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# Chapter 1

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## SCOPE OF THIS REPORT

1.1 This is the Victorian Law Reform Commission's report on the review of the *Crimes (Family Violence) Act 1987*. The review started in August 2003 and this report presents the results of our review and our subsequent recommendations for law reform.

1.2 Our research, the consultations we conducted and the submissions we received show that widespread improvements are needed throughout the justice system to achieve administrative, legislative, procedural and cultural reform of the systems which protect family violence victims. All too often intervention orders fail to provide the

When referring to the **justice system**, we are talking about police, the courts, prisons and any other of the State's responses to crime or wrongdoing.

necessary protection for family violence victims. People from Indigenous and other marginalised communities face particularly significant barriers in seeking protection from family violence.

1.3 This report discusses how family violence should be defined, the role of criminal and civil law, and how the intervention order process should operate. We recommend the repeal of the *Crimes (Family Violence) Act* and the introduction of a new Act, which we have called the Family Violence Act.

## BACKGROUND

1.4 The intervention order system was created in Victoria in December 1987 under the *Crimes (Family Violence) Act*. Other than the criminal law, the Act is the principal legislation used in this state to protect people from family violence. Since it was introduced, there have been several independent and government reviews to monitor its impact.<sup>1</sup> Significant changes to the system were made in 2004<sup>2</sup> which principally provide for the operation of two family violence courts which can deal with a range of legal matters that may arise from family violence situations such as criminal proceedings for summary offences and applications to the

A **summary offence** is one heard by a magistrate rather than a judge and jury.

Victims of Crime Assistance Tribunal (VOCAT). However, since its introduction, the Act has not been

1 See, eg, Rosemary Wearing, *Monitoring the Impact of the Crimes (Family Violence) Act 1987*, Report (1992); Rosemary Wearing, *Monitoring the Crimes (Family Violence) Act 1987: A Study of Those Who Do Not Proceed*, Report (1996); Rosemary Hunter, 'Styles of Judging: How Magistrates Deal with Applications for Intervention Orders' (2005) 30 (5) *Alternative Law Journal* 231.

2 The *Magistrates' Court (Family Violence) Act 2004* established the Family Violence Division of the Magistrates' Court and provided for orders that require defendants to attend counselling. The Act was also amended in 2003 by the *Crimes (Family Violence) (Amendment) Act 2003*, which empowered magistrates to issue intervention orders where both parties consented to the order being made without hearing evidence of the merits of the application and whether or not a respondent admits to matters stated in the application.

comprehensively reviewed to determine whether it provides the best legal response to family violence.

1.5 Since 1987 our recognition and knowledge of family violence has changed. There has been increased public recognition of family violence as a social problem and a burgeoning body of research about its broad nature, dynamics and effects. New legislation to address family violence has also been enacted in other Australian states and overseas **Jurisdiction** is the territory over which judicial or State authority is exercised. jurisdictions, giving us the opportunity to learn from different approaches.

1.6 This review also takes place in the context of unprecedented change in Victoria in the development of family violence policy, service provision and legal response. Given this context, this review of family violence legislation is particularly timely.

1.7 However, the most important reason for reviewing the Act is that despite multiple efforts to address it, Victorians continue to experience violence and abuse at the hands of family members. Commentators have called for a review of the intervention order system in this light,<sup>3</sup> because it is not providing effective enough protection for those who experience family violence.

## CURRENT VICTORIAN POLICY DIRECTIONS AND OTHER DEVELOPMENTS

1.8 As mentioned, there are several new initiatives and developments occurring in Victoria which aim to improve responses to family violence. Many of these initiatives intersect with the operation of the Act and the matters we examine in this report.

### STATEWIDE STEERING COMMITTEE TO REDUCE FAMILY VIOLENCE

1.9 The Statewide Steering Committee to Reduce Family Violence was jointly convened in August 2002 by Victoria Police and the Office of Women's Policy. It comprises representatives of the Department of Justice, magistrates, community legal services, the Law Reform Commission, the Department of Human Services, the Victorian Community Council Against Violence, rural and Indigenous services, women's services—including family violence services and refuges—and male family violence prevention services.

