

General feedback

Victoria Police is supportive of legislative reforms that strengthen capacity to recognise and respond to child abuse and neglect and enable better cooperation between States and Territories in combating family violence. The proposed amendments give rise to a number of policy and operational considerations for Victoria Police, which are set out below.

In view of these issues, Victoria Police recommends delaying the commencement date for the legislation to accommodate the need to update operational procedures and inform members of the new legislative provisions.

Item 1: Update definition of 'abuse' in the Family Law Act 1975 to include causing the child to suffer serious psychological harm including by the child being exposed to family violence

The proposed amendment is supported in principle subject to the following considerations:

Inclusion of example behaviours

The requirement that 'serious psychological harm' constitute abuse necessitates a scale for identifying levels of seriousness. For the purposes of recognising this harm and subsequent prosecution, it is recommended that the Bill should include example behaviours that would substantiate abuse.

Higher threshold and its impact on police responsibilities

As noted in Victoria Police's response to the exposure draft of the *Family Law Amendment (Family Violence) Bill 2010* in January 2011, the Bill's threshold of causing a child to suffer 'serious psychological harm' is higher than the threshold in the *Children Youth and Families Act 2005* (Vic). The Victorian Act refers to children who have suffered or are likely to suffer psychological harm which causes significant damage. This Victorian threshold forms part of the basis for current responses to concerns for the emotional abuse or neglect of a child.

The new provision in the Bill would create an inconsistency between State and Commonwealth legislation, and this may result in ambiguity in responses to children at risk. Assuming that the Commonwealth law prevails to the extent of the inconsistency, current Victorian responses may need to be amended accordingly.

As the first point of contact in many family violence and child abuse incidents, police play a key role in assessing harm and its impact. Although police have the capacity to recognise indicators of psychological abuse, identifying 'serious psychological harm' is best achieved through a comprehensive assessment undertaken by other

practitioners who possess the relevant skill sets to accurately identify indicators of serious psychological harm.

Victoria Police recommends that the responsibility for assessing serious psychological harm should not sit with police at the first point of contact. If this responsibility is allocated to police, it is likely to result in a substantial increase in the number of Child Protection reports made. If the responsibility is allocated to another agency, the role of that agency in identifying and assessing serious psychological harm will need to be clarified prior to the introduction of the new definition.

The proposed amendment may also impact on current Child Protection Reporting Protocols, which require Victoria Police members to report to Child Protection where the member has concern that a child may be experiencing, or be at risk of experiencing, physical abuse, sexual abuse, emotional abuse or neglect. Recognition of 'serious psychological harm' as a form of abuse may require revision to Child Protection Reporting Protocols and the role of police as protective interveners.

The addition of this definition will require communication to Victoria Police members, and potential amendments to the Victoria Police Manual and *Code of Practice for the Investigation of Family Violence*. As a result, Victoria Police recommends that a delayed commencement date of at least 6 months following Royal Assent be implemented to allow for operational procedures to accommodate this provision.

Item 11: Principles to be applied by the courts – s 43(1)(ca)

The Bill proposes to amend s 43(1)(ca), *Family Law Act 1975*, which provides the principles to be applied by courts, by replacing the word 'safety' with 'protection'. The new provision would read:

The Family Court shall, in the exercise of its jurisdiction under this Act, and any other court exercising jurisdiction under this Act shall, in the exercise of that jurisdiction, have regard to:

*(ca) the need to ensure **safety protection** from family violence*

This is justified as promoting consistency of terminology in the Act.

Safety and protection are not interchangeable terms and should not be considered as such in considerations by the Courts. A primary purpose of the *Family Violence Protection Act 2008* (Vic) is to 'maximise safety for children and adults who have experienced family violence.' Similarly, best practice frameworks for responding to family violence throughout the Victorian Integrated Family Violence system emphasise safety of victims as a primary priority.

Therefore, for the purpose of consistency between Commonwealth and Victorian legislation, it would be preferable that the word 'protection' be added in addition to the word 'safety', rather than as a replacement. There is a risk that removing the statutory reference to "safety" may dilute the meaning of the section.

In addition, the use of the term protection may result in courts using intervention orders, in the absence of other measures, as a mechanism for providing adequate protection to warrant the court to allow access to children, or to limit family violence. It is essential that the court considers safety outside of the context of protective mechanisms such as intervention orders, as whilst valid, these protective mechanisms do not guarantee safety.

Item 17: Greater weight to the primary consideration to protect children from harm

The Bill proposes to amend s 60CC(2A), *Family Law Act 1975* to require the court, when determining what is in a child's best interests, to give greater weight to the primary consideration of the need to protect the child from harm, if there is inconsistency in applying the two primary considerations. The two primary considerations are:

- (a) the benefit to the child of having a meaningful relationship with both of the child's parents
- (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence

It should be noted that having two primary considerations maintains the tension between meaningful relationships and protection. The presence of two primary factors for consideration, where one is clearly intended to outweigh the other in court considerations, adds an unnecessary layer of complexity, as it renders one 'primary' consideration to be of secondary importance.

To the extent that safety is deemed to be of primary importance and consideration, it is recommended that there be one primary consideration (the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence) and one secondary consideration (of the benefit to the child of having a meaningful relationship with both of the child's parents).