

INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND ISSUES IN NSW

Organisation: Victims of Crime Assistance League Inc NSW (VOCAL)
Date received: 26/03/2012

Partially Confidential



Victims Of Crime Assistance League Inc NSW

Standing Committee on Social Issues
Trends & Issues in Domestic Violence
Legislative Council

Supplementary submission

Since receiving my questions on Friday 23rd, I have looked over transcripts to date. Given the time available tomorrow, I thought it wise to give thought to some issues and expand what I had already submitted as there are many issues to raise.

1. Ignorance of the issue

It's important to make crystal clear that domestic violence is something that is often not recognised by the victim for what it is, and neither may the offender link their behaviour and purpose with this term. It is commonly found that victims of even severe violence, do not necessarily identify their situation with DV, and it follows that they will therefore not know where to go for help, or what systems require of them.

So many in the community equate DV with a punch in the eye to a nagging wife. Including the nagging wives who think it wouldn't have happened unless they provoked it, and take the blame directed at them from the perpetrator.

I make this point to underpin everything else I am going to say, because expecting people to 'get it' – about victims or offenders – expecting victims to identify and relate their circumstances to Domestic violence, let alone understand the finer points, complexities, processes and all that action may mean, or even expecting the bully at home to see that their behaviour is destructive to those who love them, is a major hurdle.

Frustratingly, I have seen many clients who work in the DV industry, who were unable to identify themselves as impacted by DV.

Example: Just this week I was speaking to an intelligent 50 year old woman, who didn't know what to do, she was unhappy and just didn't seem to be able to get anything right with her husband. She was at her wits end, teary and feeling so alone. I asked her whether there had been any violence, and she said 'No – he's never hit me'.

She had never, ever thought of herself as 'a victim', or of the situation and Domestic Violence.

By the end of the conversation, she had told me that in fact she had been locked out of the house in winter, without a coat, she had been raped frequently, she had been choked and she had to give him all her money and account for every cent she spent, and he isolated her and belittled her frequently. She was suffering from EVERY aspect of Domestic Violence.

She was even unable to even identify that the emotion she felt was fear.

She was too busy trying to figure out how to keep him happy, how to turn herself inside out to be the woman he said he wanted.

This is a large potential audience and service users for whom educational strategies need to be addressed. It is a situation commonly found by my service.



2. Expanding issues from VOCAL's submission of 16/8/2011:

In my earlier submission, I was brief about the issues I raised. I had presumed that others would highlight similar issues and examples, however I note that has not occurred to the degree that will help the Committee understand why Domestic Violence continues to grow, or why only perhaps 25-40% of victims approach services. I will add to that submission, if I may

Re Issue 1/ VOCAL 16/8/2012: Much of our work is to fill gaps, address the impacts of a lack of coordination or errors for the client in services at the state level and the absence of remedies or an effective complaints system. In particular,
— at the AVO stage, when for some reason, a needed AVO is not granted, a mistake is made by other than the PINOP there is no way to return the matter to the list in a timely fashion.

There is no 'one official place' to report systemic issues, which doesn't effectively promote CHANGES, SYSTEMICALLY. We (the system) do not learn from our mistakes. We make the same ones, over and over.

Example: The victim was living a refuge with her children, She was too scared to move from the refuge into rental accommodation she had found, until she had the protection of an AVO and was at the same time very concerned for the child's health because of the risk of infection in the refuge. The case was one where there had been ongoing coercive controlling violence for years, with an overlay of cultural 'norms'.

At court, the rushed and busy prosecutor asked 'Do you still want the AVO?' In the very noisy court, she didn't hear or understand the question (since the very purpose of being at the court was to get an AVO) and turned to seek advice from the DV ladies with her. ONE OF THEM answered 'No' which the Prosecutor took, for some reason, to mean the woman did not need the AVO. But she did desperately need one, and was very upset when it didn't happen.

When she tried to get the matter addressed, the woman was variously told what she would have to do to remedy the systemic glitch. The instructions she was variously given were inconsistent and confusing.

