

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

Organisation: Wirringa Baiya Aboriginal Women's Legal Centre
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Wirringa Baiya provides free legal advice to Aboriginal and Torres Strait Islander women, children and youth who are or who have been victims of violence.

23 September 2011

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

Dear Sir/Madam,

Domestic violence trends and issues in NSW (Inquiry)

We welcome the opportunity to comment on the above inquiry.

We note that the Department of Justice and Attorney General has recently commenced a review of the *Crimes (Domestic and Personal Violence) Act 2007* and that this review will be accepting submissions until 18 November 2011.

Our Centre will be making more substantial submissions to this legislative review and we would encourage the Standing Committee on Social Issues to also consider the submissions and suggestions that emerge during that review process.

We also note our submissions in relation to the 2010 Australian Law Reform Commission and New South Wales Law Reform Commission inquiry into family violence which resulted in the joint report, *"Family Violence – A National Legal Response"* (hereafter referred to as the 'Family Violence Report 2010').

Wirringa Baiya Aboriginal Women's Legal Centre

Wirringa 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 thirteen (13) 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 ADVOs.

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.

Terminology

We note that this inquiry refers to 'domestic violence' although it is more common practice to use the terms 'domestic violence' and 'family violence' interchangeably. Wirringa Baiya's position is that the dynamic of intimate partner violence should be distinguished from violence or abuse that occurs in a other family relationships or in the Aboriginal community, between members of the same kin.

We prefer to use Aboriginal rather than Indigenous. However, we note that a number of reports use the term Indigenous and where we refer to those reports in our submissions we will use the term Indigenous if that is the term used in the relevant report.

The experience of Aboriginal women

A recent NSW Bureau of Crime and Statistics analysis of domestic violence trends and patterns in the last ten years showed that Aboriginal women in NSW continue to be dramatically over-represented as victims of violence (NSWBOCSAR, *"Trends and Patterns in domestic violence assaults: 2001 to 2010"*, May 2011 at p 8). The rate of domestic violence for Aboriginal women is six times more likely than that for non-Aboriginal women.

It has also been found that nationally Indigenous women are 31 times more likely than other Australian women and men to be hospitalized for family violence related assaults (Steering Committee for the Review of Government Service Provision, *"Overcoming Indigenous Disadvantage: Key Indicators 2011"* Productivity Commission, Canberra at page 23).

TERMS OF REFERENCE

1. **Strategies to reduce breaches and improve compliance with Apprehended Violence Orders (ADVOS), including:**
 - a. **the use of GPS bracelets**
 - b. **whether existing penalties for domestic violence are adequate**

1a. **The use of GPS bracelets**

We have no direct knowledge or experience of the use of GPS bracelets, however we have undertaken some independent research about their use in Australia and overseas and having considered the literature. We have some reservations about their introduction for domestic violence related assaults and ADVOs in NSW. We note the comments of the Domestic Violence Clearinghouse and the issues raised in a recent article (Ludo McFerran, *"International strategies to protect women in their homes"* by Clearinghouse Good Practice Officer, Newsletter 34, page 4) which neatly summarises the concerns relating to GPS bracelets or monitoring systems:

- These only work outside and need to be within range of a mobile phone network: limitations for people living in rural or remote areas, and due to the offender needing to be outside – they would fail to detect assault within the home, online harassment or other forms of communication (phone calls/text messages)
- Unreliability (as seen in NZ when the tracking systems dropped out)
- In the UK the system failing to properly track offenders and protect victims
- Costs blowouts (each unit costs \$5000)
- How long should the tracking continue? Past the date of the ADVO?
- Should tracking be characterised as a deterrent, prevention or helpful in improving the self-confidence of women?

- Would there be less defendants consenting to orders without admissions if a tracking device/GPS bracelet was going to be ordered by the court?
- Limited use: in the USA, tracking has not stopped offenders assaulting victims again but has had some use as a warning system and to prove breaches of a low-level.
- For orders where contact is permitted, what use would tracking systems be?

