



# WIRRINGA BAIYA

## ABORIGINAL WOMEN'S LEGAL CENTRE INC

Wurringa Baiya provides free legal advice to Aboriginal and Torres Strait Islander women, children and youth who are or who have been victims of violence.

28 March 2012

The Chairperson  
Standing Committee on Social Issues  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Sir,

### **DOMESTIC VIOLENCE TRENDS AND ISSUES IN NSW (INQUIRY)**

We thank you for the opportunity to give evidence on 5 March 2012 as part of the Domestic Violence Trends and Issues Inquiry.

We have had a chance to review the Draft Transcript from 5 March 2012 and have some corrections and clarifications, which we hope can be noted in the official record.

We have had the chance to confer with our colleagues, including our Coordinator Christine Robinson, in relation to the question taken on notice. This response is below.

Lastly, we had prepared responses to the Proposed Questions that you provided us with ahead of the Hearing on 5 March. Unfortunately there was not enough time to respond to these questions at the Hearing, and as such, we include our written responses to the Proposed Questions below.

### **Overview of Wurringa Baiya Aboriginal Women's Legal Centre**

Wurringa Baiya Aboriginal Women's Legal Centre is a New South Wales statewide community legal centre for Aboriginal women, children and youth. The focus of our service is to assist victims of violence, primarily domestic violence, sexual assault and child sexual assault.

Over the fifteen (15) years of our operation we have given advice and support to many hundreds of women and children who have been victims of violence. We have also acted for many clients in applications for statutory victims compensation for the violence they have endured. Furthermore, we have provided numerous community legal education workshops to community members in New South Wales, in both regional and metropolitan locations.

In addition to our day-to-day advice and casework services, we also provide legal advice clinics in several outreach locations including in women's correctional centres and community centres. We also provide support to women through our involvement with the Women's Domestic Violence Court Advocacy Service (WDVCAS) at the Downing Centre and Waverly Court and have some exposure in this capacity to the process of obtaining and enforcing Apprehended Domestic Violence Orders (ADVO).

As such, our experiences are informed by the women we work with and the clients we support and where relevant, we have used case studies in this submission to illustrate our points.

### **Question taken on notice**

#### **Have you been invited or asked to participate in the formation of the current State Government's domestic violence framework?**

To the best of our knowledge staff from our Centre have not been invited to participate in the formation of the Government's domestic violence framework.

### **Corrections of the Transcript**

We note that time and care has been taken to ensure that the transcript is an accurate reflection of the evidence we provided on 5 March 2012. Thank you for offering us the opportunity to correct the transcript.

We have enclosed the transcript with some minor corrections

However, our main concern is that we were cut off from answering one of the questions put to us and that the transcript does **not** reflect the fact that time had run out – we would have been happy to stay longer and provide a more complete response to the questions being put to us.

We would like to note that we had a more substantial response to the questions about compliance with ADVOs and whether representation for defendant would make a difference. Our response, had we been able to complete it, would have included some of the points raised in Question 9 below.

#### **Our response:**

We think that a problem with compliance may be that defendants don't understand the terms of the conditions granted, whether ordered by the Court after a defended hearing, or consented to by the defendant. Certainly having a legal representative to explain those conditions and what they mean would be a good thing.

We also think this is the role of the Magistrate to do this, although we have observed that some do it better than others. Some Magistrates are much better using plain English than others.

Having said that we have had a number of clients where ADVOs were granted by the Court upon a conviction of a domestic violence offence, which meant they were legally represented, and there was **no** compliance with the conditions of the ADVO. One client we can think of had an ex-partner who was constantly being charged with breaching the numerous ADVOs she had against him, often for serious matters of assault. On a number of occasions he spent time in custody for breaching an ADVO as well other domestic violence offences, and upon release he continued to breach the ADVO. This offender fundamentally had no respect for the ADVO. The only reason the violence has desisted for client is because he is now in another relationship with another woman, to whom he is also violent

We want to press that we do not think that lack of representation for offenders to explain the terms of an ADVO is the main reason for non-compliance. We refer to our recommendation for the adoption of a specialised domestic violence court to intensively case manage offenders, which is the point that we were intending to make in response to the original question about the contrasts between the DVICM and other integrated specialist domestic violence courts in, for example, North America.

We hope that the transcript can be amended to reflect the issues raised above.

### **RESPONSES TO PROPOSED QUESTIONS**

#### **The experience of Aboriginal people**

**1. Your submission talks about the consequences of domestic violence on Aboriginal communities and you emphasise that there is a strong link between experiencing domestic violence and entry into the criminal justice system (pp 16-17).**

**a. Can you elaborate on this point? Is this an increasing trend?**

We cannot say that this is an increasing trend but perhaps there is just more awareness of these issues now than there has been in the past. In relation to Aboriginal incarceration, the reasons for the high numbers of Aboriginal people in custody are complex but include the current bail laws, lack of alternative sentencing options, and pro-arrest policing practices. Whatever the cause, the fact is that Aboriginal people are incarcerated at 13 times the rate of non-Aboriginal people (Corrective Services 2009) and Aboriginal women are the fastest growing group in NSW prisons. While not wishing to overload the inquiry with statistics, we feel that it is important to draw your attention to some of the very high rates of Aboriginal incarceration and victimisation:

- Between 1998 – 2009 the number of Aboriginal women in prison increased from 91 – 236, an increase of 230% (Corrective Services 2010)
- Aboriginal women account for 27.6% of the full time female prison population (reference as above)
- Aboriginal girls are 8 ½ times more likely to appear in a criminal court than non-Aboriginal girls and

- Almost half (48%) of children in juvenile detention centres are Aboriginal.

