

Family violence and sexual assault

Aspects of a new report in Victoria on law reform

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On 1 March this year, the Victorian Law Reform Commission released its final report on the legal response to family violence in Victoria. The Commission's task was to review Victoria's civil intervention order system, which allows an individual to obtain protection from family violence through the courts, and has not been reviewed since its inception in 1987. The report's 153 recommendations cover all aspects of the justice system's response to family violence. Of particular interest to those working in the sexual assault field are the report's recommendations on sexual assault and family violence, including a call to explicitly mention sexual assault in definitions of family violence, so that this form of violence may receive a more effective legal response.

Background to the report

Intervention orders' are Victoria's version of 'restraining orders' or 'apprehended violence orders'. An individual can apply to obtain an intervention order in the Magistrates' court to receive protection from a violent family member. If the order is granted, it will be 'served' on the violent person. The order will contain various conditions, such as the requirement that the person using family violence stay a certain distance away from the person who has experienced the violence. If any of these conditions are 'breached', then the person using family violence has committed a criminal offence and can be arrested.

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Intervention orders were introduced in Victoria in 1987 as a way for women to be able to take the law into their own hands when they experience violence, rather than waiting for the police to provide a criminal response. Some have argued that they represent a 'de-criminalisation' of the justice system's response to family violence, while others – including the Victorian Law Reform Commission (VLRC) – state that they are an important part of the overall justice system's response to family violence. Overall, however, it was felt that the intervention order system was not providing sufficient protection for victims of family violence, prompting the Victorian Government's request for this report.

What are the report's main recommendations?

The VLRC argued that the following should occur:

- A new definition of 'family violence' should be adopted that makes it clear what range of behaviours constitutes family violence.
- A definition of 'family member' should be adopted that covers all family relationships, includes diverse family relationships of those in marginalised communities, and includes the relationship between a person and their carer (even if the carer is not a family member).
- Clear aims and principles for the legislation should be constructed, to make it clear to all who use it (including magistrates and lawyers) that its first and foremost aim is to ensure the safety of people who experience family violence.
- Implementation of the new Victorian Police Code of Practice in relation to family violence is supported, with particular emphasis on the need for police to respond to breaches of intervention

orders in order for the system to be effective. This is in response to calls that intervention orders are 'not worth the paper they are written on' if police do not respond to a breach of an intervention order's conditions.

- A review of the 'after-hours' response to family violence by the Magistrates' Court should occur.
- Further specialisation of the legal response to family violence is needed. For example, a specialist list in the Magistrates' Court for family violence matters, a specialist police prosecution unit, funding for community legal centres for provide legal advice and legal representation to applicants in intervention orders.
- Greater use of 'exclusion orders' is needed, which are intervention orders with a condition that excludes a violent family member from the family home, allowing the person who has experienced the violence to remain.
- Greater court safety and accessibility is also needed. For example, improving physical safety measures at court; measures to make it easier for applicants to give evidence in court.
- The access of Indigenous women, immigrant women and women with disabilities to the justice system needs to be improved. For example, through increased support for specialist community agencies serving these women, and through improving the access to and quality of court interpreters.
- Young people need better protection. For example, in addition to children who are direct victims of family violence, children who have heard, witnessed or otherwise been exposed to family violence should be protected by the intervention order system. Also, the report recommends that when an order is made to protect a child, the court must make it clear that it prevails over a Family Court order and does not allow child contact.

If the report's recommendations are implemented, this will constitute a major overhaul and improvement of the current intervention order system in Victoria, a move welcomed by Victorian women's groups and many others working in the sector.


What does the report say about sexual assault by family members?

Sexual assault is mostly dealt with in the report through recommending greater and more explicit recognition of sexual assault as one form of family violence.

Sexual assault is still an under-recognised form of family violence

Quoting ACSSA Issues Paper 1, *Just keeping the peace: A reluctance to respond to male partner violence*, by Melanie Heenan, the report points out that sexual forms of family violence are still unrecognised forms of family violence, and that there is still relatively little research on sexual violence by intimate partners. The report points out that, even when other violence has been disclosed, victim/survivors of multiple forms of family violence find that sexual forms of family violence are particularly difficult to talk about. Sexual assault and family violence service providers are often separated, making it difficult for service providers to recognise and respond adequately to the needs of women who experience sexual forms of family violence.

The report quotes the Community Attitudes Study conducted in Australia in 1995, which showed that few respondents spontaneously identified sexual assault as an element of domestic violence. Verbal, emotional, psychological forms of family violence, all also still under-recognised by the community, were still recognised to a greater extent in this study than sexual forms of family violence. Yet, despite this, victim/survivors of family violence report that this form of family violence can be the most damaging. The report makes excellent use of accounts of victim/survivors of their own experiences of family violence, integrating these voices to form the basis of their recommendations for law reform.



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Current family violence laws in Australian states and territories under-recognise sexual forms of family violence

The authors of the report found that current legislation in Australian states and territories mimics dominant community attitudes that under-recognise sexual assault as a form of family violence. Tasmania is the only state in Australia that explicitly mentions sexual forms of family violence in its legislation. Tasmanian legislation defines 'family violence as assault, including sexual assault'. New Zealand legislation also includes sexual abuse in its definition of family violence.

There needs to be specific reference to sexual forms of family violence in the legal definition of family violence

The report argues that explicitly including sexual violence in the definition of 'family violence' in Victoria would help victims/survivors of sexual forms of family violence be protected by this legislation. Overall, the report recommends a new definition of family violence, which recognises all forms of family violence, including specific mention of sexual assault and other sexually coercive behaviour. It

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argues that including sexual forms of family violence in the definition would serve two main purposes. Firstly, it would make it clear to victim/survivors of family violence that they do not have to endure sexual assault within family relationships (including marriage), that it is not considered acceptable in the laws of our society, and that legal protection is available. Secondly, specifically mentioning sexual assault could educate the legal community (magistrates, judges, lawyers) and the wider community that sexual violence within family relationships occurs, and is unacceptable. Overall, the report recommends that sexual assault and other forms of sexually coercive behaviour be included in a new legislative definition of family violence.

Where to from here?

Since the launch of this report on 1 March 2006 in Melbourne, and its tabling in the State Parliament of Victoria, the State Government's Department of Justice has been working on its response to the report's recommendations, including the suggestions for expanding the definition of family violence to sexual assault. The Victorian Government has publicly committed in its policy 'A fairer Victoria' to an 'exposure draft' of the new legislation in 2006, which would allow further public comment on the matter.

If you would like a copy of the report, *Review of family violence laws: Report*, contact the Victorian Law Reform Commission. Phone: (03) 8619 8619. Email: law.reform@lawreform.vic.gov.au. The report is also available online at: www.lawreform.vic.gov.au.

Publish in ACSSA Aware

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