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Domestic violence related laws – Then and now

Seminar presenters from left to right: Raquel Aldunate, Dr Rae Kaspiew, Zoe Rathus AM and Professor Heather Douglas

Recent and impending reforms to domestic and family violence related laws

Navigating changes to the child protection system

Veterinary forensics – What's behind animal cruelty?

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Director's message

Queensland's new *Domestic and Family Violence Protection Act 2012* came into effect on the 17th September, having been passed by Parliament in February 2012. Here, I signal some of the Act's key features and introduce a project to support domestic violence counsellors and court assistance workers assisting clients with applications under the Act.

The *Domestic and Family Violence Protection Act 2012* addresses some of the major concerns raised by workers in the domestic and family violence sector and based on the knowledge gained from 20 years' experience with civil domestic violence laws in Queensland. It also provides a preamble signalling that domestic violence is a human rights issue and relevant to a number of United Nations instruments to which Australia is a signatory.

The provisions of the *Domestic and Family Violence Protection Act 2012* apply to people who are, or were: married; in a de facto relationship; engaged or betrothed to be married; the parents of a child; or a couple, whether or not they are the same sex/gender. It also covers current or former: family relationships (people who are, or were, relatives by blood, marriage or mutual recognition under cultural practice); and informal care relationships, where one party provides assistance required by the other for daily living and the care is not provided through a formal, commercial arrangement. The main difference in regard to relationships covered is that only the biological parents of a child were previously included in the scope of the legislation and this has been extended to people who are, or were, the parents of a child (excluding those, such as foster parents, who are temporarily standing in as parents).

Among the most significant provisions, however, are those that:

- construct the Act as a set of provisions to be interpreted, and applied, within the context of a clear set of objectives and a list of guiding principles;
- seek to substantially reduce (if not eliminate) cross-applications and cross-orders;
- require magistrates to consider the inclusion of children on domestic violence orders and to consider using their powers under the Family Law Act 1975 to enhance safety for victims and children; and
- provide for immediate protection through police issued notices.

The principles in the Act explicitly state that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, is paramount; and perpetrators are to be held accountable.

Domestic violence is defined in the Act as behaviour which is physically, sexually, emotionally, psychologically or economically abusive, threatening or coercive; or in any other way controls or dominates the victim and causes them to fear for their, or some-one else's, safety and wellbeing. The inclusion of coercion, domination and control responds to the need to better articulate domestic violence as an ongoing pattern of domination and control, distinguishing it from discrete, conflict based disputes. It is worth noting, however, that coercion, and domination and control, are among a list of abusive behaviours, rather than situated as an overarching context for behaviours constituting domestic violence. The definition of domestic violence in the *Domestic and Family Violence Protection Act 2012* is, therefore, inconsistent with the definition recommended by the Australian and NSW Law Reform Commissions in their 2010 report Family Violence - A National Legal Response, and adopted in the *Family Law Act 1975* (as amended in 2011).

CDFVR is currently working with a community-based reference group to develop a Smartphone application (app) to support domestic violence counsellors and court assistant workers in their work. The app will enable domestic violence counsellors and court assistant workers to quickly search a prose version of the *Domestic and Family Violence Protection Act 2012*, a set of frequently asked questions about the Act, and a glossary of relevant terms. The app will be available for smartphones and tablets, enabling counsellors and court assistant workers to provide timely and accessible information and support to clients at court, or in a counselling or crisis intervention situation. The app will include a disclaimer to the effect that it is intended for use by appropriately qualified service providers and is not a substitute for legal advice and/or support from a specialised domestic and family violence support service.

Inside this issue

Centre News

Strong women-Hard yarns

CDFVR is proud to announce that the Strong women–Hard yarns resource has now been launched, both at the Violence Against Women conference in Brisbane and at the Social and Emotional Well Being Unit of the Aboriginal and Torres Strait Islander Community Health Service in Mackay. This 40-page A-5 sized booklet has been designed specifically for Aboriginal and Torres Strait Islander young women, middle aged women and older women. It contains real life stories of women's experiences of domestic and family violence, as well as providing helpful information and examples of the type of services that are available in Queensland for Aboriginal and Torres Strait Islander women. CDFVR would like to thank both their local and state-wide Aboriginal and Torres Strait Islander reference groups for their support and advice in the development of this resource. Orders can be placed at: www.noviolence.com.au/resourceorders/resourceorderform.html or by accessing the 'resources' link at: www.noviolence.com.au

Left to right - Roz Roddenby, Aunty Maud Corowa and Rata Mills at the Mackay launch of the resource.

Fact sheets for services who work with men who use violence

In response to requests from service providers CDFVR has adapted the Babies and Toddlers, Children 4-12 years and Young People fact sheets to create an additional suite of resources that are relevant to male perpetrators of domestic and family violence. These fact sheets are designed to provide fathers with an insight into the impact their abusive behaviour may be having on their child or family. They provide information to enable fathers to play a positive role in their children's lives. Copies of these fact sheets can be ordered at http://www.noviolence.com.au/resourceorders/resourceorderform.html or by accessing the 'resources' link at www.noviolence.com.au until October 15 and will be distributed in early November.

Family violence and family law parenting matters: the 2012 family law reforms

by Dr Rae Kaspiew#

1. Introduction

On June 7, 2012, a set of legislative amendments intended to place greater emphasis on ensuring children are protected from harm in family law parenting matters came into effect. The amendments changed the law applying to parenting disputes under the Family Law Act 1975 (Cth) (FLA),[1] in response to three reports indicating a need for improvements in the way that the family law system deals with family violence.[2] The three reports are:

- Australian Institute of Family Studies Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009),
- Family Courts Violence Review (Chisholm, 2009)
- Improving Responses to Family Violence in the Family Law System report (Family Law Council, 2009)

This article summarises key legislative changes and discusses empirical findings from the evaluation of the 2006 family law reforms and associated research on family violence and child safety.

2. The legislative changes

Central to the legislative changes that came into effect this year are an expanded definition of family violence, a new definition of child abuse and a series of provisions that are intended to emphasise protection from harm (over the child's right to a meaningful relationship with each parent after separation where there is a conflict) and to support better identification of cases where family violence and child safety are of concern.

2.1 New definitions

The definition of family violence responds to recommendations of the Australian Law Reform Commission[3] and replaces the previous definition, which the Family Law Council observed resembled the 'common law definition of assault',[4] with a wider definition that recognises that a range of behaviours, not just physical violence, may amount to family violence. The new definition is:

'[F]or the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful (FLA s4AB(1))'.

The definition is accompanied by a non-exhaustive list of examples, such as assault, repeated derogatory taunts, property damage, withholding financial support and isolation from family, friends or culture.

In relation to child abuse and neglect, the FLA previously applied the relevant definition from each state or territory. Now, the Act has its own definition, which refers to physical abuse; sexual abuse; psychological harm, including that caused by exposure to family violence; and neglect of a child. A child is exposed to family violence 'if the child sees or hears family violence or otherwise experiences the effects of family violence' (FLA s4AB(3)).

Dr Rae Kaspiew, Australian Institute of Family Studies.

2.2 Prioritising protection from harm

In 2009, Professor Richard Chisholm highlighted what he referred to as a 'tension' in the parenting provisions of the FLA, which was based on two key principles stated to be the 'primary considerations'.[5] These principles are the 'benefit to the child of a meaningful relationship' (FLA s60CC(2)(a)) with each parent after separation; and the child's need 'to be protected from harm' from exposure to abuse, neglect and family violence (FLA s60CC(2)(b)). Chisholm argued that the legislation provided no guidance as to how 'the apparent conflict between the two 'primary' considerations is to be resolved in situations where providing for a 'meaningful relationship' with a parent might expose the child to the risk of violence'.[6] The amendments address this issue by retaining both principles but specifying that where they conflict, greater emphasis is to be given to the need to protect children from harm.

