

**Sydney Women's Domestic Violence Court Advocacy Service**

**Submission to**

**Australian Law Reform Commission**

**and**

**NSW Law Reform Commission**

**Family Violence Inquiry**

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This is a submission to the Australian Law Reform Commission and NSW Law Reform Commission Family Violence Inquiry by the Sydney Women's Domestic Violence Court Advocacy Service, a service provided by Redfern Legal Centre and funded by Legal Aid NSW.

**The Sydney Women's Domestic Violence Court Advocacy Service:**

The Sydney Women's Domestic Violence Court Advocacy Service (SWDVCAS) is well placed to comment on aspects of the Australian Law Reform Commission and NSW Law Reform Commission Consultation Paper Family Violence: Improving Legal Frameworks. In the period 1 July 2009 to 31 March 2010, the SWDVCAS provided 5,063 services to 1,080 individual female clients with domestic violence related matters.

The SWDVCAS is a service provided by Redfern Legal Centre and funded by Legal Aid NSW through the Women's Domestic Violence Court Advocacy Program (WDVCAP). The WDVCAP was established in 1996 and currently funds 28 Women's Domestic Violence Court Advocacy Services (WDVCASs) operating at 108 New South Wales Local Courts. The SWDVCAS is one of these services, and operates at the Downing Centre (central Sydney), Balmain, Newtown and Waverley local courts.

The aim of the WDVCAP is to assist women and children who are experiencing domestic violence to obtain protection orders by providing court advocacy, information and assistance to gain access to support services that can assist them with their other legal and social needs (for example, assistance with financial advice, housing, counselling and family law issues). In 2008 - 2009 the program provided 44,233 services to 15,895 individual clients.

Individual WDVCASs build relationships with other key partners including NSW Local Courts and the NSW Police Force in order to gain specialist knowledge about the systems and services available to assist women and children experiencing domestic violence. The WDVCASs advocate with the Domestic Violence Liaison Officer (DVLO) or police prosecutor on behalf of clients to ensure ADVO conditions are appropriate to the client's needs, and with other local agencies to ensure women receive the support and assistance they need to engage with the legal process. Most WDVCASs employ Aboriginal Specialist Workers and CALD Specialist Workers.

The SWDVCAS has chosen to comment on and make recommendations about two key areas of the inquiry:

1. Integrated Responses and Best Practice – ARLC Proposal 19.1
2. Specialisation – ARLC Proposal 20.5

In responding to these key areas of the inquiry, SWDVCAS will build an argument for a nation-wide, integrated and specialised response to domestic and family violence within already existing systems. SWDVCAS argues for the immediate establishment and further development of best-practice integrated responses to domestic and family violence, and the immediate development of a model of domestic and family violence specialisation within all existing local courts as a cost-effective model of specialisation that need not be confined to a selected few geographical sites. To this end, SWDVCAS recommends the following:

## 1. INTEGRATED RESPONSES AND BEST PRACTICE

### **ALRC Proposal 19.1**

#### **Integrated Responses and Best Practice:**

The SWDVCAS agrees with the proposal that state and territory governments should establish and further develop integrated responses to domestic and family violence in their respective jurisdictions, building on best practice. The Australian Government should also foster the development of integrated responses at a national level. These integrated responses should include the following elements:

- (a) Common policies and objectives;
- (b) Mechanisms for inter-agency collaboration, including those to ensure information sharing;
- (c) Provision for legal and non-legal victim support, and a key role for victim advocates;
- (d) Training and education programs; and
- (e) Provision for data collection and evaluation.

### **SWDVCAS recommendations for integrated responses and best practice**

In NSW most services for victims of domestic and family violence are drawn from mainstream services such as police, legal services, courts, child protection agencies, housing and health. In addition, the wide range and scope of the non-government sector and the experience, expertise and cost effectiveness of its services to victims has been recognised as a key strength in NSW.<sup>1</sup>

A perceived weakness of the NSW response to domestic and family violence was highlighted in the report Coordinating NSW Government Action Against Domestic and Family Violence,<sup>2</sup> including:

- Lack of a strategic policy framework that defines the priorities for coordinated action to deal with domestic and family violence;
- Lack of integration between the different components of criminal justice responses;
- Lack of integration between the case management approaches focused on early intervention and the victim support approaches used in criminal justice responses; and
- Lack of consistency and coordination of different agency approaches to training of practitioners around issues of domestic and family violence.

