

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

Organisation: Women's Domestic Violence Court Advocacy Network Inc
Date received: 16/09/2011



Women's Domestic Violence
Court Advocacy Service Network Inc

***Response to the NSW Legislative
Council Standing Committee on Social
Issues inquiry into domestic violence
trends and issues in NSW***

Julie Hourigan Ruse
Executive Officer

15 September 2011

About the WDV CAS Network

Established in 1996, the Women's Domestic Violence Court Advocacy Service (WDVCAS) Network Inc is the peak body for women and their children experiencing domestic violence who require legal protection from the courts. The WDV CAS Network is an incorporated association comprising representatives from 28 individual WDV CAS¹ that operate in 108 local courts throughout metropolitan, regional and rural New South Wales.

In 2010, the 28 WDV CAS provided services to female clients in 56,770 domestic and family violence related matters. 18,060 of these clients had children under the age of 16. Referrals were made for family law advice in 1,462 service events.

The principle aim of each WDV CAS is to assist women and their children who are experiencing domestic violence to obtain legal protection, in the form of Apprehended Domestic Violence Orders. Assistance and referrals are also provided to address interconnected legal and social needs such as housing, family law, victims' compensation and counselling. Some WDV CAS also have specialist workers to help Aboriginal women, and women from culturally and linguistically diverse (CALD) backgrounds.

The role of the WDV CAS Network is to:

- advocate on behalf of WDV CAS clients to improve service delivery across the State;
- collaborate and consult with relevant government agencies and community organisations; as well as
- formulate recommendations for legal policy reform.

The WDV CAS Network meets quarterly to exchange information, develop working parties, and discuss social, legal and procedural issues impacting on their services. In identifying and discussing systemic issues and developing strategies to address these issues, the WDV CAS Network acts as a strong advocate for legal and social policy reform for women and their children experiencing domestic violence.

¹ Blue Mountains, Burwood, Central Coast, Central West, Far South Coast, Far West, Hunter, Hunter Valley, Illawarra, Macarthur, Macquarie, Mid-North Coast, New England, North Coast, North West, North West Sydney, Northern Rivers, Northern Sydney, Riverina, South Coast, South Eastern, South West Sydney, Southern, Southern Sydney, Sydney, Wagga Wagga, Western, Western Sydney

Introduction

The WDV CAS Network appreciates the opportunity to respond to the NSW Legislative Council Standing Committee on Social Issues inquiry into domestic violence trends and issues.

As the peak body in NSW representing women and children to access Apprehended Domestic Violence Orders (ADVOs) through the local court system, our direct experience over 15 years makes the WDV CAS Network well placed to comment on the terms of reference for this inquiry.

Strategies to reduce breaches and improve compliance with ADVOs

The use of GPS bracelets

In the WDV CAS Network's experience, the primary outcome that women who have experienced domestic violence want is to feel safe. While the use of GPS bracelets may help to deliver that outcome for some women and children, the WDV CAS Network has a number of concerns about expanding the use of GPS bracelets to include perpetrators of domestic violence, including:

- what would be the threshold test for a Magistrate to consider when deciding whether a GPS bracelet is an appropriate penalty;
- at what point would a GPS bracelet be imposed? Could a GPS bracelet be considered where criminal charges are pending, or only at the finalisation of criminal proceedings;
- would monitoring a GPS bracelet remove the onus from the victim to report a breach of an ADVO;
- who would monitor the perpetrators wearing a GPS bracelet;
- what would be the response if there were a breach of an ADVO; and
- what is the consequence of breach by a GPS bracelet wearer.

Nationally and internationally, there is currently very limited independent and credible research data that supports (or not) the effectiveness of GPS bracelets as a sanction or deterrent, and the WDV CAS Network would be wary of large scale implementation of GPS bracelets in New South Wales that does not come from a strong evidence base.

