

SUBMISSION TO ROYAL COMMISSION INTO FAMILY VIOLENCE

Introduction

1. This submission is made to the Royal Commission on my own behalf. Any views expressed in this submission are personal and are not the views of any other person or organization.
2. The Commission is invited to address and accordingly make recommendations concerning what I believe is a significant number of unreported acts of family violence which occur behind closed doors.
3. **This submission invites the Royal Commission to make recommendations based upon its terms of reference and specifically the “early intervention to identify and protect those at risk of family violence” to prevent the escalation of family violence and make recommendations in relation to the “need to establish a culture of non-violence and gender equality and to shape appropriate attitudes towards women and children”.**
4. This submission is confined to non-physical acts of family violence which are unreported.
5. It is clear to me that the *Family Violence Protection Act 2008* (“FVPA”) in subsection 5(3) states that behavior “*may constitute family violence even if the behavior would not constitute a criminal offence*”. It is my strong view that the lack of report of non-physical violence which occurs behind closed doors may well be a matter requiring a community response. By community response I mean that the whole of the community both male and female genders must take responsibility and act in a manner which demonstrates that any form of non-physical family violence is unacceptable.
6. From a sociological perspective it is my view that the socialisation of young boys needs to occur before primary school so that in the long term there is a significant change of attitude and culture of boys and men toward family violence where the victim in the majority of cases is a woman and/or her children.
7. The Commission is well aware that in the State of Victoria in the year 2013-14 there was an increase of some 83% of reported violence family incidents to Victoria Police since 2009-10. It is significant in my view however that there were 65,393 family incidents reported to the police in 2014. It is understood that in 2013 there were 44 family violence “related” deaths in Victoria. Since the advent of the Crimes Statistics Agency which now has responsibility for

statistics, it was claimed that *“family violence cases increased by 70.2% since 2010 and that Victoria Police recorded more than 68,000 family violence incidents in 2014 which is said to be an 8.2% increase from the previous year”*.

8. Whatever version of statistics is relied upon it is clear that **less than 1% of the total family violence reported incidents result in death.**
9. In my view the various agencies and groups when dealing with family violence have improved markedly in the last decade. However my concern is directed toward those events which are unreported. In the absence of reliable statistics the gross number of unreported family violence incidents involving non-physical violence significantly exceeds the number of reported acts of violence dealt with by police, the Courts and other agencies. Although the current concern has been expressed as a “law and order” issue facing Victoria, it is my view that the incidence of family violence in total represents a challenge to the community which goes well beyond a “law and order” issue.
10. No doubt many other submissions will be made by many organisations which are required to deal with the acts of reported family violence and the need for a systemic response can be identified. This submission does not address that matter given that those other organisations are much better equipped to make more relevant submissions concerning reported family violence.

Family Violence

11. The meaning of family violence has been set out in some detail in section 5 of the FVPA. That definition is broad enough to include non-physical violence which has been recognized by the Courts for many years. In particular in Victoria the Supreme Court in the case of *R v Butcher* (1986) VR 43 (“Butcher”) considered the meaning of the word “violence” as then used in section 3A of the *Crimes Act 1958*. In that case the Full Court of the Supreme Court relevantly stated at page 53 the following:-

“In our opinion the word ‘violence’ where it is used in section 3A is not to be understood to refer only to physical force but rather to include those aspects of intimidation and seeking to intimidate by the exhibition of physical force or menaces as in the past have been considered to constitute violence.

When the words ‘act of violence’ and ‘crime’ the necessary elements of which include violence are used in section 3A, violence is used in a descriptive sense. ‘Act of violence’ means an act of a violent kind for there is no legal definition of violence as such inside or outside which any

particular act or threats may be said to fall. Nor is there any common law crime in which violence is by definition an element.”