It would be simplistic and inaccurate to conclude that Aboriginal people commit more offences to account for these rates, the reality is that that Aboriginal incarceration is a social and political issue influenced by many factors, including those outlined above and indicative of their responses to, and sometimes lack of options in coping with, the very high levels of victimisation that Aboriginal women and children face in the general community.

Aboriginal women in prison and children in juvenile detention centres have experienced high levels of victimization throughout their lives, often commencing through witnessing domestic violence and abuse in the home and then going on to experience child sexual abuse and relationships of domestic violence. This information is drawn from self-reporting surveys such as the *Young People in Custody Health Survey*, Inmate Health Surveys and the *Inmate Census* as well as the 2002 report *Speak Out Speak Strong* (published by the Aboriginal Justice Advisory Council) and our own experiences of working directly with women in prison.

These sources of information tell us that:

- 69% of all women and 81% of Aboriginal women report at least one relationship of domestic violence (Inmate Health Survey 2001, Corrective Services NSW)
- 44% of Aboriginal women report victimhood of adult sexual assault (reference as above) and
- 70% of Aboriginal women report victimhood of child sexual assault (*Speak Out Speak Strong* 2002, published by Aboriginal Justice Advisory Council)
- 81% of girls in juvenile detention centres report at least one form of child abuse or neglect (*Young People in Custody Health Survey 2009*, Juvenile Justice)

Only a third (or 29%) of women the subject of the *Speak Out Speak Strong* study said that they had previously disclosed their childhood sexual abuse and the overwhelming majority (68%) of these women said that they would like counselling to help address their trauma and abuse. In relation to mental health, people in prison have schizophrenia at 3 -5 times the rate of the general population (Inmate Health Survey 2001, Corrective Services NSW) and Aboriginal girls in in juvenile justice centres have on average 4.8 separate mental health diagnoses (*Inmate Health Survey 2001*, Corrective Services NSW).

Very often, women and children who have been victims of violence have self-medicated their mental health and trauma with drugs and alcohol which inevitably results in adding to the chaos of their lives and increases their contact with the criminal justice system.

These figures are indicative of communities in crisis and exemplify to policy makers the very real need for better culturally appropriate early intervention to identify child sexual abuse and violence more broadly when it occurs and to respond with appropriate counselling, support and referral services, especially

for communities in rural, regional and remote parts of NSW.

**b. Are there currently any programs that you think work well to reduce the likelihood of this occurring?**

We do not have knowledge of what is being provided right across the state; however, there are some programs that we have heard are affective at identifying and responding to childhood abuse and violence such as:

- *Red Dust Healing: Red Dust Healing* is a cultural healing program that was originally designed by Tom Powell, and further developed in partnership with Randal Ross. The program was developed for Indigenous men and their families. The goal of the program is to heal and rehabilitate Indigenous offenders and those at risk of offending. The program is designed to examine the intergenerational effects of colonisation on the mental, physical and spiritual wellbeing of Indigenous families. It also encourages individuals to confront and deal with the problems, hurt and anger in their lives.
- *Lovebites* in schools: We note that this program has been running in many NSW highschoools since 2004 and is founded on evidence which shows that school-based strategies can lessen perpetration and victimisation of relationship violence (NAPCAN website). One of the strengths of the Lovebites model is that it is run from school settings, which increases the accessibility of programs allowing the material to be integrated within the curriculum and the systems of the school. These programs also lend support to existing violence prevention initiatives that are operating in classrooms. It is also of benefit that schools run welfare departments which combine primary, secondary and tertiary prevention activities therefore providing holistic support to young people.

One of Wirringa Baiya's concerns with Lovebites however is that the program usually targets children aged 15-16 years old (Year 9 and 10) and that some Aboriginal children will have stopped attending school by this stage. Additionally, by this age, many young people are already in sexual relationships and some of these will also include domestic violence or coercive behaviour. We have recommended to NAPCAN that these programs needed to be aimed at children much younger and preferably to children of all ages. We understand that an "all of school" approach has been developed but not yet implemented across the state. Lastly, we note that this program has not been developed in consultation with Aboriginal young people or services and we are of the view that this program could be improved by making it culturally appropriate and relevant to Aboriginal children and young people.

**Other programs**

We are not aware what programs and services are provided to children and young people in juvenile detention centres but we would be interested to learn whether there are programs, which have been developed specifically for boy and

for girls and whether these programs are culturally appropriate for Aboriginal children. We note that very many of the children in juvenile detention centres and women in adult prisons have been separated from their families either through forced child removal policies of the Stolen Generation, or more recently through child protection policies and placement of children in out of home care.

