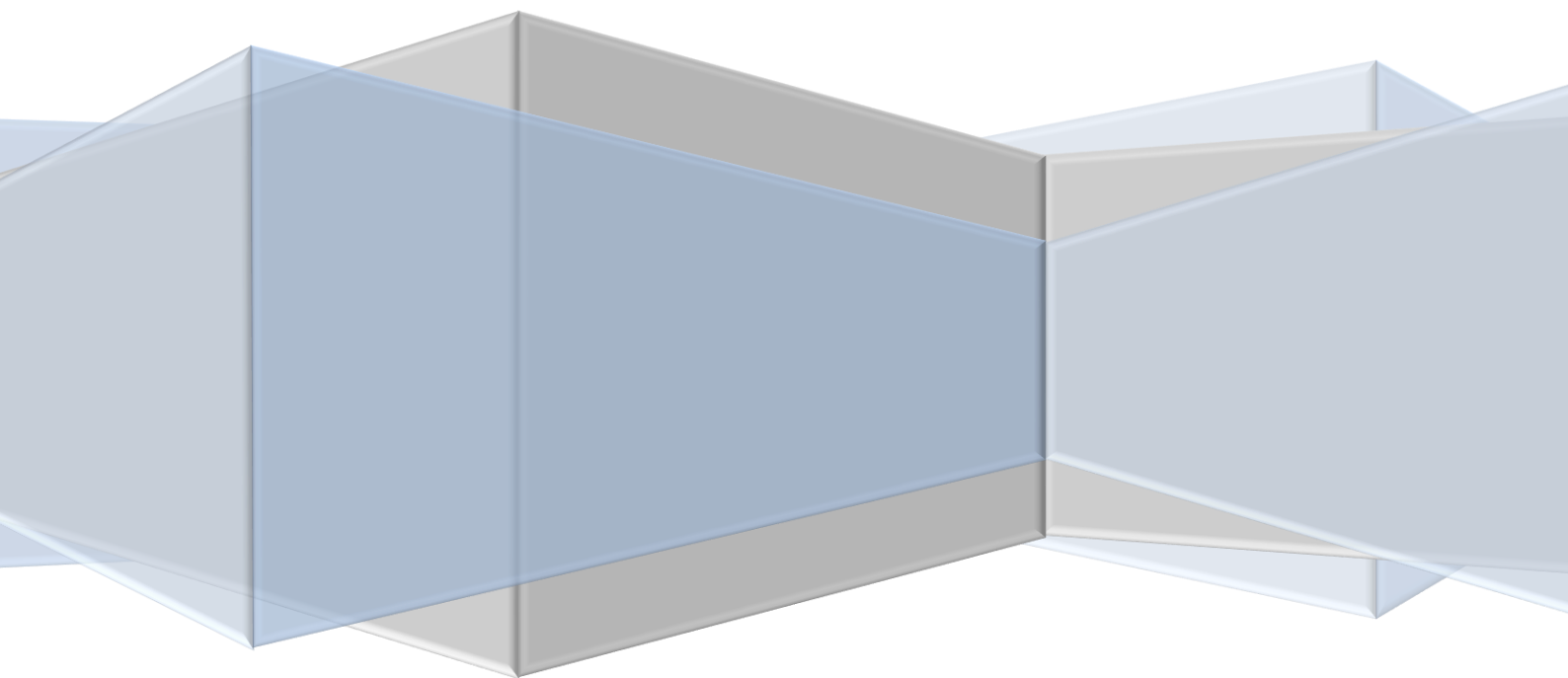


Domestic Violence Legal Workers Network

**Inquiry into Methods of
Evaluating WA Police
Performance: Protection
for Victims of Family and
Domestic Violence
Submission**



INQUIRY INTO METHODS OF EVALUATING WA POLICE PERFORMANCE

SUBMISSION OF DOMESTIC VIOLENCE LEGAL WORKERS NETWORK

About the Domestic Violence Legal Workers Network

The Domestic Violence Legal Workers Network undertakes policy and law reform as well as providing training, network opportunities and regular updates to solicitors and other workers who assist victims of domestic and family violence.

