Review of non-family violence intervention order system

Part 1 - Introduction

No specific questions.

Part 2 - Background to the current stalking intervention order system

No specific questions. Any comments?

Part 3 - Issues with the current stalking intervention order system

Question No.	Question	Comment
1.	In your view, does the current stalking intervention order system adequately protect and address all types of non-family violence matters? What do you see as the key strengths and weaknesses of the current system?	• Key weaknesses: o Community misapprehension of the purpose, scope and legal consequences of non-family violence Intervention Orders ('IOs') o Inadequate police engagement: police often encourage individuals to apply for IOs, but then fail to enforce breaches o Inadequate legal support for parties: most applications proceed without legal advice or representation o Disproportionate impact on the mentally ill: people with mental illnesses are often subject to IOs they do not fully understand, which can lead to breaches and criminal charges.

Part 4 - What would a successful system look like? How would you measure success?

No specific questions. Any comments?

A successful system would be:

- accessible – people who need legal advice and other support services (such as interpreters) can access these services;
- effective – the system is enforced and breaches are penalised;
- just – vulnerable people, particularly people with mental illnesses, are diverted to support services, and not punished for behaviour that is symptomatic of their vulnerability or marginalised status;
- targeted and proportionate – ie parties have realistic expectations of what an IO can achieve, and understand that IOs cannot resolve every type of conflict (eg neighbourhood disputes).

Its success could be measured by:

- better support for applicants and respondents, including (a) better resourcing of community legal centres to provide legal advice to prospective applicants and respondents; (b) provision of in-house legal advisers, similar to duty lawyers, to assist parties who otherwise would not have access to legal assistance; (c) employment of a Department of Human Services (DHS) liaison worker to refer vulnerable parties to relevant support services; and (d) better provision of interpreting services to people from culturally and linguistically diverse ('CALD') backgrounds;
- a community education campaign to inform people (a) of their right to apply for an IO; (b) of what an IO can and cannot achieve; and (c) of alternative avenues for resolving their disputes;
- more effective pre-court streaming of cases, so that serious cases receive priority;
- proportionately fewer IOs issued against people with mental illnesses;
- improved training for police concerning the scope, purpose and legal implications of IOs, and the importance of adequate enforcement; and
- improved data collection, so that policymakers can accurately chart the effects of reforms to the system, particularly the effects of compulsory mediation on vulnerable groups.

It is crucial that parties have access to adequate legal advice before, during and after their involvement in the non-family violence intervention order system. Provision of adequate legal advice is the most effective way to:

- screen inappropriate disputes out of the system;
- ensure that mediations are conducted fairly, with the least possible stress or trauma to the parties;
- improve the speed and efficiency of court hearings; and
- promote community awareness and realistic expectations of the system.

The Federation generally supports the move towards alternative dispute resolution in family law, where it is clear that family violence is not an issue. However it must be acknowledged that these reforms have significantly increased the workload of CLCs. Greater demands are being made on CLCs to appear at

mentions, to represent clients in contested matters and to negotiate parenting plans. We anticipate that a similar shift towards mediation in the non-family violence intervention order system will place still greater demands on CLCs. If the legislature adopts this course, we urge that greater resources be provided to CLCs and other support agencies to assist parties in these matters. As discussed in further detail below, the Federation strongly believes that mediation is inappropriate where there is a significant power imbalance between the parties (including any situation involving violence).

Part 5 – Proposal

Question No.	Question	Comment
5.1 – Rationale of system, diversion of disputes prior to court and classification of applications for non-family violence intervention orders		
5.1.1 – Inclusion of clear rationale for the new system		
2.	What should be the objectives of the new system?	The objectives of the system should be to offer effective protection to victims of stalking, harassment and other forms of intimidation, while affording due process and appropriate support to persons accused of such conduct. The system should be accessible to applicants with special needs (eg people with disabilities), while also meeting the needs of vulnerable respondents (eg the mentally ill). The system should include alternative dispute resolution measures, but should contain safeguards to ensure that parties are not intimidated, coerced or further traumatised by these experiences.
5.1.3 – What matters will be inappropriate for mediation?		
3.	What types of matters are inappropriate for mediation?	Situations where: a) there is a significant power imbalance between the parties, for example due to one party's lack of English language and literacy skills, disability, mental illness, age or youth, gender, financial insecurity or dependence on the other party, and/or b) there have been past instances of violence on the part of one or both parties, or there is a risk of future violence.
4.	Will it ever be appropriate to mediate a case where there has been violence or threats of violence between the parties?	No. As the Federation has previously stated in the context of family law disputes, mediation will never be appropriate where there is a history of violence, intimidation, control or coercion, or a risk of future violence, which jeopardises a party's safety or ability to negotiate effectively.

