

**Submission  
No 3**

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

**Organisation:** Victims of Crime Assistance League Inc NSW (VOCAL)  
**Date received:** 15/08/2011

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Chair  
Standing Committee on Social Issues  
Trends & Issues in Domestic Violence  
Legislative Council  
Per email to : [socialissues@parliament.nsw.gov.au](mailto:socialissues@parliament.nsw.gov.au)

Dear members,

I am properly authorised to make this submission on behalf of my organisation and members of the Victims of Crime Assistance League Inc NSW, also known as 'VOCAL NSW', and give permission for the submission to be published. Publishing submissions is one way that can put the discussion widely in the public arena and promote the possible advancement of this vexed, damaging, expensive issue, and we encourage that. We are also prepared to give additional evidence or information, in person if required. I have limited our response to the areas of greatest concern.

We strongly believe that Parliament, Government, Non Government, the private sector, charity sector, religions, and courts need to work cohesively, finally reaching agreement to use the same definitions and education with the intent to stop the violence. After 40+ years, we have not achieved unity even in defining the problem, let alone the state's practice, and the worst shock of all can occur in the different world that awaits the unsuspecting escapee from DV if they get into the Family Law arena where 'evidence' and 'proof', not the lived experiences of inexperienced victims and children affected by this insidious, secret crime, is King.

Only if and when Australia comes to the collective conclusion that we will not tolerate and will not make excuses, including legal excuses, for abuse and violence, only when we stop denying the highly gendered nature of the majority of Domestic Violence (DV) and the law, while never denying or refusing services to males who need them, only when we stop treating victims of domestic or family violence as some sort of second-class victim, with second-class law, will the many gaps in services for families and individuals affected by DV ever be addressed properly.

### **About 'VOCAL'**

Formed in 1989 initially as a self-help support group for people left after the crime of homicide, the charity, Victims of Crime Assistance League Inc NSW was the first Victim Support group of its kind in NSW. It became a generalist crime victims support organisation in 1994 and provides free, high quality assistance to men, women and children whose lives have been affected by every and any type of crime - from bullying to murder, or other similar-impact

tragedies – such as Terrorist crimes, Road crimes, arson, neighbourhood abuse. 80% of our work has some association with Domestic or Family violence.

VOCAL addresses the needs of individual clients. Those range and alternate between crime prevention, education, crisis intervention, police responses, life, legal, court and post-court process to long-term support. Every aspect of life may be affected. VOCAL assists its clients to anticipate, prepare for and manage the issues that confront them. Our aim is reflected in our motto 'Victim - Survivor - Thriver – Inspirer'. We also have an advocacy and lobbying function. We are both a public benevolent charity and a funded non-government organisation. Our focus is both wide and deep, and we believe our view is pertinent.

**Issue 1:** Much of our work is to fill gaps or omissions in services at the state level. In particular, we find many legitimate DV victims have been let down and need help around

- at the AVO stage,
- when their case becomes serious,
- where there is no actual protection available
- where there are breaches to prove,
- in criminal matters where they must appear as a witness,
- with no court preparation or support at court
- when the court's decision has left them unprotected,
- where the primary aggressor has been treated as the victim and vice versa,
- in sentencing processes,
- failing to assist in the preparation and delivery of Victim Impact Statements,
- support for victims during appeals,
- assisting and representing victims in parole matters,
- Post sentencing & release safety issues.
- Social issues such as housing, resources, child support, centrelink,
- Financial abuse

DV Clients often report never previously having been advised of the NSW Charter of Victim's Rights, or the accessible Approved Victims Counselling Scheme, or Victims Compensation, and many are very dissatisfied with the legal handling of cases in the AVO process, in criminal matters and in Family Courts. We assist in complex housing issues, support clients with mental health issues (and find many have a base in untreated or unrecognized trauma, disability, childhood abuse and violence issues in adolescent, and in any other type of scenario a client may meet in or because of Domestic Violence.

Note that we are not limited to the actual 'victim' but include those seeking help on behalf of someone else. Our assistance extends to supporting families after a DV homicide.