She'd have to go back to court, she'd have to go the Chamber Magistrate, the DVLO wasn't interested. It took VOCAL's appeal to the DV Corporate Sponsor for police for the matter to be addressed by police. But she didn't get her ADVO.

The police decided to address the matter by arresting the husband because of bruising that had previously been reported (whereas previously no attempt to discuss the matter as an assault had occurred). The husband received bail conditions, but they did not include staying away from the family.

We now have a situation where the man can go to the house, after dark, bang on doors and windows, demanding to see the tired and frightened children, calling the police who say 'he can do that because the bail conditions do not prevent it, and 'a man has the right to see the children'. (The man has access to the children, by agreement, at other times.

The woman will now have to prove, beyond a reasonable doubt, that he put the bruise on her. She will be a witness – with no legal representative – and he will have a barrister. He is not the type to admit, or accept responsibility. All she wanted was an AVO for him to leave her alone.

Months now of waiting, worrying, tolerating the aggressor's behaviour, waiting for the court to give her an ADVO. Hardly likely to give her confidence that 'the system' supports her right to be safe, or her children's right.

However if 'the system' had recognised an error was made in the court (not by the victim) it could have been addressed on the day. 'Your Honour, I seek leave to return this matter to the list as a miscommunication has led me into an error. In the interests of justice being seen to be done (and citing the special interest case), with cooperation from the Bench, it could have been remedied on the spot. There is no special circumstances legislation. There is no way to fix a mistake. Who suffers? The victim.

□ **a case so easily becomes serious or complex, VOCAL 16/8/2011 and also Question 10 from the Committee.**

AVO day, or "Ladies day" at court is often cynically referred to as 'Cattle call'. There are no special processes for individuals with special needs or special fears.

The application and complaint forms are not consistently completed and often lack what ought to be essential information for both the Prosecutor and the Court. The standard of General duties police recording of complaints is variable, at best. They are time poor.

- Is this a case for DV trained non-police workers to do non-policing, clerical support work?
- It is certainly a case for a professional police response tailored to address 40% of its 'client' base, not an ad hoc, part-time DVLO, who no matter how dedicated they are, cannot do the job that needs to be done.

If I were a magistrate in whose hands the safety and management of DV matters lay, I would regard the following material to be essential for a court if that court wanted to better understand and apply the protection orders actually required.

- List the components of DV separately, and whether they were present, with a brief description. Eg verbal abuse, financial abuse, emotional abuse, physical assault such as strangulation, weapons, injuries, sexual abuse to themselves or to children.
- The brief story of what has been going on,
- The nature of any actual violence,
- Whether guns are owned or available to the defendant, whether there has been a problem
- If or there have been threats to harm people, themselves, children or pets, and the nature & frequency of those threats
- Whether the parties are in any other court, for how long,
- Any special circumstances that exist,
- Any other orders that may be in place, or need to be in place
- And the nature of any fear.

This information could be rated or feed into a risk assessment.

These cases need to be properly set out, and the Prosecutor needs time to review them **prior to** court so they can seek answers or more information before court is actually happening. Perhaps then the applicants would have a better chance to get the sort of orders they need because the case is clearly stated.

Clearly the prosecutor cannot possibly prepare with the conditions currently available, which is a resources issue. 40% of police work, 40% of court work squished into too short and too trivial processes.

Such an application (using the above guideline) might also support a matter in the Family Court as it proceeds.

Such an order would clearly consider other orders in place, for children and access, and explain how they are to work. Then the claimed lack of understanding about orders might reduce.

Protection

Note that there is **no actual protection** available. An AVO is a warning that is often ignored by the perpetrator and by police who often say that while the orders were 'technically' breached, the issue is not serious enough to take to court. Even in a serious breach or serious assault, it is common for the perpetrator to be released back into the community.

It ought to be of concern to a magistrate that their orders are trivialised by defendants and by police. The fact that there is little regard for the truth and no capacity to have consequences for disobeying court orders without good reason leads the system into disrepute.