We would prefer to see investment towards the services and systems dealing with domestic violence to intervene early, reduce offending and support victims and their needs.

Some of our clients have been assaulted while an ADVO has been in place and for very serious breaches where further assaults have occurred, these women are unlikely to have benefitted from a tracking device, even if one was available.

Case study 1

Client 1 was assaulted by her partner. The police were called and a provisional ADVO was taken out for her protection. She was granted bail by the police and subsequently accepted the mandatory order of the ADVO without admissions. The couple remained in the relationship and continued to reside together. Two months later, he assaulted our client again, causing much more serious injury to her than the initial assault. He was again charged with the new offences, as well as the breach of the ADVO. He served a 12 month sentence and was released with a Section 9 bond.

1b Whether existing penalties for domestic violence are adequate

We are not prosecutors, nor do we act for offenders in criminal matters. Therefore we do not claim to have any expertise in sentencing law.

We note that the ALRC and NSWLRC Family Violence Report 2010 considered at length the issue of breach of protection orders (see Chapter 12) and in particular penalties and sentencing for breach of protection orders. We refer the Committee to that chapter. The Family Violence Report 2010 also considered the recognition of domestic violence in criminal offences and sentencing (see Chapter 13).

We also note the 2010 paper of the NSW Bureau of Crime and Statistics "*Factors which influence the sentencing of domestic violence offenders*" (Issue Paper No 48, July 2010) which at looked at the pattern of sentencing of domestic violence offences in NSW Local and District Court.

The NSW BOCSAR paper found that:

- The most common offence was common assault and is most likely to receive a bond with supervision (30% of offenders)
 - Breaching an ADVO, assault occasioning actual bodily harm and stalking/intimidation are also most likely to receive bond with supervision (21%, 29% and 34% respectively)
 - For the more serious but less frequent offences of recklessly wounding, recklessly cause grievous bodily harm and being armed with intent the most common penalty is imprisonment 38%, 60% and 41% respectively
- (at page 7)

The NSW BOCSAR report found that:

"the variables found to significantly influence the likelihood of a prison sentence relate either to the severity of the current offence or the extent of the offender's criminal history" (at page 7).

However, the two exceptions were Indigenous status and gender. It was found that the odds of an Indigenous person receiving a sentence of imprisonment for a domestic-violence related assault were 1.46 times the odds of a non-Indigenous person and the odds of male receiving a custodial sentence were 2.85 times the odds of a female (page 6). We particularly highlight this finding in light of the

fact that some Aboriginal women are concerned about reporting a domestic violence offence or breach of an ADVO for fear of her partner being incarcerated.

The research also found that those who had a concurrent offence of breaching and ADVO were much more likely to receive a custodial sentence being 13% for those with one and 37% for those with two or more compared to 4% for those with none (page 5).

We have not been able to identify or locate any other analysis and research around the sentencing trends of domestic violence offences in New South Wales and we respectfully suggest that in order to gain a detailed picture of what sentences are been given by NSW courts and the efficacy of those sentences, that this issue be referred to the Sentencing Council or the NSW Bureau of Crime Statistics and Research for further extensive research and analysis.

However, we would like to take this opportunity to make some general comments. We know there are many theories about the purposes of sentencing as was also discussed in the Family Violence Report 2010 (see paras 4.73 to 4.106).

Sentencing plays an important role in recognizing the crime and the significant harm caused to the victim, her family and the community. Sentencing can also incapacitate the offender to stop re-offending such as the use of imprisonment.

For these reasons we in principle support section 14(4) of the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* which requires courts to sentence offenders to imprisonment for breach of ADVOs involving violence, unless they otherwise order and give their reasons for doing so.

However, sentencing should also be used to rehabilitate the offender. Theoretically sentencing is also meant to be a deterrence with offenders refraining from further criminal conduct if they can see that the consequences of their behaviour are sufficiently harsh. Our work with victims of ongoing

domestic violence show that sentencing rarely has a deterrent effect, or rehabilitative effect.

