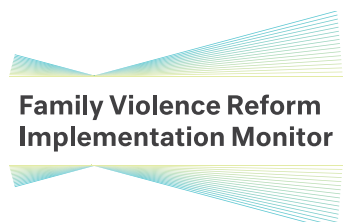


# Monitoring Victoria's family violence reforms

## Accurate identification of the predominant aggressor

December 2021



## Family violence services and support

If you are concerned for your safety or that of someone else, please contact the police in your state or territory, or call Triple Zero (000) for emergency assistance.

If you have experienced family violence and need support or assistance, contact:

- > National Sexual Assault and Domestic Violence hotline  
1800 RESPECT (1800 737 732)
- > Safe Steps 24/7 family violence response line  
1800 015 188
- > Victims of Crime helpline for men experiencing family violence  
1800 819 817 (8am-11pm)
- > Rainbow Door specialist LGBTIQ+ support, advice and referral line  
1800 729 367 (10am-5pm).

If you are concerned about your behaviour and its impact on your family, contact the Men's Referral Service on 1300 766 491 (8am-9pm).

## Victim survivor acknowledgement

We acknowledge the terrible impact of family violence on individuals, families and communities, and the strength and resilience of the children and adults who have, and are still, experiencing family violence.

We pay respects to those who did not survive and to their family members and friends.

## Aboriginal acknowledgement

The Victorian Government proudly acknowledges Victorian Aboriginal people as the First Peoples and Traditional Owners and custodians of the land and water on which we rely.

We acknowledge and respect that Aboriginal communities are steeped in traditions and customs built on an incredibly disciplined social and cultural order. This social and cultural order has sustained up to 60,000 years of existence.

We acknowledge the ongoing leadership role of the Aboriginal community in addressing and preventing family violence and join with our First Peoples to eliminate family violence from all communities.

## Accessibility

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This document is also available in HTML and PDF format on the [Monitor's website](#).

# Monitoring Victoria's family violence reforms

## Accurate identification of the predominant aggressor

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# Foreword

This is the first of our topic-based reports. It explores the practices informing the accurate identification of the predominant aggressor in responding to family violence. Critically, it shines a light on the all too frequent mistaken classification of a victim survivor as the perpetrator. The unjust consequences are far-reaching. Where misidentification occurs, the system designed to care for victims of family violence is unintentionally causing harm. As one stakeholder powerfully avowed, she ‘burns with the injustice of it’.



**Jan Shuard PSM**  
Family Violence Reform  
Implementation Monitor

It is of note that sector stakeholders universally encouraged our office to explore this subject as their most pressing concern. They are alert to the experiences of misidentification and keen to work together with government to remedy the situation. While our research found no single source of truth on the prevalence of misidentification, the estimates highlight that it occurs far too often, and requires urgent attention.

This report features the compelling stories as told to us by victim survivors who have experienced the injustice of being labelled a perpetrator of family violence. Their stories speak for themselves and alone should serve as a ‘call to action’. It was humbling to receive feedback from the women who spoke to us, with the following comments passed on:

*[The consultation] was the first time I've told people outside my family and friends everything that happened. It was the first time I felt like an outsider really believed I was a victim, and I had been abused.*

*Being able to tell you what is happening to me helped me feel heard. It gave me hope that someone is listening and doesn't want this to happen to other women and children.*

My office was greatly supported by Flat Out and members of the Victim Survivors' Advisory Council (VSAC) in connecting us with victim survivors and expertly guiding us through the consultations. Their unique skills and abilities, compassion and dedication to improving the system is an inspiration for us all to do better. But we must do more than just listen. In reflection of our work together on this project, our VSAC colleagues stated:

*Sharing space as an equal alongside professionals may feel insignificant; but to us this is very meaningful. It helps break down the hierarchy of roles and creates space for us to feel we have qualified knowledge and abilities and provides an example of how professionalism and lived experience can co-exist in work together to produce powerful and meaningful outcomes.*

Recommendation 41 of the Royal Commission sought to enhance the accuracy in identifying the predominant aggressor and has been implemented. However, as this report highlights, much more is required. I have made 12 proposals directed to the issues identified and four where continued effort is required. Our consultations have provided confidence that agencies such as Victoria Police, the Magistrates' Court of Victoria, the legal sector, the Department of Families, Fairness and Housing, and Family Safety Victoria, along with the service sector all have a strong desire to work together on solutions. I particularly want to acknowledge the openness and transparency of Victoria Police in our examination of this issue. I trust this report provides the focus and impetus to drive the changes required.

Finally, I wish to acknowledge the contribution of the many people we consulted during this review. Many of the proposals put forward are their ideas, and while planned work is not reflected in the body of this report, we have seen progress already and a strong commitment to making the improvements.

I look forward to seeing all parts of the system work together to tackle this important issue.

**Jan Shuard**

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# Monitoring context

## About the Family Violence Reform Implementation Monitor

The Family Violence Reform Implementation Monitor (the Monitor) was formally established in 2017 as an independent statutory officer of the Parliament after the Royal Commission into Family Violence released its report in 2016. The role is responsible for monitoring and reviewing how the Victorian Government and its agencies deliver the family violence reforms as outlined in the government's 10-year implementation plan *Ending Family Violence: Victoria's Plan for Change*.

On 1 August 2019 former Victorian Corrections Commissioner, Jan Shuard PSM, was appointed as the Monitor under section 7 of the *Family Violence Reform Implementation Monitor Act 2016*. Jan took up her role on 2 October 2019, replacing Tim Cartwright APM, the inaugural Monitor.

## Monitoring approach

The Monitor's 2021–2022 plan was developed through a process of consultation with government and sector stakeholders. Topics were selected that aligned areas of greatest interest and concern to sector stakeholders, with reform implementation activity outlined in the government's second Family Violence Reform Rolling Action Plan 2020–2023. In determining topics, the focus was on areas where an independent perspective could add the most value to the ongoing reform effort.

Topics selected for monitoring throughout 2021 and 2022 are:

- > **accurate identification of the predominant aggressor**
- > **family violence reform governance**
- > **early identification of family violence within universal services**
- > **primary prevention system architecture**
- > **Aboriginal-led primary prevention and early intervention**
- > **crisis response model for victim survivors**
- > **service response for perpetrators and people using family violence.**

In undertaking our monitoring, the following cross-cutting themes are examined across all topics:

- > **intersectionality**
- > **children and young people**
- > **Aboriginal self-determination**
- > **priority communities such as LGBTIQ+, people with disabilities, rural and regional, criminalised women, older people and refugee and migrant communities**
- > **data, evaluation, outcomes and research**
- > **service integration.**

Monitoring of the selected topics is based on information gathered through:

- > consultations with government agency staff
- > consultations with community organisations and victim survivor groups
- > site visits to service delivery organisations
- > attendance at key governance and working group meetings
- > documentation from implementation agencies, including meeting papers and records of decisions by governance bodies
- > submissions made to the Monitor in 2020 by individuals and organisations (many of these are available in full on the [Monitor's website](#)).

## Engaging victim survivors in our monitoring

We are also actively seeking to include user experience and the voices of victim survivors in our monitoring. The office is working with established groups including the Victim Survivors' Advisory Council, Berry Street's Y-Change lived experience consultants, and the WEAVERs victim survivor group convened by the University of Melbourne.

## Stakeholder consultation

The Family Violence Reform Implementation Monitor would like to thank the following stakeholders for their time in monitoring this topic:

- > Berry Street
- > Centre for Excellence in Child and Family Welfare
- > Court Services Victoria
- > Crime Statistics Agency
- > Department of Families, Fairness and Housing
- > Department of Justice and Community Safety
- > Djirra
- > Drummond Street
- > Elizabeth Morgan House Aboriginal Women's Service
- > Family Safety Victoria
- > Federation of Community Legal Centres
- > Flat Out Inc
- > Flemington and Kensington Community Legal Centre
- > Humphreys, Professor Cathy – The University of Melbourne
- > InTouch Multicultural Centre Against Family Violence
- > Kertesz, Dr Margaret – The University of Melbourne
- > Law and Advocacy Centre for Women
- > No to Violence
- > Reeves, Ellen – Monash University
- > Safe and Equal (formally known as Domestic Violence Victoria and Domestic Violence Resource Centre Victoria)
- > Sentencing Advisory Council
- > St Kilda Legal Service
- > Switchboard Victoria – Rainbow Door
- > The Orange Door staff
- > Women's Legal Service Victoria
- > Women with Disabilities Victoria
- > Victims of Crime Helpline
- > Victim Survivors' Advisory Council Chair and Deputy Chair
- > Victoria Legal Aid
- > Victorian Aboriginal Legal Service
- > Victoria Police
- > Youthlaw

We also thank and acknowledge the victim survivors who shared their personal stories of misidentification directly with us, and to those whose stories we heard through the agencies representing them. These stories have strengthened our monitoring of this topic and have helped shine a light on the points in the system that need improvement. A number of these stories are highlighted throughout the report, with names changed to protect individuals' privacy. These stories reflect the women's accounts of their experiences.

# 1. Introduction

Accurately identifying the predominant aggressor is a basic prerequisite for ensuring victim survivors are protected and perpetrators are held accountable for their use of family violence.

Yet we know that some victim survivors continue to be misidentified as perpetrators, with far-reaching, life-altering negative consequences.

In choosing this topic, we set out to examine the progress that has been made in:

- > supporting workforces to accurately identify predominant aggressors
- > establishing system processes to remedy misidentification at the earliest opportunity.

In exploring these matters, this report finds multiple areas that need further attention, including the need for a greater understanding of the dynamics of family violence and coercive control, clearer guidance and more joined-up processes for dealing with misidentification, and better system monitoring.

## A note on language

In our research and consultations, the terms ‘primary aggressor’ and ‘predominant aggressor’ were often used interchangeably, and we accept that their intended meaning is the same. When we use either of these terms, we are talking about a family violence perpetrator, as opposed to the victim survivor.<sup>1</sup> Some organisations have expressed reservations about these terms, noting that they can imply mutuality of violence, coercion and control or may promote a focus on a particular incident rather than the full context of the relationship. Nevertheless, we accept the documented definitions of these terms and use them throughout this report.

We understand that in some cases the predominant aggressor may not be immediately obvious. A victim survivor may use force as self-defence or as an act of resistance to their ongoing abuse. This does not make them a perpetrator, and isn’t evidence of mutual violence.

When discussing the victim survivors, we also at times use the term adopted by ANROWS<sup>2</sup>, the ‘person most in need of protection’ and suggest this provides a useful point of emphasis when determining who is a perpetrator and who is a victim survivor within a relationship.

## A note on scope

Misidentification of the perpetrator and victim survivor can occur in all types of relationships. However, this report primarily, but not wholly, focuses on the misidentification of women in heterosexual intimate partner relationships because this is the form of misidentification that has been raised with us most strongly by stakeholders. We acknowledge, however, that misidentification has been identified as a significant issue within LGBTIQ+ relationships and also occurs in other familial relationships (particularly child-parent/carer relationships).



## 2. Key findings and proposed actions

Our investigation found that despite the Royal Commission's only recommendation regarding misidentification having been implemented, misidentification continues to occur, and rectification is extremely challenging. As the Chair of the Victim Survivors' Advisory Council neatly concluded, 'it's too easy for it to happen and too hard for it to be fixed'. Indeed:

*This serves as a reminder that reform should go beyond 'ticking a box' and moving on – it requires constant re-evaluation and education to best serve victim-survivors of [family violence] and their individual safety needs.<sup>3</sup>*

We found some good foundations in policy and guidance, but this has not yet translated into consistent practice. Inconsistency in being able to identify the predominant aggressor, and to recognise and respond to misidentification, was raised frequently about Victoria Police, Child Protection and magistrates. This illustrates that despite substantial efforts across a range of workforces to date, there continues to be inconsistency in understanding family violence and coercive control and how these intersect with a range of cohorts. It also illustrates that, in some cases, the available guidance is not clear enough.

There was also a lack of clarity about both local and systems approaches to reducing misidentification and rectifying it when it does occur. While it was possible to change the record in some cases, such as in The Orange Door and specialist services databases, many victim survivors or their advocates were left to fight to be acknowledged as a person in need of protection and to stop being treated as a perpetrator in other systems.

Our detailed analysis can be found in the remainder of this report. Throughout the report, findings that directly relate to a proposed action are highlighted.

This review has identified an urgent need to address misidentification. Currently, some systems that have been set up to protect victim survivors are unintentionally resulting in further harm. To effectively reduce and respond to misidentification, as intended by the Royal Commission, a genuine whole-of-system effort is required. This will require partners from across different sectors to work together to develop workable solutions for each stage of the process and at a minimum will need to involve government representatives from justice system agencies, the legal sector, the specialist family violence sector, child and family services, and Child Protection. Engagement with groups that can represent the unique needs of priority cohorts will also be essential. Close collaboration with Koori Caucus and Aboriginal organisations will be required to ensure that these solutions adequately address the high rates of misidentification among Aboriginal women.

We suggest the following suite of actions is required to adequately address misidentification in a systemic way.

**Figure 1: 16 proposed actions to address systemic misidentification<sup>4</sup>**



### 3. What did the Royal Commission say and what has changed since?

The Royal Commission into Family Violence found that more needed to be done to ensure predominant aggressors are accurately identified and that situations where victim survivors are misidentified as perpetrators can be appropriately rectified. It specifically mentioned the importance of 'amending LEAP processes to facilitate the removal of the name of a person wrongly identified'.<sup>5</sup>

The Royal Commission reflected what it had heard from many sources about the negative consequences of misidentification for victim survivors and the additional risks victim survivors from marginalised groups face of being misidentified.<sup>6</sup>

It made one recommendation that directly related to the accurate identification of predominant aggressors and the issue of misidentification:

#### Recommendation 41

Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to ensure it provides suitable guidance on identifying family violence primary aggressors [within 12 months]. This includes:

- > procedures for amending [LEAP] when a service provider or a Support and Safety Hub [now known as The Orange Door network] subsequently informs Victoria Police that a person is not the primary aggressor
- > details of specialist support available to assist in identifying the primary aggressor.

Victoria Police should provide training at all appropriate levels on the amended requirements relating to identifying primary aggressors.

This recommendation was directly translated into other government plans and commitments:

- > Ending Family Violence: Victoria's 10-year Plan for Change and its first Rolling Action Plan (2017-2020) both reference the creation of the Victoria Police Family Violence Centre of Learning and the fact that police will be supported to accurately identify the primary aggressor.
- > Similarly, Victoria Police's family violence strategy commits to improving 'frontline capabilities in understanding perpetrator behaviours and identifying primary aggressors'.<sup>7</sup>

Recommendation 41 is considered 'implemented', with Victoria Police having updated the Code of Practice, Victoria Police Manual Family Violence and its training to support the accurate identification of the predominant aggressor.

A Primary Aggressor Working Group operated during 2018 and 2019 to investigate the issue of misidentification and explore possible solutions. The group included representatives from across government and the family violence sector and prompted useful discussions about the issue of misidentification, culminating in the acquittal of recommendation 41.

Other major family violence reform initiatives are also contributing to improved identification of predominant aggressors. For example, the MARAM (Multi-Agency Risk Assessment and Management) Framework is contributing to a 'shared understanding of family violence' (pillar 1) and aims to generate more 'consistent and collaborative practice' (pillar 2), with the accurate identification of victim survivors and perpetrators a core part of the framework.