There needs to be a 'Breach of Court Order' offence. Then, if the order says 'do not' and a defendant 'does', the police should be (depending on the circumstances) issuing at least a strong verbal & notebook warning, then a contravention fine, for further breaches. Records need to be kept for any further court matter. I refer to 'technical breaches'. Currently, ADVOs can be frequently breached with no consequence, making the whole process empowering for the offender.

For the PINOP, the order is about fear. Distances and no go zones, and non-contact orders are meant to help them feel less fear, safer. It is counter-intuitive and counter-productive to then ignore those factors. Perpetrators experience the watering down of Orders as vindication of their behaviour, of their infallibility and the idea that the system supports them, not the victim.

Nevertheless, at the end of the day, in a case of a real event of danger, and again after the event, there is no actual 'mode of protection' available apart from a piece of paper, or a jail cell.

*The Committee also needs to know that where there are children involved, a woman cannot simply move away for safety, return to family and support, because an application in the Family or Federal Magistrates Court can be made over relocation and she will be ordered back to 'the scene of the crime'.

Insufficient guidance as to 'now what?'

☐ No thorough instruction is given to AVO recipients, or to defendants about how a breach is a criminal matter, and what is needed to 'prove' them. There is no direction from the bench about intervention opportunities (as happens in Forum Sentencing)

There is little assistance about, what is evidence, how to keep contemporaneous records, how to deal with people like police, about how to record events, when a recording device can be used, how to manage telephone harassment, the importance of witnesses, or what to do if and how to effectively record a breach.

☐ in criminal matters where they must appear as a witness, victims need to know that they can get preparation, about getting support at court, about getting debriefing after court and assistance as a victim of crime.

Are all applicants for ADVO given guidance about DV services that can help them understand and recover from this complex, confusing status of a DV victim?

☐ when the court's decision has left them unprotected, because an ADVO was not granted, or the offender has been acquitted, now they have to face Family Court where the Domestic Violence will have disappeared?

Who supports them through that process – which can go for years?

Issue 3. Mediation/ Brokerage. (VOCAL 16/8/2011) This also refers to question 5 on Questions from the Committee.

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 absolutely illogical when compared with the reality that if a case goes to court, especially but not exclusively in a serious criminal matter, the victim has NO LEGAL REPRESENTATIVE, OR RIGHTS, AND IS NOT A PARTY TO PROCEEDINGS AND CAN BE SUBJECTED TO GROSSLY ABUSIVE PRACTICES. Literally, no member of the court is 'on the victim's side' – not police, not the prosecutor.

Example: In my case, an outcome of a serious crime was not only permanent physical damage, a very long legal process with a resulting failure of the system to hold him accountable, the loss of my very successful business, home and complete loss of financial resources.

It made me homeless, in poverty and disabled. Those impacts were serious and affected our children.

The legal system was very prepared to negotiate a deal, criminally, but not one that advantaged me in any way.

I take part in Forum Sentencing where an offender and their supporters meet with the victim and their supporters and community reps to try to repair the harm and prevent reoffending. Since my ex husband had as much to lose financially as I did, I have always believed that a different process may have resulted in a less acrimonious process and we all, both families, may have benefitted.

It would not be for everyone, but it could be an option, PROVIDED the mediator/broker was very skilled in the power differential, I see no reason why a DV victim could not be empowered by such a process. **They certainly will not be empowered by an unsupported and unsuccessful processing through the criminal law.**

It would have to be far cheaper than the court process, and have positive impacts on mental health, homelessness, poverty, relationships, futures and costs to the taxpayer would be significantly less both in the immediate and longer term.

Clearly such a process would need to be court sanctioned, with penalties for non-compliance or further violence. This is just a simple suggestion that could have absolutely changed my life and that of all concerned. The person in the next case agrees completely with me. The criminal system has not served either of us, or plenty more victims of DV.

