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FAMILY VIOLENCE PROTECTION BILL 2008

An examination of the Family Violence Protection Bill 2008, which repeals the *Crimes (Family Violence) Act 1987* and reforms administrative and judicial responses to family violence in Victoria. This paper discusses definitions of family violence, current Victorian legislation, and family violence law in other Australian jurisdictions.

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NB: Readers should note that this paper was prepared prior to the passage of the Family Violence Protection Bill 2008 through the Victorian Parliament. It was passed by the Legislative Council on 12 September 2008, and was assented to on 23 September 2008 (Act no. 52/08). Readers interested in this Act as passed should visit the Victorian Legislation and Parliamentary Documents website @ <http://www.dms.dpc.vic.gov.au>.

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Introduction

In June 2008 the Government introduced to the Parliament a bill to re-define and reform family violence protection in Victoria. Based in part on recommendations made by the Victorian Law Reform Commission (VLRC) in 2006, the Family Violence Protection Bill 2008 ('the Bill') will repeal the *Crimes (Family Violence) Act 1987* and create a new statute with guiding principles and a broad definition of 'family violence'. The Bill aims to make administrative and judicial responses to family violence more accessible and effective, thereby ensuring the safety of victims and their children.

According to VicHealth, domestic violence is the leading cause of death, disability and illness to Victorian women under the age of 45.¹ It contributes to homelessness, substance abuse and social isolation.² Access Economics has estimated that family violence costs the Victorian community approximately \$2 billion dollars every year.³ Victorian Attorney-General Mr Rob Hulls has described family violence as 'a blight on our community' which, according to the VLRC, affects more than one fifth of Australian women.⁴ The Australian Institute of Criminology reported in 2001 that up to one quarter of young people in Australia have witnessed physical violence against their mother or step-mother.⁵

While family violence is largely perpetrated against women, it may be directed against any member of a family by another member. Children, carers and animals are increasingly recognised as victims of family violence, and the VLRC has found that violence may be shaped by cultural and linguistic contexts, socioeconomic status, disability and sexuality.⁶ It has described family violence as a perpetrator exercising 'power and control... through the use of diverse and multiple forms of violence'.⁷

While the term 'domestic violence' is more common, it traditionally refers to violence between co-habiting partners, and/or co-habiting partners and their children. In comparison, 'family violence' is increasingly used as a means of indicating a broad range of relationships. These may include indigenous notions of kinship, violence between siblings and, according to the Family Court of Australia, between people who are 'not part of the physical household but are part of the family'.⁸

¹ See further: VicHealth (2004) *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence*, Melbourne, VicHealth, viewed 21 May 2008, <<http://www.vichealth.vic.gov.au>>, p. 8; Victorian Law Reform Commission (2006) *Review of Family Violence Laws: Report*, Melbourne, VLRC, p. 42; Office of the Attorney-General (2007) *Hulls Outlines Bold Plan to Address Family Violence*, Media Release, 13 August; Victorian Law Reform Commission (2004) *Review of Family Violence Laws: Consultation Paper*, Melbourne, VLRC, pp. 17-21.

² See further: Office of Women's Policy (2002) *Women's Safety Strategy: A Policy Framework*, Melbourne, OWP, pp. 35, 41.

³ VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. 42.

⁴ *ibid.*, pp. 15-19; Office of the Attorney-General (2008) *Independent Review of Family Violence Sentences*, Media Release, 15 April.

⁵ D. Indermaur (2001) 'Young Australians and Domestic Violence', *Trends and Issues in Crime and Criminal Justice*, no. 195, Canberra, Australian Institute of Criminology, p. 2; see also: Office of Women's Policy (2002) *Women's Safety Strategy: A Policy Framework*, op. cit., p. 21.

⁶ VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. 17.

⁷ *ibid.*, p. 44.

⁸ Family Court of Australia (2007) *Family Violence Strategy*, Canberra, FCA, p. 3. It should be noted that this definition was informed by the New Zealand Ministry of Social Development (2002) *Te Rito: New Zealand Family Violence Prevention Strategy* – see further: <<http://www.msd.govt.nz>>. See also: T. Drabsch (2007) 'Domestic Violence in NSW', *Briefing Paper no. 7/07*, Sydney, Parliamentary Library, pp. 3-5; Office of Women's Policy (2002) *Women's Safety Strategy: A Policy Framework*, op. cit., p. 20.

1. The Bill

Principles and Purpose

In his second reading speech to the Legislative Assembly on 26 June 2008, the Attorney-General Rob Hulls stated that while Victorians have relied on the Crimes (Family Violence) Act since its introduction in 1987, the time has come to review how victims of family violence are protected.⁹ He outlined the principles and purposes of the Bill, as listed in the Preamble and Part 1.1 respectively:

- Non-violence is a fundamental social value that must be promoted
- Family violence in any form is an unacceptable violation of human rights
- Family violence is not acceptable in any culture or community
- In responding to family violence, and ensuring the safety of victims, the justice system must respect the views of victims

The Bill then states that family violence has particular characteristics:

- It is predominantly perpetrated by men 'against women, children and other vulnerable persons'
- Children exposed to family violence are vulnerable and their current and future physical, psychological and emotional wellbeing may be affected
- Family violence affects the entire community and may occur in any area of society
- Family violence is not limited to physical or sexual violence, and may consist of psychological, emotional or economic abuse
- Family violence may involve subtle or overt 'exploitation of power imbalances' and may be perpetrated in 'isolated incidents or patterns of abuse over a period of time'

The Bill therefore has three purposes:

- To maximise the safety of adults and children who have experienced family violence
- To prevent and reduce family violence as much as possible
- To 'promote the accountability' of perpetrators

To these ends the Bill contains key provisions which are discussed in detail below. The most prominent of these are the definitions of the terms 'family violence' and 'family member'.

