



SUBMISSION

Review of the Family Violence Act 2004

**MR PAUL MASON,
COMMISSIONER**

7 February 2008

The Commissioner for Children is an independent, statutory office responsible to the Parliament of Tasmania. The Commissioner's functions include promoting the rights and well-being of children and young people, examining and advising the Government on policies, practices and services provided for children and laws affecting their health, welfare, care, protection and development.

BACKGROUND

Pursuant to s.43 of the Family Violence Act 2004 (hereinafter the FV Act) the Attorney-General announced a review of the Act and invited the Commissioner for Children (the CfC) to participate in interviews with consultants engaged to conduct the Review. By letter dated 8 January 2008 he also invited the CfC to provide any views he thought pertinent to the review.

There follows the CfC's submission in relation to the effectiveness of the FV Act as it affects children who witness or are the subject of family violence as that term is used in the Act and in general usage.

1. DEFINITION OF "FAMILY VIOLENCE" IN S.7 FAMILY VIOLENCE ACT

The CfC can find no collected statistics on how many children in Tasmania are physically assaulted, let alone verbally and emotionally terrorised and oppressed, by their parents and carers and who might benefit from having the protection of Family Violence Orders (FVOs).

By letter dated 21 August 2007 the CfC sought from the Department of Justice the existence of statistics showing how many parents or persons in loco parentis have been charge with physically assaulting children in their care and how many such adults had availed themselves of the statutory defence under s.50 Criminal Code Act 1924. The Department replied that such statistics were not available separately, but might be extracted by an interested researcher examining files held of the Victims of Crime Unit in the Tasmania Police Force.

In The Mercury 17 September 2007 the then Attorney-General The Hon Steven Kons reportedly said that "the child protection and family violence legislation both address the question of violence within families, both physical and emotional, and enable an appropriate response".

The question then arises: how do the Family Violence Act 2004 (the FV Act) and the Children, Young Persons and Their Families Act 1997 (the CYPATF Act) protect children from "family violence" in its common usage sense when it is perpetrated against them by parents and step-parents?

CHILDREN YOUNG PERSONS AND THEIR FAMILIES ACT

How does the CYPATF Act protect children from family violence against themselves, rather than between adults as defined in s.7 FV Act?

s.91 CYPATF Act creates an offence punishable by \$5000 fine or 2 years imprisonment or both for [inter alia] a person having a duty of care in respect of a child taking action that could reasonably be expected to result in the child:

(a) suffering significant harm as a result of physical injury or sexual abuse; or

(b) the child suffering emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged; or

(c) the child's physical development or health being significantly harmed.

Academic psychological evidence is overwhelming that the intentional infliction of pain as a physical penalty as a disciplinary measure (not for the immediate protection of the child or another person) causes significant and long-term harm and financial cost to communities. Children subjected to a consistent regime of corporal punishment are more likely to develop antisocial and oppositional behaviour and bullying at school¹, to hit their own children and spouses², to develop loss of self-respect and depression, suicide and become victims of violence in adulthood³.

However to the best of the Commissioner for Children's inquiries s.91 has never been used to found a prosecution. A careful reading of s.91 itself reveals the possibly insurmountable difficulties faced by a prosecutor in securing a conviction under that provision, so it is little wonder that it has not been used. It may well be there for educational impact rather than as a practical prosecutorial tool.

Thus the CYPATF Act only provides protection for children so grossly abused that the State intervenes for their sheer safety and not the 70% of children notified for abuse or neglect but excluded from State intervention under s.17 (a) or (b), nor those who on the balance of probabilities – but not beyond reasonable doubt - may have suffered the kinds of abuse contained within s.91.

The Commissioner for Children is concerned about children who are the subject of physical assaults, threats, coercion, intimidation, verbal and emotional abuse who do not attract prosecutorial discretion of the State and whose level of risk is insufficient to warrant emergency (and expensive) State intervention in their living arrangements. **IT IS RECOMMENDED** that the CYPATF Act does little to empower children to control violence within their homes.

¹ Straus MA, Sugarman DB & Giles-Sims (1997) Corporal punishment by parents and subsequent antisocial behaviour of children. *Archives of Paediatrics and Adolescent Medicine*, 155, 755-767.

² Julian TW & McKendry PC (1993) Mediators of male violence to female intimates. *Journal of Family Violence*, 8, 39-56.

