

INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND ISSUES IN NSW

Organisation: Women Everywhere Advocating Violence Elimination Inc.
(WEAVE Inc)

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Inquiry into Domestic Violence Trends & Issues in NSW

Dear Committee

Please find attached WEAVE's submission to the Inquiry into Domestic Violence Trends & Issues in NSW. The submission incorporates the views of Solomums Australia for Family Equity and the National Abuse Free Contact Campaign. The submission focuses on issues for women and children arising from domestic violence.

Yours sincerely,

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Women Everywhere Advocating Violence Elimination Inc (Australia)

Women Everywhere Advocating Violence Elimination Inc (WEAVE Inc), formed in 2009, is a National Women's Alliance that aims to eliminate gendered violence (including sexual assault, domestic violence, stalking, sexual exploitation and trafficking). As a non-partisan coalition WEAVE Inc brings together groupings that have sometimes worked separately from one another, such as sexual assault services, women's health services, women's legal services, domestic and family violence services, and organisations working against trafficking. In drawing together key stakeholders that make up the 'violence against women sector' as well as survivors, and activist and interest groups, WEAVE embeds a wealth and diversity of experience and expertise within a single body.

WEAVE Inc Vision

To ensure that all women and children are able to live free from all forms of violence and abuse.

WEAVE Inc Values and Principles

HUMAN RIGHTS

WEAVE Inc employs a human rights framework that recognises that gendered violence is one of the most serious and widespread violations of fundamental human rights, in particular, the right not to be treated in an inhuman and degrading way, the rights to respect, physical, sexual and psychological integrity.

FEMINIST FRAMEWORK

WEAVE Inc works within a feminist framework that recognises that gendered violence is both a consequence and cause of gender inequity, embedded deeply within all levels of our society, and that efforts to end such violence must be accountable to women and promote women's empowerment and gender equality.

EQUITY, DIVERSITY & INCLUSIVITY

WEAVE Inc is committed to representing and working respectfully with the diversity of women in Australia. WEAVE Inc recognises, and seeks to advocate and lobby for, the particular and urgent needs of Indigenous women, women from immigrant, refugee and/or non-English speaking backgrounds, women with disabilities, as well

as the challenges faced by young women, older women and women in rural and remote areas.

WEAVE Objectives

- (a) To provide leadership and advocacy at state and national levels in relation to all aspects of gendered violence.
- (b) To bring together in a single body the key stakeholders concerned with all aspects of gendered violence in order to access and disseminate the wealth and diversity of knowledge within the sector as a whole.
- (c) To contribute to and monitor policies, legislation and programs which impact on women and children experiencing gendered violence.
- (d) To promote and prioritise equity of access to services for all women including Aboriginal women, Torres Strait Islander women, women from immigrant, refugee and/or non-English speaking background, women in rural and isolated areas, older women, young women and women with disabilities.
- (e) To promote greater community awareness of gendered violence and its personal and social consequences using community development and educational strategies.
- (f) To build and promote alliances and collaborative relationships with other key stakeholders and networks.
- (g) To promote, further develop and disseminate 'cutting edge' knowledge of gendered violence arising from practice, research, community and activism.
- (h) To connect with international developments in advocacy, research and practice concerning gendered violence.

WEAVE Inc. submission addresses the Terms of Reference as follows:

1. Strategies to reduce breaches and improve compliance with ADVOs including:
 - a. The use of GPS bracelets
 - b. Penalties
2. Early intervention to prevent domestic violence
3. Increase in women being proceeded against by police for domestic violence related assault
4. Any other relevant matter

There are serious problems in the way that the legal profession regard the ADVO process. This is illustrated in the submission by Prof. Patrick Parkinson, University of Sydney, to the Senate Committee on Legal and Constitutional Affairs in the inquiry into the Family Law Legislation Amendment (Family Violence) Bill 2011. The following text is an extract from Parkinson's submission (number 14) pp.4-8.