⁹ See further: Victoria, Legislative Assembly (2008) *Debates*, 26 June, p. 2644.

New definitions

In his second reading speech, the Attorney-General claimed that a new, comprehensive definition of family violence would help to ensure that 'the dynamics and patterns of family violence will be better recognised by the justice system', thereby leading to better protection of victims.¹⁰

Family Violence

Under Section 5(1) of the Bill, family violence constitutes behaviour inflicted by one family member against another that is 'physically or sexually abusive'; 'emotionally or psychologically abusive'; 'economically abusive'; threatening, coercive or in any way controlling or dominating, and which causes the victim to fear for the safety or wellbeing of themselves or another person.

Family violence is also defined as behaviour which 'causes a child to hear or witness, or otherwise be exposed to the effects of' behaviour listed in the above paragraph. Examples may include not only overhearing or witnessing abuse but also 'comforting or providing assistance' to a victim of physical family violence, 'cleaning up a site' after a family member has intentionally damaged another member's property, or being present when police attend an incident of physical family violence.

Section 5(2) then expands on the behaviour outlined in Section 5(1), describing actions such as:

- Physically assaulting or 'causing personal injury' or threatening to do so
- Sexually assaulting, or engaging in another kind of sexually coercive behaviour, or threatening to do so
- Intentionally damaging property or threatening to do so
- Unlawfully depriving a family member of their liberty or threatening to do so
- Causing or threatening to cause the death of or injury to an animal (regardless of whether it is the victim's property) in order to dominate, coerce or control that person

In order to 'remove doubt', the Bill explicitly states in Section 5(3) that behaviour may constitute family violence even if it does not constitute a criminal offence.

Economic, emotional and psychological abuse

Furthermore, Sections 6 and 7 of the Bill define the concepts of 'economic abuse' and 'emotional or psychological abuse', which are forms of family violence under Section 5(1).

Economic abuse is coercive, deceptive or unreasonably controlling behaviour by one person against another. It is perpetrated 'without the second person's consent' in such a way as to: deny the second person financial or economic autonomy they would otherwise have; or withhold or threaten to withhold financial support necessary for the 'reasonable living expenses' of the second person or their child, 'if the second person is entirely or predominantly dependant on the first person for financial support' to meet those expenses.

Emotional or psychological abuse is defined as behaviour by a person that 'torments, intimidates, harasses or is offensive to' another person. Examples provided include:

¹⁰ See further: Victoria, Legislative Assembly (2008) *Debates*, 26 June, p. 2645.

derogatory and racist taunts; threats to withhold medication; threats to self-harm or harm another family member as a means of intimidating or tormenting the other person; and preventing the other person from contacting or involving themselves with family, friends or culture.

Sexual Assault

The Bill includes sexual assault in the definition of family violence under Section 5. If passed, Victoria will become only the second jurisdiction in Australia with this provision, alongside Tasmania's *Family Violence Act 2004*, which is discussed later in this paper.¹¹

Animals

Some jurisdictions in Australia specifically list harm to animals as a domestic violence offence, however this is generally when the animal belongs to the victim (with the exception of the ACT).¹² Section 5(2) of the Victorian Bill includes harm to animals which are not the property of, or connected to, the victim.

Family member

The definition of family member covers many types of current or former relationships in a domestic environment. In relation to 'a relevant person', a family member may constitute a current or former spouse or domestic partner; a person who has or has had an 'intimate personal relationship' with the relevant person; a child of someone who has or has had such a relationship with the relevant person; or a child who normally or previously resided with the relevant person.

Section 8(2) clarifies that 'an intimate personal relationship' may not necessarily be sexual in nature. Sub-section 3 then states that a family member may also be someone that the relevant person considers to be *like* family, with regard to the circumstances of their relationship such as:

- The social and emotional ties between them
- Whether they live together or 'relate together in a home environment'
- The reputation of their relationship in each person's community and any associated cultural recognition of this relationship
- The duration of the relationship and frequency of contact
- Any dependence or interdependence between them, financial or otherwise
- Any provision of sustenance, support or responsibility of care (whether paid or unpaid). This may include the relationship between a carer and a person with a disability which has developed over time into a family like relationship.

It should be noted that the concept of 'family member' is separate to that of 'relative', which is defined in Section 10 as constituting individuals who are connected by whole or half-blood or by marriage, such as spouses, aunts, uncles, grandparents and

¹¹ See further: K. Wilcox (2007) 'Island Innovation, Mainland Inspiration: Comments on the Tasmanian Family Violence Act', *Alternative Law Journal*, vol. 32, no. 4, December, pp. 213-214; VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. 103.

¹² Section 9(1) of the *Domestic Violence and Protection Orders Act 2001* (ACT) defines violence as including that which is 'directed at the pet of a relevant person and is an animal violence offence'. See also: *Acts Amendment (Family and Domestic Violence) Act 2004* (WA), Section 6(1); *Domestic Violence and Protection Orders Act 2001* (ACT), Section 9(1)(f); *Domestic and Family Violence Act 2007* (NT), Section 5(b), 6(1); *Domestic and Family Violence Protection Act 1989* (QLD), Section 11 (1)(b). Abuse to animals can be an offence under provisions of 'damage to property' or more general definitions of intimidation or emotional abuse – for example: *Family Violence Act 2004* (Tas) Section 9(1).

siblings. Similar to the definition contained in the Crimes (Family Violence) Act, it now includes a relative according to 'Aboriginal or Torres Strait Islander tradition or contemporary social practice'.