³ Gershoff E (2002) Corporal punishment by parents and associated child behaviours and experiences: a meta-analytic and theoretical review. *Psychological Bulletin*, 128(4), 539-579.

These children need the direct protection of the FV Act as subjects not merely as objects.

FAMILY VIOLENCE ACT

The CfC is of the opinion that the FV Act provides little or no protection for children or for their best interests independently of the parent who by whatever historical means becomes the Applicant “Person to be protected” rather than the “Respondent” in proceedings – colloquially known in Family Law circles as “the race to the phone”.

The definition of “family violence” in Section 7 does not include any form of violence to a child or affected child (with the possible and artificial exception of the emotional abuse suffered by a child’s parent witnessing such violence).

This omission makes second-class citizens of children and fails to give due recognition to the long-lasting developmental and behavioural distortions caused by violence directed to them, as well as violence directed to a parent. Children are no less entitled to protection from terror in their homes than women, or those few men, who are the target protection population of the FV Act.

This is the most glaring defect in the Act, as it leads to anomalies and unintended consequences for families and for the maintenance of meaningful relationships between children and parents from whom they are separated by State Family Violence Orders (FVOs).

Anecdotal evidence abounds that children are listed in the application form FV1 and routinely included as Persons to be protected in orders by Police and Magistrates without much inquiry into the effect of those orders on the welfare and development of individual children. Orders are routinely made excluding ALL contact and communication with a child where there is not even evidence – admissible or otherwise – that the children are at an unacceptable risk of physical or psychological harm.

Courts very rarely distinguish between conditions excluding face to face contact from conditions excluding phone, SMS or email communication. Rarely are orders considered in the FV Act context for time with a respondent to be supervised either informally by a senior relative or mutual acquaintance or formally in a Federally-funded Children’s Contact Centre.

Since the onus and standard of proof for a successful FVO is not strict and opposition is rare, time with children thus becomes a weapon in a relationship breakdown. Thus the very mischief the Commonwealth has sought to undo over the last 32 years - to reduce children being used as a bludgeon in domestic litigation - is unintentionally fostered by the FV Act.

2. REASONABLE FORCE AND ECONOMIC CONTROL WITHIN FAMILIES

It is conceded that a proper inclusion of violence against children in s.7 would require refinement of that definition in paragraphs 7(a) (ii) and 7(b) (i).

The former in the case of children would require some re-statement of the de minimis principle or the exclusion of maintaining safety and family order in the moment, as has been attempted in s.59 (1) of the Crimes Act, 1961 (NZ).

The latter (economic abuse) can be excluded in the case of children as true deprivation and neglect is clearly covered by CYPATF Act ss.4 and 91.

Indeed, parental withholding of material privileges (as opposed to necessities) is the most preferred psychological behaviour management tool in the avoidance of violence against children world-wide.

3. CHILDREN AS FVO APPLICANTS

S.15 confers on a child the right to apply for a FVO. IT IS RECOMMENDED that this “right” is nugatory – as the FV Act stands at present.

An examination of the Application Form FV1 shows that children are (as is the usual case) regarded as incidental to the purpose of the application. The circumstances in which a child might use the Form are almost inconceivable.

In the very first line the Form requires the Applicant child to identify themselves as “Person to be protected” or “Other”. The only conceivable reason a child would bring such an application would be for their own safety, perhaps in the context of protecting one parent with whom they are living from another parent or their partner with whom they are living. Q.1.3 and Q2 distinguish between “Person to be protected” and “Children to be protected”.

The Form in Q4 does not provide for “Person to be protected” to be a child of the Respondent or of the partner of that Respondent.

The Form requires the child as Applicant to establish evidence of “family violence” as defined that is between two adults, neither of whom by definition has made application for an order themselves. If “threats, coercion or intimidation” or “emotional abuse or intimidation” between the adult Person to be protected and the adult Respondent are relied on, the Child Applicant has to give evidence of the state of mind of the Person to be protected, which is manifestly absurd.

The foregoing may be construed as an argument to exclude children from the capacity to apply for an FVO altogether. To take this retrograde step would

be inconsistent with the Government's oft-repeated intention of making better provision for children to live in a safe and secure environment free from violence.

