

# **Domestic Violence in NSW**

*Current Issues - Major Needs*

**DOMESTIC VIOLENCE ISSUES KIT**

**State Election 2003**

## **INTRODUCTION**

The Domestic Violence Advocacy Service (DVAS), in partnership with the Council of Social Service of NSW (NCOSS) has prepared this document for all candidates in the forthcoming state election.

The objective of this kit is to inform you of the major issues and needs in the area of domestic violence prevention and response in New South Wales.

We are also inviting your feedback to the issues and recommendations contained in this document. A two page feedback form is attached at the end of this document and candidates are requested to return this to NCOSS by the 3<sup>rd</sup> of March 2003.

Responses will be distributed to the following agencies and networks and may be used in media comment on election policies:

- Women's Legal Resources Centres
- Network of Women's Domestic Violence Court Assistance Schemes
- Women's Health NSW
- Family Support Services Association
- The WASH House
- Rape Crisis Centre
- The Benevolent Society
- Network of NSW Community Legal Centres
- Violence Prevention Units
- Wirringa Baiya, Aboriginal Women and Children's Legal Centre
- Women's Refuge Resource Centre

### **Questions may be directed to:**

#### **Monica Neville, Solicitor, Domestic Violence Advocacy Service**

P O Box H154

HARRIS PARK NSW 2150

Tel: (02) 9637 5020 (ext 229)

Fax: (02) 9682 3844

Email: [Monica\\_Neville@fcl.fl.asn.au](mailto:Monica_Neville@fcl.fl.asn.au)

#### **Catherine Mahony, Senior Policy Officer, NCOSS**

66 Albion Street

SURRY HILLS NSW 2010

Tel: (02) 9211 2599 (ext 117)

Fax: (02) 9281 1968

Email: [catherine@ncoss.org.au](mailto:catherine@ncoss.org.au)

## **About the Domestic Violence Advocacy Service**

The Domestic Violence Advocacy Service (DVAS) is a specialist community legal centre established primarily to assist women experiencing domestic violence to get easy and effective access to the legal system. Solicitors from the DVAS appear in Apprehended Violence Order proceedings in metropolitan courts and provide telephone legal advice to women throughout NSW. These services are provided free of charge.

The DVAS is a peak body and plays an active role in policy and law reform work in the area of domestic violence in NSW. Further, DVAS performs a critical task in monitoring the performance of other service providers for example NSW Police and courts.

The DVAS also houses the Training and Resource Unit, which serves the training and resource needs of Women's Domestic Violence Court Assistance Schemes throughout the state. In addition DVAS provides training to service providers and organisations so that they may be able to better meet the needs of women and children experiencing domestic violence. The DVAS is funded by the NSW Government, and the funds are administered by the Legal Aid Commission of NSW. The DVAS is managed by Women's Legal Resources Limited.

## **About NCOSS**

NCOSS is the peak body for the social and community services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW. We take a coordination, advocacy, policy development, leadership, information and industry development role for the social and community services sector in NSW, and act as a channel for consultation with government.

*Please note that current data indicates that domestic violence is predominantly, although not exclusively, perpetrated by men against women and children. For this reason, this paper will refer to perpetrators of domestic violence in the masculine, and persons who experience domestic violence in the feminine.*

## **Domestic Violence – The Realities**

### **Definitions**

The DVAS defines domestic violence as :

***“behaviour, within a domestic relationship, that involves an abuse of power and that is usually, though not exclusively, perpetrated by men against women and children. Domestic violence encompasses a range of behaviour including intimidation, coercion, emotional abuse, financial abuse, sexual abuse, physical abuse, isolation and psychological manipulation.”***

The law<sup>1</sup> provides that a “domestic relationship” exists where persons:

- Are current or former spouses;
- Are current or former de facto partners (including same sex de facto couples);
- Have or have had an intimate personal relationship, whether or not sexual in nature;
- Are or were living in the same household or other residential facility;
- Have or have had a relationship where one is dependent on the ongoing care (whether paid or unpaid) of the other;
- Are current or former relatives.