It is acknowledged that there may be some benefits in using a GPS bracelet to monitor a perpetrator's compliance with an ADVO. For example, if an ADVO includes orders placing a restriction on contact and imposing an exclusion zone, then records provided from monitoring of a GPS bracelet could provide evidence that a perpetrator has breached the ADVO without the victim specifically needing to report the breach. For women who are reluctant to report a breach because of fear of further violence or other retribution, this would be a positive outcome.

Even though the GPS bracelet may not in itself prevent unwanted phone calls, postings on social media, or constant driving past the house, it could provide the irrefutable evidence to secure a conviction of the breach, which might otherwise be very difficult for the police or victim to obtain.

Of particular concern to the WDV CAS Network is the threshold test that a Magistrate would need to consider when deciding whether a GPS bracelet is an appropriate penalty. At moment, a GPS bracelet is used in criminal matters where a term of

imprisonment could be applied but supervision in the community using a GPS bracelet is considered an appropriate alternate penalty.

In the WDV CAS Network's experience, a GPS bracelet will not deter many perpetrators who are likely to breach an ADVO. Further, the WDV CAS Network is not convinced that the police response to incidents of domestic violence would be any faster (particularly in regional and remote New South Wales) because the perpetrator was wearing a GPS bracelet.

Given that terms of imprisonment are only imposed in matters at the more serious end of the criminal scale, or for high repeat offenders as a last resort, the WDV CAS Network is very concerned that a GPS bracelet may be considered an appropriate alternate sentence in domestic violence matters. The WDV CAS Network asserts that for serious offences or high repeat offenders, a term of imprisonment is the appropriate penalty to ensure the safety of the women and children, and Magistrates should not have the discretion to apply an alternative.

However, the WDV CAS Network would welcome further consultation on the use of GPS bracelets in domestic violence matters and, in the considered circumstances, would support a limited trial of GPS bracelets as a way of measuring their effectiveness.

Whether existing penalties for domestic violence are adequate

ADVO conditions

It is important that any myths around an ADVO are dispelled before the matter is listed in court for the first time. A lack of understanding by the perpetrator of the power of an ADVO, and the possible consequences of breach, are likely causes of some perpetrators failing to comply with the conditions imposed by the court, even if the final orders in the ADVO were granted by consent.

The WDV CAS Network acknowledges the work undertaken by Legal Aid in conducting information sessions at court for perpetrators on: the legal nature of an ADVO (that is, an ADVO is a civil not a criminal law matter); the different conditions that can be ordered, and the practical implication of those conditions; and that a breach of an ADVO is a criminal offence (unlike the original ADVO itself).

The WDV CAS Network suggests that this is a critical step in the ADVO process as it can remove some of the uncertainty about what each of the conditions of an ADVO mean, and the reality of what may constitute a breach of those conditions.

Penalties

The WDV CAS Network considers that the existing penalties available in domestic violence are adequate, but is concerned that Magistrates are not sentencing perpetrators with the strong penalties available, or are not applying penalties consistently. Domestic violence is a crime that should never be tolerated.

Case study:

Whilst intoxicated, the perpetrator said, "I'm going to smash your head in" to the victim. When he moved close to her, the victim turned her head to prevent the hit contacting her face and she was punched in the head.

The perpetrator received a 12-month good behaviour bond for the assault, a \$100 fine and an ADVO with conditions 1 and 10 (the defendant must not approach the

protected person or any such premises or place at which the protected person from time to time reside or work whilst affected by intoxicating liquor or drugs.)

The victim phoned the police on a second incident when the perpetrator was at her house in an extremely intoxicated state. He had been drinking all day when he started to get abusive, so the client phoned the police. The perpetrator was obviously intoxicated when the police arrived.

The defendant received only a \$200 fine for breaching the ADVO. The police and victim were astonished and disappointed with this penalty given the history of the defendant.

