



Domestic Violence Advocacy Service

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The Committee Secretary
House of Representatives Standing Committee
on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam,

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

We refer to the above inquiry.

Please find enclosed the submissions of the Domestic Violence Advocacy in response to the inquiry.

Yours faithfully,

Libby Goss
Principal Solicitor
Domestic Violence Advocacy Service
Encl: Submissions.

**Domestic Violence Advocacy Service
Submissions to the
House of Representatives
Standing Committee on Legal and Constitutional Affairs**

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

The Domestic Violence Advocacy Service (DVAS) is a community legal centre for women in NSW. The DVAS provides the following services:

- legal representation in Sydney metropolitan local courts;
- telephone advice line service to callers throughout NSW;
- community legal education;
- policy work; and,
- contributions to law reform.

The DVAS also auspices the Women's Domestic Violence Court Assistance Program's Training and Resource Unit which provides training and resources to the 33 Women's Domestic Violence Court Assistance Schemes located throughout New South Wales.

In the year 2001/02, solicitors from the DVAS represented women in 863 Apprehended Violence Order (AVO) matters and provided telephone advice and information to 1986 callers¹, the majority of whom were women with children. The DVAS has been providing these services for the past 16 years.

The DVAS has a detailed knowledge of the fears of women experiencing domestic violence. To obtain an Apprehended Domestic Violence Order (ADVO) in NSW, the court must be satisfied on the balance of probabilities that the complainant has reasonable grounds to fear and in fact fears the commission by a person with whom they have a domestic relationship of a personal violence offence against them; or conduct amounting to harassment, molestation, intimidation, and/or stalking - being conduct sufficient in the court's opinion in the making of the order². Our clients inform us, on a daily basis, of the fears they hold for their safety. The following case histories are just some examples of the violence our clients experience.

¹ Women's Legal Resources Ltd, *Annual Report 2001-2002: incorporating Domestic Violence Advocacy Service and Women Legal Resources Centre*, Sydney: Women's Legal Resources Ltd, 2002, at 23.

² Section 562AE, Crimes Act 1900 (NSW).

CASE HISTORY A

The defendant, Mr A, went to the home of our client, Ms A, for a contact visit with their young children in August 2002. He began to argue with Ms A and broke her phone before throwing it out. Then in the presence of their children, Mr A head-butted Ms A and threatened, "I might as well rape you". Ms A attempted to regain her balance but he head-butted her again. Ms A went to the Chamber Magistrate at the Local Court to apply for an AVO for her safety. We subsequently provided legal advice and representation to Ms A, and the Court made final orders, by consent.

CASE HISTORY B

Mr B was the nephew of Ms B. He had assaulted her on a number of occasions by punching and kicking her. He had also demanded money from Ms B and her brother on many occasions. Mr B had threatened to bash Ms B and her brother if they went to the Police. Ms B applied for an AVO and our Service represented her at Court in July 2002. Mr B had been served with the complaint and summons but he did not attend court. The Court made an AVO against Mr B for a period of 2 years.

CASE HISTORY C

The defendant, Mr C, was the brother in law of Ms F. He had assaulted his wife (Ms F's sister) on several occasions. Mr C had also been threatening his wife on a daily basis, saying things such as, "I'll kill you. If you go to your sister for help, I will kill her and her children". Mr C had also threatened Ms F. Ms F went to the Chamber Magistrate at the Local Court to apply for an AVO for her safety. Our Service assisted Ms F at the mention of the matter before the Court, and referred Ms F to a private solicitor for the hearing.

CASE HISTORY D

Mr D was the son of Ms D. Ms D previously had a restraining order against Mr D which he had breached. In the past year Mr D had kicked and thrown Ms D against a wall and held a knife to her. He had also broken into her premises and stolen property in March 2002. Ms D applied for an AVO and the Court made an AVO for her protection.

The DVAS welcomes this opportunity to provide the following submissions to the House of Representatives Standing Committee on Legal and Constitutional Affairs *Inquiry into Crime in the Community: victims, offenders, and fear of crime*.

(a) The types of crimes committed against Australians

Domestic violence is an abuse of power perpetrated mainly by men against women to physically and/or psychologically dominate and control women, in a relationship or after separation³. The National Committee on Violence Against Women defines domestic violence as “violence and abuse perpetrated by a man upon a female adopted to control his victim, which results in physical, sexual and/or psychological damage, forced social isolation or economic deprivation, or behaviour which leaves a woman living in fear”⁴. The forms of domestic violence committed by men against women and children include homicide, physical assault, sexual assault, harassment, psychological and emotional abuse, intimidation and financial abuse.

