



Research Brief *Victoria Family Violence Legislation*

Introduction

This brief provides an overview of the current Victorian Family Violence and intimate partner homicide legislation.

Key Reforms

In 2009 the Australian Government launched their National Plan to Reduce Violence Against Women (2010–2022), with the specific aim to make 'real and sustained reduction in the levels of violence against women' (DSS 2014). In Victoria, legislative action included repealing the Crimes (Family Violence) Act 1987 (Vic) and implementing the Family Violence Protection Act 2008 (Vic) in 2009. The Act offered a 'more comprehensive definition of family violence, which better recognizes economic and emotional abuse as well as other types of threatening and controlling behaviour' (Department of Justice 2014). More grounds for intervention orders were established in Crimes (Family Violence) Act 1987 (Vic): displays of violence or aggression and the likelihood of the offender repeating their actions.

Family Violence Protection Act 2008 (Vic) The Act has three key aims: 'to maximise safety for children and adults who have experienced family violence ... prevent and reduce family violence to the greatest extent possible and ... promote the accountability of perpetrators of family violence for their actions (s. 1(a-c)). These reforms aimed to create an 'accessible system of family violence intervention orders and family violence safety notices' (s. 2(ab)).

Family Violence Intervention Order (FVIO) and Family Violence Safety Notice (FVSN)

A Family Violence Intervention Order (FVIO) is an order that a victim of family violence can apply for against a violent family member. These orders prohibit respondents from: committing family violence against the protected person; approaching, telephoning or otherwise contacting the protected person unless in the company of a police officer or specified person; being anywhere within a specified distance of the protected person or a specified place and causing another person to engage in conduct prohibited by the order (Family Violence Protection Act 2008 (Vic) s. 81). The court can instruct the respondent to participate in counselling (s. 130(1)). Victims can apply for an interim order pending further hearing if it is decided to the satisfaction of the court that the order is needed to ensure the safety of the family member, preserve their property, protect a child victim or if the respondent consents to the order (s. 53(1)).

In Victoria (and NSW) people able to apply for an order include: spouses, de facto couples, same sex couples, intimate partners, relatives, carers and intimate dating couples (Wilcox 2010). Orders in Victoria are 'perpetrator focused' (Wilcox 2010) and do not require an act of violence, but behaviour 'causing the victim ... fear' (s. 5). These orders have significant problems. Victims see perpetrators in court when applying for the FVIO, which is particularly problematic for women seeking refuge from respondents (Women's Health West 2003). Family violence

victims can become more vulnerable to violence and harassment when they seek protective measures such as intervention orders (Parkinson et al. 2011). FVSN were also implemented as part of the 2008 reforms. They are notices issued by police without court applications (Family Violence Protection Act 2008 (Vic) ss 24, 26) and can be sought outside court hours (Cowie 2014). An FVSN can be sought by a police officer who believes it is necessary to protect family members and children and preserve their property (s. 23(e)).

Contravention of Family Violence Intervention Orders

The Family Violence Protection Act contains two contravention offences: contravention of a family violence intervention order (s. 10) and contravention of a family violence safety notice.

Implementing intervention orders

The Sentencing Advisory Council report on sentencing trends for contraventions of FVIO and FVSN found: an 82.2% increase in the number of intervention orders made by the Magistrates' Court; a 72.8% increase in reports of family violence incidents to Victoria Police; a 295.4% increase in the number of children named as protected persons on intervention orders and an increase in family violence intervention orders initiated by Victoria Police. This report noted sentencing trends had shifted from fines to adjourned undertakings and community orders, which the council viewed as interventions with greater potential for 'community and victim protection' (SAC 2013: 51). The report queried whether these interventions protect victims considering 'deficiencies in offender accountability and monitoring'.

Laws pertaining to intimate partner homicide

The following section focuses on two key defences - partial defence of provocation and defensive homicide - that have implications for family violence.