Terms of Reference

For the purposes of this submission we will be focusing on the Term of Reference 2

Victim's perceptions of how police respond to family and domestic violence

Additionally, we encourage the committee to review our submission to the Law Reform Commission of WA's Inquiry into Enhancing Laws Concerning Family and Domestic Violence¹, which makes comment on a number of police and training issues which may be of interest for the purpose of this inquiry.

Summary

The key points outlined in this submission:

- The importance of consistency in police responses to domestic violence calls and knowledge of accurate procedures
- The importance of consistent victim support throughout the process and sensitivity in dealing with domestic violence victims
- The importance of adequate training programs to appropriately identify and respond to family and domestic violence
- The importance of ensuring culturally and linguistically diverse victims have access to adequate tools to aid understanding
- The importance of ensuring that breaches of Violence Restraining Orders, especially forms of contact using modern technology, are recorded and investigated to the fullest extent

Background

One in three women have experienced physical violence. One in four women has experienced emotional abuse. Almost half the women who experience violence by an ex-partner said that children had seen or heard the violence. One woman dies at the hands of a current or former partner almost every week in Australia². These fatalities in the context of family violence can be prevented when

¹ <http://www.wlcwa.org.au/resources/FDV-Sub-Final.pdf>

² OurWatch, *Facts and Figures*, www.ourwatch.org.au

systems work together and respond appropriately at each point of contact with the victim and the perpetrator.

Abuse in the context of domestic violence can take many forms including physical, emotional, sexual and financial. An abusive partner, in addition to coercive and fear tactics, will increasingly isolate their spouse from support networks as well as maintaining control over financial and social aspects of the victim's life. As this abuse occurs within the home it is regularly left unreported. In 2005 a Personal Safety Survey estimated that only 36% of female victims of physical assault reported the crime to the police³. It is therefore imperative that police responses to incidences of domestic violence are consistent and supportive in order to encourage and maintain reporting rates.

Acknowledgement

We acknowledge, that we have made some generalisations in this submission. By virtue of the work that we do, we have the opportunity to see some fantastic police responses from the Western Australian Police (WAPOL), which we recognise and honour. For the purpose of this submission however, we are focused predominantly on responses that concern us and the inconsistency between appropriate and inappropriate responses.

Concerns

1. Consistency of police responses to domestic violence calls

It is of the utmost importance for police to maintain a standardised and consistent response to all instances of domestic violence. Inconsistent responses in dealing with these issues adds to the pressures of uncertainty and vulnerability felt by victims of domestic violence. WAPOL released a Family and Domestic Violence Strategy 2009-2011 detailing the themes of Safety, Early Intervention and Enforcement for responding to domestic violence incidents. Client experience however, has made it clear that these policies and procedures are not being implemented consistently.

Inconsistency in decision making and a lack of understanding of the nature of family and domestic violence was a key point of reference in the Law Reform Commissions Report in Enhancing Family and Domestic Violence Laws. It was found that the main reason for these differing approaches was an imbalance in the levels of understanding about the nature and dynamics of family and domestic violence among professionals working in the legal system. A maximisation of access to knowledge should reduce this inconsistency within police procedure. It is particularly relevant to be aware that:

- When victims respond to violence this does not make the incident one of mutualised violence
- A discontinuance of a Violence Restraining Order (VRO) application does not necessarily mean the violence never occurred, but could be indicative that threats regarding its application may have been made
- Issuing police orders on the basis of "which party has somewhere to stay", despite specifically being aware of which party is the perpetrator and which is the victim, is inappropriate

³ Australian Bureau of Statistics, *Personal Safety Survey*

Lavern's Story

Lavern has separated from her partner David, who was the perpetrator of years of physical, sexual and emotional abuse towards Lavern. She is encouraged to report the violence to the police, but the police tell Lavern that there is nothing they can do. They emphasise to her that she should have reported the abuse at the time it was happening. Lavern attempts to explain that under violent death threats she could not press charges at the time. She has brought documented photo evidence matching hospital records of her injuries and a hand written letter from David admitting to some of the offences he committed against her. The police maintain that they cannot legally take a statement from her.