In order to ensure that protection from harm is not only given greater weight in litigated matters, but also in cases negotiated by consent, the amendments have changed the obligations of 'advisors'[7] under the Act. Advisors remain obligated to advise parents to enter into a parenting plan and consider whether equal or substantial and significant time may be in their children's best interests. Now, they are also obliged to tell parents that parenting arrangements should be in a child's best interests, allow them to have a meaningful relationship with each parent and protect them from harm. This advice should also prioritise protecting children from harm where a conflict arises.

2.3 Supporting disclosure

Two aspects of the legislation that discouraged concerns about family violence and child safety being raised when parenting arrangements were being made have been repealed. These are the provisions obligating courts to make costs orders

against a party found to have 'knowingly made a false statement' in court proceedings, and the so-called 'friendly parent provision' that directed the attention of courts to the extent to which a parent had facilitated a child's relationship with the other parent.

New provisions also oblige courts to ask about a history of family violence and any concerns about child safety. Parallel obligations are imposed on parties to disclose involvement of child welfare authorities with the child subject to proceedings under the FLA or another child in the family.

3. Empirical evidence

Findings from the evaluation of the 2006 family law reforms[8] and associated longitudinal research[9] have established the prevalence of family violence and child safety concerns among separated families and highlighted how 'the system has some way to go in being able to respond effectively to these issues'.[10] This section presents a selection of relevant findings.[11]

A history of family violence is more common than not among separated families, with 65% of mothers and 53% of fathers reporting either physical hurt before separation (26% of mothers and 17% of fathers) or emotional abuse before or during separation (64% of mothers and 52% of fathers) (LSSF wave 1 – parents were interviewed some 15 months after separation).[12]

In LSSF wave 2, (in which 70% of parents were re-interviewed some 28 months after separation), 4–5% of mothers and fathers reported experiencing physical hurt at the hands of the former partner in the previous 12 months, with 53% of mothers and 45% of fathers reporting emotional abuse in the same time frame.[13] The parents who reported physical hurt in the preceding twelve months were asked if their children had witnessed violence or abuse in this timeframe: 81% of fathers and 79% of mothers said yes.[14]

In addition, in LSSF wave 1, 21% of mothers and 17% of fathers reported holding safety concerns for their children and/or themselves as a result of the child's ongoing contact with the other parent. By LSSF wave 2, a similar proportion of the sample reported holding safety concerns, with a core group of 10% holding the concerns through both LSSF waves.[15] For 10% of parents, concerns held in wave 1 had dissipated by wave 2 while newly arising concerns were reported by 7% of parents in wave 2.[16]

In LSSF wave 1, parents with shared care-time arrangements were as likely, and in some instances, more likely to report the experience of family violence than parents with other arrangements. For example, 70% of mothers with shared care-time reported having experienced physical or emotional abuse compared, with 64% of mothers who cared for their child for 66-99% of nights.[17]

Disclaimer: anyone requiring legal advice on their personal family situation should consult a legal practitioner. In the first instance, you may wish to contact Family Relationships Advice Line which has a legal advice component on 1800 050 321.

[#] Senior Research Fellow at the Australian Institute of Family Studies. This article is a summary of a presentation delivered at the Queensland Centre for Domestic and Family Violence Research's seminar: *Domestic violence related laws - Then and now*, held at the Brisbane State Library on August 3, 2012.

[1] The amending legislation is called the *Family Law Legislation Amendment (Family Violence and Other Matters)* Act 2011 (Cth).

[2] Parliament of the Commonwealth of Australia, House of Representatives (2010-2011), Family Law Legislation Amendment (Family Violence and Other Measures) Bill 211: Explanatory Memorandum.

[3] Australian Law Reform Commission and NSW Law Reform Commission, 2010. *Family Violence A National Legal Response,* Commonwealth of Australia: Sydney

[4] Family Law Council 2009 p 24.

[5] Chisholm, R., 2009. *Family Courts Violence Review*. Attorney General's Department, Canberra.

[6] Ibid, 98.

[7] A wide range of professionals who assist parents after separation, including family counsellors, lawyers, family consultants and family dispute resolution practitioners.

[8] Kaspiew, R, Gray, M, Weston, R, Moloney, L, Hand, K, Qu L and the Family Law Evaluation Team (2009) *Evaluation of the 2006 family law reforms,* Melbourne: Australian Institute of Family Studies. The following findings are from Waves 1 and 2 of the Longitudinal Survey of Separated Families (LSSF). Wave one was based on a sample of 10,000 parents who registered on the Child Support Agency database in 2007 and were interviewed between August and October 2008.

[9] Qu, L and Weston R, (2010) *Parenting dynamics after separation: a follow up study of parents who separated after the 2006 family law reforms*, Melbourne: Australian Institute of Family Studies

[10] Kaspiew, R, Gray, M, Weston, R, Moloney, L, Hand, K, Qu L and the Family Law Evaluation Team (2009) *Evaluation of the 2006 family law reforms*, Melbourne: Australian Institute of Family Studies, p 364.

[11] It draws on Kaspiew R, and Weston, R, (2011) AIFS *Supplementary submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.*

[12] Kaspiew et al 2009, p25-26.

[13] Qu and Weston 2010, p19-20.

[14] Ibid p22.

[15] Ibid p25-26.

[16] Ibid.

[17] Kaspiew et al 2009 Figure 7.30.

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Kaspiew R, Gray, M, Weston, R, Moloney, L, Hand, K, Qu L and the Family Law Evaluation Team, (2010) Family violence: key findings from the Evaluation of the 2006 family law reforms, *Family Matters* No 85, 38.

Kaspiew R, and Weston, R, (2011) AIFS *Supplementary submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011,* Melbourne.

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Under the microscope again: Family violence provisions in Australian migration law

By Raquel Aldunate[#]

Access to justice and equality before the law are important principles underpinning any notion of fairness in the legal system of a democratic country such as Australia. It is these principles which saw the introduction of the domestic violence provisions (the fore-runner of the current family violence[1] provisions) into Australian migration law in 1991.

The provisions are intended to protect people (the vast majority of whom are women) sponsored by a partner for permanent residence in Australia, or included in their partner's permanent resident application, and they are being subjected to violence by that partner. The power imbalance which is fundamental to an abusive relationship is often characterised in the immigration context by statements from abusive partners along the lines of "I am an Australian citizen/permanent resident and I can get you Australian permanent residence but without me you can't have it" (i.e. 'I have control over you').

Lobbying by immigrant women's services and others led to the introduction of the domestic violence provisions in migration law to protect women who were either forced to leave the abusive relationship, thereby losing their access to permanent residence; or remaining in the abusive relationship and being subjected to continued domestic violence. Leaving the relationship and returning to their home country often meant returning with nothing; no money, no home to return to, no job to go back to, and in some cases being faced with shame, blame, and social isolation by family and community and even physical harm, in their home country. Even when an abused woman left the relationship, the man often simply sponsored another and when she left, he sponsored another, and so on. This practice became known as 'serial sponsorship'. A sponsor is now limited to only two overseas sponsored partners and the sponsorships must be five years apart; although this limitation may be waived in exceptional circumstances.

The proportion of visa applications involving claims of family violence is very small. Only 2.4% (1,023) of the 41,994 partner visas granted in 2011-2012 involved family violence claims.[2] Yet, the family violence provisions, controversial since their introduction in 1991, have often been under the microscope. There have been at least five previous reviews and a further review is currently underway.

The current legislation

The migration legislation requires that an applicant for a permanent partner visa must be in a genuine, continuing and exclusive relationship with their sponsoring spouse when an application for, and a decision on, a visa is made. If the relationship breaks down before the application is decided the visa will be refused as the applicant no longer meets the relevant criteria. However a visa can still be granted in certain circumstances. These include where the sponsoring Australian resident/citizen has died and the applicant has close ties to Australia; or the sponsoring partner has perpetrated family violence against the applicant or against a member of the applicant's family; or the applicant and their sponsoring partner both have ongoing legal responsibilities towards a child or children of the relationship. The latter is commonly referred to as the 'child of the relationship exception'.

