

It looks like a real **Act**, lawyers will read it

Family Violence Protection Act Forum

Janet Hall

On November 24 2008, DVRC and DHS held a forum on the new Family Violence Protection Act for domestic violence, community legal and community service workers to hear about the history of the reforms, what the changes entail, and implications for workers in supporting women to access protection through the courts. Janet Hall reports below on some of the highlights of the day.

In Melbourne recently more than 800 people attended an information forum and celebration of the landmark new *Family Violence Protection Act 2008* (FVPA) that passed into law in Victoria and soon to be proclaimed. The numbers illustrate how many more of us now see ourselves as working in family violence.

The new Act provides a solid legal foundation for the Victorian government's reform of responses to family violence. It is the culmination of a process of review of legal responses to family violence, including existing legislation, the *Crimes (Family Violence) Act 1987* (CFVA), by the Victorian Law Reform Commission (VLRC).

The VLRC was given its terms of reference for the review in 2003, and the Commissioner involved, Judith Peirce, was first guest speaker at the forum. Most of her address tracked reform from a period when the law condoned beating as within the lawful right of a husband, and when rape within marriage was not criminalised.

- 1970s and 80s calls for family violence to be recognised and treated as no longer beyond the realm of the law, in the private sphere
- Pressures for reform lead to the *Crimes (Family Violence) Act 1987* with a system for protection via **intervention orders** established, problems of acceptance by justice system, continuing debate as to whether civil or criminal jurisdiction appropriate
- 1989 campaign around domestic murders of women and children, often ignored or trivialised by media ('Love pulls the trigger', 'Farm crisis dad kills wife, tots')
- Increasing public recognition and growing body of research around family violence as a social problem
- Many new systems for dealing with family violence in other states and countries
- Unprecedented time of changes in Victoria in policies, services and legal responses
- Police Review 2001 and structural changes, Police Code of Practice under leadership of Commissioner Christine Nixon, State-wide Steering Committee to Reduce Family Violence set up to improve responses from police, courts and service providers, develop a model for a multi-agency integrated response
- 2002 Women's Safety Strategy launched with funds for new initiatives, specialist family violence courts, men's behaviour change groups, Indigenous family violence programs set up in recognition of particular responses required for complexity, media and other campaigns to tackle attitudes, and public recognition that the justice system failed some victims, and a reconsidering of the issue of provocation.

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Against the background of significant change the VLRC commenced its review. Its task was to make recommendations for changes to the law that would result in appropriate new legislation for a complex and diverse society which was no longer in denial as to the extent of family violence and the damage it causes. The terms were very wide, allowing for extensive consultations, with no restrictions except over the issue of stalking to be considered in separate legislation. The guiding principles adopted were a foundation of human rights, awareness that social change can prevent family violence, and a desire to incorporate the views of people affected by violence.

Values that would guide the review and thus the system it hoped to create had to be non-violence, respect, empowerment, responsibility and accountability. Therefore the law and the way it was applied must not replicate the power and control exercised by perpetrators over victims. It must hold perpetrators accountable and protect victims, but without disempowering people in the process. Victims must be taken seriously and their decisions respected. Legal responses must be supported by a range of programs to change community attitudes.

Therefore the Victorian justice system was seen as having a responsibility to confront violence against women on multiple levels by providing:

- an adequate response with both civil and criminal remedies
- training for people in the justice system
- court mechanisms both accessible and sensitive
- support and assistance for victims
- removal of the perpetrator from a shared home

- protection at child contact arrangements
- public awareness and education campaigns, and
- services including legal aid, refuges, counselling and rehabilitation.

The 153 Family Violence Recommendations of the VLRC review can be found in clear language and in summary form on the Commission's website:

www.lawreform.vic.gov.au

Annie Woodger took up the story from the point where the VLRC review delivered its report to the Victorian government. She was the Senior Legal Policy Officer at the Department of Justice whose team was given the task of analysing the seventy-plus recommendations for legislative change with all their cost and consultation implications, necessary approvals and drafting, more consultations, re-drafting and cabinet approvals before passage of the Bill through parliament, amid preparations for its use in the legal system.