As a result of a lack of integration, victims are often forced to deal with a range of services that are not properly coordinated, and may therefore not provide consistent outcomes. The establishment and further development of integrated responses to domestic and family violence building on best practice will provide for more consistent outcomes, and should include the following elements:

#### **(a) A common set of policies and objectives:**

An integrated response to domestic and family violence needs a common set of policies and objectives in order to reduce the prospect of conflict between the policies adopted by different

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<sup>1</sup> New South Wales Government, Department of Premier and Cabinet, Discussion Paper on NSW Domestic and Family Violence Strategic Framework, 2008.

<sup>2</sup> ARTD Consultants, Coordinating NSW Government Action Against Domestic and Family Violence, November 2007.

agencies. At the policy level, agencies should collaborate in agreeing upon common principles and objectives and in formulating strategies.

The SWDVCAS supports policies that promote best practice in policing and prosecuting domestic violence offences and promote the safety of victims of domestic and family violence. In NSW, the Police Code of Practice<sup>3</sup> reinforces a proactive policing response to domestic and family violence and policies which:

- Encourage police to give the strongest consideration to the arrest offenders of domestic and family violence;
- Enforce a pro-prosecution response to the investigation and management of domestic and family violence, where charges will be laid against offenders where evidence exists to support criminal charges.
- Ensure coordinated and integrated models of practice.

The SWDVCAS supports the two broad objectives for a comprehensive and coordinated response suggested in the Discussion Paper on NSW Domestic and Family Violence Strategic Framework:<sup>4</sup>

- I. To provide a comprehensive service to individual victims that meets their needs such that they are safe and adequately provided for. This includes reducing the trauma for victims and supporting them so that they do not need to return to violent situations.
- II. To provide a level of coordination across agencies and programs such that overall efficiency is enhanced in provision of domestic and family violence services.

**SWDVCAS Recommendation 1:**

**A common set of domestic and family violence policies and objectives be adopted Australia-wide, emphasising the criminal nature of domestic and family violence; the safety of victims and accountability for perpetrators; and the need for a coordinated and integrated response to domestic and family violence which emphasises victim support.**

**(b) Mechanisms for inter-agency collaboration, including those to ensure information sharing:**

The existing restrictions under the privacy legislation prevent agencies from sharing information vital to the safety of victims of domestic and family violence in NSW. Because of these privacy concerns, data sharing will become a very significant issue in NSW if government decides to pursue more effective integrated case management approaches, as foreshadowed in discussion papers.<sup>5</sup>

SWDVCAS recommends the current barriers to the exchange of information between government and non-government organisations in NSW be modified as a priority in order to provide assistance to victims of domestic and family violence. SWDVCAS notes that in the ACT, the *Domestic Violence Agencies Act 1986* enables the sharing of information with ‘an approved organisation’ on suspicion of the past or future commission of a domestic violence offence. SWDVCAS supports the enactment of legislation to enable an officer of the NSW Police Force to disclose to an approved service any information that is likely to aid the service in providing assistance to victims of domestic and family violence.

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<sup>3</sup> New South Wales Police Force, Code of Practice for the NSW Police Force Response to Domestic and Family Violence, 2009.

<sup>4</sup> New South Wales Government, Department of Premier and Cabinet, Discussion Paper on NSW Domestic and Family Violence Strategic Framework.

<sup>5</sup> For example, see New South Wales Government, Department of Premier and Cabinet, Discussion Paper on NSW Domestic and Family Violence Strategic Framework at 53.

**SWDVCAS Recommendation 2:**

**Consideration be given to introducing legislation to enable the NSW Police Force to disclose to an approved service any information that is likely to aid the approved service in providing assistance to victims of domestic and family violence.**

In New South Wales, the increased use of, and a simple amendment to NSW Police Force 'yellow card' could be implemented immediately and could substantially increase information sharing and also assist in the early referral of family and domestic violence victims to appropriate services: NSW Police Force have the ability to offer all victims of domestic and family violence early referrals to services by the signing of their yellow card, which gives permission for police to pass the victims details to a family or domestic violence service.

Currently, it is our understanding that less than 40% of all Local Area Commands (LACs) make use of the yellow card system of referral. With minimal training, all NSW LACs could utilise the yellow card system. In some areas, funding has been found for yellow card projects, whereby a specially funded project officer liaises with local police and accepts all yellow card referrals. The project officers then refer the victim to the appropriate WDVCAS if police have made an application for an Apprehended Domestic Violence Order (ADVO), or otherwise to the most appropriate support service.<sup>6</sup>

From our experience, the SWDVCAS believes that - although it would be desirable to have specific yellow card project officers in all police stations - it would not be necessary to fund yellow card project officers across the state to increase the use of the yellow card system. Rather, once the appropriate services are identified locally (for example, it is our understanding that some LACs making use of the yellow cards, but without a project officer, have identified two referral paths: the local WDVCAS for victims with ADVO matters and a local domestic violence agency for others) the police Domestic Violence Liaison Officer simply forwards the yellow cards to the identified services.