### **‘Not just physical’ – what do women and children experience?**

Clients of the DVAS have reported that they and/or their children have experienced the following behaviours:

- *Physical violence* - punching hitting, slapping, shoving, pulling hair, twisting limbs, choking or serious injury requiring surgery, such as broken bones, having teeth knocked out.
- *Sexual assault* - rape, being forced to perform sexual acts without consent.
- *Use of weapons* - the use of guns and knives may be actual or threatened. In murders where a domestic relationship existed, guns were used in 51% of cases and knives were used in 22% of cases (The Australian, March 28 1996).
- *Psychological and emotional abuse* - continual put-downs, verbal harassment, making the victim think they are crazy, intermittent rewards, threatening harm to the victim and/or their friends or other family, threats of suicide. Such actions are intended to destroy a person’s self esteem and distort their perception of the right to be safe and free from violence and harassment.
- *Stalking and intimidation* - acts directed at intimidating and frightening a person, injuring or destroying pets, throwing items which just miss them, damaging personal property including cars. Stalking can include following the victim about, or waiting outside their home, place of employment or other premises they frequent.
- *Social isolation and abuse* - isolating a person from family and friends, not allowing them to leave the house, (including locking them in the house), denial of

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<sup>1</sup> Section 562A(3) Crimes Act 1900 (NSW)

access to a car or public transport, restricting them from using the telephone, controlling who they see and where they go, humiliating them in public.

- *Financial abuse* - preventing a person from having access to financial resources, not allowing them to have their own bank account, demanding that they hand over wages, depriving them and/or any children of basic physical needs.

## **Incidence of domestic violence**

During 1996 the Australian Bureau of Statistics conducted a national survey with women over 18 years of age - *Women's Safety, Australia - Australian Bureau of Statistics Report 1996*. The survey reported that in the 12 months prior to the survey:

- **23%** of women who were married or in a de facto relationship experienced violence by their partner.
- **48%** of women physically assaulted by a man in the previous 12 months sustained physical injuries in the last incident eg. bruises, cuts, scratches.
- **20%** experienced violence for the first time **when they were pregnant**.
- **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%** said that their **children had witnessed the violence**. 46% of women who experienced violence by a previous partner said their children had witnessed the violence.
- **51%** of women who experienced violence by a previous partner during the relationship stated the main reason they ended their previous violent relationship was the partner's violence towards them or threats to their children.

The Bureau of Crime Statistics and Research has found over the two year reporting period January 2000 – December 2001 an upward trend of 10.2% in the level of domestic assault<sup>2</sup>.

## **Homicide**

Australian Institute of Criminology statistics show that 61% of all female victims of homicide in Australia over 1989 to 1996, were killed by an intimate partner.<sup>3</sup>

*It is noted that the information contained in this kit is of a generalist nature. There are particular groups of women who experience domestic violence, who are not optimally served by generalist services. We urge all candidates to further support specialist services for women in the following groups:*

- 1. Indigenous women;*
- 2. Women with disabilities;*
- 3. Women who experience mental illness;*
- 4. Women from culturally and linguistically diverse backgrounds*

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<sup>2</sup> New South Wales Recorded Crime Statistics 2001, Bureau of Crime Statistics and Research

<sup>3</sup> "Homicide in Australia 1989 – 1996" Australian Institute of Criminology Research and Public Policy Series no 13.

## **Legal responses to domestic violence**

### **1. Apprehended Violence Orders:**

Many persons who experience domestic violence approach NSW courts to initiate Apprehended Violence Orders (AVOs) as a means of preventing further abuse. Apprehended *Domestic* Violence Orders (ADVOs) are issued when the parties to the proceeding are in a domestic relationship. Where no domestic relationship exists, an Apprehended *Personal* Violence Order (APVO) will issue.