Unless we can hold perpetrators accountable, what's the point of suffering far more than is created by the impacts from the crime itself?

Issue 4 (VOCAL 16/8/2011) & Question 13 of Questions from the Committee.

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

Example: After a 42 year marriage, a friend/client of mine sought a court Order to go to the premises she jointly owned but had been locked out of, to recover personal items and clothes. I accompanied her part of the way.

{I had been explaining that her relationship included many aspects of Domestic Abuse and escalating threat but in her state of absolute trauma from the shock of the end of her marriage, she found it all very hard to comprehend. She has two degrees and a Masters in Economics, and runs an overseas business, but was TRAUMATISED & REPEATEDLY RETRAUMATISED AS THE MONTHS PASSED.}

An altercation took place and she was injured, with many superficial bruises and gouges to her hands and arms. The couple's sons attended shortly after the incident, saw their father, then advised her to go to the police. She was traumatised, very scared, described threats made to her, and 'didn't want to make things worse'. Anyway, she was flying out of the country the next morning, early, to return to the family business overseas, and had much to do that night. Instead she sent an email and photos that I took, to her lawyer. Unbeknown to her, the husband did go to the police, later that night.

Weeks later she returned to Australia to be awoken by a loud knocking at her hotel door, and police had come to arrest her for a Domestic Violence Assault on her estranged husband, and issued her a copy of the interim AVO. This was the first she knew of any action against her.

She rang me from the police station, very upset, and claimed intimidation about making a statement, from police. She elected to wait for her lawyer.

I rang the Duty Officer, explaining that I had been a witness to part of what happened, that there had been another independent witness during it WHO HAD TRIED TO INTERVENE during the event, ON HER BEHALF, and the two sons had witnessed the parents after the event.

I was transferred to the investigating officer, who said 'You know how it is under the DV legislation, it's a matter of first in best dressed! I asked if they intended to interview myself, the sons or the independent witness and was told 'No, we will leave it to a court to sort out'. I said that that was ridiculous, a waste of taxpayers' money, a complete injustice and tried to explain why that was the wrong process, and why it could not succeed, but he was NOT AT ALL INTERESTED.

I attended the court hearing with her, 'the accused'. The husband appeared, smirking and grinning at his wife, and supported by two women from the Court support scheme. The prosecutor was changed at the last minute and was not at all prepared because he had no time. During his evidence the husband became volatile, abusive toward her, and under cross-examination he made quite a spectacle of himself. He even admitted that the only reason he had gone to police was because he was afraid his wife might so he 'wanted to get in first'.

(He did have evidence of an injury to his eye, an injury that was seen after the event by his sons as no real injury at all, but one that could easily be exaggerated by some self-applied pressure on the delicate skin of an older man's face.)

At 4pm that day, the magistrate had to leave, saying, 'It's a shame I have to go because we could finish this today'. He set a new court date, which meant that in addition to having to fly back to the country again for another court date, live in a hotel, and always terrified of what he might do as the AVO had not been terminated, my friend also had the additional costs of her legal people for a second day.

On the second court day I was called to give evidence. I explained what I had seen and heard, and was able to assist the court in the matter of other witnesses who, like me, had never been spoken to, and some part of my communications with police. I was asked to examine the photos of her injuries at some length.

The prosecution did object but the court was open to my testimony. As the magistrate summed up and began to read his reasons, he came to a part where my friend's testimony had been that her face

had been pushed into the steering wheel, the 'victim' was sitting in the front row, directly before the magistrate, acting as if he was driving a car – hands on the wheel, saying 'brum, brum', glaring at both of us. She has fears he is suffering some type of mental illness, which magnifies her fear.

The assault charge and the AVO were both dismissed against my friend.

The bench made no comment detrimental to the 'victim' despite his fanciful, changing and often ludicrous version, or of his behaviour.

On his way from the courthouse, later, still accompanied by the Prosecutor and the police officer, the 'victim' approached us in order to denigrate us. The fear he'd claimed to have was not in evidence.

