

**INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND
ISSUES IN NSW**

Organisation: Binaal Billa Family Violence Prevention Legal Service

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Submissions to
The Inquiry into Domestic Violence
Trends and Issues in NSW

Prepared by
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Submission to the Standing Committee on Social Issues, NSW Legislative Council in Response in to Domestic Violence Trends and Issues in NSW

It is accepted that the Commission is not in a position to intervene in or review individual cases, and the comments made herein reflect the experiences of legal practitioners dealing with victims of Domestic Violence in the remote and outer regional areas of NSW.

Terms of Reference

Strategies to reduce breaches and improve compliance with Apprehended Domestic Violence Orders (ADVOs), including:

1a The use of GPS bracelets

1.1 Inadequate resources would make GPS monitoring of the perpetrators particularly challenging for supervision of GPS data, especially in rural and regional areas.

1.2 The rural location, combined with the lack of immediate access to police assistance (particularly in the evenings and weekends) remain significant barriers to protecting victims of domestic violence, we submit while the wearing of GPS bracelets may enable the police to collect evidence of perpetrators breach, it will not alter the existing (and realistic) fears of the victims.

1.3 Many breaches of an ADVO take place at the residence of the victim and, as such, the location of where the violence is likely to occur is predictable.

1.4 ADVO's are frequently subject to family law orders giving the perpetrators legitimate reasons for being at the victim's residence.

Recommendations

1.5 The use of GPS bracelets, in our view, will not reduce breaches or improve compliance with ADVO's

1b Whether existing penalties for domestic violence are adequate;

1.6 We submit that the existing penalties for domestic violence are frequently ineffective as deterrents and fail on many occasions to protect the victim. The perpetrator may breach many times before the matter comes before the court.

1.7 Article 1 of *The Declaration on the Elimination of All Forms of Violence Against Women Australian*, (CEDAW) which Australia became a signatory in 1980 and ratified in 1983, defines violence as; any act resulting in physical, sexual or psychological harm or suffering, including acts of coercion or deprivation of liberty in public or private. We would argue that the current offences and penalties often fail to take into account the breaches of these Human Rights.

Recommendations

1.8 In order to adequately address differing levels of escalating violence greater weight should be given to the more aggravating circumstances such as; the use of weapons and stalk and intimidate, with less discretion at the lower end of the scale. Stronger penalties should be enforced for repeat offences and breaches of sentencing and protective orders.

1.9 We would urge the State government to take the initiative and develop a similar framework of offences to CEDAW. A framework, which acknowledges that while not all domestic violence is physical or sexual, the consequences for the victims are equally as devastating and as such, are nonetheless deserving of similar penalties.

2 Early Intervention Strategies to prevent domestic violence

2.1 Government funded programs under the 'national plan'¹, have been comprehensively rolled out across the State; however our organisation is yet to see any real positive effect from many of these programmes which do not appear to have the resources or manpower to implement the programme in our remote and outer regional locations.

2.2 The *Yellow Card* program; the early intervention strategy already in use by NSW Police, aims to provide domestic violence victims with early engagements with support services for the entire family. Unfortunately the user rate has been disappointing, with few DV victims participating in the programme. We believe this is not only due to the lack of understanding of the yellow card program, but also the misconceptions associated the consequences of signing a yellow card.

¹ *The National Plan to Reduce Violence against Women and their Children 2010-2022*

2.3 Many victims wish to keep the family unit together which frequently leads to further breaches of an AVO. Research tells us that often physical violence is the last stage in the domestic violence cycle which begins with other practices such as control and coercion on the part of one partner. Early recognition of these practices with intervention through counselling and family therapy may lead to greater understanding of the dynamics of the relationships and less exacerbation into physical violence.

Recommendations

2.4 We would urge more accountability of the main stream programmes which fund organisations to deliver aboriginal focused programs, which frequently fail to reach their target group, because these clients are often allocated to the *'too hard basket'*

2.4 An appropriate national data collection and reporting framework needs to be implemented to determine why these programmes do not have the required uptake, and increased funding needs to be made available for educating the community on early intervention strategies already in use.

