

**Submission
No 4**

INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND ISSUES IN NSW

Organisation: Barnardos Australia

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Inquiry into domestic violence trends and issues in NSW

Submission by Barnardos Australia

This is a submission to the NSW Legislative Council Standing Committee on Social Issues. The Inquiry seeks to examine:

1. Strategies to reduce breaches and improve compliance with Apprehended Domestic Violence Orders [ADVOs], including: [a] the use of GPS bracelets and [b] whether existing penalties for domestic violence are adequate.
2. Early intervention strategies to prevent domestic violence.
3. The increase in women being proceeded against by police for domestic violence related assault, and
4. Any other relevant matter.

Relevant Barnardos Australia staff members were invited to complete and return a questionnaire based on the Committee's terms of reference.

The comments that follow reflect the views of three Barnardos Program Managers and one individual worker. "MG" manages a counseling team in a domestic violence support program based in Auburn. "AH" manages a Family Accommodation and Intensive Family Support Service in Penrith. "WC" manages a Family Support service in Queanbeyan, while "CS" is a Family Support and Preservation worker based in the Canterbury area.

This is not intended to be an academic overview of domestic violence but rather a grass-roots response in the words of those Barnardos staff that frequently meet domestic violence victims. Barnardos provides professional social welfare services in areas with significant levels of domestic violence. In 2010 Penrith had the third highest number of domestic assault incidents [940] in NSW, with Canterbury ranked at fifteen [461], Auburn ranked at twenty three [302] and Queanbeyan ranked at fifty one [134].*

*Source: Grech, K and Burgess, M. Trends and patterns in domestic violence assaults May 2011 pp12-14 NSWBCSR [available at www.bocsar.nsw.gov.au].

Questionnaire Responses

[1] What involvement have you had with domestic violence victims generally and specifically with domestic violence victims who were protected by ADVO's?

MG. Our program (Auburn Domestic Violence Support) has had extensive involvement with women and children impacted by domestic violence. In the 2010-2011 financial year, the program had contact with 58 women and children. Involvement included: attending the police station following incidents of domestic violence; supporting a client who needed to make a complaint about police handling of a report of domestic violence; court support for victims applying for ADVOs; court support for victims subject to breaches of ADVOs; assisting clients applying for victim's compensation, and supporting victim's still living with perpetrators of violence because affordable housing was not available.

AH. I have been involved with domestic violence victims generally for the past 4 years or so, through a family support capacity. The victims I have been involved with have generally not had the protection of an ADVO, although in the cases that had, the perpetrator has ended up incarcerated.

WC. Over the past 20 years I have had substantial involvement with families affected by family violence and in particular women and children. Many of these families have been 'protected' by ADVO's. Unfortunately not all have experienced the possible benefits of the protection due to: breaches/unwillingness to return to court for fear of further breaches/threats and the women often feeling they have to 'prove' the abuse or have to be hurt to get it. In particular trying to prove verbal harassment and getting an ADVO to be left in peace is so hard. I have been to court in regards to seeking ADVO's. I have case managed families and been involved with the educating of the restrictions/understanding of the document and assisted families in regards to prevention of breaches etc. Unfortunately, many women feel the ADVO does not 'really' protect them, the fact that they have to register the ADVO if they move; rather than it being accepted nationally, the fact that magistrates prefer the children are not on the ADVO – so that an

assumption is made that they will be protected if an incident occurs while in the company of the victim.

[2] What involvement have you had with perpetrators of domestic violence who were the subject of an ADVO?

MG. The criterion for the Auburn program precludes working with perpetrators. However, several of our clients this year have been dealing with issues surrounding applying for ADVO's and the breaching of ADVO's by perpetrators. When court support is involved, there is some contact with the perpetrator at court. There has also been direct contact with a perpetrator when supporting a client during hand over for access at a police station.

AH. I have not dealt directly with perpetrators of domestic violence, as I deal predominately with victims.

