



Victorian
Law Reform
Commission

Review of Family Violence Laws

FINAL REPORT SUMMARY

The Victorian Law Reform Commission was established by government to look at ways to improve Victoria's Laws. It receives its projects from the Attorney-General but otherwise operates independently of government. Nine people sit on the commission, including judges, academics and lawyers.

FAMILY VIOLENCE LAW REFORM PROCESS

The commission received terms of reference from the Attorney-General in November 2002. However, full-time Commissioner Judith Peirce was appointed and the project commenced in August 2003.



The commission's staff undertook initial research and extensive consultations across Victoria.



A Consultation Paper was published in November 2004 that explained the current law and issues identified through consultations.



Submissions were invited from any interested individuals or groups in response to the Consultation Paper. The commission received 87 submissions.



Further consultations were undertaken with members of the community, workers in the field and other relevant agencies to refine recommendations.



In response to a request from the Attorney-General, the commission produced an Interim Report in August 2005 on police holding powers. The government has introduced legislation giving effect to the commission's recommendations.



The Final Report with recommendations for changes to the law and procedure was forwarded to the Attorney-General in December 2005.



The Attorney-General tabled the report in parliament on 1 March 2006.



It is now up to the government to decide whether to implement the recommendations (in whole or in part) through legislation.

The full Family Violence Report is available on the commission's website or in hard copy.

introduction

It feels like he is in control of things, because no matter what I do, I am always the one who must keep a look out, keep on my toes, assume nothing and pressure everyone else to do their jobs so that I can feel safe. Justification of my protective actions in trying to achieve our basic human rights to feel safe and secure in our own home and life is required far too often in the court process.

This is a summary of the Victorian Law Reform Commission's *Review of Family Violence Laws: Final*. The report makes 153 recommendations on all aspects of the justice system's response to family violence. It is the result of the Attorney-General's request to review the *Crimes (Family Violence) Act 1987*. This Act provides the legal framework for the intervention order system—a civil law response to family violence that restricts the behaviour of perpetrators of family violence. This Act has never been comprehensively reviewed, and attitudes and responses towards family violence have changed since its inception.

An alarming number of Victorians experience violence and abuse within their families and we know many people do not report it.

- ◆ *Family violence affects at least 1 in 5 women in Victoria.*
- ◆ *It is the leading contributor of death, disability and illness in Victorian women aged between 15 and 44.*
- ◆ *It costs Australia about \$8 billion, a substantial proportion of which is borne by the victims themselves.*
- ◆ *1 in 4 Australian children have witnessed violent behaviour towards their mother or step-mother.*

Violence against women is a violation of human rights. But in many instances, victims of family violence find that the justice system fails to protect them. It has sometimes minimised the seriousness of family violence, treated it as a 'private' issue, and based its response on myths and misunderstandings about the characteristics and dynamics of family violence.

When perpetrators break the conditions of an intervention order they commit a crime. The commission believes there are changes to be made to both civil and criminal responses to family violence to create a more effective response to family violence in Victoria.

a new approach

A NEW FAMILY VIOLENCE ACT

The law needs to provide a clear overall approach to family violence in Victoria. However, 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 is that family violence matters are sometimes not treated seriously. Our first recommendation is that a new Act be introduced dealing exclusively with family violence.

AIMS, PRINCIPLES & A COHERENT PHILOSOPHY

The *Crimes (Family Violence) Act* has no aims and principles, and is not based on a coherent philosophy. These are needed to guide police and magistrates in interpreting and applying the legislation so decisions are consistent. A clear statement needs to be included in a new Act to explain its aspirations. It would also provide a basis for a change in the attitudes of police, courts and the community. This is particularly important because both the law and community have traditionally failed to take family violence seriously.

The aims and principles 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.

These aims and principles (and all our other recommendations) are based on the following values, which provide a coherent philosophy for a new Act:

NON-VIOLENCE

Family violence is a violation of the basic human right to live a life free from violence. The new Family Violence Act should be based on the principle that any form of family violence is unacceptable. This principle should also underpin the broader social response to family violence.

RESPECT

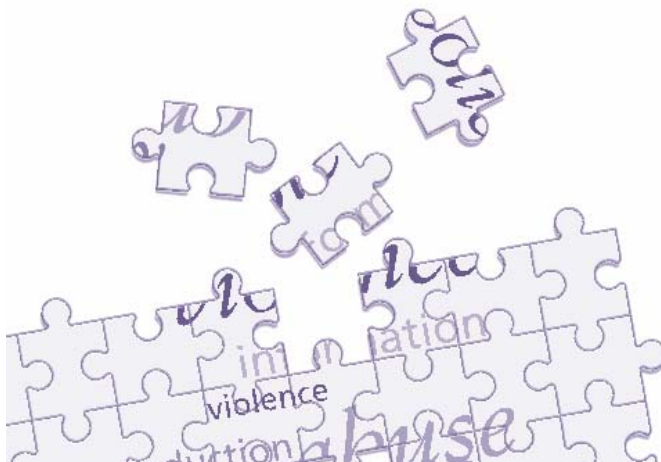
Family violence is the result of a lack of respect. The principle of respect asserts that all people should be treated as valuable and independent beings. The justice system must take account of the views of victims of family violence. The legal system and society more broadly should recognise and appreciate the diversity of outlook, experiences and cultures in our community.

