

The framing of federal domestic violence policy responses

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Abstract

This paper analyzed the Australian Government's response to the 2010 Report on Family Violence produced the by Australian Law Reform Commission (ALRC) which, at the time, represented one of the most significant documents framing the problem of domestic violence in Australia (Bacchi 2009). By focusing on two specific sites of purported 'policy reform' in response to the Commission report, Bacchi's (2009) problematisation framework revealed how the Government framed their action and inaction on the issue of domestic violence. An examination of how the social problem of domestic violence was residualised (Jamrozik & Nocella 1998) found that the Government framed their response to the recommendations as behavioural and technical concerns amenable to educational and administrative solutions. Consequently the aim of the report to improve the safety of victims has not been achieved.

Keywords: domestic violence; family violence; gender; policy analysis; problem framing

Introduction

This paper analyzes the Australian Government's response to the 2010 Report on Family Violence produced the by Australian Law Reform Commission (ALRC) which, at the time, represented one of the most significant documents framing the problem of domestic violence in Australia (Bacchi 2009). By focusing on two specific sites of purported 'policy reform' in response to the Commission report, we examine how the social problem of domestic violence was residualised (Jamrozik & Nocella 1998) into behavioural and technical concerns amenable to educational and administrative solutions.

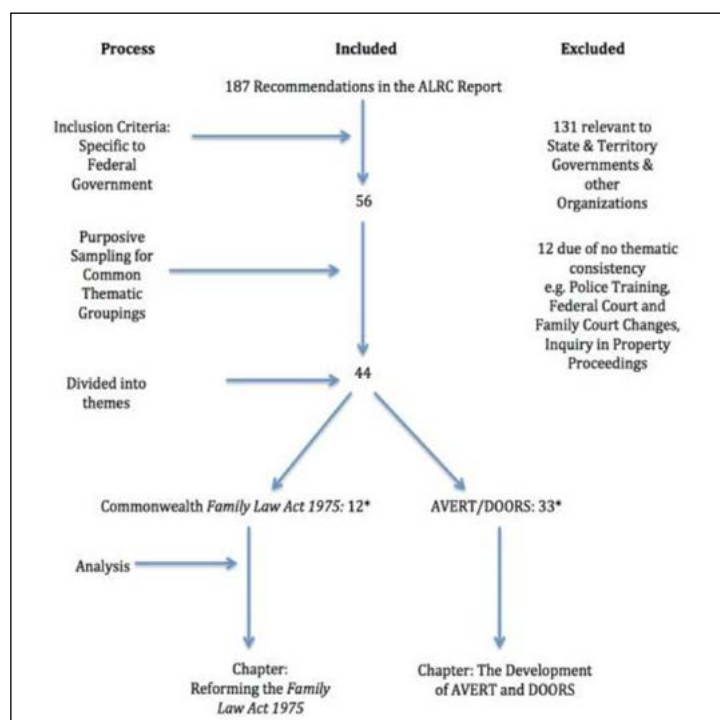
Former Prime Minister Kevin Rudd (2008: 1) commissioned the ALRC report in 2008 in order to reset the political agenda on domestic violence, contending "as a nation, the time has well and truly come to have a national conversation – a public national conversation, not a private one – about how it could still be the case that in 2008 so many Australian women could have experienced violence... It is my gender – it is our gender – Australian men – that are responsible. And so the question is: what are we going to do about it?". A response to the ALRC

Report was prepared by then Prime Minister Julia Gillard in 2013. The ALRC Report has not been addressed at a federal level since the Gillard Government left office in 2013. The following analysis examines how the framing of the problem of domestic violence within the Report and subsequent Response shaped its utility and the possibility of it ‘resetting the political agenda’.

Methodology

The ALRC Report contained 187 recommendations, however, in order to achieve a rigorous analysis within the limits of the paper, a small number of recommendations were purposively selected for analysis. To focus on federal government responses, of the 187 recommendations, 56 were “identified as appropriate for the Commonwealth to respond to separately, independent to the responses of the states and territories” (Australian Government 2013: 1). These 56 recommendations became the focus of thematic analysis, through which 12 solitary recommendations focused on niche issues or responses were excluded (as outlined in Figure 1).