WC. Due to family case management and family restoration as such, I have been involved with the perpetrators - some of whom are trying to rectify their ways, and some who do not obey the ADVO and so end up with breaches, but often little done about it.

[3] What has worked well in the enforcement of ADVO's?

MG. In the first instance, there is a greater chance of an ADVO being applied for and the women going through with the legal process if she has more support from extended family, friends, counselors and other support agencies. Education about how ADVO's work, and what is involved in the process has also been helpful in encouraging women to take out ADVOS.

This also increases the likelihood that women will notify the police of any breaches that happen. They are also more likely to notify the police if their previous interaction with the police has been positive.

Once the breach goes to court, it is helpful if the client understands the significance of her testimony and has time to speak with the Officer in Charge of her case and the Police Prosecutor to have the process clarified.

The Women's Court Advocacy Service is an invaluable service for women involved in the legal system.

AH. ADVO enforcement works well if the police respond immediately, and arrest the perpetrator at the scene of the breach. This is preferable to police trying to mediate some cases depending on the police perception of the severity of the breach.

WC. Those who have been charged with breaches at times do not re-offend, but unfortunately for some – it makes little difference. For others it sends a clear message that there will be consequence and so they do not breach the order.

[4] Are GPS bracelets [tracking devices] a solution to the better enforcement of ADVOs?

MG. ADVOs are not a criminal conviction. It is difficult to see how someone who has not been convicted of a crime can be made to wear a GPS bracelet. It is also impractical to suggest that it would be possible for police to monitor the whereabouts of all the people who are the subject of an ADVO.

AH. A GPS bracelet would probably only be effective if there was some way of it indicating to police when the perpetrator had come within a certain proximity of the victim. If the only response is after the perpetrator has been able to get to the victim, then a GPS is not much help. The damage is already done.

WC. Unsure as it doesn't prevent the incident occurring - it simply means they can be found and perhaps be made accountable.

C. The use of GPS bracelets as a deterrent for perpetrators who continually breach ADVOs will have limited preventative effect on some perpetrators. Dependant on the individual; some may feel more angered by the restraints. These are the group of men who have no fear of the police or the 'slap on the wrist' consequences. It will also not deter perpetrators from using their relatives/friends to approach the protected person.

[5] Are existing penalties for domestic violence adequate?

MG. No. There is insufficient recognition of the damaging impact of emotional and psychological abuse by the police and legal systems. Consequently, it is much harder to get police intervention in situations involving this kind of violence.

There can also be considerable delay between an application for an ADVO and it being finalized or served and made enforceable.

(Case study: A client's ex-husband was able to evade being served for over a year. This reinforced for the client, the perpetrator's assertion that the law was on his side. When he later breached the ADVO (several times), the case went to court eleven times and was adjourned each time either because the accused didn't attend, or didn't have an interpreter, or didn't have legal representation. My client was in attendance every time. He was finally given a good behavior bond.)

Also, it is our experience that few breaches of ADVO's result in jail time or any recorded conviction. The most common outcome is a Section 10, which is a time limited good behavior bond where no criminal conviction is recorded.

One of the barriers to successful convictions is the frustration and cynicism that police undergo as a result of victim's withdrawing their support for applications for ADVOs. Clients need a lot of support and education to help them gain enough trust and confidence that the legal system can help them.

Another difficulty arises where Family Court Orders are involved. In situations of domestic violence where there are Family Court Orders, it is possible for the perpetrator to breach the orders by, for example and in a recent case, refusing to return the child at the end of access. It is a commonly held view of the NSW police that it is not their responsibility to enforce Family Court Orders; whilst they can use their discretion to make a welfare check on the child, they are only able to take action if there is tangible evidence of abuse (physical injuries) or neglect. They are not able to take the child and return them to the other parent just because the Family Court Order has been breached. In such cases, the other parent must go back to the Family Court to seek enforcement. This can involve a

lengthy delay. It is critical that the police and legal bodies are able to recognize situations where domestic violence dynamics are present.