RESPONSIBILITY

Responsibility for family violence lies with the perpetrator of the violence. The justice system should encourage perpetrators to take responsibility for their actions. The community also has some responsibility to prevent family violence.

ACCOUNTABILITY

Perpetrators of family violence should be held properly accountable for their violence. Courts should ensure that they understand the full impact, effects and implications of their actions on those who are affected by their violence, both directly and indirectly. Perpetrators should also take responsibility for their actions and for stopping the violence.



DEFINING FAMILY VIOLENCE

The Crimes (Family Violence) Act does not contain a definition of family violence. The new Act should clearly define what behaviour constitutes family violence.

This would provide greater clarity and could encourage more use of the legislation. It would also educate people using and administering the Act.

Many people still consider family violence to be confined to physical assault, such as hitting, punching and pushing. A new Act should make it clear that family violence includes:

- ◆ assault and physical injury;
- ◆ sexual assault and other sexually coercive behaviour;
- ◆ damage to a person's property;
- ◆ emotional, psychological and verbal abuse;
- ◆ economic abuse.

DEFINING FAMILY MEMBERS

The definition of family member in the Crimes (Family Violence) Act is too narrow to protect all people who experience family violence. The definition of family member in a new Act should be amended to include:

- ◆ a relative according to Indigenous tradition or contemporary social practice;
- ◆ a relative according to any other tradition or contemporary social practice;
- ◆ a person who has provided paid or unpaid care to someone who is dependent or partially dependent on him or her, such as a carer of a person with a disability.

CHANGING ATTITUDES

Stereotypical views of women and men and their role in society often mean that violence is not recognised, is condoned, or is seen as a private issue. Ingrained attitudes and beliefs must be challenged for the legal system and the community to respond adequately to family violence. A broad community education campaign, focused on the need to respect family members and the unacceptability of all violent behaviour, is an essential element in bringing about change, including in the way the law is applied.

helping victims

There are six main areas where the commission has recommended changes to improve the justice system's response to family violence.

CONSISTENT AND EFFECTIVE OUTCOMES

Some police, magistrates and court staff are helpful and supportive to family violence victims. However, inconsistent decision making and insensitive treatment of victims is

The registrar explained that people turn up at the court with broken arms and noses—intervention orders are for these people, not people like me.
Family violence victim

one of the most serious problems with the intervention order system.

The intervention order system needs to be strengthened. In particular, we recommend:

- ◆ A specialist family violence list within the Magistrates' Court. All people working on the list should receive family violence training.
- ◆ A specialist police prosecution unit to conduct all police applications for intervention orders and criminal prosecutions. This unit should provide support and advice to victims and witnesses.
- ◆ Funding for community legal centres to provide legal advice and legal representation to intervention order applicants.
- ◆ Training for police, registrars and magistrates on the dynamics of family violence to ensure legal responses are not based on myths and stereotypes.

BETTER PROTECTION

Victims sometimes obtain intervention orders that do not adequately protect them. For example, the order may allow the perpetrator to visit children at the victim's home, leaving the victim exposed to violence. An order may prevent a perpetrator from approaching a victim living in a refuge, but then not allow the victim to return to the family home.

To improve the protection offered by intervention orders, the commission recommends:

- ◆ Victims should be able to remain in the family home, unless they prefer not to. Other terms and conditions of orders should be tailored to suit the victim's situation.
- ◆ Magistrates must receive detailed training on the impact of family violence on children and the potential for further abuse on contact visits. It must be made clear that contact with a violent parent is not always in the best interests of a child.

... it's wrong for the women to have to leave their home ... The woman has to change her whole life. It's half the reason why you don't want to leave ... why did I have to go, why? He's the one that's been violent, why can't he be removed? Participant in Tasmanian family violence study

- ◆ Where it is appropriate for children to see the perpetrator, contact arrangements must be clearly outlined in the intervention order. This will help police identify what behaviour constitutes a breach of an intervention order.
- ◆ It must be made easier to extend the length of an order if the victim continues to fear violence, including where the order has expired.

...the judge asked whether there were any family orders in place. When I said no, he said that my ex needed access to the children. (But)... (H)e had threatened to kill the kids. His biggest threat was that he was going to kill himself and the kids because a bitch like me didn't deserve them.
Family violence victim

- ◆ Courts should prioritise hearings about order breaches—lengthy delays between charges being laid and the court hearing mean perpetrators can commit further breaches.