We refer to the recommendations of Human Rights and Equal Opportunity Commission Report *"Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families"* April 1997<sup>1</sup> which provided:

*33a. That all services and programs provided for survivors of forcible removal emphasise local Indigenous healing and well-being perspectives.*

*33b. That government funding for Indigenous preventive and primary mental health (well-being) services be directed exclusively to Indigenous community-based services including Aboriginal and Islander health services, child care agencies and substance abuse services.*

*33c. That all government-run mental health services work towards delivering specialist services in partnership with Indigenous community-based services and employ Indigenous mental health workers and community members respected for their healing skills.*

#### **Counselling services**

*40a. That churches and other non-government welfare agencies that provide counselling and support services to those affected by forcible removal review those services, in consultation with Indigenous communities and organisations, to ensure they are culturally appropriate.*

*40b. That churches and other non-government agencies which played a role in the placement and care of Indigenous children forcibly removed from their families provide all possible support to Indigenous organisations delivering counselling and support services to those affected by forcible removal.*

In the years since *Bringing them Home* was published, some changes have taken place, but our service remains unaware of individual programs and counselling services that have been established in direct response to their poignant recommendations. We would be interested to learn of any support program operating in NSW that addressed the issues raised in this report including acknowledgement of the damage of forced removal.

We are not aware what programs have been implemented through Community Services, Brighter Futures and other out of home care providers to address childhood sexual abuse, but we note that in discussions with juvenile justice

<sup>1</sup> [http://www.hreoc.gov.au/social\\_justice/bth\\_report/report/appendices\\_9.html](http://www.hreoc.gov.au/social_justice/bth_report/report/appendices_9.html)

health workers, we have been advised that many of the girls in their centres have not had access to any programs before coming into detention.

We refer to our earlier written submission, in which we suggested that the Government should establish a separate crime prevention unit to focus exclusively on domestic violence and sexual assault in Aboriginal communities and prioritise funding for programs addressing the need of child sexual assault and domestic violence victims. We note that a number of agencies in their submissions to the important report *"Breaking the Silence: Creating the Future"* commented that services are delivered ad hoc in many communities and many NGOs have problems access funding for their service provision. That report made a number of recommendations, including:

- *"ACSAT recommendation 119: In consultation with the Aboriginal community, research, develop and implement a new model to address child sexual assault in Aboriginal communities."*

We would add that domestic violence services are often provided in an ad hoc fashion and that services need to be victim-focused and developed in consultation with Aboriginal women in order to be culturally appropriate and tailored to the needs of Aboriginal women and children.

## **2. What do you see as the main reasons for the overrepresentation of Aboriginal women as victims of domestic violence and what are the key ways that this can be addressed?**

As we stated in our earlier written submission to the Inquiry there are many reports that look at this issue and we referred the Committee to some of those reports.

We submit that domestic violence is a gendered form of violence. It is essentially about male power being used against women and children. Domestic violence is a universal problem that crosses all cultural, racial and class groups. However, why domestic violence is more prevalence in Aboriginal communities is complex. It is symptomatic of highly stressed communities. Some of the issues that have been identified include:

- The trauma and grief of the removal of Aboriginal children, the loss land and culture
- Substance abuse and alcohol abuse. And while we do not submit that alcohol and substance abuse is a cause of domestic violence per se it is a significant factor.
- Significant social and economic disadvantage
- Inadequate housing
- Lack of appropriate services or services full-stop in rural and isolated communities

These factors create highly stressed communities, which can lead to dysfunctional and violent behaviour. Sadly domestic violence in some



communities, or some sections of the community, is normalized. Thus violence is a learned behaviour. We have had many clients who have endured domestic violence because they saw their own mothers and aunties experience it and thought it was normal. We have had clients whose young sons witnessed the violence inflicted by their father and then become violent themselves. Thus the cycle continues and the stress in these communities is maintained.

### **Ways in which this can be addressed?**

There is no magic one answer. Programs need to be tailored and individualized for each community that address all the issues mentioned above. These programs need to be community driven, initiated and managed. It is important to utilise the strengths and services available within the community. Programs need to:

- improve the skill set of the local communities and individuals within services – through TAFE and qualifications/training to up-skill the community.
- utilize the knowledge and insight of Aboriginal women and people who are victims of violence
- understand access to education is also the key to unlocking the problems with the community. Programs such as Lovebites – needs to be tailored to Aboriginal communities and language and resources developed for all of school approach that looks at DV, SA and CSA .

We also refer to our written submission and our recommendation that a specialised Aboriginal unit be established with a multi-disciplinary team be established to focus exclusively on violence in Aboriginal communities.

**3. In our last hearing, the police informed us that although the vast majority of aggressors are men, there is an increasing trend that women are also acting as aggressors in domestic violence incidents. In your experience, is this apparent trend in the broader community also being experienced in Aboriginal communities?**

We don't really have experience of violence perpetrated by women as an emerging or increasing trend. What we do see more commonly is retaliatory applications of men who understand how the ADVO system works. We suspect this increase is more to do with police not correctly identifying who the primary aggressor is.