AH. *The existing penalties are both inadequate and dangerous. Domestic violence is still not seen as the violent crime that it is. Perceiving domestic violence to be in the "private" domain means that women and children will continue to be in grave danger. An ADVO does not stop the violence - it merely gives a penalty for the next lot of violence which occurs. A woman has to be a victim to violence yet again before there is a sanction against the perpetrator. To make matters worse for the victim and her children, the Family Law Courts continue to put the onus on the victim to be the so-called "friendly parent" in court proceedings, and override ADVO's to allow the perpetrator to have contact, often unsupervised, with his children. In cases of psychological and emotional violence, where there are no visible bruises, the perpetrator is given freedom to terrorise his victim with protracted court proceedings, which have a strong emphasis on "equal parenting" despite histories of violence. Despite the pending changes to the amended Family Law Act, the perception that equal time with both parents is best for children, is a culture which has taken hold in the family court and will be difficult to break.*

WC. *No – I do not believe they are. Unfortunately it would appear that domestic violence is still taken/treated lightly and we are still in damage control [as opposed to prevention]. Also until society fully recognizes family violence as an ultimate breach of trust, it is likely to continue to play it down or make excuses for it. Perpetrators can claim that they are under the influence of drugs, had a poor childhood, suffer depression, or have mental health issues - and so rarely is anyone simply tried for the act as it is defined:*

'A violent act upon another, invasion of personal right to safety and care, a matter of one's need to control a fellow human being by degradation or pain'.

Also the fact that it still appears to most in society that for domestic violence to have occurred you must have been 'physical' towards a party. Much longer term harassment/ emotional abuse goes under the radar and is difficult to get support around.

C. Existing penalties in terms of prosecution of the matter in a criminal court is mostly sufficient. However it is dependent largely on whether the police make the decision to charge the perpetrator. There are still too many 'judgment' calls by police regarding charging an offender.

Case study: A woman's ex-partner breached an ADVO and also sexually assaulted her. A detective decided not to proceed with the sexual assault charge but instead charged the perpetrator for breaching the ADVO.

[6] What contact have you had with women perpetrators of domestic violence? Is this a trend that is increasing?

MG. It is my understanding that the increase in women being proceeded against is a result of changes to the laws that require police to proceed if there is evidence of physical violence – consequently, defensive injuries/action (pushing, scratching, fighting-off) can result in women being proceeded against. The woman then becomes dependent on the investigation of the Officer in Charge and/or her own legal representative to sort out who is the real aggressor in the situation.

AH. I do not have contact with female perpetrators of domestic violence. Whilst I accept that there has been an increase in this area, it is still predominately a male dominated area. What I do see is an unofficial policy of dual arrest at the scene where a woman may have been able to inflict defensive wounds in trying to get away from the perpetrator, and/or protect her children, and she is taken into custody as well. This is a very dangerous trend which needs to be addressed.

WC. I have had some contact with female perpetrators; however this has mostly been towards female partners as opposed to a male partner. In these incidences it would be fair to say that the women do not appear to breach their ADVOs.

C. Yes there are some women who commit domestic violence but domestic violence is a gendered crime and it would be a shame to confuse the issue. Some of the narratives I heard from men who have been victims tend to indicate that the underlying reason is one of mental illness and not power and control. Perhaps this needs further research.

[7] What early intervention strategies could be developed to better prevent domestic violence?

MG.

At a primary level there needs to be well-coordinated, funded and sustained campaigns to change community attitudes towards domestic violence at National, State and local levels.

As an early response to the identification of families at risk or experiencing domestic violence, families need sustained support over the long term to reduce risk factors such as poverty, homelessness, financial hardship, alcohol and drug addictions, cultural differences, resettlement pressures, poor parenting practices, poor understanding of the impact of domestic violence on children and the family etc.

Where necessary, women and children need safe options to be separated from the perpetrator and then support to deal with the traumatic legacy of living with abuse.