Annie highlighted the improvements of the *Family Violence Protection Act 2008* over the *Crimes (Family Violence) Act 1987* it replaces. It enhances the existing intervention order system, and it applies only to family violence, not stalking.

There is new terminology for those using the Act – applicant, respondent, affected family member (AFM) or protected person (PP) – and for the enhanced intervention orders themselves – Family Violence Intervention Orders (FVIOs).

Among the improvements is the existence of a Preamble which sets out for the Act a less mechanistic guiding purpose and its underpinning principles.

The definition of family member has broadened to include family-like

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relationships, Aboriginal and Torres Strait Islander relatives by tradition or social practice, intimate personal relationships and children, as well as associates, and carers providing support.

Family violence is also more broadly defined to include economic abuse, emotional or psychological abuse (including behaviour that is offensive to *that* person), behaviour that is threatening, dominating, coercive, or causing fear for self or another, abuse of pets. Family violence against children has also broadened to include hearing or witnessing family violence or being exposed to its effects, recognising its long term harm to children themselves.

Police powers in the Act are expanded from existing holding powers to the issuing of new on-the-spot Family Violence Safety Notices out of hours, like interim intervention orders, providing continuity of protection from an incident onwards to the serving of a final order (or its refusal). Police can apply for a limited order without the consent of the victim, and can direct surrender of weapons and use additional search powers.

There is a new dimension to FVIOs in that a court must consider excluding the respondent from a shared home, depending on the circumstances of the protected person and to avoid disruption to any children. There are conditions here such as the respondent being an adult, and the protected person not opposing the exclusion. Conditions can be made for property to remain with, or be returned to the protected person so that normal life can continue more readily.

Special conditions about children stipulate that courts must enquire about Family Law Act (FLA) orders and that such orders have to be changed to fit in with FVIOs. Courts

must decide if contact with a respondent is safe for children. And if it is, arrangements for contact and hand-over have to be in writing and worked out to maximise safety.

Evidence presented can take any form acceptable to courts. Expert evidence can be heard about the characteristics of family violence, but has to come from those with qualifications in family violence. Cross examination of the AFM by the respondent is no longer allowed as a rule. Victoria Legal Aid can provide representation but if it is refused there is no cross examination, and if the respondent is represented the AFM must be too.

Court proceedings allow for several forms of support and safety precautions for AFMs. If someone uses the court system to harass a victim they can be declared a vexatious litigant. And finally, where a respondent is excluded in a tenancy situation, the protected person can be assisted to take over the lease of the home under certain circumstances.

Annie made special mention of the quality and usefulness of consultations with the family violence field in suggesting solutions to many problems; she hoped the Act would make clients and their children safer.

Sarah Vessali, a family law practitioner, formerly of the Women's Legal Service, spoke about the possible applications of the Act based on her experiences of the previous one in the courts. This one, she was pleased to note, looked like a real Act, and one she thinks lawyers will read. The first thing to remember however was that for all its positive changes it still required going through a legal process.

The inclusion of the Preamble was a significant improvement, to set the policy context for the Act. Its key principles, its

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purpose, and the research underlying it would be useful for magistrates and lawyers to refer to, assisting interpretation.

Sarah drew attention to the extended definitions of family violence making explicit emotional, sexual, and pet abuse. She expanded on economic abuse with its useful emphasis on coercive, deceptive control of a person without their consent, and withholding of necessary financial support.

All these need further thought as to what kinds of evidence could be brought to court to support applications. And in economic abuse there is the reference to 'unreasonably controlling' another person for which objective tests can be applied, while there are also specific examples in the Act. Something like economic abuse will probably not be the basis for an order by itself, but be a factor with other forms of abuse.