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5.	What behaviour should be included in a definition of 'violence' for the purposes of the new system?	In the context of family violence, the Federation strongly supports the broad definition of 'violence' under the Family Violence Protection Act 2008 ('FVPA'). We recognise that in family situations, manipulative, intimidating or otherwise controlling behaviours (such as psychological or emotional abuse) can be uniquely insidious and destructive. By contrast, for the purposes of streaming matters to mediation under the stalking legislation, a more limited definition of 'violence' is appropriate in most cases. This is due to the different character of non-family relationships, and the potential benefits of mediation in some highly emotional conflict situations, eg neighbourhood disputes. As such the Federation believes that, in general, violence should be defined as: • Physical abuse; • Threats of physical abuse; or • Destruction of the victim's personal property. However we believe that a more expansive definition should apply in cases involving people with disabilities. Such people are highly vulnerable and heavily dependent on their carers. In applications brought by people with disabilities against their carers, 'violence' should be taken to include deliberate neglect, eg withdrawal of care or assistance, withholding of meals, or threats to withdraw care or withhold meals. A more expansive definition of 'violence' may also be appropriate in cases involving children. This may include threats made via Facebook or other online social networks.
6.	How can the mediation process be adapted to allow for participation by parties with diminished capacity? In particular, how would the new system operate in circumstance where one or both parties were represented persons subject to a guardianship order under the *Guardianship and Administration Act 1986*?	As noted above, the Federation believes that mediation is inappropriate in cases where there is a significant power imbalance between the parties. The diminished capacity of one party will often give rise to such a power imbalance, in which case mediation should not be attempted. However, where diminished capacity does not give rise to a power imbalance (for example, where both parties have a moderate intellectual impairment) mediation may be appropriate. In such instances, each party should have access to a support person before and throughout the mediation. In these situations, the impartiality of the support person is crucial to the fairness of the mediation process. Since relatives or carers may not be entirely impartial, it is preferable that the support person be a lawyer, case worker or in-house DHS support worker.

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5.1.4 – Strengthening of dispute resolution referral pathways to encourage diversion of interpersonal disputes to mediation prior to applications for orders being made at court		
7.	Are there any other alternatives to intervention orders and mediation for the effective resolution of interpersonal disputes?	The Federation is aware that many neighbourhood disputes giving rise to IO applicants involve residents of public housing. Such disputes are often aggravated by the fact that parties have little or no capacity to move away from the suburb or estate in which they live. To reduce the number of neighbourhood disputes giving rise to IOs, the DHS support worker should have special authority to contact the Office of Housing, to investigate the possibility of a housing transfer for any party to the dispute. This option could be put to either or both parties prior to, or during, mediation, as one possible means of resolving the dispute. In cases of intractable conflict, involving severe violence, multiple IOs and/or multiple breaches, the Magistrate should be empowered to recommend an early housing transfer, provided that the party in question agrees and wishes to move. The Office of Housing should be required to give priority to this transfer. Such a remedy could operate in conjunction with IOs or any other remedies the Magistrate considers appropriate for the protection of the applicant.
8.	How should police, local government and other agencies decide whether to refer a dispute to mediation or court?	As noted above, the legislation should provide for better education of police concerning the non-family violence intervention order system. This should include the nature of mediation under the legislation, alternative avenues for dispute resolution (for example, services provided by local councils or workplaces) and the types of cases that may not be appropriate for mediation (as set out above). Police should be dissuaded from referring individuals to the court to apply for an IO, in situations (such as neighbourhood disputes) where an IO is unlikely to be effective.
5.1.5 – Criteria for classifying cases at court into the' court stream' or the 'mediation stream'		
9.	Is the streaming of cases appropriate?	The Federation supports the proposal to divert appropriate cases into a mediation 'stream', provided that such streaming is performed in accordance with strict criteria (see below).
10.	What criteria should be used when classifying cases into a 'court stream' and 'mediation stream'?	The Federation agrees that mediation is potentially useful in the majority of non-family violence IO applications, and therefore believes that, subject to certain exceptions, the mediation stream should be the default stream for all applications in the first instance. Cases should <u>not</u> be referred to the mediation stream where they involve *prima facie* evidence of predatory stalking, a history of violence, or a risk of future violence. After the initial referral to the mediation stream, further cases may be 'screened out' at the discretion of the mediator or the Dispute Assessment Officer (see response to q 13, below).