Intervention Orders and Safety Notices

The Bill establishes a process for 'family violence safety notices' to be issued by police outside of court hours. These will enable victims to be protected as soon as police serve the notice on the respondent. Under Section 41 of the Bill this is a trial system with a two-year sunset clause, although there is scope to institute it permanently.¹³

Under Section 45 of the Bill police officers can apply for intervention orders without the consent of the protected person (although some limitations apply under Section 75). The Bill enables interim orders to be approved without the respondent present as a means of providing fast, short-term protection to affected family members, although the orders only come into effect once the respondent has been notified. Final orders are determined once the court has heard all available evidence, and may be of an unlimited duration.

Breach of an intervention order is a criminal offence under Section 123 of the Bill. Police are empowered to arrest and detain a respondent if they have reasonable grounds to believe the order has been breached. Maximum penalties are outlined under Section 123(2).

Under Section 81 of the Bill, the court may include in an intervention order any conditions it deems 'necessary or desirable in the circumstances'. Such conditions may include prohibiting the respondent from contacting the protected person, or prohibiting them from being within a specified distance of the protected person or near a specified place.

The Bill also includes provisions for orders to be made for or against associates of the protected person or the respondent. This is based on VLRC findings that perpetrators of family violence can target friends or family of the original victim, or use their own friends or family to target the victim and others.

Exclusion Conditions

Based on VLRC recommendations, the Bill enables protected persons and their children to remain in their own home if they so choose, while the respondent is ordered to vacate. This combats the economic and social disadvantage experienced by victims who are forced to leave their homes as a result of family violence. The VLRC found that there is a high risk they will become homeless in some manner.¹⁴ In choosing to make an exclusion condition as part of an intervention order, the court must consider the interests of the protected person and their children. Such considerations include minimising disruption to their lives in terms of childcare, schooling and employment, and maintaining social support networks.

Court Proceedings

The Bill enables protected persons to give evidence in an intervention order hearing using closed-circuit television or with a nominated support person by their side (Section 68). Under Section 70 the court may declare a protected person, a child, a person with a cognitive impairment or any other family member to be a 'protected witness', who is therefore excluded from cross-examination by the respondent. The

¹³ See further: Victoria, Legislative Assembly (2008) *Debates*, 26 June, p. 2646.

¹⁴ VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. 319.

affected person may consent to cross-examination if the court is satisfied that they are a competent adult who understands the consequences of giving consent (Section 70). The use of hearsay as evidence may be included by the court for the purposes of making intervention orders, as provided for in Section 65(1):

...the court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary.

The Bill then states that this section does not apply to a proceeding for an offence under this legislation. According to the Attorney-General, the use of hearsay under Section 65(1) is based on a VLRC finding that the usual rules of evidence 'can put unnecessary barriers in the way of a court hearing and determining a matter'.¹⁵ The Attorney-General did stipulate however, that 'the court will still be bound to apply the protective rules of evidence' and to ensure the competency of witnesses.¹⁶

Children

The definition of 'family violence' contains specific provisions for children, as outlined in the above section. The Bill also makes provisions for children within the intervention order system. Under Section 77, if the court suspects that a child is or has been exposed to family violence, the court has an obligation to make an order for that child. This stands whether or not the child's guardian requests it. The child may be included on the order of a protected adult, or may have their own separate order with different conditions and duration.

If an intervention order is inconsistent with an existing Family Law Act order, Section 90 of the Bill empowers the court to vary, revive, discharge or suspend the Family Law Act order.

Most notably, the Bill makes a number of provisions for child respondents. These are based in part on VLRC findings concerning the perpetration of family violence by adolescents. While intervention orders against adult respondents may be of an unlimited duration, Section 98 of the Bill states that orders made against child respondents may not exceed twelve months duration except in exceptional circumstances. Section 83 outlines a number of factors that the court must take into account when considering whether to include an exclusion condition in an order against a child. These include the desirability of the child having access to educational and health services, and appropriate alternative care and supervision. If the child is of Aboriginal or Torres Strait Islander descent, the court's decision must have regard to the desirability of keeping the child within an extended family and cultural community.

Furthermore, the Bill contains provisions under Part 6 for ensuring that children are 'protected from exposure' to the court system. Children are not allowed to be present during court proceedings if they are the affected person, or a family member of the affected person or the respondent. This provision does not apply if the child is the respondent themselves or if the court makes an order allowing the child to be present.

¹⁵ Victoria, Legislative Assembly (2008) *Debates*, 26 June, p. 2646.

¹⁶ *ibid.*

2. Current Victorian Legislation

Currently, Sections 3(1) and 3(2) of the *Crimes (Family Violence) Act 1987* ('the Act') define the term 'family member' as either someone who is directly related to another person through either birth or marriage, someone 'who has or has had an intimate personal relationship' with another person, or someone 'who is or has been ordinarily a member of the household of that person'.¹⁷

The Act provides for intervention orders and counselling orders. It enables magistrates to make an intervention order against a person using a civil standard of proof (balance of probabilities) that the person used or threatened to use violence and had the potential to do so again. The Act also enables interim orders to be made in emergencies, with or without the respondent being present or notified.¹⁸ While an order is made under civil law, breaching it is a criminal offence.¹⁹

The Act does not provide for particular acts of violence against a family member; as the VLRC has noted, 'there are no specific offences relating to the assault of a family member' in Victoria.²⁰ Instead, perpetrators are charged under the *Crimes Act 1958* (Vic) or the *Summary Offences Act 1966* (Vic).

Importantly, Section 25(A) of the Act states that intervention orders are subject to orders made by the Family Court. This means that a perpetrator may have access to the victim through their children, which leaves open the possibility of continued violence or harassment. As previously noted, Section 90 of the Bill will alter this provision.