Below are two examples:

Case study 2

Client 2 began a relationship with a man when she was 16 years old. Violence began early in the relationship. Throughout their relationship she had many ADVOs against the offender. He was convicted for a number of violent offences against her and on occasion was incarcerated for periods of time, ranging from 4 to 12 months. Offences ranged from assault, break and enter, malicious damage to property to breach ADVO (sometimes being concurrent offences). Every time he was released he returned to her promising to be a changed person only for the violence to return. They have six (6) children. In the end the relationship ceased when he was incarcerated for a sufficient time (for unrelated offences) to allow our client to break the cycle she was in and move away. He has since returned to her life by demanding contact with his children. While there is now no physical violence he has caused significant distress through manipulation of her older children. He is also in another relationship, which is also alleged to be violent. At no point did his sentences, including custodial sentences rehabilitate him or deter him from future offending.

The only time our client felt safe was when he was in custody but that safety was only temporary.

Case study 3

Client 3 was subjected to a number of assaults by her husband. He was charged and convicted for offences against her and had an interim ADVO against him. A few weeks later he telephoned her and demanded to see their children and threatened to kill her. She drove to the police station and he was seen following her and indicated to her with his fingers that he had a gun. While she in the police station reporting the threat her car tyres were slashed. When the police picked her husband up they found weapons in his car including a knife and a

tazer gun. He was convicted and sentenced to 7 months in custody for a number of offences. When he was released from custody the client's husband demanded to have contact with their children and would turn up to her house whenever he felt like it. He also stayed at the house and on one occasion when she tried to escape he tried to choke her. He told her that he would organise for people to kill her if he ended up back in gaol, people he had met while he was in prison. For this reason she was extremely reluctant to go back to the police. At our last contact with this client the harassment and intimidation had lessened only because her husband had entered into a new relationship with a woman who was carrying his child.

1c Our recommended strategies

A. Better relationship between police and Aboriginal communities

Compliance with an ADVO relies on a number of factors:

- the defendant complying with the order; and
- when breaches do occur – the victim or other party (often family) reporting the breach; and
- when a report is made - police being vigilant in enforcing orders and charging offenders for breaches.

Historically Aboriginal people have held suspicions of the police, due in part to the role police have played in family separation and the Stolen Generation, racism in the police force generally, Aboriginal deaths in custody (including recent examples of the death in custody on Palm Island) and the social and cultural context of law enforcement.

Aboriginal women may not report breaches for the following reasons:

- Not understanding the importance or need to report breaches
- Not being made aware of their role to report breaches

- Lack of understanding about what orders are actually in place
- Police inaction to charge offenders with breaches or DV offences
- Disbelief that the police will intervene even if a breach is reported
- Concern for the defendant's welfare if police make an arrest
- Lack of action from police, particularly in rural areas or in areas with dense community housing and crime rates.

The relationship between police and Aboriginal communities has improved and in some Local Area Commands police have made real efforts to engage with local communities which has an effect on crime rates and law enforcement, but the approach is not consistent and police and communities need to constantly work on this relationship to ensure that women feel comfortable and confident to report a breach of an ADVO, and that something will be done by police as a result.

Police could improve relationships with Aboriginal communities and victims by training and awareness of:

- Aboriginal culture
- domestic violence and the effect on children and families
- intergenerational trauma
- the needs of victims
- historic relationship between Aboriginal people and government institutions including the criminal system agencies.

B. Police to follow up with victim after final ADVO has been made

A common complaint from our clients is that they feel powerless and excluded from the process when police seek a final ADVO. Additionally, some women (particularly women already feeling excluded from the ADVO process) do not attend court and thereby, remain unaware of, or unconnected to the WDVCS and available support services. Although there is wider awareness in the community now about police powers and the legislative responsibility police

have to take an ADVO in domestic violence situations, one suggestion we have had is that the police could 'check in' or follow up with the victim after a final ADVO has been made.

