

**NSW Legislative Council Standing Committee on Social Issues
Inquiry into Domestic Violence Trends and Issues in NSW
Response to Supplementary Questions**

1 The experience of young people

- (a) Has the Shopfront observed an increasing trend towards offences involving the use of social media by young people to harass and intimidate others?

The use of technology, such as mobile phones and social media, certainly appears to be a growing medium for harassment and intimidation by young people towards others, particularly other young people. However, it is important not to overstate the problem.

We have seen an increase of the use of social media such as Facebook among our clients. Perhaps inevitably, these media are being used by some young people to carry on personal arguments, usually with peers and family members. In most cases this consists of little more than rude or intemperate language, but in some cases it does involve threats or harassment.

At least where our clients are concerned, we are not of the view that the use of social media has led to an overall increase in threats and harassment. Rather, electronic media such as email, social media and SMS (as opposed to more traditional verbal communication) leave an evidentiary trail that makes harassment type offences easier to prove.

- (b) Do you think they require an improved legislative response?

On the whole, existing legislation appears to be adequate in responding to such behaviour. As well as offences such as stalking or intimidation under the NSW *Crimes (Domestic and Personal Violence) Act*, there are a number of offences under the Commonwealth *Criminal Code* concerning use of telecommunications services to threaten, menace, harass or offend. Where explicit sexual content is conveyed over electronic media, pornography offences may also apply.

We are of the view that the sentencing options available to the courts are adequate to deal with such offences, and indeed, such offences appear to be taken very seriously by the courts. For instance, in a recent decision of the Local Court¹, a man who uploaded nude photos of his ex-girlfriend to Facebook entered a plea of guilty to an offence of publishing an indecent article under section 578C of the *Crimes Act* 1900, and sentences to 6 months' home detention. On appeal to the District Court², the sentence was suspended; nevertheless a suspended sentence is a form of custodial sentence and is still a serious sanction.

However, we see the need for an improved legislative response to make sure young people are not inappropriately criminalised for behaviour such as "sexting" (sending explicit photos or text messages to their friends, often consensually).

The National Children's and Youth Law Centre, in their submission to the Australian Government Cyber White Paper, argued that teenagers engaged in this behaviour tend to receive

¹ *Police v Usmanov* [2011] NSWLC 40

² *Usmanov v Police* [2011] (unreported) NSWDC per Blanch J

disproportionately harsh legal sanctions under anti-child pornography laws.³ The NCYLC cited cases in Victoria and Western Australia where 18 year olds have been placed on the sex offender registry for sexting (which is also a sanction enforceable against young people over the age of 18 under NSW laws). This is an extremely concerning outcome, as being placed on the registry carries onerous requirements of reporting to local police and restricts employment and recreational opportunities. In a public comment, Dr Greg Lyon, SC, chair of the Criminal Bar Association, said the law was written before sexting became prevalent, resulting in unforeseen legal consequences in cases where police opt to lay charges rather than issue warnings.⁴

The Australian Law Reform Commission in its Australian Privacy Law and Practice report highlighted concerns about children and young people disclosing personal information when participating in online social networking, given their more limited capacity to understand the legal consequences of such disclosure in an online environment.⁵

The appropriate treatment of such cases is one area where an improved legislative response would be warranted.

2 Policing – yellow card system

(a) Are you familiar with this program?

We are aware of it, and believe it is a good idea, but we have no practical experience with it.

(b) Has it worked well for young people?

We are not aware whether any of our clients have had experience with this system, so we cannot make an informed comment on whether it has worked for young people.

3 Further recommendations on improving the police system's response to domestic violence

In recent years, and for very good reason, the police have taken an increasingly tough stance on domestic violence. This includes a policy of making an AVO applications, and usually also in commencing criminal proceedings, whenever an alleged domestic violence offence is detected, regardless of the victim's wishes. Further, once proceedings are commenced by police it is very rare for them to be withdrawn.

In situations which fit the "classic" domestic violence pattern (i.e. where there is a significant power imbalance between an intimidating perpetrator and a vulnerable victim, usually in the context of an intimate relationship) such a policy makes good sense and helps safeguard against offenders pressuring victims into withdrawing allegations.

However, in other contexts (including situations where a child is charged with assaulting a parent – in our experience, it is often the alleged offender who is the more vulnerable one in the relationship) this policy is unduly inflexible and can lead to some injustice.

Further, we have observed many instances where criminal charges have been laid and AVO applications made when the situation instead calls for a mental health response. A person may express fear because a family member is acting irrationally and sometimes aggressively; however, this does not always mean an AVO or a criminal charge is an appropriate response. The case

³ National Children's and Youth Law Centre "Submission to the Australian Government Cyber White Paper", 18 Nov 2011, p 15

⁴ Nicole Brady, "Sexting youths placed on the sex offenders register" The Age, 24 July 2011
<http://www.theage.com.au/victoria/sexting-youths-placed-on-sex-offenders-register-20110723-1hugu.html>

⁵ Australian Law Reform Commission 'For Your Information: Australian Privacy Law and Practice, report 108/67 (2008)

study of “Ivan” in our submission to the Statutory Review of the *Crimes (Domestic and Personal Violence) Act* is an example of one such situation.

4 GPS tracking

Which offenders should be categorised as ‘high risk’?

As alluded to in our previous submission, we would regard ‘high risk’ offenders as those who have a substantiated history of ‘stalking’ type behaviour, and at least one prior conviction for breaching a relevant ADVO, and who are regarded by the court as significantly likely to re-offend.

We are strongly opposed to the use of GPS bracelets on people under the age of 18.

5 The court system – improved education and training

- (a) Is there a particular need for greater education and training for judicial officers or a bench book for domestic violence in the Children’s Court?

In our experience, the Children’s Court (at least in metropolitan Sydney) seems to be relatively well-informed about the dynamics of domestic and personal violence involving young people.

However, not all Children’s Courts are full-time Children’s Courts with specialist children’s magistrates, and it is reasonable to be expected that magistrates’ levels of understanding will vary. In our view further judicial education, including a Bench Book, would be desirable.

We note that there is a Local Court Bench Book provided by the Judicial Commission of NSW. This includes a section on apprehended violence orders and a section on the Children’s Court (which in itself includes two paragraphs on AVOs). However, this Bench Book deals only with legal and procedural requirements and does not assist judicial officers to understand the dynamics of domestic violence and some of the factors they may need to consider.

We also commend the Judicial Commission on its Equality Before the Law Bench Book. This Bench Book includes a chapter on women, in which there is some discussion of issues faced by women who are victims of domestic violence. There is also a chapter on children and young people. However, this Bench Book does not address issues concerning young people who may be victims of domestic violence, abuse or neglect and nor does it deal in any depth with adolescent development and behaviour. In our view, expanding the Bench Book to cover these issues would be of considerable benefit.

- (b) Is there a need for the above in Local Courts?

In our view, the need for judicial education applies just as much, if not more, to the Local Court as it does to the Children’s Court. See our comments above in relation to Bench Books.

6 Further recommendations on how the court system could improve in relation to domestic violence

In our written submission to this Inquiry, we expressed the view that the more widespread provision of legal representation and court support workers would help ensure that when AVOs are made they are realistic and appropriate and understood by the respondent. We also made similar comments in our submission to the Statutory Review of the *Crimes (Domestic and Personal Violence) Act* (see sections 9.1 and 9.2)

We stand by these comments and do not have anything further to add.

The Shopfront Youth Legal Centre, April 2012