The Orange Door network is also now well-established as a central intake point for both victim survivors and perpetrators. The Royal Commission anticipated that creating this network would help to promptly spot misidentification and bring it to the attention of police for rectification.<sup>8</sup>

What is clear, is that despite recommendation 41 being acquitted and despite the substantial progress of major family violence reforms, much more work is required to realise the full intent of the recommendation.

## 4. Predominant aggressor identification is clearly described in government policies and resources

Policies and other resources for police, specialist family violence services, the legal sector, the judiciary and others define and provide guidance for identifying the predominant aggressor. Some of this guidance is outlined below, with an emphasis on the guidance provided to police, given their important initial role in identifying victim survivors and perpetrators when they attend family violence incidents.

### Victoria Police

Victoria Police defines the 'primary aggressor' as:

*... the party to the family violence incident who, through known history and actions within the relationship, has caused the most physical harm, fear and/or intimidation against the other ... The primary aggressor is the perpetrator who is using violence and control to exercise general, coercive control over their partner or family member.<sup>9</sup>*

Importantly, the Victoria Police Manual Family Violence distinguishes 'the primary aggressor, through their history and pattern of coercion, power and controlling behaviour' from a 'victim who may have utilised self-defence or violent resistance in an incident or series of incidents'<sup>10</sup>

Victoria Police's Code of Practice for the Investigation of Family Violence and the Victoria Police Manual Family Violence require police to identify the primary aggressor when they attend a family violence incident, and both documents provide guidance to support police to do so. To identify the primary aggressor, police are asked to consider a series of indicators, which are also reflected in MARAM guidance (refer to Box 1).

Police are warned to avoid making assumptions by considering whether someone may have been acting in self-defence and whether a perpetrator is attempting to exert undue influence over the police's assessment of the situation. The training materials provided to police recruits ask police members to 'look beyond the incident they are presented with' and consider the broader context to determine the primary aggressor, alerting them to the fact that 'the demeanour of perpetrators and victims can go against common assumptions of behaviour. For example, victims may present as angry and emotional and perpetrators calm and charming ...'<sup>11</sup>

Police decisions about who to list as the respondent (perpetrator) and affected family member (victim survivor) on the Family Violence Report (sometimes referred to as the L17) should be 'based on future risk'.<sup>12</sup> They must only identify one perpetrator 'except in situations where there may be multiple aggressors and one [affected family member],<sup>13</sup> and if they are unsure, they are advised to nominate the affected family member 'on the basis of which party appears to be most fearful and in most need of protection.'<sup>14</sup>

### Box 1: Victoria Police and MARAM guidance for identifying the primary aggressor

#### Victoria Police – indicators for identifying the primary aggressor:

- > respective injuries
- > likelihood or capacity of each party to inflict future injury
- > whether either party has defensive injuries
- > whether it is likely one party has acted in self-defence
- > in predicting or anticipating violence, whether it is likely one party acted with violent resistance
- > which party is more fearful
- > patterns of coercion, intimidation and/or violence by either party.

Source: Victoria Police (2021): *Victoria Police Manual Family Violence* (unpublished)

#### MARAM Framework – key indicators for identifying the predominant aggressor:

- > The respective injuries of the parties
- > Whether either party has defensive injuries
- > Whether it is likely one party has acted in self-defence
- > In predicting or anticipating violence, whether it is likely one party acted with violent resistance
- > The likelihood or capacity of each party to inflict further injury
- > Self-assessment of fear and safety of each party, or if not able to be ascertained, which party appears more fearful
- > Patterns of coercion, intimidation and/or violence by either party
- > Prior perpetration/histories of violence (from a range of services, including specialist family violence services, health services etc)
- > Accounts from other household members or witnesses, if available
- > The size, weight and strength of the parties.

Source: Family Safety Victoria (2021): *MARAM Foundation Knowledge Guide*, p. 113

## MARAM Framework

The MARAM Framework articulates that ‘correctly identifying perpetrators of family violence is a critical component of risk assessment and risk management’.<sup>15</sup> Through its Foundation Knowledge Guide and range of practice guides, it includes a series of considerations for identifying the predominant aggressor, such as those listed in Box 1, and guidance for situations where it is unclear, which includes seeking specialist family violence advice.

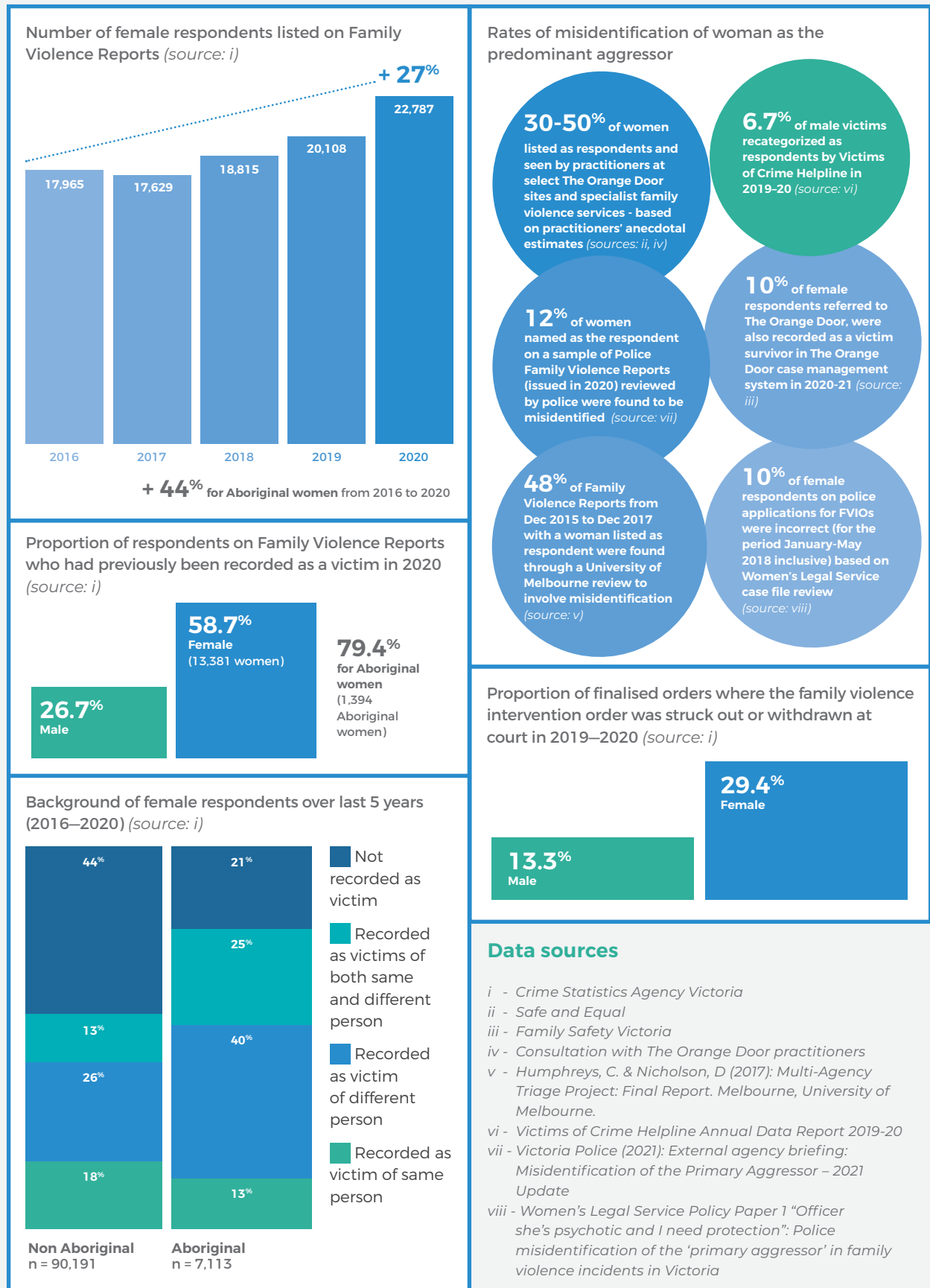
MARAM perpetrator-focussed guidance for services that do not specialise in working with perpetrators was released in July 2021, providing important insights into the issue of misidentification. The guidance cautions against the idea of ‘mutual violence’, noting that in most cases one party exerts coercive controlling and violent behaviour towards the other. It explicitly states that men who experience violent resistance from a woman who they have been using violence against (including physical, emotional, psychological, financial and other forms of coercive control) are not themselves victim survivors.<sup>16</sup>

Work is well underway on the MARAM comprehensive perpetrator-focussed guidance, tools and resources designed for services that specialise in this area. However, their release has been delayed due to the coronavirus (COVID-19) pandemic and to allow further consideration of the issue of misidentification. Once released, these will provide specific tools for identifying the predominant aggressor and deeper advice about misidentification.

## Other resources

To varying degrees, training and guidance for other key workforces, such as staff from The Orange Door, the Victims Support Agency and those working in courts, also consistently define the ‘predominant aggressor’<sup>17</sup>. They describe the considerations to be made in relation to family violence and alert workforces to perpetrators who may be seeking to manipulate systems to work against a victim survivor.

Figure 2: Key statistics relating to women as respondents, and indicators of their misidentification



## 5. Misidentification is a significant issue that has enormous consequences for the victim survivor

While relevant government policy documents and other resources quite consistently describe what a predominant or primary aggressor is, and provide guidance on how to identify one, misidentification continues to occur, with enormously harmful consequences for victim survivors.

The exact prevalence of misidentification is unknown, but stakeholders we met with consistently told us that they see it happen too often. There are also some quantitative indicators, as outlined below and depicted in Figure 2:

- > Victoria Police estimate that of female respondents on Family Violence Reports relating to intimate partner violence, misidentification occurs approximately 12 per cent of the time.<sup>18</sup>
- > Crime Statistics Agency data showed that of family violence incidents in 2020 where police identified a female respondent, 58.7 per cent of the women had been identified as a victim of family violence in the past five years (31.3 per cent by the person they are alleged to have perpetrated against) compared with 26.7 per cent of male respondents.
- > Based on a 2018 review of client intake forms, Women's Legal Service Victoria found that 10 per cent of their clients had been misidentified as respondents on police applications for family violence intervention orders (FVIOs).<sup>19</sup>
- > At court, 29.4 per cent of FVIO applications where the respondent is female are struck out or withdrawn compared with 13.3 per cent of applications where the respondent is male (noting there are numerous reasons that could lead to a matter being struck out or withdrawn).<sup>20</sup>

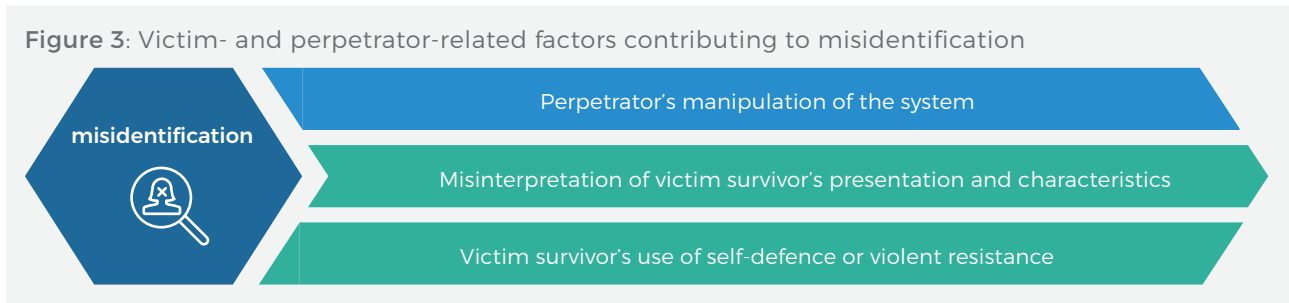
With the number of incidents where police identify a female respondent increasing substantially over recent years (to 22,787 in 2020), misidentification is affecting a significant number of women. There is no single source of truth for the number of women misidentified. However, applying prevalence estimates to the number of incidents where a woman is listed as the respondent equates to misidentification potentially occurring in at least 2,279 incidents in 2020, based on a prevalence of 10 per cent, and possibly many more.

Further, certain cohorts are at greater risk of being misidentified as a perpetrator: in particular, Aboriginal women, migrant and refugee women, women with disabilities, criminalised women and LGBTIQ+ people.<sup>21</sup> For example, InTouch told us that of a group of victim survivors they had worked with who had been labelled perpetrators, half of them had been misidentified and others reported not being believed or being treated as though they were being manipulative or lying. Youthlaw noted that in a case review they conducted of children and adolescents who were listed as respondents on FVIO applications, 75 per cent were current or past victim survivors.<sup>22</sup> Djirra estimated that on FVIOs where their female client is listed as the respondent, there has been misidentification or some degree of unfairness in the response 90 per cent of the time. Crime Statistics Agency data presented in Figure 2 shows that nearly 80 per cent of Aboriginal women who were identified by police as the respondent in family violence incidents had been recorded as a victim in the past five years (compared with nearly 60 per cent for all female respondents). Some of the high-level reasons for these discrepancies are explored below.

Relates to  
action 13

Aside from workload or process related factors, there are several reasons for victim survivors being misidentified as perpetrators, and vice versa. We have classed these reasons into three overlapping categories, depicted in Figure 3 and described below.

Figure 3: Victim- and perpetrator-related factors contributing to misidentification



> **Perpetrator's manipulation of the system.** Some perpetrators actively manipulate police and the justice, health and Child Protection systems for their own advantage and as a continuing form of family violence (for example, refer to Caroline's story). This is known as systems abuse, and some stakeholders explained that once a perpetrator has achieved success in manipulating systems against a victim survivor, they will continue to use this approach. A particular concern raised was the system manipulation used by non-Aboriginal men in relationships with Aboriginal women; knowing their victim survivor's fear of involvement of police and Child Protection, the perpetrator makes threatened and actual use of these systems as a further form of coercive control. Stakeholders expressed that while it is a positive step that online tools and family violence information are now readily available, making it easier for victim survivors to seek help, these resources also provide perpetrators with a script and tools that enable them to abuse the very systems that are designed to protect people. This, of course, doesn't mean that access should be reduced but that relevant workforces need to be skilled in identifying when systems abuse is happening.

*The most effective strategy for a perpetrator is to get the victim named as the perpetrator.*  
 Professor Cathy Humphreys, The University of Melbourne, consultation with Family Violence Reform Implementation Monitor, July 2021

> **Misinterpretation of victim survivor's presentation and characteristics.** Misidentification can also occur when judgements are made about a person's appearance, behaviour and characteristics. Many of the stakeholders we met with said there are some ingrained assumptions – which 'can be highly racialised, gendered and classed'<sup>23</sup> – about how a 'real' victim survivor should look and behave. Victim survivors who appear agitated and/or uncooperative are less likely to be seen as being in need of protection, even though they may be exhibiting a very normal response to the, often extended, trauma they have endured. Stakeholders told us that some cohorts of women are more likely to be subject to bias and discrimination and less likely to be taken seriously as a victim survivor (such as women experiencing mental illness, women using alcohol or other drugs, and criminalised women). These issues are particularly salient for Aboriginal women, many of whom have experiences of intergenerational trauma, racism and criminalisation. For other women, such as women with disabilities and migrant and refugee women, communication barriers may make it more challenging for them to convey their side of the story. For women with multiple, intersecting forms of disadvantage, the issues are compounded.