We think that having skilled counsellors to attend family violence incidents or sit in on interviews would be very useful in assisting police to identify who actually needs protection. In addition we suggest that the use of specialized officers and specialized domestic violence courts would greatly assist in better identifying the primary aggressor

**4. Your submission refers to children being removed from the care of a non-offending parent and that it is "almost impossible" to get these children returned to that parent unless it was flagged at the outset in a**



**“restoration plan” (p 17). A similar concern was raised by Binaal Billa Family Violence Prevention Legal Service (Submission 38, p 6).**

**a. Can you tell the Committee more about this? In what circumstances are children being removed from non-offending parents?**

In NSW children can be removed from an environment when they are perceived at being ‘at risk of significant harm’ and in need of ‘care and protection’ pursuant to section 43, *Children and Young People (Care and Protection) Act 1998 (NSW)*. We have heard from time to time reports from clients where children have been removed due to ‘domestic violence’ as the only reason for removal. We are aware from our discussions with care and protection solicitors that in such instances, the younger the child and the longer the children are placed in out of home care, the harder it will be for either parent to have the children restored to their care. We note the very many reasons why women find it difficult to report violence and leave abusive partners and we note in such situations that it is unfair to blame the victim mother for the violence being perpetrated by her partner. In NSW, children are removed from families at a higher rate than any other state and that in 2008/09 Aboriginal children made up 31.2% of the 14,667 children who had been removed from their families and placed in out of home care.

Our child protection system needs to fully appreciate the devastating legacy of the Stolen Generation and the damage done through these policies to women, children and communities. The current system needs to be flexible enough to respond to violence and child protection concerns when they arise and be aware that different solutions will work for different families and communities, like so many social policies, a blanket response to child protection is not an effective way of delivering policy and we have seen the trauma caused to mothers and children who are separated and institutionalised from childhood through this process.

**b. How do you suggest the Government should address this?**

We are not specialists in child protection law and are not acting for parents before the Children’s Court. However we have a number of clients over the years that have children removed because those children were exposed to domestic violence. These tend to be situations of severe domestic violence when women are still stuck in the cycle of violence and there is still some contact with the perpetrator. Sometimes these women suffer from quite significant depression and anxiety caused by the violence, that affects their parenting.

Our view is that women need to be given intensive support to help them leave that relationship and work with effects of that violence. This may mean working the woman’s family, if they are supportive to help her work through these issues. Family Group Conferencing is a good model to utilize more to help families work out how best to support the non-offending parent be safe with her children. In some instances it may be that children need to be living with another member of a family until that woman is at a point that she is able to care for her children. This could be done with Family Law Court orders. But once a care order is made

by the Children's Court the non-offending mother is at the mercy of the department as to whether she will ever get her children back into her care.

We acknowledge that there are some early intervention services but our view is that there needs to be more of them.

We also advocate for better training of the Department and Family and Community Service's (FACS) caseworkers to understand the complexity of DV and the reasons of why women find it hard to leave. In addition we press for better support for FACS workers as burnout is high and caseworkers are often very young

### **Terminology**

**5. Your submission suggests that intimate partner violence should be distinguished from violence or abuse that occurs in other family relationships or in the Aboriginal community between members of the same kin (p 2). Can you elaborate on this point?**

The dynamics of power in a relationship involving intimate partners is very different to that in other family relationships. Primarily it is male power being used against women (and their children) to maintain control. It often involves a range of abuse over a period of time and it depends on the manipulation of the intimacy to keep the victim in that relationship and thus the cycle of violence often referred to. The relationship is more complicated psychologically involving sexual intimacy, romantic love, a need to be wanted and loved as well as insecurities and poor self-esteem. It involves a dependence on the dominant partner, particularly if there are children. This is economic dependence or assistance with children. Children are often used to blackmail to victims to stay together. The abuse tends to be secretive.

Violence between family members or kin is far less complicated psychologically. There is often no dependence on the abuser, the one exception being in parent/child relationships. There is often not a cycle of violence. Violence between family members or kin often is about specific issue or difference rather than a pattern of violence to maintain constant control.

The overwhelming majority of the advice we give is to women who have experienced violence by an intimate partner. We are also mindful also that non-Aboriginal people are also responsible for violence against Aboriginal women and children and Aboriginal men are not the only source of this oppression.

We would also like to include a relatively new term, which is 'lateral violence' which refers to violence that occurs within communities and we note a paper was submitted on 5 March in relation to lateral violence, what it is and how it effects colonised communities. The roots of lateral violence lie in colonisation, oppression, intergenerational trauma, powerlessness and ongoing experiences of racism and discrimination, factors mainstream bullying programs do not take into account.

*"Lateral violence comes from being colonised, invaded. It comes from being told you are worthless and treated as being worthless for a long period of time. Naturally you don't want to be at the bottom of the pecking order, so you turn on your own."*

(Richard J. Frankland,  
Canadian Aboriginal singer/songwriter, author and filmmaker)

Governments can (inadvertently or deliberately) create the environment for lateral violence through a lack of recognition and engagement, and by pitting groups against each other. One such example is the native title process where Aboriginal people have to prove their identity over and over again. In some states Aboriginal groups have a say in who belongs to a particular land and who doesn't, a right which can stir lateral violence when native title claimants are not sure of their Aboriginal identity. The native title process can also lead to feelings of dispossession.

Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, says that *"although native title provides a unique opportunity for many of our communities to overcome disadvantage, these outcomes are often not fully realised because lateral violence fragments our communities as we navigate structures such as the native title system."*<sup>2</sup>

We are of the view that this is a useful term for understanding the inter-familial and inter-community violence within Aboriginal communities.