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11.	Is mediation appropriate where one or both parties is a child? What protections could be included?	Disputes between a child and an adult will almost always involve a significant power imbalance and therefore will be 'screened out' by the Dispute Assessment Officer or mediator. However where both parties are children, mediation may be appropriate, provided each child has the support of a lawyer, relative, friend, case worker or a DHS support worker. Before a child attends mediation, he or she should receive independent legal advice, without his or her parents present. This reduces the risk of parents exerting pressure on their children in the mediation process.
5.1.6 – Matters referred to mediation to be assessed by a dispute assessment officer for suitability		
12.	How can court registries best be linked with mediation service providers to allow for the swiftest possible referral process?	The Federation supports the proposal to appoint a Dispute Assessment Officer ('DAO') to assess each matter referred to the mediation 'stream' by the Registrar. It is imperative that the DAO be appropriately trained to recognise symptoms of power imbalance, and to understand the special circumstances and needs of people with disabilities, the mentally ill, young people, the elderly and CALD communities. The DAO may be a qualified mediator, or may be trained in mediation techniques for the purposes of this role.
13.	What criteria should DAOs use in making their decisions?	DAOs should apply the criteria listed in the response to Question 10, after performing a thorough assessment of the case. In addition, the DAO should refer the matter back to the court for hearing where, on the basis of this assessment, he or she believes that: • there is a significant power imbalance between the parties; • one party is (or the parties are) mentally ill; • one party has (or the parties have) insufficient English language skills to participate meaningfully in the mediation process, even with an interpreter; or • one party has (or the parties have) an intellectual disability of such severity that it would make mediation inappropriate (NB: intellectual disability will not always render mediation inappropriate). As in the FVPA, the new Act should include case studies or examples to supplement its definitions of key terms. Examples of 'significant power imbalance' may include the relationship between a carer and a person with a disability, or the relationship between a teacher and his or her student.
5.1.7 – Registers' power to decline to accept an application for a non-family violence intervention order if matter classified as 'mediation stream'		
14.	Who should make a decision in relation to the classification of a case and	The Federation supports the proposal that Registrars should classify matters into court and mediation streams in the first instance, provided that a DAO investigates the mediation cases more thoroughly

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	according to what criteria/factors?	before mediation is attempted. Registrars should have a broad discretion to direct most applicants to mediation on a provisional basis, even where the parties express a strong desire for a court hearing. This broad discretion would recognise that Registrars' workload and training do not permit lengthy enquiries into individual cases at the initial streaming stage. The DAO should conduct a thorough investigation before deciding whether to refer a case to mediation or back to the court. In making this recommendation the DAO should apply the criteria set out in answer to questions 10 and 13. While referring a matter to mediation, a Registrar should simultaneously set the matter down for court hearing, at a time well after the mediation date. If the matter is resolved at mediation, this court hearing may be used to authenticate consent orders or provide undertakings to the court (where this has been agreed at mediation). If the matter is not resolved at mediation, it should proceed automatically to a full hearing on that date. Only the Registrar should have authority to refer matters directly to court, bypassing mediation. In most cases, however, the Registrar could be expected to follow the recommendations of the DAO.
15.	Can a risk assessment minimise the risk of people being endangered by mediation if a party is or becomes violent? Can violence be predicted?	Yes. Risk assessments should be employed in determining whether or not to refer a case to mediation. The Federation makes no comment in relation to the second part of this question.
16.	What powers should registrars have in relation to non-family violence intervention order applications (eg to refuse)?	The Registrar should <u>not</u> have the power to refuse applications outright, even if, in the Registrar's opinion, the application is trivial, frivolous, vexatious or in bad faith. Such matters should be referred to the DAO for further assessment. If the DAO regards an application as trivial, frivolous, vexatious or in bad faith, he or she should recommend to the Registrar that the application be refused. The Registrar should be empowered to refuse the application on the DAO's recommendation.
17.	Would it be appropriate to have an 'appeal' from a registrar's decision not to accept an application/to refer a matter to mediation? If so, is appeal to a judicial registrar appropriate? Or should it be to a magistrate?	Yes. An applicant should be able to appeal to a Magistrate or Judicial Registrar if the Registrar refuses his or her application in the first instance. In reviewing the initial decision, the Magistrate or Judicial Registrar should take into account the reasons of the DAO who recommended refusal of the application.