Neither VOCAL nor the NSW Government agency Victims Services in the Department of Attorney General and Justice are necessarily recognised as part of the Domestic Violence industry or network, as shown on the attached Map of DV services. Victims Services are not a legal service and should really not be regarded as one.

One question to be resolved is 'Why are DV victims frequently denied basic, advantageous



access under Victims' Legislation?'

We are frequently concerned at the lack of knowledge generally in the DV sector about the criminal legal process, or how to assist DV victims to 'hold perpetrators accountable' as the literature and great plans always demand. Isn't it time the way the law responds to DV was brought up to date? Not just legislation, but the imbalance between the rights of an accused and a witness-victim?

Please see the following page Offenders Vs Victims Rights.

**Recommendation:** DV services always link clients to Victims Services so that victims are not denied access to their legitimate entitlements.

The Rights of Offenders	The Rights of Victims	What the Jury doesn't hear
Warning about how anything they say can be used as evidence against them.	No warning about how what they say can and will be used against them.	How limited role of the prosecutor is, the way it all works, the rules, the games.
The right to silence, and a solicitor and or barrister.	No right to silence, no solicitor, no choice, no rights.	The prosecutor is not on the victim's side, nor against the accused.
Legal counsel - full and detailed preparation about everything - what to wear, what to say, what not to say etc.	No counsel – no one prepares them or instructs them about court, how to answer questions, procedures etc.	Searching for the truth is unimportant and financial & time restrictions apply to investigations and prosecutions.
To be included and informed in all actions.	A victim is just a witness who only gives evidence 'if required'.	Witnesses who wouldn't or couldn't give evidence, witnesses who have died, or evidence destroyed.
A presumption for bail – based on whether the accused will appear if released.	No protection if bail granted, and often no support to get a protection order.	The victim doesn't know the prosecutor is not on their side, or has a limited role.
The right to a fair trial.	The right to ask questions; if they know the right questions. No victims advocate.	The victim is not consulted about who and what evidence will appear in court.
To know all evidence and what witnesses have stated, before court, and hear all Crown evidence before defence begins.	No right to know about evidence or witnesses. Give evidence with no right of reply after defence begins. Told to answer 'Yes' or 'No' – truth & memory are manipulated.	The witness can't sit in court until after they've given evidence, but the accused hears it all. The jury are sent out during legal argument and don't know the defence's case, the hidden evidence.
Innocent until proven guilty "beyond a reasonable doubt" in a court of law - no matter who saw them do it.	To be excluded from most actions, investigations and advice. The focus is on the rights of the accused.	The witness can't speak with other witnesses but the accused can speak to his witnesses during the trial.
To have Character evidence and evidence that is 'too prejudicial' or 'wrongly' obtained excluded.	Character is entirely open to attack by the defence, often viciously without need for proof. In sexual assault, women and children are 'guilty' until proved innocent.	Lots of evidence is 'too prejudicial' (unfair to the accused) for the jury to see.
Previous criminal history is excluded.	Previous life is exposed by allegations with no chance to call witnesses to invalidate.	The investigation was out of the victim's control.
Only offender actions directly related to the 'charges' and not 'the crime' are admitted into evidence.	Any previous alleged action of the victim may be admitted into evidence with no warning – truth is manipulated to damage victim's credibility.	Victim is just a witness - not a party to the proceedings – with no power and unsupported by a legal practitioner or advocate.
Prosecution case goes first. The prosecutor cannot be 'too vigorous' in cross-examination of defence witnesses. Witnesses can lie, with perjury charges rare.	Defence can be very vigorous even abusive, and goes last. No matter what, the Crown cannot introduce new testimony. Fear of perjury or making a mistake.	Victim answers questions but not given opportunity to tell the whole truth. Despite 'the Oath' perjury charges are extremely rare.
Rights of appeal about verdict if found guilty, about sentence, or if evidence suggests jury did something unacceptable.	Judges can be abusive to victims. No right of appeal. No point complaining to government; 'Can't interfere in courts!' DPP and judges are independent.	Victims Impact Statements only apply after a 'guilty' finding, and judges often object to them. Charges may not reflect "the crime", but jury are unaware of the full story.
Litigation if wrongly convicted. Barristers lie – 'just carrying out client instructions' – and can use any legal means to achieve an acquittal.	No right of litigation if wronged, silenced, or if acquittal occurs – fear of defamation. Victim regarded as a liar.	Victims have no chance to dispute anything the defence says.