http://www.aph.gov.au/Senate/committee/legcon_ctte/family_law_familyviolence/submissions.htm

'There is now a very widespread view in the community that some family violence orders are sought for tactical or collateral reasons to do with family law disputes. People have become (sic) very cynical about them. A national survey conducted in 2009, with over 12,500 respondents, found that 49% of respondents agreed with the proposition that 'women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case', and only 28% disagreed. While it might be expected that men would be inclined to believe this, 42% of women did so as well. The view that some family violence order applications are unjustified appears to be shared by state magistrates in New South Wales and Queensland. Hickey and Cumines in a survey of 68 NSW magistrates concerning apprehended violence orders (AVOs) found that 90% agreed that some AVOs were sought as a tactic to aid their case in order to deprive a former partner of contact with the children. About a third of those who thought AVOs were used tactically indicated that it did not occur 'often', but one in six believed it occurred 'all the time'.² A similar survey of 38 Queensland magistrates found that 74% agreed with the proposition that protection orders are used in Family Court proceedings as a tactic to aid a parent's case and to deprive their partner of contact with their children.³

In research that our research team recently published on the views of 40 family lawyers in NSW, almost all solicitors thought that tactical applications for AVOs occurred, with the majority considering it happened often.⁴ In another study based upon interviews with 181 parents who have been involved in family law disputes, we found a strong perception from respondents to family violence orders (both women and men) that their former partners sought a family violence order in order to help win their family law case.⁵ This is a quote from one of the women in our study. Her former husband, who we also interviewed, sought an apprehended violence order (AVO) to keep her away from the house after she had left it. She said this:

I thought this is ridiculous. What's he giving me an AVO for? I haven't done anything to him. I haven't hit him, kicked him. We never had any violence in our marriage. Why have I got an AVO? And apparently the AVO was ... you can put an AVO on someone and say that they're violent, and the only way you can get a child off their mother is because they're violent. And that's why I think he gave me the AVO.

The belief that family violence orders are a weapon in the war between parents is fuelled by the fact that judges are required under the Family Law Act to consider such family violence orders in determining the best interests of the child. The proposed

clause in this Bill takes the law back to what it was before 2006, without any explanation for why Parliament should reverse its previous decision at least to limit the provision. **It really doesn't matter whether this belief that family violence orders are used tactically is true or not. The fact is that the perception is out there and it is held by state magistrates and family lawyers, as well as the wider community.** The retention of this provision in the Family Law Act simply fuels the suspicion that family violence orders are being misused. This is damaging to the credibility of the family violence order system and the courts. The second reason why the requirement to consider family violence orders ought to be removed is that this serves absolutely no purpose. Yes, the court needs to know about the existence of a current family violence order in order to consider how to frame its own orders (s.60CG), but that is dealt with by requiring people to inform the court of such orders (s.60CF). Why consider them again in deciding what is in the best interests of a child (s.60CC(3))? The court is already required to consider the history of violence. What does it add to require the court also to consider a family violence order? The impression given by the legislation is that these orders are somehow evidence that there has been violence. However, that is a misunderstanding.

Family violence orders have absolutely no evidential value in the vast majority of cases. This is because, in the vast majority of cases, they are consented to without admissions.

The hearings in these uncontested cases are very brief indeed. Prof. Rosemary Hunter, in observations in Victoria in 1996–97, found that the median hearing time for each application was only about three minutes.⁶ Applications were typically dealt with in a bureaucratic manner, with magistrates being distant and emotionally disengaged.⁷ To the extent that applicants were asked to give oral evidence, they were typically asked to confirm the content of their written application, and very little exploration of the grounds for the application took place.