AH. Domestic violence needs to be dealt with as the violent crime that it is. It is not a private matter. It is a public matter, a public health concern which affects scores of women and children. Women need to be given financial support, social support and options for escaping from violence which do not leave them homeless and destitute and at risk of losing their children to the perpetrator from whom they are trying to escape in the first place.

Harsher first time penalties, with public record naming the perpetrator as a person who commits violence against women, and imposing sanctions on the perpetrator would, I believe, begin to address the problem.

A perpetrator, and/or anyone thinking that they can get away with being violent towards women needs to fully understand the implications of that violence.

There also need to be more high profile men in public campaigns denouncing violence against women.

WC. Family violence/domestic violence awareness should begin in the senior years of high school. We need to target those in our society who are entering relationships for the first time, who are not fully aware perhaps of boundaries of control. These people are also not yet ready to accept that an event may occur again, that it is a form of control, that it is not love or hard love, that they are not to blame, that they didn't 'wind' someone up/bring it upon them self and so on. Another area to look at is in primary school in relation to 'bullying' I do not believe we have got it right yet in regards to the assistance/solution to families who are victims of such. Once again we look to the victim to resolve/change/beat the situation. We need to take a closer look at what it is the bully may be experiencing in the home. We need to assist with educating that child/family in relation to what is and that it is not acceptable behavior towards a fellow human being.

C. School and community education on what domestic violence is. Work needs to be done within CALD and indigenous communities to encourage both men and women to break the silence regarding domestic violence. There are still a lot of grey areas that women and communities (including police) are unclear about. There is some evidence from overseas research that holistic intervention is better than punitive measures alone. Within the indigenous communities in Canada, there are programs working with violent men such as 'circle conferencing' of the families involved or communities. Consistency in actions taken by the police and the criminal justice system will help victims to report incidents correctly rather than underreporting. The "three strikes and you are out" system could assist domestic violence victims.

[8] Any other comments or suggestion?

MG.

- *Strongly support the continued expansion of the Staying Home Leaving Violence Project*
- *Increased education about and use of Exclusion Orders is desirable*

- *Support the initiative to allow Real Estate agents to change the name on the lease so that women can take over in event of ADVO and Exclusion Order*
- *More affordable housing for women and children who need to leave domestic violence situations.*
- *Support increased funding and expansion of Women's Court Advocacy Services and the use of Shine Rooms*
- *Expansion of the Women's Court Advocacy Service to include assistance and direct court support with breaches of ADVOs*
- *Training of Police Prosecutors and Magistrates in the dynamics of Domestic Violence*
- *Increased training for police in recognizing and understanding domestic violence and how to respond appropriately.*
- *Support the expansion of Domestic Violence Liaison Officers in local police stations.*
- *Better coordination between the Family Court and Magistrates regarding the conflicting interests of Family Court Orders and ADVOs. Many women are faced with having to negotiate the requirements that their children be allowed to spend time with fathers who have and continue to be abusive – particularly emotionally and psychologically abusive in ways that negatively affect the children.*

AH. Women need to be able to leave the perpetrator without fear of homelessness, without fear of losing their jobs, without fear of struggling for money and food. They need to be supported to re-establish their lives away from the perpetrator, without being forced through ridiculous mediation sessions and court cases which mean that the perpetrator can continue to control and humiliate the woman. Women should not be forced to remain in the same town as the perpetrator so that he can have access to children. A perpetrator should not be allowed to continue to abuse and control through the children.

Further, the perpetrator should be forced to leave the home, immediately and without question. He should not be allowed to stay in the home whilst the woman has to run to a shelter.

I also believe that both mandatory arrest and mandatory minimum jail time should be attached to the crime of domestic violence.