Rehabilitation and retraining. Accused never has to face the consequences to the victim; remorse is often not to the victim, but for getting caught.	No rehabilitation, restoration, or retraining. Often has to fight for compensation. Victim's perception of safety and justice is forever altered. Impact on society.	The full impact of the crime on the victim's life.
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**Issue 2. Properly prepare victim-witnesses.** A properly prepared victim - witness as the PINOP (Person in Need Of Protection) in an Application for an Apprehended Violence order, or a witness in a breach of the AVO, or in a criminal matter will walk away from whatever outcome a court reaches without feeling personally re-traumatized and ambushed (as they so often report happens without preparation). It ought to be the least we do for them. Generally this preparation does not happen, victims are re-traumatized and offenders are not held accountable.

**Issue 3. Mediation.** The use of mediation or victim-offender conferencing has long been shunned by the DV sector because of the imbalance of power between a victim and an offender. This becomes illogical when compared with the reality that if a case goes to court, the victim has no legal representative but the offender does, the entire process is predicated on the rights of the accused. (See Offenders Rights vs Victims Rights at page 4)

There is no quarter given to a victim because of trauma, mental illness or disability – all those become advantageous to the accused. If there was ever a process that validated and made excuses for the behaviour of a DV offender, while silencing and limiting the victim's voice, it is the Criminal legal System. A properly trained mediator, thoroughly aware of DV, power and control, could operate somewhat similarly to Forum Sentencing with a whole lot more justice for victims than they get in a court of law, where the whole idea is to minimize, discredit, humiliate, terrorise and beat the victim. The use of mediation (court sanctioned and properly managed), could begin to address many of the blatant abuses of victims by the courts and the offender, and perhaps have some hope of resolving many 'family' issues.

'The Criminal Justice process undermines every therapeutic process a victim has sought'.  
Clinical Psychologist 2010.

**Issue 4. Failure to identify the primary aggressor** leading to the wrongful arrest of the victim and the state supporting the actual offender. Police acting as law enforcement without any attention to the resultant imbalance of social impacts.

The police have admitted to me that under the DV guidelines, it can be a case of 'first in best dressed'. If there is a complaint and any evidence of injury, they will arrest and prosecute without a proper investigation. They may not even interview the alleged perpetrator, seek witnesses until afterwards, if at all. They do not get the other side's version, or necessarily consider self-defence, hear about injuries, or compare and assess one person's word against another's as they do in other crime types, or also as they often do in other cases, apply their discretion not to charge.

Many of these cases **must fail at court under the 'Beyond Reasonable Doubt' test** but can be a very traumatic experience for the wrongly accused actual victim, let alone the enormous pressure financial costs of defence can create. It often leads to victims having to admit guilt for something they did not do because they cannot afford a defence. The costs to the state in court costs, then potential litigation for wrongful arrest may also apply, and courts are already overcrowded and under-resourced. All this, plus the trauma for victims, could be limited, with associated costs savings and better 'justice' by proper investigation.

If police have a narrow operating window with no regard for the processes that follow, then perhaps some type of social negotiator need to be involved. In many cases, it may be important to consider the flow-on impacts of social circumstances, especially if we (the state) will meet a complication in another area – eg homelessness, poverty, disability etc.

I had a case recently where a man in his 60's was the carer for another man who had schizophrenia. The carer was himself in remission from cancer. The patient had not taken his medicine and had attacked the carer. The police had removed the patient who was now homeless, and the carer was about to become homeless because he could not afford the rent alone. Both were terribly worried about the other. The terms of the AVO made it impossible to negotiate. This short term solution will create long term difficulties and costs. The carer was suicidal and I can only imagine the plight of the now homeless man with schizophrenia who now has no carer.