In too many of the examples we heard, perpetrators used the 'vulnerabilities' of victim survivors – including mental illness, alcohol and other drug use, language barriers, visa status, finances, housing and fear of Child Protection – against them, including by 'weaponising' associated systems to manipulate the situation. In some cases, the mental illness or substance misuse was a result of the abuse, and yet was able to be used by the perpetrator to undermine the victim survivor and contribute to their misidentification.

> **Victim survivor's use of self-defence or violent resistance.** It is our understanding that a victim survivor who, through an act of self-defence or violent resistance, commits a crime is likely to be labelled a family violence perpetrator, at least at the time of the incident. Being able to separate such an act from a pattern of abuse requires a nuanced understanding of the dynamics of family violence and the difference between men's and women's use of violence. The MARAM Framework is clear that women 'tend to use force to gain short-term control over threatening situations, rather than using already held power to dominate or control their partner'. This motivation is 'distinctly different from men's use of violence, which is characterised by a pattern of coercive, controlling and violent behaviour'.<sup>24</sup>



### **Caroline's story**

Caroline travelled to Australia from Europe in her early 20s, with no friends or immediate family in the country. She met Felix and the relationship became one of co-dependency very quickly. They were married and had two children. Felix drank heavily every day. He had a controlling and manipulative personality and kept her close, not encouraging her to have her own friends or outside activities. When their children came along, she became more focused on them and he received less attention, which he did not like. Due to the pressure and control she experienced during the marriage, her mental health suffered, and she received support from mental health services, including a stay in a mental health unit. At no point was she questioned about their relationship by these services. When she was released, Felix would tell her that he 'saved' her from the mental health unit. She believed him for a long time. In fact, Felix was in ongoing contact with the outpatient support Caroline was receiving, claiming that she was abusive and directly attempting to influence her diagnosis and medication.

During the coronavirus (COVID-19) pandemic, Felix's abuse escalated. He was verbally, emotionally and physically abusive, and this abuse included an incident of attempted strangulation. Caroline decided she had to leave the relationship. But before she could leave, Felix took the children and left. He went to the local police station and applied for a family violence intervention order (FVIO) against her. The children were not included in this order. Felix also called Child Protection and the mental health outpatient service, claiming Caroline was having a psychotic episode.

Caroline engaged closely with the mental health service to have Felix removed as her next of kin and to slowly disclose what had actually been happening at home. Her mental health improved considerably once she was out of the relationship, and the service removed her initial diagnosis, instead diagnosing her with chronic post-traumatic stress disorder.

Caroline has now applied for an FVIO of her own and included her children on the application. However, while the court proceedings are ongoing, Felix still has custody of the children and has made it very difficult for her to see or communicate with them. Caroline contacted Child Protection to discuss her concerns about the children being in Felix's care, but she was advised that there was already a case open, as he had already called them, claiming she was the problem. Child Protection staff informed her that Felix claimed that she is making no effort to contact the children and that he had disclosed his version of Caroline's mental health history. She knows that they have obtained outdated diagnosis information, which she feels affected their judgement of her. They have also never asked questions that indicated they were truly trying to understand the dynamics of the relationship, and Caroline has felt like they only ever heard his side of events. Child Protection have refused to speak to her lawyer and Caroline is unsure who to contact. She has not been advised of the steps moving forward and has felt very intimidated by the whole process.

Caroline has always felt disadvantaged due to Felix's systems abuse. She is shocked that by simply removing her children from the home and 'getting in first' with the FVIO and Child Protection applications, Felix has been successful in getting these systems to work against her.

*Source: Family Violence Reform Implementation Monitor, based on a direct victim survivor account*

Tragically, the dynamics of family violence and coercive control will sometimes mean that women are conditioned to believe they are in the wrong and deserve what is happening to them. They may not be aware that they are experiencing misidentification, and this will affect their engagement with police, courts and other services, and often act as a barrier to challenging the misidentification early, if at all.

Yet the consequences of being misidentified as the predominant aggressor can be crushing for a victim survivor. These consequences have been widely documented<sup>25</sup> and have been shared with us directly through our consultations. First and foremost, misidentification means that the actual perpetrator is not being held to account for their violence and may continue to inflict family violence on the actual victim and others, uninhibited. It means that the person most in need of protection is not being protected and may instead have court processes initiated against them. The flow-on effects of this are far-reaching, including the following (see also Amy's story):

- > Further criminalisation – for example, if the victim is subject to an FVIO and inadvertently breaches it, they may be subject to criminal charges. A record as a perpetrator may also influence the police response to future incidents.
- > Information sharing – a misidentified person can have information that mistakenly lists them as a perpetrator shared across agencies under information sharing provisions.
- > Impact on children – for example, if Child Protection assesses that a child is in need of protection and progresses a protective application, then the Children's Court may decide to remove the child from the care of the parent who has been labelled the perpetrator (but who is actually a victim survivor), and in some cases place them with the actual perpetrator.
- > Financial implications – for example, misidentified victim survivors may lose access to government payments and may have to take time off work for court proceedings.
- > Housing implications – the misidentified victim survivor may be excluded from the home and forced into crisis accommodation or homelessness and not be considered a priority for housing assistance because they are not recognised as a victim survivor.
- > Access to services – the victim survivor may experience a delay or additional barriers in accessing specialist family violence services.
- > Health impacts – the victim survivor may receive a misdiagnosis resulting from misinformation, trauma and post-traumatic stress disorder related to the abuse, removal of maternal care (e.g. breastfeeding if separated), unidentified or unattended injuries, exacerbation of family violence drivers of ill-health and coping behaviours (e.g. alcohol).
- > Future employment – employment prospects may be limited with a record of family violence perpetration or related criminal convictions.
- > Future help-seeking behaviour – the victim survivor is less likely to seek help from police or services in future due to a lack of trust.

As captured in the 2020 ANROWS report, these consequences:

*... contributed to a profound sense of injustice and distrust of the police and legal system, meaning victims/survivors came to view the legal system as an extension of violence rather than a protective resource. For many women this trauma manifested in a range of poor mental health outcomes and substance use issues ... At a personal level, this also translated to deeply felt impacts of misidentification on their self-worth, with many women expressing shame, humiliation and social isolation.<sup>26</sup>*

The issues contributing to misidentification and the challenges to its rectification at various points in the system are captured in Figure 4.

### **Amy's story**

In 2018 Amy's then husband, Dan, assaulted her. He regularly abused alcohol and became particularly angry and difficult when drinking. Amy knew his behaviour was bad, but at the time she didn't even realise she was experiencing family violence. On this occasion, she felt unsafe and wanted to get in her car and leave the area, but Dan blocked her car in.

As she had done many times before, Amy called police in the hopes that it would force Dan to calm down and the situation would de-escalate. However, on this occasion police issued a family violence safety notice against her, based on Dan's claims that Amy had assaulted him. Amy hadn't told police about the assault against her because she didn't want to aggravate Dan.

Amy was then evicted from the property, leaving in the back of a police vehicle. Amy had to attend court seven days later due to the expiry of the safety notice. There, police applied for an interim FVIO against her. Amy still loved and wanted to protect Dan. She ultimately described what had actually happened at the incident while still hiding the full history of his behaviour. The court (a specialist family violence court) struck out the application, and Amy later applied for an order on her own, which was granted.

Amy's psychologist has diagnosed her with extreme post-traumatic stress disorder due to the experience. She has difficulty sleeping and often wakes up distressed. Having returned to the home she shared with Dan, she lives in a state of stress and hypervigilance.

Because Amy works for herself, this experience has had a large impact on her work. She lost clients, which affected her financially.

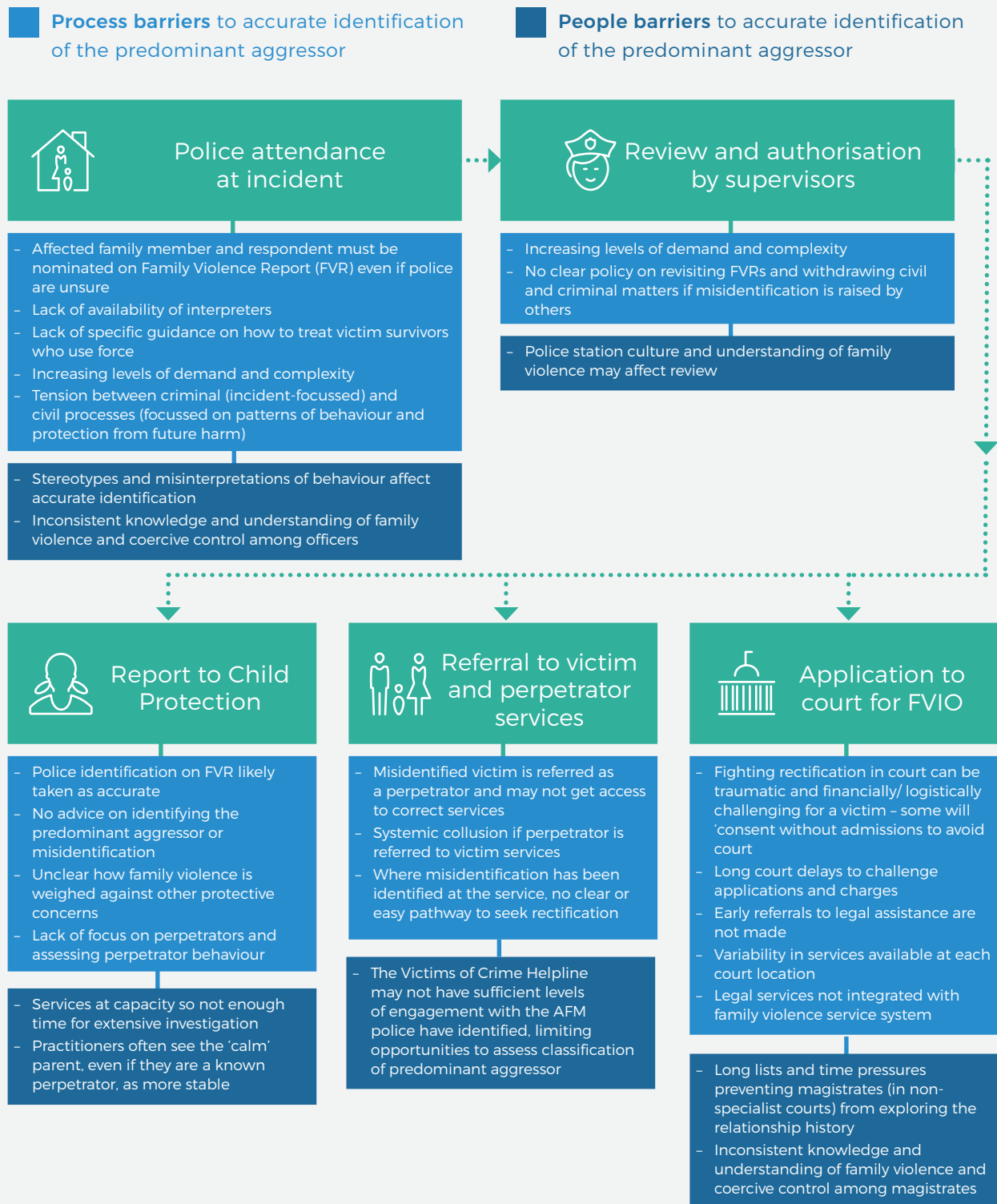
Amy feels strongly that there must be consequences for perpetrators who use systems abuse in this way. She describes police siding with Dan as emboldening and encouraging him to continue his narrative of being a victim loudly and persistently.

*Source: Family Violence Reform Implementation Monitor, based on a direct victim survivor account*

There are also significant flow-on implications for children of the person who has been misidentified. They are exposed to the resultant stress and loss of stability, and they may ultimately be removed from the parent who has been doing their best to be protective within an abusive relationship. For children who, themselves, have been misidentified, there is often a history of family violence, particularly from a parent or carer, yet there are limited options to respond. Youthlaw explained that as the young person is often heavily reliant on their parents (including emotional dependency and ability to remain engaged with their family including siblings, financially for accommodation, access to education and services and ability to attend court), they may be reluctant to challenge them legally, and there is a very real risk of criminalising the child.

Further, aside from the profound personal consequences for a victim survivor who is misidentified, misidentification leads to wasted system resources across police, courts, specialist services and other government-funded areas that are already under ongoing demand pressure. It is encouraging that we observed widespread awareness of misidentification and its impacts, and a commitment to doing something about it, particularly from Victoria Police. We hope the issues highlighted in this paper can inform future whole-of-government action to address misidentification.

**Figure 4:** Stakeholder perceptions of key barriers contributing to the ongoing issue of misidentification



## 6. Acknowledging the complexity of the family violence incidents police attend, police practice and processes are contributing to misidentification

While Victoria Police has made considerable changes in updating its policies, guidance and training to reflect the need to accurately identify the predominant aggressor, this has not consistently translated to improved police practice.

Internal Victoria Police analysis of a sample of incidents in 2020 where a woman was named as the respondent suggests that it misidentifies female respondents at a rate of 12 per cent. A further 35.2 per cent of cases can be classed as 'borderline' for correct identification. Professor Cathy Humphreys advised us that in previous research analysing police Family Violence Reports where a woman was a respondent, almost half (48 per cent) of cases involved misidentification.<sup>27,28</sup>

There is no doubt that officers face extremely challenging situations when they attend family violence incidents, and the predominant aggressor will not always be plainly obvious. However, there are some clear process and practice issues that need further attention. We must acknowledge that, based on substantial internal work Victoria Police has done to understand the issue of misidentification, they themselves have identified many of the issues raised with us by stakeholders.

### Police must nominate the perpetrator at the incident, even if they are unsure

At the beginning of the police risk assessment, the Family Violence Report, which police must complete for every family violence incident they attend, they must nominate the respondent (perpetrator, predominant aggressor) and affected family member (person most in need of protection, or victim).

Victoria Police advised us that officers will generally speak to both parties to reach a view about who is the victim and who is the perpetrator. Observation, physical evidence and witness statements also inform their decision. However, there are cases where police are genuinely unsure, whether as a result of family violence knowledge gaps, or the complexity of the case. In such a case, they make a best assessment (refer to Tracey's story). This is particularly true for LGBTIQ+ family violence, which stakeholders told us was more likely to be mistakenly seen as mutual, as a result of poorer understanding of the dynamics of violence, coercion and control in these relationships on the part of police.

*... police are more likely to fail to identify a predominant aggressor in situationally ambiguous circumstances, for example when both parties tell police they are the victim of the other. Additionally, case study data indicates that victims are more likely to be misidentified when police work demands are privileged over investigatory ones, or when trivial criminal information, such as a victim's use of an illicit substance, supersedes [intimate partner violence] risk-relevant information.*

No to Violence (2019): Discussion Paper: Predominant Aggressor Identification and Victim Misidentification, p. 6

Furthermore, Victoria Police estimates that in about a third of cases, officers only speak to the person they believe to be the affected family member. This can mean they accept the story presented by a perpetrator claiming to be a victim, and the actual victim survivor misses an important opportunity to challenge this account.