Dr Jane Wangmann, in a recent analysis of court files in NSW, reached finding very similar to Hunter's. In her observations of AVO matters in 2006–7, she found, like Hunter, that cases were dealt with in three minutes or less.⁸ She also noted that the information provided in written complaints was brief and sometimes vague.⁹

It is hardly surprising, then, that judges in family law cases draw no inferences from the mere existence of a family violence order. This has been the clear view of family lawyers for the last 15 years.¹⁰ Indeed, in the research we recently published on the views of 40 family lawyers in NSW, none of the lawyers who responded to the question believed that judicial officers gave AVOs much consideration in determining parenting disputes. Judges, they indicate, want to evaluate the evidence of violence itself, not the fact that another court has made an order about it by consent and without admissions.¹¹

Thirdly, it is quite likely that many state family violence orders will have been based upon allegations of conduct that fall outside of the definition of family violence in this Bill. The grounds upon which such orders may be sought vary from one jurisdiction to another.

² J Hickey and S Cumines, *Apprehended Violence Orders: A Survey of Magistrates, Judicial Commission of New South Wales*, Sydney, 1999, p 37.

³ B Carpenter, S Currie and R Field, 'Domestic Violence: Views of Queensland Magistrates' (2001) 3 *Nuance* 17 at 21.

⁴ Parkinson, P, Cashmore J and Webster A, "The Views of Family Lawyers on Apprehended Violence Orders after Parental Separation" (2010) 24 *Australian Journal of Family Law* 313.

⁵ Parkinson P, Cashmore J and Single J, 'Post-Separation Conflict and the Use of Family Violence Orders', *Sydney Law Review* (2011, in press).

⁶ Rosemary Hunter, *Domestic Violence Law Reform and Women's Experience in Court: the Implementation of Feminist Reforms in Civil Proceedings* (2008), at 77, 81–2.

⁷ Hunter, *ibid* 84–8.

⁸ Jane Wangmann, *'She said...' 'He said...': Cross Applications in NSW Apprehended Domestic Violence Order Proceedings*, PhD thesis, University of Sydney, (2009), at 98–100.

⁹ Ibid 104–5.

¹⁰ Rosemary Hunter, above note 6 at 256; Tom Altobelli, 'Family Violence in Children's Cases: Implications in Practice Pt I,' (1998) 13 *Australian Family Lawyer* 6 at 12; John Dewar and Stephen Parker, 'The Impact of the New Part VII Family Law Act 1975' (1999) 13 *AJFL* 104 at 110; Rae Kaspiew, 'Violence in Contested Children's Cases: An Empirical Exploration', (2005) 19 *AJFL* 112 at 119.

¹¹ Patrick Parkinson, Judy Cashmore & Atlanta Webster, 'The Views of Family Lawyers on Apprehended Violence Orders after Parental Separation' (2010) 24 *AJFL* 313.

END EXTRACT

As the above excerpt notes, Prof Parkinson believes that people are 'cynical' and believe applications are 'tactical', that they have 'no evidentiary basis'. He also notes that it doesn't matter whether or not the perceptions are true, they are there. This submission begins with Professor Parkinson's claims because they highlight that ADVOs are not respected by the legal community. If the professional community which deals with ADVOs does not respect them, that view is likely to be conveyed to system participants and the wider community. This implies a need to educate the legal profession and the wider community that ADVOs are the main available process to families seeking to protect themselves from assault by other family members. ADVOs need to be supported across the legal system as a valid process. This is an important step in supporting compliance.

Recommendation 1: Develop an information and education process to develop increased respect for the ADVO process in the professional and wider community.

A national study in 2010 examining the experiences of family violence of adults from families who separated after 1995 (Bagshaw et al 2010) included questions about domestic violence orders. 931 adults responded to an online survey. DV orders had been sought by 28 men and 239 women. 45 men and 24 women had an order against them. 215 of the 267 respondents with orders protecting them (80%) said the order had been breached. Police prosecuted the breach in 78 cases (36%) with a guilty verdict in 67 cases (86%) (p.82). These findings indicate that police responses to breaches of orders can improve in terms of:

- Attending reports of breaches of orders
- Prosecuting breaches of orders

WEAVE Inc. considers there is work to be done to identify the drivers of police responses to reports of breaches of orders and to assess whether there is room for improvement.