WC. *The best way to protect a child or children of family violence is to protect the mother. We need women to feel strong and safe, they need to feel protected to be able to disclose. If we fail in this we leave her and the child vulnerable to further abuse. It is time for society to hold the perpetrator accountable for the abusive behavior and not the victims. Also the focus for many years in regards to domestic violence has been on stopping the physical assault and getting the victim to leave the relationship. As we know all too well, victims can often feel that it is not the perpetrator they do not like but the behavior – if that could be assisted they often feel the relationship would work. We also need men to become part of violence prevention which means they need to speak as non-violent mentors to teenage males, groups, educationally, and/or through advertising. The effort needs to focus not on ‘that they may be potential perpetrators’, but rather as allies in an effort to make the home and community a safer place.*

Another area that needs to be re-looked at is mandatory intervention for those charged with domestic/family violence - even if on an experimental basis. There needs to be a public consciousness and disapproval of domestic violence and an acceptance that it won't be tolerated and therefore attracts mandatory intervention punishment etc. while at the same time protecting the victims of those mandated. Perhaps we should look towards a ‘victim advisory panel’ that is part of the development of such a trial.

C. *Thursdays in Black – women who undertake to wear black on Thursdays and hand out literature on domestic violence and encouraging women to stand up against violence – their presence in the community demonstrating community action and intolerance against domestic violence.*

“Staying Home leaving violence with security upgrades” TV advertising campaign appears to be too ‘soft’ on the issue. Needs to be multi layered – one to get message across to women that domestic violence can happen to anyone.,

Sports stars endorsing their support against violence and the next layer is to actually get the message across of the seriousness of the crime and the consequences for perpetrators. Ideally it would be fantastic to have a day of action whereby men are the ones (particularly men from CALD and high profile positions) to join their voices with women’s. This would reduce the polarity between the camps of men vs. women and those who think that women fabricate domestic violence in order to get back at their men or that women ask for it (being “disciplined”). In my experience with the school system as an advocate I found that there is some level of tolerance for violence and that the educational policy on violence is not followed to the letter particularly when it comes to situations when teachers think someone ‘provoked’ the incidence of violence or that someone is going through a tough time. These covert messages to our children are confusing and support the dominant discourse of domestic violence.

Conclusion from Questionnaire

It is clear that there are some differences of opinion amongst front-line workers on some issues – however there is a definite consensus that domestic violence needs to be reshaped as “violence” first and “domestic” second – and that the treatment and sentencing of the criminal [perpetrator] must be for the “violence” with the fact that it is “domestic” not being used as a reason to lighten the sentence. There is also consensus that the emphasis should be on removing the criminal and supporting the victim to remain at home as the innocent party and that the current level of support and accommodation options for victims who do leave home is inadequate.

Past Research and Publications

Barnardos has participated in research and policy development in the field of domestic violence since 1993. This past research could be useful in consideration

of changing trends and issues in domestic violence, and in particular its impact on children and young people.

In 1993 Jude Irwin of Sydney University began to develop a policy on domestic violence for Barnardos Australia with a specific focus on violence perpetrated on women by their male partners. Jude's work was published as Barnardos Monograph 25 "Domestic Violence – Criminal Assault in the Home" [copy attached].

Between 1997 and 2001 Associate Professor Jude Irwin, Dr Fran Waugh and Dr Marie Wilkinson of Sydney University conducted a collaborative research project with Barnardos Australia "Domestic Violence and Child Protection". This comprised four stand alone but related studies:

[1] an analysis of NSW DoCS responses to domestic violence;

[2] the understandings of practitioners, in both statutory and non-statutory organizations, of the policy and practice issues related to the protection of children and young people who live with domestic violence;

[3] women's perceptions about living with domestic violence and the protection of their children; and

[4] the views of children and young people who have lived with domestic violence.

[A copy of the executive summary is attached].

In September 2002 the Barnardos Auburn Centre held a focus group with three clients, on their family court experiences [predominantly at Parramatta Court] in relation to family violence matters. Barnardos workers were also asked to comment. [A copy of the notes from that meeting is attached].

Prepared by Bill Hoyles [Senior Manager: Aftercare and Special Projects]