1.10 The role of the committee is to provide advice about improving responses to family violence from police, courts and all relevant service providers, and the

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3 See, eg, Jenny Nunn and Marg D'Arcy, 'Legal Responses to Family Violence: The Need for a Critical Review' (2001) (3) *Domestic Violence & Incest Resource Centre Newsletter* 15.

development of an integrated response to family violence. While this review has taken place, the committee has developed and launched its model for a multi-agency integrated response to family violence.<sup>4</sup> This framework states that the response to family violence must be coordinated to give priority to the safety of women, young people and children. It also outlines how multi-agency coordination will occur.

## WOMEN'S SAFETY STRATEGY

1.11 The five-year Women's Safety Strategy was launched in October 2002. It aims to reduce the level, and fear, of violence against women in Victoria and is 'the first comprehensive strategy on violence against women by any Victorian Government for 16 years'.<sup>5</sup> *Changing Lives: A New Approach to Family Violence in Victoria* was launched in November 2005, detailing the \$35.1 million spending plan to improve Victoria's response to family violence. The policy's programs are geared towards establishing an integrated rather than fragmented approach to family violence in Victoria. They include: use of a common risk assessment tool across service providers, a greater choice of housing options for victims, more support for victims to enable them to stay in their own homes and communities, and a stronger approach towards men who use violence.

## VICTORIA POLICE CODE OF CONDUCT

1.12 In August 2001, Victoria Police began a review of violence against women, including family violence. A review team was established to analyse all aspects of crimes involving violence against women and to recommend improved strategies to deal with these crimes. The review team also analysed how police responded to crimes of violence against women and to the women subjected to violence. The review team's report, *Violence Against Women Strategy 'A Way Forward'*, contained 25 recommendations, many of which specifically addressed the police response to, and investigation of, family violence. Some of the recommendations have been implemented and others are being handled by an internal Victoria Police steering committee. One of the recommendations was the development of a code of practice for police response to family violence incidents. The Code of Practice for the Investigation of Family Violence was launched in August 2004 and all Victoria Police members are being trained in it. The code implements a pro-arrest response to family violence.

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4 Statewide Steering Committee to Reduce Family Violence, *Reforming the Family Violence System in Victoria* (2005).

5 Office of Women's Policy [Victoria], *The Women's Safety Strategy: A Policy Framework* (2002).

## MAGISTRATES' COURT FAMILY VIOLENCE DIVISION

1.13 In November 2002, the Victorian Government allocated funding to establish a Family Violence Division of the Magistrates' Court. Consultations were undertaken and work conducted towards developing an appropriate model for these courts. The family violence courts were opened in 2005 in the regional town of Ballarat and Melbourne suburb of Heidelberg. To enable the establishment of the Family Violence Division, the *Magistrates' Court (Family Violence) Act 2004* was introduced.

1.14 The aim of establishing family violence courts is to bring specialist expertise and targeted resources together to improve the Magistrates' Court's response to family violence, and to ensure the court works in an integrated way with police, health, housing and other support services. It aims to simplify access to the justice system and is able to deal with legal matters that may arise from a family violence situation. The Family Violence Division will hear intervention order proceedings. It will also deal with certain family law matters, criminal proceedings for a summary offence, and VOCAT applications.

1.15 Specialist family violence services are to begin at Melbourne Magistrates' Court in December 2005 and at Sunshine and Frankston Magistrates' Courts in June 2006. On one day a week this service will also be offered at Werribee Magistrates' Court. These services will provide additional specialist staffing resources, such as additional police prosecutors, magistrates, registrars and a specialist applicant worker who will support individuals who have experienced family violence and their children. Changed listing arrangements will provide additional courtroom time dedicated to family violence intervention order proceedings.<sup>6</sup>

A **police prosecutor** appears in court as the representative of the person who alleges the crime.

A **magistrate** is a judicial officer in the Magistrates' Court who judges civil and some criminal cases.

A **registrar** is a staff member at a court who carries out the court's administrative tasks.

## FAMILY VIOLENCE COURT INTERVENTION PROJECT

1.16 A four-year pilot project targeting men who are subject to family violence intervention orders was announced in July 2002. Following consultation with various organisations, the Department of Justice developed a model for programs to be piloted over 29 months in Heidelberg and Ballarat. This includes the provision of court-directed counselling for men who have used violence towards family members, support programs and services to (former) partners of directed clients and support programs for children who have experienced or witnessed violence.