To remove the capacity of children to apply while leaving the s.7 definition unaltered would also contradict the declared rights of children under the United Nations Convention on the Rights of the Child, in particular [in summary] Article 2 to take appropriate measures to protect children from punishment on the basis of the beliefs of the child's parents; and Article 12 guaranteeing the right of the child capable of forming views the opportunity to express them and the opportunity to be heard in judicial procedures affecting the child.

As long as "family violence" excludes "violence against children", at-risk target populations in the community will continue to believe that "violence against children" is not "family violence". In plain English it obviously is.

4. S.14 EFFECT ON CHILD PROTECTION SYSTEM

s.14 (2) CYPATF Act imposes a mandatory requirement on Police to report where they suspect a child is an "affected child" within s.4 FV Act.

CfC is concerned about overloading the child protection system. It is trite in Tasmania that the Police reporting obligation where a child was "affected" increased notifications tremendously without a concomitant increase in the overall proportion of children referred for child protection investigation and substantiated. By contrast the last 12 months from November 2006 has seen a decrease in the proportion of notifications referred for investigation.

In this manner the increase in raw numbers of mandatory notifications has not resulted directly in an increase in the number or the proportion of children becoming the subject of statutory intervention. However dealing with the greater number of notifications and investigating those that appear to warrant investigation before children are found to be essentially safe absorbs vast resources.

Current child protection theory is that mandatory reporting of populations adversely affects a State's capacity to provide useful protection. It is a Tertiary (State intervention) response to a Primary (whole of population) problem. The process is comprehensively analysed in Professor Dorothy Scott's seminal work "Towards a Public health model of child protection in Australia"⁴.

The CfC has heard reports from Police that Police resources are spent notifying the Child and Families Division of DHHS about children who were not in a position to witness the incident of violence that lead to FV Act intervention, thus increasing the workload of both arms of Government.

⁴ Scott, D.A. (2006) Towards a public health model of child protection in Australia, Communities, *Families and Children Australia*, 1(1) 9-16

s.14 of the CYPATF Act requires Police to notify children whom they reasonably suspect of being “abused or neglected” or being at risk of such within the meaning of that Act. S.4 of that Act defines “abuse or neglect” to include non-physical emotional injury from which the child is likely to suffer psychological harm detrimental to their wellbeing or where their psychological development is in jeopardy.

The CfC SUBMITS that consideration should be given to reviewing this mandatory reporting requirement and Police instructed, as they have evidently been instructed, about the real and direct risk of harm suffered by children who live in violent homes, or witness direct violence.

The more child-focussed solution is to spend this part of State resources on expanding the population within the existing protections of the FV Act by including violence against children in the definition of “family violence”, so that “affected” children outside the definition of s.4 are included within the Safe At Home framework.

5. INTERPLAY OF STATE FVOs AND FEDERAL FAMILY LAW ACT PARENTING ARRANGEMENTS

There is significant anecdotal evidence known to the Commissioner for Children that the conditions of FVOs unnecessarily disrupt relationships between children and parents. This is true in other jurisdictions as in Tasmania. It appears to be less so where Magistrates in courts of petty sessions deal routinely with urgent interim parenting applications at the same time they deal with FVO applications.

In Tasmania, unlike most mainland jurisdictions, there is no culture of Magistrates hearing and determining “interim interim” parenting applications in the course of determining FVOs and transferring the parenting aspect to the specialist jurisdictions of the Family Court of Australia or the Federal Magistrates Court pursuant to s.69N Family law Act 1975 (Cth).

This, for some reason not known to the writer, is not and has not for a long time been the case in Tasmania. One explanation may be that the Family Court of Australia and the Federal Magistrates Court are thought to be adequately accessible for urgent decisions about with whom children should live, with whom they should spend time and with whom and how they communicate.

However State lawmakers should be aware of the considerable delays and obstacles placed in the way of litigants (of both genders) by procedural requirements, mediation resources and listing priorities in the Federal Courts.

If an urgent FVO is made precluding the continuation of the relationship between a loving parent and child, even an agreement between the parents can take weeks to be effected by an amendment to the FVO under s.20.

The more usual outcome is that parents conspire to breach and aid and abet the breach of FVOs in order to maintain meaningful relationships between parents and children.

SCENARIO

Mother has retained paid part-time employment and has always relied on the Father to care for the children within the home during her shift.