FIGURE 1: SELECTION OF RECOMMENDATIONS FOR ANALYSIS



This resulted in 44 thematically focused recommendations analysed in depth.

These 44 recommendations (see Appendix 1) were then subject to Bacchi’s (2009) analytical techniques to examine problem framing and the trajectory of subsequent government responses, which included an analysis of the 2013 Australian Government Response document, Hansard transcripts and statements by relevant Ministers. Our analysis is presented in two thematic sections; first focusing on recommended changes to the *Family Law Act 1975*, followed by the AVERT and DOORS education and training programs.

Reforming the *Family Law Act 1975*

In the ALRC Report, 33 federal-level recommendations were specific to the *Family Law Act 1975* (hereafter referred to as ‘the Act’). Of these recommendations, the Government agreed with three, which were subsequently implemented (Table 1).

Fulfilled Recommendations

The fulfilled ALRC recommendations were Recommendations 6-4, 171-1 and 17-6., which called for: a widening of the definition of Family Violence in the Act; a widening of evidence available

for courts to consider in parental custody arrangements; and repealing Section 114(2) in the Act that allows courts to order a person in a marriage to perform their conjugal rights, respectively.

TABLE 1: RECOMMENDATIONS TO AMEND THE *FAMILY LAW ACT*

Breakdown of Reform of the Family Law Act 1975 Recommendations:	Total out of 33 selected for analysis	Individual Recommendations
Commonwealth Specific Recommendations about the Family Law Act Recommendations that were Fulfilled	3	6-4, 17-1, 17-6
Commonwealth Specific Recommendations about the Family Law Act Recommendations that are Unfulfilled	30	7-3, 16-4, 17-3, 17-4, 25-2, 25-4, 25-5, 25-6, 26-2, 26-3, 26-5, 26-6, 26-7, 26-8, 27-1, 27-2, 27-3, 27-4, 27-5, 27-6, 27-7, 27-8, 27-9, 27-11, 27-13, 28-1, 28-2, 28-4, 28-5, 28-6

The Response document noted that Recommendation 6-4 had been implemented to “better capture harmful behavior” which was necessary so that the Act was “clearly setting out what behavior is unacceptable” (Australian Government 2013: 3). According to the government (2013: 3), the widening of the definition of family violence illustrates that Australia “takes the issue of addressing and responding to family violence and the safety of children very seriously”. The new definition supports the government’s assertion that they placed an increased emphasis on family violence within the Act, where the definition of family violence was not only broadened but also moved from the interpretation section of the Act into its own section, 4AB. The government’s (2013: 3) purported rationale for this decision was that the definition’s more prominent position would “improve the understanding of what family violence and abuse are”. Applying Bacchi’s (2009) problematisation framework reveals that the government framed the *Family Law Act 1975* as lacking clarity on what constitutes family violence, and this lack of clarity would be detrimental to the safety of women and children. This framing is in line with the government’s goal to make the Act more effective when handling domestic violence cases.

The Gillard government’s response to Recommendation 17-1 was that the courts should have as much information as possible to determine what is in the child’s best interests, and that they had already implemented this recommendation in 2011 legislative changes (Australian Government 2013: 7). The then Minister for the Status of Women, Kate Ellis justified the 2011 legislative changes, contending that “the amendments in this bill will make it easier for the court and other decision makers to inform themselves about family violence when determining matters under the Family Law Act.... We know that this violence does exist. We need to make sure that the court is in a position to receive and weigh evidence on it” (Parliament of Australia 2011: 4804).

While recommendations 6-4 and 17-1 were implemented in 2011 amendments, recommendation 17-6 was fulfilled in a 2014 amendment. Recommendation 17-6 called to repeal Section 114(2) in the Act that allows courts to order a person in a marriage to perform their conjugal rights. The Gillard Government (2013: 9) noted that the idea that the law gave a husband irrevocable consent from his wife is “no longer consistent with the societal values

of Australians”. Underlying this reform is the assumption that changing societal attitudes warranted the reform. Notably, by declaring male legal entitlement to women unacceptable, the government touched upon the argument that patriarchal society was also coming to be regarded as unacceptable. However, the argument that the root cause of domestic violence can be in part attributed to a mindset of entitlement that society reinforces in men is a silence both with respect to this recommendation and the government’s ALRC Response. For example, the fact that “one in three Australian women have experience physical violence since the age of 15, and almost one in five have experience sexual violence” could also have been framed as related to a male mindset of power and control (Australian Government 2010: 1), but such connections were not made. While domestic violence is a gendered issue, the government did not embed such an understanding of domestic violence in the *Family Law Act 1975*.