In the year 2000, a total of 21,800 AVOs were issued in NSW. Of those, 15,584 were ADVOs. This represents an increase of 731 ADVOs from the previous year.<sup>4</sup> The DVAS has also seen an increase in the number of AVO applications before the court, and the number of court appearances undertaken by our solicitors increased by 15% in the year 2001 – 2002<sup>5</sup>.

#### ***Apprehended Violence Orders – Major Issues***

AVOs have been shown to be an effective tool in the reduction and prevention of domestic violence.<sup>6</sup> However, some criticisms have been levelled at the AVO scheme.

#### ***Myth: AVOs are too easily issued by courts***

There has been suggestion that AVOs are too easily issued by NSW courts – that the test for the making of an AVO (ie. that, on the balance of probabilities, a complainant holds fears of violence, stalking, intimidation or harassment based on reasonable grounds) is too lenient, and should be brought into line with the criminal standard of proof (ie. beyond reasonable doubt).<sup>7</sup> Criticisms have also been raised that AVOs may be made against defendants in their absence, thereby exposing them to the risk of criminal consequences for breaching the AVO.

#### ***Fact:***

AVO proceedings are similar to any other legal proceeding in that an allegation is made by a complainant, and the defendant is entitled to challenge that allegation before a magistrate. In such circumstances, a complainant must establish their case in accordance with the above test for the making of an AVO.

A defendant may choose to consent to an AVO without admitting the allegations. If a defendant does so, an AVO is issued. No conviction is recorded against the defendant, and it is recorded on the court file that the allegations are not admitted.

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<sup>4</sup> NSW Criminal Court Statistics – Local Courts (for the years 1999 & 2000), Bureau of Crime Statistics and Research.

<sup>5</sup> DVAS Annual Report 2001 – 2002.

<sup>6</sup> “An Evaluation of the NSW Apprehended Violence Order Scheme”, Bureau of Crime Statistics and Research

<sup>7</sup> See “Should we be more apprehensive about Apprehended Violence Orders”, McMillan, M in Law Society Journal, December 1999. See also “Apprehended Violence Orders – Industry or Disease?” Nyman, T in Law Society Journal, same issue.

A final AVO cannot be made in a defendant's absence, unless the court is satisfied that the defendant has been notified of the proceedings. An AVO made in such circumstances is not enforceable until it has been served on the defendant. Interim AVOs *may* be made against a defendant without their knowledge, similarly, such an order is unenforceable until it has been served on the defendant.

Whilst AVO legislation is contained within the Crimes Act 1900 (NSW), it is clear from the legislation that AVO matters are civil proceedings and as such, the civil standard of proof should apply. An AVO is not, of itself, a criminal conviction. It is a breach of an AVO which is a criminal matter and the offence of contravening an AVO is addressed by courts on the criminal standard of proof.

***Myth: Women use AVOs to gain advantage in family law proceedings relating to children***

It is constantly asserted, in the courts and the media, that women allege domestic violence and child abuse to obtain tactical advantage in family law proceedings, and that they initiate AVO proceedings to further this advantage.

***Fact:***

Such allegations minimise and/or discount the dangers faced by women and children who experience domestic violence and undermine the legislation and services which have been set up to protect them.

The Family Law Act 1975 is a Commonwealth Act, and is administered in the Commonwealth jurisdiction. AVO legislation is state based. Whilst the two may intersect they are independently administered. In Family Court proceedings, the fact that an AVO has been issued by a state court against a person, or that an application for an AVO is pending is **not** the basis for a finding that violence has occurred. The Family Court must make its own findings in that regard, and research shows that in matters where violence has been alleged, court findings *support* those allegations in most instances.<sup>8</sup>

Further, research indicates that where allegations of violence or child abuse have been made, the response of the Family Court is to order alternative means of contact changeover (for example, at a safe place such as a police station) or alternative contact arrangements (for example supervised contact), rather than to prohibit contact from occurring at all.<sup>9</sup>

The prevalence of such beliefs has only served to increase the number of cross applications for AVOs being brought before courts in NSW. Ironically, it is the experience of DVAS solicitors, that the majority of these cross applications are being brought to the courts by perpetrators on the advice of their solicitors – “to even the score”.

