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**REDFERN LEGAL CENTRE
AND
SYDNEY WOMENS DOMESTIC VIOLENCE COURT ADVOCACY SERVICE**

Redfern Legal Centre and Sydney WDVCS recommend the development of specialised domestic violence court lists within all local courts in New South Wales as a cost-effective means of reducing re-offending, improving the legal framework relating to domestic violence, promoting consistency of outcomes, improving the ongoing safety of victims and carrying specialist knowledge into the general system and the community.

Specialist domestic violence court lists

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 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 jurisdictions¹ 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.²

We 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, 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.

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

² Recommendation 32-3.

Jurisdiction

A specialist domestic violence court list would deal only with:

- Domestic violence orders;
- Domestic violence related charge matters, including breaches;
- Related amendments to inconsistent parenting orders.³

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

Even in small communities where the AVO list is only heard on a fortnightly or monthly basis, specialist training could be provided to police, prosecutors and magistrates. 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 s 68R *Family Law Act 1975*.⁴
- List applications for personal violence orders (APVOs) separately (not at the same time as ADVOs).
- Provide legal advice 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.

³ Section 68R, *Family Law Act 1975* (Cth) allows a state or territory magistrate to amend inconsistent parenting orders to protect victims of family violence.

⁴ 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 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.

- Assign specially trained police (Domestic Violence Liaison Officers) to: ensure a high quality response to family and domestic violence; promote best practice in their 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.
- Provide facilities to ensure the safety of women and children attending court.

Many of the above elements already exist in most NSW courts and would only require further integration and training 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 Women's Domestic Violence Court Advocacy Service (WDVCAS), funded by Legal Aid, already attends 108 local courts across NSW and most services have CALD and Aboriginal Specialist Workers.
- WDVCAS Coordinators already maintain rosters of specialist domestic violence workers, seconded from local agencies to attend court on ADVO list days.

Other elements of a specialist domestic violence 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.⁵
- Even in the smallest communities, workers who provide services to women and children (for example, health care and child care workers) could be trained as seconded workers to provide assistance at court on ADVO list days on a rostered basis. This is a model of court assistance already utilised by the WDVCAS across many courts in NSW.

The separate listing of Apprehended Personal Violence Orders (APVOs)

The separate listing of APVOs is a matter for the Attorney General, and consideration is currently being given to providing further legislative distinction between ADVOs and APVOs and the increased diversion of APVOs from the courts.⁶ Submissions to the NSW Law Reform Commission's inquiry into Apprehended Violence Orders⁷ highlighted the importance of separating ADVOs and APVOs, including:

⁵ Arrangements could be made with local practitioners in rural areas to attend court on a sessional, rostered basis.

⁶ 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.

⁷ NSW Law Reform Commission, *Apprehended Violence Orders*, Report 103 (2003).

- 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.
- Having ADVOs and APVOs together detracts from the seriousness and particular dynamics of domestic violence.
- Media criticism about the abuse of AVOs through the making of frivolous complaints does not distinguish between APVOs and ADVOs. This trivialises domestic violence and undermines the integrity of the AVO legislation.

Specialist judicial officers

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 officers⁸ has been identified as a key issue in building strategic frameworks for addressing domestic and family violence⁹ 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;
- 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.

Specialist prosecutors

There are no trained specialist domestic violence prosecutors in NSW, and the prevalence of significant concerns about the quality of service provided by police prosecutors in domestic violence matters has been noted,¹⁰ including concerns about their:

- Failure to confer with victims and their advocates;¹¹
- Failure to confer with Domestic Violence Liaison Officers;
- Failure to effectively advocate on behalf of victims; and
- Lack of accountability.

Jurisdictions with specialised domestic violence prosecutors are reported to have higher rates of successful prosecutions,¹² and specialist prosecutors have been reported to be 'the single greatest factor responsible for the [specialist domestic and family violence] court's success.'¹³

⁸ 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'.

⁹ Australasian Police, Australasian Policing Strategy on the Prevention and Reduction of Family Violence, 2008.

¹⁰ NSW Ombudsman's Special Report to Parliament, Domestic Violence – Improving Police Practice, 2006 at 33.

¹¹ 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.

¹² 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.

¹³ Ursel, E.J. 'The Possibilities of Criminal Justice Intervention in Domestic Violence: A Canadian Case Study', Current Issues in Criminal Justice, 1997 at 271.

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 admissible;
- Liaising with court advocates and other victim support persons as appropriate;
- Interviewing the victim before the hearing;
- Interpreting the domestic and family violence legislation;
- Prosecuting with a high level of skill;
- Understanding the type of orders appropriate to the victim's circumstances;
- Carrying specialist knowledge into the general system.

Domestic Violence Liaison Officers (DVLOs)

DVLOs would play a crucial role in the development of specialist domestic violence lists. Most New South Wales Local Area Commands (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.

Specialist support services

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.

Existing specialist courts

Two specialist domestic violence courts (as opposed to specialist ADVO lists) already exist in NSW, one in Campbelltown and the other in Wagga Wagga,¹⁴ and only deal with ADVOs where there are associated charges. While these courts provide an excellent model of domestic violence intervention, the establishment of similar courts in regional and remote communities is not feasible or practical. Specialist ADVO lists could achieve similar interventions at far less cost.

¹⁴ Domestic Violence Intervention Court Model (DVICM).