Going to court can be stressful, confusing and confronting for victims, having a follow up or 'check in' call from police would ensure that victims have obtained copies of the ADVO (which often doesn't happen), understand the orders and are aware of the need to and the way to, report breaches of the ADVO.

We suggest that the follow up work would need to be done at a number of points in time once a final order has been granted. We would suggest:

- a time very soon after the order was granted (say within a week),
- one month after the order was granted and
- then a third time of say 6 months after the order was granted.

This would serve to enhance the relationship between the victim and police, and provide an opportunity for her to mention any contact with the defendant, any concerns she still has, and any breaches that have occurred since the order was made. This contact could also be done by the WDVCS as a matter of course, or the DVLO involved with the matter.

Police inaction is also a concern and a barrier to women reporting domestic violence at all. A case study from a client demonstrates some of the reasons why our women may be reluctant to report a breach after a negative experience with a junior police officer who provided wrong information.

Case study 4

Client 4 contacted Wirringa Baiya after she had ended her violent relationship and was attempting to report the domestic violence to the police. She reported the violence to the counter staff at the local police station but was advised that "as the relationship had ended, it was no longer 'domestic' violence, but personal violence" and she was directed to report the violence to the Local Court Chamber Registrar and seek a private ADVO. She attended the local courthouse and was advised by the Registrar that the Police should be applying for the ADVO due to the seriousness of the violence. She returned to the local police station only to be

advised that she should wait for the DVLO, as he, (rather than the GD officer) was in the best position to take out the ADVO for her.

Recommendation 1

NSW Police Standard Operating Procedures (SOPs) be amended to include:

- Provisions that police contact victims within ONE WEEK to provide information about the prosecution of the ADVO or charges (see Point #5 of the Charter of Victims Rights).
- Provisions that police should also contact victims at regular intervals (1 week, 1 month and 6 months) AFTER a FINAL ADVO has been made, in order to 'check in', retain rapport and encourage the victim to report any breaches.

C. ADVO Breach Line

As mentioned above the main complaint that we hear from our clients who wish to report breaches of ADVOs is inaction from the police.

We recommend that a dedicated line be established for reporting of breaches.

The officer(s) working the ADVO Breach Line would:

- Do a client intake, identifying which orders have been breached and how
- Performing a risk assessment in terms of seriousness of breach and the risk to the protected person(s)
- Provide safety planning advice
- gather intelligence (time permitting) using the COPS database about the parties and their ADVO and charge history with particular emphasis on trying to investigate whom the primary aggressor is.
- Contact the relevant police station covering the area where the incident is occurring to pass on the information they have and gain some appreciation of the possible response time. Feed back to the client this

information. If in the event the response time is slow because of resources, investigate whether another relatively close police station has capacity to deal with the matter faster

- Provide a referral pathway to other services such as the Domestic Violence Line or Women's Domestic Court Assistance Scheme
- Accept feedback (complaints and suggestions) about how the police can better deal with breaches of ADVOs
- Collate data to provide to the Commissioner and the Ombudsman about breaches in ADVO matters. Including numbers of breaches the conditions being breached and how. Where breaches are occurring and how they are being dealt with.

The advantage of the above scheme is to provide consistency in police response in the first instance to breach ADVO matters. Increased transparency and accountability around these matters will build client confidence about calling the police about these issues rather than having the view "what is the point they don't do anything anyway". We would recommend that the ADVO breach line be provided on all copies provisional, interim or final ADVOs that are issued.

In addition, or alternatively, the protected person could have a small card with the Breach Line number on it and an ADVO identifying number, which the protected person can advise the officer on the Breach Line of when calling.

Advantages of the scheme

With such a scheme clients may not have to worry as much about various local police bias when dealing with breach of ADVO matters.

This is especially important when the:

- Defendant themselves works in law enforcement in the local area
- The client has a criminal record
- The client is moving around the state and being followed or stalked by the defendant

- The client comes from a remote community
- There is institutional racism
- There are family law issues (and any police response along the line of “if she just let him see the kids then he wouldn’t do this”)

Centralised pre- and post- ADVO breach incident intelligence gathering that can occur to assist in evaluating how effectively breach ADVO matters are dealt with.