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<sup>8</sup> “Family Law Reform Act – the First Three Years”, Rhoades, H, Graycar, R and Harrison, M. Published by University of Sydney and Family Court of Australia, 2002

<sup>9</sup> Ibid.

## **2. Criminal Charges**

Criminal charges are available in respect of certain abusive behaviours, for example assault, malicious damage, stalking or intimidation or contravention of an AVO.

Many women, however, report a reluctance of police to proceed on charge matters, especially in relation to contravention of AVOs. Common responses, reported by women who report breaches to police, include “This is family law – it has nothing to do with us”; “we’ll give him a warning this time” and “it’s just your word against his – you have no witnesses.”.

### **Recommendation**

That Part XVA of the *Crimes Act 1900* be amended to include stronger obligations on police to act or record action taken or reasons for failure to act in response to reported incidents of domestic violence and contraventions of AVOs. This amendment should include a requirement to charge the alleged offender where the breach alleged includes a violent act against the protected person or her property.

## **Issues for domestic violence support services**

### **Legal Support Services**

#### **1. *Women's Domestic Violence Court Assistance Schemes – adequate staffing***

The Women's Domestic Violence Court Assistance Program (WDVCAP) \* was established in 1996. The program comprises a network of 33 Women's Domestic Violence Court Assistance Schemes (WDVCAS) providing service in 46 local courts throughout NSW.

Each WDVCAS provides information, support and referral to women involved in AVO proceedings. Most schemes employ a co-ordinator and assistant co-ordinator. These positions are usually part time. Workers, seconded from local services, attend court on a rostered basis to provide the service to women presenting at court.

Many WDVCAS co-ordinators report difficulty in obtaining sufficient numbers of seconded support workers to maintain a roster, and feel constrained by the part time basis of their own work.

#### **Recommendation**

That funding to the WDVCAP be increased so as to provide employed support workers for each scheme.

#### **2. *Women's Domestic Violence Court Assistance Schemes – appropriate safe space***

The WDVCAP also endeavours to provide a safe space for women to wait at court. A number of WDVCASs do not have a designated safe space at the court at which they operate. Further, a number of WDVCASs report that whilst they have a designated room, it is too small to effectively meet the needs of their clients.

#### **Recommendation**

That all local courts across NSW provide a safe waiting space for women in domestic violence proceedings from which the WDVCAS can operate.

#### **3. *Availability of legal aid***

The Legal Aid Commission has recently reviewed its policy in respect of grants of aid in AVO matters, and has tightened the guidelines considerably. Persons who are in a domestic relationship other than a current or former marriage/de facto relationship are now ineligible for a grant of legal aid. This means that daughters, sisters, parents or grandparents are no longer eligible. Many WDVCASs have solicitors who will represent women in AVO applications in the initial stages of the proceedings. If an AVO matter proceeds to hearing, however, a woman is required to represent herself or to obtain a lawyer represent her. It is the experience of DVAS solicitors that there is an increase in the number of parents and grandparents seeking AVOs for their protection. This is often related to their adult child's overuse of drugs/alcohol or to mental illness.

### **Recommendation**

That funding to the WDV CAP be increased to provide solicitors to work with all WDV CASs and that the availability of legal aid for ADVOs for close family members be reviewed.

#### ***Domestic Violence Advocacy Service***

There is an urgent need for legal and support service for victims of domestic violence in rural NSW. In the financial year 2001/2002, 21.4% of all callers to the DVAS telephone advice line identified as being from regional, rural or remote areas of NSW. This represents an increase from the previous year's figure of 18.3%<sup>10</sup>.