The WDV CAS Network understands the criminal law process, the scale of penalties that apply in criminal matters in New South Wales local courts, and agrees that the penalty should be proportionate to the crime. However, in domestic violence matters, the WDV CAS Network asserts that some of the lesser penalties should not be available in domestic violence matters if the perpetrator and community are to fully recognise that domestic violence is a crime that will not be tolerated.

It is not uncommon for a fine to be imposed as the penalty. However, a fine can have unintended consequences for the victim. Often the women and children rely on the perpetrator for access to money. The WDV CAS Network has often supported women who have reported that they have been “punished” by having money for food and other essentials withheld from them by the perpetrator because he has had to pay a court ordered fine.

Plea-bargaining

Due to resource constraints, the WDV CAS Network has very limited capacity to assist women and children at hearings to provide support and legal information. Therefore, many victims attend court hearings with no independent professional support. While the WDV CAS Network accepts the role of plea-bargaining generally in the justice system, in matters of domestic violence many victims tell us that they were either not consulted or felt coerced to accept the outcome of plea-bargaining.

Case study:

A woman was the victim of domestic violence resulting in a police initiated ADVO and charges for indecent assault. The prosecutor did not speak with the victim before the hearing to explain the process or the implications of negotiations outside the court to which the victim was not a party. The perpetrator pleaded guilty to the lesser charge of assault occasioning actual bodily harm and was sentenced under section 10 of the Crimes (Sentencing Procedure) Act receiving a good behaviour bond.

Case study:

A woman punched her male friend and occasional lover in the eye causing it to bruise. The male friend was at court supporting the client and told the police that he did not want the matter to go ahead because it was a one off incident and he was not in fear.

The female defendant accepted responsibility from the start, demonstrated a lot of remorse and pleaded guilty at first mention to the original charge. She did not have a prior criminal record and received the sentence of \$500 fine (which she could not afford to pay) and a two-year good behaviour bond.

At the same court in a different matter:

The female victim's statement regarding the domestic violence incident that went to court was that the perpetrator threw her over a ground floor balcony after an argument, causing her to break her shoulder. Her bone was exposed through her skin. She had an operation resulting in extensive scars on her shoulder and was in hospital for almost a week.

The statement said that the argument broke out after she found naked pictures of herself on the computer that the perpetrator had taken when she was asleep without her knowledge or consent. The victim said that she had been living in fear and isolation for approximately one year.

The police initially only charged the perpetrator with common assault. After advocacy from WDV CAS, the prosecution changed the charge to assault occasioning actual bodily harm. On the day of the hearing, the defense proposed that the perpetrator would plead guilty to common assault but not to actual bodily harm. After a lot of consideration by the victim regarding her strength to be cross-examined, she agreed to the perpetrator pleading of guilty to the lesser charge of common assault.

When making submissions on sentencing, it was claimed that the assault was minor and explained male defendant did not have a criminal record. The Magistrate decided to record no conviction.

Beyond the local court, pleading guilty and being sentenced for lesser charges are intrinsic to Family Court proceedings, particularly where children are involved. Local court transcripts of hearings are admissible in the Family Court. By pleading guilty to a lesser charge, the perpetrator can avoid a hearing, and therefore avoid having police and other evidence of the original domestic violence incident being introduced into the Family Court. This can have dire consequences in terms of the formal orders put in place for access to the children of the relationship.

Interim orders

It is becoming more common for Magistrates to extend the application of an interim ADVO to see if another incident happens, rather than making a final ADVO. The WDV CAS Network supports this decision in some limited and specific instances, for example, where both the victim and perpetrator are children. However, the WDV CAS Network does not support this as the general course of action. Extending an interim ADVO has the implication of: allowing the perpetrator to retain possession of a gun; to remain on the tenancy agreement; to have no employment restrictions (such as working with children); and has immigration implications.

The WDV CAS Network strongly asserts that the safety of women and children should always be paramount and interim ADVOs should only be extended in very limited and specific circumstances.

