



*ANSWERS TO SUPPLEMENTARY QUESTIONS FROM THE NSW
PARLIAMENT'S LEGISLATIVE COUNCIL
STANDING COMMITTEE ON SOCIAL ISSUES*

INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND ISSUES

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1. Could you please outline the services the Sydney Women's Domestic Violence Court Advocacy Service provides to women.

The Sydney Women's Domestic Violence Court Advocacy Service is auspiced by Redfern Legal Centre and funded by Legal Aid through the Women's Domestic Violence Court Advocacy Program.

We provide specialist services to women and children affected by domestic violence in order to assist them to obtain legal protection that will work for them, and to resource them with information and legal advice. To do this we work closely with police, court staff, legal practitioners and other domestic violence service providers.

In 2010 we provided services to 2,026 clients in domestic violence related court matters at Downing Centre, Balmain, Newtown and Waverley courts. We are based at the Downing Centre Court and attend the other three courts on AVO list days. Apart from our own staff, which includes a CALD and Aboriginal Specialist Worker, we maintain a roster of approximately 50 workers, seconded from local domestic violence services, who attend our courts on list days and work with us to provide our clients with direct access to specialist services. On every list day, a solicitor or a barrister from the Domestic Violence Practitioner Scheme is also in attendance to give legal advice to women about their ADVOs, and about any ancillary legal problems (for example, Family Law).

As a part of Redfern Legal Centre, SWDVCAS also uses internal referral processes to obtain legal advice services for their clients in victims compensation, family, care and protection, tenancy, credit and debt and police and privacy matters related to the domestic violence.

a) Are they provided to victims of domestic violence, or to offenders also?

In certain circumstances we do assist female defendants, for example:

- If they are the defendant in a cross application;
- or a previous client who is now the defendant, but was previously the victim with the same other party;
- or a female defendant who tells us that the other party was the primary aggressor and she acted in self defence;
- or where the female defendant tells us that she was the victim but police have charged her and/or applied for an ADVO against her.

b) What, if any, services do you provide to children, and in what circumstances?

Many of the women we see have children named on their ADVOs, and we also have cases where the child is the victim of domestic violence, and/or the named person in need of protection.

2. What do you see as the priority issues that should be addressed in domestic violence policy in New South Wales?

We believe there are four inter-connected priority issues for NSW Government to address the problem of domestic violence:

- A consistent and integrated response to domestic violence.
- The development of specialist domestic violence court lists.
- The expansion of the use of the NSW Police Yellow Card early referral system.
- The adoption of a comprehensive assessment tool to assist NSW Police in the identification of the primary aggressor or primary victim in domestic assaults.

A consistent and integrated response to domestic violence

A consistent and integrated response to domestic violence should feature a common set of domestic violence policies and objectives to be adopted by all New South Wales departments, agencies and services. Common policies and objectives should emphasise the criminal nature of domestic violence; prioritise the safety of victims and accountability for perpetrators; and provide victim support. The Australian and New South Wales Law Reform Commissions made numerous detailed recommendations about integrated responses to domestic violence in their report Family Violence – A National Legal Response.¹

The development of specialist domestic violence court lists

We say the provision of a consistent and integrated response to domestic violence offending across all of New South Wales would be greatly assisted by the development of specialist domestic violence court lists within all existing New South Wales courts, and we say this can be done in a cost effective and geographically inclusive way.

We believe the development of specialist court lists would be a means of reducing re-offending, promoting consistency of outcomes, improving the ongoing safety of victims and carrying specialist knowledge into the general community. Specialist court lists would also accord with the Australian Law Reform Commission's recommendations regarding the establishment or further development of specialised family violence courts within existing courts in all Australian jurisdictions² with these courts to have certain minimum core features, including specialised judicial officers and prosecutors; regular training on family violence issues for judicial officers, prosecutors, lawyers and registrars; victim support, including legal and non-legal services, and arrangements for victim safety.³

We say this model of specialisation is readily achievable because the key elements already exist across all courts, with only the need to provide specialist training to selected personnel; the need to further expand the provision of legal advice to both

¹ A National Legal Response, Australian and NSW Law Reform Commissions (2010).

² Recommendation 32-1.

³ Recommendation 32-3.

the persons in need of protection and to defendants; and the need to include non-legal service providers in the integrated response.