**Recommendation: Investigate properly to avoid wrongful arrests and advantaging a perpetrator.**

The downside of a pro action strategy is the lack of investigation, frequently revictimising the actual victims, who are not only victims suffering whatever impacts and social implications the abuse and assault has generated, but being falsely accused, often without resources to fight legally. Actual victims may then be denied Victims Compensation, and actual perpetrators may get compensation. This type of situation is occurring more frequently, in fact is obviously being used as a tactic in financial dealings over Family finances, and can only lead to inappropriate prosecutions. It is also being used to advantage the actual DV perpetrator in Family Court matters, residency, and maintaining control over assets. It's a form of legal abuse, particularly enjoyed by the totally convincing, often charming liars that are narcissists and psychopathic abusers. Our systems are particularly poor at identifying these types of predators.

Not only does this situation subject victims to wrongful arrest, it can be used as a tactic to exclude someone from premises, to gain advantage in Family Law matters, to inflict humiliation, to increase the financial burden on the accused (who is often equally if not more the victim in the case). The use of legal tactics to 'victimise' a victim is common.

Contrast this to every other criminal investigation. A complaint is made, the police must find the elements of a crime, investigate, interview the other side (if the accused is willing), they speak to potential witnesses, and they have the discretion to charge or not, taking in the 'public interest' and knowing that the matter must have a good chance of succeeding in court - therefore that the Crown must be able to prove, 'Beyond a reasonable doubt' that the accused acted as the

complaint says, and whether there are any defences to the actions.

**Issue 5. The refusal to investigate Family Fraud, and various forms of stealing.** In DV, it is common for financial misappropriation to have occurred. The Federal Government is finally adding 'Financial Abuse' to the definitions included under abusive behaviour in DV. (Failure to understand that MONEY, acquisition and control of it, and that without access you have few choices to leave) lies behind much DV, and is often the very glue that binds the relationship. The failure of the state to take financial circumstances and assets into consideration has left many victim robbed of assets. However police are very reluctant to investigate even clear cases of fraud.

**Issue 6:** The use of AVO's often replaces the actual charging for criminal offences, even when one has occurred. It is the very nature of DV relationships that the victim often hopes the violence will end so they can keep the family relationship and simultaneously fears the consequences of leaving, both from a fear of escalation, and concern about the future. However, the idea that most women fraudulently get AVO's in a 3 minute court matter to leverage their position in Family Law matters is widespread, promoted by the various father's support organizations.

In fact, in submissions made to the Australian senate recently, the Family Court itself was arguing to have AVO's disregarded as 'evidence' of violence. This of course would leave women escaping DV with yet another useless process, expectations of it meaning something, only to find it has no value at all in Family Court. The state and federal governments must get on the same page, and if AVO's are to be used, then manage them properly, which will blow out court times.

The Family court requires evidence. They do not accept evidence of attendance at state Domestic violence agencies as evidence of violence – they see such attendances as 'one side of the story', they negate a child's version of events and abuse if only one parent took the child for treatment, yet the AVO process is often the only process offered to victims. Are we then setting these victims up to fail by not looking at how our actions will be viewed in the federal sphere?

The Family Court also deals by artificially placing types of violence into categories – coercive controlling, mutual, separating couples violence, and situational. They have little real comprehension of the infrequency yet escalation of violence over time, and if a victim EVER hit back (say at the start of a relationship) that immediately places them in the 'mutual' category forever – where one party is as bad as the other, unless there has been an actual prosecution and guilty finding. Even then a conviction at the state level, or a finding of child abuse can be disregarded at the federal level.

Of course the committee must always keep in mind that the DV industry does not use the same categories as the federal court, and the criminal legal system does not place the relationship history under a microscope – *in fact the victim is restricted to the one particular event only.* The accused of course can reframe or introduce, without the need for any evidence at all, whatever version they like.



Ergo, the AVO system as it stands is setting DV victims up to fail.

