



**Incorporating
Women's Legal Resources Centre
Domestic Violence Advocacy Service
Indigenous Women's Program
Walgett Family Violence Prevention Legal Service
Bourke/Brewarrina Family Violence Prevention Legal
Service**

17 April 2009

The Manager
Violence Prevention Co-ordination Unit
Office for Women's Policy
Department of Premier and Cabinet
GPO Box 5341
Sydney NSW 2001

By email: vpcu@dpc.nsw.gov.au

Women's Legal Services NSW comment on the development of the NSW Domestic and Family Violence Strategic Framework

Women's Legal Services NSW (WLS) welcomes the opportunity to contribute to the development of a Strategic Framework for Domestic and Family Violence for NSW (referred to as the 'Strategic Framework'). WLS made a substantial contribution to the submission from the Combined Community Legal Centres Group (NSW) Inc (CCLCG) and we fully endorse the contents and recommendations of that submission. However, we would like to take this opportunity to make some additional comment as a statewide community legal centre providing legal advice, advocacy and representation to women who have or are experiencing domestic and family violence. In particular, we want to make comment about access to comprehensive legal assistance for women who have or are experiencing domestic violence and the response of the justice system.

We strongly support the proposal to develop of a co-ordinated approach to address domestic and family violence in NSW. However we believe that for such a strategic framework to have a lasting impact it will require a high level of sustained commitment from senior levels of government. The Victorian experience¹ in developing an integrated response to domestic violence demonstrates that the key elements are a high level of leadership, a commitment by both government departments and non-government agencies to work together, and the resources to enable this to occur.

About Women's Legal Services NSW

The provision of services to women who have experienced domestic violence is a priority for WLS and we undertake a significant amount of work in this area. This includes work across all our programs, which are:

¹ Office of Women's Policy, Victoria, (2005) *Reforming the Family Violence System in Victoria: Report of the Statewide Steering Committee to Reduce Family Violence*, Melbourne.



- the Domestic Violence Advocacy Service, which focuses on assisting women seeking Apprehended Domestic Violence Orders (ADVOs) and in related legal processes such as defending cross applications for ADVOs, interlocutory subpoena issues arising from private or police applications and prosecutions;
- the Women's Legal Resource Centre, which focuses on assisting women in the family law system in cases where they have experienced domestic violence; victims compensation for women who have been sexually assaulted and / or experienced domestic violence; claims for sexual assault communications privilege and other related legal processes;
- the Family Violence Prevention Legal Services in Walgett and Bourke-Brewarrina, which focus on providing holistic services to victims / survivors of family violence and sexual assault employing both solicitors and non-legal advocates to provide casework and preventative services.

Our work seeks to take a client focused approach and combines casework, community legal education and law reform/policy work to maximise our capacity to respond to state-wide needs with limited resources.

Our casework services to women who have experienced domestic violence includes the work of solicitors who regularly represent women at Penrith, Blacktown, Mt Druitt and Sutherland local courts, as well as other courts in metropolitan Sydney. Solicitors from our Family Violence Prevention Legal Services appear for Aboriginal women and children in Walgett, Lightning Ridge, Bourke and Brewarrina local courts. We work with several Women's Domestic Violence Court Advocacy Program (WDVCAP) in metropolitan Sydney and in Bourke. We provide general advice and advocacy services to many women who have experienced domestic violence through our outreach advice program which operates in partnership with women's health centres in Campbelltown, Blacktown, Penrith, Liverpool, Fairfield and Wyong.

We also undertake extensive community legal education activities. This includes a state-wide program of workshops and seminars for workers and the community; plain English publications and guides to the law such as *Women and Family Law*; the *Law Handbook* chapters on domestic violence, sexual assault and family law; *Counsellors and Subpoenas*; *Silence is Abusing our Kids*; *Hot Topics* issue on Sexual Assault.

We also have a significant role in law reform with the aim of improving the legal systems response to those who have experienced violence. This includes working with Women's Legal Services Australia and the Combined Community Legal Centres' Group NSW; participating in high level consultative committees such as the Family Court Chief Justice's Forum, the NSW Apprehended Violence Legal Issues Coordinating Committee (AVLICCC) and the Domestic Violence Intervention Court Model Senior Officers Group; and undertaking research, submission writing and public interest litigation.

1. What are the key principles that should guide the Strategic Framework on Domestic and Family Violence in NSW?

The response to those who have experienced domestic violence remains ad hoc and inconsistent across regions and across agencies. There have been several attempts since the

mid 1980s in NSW to develop a co-ordinated approach to domestic violence. The ability to achieve this has been hampered by an emphasis on time limited project funding, the lack of a coherent strategy across departments to address violence against women, and the chronic under funding of existing services involved in delivering services to women who have experienced violence.

The Strategic Framework should also have at its core the elimination of violence against women, not merely to respond to, or reduce, domestic and family violence. In relation to the specific key principles that should guide the Strategic Framework, we endorse the principles set out in the submission from the CCLCG.

