

Victorian
Law Reform
Commission

Review of Family Violence Laws
Report

Victorian Law Reform Commission

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Warning to Readers

In line with our victim-centred approach, we have drawn extensively on the experiences of family violence victims in this report and often quote directly from their submissions, interviews and published accounts. We warn readers that some of the language used in these quotes and the graphic nature of the violence described may upset some readers and re-traumatise people who have experienced violence. Many of the first-hand accounts are in chapters 2 and 4.

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Preface

This is the Victorian Law Reform Commission's Final Report on the *Crimes (Family Violence) Act 1987*. The Act has not been comprehensively reviewed since its inception and attitudes towards family violence have changed substantially since 1987. In this report we have examined the dynamics of family violence and its many forms as the foundation of our recommendations about the purposes and principles of family violence legislation. In preparing this report we endeavoured wherever possible to draw upon the knowledge of victims of family violence and were able to directly interview a number of them. I thank them for their ability to speak frankly and openly about their difficult experiences.

This report makes recommendations on all aspects of the justice system and family violence. Our recommendations are based on research about family violence, the law, and the processes and procedures of Victoria Police and the Magistrates' Court. We have engaged in extensive consultation with victims of family violence, organisations working to support victims, personnel in government departments, operational police, magistrates, registrars and lawyers. We also drew on the experiences of people working in Tasmania and Western Australia who are responsible for the implementation of recently introduced changes to family violence legislation in those jurisdictions. The contribution of many people who assisted us by participation in our advisory committees and in other specially convened meetings and consultations is gratefully acknowledged.

The commission published a Consultation Paper in November 2004, accompanied by a separate publication, the Outline and Questions, which enabled our work to be more accessible to a wider audience. The Consultation Paper generated many submissions and we have drawn extensively on them in this report. In August 2005 we published *Family Violence Police Holding Powers Interim Report*. The recommendations in that report have been adopted in the Crimes (Family Violence) (Holding Powers) Bill 2005.

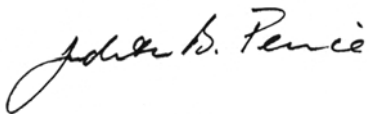
Although production of this report was a team effort, I make special acknowledgement of the principal authors Joanna Carr and Dr Zoë Morrison, who made an outstanding contribution to this work through their careful research and analysis. I particularly thank them for their professionalism and consistent dedication to this task.

Many other people were involved in preparing this report. Commission Chairperson Professor Marcia Neave, Part-time Commissioner Paris Aristotle, and

CEO Padma Raman were closely involved in its final form and provided important and valuable assistance throughout its development.

The publication was edited by Alison Hetherington. Trish Luker provided editorial and research assistance. Kath Harper proofread and prepared the index. Julie Bransden prepared the bibliography and Kathy Karlevski arranged the report's distribution.

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A handwritten signature in black ink, reading "Judith B. Peirce". The signature is written in a cursive style with a large, sweeping initial 'J'.

Judith Peirce, Commissioner

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Terms of Reference

On 1 November 2002, the Attorney-General, the Honourable Rob Hulls MP, gave the Victorian Law Reform Commission a reference:

1. To consider whether the *Crimes (Family Violence) Act 1987* is based on a coherent philosophy and whether, having regard to national and international experience, its approach to family violence is the best approach available to Victoria.
2. To identify any procedural, administrative and legislative changes which may be necessary to ensure that the *Crimes (Family Violence) Act 1987* provides the best available response to the problem of family violence.
3. To undertake research to monitor the practical effect of such changes.
4. To develop and/or coordinate the delivery of educational programs which address any lack of knowledge or misconceptions relating to the *Crimes (Family Violence) Act 1987* and the existing processes under the Act.
5. To develop and/or coordinate the delivery of educational programs which may ensure the effectiveness of proposed legislative, procedural or administrative reforms.
6. In conducting this review, the VLRC shall have regard to:
 - The work of the Statewide Steering Committee to Reduce Family Violence.
 - The accessibility of the Act and whether it is working effectively for:
 - immigrant women (particularly recent immigrants);
 - Indigenous communities; and
 - people with disabilities.
 - The position of children in applications made under the Act and the intersections between the *Crimes (Family Violence) Act 1987*, the *Children and Young Persons Act 1989* (Vic) and the *Family Law Act* (Cth).

Abbreviations

ACT	Australian Capital Territory
art	Article
CALD	culturally and linguistically diverse
CCSM	Continuing Consolidation of the Statutes of Manitoba
CCTV	closed circuit television
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEO	chief executive officer
ch	chapter
Cth	Commonwealth
DHS	Department of Human Services
DVIRC	Domestic Violence and Incest Resource Centre
et al	and others
eg	for example
ibid	in the same place (as the previous footnote)
ie	that is
IO	intervention order
n	footnote
NAATI	National Accreditation Authority for Translators and Interpreters
NSW	New South Wales
NZ	New Zealand
OPA	Office of the Public Advocate
para(s)	paragraph(s)
pt	part
Qld	Queensland
reg	regulation
rev	revised
s	section (ss pl)
SA	South Australia
SCC	Supreme Court of Canada
SS	Saskatchewan Sessional volume
TAFE	Technical and Further Education
Tas	Tasmania
UN	United Nations

UNGAOR	United Nations General Assembly
UNTS	United Nations Treaty Series
v	and (civil) or against (criminal)
VALS	Victorian Aboriginal Legal Service
VLA	Victoria Legal Aid
VOCAT	Victims of Crime Assistance Tribunal
VPM	Victoria Police Manual
WA	Western Australia

Terminology

Our approach attempts to be inclusive, as far as possible, of everyone in the community, including children who experience violence, people in same-sex relationships and Indigenous people, because family violence affects all members of the community.