May I add that while this matter concerns another unedifying example of the system in progress, I can only imagine what lousy preparation and 'justice' my friend would have received had she gone to police that night, suffering such shock and trauma, to report the assault against her. She would have been the victim with the unprepared prosecutor, so the chances of a successful prosecution under those circumstances, and without interviewing or using the available witnesses, seems remote. The real offender (primary aggressor) would surely, like so many are, have been also found 'not guilty'.

So while I appreciate the police belief that they do properly investigate, unfortunately I have seen too many cases where they do not, and 'leave it to the court to sort out!'

So what happens then? The real victim hands over a lot of money, still does not have an AVO, (the legal advice was 'Oh it would look like a tit-for-tat case') and who does one complain to in order to address the systemic glitches? And who holds the 'alleged victim' accountable for his perjury or behaviour? Answer, no one.

- This client also would prefer properly supported mediation to resolve the end of her 42 year marriage.

The Main event: the elephant in the room.

From a transcript (police service):The Hon. HELEN WESTWOOD: The components of the best practice model are what I am interested in. Perhaps it is a combination of these things or perhaps one is more important than the other, but are we talking about resources, attitude and approach, training or leadership—by leadership I mean within the police command and the criminal justice system? Could you elaborate on that?'

This is a great question to be applied right across the issue 'Domestic violence', not just policing, or after an 'event'. We are talking about exposing it, educating, mapping, whole of government, attitude, approach, resources, training and of course leadership. We are talking academic reform where EVERY faculty, course, educational opportunity treats DV like the scourge it is, to be exposed, understood, recognised, recovered from and eradicated. Of course, that's a big job.

Definitions: Let's get one comprehensive definition of what is DV then look at it like 'holistically'

I'm thinking of it as someone who wanted to produce an ideal, society-changing plan, using a real plant as a metaphor. It could reform our world of escalating DV.

Using the 'perfect plant analogy' in DV, what is its seed, roots, stems, branches, and what does it produce? How does it spread? Are our weeding processes working?

It's a continuum in two ways – where is the behaviour learned, and at what point is intervention possible?

1. What are the seeds?

Where do people learn about behaviour, boundaries, personality types, their own psychology, how to identify and respond to abuse and violence? What leadership and approach and resources can address the issue?

Starting at pre-birth,

Health material about pregnancy. We know now that foetuses are affected by external and internal stress. We know that many women report abuse and actual violence began early in a relationship, or first happening at marriage, pregnancy, at birth or in the months after.

Is this dealt with in literature generally available from pre-marriage literature, GP's Obstetricians, health services.

Is research about abuse and violence openly available, its commonality, and opportunities for more support?

I remember a great ad campaign where a baby was shown, and words about the effect of abuse on a child. Shocking, but effective.

A risk assessment process is fine, but I say many, many women do not recognise behaviour as abuse and violence, will deny it. Relating it directly to the protection of the child might work.

What can then be put in place if a mother notifies that there is danger? Does she risk having Community Services take her child? She is going to need intensive support to comprehend the danger, the impact on the child, and what the future will look like. What financial help can be provided to support her journey?

What is to be done about the abusive father? What mechanisms can be put in place to address his offending behaviour?

Is the Family Court going to be on board with safety first, or is it going to punish the mother for leaving the father, depriving the child of a father?

Roots:

The child lives in a world of others, it has no control. If that child at pre-school or school is exhibiting signs of aggression, or is withdrawn and non-communicative, what is in place?

Who asks about home environment? It is not 'private' if a child is affected. What is the attitude and culture of power and control? Is the child safe at school? On transport?

If DV is recognised, and present in the home, what interventions can be identified, and what comprehensive training do pre-school and school experts get in managing violence/abuse affected children?

What does the law really say about living in a safe, empowering community, or does it really just attempt to mop up the mess?

Are teachers, child care workers, principals, sufficiently aware of Domestic violence, and what it creates? Do they understand the effects of trauma? Do they correlate bullying to learned behaviour?