### **Early intervention**

**6. The Department of Attorney-General and Justice told the Committee<sup>1</sup> that it manages 20 Aboriginal Community Justice Groups which meet regularly to discuss local solutions to the high rate of contact between Aboriginal people and the criminal justice system.**

**a. What experience do you have in dealing with these groups?**

We have no direct experience, but we understand that the current arrangements for membership to these groups states that members can't have a criminal record or ADVO recorded. We refer to our submissions above and note that Aboriginal people are over-represented at every level of the criminal justice system which is due to many factors as noted, including as well, over-policing of Aboriginal communities, the criminalisation of Aboriginal people (through policies such as move-on powers and public nuisance), the cultural understandings of public space and cultural differences in parenting styles and the high visibility of Aboriginal people, which all result in the fact that Aboriginal people are more likely to, and do often have, criminal convictions and/or records of AVOs.

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<sup>2</sup> <http://www.creativespirits.info/aboriginalculture/people/bullying-and-lateral-violence.html#ixzz1nvBmOLKz>

We are also aware that the success and effectiveness of the Aboriginal Community Justice Groups (ACJG) depends greatly on who the Justice Coordinator is, and how much that person engages with the community and the issues. Without singling people out we have had limited contact with one person in particular who has been ineffective and this group is ineffective in part due to poor leadership and community engagements.

Christine Robinson, the Coordinator of Wirringa Baiya Aboriginal Women's Legal Centre, is on Redfern Local Area Command Aboriginal Consultative Committee. The purpose of this group is to meet with police and share information about the crime statistics and the work of the Police, to share info about community engagement and to advise police about effective community engagement. This group has been initiated by Redfern LAC and the Local Area Commander of Redfern has worked hard to develop relationships of trust within the Aboriginal community. As such, much of the work of such groups depends largely on the pro-activeness of the local command. We note that other strategies such as 'visible policing' and having Youth Liaison Officers within the LAC are effective ways of breaking barriers to reporting violence and that where this happens, reports and clear up rates of crime are higher.

As we travel to regional and remote parts of NSW, we also have experience and knowledge of entrenched racism within the NSW Police and some Local Area Commands who see their role as purely a law enforcement one, and community engagement is not valued or prioritised.

**b. Have you found them to be effective in addressing domestic violence?**

We can't really comment further about this.

**7. Your submission suggests that rather than funding GPS tracking devices, the Government would be better to increase investment in early intervention services (p 5). What early intervention strategies would be most effective in Aboriginal communities?**

Please refer to our original written submission as we feel we have addressed this issue in that document.

**8. Your submission states that the main complaint you hear from your clients about ADVOs is related to police inaction for breaches. You recommend that a dedicated ADVO breach line might alleviate some of this problem (pp 12-13). How do you envision this would work? Do you anticipate it would be staffed by sworn police officers?**

We envision that a dedicated ADVO breach line would work by establishing a centralised 24 hours toll free telephone line within the police service. Either or both of the following methods would promote the existence of a dedicated ADVO breach line;

All copies of ADVO's have printed on the bottom of the last page in bold type

**Report all Breaches of ADVO's on 1800.....(24 hour toll free)**

In case of emergency call the Police on 000

Quote ADVO Identifying No

Alternatively this information can be printed on a small coloured card that can fit into somebody's wallet or purse or incorporated into a Yellow Card scheme.

The staff of an ADVO Breach line should be sworn police officers. This is because dealing with ADVO's and breaches is generally the work of sworn police officers.

Officers staffing an ADVO Breach line would have specialist training around domestic violence issues. Additional specialist front line or accidental counselling type skills would also be useful.

Any training provided to police would need to reinforce the view that breaches of ADVO's are a part of a pattern of controlling behaviour, which require proper enforcement to generate confidence in ADVO regime.

It is our view that many Police officers would benefit from a secondment to such a position even for a short period of time. Alternatively it could be an initial job placement for new police officer before they begin their work in the field.

**9. The Law Society has suggested that the best way to increase compliance with ADVOs is to ensure that parties are legally represented at ADVO hearings (Submission 56, pp 1-2). What is your view of this suggestion?**

We think that a problem with compliance may be that defendants don't understand the terms of the conditions granted, whether ordered by the Court after a defended hearing, or consented to by the defendant. Certainly having a legal representative to explain those conditions and what they mean would be a good thing. We also think this is the role of the Magistrate to do this, although we have observed that some do it better than others. Some Magistrates are much better using plain English than others.

Having said that we have had a number of clients where ADVOs were granted by the Court upon a conviction of a domestic violence offence, which meant they were legally represented, and there was **no** compliance with the conditions of the ADVO. One client we can think of had an ex-partner who was constantly being charged with breaching the numerous ADVOs she had against him, often for serious matters of assault. On a number of occasions he spent time in custody for breaching as well other domestic violence offences, and upon release he continued to breach the ADVO. This offender fundamentally had no respect for the ADVO. The only reason the violence has desisted is because he is now in another relationship with another woman, to whom he is also violent

We are of the strong view that lack of representation for offenders to explain the terms of an ADVO is **not** the main reason for non-compliance. We refer to our

recommendation for the adoption of a specialised domestic violence court to intensively case manage offenders.