In addition, a simple amendment to the NSW Police Force yellow card would allow for an increase in information sharing. Currently, a victim can sign the yellow card and consent to their name and contact details being passed to a family and domestic violence service. SWDVCAS suggests an additional box be added to the yellow card, to be ticked when victims consent to a copy of any ADVO application or provisional order being passed on to the Coordinator of the local WDVCAS at the same time as the victim's contact details. Usually, the SWDVCAS Coordinator (and very often, the victim) does not see the basis of the complaint against the defendant, or the orders police are seeking, until the first court date. The sharing of information in this way would assist in focusing the information and referrals provided to the victim at the earliest possible opportunity, and would allow for pre-court discussion and advice around the victim's safety and the appropriateness of the orders sought.

**SWDVCAS Recommendation 3:**

**The NSW Police Force amend their yellow cards to increase and facilitate information sharing, and implement the use of the yellow card system or similar across the state as a mechanism for inter-agency collaboration.**

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<sup>6</sup> Redfern Legal Centre's 'Yellow Card' Project is currently funded by the Office for Women's Policy, Domestic and Family Violence Grants Program to provide early referrals for domestic and family violence victims.

**(c) Provision for legal and non-legal victim support, and a key role for victim advocates:**

SWDVCAS agrees with the Commissions' view that access to legal advice and representation is a crucial element of integrated responses, and supports the view that adequate resourcing and further development of women's legal services is critically important because of the need for specialised, timely and free legal advice and representation for victims of domestic and family violence.

SWDVCAS also supports the view expressed by ALRC Commissioner, Magistrate Anne Goldsbrough, that legal advice is critically important not only to the victims of domestic and family violence, but also to the defendants in domestic and family violence matters.<sup>7</sup> In NSW, eligible defendants in ADVO matters with associated charges are represented by Legal Aid, and eligible defendants in ADVO matters with no associated charges are often able to seek advice (but not representation) from the Legal Aid duty solicitor or pro-bono duty solicitor.

SWDVCAS draws the Commissions' attention to the legal services available to victims of domestic and family violence and provided by Legal Aid NSW. Legal Aid funds the Domestic Violence Solicitor Scheme (DVSS) which operates in conjunction with WDVCAS at a number of NSW Local Courts.<sup>8</sup> The DVSS uses private solicitors who are rostered to attend court on AVO list days to represent WDVCAS clients in private ADVO applications at mentions and at hearings through a grant of legal aid, and to provide legal advice to women in police initiated ADVOS. The DVSS solicitor can also provide advice on ancillary legal matters, for example, family law matters. At courts with a WDVCAS, but where there is no DVSS, the WDVCAS Coordinator is generally able to refer eligible clients to private solicitors who are willing to represent the client for the grant of legal aid.

**SWDVCAS Recommendation 4:**

**All victims of family and domestic violence in NSW be provided with access to legal advice in domestic and family violence-related court proceedings, through the expansion of Legal Aid's Domestic Violence Solicitor Scheme (DVSS), and that all victims of family and domestic violence in other states and territories be provided with access to legal advice in domestic and family violence-related court proceedings, through a service similar to the DVSS.**

The SWDVCAS agrees with the Commissions' views about the role of victim support persons and victim advocates as a critical element of an integrated response, and the importance of the role these workers play in 'integrating' the legal frameworks for victims. We note that in the Commissions' consultations, stakeholders 'repeatedly emphasised the importance of family violence support services as the key mechanism of integration from the point of view of victims' and that this view was also borne out by evaluations of specialised courts.

An evaluation of the Judicial Oversight Demonstration (JOD) initiative in the USA, which 'set out to improve the provision of comprehensive services to victims of domestic violence, to increase victim safety, and to hold offenders more accountable' highlighted the importance of the provision of coordinated victim advocacy services which provide for contact by victim advocates as soon as possible after the domestic violence incident; the provision of an individualized 'safety plan' for the victim and the victim's children (if appropriate); and the provision of needed services such as shelter, legal advocacy, medical assistance, economic support.<sup>9</sup>

<sup>7</sup> NSW Legal Assistance Forum, ALRC and NSW Law Reform Commission Family Violence Forum, Sydney, 10 May 2010.