**Issue 6. When is a victim a victim? Well, by which agency's definition and practice?**

In a different failing – different departments have different foci on ‘who is the problem?’

DOCS (now called Community Services) have a focus on child safety. In order to remove the child from a possible at risk situation, they may warn a woman to leave a DV relationship under threat that THEY will remove the children, and the mother will be regarded as neglecting the child. The perpetrator generally is not the focus, and escapes sanction or removal.

- DOCS do not issue any official written certification. Usually it is a verbal direction.
- The woman leaves, and takes the kids - somewhere, as directed.
- Now the children are not at risk, according to DOCS, and there is no investigation.
- The father goes to the Family Court. He is in the family home, has a job/career/business
- There is no evidence to support DoCS direction
- There may be no report to police.
- If there was a report to police, an AVO may result – or not and the children may, or may not be included on it for protection, DV prosecutions for assault and worse proceed. The victim has no legal representation, is not a party to proceedings, has no rights and no right of appeal. No one has a duty of care to them.
- Most get little preparation for the process.
- The rights of an accused vastly outweigh the absence of rights for a victim.
- Yet the outcome of these cases IS used as ‘evidence’ as to guilt if a case gets to the family court.
- No credit at all is given to the victim because of unequal representation or rights.
- When it comes to housing, the offenders name on the mortgage or lease is often sufficient to mean the victim becomes homeless, even in Department of Housing Matters.

The Family Court likes shared parenting, especially if it quiets the whinging voice of angry fathers. It has publically said ‘the father is more important than the worst of his behaviour. A violent man can therefore look forward to an association and financial benefits of having his children. Please note there is no similar weighting towards mothers – a mother who is flawed in any way is more likely to lose access, let alone having the children living with her or ‘benefiting’ financially. Financial ruin is one of the frequent promises of abusive men to their victims ‘if they ever leave’.

The children are frequently placed in shared care – 50% with the father, 50% with the mother often irrespective of his actual behaviour and threat level. The mother who left because of the violence and to protect her kids may well show signs of trauma and be regarded as ‘mentally ill’ for fearing for her child’s safety. There have been several reviews by the federal government on this topic.

Now she cannot protect her children. He said if she ever left he’d take the children and see her in the gutter.

If she challenges the shared care arrangement, or believes the only way left to protect her child is



to try to escape, she will be caught and imprisoned and even lose the kids altogether. That's happening.

**Recommendation:** We (services, agencies and courts) in the state scene need to be able to respond to victims of DV in ways that do not set them up to fail in a later, related system, simply because we do not have a properly coordinated system.

To conclude, as you can see there are many more issues to address.

In 1992 I was the victim of a savage, prolonged, unprovoked attack by my then husband. To cut a long, horrible story short, the original charges of Attempted Murder and Grievous Bodily Harm were lowered to actual bodily harm with my permission, because I was warned he would kill me if he went to jail. I believed him. I was also mindful of society's contempt for the families of violent criminals. Even after such a brutal attack, I wanted only to be free, and safe and for the kids to be safe.

Found guilty of the reduced charges in one court, he appealed. The appeal, for which I was completely unprepared, was later termed 'an ambush' by those in the know. I was humiliated by the judge. I approached the government who were quick to say they had no power at all in the matter, in fact in any matter. I remember the then Minister for Women assuring me she heard of cases like mine 'all the time'. I remember a sense of outrage that if someone had done something about cases before mine, perhaps things would change. Isn't it time the Government took back some obligation for the out-of-control, unaccountable courts?

I believe VOCAL's perspective, born of actual experience and seeing the desecration of decent people by a system that hasn't managed to quell DV in 40+ years, is absolutely valid. It's 20 years since the victim was me and sadly I see others just like me, recent victims, too often. I had hoped by now the issues would be fixed but instead I see more awful cases, especially the after DV, child abuse cases in Family Court.

The least we can do is examine the gaps, and understand what can make a difference. Actually determining how to hold perpetrators accountable would be a good start. We have to stop accepting excuses for violence and abuse, and we had better start soon.

Regards

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Executive Director

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