Recommendation 2

NSW Police Force develop a state- wide, 24 hour free call (including from mobiles) ADVO Breach Line. The Line would be staffed by police officers trained around domestic violence and sexual assault. The Breach Line would have response, liaison and intelligence gathering functions

2. Early Intervention Strategies to prevent domestic violence

There has been much written about early intervention strategies to reduce domestic violence in Aboriginal communities. There are a number of reports that make numerous recommendations. Some of these are as follows:

- Australian and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission “Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues” June 2006
- Australian and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission “*Social Justice Report 2007*”
- Amnesty International Australia, “*Setting the Standard: International Good Practice to Inform an Australian National Plan to eliminate violence against women*” 2008

- *"Aboriginal and Torres Strait Islander Women's Task Force on Violence Report - Digest"* [2000] AU IndigLawRpr 20; (2000) 5(2) Australian Indigenous Law Reporter 91

We do not wish to re-state those recommendations but refer the Committee to those reports.

We of course are also familiar with NSW Government's Domestic Violence and Family Violence Action Plan *"Stop the Violence End the Silence"*.

We submit that the issue of early intervention is an issue that cannot be comprehensively and meaningfully addressed in this Inquiry. The issue of early intervention and what are best practices for Aboriginal communities is a critical issue that the state government needs to address. The solutions to prevent domestic violence in Aboriginal communities are multiple and complex and require long-term commitment with significant investment.

We submit that if the NSW government is serious about reducing domestic violence, together with sexual abuse in Aboriginal communities, it would establish a dedicated crime prevention unit staffed by Aboriginal workers of different expertise to focus exclusively on these issues. These specialists would come from a range of disciplines/skill backgrounds including counselling, early childhood education, middle childhood education, adult education, refuge services, child protection, law enforcement, legal, health, employment and housing. This unit would need to look at state-wide, regional and local strategies. This unit would have both:

- a policy and advice function to the NSW government;
- as well as being a resource unit for Aboriginal communities and services to access when developing community managed strategies.

Ideally this unit would be independent of the government .

We stress that it is our view that the NSW government needs to be prepared to invest significant resources into early intervention and prevention of domestic violence rather than spending considerable millions dealing with the consequences of the violence. We submit that a dedicated and separate budget for early intervention and prevention of domestic violence in Aboriginal communities be allocated to the specialist unit we are proposing.

The economic and health consequences of domestic violence have been well documented. Two consequences of domestic violence that we want to draw the Committee's attention to are the:

- over-representation of Aboriginal women in prison; and the
- Over-representation of Aboriginal children in care.

Aboriginal women in prison

In 2008 nearly 30% of the female prisoner population were of Aboriginal or Torres Strait Islander background (Corben S, *NSW Inmate Census 2008: Summary of Statistics*, NSW Department of Corrective Services, Statistical Publication No 32, March 2009, page 73).

Research conducted by the New South Wales Aboriginal Justice Advisory Council in its' report "*Speak Out, Speak Strong*" (2002), showed that an overwhelming majority of Aboriginal women in custody were the victims of sexual and domestic violence. The survey found:

- 70% had been sexually assaulted as children
- 44% were victims of sexual assault as an adult
- 61% were victims of physical violence.

Our Centre, in partnership with the Women's Legal Service NSW and Hawksbury Nepean Community Legal Centre, run an outreach advice clinic in the three main women correctional centres in metropolitan Sydney. That program has found that 80% of the Aboriginal clients reported having experienced domestic

violence.

It is our submission that there is a strong connection between Aboriginal female inmates' experience of violence and them entering the criminal justice system.

Over-representation of Aboriginal children in care

As at 30 June 2010 Indigenous children in NSW were 11.3 times more likely to be in out of home care than non-Indigenous children with there being some 5,465 Indigenous children in care (Australian Institute of Family Studies, *"Child protection and Australian and Torres Strait Islander Children"*, National Child Protection Clearinghouse Resource Sheet, 2011 at page 3).