<sup>8</sup> The DVSS is currently available at thirteen local courts, and is soon to be expanded to another three courts.

<sup>9</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, The Evaluation of the Judicial Oversight Demonstration: Findings and Lessons on Implementation, 2007.

In other jurisdictions in the USA, and in Canada, the United Kingdom and New Zealand, victim advocates are an integral feature of domestic violence courts. For example, ‘the most integral and critical feature’ of the specialised Family Violence Courts in Manitoba (Canada) is reported to be the in house Women’s Advocacy Program, consisting of three social workers and one lawyer with ‘access to all information including that provided to the court and who provide information, support and advocacy for family violence victims and have particular regard to safety plans and safety measures for victims.’<sup>10</sup>

**Recommendation 5:**

**State and territory governments should, to the extent feasible, make victim advocates available at family and domestic violence-related court proceedings, and enable advocates access to all relevant information including that provided to the court.**

**In this regard, SWDVCAS agrees with the Commissions’ statement that the NSW Domestic Violence Court Advocacy Service is a useful precedent for productively mainstreaming across all courts dealing with domestic and family violence.**

**(d) Training and education programs:**

An integrated response to domestic and family violence should include training and education programs for all stakeholders, including operational police, prosecutors, lawyers, judicial officers, and victim’s services. In particular, SWDVCAS would like to highlight the key leadership role of the judicial officer and the importance of specially trained judicial officers in an integrated response to domestic and family violence, and supports the National Council’s recommendation of a model Bench Book for judicial officers.<sup>11</sup>

SWDVCAS agrees with the National Council that the attitudes and responsiveness of police and the judiciary are central to ensuring responses to violence against women are just, and agrees with the recommendation that, in achieving the outcome of ensuring just responses, a key strategy should be to ‘ensure judicial officers, law enforcement personnel and other professionals with the legal system have appropriate knowledge and expertise’.<sup>12</sup> The Family Law Council also recommends that all domestic and family violence key players should ‘undertake relevant ongoing training at least annually’.<sup>13</sup>

**SWDVCAS Recommendation 6:**

**Ongoing, thorough and consistent training in the area of domestic and family violence be provided to ensure judicial officers, law enforcement personnel and other professionals have appropriate levels of knowledge and expertise and agrees with the National Council’s recommendations to:**

<sup>10</sup> Julie Stewart, Australian Domestic and Family violence Clearinghouse, University of New South Wales, Specialist Domestic/Family Violence Courts within the Australian Context, Issues Paper 10.

<sup>11</sup> National Council to Reduce Violence against Women and their Children, Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021 (2009), 21.

<sup>12</sup> National Council to Reduce Violence against Women and their Children, Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021, 21.

<sup>13</sup> Family Law Council, Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues (2009), Recommendations 6.1–6.7.

1. **Develop and implement a national education and professional development framework that recognises the specific roles and functions of police; prosecutors; defence counsel; family and migration lawyers; legal advisers; court staff and the judiciary.**
2. **Commission the production of a model Bench Book, in consultation with jurisdictions and as part of a national professional development program for judicial officers on sexual assault and domestic and family violence, to provide a social context analysis and case law to complement existing resources and enhance the application of the law.**

**(e) Provision for data collection and evaluation:**

The National Council to Reduce Violence against Women and Children has pointed out that data relating to violence against women and their children in Australia is poor, and has highlighted the need for a national database.<sup>14</sup> The development of an integrated response to domestic and family violence at a national level with associated, centralised databases would allow researchers to readily identify and evaluate what is critical to quality domestic and family violence responses and identify areas for change and so that resources might be directed to where they will have the most impact.

SWDVCAS also recommends that consideration be given to a database common to all agencies, to assist with information sharing across agencies and to allow for the identification of high risk victims.

**SWDVCAS Recommendation 7:**

**An integrated response to domestic and family violence include the development of a national database to readily identify and evaluate what is critical to domestic and family violence and that consideration be given to a common database for the purpose of domestic and family violence cross-agency information sharing.**

## **2. SPECIALISATION**

**ALRC Proposal 20-5**

**Specialisation:**

**State and territory governments should review whether, and to what extent, the following features have been adopted in the courts in their jurisdiction dealing with family violence, with a view to adopting them:**

- (a) Identifying and listing on the same day, protection order matters and criminal proceedings related to family violence, as well as related family law act and child protection matters;**
- (b) Providing victim and defendant support, including legal advice, on family violence list days;**
- (c) Assigning selected and trained judicial officers to work on cases related to family violence;**
- (d) Adopting practice directions for family violence cases;**
- (e) Ensuring that facilities and practices secure victim safety at court; and**
- (f) Establishing a forum for feedback from, and discussion with, other agencies and non-government organisations.**

### **SWDVCAS recommendations for specialisation**

<sup>14</sup> National Council to Reduce Violence against Women and their Children, Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009–2021 (2009), 47–48, 52, 68, 89, 122, 143, 167.