...my ex-partner broke it (the permanent intervention order) within two months, but absolutely nothing was done about this. I even had a witness to the fact that he breached the order ... Still nothing was done about it, and it just made me feel like the process was empowering him again and that I would have to look over my shoulder for the rest of my life.
Family violence victim

SAFE AND ACCESSIBLE COURTS

Attending court is an intimidating experience for most people. In a family violence situation it can be particularly traumatic. There is usually little support available at courts and the procedures are often unclear. The commission recommends:

- ◆ physical safety measures at courts be improved—this includes providing separate waiting areas for applicants and respondents, safe entrances and exits to the courthouse, private space for making applications for intervention orders, and improved disability access;
- ◆ respondents must be required to inform the court before the final hearing whether they intend to defend the application. Applicants currently 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 explain the procedures in court;
- ◆ application forms and the terms and conditions of intervention orders must be written in plain English.

Not knowing if the respondent will turn up to court and contest an intervention order application is a nightmare. In light of the minimal legal assistance and the huge safety implications of being in the same room ... to be left waiting in agony and unable to prepare for the situation is terribly painful. Family violence victim

- ◆ It must be made easier for applicants to give evidence in court—this includes alternative methods for giving evidence such as closed-circuit television, preventing cross-examination of victims by respondents, giving the magistrate powers to close the court or exclude people, and allowing the court to consider any evidence it considers relevant.

Video conferencing—that was a huge help. I knew they would be asking me very horrible questions and very arrogantly ... I was anxious and it was awful. But the video conferencing made a huge, huge difference. Family violence victim



MARGINALISED GROUPS

Some people experience particular difficulties and barriers when seeking protection from family violence. These include Indigenous Australians, immigrants and people with disabilities. For example, Indigenous Australians may fear the police and court staff due to previous experiences of racism. Immigrants may lack English language skills and find it difficult to access the justice system. Interpreters are often not provided, or are not independent and professional. People with disabilities have trouble getting information in accessible formats and may find it difficult to act against people providing practical care to them. To improve access to justice for these groups, the commission recommends:

- ◆ increased funding to specialist community agencies that provide services and support to victims of family violence, in particular, Indigenous, migrant and disability-specific organisations;
- ◆ police, magistrates and registrars must be provided with comprehensive training about issues relevant to Indigenous and immigrant victims of violence and victims with disabilities;
- ◆ more information on family violence and the legal system tailored to the needs of marginalised groups be provided, including information in different formats and languages, and more information sessions for marginalised groups;
- ◆ the justice system must continue 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.

YOUNG PEOPLE

Intervention orders often provide inadequate protection for victims' children. The commission therefore recommends:

- ◆ 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 overrides a Family Court order and prohibits child contact.

- ◆ Magistrates must receive detailed training on the impact of family violence on children.

Abusive behaviour on contact visits included: threatening to kill the child(ren) or their mother; killing children's pets; destroying or removing children's favourite toys; interrogating the children to discover their address or phone number or details of their mother's life; and name calling and abuse. NSW study

Where a young person has perpetrated an act of family violence, it can have a devastating impact on the victim.

Safeguards must be in place to ensure an intervention order is an appropriate response to young perpetrators and alternative responses must be considered.

There were holes in the walls, lots of things were broken ... I started living in my bedroom because I was frightened of the violence [from my teenage daughters] ... I think having the intervention order and having a plan of action in my head has helped. Mother who had experienced family violence from her

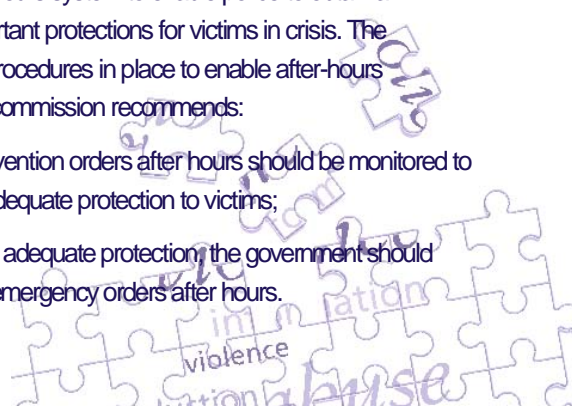
The commission recommends:

- ◆ An order against a young person should last for a maximum of 12 months, unless there are exceptional circumstances.
- ◆ The court must be satisfied there are grounds for the order, even if the young person consents to it being made.
- ◆ An application against a young person must be heard in the Children's Court.

CRISIS PROTECTION

When police receive a call from a family violence victim, they must have adequate powers and procedures to be able to respond effectively. The commission supports the new Police Code of Practice, particularly its pro-arrest policy. Most family violence incidents occur at night or on weekends. An efficient after-hours system to enable police to obtain an intervention order is one of the most important protections for victims in crisis. The Magistrates' Court has recently put new procedures in place to enable after-hours applications for intervention orders. The commission recommends:

- ◆ the new process for granting intervention orders after hours should be monitored to ensure it is providing timely and adequate protection to victims;
- ◆ if the new process is not providing adequate protection, the government should consider allowing police to make emergency orders after hours.



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