There is currently a chronic lack of services able to provide legal representation, advice and support to victims in rural areas and it is these areas that are exhibiting the greatest need. The highest rates for recorded domestic assaults in 2001 in NSW per 100,000 population were the Far West, North Western and Murrumbidgee regions.<sup>11</sup>

The DVAS is the only statewide community legal centre solely dedicated to providing legal advice and representation to women experiencing domestic violence. To enable this service to extend its services to rural locations, additional funding is needed to employ three full time additional solicitors and three full time additional court support workers. These positions should be auspiced by the DVAS, based with rural Community Legal Centers and provide outreach services from central rural locations. The lack of services for Indigenous women and children in rural areas has been well known for many years, and the most recent statistics continue to reflect the growing unmet need, particular in the Far West/Orana and North Western regions. To ensure culturally appropriate service delivery to high need communities, at least two of these positions should be Indigenous specific. Given the large geographic areas that these positions will be required to service, it is also essential that an adequate travel budget is included in the funding

### **Recommendation**

That additional funding be allocated to the DVAS to employ additional solicitors and additional court support workers to meet the high unmet need for legal and support services in rural areas of NSW.

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<sup>10</sup> DVAS Annual Reports –2000/2001 & 2001/2002

<sup>11</sup> NSW Recorded Crime Statistics, 2001, Bureau of Crime Statistics and Research

## **Other Support Services**

### ***The Department of Community Services Domestic Violence Line (DV Line)***

The DV Line operates as a telephone counselling and referral service for women and men in relation to domestic violence. It is an important contact point for people needing emergency refuge accommodation, and it is a Service that the DVAS refers clients to on a frequent basis.

Reports about the service provided by the DV Line are quite positive, however, many clients report frustration with long waiting times on the DV Line. Some clients have reported waiting times of up to twenty minutes.

### **Recommendation**

To increase funding to the DV Line to provide more telephone counsellors thereby reducing waiting times for callers.

### ***Sexual Assault and Domestic Violence Services in the Far West Region***

The Far West Area Health Service (FWAHS) is the largest area health service in the state. Indigenous residents account for over 13% of the population. Although the area has a small population, it had the highest rate of recorded domestic violence assaults last year.<sup>12</sup>

Sexual assault and domestic violence counselling and support are provided through the Broken Hill Mental Health and Counselling Team. This service has two full time workers providing a range of specialist medical, counselling and support services. Due to the very high demand and the large travelling distances involved in providing outreach, the current level of staffing is clearly inadequate to meet the growing demand. Access for Indigenous women and children who are victims of sexual and family violence living in remote communities is severely limited. For example, the town of Wilcannia receives an outreach service from the sexual assault/domestic violence workers one day per week. When travelling times are taken into account, this amounts to four hours of outreach per week. Given that a women and children's safe house is located in Wilcannia and its clients are predominantly victims of domestic violence and sexual assault, this level of outreach needs to be substantially increased.

### **Recommendation**

That funding is provided to the FWAHS to employ at least two additional sexual assault/domestic violence workers to address unmet demand for outreach services in the region.

*Thankyou for taking the time to read this document*

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<sup>12</sup> NSW Recorded Crime Statistics 2001, Bureau of Crime Statistics and Research

STATE ELECTION 2003

**Domestic Violence Issues**

**CANDIDATE FEEDBACK FORM**

<b>Candidate Name:</b>	
<b>For Seat of:</b>	
<b>Party:</b>	

**1. Which of the recommendations in this document do you support?**

<b>Recommendations for</b>	<b>Yes</b>	<b>No</b>	<b>Why?</b>
1. Amendment of legislation to provide greater police accountability.			
2. Increase in funding to WDV CAP to provide more support workers.			
3. The provision of safe waiting space for women in NSW Local Courts.			
4. Increase in funding to WDV CAP to provide legal representation.			
5. Increase in funding to DVAS to provide solicitors and support workers in rural NSW.			
6. Increase in funding to the DV Line to reduce waiting times experienced by callers.			
7. Funding be allocated to FWAHS to provide sexual assault/domestic violence workers			