These uncertain nominations of respondent and affected family member have real consequences because once a sergeant signs off on the Family Violence Report and it is committed to the LEAP database, it remains on record permanently. Sound internal review processes at Victoria Police are therefore vitally important to pick up on misidentification.

Furthermore, the Family Violence Report and/or its guidance may need additional prompts to more accurately identify the predominant aggressor and person most in need of protection, particularly in ambiguous situations. The continuing release of the MARAM perpetrator tools and guidance provides an opportunity for such a review in line with agreed Victorian risk assessment and management processes

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action 4

### Tracey's story

Tracey and Celina were in a relationship. There was a history of Celina using violence in the relationship, but Tracey had not accessed or been referred to family violence services or police before.

Police were called by passers-by to an incident where they found Tracey and Celina outside their house, in a heated argument, punching each other. The police members attended, separated the two parties and spoke to them separately. They did not explore the context of previous abuse in the relationship.

No criminal charges were laid, but police issued a family violence safety notice at the scene, listing Tracey as the respondent and Celina as the affected family member. They noted that they were unable to determine the predominant aggressor in this instance.

At the first hearing in court, the police and magistrate agreed that the FVIO application would be withdrawn, effectively dismissing the seriousness of the violence. Knowing this, Tracey decided not to say anything about the abuse she had been experiencing in the relationship. Due to this withdrawal, no further risk assessments around the relationship were completed. As a result, an opportunity was missed for the women to be referred to relevant family violence services. If police are ever called to an incident again where Tracey is present, police records will show that she was a perpetrator in a past incident.

*Source: Family Violence Reform Implementation Monitor, based on a case example provided by a community legal centre*

## Police do not always sufficiently consider the history and circumstances of an incident

All stakeholders consistently raised concerns that, too often, police are taking what they see and hear at the incident at face value and are not digging deeper to understand the context in which an incident occurred.

Stakeholders advised that this appears to be the result of varying levels of understanding of family violence, biases and stereotypes among some officers, and inconsistency in adherence to police policies and processes. This results in them not understanding the factors that can contribute to misidentification (such as manipulative perpetrators and the characteristics of victim survivors – as outlined in section 4). These issues have been highlighted in recent news articles,<sup>29</sup> and while some of these stories are from other Australian states, they echo the Victorian stories we heard during our consultations. We heard numerous examples from community legal centres and directly from victim survivors. The key factors in many of the misidentification cases were:

- > Police listened to the calm and well-spoken male perpetrator, believing him to be the victim, including in cases where the woman was the one to call police and request help but was hiding or had left the house once police arrived. In these cases, women often didn't know they'd been named as the respondent in the incident and were very distressed to find out when they were served with an FVIO application.
- > Police seemed to overlook signs of trauma and self-defence among those in need of protection.
- > Police also seemed to either not realise or not give sufficient regard to the fact that the woman they were listing as the respondent often had no prior offending and often had a documented history of abuse by her partner (the alleged victim) or another partner.

As well as these general issues, there were further issues for minority groups that affected their ability and/or willingness to disclose family violence, which seemed to play a large role in police misidentifying them:

- > For non-English speaking and migrant women, police seemed to lack an awareness of their fear of speaking up due to the perceived risk of being deported. Cultural differences also possibly contributed to a reluctance to speak openly about family violence, including particularly sensitive topics such as rape. Very careful questioning is required to uncover what is happening in these situations. In some cases, though, police used the perpetrator to interpret for a non-English speaking victim, which goes against police policy.
- > Aboriginal women are often deeply mistrusting of police due to past experiences of systemic racism and the perceived risk of Child Protection becoming involved and children being removed from their care. They are also statistically more likely to have a traumatic brain injury, with Aboriginal women experiencing head injury due to assault at a rate 69 times the rate for non-Aboriginal women.<sup>30</sup> All of these factors will affect their communication and cooperation with police, yet stakeholders told us that this continues to be insufficiently acknowledged by some police. In some cases, police interviewed Aboriginal women in front of the perpetrator and dismissed violence against Aboriginal women in smaller communities because they believed the couple would 'be back together tomorrow'.
- > There was a clear view that police in regional and rural areas had a poorer understanding of the dynamics of family violence and that it is particularly difficult to get an appropriate response in these areas if the family is known to police.
- > There was a perception by stakeholders that police don't take certain voices seriously, particularly those of Aboriginal women and children and young people, treating them as unreliable.

Family violence is core business for police: 40 to 60 per cent of Victoria Police callouts on any given day are to family violence incidents.<sup>31</sup> In 2021, 47 per cent of all crimes against the person related to family violence.<sup>32</sup>

Despite the enormous effort of Victoria Police through existing family violence training offered through the Victoria Police Family Violence Centre of Learning, there appears to be a real need for further targeted capability building activities for frontline police and sergeants to ensure they truly understand the complexity of family violence and how it might be experienced by a range of marginalised groups. Better understanding these dynamics could help police to work more effectively with vulnerable groups to:

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action 14

- > overcome their hesitancy to disclose family violence
- > be more alert to perpetrators' manipulative tactics
- > have the skills to engage with likely perpetrators in a non-collusive way.<sup>33</sup>

There is likely to be value in involving the specialist family violence sector, which has not previously been involved, in the future development and delivery of police training, targeting known issues. This should include Aboriginal family violence organisations.

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action 13

## Victim survivors who use force are often labelled perpetrators

Despite police guidance being clear that a victim who uses self-defence or violent resistance against a perpetrator is not themselves a perpetrator, there appears to be a real practice tension for police in situations where a victim uses force. This tension arises, in part, from the dual functions of the Family Violence Report that is completed about the incident.

## Susan's story

Susan and Alex are married and were living together with older children from previous relationships and a baby they had together. Alex worked full-time and Susan was studying law and working in a part-time role in the criminal justice system. Neither had a criminal history nor any previous dealings with the police. Alex had a pattern and history of exercising coercive control over Susan and was occasionally violent. Alex's main ongoing abuse was manipulation through threats and denying Susan access to money and assets of the relationship.

On the night of Susan's arrest, they had both been drinking and arguing about money from the proceeds of a house sale that Alex had attempted to hide in his mother's name to obstruct Susan accessing it in the event of a divorce. This verbal argument escalated when Alex held Susan down on the ground and strangled her. This was witnessed by one of Susan's older children. In the process of prying his fingers off her neck, Susan broke Alex's finger. This stopped Alex from continuing to strangle her, but Susan was shocked, physically and psychologically hurt, and feared for her life. Susan grabbed a steak knife that was in close proximity on the kitchen bench and stabbed him in the shoulder. When the police arrived, Susan was as calm and collected as possible, and she had faith in the system protecting her, given she had been acting in self-defence. Susan was arrested, taken to the police station, where she was denied bail, and held overnight. The last thing her son said to her before she was taken away by police was that he didn't want to be taken away from her.

Susan applied again for bail at court, explaining that she was defending herself, had no previous criminal history and would lose her house, job and kids into foster care if she didn't get bail. The magistrate determined that these were not compelling reasons to grant bail, and Susan was held on remand. Susan, who had been working within the criminal justice system 24 hours earlier found herself on a prison transport vehicle headed for the state's maximum security prison for women.

During her time in custody, Susan only saw her youngest child, who had spent his entire life in his mother's care, twice and had no phone or visitation access with her other children. In consultation with her lawyer, Susan decided to plead guilty because she did not want experience or have her children experience having to testify in court. She received a custodial sentence and a community corrections order (CCO). She had already been in custody for the majority of the sentence she received so was released shortly after sentencing.

Upon her release, Susan was homeless. She received short-term crisis accommodation, and subsequently lived in shared accommodation, while rebuilding her life. She completed her CCO without issue. She lost her job due to the admission of guilt, and now has a criminal conviction and a job dismissal that will remain with her. Susan now has a new job, a house and one of her older children living with her. She knows she is lucky in this regard. She is entitled to visits with her other children on the weekends, however Alex continues to exert his control by withholding these visits frequently if Susan does not behave the way Alex wants or does not comply with his demands. This wasn't just a case of misidentification, Susan was deemed the "only aggressor", with Alex's potentially lethal violence not acknowledged at all. This label and the ramifications of that night will stay with her for the rest of her life.

*Source: Family Violence Reform Implementation Monitor, based on a direct victim survivor account*

The Family Violence Report is designed to capture the predominant aggressor and person in need of protection (these terms are not used in the template but perhaps should be) and assess the risk of future harm to the victim(s). It also captures details of the family violence incident in the 'narrative' section and prompts referrals to Child Protection and specialist victim and perpetrator services. When officers complete the Family Violence Report on their device, they create linked 'sub-incidents' for any crimes that have occurred at the incident, which could include property damage or physical assault.<sup>34</sup>



There is no requirement for the respondent on the Family Violence Report to be the same as the offender in a crime. For example, a victim survivor who commits a crime in the process of exercising violent resistance can reasonably be labelled the offender in the sub-incident while still being acknowledged as the person in need of protection on the Family Violence Report. However, we understand that in practice police will usually match the respondent and offender, even if they know the offender is the victim survivor within the relationship. This is deeply problematic and is inconsistent with the intention of the Family Violence Report, MARAM Framework and police guidance about predominant aggressors. It sets both parties on the wrong justice and specialist service pathways.

For children using or allegedly using violence, many of whom have been living in family violence environments, The Orange Door practitioners, Centre for Excellence in Child and Family Welfare and Youthlaw agreed that they should not be labelled perpetrators or respondents. Instead, there should be a more trauma-informed approach, as has been implemented for child sexual abuse cases. This is consistent with our findings regarding adolescents using violence in the home in our 2020 report.<sup>35</sup> We suggest that as whole-of-government efforts to respond to adolescent violence in the home progress, special consideration should be given to the risk of children under the age of 18 being misidentified as respondents.

Relates to  
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There is currently no explicit guidance for police in situations where a victim has technically committed a crime, and how to treat and record this. Victoria Police needs clear and specific guidance on how to approach these situations and to make a clear distinction between the criminal incident and the family violence risk assessment.

Relates to  
action 4

Without practice improvement in this area, victim survivors are put in an impossible position in deciding whether to defend themselves. The victim survivor whose experience is shared in Susan's story told us that she wonders if she should have let her ex-husband strangle her rather than fight back and suffer the consequences. Similarly, a practitioner from Elizabeth Morgan House, a specialist Aboriginal family violence service, said she wasn't sure whether to advise women to defend themselves or not, knowing how easy it is for misidentification to occur when they do.

## Internal review processes

Following initial police attendance at a family violence incident, review processes by supervisors should provide a crucial safeguard against misidentification being cemented in police records.

After a supervising sergeant approves the Family Violence Report, it is committed to LEAP, the police database. Victoria Police advised us that supervisors frequently return the brief (which includes the Family Violence Report, application for an FVIO and paperwork for any criminal charges) for review or changes to be made. It is not clear how often supervisors pick up misidentification or seek further information before approving the brief. However, many stakeholders noted that there is considerable room for improvement at this point in the process. Supervisors represent a smaller, more experienced part of the police workforce who can support the on-the-job learning of the younger general duties officers who are under considerable work pressure. Supervisor training in being able to accurately identify the person most in need of protection and the predominant aggressor, and to understand how to capture this in police records is, therefore, essential.

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action 14

Internal family violence expertise can be sought from family violence liaison officers, who are sergeants with family violence as one of their portfolios, although these roles only exist at 24-hour stations. Family Violence Investigation Units are also a source of internal Victoria Police family violence expertise, but it is not clear how often advice is sought or how frequently this leads to misidentification being detected.

One recurring suggestion during our consultations was for a stronger partnership between Victoria Police and the family violence sector to review cases where there is a high risk of misidentification or other uncertainty about the dynamics in the relationship. For example, it may be worth considering a clear review process for cases where a woman is identified as a respondent, where the narrative talks about mutual violence, or for LGBTIQ+ relationships. This process could include using information sharing mechanisms to check past engagement with family violence and other relevant services, which would be particularly useful for cases where there are no past police incidents. This should ideally occur before the Family Violence Report is committed to LEAP and be seen as an opportunity to build capability and support improved practice. Such a model would be worth trialling to determine the level of demand pressure it would place on the sector, whether the review can occur within timeframes required by police, and whether it reduces the rate of misidentification. It will also be important to assess whether such a review process is equally benefiting marginalised groups who are overrepresented, particularly Aboriginal women.

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Relates to  
action 14

## When the perpetrator is a police officer

The issue of perpetrators within Victoria Police has direct relevance to the issue of misidentification. Police officers who are perpetrators are likely to be less responsive to family violence training, less likely to properly investigate family violence, and may deliberately collude with other perpetrators. In other cases, a police perpetrator may deliberately cause misidentification. We spoke with one victim survivor who experienced family violence at the hands of a police officer who abused his power to have her labelled a perpetrator; her experience is captured in Sally's story.

Among the Victorian population, there were 123 perpetrators involved in family violence incidents for every 10,000 people in 2019.<sup>36</sup> The Age has reported that only 23 Victorian police officers (of the 16,295-person workforce, or 0.14 per cent) were charged with family violence offences in that same year.<sup>37</sup> Evidence suggests this is probably an underestimate and that police are 'as likely as the general public to be perpetrators of intimate partner violence'.<sup>38</sup>

Victoria's Independent Broad-based Anti-corruption Commission is quoted as having concerns about 'systemic problems in how Victoria Police handles matters where there are family violence allegations against a serving member'.<sup>39</sup>

## Sally's story

Sally was in a relationship with a long-serving police officer, Tom. The relationship included physical abuse (but he was careful not to leave visible bruises), property damage, emotional abuse and threats against their pets. Due to his position, Sally was understandably apprehensive about going to police, so she had never approached police or family violence services for help. Tom had made it clear through his emotional abuse that if she did, she would not be believed anyway. He even told her that if she went to police, he would say she was the primary aggressor. She didn't even know what that term meant.

Sally left Tom when she was pregnant with her second child. After leaving the relationship, the abuse morphed into coercive control from afar. Tom has used the children as leverage against her by way of family consent orders. In the Federal Circuit and Family Court of Australia, Tom has attempted to manipulate systems against Sally by claiming she has mental health issues, alcohol issues and has abused him, in attempt to discredit her character and make himself look favourable to the courts. When she doesn't agree to his demands, he continues to use threats, punishment and coercion to get his way. Tom has exercised misidentification as his tool of trade, using victims' words he has heard during the course of his work as a police officer to portray himself as the victim. In Sally's words, Tom is seen as charming and unassuming – people like him and want to believe him. Sally eventually agreed to equal shared custody of the children to end the traumatic court process.

Last year, Sally was served with an application for an FVIO, on which she was listed as the respondent. She knew nothing of the order until police arrived at the door to serve her. The police officers were Tom's colleagues. This led to a lengthy, distressing and retraumatising court process. Tom's role, knowledge of the system and perceived credibility has meant that Sally has constantly felt as though it was 'her against the police'. Sally sought legal support and the order was later revoked when the police agreed to voluntarily withdraw. But this was not before Sally had to tell her story again and describe him as the perpetrator.

Due to their shared custody arrangements, Sally constantly feels unsafe, waiting for Tom's next attack and terrified of his threats to exert further control over her via the children. She feels she is continually defending herself and fighting to be believed, which deliberately deflects away from his wrongdoing. She believes that her children are also feeling the lifelong impact and she despairs at the knowledge that her children must endure his abuse when they are in his household every fortnight.