While we have not been able to ascertain the most common types of abuse and neglect for Aboriginal children in out-of-home care we note that Community Services statistics show that in terms of reported issues in 2006/2007 domestic violence was the most reported issue with 49% of Aboriginal children reported, and 45% of non-Aboriginal children reported as having this issue (V. Smoothy and M. Butler, *"What DoCS data tells us about Aboriginal clients"*, NSW Department of Community Services Statistical Report (2006), at p 10).

While we agree that children being exposed to domestic violence is most definitely a child protection issue we question the utility in removing children from a non-offending parent if she can be supported to keep her children safe and there are no other significant risk factors that cannot be addressed. Undoubtedly, that family may need intensive support and therapy but punishing a mother for being a victim of violence by removing her children emotionally and psychologically destroys many of the Aboriginal women we speak to. If they are able to recover and get their life back on track, they should not have their children removed, as many care and protection practitioners tell us that it is almost impossible to get their children returned unless the Department of Family and Community Services had agreed to it at the outset in a restoration plan.

We also question how this best protects the children unless they have been placed with a supportive member of the extended family. We speak to many women whose children have been placed with non-family carers and frequently non-Aboriginal carers. Aboriginal children are removed from family and very often their community with significant negative consequences including: poor long term health; poorer wellbeing and mental health issues; loss of identity, culture and community.

Disturbingly, research shows that Aboriginal children in juvenile justice prisons are twice as likely as non-Aboriginal young people have had experiences of out of home care (Indig, D., Vecchiato, C., Haysom, L., Beilby, R., Carter, J., Champion, U., Gaskin, C., Heller, E., Kumar, S., Mamone, N., Muir, P., van den Dolder, P. & Whitton, G. (2011) 2009 *“NSW Young People in Custody Health Survey: Full Report”*, Justice Health and Juvenile Justice, Sydney, at page 32) and other data indicates that over 50% of children in the criminal division of the Children’s Court have been in out of home care (McFarlane, Katherine *‘From Care into custody’* (2010)) and generally have higher rates of contact with police and juvenile justice institutions.

Recommendation 3

- NSW government to establish a crime prevention unit staffed by Aboriginal workers of different expertise to focus exclusively on early intervention and prevention of domestic violence and sexual assault in Aboriginal communities.
- These specialists would come from a range of disciplines/skill backgrounds including counselling, early childhood education, middle childhood education, adult education, refuge services, child protection, law enforcement, legal, health, employment and housing. This unit would need to look at state-wide, regional and local strategies.
- This unit would have serve as:
 - a) a policy and advisory body to the NSW government;

- b) as well as being a resource unit for Aboriginal communities and services to access when developing community managed strategies.

Recommendation 4

- A dedicated and separate budget for early intervention and prevention of domestic violence in Aboriginal communities be allocated to the specialist unit proposed above.
- The budget will include investment in long-term strategies of a minimum period of 5 years.

Some early prevention and early intervention strategies

As mentioned above strategies to prevent domestic violence in Aboriginal communities need to be multi-faceted to address a myriad of complex social and economic issues. At a bare minimum the following are some recommendations we have:

Recommendation 5

5.1 The funding of Aboriginal women controlled programs across the state that are culturally sensitive and gender-specific to work holistically with Aboriginal women and children, to offer:

- a) intensive and ongoing support and counselling for individuals and families affected by violence; and
- b) comprehensive legal support and advocacy across a broad range of legal issues to enable women and children to seek legal protection or remedies (this includes a comprehensive and adequately resourced service for Aboriginal women in custody).

5.2 The adequate funding of women's refuges, especially to enable them to take large families, given that many Aboriginal women have large families.

