

INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND ISSUES IN NSW

Organisation: Inner City Legal Centre

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The Director
Standing Committee on Social Issues
Parliament House
Macquarie St
Sydney NSW 2000
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By email socialissues@parliament.nsw.gov.au

Dear Sir or Madam,

RE: Inquiry into domestic violence trends and issues in NSW

Thank you for the opportunity to contribute to the Legislative Council's inquiry on domestic violence trends and issues in NSW.

This submission is presented on behalf of the Inner City Legal Centre (ICLC) and the Safe Relationships Project (SRP), which is a project of ICLC. The ICLC is a non-profit Community Legal Centre based in Kings Cross. Relevantly, we provide legal advice and assistance for disadvantaged people experiencing Domestic Violence from our catchment area in Family Law, ADVOs and APVOs. The ICLC also provides specialist legal services to anyone in New South Wales who is gay, lesbian, bisexual, transgender, or intersex (GLBTI). The Centre provides a wide range of legal advice, representation and education to GLBTI communities in areas such as family law, domestic violence, homophobic vilification, discrimination and employment. The SRP was established by the ICLC in 2009 to meet the need of GLBTI communities experiencing or escaping domestic violence. The SRP provides a court assistance scheme for people who are GLBTI seeking Apprehended Domestic Violence Orders (ADVOs).

As your Committee will receive other submissions from the Community Legal Sector which will canvass Domestic Violence in the broader NSW community, this submission will focus largely on Domestic Violence in GLBTI relationships.

Background: Domestic Violence in GLBTI relationships

In 2010 the Australian Domestic and Family Violence Clearinghouse released a Special Collection of research and resources on domestic and family violence in same sex relationships^[1]. The summary of findings included that:

- *Domestic and family violence occurs at relatively the same rate in same-sex relationships as in heterosexual relationships;*

¹ <http://www.adfvc.unsw.edu.au/specialcollectionssamesex.htm>

- *Same sex victims may experience the same forms of relationship abuse;*
- *they may also be subject to additional threats and abuse related to their chosen sexuality or gender, such as ‘outing’ to family, friends and others; and*
- *they may experience specific challenges around help seeking such as combating homophobia and a lack of services.*

Research for the Inner City Legal Centre’s 2011 *Outing Injustice Report* (yet to be published) showed that up to 29.9% of GLTBI people who had been in relationships within the last three years may have experienced some form of domestic violence.

We address the specific Terms of Reference below;

1. Strategies to reduce breaches and improve compliance with ADVOs, including:

a) the use of GPS bracelets

ICLC and the SRP are uncertain about the use of GPS bracelets to improve compliance with ADVOs.

If the use of GPS bracelets were to be a requirement of an ADVO, it is possible that Magistrates may be less inclined to grant ADVOs as it would have a significant effect on a defendant’s liberty.

We further note the significant resources that would be required for the training and implementation of the policing of perpetrators. We would need to see more details about the proposed scheme particularly around the practicalities of police and compliance. In general terms, ICLC supports the submissions made by Women’s Legal Services in relation to this issue.

b) whether existing penalties for domestic violence are adequate

In NSW there is no specific crime of domestic violence. An act of domestic violence is dealt with under criminal law, and any breaches of criminal law carry the same penalties whether it is domestic violence or whether it is a crime committed by a stranger. The *Crimes (Domestic and Personal Violence) Act* also includes penalties for stalking and intimidation and again the penalties for domestic violence offences are indistinguishable from personal violence offences.

Records identifying the crime as domestic violence are not adequately kept. This is reflected in the judicial commission reports, where the majority of prosecutions for ‘stalking and intimidation’ do not distinguish between domestic and personal violence orders and are marked as ‘unknown’. As specific records are not reliably kept we are only able to report on anecdotal evidence from our own practice, and the information we have access to through our participation in domestic violence committees and networks.

In our practice we have seen instances of clients who have been granted an ADVO for their protection but criminal prosecution for the crime that triggered the ADVO has not been progressed. In our view, it is important that there are clear policies in place that state that family law proceedings or ADVO applications are not substitutes for criminal investigation of assault or other forms of violence dealt with under the *Crimes Act* or the *Crimes (Domestic and Personal Violence) Act*. When a person has been a victim of domestic violence and contacts the police, clear procedures that include both applying for an ADVO for the victim and investigating the criminal offence that is the subject of the AVO need to be followed. The dual focus is paramount for access to justice for victims of domestic violence.