*Source: Family Violence Reform Implementation Monitor, based on a direct victim survivor account*

Having perpetrators within Victoria Police weakens the implementation of its efforts to effectively respond to family violence. It is encouraging that Victoria Police is actively working to address this, with the Victoria Police Manual Family Violence section recently released on 'Family violence involving Victoria Police employees' and the first of two employee family violence teams of specialist detectives commencing in November 2021.

## 7. There is considerable variability in other parts of the service system picking up misidentification and alerting others

Beyond Victoria Police, and outside of MARAM guidance on misidentification, we found a range of service-specific training and guidance on family violence and the issue of misidentification, varying levels of responsiveness to the issue and a range of local processes for alerting other agencies to misidentification. There was a notable lack of system-wide clarity about roles and responsibilities in detecting and responding to misidentification.

### Child Protection

Child Protection practitioners must conduct MARAM risk assessments on victim survivors when family violence is suspected or known to be present, including when receiving reports from Victoria Police.<sup>40</sup> With the introduction of the SAFER Children Framework in November 2021, MARAM assessments are now integrated into the Child Protection client management system and included as an annexure of court reports when the contents are relevant to the protective concerns. This is then presented to the Children's Court, which decides the outcomes of Child Protection matters. These developments are only very recent but should support increased detection of misidentification among practitioners over time, as work continues to embed MARAM tools and guidance in Child Protection practice.

The Department of Families, Fairness and Housing (DFFH) has advised us that the concept of misidentification is flagged in family violence training for Child Protection staff. There is also preliminary guidance in the Child Protection Manual about what to do where it is suspected that the wrong person has been identified as the perpetrator. However, there is currently no formal category in the case management system to identify the predominant aggressor. There is also no data available on how frequently Child Protection picks up misidentification.

The focus of Child Protection guidance is on assessing risk to the child, with the Child Protection Manual emphasising the importance of corroborating evidence, including engaging with police, specialist family violence services and the Family Violence Report portal to help prioritise a case initiated through a police referral.<sup>41</sup> It states that:

*Taking information at face value can result in poorly informed analysis and in some instances may place a child at further risk of harm. The quality of information provided by reporters will vary, and parents and children will commonly minimise or deny abuse and neglect.*

*Child Protection needs to ensure that critical information is verified or corroborated through seeking further information from other relevant sources. Establishing the validity of information also protects children and families from unfounded or malicious allegations.<sup>42</sup>*

Based on our consultations, however, policies and practice do not always align. Anecdotally, Child Protection relies heavily on the police assessment in the Family Violence Report and will accept their nominations of victim survivor and perpetrator. Victoria Legal Aid advised us that, in its experience, 'where a woman has been misidentified by police and this has triggered her involvement with DFFH Child Protection, her misidentification will often be continued, rather than identified, by Child Protection'.<sup>43</sup> A number of examples shared with us by victim survivors directly, or by the community legal services representing them, involved children being removed from the mother, who had been misidentified, leaving her to fight to access her children again. One of these examples is provided as Chloe's story.

## Chloe's story

Chloe lived with her two children and their father, who habitually abused her. Chloe experienced significant family violence and used alcohol as a coping mechanism. During a violent incident, neighbours called the police. When the police attended, Chloe's behaviour was heightened, and police assessed her as drunk. Chloe told the police that she had been assaulted by the father and the police noted that she was covered in bruises. Despite this, police issued a safety notice naming Chloe as the respondent and excluding her from the home.

After the incident, the police left the property and Chloe returned to the home with the father and children, even though she was not allowed to be there under the safety notice. Chloe continued to live with the father until another violent incident, during which the father kicked her and the children out of the home.

Family violence services supported Chloe to find a private rental. She engaged with alcohol and other drug (AOD) services and stopped drinking. DFFH was also engaged with the family on a voluntary basis and did not assess the children to be at risk in Chloe's care.

Post separation, Chloe allowed the children to have contact with the father on and off over the next few months. After one contact, the father withheld the children, refusing to return them to Chloe's care. Chloe contacted the police and DFFH, both of which stated they could not assist and directed her to seek family law advice. With no other options available, Chloe issued an application for a recovery order in the Federal Circuit Court. However, the first return date for these proceedings was not for another two months.

DFFH was subsequently forced to intervene following another serious assault perpetrated by the father against his new pregnant partner. When DFFH attended the home, the father had disappeared with the children and there were serious concerns for their safety. DFFH issued a protection application in the Children's Court of Victoria. Once the children were located, DFFH refused to return them to Chloe's care due to protective concerns relating to Chloe's use of alcohol and the (inaccurate) record of family violence.

Women's Legal Service Victoria met Chloe through its duty lawyer service at the Children's Court. DFFH were seeking a protection order for the children to be placed in the care of a maternal aunt. The duty lawyer represented Chloe in court and advocated for the children to be returned to and remain in Chloe's care, noting her successful engagement with AOD services and good care of the children since separation. The duty lawyer emphasised that Chloe's previous reliance on alcohol had been a response to family violence and highlighted the misidentification of her as the primary aggressor by police and DFFH. The court returned the children to Chloe's care that day, with the father only allowed to see the children under supervision.

Chloe continued her engagement with AOD and mental health supports and provided regular screens to DFFH. Women's Legal Service's in-house financial counsellor and social worker helped Chloe to reinstate her parenting payment, negotiate a payment plan for rent arrears with the landlord and apply for a flexible support package.

Due to DFFH's concerns relating to both alcohol use and family violence, there was a high likelihood that the children would have been removed from Chloe's care. Instead, access to trauma-informed legal assistance and wraparound support, along with Chloe's proactive engagement, enabled Chloe and her children to remain safe and together.

*Source: Women's Legal Service Victoria*

Child Protection workers do vitally important work in extremely difficult circumstances and under significant demand pressure. However, there is substantial concern among most stakeholders that they are enabling the continuation of misidentification. We have previously reported on the concerns of the Commission for Children and Young People and others around the level of the Child Protection workforce’s understanding of and response to family violence.<sup>44</sup> We understand that despite the entire Child Protection workforce previously completing the Tilting Our Practice family violence training and large proportions of the workforce having completed at least some MARAM training,<sup>45</sup> Child Protection is still in the very early stages of MARAM implementation. We suggest MARAM alignment activity requires prompt attention, and consideration needs to be given to what additional guidance, training and policy statements need to be provided to ensure:

Relates to action 12

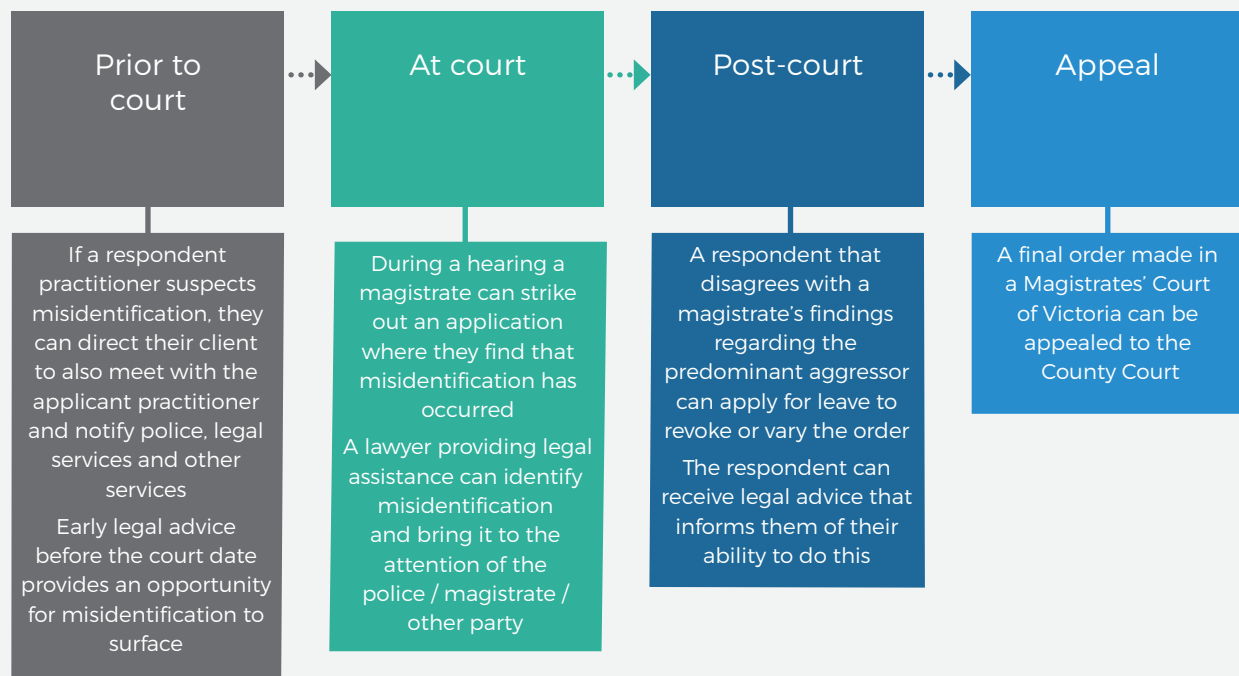
Relates to action 14

- > the dynamics of family violence in the relationship are properly explored
- > children are not being unnecessarily removed from a misidentified parent
- > misidentification is picked up and rectified.

## FVIO applications and the courts

Many stakeholders were of the view that the main mechanism to resolve misidentification is in the courts where a family violence safety notice is in place, an application for an FVIO has been made or criminal charges have been filed. While there are opportunities throughout court processes for misidentification to be picked up and addressed, as outlined in Figure 5, there is variability in the extent to which this occurs in practice.

Figure 5: Opportunities for misidentification to be remedied during the FVIO journey through court



Source: Based on material provided by Court Services Victoria and Victoria Legal Aid

## Identifying misidentification before the case is heard

Family violence practitioners at the courts who are working with the respondent and affected family member may pick up on misidentification before the case is heard (there is guidance to support them to do this) and are advised to notify police, who can then withdraw the matter.<sup>46</sup> Similarly, in the Children's Court of Victoria, children under the age of 18 who are listed as the respondent to an FVIO application can access family violence practitioners or the RESTORE program (Melbourne Children's Court only), both of which can assess whether they are experiencing family violence at home. However, we have not seen any data on the rate at which these practitioners are picking up on misidentification. There is also an opportunity for legal services to identify the misidentification if an early referral is made to legal assistance prior to court, rather than relying only on people seeing a duty lawyer on the day of court.

Based on what we were told, legal services representing respondents and affected family members do notice when their clients have been misidentified and attempt to work with the police prosecutor to have the matter withdrawn. The legal sector representatives we met with spoke passionately about this issue, demonstrating great care for their clients and a keenness to be part of the solution. We did hear some examples, though, of duty lawyers representing misidentified women who showed a lack of understanding of family violence and encouraged their client to agree to an FVIO as a simple way to end the matter.

One lawyer who represented an alleged male affected family member explained that she soon realised he was actually the perpetrator, and that while providing robust legal representation was appropriate, she refused to take actions that perpetuated systems abuse. This is consistent with the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015, which require lawyers to use their forensic judgements and not simply act as a mouthpiece for the client.

Anecdotally, there is variability in lawyers' understanding of family violence and how to work with perpetrators without colluding with them. We suggest that while legal services are not prescribed under MARAM, there would be real value in supporting them to understand and operate consistently with MARAM. There is already some activity occurring in this area. For example, the Eastern Metropolitan Region Regional Family Violence Partnership has funded the Eastern Community Legal Centre to adapt and deliver MARAM training to professionals employed in the legal assistance sector. On a larger scale, Victoria Legal Aid has developed online Client Safety Framework training in collaboration with stakeholders such as No to Violence and Safe Steps. The training has been designed for legal and non-legal staff working in a legal context to better recognise and respond to safety risk indicators for family violence and suicide in their work. It also provides guidance to staff about how to work with perpetrators in a non-collusive way. This training could be leveraged to build capability across more of the legal sector.

Relates to  
action 10

A key complaint from the legal services we met with was that there is not a clear escalation and resolution point at Victoria Police for misidentification matters. Victoria Police advised us that family violence liaison officers are the appropriate escalation point, but this needs to be clearly communicated with the sector, with clear guidance about what to do when a family violence liaison officer is not available. Inconsistency in Victoria Police's responses to notifications of misidentification at the court stage is discussed in section 8.

Relates to  
action 7

## Magistrates' responses

If the matter reaches the court hearing stage, the magistrate can have it struck out if misidentification has occurred. Magistrates' understanding of family violence and misidentification is supported through training offered by the Judicial College of Victoria and the available family violence bench books, which are publicly available. The National Domestic and Family Violence Bench Book includes a range of relevant content, including a section on 'Victims as (alleged) perpetrators'.<sup>47</sup> We understand that the Victorian Family Violence Bench Book is more frequently used by those in the Victorian legal and judicial systems; it most relevantly includes a section on 'Responding to men who claim to be victims of family violence',<sup>48</sup> but there is scope for it to directly cover the issues of misidentification and systems abuse.

One magistrate at a Specialist Family Violence Court estimated that in their experience, misidentification is present in three to four cases out of each court list that they hear (capped at 35 cases a day in the Specialist Family Violence Courts). In cases where there is a female respondent to an application for an FVIO, we know that the matter is struck out approximately 11 per cent of the time, in contrast to five per cent for male respondents.<sup>49</sup> The Magistrates' Court of Victoria does not record the reason for a matter being struck out: that is, we don't know what proportion is due to the magistrate's finding that misidentification has occurred.

However, numerous stakeholders spoke of inconsistency in misidentification being picked up at court, with significant variability in magistrates' understanding of family violence, coercive control and the issue of misidentification. Most stakeholders noted, unsurprisingly, that there is likely to be a better response from magistrates, court staff and police in Specialist Family Violence Courts than in non-specialist courts, given their understanding of family violence and listings being capped at 35 cases in a day. This allows for a deeper consideration of the context, unlike in non-specialist courts, which may hear up to 115 cases in a day and will be heavily reliant on the initial police assessment.<sup>50</sup> However, in 2019–20 only five per cent of family violence matters were heard in Specialist Family Violence Courts.<sup>51</sup> This is expected to increase to around 20 per cent in 2020–21.<sup>52</sup> Continued implementation of the Specialist Family Violence Court model is critical for improving the consistency of response and the court's capacity to identify and address misidentification.

Relates to  
action 15

## Challenges to misidentification being resolved at court

A victim survivor who has been misidentified as the respondent can challenge an FVIO:

- > At the time of the initial FVIO application, the victim survivor can initiate their own application against the perpetrator.
- > The victim survivor can contest the application at various court dates.
- > When an order has been made by a magistrate, the victim survivor can apply to revoke or vary the order.

This can help to highlight the case as one possibly involving misidentification, but these processes can take several months. While the courts have continued to hear interim applications during the coronavirus (COVID-19) pandemic and has prioritised high risk and urgent matters, delays in having matters heard have increased. During this time, damage can be accruing while the victim remains misidentified, particularly in relation to situations where misidentification adversely impacts on the care arrangements for children. For example, a woman's children may have been removed following a family violence incident where she has been misidentified, and the time taken to challenge the application eats into the two-year timeframe within which to address protective concerns and achieve a safe and permanent home for the children,<sup>53</sup> noting that during the coronavirus (COVID-19) pandemic, special provisions were made to allow additional time to account for pandemic-related delays. She may also be unable to access victim services, become homeless or go on to receive a criminal conviction, spend time in custody and/or receive fines.