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18.	What training would registrars require to undertake this role? Would all registrars do this or would it be specially trained registrars?	As noted above, the Federation believes that DAOs should assist Registrars in filtering out unmeritorious claims. DAOs should receive rigorous, specialised training as set out in the response to question 12.
5.2 – Diversion of appropriate matters to mediation after application for non-family violence intervention order is made		
5.2.3 – Reclassification of matters		
19.	If a previous assessment had taken place, should new facts and circumstances be required to initiate a reassessment? Who should have capacity to initiate a reassessment?	The Federation agrees that there should be scope for applications to be reclassified by the Registrar at any time (independently or on the recommendation of a mediator, DAO or Magistrate) if conflict escalates to the point that mediation is no longer feasible, or, conversely, if parties in the court stream express a desire to attempt mediation.
5.2.4 – Results of mediation to be 'binding'		
20.	Should the results of mediation be binding? If so, how should this happen and in what circumstances?	As set out in response to question 14, the Registrar should set each matter down for a court hearing at the same time as referring it to mediation. The court hearing should take place approximately one month after the mediation (subject to the court's capacity). In the event that the matter is resolved at mediation, parties should be given the option of seeking consent orders, or giving undertakings to the court, at the ensuing court hearing. They should be warned that if they fail to do this, the agreement reached at mediation will not be binding on either party. Parties who cannot afford a lawyer should receive free legal advice before making application to the court for consent orders or giving any undertakings to the court.
5.2.5 – Incentives to use mediation		
21.	Where referred to mediation, should parties be compelled to attend and/or participate at mediation sessions? Should there be sanctions for failure to attend/participate? - If so, what sanctions would be appropriate? - If not, how else can attendance and participation be encouraged?	The parties should be referred to mediation regardless of their own preference for a court hearing, unless the dispute falls into one of the categories identified above (see responses to questions 10 and 13) as being inappropriate for mediation. <u>Sanctions:</u> If an applicant fails to attend mediation, the application should be struck out. If a respondent fails to attend, the matter should be referred back to the court stream, to enable the applicant to seek an interim order. <u>Incentives:</u> As outlined above (see response to question 14), each matter should be set down for a court hearing as well as a mediation, with the mediation date set well in advance of the court date. The opportunity

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		to resolve the matter in a more timely fashion may serve as an incentive for some parties to attempt mediation, even if their ultimate intention is to proceed to a court hearing.
5.3 – Non-family violence intervention orders for matters not appropriate for mediation or where a dispute is not resolved through mediation		
5.3.1 – Grounds for a non-family violence intervention order		
22.	Should the grounds for a non-family violence intervention order cover one-off incidents?	A one-off incident should not ordinarily be grounds for an order, but it may in some circumstances be sufficient. This will depend on the severity of the incident and the context in which it took place. The legislation must be sufficiently flexible to accommodate rare cases in which a single incident constitutes grounds for an order. In this respect, the legislation might be modelled on the FVPA, which states in its preamble that 'family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time,' and in s 74 empowers a court to make orders where it 'is satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member and is likely to do so again.'
23.	Should any changes be made to the definition of 'stalking' for the purpose of obtaining a non-family violence intervention order? For example, should 'stalking' be distinguished from less serious forms of 'harassment'? If so, how could this be achieved?	The Federation does not support the creation of a new offence of 'harassment'. We believe that splitting the current stalking offence into two related offences would render the system more complex and more difficult for self-represented litigants to navigate. It would also be difficult to demarcate the offences with precision. This could lead to ambiguous laws which may be applied in an inconsistent and unjust manner. Instead, the Federation considers that the single offence of stalking should be replaced with a more clearly defined, more calibrated and more flexible offence, with a greater range of remedies, to encompass situations of greater and lesser severity (eg so as to include non-physical threats or intimidation where the victim has a disability).
24.	Would it be desirable to require charges to be laid before making an order on the basis of stalking? If so, should an alternative order (eg harassment or intimidation) based on other grounds be created?	No. It should not be necessary for charges to be laid in order for the court to make an order on the basis of stalking.
25.	Should a non-family violence intervention order be available: a) where a person has been subjected	IOs should be available not only in cases of predatory stalking, but in cases of serious harassment or intimidation. The legislation should include examples or case studies, as currently appear in the FVPA.