In this Final Report we discuss the research which argues that family violence is a gendered form of violence and is perpetrated primarily by men against women. Accordingly, in some instances in this report gender-specific terminology is used. The feminine pronoun is used about victims throughout this research in recognition of the fact that the vast majority of victims are female. The masculine pronoun is used in relation to accused and perpetrators, acknowledging that almost all offenders are male.

Below are some of the terms that we have used in this report, and an explanation for why we have chosen to use particular terms. Other terms defined throughout the report also appear in the Glossary.

agency: this term is used throughout the report to refer to victims' ability to act for themselves.

applicant: this is our preferred term for a person who lodges an application for a family violence protection order. The applicant may be the person who needs protection from family violence, a police officer, or a guardian of a child or young person.

child/young person: is used for any child/young person aged 18 years or under, in accordance with the *Children Youth and Families Act 2005* (Vic).

cognitive impairment/impaired mental functioning: we use the term 'impaired mental functioning' where referring to current Victorian legislation, as that is the terminology used in legislation. In all other cases we use the term 'cognitive impairment' as this is regarded as a more accurate description by disability groups, and is widely used and accepted.

complainant: this is the term used in the *Crimes (Family Violence) Act 1987* to describe a person who applies for an intervention order on their own behalf or on behalf of another person.

defendant: this is the term used in the *Crimes (Family Violence) Act 1987* for a person against whom an intervention order is sought, or for a person who has been charged or convicted with a criminal offence, for example, an assault or breach of an intervention order.

exclusion order: this is our preferred term for an order preventing a respondent from continuing to reside with an applicant in a formerly shared residence. In the Consultation Paper we referred to these orders as ‘ouster orders’. **Family Violence Act:** we recommend that the *Crimes (Family Violence) Act 1987* should be replaced and this is our preferred term for a new Act.

family violence protection order: is our preferred term for use in the proposed new Act to replace the current term ‘intervention order’ in the *Crimes (Family Violence) Act 1987*.

Indigenous: when we refer to Indigenous people or services in this report we are referring to Indigenous Australians unless reference is being made to international agreements about indigenous peoples.

interim order: is the term used in the *Crimes (Family Violence) Act 1987* for a temporary intervention order. We retain this term in the new Act.

intervention order: Intervention order is the term for the order made by the Magistrates’ Court under the *Crimes (Family Violence) Act 1987*.

perpetrator: we use the term ‘perpetrator’ in certain contexts instead of the longer terms ‘family member who uses violence against a family member’ ‘person/family member who has used violence’ or ‘violent family member’, mostly for expediency.

respondent: this is our preferred term in the proposed new Act for a person against whom an intervention/family violence protection order is sought or against whom an order is made.

victim: in some contexts in this report, we use the term ‘victim’, meaning ‘one who is harmed or killed by another’. We do not use or intend the term to have negative connotations of helplessness. We appreciate and have integrated into our analysis that people who experience family violence also exercise agency.

Executive Summary

PURPOSE OF THIS REPORT

An alarming number of Victorians experience violence and abuse within their families. In many instances, victims find the justice system fails to protect them. Victoria has had a civil intervention order system to protect family members from violence since 1987. The criminal law also applies to some forms of family violence. In this report we review the justice system's response to family violence—particularly the intervention order system—and provide detailed recommendations for ways that it can be improved.

A NEW APPROACH TO FAMILY VIOLENCE

Violence against women, including violence in the family, is a fundamental violation of human rights that the State has an obligation to eliminate. However, the justice system's response to family violence is often inadequate and inconsistent. The commission has found this can be partly attributed to the absence of a clear philosophy and overall approach in Victoria's family violence legislation. The *Crimes (Family Violence) Act 1987* is used to obtain intervention orders for people involved in neighbourhood and other community disputes and in stalking matters, as well as for family violence. This has led to confusion among people working with the legislation, one consequence of which has been that family violence matters are sometimes not treated seriously. We recommend that a new Act should be introduced to deal exclusively with family violence.

We also recommend that the new Act should contain clear purposes and principles. The most important aim of the new Act should be to ensure the safety of all people who experience family violence. It should also aim to prevent family violence, provide victims with effective and accessible remedies, and promote non-violence as a fundamental social value. Those making decisions under the Act should give primary importance to the safety of victims. They should also consider the gendered nature of family violence, the promotion of non-violence in society, the need to treat victims with dignity and respect, and the need to ensure perpetrators of violence are held accountable for their actions.

Another notable absence in the current legislation is a definition of family violence. The new Act should include a definition which makes it clear what

behaviour constitutes family violence. Family violence is violent, threatening and other abusive behaviour that coerces, controls or dominates family members or causes them to be fearful. A new Act should make it clear that this includes assault and physical injury, sexual assault and sexually coercive behaviour, damage to a person's property, kidnapping or depriving a person of their liberty, emotional, psychological or verbal abuse, and economic abuse.

It is also crucial that a new Family Violence Act covers all family relationships that exist in the Victorian community, including those in marginalised communities. In particular, a new definition of 'family member' should include a relative according to Indigenous tradition or contemporary social practice, a relative according to any other traditional or contemporary social practice, and a person who has provided paid or unpaid care to someone who is dependent or partially dependent on that person, such as a carer of a person with a disability.

For the legal system and the wider community to respond adequately to family violence, it is also essential that ingrained attitudes and beliefs are challenged. Stereotypical views of women and their role in society often mean that violence against them is not identified, is implicitly condoned or is seen as a private issue. We therefore regard a broad community education campaign as an essential element in bringing about change, including change in the way the law is applied.