## Hillary's story

Hillary and Stuart moved in together after dating for about a year. They moved into a new house, with the lease agreement in both their names. Hillary had children from a previous relationship, and as a result of their moving in together, she lost government benefits and was paying more in rent.

Over time, they began arguing more. Stuart questioned everything she did and said everything was her fault. Hillary was working full-time, yet all household duties and caring responsibilities fell on her. Stuart, meanwhile, was off work, allegedly recovering from a workplace injury. Hillary didn't see his behaviour as psychologically and financially abusive at the time.

In 2020, they had an argument where Stuart said Hillary was impossible to live with. She was devastated. Stuart moved out but would not tell her where he was going. A few weeks later, Stuart contacted Hillary asking to move back in. Her children were away for the night, so Hillary cooked dinner for them both. When Stuart arrived, he was clearly intoxicated, very argumentative and attempting to provoke her. They argued and she acknowledges that she said things she shouldn't have. After that night, Hillary decided she needed to leave the relationship, so she organised to take the children and stay with friends.

The following week, two police officers walked into her workplace and served her with an FVIO that listed her as the respondent. She was told that Stuart felt threatened for his life. This was her first interaction with police. Hillary felt extremely humiliated that this had occurred in her workplace and that she was made to feel like a criminal. The police officer serving the order told her she could contest the FVIO but 'if you don't want to see him ever again, don't worry about it' (meaning, don't fight the order). This comment strongly influenced her decision to not contest the FVIO. Hillary did not attend court; she did not want to see Stuart again and felt that she couldn't afford to take another day off work. She instead wrote a letter, advising of her intention to consent without admissions, thereby agreeing to the conditions of the order even though she did not agree with what was said in the application.

The implications of her decision were never fully explained to Hillary, and she is unsure of who, if anyone, is able to find out that she was listed as a respondent on an FVIO. She had contemplated applying for the police force but acknowledges that may not be possible now.

*Source: Family Violence Reform Implementation Monitor, based on a direct victim survivor account*

We understand that in many cases a victim survivor (such as Hillary in Hillary's story) who has been misidentified as the perpetrator will feel exhausted, embarrassed, traumatised and scared, and may 'consent without admissions' to an FVIO. This means the victim (respondent, in this case) is agreeing to the conditions of the order without agreeing to what is said about their behaviour in the application.<sup>54</sup> This is a legitimate option for a misidentified victim survivor but should be exercised with caution and accompanied by careful legal advice, given the potential consequences of having been a respondent on an FVIO. The importance of having access to legal advice at every point in the FVIO process, and other court-related supports, has been emphasised by RMIT University's Centre for Innovative Justice.<sup>55</sup> For example, if a decision on arrangements for which parent the child will live with is being sought in the Federal Circuit and Family Court of Australia, 'the court is instructed to recognise that no guilt is established in the FVIO; however, having an order listed against you may still be considered in family court decisions'.<sup>56</sup> The order can also be used as a 'tool of further abuse by a perpetrator',<sup>57</sup> with perpetrators in some cases instigating a breach of the order and then reporting, or threatening to report, the breach.

In other cases, the misidentified respondent to the FVIO application may not attend court for the first hearing. Based on the examples presented to us, this may be because the woman simply wants to avoid court altogether, because she believes she doesn't need to attend (such as the case in Isobel's story), or because of barriers such as a migrant woman finding it difficult to attend online hearings. We understand that this non-attendance can result in an FVIO being finalised against the woman. This is further evidence of the need to urgently expand the Specialist Family Violence Court model across the state, as staff in this model have the training and capacity to engage with respondents earlier in the process. Furthermore, as well as being attuned to the risk of misidentification, respondent workers need to understand the particular barriers to engagement for some cohorts.

Relates to  
action 15

### Isobel's story

When police attended Isobel's home, Isobel was bleeding, locked out of her house and highly distressed while her boyfriend was sitting calmly on the couch. They identified Isobel as the primary aggressor, and even once Isobel explained the abuse she had endured, she didn't feel believed. She describes that night as the worst moment of her life. Having been subjected to ongoing abuse, Isobel had very low self-esteem and constantly doubted herself; being labelled the aggressor confirmed for her that she deserved the abuse and made it that much harder to leave.

Isobel felt so embarrassed when she attended court for the first hearing. That day, the lawyer and magistrate agreed that it was a case of misidentification and that Isobel posed no risk to her boyfriend, but the matter was still adjourned so a safety assessment could be carried out. The police told Isobel it would all be dealt with before the next court date, and there was nothing else to deal with, so she didn't go to the next hearing.

Because she wasn't there, an FVIO was made against her, giving her ex-boyfriend a tool to use as leverage against her and to harass her. He then made an application to get the FVIO strengthened. On the advice of a psychologist she had begun seeing, Isobel called Victoria Legal Aid before the hearing. She felt a huge sense of relief that the service believed her and could help her through the legal process. She felt that the legal support she received was the only bit of respite she had through the whole process.

Isobel's duty lawyer told her how to notify the court that she wouldn't be attending in person due to the coronavirus (COVID-19) pandemic and that she would be represented by a duty lawyer. She was grateful that she didn't have to see her ex-boyfriend at court and believes it would be good if everyone had that opportunity regardless of whether the pandemic related restrictions are still in place.

Her ex-boyfriend dropped his application to strengthen the order, and Isobel is now working to have it revoked altogether so he doesn't have it as leverage over her.

*Source: Based on a Victoria Legal Aid example prepared for the Family Violence Reform Implementation Monitor*

These challenges in the court system highlight the absolute necessity of recognising misidentification as early as possible to prevent those in need of protection from having to enter the court system as a respondent. However, there are also process improvements that could be made at court, such as the ability to urgently return matters to court after a magistrate has ordered a further risk assessment to be undertaken and this reveals that misidentification has occurred.

Relates to  
action 9

# The Orange Door, specialist services and Victims Support Agency

Specialist family violence services and service access points, such as The Orange Door and the Victims Support Agency's Victims of Crime Helpline, are all well placed to pick up on misidentification.

## The Orange Door

The Orange Door, in areas where it exists, is the referral pathway and access point for all victim survivors, except for adult males, and all perpetrators.

The Orange Door service model acknowledges the important role its staff have in accurately identifying the primary aggressor, explaining that an individual who police have identified as a perpetrator in one incident may not be the predominant aggressor in the relationship.<sup>58</sup> It describes the importance of gathering further information to help clarify and verify critical information, to confirm the identity of the primary aggressor and assess family violence risk, particularly in cases where a female is listed as a respondent. One barrier is that The Orange Door can't engage with someone who is listed as the respondent on the police referral until police have spoken with that person. For misidentified women who may be avoiding police contact, The Orange Door will be unable to engage with her and the misidentification may go unnoticed. This issue has been raised with us in the context of a recent case of a woman who was at imminent risk and resulted in safety planning being unavailable to her.

We met with representatives from four The Orange Door sites. They outlined the critical lens they take when a female respondent is listed on a Family Violence Report, acknowledging the frequency with which misidentification occurs, and are able to 'switch roles' of perpetrator and victim survivor in their client relationship management system (CRM). One site indicated that close to 50 per cent of the female respondents they receive are actually victim survivors, while Family Safety Victoria has advised us that 10 per cent of female respondents in the CRM were also recorded as victim survivors; this is taken to be a partial indicator of misidentification.

One site actively shares their assessment of misidentification with Victoria Police, Child Protection and the Victims Support Agency, as required, but practice differs across sites. There was a view that The Orange Door model should include a clear description of what needs to occur when misidentification is found, to ensure greater consistency across sites. For example, while The Orange Door guidance states that practitioners must 'identify, manage and rectify misidentification of primary/predominant aggressors, including through liaison with the Victims Support Agency and other agencies as needed',<sup>59</sup> it does not detail what management and rectification of misidentification involves.

Relates to  
action 3

## Specialist services

In areas where The Orange Door hasn't been established, perpetrators and any victim survivor who is not an adult male will be directly referred to specialist services.

These services do not collect specific data on misidentification, but Safe and Equal has indicated that its members are increasingly seeing misidentification occur, with one family violence practitioner reporting that over a third of their clients have been misidentified and another indicating that 50 per cent of the victim survivors they work with have been misidentified.<sup>60</sup>

The sector's perception is that there is very little recourse for services if they find misidentification, with workers in individual agencies left to advocate for a client with police and courts based on local relationships.

## Victims Support Agency's Victims of Crime Helpline

Male victims of family violence identified by police are referred to the Victims of Crime Helpline. Helpline staff receive family violence training and have access to a No to Violence manual that includes indicators that a client may be a perpetrator. Historically, a broader family violence manual has guided helpline staff in working with male victims referred by police, but as at October 2021, there is no such manual in use by practitioners while a new one is under development.

In practice, when misidentification is found, helpline staff recategorise referrals from 'victim' to 'perpetrator' and transfer these clients to The Orange Door or the Men's Referral Service accordingly. Additionally, the Department of Justice and Community Safety has advised us that in October 2021, a feedback process to Victoria Police was formalised, with a template now available to be used to notify police that they have reassessed the male to be a perpetrator.

Of the 17,369 referrals to the Victims of Crime Helpline by Victoria Police in 2019–20, only 6.7 per cent were recategorised.<sup>61</sup> This figure is lower than all other available estimates of misidentification; however, helpline staff have only recently been given access to historical Family Violence Report records, which provide an important source of information for recognising misidentification. The low figure may also result from the fact that 54.6 per cent of the 17,369 referrals were related to intimate partner violence (where misidentification may be more prevalent), and in 18 per cent of referrals, the client could not be reached.<sup>62</sup> Helpline staff advised us that confirming that misidentification has occurred often requires a conversation with the client. Finer grained data on recategorisation by the relationship between the parties and by referral outcome would be useful in determining whether misidentification is under-identified.

## 8. Rectification processes are insufficient in reversing the damage done to victim survivors

While it is positive that there are various agency-level mechanisms in place to respond to misidentification, there is no agreed system-wide process designed to correct the records and reverse the damage of misidentification to victim survivors. In a paper prepared for our office, Safe and Equal explained that:

*Feedback from members consistently demonstrated that there are no clear processes in place to correct misidentification. This results in workers undertaking their own advocacy on a case-by-case basis with no clear systemic processes or pathways in place with police and/or courts. Members commented that it is extremely hard to correct misidentification and it can often depend on who services speak to. Having no clear process in place has significant risk and safety implications for victim-survivors and is resource intensive for our members.<sup>63</sup>*

Because each agency has its own records and information management systems, family violence practitioners, lawyers and individuals are left to advocate for records to be changed independently in multiple places. The most challenging aspect can be fighting against the misidentification that finds its way into court files at the Magistrates' Court of Victoria, the Children's Court of Victoria and the Federal Circuit and Family Court of Australia. This can be extremely complex and time-consuming work, and before proper rectification occurs, the victim survivor continues to suffer the consequences of having been misidentified and may be exposed to further abuse. This highlights the critical role lawyers play and the need for legal assistance to be better integrated with the family violence response system to ensure early and appropriate assistance for addressing the legal consequences of misidentification.

Relates to  
action 10

Table 1 outlines the various places the misidentification can be found, the rectification processes in place, and the challenges that remain even after 'rectification'. If these rectification processes aren't followed, the challenges will be even greater.

The only system-wide guidance we found is for those who have used the Family Violence Information Sharing Scheme to share information, where misidentification is then found to have occurred. For example, agencies are expected to update their records to the best of their ability, stop sharing information without consent about a victim who has been misidentified as a perpetrator, and notify any other agencies with whom incorrect information has been shared.<sup>64</sup> This is positive, but the flow of inaccurate information often occurs outside information-sharing legislation, through referral processes and court procedures. There would be benefit in providing similar guidance that applies beyond the Family Violence Information Sharing Scheme.

Relates to  
action 3

There is a need for more whole-of-system discussion and action around how true rectification could occur. The former Primary Aggressor Working Group agreed, in dealing with misidentification, on 'the importance of prompt rectification' and 'the need for a multi-agency approach, with capacity for feedback loops created'.<sup>65</sup> We wholeheartedly agree and suggest a dedicated group is now needed to:

Relates to  
action 1

- > document the locations where records containing misidentification are held
- > formalise feedback loops to promptly communicate misidentification when it is found to have occurred
- > understand the current rectification processes in place and their limitations
- > identify opportunities for improving rectification processes to ensure police, Child Protection and courts do not continue to rely on inaccurate information

**Table 1:** Records containing misidentification across agencies, rectification processes and future implications

Agency	Records	Rectification processes	Remaining challenges
<b>Victoria Police</b>	The Family Violence Report (FVR) that lists the victim as respondent is committed to LEAP and goes into the FVR Portal, which is shared with other agencies.	A new FVR can be conducted and linked to the original.	The original FVR remains on record. If police run a summary of past incidents or if records are subpoenaed in future court cases, the original FVR will show up.
<b>The Orange Door, specialist services, Victims of Crime Helpline</b>	The police referral that lists the victim as the respondent is held in local databases.	Local records can be updated within client management systems, with agencies classifying the individual as a victim.	Original referral remains in the system. Records can be subpoenaed in future court cases.
<b>Child Protection</b>	The police referral and/or Child Protection's assessment of risk to a child based on that referral are held in local databases.	Theoretically, if Child Protection do their own assessment and find the alleged perpetrator is the victim, they may note this in their records and it may or may not change their protective concerns about the parent.	Original report remains in the system. Involvement of Child Protection can have implications for Federal Circuit and Family Court of Australia proceedings.
<b>Courts</b>	Applications for FVIOs and reports prepared in the pursuit of criminal charges or in child protection or family law proceedings that may reference the (inaccurate) family violence perpetration will all be in court records.	An FVIO application can be withdrawn by the prosecutor or struck out by a magistrate. Additional reports can be prepared to provide updates on past, inaccurate reports.	Misidentification is not recorded as the reason for the FVIO being withdrawn or struck out so may not be clear to others. Original reports remain on record and can find their way into future court cases.

During our consultations, one suggestion was that courts could be given the power to issue an order finding that misidentification has occurred and requiring records to be corrected. We believe this approach to rectification would have significant benefit for victim survivors and is worth exploring further.

Relates to  
action 11

In most misidentification cases shared with us, even when misidentification was picked up and communicated, stakeholders reported that Victoria Police and Child Protection were generally unresponsive. This is explored in detail below.

## Victoria Police

Where new information comes to hand, Victoria Police has advised that officers can update the narrative in the original Family Violence Report and can complete a new report to capture the correct affected family member and respondent and an accurate assessment of risk. Victoria Police can also withdraw a family violence safety notice or FVIO application if new information changes their assessment of the situation and can 'consider whether a new notice is issued for the correct respondent'.<sup>66</sup>

However, these processes are not detailed in the Victoria Police Manual Family Violence nor the Code of Practice for the Investigation of Family Violence. Further, Victoria Police and many of the stakeholders we spoke to commented that it would be rare for police to conduct a new Family Violence Report based on feedback that misidentification had occurred. From a police perspective, in the absence of clear procedures and agreed decision thresholds, it is difficult to judge when it is reasonable and necessary to revisit and potentially complete a new Family Violence Report.