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6 Office of the Attorney-General, 'Sites Chosen for Specialist Family Violence Service' (Media Release, 2 December 2005).

## INDIGENOUS FAMILY VIOLENCE TASK FORCE

1.17 In the 2002–03 Budget, the Victorian Government announced it would fund an Indigenous Family Violence Strategy to help prevent, reduce and respond to family violence in Indigenous communities. As part of this initiative, nine local Indigenous Family Violence Action Groups were established and nine Indigenous Family Violence Support Workers were employed under a statewide coordinator. To advance the Indigenous Family Violence Strategy and to engage Indigenous people in the development of ‘community-led’ strategies for addressing family violence, the Indigenous Family Violence Task Force was established. Between 2001 and 2003 the task force conducted and funded a broad range of activities across Victoria aimed at developing community responses to family violence for inclusion in the strategy.

1.18 The Indigenous Family Violence Task Force released its final report in December 2003. The task force acknowledged the high incidence of family violence among Indigenous families and communities in Victoria, and the higher risk Indigenous women face of experiencing family violence and dying as a result of it compared to non-Indigenous women. The report also pointed out the complexity of issues relating to violence in Indigenous communities, due to factors unique to such communities. The report found significant gaps in the ability of government and Indigenous communities to provide responses to Indigenous family violence.

1.19 The government released its response to the task force’s 28 recommendations in October 2004. In the response, the government announced the establishment of an Indigenous Family Violence Partnership Forum to oversee the development and implementation of a ten-year Indigenous Family Violence Plan.<sup>7</sup> The government response also reported current and proposed initiatives to address Indigenous family violence, including the establishment of three Holistic Family Healing Centres, an Indigenous Men’s Resource Advisory Service and funding for eight Indigenous Family Support Innovation Projects.

## OUR APPROACH

1.20 The commission has considered Victoria’s international obligations to combat violence against women when making recommendations for change. Violence against women, including violence in the family, has been recognised at the international level as a fundamental violation of human rights. We outline the nature and extent of the State’s responsibility to ensure every person’s right to live free from violence in Chapter

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<sup>7</sup> Victorian Government, *Victorian Government Response to the Victorian Indigenous Family Violence Task Force Final Report* (2004) 15–18.

3. Consistent with this responsibility, we also consider the way in which changes to broader social structures and power dynamics could help to reduce family violence and support people who are affected by it.

1.21 Throughout this report we have attempted to use the perspectives, experiences and words of people who have been affected by family violence.

## VALUES

1.22 An effective legal and social response to family violence must be based on an accurate understanding of its nature and dynamics. We recommend that the explanatory memorandum which accompanies the new Family Violence Act should refer to the values that underpin the recommendations in this report: non-violence, respect, empowerment, responsibility and accountability. These values should be discussed in educational programs for police, registrars and magistrates.

1.23 The values we recommend reflect three main themes. First, because family violence involves the exercise of power and control by the perpetrator over the victim, the substantive law and the way it is applied must not replicate this inequality of power. The legal approach to family violence must hold perpetrators accountable for their actions as well as protecting victims from harm.

The **perpetrator** is the family member who uses violence against another family member.

1.24 Secondly, because family violence involves the systematic disempowerment of people who experience it, legal processes must have the opposite effect. This requires police and courts to ensure that the perspectives of people who have survived family violence are taken seriously and are not repressed or ignored. The legal system must also ensure that victims are not blamed for the harm done to them, that their decisions are respected and that police and court processes do not victimise them further.

1.25 Thirdly, the report recognises that law alone cannot prevent family violence or provide support to those who have experienced it. It follows that the legal response to family violence must be supported by changes in community attitudes and integrated with a range of programs and processes which have been established to reduce violence and support those affected by it. The legal system response to family violence should take account of these other programs and processes and interact with them as effectively as possible.

## NON-VIOLENCE

1.26 The provisions of the new Family Violence Act and the way it is applied must be based on the principle that all forms of family violence are unacceptable. This

principle recognises that all family violence is unacceptable because it is a fundamental violation of the basic human right to live a life free from violence. The principle should also underpin the broader social response to family violence.