The Commissions' state their preliminary view is that state and territory governments should establish and foster specialised family violence courts in their jurisdictions.<sup>15</sup> The Commissions propose that state and territory governments should ensure that specialised family violence courts determine matters relating to criminal proceedings related to family violence along with civil and statutory claims for compensation, child support and family law matters.

SWDVCAS agrees that the creation of specialised domestic violence courts, with the ability to determine all matters relating to the victim and the defendant, would be an ideal response to the problem of domestic and family violence. Violence against women and their children was estimated to cost the Australian economy \$13.6 billion in 2008-2009, and by the period 2021-2022, the cost is projected to be \$15.6 billion. Therefore, it can be argued that the cost of establishing nation-wide specialised courts can be justified and should be a long-term goal; however SWDVCAS argues that urgent and achievable action must be taken by state and territory governments to improve the legal frameworks relating to family and domestic violence.

SWDVCAS believes that – considering the resources required - the establishment of nation-wide specialised domestic and family violence courts is not currently an immediate or feasible option and that – at far less cost – existing courts could be immediately developed to deal with domestic violence related protection orders, associated criminal charges, family law matters and child protection matters.

SWDVCAS recommends that a model of domestic and family violence specialisation be developed immediately within all existing courts as a way of improving interactions, consistency and outcomes, and promoted as a cost-effective model of specialisation that need not be confined to a selected few geographical sites. To this end, SWDVCAS recommends the following:

**(a) Identifying and listing on the same day, protection order matters and criminal proceedings related to family violence, as well as related Family Law Act and child protection matters:**

In NSW, the new JusticeLink system appears to readily identify domestic and family violence applications and charges for the purpose of the court list. It would then be helpful, particularly in smaller courts, if protection order hearings (as well as mentions) could be listed on a particular day of the week.<sup>16</sup> Identifying family violence related proceedings and listing them on the same day would then allow for specialist judicial officers, prosecutors, solicitors and court advocates to be in attendance.

In NSW, many local courts already run a separate protection order and associated charges list,<sup>17</sup> and in smaller courts with no dedicated protection order list day, a time could be allocated on general list day for the protection orders list.<sup>18</sup>

**SWDVCAS Recommendation 8:**  
**State and territory governments support the identifying and listing on the same day at local courts, all protection order matters and criminal proceedings related to domestic and family**

<sup>15</sup> ALRC Consultation Paper, *Family Violence – Improving Legal Frameworks* 2010 at 984.

<sup>16</sup> For example at Waverley Court, the Magistrates try to list most ADVO hearings for Thursday when the SWDVCAS and police Domestic Violence Liaison Officers are in attendance for the AVO list.

<sup>17</sup> For example, SWDVCAS attends Downing Centre, Balmain, Newtown and Waverley Local Courts, which all have a dedicated AVO list day.

<sup>18</sup> For example, before the closure of Redfern Court, the Magistrate there would set aside time for the AVO list after the general list, which allowed victims time to give instructions to their respective Police Domestic Violence Liaison Officers to pass to prosecutors, and time to speak to the WDVCS before the list was called.

**violence, as well as related Family Law Act proceedings and child protection matters, in order to allow judicial officers, prosecutors, solicitors and court advocates specially trained in domestic and family violence to be in attendance.**

**(b) Providing victim and defendant support, including legal advice, on family violence list days:**

In NSW the Women's Domestic Violence Court Assistance Program operates to assist women and children who are experiencing family and domestic violence to obtain legal protection and to access support services that can assist them with their other legal and social needs (for example, financial assistance and advice, housing, counselling and family law issues). Individual Women's Domestic Violence Court Advocacy Services (WDVCASs) provide information, assistance and court advocacy services to women and children at 108 local courts across New South Wales. Most WDVCASs have a Coordinator, an Assistant Coordinator, an Aboriginal Specialist Worker, a Culturally and Linguistically Diverse (CALD) Specialist Worker and Court Advocates.