In section 21A(2) of the *Crimes (Sentencing Procedure) Act* 1999 (“the Act”), domestic violence is not included as an aggravated factor to be taken into account when determining the appropriate sentence for an offence.

In South Australia the courts have recognised that domestic violence needs to be taken into an account as an aggravating factor when sentencing sentencing.

As Gray J observed in *Wilkinson* [2]:

Domestic violence is predominantly directed by men toward women. The community expects the law to protect women, to protect the weak from the strong, and to protect the vulnerable from the oppressor. These are factors that have led courts to treat crimes involving domestic violence as grave crimes. Parliament has enacted laws designed to provide protection to those subjected to domestic violence. Parliament has recognised that crimes involving violence and assault may be aggravated by a domestic violence situation.

The sentencing Judge took a very serious view of the defendant’s criminal conduct. He was right to do so. The defendant engaged in a course of domestic violence extending over a period of more than 12 months in which he bullied, victimised and brutalised his young partner. He continued to engage in acts of domestic violence notwithstanding the attempts of KS to seek police protection, notwithstanding the terms of bail, notwithstanding his arrest and being charged with the May 2006 offences and notwithstanding KS’s pleas that he stop his violent conduct. These circumstances called for a sentence that would operate to personally deter the defendant from further similar conduct. He had not been deterred by earlier warnings. The need for general deterrence also called for particular attention. Parliament, through the amendments to the *Criminal Law Consolidation Act* making assault within a de facto relationship an aggravating factor, has drawn attention to the seriousness with which such conduct is viewed. The Courts have a responsibility to give effect to these considerations.

The capacity of an offender to diminish an offence because they had a relationship with the victim would be removed if domestic violence were listed as an aggravating factor on the list in the Act.

The Act would require a definition of domestic violence to be included. There are already workable definitions of domestic violence in other legislation, particularly, the *Crimes (Domestic & Personal Violence) Act* which defines a *Domestic Violence Offence*.

Recommendation 1:

Add “domestic violence” as an aggravating factor in section 21A(2) of the *Crimes (Sentencing Procedure) Act* 1999

2. Early intervention strategies to prevent domestic violence:

Domestic Violence Awareness

Research conducted on same-sex domestic violence supports the need for raising awareness as a first step to reducing domestic violence in GLBTI communities.

Most mainstream material used to raise awareness of domestic and family violence identifies relationship abuse as primarily a gendered issue, with the male partner the aggressor and the female partner the victim.

For example, in the 2007 Anti Domestic Violence initiative, a specific message was “To Violence Against Women, Australia says No”. An unintended impact of media campaigns such as these is that other groups experiencing domestic violence remain largely invisible [3]. People in abusive GLBTI relationships may not even be aware that they are in a domestic violence situation or that they can seek assistance from government agencies or the police.

Research conducted for ICLC’s *Outing Injustice Report* showed that GLBTI people who experienced Domestic abuse sometimes did not realize that what they were experiencing was, in fact, domestic violence. Anonymous comments from survey participants included:

“It took me three years to work out that it wasn’t okay, because I didn’t think a woman would abuse another woman.”

“I did not report it at the time because I wasn’t sure it was ‘really’ abuse because we were same-sex. I also felt like I would not be believed or would be mocked by law enforcement and that I would not be taken seriously. At the time I wanted to call a women’s refuge to get away from my abusive partner but I felt those services would not apply to me, that they were heterosexual women only.”

Recommendation 2:

Include GLTBI relationships in all domestic violence awareness raising initiatives.

The *Writing Themselves in 3* [4] report showed that more than one third of young people realized their sexual difference before puberty. We suggest that sexuality & gender questioning young people need to have access to positive images of what safe GLBTI relationships look like.

The report also found that 61% of young people reported verbal abuse because of homophobia, and 18% of young people reported physical abuse because of homophobia. The report noted that many young GLBTI people accept harassment and violence as part of their everyday life. If violence and abuse are viewed as “normal” occurrences in the lives of young GLBTI people, then understanding what is and what is not acceptable behaviour and identifying forms of abusive behaviours in intimate relationships can be extremely difficult for young GLBTI people.