The provisions for intervention orders under the Act are also used to manage neighbourhood and community disputes, and incidents of stalking. In stalking cases, Section 21A(5) of the *Crimes Act 1958* (Vic) allows the respondent to be issued with an intervention order under the *Crimes (Family Violence) Act*, although applicants and respondents are not required to be family members.²¹ The VLRC notes that this 'has led to confusion among people working with the legislation', which has resulted in actual cases of family violence not being taken seriously enough.²²

Since the Act was passed by the Cain Government in 1987, several amendments have strengthened the accessibility and efficacy of intervention orders, and introduced the provision for counselling orders.²³ According to the VLRC however, the Act has not been 'comprehensively reviewed' since 1987, and 'attitudes towards family violence have changed substantially' since then.²⁴

¹⁷ *Crimes (Family Violence) Act 1987* (Vic), Section 3(1), 3(2).

¹⁸ See further: R. Alexander (2002) *Domestic Violence in Australia: The Legal Response*, Third Edition, Melbourne, The Federation Press, pp. 169-170.

¹⁹ See further: VLRC (2004) *Review of Family Violence Laws: Consultation Paper*, op. cit., pp. 62-63.

²⁰ *ibid.*, p. xxiii.

²¹ *ibid.*, p. 72.

²² VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. xxii.

²³ For example: *Crimes (Family Violence) (Further Amendment) Act 1992* (Vic); *Crimes (Family Violence) (Amendment) Act 1998* (Vic); *Crimes (Family Violence) (Holding Powers) Act 2006* (Vic).

²⁴ VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. ix.

3. The Victorian Law Reform Commission Report 2006

In 2002 the Attorney-General requested the VLRC examine the efficacy of the *Crimes (Family Violence) Act 1987* (Vic) with regard to: other national and international jurisdictions; necessary administrative and procedural changes; civil and criminal responses to family violence; and the position of children under the Act, particularly with regard to related legislation. In December 2005 the VLRC submitted its report on family violence to the Attorney-General. The report is titled *Review of Family Violence Laws: Report*, and was tabled in the Legislative Assembly on 1 March 2006.

The VLRC's main recommendations, to repeal the *Crimes (Family Violence) Act* and to develop strong guiding principles for new legislation, are central to the Bill. These recommendations were based on a set of values, which may be summarised thus:

...because family violence involves the systematic disempowerment of people who experience it, legal processes must have the opposite effect.

And:

...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.²⁵

Recommendations: Definitions

As noted in Section 1 of this paper, two key elements of the Bill involve re-defining the terms 'family violence' and 'family member'. These concepts are based on VLRC recommendations concerning the myriad forms of non-physical abuse and coercion perpetrated in family violence situations.²⁶

The VLRC also recommended including sexual assault in the definition of family violence as a means of strengthening judicial and community responses to the problem. According to its *Report*, sexual assault can include rape, forcing someone to watch pornography, and other intimidating, non-consensual or coercive sexual behaviour. It may also involve forcing someone to watch sexual activities, including children (for example, if the mother is raped in front of her children).²⁷ The VLRC argued that the common separation of sexual assault and family violence service providers does not enable victims to be cared for adequately.²⁸ Sexual assault is now provided for under Section 5 of the Bill.

Recommendations: Administrative and Judicial Processes

The VLRC listed 'inconsistent decision making' and 'insensitive treatment of victims' as indicative of a culture within the justice system that, in some cases, minimises the seriousness of family violence.²⁹ It therefore recommended a number of measures to strengthen the response to family violence across the law enforcement system. The report made 153 recommendations within six main areas of concern. A great deal of these have now been incorporated into the principles and provisions of the Bill.

²⁵ *ibid.*, p. 7.

²⁶ According to the VLRC, an example of 'psychological torment' could include 'threatening to out a homosexual person' or 'threatening to withdraw the care of an elderly person' – see further: *ibid.*, pp. 104, 106.

²⁷ *ibid.*, pp. 16-17.

²⁸ *ibid.*, p. 102.

²⁹ See further: VLRC (2006) *Review of Family Violence Laws: Final Report Summary*, Melbourne, VLRC, p. 3; VLRC (2006) *Review of Family Violence Laws: Report*, *op. cit.*, pp. xxiv, 176.

As part of improving the intervention order system, the VLRC recommended allowing victims to remain in their homes if they so chose, and removing the offender. Now provided for under Section 82 of the Bill, the VLRC argued that this practice will remove the burden of finding victims (and potentially their children and/or pets) crisis accommodation and may ultimately encourage victims to report family violence and leave their partner.

The Bill has included the VLRC's recommendation that children should always be included on intervention orders if they have witnessed, or been subjected to, family violence. The VLRC found that the current provisions for this inclusion under the *Crimes (Family Violence) Act* 'are not being taken into account seriously or are being interpreted too narrowly'.³⁰ Most importantly, the VLRC also recommended that court orders relating to the protection of children should clearly override rulings of the Family Court which may allow a perpetrator access visits.³¹ This has been provided for under Sections 87 to 92 of the Bill. The VLRC also made several recommendations for cases in which a young person is the perpetrator of family violence, including that intervention orders are made for a maximum of 12 months (although exceptional circumstances may permit a more lengthy time period). Again, this has been provided for under Section 98 of the Bill.