One night the children have witnessed some frightening levels of violence directed to her over a purely adult issue such as an imagined infidelity by her or his wasting money on poker machines. She suffers two black eyes on this occasion, and both have scratches to their forearms, though the same arguments have been going on at a verbal level for two years. A neighbour calls the Police who remove him and she may earnestly wish to be rid of him from the home.

Mother finds that without his occasional care of the children she is unable to keep the roof over their heads. The Mother rings the Father and asks him to resume the previous care arrangements but neither of them has the time or money, or can be bothered to return to court for a consent variation. He is in breach and she is aiding and abetting the breach. They have conspired to do so.

In this way the legislation fails to pay sufficient attention to the circumstances of children within families and creates or facilitates destructive unintended consequences for families. The Law is brought into disrepute as people proceed with their family lives in flagrant breach, exposed to the risk of prosecution for doing their best to make things work well for themselves and their children.

In the view of the CfC there is a real risk that the almost automatic inclusion of children within a no-contact, no-communication order will interfere so much in their meaningful relationship with the other parent that irreversible harm can be done.

In most cases where the allegation of family violence does include allegations that the Respondent has offered violence to the children (which is not itself as has been noted above “family violence”) it may well be appropriate for a Magistrate to suspend all time with and all communication between the respondent and the child until a court has considered those issues within the framework of the Family Law Act.

Even then the Court should be directed to consider whether the risks to the safety of the children are unacceptable and to consider not just a blanket termination of the relationship but possibilities of face-to-face contact, supervision, and communication.

The Family Law Act since July 2006 has abolished notions of “custody”, “residence”, “contact” and “access” as being proprietary or focussed on adults

needs and perceived “rights”, concepts inconsistent with the paramountcy of the child’s best interests. The new framework is deliberately child focussed and considers three aspects of the relationship: “living with” s.64B(2)(a), “spending time with” s.64B(2)(b) and “communicating with” s.64B(2)(c) and different orders can be made in respect of each appropriate to the individual child’s needs.

s.16 of the FV Act is the only guide to the form and content of orders within the Act. s.16 (2) provides for the form of orders upon s.16 (1) being satisfied on evidence properly adduced under the Evidence Act (including s.75 of the Evidence Act relating to the admission of hearsay representation in interim proceedings).

The protection of children in the Act lies within s.16(2) but IT IS RECOMMENDED that children’s true needs – and rights – their care welfare and development in the broadest sense is more implicit than explicit.

6. S.18 “SAFETY AND INTERESTS” – OF WHOM?

In s.18 the expression “safety and interests of the persons to be protected” fails to distinguish between the safety and interest of an adult spouse or partner and “the best interests of the child” in the sense used in s.60CC of the Family Law Act 1975 and *passim.*, and in doing so fails to recognise that these may not coincide.

If a Magistrate has made an order, including an interim order, excluding a violent father (in the usual case) from the family home, the child still living there is “safe”. But in the case of parental relationships the expression “safety and interests” does not stop there. How is the Court to assess the best interests of that child in distinction from the “safety and interest” of the other parent, who has brought the application or who is the primary “Person to be protected”?

The CfC’s concern with s.18 is the word “may”. “May” is not a word imputing any degree of probability, so that it is too easy to conceive a possibility falling short of a probability that would justify an easy “no-contact” order.

The word has the potential to cause greater harm to the psychological development and welfare of children than any original exposure to the majority of incidents encompassed within the definition of “family violence” between adults as presently defined.

The Application Form FV1 itself with its tick-a-box format for orders sought situates the Section 2 “Children to be protected” before the statement of evidence. In the location and use of the expression “to be protected” it raises a presumption that whatever evidence tends to establish a family violence offence against the adult Person to be protected establishes a need to impose conditions limiting or excluding (“protecting”) the Respondent’s relationship with the named children.

The FV Act and Form FV1 thus fail to ensure that Police and Courts give careful consideration to whether violence has been or is likely to be offered to a child.

This is not to deny that some children who have witnessed family violence may have been adversely and even profoundly affected, which is common knowledge (Patsalou [1994] FamCA 118), but rather that parental responsibility and the maintenance of a meaningful relationship should be the province of a Court considering these issues and under the framework of the best interests of the Child s.60CC FLA.