### **The court system**

**10. Your submission refers to the recommendation of the Australian Law Reform Commission that a specialised domestic violence court should be established. You suggest that such a court would need to be very sensitive to the cultural needs of Aboriginal women and understand the complexities of domestic violence in Aboriginal communities (p 23). How could a specialist domestic violence court do this effectively?**

**a. What are your views on this suggestion?**

Some of our suggestions in relation to culturally appropriate service provision are:

- Employing more Aboriginal people within the court system
- Mandatory Aboriginal cultural awareness training for all court staff including magistrates, frontline staff and other court workers including Police
- Establishing a dedicated Aboriginal Crime Prevention Unit to focus exclusively on domestic violence and sexual assault, which could assist in advising courts generally
- For local courts to establish an Aboriginal Advisory Group to make recommendations about ongoing day-to-day issues such as engagement with Aboriginal people coming to court and access to justice issues

**b. How could this could list model be made more sensitive to the needs of Aboriginal communities?**

As above and please refer to our written submissions.

**11. Other inquiry participants have advocated the extension of domestic violence court lists within NSW local courts as a more cost effective and localised approach.**

We do not have in depth knowledge of the current NSW model - the Domestic Violence Intervention Court Model (DVICM) however, our view based on what we have read and heard about that model is that the DVICM does not go far enough in offering a real alternative to the current adversarial system. We noted in our evidence (and repeat here again) that models that offer intensive case management, overview and support (such as the NSW Drug Court) and overseas specialist domestic violence courts provide better models and we would like to see the DVICM expanded to include some of these features.

We note that the primary features Domestic Violence Problem Solving Courts are:

- Involvement/participation of the victim and offender
- Integrated service delivery including lots of local service providers

- Intensive case management
- Individualized management of matters
- Expediency
- Outcomes – reductions in domestic violence
- Not diversionary
- Problem solving/therapeutic courts
- Encourages victim participation
- Non-adversarial approach and alternative to usual courts

The DVICM has not adopted all of these characteristics and the current criminal justice/ADVO process is a one size fits all approach, which is also not working. We note that it is important to reflect on the justification for domestic violence problem solving courts, which include:

- Dissatisfaction of victims with criminal procedure and court process
- Barriers to access to justice remedies
- Affordability
- Low levels of reporting of domestic violence for Aboriginal women
- Proactive rather than reactive – can anticipate future problems by case management and active involvement in matters.
- Can look at underlying problems rather than result only (can look at causes of violence, drugs, alcohol, unresolved issues – rather than only looking at violence as an outcome)

We also note specialist courts have been operating in North America for many years and the best practice model from those experiences states that specialist domestic violence courts should be:

- Just in delivering outcomes
- Fair in treatment of litigants
- Offer outcomes at a reasonable cost
- Deal with matters with reasonable speed
- Be understandable
- Responsive
- Provide certainty
- Be effective, adequately resourced and organized

Lastly, we would like to make a comment about ‘efficiency’ and ‘cost effectiveness’. While noting that cost and budget considerations are always part of the bottom line in policy development, there are other considerations worth taking note of as well. We note that although many crime rates are falling, incidents of domestic violence and sexual assault are increasing, due in part perhaps to increased reporting and access to justice. However, we note that as rates rise, the social and emotional cost of violence for communities and families is immeasurable. Nonetheless, we draw the Committee’s attention to the NSW Auditor General’s Report on Domestic Violence, which provides an estimate that the total cost of domestic violence to the NSW Government and taxpayers, which is estimated at \$4.5billion/year (*“Responding to Domestic and Family Violence”*, Office of Audit General NSW published 8 November 2011 <http://www.audit.nsw.gov.au/Publications/Latest-reports>).



We respectfully submit that solutions to complex and entrenched problems like domestic violence will take time, effort, commitment from Government and stakeholders and ultimately, investment in innovative and alternative programs and services that can deliver results. The costs will be large, bi-partisan commitment is needed and any recidivism or “result” is likely to be slow and unlikely to fit within a three-year election cycle. Many of the changes that need to take place to address violence in the community will need to occur over long period of time. A yardstick measurement advocated by criminologist is to examine no less than 5 – 10 years of crime trends in order to measure any result or change.

As was once observed, a definition of insanity is “doing the same thing over and over again and expecting different result...” Albert Einstein (1879 - 1955). We would agree and comment that doing nothing or doing nothing different to address these problems is not an option.

### **Apprehended Domestic Violence Orders**

**12. Numerous submissions have argued that there is a need to improve education/training for judicial officers and others about domestic violence, in order to improve the consistency and quality of decisions. Some have also recommended a bench book for domestic violence proceedings. What are your views on these suggestions?**

We think it would have some benefit. There is one for sexual assault trials. However we do press that training for judicial officers would be beneficial, especially training by Aboriginal people.

**13. Do you have any further recommendations for how the court system should be improved in NSW?**

See above and below.