## **RESPECT**

1.27 Respect requires all people to be treated as valuable and independent beings. Family violence is based on a fundamental lack of respect for family members who experience it. By contrast, the legal system must hear the views of people who experience family violence and take account of their ideas about ensuring their own safety. Respect also requires the legal system and the broader society to recognise and appreciate the diversity of outlook, experiences and cultures in our community.

## **EMPOWERMENT**

1.28 Family violence involves the systematic disempowerment of the people who experience it. Empowerment of people who have experienced violence enables them to put the violence behind them and regain power and control over their lives.

1.29 The principle of empowerment requires legal processes which do not further disempower a person who has experienced family violence and which encourage and assist people to plan for their safety and live a life free of violence.

## **RESPONSIBILITY**

1.30 This principle recognises that responsibility for family violence lies with the perpetrator of the violence. It also recognises that the justice system should encourage perpetrators to take responsibility for their actions and that the community also has some responsibility to prevent family violence.

## **ACCOUNTABILITY**

1.31 This principle refers to the need to ensure that perpetrators of family violence are held properly accountable for their violence. This requires courts to ensure that perpetrators understand: the full impact, effects and implications of their actions on people who were directly and indirectly affected by their violence; their responsibility for these actions; and their responsibility for stopping the violence.

1.32 Preventing family violence requires the community to understand the nature of it, to condemn the behaviour of those who perpetrate it and to provide support to people who need it at the earliest possible stage.

## OUR PROCESS

1.33 We have drawn upon the emerging programs and policies to deal with family violence in formulating our approach to this reference. The recommendations in this report have been based on evidence from a wide variety of sources, including information obtained from consultations, submissions and interviews, current research on family violence, forums, advisory committees and our participation as an observer on the Statewide Steering Committee to Reduce Family Violence and the Family Violence Court Reference Group.

1.34 As with all its references, the commission has encouraged a broad cross-section of the community to become involved in the law reform process. It is part of our charter to ensure traditionally marginalised groups, such as Indigenous people, people from non-English speaking backgrounds, people living in rural areas and people with disabilities, have a chance to comment on any reform that may affect them.

## CONSULTATIONS

1.35 Our first round of consultations helped us identify the range of issues to take into account during our review of the Act. We actively sought opinions and tested our views and recommendations with a wide variety of people.

1.36 Between January and July 2004 we conducted 41 consultations and held meetings in each Department of Human Services region in Victoria.<sup>8</sup> Participants at these meetings included family violence workers, court staff, magistrates, lawyers, police, victims of family violence, Indigenous Family Violence Action Groups, workers with immigrant women's groups, and other workers assisting perpetrators, children and people with disabilities.

1.37 We conducted three forums involving 220 participants from Victoria Police, courts, government departments, the community sector and individuals who have experienced violence. The first forum, held in February 2004, considered the impact of specialisation of courts and the use of specialist prosecutors in family violence matters. The second forum, in November 2004, considered the needs of victims of family violence in the justice system. Both of these forums were held in partnership with the Victims Support Agency. A third forum, held in conjunction with Aboriginal Affairs Victoria, considered the views of Indigenous people about police powers, support needed for Indigenous people and alternatives to the legal system. A roundtable

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8 The list of 41 consultations undertaken in 2004 appears as Appendix 1 in Victorian Law Reform Commission, *Review of Family Violence Laws: Consultation Paper* (2004) 257–9.

discussion with Indigenous representatives and Department of Justice staff followed this forum.

1.38 Additional meetings, workshops and consultations with community groups were held in 2005 and involved 110 participants from the Immigrant Women's Domestic Violence Service; Domestic Violence Victoria Child Issues Sub-Group; Violence Against Women and Children Group of the Federation of Community Legal Centres; Aboriginal Family Violence Prevention Legal Service; Peninsula Community Legal Service; Eastern Community Legal Centre; Women's Group of the Horn of Africa, Welfare Council of Victoria; and representatives from the South Sudanese group from the Springvale Community Aid and Advice Bureau. These last two workshops were facilitated by a consultant with expertise in these issues, Maria Dimopoulos.

1.39 We were also able to meet with representatives of the Magistrates' Court of Victoria, the Magistrates' Court Protocols Committee and Senior Registrars Committee, representatives from Victoria Police and officers from the Broadmeadows Police Complex.