Raquel Aldunate, Refugee and Immigration Legal Service, Inc. Qld

The family violence exception

To qualify for permanent residence under the family violence provisions the applicant must satisfy the definition of family violence, found in regulation 1.21, by providing evidence of family violence in a prescribed form, found in regulations 1.22 to 1.27. The violence, or part of the violence, must have occurred during the marriage or de facto relationship. Evidence to substantiate family violence is categorised as judicial, or non-judicial, evidence.

Judicial evidence refers to a restraining order or domestic violence protection order or injunction issued by a court against the sponsor; a conviction or finding of guilt against the perpetrator in respect of violence against the applicant or a member of the applicant's family; or a court injunction under the *Family Law Act 1975*. A temporary order or injunction is not permissible evidence, which is limited to court orders made only after the alleged perpetrator has been given reasonable opportunity to be heard, or to make submissions to the court on the matter.

Non-judicial evidence refers to a joint undertaking made before a court by the alleged victim and the alleged perpetrator (signed by the Magistrate); or a statutory declaration by the visa applicant (victim), or a person on behalf of the visa applicant (victim), which is supported by: either two statutory declarations by competent persons in different categories of profession; or one statutory declaration by a competent person and one police record of assault.

A 'competent person' is either: a registered medical practitioner; a registered psychologist; a registered nurse who is performing the duties of a registered nurse; a social worker who is a member, or eligible to be a member, of the Australian Association of Social Workers, and is performing the duties of a social worker; a person who is a family consultant under the *Family Law Act 1975*; the manager or coordinator of a women's refuge or a crisis and counselling service specialising in family violence; or a person with decision making responsibilities in a women's service or family violence counselling service that has a collective structure.

The law is very specific about the requirements of the statutory declarations from the visa applicant, and also from the competent persons, they must meet seven criteria. The legislation is set out in Division 1.5 of the Migration Regulations, Special Provisions Relating to Family Violence. The declarations must be worded in accordance with the legislation at regulation 1.26 and the definition of family violence at regulation 1.21. If these requirements are not satisfied, the visa application will fail, irrespective of whether the applicant suffered family violence.

In circumstances where the decision maker is dissatisfied with the non-judicial evidence, the matter may be referred to an 'independent expert' - a Centrelink social worker. The decision of the independent expert is final.

Australian Law Reform Commission (ALRC) review of Commonwealth laws

Following the release of the National Council's Plan for Australia to Reduce Violence Against Women and their Children, *Time for Action;* and consistent with its principle that 'no law, policy or practice should jeopardise the safety or well-being of women and their children', the Federal Attorney-General asked the ALRC to identify improvements required in commonwealth laws to safeguard those affected by family violence.

ALRC recommendations

The following is a list of the key recommendations of the ALRC (2011).

1. A common definition of family violence be adopted in all commonwealth, state and territory jurisdictions;
2. Targeted training regarding the nature, features and dynamics of family violence for Department of Immigration and Citizenship (DIAC) case officers and Centrelink independent experts;
3. A new visa subclass for victims of family violence who hold temporary visas because they are the spouse or de facto partner of a temporary visa holder;
4. Extension of the coverage of the family violence exception provisions to all onshore permanent visas;
5. A greater range of non-judicial evidence that can be considered by the visa decision maker;
6. Repeal of the prescriptive criteria for the statutory declarations;
7. Greater transparency and consistency in referrals to the independent expert;
8. Procedural fairness on the part of the independent expert (i.e. the applicant has the right to know any adverse information or assessment and is given the right to respond to it, before the independent expert makes their final report);
9. The totality of the evidence provided by a victim should be considered, taking into account the circumstances of the individual.

Impending changes to the family violence provisions in migration law

On 17 June this year the Minister for Immigration and Citizenship, Chris Bowen, and Minister for the Status of Women, Julie Collins, jointly announced they would be introducing amendments designed to improve the assessment of family violence in migration law.

The amendments include the provision of a wider range of evidence to support claims of family violence, as recommended by the ALRC. Minister Bowen acknowledged that the current process of obtaining statutory declarations, with a set of technical requirements, can be quite difficult for some victims, particularly those in rural or regional areas or those who do not speak English, and that it is both fair and sensible to allow victims to provide other forms of evidence where they exist.

Implementation of the amendments is scheduled for 24 November 2012. In the interim, DIAC will update policy guidelines to confirm that any evidence provided by applicants, in addition to the statutory declarations required under the existing legislation, should be considered.

The Ministers both saw it as unacceptable for women to face obstacles in leaving violent relationships and that they should receive the support and assistance they need. However they also state that 'to ensure the integrity of assessments, applicants will still need to provide a minimum standard of evidence'. To know exactly what the new regime will involve we will have to wait and see. There is nothing as yet to suggest that the Minister is considering implementing any of the other recommendations of the ALRC.

[#]Director, Refugee and Immigration Legal Service, Inc. Qld. This article is a summary of a presentation delivered at the Queensland Domestic and Family Violence Research's seminar: *Domestic violence related laws - Then and now*, held in Brisbane on August 3, 2012.

[1]In Commonwealth law 'family violence' is used instead of 'domestic violence'.

[2]DIAC Annual report 2011-2012

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Domestic violence law and criminal law: What hope for improved application of both?

by Professor Heather Douglas[#]

In their extensive 2010 report, Family Violence- A National Legal Response, the Australian Law Reform Commission and New South Wales Law Reform Commission (the Report)[1] devoted half of its chapters to a discussion about the role, implementation and concerns with policing and criminal justice interventions in the domestic violence context. Despite the myriad difficulties recognised in relation to the role of criminal justice responses in this sphere, the criminal law is still one of only a few legal alternatives that can be used to respond to domestic violence - so how to make the criminal law work fairly - or even work at all - for victims of domestic violence continues to puzzle many who work in this field. This short overview examines some of the chapters of the Report that focused on criminal justice and considers the Report recommendations in light of the Queensland situation.[2]

Chapter 9 of the Report recommended the introduction of police issued protection orders. The Report found that such orders could provide immediate protection to those at risk and that they could also operate as an application for a standard protection order.

> "Breach of a DVPO is an offence in Queensland, and new amendments ensure that breach of a Police Protection Notice is also an offence in Queensland."

There were a number of concerns recorded in the Report about the introduction of police orders. Concerns included that such orders should ideally be made by judicial officers, rather than police, who are able to hear both sides; that those in need of protection may not come to court and as a result may miss out on connecting with networks of support; that police will not explain the orders satisfactorily (setting people up to breach orders) and that police will be ill-equipped to identify primary aggressors. On the positive side the Report observed that police protection orders could provide a timely crisis response which did not require parties to attend court - with all the difficulties that may entail; police orders might provide a chance for perpetrators to 'cool-off' and may be particularly valuable for those in rural areas. Police issued orders have operated in many states in Australia without any clear problem and based on the Report's recommendations they have been introduced in Queensland. In Queensland Police Protection Notices can now be issued by a police officer who reasonably believes that the respondent has committed domestic violence; that there is no other protection order in place; that the notice is necessary or desirable and that it is not a situation where the respondent should be taken into custody.[3] A police officer requires the approval of a supervising officer and the order operates as an application for a protection order and must be heard in court within 28 days.[4]

Professor Heather Douglas, TC Beirne School of Law, University of Qld

One of the key differences to the interim order process, which previously operated in Queensland, is that police officers will have to select the party most in need of protection as Police Protection Notices will not be able to be issued against both parties involved in a domestic violence dispute.[5] This is important as many in the domestic violence sector have observed that there were increasing numbers of police applications for protection orders where applications were applied for by police on behalf of both parties (ie cross-applications) - a situation that leads to the reduced effectiveness of protection orders. It will be very important for police to have appropriate training so they are able to identify the person most in need of protection; a concern that was identified by the Report.