This proposal would also be in keeping with the proposed expansion of the Domestic Violence Intervention Court Model (DVICM) which Mr Brendan Thomas, the Assistant Director-General, Crime Prevention and Community Programs, mentioned at this Inquiry on 17th October 2011. Mr Thomas said:

Elements of what has worked for the DVICM are being progressively expanded state-wide, from policing practices to evidence collection to court processes. This review is looking at how we can move this program to a more strategic level, how we can take the benefits of what are shown to be effective criminal justice responses to domestic violence and apply them more broadly across the state.

We say we cannot hope to replicate the DVICM across the state – it would be cost prohibitive - but it would be in keeping with our recommendation to take elements of this model and incorporate them into every local court.

The expansion of the NSW Police Yellow Card early referral system

We would like to see the expansion of the Yellow Card partnerships with NSW Police, which provide victims with an early intervention by way of referrals to appropriate support services within a short time of the domestic violence occurrence. When police attend a domestic violence incident, they ask the victim whether they would like contact from a service that can ascertain their needs and make appropriate referrals for the victim and their children (see more under 'early intervention' below).

The adoption of a comprehensive assessment tool to assist NSW Police in the identification of the primary aggressor or primary victim in domestic assaults

Because of the number of female defendants in domestic violence assault matters who identify to our service as the primary victim of the violence, we are of the opinion that NSW Police should adopt policies to assist in the identification of the primary aggressor (or the primary victim) when investigating domestic violence assaults. The adoption of a primary aggressor policy would accord with the objects of the legislation,⁴ and would assist police officers to contextualize the domestic violence and identify injuries inflicted or acts committed in self-defence, whilst still maintaining a policy of preferred arrests in domestic violence situations.

Pro-arrest policies that were initially implemented to address the gendered nature of domestic violence now appear to be having a detrimental effect on those victims of domestic violence who have acted in self-defence and/or those victims unable to articulate what has transpired at the scene of the crime.

⁴ Section 9 (3)(b), *Crimes (Domestic and Personal Violence) Act 2007* (NSW) states that in enacting the legislation, Parliament recognised that domestic violence is predominantly perpetrated by men against women and children.

In December 2006, in response to a 23% rise in the number of female defendants assisted by the Sydney WDVCAS,⁵ we presented a submission to NSW Police and the NSW Ombudsman recommending that police adopt a primary aggressor policy. At that time there was little or no Australian research examining the increase in female arrests for domestic violence, and the submission was almost entirely reliant upon our own case studies and research conducted in the USA where a similar arrest trend had been noticed.

Our case files continue to indicate that police often subscribe only to the version of events provided by the male party, who often presents as comparatively calmer than the woman at the scene of the assault. In particular, our clients report police officers are prone to accept the male party's accusations that the woman has lied, or over-reacted, or has psychiatric problems that were instrumental to events. Many female defendants report they were initially either too distraught from the assault to give the police a coherent version of events, or too scared because of possible repercussions from the other party.

Apprehended Domestic Violence Orders

3. Your submission (p 6) recommends that a number of non-legislative measures focusing on police practices be used to reduce breaches and improve compliance with ADVOs.

a) Why do you think increasing penalties would not be effective here?

The increase of penalties only expands the range within which the courts may sentence offenders. An increase in available penalties will not, in and of itself, provide reasons for the courts to impose more severe penalties. The non-legislative measures we have proposed are intended to be more functional in addressing domestic violence than increased penalties. Increased police resources, training and transparency would encourage the courts to make more appropriate AVO conditions and sentences: first, by reducing breaches and increasing compliance, and second, by improving the strength of evidence tendered by the police in breach prosecutions and ADVO applications.

b) How would the non-legislative measures you have recommended improve the ADVO system?

We believe existing penalties are adequate. Under the *Crimes (Domestic and Personal Violence) Act* the maximum penalty for breach of an ADVO is imprisonment for two years or a \$5,500 fine, or both. The legislation creates a presumption in favour of imprisonment if there was an act of violence against the victim.⁶ Where the court does not impose a sentence of imprisonment it must give its reasons. However, our case files show that not all breaches are investigated, and when charges are laid, only about 57% of breaches are successfully prosecuted, and sentencing outcomes do not always reflect the seriousness of the breach.

⁵ Formerly known as Redfern WDVCAS.

⁶ *Crimes (Domestic and Personal Violence) Act 2007* section 14(4).