CHANGES TO THE JUSTICE SYSTEM

In making recommendations for change, we have focused on how the justice system can respond better to victims of family violence. There are six main areas where we have recommended reforms to improve the justice system's response.

PROTECTION IN A CRISIS SITUATION

When a family violence victim calls the police for assistance, police must have adequate powers and procedures to be able to respond effectively. We support the new Police Code of Practice in this respect, particularly the pro-arrest policy. Most incidents of family violence occur out of office hours and an efficient after-hours system to enable police to obtain an intervention order is one of the most important protections for a victim in a crisis situation. Since 1999, police have not sought after-hours intervention orders and instead have made applications for complaints or warrants to be made, which do not provide appropriate protection for victims. An effective after-hours response by the Magistrates' Court would complement the holding power for police recommended by the commission in its August 2005 Interim Report, *Family Violence Police Holding Powers*. The Magistrates' Court has recently put new procedures in place to enable after-hours applications for intervention orders, and we recommend that this process is

monitored to ensure that it is providing timely and adequate protection to victims of violence.

CONSISTENT AND EFFECTIVE OUTCOMES FOR VICTIMS

Although some police, magistrates and court staff are helpful and supportive to victims of family violence, inconsistent decision making and insensitive treatment of victims was identified by those we consulted as one of the most serious problems with the intervention order system. To ensure more consistent and effective outcomes for victims in court, the commission recommends:

- A specialist list within the Magistrates' Court for family violence matters. All those working on the specialist list, including magistrates, court staff and legal representatives, should receive family violence training.
- A specialist police prosecution unit to conduct all police applications for intervention orders and criminal prosecutions related to family violence. This unit should include provision of appropriate support and advice to victims and witnesses.
- Funding for community legal centres to provide legal advice and legal representation to applicants in intervention order matters.
- Training for police, registrars and magistrates on the dynamics of family violence, to ensure that legal responses reflect the experience of victims and are not based on myths and stereotypes.

BETTER PROTECTION FROM ORDERS

In some circumstances, a victim may obtain an intervention order that does not provide adequate protection. To improve the protection offered by an intervention order, the commission recommends:

- Where the victim wishes to remain in the family home, there should be a presumption that she or he can do so. 'Exclusion orders' that allow this should be explicitly mentioned in the new Act and other terms and conditions of orders should be tailored to suit the situation of the victim.
- Where there are children of the relationship and it is appropriate that they have contact with the respondent, this contact must be regulated in the intervention order. This will make clear to the parties and the police the contact the respondent may exercise with the children and will therefore assist police to identify what behaviour constitutes a breach of an intervention order.
- It must be made easier to extend an order where the victim continues to fear violence, including where the order has expired.

-
- Charges of breaching an order must be heard by the court as a matter of priority. Lengthy delays between charges being laid and the court hearing mean that perpetrators are not deterred from committing further breaches.

SAFE AND ACCESSIBLE COURTS FOR VICTIMS

Attending court is an intimidating experience for most people. In a family violence situation it can be particularly traumatic. The commission therefore recommends:

- Physical safety measures at court must be improved. This includes the provision of separate waiting areas for applicants and respondents, safe entrances and exits to the court building, private space for making applications for intervention orders, and improved disability access.
- Respondents to an application must be required to inform the court prior to the final hearing whether they intend to come to court and defend the application. Currently, applicants attend court not knowing whether the respondent will be there.
- The court must provide accessible information in a range of formats on the intervention order system and what applicants can expect at court.
- Application forms and the terms and conditions of intervention orders must be written in plain English.
- It must be made easier for applicants to give evidence in court. This includes providing alternative methods for giving evidence such as closed-circuit television, preventing cross-examination of the applicant by an unrepresented respondent, giving the magistrate clear powers to close the court or exclude people from it where necessary and allowing the court to consider any evidence it considers relevant.

IMPROVED RESPONSE TO MARGINALISED GROUPS

Some groups of women experience particular difficulties and barriers when seeking protection from family violence. These include Indigenous women, immigrant women and women with disabilities. To improve access to justice for these groups, the commission recommends:

- Funds should be provided to increase the support available from specialist community agencies that provide services and support to victims of family violence, in particular, Indigenous organisations, migrant organisations and disability-specific organisations.

- Police, magistrates and registrars must be provided with more comprehensive training about issues relevant to Indigenous and immigrant victims of violence, as well as victims of violence with disabilities.
- There must be more information on family violence and the legal system that is tailored to the needs of marginalised groups. This includes information in various formats, information in community languages, and greater provision of information sessions for marginalised groups.
- The justice system must continue in its efforts to promote diversity in the recruitment of staff. In particular, the government should support schemes to train more Indigenous people for court registrar positions.
- Access to, and quality of, court interpreters must be improved.

BETTER SAFEGUARDS FOR YOUNG PEOPLE

Children and young people are particularly vulnerable in the justice system, both as victims of family violence and as perpetrators. The commission therefore recommends:

- In addition to those who are direct victims of family violence, children who have heard, witnessed or otherwise been exposed to family violence should be protected by the intervention order system.
- Where an order is made to protect a child, the court must make it clear that it prevails over a Family Court order and does not allow contact.
- Where a young person has perpetrated family violence, we recognise that it can be very serious and have a devastating impact on the victim. However, safeguards must be in place to ensure that an intervention order is an appropriate response. An order against a young person should last for a maximum of 12 months, unless there are exceptional circumstances. The court must be satisfied that there are grounds for the order, even if the young person consents to the order being made. An application against a young person must be heard in the Children's Court.