In chapter 11 of the Report it was recommended there should be power for the courts to make a protective order at any time during criminal proceedings. Queensland criminal courts have had the power under sentencing legislation to make non-contact orders for some time[6] and judicial officers can, on conviction of an offence involving domestic violence, also vary an existing order after hearing from the offender, prosecutor and aggrieved.[7] The Report also recommended that courts sentencing domestic violence offences should be able to take into account the conditions of the DVO and how long it has been in place. As a result of the broad discretion available to judicial officers in sentencing courts in Queensland this has been possible for some time.[8]

The ALRC discussed breaches of Domestic Violence Protection Orders (DVPOs) in chapter 12 of its Report. Breach of a DVPO is an offence in Queensland, and new amendments ensure that breach of a Police Protection Notice is also an

offence in Queensland.[9] While penalties for breach are quite high and may lead to a jail sentence, offences of breach of a DVPO or Police Protection Notice are only summary (or minor) offences. This results in the accused having a criminal record for summary breach offences which may minimise the seriousness of the behaviour underlying the breach. It is also the case that breaches of DVPOs usually result in fines,[10] a concern that was raised but not effectively addressed by the Report or subsequently in Queensland legislative reform. The Report accepted that prosecution authorities have a tendency to charge breach offences instead of substantive offences (such as assault and criminal damage) however there have been no amendments in Queensland that deal with this continuing concern. The Report recognised that in many cases both breach of a DVPO and assault or criminal damage could be charged and it recommended that prosecution guidelines should be amended to reflect this. So far this has not occurred in Queensland.

Some of the issues that contribute to a difficult fit between domestic violence and criminal prosecution are documented in chapter 13 of the Report. Issues include that criminal law focuses on discrete incidents while domestic violence reflects a course of conduct; while victims of domestic violence sometimes have good reason for delayed reporting of events, such delay can impact on the credibility of their evidence; the approach of many women is to blame their injuries on accident rather than domestic violence and this can lead to a lack of evidence in doctors' records and also that the neighbors' hearing of screams and the like is only considered to be weak corroborative evidence. While the ALRC suggested a range of possible responses to these concerns, including the introduction of an umbrella offence of domestic violence, legislating for family violence to be recognised as an aggravating feature of existing offences and the development of a course of conduct offence, ultimately none of these approaches was recommended or taken up in Queensland. The Report suggested that police should be encouraged, through guidelines, to use representative charges as a way of presenting a course of conduct.

> "Deterrence, both personal and general, is an important factor in sentencing in domestic violence cases. So too is denunciation."

Arguably this approach is sometimes being taken in Queensland and judges have allowed information that supports more serious offences to be put before the court in the prosecution of breach of DVPO matter. For example in Police v RTC, the judge commented: 'The fact that an assault or damage to property may have occurred whilst breaching the domestic violence order simply forms part of the narrative of the act of domestic violence constituting the breach …'[11] Accepting the full narrative of events in this way allowed the judge to sentence the breach in consideration of the underlying context of damage and assault. Finally, the Report also recommended better use of victim impact statements. Victim impact statements can not be presented in cases of breach of a DVPO in Queensland as they are limited to offences against the person (such as assault).[12] Perhaps it would be appropriate to allow the presentation of victim impact statements in breach offence cases both to help in the victim's recovery but also as a way of educating judicial officers about the broad effects of domestic violence. When domestic violence cases are heard in the criminal courts there is evidence to suggest that judges carefully consider victim impact statements when they are available and treat the matter seriously. For example in R v Major[13] the judge heard the contents of the victim impact statement and observed:

The dreadful effects of prolonged episodes of domestic violence are notorious. Deterrence, both personal and general, is an important factor in sentencing in domestic violence cases. So too is denunciation.

The community through the courts seeks sentences which show the public disapprobation of such conduct. The effects of domestic violence go beyond the trauma suffered by victims, survivors and their children to their extended families, and friends. Domestic violence also detrimentally affects the wider community, causing lost economic productivity and added financial strain to community funded social security and health systems.[14]

[#] Professor of Law, TC Beirne School of Law, University of Qld. This article is a summary of a presentation delivered at the Queensland Centre for Domestic and Family Violence Research's seminar: *Domestic volence related laws - Then and now,* held at the Brisbane State Library on August 3, 2012.

[1] A copy of the report is available at: http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114

[2] Primarily for reasons of space, the background chapter, bail and homicide (chapter 8, 10 and 14 ALRC Report) are not discussed.

[3] See *Domestic and Family Violence Protection Act 2012* (Qld), s101

[4] *Domestic and Family Violence Protection Act 2012* (Qld) s102, 103.

[5] *Domestic and Family Violence Protection Act 2012* (Qld) s103.

[6] *Penalties and Sentences Act 1992* QLD part 3A ss 43A-43F

[7] *Domestic and Family Violence Protection Act 2012* (Qld) s42

[8] Penalties and Sentences Act 1992 QLD s9.

[9] *Domestic and Family Violence Protection Act 2012* (Qld) ss177,178.

[10] Heather Douglas, *'The Criminal Law's Response to Domestic Violence: What's Going On?'* (2008) 30 (3) Sydney Law Review 439-469

[11] Com Police v RTC (2009) QDC 376

[12] *Victims of Crime assistance Act 2009*(Qld), ss 15, 25(8).

[13] R v Major; ex parte A-G (Qld) [2011] QCA 210

[14] R v Major; ex parte A-G (Qld) [2011] QCA 210 [53] per McMurdo P.

On 3 August, CDFVR hosted a research seminar 'Domestic violence related laws – Then and now'. Presenters, Dr. Rae Kaspiew, Zoe Rathus AM, Professor Heather Douglas and Raquel Aldunate, discussed recent and impending reforms to domestic and family violence related laws, including the *Family Law Act 1975*, Queensland's *Domestic and Family Violence Protection Act 2012* and the family violence provisions in the Migration Regulations. The seminar was attended by 85 people. CDFVR asked seven participants to comment on the seminar and its relevance to their work.

Graham Foward, Centacare Scope

One of the big ticket items for me is the changes to the domestic violence legislation that increases the safety of the aggrieved. Particularly the addition that allows voluntary intervention for Magistrates to suggest, in the court room, that respondents attend behaviour change programs. It's a small but largely important step. My feelings, for many years is that changing men's attitude and consciousness is vital in the challenges for keeping women and children safe in their homes.

This forum is a must for future collective involvement, a collective voice, to enable significant reduction in acts of domestic violence.

Janelle Evans, Gumbi Gunyah Women's Centre, Woorabinda

'I am glad the new changes recognises family as more than just the nuclear family. This will help the women who we work with to get more protection from violence within the family. I am also happy that men will be made to work on their issues, as it's no good we working with the women and children and nothing has changed with the men. I like the fact that children will be protected more by the new laws as I've seen the effects of witnessing domestic and family violence and we need for our children to be safe and happy. I would like to see more information about the laws in 'layman's English' as most of the articles are written in language that is too hard to read and take in if English is your second language, as with the clients I work with who speak Aboriginal English.

Rachel Kayrooz, Shout! Speak Out!

This seminar highlighted positive changes that represent a major acknowledgement of the wider impact of the domestic and family violence web. Of great concern is the exclusion of ALRC recommendations that hold strong sector support; and the inclusion of domestic violence typologies that causes implications for legal practitioners and, ultimately, the outcome for their aggrieved client.

The new definition of family violence acknowledges the fear and control on not only the victim but other family members. This inclusion is imperative in recognising all persons affected by the perpetrator's behaviour and therefore, all persons at risk.

Though the new legislation provides that greater weight be given to children's protection from harm, it is yet to be seen if this will be implemented by judiciary in a flawed system where abused children are repeatedly in the care of a perpetrator. Still absent however, is the children's right to their voice being heard, especially in cases where violence has occurred.

As with any legislation change, promotion and thorough training of the new definitions, both within and beyond the sector, is required to ensure complete understanding and correct implementation. With the severity of domestic and family violence - where homicides are on the increase -suggestive guidelines for judiciary are not sufficient. Mandatory training is.

The papers presented at the *Domestic violence related laws – Then and now* seminar are summarised in this edition of the CDFVRe@der. A video of the entire presentations can be viewed at: www.noviolence.com.au/seminarvideos.html

The research findings and information provided at the *Domestic violence related laws - Then and now* reflect the experiences of women of non-English speaking backgrounds accessing services from the Immigrant Women's Support Service (IWSS). This is highlighted by the heavy reliance on dispute resolution centres, which raises concern as to the suitability of this process for women who have experienced domestic and family violence.