From our perspective, a reduction in breaches would be more likely to occur if we had:

- Increased resources for the policing and prosecution of breaches of ADVOs;
- Increased training of police around breaches, including the taking of statements from victims and witnesses and the collection of relevant evidence;
- Utilisation of specialised police trained in domestic violence to address inappropriate police responses to breaches of ADVOs; and
- A requirement that police record their reasons for not proceeding with the prosecution of a reported breach.

These measures should mean that police are able to identify and successfully prosecute more breaches, which in turn should prove a deterrent to offenders, particularly to repeat offenders.

The Australian and NSW Law Reform Commissions report made similar recommendations, including a recommendation that all police – including specialised police units – receive regular education and training consistent with the Australasian Policing Strategy on the Prevention and Reduction of Family Violence; and a recommendation that specially trained police have responsibility for supervising, monitoring or assuring the quality of police responses to family violence incidents, and providing advice and guidance in this regard.⁷

4. At the Committee's first hearing, Dr Lesley Laing urged that we think about whether victims receive justice from the current legal system, and asked whether ADVOs only give women "a cheap form of justice" (Evidence, 17 October 2011, p 50). What are your views on here?

We believe Dr Laing was urging the Inquiry to recommend adequately resourcing the justice system response to domestic violence. Dr Laing said that if we are going to 'sweep people into the justice system' we must have the resources to follow through with the aim of getting the best outcome possible for the person in need of protection, or else we risk further compromising their safety and their confidence in a system that should be able to provide for their protection. Dr Laing's evidence also highlighted the importance of our service, the need to provide persons in need of protection with legal advice, and the need to tailor orders to meet the needs of the person in need of protection.

5. At the Committee's first hearing the NSW Domestic Violence Committee Coalition argued that to be most effective, ADVOs need to be tailored to the needs of an individual (Evidence, 17 October 2011, p 29). How should police and the courts work to ensure that ADVOs are formulated to meet the needs of individual complainants?

We agree with the Coalition's evidence to the Committee regarding the need for ADVOs to be specifically tailored to suit the safety needs of the person in need of protection. Tailoring orders will result in more effective orders and less breaches,

⁷ Recommendation 32-5.

and to this end police and police prosecutors should encourage persons in need of protection to attend court to give their instructions about the type of orders they need, and then seek those orders where appropriate.

Part of the role of the WDV CAS is to hear from our client about the sort of orders that would work best for her, and to refer her to the Domestic Violence Practitioner Scheme (DVPS)⁸ for advice about the orders where necessary. We then ensure that the relevant DVLO or prosecutor has been instructed to seek these orders where appropriate.

We often find that an order police originally deemed appropriate needs to be reconsidered in the light of the client's instructions. For example an exclusion order might not be appropriate where the person in need of protection no longer wants to live with the defendant, but would still like the defendant to attend her home from time-to-time. Here, we might request that the exclusion be revoked and instead an order be made that the defendant not reside at the house.

Police will often list more than one protected person on an ADVO and this can create difficulties in ensuring an order is tailored to meet the specific needs of each individual listed, and might therefore compromise the protection provided to one or more of the persons in need of protection. In this respect, the tailoring of individual orders should also extend to orders made to cover mothers and children, whose contact or safety needs may be very different and who made therefore need separate orders.

Penalties

6. During your hearing you pointed to inconsistencies in magistrates' interpretation of the law, and suggested that would be addressed through training, a bench book and perhaps a comprehensive practice note. Some participants have highlighted inconsistencies in relation to the application of penalties. Have you any further comments here?

In our opinion, education and training about the nature and dynamics of domestic violence and its impact on victims, and a bench book or comprehensive practice note would assist in ensuring consistency of decision making and application of penalties. Two recent reports commissioned by the Australian Government have highlighted the importance of education and training to improve the consistency and quality of decisions in the domestic and family violence legal system,⁹ and the Law Reform Commissions' report notes 'the development of a national bench book would be a useful resource for judicial officers in Australia, and should be pursued...such a book would promote consistency in the interpretation and application of laws across

⁸ Domestic Violence Practitioner Scheme is funded by Legal Aid and works in conjunction with the WDV CAS at 33 courts in New South Wales.