Recommendation 2: Research the systemic drivers of police responses to reports of breaches of domestic violence orders examining the rate of breaches, the numbers of breach reports per case, the decisions to attend and the decisions to prosecute breaches with a view to address systemic barriers to responsive policing of breaches of orders.

Some strategies to improve compliance would include using GPS tracking devices and increasing penalties for breaches of orders. WEAVE Inc. supports these measures.

Recommendation 3: Deploy GPS technology to monitor the activity of offenders placed on ADVO with a view to providing evidence to support prosecution of breaches.

Recommendation 4: Increase the penalties for breaches with each subsequent breach.

The B-Safe Personal Alarm system for domestic violence targets in Victoria has been very effective for the 72 women and their children who have been issued with an alarm. The ABC 7.30 Report of September 1 noted the following :

It's reduced breaches of intervention orders. It's actually reduced physical assaults against more than half of the 72 women. None of the children have been assaulted during that three-year period.

A key point of efficacy in the personal alarm system was that offenders knew that they would be reported and there would be evidence of their offending. This was a significant deterrent as many offenders rely on secrecy and terror, offending away from public view, denying their offending and terrorizing their victims to stay quiet.

Recommendation 5: Implement a personal safety alarm system for victims.

There is also a need to improve processes and timelines between the application for an order, the issuing of an order, the serving of the order and responses to reports of breaches of the order. Victims report problems when the offender has not been served the Order and/or reports they have breached the order do not gain a prompt or coercive response from Police.

Recommendation 6: Review system for serving ADVOs to ensure minimal delays.

Other useful technologies include the installation of monitored CCTV surveillance in cases classified as high risk. Indicators of high risk which have emerged from DV Death Reviews are detailed in the following table from the Ontario 5th DV Death Review report of 2007.

Risk Factors	2007		2003-2007	
	n (n=15)	%	n (n=62)	%
Actual or pending separation	11	73%	49	79%
History of domestic violence	11	73%	47	75%
Perpetrator depressed in the opinions of non-professionals (e.g., family, friends, etc)	7	47%	39	63%
Obsessive behaviour displayed by perpetrator	11	73%	39	63%
Escalation of violence	8	53%	36	50%
Prior threats to kill victim	8	53%	31	45%
Prior threats to commit suicide	6	40%	28	44%
Prior attempts to isolate victim	6	40%	27	44%
Access to or possession of firearms	7	47%	27	42%
Control of most or all of victim's daily activities	9	60%	26	40%
Excessive alcohol and/or drug use	4	27%	25	40%
Perpetrator unemployed	5	33%	25	39%
History of violence outside the family	7	47%	24	34%
Prior threats with a weapon against victim	7	47%	21	34%
New partner in victim's life	7	47%	21	32%
Perpetrator failed to comply with authority	5	40%	20	31%
Perpetrator was abused and/or witnessed domestic violence as a child	4	27%	19	31%
Perpetrator displayed sexual jealousy	5	33%	19	31%
Extreme minimization and/or denial of spousal assault history	6	40%	19	31%

by perpetrator				
History of violence or threats against children	3	20%	17	27%
Prior hostage-taking or forcible confinement	5	33%	14	23%
Other mental health/psychiatric problems	3	20%	12	19%
Victim and perpetrator living common-law	5	33%	11	18%
Child custody or access disputes	1	7%	9	15%
Presence of stepchildren in the home	5	33%	9	15%

Recommendation 7: Conduct risk assessments in each case and provide monitored CCTV surveillance of victim premises in cases of high risk.