Carla de Simone, Immigrant Women's Support Service

An issue of particular concern for IWSS is the use of the domestic violence typologies within the justice system. The interpretation and application of these typologies has the potential consequence of excluding women from accessing safety due to the negation of the power imbalance in the typology definitions of violence.

Of particular interest for the work of IWSS was the presentation on the proposed changes to the family violence provisions, mostly changes to non-judiciary evidence. It is hoped that expanding the types of evidence that can be used to access the provisions will reduce the pressure on our client group so as a service we can concentrate on assisting women to achieve safety and stability.

As a Court Assistant Worker working in the Domestic Violence Court it is satisfying to hear the overarching theme of the forthcoming *Domestic and Family Violence Protection Act 2012* is 'increasing perpetrator's accountability' for their violence. This accountability will subsequently filter into family law through the 2011 reforms made to the F*amily Law Act 1975*. Queensland's current domestic and family violence legislation failed to provide specific guidance to a court when considering the naming of a child on an order, often resulting in protection being denied to children unless physical harm or threats to harm are alleged. The emotional and psychological harm experienced by children witnessing or being exposed to such violence therefore went unrecognised by the 1989 Act.

Kathryn Reid, Domestic Violence Resource Service, Mackay

This valuable information, delivered at the seminar, has subsequently provided me with more clarity into the recent changes made to the Family Law Act along with more in-depth knowledge of the new *Domestic and Family Violence Protection Act 2012*. This acquired knowledge will enable me to advocate appropriately when supporting a client working her way through the domestic violence and family law courts.

Angela Fredericks, Banana Shire Support Centre

The seminar was most useful in gaining a clear overview of the reform to the *Family Law Act 1975* and the new *Domestic Violence Act 2012*. I am very pleased with the broadening of the 'domestic violence' definition; however I share the presenters' concern with the inclusion of 'coercive control' as a pre-requisite in the Family Law Act's definition. The most valuable thing I learnt is the importance that a hearing can place on an actual Domestic Violence Protection Order when it is then used in the Family Law Court or for Immigration purposes. I will no longer enter the court room hoping for a consent order as I realise they do not bear the same weight that an order granted with a judicial decision does. Overall, attendance at this seminar has given me greater confidence as I work with clients, particularly those who have to deal with both Acts.

Les Jackson, Elder Abuse Prevention Unit, Uniting Care Community

It's one thing to know about a particular piece of legislation but it's a different story when you see how these federal and state laws interact, the gaps that clients could fall through and areas that could be used to improve their safety. I find this type of forum invaluable, more so when the presenters are obviously experts in content and delivering information relevant to front line workers. Although targeted at situations involving spousal violence I could identify many areas of these laws that would relate to situations involving older victims of family violence. Family law amendments that strengthen the focus on protecting children from domestic violence have implications for the increasing number of grandparents denied access to or raising their grandchildren. However the way criminal law and the new domestic and family violence legislation will (or should interact) is of particular relevance to older victims of abuse by family members.

Interactions and complete misses: The 2012 Queensland *Domestic and Family Violence Protection Act* and the 2011 family violence amendments to the *Family Law Act*

by Zoe Rathus AM[#]

Introduction

In the space of about 3½ months this year Queensland witnessed two major sets of changes to our laws about domestic and family violence. On 7 June, 2012 amendments to the federal *Family Law Act 1975* (FLA) became operative through the *Family Law Amendment (Family Violence) Act 2012* (Cth) and the Queensland *Domestic and Family Violence Protection Act 2012* commenced on 17 September. Given the task of speaking about the 'The interaction between the family law and Queensland's domestic and family violence legislation', my research led instead to inconsistencies and failures to connect and a realisation of how the different policy contexts of these reforms created inevitable differences in language and approach. I will endeavour to unpack some of these and demonstrate how the more constrained changes to the *Family Law Act 1975* (FLA) may limit their effect.

The first significant difference between these two reforms is that one is federal and the other is state-based. Secondly the federal amendments deal with only a tiny part of the increasingly complex and convoluted FLA[1] while the Queensland initiative completely repeals the existing Act[2] and replaces it with an entirely new piece of legislation.

Clarity of policy

Queensland Legislation

The Queensland legislation arose out of a 2009 state strategy[3] to reduce domestic and family violence, which included a review of the existing domestic violence laws.[4] This background means that the Queensland legislation has a clear and overt policy framework. It contains a preamble and sections setting out the objects[5] and principles[6] of the Act. The preamble's aspirational language invokes the Universal Declaration of Human Rights and three other United Nations documents[7] and states that:

> 2 Living free from violence is a human right and fundamental social value.

The 'main objects' are to 'maximise the safety, protection and wellbeing of people who fear or experience domestic violence …', 'to prevent or reduce domestic violence' and children's 'exposure' to it and 'to ensure' that perpetrators are 'held accountable for their actions'.[8]

Family Law Act

The precise impetus for the FLA amendments is harder to pinpoint. There have been many evaluations and reports commissioned and published since the shared parenting amendments [9] commenced in 2006. The Bill was said[10] to respond to the major evaluation of the 2006 reforms by the Australian Institute of Family Studies[11] and other recent reports about family violence.[12] Interestingly, although it referenced a range of other contemporary research,[13] it made no mention of the commissioned Report of the Australian and NSW Law Reform Commissions on family violence (ALRC Final Report),[14] or the National Plan to Reduce Violence against Women and their Children.[15] It seems that the tragic death of four year old Darcey Freeman, thrown off Melbourne's West Gate bridge by her father while the family was engaged in family law litigation about parenting orders, may have been a trigger for this review.[16] Because the changes to the FLA have come via an amendment Act there is no preamble or object sections which express a policy position.

Zoe Rathus AM,
Griffith University Law School

Definitional diversity

Despite specific mention of the ALRC Final Report in the Queensland Act's Explanatory Memorandum[17] and the failure to acknowledge this 1,500+ page tome by the federal government, it is actually the FLA definition that most closely mirrors the definition recommended in that Report.

The FLA now defines family violence in s 4AB as:

> 1) … violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.
>
> 2) Examples of behaviour that may constitute family violence include (but are not limited to):
> a) an assault; or
> b) a sexual assault or other sexually abusive behaviour; or
> c) stalking; or
> d) repeated derogatory taunts; or
> e) intentionally damaging or destroying property; or
> f) intentionally causing death or injury to an animal; or
> g) unreasonably denying … financial autonomy …; or
> h) unreasonably withholding financial support …; or
> i) [isolating from] … family, friends or culture; or

j) unlawful… [deprivation of liberty].[18]

The Queensland Act defines domestic violence as:

1) behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that—
   a) is physically or sexually abusive; or
   b) is emotionally or psychologically abusive; or
   c) is economically abusive; or
   d) is threatening; or
   e) is coercive; or
   f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.

This is followed by sub-section (2); a non-exhaustive list of examples very similar to those set out in the FLA list above, although it includes 'threatening to commit suicide or self-harm'.[19]

The difference between these definitions is that whereas the Queensland Act amounts to a list of 'big picture' examples of domestic violence which include coercion and control, in the FLA coercion or control, or causing someone 'to be fearful', become pre-requisites to acts of abuse being defined as family violence. As Professor Parkinson explains about the FLA:

The most important point to be noted is that the definition is contained entirely in sub-section (1). Sub-section (2) provides illustrations of conduct that may fall within the definition …[20]

In other words if coercive or controlling conduct or causing fear cannot be proved, behaviour that might be considered abusive (and might well fall within the examples provided in s 4AB(2)), will not be defined as 'family violence'. This means that the exceptions and other protections expressed to apply where family violence has been found to exist become irrelevant. For example, the fact that 'family violence' rebuts the presumption that equal shared parental responsibility is in the best interests of children[21] is irrelevant if abusive conduct is found not to amount to family violence.

