



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: rbg
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6 December 2011

The Hon. Niall Blair, MLC
Chair
Standing Committee on Social Issues
Parliament House
Macquarie St
Sydney NSW 2000

Dear Mr Blair,

Inquiry into domestic violence trends and issues in NSW

Mr Elks and Mr Thomas appreciated the opportunity to give evidence to the Social Issues Committee on 7 November 2011.

Please find attached their responses to the questions taken on notice.

The Law Society looks forward to the Social Issues Committee's report on this important issue.

Yours sincerely,

Stuart Westgarth
President

Supplementary Questions

1. What do you see as the priority issues that should be addressed in domestic violence policy in New South Wales?
 - *Prevention*
 - *Deterrence*
 - *Rehabilitation*

ADVOs

2. Your submission (p 1) states that defendants in ADVO proceedings are often unrepresented, and you made some comments about this in your hearing.

- a. Are you aware of what proportion of defendants are unrepresented?

No, but Legal Aid is generally not available to defendants.

Is the proportion the same as for applicants?

In our experience more applicants are represented than respondents. This is probably because Legal Aid guidelines and police department policies make assistance/representation more readily available to applicants than it is to defendants.

- b. Why do you consider legal representation of parties to ADVO applications so important?

Solicitors understand how the system works and can advise their clients accordingly. Solicitors can properly defend matters and engage in negotiations as to the conditions of the order.

- c. How might legal representation make a difference to compliance with the order?

A solicitor can explain the meaning of the order and the consequences of breaching the order. Legal representation can therefore assist in reducing incidences of breaches. A solicitor acting for a client is also more likely to identify which conditions of an order are appropriate to the individual circumstances of the parties. In our experience if appropriate conditions are negotiated breach of an order is often less likely.

Penalties

3. A number of submission authors have suggested that while the existing penalties are adequate they are applied inconsistently (see for example Mt Druitt Family Violence Response and Support Strategy Leadership Group, Submission 23, pp 3-4).

- a. What is your view of this suggestion?

The Committee is not aware of evidence that penalties are applied inconsistently. Any sentencing matter involves the court exercising its discretion.

- b. Do you think additional judicial officer training and/or a bench book would help alleviate perceived inconsistencies?

We support and encourage any measures that promote consistency.

4. At our first hearing, the Committee was advised that around 50 domestic violence offenders are currently subject to intensive correction orders (Department of Attorney General and Justice, Evidence, 17 October 2011, p 18), which we understand are community based orders with intensive supervision and mandatory behaviour-change programs. In your view, do intensive correction orders offer an effective and appropriate response to domestic violence?

We support ICOs as an appropriate sentencing option for domestic violence matters. ICOs are a sentence of imprisonment. ICOs can involve participation in community work and programs, supervision and drug treatment.

The court system

5. What are your views on the Domestic Violence Court Intervention Model (DVICM) and the plan to expand elements of it throughout the state?

We support the Domestic Violence Court Intervention Model.

6. The NSW Domestic Violence Committee Coalition was also critical of police prosecutors and their approach to cases involving domestic violence, suggesting that they are less accountable because they stand outside the local area command structure (Evidence, 17 October 2011, p 25). What are your views on this and do you have any suggestions for how police prosecutors' practices could be made more effective?

We do not agree that police prosecutors need to be part of the Local Area Command structure. Police prosecutors have a duty to the court to present the case in a fair and objective manner, whether or not it favours the prosecution. Police prosecutors need to be separate from everyday police officers to maintain their independence and objectivity.

Policing

7. In your submission (p 3) to views of Dr Weatherburn that increased public willingness to call police and/or tough law enforcement are more likely to explain the increase in the number of women being proceeded against by police for domestic violence offences than an increase in domestic violence.

- a. Is this borne out by your experience?

Yes, generally.

- b. Is the justice system responding adequately to the increased number of women being proceeded against: Do you have any suggestions for how it might be improved?

Sections 27 and 49 of the Crimes (Domestic and Personal Violence) Act 2007 require police officers to apply for an ADVO where the officer suspects that a domestic violence offence or a stalking offence has been, or is likely to be, committed.

Police at the coalface investigating the complaint often do not have the discretion to determine who the primary aggressor was and whether an act of violence was made in self-defence. This can lead to dual arrests and creates a net-widening effect catching women who were not necessarily the primary aggressor.

8. Have you any further recommendations for how the police system could improve in its responses to domestic violence?

No.

Early Intervention

9. On page 2 of your submission, you support extending the authority of Magistrates to refer parties to court facilitated processes such as mediation, and you make reference to the experience of the Family Court in this regard.

- a. Can you please expand on this suggestion, and how it may operate?
b. How might this prevent domestic violence?

The Committee wishes to stress that it is not suggesting that mediation would be appropriate in circumstances of serious or prolific domestic violence, but that it may be appropriate when an ADVO conflicts with a Family Court Order.

Other

10. Your submission (p 3) notes that over half of the cases involving domestic violence assaults do not fall within the category of female victim and a male offender in a partnership relationship. You recommend the *Crimes (Domestic and Family Violence) Act 2007* may need to be reviewed in light of this.

- a. What aspects of the Act may not be appropriate for the diverse characteristics of victims and offenders involved in domestic violence? Can you give the Committee any examples?

Legislation, court procedures and sentencing options need to be flexible enough to deal with the diverse characteristics of victims and offenders involved in domestic violence.

An example is when ADVOs are imposed for matters that involve conflict between siblings, or between children and their parents or carers. Children and young people often lack the capacity to understand the conditions of ADVOs and the consequences of a breach, which can lead to conviction and the possibility of incarceration. We are very concerned about the criminalisation of children's problematic behaviour. The penalties for breach of ADVOs for children and young people should be different than those applicable to adults.

- b. Do you have any suggestions for how the operation of the Act might be improved?

The Criminal Law Committee's submission, which outlines possible amendments to the Act, is attached for your review.

11. At our first hearing, some non-government stakeholders suggested that on balance, domestic violence policy has been too focused on the role of the police and the courts in NSW, at the expense of other services for victims and children.

- a. What is your response to this?

The police and courts have an important role to play. We do not know if this occurs at the expenses of other services.

- b. Have you any recommendations in relation to non-legal services for victims and children?

Non-legal services are very important for victims and children. It is not within our expertise to make recommendations in relation to these services.

12. A number of submissions have pointed to the need for better coordination and integration across the whole system responding to domestic violence. What is your view on this, and have you any practical advice on how coordination can be improved?

We agree that coordination and integration across the whole system responding to domestic violence is absolutely necessary.