Early Intervention strategies to Prevent Domestic Violence

Research has established that there are key risk points for the onset of domestic violence. These include:

- After formalizing the relationship (marriage)
- Pregnancy
- After childbirth
- Paternal alcohol use
- Paternal depression

One way to prevent domestic violence is to engage in community education with regard to attitudes to women, beliefs about relationships and recognizing healthy and unhealthy relationships. There is considerable evidence that community attitudes which support views of male control of women are dangerous. Many young women also confuse controlling jealousy with love and do not recognize that an obsessive need to monitor their every movement is a sign of danger. Young women need education in recognizing health and unhealthy relationships.

Recommendation 8: Conduct community education campaigns to educate people in attitudes of gender equality and supporting young women in particular to recognize health an unhealthy relationship practices.

The prevalence of violence around pregnancy and childbirth indicate the need for targeted interventions for new parents (Taft 2002). Ante-natal screening for domestic violence is already implemented in many public hospitals however there is some evidence that it is not implemented effectively such that women might be asked about concerns for their safety with their partner present. This is inappropriate.

Recommendation 9: Provide effective ante-natal screening for domestic violence at all ante-natal services. Where violence is identified as an issue, services should support mothers' safety planning.

There is some emerging research evidence that fathers' mental health is an important aspect contributing to mothers' mental health around pregnancy and childbirth (Buchanan 2008). Men's depression and anxiety is linked to increased aggression which adversely affects the functioning of mother and baby (Davis et al 2011; Ramchandani et al 2005). There is an argument for a public health initiative to screen both maternal and paternal mental health for depression and to offer therapeutic and protective interventions where indicated. Ante-natal services could also engage fathers more generally in supporting their knowledge of child development and their contribution to their child's well-being.

Recommendation 10: Screen new fathers for depression (as well as new mothers) and offer therapeutic and protective interventions where indicated.

The frequency of depression as a high homicide risk indicator in reviews of risk indicates that all opportunities to clinically screen the mental state of abusive men should be taken. Screening points include in custody after arrest; as a condition of bail; involuntary hospitalization as a threat to self or others. Where indicated, effective treatment may be beneficial to the offender and reduce and prevent future assaults.

Recommendation 11: Introduce mental health screening and assessment of offenders as a routine element of response, linking treatment to bail and sentencing conditions.

- **Increase in women being proceeded against by police for domestic violence related assault**

The Australian Law Reform Commission paper <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114> gives specific consideration to the need to identify the 'primary aggressor' when police respond to domestic violence reports. They note, in Chapter 9, in the section titled 'Identifying the Primary Aggressor' that some jurisdictions require police to address specific criteria in determining who to arrest:

9.162 In Ohio, for example, to determine who is the 'primary physical aggressor', officers are required to consider, in addition to any other relevant circumstances:

(i) Any history of domestic violence or of any other violent acts by either person...;

(ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;

(iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;

(iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense. ^[255]

Such analysis is likely to be effective considering men's and women's different experiences of being a victim of family violence. In the national study of experiences of violence by parents who separated after 1995 by Bagshaw et al (2010), men who named themselves as victims of violence described primarily non-physical forms of abuse of them by women, whereas women's descriptions of abuse by men ranged across serious physical and sexual abuse to non-physical forms of abuse (pp.74-75). Women were also much more likely than men were to report being fearful of the abuser and to have suffered severe physical or sexual harm arising from abuse (pp.78-9).

WEAVE Inc. considers that when children are present and there is a question as to the primary aggressor, police should also identify the primary carer. Some indicators of primary carer are:

- i. Any known history of the family
- ii. Each parent's awareness of and concern for the children and their situation
- iii. The children's reactions to each parent
- iv. The children's age and development.

Police responses should support the primary carer's continuing capacity to provide care for their children.

Recommendation 12: Police should institute ‘predominant aggressor’ identification processes to ensure that victims are not arrested for defending themselves.

Recommendation 13: When children are present and there is an issue of who is the predominant aggressor, any assessment should include identifying which parent is the primary carer and to support their capacity to provide care for their children.