Coercive control – From explanation to category to pre-requisite

It seems to me that there has been an almost imperceptible shift in the use of the terms coercive and controlling conduct and the FLA definition may unwittingly straddle those meanings in a complex way, rendering its meaning ambiguous. Some feminists, women's advocates and workers in the domestic violence sector have for many years used the language of 'control' to explain what is meant by domestic violence to the community – to differentiate it from the kind of one-off violence that occurs between strangers. It was a useful descriptor of domestic violence – but was never intended to be directly imported into a legislative definition as a pre-requisite.

To complicate things further, in more recent times these words have become associated with a way of categorising domestic violence. The works of Michael Johnson and other scholars from the USA who have developed a schema of 'typologies' of domestic violence have become widely known in Australia since they were discussed in a well publicised 2007 report by the Australian Institute of Family Studies (AIFS).[22] One of the most cited recent works of Johnson describes four types of domestic violence:

- 'coercive controlling violence',
- 'violent resistance',
- 'situational couple violence', and
- 'separation-instigated violence'.[23]

As can be seen, coercive and controlling violence is one type of domestic violence only - so how does this translate when interpreting the new definition? Material from professional development conferences in Australia for lawyers, judges, family dispute resolution practitioners and others in the family law system demonstrates that the professions are being educated, or even trained, in the typology literature.[24] I am concerned that an understanding of coercive control which is drawn from this literature may be a misunderstanding of its use in this legislative definition. In the definition the words seem to represent an underlying feature of the violence, whereas in the Johnson model it is one of four categories. Judges may try to identify 'violent resistance', 'situational couple violence' or 'separation-instigated violence' to exclude them from being defined as family violence under the FLA. This will be of particular concern to women whose experiences of family violence are difficult to articulate and prove.

On the other hand the presumption that equal shared parental responsibility is in the best interests of children continues to operate.[25] It was not repealed nor altered in any way despite recommendations from Professor Chisholm for structural reform in this area.[26] Its mode of operation is inclusive – it is presumed to apply unless rebutted or otherwise rejected. Therefore families whose alleged abuse has been excluded from being defined as family violence will be automatically included in the families to whom the presumption applies.

Conclusion

How these laws will actually play out will start to be seen soon. No doubt a genuine intention to assist families experiencing family violence exists at both state and federal levels and with all political parties. But some questions remain: which changes will really be useful; and what unintended consequences will have to be mopped up again in six more years' time?

#Senior Lecturer, Griffith University Law School. This article is a summary of a presentation delivered at the Queensland Centre for Domestic and Family Violence Research's seminar: *Domestic violence related laws - Then and now*, held at the Brisbane State Library on August 3, 2012.

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[1] See: R Chisholm, 'Simplifying the Family Law Act: Saying Less, and Saying it Better', (2011) 21(3) *Australian Family Lawyer*, 11.
[2] *Domestic and Family Violence Protection Act 1989 (Qld)*
[3] Minister for Community Services and Housing and Minister for Women, Minister for Police and Minister for Child Safety, *For our Sons and Daughters: A Queensland Government strategy to reduce domestic and family violence 2009–2014*, Queensland Government, 2009
[4] *For Our Sons and Daughters*, p 9
[5] s 3 *Domestic and Family Violence Protection Act 2012 (Qld)*
[6] s 4 *Domestic and Family Violence Protection Act 2012 (Qld)*
[7] *The Declaration on the Elimination of Violence against Women, the Convention on the Rights of the Child and the Principles for Older Persons*.
[8] s 3(1) *Domestic and Family Violence Protection Act 2012 (Qld)*
[9] *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth)
[10] See: House of Representatives, 'Explanatory Memorandum', *Family Law Legislation Amendment (Family Violence and Other Measures)* Bill 2011, Parliament of the Commonwealth of Australia, p 1.
[11] R Kaspiew, M Gray, R Weston, L Moloney, K Hand and L Qu, *Evaluation of the 2006 Family Law Reforms*, Australian Institute of Family Studies, 2009.
[12] R Chisholm, Family Courts Violence Review, Australian Government, Attorney-General's Department, 2009 and Family Law Council, *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues, 2009*.
[13] D Bagshaw, T Brown, S Wendt, A Campbell, E McInnes, B Tinning, B Batagol, A Sifris, D Tyson, J Baker, P Fernandez Arias, *Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post-2006*, Monash University, University of South Australia and James Cook University, 2010; J Cashmore., P Parkinson, R Weston, R Patulny, G Redmond, L Qu, J Baxter, M Rajkovic, T Sitek, and I Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* Sydney; Social Policy Research Centre, University of New South Wales, 2010 and J McIntosh, B Smyth, M Kelaher, Y Wells and C Long, *Post-separation parenting arrangements: Patterns and developmental outcomes for infants and children - Collected Reports*, Australian Government Attorney-General's Department, Canberra, 2010.
[14] Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence — A National Legal Response,* ALRC Report 114, 2010.
[15] The National Plan was based largely on the report of the National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against women and their Children, 2009 – 2021,* 2009. It was endorsed by the Council of Australian Governments (COAG) in February, 2011, just before the FLA Amendment Bill was introduced.
[16] This incident was specifically referred to in the Terms of Reference for the Chisholm Report, *Family Courts Violence Review*, Australian Government, Attorney-General's Department, 2009.
[17] *Domestic and Family Violence Protection Bill 2011*(QLD), Explanatory Notes, p 5
[18] I have summarised some of these examples.
[19] s 8(2)(f). This is a well known occurrence, particularly when women leave or threaten to leave violent men.
[20] P Parkinson, The 2011 Family Violence Amendments: What Difference Will They Make? (2012) 22(2) *Australian Family Lawyer,* 1 at 5 (his emphasis). In fact Professor Parkinson put forward a definitional framework close to this at the ALRC Inquiry. See ALRC Report, para 6.92.
[21] S 61DA(2)(b) FLA
[22] *Family Law Amendment (Shared Parental Responsibility) Act 2006*
[23] J Kelly and M Johnson, 'Differentiation Amongst Types of Intimate Partner Violence: Research Update and Implications for Interventions', (2008) 46(3) *Family Court Review* 476 at 476
[24] They are also a feature of the Family Court of Australia and Federal Magistrates Court of Australia's *Family Violence Best Practice Principles* published in July 2011.
[25] FLA s61DA
[26] R Chisholm, *Family Courts Violence Review,* Australian Government, Attorney-General's Department, 2009, pp 122 – 144.

Navigating changes to the child protection system in Queensland – information kits for parents and workers

by South West Brisbane Community Legal Centre

South-West Brisbane Community Legal Centre has had a keen interest in the area of child protection since the development of the *Child Protection Act (Qld) 1999*. It became quite apparent at the time that the Queensland Government's new direction for child protection was not only a fresh approach but also a completely different approach in methodology and application.

As a result of the changes to the child protection system it was realised that those affected by the changes needed to be better informed about the process itself. Those affected were broken down into three main groups, (1) parents, (2) workers and (3) kinship carers. Gratefully, we secured funding from the State Government to produce kits directed to the 3 main groups.

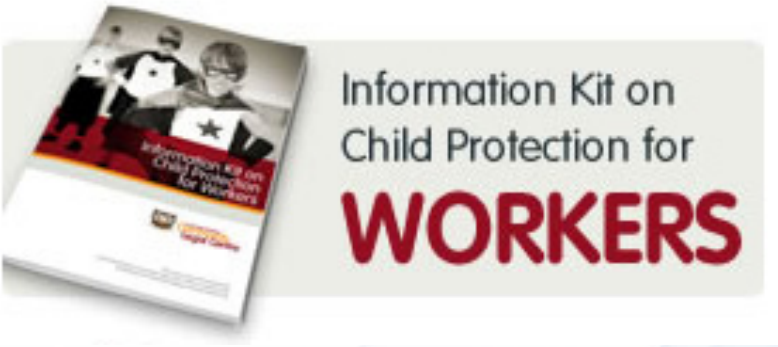
Three information kits were produced to meet the information needs of the three main groups. Over time and changes to the legislation we have had to amend our kits to suit. Due to limitations of time and funding we have only been able to update two of our kits, the Parent Kit and the Worker Kit.