Recommendation 1:

We recommend that the Strategic Framework should:

- be based on a human rights approach
- develop a sustainable, co-ordinated and integrated approach
- have a client-focused approach to service provision
- be adequately resourced and supported
- be informed by international and local good practice
- include quantifiable targets and assign responsibilities
- involve active consultation with Aboriginal women and services, in rural and remote as well as metropolitan areas
- have as a central focus the specific needs of those groups in the community who experience particular disadvantage
- incorporate a system for ongoing accountability and improvement.

We refer you to the CCLCG submission for a more complete discussion of these principles.

2. Priority areas for improvement in the legal service and justice response that should be addressed by the strategic framework on domestic and family violence in NSW?

WLS endorses all comments and recommendations made in the CCLCG submission in relation to priority areas for reform. In addition we would like to make particular comment about the importance of access to comprehensive legal assistance for women who are experiencing domestic violence. We also want to make additional comment about the response of the police and the courts to those who have or are experiencing domestic violence.

Comments on access to legal services

Victims of domestic violence experience a legal system that is fragmented. State and federal laws and courts must be navigated and many women have to tell their stories over and over. Those who have experienced domestic violence may have to negotiate a variety of legal systems. For example, victims of domestic violence may find themselves in the Local Court seeking an ADVO; in the Family Court seeking parenting orders; and /or in the Children's Court if the Department of Community Services has intervened. Later, those eligible for victim's compensation as a result of the domestic violence may also have an application to the Victims Compensation Tribunal.

It is extremely important that the Strategic Framework operate to enhance the capacity of women who have experienced domestic violence to access timely, comprehensive and appropriate legal assistance. The post-separation period is one of the most dangerous times for women victims of domestic violence and affordable or free legal services are critical to keeping women safe. Those who have experienced domestic violence also have a range of immediate and ongoing legal needs which, if not addressed, can serve to prevent them from leaving situations of violence or place them at further risk of victimization.

A number of problems exist in the current system. Firstly, while there may be a lot of information available about people's legal rights and entitlements, the major gap is in their ability to get actual representation to access their legal rights. Secondly, the provision of accessible legal assistance across the State to those experiencing domestic violence is poor. The main reason for this is the chronic under funding of accessible legal services such as community legal centres in the context of a significant increase in demand. In some regions there are no easily accessible free legal services such as the Mid North Coast region and the Far south West Region. Even in those regions with access to community legal centres and Legal Aid services, the demand is frequently overwhelming for services.

The current funding of specialist legal services for those who have experienced domestic violence is inadequate. The Domestic Violence Advocacy Service has not received any additional funding apart from CPI increases since its commencement despite increased demand on its services. The NSW government recently announced some expansion in the Women's Domestic Violence Court Advocacy Schemes funded through Legal Aid, however these services focus on the immediate needs of women seeking ADVOs and are still very limited in what further help they can provide.

Currently, most legal services are often provided according to legal jurisdiction rather than having a client centred approach. This has a particular impact on women who have experienced domestic violence. WLS strongly advocates for the development of a client focused approach to the provision of legal services to those who have experienced domestic violence.

Recommendation 2:

We recommend that the strategic framework should support the establishment of a network of integrated and holistic services across NSW for women who have experienced domestic violence. These services should be available across the State and should:

- be responsible for a geographic area based on local courts, police jurisdictions or geographic access;
- have a focus on accessibility;
- work in conjunction with the courts and police in that area;
- meet domestic violence victims' support and legal representation needs throughout the legal process, including ADVO hearings;
- be able to assist women to get income support, accommodation, assistance for their children, and counseling;
- be able to provide legal assistance for other related matters such as family law;
- be able to refer to alternative services in cases of conflict of interest;
- undertake community development and education work at a local level;
- contribute to law reform and policy work from a grounding in practice.

The WLS Family Violence Prevention Legal Service model is one that we recommend. The service provides salaried solicitors and court assistance workers, as well as community development, counselling and other functions. The WLS Services in Walgett and Bourke employ two solicitors in each service and a coordinator, court support, family support and/or community development workers depending on local needs. The service is able to provide direct casework services – both legal and non-legal – and also participate in community education, networking and other community development work. The salaried solicitors attend the Local Court on ADVO list day and are also able to provide family law, care and protection and victims compensation advice and assistance. This may involve linking clients into other legal aid services if appropriate, but also may involve direct representation by our service. Unfortunately demand is still greater than capacity and referral to pro bono services, particularly for victim's compensation cases is still required.

Comments on access to Legal Aid

There is also a need to review the accessibility of Legal Aid for those who have experienced domestic violence. Many women are forced to initiate private applications for ADVOs as a consequence of erratic policing of domestic violence. There are limited legal services available to these women. In NSW, the Domestic Violence Solicitor Scheme operates in some, but not all, courts to assist women at the mention stage. However, means testing removes support for women just as they reach the most complex and arguably most crucial time for representation in the ADVO process: the hearing.