Provocation, or the partial defence of provocation, is used to reduce murder to manslaughter, specifically in cases where the offender responds with lethal violence, arguing the provocation resulted in loss of control (VLRC 2004). Feminist critiques have highlighted that the defence is highly gendered and used by men to excuse intimate partner murder (Fitz-Gibbon & Pickering 2012; Maher et al. 2005). These critiques were heightened after *R v Ramage*.

R v Ramage

In 2004 James Ramage was convicted of the manslaughter death of his wife Julie Ramage (separated at the time). Ramage claimed that he 'lost control', struck her in the head and strangled her. During the trial his defence counsel raised provocation, 'identifying the immediate circumstances prior to Julie Ramage's death as being the culmination of the events, combined with James Ramage's mental state at the time' (Maher et al. 2005). Ramage was found guilty of manslaughter and sentenced to 11 years imprisonment, with a minimum non-parole period of 8 years.

Defensive Homicide

In 2005 Victoria became the second state to repeal the partial defence of provocation (Crimes (Homicide) Act 2005 (Vic)) (Fitz-Gibbon & Pickering 2011). After concerns that women who kill their partners would be 'disadvantaged' in the abolition of

provocation, Victoria introduced a new offence of defensive homicide (Crimes (Homicide) Act 2005 (Vic) s. 9AD); Fitz-Gibbon & Pickering 2011). By 2010 defensive homicide was mostly used when men killed other men, rather than in cases where women kill their intimate partners (Department of Justice 2010). Criticism was pronounced after *R v Middelndorp*. Luke Middelndorp was convicted of defensive homicide after he stabbed his former partner Jade Bownds in the back (Maher 2014, Fitz-Gibbon et al. 2014). Attorney-General Robert Clark commented 'this law is not working as it's supposed to have worked and justice is not being served' (Lowe 2010). In 2014, the Victorian parliament passed the Crimes Amendment (Abolition of Defensive Homicide) Act 2014 (Vic).

Cases

R v Ramage [2004] VSC 391
R v Middelndorp [2010] VSC 202

Legislation

Crimes Amendment (Abolition of Defensive Homicide) Act 2014 (Vic).
Crimes (Family Violence) Act 1987 (Vic).
Crimes (Homicide) Act 2005 (Vic).
Family Violence Protection Act 2008 (Vic).

References

- Cowie, T 2014, 'Family Violence Laws Come into Effect', *The Age*, 2 November 2014.
- Department of Justice 2010, Review of the Offence of Defensive Homicide: Discussion Paper, Department of Justice, Victoria. Department of Justice 2014.
- Department of Social Services 2014, National plan to reduce violence against women and their children.
- Fitz-Gibbon, K & Pickering, S 2011, 'Homicide Law Reform In Victoria, Australia', *British Journal of Criminology*, vol. 52, iss. 1, pp. 159–180.
- Lowe, A. 2010, 'New Calls for State to Overhaul Homicide Laws', *The Age*, 20 May 2010: 6
- Fitz-Gibbon, K, Tyson, D, & McCulloch, J 2014 'R v Middelndorp' (pp: 325-329) and Maher, J 2014 Commentary on *R v Middelndorp*, in *Australian Feminist Judgments: Righting and Rewriting Law*, (eds) H Douglas, F Bartlett, T Luker, R Hunter, Hart Publishing: UK, pp: 325-329
- Maher, J et al. 2005, 'Honouring White Masculinity: Culture, Terror, Provocation and the Law', *The Australian Feminist Law Journal*, vol. 23, pp. 147–175.
- Sentencing Advisory Council [SAC] 2014, Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention, Sentencing Advisory Council: Melbourne.
- Women's Health West 2003, Measuring the Tides of Violence Report, Women's Health West, <http://www.adfvc.unsw.edu.au/>

Author: MGFV team (2016)

For further inquiries: arts.monash.edu/gender-and-family-violence