

Submission - Family Violence

From the limited amount of media coverage I have been able to follow, the calls seem to be :
 More must be done - Efforts must be improved - Regulations must be tightened. Etc.

Whilst I do not disagree with these VERY VAGUE suggestions to prevent and eliminate violence,
 I ask :
 Why will attempts now succeed when all past similar efforts have not been fully effective.

The document by the Governor, in establishing the Commission, under "Background" correctly lists some of the causes and contributing factors of family violence. (known facts as established in earlier enquiries)

There is however, one important question that I have not heard raised in the media coverage - and somewhat surprisingly not listed specifically as a "term of reference" although quite obviously within the ambit of responsibility of the Commission - in those CASES WHERE A DEATH RESULTS.

WHAT IS THE BASIC CAUSE - What is the factor that motivates someone to consider it appropriate to kill a former partner OR to gain revenge by killing their own child to deny the other parent access.

Whilst treatment of the symptoms may be appropriate, the THRUST of this submission is to suggest that the CAUSE MUST BE ESTABLISHED AND ELIMINATED if these tragic events are to cease .

Newton asked "Why is it so ?" when hit on the head with an apple.

Similarly - This Commission must ask " WHY IS IT SO ? " (WHY would he kill ?)

This Commission must establish the cause -
 and then make recommendations to establish something different to existing methods and practice that:

- a. are not achieving a fully satisfactory result, and
- b. could be the cause which, magnified by other factors, result in a perceived need for revenge.

Most , if not all partnerships that degenerate to physical and or mental abuse start by mutual choice, and involve a period of bliss - the length dependant upon the varying reasons for the ultimate failure. - and many result in the production of children before they fail.

With the failure of these partnerships comes the division of assets and agreements or determinations as to custody of , and access to their children.

Whilst the result, in most cases, is determined along pre-established guidelines, common practice generally involves the engagement of legal counsel.

I suggest that in some, or even many of these cases, the negotiations become unnecessarily protracted at great, even excessive, financial and mental cost. (and for the financial gain of those solicitors)

In lieu of amicable arrangements (as could often be quickly achieved) this process can convert former "best of friends" to "best of enemies" Claims that are false or exaggerated against the character of their now former partner are made - at times on the advice of their counsel - intended to gain some advantage (or protract the negotiations) . Whilst there may have been some past violent actions, drug or alcohol abuse etc. , providing a factual base for the claim, I suggest that in some cases, claims are made that could be unrealistic - leading to the restriction or denial of access to the children - generally for the father. The resultant perceived hurt can grow over time - with the established procedures, incl. drawn out court actions, massive costs etc. which could have been avoided or those funds better used.

I am suggesting that this hurt becomes magnified if a party BELIEVES they have been cheated - unfairly treated, particularly in the restriction or denial of this access. - The mother may have been motivated to false or exaggerated claims, either on advice and/or for revenge, if she believes she was earlier unfairly treated or denied of an asset etc.

Solace from drugs or alcohol may be sought. Whether used previously or not, this course will likely only combine with the other factors that cause the hurt to grow and the wounds to fester.

One can only imagine that a man must have FELT GREAT HURT to convert that to THE GREAT HATE necessary to kill a former love-one.

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It is almost impossible to imagine the festering hurt necessary for a father to throw their own child off the West Gate Bridge, presumably in revenge, to deny the former partner believed responsible for the hurt. (or the background associated with some of the tragedies that have receiver some media coverage)

With the failure over time of some 40-50 % of all partnerships, the number that culminate in extreme violence is possibly a very low percentage. Just one death, however is one too many, and violence at any level should not be accepted.

If the Commission concludes, as I have done, when asking the question “ Why is it so? ” that the basis, or a basis for grievance for those who do commit these terrible crimes, AND those MANY MORE who only contemplate such action, is this underlying belief of unfair treatment, what changes are necessary to achieve a system that is fair AND IS SEEN AND ACCEPTED AS FAIR - a system that eliminates these types of concerns and, as such eliminates the need for revenge.

One could argue that the present system HAS FAILED or simply state that claim.. Cosmetic changes now that may be little different to those implemented in all past reviews, will predictably achieve little.

Some have called for earlier and better identification of potential perpetrators of extreme actions.

There would be merit for this IF possible actions could be accurately predicted and some of the agencies supplied with the necessary “ crystal balls” . Furthermore, I imagine that this may only accurately identify very few, if any, and therefore be ineffective. Conversely, include all the possibles and probables, if over zealously applied and thus penalize someone who could, but with better judgement, would not have gone that far, which may then create the additional grievance necessary to cause a tragic action. (or REACTION)

This course could precipitate an increase in deaths, rather than the desired reduction.