Training

The WDV CAS Network has a strong relationship with the NSW Police Domestic Violence Liaison Officers (DVLO) across the State. However, the WDV CAS Network is aware of some general duties officers who, when a ADVO breach is reported, have failed to properly investigate and pursue the breach because they consider it a "minor breach" or a "technical breach". This inadequate response causes victims to question the point of the ADVO as a practical means of protection, discourages

victims from reporting a breach of an ADVO; and entrenches the cycle of domestic violence.

Case study:

In one WDVCS region, DVLOs encouraged victims sign written agreements regarding contact arrangements regardless of whether she has sought family law advice or not. Victims have told WDVCS that they felt pressured to sign the agreements in order to get an ADVO and they were not always comfortable with those arrangements. The matter was been taken up with the Local Area Commander who advised that the practice would stop.

The WDVCS Network strongly asserts that regular training on domestic violence from a gendered perspective should be compulsory for all police officers, Magistrates and prosecutors.

Early intervention strategies to prevent domestic violence

The WDVCS Network is disappointed that there are so few effective early intervention strategies to prevent domestic violence. School programs, such as, *LOVE BITES* and *No Excuse*, provide targeted education against bullying and domestic violence and should be encouraged and expanded across the education system.

“LOVE BITES is a school-based program founded on evidence which shows that school-based strategies can lessen perpetration and victimisation of relationship violence. Schools are a positive site from which to run prevention education as they increase the accessibility of programs allowing the material to be integrated within the curriculum and the systems of the school. These programs also lend support to existing violence prevention initiatives that are operating in classrooms. It is also of benefit that schools run welfare departments which combine primary, secondary and tertiary prevention activities therefore providing holistic support to young people.”²

The WDVCS Network asserts that early intervention strategies are vital to breaking the intergenerational cycle of domestic violence, but is cautious that strategies must be culturally sensitive and from a gendered perspective.

The increase in women being proceeded against by police for domestic violence related assault

Women who are the defendants in domestic violence related assault matters often have a long history as a victim of violence or trauma (or both). In the WDVCS Network's experience, a woman will suffer years of domestic violence in silence but, in a single act of self defense or retaliation against the perpetrator, will find herself immersed in the criminal justice system having to defend an ADVO and criminal charges.

The WDVCS Network strongly contends that domestic violence is a gendered issue and is alarmed that our service in the Cootamundra Local Area Command reports that approximately 40% of ADVO applications are made by men.

² NAPCAN, <www.napcan.org.au/programs/love-bites/uj>, at 8 September 2011

This needs to be balanced against situations where both the victim and perpetrator are female (likely to be sisters, or mother and daughter).

In the WDVCS Network's experience, a woman defendant is more likely to be young, be from a CALD background, or have a mental illness. These added vulnerabilities make their interaction with the criminal justice system even more difficult and unbalanced.

Case study:

The parties have been married for nine years and have three children. The woman was born in Thailand and has no family in Australia.

The wife found out her husband had been having an affair with a family friend. She confronted him and said she wanted a divorce and the discussion escalated into an argument. She then became very upset and later that day cut up family photos and damaged the frames.

The husband has become enraged and grabbed our client by her arms and pushed her into the wall. He has lifted the dining chair over his head and slammed the chair into the floor and breaking it.

Police attended the property and instigated ADVOs and charges against both parties. The wife was charged with malicious damage.

A woman defendant supported by the WDVCS Network is more likely to "want it all over and done with" and will plead guilty to criminal charges on the first occasion that the matter is before the court rather than take the time to get legal advice, attempt to plea bargain or prolong the matter by pursuing it to a hearing. This is compounded by the fact that a woman may not have had access to relevant support at all times, such as, an interpreter attending the premises with Police after the domestic violence incident.

The WDVCS Network is extremely concerned that police officers are actively pursuing women as defendants in domestic violence matters without thoroughly investigating the circumstances leading up to the incident and the history of violence experienced by the women and children.