Recommendations

Chapter 3

1. The *Crimes (Family Violence) Act 1987* should be repealed and new legislation, entitled the Family Violence Act, should be enacted.
2. The new Family Violence Act should contain clear purposes and guiding principles.
3. The purposes of a new Family Violence Act should be:
 - to ensure the safety of all people who experience family violence;
 - to prevent family violence between people to the greatest extent possible;
 - to provide victims of family violence with effective and accessible remedies;
 - to promote non-violence as a fundamental social value.
4. In making decisions, courts should treat the safety of victims of family violence as paramount and should also have regard to the following matters:
 - the particular characteristics and dynamics of family violence, including that family violence is predominantly perpetrated by men against women and children;
 - the promotion of non-violence as a fundamental social value between family members, within the legal system and in the wider community;
 - the need to ensure that victims of family violence are treated with dignity and respect; and
 - the need to ensure that perpetrators of family violence are held properly accountable for their actions.
5. Further research should be conducted before restorative justice practices are considered for use in family violence matters in Victoria.

6. If restorative justice practices are introduced, standards should be established for particular processes, practitioners should be trained and programs should be monitored and evaluated.

Chapter 4

7. 'Family violence' should be defined in the new legislation.
8. The new definition of family violence should explicitly include non-physical forms of family violence.
9. The legislation should allow an intervention order to be renewed without the applicant having to prove that further family violence occurred during the period of an intervention order.
10. Provisions should be included in the new legislation to enable an intervention order to be made for a child who has been subjected to, heard, witnessed or otherwise been exposed to family violence.
11. The new definition of family violence should be broad enough to include abuses specific to certain groups in the community.
12. Causing or threatening the death, torture or injury of an animal should be included in a definition of family violence, even if that animal is not the property of the family violence victim.
13. The new definition of family violence should include specific reference to sexual forms of family violence.
14. The new legislative definition of family violence should be:
 - Family violence is violent or threatening behaviour or any other form of behaviour which coerces, controls and/or dominates a family member/s and/or causes them to be fearful.
 - Family violence includes causing a child to see or hear or be otherwise exposed to such behaviour.
15. The definition of family violence may include, but is not limited to:
 - assault or personal injury to a person;
 - sexual assault and other forms of sexually coercive behaviour;
 - damage to a person's property;
 - kidnapping or depriving a person of her or his liberty (eg forced social isolation);

- emotional, psychological and verbal abuse (see definition of ‘emotional abuse’);
 - economic abuse (see definition of ‘economic abuse’).
16. ‘Emotional abuse’ and ‘economic abuse’ should be defined as follows:
- emotional abuse includes:
 - (i) behaving in a manner that is intimidating or offensive or harassing towards a person;
 - (ii) causing or threatening to cause the death of, or injury to, an animal whether or not the animal is the applicant’s property;
 - (iii) repeatedly using other coercive or controlling behaviour not included in (i–iii) including verbal abuse;
 - (iv) using other incidents of emotional and psychological torment not covered by (i–iii) above. For example: threatening to ‘out’ homosexual partners to their friends and/or family when they do not wish to be ‘outed’; threatening to withdraw the care of an elderly person; or threatening to withdraw a visa application to coerce a person.
 - economic abuse includes:
 - (i) coercing a person to relinquish control over assets or income;
 - (ii) disposing of property owned by a person or owned jointly with a person against that person’s wishes;
 - (iii) preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses, or withholding or threatening to withhold the financial support reasonably necessary for meeting normal living expenses for a person and/or their children;
 - (iv) coercing a family member to claim social security payments;
 - (v) coercing a family member to sign a contract for the purchase of goods and services, for the provision of finance, loans and/or credit, for a contract of guarantee, or any legal documents for the establishment and operation of businesses;
 - (vi) otherwise controlling access to money or finances.
17. The current definition of ‘family member’ should be amended to include the following relationships:
- ‘a relative according to Aboriginal tradition or contemporary social practice’;

- ‘a relative according to any other traditional or contemporary social practice’;
 - ‘a person who has or has had a relationship with the original person involving the original person’s dependence or partial dependence on that person for paid or unpaid care’.
18. Examples of specific family relationships should be added to the legislation to clarify its scope.
19. The grounds for getting an intervention order should be:
- the respondent has committed family violence against a family member and is likely to do so again;
 - the respondent has threatened to commit family violence against a family member and is likely to do so again.

Chapter 5

20. Victoria Police should continue with their efforts to oversee, monitor and evaluate the implementation and use of the Code of Practice for the Investigation of Family Violence by all police officers.
21. Victoria Police should make additional efforts to provide comprehensive and regular training on the dynamics of family violence, particularly from a victim’s perspective, for all police officers.
22. An independent and external review of the impact of the Police Code of Practice for the Investigation of Family Violence should be conducted within two to three years of the code’s full implementation.
23. Victoria Police should establish a specialist family violence prosecution unit to deal with intervention order applications, prosecutions of a breach of an intervention order and criminal charges arising in situations of family violence.
24. A specialist prosecution unit should include the provision of appropriate support and advice to victims and witnesses.
25. Magistrates’ discretion to award costs against police for unsuccessful prosecutions for family violence offences, including breaches of an intervention order, should be limited. Magistrates should only be able to award costs against police where the court is satisfied that:
- the investigation into the alleged offence was conducted in an unreasonable or improper manner;

- the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecutor in an improper manner.
26. The Indigenous Family Violence Partnerships Forum should consider the possibility of providing an Indigenous victim support scheme that is available to offer support when the police are called to a family violence incident.
 27. Victoria Police should improve and further develop training in cultural awareness and barriers experienced by particular groups, including Indigenous communities, migrant communities, people in same-sex relationships and people with disabilities.
 28. Police should be able to apply for an interim intervention order regardless of the protected person's wishes.
 29. Police should not be able to apply for a final order without the consent of the protected person unless the person is a child or has a cognitive impairment.
 30. Police should be able to apply for a variation or revocation of an order, including where the police were not the original applicants. Police should obtain the consent of the protected person before making such an application, and in doing so, should clearly explain the consequences of any variation or revocation.
 31. A case management program for victims of multiple breaches should be established by Victoria Police to monitor the safety of the victim and behaviour of the offender.
 32. A victim of multiple breaches should be given a choice whether or not to accept support through a case management program and may choose to terminate participation in the program at any time.
 33. The new Family Violence Act should provide that a person protected by an intervention order cannot be prosecuted for aiding and abetting an intervention order breach under the *Crimes Act 1958*. If police believe a protected person has consented to a breach, they should explain to that person the procedure for varying or revoking an order. If necessary police should apply for a variation and revocation on behalf of the protected person with their consent.