The objects clause/section of Division 1 of Part 15A of the Crimes Act 1900 (NSW) includes statements that domestic violence is predominately perpetrated by men against women and children and occurs in all sectors of the community⁵. Often domestic violence involves conduct that constitutes crimes under various state legislation, including the Crimes Act 1900⁶. These crimes are predominately personal violence offences, in the extreme cases - homicide.

The Australian Bureau of Statistics (ABS) undertook national research in 1996 in its survey *Women’s Safety Australia 1996*⁷. Of the women aged 18 years and over who took part in the telephone survey, it was reported that:

- 23% of women who were married or in a de facto relationship experienced violence by their partner at some time during the relationship⁸.
- 48% of women physically assaulted by a man in the previous 12 months sustained physical injuries in the last incident. The most common injuries were bruises, cuts and scratches⁹.
- 42% of women who experienced violence by a previous partner reported that they had been pregnant at some time during the relationship and 20% of women said they experienced violence for the first time when they were pregnant¹⁰.

³ Partnerships Against Domestic Violence, http://www.pvad.dpvc.gov.au/nesb_sept02/definition.html, as at 4 December 2002.

⁴ National Committee on Violence Against Women, *NCVAW Position Paper*, Canberra: AGPS, 1992.

⁵ Sub-sections 562AC (3)(b) and (c), Crimes Act 1900 (NSW).

⁶ *Ibid*, section 4.

⁷ W McLennan, *Women’s Safety Australia*, Canberra: Australian Bureau of Statistics, 1996.

⁸ Note 7, at 50.

⁹ Note 7, at 12.

¹⁰ Note 7, at 52.

- 61% of women who experienced violence by a current partner reported that they had children in their care at some time during the relationship and 38% of women said that their children had witnessed the violence¹¹.
- 68% of women who experienced violence by a previous partner reported that they had children in their care at some time during the relationship and 46% of women said that their children had witnessed the violence¹².

The NSW Attorney General's Department has reported that Local Courts in NSW granted 18,853 Apprehended Violence Orders in 2001¹³.

(b) Perpetrators of crime and motives

Domestic violence is predominately perpetrated by men against women and children. Reported cases indicate that men are the perpetrators of domestic violence in 95% of cases¹⁴.

There are many myths perpetuated in the media and in the community about the causes of domestic violence. One myth is that men are motivated to abuse their partners because of the inadequacies of their partner. However, women do not provoke or deserve domestic violence. The responsibility for domestic violence lies with the perpetrator and not the victim¹⁵.

Popular culture, the media and the community, also attribute domestic violence to other external factors such as poverty and unemployment. However, court statistics reflect that domestic violence occurs in all socio-economic communities in NSW¹⁶. Also, clients of the DVAS are from diverse socio-economic backgrounds and from a wide range of different cultural and religious backgrounds¹⁷. In 2001/02, country of origin statistics were collected from 1333 clients of the DVAS. 27% of clients stated their country of origin was not Australia. Forty-five other countries were stated as countries of origin¹⁸.

The community also often associates domestic violence with alcohol abuse. However, studies such as the 1996 ABS survey *Women's Safety Australia* show that half of domestic violence cases involve no alcohol¹⁹. Alcohol may be a factor in that it may

¹¹ Note 7 at 52.

¹² Note 7, at 8.

¹³ Bureau of Crime Statistics and Research, *Local Court Statistics 2001: AVO's Granted*, at http://www.lawlink.nsw.gov.au/boscar1.nsf/pages/lc_2001_avo, as at 4 December 2002.

¹⁴ NSW Women's Refuge & Resource Centre, *It's Not Love - It's Violence: an information and resource kit about domestic violence*, Sydney: NSW Women's Refuge & Resource Centre, 1997, at 1.

¹⁵ Jane Mulrone and Domestic Violence Advocacy Service, *Women's Domestic Violence Court Assistance Program: Support Workers' Kit* (2nd ed) Sydney: DVAS, 2002 at 14.

¹⁶ Note 13.

¹⁷ Note 1 at 14.

¹⁸ *Ibid* at 15.