VLRC recommendations on the process of giving evidence and the concept of a 'vexatious applicant' have all been provided for under the Bill, as has the recommendation for quicker, more accessible intervention order applications.³² The Bill does not however, provide for courts to prioritise hearings related to breaches of intervention orders, to resolve matters quickly and therefore prevent perpetrators from committing further breaches, as the VLRC suggested.³³ The VLRC recommended that a case management program be established within Victoria Police for victims of multiple breaches, assigning them a Family Violence Liaison Officer.³⁴

Other recommendations are outside the scope of this Bill, but are worth noting in terms of the intention to improve judicial and community responses to family violence. The VLRC recommended that magistrates and court registrars be trained to understand the complexities and realities of family violence; that special 'family violence lists' be instituted within the court system of staff who have undergone family violence training; and that a 'special police prosecution unit' be established to handle all applications for intervention orders and criminal procedures.³⁵ The VLRC recommended that court buildings have facilities which ensure the safety of victims during family violence hearings, such as childcare services, and separate entrances and waiting areas for victims and perpetrators. The VLRC reported that courtrooms can be 'particularly unwelcoming' for disabled or indigenous applicants, and also for children.³⁶ As noted in a previous section, the Bill has chosen to promote the exclusion of children from court proceedings as a means of limiting their exposure to family violence.

³⁰ VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., pp. 98-99.

³¹ *ibid.*, p. 259.

³² *ibid.*, pp. xxxviii-xxxix, 284-285, 394-400; VLRC (2006) *Review of Family Violence Laws: Final Report Summary*, op. cit., p. 9.

³³ VLRC (2006) *Review of Family Violence Laws: Final Report Summary*, op. cit., p. 8; VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. xxv.

³⁴ VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., pp. 158-159.

³⁵ VLRC (2006) *Review of Family Violence Laws: Final Report Summary*, op. cit., p. 7; VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. 458.

³⁶ VLRC (2006) *Review of Family Violence Laws: Report*, op. cit., p. 220.

The VLRC found that particular community groups, such as indigenous people, disabled people and those from non-English speaking backgrounds, can find the justice system to be intimidating or confusing. It therefore recommended greater funding be provided for community agencies, particularly those that deal with marginalised groups, and that multi-lingual information and professional independent interpreters be provided. The VLRC also recommends that magistrates and registrars be given training on issues related to family violence within marginalised groups, and the recruiting of a diversity of staff within the justice system.

4. Recent Events in Victoria

In the past eight years there have been significant developments in approaches to family violence within the Victorian justice system. These developments have been driven by a series of high profile homicide cases, community activism and progressive social policy.

Victoria Police

Since her appointment as Victorian Police Chief Commissioner in April 2001, Christine Nixon has initiated procedural and administrative changes to the way police deal with family violence.

Under Commissioner Nixon, Victoria Police began a review into issues surrounding violence against women. The report, *The Way Forward: Violence Against Women Strategy*, was released in August 2002. The report recommended that a code of practice for police dealing with family violence be developed. *The Code of Practice for the Investigation of Family Violence* was subsequently introduced in June 2005. It ensures that police follow a strict process when responding to family violence reports to ensure that each case is fully investigated and that the safety of victims and their children is paramount.³⁷ Ten family violence advisors were instituted across Victoria, and family violence liaison officers were trained for all 24-hour police stations. Most notably, the Code's definition of family violence far exceed the parameters of the Crimes (Family Violence) Act, including forms of behaviour that have since been identified by the VLRC and the Bill.

Many forms of family violence are criminal. These include physical violence, sexual abuse, stalking, property damage, threats and homicide. Other forms, which are not categorised as criminal offences but which can be just as destructive for victims and their families, include coercive or controlling behaviours and any behaviour which may cause a person to live in fear, to suffer emotional and psychological torment, financial deprivation or social isolation.³⁸

Further, in 2007 police were granted the power to remove perpetrators from their homes and issue 'safety notices', which have the same power as an intervention order, immediately and without the victim's consent.³⁹ This policy came into effect in June 2008.

³⁷ See further: Victoria Police (2005) *Victoria Police Code of Practice for the Investigation of Family Violence: Executive Summary*, viewed 7 May 2008, <<http://www.police.vic.gov.au>>.

³⁸ See further: *ibid*.

³⁹ Office of the Premier (2007) *More Police Powers to Protect Family Violence Victims*, Media Release, 19 July; ABC News (2007) 'New domestic violence powers for Vic police', *ABC News Online*, 19 July.

The Judiciary

The Victorian Magistrate's Court introduced Family Violence and Stalking Protocols in December 2002. In 2004 the Magistrates (Family Violence) Bill amended the *Magistrates Court Act 1989* and the *Crimes Act 1987* to establish two specialist family violence courts in Heidelberg and Ballarat, which are able to direct perpetrators to attend counselling. These courts are intended to be 'more responsive and less intimidating' for victims by ensuring that magistrates, solicitors, police prosecutors and registrars are trained in the 'nature and dynamics' of family violence matters.⁴⁰ The initiative was based on key principles, as outlined by the Attorney-General in Parliament in 2004:

...Our judicial and administrative processes should respond to the needs of victims with compassion and respect for dignity... [and] problem-solving courts can address the underlying causes of behaviour which lead people to come before the courts.⁴¹

Under Section 4K of the Magistrates Court Act, victims are able to give evidence using closed-circuit television or with a support person by their side, a provision which has been continued under Section 68 of the Bill. A 'court assistance' program ensures that trained staff explain court processes to users of the court, and that the cultural and linguistic needs of indigenous or minority communities are catered for.

State Government

The 2002 Victorian Government *Women's Safety Strategy* was a 5 year whole of government approach to improving resources for women who are affected by violence. As part of this program, research into family violence issues was undertaken by the Statewide Steering Committee to Reduce Family Violence, also established in 2002. The Committee's brief was to investigate integrated approaches to family violence, combining various agencies and resources. Its initial publication, *Women's Safety Strategy: A Policy Framework*, called for legal responses to family violence, and violence against women generally, to be reviewed and improved.⁴²

The resultant *Reforming the Family Violence System in Victoria: Report of the Statewide Steering Committee to Reduce Family Violence* was released in 2005. Like the Victoria Police Code of Practice, it also identified psychological, social and financial coercion and sexual assault as forms of family violence.⁴³ The report proposed guiding principles for law reform which resembled those outlined by the VLRC later that year, with particular concern for the welfare of children and the need for an integrated, community wide response to family violence issues.⁴⁴

The Government has incurred criticism for not responding sooner to the VLRC's final recommendations. Shadow Attorney-General Robert Clark labelled the delay between the tabling of the *Report* in 2006 and the introduction of the Bill in 2008 as 'shameful' and 'a leisurely approach' to an important issue.⁴⁵

⁴⁰ See further: Victoria, Legislative Assembly (2004) *Debates*, 26 August, p. 189.