⁹ Time for Action, The National Council Plan to Reduce Violence Against Women and their Children, 2009 – 2021 (2009) and Family Violence – A National Legal Response, Australian and NSW Law Reform Commissions (2010).

jurisdictions, offer guidance and promote best practice among judicial officers.¹⁰ In Canada, an electronic bench book has been developed to assist in providing social context information and information about victim and offender behaviour.¹¹ Ideally, judicial officers would have an understanding of the gendered nature of domestic violence and an understanding of the needs of marginalised victims, for example Aboriginal or Torres Strait Islander victims, victims from culturally diverse backgrounds and victims with disabilities.

7. Do you consider that intensive correction orders (community based orders with intensive supervision and mandatory behaviour change programs) offer an effective and appropriate response to domestic violence?

The current legislative provisions regarding ICOs only allow the court to make the order in circumstances where, among other things, the court has already determined that the offender would otherwise receive a sentence of imprisonment. As outlined in our submission, many domestic violence offenders do not receive a sentence of imprisonment or an ICO. We consider that an effective and appropriate response to domestic violence would make the behaviour change and rehabilitation aspects of ICOs available to offenders and AVO defendants in a wider variety of cases than currently occurs. In any case, the supervision and behaviour management offered by ICOs can only form part of a broader response to domestic violence, and cannot take the place of prevention and changing community standards.

Specialist support services

8. Your submission (pp 13-14) notes the important contribution made by the Women's Domestic Violence Court Advocacy Services operating in 108 courts across NSW, and points to the recent recommendations of the Australian Law Reform Commission and NSW Law Reform Commission in respect of them. Could you please summarise the recommendations for the Committee and offer further comment on them?

The Australian and New South Wales Law Reform Commissions' report emphasised the importance of an integrated response to domestic violence and the pivotal role played by support services in 'integrating' the system for victims by helping them to navigate between the different legal frameworks. The report also stated that stakeholders repeatedly emphasised the importance of victim support services as the key mechanism of integration from the point of view of the victim and reads:

The Commissions note that, where victim support workers are a feature of specialised courts, this service need not be limited to such courts. Indeed, this is one element that the Commissions believe could be productively mainstreamed across other courts. The NSW Domestic Violence Court Advocacy Service provides a useful precedent.

¹⁰ Australian and New South Wales Law Reform Commission Report, Family Violence – A National Legal Response (2010) at 1468.

¹¹ Neilson, Linda, Domestic Violence and Family Law in Canada – A Handbook for Judges (2009).

The Commissions' recommendation 29-3 reads: 'The Australian, state and territory governments should prioritise the provision of, and access to, culturally appropriate victim support services for victims of family violence, including enhanced support for victims in high risk and vulnerable groups.'

At page 1384, the Commissions' noted the particular importance of victim support leading up to and during court appearances. They said:

In New South Wales the Women's Domestic Violence Court Advocacy Service operates at 108 local courts to assist women and children who are experiencing domestic violence to obtain the protection of court orders and to access support services that can assist them with their other legal and social needs. The Coordinators of individual schemes coordinate a roster of workers seconded from local domestic violence agencies to attend court to provide specialist support for victims.

We believe that the Women's Domestic Violence Court Advocacy Services are in a unique position to play a pivotal role in the integration of domestic violence services across New South Wales and in the coordination of specialist domestic violence court lists.

Aboriginal people

9. Do you have any comments to make as to how the particular needs of Aboriginal people should be addressed with regard to domestic violence?

We believe that Aboriginal people, and in particular, Aboriginal women should be consulted about how their particular needs with regard to domestic violence might be met. We suggest that Wirringa Baiya Aboriginal Women's Legal Service and Mudgin-Gal Aboriginal Women's Corporation should be consulted as part of the Inquiry. Many of the WDVCSs across the state employ Aboriginal Specialist Workers who are very knowledgeable about their communities needs, and who could provide valuable input into the Inquiry. For example, Charmaine Weldon is the Aboriginal Specialist Worker for the Sydney WDVCS, is the Chairperson of the board of Wirringa Baiya Aboriginal Women's Legal Service NSW, and is also a member of the Premier's Council on Preventing Domestic Violence Against Women.

We would be happy to assist in any way we can in coordinating a consultation with Aboriginal service providers and specialist workers. We strongly believe that in order for any progress in protecting Aboriginal communities from domestic violence to be sustainable, those same communities must be a guiding force in developing and implementing those strategies.

10. During his evidence to the Committee (7 November 2011, p 12), Dr Don Weatherburn pointed to the link between domestic violence and alcohol, and to the success of restriction on alcohol sales in Aboriginal communities in reducing violence. He went on to suggest that there may be value in extending such restrictions. Have you any comments here?