12. Apart from the case of Butcher and the definition in the FVPA, it will also be known to the Commission that an amendment was made to the *Family Law Act 1975* whereby in 2010 by the then Attorney General who expanded the definition of ‘family violence’ in sub-section 4AB(1) to provide as follows:-
- (1) *For 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.*
 - (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 the family member the financial autonomy that he or she would otherwise have had; or*
 - (h) *unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or*
 - (i) *preventing the family member from making or keeping connections with his or her family, friends or culture; or*
 - (j) *unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.*
 - (3) *For the purposes of this Act, a child is **exposed** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.*
 - (4) *Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:*
 - (a) *overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or*
 - (b) *seeing or hearing an assault of a member of the child's family by another member of the child's family; or*
 - (c) *comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or*
 - (d) *cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or*

(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

13. This definition is similar though not identical to the meaning of family violence set out in the FVPA.
14. Whilst sub-section 5(3) of the FVPA presumably would cover behavior which I have described as non-physical violence, it is clear to me that at present no authority has been given to any person or organization to investigate those claims. The police will not investigate, charge and arrest a person who has not committed a criminal offence despite sub-section 5(3) of the FVPA. Hence, sub-section 5(3) of the FVPA does not detract from the submissions which I have made.
15. Relying upon the various definitions of family violence including the State and Federal Statutory definitions together with judicial interpretations set out above, it is my view that the Commission acting upon its terms of reference should consider recommendations which take into account unreported acts of non-physical family violence.

Action required

16. The National Council to Reduce Violence Against Women and their Children has produced two reports namely a first report dated March 2009 and a second report released in early 2015. Both reports appear to adopt the United Nations definition of violence against women and children as “any act of gender-based violence that results in is likely to result in physical, sexual or psychological harm or suffering of women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (see Office of High Commission of Human Rights United Nations Declaration on the Elimination of Violence Against Women United Nations 1993).
17. It is noteworthy that in Victoria the Department of Health (Vic Health) has taken an active and significant role in the reduction of violence against women. In its report summary entitled “National Survey on Community Attitudes to Violence Against Women 2009” published by Vic Health in March 2010 comments were made about a survey commissioned by the Commonwealth Government in February 2009 relating to community attitudes to violence against women. The survey was conducted in partnership with the Australian Institute of Criminology and the Social Research Centre. The survey concluded that violence against women was a serious issue and that there was a need for a change in attitude.

The summary produced by Vic Health concluded amongst other things that the survey of findings reaffirmed the importance of the national leadership for reducing violence against women.

18. My concern is that the survey revealed an attitude toward non-physical forms of violence as being less serious. Indeed approximately 20% of survey respondents regarded non-physical forms of violence including yelling abuse at a partner and controlling a partner by denying money was either “not that serious” or “not serious at all”. Whilst physical injury is clearly serious and sadly may result in long term physical harm or death, it is my view having considered the matter over the last decade that the long term detrimental impact upon victims of non-physical forms of violence is also serious.
19. Whilst on the one hand the increase in the number of reported family incidents is of deep concern, that fact alone may ultimately be a positive development in the sense that victims are more readily aware that family violence is unacceptable and prepared to report that conduct to the relevant authorities. It perhaps is also a positive piece of information in that the law enforcement officers are much better equipped to deal with reports of family violence than in the past.
20. Nevertheless the significant challenge remains to change attitudes and culture mainly of men towards women **and to address that issue at a very early age**.
21. I have no doubt that experts currently working in the field would have little trouble identifying that early socialisation provides the best opportunity of changing attitudes and culture in relation to this important issue. I do not present this submission as an expert though note that the Commission itself may well seek access to the expertise of professionals and academics working in the field of family violence.
22. It is recognized that the National Council to Reduce Violence Against Women and their Children in its First Plan and Second Plan has made a major contribution to the debate of this important issue. Whilst a National Action Plan is essential, it is also recognized that each State and Territory must deal with the issue at a local level in order to ensure that the National Plan succeeds. It is recognized that this is a complex issue requiring complementary action both at a National and State level.
23. Any action required to deal with a change of community attitude and culture will necessarily involve both a short term and long term plan.
24. In the short term those who are the victims of unreported non-physical violence need support and assistance which does not necessarily involve reporting

matters to police and then undergoing significant further trauma of Court proceedings.

25. In the long term the socialisation of young males should occur at a very early age so that ultimately when young boys develop into young men and adult men the cultural and attitude change will occur so that violence is rejected.
26. Hopefully a greater proportion of men will demonstrate respect for women in our society.
27. The Commission is invited to recommend that statistics be kept of reported crimes and of unreported incidents. It is recognized that this will be a very difficult task and information will be very hard to gather.

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