

Specialist domestic violence court lists for New South Wales

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The Women's Domestic Violence Court Advocacy Service Network recommends the development of specialised domestic violence court lists within all local courts in New South Wales as a cost-effective means of improving the legal framework relating to domestic violence by:

- promoting consistent outcomes;
- improving the ongoing safety of victims;
- reducing re-offending; and
- influencing the broader legal system and community perceptions of domestic violence.

About the Women's Domestic Violence Court Advocacy Service Network Inc

Established in 1996, the Women's Domestic Violence Court Advocacy Service (WDVCAS) Network is the peak body for women and their children experiencing domestic violence who require legal protection from the courts. The WDVCAS Network is an incorporated association comprising representatives from 28 individual WDVCAS¹ that operate in 108 local courts throughout metropolitan, regional and rural New South Wales.

Introduction

The development of specialist domestic violence court lists would be a means of promoting consistent outcomes, improving the ongoing safety of victims, reducing re-offending, and influencing the broader legal system and community perceptions of domestic violence and would 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 jurisdictions.² These court lists would 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

¹ For more information on the Women's Domestic Violence Court Advocacy Service Network see Appendix 1

² Recommendation 32-1, Australian Law Reform Commission Report, Family Violence – A National Legal Response.

³ Recommendation 32-3

The WDV CAS Network believe 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 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, referred to at the NSW Parliamentary Inquiry into Domestic Violence Trends and Issues. 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.⁴

Further, a specialist domestic violence court list would affirm the Government's commitment to the *Charter of Victim's Rights* and would promote a positive intention to address and reduce domestic violence in the community.

Promoting consistent outcomes

A specialist domestic violence court list would deal only with:

- domestic violence orders;
- domestic violence related charge matters, including breaches; and
- related amendments to inconsistent parenting orders.⁵

And at the same time would bring together domestic violence experts to assist persons in need of protection on Apprehended Domestic Violence Order (ADVO) list days and thereafter.

Even in small communities where the list is only heard on a fortnightly or monthly basis, specialist training could be provided to police, prosecutors and magistrates. Currently, the WDV CAS Network attends 108 of the 130 local courts in New South Wales assisting women and children who have experienced domestic violence to obtain an ADVO. Where the WDV CAS Network does not have a presence (and where is not feasible to expand the WDV CAS), workers from local services (for example, health or child care workers) could be trained to provide expert assistance to persons in need of protection on list day, and to carry specialist knowledge into the local community. By spreading the expertise into the community through the use of local seconded or sessional workers, not only would persons in need of protection be provided with local support, but police would also benefit from the support provided by the increased community knowledge and integration of services.

Features of a specialist domestic violence court list

A specialist domestic violence court list would:

- identify and list on the same day at local courts, all domestic violence matters and related criminal proceedings along with related applications for amendments to parenting orders pursuant to section 68R *Family Law Act 1975*;⁶

⁴ NSW Parliamentary Inquiry into Domestic Violence Trends and Issues, transcript from 17 October 2011.

⁵ Section 68R, *Family Law Act 1975* (Cth) allows a state or territory magistrate to amend inconsistent parenting orders to protect victims of family violence.

⁶ The Act provides that a state or territory court may only revive, vary, discharge or suspend a parenting order to the extent that it relates to a person spending time with a child. The court may only exercise its power

- list applications for personal violence orders (APVOs) separately (not at the same time as ADVOs);
- provide legal advice or information at court to both the person in need of protection (including those in police applications) and to unrepresented defendants;
- assign specially selected and trained judicial officers to preside in family and domestic violence related matters;
- adopt relevant practice directions and/or a model Bench Book for judicial officers in order to improve consistency of outcomes;
- assign specially trained police prosecutors to: ensure the brief of evidence is thorough and complete; ensure all evidence is admissible; interview the victim before the hearing; prosecute with a high level of skill; and understand the type of orders appropriate to the victim's circumstances;
- assign specially trained police (Domestic Violence Liaison Officers) to: ensure a high quality response to family and domestic violence; promote best practice in their Local Area Command (LAC) through the provision of training and monitoring; liaise with court and prosecutors; and develop domestic violence policies;
- make specialist victim advocates available to attend the ADVO list day proceedings, and enable these advocates access to all relevant information including that provided to the court;
- invite local specialist domestic violence workers to attend the ADVO list day proceedings on a rostered basis; and
- provide facilities to ensure the safety of women and children attending court.