Following the breakdown of a relationship many women are just above the Legal Aid means test but barely coping financially. The impecunious circumstances of women during this period have a significant impact on their access to domestic violence legal services. Having to pay for an ADVO hearing may be impossible – as a result women may be forced to self represent if representation by a service such as DVAS or pro bono representation is not available.

Recommendation 3:

WLS would recommend the removal of the Legal Aid means test for victims of domestic violence. Making legal aid available to all victims of domestic violence seeking protection is consistent with a human rights framework and the NSW government's commitment to reducing violence, particularly violence against women. Victims of violence should not have to pay for their protection.

The position of female defendants to ADVO applications

Changes in NSW laws dealing with domestic violence and in police practice has had the consequence of more police applications for ADVOs (and charges) being initiated against defendants where there has been a history of domestic violence towards the woman in the relationship. There has also been an increase in private applications for ADVOs against women who are subject to violence from the applicant and cross applications. While it is possible for women subject to domestic violence in these circumstances to access legal

assistance through legal Aid, there ability to do so relies heavily on availability and the woman's capacity to locate the assistance.

Comments on the impact of the overlap between ADVOs and family law

There is also a complex interplay between family law and ADVO provision. The 2007 amendments to the AVO legislation created a rebuttable presumption that children in a domestic relationship with a protected person should be included on the ADVO. A consequence of this is an increase in the proportion of ADVO matters going to hearing, as parties are less likely to consent if children are listed as protected persons. A corollary increase in evidence about children in ADVO matters may also result in longer hearings. This change is also in the context of family law changes, which encourage cooperative parenting and have raised community expectations about children spending equal or substantial and significant time with each parent.

Comments on police responses

Generally there is a lack of consistency in response to reports of domestic violence by police between and within local area commands. Common problems with police response include failure to act on reports of violence, failure to apply for ADVOs and the failure to charge offenders when charges would have been indicated by policy and the legislation. There are also repeated failures to act on reported breaches of ADVOs, delays in responding to incidents and inadequate victim follow up.

We also have concerns with police applying for ADVOs inappropriately on behalf of male partners against women defendants where there has been a history of domestic violence against the woman from her partner or ex-partner. These situations appear to have their origin in the inability of the police to assess which party is most at risk. We have also had many women report that police have refused to charge violent offenders on the basis that because the other party has made allegations of violence against her, the police would have to charge her as well. It is very important that police are given adequate training and assessment tools that allow them to assess fully the circumstances involved in domestic violence as if the response is inappropriate, police risk becoming party to the ongoing intimidation of the woman through the justice system.

Recommendation:

4. We recommend greater resourcing for the police to respond effectively to domestic and family violence including increasing the availability and number of DVLOs to ensure adequate supervision of general duties officers.
5. We further recommend that the NSW Police develop a means for uniform assessment of risk and police response to guide and monitor the use of police discretion in responding to victims of domestic violence and that this should be informed by international good practice.

Comments on the response of the courts to domestic violence

While there have been improvements in the response of the courts to domestic violence, there are still concerns that need to be addressed. A range of issues arise regularly including inconsistent responses by court staff to those seeking to make private ADVO applications; inconsistent responses by Magistrates to applications for ADVOs; and reduced chamber registrar services in some courts.

Of particular concern is the effective imposition of parenting plans on women with children who are in need of protection through an ADVO. Many magistrates will require the applicant to negotiate parenting arrangements as part of the process of making orders. This appears to have its origin in the reluctance of magistrates to deny time spent with children to defendants. It is highly stressful and potentially dangerous for applicants to be put in this position. It would often be more appropriate for magistrates to recommend that the parents use the family law processes that have been established to develop appropriate arrangements rather than forcing an 'agreement' at the local court. This is particularly a concern for victims of domestic violence where the police have applied for the ADVO on their behalf as police prosecutors will often also place pressure on the person to agree to parenting arrangements developed in this ad hoc manner.

In addition, there is reluctance by Magistrates to use their powers under s68R of the Family Law Act 1975 (Cth) to vary parenting orders on the making of an ADVO.

Recommendation 6:

We recommend a program of ongoing judicial education about domestic violence, the impact of violence and the role of the courts in providing protection to victims and children and the development of guidelines for judicial responses to the overlap between domestic and family violence, family law and child protection for the Local Courts.

We thank you for the opportunity to contribute to this process and look forward to further consultation regarding the actual form of the Strategic Framework. If you would like to discuss any of the issues raised in our submission in more detail please contact Janet Loughman on (02) 9749 7700 or janet_loughman@clc.net.au, or Felicity Martin on felicity_martin@clc.net.au.

Yours sincerely



Janet Loughman
Principal Solicitor
Women's Legal Services NSW