7. THE CHILD'S VIEWS ABOUT FVOS THAT IMPACT ON THEM AND THEIR LIVES.

In the fraught environment of domestic disputes it must be centrally recognised that the wishes, interests and intellectually legitimate opinions of children cannot be safely represented by one parent or the other who will often find themselves caught in a conflict between their own and the child's interests. Independent views can be obtained by a psychologist report or by the advocacy of a separate representative trained to put the views of children and assist the Court in identifying their "best interests" where those differ from immaturely expressed views.

The Legal Aid Commission of Tasmania is currently developing a curriculum for such representation within the CYPATF Framework with the assistance of the DHHS. Consideration could be given to the Magistrate seeking the views of children in person, though this may not be the place or time to argue these complex issues. Magistrates should certainly be given the power to obtain those views in any manner they see fit, including interviewing the child in person.

Seeking the views of children may cause delay in the making of final orders, but is demanded by the letter and spirit of Article 12 of the UN Convention on the Rights of the Child:

...the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rule of national law.

8. EVIDENCE

There are serious consequences to calling children as witnesses to give evidence in a formal court setting in favour of one parent against the other. The pain of domestic breakdown for adults can fade over time, but for children to be thrown in to the arena can be deeply traumatic and should to all possible extents be avoided.

The Family Law Act recognises this in s.100B:

(2) A child must not be called as a witness in, or be present during, proceedings in the Family Court, or in another court when exercising jurisdiction under this Act, unless the court makes an order allowing the child to be called as a witness or to be present (as the case may be).

The FV Act should contain a similar provision as parents will sometimes threaten to call a child as a witness during pre-trial negotiations with the desired effect of procuring the withdrawal of a perfectly justified application or defence. Once again the child is used as the bludgeon in the adult battle. The writer has personally found himself in the position of putting such a proposition on instructions, though in a Relationships Act 2003 case, one where again s.100B of the Family Law Act had no application. It was a most potent but cruel tactic.

There will often be Police statements from children which should be admissible, but a party should be required to establish before being entitled to cross-examine on it that justice cannot otherwise be done. The Court does after all have the benefit of s.190 of the Evidence Act to give such evidence the weight it considers appropriate in context of all the other evidence.

It is the opinion of the CfC that Part 2 of the Evidence (Children and Special Witnesses) Act 2001 gives inadequate protection to the best interest of children in FV Act cases, at least in respect of applications for orders, revocations, variation and the like. There is an argument that in the prosecution for a punishable offence under the FV Act a defendant may have leave to require a child to be available for oral cross-examination upon satisfying the Court on the voir dire that the requirements of justice override the Court's need to protect the child not only from exposure to the rigours of examination but also from the rigours of becoming an instrument in the domestic battle between two persons of fundamental psychological importance to them.

9. SECTIONS 37 & 38 – PROCLAMATION OR NOT?

It is the opinion of the CfC that promulgating ss.37 and 38 is likely to increase the burden on the Intake section of the Division of Child and Families without concomitant benefit or improvement in the lives of children. The CfC is not aware of any evidence that such a process would make the lives of family violence victims any safer.

If Police turn up at a doorstep on the report of a mandatory notifier, but not in the heat of the moment in dealing with an immediate family violence offence, there is a serious risk that a victim's private plans to escape or end the violence will be disrupted. Further, the perpetrator who may at that time be in a calm phase of the well-documented "cycle of violence", could become destabilised and work retribution on the victim as a result of the visit itself.

Where there is family violence serious enough to affect the health or wellbeing of children s.14 of the CYPATF Act requires notification and the Government manages that level of complaint effectively, if with some difficulty for limited resources. A visit from a Child Protection Worker or from a Family Support Service entity is more likely to be attended by offers of assistance than threat to a perpetrator and offer more choices to both partners to address the root causes of their family violence.

Adding another mandatory reporting regime could be the straw that breaks the back of the Child Protection camel.

RECOMMENDATIONS

Accordingly the CfC makes the following recommendations:

1. While the criminal character and public importance of family violence has historically been overlooked and that oversight has been directly addressed by the FV Act, the familial and psycho-dynamic dimensions continue to be overlooked.

For this reason it is important to build into any statutory scheme to address family violence formal processes for resolving relationship breakdown and for protecting and advancing the best interests of children. The models for these processes have been developed in the specialist environment of the Family Law Act 1975 (Cth).

To the greatest extent possible, and consistent with the safety of adults and children, the Family Law Act models for family dispute resolution and the maintenance of meaningful but safe relationships between children and their parents and significant adults should be adopted.