Lavern's situation is not an isolated case. Police need to be aware of both the policies in place to accurately record violence but also the nuances of violence in a domestic context. This will ensure that they are aware that often reporting at the time of the offence is not an option for many victims.

Susan's Story

Susan called 000 around 1:30am when the father of her child was at her house threatening to slit her throat with a knife, in a highly agitated and drug-altered state. The perpetrator left just prior to the Police attending. The Police refused to look for him, instead insisting there was nothing they could do until the victim attended the Police Station to make a written statement. When Susan asked the Police why they were unable to look for the perpetrator, and reduce any risk of him coming back, Susan was told too many women in family relationships refuse to provide a statement and make it difficult for the Police to charge the perpetrator.

Had the police officers in this situation taken the time to look for the perpetrator there was a likelihood they would have both reduced a potential risk to Susan and her children and gathered some relevant evidence.

Olivia's Story

Olivia and her boyfriend were together for 3 years and have a 2 year old daughter together. Olivia dealt with both racial abuse and threats from her boyfriend to burn her alive in front of her daughter, torch their house and slit her throat. When Olivia told her boyfriend that she had met someone else, he found two petrol cans and threatened to burn her alive. He then proceeded to drag her down the road and by the hair, while holding a knife to her throat. When the police arrived they did not take a statement from Olivia, only noting down what had happened. She was then informed that as her boyfriend had left the scene it was too late to go after him. Olivia tried to follow the matter up with the police to no avail, being told that 'nothing could be done'. Olivia felt very disappointed by the police response to her situation and felt as though they did not believe that the incident had occurred.

Olivia's situation can be contrasted to situations in which the police are consistent in their approach to policies and procedures. When the police know the process they are then able to convey this information to the complainant, which puts them at ease in knowing what will happen next. This also assists in allowing victims to follow up the status of a VRO application or any charges that have been laid to ensure their safety and diminish vulnerability.

Lisa's Story:

Lisa and her husband were married for 10 years and had 2 young children. For the past few years Lisa had suspected her husband of abusing alcohol and drugs. In one incident her husband began shouting and swearing at her in front of her children and pushed her up against a wall by the throat until she could not breathe. When the police attended the scene they spoke to both Lisa and her husband and issued a Police Order against her husband. The police officers also suggested that Lisa use the 72 hour Police Order to apply for a VRO at court and provided referrals to support agencies.

Lisa's situation shows the positive effect that knowing and implementing standardised police procedure can have in domestic violence cases. Ensuring that the complainant is aware of the 72 hour police order, the process for obtaining a VRO and providing information on support agencies that can assist with emotional support during the process. This all serves to make the client feel more comfortable about the process and less vulnerable.

Recommendations

- Providing victims with incident report numbers so that if they can follow up with the police they are able to gain accurate information
- Adequate and consistent training programs and continuing guidance to ensure that policies and processes for domestic violence are followed directly by police officers
- Consistency between standard procedure and actual procedure

2. Consistency in victim support throughout the process and a sensitivity in dealing with domestic violence victims

It is imperative in a situation of domestic violence that the victim feels supported in reporting incidents of domestic violence to the police. This is not only important for reducing the vulnerability felt by these clients but it also has a huge impact on the likelihood of victims reporting future incidents and further violence. At all times during the process of reporting violence to the police, the safety of victims and children are held paramount. The system must respond in a supportive and sensitive manner to reduce the trauma suffered by victims⁴.

There is a fundamental need to prioritise training in family and domestic violence situations across the justice system. The experiences of our solicitors have made it clear that adequate police

⁴ Emphasised by the law Reform Commission of WA Final Report into *Enhancing Family and Domestic Violence Laws*

training procedures remains a core concern. A number of issues that clients have been faced with can be resolved or minimised by focusing police training on:

- Ensuring adequate investigation of family violence claims
- Where an assault has occurred, ensure that the perpetrator is charged
- Identification of a single primary aggressor, as opposed to including the victim as a Person of Interest
- Ensuring the accurate reporting of incidents of violence and an understanding of how this evidence will assist in seeing the overall context of abuse patterns
- Ensuring that officers understand and can correctly read the dynamics of family violence- ensuring they do not make inaccurate decisions based on the perceived behaviour of either party
- Ensuring that police understand why a victim may not want to make a statement and confidence that they will collect any other available evidence that may exist