The fulfillment of these recommendations illustrate that the government made small changes to highlight the importance of domestic violence awareness and remove legislation that references male entitlement to women’s bodies. While the implementation of these recommendations is positive, by not challenging the current patriarchal power structure, they are unlikely to have impact on the incidence of family violence in Australia. At the same time, the government deemed another 30 recommended changes to the Act as unsuitable for implementation.

Unfulfilled Recommendations

The Government did not fulfill 30 of the 33 level recommendations relating to the Act. Twenty-six of the recommendations called for federal criminal legislation involving sexual assault, sexual abuse, age of consent and rape as well as call for further education for those involved in all levels of the family law system in regards to these types of abuse. All twenty-six of these recommendations were given identical responses by the Gillard Government: “Commonwealth criminal law does not contain family violence or general sexual assault offences” (Australian Government 2013: 18).

Two recommendations called for federal provisions for injunctions for personal protection and breaches to be made a criminal offence within the Act. However the government (2013: 8) responded that state and territory courts already provided a “simple, quick and low cost” service and consequently asserted the appropriate avenue for this injunction already exists. A notable silence within the government’s responses is that state and territory laws differ and the legislation in one state may not exist in another. By making personal injunctions available federally would also have streamlined the process for victims who are already using the Family Court of Australia rather than have multiple proceeding occurring in multiple courts which can create unnecessary emotional & monetary strains on family violence victims (Astor & Croucher 2010).

Recommendation 7-3 was one of the most vigorously opposed Recommendations; and one that was opposed on a number of grounds. This recommendation sought to detail the reality of domestic violence in Australia within the Act, including that it is “while anyone may be a victim of family violence, or may use family violence, it is predominately committed by men” and “can involve exploitation of power” (Australian Law Reform Commission 2010: 19).

In their response, the government (2013: 4) stated that the Act should remain “gender neutral”, framing a gendered understanding of domestic violence as unsuitable for inclusion in the Act for two reasons: First, that a gendered understanding of the dynamics of family violence had already been covered in the Best Practice Principles for Use in Parenting Disputes When Family Violence or Abuse is Alleged, a tool that provides “useful background information for decision makers, legal practitioners and individuals involved in these [family violence] cases” (Family Court of Australia et al 2012: 2). Here, the government’s response frames the solution as the education of the legal system after an instance of family violence instead of using the law foster cultural change in order to prevent gendered family violence. Second, the government (2013: 4) responded to

recommendation 7-3 was with the statement that the Act should remain focused on the “best interests of the child”. In doing so, the government implied that acknowledging the gendered nature of domestic violence would detract from the Act’s ‘first’ priority to ensure that the best interests of the child are met.

Recommendation 16-4 urged that Section 60CG of the Act be amended to state when arranging a parenting order, primary consideration should be given to protection of people “over all other factors that are relevant to determining the best interests of the child” so that a parenting order does not expose a person to the risk of family violence (Australian Law Reform Commission 2010: 28). The government responded to recommendation 16-4 by agreeing with it in principle but would not implement it, contending that the existing legislation was already adequate in protecting both victims and children from future domestic violence incidents.

The critical difference between the existing legislation and the recommendation is that the ALRC recommendation wanted the protection of the victims to have “primary consideration” when determining what parenting orders, while the government (2013: 6) contended that “the best interests of the child [remain] as the paramount consideration”. As has been reported elsewhere (Cook et al 2015), the current legislation, however, may put victims, most commonly mothers, at risk as a result of the facilitation of the child’s relationship with the abuser.

As this analysis demonstrated, there were only minor legislative changes made to the Act on the recommendation of the ALRC. These changes, while demonstrating some commitment to helping domestic violence victims using the family law system, had only a minimal impact. The government avoided addressing the gendered nature of domestic violence and making major changes to the Act. The analysis demonstrates that the Australian Government refused to intervene in or give any opportunity to discuss the underlying patriarchal power relation contributing to the domestic violence epidemic in Australia today.