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	to 'intimidation' or 'harassment'? If so: - should these terms be defined or examples provided? - should this be in addition to stalking or as an alternative to stalking? b) where a person has been charged with 'assault', 'personal injury' or listed crimes involving violence from the *Crimes Act 1958*? c) where a person has damaged another person's property or threatened to do so?	They should also be available in cases where a person has been charged with assault, personal injury or another listed crime involving violence under the *Crimes Act 1958.* They should be available in cases where property has been damaged in a way that causes the applicant to fear for his or her personal safety. In general, IOs should not be available where the respondent has merely threatened to damage the applicant's property, however this should be left to the discretion of the Magistrate.
5.3.2 – Breach of the peace or offensive behaviour		
26.	Should the Magistrates' Court retain a separate power to order a person to enter into a bond to keep the peace or be of good behaviour, in addition to a non-family violence intervention order system?	The Magistrate should have this power in cases where the parties are children attending the same school.
5.3.3 – Types of non-family violence interventions orders		
27.	Should there be one type of non-family violence intervention order or two?	No comment.
28.	What should non-family violence intervention orders be called?	Stalking, harassment and intimidation protection (SHIP) orders.
5.3.4 – Distinction and interaction between intervention orders for family and non-family relationships		
29.	Is it desirable for the family violence intervention order system and the non–family violence intervention order system to be mutually exclusive?	The Federation recognises that the definition of 'family-like' relationships under the FVPA may cause confusion to some applicants, leading them to apply under the non-family violence intervention order system, when they are in fact covered by the FVPA. The Federation supports any measures to provide greater flexibility between the two systems, so that where parties apply for an order under the wrong system, the Magistrate can hear the application without the need to reapply under the other system.

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30.	How could the system deal with mutual applications, where one party makes an application for a family violence intervention order and the other makes an application for a non-family violence intervention order?	The Federation agrees that the Registrar should enquire of applicants (for non-family violence intervention orders) whether or not there are any current family violence orders between the same parties, or whether there are any applications on foot under the family violence system. If appropriate, the applications should be heard concurrently. Otherwise, the application for a non-family violence order should not be allowed to proceed until the family violence order application is resolved or dismissed.
5.3.6 – Applications by police		
31.	Should the police have an obligation to make, or consider making, an application for a non-family violence intervention order in certain circumstances? If so, how should this work?	The Federation considers that police should be required to consult victims, as to whether or not an order should be made, when laying charges for the criminal offence of stalking. Where the victim expresses a desire for an order, the police should be obliged to apply for an order on his or her behalf. The Federation believes that even where a victim does <u>not</u> wish for an order to be made, the police should have the power to apply for an order, however the conditions imposed by such an order should be limited (as currently applies under the FVPA). This arrangement would preserve the agency and dignity of the victim, while offering some protection for victims who may lack the confidence to request an order. The Federation supports the adoption of a police Code of Practice in relation to non-family violence intervention orders.
32.	Should there be any limits on the ability of police to make applications for non-family violence intervention orders against the affected person's wishes?	Where the IO will result in the respondent being excluded from particular premises (eg a shared rental property), the victim's consent should be required.
5.3.7 – Streamlining the process for cases where a charge has been laid		
33.	Should the application process be streamlined for cases where a criminal charge has been laid?	The Federation strongly agrees that where criminal charges have been laid, the application for an order should be referred directly to the court stream.
5.3.9 – Setting an appropriate duration for a non-family violence intervention order		
34.	Should the legislation provide guidance to the court on determining the duration	The legislation should provide that, when determining the duration of an order, the court should take into account the factors currently specified in the comparable section of FVPA, namely:

