

Victoria Legal Aid response to questions/issues on notice from family violence perpetrator data inquiry

Question on notice:

'If you are having to change that narrative (misidentification of the predominant aggressor), what is the timeline on that? How much does it linger permanently on someone's profile? We understand from a L17, an instant report, how that is just a moment in time—that they stand by not manipulating the narrative—but understanding from a legal lens what that mis-ID means for your profile forever would be really great, and the timeline associated. If you have got any explanation around where the delays are in that timeline to address mis-ID.'

VLA response:

While there have been many improvements to the family violence system, misidentification remains a significant issue that impacts on victim survivors in consequential ways. We echo Victorian Aboriginal Legal Service's (VALS) concerns that 'the impacts of misidentification are profound and can include separation from children, criminalisation and lack of access to necessary supports.'¹

VLA contributed to the 2021 Family Violence Reform Implementation Monitor (FVRIM) report [Monitoring Victoria's Family Violence Reforms: Accurate Identification of the Predominant Aggressor](#). We urge the committee to review the findings and recommendations of this report.

Many of the concerns about resolving misidentification raised by VLA and other services remain today including:

- Where a woman has been misidentified by police and this has triggered her involvement with Child Protection, her misidentification will often be continued, rather than identified, by Child Protection.
- Misidentification can also have ongoing and significant detrimental impacts on victim survivors' family law proceedings in the Federal Circuit and Family Court of Australia (FCFCOA). Misidentification is not recorded as the reason for the FVIO being withdrawn or struck out and a party may use the inaccurate application in materials prepared for the FCFCOA.
- Currently the main mechanism to resolve misidentification is in the courts where a family violence safety notice is in place, an application for a Family Violence Intervention Order (FVIO) has been made or criminal charges have been filed. This is not always picked up by the Magistrate and/or in referrals made to the duty lawyer.
- Lawyers do not have reliable and consistent escalation pathways to review and rectify cases of suspected misidentification across Victoria before or after court.

Given that misidentification disproportionately impacts First Nations women, and women from migrant and refugee communities, and has such severe consequences, it is essential that these cases are addressed as quickly as possible, with minimum delay and re-traumatisation of victim-survivors.

¹ Victorian Aboriginal Legal Service, [Submission - Victorian Aboriginal Legal Service \(Family Violence\)](#) - Yoorrook Justice Commission accessed 9 July 2024.

We share our suggestions for the timely rectification of misidentification including:

- Improved coordination between agencies and reliable escalation processes to review and correct misidentification.
- Training for all professionals working in family violence systems on the nature, gendered drivers, dynamics, and patterns of family violence. This includes lawyers, police, court staff and the judiciary.
- When a decision is made that a FVIO police application be withdrawn or charges changed/withdrawn, Victoria Police clearly update LEAP and Central Information Point records and notify relevant organisation such as information sharing agencies.
- Strengthen Magistrates' and Court Registrars' understanding of misidentification by updating the Family Violence Bench book and investigating a specific training module on misidentification.
- Ongoing funding for the pre-court engagement service. This service provides legal advice to parties prior to their court case and enables cases of misidentification to be identified, prior to court.

Data about children who use violence

'I hear a lot about children more and more—in schools, on their families, on their parents, sometimes on their siblings. And we tend to think violence is within, you know, the relationship of the parents, the adults, but more and more it seems to not be. And that is a further question: what is happening that children are doing that?'

VLA response:

Current data often does not reflect the circumstances of young people using violence.

Children and young people who use violence are often not recognised by the justice system and linked data, as victim-survivors in their own right.

Our work with children and young people echoes established research that suggests that many children who use family violence, whether in the home or in intimate relationships, have a background of abuse, disability, mental health issues, developmental issues, or trauma.

The power dynamics in adolescent family violence situations are different to intimate partner relationships and the child will often have experienced past or current use of violence where they are the victim, multidirectional use of violence within the family home, and/or misidentification of the child as the perpetrator.

We believe there is a significant risk of doing harm to a young person who has experience as a victim of violence by labelling them as a perpetrator. The Positive Interventions for Perpetrators of Adolescent violence in the home (PIPA) report noted "Once an adolescent becomes labelled by the courts or a service as a "perpetrator", they can potentially be precluded from key supports, such as crisis accommodation or out-of-home care because of their use of violence against others".

We would welcome a greater policy focus and early intervention programs for children who are victim-survivors.

It is essential that children are diverted away from the justice system and into therapeutic or other supports at the earliest possible stage, especially where their behaviour is assessed as arising from disability or mental health issues.

Our practice experience suggests intervention orders against children are increasing and we are currently conducting a research project into this issue, to be released in late 2024.