In a recent article by ABC News about "How Police navigate the complex terrain of domestic violence"⁵, a police officer Sergeant O'Malia conveyed,

"I went to one particular [domestic violence matter] a little while ago now where I spoke to the boy and he gave me a version of events and I thought 'that's terrible', she must be a bad person, she must be the baddie. Then my colleague was speaking to her and he said, 'Rog, you're flat-out wrong. She's the victim and here's what really happened: This guy was sitting on top of her, smashing her head into the floor and she said the only reason he stopped was because he heard your siren. He would have killed her.'"

He and his partner arrested the man involved, but Sergeant O'Malia was "mortified" with his own misjudgement. *"I was convinced this guy was the victim and he wasn't."*

This examples indicates the charismatic and compelling attributes that are typical of domestic violence perpetrators, in conjunction with the fact that victims don't always present the way our societal expectations indicate they should. This combination can have the effect of police assuming that the victim is the primary aggressor, when further inquiries and investigation are not undertaken. Additionally, because domestic violence is a specialist area, typical approaches associated with our general understanding or assumptions of crime and/or the justice system (i.e. where crimes are often random, untargeted offences where no relationship with the offender exists), do not apply as fittingly to domestic violence related offences.

In addition to training, encouraging critical thinking and reflective practice of police is of utmost importance.

⁵ <http://www.abc.net.au/news/2015-06-02/police-domestic-violence/6488828>

Jenny's Story

Jenny was in a de facto relationship with Shane and had a 2 year old son with him. Shane inflicted both physical and emotional abuse, preventing Jenny from leaving the house. Furthermore, he would tell her she would be 'nothing without him' and how she was a 'bad mother'. Shane took Jenny's car keys and bank cards in order to isolate her further from her friends and family. In one incident Jenny requested Shane help her move some furniture and instead he began shouting at her and threw the furniture at Jenny, narrowly missing their son. He then attempted to strangle Jenny and hit her in the face. When the police arrived, one officer spoke to Jenny and another to Shane. The police officer who spoke to Shane suggested that Jenny had hit Shane and as it was her fault she should find somewhere else to go. The female police officer who had spoken to Jenny informed her that a Police Order could be issued which meant Shane would need to leave for 72 hours.

Jenny's case is an example of where police officers need to be vigilant to the sensitivities of a domestic violence situation. Specifically, asking a complainant to leave, rather than the accused, can have irrevocable consequences for the trust between a police officer and a victim. If a domestic violence victim feels judged in making their statement they can downplay the events and are less likely to report future occurrences of violence. Perpetrators also learn that the system supports their behaviour and will use this as a threat or coercive tactic in future violent situations.

Marie's Story

Marie found her partner Mark to be very controlling. For example, making demands and controlling her finances, as well as preventing her from socialising with her friends and family. He also emotionally abused her, calling her 'fat' and 'lazy' and physically abused her by pushing glasses into her face, pulling her by the hair to remove her from her car and throwing objects at her. He also threatened her life while holding a knife. Marie left Mark, but he came to her house and destroyed her front door, smashed her windows and did burnouts on her lawn. The police took a long time to get to the scene and when they arrived, Mark had already left. It was clear to Marie from her conversation with the police that they did not speak to her in a respectful manner and thought she had made the incident up. Marie felt 'belittled' by her interaction with the police officers and stressed as the previous abuse from Mark had made it difficult to report the incident in the first place, without having the police act negatively towards her.

Orana House have identified that a supportive network throughout the process is an important step in ensuring victim's safety and comfort. Specifically, returning to the house in which the attack occurred to collect their belongings is often a traumatic experience for a victim. Therefore ensuring that police escorts are provided is an important step. It is highly distressing for a victim to go back to their house, with the possibility of facing their attacker and have the police escort to not show up.