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	of a non-family violence intervention order?	• that the safety of the protected person is paramount; • any assessment by the applicant of the level and duration of risk posed by the perpetrator; and • if the applicant is not the protected person, the protected person's views, including the protected person's assessment of the level and duration of the risk.
5.3.10 – Possible conditions for the order		
35.	Should the court be required to consider any particular matters when determining the conditions for a non-family violence intervention order?	Yes. The court should be required to consider the effects an order may have on the respondent's ability to carry out his or her business, undertake employment, or access essential services. Where the respondent is a child, and the order refers to the child's school, the court should have regard to the school's ability to accommodate the order. The court should not make any order that adversely affects a child respondent's education, except in the most extreme circumstances (see also response to question 41).
36.	Should the non-family violence intervention order legislation include the following: - a power to revoke or suspend a weapons approval as a type of condition on an order? - the exclusion of the respondent from the protected person's residence as a type of condition on an order? If so, what factors should the court consider when deciding whether to exclude the respondent? - provisions on whether the respondent is to have any contact with a child of the protected person as a possible condition? - anything else?	The Federation supports the following possible conditions being listed in the legislation: • revocation or suspension of any weapons approval(s) held by the respondent; • termination of a tenancy agreement to which both the applicant and the respondent are parties; and • exclusion of the respondent from any premises in which the applicant lives or works, where the evidence shows that this is necessary to preserve the applicant's safety. In making an order of this nature, the court should be required to take into account the respondent's need to carry out business, undertake employment, or access essential services, as well as any special vulnerability of the respondent (eg mental illness). Where an interim order is made against a carer, and the applicant is a person with a disability in residential care, the worker should be prevented from entering the residential care facility until the matter has been heard by a Magistrate or otherwise resolved. We refer to the submission of our member centre, the Disability Discrimination Legal Service, in this regard.
5.3.12 – Timing of hearings to ensure victims have adequate time to prepare		

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37.	Should the new non-family violence intervention order legislation include a mention system? Are there other ways to ensure the parties have adequate time to prepare, without increasing the number of times the parties need to attend court?	If a mention system is adopted, each party should be required to notify the other party in advance if he or she does not intend to appear. This would reduce the number of times that a party is required to attend court unnecessarily. It would also ensure that, in the event that one party does not appear, the other party does not incur unnecessary legal costs (eg solicitors' or barristers' appearance fees).
5.3.14 – Providing alternative ways of giving evidence		
38.	What alternative ways of giving evidence might be appropriate for non-family violence intervention order applicants and witnesses? Are changes to the rules of evidence and alternative methods appropriate for all cases or only for some cases?	The Federation supports measures to reduce trauma to applicants, provided that procedural fairness is accorded to respondents. Specifically the Federation supports legislative provision for: • applicants to give evidence from outside the court room via closed circuit television; • use of screens to remove the respondent from witnesses' direct line of vision; and • restricting respondents' ability personally to cross-examine applicants; where the Magistrate is satisfied that such measures are necessary to avoid trauma to the applicant, and will not prevent procedural fairness being accorded to the respondent. In such circumstances, it is particularly important for respondents to have access to adequate legal advice.
39.	Are there other ways the court process could be modified to reduce trauma to applicants?	The Federation considers that providing legal representation, and appropriately trained interpreters where necessary, is the best way to reduce the stressful and potentially traumatic effects of a court hearing. The provision of a DHS support worker (as discussed above) would also reduce stress and trauma to applicants, by linking them to counsellors and other services (such as disability, mental health or domestic violence support services, or interpreters) where appropriate.
5.3.15 – Protection of child victims and witnesses in the court process		
40.	How should the legislation ensure appropriate protection of children in non-family violence intervention order matters? Would any of the provisions of the family violence legislation be appropriate for inclusion in, or adaptation to, the new non-family	Children should always receive legal advice before participating in a mediation or appearing in court. This could be provided by a CLC or a duty lawyer at a mediation centre or court. As some parents exert considerable pressure on their children, children should always have an opportunity to speak with a lawyer in the absence of their parent(s).