If the child cannot learn, does anyone identify that a child who is concerned he'll get home to find mum dead isn't going to learn too well?

Do they notice the high achiever who is too afraid to fail? Too afraid to try?

Are school counsellors sufficiently trained?

Is there a community response to assist any of the players?

Is there sibling rivalry with abuse and violence?

Is abuse and violence identified in the school yards?

What remedies exist?

Are teachers and principals sometimes bullies to other staff and the children? Isn't bullying just another way of describing exactly the same power and control based behaviour in a different setting?

If that child is injured or witnesses his mother or siblings (or father) being assaulted, is he identified as 'a victim of Domestic violence?' Who takes care of him?

Stem:

We want to grow strong stems. We want health, we want confidence and we want success from our children. If a child, youth, young person has learned bad behaviours, had a period of victimisation with no healing support, has not been motivated or guided in his development, they are trapped, the stem will be bent out of shape, or terribly twisted. We know this, but still we ignore it so often. Insufficient resources. Child too young to give evidence in an adult court.

Do we ignore it, and the damage we absolutely know will be heaped upon others over time, or do we look at an Inquisitorial or 'truth-seeking legal process system – to handle family matters and the complex DV that cannot and does not fit the adversarial model, except to benefit offenders?

If the child's personality has been damaged by early life experiences, who identifies those and captures the need? Yet we know that early childhood and early adolescence are times of great growth with significant input to life outcomes.

You can see plenty of examples of kids like this, kids out of home, kids living with drugs, alcohol and abuse and violence. Are they DV victims? What strategies are available generally, at whatever stage a need is identified? How good are we at managing multiple diagnoses and issues, like DV, Child abuse, drugs, alcohol and homelessness?

Is a dollar spent on prevention and healing a better spend than \$7 spent later, after an event?

Branches:

The child moves into the world. They want what they want when they want it. They meet and influence others, dominating, infecting, beating, controlling, sharing, loving etc Or they put on

the mask of normality and go onwards into life, blending with others, manipulating to get needs met, until one day, something causes exposure. A DV incident occurs. There's a victim.

Are we confident that these labels applied to teenage offenders and victims are handled 'right' by the systems? I can tell you that I see some young people, but if the statistics mentioned are accurate regarding the increasing numbers affected and 'doing' DV are right, perhaps the Juvenile Justice System can improve on referrals for victims of DV in order to break the cycle and help the victims heal. Clearly the offender also needs interventions to deal with DV, as well as anger and drug and or alcohol issues.

And on into life – partner, home, family, anger, aggression, explosion. 25 times on average until the victim reaches out for support and an AVO. And they encounter the legal processes that will, or won't get them an AVO, will or won't hold the perpetrator accountable, will or won't make the victim safe. Will or won't be successful in protecting children from violence.

Finally, the strategy MUST look at the intersections with state and federal laws. The parliament MUST insist that residents and citizens of NSW are ENTITLED to be treated fairly by Federal courts around victims, children and parenting when one of the parties is a batterer, and that will take coOmprehension, leadership and political guts, from the very top.

I will finish by saying that day-in , day-out, we meet people – victims, families, professionals and the law abiding community who are blissfully ignorant of how the systems do or do not work.

There is such colossal ignorance 'out there' including from many who ought to know.

Strategies will need education, from pre-school, right thru, not just when a child reaches a certain age or point in life. We need clever ad campaigns that show people, all ages and cultures, equally victims and offenders. It needs to be a subject at school, every year, not just a Healthy Harold, a Love Bites, or other – but a core subject, like English. Call it social development.

Please forgive the hurried nature of this additional submission, and I hope you accept that there are many areas where we could do so much better, if we really want to 'address' DV in our communities, not just react late in the day, with a system that fails too many. It is not at all my intention to put down any attempt or strategy to assist, to respond, but it is my role, at the grass roots of people's experience, to make sure the problems, and some solutions, are exposed.

Sincerely

Robyn Cotterell-Jones

Executive Director.

25th March, 2012