¹⁹ Note 7, at 22.

make perpetrators less inhibited but it does not cause “the attitudinal elements that underlie the abuse”²⁰. Alcohol may also increase the likelihood of serious physical violence, which may then require police attendance and elicit or promote media coverage²¹.

Domestic violence is attributable to issues of power and control. There are numerous tactics and behaviours, regularly documented in domestic violence cases, that “abusive men use to establish and maintain control over their female partners”²².

(c) Fear of crime in the community

Crime literature, the media and popular culture, often promote a gendered portrayal of fear of crime. That is, women are at risk of crime by strangers in public places and women’s fear of crime is crime committed by strangers. However, there is a much higher risk of assault to women in the home and by a current or former partner, than on the street by a stranger or a man known to them²³. Women’s fear of domestic violence often occurs in the private sphere, within the home. Some women fear domestic violence due to past experiences and inadequate police and community responses.

In the 1996 ABS *Women’s Safety Australia* survey, it was reported that 2.6 million women had experienced one or more incidents of violence since the age of 15²⁴. It is therefore not surprising that most women have fears or anxiety about violence.

The same gendered portrayal of fear of crime is also promoted by the community in relation to children’s fear of crime. Governments, local councils, the police and the media often warn parents and children of “Stranger Danger”, but children are of greater risk of being a direct or indirect victim of violence within the home.

(d) The impact of being a victim of crime and fear of crime

The impact of domestic violence on a victim is pervasive. Being subject to repeated physical, psychological, economic and social subordination can result in a “paralysing fear and a belief there is no escape”²⁵. The effects of domestic violence include²⁶:

- Feelings of worthlessness and low self-esteem.
- Self-doubt and difficulties with decision-making.
- Depression, anxiety and stress.
- High rates of drug and alcohol abuse.
- Increased likelihood of abusing dependent children.

²⁰ Note 15, at 14.

²¹ Id.

²² Note 14 at 5.

²³ Note 7, at 6.

²⁴ Note 7, at 12.

²⁵ Note 15 at 16.

²⁶ Id.

Children are also direct and indirect victims of domestic violence. They are sometimes the direct targets of physical and emotional abuse. Often they witness the violence occurring against their mother or hear the violence occurring²⁷. In the ABS *Women's Safety Australia* 1996 study, 61% of women who experienced violence by a current partner reported that they had children in their care at some time during the relationship and 38% of women said that their children had witnessed the violence²⁸. 68% of women who experienced violence by a previous partner reported that they had children in their care at some time during the relationship and 46% of women said that their children had witnessed the violence²⁹.

Children who are victims of domestic violence live in a home filled with fear and tension. The effects of domestic violence on children include³⁰:

- Aggressive behaviour.
- Acting out.
- Bedwetting.
- Difficulty relating to peers.
- Drug and alcohol problems.
- Inability to concentrate.
- Depression and anxiety.
- Running away.

(e) Strategies to support victims and reduce crime

Effective strategies to support victims involve those which are “sympathetic to the profound impact of domestic violence on women”³¹ and which “address the many practical and psychological barriers that prevent women from leaving their violent partners”³².

Services need to be responsive to women from different backgrounds and with different needs, including Aboriginal and Torres Strait Islander women, immigrant and refugee women, women with disabilities and lesbians.

Strategies include developing court support services and responsive police services (including prosecution services) which have specialised training and understanding of domestic violence issues.

²⁷ Id.

²⁸ Note 11.

²⁹ Note 12.

³⁰ Note 15 at 17.

³¹ Ibid at 21.

³² Id.

Other networks of support are also necessary, such as community-based health and housing programs. These programs need to be economically accessible to women, providing them with assistance and creating opportunities of reducing their exposure to domestic violence by supporting them financially and emotionally to leave. Accessible housing is crucial in this regard, including refuges, medium term housing and longer term housing which caters for women and their children.

(f) Apprehension rates

In the 1996 ABS survey *Women's Safety Australia* it was reported that 19% of women who had experienced a physical assault by a man in the previous 12 months reported it to police³³. 29% of women who were injured in the last incident of physical assault since the age of 15 reported the incident to police compared with 10% who were not injured³⁴. Women were more likely to report incidents that were perpetrated by a stranger than by somebody they knew³⁵. Women who were physically assaulted by a current partner were least likely to have reported the incident, with only 5% reporting the incident to the police³⁶.