2.3 Community initiatives need to be encouraged to enable service providers and government agencies to work in a more holistic manner, involving the whole family unit.

2.4 We not only recommend an increases in the FVPLS² providers but also more programs that focus on the rehabilitations of the perpetrators. We would submit that one key strategy to reduce domestic violence recidivism is to put into place education program for both victims and perpetrators, particularly those receiving AVO's for the first time. Such programs should be piloted as court ordered for perpetrators in a similar fashion to current driver education programs in operation to address irresponsible driving practices.

3 The increase in women being proceeded against by police for domestic violence related assault; and

3.1 Recent NSW BoCSAR³ figures indicate that Indigenous females are recorded as perpetrators of domestic violence at 10 times the rate of non-Indigenous females, a figure of great concern to our organisation; we are unable to detect any general trends which can substantiate this rate.

² Family Violence Prevention Legal Services

³ Burgess, M & Grech, K *'Trends & patterns in domestic violence assaults: 2001 to 2010'* Crimes & Justice Statics Bureau Brief no. 61 May 2011

3.2 Police procedures see police operating under the “first caller” principle which in many circumstances are the “real perpetrator” who has removed the victims ability to contact police by inhibiting their use of their phones by either removal or destruction, or preventing them from leaving the premises through either coercion or physical means. They then engage with police themselves on their own terms, often resulting in charges laid against female victims.

3.3 Our organisation is aware of numerous circumstances in what can only be described as ‘heavy handed tactics’ being used by the police towards women during the arrest of violent partners for breaches of ADVO’s; in some instances resulting in use of capsicum spray and resulting in charges against the women for hindering police in the course of their duties.

3.4 We have recently become aware of a matter in which the victim of domestic violence received a custodial sentence as a consequence of recanting her original complaint to police during the hearing. From the instructions that we have received, the change in testimony resulted from the extreme threat of further physical violence and intimidation from the perpetrator and his family, causing her to fear for her physical safety more than the legal consequence of changing her story.

Recommendations

3.6 Under the National Plan⁴ there are approximately over 120 specialist domestic violence officers employed by NSW Police, we would submit that these Officers be given increased authority in the laying of charges, and providing support in domestic violence situations. Their specialist training would assist front line officers in implementing the current policies in a more client-focused approach rather than the broad and wide-sweeping approach that we believe is leading to the increase in women being proceeded against.

3.7 We would also urge the government to provide police with greater training regarding the consequential psychological effects on an individual’s behaviour with the aim of reducing these figures.

⁴ The National Plan to Reduce Violence against Women and their Children 2010-2022

Any other relevant matter

3.8 Following the NSW government implemented 'Keep Them Safe: A Shared Approach to Child Wellbeing' 2009–2014, the *Children and Young Persons (Care and Protection) Act 1998* raised the threshold for statutory intervention. With the inclusion of the term "significant", a child is now in need of protection (and thus requires a statutory response) if they are at "risk of significant harm".

3.9 The above terms of reference do not examine the role of Department of Community Services in their handling of domestic violence matters, but we would argue that experience has taught many of our clients that reporting their partners breaches, no matter how minor, may result in having their children removed. Too often the victims are being blamed for their failure to act in removing themselves and their children from the domestic violence, and it is our experience that Departmental staff frequently fail to operate in an objective manner, and it often appears that decisions are made by staff on a personal emotive and/or preconceived notions.

3.10 It is our experience that often our clients consider their family violence too trivial to report to the police, and when they do, they ultimately lack confidence that it will achieve the desired outcome. While programs such a *Stop the violence end the silence* have assisted in getting the message across that violence is not acceptable; victim's of domestic violence in remote and outer regional NSW remain disadvantaged. We submit that the reported incidents of DV would increase if the victim's could be assured of their own personal safety post reporting; prompt police response and most importantly access to a women's refuges in these remote areas. Currently the only women's refuge available to the remote community of Lake Cargelligo is Forbes, a distance of 200 km or Griffiths, a distance of 150 km.