Magenta have also identified that a relationship of trust between a victim and the police is often down to the timeliness of their responses. In one particular instance they had a client whose abuser had not yet been issued with a VRO. The client could not get into a refuge and was not confident to go home as she did not believe that police would respond to an emergency at their house in time given they hadn't yet served the order. Ensuring that police respond in a timely manner would go a long way to improving reporting rates.

Recommendations

It is recognised by the Gender Bias Taskforce report⁶ that domestic violence awareness training should be essential for all persons involved in domestic violence matters. This is due to the huge importance in the relationship between the victim and police for reducing the vulnerability of the client and ensuring that we encourage the reporting of incidences in domestic violence. It is particularly important that referrals to supporting agencies are made known to the victims by the police. These agencies can help with anything from emotional support for the victim and their children to legal assistance with applying for more permanent court orders at the expiry of a 72 hour police order. The Law Reform Commission's Report into Enhancing Family and Domestic Violence Laws found that it is a key objective to improve integration and coordination in relation to family and domestic violence in the legal system. The Western Australian *Strategic Plan for Family and Domestic Violence*⁷ focuses on producing 'better integrated service responses to families who find themselves victims of domestic violence'. A multiagency approach is required from state and federal government agencies and non-government agencies and individuals.

We recommend that WAPOL provide more regular training to all police officers in relation to family and domestic violence.

- This training should be developed by a wide variety of agencies with knowledge in all contemporary issues and dynamics of family and domestic violence
- Such training should also focus on the nuances involved with dealing with domestic violence in relation to Aboriginal and Torres Strait Islander communities, multicultural communities, LGBTIQ communities and people with disabilities
- This training should also include relationship building with or identification of specialist services that the police can partner with and refer to. A more integrated and collaborative response will ensure that victims are not re-traumatised by having to repeat their accounts of violence multiple times for multiple individuals and agencies and also reinforce positive social response to the disclosures of abuse.
- Accountability and compliance measures should be put in place to ensure that adequate training is provided to police officers throughout Western Australia, and this training is regularly overseen and informed by government and non-government

⁶ http://www.wlwa.asn.au/2014_GenderBiasReviewReport_September2014.pdf

⁷ <https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/WA%20FDV%20Prevention%20Strategy%20to%202022.pdf>

agencies who work with victims of FDV to provide feedback into the evolving nature of the training courses and support police to undertake this training

Further, we recommend (as was recognised in the Law Reform Commission of WA's Enhancing Laws Concerning Family Violence report), that police DV policies should be publically available to assist with transparency so people clearly know what the policies are, what to expect police responses to be and police are accountable to them.

Below is an example of how the implementation of these processes can have a positive effect on the outcome.

Jill's Story

Jill, having moved from Africa to Australia 4 years prior, had no family in Australia. Jill and her husband became involved in their local church and regularly attended church related activities. As her husband was controlling the finances and her use of the family car, Jill often took her son on public transport when her husband withheld the car keys. When her husband found out he confronted Jill and punched her so hard in the jaw that she saw stars. He pushed Jill onto the floor and stamped on her head in front of their young son. The police attended the scene promptly and issued Jill's husband with a 72 hour police order. They also took the time to talk to Jill about the incident and as she was too sore to move and took her to the hospital. They also took her husband away in a different car so as she did not have to see him again.

3. Ensuring cultural and linguistic sensitivity of victims is highlighted and accommodated

The Humanitarian Group, who assist culturally and linguistically diverse clients, have highlighted issues that are particularly faced by these types of clients. These clients are especially vulnerable in instances of domestic violence as they have difficulty understanding the procedures undertaken by police officers adding to their vulnerability.

Interpreters

The responses from legal workers involved with clients who have a language barrier are that clients are often unaware that they have a right to an interpreter. Police need to be aware of this need and accommodate accordingly. A solicitor had spoken to a police officer regarding a client and the police officer had relayed the concern that the client did not understand the processes involved in obtaining a VRO. It is important that police officers are given adequate access to interpreters to ensure that they can put CALD clients at ease in knowing that they understand their legal rights in relation to DV claims.