This includes using terminology from the Family Law Act in appropriate places, such as “the best interest of the child”, “meaningful relationship,”, “living with”, spending time with” and “communicating with”.

ACCORDINGLY IT IS RECOMMENDED that section 3 the objectives section of the FV Act be amended to include a statement that recognises the potential for conflict between the “interests’ of a parent victim of family violence and the interests of the children of the parties who are members of the parties’ household.

This might be achieved by adopting in a sub-section (2) all or part of the principles set out in s.60B of the Family Law Act 1975 (Cth). The CfC SUBMITS that the following paragraphs at least be included and that such a subparagraph might read:

3(2) In respect of affected children that the safety wellbeing and interest of children are met by:

(a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and

(b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and

(c) ensuring that children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and

(d) parents should agree about the future parenting of their children; and

(e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture) and for the purposes of this paragraph but without limiting its effect an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right to maintain a connection with that culture; to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and to develop a positive appreciation of that culture.

2. IT IS RECOMMENDED that s.7 be amended to include in the definition of "family violence" violence between parents and children and between the domestic partners of parents (step-parents) and children in the home.

This can be achieved by the insertion of a third paragraph

7(c) any of the types of conduct committed by a person, directly or indirectly, against a child of that person or that person's spouse or partner being conduct referred to in paragraph (a) or in sub-paragraphs (b)(ii) or (iii) of this section.

3. IT IS RECOMMENDED that the amendment to s.7 exempt from the definition violence against children the use of force of a kind referred to in s.59 (1) of the Crimes Act 1961 NZ.

This can be achieved by the insertion of a fourth paragraph

7(d) Paragraph (c) of this section does not apply to the use of physical force by a parent or person in loco parentis being force not applied for the purposes of punishment but force reasonable in the circumstances:

(i) to prevent harm to the child or another person,

(ii) to prevent the child committing a criminal offence,

(iii) to prevent the child engaging in offensive or disruptive behaviour; or

(iv) being inconsequential force used in normal daily tasks incidental to good care and parenting.

4. IT IS RECOMMENDED that s.16 be amended by the addition of a provision that if an order excludes any time spent with or communication with an affected child by a person to whom a FVO is

issued or a person against whom a FVO is made, then such an order should only be made upon evidence that there is an unacceptable risk the person is more likely than not to commit a family violence offence on or in the presence or hearing of the child which has the capacity to adversely affect the welfare of the child.

5. IT IS RECOMMENDED that in any case where an order may restrict time with or communication with an affected child, s.16 expressly direct Police and Magistrates to consider what conditions can be imposed on an FVO that will best achieve the objects the CfC has submitted in Recommendation 1 above.
6. IT IS RECOMMENDED that if an order is made at interim hearing limiting time or communication between a Respondent and an affected child, then the views of the child should be sought as to the conditions of any restraint placed on their relationship with the respondent.
7. IT IS RECOMMENDED that s.18 be amended to provide that the Court, in imposing any condition having the effect of restricting a person's time with or communication with an affected child, shall have regard to the best interests of the child as the paramount consideration and consider the benefit to the child of having a meaningful relationship with both of the child's parents; and the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Alternatively the Court could be directed to consider the matters set out in s.60CC of the Family Law Act 1975 before imposing orders that would have the effect of restricting a person's time with or communication with an affected child.

8. IT IS RECOMMENDED THAT there be no final FVO made until the parties have attended accredited mediation, the Family Relationship Centre or an accredited Family Dispute Resolution Practitioner under the Family Law Act, and that organisation has certified what if any progress has been made and whether the parties have themselves agreed on the conditions that should attach to any FVO.

It is trite that an agreement crafted by the parties themselves is far more likely to be sustained than one imposed on them unwillingly by a disinterested Court.

9. IT IS RECOMMENDED that s.14 mandatory reporting by Police to Child and Families either be limited to situations where the officer reasonably believes that the child is at risk of abuse or neglect with a rider

“for the avoidance of doubt including the risk of emotional abuse or neglect arising from family violence in the home”,

or be omitted altogether.

10. IT IS RECOMMENDED that ss. 37 and 38 not be proclaimed.

CONCLUSION

The Commissioner hopes these observations and recommendations are of assistance.

Paul Mason
Commissioner