Relates to  
action 3

Clear and documented guidance is required to describe what should occur when external agencies alert Victoria Police to misidentification, or when Victoria Police otherwise becomes aware of it.

Relates to  
action 7

Even where police do conduct a new Family Violence Report, the original with the victim listed as a respondent remains in the LEAP database permanently. This is problematic because LEAP records containing the misidentification can be subpoenaed and become accessible to parties such as Independent Children's Lawyers, magistrates, prosecution staff and DFFH. Victoria Legal Aid explained that 'inferences may be drawn that supports the perpetrator's narrative that the mother is violent, and potentially harms her credibility in the family law case'.<sup>67</sup> Additionally, if police attend a future incident involving the individual, they will see that she has previously been listed as a respondent and will only see the misidentification if they delve into the records, which in many cases does not appear to happen.

While we acknowledge the importance of retaining original observations from the scene and documenting the reclassification process, there is a clear need to look at how records are captured in LEAP to ensure that, where misidentification is found, the headline record can be amended so a person doesn't continue to be incorrectly listed as a respondent.

Relates to  
action 6

Stakeholders told us of variability in police prosecutors' approaches to withdrawing matters before they are heard at court; positive results often depend on relationships with individual prosecutors. It is not clear whether prosecutors have the authority to withdraw a matter and, anecdotally, even when the prosecutor agrees that withdrawal is appropriate, sergeants may be unwilling to agree to it. In some cases, due to workload, the police prosecutor may withdraw the matter but only at the last minute and after the victim and legal support services have already spent numerous hours in preparation. Similarly, where criminal charges coexist with misidentification on the FVIO, police often drop the charges, but this occurs after a drawn-out legal process that continues to traumatise the misidentified victim.<sup>68</sup>

A clearer policy to guide the withdrawal of both civil and criminal matters would be of great benefit to Victoria Police and stakeholders. Finding ways to ensure matters are withdrawn more quickly, avoiding lengthy adjournment periods, would help those in need of protection avoid further trauma.

Relates to  
action 8

## Child Protection

While Child Protection practitioners are expected to update records when new information is provided by another agency, we understand there is no specific guidance in place that explains what Child Protection practitioners should do next if misidentification is raised. We saw and heard no evidence of Child Protection adjusting its assessment of risk based on feedback that a mother had been misidentified.

Relates to  
action 3

Of most relevance appears to be the guidance relating to 'malicious reports', where the advice is to focus on assessing the risk to the child rather than on the intent of the party who has made a report to Child Protection.<sup>69</sup> This implies that, for example, if a mother has been misidentified by police as a perpetrator and her children referred to Child Protection, risk to the child will be assessed during the 'investigation stage' and protective concerns about the mother may be found and acted upon. We acknowledge that making judgements about the validity of reports to Child Protection is complex. However, if perpetrators are not held to account for making malicious reports to Child Protection, their systems abuse is enabled and even encouraged.

Family violence is only one of many protective factors that Child Protection staff must assess to determine the risk of harm to a child. However, further investigation is required to understand how family violence as a protective concern is weighed up against other protective concerns. The new SAFER Children Framework, launched in November 2021, provides an opportunity to build greater clarity among practitioners and others about how these factors that contribute to the assessment of risk to a child are weighed up, and emphasises the importance of guided professional judgement.

Relates to  
action 12

We understand that Child Protection practitioners are required to gather information from a variety of sources to understand and assess the risk of harm to children. However, stakeholders shared examples where children had been placed into accommodation with a father who was a known perpetrator, and indicated that they believed that his calm and stable demeanour, in contrast to the mother's less stable demeanour, was a factor in the placement decision. While being a perpetrator of family violence does not automatically exclude a person from being a suitable carer for their children, stakeholders expressed concern that insufficient understanding and regard is given to the perpetrator's use of violence and control and the impact this has on women and their children.

Women's Legal Service Victoria has suggested that there needs to be a more trauma-informed approach to working with mothers who are victim survivors of family violence (whether or not they have been misidentified as a perpetrator) to better acknowledge the violence and control they have endured and assess whether they could be supported to safely care for their children.



## 9. There is no ability to systematically understand and monitor issues within the system

While most agencies and services we met with were aware that misidentification occurred, and had at least some local processes in place to respond to it, there was a distinct lack of clear data and regular monitoring, both at the local and system levels. This makes it difficult to clearly and accurately identify the extent of the issue and the effectiveness of any remedial processes that have been put in place.

Victoria Police completed an intelligence product on misidentification during 2021, which is an excellent resource but not widely available. We suggest the Victoria Police misidentification rate needs to be more closely and regularly tracked, and could include monitoring of the following:

- > how often the affected family member and respondent roles are changed in the Family Violence Report at the sergeant review stage
- > how often a new Family Violence Report is completed and why
- > how often police withdraw an FVIO application or criminal charges in family violence cases and why
- > misidentification notifications from other agencies and what Victoria Police does in response (for example, new Family Violence Report completed, withdrawal of an FVIO application, withdrawal of criminal charges, new application taken out against the actual perpetrator)
- > evidence of police knowledge and understanding of family violence, including predominant aggressor identification.

Different agencies have different metrics they use to indicate that misidentification may have occurred, but there are no definitive measures. For example:

- > The Orange Door uses a client's listing in the system as both respondent and affected family member to indicate misidentification but doesn't capture 'misidentification' as the reason for a referral being reclassified.
- > The Victims of Crime Helpline helpfully captures the proportion of clients who are recategorised (from victim survivor to perpetrator) and the reason for the recategorisation, but it would be useful to link this to the outcomes for that client.
- > Specialist services have provided some anecdotal estimates about the incidence of misidentification, but it would be useful to officially track this within their information systems.
- > At court, we know the rate at which applications are struck out or withdrawn, but it would be useful for the reasons to be recorded and to understand the rate at which family violence workers at court are picking up on misidentification.
- > Child Protection has not previously been able to collect data about MARAM assessments conducted by practitioners for cases involving family violence, however from November 2021 they have the capacity to do so. The next step will be to capture how often misidentification is found to have occurred and the action taken in response.<sup>70</sup> As this information becomes available, it could help identify important areas for system improvement.

We are aware of some good local qualitative practice to monitoring issues such as misidentification. For example, The Orange Door – Central Highlands team has monthly meetings with Victoria Police to flag thematic issues. Victoria Police also sits on The Orange Door's Hubs Leadership Groups across the state, where issues such as misidentification can be discussed, although we were told that Victoria Police members have competing demands and attendance at these meetings differs by area.

As noted in the previous section, and given that this is a whole-of-system challenge, we suggest a whole-of-government effort is required to oversee the issue of misidentification and to monitor its prevalence. Opportunities to collate data from across agencies should be encouraged to piece together a picture of the prevalence of and responses to misidentification and the outcomes for those who have been misidentified. Special attention should be given to understanding the differing rates and experiences of misidentification among different cohorts to help inform more targeted training and practice guidance.

Relates to  
action 2

At a minimum, governance groups such as the Cross-Government Perpetrator Accountability Group and the Sector Perpetrator Accountability Group should have an interest in misidentification because it involves perpetrators escaping accountability for their use of violence and coercive control.

Misidentification often appears to stem from a lack of sufficient understanding of the dynamics of family violence and coercive control, with stakeholders indicating that despite training having been rolled out to large proportions of the Victoria Police and Child Protection workforces, this has not yet translated into consistent improvements in practice. There is a need for both organisations (and others implementing MARAM) to consider how they will assess, monitor and report on their workforce's capability change.

Relates to  
action 14

## 10. Other issues

A number of important matters were raised during our consultations that were tangentially relevant to this topic. We did not explore these in any detail, but they are captured below.

### Primary prevention

Throughout our consultations, stakeholders spoke of women being held to a higher standard than men and being judged by police and the justice and Child Protection systems when they are seen to fail to adhere to gender stereotypes. This reinforces the importance of primary prevention activities that seek to improve gender equality and reduce the likelihood of the double standards that more harshly judge women in situations that may lead to family violence. We also note that primary prevention can play a supportive role in addressing perpetrator misidentification as a broader social issue. It can do this by fostering community awareness and understanding of the many different manifestations of family violence and the key factors that drive perpetration of this violence. This understanding can support objective assessment of family violence situations and overcome biases of judgement that may lead to the misidentification of perpetrators. The continued implementation of Free from violence: Victoria's strategy to prevent family violence and all forms of violence against women is, therefore, vitally important.

We will examine the topic 'primary prevention system architecture' during 2022.

### Unintended consequences of justice system reforms

Stakeholders also raised the intersection of misidentification and justice system reforms in increasing the criminalisation of victim survivors. Victoria's bail laws were toughened in 2018 and the number of women remanded to custody increased substantially.<sup>71</sup> Where a woman is charged with a criminal offence or has breached an FVIO, she is now more likely to be remanded than in the past. Particular concern was raised with us about ongoing systems abuse by perpetrators after having their victim named as the respondent and prompting reports to police for order breaches.

### Criminalisation of coercive control

Arguably, criminalising coercive control could give the police the impetus to respond more definitively to non-physical types of family violence and help to better document a pattern of abuse. However, in the context of misidentification, stakeholders were concerned that women who are already marginalised could have additional opportunities to be misidentified and criminalised. Certainly, it will be vital to consider the risk of misidentification as part of the ongoing debate around the criminalisation of coercive control.

### Royal Commission recommendation 59

Recommendation 59 asked the government to consider if Victoria Police should be given the power to issue FVIOs at family violence incidents. In our consultations, several stakeholders expressed concern about police being given this power given the known issues with police practice that are contributing to the continued misidentification of victim survivors. This concern was echoed in a recent review conducted by the Department of Justice and Community Safety about recommendation 59, which highlighted the need for additional research on the prevalence and outcomes of police misidentification.

## Glossary of relevant terms and abbreviations

Aboriginal	While acknowledging the diversity of Aboriginal people in Australia, in this document the term 'Aboriginal' has been used to refer to all people of Aboriginal and/or Torres Strait Islander descent.
Affected family member	A person who has experienced family violence, also known as a victim survivor. The term is predominantly used in police and court proceedings to refer to the person to be protected by a family violence intervention order.
Applicant practitioner	A court-based support worker who provides non-legal advice and support to individuals who are applying for a family violence intervention order.
Coercive control	A pattern of abusive behaviours and tactics used by a perpetrator of family violence to gain power and control over a partner or family member.
Collusion	Intentional or unintentional collaboration with a perpetrator by reinforcing, excusing, minimising or denying a perpetrator's violence towards family members.
Duty lawyer	Publicly funded legal aid lawyer 'on duty' at courts and tribunals to provide free advice and representation for people attending a court hearing who do not have their own lawyer.
Family Safety Victoria	An administrative office of the Department of Families, Fairness and Housing (comprising some portfolio responsibilities of the former Department of Health and Human Services) with dedicated responsibility for delivering key elements of the family violence reform. This includes the Family Violence Information Sharing Scheme, The Orange Door network and the Family Violence Multi-Agency Risk Assessment and Management reforms.
Family violence	Any violent, threatening, coercive or controlling behaviour that occurs in current or past familial relationships, including by intimate partners, family members, and/or non-family carers.
Family Violence Information Sharing Scheme	Established in legislation, the scheme enables sharing of information between authorised organisations to support the assessment and management of family violence risk.
Family violence intervention order (FVIO)	A court-issued order to protect people from further family violence.
Family Violence Investigation Units	Established in each police division, the 31 units investigate serious family violence matters and support general duties police and other specialist units on appropriate risk management interventions to increase safety for adult and child victims.
Family violence liaison officer	Frontline police supervisor responsible for reviewing and auditing Family Violence Reports. Also provides support to frontline police officers around recording and practice in family violence incidents.
Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework	A framework to support the identification, assessment and management of family violence risk. A range of organisations are required by law, under the Family Violence Protection Act 2008, to align their practices and policies with MARAM, which replaced the former common risk assessment framework or 'CRAF'. The MARAM Framework is supported by operational practice guidance and risk identification, screening and assessment tools. The MARAM Framework is also being implemented with the Child Information Sharing Scheme (CISS) and the Family Violence Information Sharing Scheme (FVISS).
Family Violence Report	Risk assessment and management report completed by Victorian police officers when questioning all parties at a family violence incident (including children). It is the main referral pathway to community agencies and/or Child Protection. Also known as an 'L17'.

Family violence safety notice	A police-issued notice that provides immediate protection for a person from a family member who is using family violence before an intervention order application is heard in court.
Law Enforcement Assistance Program (LEAP)	The Victoria Police database that includes information such as criminal offences, family incidents and missing persons.
LGBTIQ+	An inclusive initialism that refers to lesbian, gay, bisexual, transgender, intersex and queer people.
Person most in need of protection	Within a familial relationship, the person deemed most at risk of future violence.
MARAM	See Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework.
Predominant aggressor	The term used in the MARAM Framework to denote the individual posing the greatest risk of ongoing harm and control over a partner, ex-partner or family member. This may be exerted through a number of abusive behaviours constituting physical, sexual or emotional abuse. Sometimes referred to as the primary aggressor.
Primary aggressor	The term used by Victoria Police in its manual and guidelines to denote the predominant aggressor (see definition above).
Respondent	A term used by police and the courts to describe the alleged family violence perpetrator.
Respondent practitioner	A court-based support worker who provides non-legal advice and support to an individual who is listed as a respondent on a family violence intervention order.
Royal Commission into Family Violence	Established in 2015, the Commission was tasked with finding ways to prevent family violence, improve support for victim survivors and hold perpetrators to account. The Royal Commission provided its report, which included 227 recommendations, to the Victorian Government on 29 March 2016.
Specialist Family Violence Courts	Specialist courts that provide enhanced safety features including separate entrances for victim survivors and remote hearing facilities. Specialist Family Violence Courts are staffed by specially trained magistrates and court staff, partner agencies and other court-based services to deliver a coordinated response. Magistrates at Specialist Family Violence Courts have powers to mandate counselling orders for perpetrators.
Systems abuse	The misuse of any systems, such as legal, child protection, health and human services, by perpetrators of family violence, to exercise control over, threaten and/or harass a victim survivor/s.
The Orange Door	A network that is the entry point to women's and children's family violence services, services for men who use violence and family services. It undertakes triage to assess and manage risk and connect people to the services they need.
Victim survivor	A person who has experienced domestic, family or sexual violence.
Victim Survivors' Advisory Council	Formed in July 2016, the council was established to include people with lived experience of family violence in the service design of the family violence reform.
Violent resistance	When a victim survivor uses force in response to their abusive partner's ongoing violent or controlling behaviours.