The WDVCASs advocate on behalf of clients and build relationships with other key partners at NSW Local Courts and with the NSW Police Force in order to gain specialist knowledge about the systems and services available to assist women and children experiencing domestic violence. Examples of the advocacy work that WDVCASs do include working with the Domestic Violence Liaison Officer (DVLO) or police prosecutor to ensure ADVO conditions are appropriate to the client's needs, and ensuring women receive the support and assistance they need.

**SWDVCAS Recommendation 9:**

**As an integral part of domestic and family violence specialisation within existing courts, state and territory governments should, to the extent feasible, make victim advocates available at family and domestic violence-related court proceedings, and enable advocates access to all relevant information including that provided to the court.**

**In this regard, SWDVCAS agrees with the Commissions' statement that the NSW Domestic Violence Court Advocacy Service<sup>19</sup> is a useful precedent for productively mainstreaming across all courts dealing with domestic and family violence.**

At thirteen (soon to be 16) NSW local courts, Legal Aid NSW provides duty solicitor services to WDVCAS clients through the Domestic Violence Solicitor Scheme (DVSS).<sup>20</sup> The scheme uses solicitors from the private profession, who are rostered to attend court on AVO list days to represent WDVCAS clients in private ADVO applications at mentions and at hearings through a grant of legal aid. The DVSS is also available to provide legal advice to police assisted clients on ancillary matters, such as family law and child protection.

**SWDVCAS Recommendation 10 (similar to Recommendation 4):**

**As an integral part of domestic and family violence specialisation within existing courts, all victims of family and domestic violence in NSW be provided with access to legal advice in domestic and family violence-related court proceedings, through the expansion of Legal Aid's Domestic Violence Solicitor Scheme (DVSS), and that all victims of family and domestic violence in other states and territories be provided with access to legal advice through a service similar to the DVSS.**

<sup>19</sup> ALRC Consultation Paper, *Family Violence – Improving Legal Frameworks* 2010 at 984.

<sup>20</sup> The Domestic Violence Solicitor Scheme currently operates at Waverley, Burwood, Bankstown, Liverpool, Fairfield, Campbelltown, Sutherland, Kogarah, Blacktown, Penrith, Gosford, Woy Woy and Wyong courts and is soon to be extended to Downing Centre, Newtown and Balmain courts.

At most courts in NSW, Legal Aid duty solicitors are able to provide advice to defendants in ADVO matters, and in certain circumstances, are able to represent defendants in domestic and family violence criminal proceedings at mentions and hearings. Our own observation is that domestic and family violence matters are finalised much sooner when the defendant has been provided with legal advice.

**SWDVCAS Recommendation 11:**

**As an integral part of domestic and family violence specialisation within existing courts, unrepresented defendants in family and domestic violence-related proceedings in all states and territories be provided with access to legal advice by Legal Aid solicitors on local court list days.**

**(c) Assigning selected and trained judicial officers to work on cases related to family violence:**

Specialist judicial officers, prosecutors and police are a feature of a number of the specialist courts operating successfully in other jurisdictions, and training and education for judicial officers has been identified as a key issue in building strategic frameworks for addressing domestic and family violence.<sup>21</sup> A dedicated presiding judicial officer, specially selected and trained, would provide a consistent and committed approach to, and would be critical to the success of, specialised domestic and family violence lists within existing courts.

In particular, specially trained judicial officers would need to have:

- An understanding of victim safety and defendant accountability as primary considerations;
- Knowledge of the key theories that inform an understanding of domestic and family violence and the role of gender;
- An understanding of the needs of marginalised victims, for example Aboriginal or Torres Strait Islander victims, victims from culturally diverse backgrounds and victims with disabilities.

Specialist judicial officers could:

- Preside in protection order matters and criminal proceedings related to family violence, as well as related Family Law Act proceedings and child protection matters;
- Provide consistency and efficiency in the application of laws;
- Drive change within the legal and judicial systems;
- Carry specialist knowledge into the general system.

**SWDVCAS Recommendation 12:**

**As an integral part of domestic and family violence specialisation within existing courts, specially selected and trained judicial officers be assigned to preside in protection order matters and criminal proceedings related to family violence, as well as related Family Law Act proceedings and child protection matters.**

**(d) Adopting practice directions for family violence cases:**

One problem faced by victims of domestic and family violence is inconsistency in the application of the law by judicial officers. The development and adoption of practice directions would be a way of improving consistency and outcomes in the context of family violence specialisation within existing courts. For example, since the commencement in NSW of the Chief Magistrate's practice note

<sup>21</sup> Australasian Police, Australasian Policing Strategy on the Prevention and Reduction of Family Violence, 2008.

applying to domestic violence criminal matters listed for mention or hearings at Local Courts,<sup>22</sup> SWDVCAS statistics show an increase in guilty pleas and a decrease in the length of time before proceedings are finalised at the courts we attend.