⁴¹ *ibid.*

⁴² Office of Women's Policy (2002) *Women's Safety Strategy: A Policy Framework*, op. cit., p. 39.

⁴³ Statewide Steering Committee to Reduce Family Violence (2005) *Reforming the Family Violence System in Victoria*, Melbourne, OWP, p. 11.

⁴⁴ *ibid.*, p. 10.

⁴⁵ Liberal Nationals Coalition (2008) *Hulls Must Act Swiftly on Civil Justice*, Media Release, 28 May 2008. See also: ABC News (2008) 'Financial abuse against spouses won't be tolerated: Hulls', *ABC Online*, viewed 7 July 2008, <<http://www.abc.net.au/news>>.

Prominent cases

In recent years there have been two extremely prominent homicide cases in Victoria that have brought family violence to public and legislative attention. The first is the long-running case of Heather Osland, a Bendigo woman who was convicted in 1996 of murdering her violent husband Frank. Osland invoked the theory of 'battered woman syndrome' as evidence, but failed to have her sentence commuted upon appeal to the High Court in 1998.⁴⁶ In 2001, the Victorian Government rejected a Petition for Mercy organised by the Release Heather Osland Campaign. Osland served a 9½ year minimum sentence, and was released from prison on 22 July 2005.

The circumstances of Osland's case engendered fierce public and legal debate, made all the more controversial by the story of Frank's abuse.⁴⁷ In feminist legal opinion, Osland's conviction exemplifies a gender binary within criminal law that disadvantages female defendants for their (usual) inability to kill in immediate self-defence, and the premeditation that their action therefore requires.⁴⁸ Since being released, Osland and her support group continue to campaign for greater understanding of domestic violence issues within the justice system.⁴⁹

The second and more recent case was the murder of Julie Ramage at the hands of her estranged husband James, on 21 July 2003. His conviction in 2004 for manslaughter on the grounds of provocation prompted significant public discussion on the value, fairness and efficacy of that defence. Both this and the Osland case encouraged the Bracks Government to remove provocation as a defence to homicide; the *Crimes (Homicide) Act 2005* replaced provocation with the concept of 'defensive homicide', which includes responding to a threat that is 'not immediate'.⁵⁰

5. Family Violence Law in Other Australian Jurisdictions

The issue of domestic and family violence in Australia was an essential concern of second wave feminism during the early to mid 1970s.⁵¹ It is largely through this movement that violence in the home became a public concept. Groups such as Women Against Rape (WAR) and the Women's Electoral Lobby (WEL) won public attention and government funding for women's safety initiatives, aided in part by an amenable Whitlam Government.⁵²

With the impetus of International Women's Year in 1975, the United Nations (UN) began to develop the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW), which was ratified by Australia in 1983. The UN Declaration on the Elimination of Violence Against Women was adopted by Australia in 1993, and a year later the UN appointed a Special Rapporteur on violence against women, who continues to assess the efforts of individual states in tackling the issue.

⁴⁶ See further: Z. Craven (2003) 'Battered Woman Syndrome', *Australian Domestic Violence Clearinghouse Topic Paper*, viewed 19 May 2007, <<http://www.austdvclearinghouse.unsw.edu.au/>>.

⁴⁷ See further: *Australian Story* (2005) 'Terms of Imprisonment', ABC Television, online transcript, viewed 19 May 2008, <<http://www.abc.net.au/>>.

⁴⁸ See further: *Radio National* (2001) 'The 'Battered' Defence: Men Who Bash, Women Who Kill', ABC Radio, online transcript, viewed 19 May 2008, <<http://www.abc.net.au/rn/>>.

⁴⁹ See further: P. Gregory (2006) 'Osland Resumes Fight For Fol Papers', *The Age*, 6 June, p. 6; AAP (2007) 'Battered Killer Denied Answers', *The Australian*, 18 May, p. 7.

⁵⁰ *Crimes Act 1958* (Vic), Section 9AH(1).

⁵¹ The VLRC states that data on family violence is only available from this period – see further: VLRC (2004), p. 20. See also: Alexander (2002) op. cit., p. 6.

⁵² See further: B. Caine, et. al. (1998) *Australian Feminism: A Companion*, Melbourne, Oxford University Press, pp. 337-339.

Commonwealth

The Commonwealth began to formally address family violence issues in 1986, though the Hawke Government's National Agenda for Women. A series of public awareness campaigns and surveys was run by the Office of the Status of Women during the late 1980s and into the mid 1990s.

The Howard Government funded a series of programs which worked with state and territory governments, business and community organisations to improve responses to domestic violence issues. The Partnerships Against Domestic Violence Initiative funded an extensive and consultative study of domestic violence by the University of Adelaide, which published its final report in 2000. Currently, the Women's Safety Agenda includes the 'Violence Against Women: Australia Says No' campaign, which began in 2004. Overseen by the federal Office for Women, the campaign features a 24-hour hotline for victims, offenders, and their friends and family.