Many of the above elements already exist in most New South Wales courts and would require only minor enhancement to develop specialisation, for example:

- more comprehensive domestic violence training could be provided to police, prosecutors and judicial officers attending the list;
- Legal Aid NSW already attends most courts to provide advice and representation to defendants in domestic violence related charge matters;
- the WDVCAS employs 13 Cultural and Linguistically Diverse Specialist Workers and 23 Aboriginal Specialist Workers; and
- WDVCAS Coordinators already maintain rosters of specialist domestic violence workers, seconded from local non-government organisations and government agencies to attend court on ADVO list days.

Other elements of a specialist domestic violence court list exist in larger courts and would need to be expanded to other locations across the State, for example, consideration could be given to extending Legal Aid's Domestic Violence Practitioner Scheme (DVPS), which already provides women attending 32 courts in NSW with advice and representation.⁷

Improving the ongoing safety of victims

The existing structure of how the list day runs is determined by the sitting Magistrate and, most unfortunately, is often determined by the compatibility (or not), seniority and expertise of the judiciary and court users.

under s 68R when it has material that was not before the court that made the original parenting order. The effect of a decision to amend a parenting order differs depending on whether it is amended during proceedings for an interim protection order or for a final protection order. Magistrates' courts are not permitted to discharge a parenting order during proceedings for an interim protection order. In addition, if a magistrate's court revives, varies or suspends a family law order during proceedings for an interim protection order, the variation only has effect for 21 days.

⁷ Arrangements could be made with local practitioners in rural areas to attend court on a sessional, rostered basis.

The consequence is that, in some jurisdictions, little or no consideration is given to the responsibilities that fall to the woman out of necessity, such as attending to:

- child care or school transport arrangements;
 - attempting to access a crisis accommodation service, or
 - Centrelink, a job service provider, Housing NSW, or Community Services, etc. for which there are consequences for non-compliance,
- which may delay her arrival at court first thing in the morning.

A specialist domestic violence court list could commence later in the morning (after other civil matters are dealt with) and not impede a woman's ability to give clear, considered and informed instructions and have access to appropriate support.

Further, this arrangement would allow sufficient time for Domestic Violence Liaison Officers (DVLO) to liaise with the defendant about the nature and effect of the proposed final orders. This increased allocation of time for negotiation would inevitably reduce the time that local courts spend on hearing contested ADVO applications.

Reducing re-offending

It is important that any myths around an ADVO are dispelled before the matter is listed in court for the first time. A lack of understanding by the perpetrator of the power of an ADVO, and the possible consequences of breach, are likely causes of some defendants failing to comply with the conditions imposed by the court, even if the final orders in the ADVO were granted by consent.

The work undertaken by Legal Aid in conducting information sessions at some local courts for defendants on: the legal nature of an ADVO (that is, an ADVO is a civil not a criminal law matter); the different conditions that can be ordered, and the practical implication of those conditions; and that a breach of an ADVO is a criminal offence (unlike the original ADVO itself).

This is a critical step in the ADVO process as it can remove some of the uncertainty about what each of the conditions of an ADVO mean, and the reality of what may constitute a breach of those conditions. The expansion of these sessions is integral to reducing re-offending.

Influencing the broader legal system and community perceptions of domestic violence

A negative consequence of the current listing arrangements is that other civil matters, most particularly Apprehended Personal Violence Orders (APVO), are intermingled with ADVO matters. This compounds the broad misconception in the community that there is only one generic instrument called an Apprehended Violence Order (AVO).

At the moment, and consideration is being given to providing further legislative distinction between ADVOs and APVOs and the increased diversion of APVOs from the courts.⁸ Submissions to the NSW Law Reform Commission's inquiry into Apprehended Violence Orders⁹ highlighted the importance of separating ADVOs and APVOs, including:

- the widely acknowledged view that violence in domestic relationships differs from other types of violence in that it often involves issues of physical and emotional power and control, financial dependence, and shared emotional history;

⁸ See the current discussion paper: Discussion Paper – Statutory Review of the *Crimes (Domestic and Personal Violence) Act 2007*, Department of Attorney General and Justice, 2011.

⁹ NSW Law Reform Commission, *Apprehended Violence Orders*, Report 103 (2003).

- having ADVOs and APVOs together detracts from the seriousness and particular dynamics of domestic violence; and
- media criticism about the abuse of AVOs (in the generic sense) through the making of frivolous complaints does not distinguish between APVOs and ADVOs. This trivialises the gendered consequences of domestic violence and undermines the integrity of the ADVO legislation.