Further, the commission of a model Bench Book (as mentioned earlier in this document) in consultation with jurisdictions and as part of a national professional development program for judicial officers on sexual assault and domestic and family violence, could provide a social context analysis and case law to complement existing resources and enhance the application of the law.

**SWDVCAS Recommendation 13:**

**As a guide to judicial officers and to improve consistency and outcomes in the context of domestic and family violence specialisation within existing courts, SWDVCAS recommends the adoption of relevant practice directions and a model Bench Book for family and domestic violence cases.**

**(e) Ensuring that facilities and practices secure victim safety at court:**

Some NSW courts already have purpose-built safe rooms or a safe space set aside for victims of domestic and family violence, and fifty-seven NSW courts have officers assigned from the Sheriff's Office to provide for the safety of those attending court. In a number of NSW courts, eligible witnesses are able to utilise remote witness facilities, and in other courts arrangements can be made to access these facilities when appropriate notice is given.

SWDVCAS agrees with the NSW Ombudsman's recommendation that safe rooms be made available at all courts listing domestic and family violence related matters<sup>23</sup> and recommends that officers from the Sheriff's Office be in attendance at court when family and domestic violence related matters are listed.

**SWDVCAS Recommendation 14:**

**At all courts listing family and domestic violence related matters, facilities be made available and practices be implemented to ensure the safety of women and children attending court.**

**All new or renovated courts listing domestic violence related matters be designed to include purpose-built safe rooms to ensure the safety of women and children attending court.**

**(f) Establishing a forum for feedback from, and discussion with, other agencies and non-government organisations.**

In many areas, local domestic violence interagency committees operate, consisting of members from government and non-government agencies, and other professionals.<sup>24</sup> These committees cooperate and liaise with agencies and service providers to respond to the problem of domestic and family violence at the local level. The NSW Ombudsman has identified a number of examples of 'solid interagency practice' with regard to local domestic violence interagency committees that involved one or more of the following elements:

- Strong leadership;

<sup>22</sup> Local Court Practice Note No. 3 of 2008 has the stated objective of ensuring that, where appropriate, pleas of guilty are entered at the first available opportunity and if a plea of not guilty is entered that a hearing occurs as promptly as possible (within three months of charges being laid).

<sup>23</sup> NSW Ombudsman Special Report to Parliament, *Domestic Violence – Improving Police Practice*, 2006 at 38.

<sup>24</sup> For example, SWDVCAS is a member of four local inter-agency committees operating in four different local areas.

- The commitment of all parties;
- A shared focus on safety;
- A structured approach;
- A willingness to exchange information.<sup>25</sup>

Another forum for the exchange of information and the discussion of processes and procedures is the Court Users Forum which operates in some NSW courts, and consists of stakeholder representatives, including magistrates.<sup>26</sup>

**SWDVCAS Recommendation 15:**

**State and territory governments provide funding for local interagency committees to be formed or strengthened to address the problem of domestic and family violence through interagency collaboration, the exchange of information, community education and feedback on initiatives.**

**State and territory governments support and expand the use of Court User Forums or similar, for the exchange of information and the discussion of processes and procedures vital to the operation of domestic and family violence court specialisation.**

In addition to the above recommendations in response to ALRC Proposal 20-5, SWDVCAS makes the following recommendations regarding the vital roles of specialist police prosecutors and specially trained police officers within the context of domestic and family violence specialisation within existing courts:

**Police prosecutors:**

There are no trained specialist domestic violence prosecutors in NSW, and the prevalence of significant concerns about the quality of service provided by police prosecutors in domestic violence matters has been noted,<sup>27</sup> including concerns about their:

- Failure to confer with victims and their advocates;<sup>28</sup>
- Failure to confer with Domestic Violence Liaison Officers;
- Failure to effectively advocate on behalf of victims; and
- A lack of accountability.

Jurisdictions with specialised domestic violence prosecutors are reported to have higher rates of successful prosecutions,<sup>29</sup> and specialist prosecutors have been reported to be ‘the single greatest factor responsible for the [specialist domestic and family violence] court’s success.’<sup>30</sup> In Manitoba,

25 NSW Ombudsman’s Special Report to Parliament, *Domestic Violence – Improving Police Practice*, 2006 at 47.

26 For example, at the Downing Centre Court, the Court Users Forum is usually chaired by a magistrate (often the Chief or Deputy Chief Magistrate) and consists of representatives from the Attorney General’s Department, Downing Centre Prosecutors Office, Legal Aid, Aboriginal Legal Service, the Salvation Army, SWDVCAS and others.