IF this submission has identified substance deserving of the Commissions attention, it should also contain some suggestions as to remedies for the Commission to consider. Hopefully, some ideas that could be manipulated to effect. (as I am sure that I would not have all the answers here)

Without the benefit of personal experience of court or other arbitrated family dispute settlement, I may now be somewhat out of my depth but, inspired by the belief that :

there would not be the need for this Commission if all was well with present policies

AND subtle cosmetic changes to the system, as I imagine it to be, will likely achieve very little I see the need for, or distinct benefits from, the implementation of a completely new concept , flexible to allow for all variants AND in particular, mindful of, and able to address the failures, weaknesses and concerns of the existing procedures - as identified.

I add the following suggestion as a starting base for consideration :

Establishment of a panel within, or separate to the Victorian Civil and Administrative Tribunal along similar lines to V C A T Guardianship List.

This body would be responsible for the preparation and distribution, as required of booklets and pamphlets detailing : (say)

advice to the parties if/when their marriage, union or domestic partnership begins to unravel

(initially marriage guidance intended where possible to re-establish harmonious union)

advice on matters that should be considered/expectations before a union is established

(this could also be distributed to schools and included with sex education advice)

advice on matters during/after a partnership break-up

(including guidelines as to likely asset division and custody arrangements for children

and of the benefits if this can be achieved in a NON ADVERSARIAL MANNER)

The panel members could conduct public and private meetings/discussions, as required at locations around the suburbs and provincial towns - provision for the latter to be conducted either with both parties to a former marriage , or one on one meetings with one of the parties.

The Panel Member would have the power or discretion to determine how much of a conversation with one party is, or must be revealed to the other, or what NECESSARILY remains confidential.

These private (& public) meetings would be arranged by appointment, and for nominal fees, and would normally be conducted in office hours, but in special cases, possibly during evenings or weekends -/3

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the Member would have the power to require the attendance at a meeting of the other party or both at any periodic review.

The aim of these non public meetings (following marriage/partnership break-up) would be :
to agree on/establish asset division and child custody provisions in a NON

CONFRONTATIONALIST FORMAT

to be conducted in a less formal/friendlier/more comfortable environment at much lower cost intended where possible to achieve results more acceptable to both sides (with appropriate regard to the best interests of any children) by negotiation and agreement.

The Member would control/chair the meeting, encourage negotiation, offer advice and guidance, ratify and record agreements and when necessary, make determinations, rulings and decisions

There would be no need for the involvement of a member for those break-ups where the parties, are (ideally) able to reach agreement without additional cost or outside involvement.

One important function of this panel would be the early availability of a Member to attend a private meeting, by appointment after the request of a party (likely for a nominal fee)

These private meetings, again in a less formal, friendlier environment that would encourage honest, frank (confidential) discussion would allow for, or even encourage the airing of any concerns as to :

the failure of the other party to honour aspects of agreements and arrangements
the belief or suspicion that the other party has turned to/resumed using drugs - excessive alcohol cases where a party has used excessive physical , verbal etc. abuse toward the other, or to children or any concerns where the other party may not be performing to an accepted level
any suggestions which could lead to a better outcome for those involved, particularly children
AND any matter where a party holds any belief that they may have been unfairly treated etc.

There are some aspects of these proposals which are causing me some concern, but I am confident solutions to these could be found.

I have devoted little time, or do not have the ability to know if provision should be made, in some cases for children to be given the opportunity to express their desires and concerns, in confidential meetings with Panel Members. I would believe that such appointed Members would have the training, skill and impartiality required, however inappropriate influence by one parent could be a concern.

In this country, virtually all decisions in any legal jurisdiction are subject to appeal or challenge. This system, if implemented will only succeed if that right of review is available, however it may be appropriate that a review before, say a three member tribunal becomes the last level of review, or to where an application must be made for the right to challenge in a higher court. The ability to proceed to such higher Court would be approved only in some exceptional circumstance. The ability of engaged lawyers to parry with these new procedures only as a forerunner to higher court appeals, will simply mean that the new system would only be an ineffective delaying mechanism. Then the procedure would revert to our current high cost confrontations which I suggest are herein identified as A MAJOR CAUSE TO OUR EXISTING PROBLEMS and should be discontinued - replaced.

To conclude .

There should be nothing here to prevent the proper report to the police if a crime has been alleged. The reporting, however of very minor allegations or suspicions to a Panel Member could ultimately lead to an overall better outcome . (if potential problems can be nipped at an early stage)

It is envisaged however that the Legal fraternity may not welcome any disruption to what is currently a major, lucrative source of income for many in that field BUT, what are we TRYING to achieve here - Preservation of their high standard of living OR

The saving of the lives of some of the parties to failed/failing partnerships

The saving of the lives of children who tragically can become victims due to resultant confrontations
All of the other benefits, that one can imagine, that could result from this different approach - which essentially suggests the replacement of the present excessively costly adversarial proceedings in which emotions can be stirred and claims exaggerated in a manner that at times encourages confrontation, TO THE suggested changes where pleasant and fair to all outcomes are sought.

That is, if the Commission now sees THE PRESENT SYSTEM AS A MAJOR CONTRIBUTING CAUSE when it asks "WHY IS IT SO ?"

Thank you for your time , if you did manage to read to the end of this page.