States and Territories

Australian states and territories have a range of family violence legislation, varying in focus and detail. More recent legislation, developed in the wake of legislative reviews, tends to address the needs of children and recognises the breadth of family or personal relationships that can involve violence. The Tasmanian and Northern Territory Acts in particular have wide definitions of domestic and family violence, and of the concept of 'family member', similar to those definitions proposed in the Victorian Bill.

ACT

In 1984 the then federal Attorney-General Gareth Evans referred to the Australian Law Reform Commission issues of domestic violence law in the ACT. The resultant report, *Domestic Violence*, was released in 1986 and was followed by the *Domestic Violence Act 1986*, which came into effect upon ACT self-government in 1989.⁵³ The Act was renamed the *Domestic Violence Agencies Act 1986* under Part 4 of the *Protection Orders (Consequential Amendments) Act 2001*. Also in 2001, the *Domestic Violence and Protection Orders Act* was introduced to consolidate protection and restraining orders from the original 1986 Act and the *Magistrates Court Act 1930*.

These statutes refer to broad concepts of 'physical' or 'personal' violence ('personal' including damage to property, or offensive threatening behaviour). As mentioned in Section 1 of this paper, domestic violence is also defined to include threats or violence toward an animal (which belongs to the victim or another person). Police are empowered to enter premises with a warrant, invitation, or in an emergency. Police may also search for and seize weapons in relation to an offence or the threat of an offence.⁵⁴

Tasmania

In Tasmania, significant reform has been instituted during the past four years through the 'Safe at Home' program and its legislative counterpart, the *Family Violence Act 2004* (Tas). Under these initiatives, community and government resources are brought together to ensure the welfare of victims and their families, and to ensure that perpetrators receive due treatment or punishment. Representatives from relevant government agencies and the justice system meet weekly across Tasmania to assess domestic violence cases; it is an integrated and 'outcome oriented'

⁵³ See further: Australian Law Reform Commission (1986) *Domestic Violence*, Report no. 30, Canberra, Australian Government Publishing Service.

⁵⁴ See further: Alexander (2002), op. cit., pp. 35-36.

system.⁵⁵ 'Safe at Home' has been described as 'the strongest and potentially the most effective criminal-justice response to domestic violence yet seen in Australia', while the *Family Violence Act* is recognised as 'the toughest family violence [law] in the country'.⁵⁶ Most prominently, the Act gives police the power to enter homes without a warrant during a family violence situation, and to arrest offenders. There is a presumption against bail, meaning that alleged perpetrators are held in custody until the alleged victims' safety can be confirmed.

The Act's provisions have incurred criticism from a number of legal and civil organisations.⁵⁷ The Australian Council of Civil Liberties expressed concern that through the provision of 'economic abuse' the government was 'interfering in the day to day arrangements between spouses', and that a presumption against bail would invariably engender miscarriages of justice.⁵⁸

New South Wales

New South Wales recently introduced new family violence legislation. The *Crimes (Domestic and Personal Violence) Act 2007* repeals and replaces Part 15A of the *Crimes Act 1900* (NSW). The new Act recognises that domestic violence occurs in many forms throughout the community, and features guiding principles, one of which makes reference to the United Nations Convention on the Rights of the Child. The Act enables children to be protected under apprehended violence orders made for their parent or guardian.⁵⁹ Stalking and 'intimidation with the intention of causing someone to fear physical or mental harm' are included as offences, taken from the *Crimes Act 1900*.

Northern Territory

Also in 2007, the Northern Territory (NT) replaced the *Domestic Violence Act 1992* with the *Domestic and Family Violence Act 2007*. The new legislation made provisions to protect people who are engaged or 'in a dating relationship' or a carer relationship, in order to recognise that domestic violence can occur between individuals who are not co-habiting. As with the Victorian Bill, the NT legislation redefines domestic violence to include economic abuse, sexual assault and harm to animals (among other things). NT Attorney-General Syd Stirling said that the legislation was developed partly as a response to the *Little Children Are Sacred* report of 2007.⁶⁰

Western Australia

The *Acts Amendment (Family and Domestic Violence) Act 2004* was passed in response to a 2004 review of domestic violence legislation. The Act includes emotional abuse within the definition of violence, and enables permanent, life-long restraining orders to be made against perpetrators guilty of rape or violent assault.⁶¹

⁵⁵ Wilcox (2007) op. cit., p. 213.

⁵⁶ *ibid*; *Stateline Tasmania* (2004) 'Safe at Home', online transcript, ABC Television, viewed 7 May 2008, <<http://www.abc.net.au/>>.

⁵⁷ *PM* (2004) 'Tasmania's new domestic violence legislation comes under attack', ABC Radio, transcript, viewed 13 May 2008, <<http://www.abc.net.au/>>.

⁵⁸ ABC (2004) 'Council Slams Tas Domestic Violence Bill', *ABC News Online*, 14 November, viewed 13 May 2008, <<http://www.abc.net.au/>>.

⁵⁹ See the second reading speech: New South Wales, Legislative Assembly (2007) *Debates*, 16 November.

⁶⁰ See the Attorney-General's second reading speech: Northern Territory, Legislative Assembly (2007), *Debates*, 17 October.

⁶¹ See the second reading speech for details: Western Australia, Legislative Assembly (2004), *Debates*, 2 June.

Queensland

The *Domestic and Family Violence Protection Act 1989* has been amended several times since it was introduced. In 1992, the Domestic Violence (Family Protection) Amendment Bill strengthened the efficacy of intervention orders and ensured that women had the choice of remaining in their homes. In 1999 and 2002 other amendments broadened the Act to include same-sex couples in spousal like relationships, and people in personal relationships and carer relationships.⁶²

South Australia

The Rann Government initiated a review of domestic and family violence laws in 2005. The discussion paper was released in 2006, and submissions closed in May 2007. Similar to the VLRC review, the paper queried whether the principal act, the *Domestic Violence Act 1994* (SA), should contain guiding principles and broaden the definition of 'family member'.⁶³ The final report is yet to be released.