### **Policing**

**14. Among the strategies to address domestic violence recommended in your submission is to improve the relationship between police and Aboriginal communities (p 9).**

**a. What do you suggest is the best way for police to go about this?**

Community policing is critical to engaging the Aboriginal community, this includes participating in community activities to enable Aboriginal people to have positive experiences with police and vice versa. Examples of community policing include:

- being involved with the PCYC (we understand that this would largely be voluntary)

- attending Aboriginal events such as NAIDOC celebrations and YABUN
- walking the streets of communities, rather driving around, to have an opportunity to actually say hello to people and engage in some positive conversation
- using the Mounted Police (anecdotally we hear they are very popular with children)

In addition we also add that police working with Aboriginal communities should have comprehensive training that involves:

- working with young people and the complex issues that affect their lives. It should involve awareness of Youth Justice Conferencing.
- Aboriginal cultural awareness including the impact of the forced removal of Aboriginal children from families and deaths in custody. Police must hear real stories from individuals who live with impact of these experiences.
- Interaction with positive Aboriginal role models.

We also stress that police must not too heavily rely on Aboriginal identified positions, such as Aboriginal Client Liaison Officers as the source of all information and guidance on community issues. This places too much of a heavy burden on one or two individuals in a Local Area Command.

**b. Are there certain Local Area Commands that you can point to as doing this well?**

We think the Redfern Local Area Command is doing a number of positive things including:

- running a boxing group and health and fitness groups for primary school aged Aboriginal boys and Youth, along with Tribal Warrior. This program involves a senior officer from Redfern police.
- providing workshops to the community on a range of issues. This includes participating in the running of a young Aboriginal women's group.
- having an active Aboriginal Community Justice Group (as discussed above).

**15. In our last hearing, we heard from some witnesses about the benefits of the yellow card system, including that it helps with victims' preparation before coming to court and therefore increases the likelihood of them attending. Are you familiar with this program?**

**Do you think it could/does work well in Aboriginal communities?**

We are familiar with the yellow card. However, we cannot comment either way as to whether it works well in Aboriginal communities.

**16. Your submission suggests that police that work with Aboriginal communities need to have comprehensive and ongoing cultural awareness training (p 20). Can you provide the Committee with examples of what is happening that supports your view that further training is required?**

Some of the issues that have been identified include:

- Harassment and over-policing of young Aboriginal people
- Treating all Aboriginal people as the same
- Ignorance about domestic violence and the causes of violence. We have come across some police officers who perceive that no Aboriginal woman wants to leave an abusive relationship.
- That an Aboriginal Community Liaison Officer is all you need to engage with the Aboriginal community
- Stereotypes about drug users and people living in social housing in Redfern and Waterloo. We know of a young Aboriginal woman who for a period of time lived in one of the towers in Waterloo. This woman was stopped a couple of times a week while driving her car from work to home by Redfern police for random reasons. Since moving out of the towers she is no longer stopped.
- A perception that all Aboriginal communities are homogenous and all the same.

**17. What merit do you see in Dr Lesley Laing's suggestion that a police risk assessment protocol be established to enable more accurate assessments of risk and thereby more appropriate police responses to domestic violence (Evidence, 17 October 2011, p 51)?**

We think this would be especially useful to assist them identify who is in fact a primary aggressor in the relationship if both parties are claiming to be victims.

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

**Specialised policing**

As we stated in our original written submission, while we applaud the work and dedication of many Domestic Violence Liaison Officers it is our experience that they are often the lone officers in large police stations that have a good understanding of domestic violence and the complexities of victim's lives.

We think consideration should be given to the establishment of specialised local police units that specialise in domestic violence and sexual assault matters. We support these units being multi-disciplined teams that include counsellors to assist in supporting victims of violence. We think the multidisciplinary model of the Victorian Sexual Offences and Child Abuse Investigative Teams (SOCITs) is an interesting model to consider.

**19. In your submission you state that, in your experience, sentencing rarely has a deterrent or rehabilitative effect (p 8). Are there alternative sentencing mechanisms that you think might be more effective?**

We refer to our client's experiences and also to the recently released BOCSAR report entitled "The effect of arrest and imprisonment on crime" (March 2012)

which found that incarceration has little deterrent on crime rates and that more effort (and resources) should be directed into increasing the likelihood of arrest and detection, rather than increasing the length of sentences.

Additionally, we note that in sentencing, the current system does not enable judges and magistrates to order offenders to complete rehabilitation programs in the community OR in prison. We note that availability of rehabilitation programs varies substantially from prison to prison and that programs are voluntary unless tied to parole conditions. There is no incentive for offenders to complete programs in prison and the experience of many of our clients is that their ex-partners emerge from prison angrier and more violent than they were before, rather than prison having any rehabilitative effect.

We also note that a different model, such as a properly planned and designed specialist court model would enable things such as:

- intensive case management to identify underlying issues for defendants and develop personalized program that addressed their needs
- consultation with victims and offenders through these restorative justice process that incorporate victims views into sentences
- courts and the criminal justice system to focus on real rehabilitation and individualized responses to people who have committed crimes

We work closely with women in and leaving prison and we advocate strongly for programs and services to address their victimization as this is (as outlined above) often an underlying cause of their offending behaviour. As such, we would assume that the same argument could be made for offending men and that individual programs are needed to address pressures such as access to employment, drug and alcohol abuse, experiences of violence, learnt behaviour and mental health issues. We are of the view that instead of treating the offence, it would be preferable to focus on treating the offender and the causes of their offending behaviour – rather than retributive and punitive punishment that results in no behaviour change.