There is some evidence that requiring police to report to child protection when they have attended a domestic violence incident and children were present is having the effect of deterring victims from calling police for help. There have been numerous reports by domestic violence victims that they have been identified by child protection as emotionally abusing their child because they have exposed the child to violence by their partner (Higgins & Kaspiew 2011). Instead of targeting the perpetrator as ‘the problem’ child protection services tend to focus on primary carers as ‘failing to act protectively’. In some child protection interventions, child protection have removed the children from the mother and placed them in the care of the perpetrator in the belief that the perpetrator’s violence was ‘caused’ by the mother. Child protection responses tend to ignore the impact of the perpetrator’s violence on women’s capacity and agency to protect their children and often blame mothers instead of focusing on supporting the safety and recovery of both mothers and their children (Hester 2011).

Recommendation 14: Review child protection responses to police reports of children’s exposures to domestic violence to focus culpability on the perpetrator and to support the mother’s capacity to care for her children in safety.

Recommendation 15: Introduce measures to prevent child protection services placing children in the care of domestic violence perpetrators.

Crime and incarceration statistics indicate that a rising proportion of women are engaging in violence, however the intimate partner homicide and serious assault data continues to also locate women primarily as victims of men’s violence. In WEAVE’s view the use of violence is both a personal and cultural attribute. In personal terms the perpetrator has to perceive violence as an effective behavior and this is in turn built upon exposure to a cultural environment where violence is modeled and is effective. Reactive aggression can also be understood as a post-traumatic response to victimization. In this paradigm there could be a number of social factors driving women’s increasing use of violence which can be summarized as follows:

- One in four Australian children has witnessed their mother being subjected to family violence (Indermaur 2001; Richards 2011).
- A population study of mental health and violence correlates identified that amongst women victims of violence the median age of the first occurrence of rape was 13, sexual assault 12, physical violence 22 and stalking 22 (Rees et al 2011). They identified that 27.4 percent of Australian women had experienced at least one of these forms of violence. Rates of mental illness increased exponentially with exposure to violence.
- Family law reforms of 1996 and 2006 have progressively increased the difficulty of protecting children from continuing exposure to violent parents. The legislative changes introduced a ‘right to contact’ then a ‘right to a meaningful relationship’ with both parents. These changes have effectively subordinated children’s right to safety from abuse in favour of children’s continued exposure to their abuser. This has resulted in more children being exposed to continuing family violence. Research by Moloney et al (2007) examined the impact of abuse allegations on children’s matters in family law proceedings and found that such allegations made no difference in most cases.

Whilst Australian girls and boys continue to grow up exposed to a rising prevalence of family violence, society can expect increased acts of violence by young people, including young women.

- **Any other relevant matter**

Access to domestic violence services has become increasingly difficult for many women wanting to leave violent relationships. As services have increasingly been converted into generic homelessness services there have been fewer places available for women and children and the presence of men as both staff and clients has made victims feel less safe in accessing these services.

Recommendation 16 : Increase the number of specialized women’s domestic violence services and emergency accommodation places.

Limits on access for male children and on numbers of children as well as policies excluding victims affected by drugs or alcohol have also been used to exclude women from services. Substance abuse is a common response to violence victimization (Chilcoat & Breslau 1998), but services have not responded effectively to this aspect of victimization with the result that women have been refused help.

Recommendation 17: Ensure women’s emergency services have places for older male children and for women with 2 or more children.

Recommendation 18: Provide drug and alcohol services to assist victims with substance abuse disorders in women’s emergency accommodation.

An understanding of domestic violence and its prevention relies on continuing research and a willingness to learn from events. The NSW Domestic Violence Death Review process should be well resourced and underpinned by comprehensive collection of police data which is capable of identifying households and individuals with a history of domestic violence.

Recommendation 19: Continue support for a NSW Domestic Violence Death Review process and police data collection identifying households and individuals with domestic violence histories.

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