1.40 To consider community-based legal representation schemes, consultations were held with New South Wales Legal Aid, which administers the Women's Domestic Violence Court Assistance Program; Victoria Legal Aid; the Federation of Community Legal Centres; Victorian Bar Council Family Violence Subcommittee; and the Family Law Section of the Law Institute of Victoria.

1.41 In our research about whether police should have the power to issue intervention orders, we were greatly assisted in consultations with representatives from Victoria Police; NSW Police; Tasmania Police; Western Australia Police; representatives from Tasmania Legal Aid; the Magistrates' Court of Tasmania; Tasmania's Safe at Home project; the Tasmanian Department of Justice and Liberty Victoria.

1.42 Consultations were also conducted with the Office of the Public Advocate (OPA) and the Office of Senior Victorians.

1.43 A list of participants in these meetings appears in the Acknowledgments at the front of this report.

## **INTERVIEWS**

To ensure that we understood and accurately represented the views of people who have experienced family violence, we conducted in-depth interviews with 10 female volunteers. These interviews were recorded and transcribed. The interviews are treated

anonymously, confidentially or otherwise according to the wishes of the interviewee. Despite our efforts, we were unable to secure any interviews with male perpetrators of family violence.

### ADVISORY GROUPS

1.44 Our work was informed and assisted by a general advisory committee and two specialist advisory committees. The specialist committees were convened to consider family violence and its impact on people from culturally and linguistically diverse communities and people with disabilities. All the committees were comprised of individuals with expertise and experience in matters relevant to the review. The role of advisory committees is to provide advice about our proposed approach and the directions we take during the course of the review. The members of the advisory committees are listed in the front of this report.

### PUBLICATIONS

1.45 Throughout the reference we have published an email newsletter to inform people of our progress and to encourage participation in our enquiry.

1.46 A Consultation Paper seeking responses from the community about the issues we identified in the first phase of this reference was published in November 2004. Following the call for submissions in the paper, we received 86 submissions, including four submissions which were taken directly from individuals or groups who were unable to prepare a written statement. Extensive reference to the submissions received is made throughout this report.

1.47 In August 2005 we published the Interim Report, *Family Violence: Police Holding Powers* in which we made recommendations to confer on police officers a power to remove, hold and detain people pending an application for an intervention order. The Crimes (Family Violence) (Holding Powers) Bill was introduced into parliament and read for a second time on 19 October 2005.

### STRUCTURE OF THE REPORT

1.48 The rest of this report contains recommendations for changing the administrative, procedural and legal responses to family violence to better protect victims.

1.49 Chapter 2 deals with the definition and recognition of family violence and how typical patterns of abuse play out.

1.50 Chapter 3 discusses what an effective legal response to family violence should look like, keeping in mind the benefits and limitations of both criminal and civil systems. The chapter also outlines the commission's values framework, which has guided its formulation of a new Act, and the principles and objectives that should be included in legislation.

1.51 Chapter 4 defines family violence and family member for the purposes of legislation, and discusses what sort of behaviour should fall under the definition.

1.52 Chapter 5 is about the importance of police responses to family violence, especially the treatment of such violence as a criminal offence. It recommends the establishment of specialist police prosecutors and the need for police training to respond to marginalised groups in the community. It examines police applications for intervention orders and police reactions to intervention order breaches.

1.53 Chapter 6 details how magistrates and registrars can improve their processes and training in dealing with family violence victims and the importance of access to legal information and advice. It also discusses how courts can better serve people from marginalised groups and the need for greater safety in courtrooms.

1.54 Chapter 7 looks at how to get an interim intervention order, especially after hours, and Chapter 8 describes the process of getting a final intervention order. Issues involved with final orders include: where to get a final order, who can apply for an order, serving orders, cross applications, undertakings, costs, vexatious litigants, and orders against young people.

1.55 Chapter 9 examines the contents of intervention orders, including exclusion orders, and how orders may deal with child contact issues.

1.56 Chapter 10 looks at how orders may be revoked, varied or extended after a final order is made, as well as how the justice system should respond to intervention order breaches.

1.57 Chapter 11 takes us inside the courtroom to recommend changes to the way evidence is given to make it easier for victims to tell their stories, and Chapter 12 looks beyond the legal system to recommend changes in professional cultures and community understanding of family violence.