Chapter 6

34. All registrars who come into contact with family violence cases, including all those working in the specialist family violence list, should receive specialised training. This training should include:
 - the effects of family violence, especially non-physical violence, on people experiencing family violence;
 - the impact of family violence on children;
 - the purposes and principles of a new Family Violence Act;
 - issues facing Indigenous women, migrant women and women with disabilities when experiencing family violence and seeking access to justice;
 - clarification of the registrar's role, that is, that registrars cannot refuse to allow a person to make an application for an order, should inform all applicants of the possibility of getting an interim order, and inform applicants and respondents of support services available in court;
 - strategies for obtaining information from applicants and ensuring all relevant information is provided on the application form.
35. The family violence Magistrates' Court list should include adequate numbers of registrars.
36. Registrars working in the family violence list should be provided with adequate support, including peer support programs, access to debriefing and counselling and schemes for performance review and recognition which take into account their specialist status.
37. The Magistrates' Court should establish a specialist list for family violence matters, including intervention order applications, criminal charges relating to family violence and victims of crime compensation.
38. All magistrates who sit on the specialist family violence list should complete training on family violence issues. This training should cover:
 - the effects of family violence, especially non-physical violence;
 - the principles and purposes of a new Family Violence Act;
 - issues facing Indigenous women, migrant women and women with disabilities when experiencing family violence and seeking access to justice;

- the types of information that should be provided to applicants and respondents once an intervention order is made (eg a clear explanation of the terms of the order).
39. Applicants and respondents should have access to legal advice prior to applications for intervention orders being finalised in uncontested applications and legal representation in contested matters.
 40. Community legal centres should be funded to provide court assistance services for applicants.
 41. Policies and programs should be developed for such services, including standards and management practices to improve consistency of access to legal advice and representation for litigants and courts.
 42. The Department of Justice should audit, update and coordinate delivery of information about the process of applying for or responding to an intervention order.
 43. The intervention order application form currently being used in the Family Violence Court Division should be used at all venues of the Magistrates' Court. The form should be available on the Internet for electronic use by services which support people applying for intervention orders. Future revisions of this form should include:
 - all questions written in plain English;
 - more space for details of previous abusive behaviours;
 - an illustrative list of types of behaviours that may be acts of family violence at the question on past incidents, in line with an expanded definition of family violence;
 - making the application form available on the Internet for electronic use by services who are supporting people applying for intervention orders.
 44. The intervention order received by applicants and respondents should be redrafted to:
 - be written in plain English;
 - refer to the parties by name rather than as 'aggrieved family member' and 'defendant';
 - provide examples of what particular terms of the order mean (eg 'this means you cannot telephone [name], drive past her home or go to her workplace');

- provide information on consequences of breaching an order and how to apply for a variation of an order.
45. The new Family Violence Act should require magistrates to provide a clear verbal explanation to the respondent and the protected person where either is present in court. This explanation should include the matters outlined in section 15 of the *Crimes (Family Violence) Act 1987*.
 46. Indigenous community agencies should be resourced to provide services to people seeking intervention orders.
 47. Community information sessions on family violence and the law should be more widely available for Indigenous Australians, particularly in regional and rural areas.
 48. The Department of Justice should investigate the most effective means of supporting provision of preparatory training for Indigenous applicants seeking to undertake the Certificate IV in Government (Court Services).
 49. Specialist disability community agencies should be resourced to provide services to people seeking intervention orders.
 50. Any materials developed about the intervention order system should be made available in braille, large print and audio tape formats. This information should be available in Magistrates' Courts, police stations and community agencies such as support services, libraries and health centres.
 51. Any materials developed on the intervention order system should be made available in a variety of community languages. Written information in other languages should include extra information on access to interpreters and access to immigration legal advice for those who are not permanent residents. This information should be available in Magistrates' Courts, police stations and community agencies such as support services, libraries and health centres.
 52. A community education strategy about the intervention order system, including the role of police, should be developed for migrant communities. This could involve education forums run by community legal centres and other community agencies, in conjunction with culturally specific services.
 53. Specialist community agencies should be resourced to provide services to immigrants seeking intervention orders.
 54. The government should conduct a review of the provision of interpreting services in the Magistrates' Court, with a view to developing standards for legal interpreting in family violence matters and the provision of and availability of interpreting services.