The importance of specialist expertise

Specialist judicial officers, prosecutors and police are a feature of a number of the specialist courts operating successfully in other jurisdictions. Training and education for judicial officers¹⁰ has been identified as a key issue in building strategic frameworks for addressing domestic and family violence¹¹ and driving change within the legal and judicial systems. Specially trained judicial officers would have:

- an understanding of victim safety and defendant accountability as primary considerations;
- knowledge of the key theories that inform an understanding of domestic and family violence and the role of gender; and
- an understanding of the needs of marginalised victims, for example Aboriginal or Torres Strait Islander victims, victims from culturally and linguistically diverse backgrounds and victims with disabilities.

Specialist hearing days

The WDVCS Network recommends a pilot or trial of specialist hearing days for domestic violence matters in large or high volume courts in New South Wales as a further opportunity to streamline processes and improve outcomes.

A specialist domestic violence hearing day would increase the capacity of specialist services, like the WDVCS, to attend court to provide assistance and support to a greater number of women than is currently possible; a response that fulfils one of the objectives within the *Charter of Victims Rights*.

Specialist prosecutors

There are no trained specialist domestic violence prosecutors in New South Wales, and the prevalence of significant concerns about the quality of service provided by police prosecutors in domestic violence matters has been noted,¹² including concerns about their:

- failure to confer with victims and their advocates;¹³
- failure to confer with Domestic Violence Liaison Officers;
- failure to effectively advocate on behalf of victims; and
- lack of accountability.

¹⁰ We note in the [NSW Budget Estimates 2011-2012](#) the Judicial Commission has future plans to 'provide high quality and innovative professional development programs for judicial officers'.

¹¹ Australasian Police, [Australasian Policing Strategy on the Prevention and Reduction of Family Violence](#), 2008.

¹² NSW Ombudsman's [Special Report to Parliament, Domestic Violence – Improving Police Practice](#), 2006 at 33.

¹³ For example, at the Downing Centre most victims in domestic and family violence matters do not have any contact with their prosecutor before the hearing day, and most are only able to speak to their prosecutor in the minutes between the court room being allocated and the hearing commencing. This does not allow the victim to inform the prosecutor of any change in circumstance that has occurred since the victim gave her statement to police, or to inform the prosecutor of any recent incidents that have occurred.

Jurisdictions with specialised domestic violence prosecutors are reported to have higher rates of successful prosecutions,¹⁴ and specialist prosecutors have been reported to be 'the single greatest factor responsible for the [specialist domestic and family violence] court's success'.¹⁵

For the purposes of a specialist domestic violence court, trained prosecutors would have a critical role in:

- ensuring the brief of evidence is thorough and complete;
- ensuring all evidence is gathered and presented so as to be admissible;
- liaising with court advocates and other victim support persons as appropriate;
- interviewing the victim before the hearing;
- applying domestic and family violence legislation;
- prosecuting with a high level of skill;
- understanding the type of orders appropriate to the victim's circumstances; and
- influencing the broader legal system and community perceptions of domestic violence.

Domestic Violence Liaison Officers

DVLOs would play a crucial role in the development of specialist domestic violence lists. Most New South Wales LACs already have specialist DVLOs whose role it is to:

- promote best practice in their LAC through the provision of training and monitoring;
- ensure high quality first response to domestic and family violence;
- act as a point of contact and information for victims;
- liaise with the court and prosecutors;
- provide a vital link between police and the community, particularly victims and their advocates.

Existing specialist courts

Two specialist domestic violence courts (as opposed to specialist ADVO court lists) already exist in New South Wales, one in Campbelltown and the other in Wagga Wagga,¹⁶ and only deal with ADVOS where there are associated criminal charges. While these courts provide an excellent model of domestic violence intervention with certain elements suitable for replication, the establishment of similar specialist courts (as opposed to specialist lists) in regional and remote communities is not feasible or practical.

Specialist ADVO court lists could achieve similar interventions, reaching far more women and children who have experienced domestic violence, at far less cost.

Acknowledgement

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¹⁴ Klein, A. Special Report – Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges, U.S. Department of Justice, National Institute of Justice, 2009 at 33.

¹⁵ Ursel, E.J. 'The Possibilities of Criminal Justice Intervention in Domestic Violence: A Canadian Case Study', Current Issues in Criminal Justice, 1997 at 271.

¹⁶ Domestic Violence Intervention Court Model (DVICM).