

WESTERN REGION DOMESTIC VIOLENCE COLLECTIVE

C/o P O Box 1246
Dubbo NSW 2830

Telephone 02 68841688
Fax 02 68840190

RECEIVED
12 AUG 2002

BY: *G. B. Gould*

Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA
ACT 2600

25.7.02

Submission to Inquiry on

Crime in the Community: victims, offenders and fear of crime.

The following submission has been prepared by members of the Western Region Domestic Violence Collective. It is primarily concerned with the effects of domestic violence on the community and government and non-government organisations. Intervention and prevention strategies which increase the safety of women and children and hold perpetrators accountable for their violence are raised in this submission. It is understood that some of the matters discussed in this submission are subject to State legislation and others to Federal legislation.

1. Types of Crimes committed against Australians

It is important to note that domestic violence is a crime, that the majority of victims (97%) are women and children. While the inquiry information mentions assault, the attitude persists that domestic violence is not included in this category. In the minds of many, responsibility for the violence rests with the victims. Domestic Violence is the unacknowledged or hidden crime.

2. Perpetrators of Crime and Motives

Overwhelmingly (95%) the perpetrators of domestic violence are male and the motive is power over and control of other human beings.

The risk factors outlined in the terms of reference that place someone at a higher risk of engaging in crime, are not entirely relevant when considering perpetrators of domestic violence. There are statistics indicating that a person who experience domestic violence in the familial environment as a child is likely to become a perpetrator as an adult. In some cases this is true, however, in a significant number of cases it is not so.

Domestic violence perpetrators and victims are represented in all cultural and socio-economic groups.

3. Fear in the Community

Many women and children who have experienced domestic violence remain fearful of further violence. In some cases, domestic violence experiences lead to Post-traumatic stress Disorder.

4. The Impact of being a Victim of Crime and Fear of Crime

Victims of domestic violence and sexual assault experience a myriad of impacts - shame, loss and grief, loss of self-esteem, depression, anxiety, constant fear and hypervigilance, inability to form quality personal relationships, inability to process information (a major impact for children), truancy, juvenile suicide, self harm, homelessness, substance abuse, vandalism and other anti-social behaviours.

Children as victims of domestic violence

As can be seen above, children are profoundly affected by domestic violence, however their experiences are not being adequately addressed by the existing legislation, legal practitioners or the judiciary. There is a widely held, but erroneous, belief amongst Family Law practitioners that women apply for Apprehended Domestic Violence Orders to "make things better for them in the Family Court" and to prevent contact with the Father.

When relationships break down, parties seek orders regarding residency and contact of the children of the relationship. The Family Law Act (FLA) provides that decisions regarding residency and contact orders are based on what is in the best interests of the child. The FLA has a presumption that

it is considered in the best interests of the child to have a relationship with both parents. However (especially since the FLA amendments 1995), where there is domestic violence and allegations of child sexual assault, this presumption has put children in further and continuing danger of harm. It is understood that the court needs to be shown strong, clear evidence of such allegations, but in many cases this evidence is minimised or completely disregarded. Although a Child Advocate is appointed in some of these cases, he never meets or talks with the children so their experiences and wishes are never presented as direct evidence. The Mother is vilified as being manipulative, unco-operative, irrational and unreasonable.

The result is that the Family Court makes inappropriate, unsupervised contact orders where the children are afraid of the offending parent.

Legislative and procedural change needs to occur to ensure that children are not put in further danger.

- That a child representative be appointed where application for residency and contact has been made and domestic violence has occurred.
- That the child representative provides direct evidence from the children to the Family Court so that the impact of domestic violence on the children can be accurately assessed by the court.
- That presumption of right of contact with both parents be removed where domestic violence has occurred and that contact be dependent upon continuing participation in a domestic abuse programme by the perpetrator.
- That any contact is supervised where domestic violence has occurred or child sexual assault allegations have been made.
- That interim residency and contact orders be included in interim Apprehended Domestic Violence Orders.

It is submitted that if the above legislative changes were implemented, that child representatives and supervised centres would be more appropriately accessed and that ongoing safety of victims of domestic violence would greatly increase.

5. Strategies to support Victims and reduce crime

The following submission is based on the Pittsburgh model of how police handle incidents of domestic violence.

Domestic violence incidents involving police are treated as a crime scene. Police need to take this approach so that the police are in charge of the action that is to be taken against the perpetrator. Presently too much discretion on whether to charge the perpetrator is placed with the victim. The victim should not have to take responsibility for charging the perpetrator. The standard of evidence obtained by police at scenes of domestic violence incidents, applicants would be greatly assisted in to satisfying magistrates that they have reasonable grounds to fear. Where breaches occur and standard of proof is beyond reasonable grounds, victims often have to work very hard to collect and provide evidence to the police for any charges to be brought.

6. Apprehension rates

In circumstances where an Apprehended Domestic Violence Order exists, breaches of the conditions contained therein constitute a criminal offence. However, police often ignore reports of breaches, resulting in a failure to apprehend perpetrators of this crime. Because police often do not take action in relation to breaches, reducing the effectiveness of Orders, reporting does not occur and faith in the system becomes non-existent. This increases danger for victims of domestic violence and the seriousness and incidents of breaches increases. Again, domestic violence and the legislative provisions around domestic violence are not taken seriously, and therefore result in low apprehension of perpetrators of domestic violence.

7. Effectiveness of sentencing

Culturally specific sentencing.

If sentencing of domestic violence perpetrators is to be effective it needs to focus, as should all criminal sentencing, on rehabilitation and education of offenders, Sentencing also needs to account for the cultural differences that exist between European concepts of sentencing offenders, and the theories around Aboriginal people and how they view sentencing.

For, example, Aboriginal women, who are victims of domestic violence, do not want violent partners to be imprisoned. Given the information regarding the experience of Aboriginal males in custody, this is not surprising. Sentencing an Aboriginal offender to a fail sentence, is therefore not productive for either the victim or perpetrator.

A more culturally appropriate strategy (and more acceptable to Aboriginal women) is for perpetrators to be removed to premises other than jail to be mentored and 'talked down' by other Aboriginal men.

Sentencing options in general

It is generally acknowledged that the current penal system does little to encourage rehabilitation of offenders, and its main function is that of a punitive nature.

Sentencing of domestic violence offenders therefore does little to alleviate the problem at the foundation level, with the possibility that most domestic violence offenders would re-offend.

It is therefore proposed that sentencing of domestic violence offenders involve the attendance of rehabilitation or counselling sessions, prior to sentencing. For example, if a person is found guilty of committing a domestic violence offence, then part of their sentence (perhaps all depending on the nature of the incident) would be to direct the offender to a programme for perpetrators of domestic violence. If the offender failed to attend a session, then the offender would have to serve the penal sentence instead.

The result would that perpetrators of domestic violence receive some assistance to cease being criminals, and the incidence of domestic violence would be reduced. It would also result in sentencing being effective in reducing the crime of domestic violence rather than simply punishing the offender each time they commit the offence.

8. Community safety and policing

Many members of the community, service providers included, think that domestic violence is a relationship problem, a 'private' problem. There needs to be much community education to raise awareness that domestic violence is a crime. Legislation and policing need to acknowledge the seriousness of this crime and the community in general should be encouraged to report incidents when they occur.