GLBTI young people are also vulnerable and at risk of abuse at home. In the *Writing Themselves in 3* report, 24% of young people who were abused, suffered abuse at home. This was often by parents, some experiencing verbal abuse and others physical.

The Internet is an important tool for young GLBTI people to communicate with others and find an accepting community. From Dr Hillier’s report:

“I followed a lot of gay people on you tube who had gone through, or were going through the same thing as me, which helped define what being gay meant in my mind, erasing the stereotypes, and helped me

3 Jeffries, S., Ball. (2008) *Male Same-Sex Intimate Partner Violence: A Descriptive Review and Call for Further Research*. Murdoch University Electronic Journal of Law, vol15, no. 1. Pg 135

4 Hillier L, Jones T, Monagle M, Overton N, Gahan L, Blackman J and Mitchell A (2010) *Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people* Australian Research Centre in Sex, Health and Society, La Trobe University

relate in a way that let me admit to myself that I am the same as these people, and they're ok, so I must be okay too...Relationships for same sex couples were never addressed throughout school, and I had no friends I could talk to about this. Online forums allowed me to interact with other gay males of a similar age for the first time, seek support, learn about what it meant to be gay, and once again provided me with an education in areas of social life, relationships, and sex-ed that simply weren't addressed while straight relationships and issues were being discussed in the classroom and the play ground at school".

(Sally's Story, 21 years)

The ICLC supports early intervention through school programs and social media which would allow GLBTI young people to develop healthy attitudes about relationships, which would assist them, their parents, educators and peers in identifying those at risk of, or who are, experiencing domestic abuse.

Recommendation 3:

The implementation of GLBTI diversity programs such as 'Proud Schools' in all schools across NSW.

The development and implementation of healthy and respectful relationship programs in schools, that are inclusive of GLBTI relationships.

Recommendation 4:

The promotion of positive images of healthy and respectful GLTBI relationships, through social media and other online initiatives.

3. The increase in women being proceeded against by Police for Domestic violence related assaults

The ICLC refers to & supports the submission of Women's Legal Services .

4. Any other relevant matter

Service Delivery

A main issue for GLTBI people is service delivery, and the understanding of the dynamics of domestic violence within GLBTI relationships.

As a domestic violence service provider, some of the challenges that we encounter when responding to GLTBI domestic violence include:

- Gendered language around domestic violence;
- Lack of community awareness of domestic violence;
- homophobia and discrimination, affecting GLBTI victims of domestic violence to access formal and informal supports;
- Lack of service provider awareness of GLTBI domestic violence and consequential gaps in policies and procedures to assist staff to identify and address GLBTI domestic violence;
- A lack of formal education and training for police (and other service providers) to respond to GLBTI domestic violence;

- Difficulty in accessing counselling and advocacy services that address the needs of GLTBI domestic violence victims and perpetrators;
- No emergency housing accommodation for gay men;
- Difficulty in accessing appropriate services in rural, regional and remote areas.

Recommendation 5:

ICLC supports the recommendations from ACON's 2011 'One Size Does Not Fit All' Report - Available on ACON website.

Rehabilitation and Counselling

The ICLC and SRP have often encountered situations where both parties in an ADVO matter would be better served by other orders, such as attending alcohol rehabilitation and anger management counselling, either instead of, or as well as the protection orders. The current ADVO & APVO regime is effectively based on making orders restraining conduct, it does not allow Magistrates to make positive orders, requiring specific conduct to be undertaken.

Recommendation 6:

ADVO's to include conditions imposed on persons requiring them to attend rehabilitation or counselling programs, where it is suitable to do so.

Free calls from mobiles to 1800/1300/13 numbers

ICLC and SRP are supporters of the Fair Calls for All campaign - a campaign to telecommunication providers to enable 1800, 1300 and 13 mobile calls at the same rates as a call from a landline to ensure people can access important services, particularly domestic violence services from their mobile.

Recommendation 7:

ICLC supports the Australian Communications Consumer Action Network campaign for free / cheap fixed-cost calls from mobiles to 1800/1300/13 numbers.

Please contact me on _____ should you wish to discuss any aspects of this submission.

Yours faithfully
INNER CITY LEGAL CENTRE

Rosslyn Mayne
 (Principal Solicitor)