Exposing children to the effects of family violence was a welcome addition, broader than witnessing violence and might even cover things like comforting someone after violence or cleaning up a site where it occurred. Expanded definitions of family member and the possibility of including associates of both respondents and protected persons in orders, if they commit or suffer family violence could make for interesting arguments in court.

With the possibility of a Family Violence Safety Notice (FVSN), clients will need to be clear what orders they have got and have copies of them, as an FVSN can be issued by police whether or not the victim wants it. Property is still the business of the Family Law Act, but allowing a respondent to pick up property could keep the lawyers arguing. Having regard to the circumstances of the respondent

when considering excluding that person from the shared home will no doubt mean considering accommodation for them. Being asked whether or not she opposes exclusion will put the AFM on the spot.

Clients will also have to think about the issue of contact in applying for an order, because there are many new requirements in the Act for the court to protect the safety of children, and lawyers will be finding ways to circumvent them. Clients will need to bring to court any family law orders they have.

Sarah made some further speculations about the possible implications of changes in details for clients and their lawyers and support workers both before and after orders are made. It remains to be seen how they work out but the basics are important and still the same. She noted that aiding and abetting a breach of an intervention order was no longer an offence under the Act. A comparison of the two Acts will soon be available on the Department of Justice website: www.justice.vic.gov.au

Questions to the panel touched on the training of police to issue FVSNs sensitively and appropriately, the safety of family violence support workers going to court and their possible protection as associates of the AFM, child protection workers applying on behalf of children (with consent of parent and leave of court), gender neutral language of the Act itself, the added empowerment of victims under this Act to have the final say about aspects of orders applied for by police on their behalf, the inclusion of carers, paid or unpaid, the provision of emergency accommodation funds for respondents excluded from home, the intersection of child protection and family violence orders, the potential blow-out in demands for Legal Aid, the prioritisation of family violence cases in

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rural court circuits, and the collection of better data, particularly concerning women with disabilities, in future anticipated improvements.

Further Information

There will be a public information campaign around the new Family Violence Protection Act 2008. You can find information about this campaign at: www.familyviolence.vic.gov.au

Copies of the Family Violence Protection Act 2008 are available from www.legislation.vic.gov.au/ or can be obtained by phoning Information Victoria on 1300 366 356.

A Family Violence Death Review has also been announced for Victoria as recommended by the VLRC. The Department of Justice website: www.justice.vic.gov.au has information about

this and about the courts, legal processes, applying for intervention orders, and details of differences between the CFVA 1987 and the FVPA 2008.

Other government information sites which may be useful are:

www.women.vic.gov.au

www.cyf.vic.gov.au/family-violence-sexual-assault

www.housing.vic.gov.au/housing-sector-development/targeted-initiatives/family-and-domestic-violence

The Victorian Women with Disabilities Network report *Building the Evidence* analyses the extent to which current Victorian family violence policy and practice recognises and provides for women with disabilities who experience violence. See www.whv.org.au/vwdn/violence

Leadership and Women with Disabilities: Capacity Building in Violence Prevention

Over many years, DVRC has worked with, and been inspired by, women willing to speak out in various ways on behalf of other women. In our training, publications, forums, and on our websites DVRC has drawn upon the voices of survivors. Women with disabilities have been amongst those who have participated in working groups, told their stories, co-facilitated workshops, given talks, and presented research.

The influence of women with disabilities who speak out can be very powerful. Recent experiences delivering training around disability and family violence however, and difficulty finding women with disabilities with the experience and confidence to be co-facilitators, has led the organisation to consider mentoring more women along this path.

We are very excited therefore to have received a WESNET Capacity Building Grant, and have now undertaken a new project – Leadership and Women with Disabilities: Capacity Building in Violence Prevention. This innovative project aims to recruit women with disabilities who have an interest in violence prevention, and provide them with training, support, encouragement, advice and resources to enhance their existing skills and abilities. This project aims to strengthen the voice of women with disabilities in violence prevention.

If you are interested in participating in this project please contact Chris Jennings at DVRC on 03) 9486 9699 or by email vwdp@dvrcv.org.au