55. The Magistrates' Court should consider revision of the Family Violence and Stalking Protocols on the provision of interpreters. Specifically, the protocols should provide:
 - that where both parties need interpreters, separate interpreters must be provided unless they are not available;
 - that where only one interpreter is used for both parties, the court should ensure that interpreters behave consistently with their obligation of independence (eg by not sitting with one of the parties);
 - the court should ensure that interpreters always swear an oath or affirmation regarding their obligation to interpret accurately before they interpret in the court.
56. All courts dealing with family violence matters should have separate waiting areas in which it is possible to ensure the safety of an applicant waiting for a matter to be heard.
57. The availability of separate and safe waiting areas should be brought to the attention of applicants wherever possible before they attend the courtroom, and immediately on their arrival at the courtroom.
58. Wherever possible, there should be at least one separate and safe entrance and exit from the courtroom for the use of applicants in fear of their safety.
59. Applications for intervention orders should not be required to be made at the inquiries desk or other public spaces in court buildings.
60. A private space should be made available for inquiries and applications for intervention orders.
61. Training of court staff should include awareness raising about victims' experiences at court, and perceptions of the courthouse space and courthouse processes. Private security staff should also be included in this training process.
62. Awareness raising provides the basis for training on safety considerations in court.
63. All courts dealing with family violence matters should ensure there is sufficient disability access. This could include the implementation of individual Disability Action Plans by the courts.
64. Measures should be taken to provide facilities for children attending court in the context of family violence matters.

Chapter 7

65. The Magistrates' Court should implement a system for determining intervention order applications outside business hours.
66. Victoria Police should use the system implemented by the Magistrates' Court for after-hours intervention orders, rather than applying for complaint and warrants or complaint and summons from registrars.
67. The Department of Justice should establish a system to monitor any system implemented in the Magistrates' Court for granting after-hours intervention orders. If the Magistrates' Court is unable to provide quick and efficient access to intervention orders after hours, the government should consider giving police officers the power to make short-term intervention orders.
68. The Magistrates' Court Protocols should be amended to require registrars to discuss with applicants whether there is a need for an interim intervention order. The protocols should make it clear that it is not the registrar's role to decide whether an interim application will be placed before the magistrate.
69. The Magistrates' Court should revise the question about interim intervention orders included on the application form used in the Family Violence Court Division for use in all Magistrates' Courts. The question should be phrased simply, for example, 'Do you need protection immediately, before your final application is heard?'
70. Where an interim order has been made and the final hearing needs to be postponed, the interim order should be automatically extended up to two times until the new hearing date. This should be an administrative procedure which is done by the registrar when the hearing date needs to change, for example where police have been unable to serve the interim order on the respondent.
71. Where an interim order is automatically extended due to an inability to serve the respondent, the registrar should inform the applicant of the automatic extension and send the applicant a copy of the extended interim order.
72. Where there have been two automatic extensions of an interim intervention order due to an inability to serve the respondent and police are still unable to serve the order, the police should apply for an order for substituted service.

Chapter 8

73. The new Family Violence Act should include a provision stating that the appropriate venue for a final intervention order application is either the court closest to the defendant's or the applicant's residence or to where the incident occurred. If the applicant wishes to apply in a different court, the magistrate should exercise a discretion. When exercising this discretion, the magistrate should consider:
- the safety of applicants and their need to keep their general location secret from the respondent;
 - any desire of the applicant to access security or support services at a particular court;
 - any inconvenience that may be caused to a party by allowing an application at a court which is a long distance from where he or she is living.
74. Recommendation 73 should not apply to the Family Violence Court Division during the pilot period.
75. The new Family Violence Act should state that in all cases an application for a final intervention order can be made at the Melbourne Magistrates' Court.
76. The Children's Court should have jurisdiction over any intervention order application where a person aged under 18 years is involved, including jurisdiction over an adult–adult application that includes a child on the application.
77. The Child, Youth and Families Bill 2005 should be amended to declare the Children's Court a court of summary jurisdiction, so the court can exercise powers under the *Family Law Act 1975* to make, vary, discharge or alter a family law child contact order.
78. An intervention order should be able to be made against an associate of a respondent, if the applicant has an intervention order against the respondent, and the behaviour of the associate constitutes family violence.
79. An associate of the applicant should be able to obtain a separate intervention order against the respondent if the respondent's behaviour constitutes family violence and if the original applicant has an intervention order against the respondent.
80. A guardian should be able to make an application for an intervention order against the wishes of the person with an appointed guardian, in the same way that police can make applications without consent.

81. People with an appointed guardian who object to an intervention order application being made on their behalf should have their views heard separately from their guardian. This should occur through an independent legal representative.
82. Where police have been unable to locate a respondent for service of an intervention order or an application for an intervention order, they should apply to a Magistrate's Court for a court order requiring a state government department or agency to supply information that could assist in locating the respondent.
83. Where respondents intend to defend an intervention order application, they should be required to lodge a notice with the court at least five working days before the final hearing is listed.
84. To facilitate a notice system, the court should make interim orders for a minimum of 21 days.
85. Where a notice is received by the court, a registrar should inform the applicant of this within one working day of receipt. Where no notice has been received five days before the hearing, the registrar should inform the applicant if this is because of a failure to serve the applicant and the application will therefore not proceed.
86. A plain English brochure should be provided to respondents at the time of service that gives information to help them decide whether to contest an application or order. This brochure should be available in languages other than English.
87. Where a respondent fails to return the notice but attends court on the hearing date and wants to contest the order, the court should automatically give an adjournment for a new hearing. Any interim intervention order should be automatically extended until the new hearing date. The court should also consider imposing a sanction against the respondent, in the form of a costs order.
88. A mutual order should not be made unless the magistrate is satisfied that there are sufficient grounds for making orders against each party on the basis that each party has committed family violence.
89. The Chief Magistrate and delegates of the Chief Magistrate should have the power to declare a person involved in family violence proceedings a vexatious litigant and therefore require that the person seek leave of the court before making any further intervention order applications.