27 NSW Ombudsman’s Special Report to Parliament, *Domestic Violence – Improving Police Practice*, 2006 at 33.

28 For example, at the Downing Centre most victims in domestic and family violence matters do not have any contact with their prosecutor before the hearing day, and most are only able to speak to their prosecutor in the minutes between the court room being allocated and the hearing commencing. This does not allow the victim to inform the prosecutor of any change in circumstance that has occurred since the victim gave her statement to police, or to inform the prosecutor of any recent incidents that have occurred.

29 Andrew Klein, *Special Report – Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, U.S. Department of Justice, National Institute of Justice, 2009 at 33.

30 E.J. Ursel ‘The Possibilities of Criminal Justice Intervention in Domestic Violence: A Canadian Case Study’, *Current Issues in Criminal Justice*, 1997 at 271

policy guidelines for specialist prosecutors were introduced to reflect ‘a dual mandate of rigorous prosecution and sensitivity to the victim’s needs’, and this mandate has been said to ‘encompass a wide array of objectives, including victim safety, communicating to the offender the unacceptability of violence, and potentially investing victims with greater power and agency in dealing with a violent partner...each of these outcomes can be achieved in the absence of a conviction’.<sup>31</sup>

The model of specialisation recommended by SWDVCAS would require specially selected and trained prosecutors, who would have a critical role in:

- Ensuring the brief of evidence is thorough and complete;
- Ensuring all evidence is admissible;
- Liaising with court advocates and other victim support persons as appropriate;
- Interviewing the victim before the hearing;
- Interpreting the domestic and family violence legislation;
- Prosecuting with a high level of skill;
- Understanding the type of orders appropriate to the victim’s circumstances;
- Carrying specialist knowledge into the general system.

**SWDVCAS Recommendation 16:**

**State and territory governments provide, as an integral part of domestic and family violence specialisation within existing courts, trained prosecutors to be assigned to prosecute protection order matters and criminal proceedings related to domestic and family violence.**

**Specialist police officers:**

In NSW, many Local Area Commands (LACs) already have specialist Domestic Violence Liaison Officers (DVLOs) who oversee the investigation of domestic and family violence offences.<sup>32</sup> These specialist officers have a critical role in:

- Promoting best practice in their LAC through the provision of training and monitoring;
- Ensuring high quality first response to domestic and family violence;
- Acting as a point of contact and information for victims;
- Liaising with the court and prosecutors;
- Liaising with other agencies;
- Developing domestic and family violence policies.

SWDVCAS believes the role of the DVLO is a vital one, and one which should be a recognised senior role within police. The NSW Ombudsman has highlighted the importance of the DVLO role and described the role is ‘an invaluable one, providing a vital link between police and the community, particularly victims and their advocates’.<sup>33</sup>

**SWDVCAS Recommendation 17:**

**As an integral part of domestic and family violence specialisation within existing courts, specially trained police officers be appointed to ensure high quality first response, the provision of training and monitoring within their local command, and to provide liaison with the court and prosecutors.**

31 E.J. Ursel, ‘Winnipeg Family Violence Court Report’ in *Family Violence in Canada: A Statistical Profile 2000*, Canadian Centre for Justice Statistics, Chapter 6.1 July 2000, Statistics Canada at 55.

<sup>32</sup> For example, SWDVCAS works with 14 well-trained DVLOs from 11 Local Area Commands at four local courts.

<sup>33</sup> NSW Ombudsman’s Special Report to Parliament, *Domestic Violence – Improving Police Practice*, 2006 at 27.

## CONCLUSION

SWDVCAS makes 17 recommendations to the ALRC Inquiry. Recommendations 1-7 argue for an integrated response to domestic and family violence, with a common set of policies and objectives; inter-agency collaboration and information sharing; the provision of legal and non-legal victim support, with a key role for victim advocates; and specialist training for stakeholders. Recommendations 8-17 argue for the establishment of specialisation within existing courts, with the scheduling of specially allocated list days to identify and remove domestic and family violence cases from the mainstream court process; providing victim and defendant support, including legal advice on family violence list and hearing days; adopting practice directions and a Bench Book for domestic and family violence cases; establishing a forum for interagency feedback and information exchange; and the importance of properly trained police prosecutors and DVLOs.

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