We note that in some instances, incarceration can still be part of the sentencing process in specialist courts, but it is only one option and part of a suite of sentencing options for that person. We also note that any behaviour change perpetrator program needs to include some of the following features:

- Education for offenders about domestic violence
- Exploration of domestic violence and the effect on women and children and communities
- Challenging behaviours and attitudes towards women
- Information and education about domestic violence as gendered
- Challenging core values and beliefs
- Exploration of underlying issues and personal issues
- Addressing and seeking resolution of internal issues and conflicts
- Combining group work and individual counselling

We are of the view that Courts should be empowered to make referrals to

perpetrator programs that effectively and holistically consider the personal circumstances of the offender and offer realistic behaviour change therapies and approaches to address their violence.

Additionally, and as part of this process, we are of the view that the victim's views are paramount and should be considered and that much more research is needed in relation to effective perpetrator programs. It is unlikely for there to be a magic solution to address domestic violence as the factors and contributing causes of intimate partner violence and more broadly – family violence are complex, intergenerational and in Aboriginal communities, need to be understood through the lens of history. We also note that there is no conclusive evidence about the effectiveness of perpetrator programs, nor whether voluntary or mandated referral is more likely to be effective for true behaviour change.

For Aboriginal communities we note that the causes, factors, contributors and effects of domestic violence are more complex and interconnected than in other communities, and the legacy of history cannot be separated from the ongoing violence that affects Aboriginal communities today. Violence and brutality among Aboriginal people is a mirror of the violence and abuse that has been inflicted on Aboriginal communities, men, women and children since colonization and there is a continued 'colonising' of Aboriginal people through forced programs and initiatives that destroy culture and community.

We note that any consideration of domestic violence in Aboriginal communities and any consideration of a policy proposing referral into treatment, must also consider:

- The effects of Stolen Generation
- Aboriginal deaths in custody
- Relationships between Aboriginal communities and police
- Violence perpetrated against Aboriginal people
- Family separation and the ongoing removal of children from families
- Colonisation and the continued colonising of Aboriginal communities
- The lack of services for women and children escaping violence
- The number of Aboriginal children in the care of Community Services
- The number of Aboriginal children in Juvenile Justice Centres
- Barriers in accessing justice remedies for Aboriginal people
- Social and geographic isolation

**20. Various participants have argued that penalties for domestic violence are adequate but applied inconsistently (see for example Mt Druitt Family Violence Response and Support Strategy Leadership Group, Submission 23, pp 3-4 and Legal Aid NSW, Submission 34, p 9). What is your view of this suggestion?**

We cannot really comment, as we are not regularly in the Local Court observing

the sentencing of offenders.

**21. A number of inquiry participants have noted increasing numbers of young people acting violently towards family members. Do you share this observation?**

Through our legal advice and casework we are not seeing this trend however, we do hear anecdotally that this is an emerging issue. We note that family violence which include violence between children and parents, siblings, aunts and uncles and cousins does occur in Aboriginal communities, as does family feuds and disputes that run deep through some communities, both rural and urban. We note that the discussion about 'lateral violence' outlined above provides some explanation for the causes of this and we would support programs that appreciate that Aboriginal people have had with the criminal justice system in any development of future programs aimed at addressing intergenerational and lateral violence.

**22. Some inquiry participants have called for a different approach to young people and domestic violence. For example, the Shopfront Youth Legal Service suggested a number of alternative sentencing options such as youth justice conferencing, forum sentencing and home detention (Submission 51, p 6). Similarly, Legal Aid recommended that penalties for ADVO breaches by young people should focus on diversionary options (Submission 34, pp 20-21). What are your thoughts on these ideas?**

We are of the view that different responses are needed for children and young people and as we mentioned in our submission, there are a number of options for this including establishing a separate division of the Children's Court for the hearing of ADVOs or a separate list within the local courts for AVOs for young people named as defendants or victims (persons in need of protection).

In spite of the recent critique of the Youth Justice Conferencing (YJC), we note firstly the December 2011 BOCSAR report which recommends that more police use youth justice conferencing rather than proceeding to Children's Court. We note that YJC is a diversionary scheme and is effective in reducing young people's future contact with the criminal justice system. We note our comments about contact with the criminal justice system and any scheme which aims to divert young people from this, had sound objectives.

It is our view that an AVO against a child or young person as a defendant is often not appropriate anyway, especially when there is no associated criminal offence. It is a very blunt and harsh legal tool to use to manage the behaviour of a child or adolescent with often complex problems and needs.

We submit that the Government needs to consider an entirely different system for managing or responding to young people whose behaviour causes fear in others, whether they be in a domestic relationship or otherwise. Once again we state that we would like to hear from a range of other people who work with children and young people as to their views as to what is appropriate. We are

not in a position to make detailed submissions on this issue, however we think consideration should be given to referring such matters (with some exceptions for allegations of serious physical and sexual violence) to a conferencing system similar to youth justice conferencing under the *Young Offenders Act 1997*, which will also allow for a comprehensive assessment of the health and social well-being needs of that young person.

**Conclusion**

Thank you for taking the time to consider this additional information and we hope it will be considered along with our previous written submissions and evidence from the Hearing.

If you require any further information about our Centre, or have any questions about our submission, please do not hesitate to contact Rachael Martin of this office on

Yours faithfully,  
**Wirringa Baiya Aboriginal Women's Legal Centre**

**Rachael Martin**  
**Principal Solicitor**