⁶² See further: *Domestic Violence (Family Protection) Act 1999* (QLD); *Domestic Violence Legislation Amendment Act 2002* (QLD).

⁶³ M. Pyke (2007) *South Australian Domestic Violence Laws: Discussion and Options for Reform*, Adelaide, Attorney-General's Department, p. 1.

References

- AAP (2007) 'Battered Killer Denied Answers', *The Australian*, 18 May, p. 7.
- ABC News (2004) 'Council Slams Tas Domestic Violence Bill', *ABC News Online*, 14 November, viewed 13 May 2008, <<http://www.abc.net.au/>>.
- ABC News (2007) 'New domestic violence powers for Vic police', *ABC News Online*, 19 July.
- ABC News (2008) 'Financial abuse against spouses won't be tolerated: Hulls', *ABC Online*, viewed 7 July 2008, <<http://www.abc.net.au/>>.
- Alexander, R. (2002) *Domestic Violence in Australia: The Legal Response*, Third Edition, Melbourne, The Federation Press.
- Australian Law Reform Commission (1986) *Domestic Violence*, Report no. 30, Canberra, Australian Government Publishing Service.
- Australian Story* (2005) 'Terms of Imprisonment', ABC Television, online transcript, viewed 19 May 2008, <<http://www.abc.net.au/>>.
- Caine, B. (gen. ed.), M. Gatens, E. Grahame, J. Larbalestier, S. Watson, E. Webby (eds.) (1998) *Australian Feminism: A Companion*, Melbourne, Oxford University Press.
- Craven, Z. (2003) 'Battered Woman Syndrome', *Australian Domestic Violence Clearinghouse Topic Paper*, viewed 19 May 2007, <<http://www.austdvclearinghouse.unsw.edu.au/>>.
- Drabsch, T. (2007) 'Domestic Violence in NSW', *Briefing Paper no. 7/07*, Sydney, Parliamentary Library.
- Family Court of Australia (2007) *Family Violence Strategy*, Canberra, FCA.
- Gregory, P. (2006) 'Osland Resumes Fight For Fol Papers', *The Age*, 6 June, p. 6.
- Indermaur, D. (2001) 'Young Australians and Domestic Violence', *Trends and Issues in Crime and Criminal Justice*, no. 195, Canberra, Australian Institute of Criminology.
- Liberal Nationals Coalition (2008) *Hulls Must Act Swiftly on Civil Justice*, Media Release, 28 May 2008.
- New South Wales, Legislative Assembly (2007) *Debates*, 16 November.
- New Zealand Ministry of Social Development (2002) *Te Rito: New Zealand Family Violence Prevention Strategy* – see further: <<http://www.msd.govt.nz/>>.
- Northern Territory, Legislative Assembly (2007), *Debates*, 17 October.
- Office of the Attorney-General (2007) *Hulls Outlines Bold Plan to Address Family Violence*, Media Release, 13 August.
- Office of the Attorney-General (2008) *Independent Review of Family Violence Sentences*, Media Release, 15 April.

Office of the Premier (2007) *More Police Powers to Protect Family Violence Victims*, Media Release, 19 July.

Office of Women's Policy (2002) *Women's Safety Strategy: A Policy Framework*, Melbourne, OWP.

PM (2004) 'Tasmania's new domestic violence legislation comes under attack', ABC Radio, transcript, viewed 13 May 2008, <<http://www.abc.net.au/>>.

Pyke, M. (2007) *South Australian Domestic Violence Laws: Discussion and Options for Reform*, Adelaide, Attorney-General's Department.

Radio National (2001) 'The 'Battered' Defence: Men Who Bash, Women Who Kill', ABC Radio, online transcript, viewed 19 May 2008, <<http://www.abc.net.au/>>.

Stateline Tasmania (2004) 'Safe at Home', online transcript, ABC Television, viewed 7 May 2008, <<http://www.abc.net.au/>>.

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

VicHealth (2004) *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence*, Melbourne, VicHealth, viewed 21 May 2008, <<http://www.vichealth.vic.gov.au/>>.

Victorian Law Reform Commission (2006) *Review of Family Violence Laws: Report*, Melbourne, VLRC.

Victorian Law Reform Commission (2006) *Review of Family Violence Laws: Final Report Summary*, Melbourne, VLRC.

Victorian Law Reform Commission (2004) *Review of Family Violence Laws: Consultation Paper*, Melbourne, VLRC.

Victoria Police (2005) *Victoria Police Code of Practice for the Investigation of Family Violence: Executive Summary*, viewed 7 May 2008, <<http://www.police.vic.gov.au/>>.

Wilcox, K. (2007) 'Island Innovation, Mainland Inspiration: Comments on the Tasmanian Family Violence Act', *Alternative Law Journal*, vol. 32, no. 4, December, pp. 213–218.

Legislation

Acts Amendment (Family and Domestic Violence) Act 2004 (WA)

Crimes Act 1958 (Vic)

Crimes (Family Violence) Act 1987 (Vic)

Crimes (Family Violence) (Further Amendment) Act 1992 (Vic)

Crimes (Family Violence) (Amendment) Act 1998 (Vic)

Crimes (Family Violence) (Holding Powers) Act 2006 (Vic)

Domestic and Family Violence Act 2007 (NT)

Domestic and Family Violence Protection Act 1989 (QLD)

Domestic Violence and Protection Orders Act 2001 (ACT)

Domestic Violence (Family Protection) Act 1999 (QLD)

Domestic Violence Legislation Amendment Act 2002 (QLD)

Family Violence Act 2004 (Tas)

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