90. The Chief Magistrate or a delegate should be able to declare a person a vexatious litigant if the litigant has habitually, persistently and without any reasonable ground instituted applications under the Act.
91. The power to declare a person a vexatious litigant should be exercised on application from the person subject to the potentially vexatious proceedings, or the Attorney-General or on the court's own motion.
92. Before making a declaration that a litigant is vexatious, the court should provide the person with an opportunity to be heard. The court should also provide the person with an opportunity to obtain legal representation for the hearing.
93. A declaration that a person is a vexatious litigant may be reviewed by the Supreme Court on a point of law.
94. A vexatious litigant may apply to any Magistrates' Court for leave to issue an intervention order application. An application for leave to apply should be heard as soon as possible.
95. All applications for intervention orders against people who are aged under 18 years should only be heard in a Children's Court.
96. A new Family Violence Act should provide that before the Children's Court makes an intervention order against a young person that would exclude him or her from his or her ordinary place of residence, the court should inform the Department of Human Services. Once the department has been informed, it must conduct an inquiry into measures that need to be taken to ensure the young person's wellbeing.
97. The new Family Violence Act should provide that an intervention order made against a young person should not last for longer than 12 months unless there are exceptional circumstances.
98. Where young people consent to an intervention order being made against them, the court must satisfy itself that grounds exist before making the order.
99. The Magistrates' Court Protocols should state that an undertaking should only be accepted by the court where the court is satisfied that:
 - the applicant fully understands the consequences of accepting an undertaking (eg if the applicant has received legal advice or is legally represented);
 - in all the circumstances of the case, it is more appropriate to accept an undertaking rather than make an intervention order.

100. The Magistrates' Court Protocols should state that when deciding whether it is appropriate to accept an undertaking, the court should have regard to:
- the respondent's age (ie that an undertaking may be more appropriate where the respondent is aged under 18 years);
 - the nature of the violence perpetrated by the respondent, as disclosed in the application; and
 - whether making an intervention order with a condition that the respondent not assault or harass the applicant as the only condition is more appropriate in all the circumstances of the case, rather than accepting an undertaking.
101. The Magistrates' Court Protocols should make it clear that an undertaking has the legal effect of suspending the intervention order application for the period of the undertaking. If an undertaking is breached, the applicant has a right of reinstatement of the original application or may make a new application for an interim order.
102. The Magistrates' Court should develop a standard form to be used as an undertaking in all courts. This form should be able to be easily distinguished from the form of an intervention order and should clearly outline the effects of an undertaking. For example 'This agreement cannot be enforced by the police. However, if the agreement is broken, you may return to court immediately to seek an intervention order'.
103. The court should provide the parties with written information explaining the nature of an undertaking at the time an undertaking is made.
104. A new Family Violence Act should provide that costs should only be awarded against a police applicant where the court is satisfied that the application was made knowing it contained information that was false or misleading in a material way.

Chapter 9

105. The application form used in the Family Violence Court Division should continue to ask the question 'How long do you want the intervention order to last?' This form should be used in all Magistrates' Courts.
106. When determining the length of an intervention order, a magistrate should consider the:
- views of the applicant;
 - purposes and principles of the legislation.

107. The new Family Violence Act should make it clear that the list of possible conditions that can be included on an intervention order are illustrative only and that the magistrate has discretion to ‘impose any restrictions or prohibitions on the person that appear necessary or desirable in the circumstances’.
108. The new Family Violence Act should provide a list of possible conditions for an intervention order that includes all the current examples, as well as a power to ‘direct the respondent to return certain personal property to the protected person or allow the protected person to recover or have access to personal property, whether or not the respondent has a legal or equitable interest in the property’.
109. The new Family Violence Act should explicitly include an ‘exclusion order’ as a possible condition on an intervention order. The list of conditions should include a condition such as ‘exclude the respondent from occupying the home previously shared, whether or not the home is rented or owned jointly by either of the parties’.
110. If the grounds for an intervention order are made out and the applicant seeks an exclusion order, there should be a presumption in favour of an exclusion order being granted.
111. In addition to a presumption in favour of exclusion orders, the magistrate should take the following factors into account when considering whether an exclusion order should be made:
 - the wishes of the applicant;
 - the welfare of any children involved;
 - the disruption that would occur to the applicant and any children if the applicant leaves the family home.
112. Where a court is making an exclusion order and there is a tenancy agreement for the family home in joint names or solely in the perpetrator’s name, the court should be able to order that the tenancy be transferred into the victim’s name. A court should also have the power to require the applicant to indemnify the respondent in relation to the tenancy agreement.
113. The court should provide information on the possibility of obtaining an exclusion order and outline the risks involved and matters an applicant may want to consider when making this decision.
114. The application form for an intervention order should include a question asking whether the applicant seeks to remain in the family home and have the respondent removed.

115. A resource for magistrates, prosecutors and police should be developed that outlines the types of temporary housing available for male respondents.
116. Any training of magistrates in the area of family violence should include:
- the impact of family violence on children and that therefore contact is not always in the best interests of the child;
 - the risk of violence and abuse for children during contact visits and during contact handover where the mother must attend;
 - ways that contact handover can be made safer in those cases where contact is desirable;
 - how section 68T of the Family Law Act operates and how it may be used.
117. When magistrates make an intervention order for a child or including a child, the magistrate should make it clear to the respondent that there must be no contact between the child and the respondent unless the Family Court or the Federal Magistrates' Court later decide otherwise. If there is a contact order in place, such orders should be suspended pursuant to section 68T of the *Family Law Act 1975*. This should be clearly stated on the intervention order.
118. Magistrates' Courts should be able to access Family Court contact orders through a national database.
119. The new Family Violence Act should include a requirement that magistrates must consider altering any pre-existing Family Court child contact order pursuant to section 68T of the *Family Law Act 1975* when making an intervention order on behalf of one of the parents.
120. When magistrates are amending a child contact order pursuant to section 68T of the Family Law Act, magistrates should consider changing handover arrangements so they are as safe as possible. This could include:
- handover occurring in a public place;
 - handover occurring at a police station;
 - handover being arranged and occurring at a child contact centre;
 - a court-appointed third party arranging and conducting child handover.