In a 1998 study by Partnerships Against Domestic Violence, it was found that the majority of women surveyed who had experienced domestic violence did not report the violence to the police³⁷. Women cited numerous reasons, including shame, guilt, embarrassment and fear of reprisal from the offender, as reasons for not reporting their experiences to police³⁸.

However, although reporting rates of domestic violence are low, the NSW Attorney General's Department has reported that NSW Local Courts granted 18,853 Apprehended Violence Orders in 2001³⁹.

It is also the experience of the DVAS, through our statewide telephone advice line service and representation of women at Sydney metropolitan courts, that there is a high rate of police not responding adequately to reported breaches of ADVOs. Women seeking legal assistance commonly state they have reported numerous breaches to the police but the police have not acted upon their complaints.

Although the police may be exercising their discretion in not laying charges because of a belief there is not enough evidence to secure a conviction, in some circumstances,

³³ Note 7, at 7.

³⁴ Note 7, at 29.

³⁵ Note 7, at 29.

³⁶ *Ibid*, at 29 and 30.

³⁷ Partnerships Against Domestic Violence, *Against the Odds: How Women Survive Domestic Violence; The needs of women experiencing domestic violence who do not use domestic violence and related crisis services*, Canberra: The Office of the Status of Women, 1998, at 89.

³⁸ *Ibid* at 90.

³⁹ Note 13.

there still appears to be many breaches that are not prosecuted. This results in many women fearing for their safety and of future crimes being committed against them.

(g) Effectiveness of sentencing

Many in the community now view domestic violence as being a crime. In a survey by the Office of the Status of Women in 1995, 93% of those surveyed considered domestic violence to be a crime⁴⁰. However, there are those who still view domestic violence as being something that occurs as a result of provocation by women.

CASE HISTORY SENTENCING SUBMISSIONS

In a contravene AVO matter in the local court this year, sentencing submissions were made from the bar table by a legal practitioner representing the defendant, with words to the effect:

This is not a violent man; he has no other offences and has not previously been before the court. Your Worship, if this woman had not been present, pushing all my client's buttons, this crime would never have occurred.

In NSW, a person who knowingly contravenes a prohibition or restriction specified in an apprehended violence order made against them is guilty of an offence which is punishable by up to 50 penalty units (currently \$5,500.00) or imprisonment for 2 years or both⁴¹. Sentencing needs to reflect the seriousness of domestic violence and the effects that domestic violence has on its victims. However, sometimes this does not occur.

⁴⁰ Note 14 at 7.

⁴¹ Section 562I, Crimes Act 1900 (NSW).

CASE HISTORY E

Our service assisted a women, Ms E, who had been a victim of domestic violence perpetrated by her husband, Mr E, for many years. From 1987 to 1998 there were 37 charges laid by the police against Mr E in relation to domestic violence offences against Ms E. Four of the charges were occasion actual grievous bodily harm and each time Ms E required hospitalisation.

From 1987 to 1998, Mr E had been imprisoned for between 9 and 10 years, all for assaults on Ms E. Each time Mr E had been released from prison he returned to Ms E and assaulted her within 6-8 weeks. In late 1998, Mr E was charged and convicted of two charges of breaching an AVO, one charge of assault and two charges of possession of a prohibited weapon. However, Mr E was only sentenced to 3 months imprisonment by the magistrate.

Our Service was contacted by Ms E to assist her in challenging the leniency of the sentence after she learned the NSW Police would not be appealing the magistrate's ruling. The DVAS made submissions to the NSW Police about the leniency of the sentence due to the defendant's prior history of offences under Part 15A of the Crimes Act 1900. Our Service submitted that the repeated assaults and AVO breaches of this nature should attract the highest penalty, otherwise the legislation would be ineffective. The legislation and policy in relation to regarding domestic violence required victims of domestic violence to be protected and for domestic violence not to be tolerated by the community.

Our Service subsequently was informed by the NSW Police that upon their request, the Director of Public Prosecutions had lodged an appeal against the inadequacy of the sentence.

(h) Community safety and policing

For the safety of women and children experiencing domestic violence, police services must be proactive and police homes where domestic violence is occurring. The police must lay complaints for apprehended violence orders where they have the power to do so and prosecute breaches of apprehended violence orders if there is the evidence of breaches having occurred.

The community and governments need to be aware of the prevalence of domestic violence across the community and the fear of crime that victims of domestic violence experience. Assistance needs to be provided to victims of domestic violence to ensure their safety.