# Endnotes

- 1 However, we found three examples that distinguished between the 'primary aggressor' in the incident and the 'predominant aggressor' in the relationship. We understand this to be a result of a misunderstanding of how police define 'primary aggressor'. These distinctions were found in: Child Protection trainer materials provided by DFFH to the Family Violence Reform Implementation Monitor, 2021; Magistrates' Court of Victoria (2020): Family Violence Practitioner Guidelines, v1, p. 19; Family Safety Victoria (2018): Interim Operational Guidance to the interface between Support and Safety Hubs and Community Operations and Victims Support Agency, p. 13.
- 2 ANROWS (2020): Accurately identifying the 'person most in need of protection' in domestic and family violence, key findings and future directions. Available at: [anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law](https://anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law) (accessed 7 July 2021).
- 3 Reeves E (2021): 'I'm not at all protected and I think other women should know that, that they're not protected either': Victim-survivors' experiences of 'misidentification' in Victoria's family violence system. International Journal for Crime, Justice and Social Democracy, p. 11. Available at: <https://doi.org/10.5204/ijcsd.1992> (accessed 20 September 2021).
- 4 The Law Enforcement Assistance Program (commonly known as LEAP) is the police database that stores details of 'all crimes brought to the notice of police as well as family incidents and missing persons. It also includes details on locations, vehicles and persons involved. The database is online and updated constantly, 24 hours a day' (refer to <https://www.police.vic.gov.au/crime-statistics>).
- 5 State of Victoria (2014–2016): Royal Commission into Family Violence: Report and recommendations, Parl Paper No. 132, Vol. 3, p. 37.
- 6 Ibid., p. 17.
- 7 Victoria Police (2018): Policing Harm, Upholding the Right: Victoria Police Strategy for Family Violence, Sexual Offences and Child Abuse 2018–2023, Chapter 14.
- 8 State of Victoria (2014–2016): Royal Commission into Family Violence: Report and recommendations, Parl Paper No. 132, Vol. 3, p. 37.
- 9 Victoria Police (2021): Victoria Police Manual – Family Violence.
- 10 Ibid.
- 11 Victoria Police foundation training materials provided to Family Violence Reform Implementation Monitor.
- 12 Ibid.
- 13 Victoria Police (2021): Victoria Police Manual – Family Violence.
- 14 Victoria Police (2019): Code of Practice for the Investigation of Family Violence, edition 3, Vol 4, p. 23. Available at: [police.vic.gov.au/sites/default/files/2019-06/Code-of-Practice-2019.pdf](https://police.vic.gov.au/sites/default/files/2019-06/Code-of-Practice-2019.pdf) (accessed 8 June 2021); Victoria Police (2021): Victoria Police Manual – Family Violence.
- 15 Family Safety Victoria (2020): Practice Guides Responsibility 7: Comprehensive Risk Assessment, p. 301. Available at: [vic.gov.au/sites/default/files/2020-05/PG%20Responsibility%207.pdf](https://vic.gov.au/sites/default/files/2020-05/PG%20Responsibility%207.pdf) (accessed 10 June 2021).
- 16 Family Safety Victoria (2021): MARAM Practice Guides Foundation Knowledge Guide, p. 97. Available at [vic.gov.au/maram-practice-guides-and-resources](https://vic.gov.au/maram-practice-guides-and-resources) (accessed 10 June 2021).
- 17 In discussing government resources that relate to predominant aggressors, our focus is on the immediate system players. We have not looked at resources in universal services such as health and education, but we acknowledge these areas may also include relevant resources.
- 18 Victoria Police (2021): External agency briefing: Misidentification of the Primary Aggressor – A 2021 Update (not published).
- 19 Women's Legal Service Victoria (2018): 'Officer she's psychotic and I need protection': Police misidentification of the 'primary aggressor' in family violence incidents in Victoria, p. 1. Available at: [womenslegal.org.au/~womensle/wp-content/uploads/2021/04/MisID-Policy-Paper.pdf](https://womenslegal.org.au/~womensle/wp-content/uploads/2021/04/MisID-Policy-Paper.pdf) (accessed 1 July 2021).
- 20 Crime Statistics Agency (2020): Magistrates' Court Data Tables 2019–20, Table 4. Outcome of FVIO applications by gender of respondent, July 2015 to June 2020.
- 21 No to Violence (2019): Discussion paper: predominant aggressor identification and victim misidentification. Available at: [ntv.org.au/advocacy-media/policy-positions-and-submissions/](https://ntv.org.au/advocacy-media/policy-positions-and-submissions/) (accessed 6 July 2021).
- 22 Analysis of de-identified Youthlaw data. Centre for Innovative Justice, RMIT University, 2021.
- 23 Family Safety Victoria (2021): MARAM Practice Guides, Foundation Knowledge Guide: Guidance for professionals working with child or adult victim survivors, and adults using family violence, p. 112. Available at: [vic.gov.au/maram-practice-guides-and-resources](https://vic.gov.au/maram-practice-guides-and-resources).
- 24 Ibid., p. 97.
- 25 Women's Legal Service Victoria (2018): 'Officer she's psychotic and I need protection': Police misidentification of the 'primary aggressor' in family violence incidents in Victoria; No to Violence (2019): Discussion paper: predominant aggressor identification and victim misidentification; Family Safety Victoria (2021): MARAM Practice Guides Foundation Knowledge Guide.
- 26 ANROWS (2020): Accurately identifying the 'person most in need of protection' in domestic and family violence, research report, p. 86. Available at: [anrows.org.au/publication/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law](https://anrows.org.au/publication/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law) (accessed 6 July 2021).
- 27 This report focussed on the third stage of the Multi-Agency Triage (MAT) project. Between July and December 2016 and July and November 2017, a total of 7462 police Family Violence Reports were received by Berry Street Specialist Family Violence Service in the north-eastern region of Melbourne. These were triaged daily by a multi-agency team and appropriate risk assessment and service response was determined.

- 28 Humphreys, C. & Nicholson, D (2017): Multi-Agency Triage Project: Final Report. Melbourne, University of Melbourne, p.13. Available at: [safeandtogetherinstitute.com/wp-content/uploads/2018/06/MAT-Final-Report\\_6Feb\\_2018-2.pdf](https://safeandtogetherinstitute.com/wp-content/uploads/2018/06/MAT-Final-Report_6Feb_2018-2.pdf).
- 29 For example: The Age, 18 May 2021: 'Rosie told police she was a victim of domestic violence. She was the one arrested'. Available at: <https://www.abc.net.au/news/2021-05-19/rosie-told-police-victim-of-domestic-violence-she-was-arrested/100112832> (accessed 7 July 2021); Guardian Australia, 20 September 2021: "'Denied a voice': how Australia fails migrant victims of domestic violence". Available at: <https://www.theguardian.com/australia-news/2021/sep/20/denied-a-voice-how-australia-fails-migrant-victims-of-domestic-violence> (accessed 20 September 2021).
- 30 Jamieson LM, Harrison JE, Berry JG (2008): Hospitalisation for head injury due to assault among indigenous and non-indigenous Australians, July 1999–June 2005, The Medical Journal of Australia, 188(10): pp. 576–579.
- 31 Victorian Equal Opportunity and Human Rights Commission (2019): Independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police: Phase 3 audit and review, p. iv. Available at: [humanrights.vic.gov.au/static/9a9be4301421aec42a6cb3620eca1f01/Resource-Independent\\_Review\\_Victoria\\_Police-Phase\\_3-2019.pdf](https://humanrights.vic.gov.au/static/9a9be4301421aec42a6cb3620eca1f01/Resource-Independent_Review_Victoria_Police-Phase_3-2019.pdf) (accessed 21 September 2021).
- 32 Crime Statistics Agency (2021): Criminal incidents and rate per 100,000 population by principal offence and family incident flag. Available at: [crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-criminal-incidents-2](https://crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-criminal-incidents-2) (accessed 22 September 2021).
- 33 For further information on 'collusion', see Family Safety Victoria (2021): MARAM practice guides: Foundation Knowledge Guide, p. 47. Available at: [https://content.vic.gov.au/sites/default/files/2021-07/MARAM%20practice%20guides\\_Guidance%20for%20professionals%20working%20with%20adults.pdf](https://content.vic.gov.au/sites/default/files/2021-07/MARAM%20practice%20guides_Guidance%20for%20professionals%20working%20with%20adults.pdf) (accessed 21 October 2021).
- 34 If sexual assault is disclosed, officers will contact their Sexual Offences and Child abuse Investigation Team.
- 35 Family Violence Reform Implementation Monitor (2021): Report of the Family Violence Reform Implementation Monitor as at 1 November 2020. Available at: [fvr.vic.gov.au/fourth-report-parliament-1-november-2020-tabled-may-2021](https://fvr.vic.gov.au/fourth-report-parliament-1-november-2020-tabled-may-2021).
- 36 Family Violence Reform Implementation Monitor calculations based on data from the Crime Statistics Agency. Latest Victorian crime data – Family incidents – rate per 100,000 population. Available at: [crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/family-incidents-2](https://crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/family-incidents-2) (accessed 20 September 2021).
- 37 <https://www.abc.net.au/news/2020-10-19/police-in-australia-are-failing-to-take-action-against-domestic/12757914?nw=0&r=HtmlFragment> (accessed 21 October 2021).
- 38 Larsen AC, Guggisberg M (2009): Police Officers, Women and Intimate Partner Violence: giving primacy to social context, p.12. Available at: <http://www.austlii.edu.au/au/journals/AUJIGendLaw/2009/1.pdf> (accessed 21 October 2021).
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- 40 Department of Families, Fairness and Housing (2019): 'When to use MARAM screening and assessment tools - MARAM in Child Protection practice – information sheet'. Available at: <https://www.cpmanual.vic.gov.au/advice-and-protocols/specialist-resources/family-violence/maram-child-protection-practice> (accessed 24 September 2021).
- 41 Department of Families, Fairness and Housing (2019): Child Protection Manual, 'Receiving, registering and classifying a report'. Available at: <https://www.cpmanual.vic.gov.au/policies-and-procedures/phases/intake/receiving-registering-and-classifying-report> (accessed 24 September 2021).
- 42 Department of Families, Fairness and Housing (2016): Child Protection Manual, 'Child protection best interests case practice'. Available at: <https://www.cpmanual.vic.gov.au/our-approach/best-interests-case-practice-model/child-protection-best-interests-case-practice> (accessed 24 September 2021).
- 43 Correspondence from Victoria Legal Aid to the Family Violence Reform Implementation Monitor, August 2021.
- 44 Family Violence Reform Implementation Monitor (2021): Report of the Family Violence Reform Implementation Monitor as at 1 November 2020. Available at: [fvr.vic.gov.au/fourth-report-parliament-1-november-2020-tabled-may-2021](https://fvr.vic.gov.au/fourth-report-parliament-1-november-2020-tabled-may-2021) (accessed 20 September 2021).
- 45 DFFH provided the following data for active staff during July 2021: Of CPP2s (Case Practice Support workers), over 70 per cent had completed stage 1 MARAM training and over 50 per cent had completed all 3 stages. Of CPP3 (Child Protection Practitioners) and more senior child protection staff, over 90 per cent had completed stage 1 MARAM training and over 75 per cent had completed all three stages.
- 46 Magistrate's Court of Victoria (2020): Family Violence Practitioner Guidelines, v.1.
- 47 National Domestic and Family Violence Bench Book (2021). Available at: <https://dfvbenchbook.aija.org.au/contents> (accessed 10 September 2021) – relevant sections 'Victims as (alleged) perpetrators' (section 4.4.15), 'Vulnerable groups' (section 4.4), 'Coercive control' (section 3.2) and 'Systems abuse' (section 3.1.11).
- 48 Juridical College of Victoria (2019): Family Violence Bench Book. Available at: <https://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34143.htm> (accessed 14 October 2021).
- 49 Crime Statistics Agency (2020): Magistrates' Court Data Tables 2019–20, Table 4. Outcome of FVIO applications by gender of respondent, July 2015 to June 2020.
- 50 ANROWS (2020): Accurately identifying the 'person most in need of protection' in domestic and family violence, key findings and future directions, p. 9. Available at: [anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law](https://anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law) (accessed 7 July 2021).

- 51 Family Violence Reform Implementation Monitor (2021): Report of the Family Violence Reform Implementation Monitor as at 1 November 2020, p. 5. Available at: <https://www.fvrim.vic.gov.au/fourth-report-parliament-1-november-2020-tabled-may-2021> (accessed 20 September 2021).
- 52 Correspondence from Magistrates' Courts of Victoria to Family Violence Reform Implementation Monitor, November 2021.
- 53 See Child Protection Manual, 'Permanency for Children'. Available at: <https://www.cpmanual.vic.gov.au/node/3356> (accessed 27 September 2021).
- 54 Victoria Legal Aid website (2020): 'Options for dealing with an intervention order'. Available at: <https://www.legalaid.vic.gov.au/find-legal-answers/family-violence-intervention-orders/if-application-has-been-made-against-you/options-for-dealing-with-intervention-order> (accessed 27 September 2021).
- 55 Centre for Innovative Justice (2021): 'More than just a piece of paper: Getting protection orders made in a safe and supported way' Research report. Available at: <https://cij.org.au/cms/wp-content/uploads/2018/11/more-than-just-a-piece-of-paper-research-report-2021.pdf> (accessed 26 November 2021).
- 56 Reeves E (2021): 'I'm not at all protected and I think other women should know that, that they're not protected either': Victim-survivors' experiences of 'misidentification' in Victoria's family violence system. *International Journal for Crime, Justice and Social Democracy*, p. 6. Available at: <https://doi.org/10.5204/ijcsd.1992> (accessed 20 September 2021).
- 57 Ibid.
- 58 Family Safety Victoria (2019): The Orange Door Service Model, pp. 113-114. Available at: [vic.gov.au/orange-door-service-model](http://vic.gov.au/orange-door-service-model) (accessed 8 June 2021).
- 59 Family Safety Victoria (2018): Support and Safety Hubs Interim integrated Practice Framework, p. 59. Available at: [vic.gov.au/sites/default/files/2019-04/Support-and-Safety-Hubs-Interim-Integrated-Practice-Framework.pdf](http://vic.gov.au/sites/default/files/2019-04/Support-and-Safety-Hubs-Interim-Integrated-Practice-Framework.pdf) (accessed 10 June 2021).
- 60 Correspondence from Safe and Equal to Family Violence Reform Implementation Monitor, September 2021.
- 61 Department of Justice and Community Safety (2020): Victims of Crime Helpline: Annual Data Report, 2019-20.
- 62 Ibid., p. 10.
- 63 Correspondence from Safe and Equal to the Family Violence Reform Implementation Monitor, September 2021.
- 64 Family Safety Victoria (2021): Family Violence Information Sharing Guidelines: Guidance for Information Sharing Entities, p. 53. Available at: [vic.gov.au/sites/default/files/2021-04/Ministerial%20Guidelines%20-%20Family%20Violence%20Information%20Sharing%20Scheme\\_4.pdf](http://vic.gov.au/sites/default/files/2021-04/Ministerial%20Guidelines%20-%20Family%20Violence%20Information%20Sharing%20Scheme_4.pdf) (accessed 10 June 2021).
- 65 Family Safety Victoria (2019): Primary Aggressor Working Group 19 September 2019 Meeting Minutes.
- 66 Victoria Police (2019): Responding to Family Violence (Primary Aggressor), policy paper, not published.
- 67 Correspondence from Victoria Legal Aid to Family Violence Reform Implementation Monitor, September 2021.
- 68 Ibid.
- 69 Department of Families, Fairness and Housing (2016): Child Protection Manual: 'Malicious reports – advice'. Available at: <https://www.cpmanual.vic.gov.au/advice-and-protocols/advice/intake/malicious-reports> (accessed 24 September 2021).
- 70 Work to develop the reporting capability in the Child Protection case management system is currently underway.
- 71 Department of Justice and Community Safety (2021): Corrections Victoria Monthly Time Series Prisoner and Offender Data.



