

Family Violence – Reports and Inquiries

Presented by
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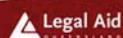
Reports and Inquiries

- Evaluation of 2006 Family Law Reforms – Australian Institute of Family Studies
- Family Courts Violence Review – Professor Richard Chisholm
- Improving Responses to Family Violence in the Family Law System – Family Law Council
- Family Violence Inquiry – Australian Law Reform Commission



AIFS Evaluation

- Information collected from over 28,000 respondents - parents, grandparents, family law services users, service providers, family lawyer
- 184 interviews with people in legal system
- 1,724 court files



Reported key findings

- Significant concerns about well being of children and parents exposed to family violence and abuse
 - Poorer reported outcomes for children, particularly in shared care arrangements



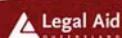
Reported key findings

- Need for better identification of high risk families
- Impact of family violence and ongoing safety concerns on children’s well-being
- Need for appropriate actions to support families to ensure right services and better coordination
- Need for sharing information across system



Family violence

- 53% fathers and 65% mothers reported physical hurt or emotional abuse
- Of parents who reported physical hurt before separation 72% mothers and 63% fathers reported children seen or heard violence and/or abuse



Family violence

- 16.5% fathers and 21.1% mothers reported current safety concerns for themselves or their child
- Parental reports of child well-being – lower where family violence, safety concerns and/or co-parental relationship distant, lots of conflict, fearful



Overview

- Families with family violence or child abuse concerns take longer to sort out arrangements
- Families with history of family violence or current safety concerns engage with multiple parts of system more than others
- Aspects of legislation may inhibit family violence and/or safety being raised – costs, “friendly parent” provisions



The Chisholm Report

Disclose – Understand – Act

Judicial officers with understanding of family law and desire to work in family law



What the system needs

- Universal risk identification and assessment
- Better education for professionals – child development, family violence, abuse
- Legislation – children’s developmental needs rather than parental rights
- Resources (particularly interim hearings)
- Information relevant to safety from other agencies to courts



Practices and procedures

- One family law court with one set of practices and procedures
- Replace Notices of Abuse/Family Violence and differential case management response with risk assessment for all



Recommended changes to legislation

- Simplify what advisers have to say – consistent with principles
- Repeal costs provision – add “knowingly false evidence”
- Amend “friendly parent” provision to include child development and safety
- Remove predominance of 2 primary considerations



Recommended changes to legislation

- Comprehensive review of Family Law Act as it relates to children
 - Equal shared parental responsibility
 - Equal time
 - Primary considerations
 - Technical review



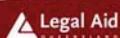
Family Law Council Report

- Definition
 - Council considers definition of family violence in Family Law Act is too narrow
 - does not reflect current understanding of what constitutes family violence
 - Recommends adoption of definition of family violence in *Family Violence Protection Act 2008 (Vic)*



Family Law Council Report

- Widen forms of communication and conduct
- Include behaviour that causes a child to hear or witness, or be exposed to effects of, behaviour that constitutes family violence



2006 family law reforms

- Proved or likely or perceived presence or absence of family violence should significantly impact on framing of court-ordered parenting arrangements



2006 family law reforms

- Legislative duties on advisers to inform clients of certain things
 - Does not include issues of family violence
 - No direction or guidance about what should be considered as parenting arrangements where issues of family violence raised



Family violence and family law cases

- Anecdotal evidence to Council around Australia – issues of family violence, often co-existing with mental health concerns, alcohol and drug misuse present in 60 – 90 % of cases in Family Relationship Centres



Family violence and family law cases

- 2007 AIFS report on allegations family violence
 - More than half cases in both federal family law courts contained allegations of family violence and/or child abuse
 - Allegations common and often serious, appeared to have only minimal impact on court sanctioned parenting outcomes



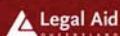
Family violence and family law cases

- When evidence of existence of family violence appropriately presented, judiciary made orders aimed at protecting victims of violence when framing orders
- In majority of cases, proper evidence not adduced to court – so court not always able to take allegations into account



Family violence and family law cases

- Court must consider risks posed by allegations of family violence
- Findings about family violence
 - Weigh above in determining appropriate parenting arrangements – to meet child's best interests
 - Take into account in determining who should exercise parental responsibility – and whether order for equal shared parental responsibility practical



Common understanding

- Need common understanding of impact of family violence on child development, child health and parental capacity
- Evidence based research findings translated into practical applications for all professionals working with families
- Judiciary should be able to take judicial notice of common knowledge base



Common understanding

- Good practice guidelines, models and tools
- Training programs and professional development
- Common framework for screening and risk assessment essential across family relationship and family law system



Concurrent jurisdiction

- Unified court
- Federal family courts determining parenting cases have concurrent jurisdiction to deal with family violence protection and child protection orders



Concurrent jurisdiction

- Concurrent jurisdiction for federal family law courts to make protection orders enforceable by state police
- National register of protection orders
- Information about the interaction of protection orders and parenting orders



Adducing evidence in court

- Notice of Family Violence in all cases where party claims family violence is factor court should consider in determining parenting case
- Courts refer party alleging family violence to risk assessment
- Amendment to court forms to raise issues of family violence



Coordination, communication and information sharing

- Federal family law
- State personal protection and child welfare laws
- Memoranda of understanding about information exchange – largely relate to child welfare rather than family violence



Legislative reform

- 2 primary considerations – protection and safety of child should be over-riding consideration
- Is order for equal shared parental responsibility “reasonably practicable”?
 - Parties capacity and/or willingness to communicate co-operatively
 - Extent of any family violence
 - Impact such order would have on child



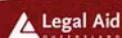
Australian Law Reform Commission

- Family Violence Inquiry
 - Family Violence: A Common Interpretative Framework?
 - Criminal Law
 - Protection Orders
 - Parenting Orders
 - Child protection
 - Sexual assault



Australian Law Reform Commission

- Improving Evidence and Information Sharing
 - Person allegedly used family violence not able to personally cross-examine other party in protection order proceedings - only legal practitioner
 - Mutual protection orders only on evidence



Australian Law Reform Commission

- Alternative Processes
 - Training and support for lawyers in screening and assessing risk of family violence
 - Screening and assessment frameworks for family dispute resolution practitioners



Australian Law Reform Commission

- Integrated Responses and Best Practice
 - Court support for victims of family violence in federal family courts
 - Family violence issues in law degrees
 - Continuing professional development in family violence



Acknowledgements

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