To assist in the dissemination of the content in the kits we have been delivering workshops in the form of Community Legal Education (CLE). We have been fortunate to deliver CLE across a vast area of the state, from Cairns in the north to the Gold Coast in the south, these CLE would not have been possible but for the Queensland Government making funds available.

Frequently, we are asked to deliver CLE to parents whose children are in care or at risk of going into care. Generally, the by-product of

these workshops is a better informed parent with a better understanding of the process they now find themselves in. Many become acutely aware, due to the veil of procedural mystery being removed, of what they should expect to happen with the case management of their matter by Child Safety Services. Most times such an understanding makes for a better working relationship.

The most common CLE workshops are in relation to our Worker Kit. This is only due to the fact that workers in support and allied non-profit service delivery are also unclear of their role and unsure how they can best assist and support their clients that are engaged with Child Safety Services. The Worker Kit assists workers to advocate for their client's needs in a more assertive way, utilising the obligations set out in the Act, Child Safety Services policy and procedure manual and the Code of Conduct.



We are currently delivering CLE around the State and aside from the many workshops in Brisbane have also been to Hervey Bay and Rockhampton. Before the end of the year we intend to deliver workshops in Mackay, Cairns, Townsville and Toowoomba. We have been very fortunate to form collaborations with a number of organisations to enable workshop delivery in the aforementioned areas. Of note is our CLE in Mackay hosted by the Queensland Centre for Domestic and Family Violence Research and delivered at the Central Queensland University Campus in Mackay on the 17th of October 2012.

By no means are our kits considered to be a definitive text for each and every engagement or situation that arises in child protection matters. But generally speaking, the kits have proved to be a sufficient guide to what procedural fairness they can expect in their dealings.

The Parent Kit is a good basic guide to the process of child protection. Commonly, upon initial engagement with Child Safety Services, parents are confused, emotional, angry and distraught at the fact that they have been engaged with a government body that either questions their ability to parent or has removed their children from their care. Many parents rely on the goodwill of the Child Safety staff to inform them of the process and their associated rights. Unfortunately, through a lack of time or resource, Child Safety staff only convey what they think needs to be conveyed to parents.

The Parent Kit is broken down into 11 parts. The areas discussed in the workbook include:

- The investigation phase.
- The process around an intervention with parental agreement.
- Being involved with the court process
- The range of orders that may be made at court.
- Information regarding Child Protection Orders, long and short term.
- How to appeal a court decision
- Considerations that must be made before placing a child in care.
- Family group meetings
- Complaints
- Appeals against decisions made by Child Safety Services that affect the parents of a child in care.

The Worker Kit contains much more detail on the topics above. Of most interest to many workers in the area of child protection is the section in the kit titled 'Information Sharing'. It is clear and concise about who has to, and who is not required to, share client information with Child Safety Services. There has been significant confusion on this issue for some time with many service providers.

Other discussion points of interest in the Worker Kit are the greater insight for developing case plans and the tip sheets. The tip sheets were developed as a quick reference guide for non-profit agency workers.

Both the Parent and the Worker Kits are available from our website, www.communitylegal.org.au, in pdf format.

South-West Brisbane Community Legal Centre provides face to face and telephone advice to its clients. Appointments are made by calling our general telephone number on (07) 33727677 and making an appointment. Our telephone advice is not limited to the Brisbane Metropolitan area.

At the coalface ...

CDFVR recently spoke to Angela Lynch about her work with Women's Legal Service and Women's Legal Services Australia and her views on the new *Domestic and Family Violence Protection Act 2012*.

Angela Lynch, Women's Legal Service

Tell us about your role at Women's Legal Service, Brisbane (WLS) and with Women's Legal Services Australia (WLSA)?

I am the legal reform lawyer with Women's Legal Service in Brisbane and the national law reform coordinator with Women's Legal Services Australia, which is a national network of women's legal services around Australia. My work involves law reform at both a state and national level. I only work part-time so although the role could be quite broad, we have to prioritise the legislative and policy issues that are of most concern to our clients.

What are the current priorities in legal reform?

There are currently four main priorities. These are:

- **Monitoring the impact of recent Family Law changes**

The Family Law Legislation Amendment (Family Violence and Other Measures) Act came into effect on 7th June 2012, substantially amending the *Family Law Act 1975* by prioritising issues of children's safety in decision-making over an ongoing meaningful relationship. This is a significant amendment and one that hopefully will go some way to improving outcomes for women and children in the family law system who have experienced domestic violence and/or have concerns about child abuse. Changes to legislation do not always have the effect intended when they are practically applied by decision-makers and professionals in the system, so WLSA has a role in monitoring the 'real' impact these changes have on the legal outcomes for women in the family law system. Additionally, although the changes were a 'step in the right direction', they did not go far enough because the presumption of equal shared parental responsibility and its links to equal time and substantial and significant time were not altered. The overall emphasis in the Act on outcomes involving 'shared parenting and shared parental decision-making' will continue to expose women and children to violence, so we will continue to take opportunities to advocate for further change.

- **Concerns about the extension of criminality in international child abduction matters**

Australia is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction (the Convention) which governs the wrongful removal and return of children across international borders. The Government announced its intention to extend criminality in these matters to where a party attends or has been invited to attend family dispute resolution (family law mediations). WLSA is strongly opposed to such an extension on the basis that adequate consultation has not occurred and the likely consequence of criminalising vulnerable women, especially women from culturally and linguistically diverse backgrounds, has not been considered.

Research has highlighted a concern about the gradual increase over time of the number of 'taking parents' who are primary carer mothers and the lack of formal recognition of this 'changed dynamic' in the Convention. In our experience, women take children because of issues of domestic violence, child abuse and because of a desire to return to their homeland for economic and emotional support, in the aftermath of a separation.

WLSA has called for the legislation to be delayed for further consultation and for a gender analysis of the social impact to be undertaken, before any changes are made.

- **The need for "Vulnerable Witness Protection" in the family law system**

Did you know that victims of family violence, including sexual violence, can be cross-examined by their perpetrator in the Family Law Courts?

This can have emotionally devastating consequences on traumatised victims and can impact on their future mental health outcomes. This outcome has largely been avoided in criminal jurisdictions with legislation in every Australian state, except Tasmania, placing restrictions on the cross- examination of complainants in sexual offence proceedings by unrepresented defendants.

The recognition of the potentially devastating impact on vulnerable witnesses of cross-examination by their abuser has been extended, in recent years, beyond the criminal courts. Section 70 of the *Family Violence Protection Act 2008* in Victoria establishes special protection for victims of family violence in intervention proceedings to be protected from personal cross-examination by the respondent. It enables the court to direct Legal Aid to appoint a lawyer for the purpose of the cross-examination. In Queensland, sections 150 and 151 of the *Domestic and Family Violence Protection Act 2012* also provides guidance to the court about restricting cross-examination by self-represented litigants in certain circumstances.

WLSA has written to the Attorney-General requesting similar legislative reform in regard to family law.

- ***Domestic and Family Violence Protection Act 2012***

Similar to changes to the Family Law Act, WLS will have a role in monitoring the impact of the changes to the *Domestic and Family Violence Protection Act* to identify unintended consequences and generally whether the changes are increasing safety for women and children escaping violence.

How will the *Domestic and Family Violence Protection Act 2012*, make women safer?

The definition of the Act has been broadened, and it is now more in keeping with women's experiences and includes many of the modern understandings of domestic and family violence - specifically including economic abuse, emotional and psychological abuse, coercion, control and domination. It is very clear that domestic violence is not just about physical harm. The preamble of the legislation 'sets the scene' and makes it clear that domestic and family violence is a human rights violation and is mainly perpetrated by men against women. The principles of the Act require that in cases of mutual allegations of violence, the person who is in most need of protection should be identified. It will be interesting to see how this plays out in practice and whether the existence of this principle will curb the numbers of mutual orders that are made. In determining whether an order is 'necessary and desirable' section 37(2)(a) requires the court to consider the principles of the Act. The Act covers those involved in a 'couple relationship' which seems much clearer than the previous definition of 'enmeshed' dating relationships. Mere dating relationships are still not covered and therefore many young women may not have access to this legal protection. However, the extent of coverage is not clear as all the definitions need to be tested in the courts to understand their true parameters. Therefore, women in dating relationships should not assume they are not covered and should obtain legal advice about their individual circumstances. The new ouster provisions which expand the issues that courts are required to consider in weighing up whether to make an order or not may mean that more orders are made, which would provide more options for some women to stay in their own home and minimise disruption to children.