121. An 'except for child contact' condition should only be included on an intervention order where a condition about how and when contact will occur is also included in the order.
122. Where a respondent has not appeared in court, including during an interim intervention order application, then an 'except for child contact' condition (with an accompanying condition explaining how and when contact will occur) can only be made where the applicant requests such a condition. Otherwise, the order should make it clear that the respondent must not breach the conditions of the order, including for the purposes of contacting children.

Chapter 10

123. When determining an application for variation or revocation of an intervention order, the court should take into account the following factors:
 - the applicant's reasons for seeking the variation or revocation;
 - the safety of the protected person;
 - the wishes of the protected person;
 - whether or not the applicant is legally represented.
124. On an application for revocation or variation of an order, the Magistrates' Court Protocols should draw the attention of magistrates to the need to consider whether the courtroom should be closed, or to facilitate the applicant's giving of evidence by CCTV, particularly if the applicant is not legally represented.
125. If a protected person is subject to a Guardianship Order under the *Guardianship and Administration Act 1986* and applies to the court for a variation, revocation or extension of an intervention order obtained by their guardian, the guardian must be served with the application and has a right to be heard on the application.
126. When making an application for a variation, revocation and extension of an intervention order, protected people should disclose whether or not they have a guardian, and if possible, the name and address of the guardian.
127. The respondent must seek leave of the court before proceeding with an application for a variation or revocation to an order. The court must only grant leave where it is satisfied that there has been a change in circumstances since the order was made that may justify a variation or revocation.

128. Extension of an intervention order should not be refused only because no incident of family violence has occurred while the order was in force.
129. Written information given to parties at the time an intervention order is made should include a statement informing them of the mechanism by which an extension can be granted and recommending a time before the order expires (eg one month) when an application should be made for an extension.
130. Magistrates should explain the extension process when they explain the intervention order to the applicant and indicate when an application for extension should be made.
131. If an application is made for an intervention order within three months of an earlier order expiring, there should be a presumption that the grounds for seeking an order have been satisfied.
132. The grounds for obtaining an ex parte interim order should be expanded to include the making of an ex parte interim order to protect an applicant between the expiration of an existing order and the making of a new order.
133. The new Family Violence Act should include a section that clearly describes the procedure for extension of intervention orders.
134. The training of magistrates should include discussion of the full range of sentencing options which may be appropriate for breach of intervention orders.
135. Training should also include information about the potential effects on victims of apparently 'minor' breaches of intervention orders.
136. The Magistrates' Court protocols should include information on the factors to take into account, and the full range of options available, when imposing sentences for breaches of intervention orders.
137. The Sentencing Advisory Council should review the sentencing of defendants and penalties imposed for breaching intervention orders.
138. When more information on diversion is available, diversion should be considered as a sentencing option for a breach of an order in appropriate circumstances. These may include, but should not be limited to, circumstances where Indigenous offenders live in a community where diversion programs are provided or where a diversion program is available for juvenile offenders.
139. Every effort should be made by the courts to ensure matters about the breach of an intervention order are heard as quickly as possible.

Chapter 11

140. The provisions relating to alternative ways of giving evidence in the Family Violence Court Division should apply to all family violence matters, not only those heard in the division. This should include criminal cases involving acts of family violence.
141. Every effort should be made to provide screens and install appropriate CCTV facilities in all courts where family violence matters are held.
142. The court should have the power to order that the court be closed for a family violence proceeding, including a criminal prosecution involving acts of family violence. This power should be used at the magistrates' discretion, taking into account the views of the parties.
143. In any family violence proceeding the respondent should not be able to personally cross-examine:
 - the applicant or complainant;
 - any family member of the parties;
 - any other person the court declares a protected witness.
144. The prohibition on respondents personally cross-examining certain witnesses should apply to criminal prosecution involving an act or acts of family violence and in intervention order applications.
145. The magistrate must inform respondents in person that if they want to cross-examine the applicant or complainant, they must arrange to be legally represented for this purpose. If the respondent refuses, or cannot access legal representation, the magistrate must instruct Victoria Legal Aid to provide legal assistance for the purpose of cross-examination.
146. The notice that is served on respondents should include a statement informing them that if they intend to defend an intervention order in person, they must inform the court. The registrar should then liaise with Victoria Legal Aid to ensure that legal representation is available on the return date, for the purpose of cross-examination.
147. The new Family Violence Act should provide that a court hearing an intervention order application, variation or revocation proceeding may inform itself 'in any way it thinks appropriate, despite any rules of evidence to the contrary'.

Chapter 12

148. The Victorian Government should research, fund and implement a community campaign about family violence with the aim of bringing about changes in community attitudes about family violence and respect in family relationships. It might also include education about changes in the legal and service system responses to family violence and prevention of family violence. Such a campaign would ideally be launched in conjunction with the launch of the new Family Violence Act.
149. A community campaign should include a broad recognition of the nature of family violence, including emotional abuse and coercive and controlling behaviour.
150. A community campaign should be based on:
 - well-founded research and testing on target groups to ensure its overall effectiveness, including the recent and continuing research of VicHealth;
 - the principles expressed by the commission regarding addressing family violence.
151. A community campaign should be accompanied by financial and other support to the relevant agencies which would be affected by such a campaign before the campaign is launched.
152. The Victorian Government should consider introducing a statewide and consistent education program for Victorian secondary schools on respect in relationships.
153. In consultation with the State Coroner, the Statewide Steering Committee to Reduce Family Violence should investigate and make recommendations to the government regarding the creation of a family violence death review committee in Victoria.