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	violence intervention order legislation in this regard?	
5.3.16 – Protection of child respondents		
41.	Should orders against persons under 18 be limited? If so, in what ways?	The Federation strongly believes that the FVPA's protections for child respondents should be replicated in the stalking legislation. In particular, a Magistrate should not have the power to make consent orders involving a child respondent, unless he or she is satisfied that there are grounds for making the order. In addition, there should be clear guidelines regarding orders that limit child respondents' access to their schools, or restrict their movement within a school. Where an applicant seeks an order to exclude a respondent from a school, or to limit the respondent's movement within a school, the applicant should be required to call a representative of the school (eg the Principal) as a witness, in support of the application. Before making such an order, the Magistrate should be required to establish that the school can facilitate compliance with the order, without detriment to the child respondent's education. Alternatively, a Magistrate should have the power to order a child to enter into a bond to keep the peace, or be of good behaviour.
5.3.17 – Providing protection from misuse of the non-family violence intervention order system – vexatious litigant provisions		
42.	Would a litigation limitation order system, as recommended by the Parliamentary Law Reform Committee, be an appropriate way to regulate vexatious litigants in a non-family violence intervention order scheme? Should such a system apply to all cases or just 'dangerous' cases?	In general, the Federation does not endorse the labelling of certain litigants as 'vexatious'. We refer to the Federation's submission to the Victorian Parliament Law Reform Committee *Inquiry into Vexatious Litigants*, available at http://www.parliament.vic.gov.au/LAWREFORM/inquiries/Vexatious%20Litigants/submissions.htm. Nevertheless we agree that in some instances, parties may use the non-family violence intervention order system as a means of further harassing, intimidating or stalking their victims. Where this can be demonstrated by clear evidence, a party should be able to apply to the court for a litigation limitation order. Such an order would ensure that the other party must seek leave of the court before making further applications for new orders, or variation of existing orders, involving the applicant for the litigation limitation order.
43.	Are there other ways to ensure that the non-family violence intervention order	See responses to questions 16 and 18. DAOs, Registrars and Judicial Registrars should receive training in how to identify applications that are merely intended to harass or intimidate respondents.

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	scheme is not misused?	
5.3.18 – Allowing easier access to orders by widening the jurisdiction of the Children's Court		
44.	Should the Children's Court have jurisdiction in adult-to-adult applications where a child is involved, as it does in family violence matters?	No, except in the situation outlined in response to question 45, below.
45.	Should applications for orders against a person who is under 18 usually be heard in the Children's Court?	The Federation believes that where practicable, stalking applications involving an applicant or respondent under the age of 18 should be heard in the Children's Court. Where there are related applications between adults, involving the same factual circumstances, these should be heard in the Children's Court together with the application concerning the child, where practicable. This would avoid unnecessary duplication in the Magistrates' Court, and would reduce the number of potentially traumatic court attendances for victims and other witnesses.
5.3.19 – Dealing with multiple perpetrators or victims		
46.	How can the non-family violence intervention order system best deal with multiple perpetrators or victims?	Courts should be able to hear multiple applications in one hearing, where the applications concern the same parties and/or factual background, and it is fair to do so.
47.	Would a system of workplace protection orders be desirable? If so, how can the system ensure that this type of order does not unduly restrict freedom of speech, access to services or lawful business practices?	The Federation supports the proposal to institute 'workplace protection orders', provided that such orders do not unduly limit respondents' ability to access essential services. To ensure this, certain workplaces, such as law courts and registries, Centrelink offices, public housing services and health facilities, should be excluded from the scope of workplace protection orders. The legislation should also clearly exclude industrial action and political protest from the scope of such orders.
5.3.20 – Extending, varying or revoking an order		
48.	Would it be appropriate to adapt these provisions for the new non-family violence intervention order legislation?	It is important that respondents have the power to apply for variation of orders when their circumstances change, unless it can be shown that they are acting in bad faith or that their applications are otherwise trivial, frivolous or vexatious.

Any other issues or comments?

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Some CLCs have expressed concern about the operation of the proposed new mediation model in smaller suburban, rural and regional courts. As set out above, the mediation model can only operate fairly and effectively if parties receive appropriate support, including legal advice, access to interpreters, referral to social services, assessment by properly trained DAOs and access to adequately trained mediators. There is a risk that in smaller courts, parties will not have access to adequate support, and applications will not be assessed by specialist DAOs or mediated by adequately trained mediators. The Federation urges the Government to ensure that parties in smaller suburban, rural and regional areas are not disadvantaged by inadequate resources if this model is introduced.