- 5.3** The expansion of social housing to enable Aboriginal women and children to escape violence more easily and find safety and stability as soon as possible.
- 5.4** More and better- trained police who have a comprehensive understanding of the complexities of domestic and sexual violence. We would like to see police who work with Aboriginal communities to receive comprehensive and ongoing Aboriginal cultural awareness training (please also see our discussion below about specialised police).
- 5.5** the development of specific training and support programs that builds the capacity and skills of members of Aboriginal communities, especially rural and remote communities with limited access to current training institutions.
- 5.6** Culturally specific education program that starts from pre-school through to high school to teach Aboriginal children protective behaviour, and a program that gives Aboriginal parents and communities the skills to identify the signs of abuse in a child.
- 5.7** Programs to address the intergenerational trauma of the Stolen Generation and the residual and ongoing effect of this legacy and ongoing familial separation on Aboriginal families, children and communities.

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

We think that there is a problem with some police incorrectly identifying whom the primary aggressor is when turning up to some incidents. We note that this issue was considered by the ALRC and NSWLRC in its' Family Violence Report 2011 (see 9.158 to 9.180).

As we submitted to that Inquiry, we have spoken to and anecdotally aware of a number of incidents where Aboriginal women have been arrested and charged for family violence offences, when it has been the woman who has been the primary victim of the violence for a long period of time.

Case study 5

Client 5 had been in a violent relationship for 20 years, more recently the physical violence had subsided although her husband used threats and intimidation over her and the threat of violence was a constant force. She had obtained ADVO against him in the past following the intervention of the police after neighbours had raised the alarm. She had three teenage children and lived in a rural area of NSW. She had been receiving counselling through a support service in her town and one weekend built up the courage to tell her husband that the relationship was over. She went outside for a smoke and when she returned he was on the phone and a short time later local police arrived at the house. The husband advised the police that his wife had threatened him with the kitchen knife on the table and that he was fearful of her. The police took out a provisional ADVO for his protection and escorted the wife to her cousin's house. The husband had since used the ADVO proceedings against her in relation to the children and is currently seeking for the ADVO to be withdrawn on the condition that she doesn't challenge the inevitable family law proceedings.

Case study 6

Client 6 was in a violent relationship for 9 years and is currently in prison. In November 2010 she obtained an ADVO against her boyfriend. In December in retaliation, he obtained a cross ADVO against her. In September 2011 she attended the police station to report a breach as he had assaulted her and punched her in the head. She was advised by the police that she was in breach of an ADVO as his ADVO provided for no contact. She was charged with the breach, denied bail and is now in prison awaiting the hearing of the charges. She has a 3 month old baby who is now with the boyfriend.

We think this should be addressed by comprehensive training of police officers about how offenders operate and how they will deflect blame by suggesting that his partner is the one who is violent and mentally unstable. Often victims are very distressed and sometimes incoherent when police turn up after an assault.

Whereas the offender, who is in control of the situation, comes across as reasonable and persuasive. We also suggest that racist perceptions of Aboriginal women come into play with some officers when trying to determine who actually needs protection. 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.

Recommendation 6

- A. the NSW Police Force comprehensively train officers about the common tactics used by offenders to manipulate others to believing that their intimate partner is the aggressor.
- B. The NSW Police Force in consultation with a broad range of domestic violence workers develop a comprehensive assessment tool to assist officers in the identification of the primary aggressor when investigating allegations of domestic violence.
- C. The NSW Police employ skilled counselors to assist officers in identifying the primary aggressor when investigating allegations of domestic violence.

In addition we suggest that the use of specialized officers and specialized domestic violence courts would greatly assist in better identifying the primary aggressor (see our submissions below).