The Development of AVERT & DOORS

There were 12 recommendations from the ALRC 2010 Report into Family Violence that the Australian Government contends it has fulfilled though the development of the AVERT and DOORS family law education and training programs (Table 2). In doing so, the government (2013: 2) framed the development of AVERT and DOORS as the key achievements to come from the ALRC Report, highlighting that they have improved “the capacity of the federal family law system to respond to family violence”.

TABLE 2: AVERT AND DOORS RECOMMENDATIONS

Breakdown of AVERT and DOORS Recommendations	Total out of 12 selected for analysis	Individual Recommendations
Commonwealth Specific Recommendations about AVERT and DOORS that were Fulfilled	8	21-2, 21-3, 21-5, 22-2, 22-3, 22-5, 23-6, 23-7
Commonwealth Specific Recommendations that were problematically fulfilled	4	7-3, 21-1, 21-4, 29-3

What is problematic about this response from the government is that alongside the minor changes made to the Act, AVERT and DOORS are the only interventions the federal government made to the family law system.

AVERT is “a multidisciplinary training package known as AVERT-Addressing Violence: Education, Resources, Training: Family Law System Collaborative Response to Family Violence” developed. The Detection of Overall Risk Screens (DOORS) tool is “a standardized common screening and risk assessment framework and tool” to be used “across the family law system (Australian Government 2013: 2). AVERT is intended for use “by practitioners, judicial officers, counselors and other professionals working in the family law system, to improve levels of understanding about the dynamics of family violence and the handling of domestic cases” (Australian Government 2013: 15), whereas DOORS is flexible enough to meet the needs of “different professionals, locations and client demographics” (Australian Government 2013: 11). The implementation of these two programs is meant to result in less victims slipping through the cracks of the fractured legal system and an improvement in victims experience in the family law system.

Since the development of AVERT by the Attorney General’s Department and DOORS by Relationships Australia South Australia there have been no evaluations, reviews or funding reports of AVERT or DOORS undertaken. How successful these programs have been is unknown. However, both AVERT and DOORS are technical solutions to the social problem of domestic violence that is framed as best addressed post hoc by a better-informed family law system (Jamrozik & Nocella 1998).

According to Jamrozik and Nocella’s (1998: 4) theory of residual conversion, the way issues are operationalized into technical problems results in the solution being targeted to “individual cases” which are “the ‘private problems’ of the affected population” and not addressed as “social problems that are the outcomes of much wider societal arrangements”. The development of AVERT and DOORS to educate and train those working in the family law system is a technical solution because it is based on individual participation in two programs after incidences of domestic violence have occurred. These technical solutions works to educate the family law practitioner who then educates the family violence victim about their legal options. Jamrozik and Nocella describe this process as a “dual conversion”, that is, “conversion of a collective problem into a individualized, personal problem; and conversion of the now-personal problem into a form of pathology that fits into the framework of the professional’s intervention method” (1998: 49), in this case, by the family violence victims choosing more effective legal options. Though the changes made to the Act, described above, are in Jamrozik and Nocella’s theory reflective of structural change, analysis in the previous section also demonstrates that the changes were minor and do not make any significant changes to the Act 1975 to address the social problem of the gendered nature of family violence.

Conclusion

In 2010, the ALRC released Report 114 on Family Violence with 187 recommendations on how to reform the family law system to improve the safety of victims of family violence. Here, we analyzed how the government responded to the Commonwealth-specific recommendations. Bacchi’s (2009) problematisation framework reveals how the Government framed their action and inaction on the issue of domestic violence. While some recommendations were fulfilled, the majority were not and consequently the aim of the ALRC Report to improve the safety of victims has not been achieved. Using the conceptual lens of the residual conversion of social problems (Jamrozik & Nocella 1998), analysis found that the minor amount of recommendations that were implemented were also only technical solutions to the domestic violence epidemic in Australia.

This research has demonstrated when undertaking policy research into the actions of Government it is essential to first understand how Governments are framing issues and defining the parameters of the problem. The findings have highlighted the need for further research into how acknowledging and challenging the male patriarchy of society can lead to stronger domestic violence policy, rather than the development of technical solutions.

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