We refer to our answer to question 9, and recommend the Inquiry consult with Aboriginal service providers and specialist workers.

It is not clear from the question whether Dr Weatherburn was suggesting extending the restriction to non-Aboriginal communities, or to further Aboriginal communities. The notion of government intervention without community support is one that must be carefully considered, and Aboriginal communities do not deserve to feel that they are the only groups treated in this fashion. We suggest that the deeply-entrenched issue of alcohol-related violence in Australian society is itself a suitable topic for a Parliamentary Inquiry.

Other

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

What is your response to this?

Domestic violence is a crime and should continue to be dealt with as such by police and the courts. However, the focus on the role of police and courts should not be at the expense of refuge accommodation and counselling and case work services for victims of domestic violence and their children.

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

We recommend that New South Wales government continue to fund those non-legal services that work with victims of domestic violence and their children, particularly those services providing refuge accommodation and those that provide domestic violence caseworkers. Together with the WDVCS focus on legal protection from domestic violence, the services that work best for our clients are those that provide refuge accommodation and those where the victim and her children have access to a caseworker to help them navigate the day to day issues that have arisen because of the violence.

Have you any comments with regard to prevention and early intervention services?

We would like to see the expansion of the Yellow Card partnerships with NSW Police, which provide victims with an early intervention by way of referrals to appropriate support services within a short time of the domestic violence occurrence. When police attend a domestic violence incident, they ask the victim whether they would like contact from a service which can ascertain their needs and make appropriate referrals for the victim and their children.

Our service works with 11 Local Area Commands, who all use the Yellow Card referral system but in different ways: some email the victims details to us, others hand us the signed Yellow Cards. Our service takes referrals for women with pending court dates, and we call the woman (usually within 24-48 hours of receiving the referral) and speak to them before they come to court. Our statistics shows this

has increased the number of women attending court on the first mention date, and obtaining legal advice and specialist assistance, with a resultant increase in the number of matters finalised at the first mention.

Through a grant from the Office for Women, RLC employs a Yellow Card project worker 2.5 days per week to contact persons who have signed a Yellow Card, but where police have not applied for an ADVO.

12. Some submissions suggest that domestic violence has been constructed as a 'women's issue' such that men experiencing domestic violence and women in same-sex relationships find it difficult to seek out and identify support (for example one in Three Campaign, Submissions 40 and Inner City Legal Centre, Submission 26 p 4). What are your views on this?

Our case work continues to indicate that domestic violence is overwhelmingly a gendered crime, committed by men against women.

We would like to make the following points regarding our case work and our observations at court:

- We provide services to women in same-sex relationships and our case work shows an increase in the number of clients in same-sex relationships. We believe this increase is due to an overall rise in the reporting of same-sex violence. Please note that the Sydney WDVCS Coordinator is a member of the Inner City Legal Centre's Safe Relationships Project Advisory Committee.
- Commensurate with the increase in reporting for women in same-sex relationships, we have observed an increase in men attending court as persons in need of protection in same-sex ADVO matters.
- Our case work shows an alarming increase in the number of older women being assaulted by adult sons who continue to live at home into their thirties and forties. These defendants are often reported as assaulting or threatening their parents for money, sometimes for drugs and alcohol. We have observed that the increase in the number of adult sons assaulting older parents has resulted in an increase in fathers as male victims in ADVOS and assault charges.
- Our case work shows an increase in the number of female defendants who have been charged by police when they have acted in self defence. A number of these women have previously been the person in need of protection. Our case work shows the majority of these clients are acquitted at a defended hearing.
- Our case work also shows an increase in the number of female defendants in ADVO matters who report they were the victim in the domestic violence incident, but were unable to explain their version of events to police at the time. In this situation it is often the other party who has been able to provide a more coherent version of events, and it is not until other evidence is provided or injuries become evident that police are able to properly determine the primary aggressor.

17. What recommendations would you like to see come out of this inquiry?

- A recommendation regarding the better of integration domestic violence services in New South Wales.
- A recommendation regarding the development of specialist domestic violence court lists in New South Wales.
- A recommendation regarding an expansion of the use of the NSW Police Yellow Card early referral system.
- A recommendation regarding the adoption of a comprehensive assessment tool to assist NSW Police in the identification of the primary aggressor or primary victim in domestic assaults.

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