A busy law reform agenda sees the Australian Government close to announcing far-reaching family law reforms, and a number of states overhauling laws relating to domestic violence.

See previous editions of *Family Matters* (Caruana 2003, 2004) for a summary of the federal family law reform process to date.

Changes to federal family law and state domestic violence legislation

Catherine Caruana

The year 2005 marks 30 years since the proclamation of the *Family Law Act* 1975. The anniversary falls on the cusp of significant changes, not so much to the Act itself but rather to the family law system as a whole that has evolved since the Act commenced operation on 5 January 1976.

What follows is a progress report on the current batch of reforms emerging from the *Every Picture Tells a Story* report (Commonwealth 2003), and an outline of some recent developments in state domestic violence legislation.

Family law reforms

The Australian Government's community consultation process on the proposed reforms drew to a close on 14 January 2005, with the receipt of more than 400 submissions. It is anticipated that the Government will announce its final package of reforms in the near future, with legislation likely to be introduced later in 2005. A public education program of some kind is proposed to help explain the changes to the law.

As foreshadowed in the Government discussion paper released last year (Commonwealth 2004), the proposed legislation is likely to include changes to the substantive law seeking to promote shared parenting and shared responsibility for children, procedural reforms relating to the conduct of cases involving children (modelled in part on the Family Court's Children's Cases Program), and amendments introducing compulsory pre-filing mediation.

The characteristics of the Children's Cases Program, an initiative of the previous Chief Justice of the Family Court, are an important component of the reform package. Although currently confined to the Sydney and Parramatta Registries, it is planned that this less adversarial and lawyer-driven approach will eventually become standard (and compulsory) procedure in all cases involving children's issues. If so, legislative changes relating to the rules of evidence in these matters will be required. Early indicators from an evaluation of the pilot, which is currently underway, are encouraging, suggesting a higher settlement rate and shorter hearings.

The proposed roll-out of the much anticipated Family Relationship Centres will be announced shortly and the registries of the Federal Magistrates' Court and the Family Court will be combined into one. It is hoped that the gate-keeping function of both the combined registry and the nationally badged Family Relationship Centres, will go a long way towards streamlining entry into the family law system and ensuring more appropriate screening and referral of matters to appropriate services.

Under the Government's proposals, participation in primary dispute resolution processes, such as mediation and conciliation, will be a pre-requisite to initiating court action for parenting matters, with some exceptions.

In other proposed amendments to the *Family Law Act* 1975, provision will be made to allow for recovery in the Family Court of child maintenance paid or property transferred as capitalised child maintenance by a person who has subsequently, through DNA testing, been found not to be the parent of a child. These amendments follow on the heels of the recent paternity fraud case of *Magill v Magill [2005] VSCA 51*. In that case the Victorian Supreme Court allowed an appeal against a county court award of $70,000 (consisting of damages and reimbursement for child support paid) to Mr Magill, two of whose three children were subsequently found to have been fathered by another man. The matter is to be reconsidered on appeal.

New domestic violence measures

In the recent past there have been a number of significant changes to state domestic violence legislation, in particular in Tasmania, Western Australia, Victoria and New South Wales. Following is a summary of some of the major changes to the law in these states.

Tasmania

New family violence legislation which came into effect in Tasmania on 30 March 2005 forms part of a package of far-reaching reforms representing a complete overhaul of policy and service responses to violence in the home. The *Family Violence Act* 2004 incorporates most of the recommendations outlined in the Options Paper, *Safe at Home: A Criminal Justice Framework for Responding to Family Violence in Tasmania* (2003). The stated aim of the strategy is to create a "pro-arrest, pro-charge, pro-prosecution response to family violence in Tasmania" (Tasmanian Government 2003: 4).

The legislation is unique in Australia in that it introduces both economic abuse and emotional abuse and intimidation as criminal offences and as grounds for obtaining restraint orders. The Act creates a presumption against bail for alleged perpetrators, requiring the decision-maker to consider the likely effect of release on the safety, well-being and interests of the victim or affected child. The premise of the strategy is that the safety of victims is a primary concern, and that where possible, they should have the choice of remaining in the family home.

Penalties for breaches of orders have been increased and a breach that exposes a child to violence will be considered an aggravating factor in sentencing. Police will be mandated to notify the Child Protection services of any children present during an incident of family violence and considered at risk. Tasmanian statistics indicate that children are present in 40 per cent of incidents attended by police (Little 2005).

Other initiatives which form part of this integrated response system include a 24-hour police crisis line, the development of specially trained police Victim Safety Response Teams, the introduction of police "risk assessments" and "safety audits", court support and victim liaison services, a child witness program, and perpetrator intervention programs.

Early indicators of the impact of the policy changes made to date paint a dramatic picture: the number of family violence reports in January and February 2005 are approximately 40 per cent higher than for the same time last year; the number of arrests for family violence have increased 136 per cent in the period from January 2004 to January 2005; and there has been an increase of 77 per cent in restraint orders issued in the three months prior to February 2005 than in the same period 12 months previously (Little 2005).

Western Australia

Amendments to the Western Australian *Restraining Orders Act* 1997 came into effect on 1 December 2004. The decision to amend the Act, one of two pieces of legislation containing domestic violence provisions, rather than creating separate and consolidated domestic violence legislation, leaves Western Australia as the only state/territory without a discrete domestic violence act.

The Western Australian amendments broaden the definition of "family and domestic relationship" and the grounds on which an order can be made. As in Tasmania, the Act now includes the new ground of "ongoing emotionally abusive behaviour" and allows for an order to be obtained to protect a child from exposure to domestic violence. It is no longer necessary to prove that it is likely that a person will be directly violent towards a child.

The Act provides for expanded police powers to enter premises to investigate an incident of alleged violence and in certain circumstances, they are obliged to apply for an order. Police can issue on-the-spot, temporary restraining orders and can represent applicants in proceedings. The Act contains similar provisions to the Tasmanian legislation relating to increased penalties.

Victoria

In Victoria, the *Crimes (Family Violence) Act* 1987 was amended by the *Magistrate's Court (Family Violence) Act* 2005 on 1 April 2005. As in Western Australian and Tasmania, the act now includes an additional ground for obtaining an intervention order for a child where the child has heard or witnessed family violence and such exposure is likely to occur again. The court is required to make enquiries about the presence of children when making an intervention order and, of their own motion, can include a child on that order, or make a separate protection order for the child if there are grounds to do so. Other changes relate to the provision of evidence in interim and final hearings, including restrictions on the use of children as witnesses.

The review of the *Crimes (Family Violence) Act* 1987 by the Victorian Law Reform Commission, which is currently underway, is likely to result in more reforms in this jurisdiction.

The new legislation also amends the *Magistrates' Court Act* 1989 to establish a specialist Family Violence Court Division, which will pilot at Ballarat and Heidelberg Magistrates' Court from June 2005. Like the Magellan and Columbus models in the Family Courts, the pilot aims to develop a more integrated and specialist jurisdiction in this high-needs area.

New South Wales

Plans are also underway for the establishment of two specialist domestic violence courts in New South Wales aimed at improving responses to domestic violence at each stage of the criminal justice system.

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