4. Any other relevant matter

Specialised Domestic Violence Courts

The ALRC considered specialised courts in Chapter 32 of the Final Report. The report noted that specialised courts exhibit some or all of the features:

- *Specialised personnel:* These will include specialised judicial officers, but may also involve specialised prosecutors, lawyers, victim support workers, and community corrections officers. In some cases, these personnel may be chosen because of their specialised skills, or be given specialised training in family violence.
- *Specialised procedures:* These will include special days in court dedicated to family violence matters ('dedicated lists'). They may also include 'case coordination mechanisms' to 'identify link, and track cases related to family violence', such as integrated case information systems, or the use of 'specialised intake procedures' (specialised procedures that apply when the victim first enters the court system).
- *Emphasis on specialised support services:* There will be someone, employed by the court or another organisation available to support family violence victims in managing the court process, and often these workers are responsible for referring victims to other services, such as counselling. There may also be specialised legal advice or representation available for both the victim and defendant.
- *Special arrangements for victim safety:* Some courts will also include specially designed rooms and separate entrances to ensure the safety of victims, and may offer facilities, which enable vulnerable witnesses to give evidence remotely.
- *Offender Programs:* Some courts have the capacity to order or refer an offender to a program which aims to educate the offender and address personal issues to prevent re-offending, usually through counselling.¹ Some courts have offender support workers to engage and refer offenders to behavioural change programs.
- *Problem solving or therapeutic approaches:* Some courts adopt broader

approaches aiming to 'solve problems' and achieve therapeutic outcomes. (page 1489)

North America provides good examples of specialised domestic violence (and other offences and treatment) courts and how they can operate effectively.

Evaluations of the various models have found numerous benefits including:

- Increased rates of convictions and decreased dismissal rates
- Greater willingness of victims to report repeat offending
- More efficient case processing
- Significant reduction in domestic homicide and recidivism
- Earlier and more frequent reporting of violent offenders

(Family Violence Report 2010 at page 1492)

We note that the recommendation of the Commissions was to establish specialised domestic violence courts in NSW and introduce specialised courts to handle domestic and family violence matters. Furthermore, we note that there was general support across the submissions for this approach. The Commissions in the Family Violence Report 2010 made recommendations about the minimum standards for specialized domestic violence courts this being:

- Specialised judicial officers and prosecutors
- Regular training on domestic violence issues for judicial officers, prosecutors, lawyers and registrars;
- Victim support, including legal and non-legal services
- Arrangements for victim safety (Recommendation 32-3)

We submit that any specialised domestic violence court would need to be very sensitive to the cultural needs of Aboriginal women given the significant over-representation of Aboriginal women as victims of violence.

We submit that all personnel involved in the specialise court ranging from judicial officers, prosecutors, support workers to the sheriff would need to received comprehensive training about the complexities of domestic violence in Aboriginal communities and the additional barriers that Aboriginal women face.

We understand that there are a number of different specialised domestic violence court models to consider and careful consideration would need be given to what would be the most appropriate and practical model for NSW. We would anticipate any model would need to be developed in consultation with stakeholders. We would welcome the opportunity to be part of any consultative group.

Recommendation 7

- A. Specialised domestic violence courts be introduced into NSW with the minimum standards recommended by the ALRC and NSWLRC in its Family Violence Report 2010.
- B. Specialised training for all judicial officers and practitioners include comprehensive and ongoing Aboriginal cultural awareness training.
- C. Specialised domestic violence courts located in areas with significant Aboriginal communities employ Aboriginal personnel at all levels of the court process.

The Family Violence Report 2010 acknowledged that establishment of specialized family violence courts in rural and regional areas may not be practical or feasible. We support the view of the Commissions that where possible the following measures be adopted in other courts dealing with family violence:

- “identifying, and listing on the same day, protection order matters and criminal proceedings related to family violence, as well as related family law and child protection matters;
- providing victim and defendant support, including legal advice, on family violence list days;
- assigning selected and trained judicial officers to work on cases related to family violence;
- adopting practice directions for family violence cases;
- ensuring that facilities and practices secure victim safety at court; and

establishing a forum for and feedback from, and discussion with, other agencies and non-government organisations." (Family Violence Report 2010, page 1512)

Specialised policing

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 who 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 counselors 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.

Recommendation 8

The establishment of specialised multi-disciplinary unit comprising of highly trained, police officers, detectives and support personnel to work on domestic violence, sexual assault and child sexual assault matters.

Conclusion

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