There is now a mandatory obligation for the court to consider naming a child on the order, whether or not this has been requested. Pregnant women and unborn children are specifically covered under Section 67. The ability for police to issue Police Protection Notices may mean that some women may be able to obtain immediate protection from violence, especially if they live in rural and remote communities.

What is your view of the Australian and NSW Law Reform Commissions' (2010) proposed definition of domestic and family violence and how the definition in Queensland's new domestic violence legislation differs?

I think that both definitions are quite good, and at this stage it is difficult to work out whether one is better than the other until we see how the Act is interpreted in the courts. The new Queensland definition has coercive behaviour and controlling and dominating behaviour as examples of domestic violence with a list of other behaviours that might also constitute domestic violence. The ALRC's recommended definition elevates the importance of coercive and controlling behaviour to the main part of the definition, requiring other behaviours listed or described to have an effect of coercion or control on the victim of violence or to cause them fear. Given the nature of domestic violence proceedings which are court proceedings that prioritise safety and require quick decision-making, the Queensland legislators may have felt that a more straightforward definition that follows a similar structure to the current definition was the more appropriate approach.

Forensic veterinary science meets social science

By David Bailey (Forensic Veterinarian)

David Bailey, Forensic Veterinarian

In my work, I get to travel to a lot of areas and see some of the worst animal cruelty that one can see. I am a vet so I focused only on the animal and the expert opinion required to prosecute the offenders in these cases. I felt like a crusader- travelling the world - saving animals - jailing criminals.

Over time I started to see a pattern. Way outside my area of expertise and certainly not something I was able to comment on in court with any formal qualification. Every case that I was called to that involved animals being harmed, neglected or abused involved a degree of mental illness from the human owners.

There were owners who would confess to me that they drink too much, they have lost their job, their wife left them or frequently the owners who were angry with me, had some existing mental pathology but were not aware of it. I would often require a police escort for these visits.

Animal harm as an indicator of mental illness? Freud would have been impressed and I dismissed it until I started to review the cases I had been involved with. Every case I had been involved with had some level of mental illness involved. Substance abuse, depression or alcoholism - I had become a de-facto social worker and wasn't even aware of it.

People who are mentally fit do not harm animals, or allow their animals to be harmed. I kept telling myself this after I had examined a large Dogue de Bordeaux that had been sexually assaulted by a teenage boy. It was unclear who the boy had started with but it was clear that he also abused his younger sisters.

A farmer had become depressed and just stopped feeding his cattle - he had just stopped. I was tasked to visit with a view to prosecute. It took time and more than one visit but he got the help he needed and then vicariously - so did the cattle in his care. This was new to me - I wasn't equipped to act as a pseudo psychologist and a de-facto social worker. I was the guy with the stick - I prosecuted. I had been focused and driven to do one thing - place people in jail. It was this focus that allowed me the drive to get through vet school and become a vet - but it was now time to park this drive and actually look at what I was doing.

This stumbled discovery was a very humbling experience for me. I started to speak with people in the social and human sciences; Heather Nancarrow and Diane Mangan, Tania Signal who couldn't hide her enthusiasm, same for Nik Taylor. I had spoken at length to Catherine Tiplady (a veterinarian) and Deborah Walsh (a social work academic) and they had convinced me there was more to it than just a vet degree. These people knew what I was only discovering, they had known for a while - seemingly waiting patiently for others to see the other side of the problem - the non-animal side.

Vets see non-accidental injuries all the time. They have a duty to report them – but only if it is serious enough to override the clients' right to privacy. The vet has an obligation to the animal; or is it to the client who is paying the bill? Also the person bringing that animal in to receive attention may be the only person in that household who isn't affected by "illness" and to report them may be cutting off that animal's only source of veterinary attention.

Vets are very reluctant to be involved in any cases of animal cruelty and go to court to give evidence. They are even less likely to provide a link between non accidental injuries, the animal examined and its owner - maybe because it is starting to fall outside their area of expertise, but I also suspect that vets need training in this area.

It is a grey and murky area and it needs direction and training, not currently provided by any of the veterinary schools. It is something vets pick up on the job and then avoid when they recognise it.

The vets see the problems as manifestations of pathology and abuse on presented animals as a last step in the animal abuse sequence. The non-vets are aware of the problems before matters progress to pain and bruises. It is time for some cross-pollination of ideas on this topic.

See Veterinary forensics, animal law and human animal interaction conference on p.18.

Workshops, Conferences and Date Claimers

26-27 September 2012
Practitioner workshop: Working with child sexual assault
Brisbane, QLD
http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/FlyerBraveheart.pdf

3-4 October 2012
Korowai Tiaki - 'Cloak of Safety': a two day workshop on responding to and preventing sexual violence - Early bookings close 24 Sept
Bundaberg, QLD
http://www.austdvclearinghouse.unsw.edu.au/events_calendar.html

8-10 October 2012
Solving the jigsaw:Changing the culture of violence, building a culture of well-being
Cairns, Qld
http://www.solvingthejigsaw.org.au/training.htm

22 October 2012
Working with children who have experienced domestic violence
Albury, NSW
http://www.acwa.asn.au/Course_Details11.php?recid=6698

31 October, 1, 7, 8 November 2012
Introduction to domestic violence
Melbourne, Vic
http://www.dvrcv.org.au/training/coursedetails/introduction-to-domestic-violence/

31 October 2012
Sexual violence in diverse sexuality and gender groups
Subiaco, WA
http://www.kemh.health.wa.gov.au/services/sarc/documents/calendar.pdf

16-18 October 2012
5 & 6, 7 & 8 February 2013
Course in Responding to Domestic and Family Violence (30949QLD)
Gold Coast, QLD
http://www.tavan.com.au

12-13 December 2012
Veterinary forensics, animal law and human animal interaction.
(incorporating presentations on domestic violence and animal abuse)
Gold Coast, QLD
www.forensicvet.com

CDFVR is hosting a free research seminar presented by Dr. David Adams from *Emerge*

Changing abusers and their communities: Recruitment, engagement and accountability strategies

25 October, CQUniversity Brisbane Campus, 160 Ann Street, Level 4, Rm 4.08.

This event will be video linked to 10 other sites in Qld, Sydney and Melbourne.
For more information or to register go to:
http://www.noviolence.com.au

Training- 2 day intensive workshop with Dr David Adams

TAVAN Institute in collaboration with DVConnect Mensline and the Queensland Centre for Domestic and Family Violence Research, CQUniversity presents:

Safe Engagement with Men who Abuse or Control their Partners

Dr. Adams, Ed.D. is co-founder and Co-Director of *Emerge*, the first counselling program in the USA for men who abuse women, established in 1977. Dr. Adams has led groups for men who batter and conducted outreach to victims of abuse for 33 years. He has led parenting education classes for fathers for 10 years. Considered one of the United States' leading experts on men who batter, Adams has conducted trainings of social service and criminal justice professionals in 44 states and 15 nations.

23 & 24 October, Royal on the Park Hotel, Alice St., Brisbane
For more information or to register go to: http://www.tavan.com.au/

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We encourage readers to contribute to the CDFVRe@der. If you have any information or articles you wish to publish, please contact Centre staff.

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If you would like to be included on, or removed from, the Centre's mailing list, please ring us on (07) 4940 7834.

The Queensland Centre for Domestic and Family Violence Research (CDFVR) is located within the Institute for Health and Social Science Research in the Academic & Research Division at CQUniversity. It is physically located at CQUniversity's Mackay Campus.

Queensland Government

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