As illustrated above, the use of interpreters by police officers when explaining the process of a Police Order or VRO is paramount. If a culturally and linguistically diverse client does not understand the process for reporting a breach of a VRO then this can add to their vulnerability as they might not be aware what constitutes a breach. The understanding of the legal issues in relation to VROs must be explained in a way that is easy enough to understand in their highly vulnerable state. This will normally be in their first language.

Cultural Backgrounds

Police need to have regard to the cultural sensitivities of clients, especially those with a torture and trauma background. Experience has been that clients with an African background have a preference of dealing with any domestic violence incidents within their community and end up not applying for a VRO. Police need to ensure that cultural sensitivity is taken into account when training police officers in order to increase the report rate of this area of DV claims.

The above example illustrates that it is imperative for police to have an understanding and sensitivity to the cultural background of a victim. Often many backgrounds of a culturally diverse nature will mean that the victim is already distrustful of the police given their experience with them in their home country. Police Officers therefore need to be trained to recognise this potential and deal with it in a professional and sensitive manner. They must ensure that these clients know the process that will occur after an incidence of domestic violence and should they have any questions, answer to the best of the officer's ability, and then refer them to agencies that can assist and have experience in a torture/trauma area.

Additionally, our clients who identify as Aboriginal or Torres Strait Islander, often have distrust of the police and other institutions for valid historical reasons. In addition, when they do reach out for help, they often receive negative social responses as a result of ingrained systemic racism, which further perpetuates their oppression. It is important to ensure Aboriginal and Torres Strait Islander people are treated with dignity when responding to domestic violence call outs and that police are appropriately trained to understand the intersectionality of racism, colonialism and dispossession of land as oppressive systems.

Recommendations

- The Police to have access to a detailed list of interpreters for situations where clients phone regarding the status of a domestic violence claim so the police are able to adequately explain the process to them
- If the client has a torture/trauma background, seek information and gain assistance from agencies with experience in this area and if necessary, refer the complainant to these agencies
- That police receive appropriate cultural competency training to ensure they are not breaching the human rights and dignity of Aboriginal and Torres Strait Islander people
- That police work in partnership with specialist agencies

4. Ensuring that breaches of VROs are adequately investigated

There is evidence that breaches of VROs have not been taken seriously by police, especially in the modern context of online communication through social media. It is appreciated that this kind of contact, while being a breach, is difficult to track and bring evidence of. However, this kind of communication can be just as damaging to a victim of domestic violence as a face to face encounter.

Cassie's Story

Cassie had been the victim of property destruction, forced isolation and both psychological and emotional violence. She was initially discouraged from applying for a VRO against her ex-partner but was granted one after he arrived at her new address. She received a written letter addressed to their daughter (a protected party of the VRO). Cassie was then advised to check with the police if this was a breach of a VRO. When seeking to clarify this point Cassie felt a lot of resistance from the police, even in regards to the VRO being checked and she began feeling as though it was pointless if the police were not going to investigate it as a potential breach.

Cassie's situation indicates that police officers may fail to hold perpetrators to account for what they perceive to be minor breaches of a VRO, especially when the claim is difficult to investigate as it stems from an online communication. This may stem from a lack of training in identifying that these actions, or failure of actions, may further oppress victims and reduce the likelihood of further reporting of breaches. A breach may appear 'minor' or 'technical' on the surface, but the realities of a family violence situation are that appearances can be deceiving. For example:

- If a perpetrator who is bound under a VRO not to contact his victim and does so with a seemingly benign message like "Johnny forgot his stuffed elephant" police may be reluctant to press charges based on this information. But the victim, aware of all of the circumstances of the relationship and an 'expert in her own life,' may have a different interpretation. The stuffed elephant being referred to may have been used to throw at her during their last argument or he may have ripped the toy up and threatened their children in the incident leading to the granting of the VRO. This example goes to prove that the most seemingly benign comment may be a major breach of the VRO, despite being minor on its surface and can be terrifying and traumatic for victims. Further, should the complainant receive a lack of support from police in the investigation of a VRO they will often wonder why they sought to obtain the VRO in the first place.

Clara's Story

Mark is permitted to text Clara in relation to his time and contact with their children. However, he uses this opportunity to be abusive towards Clara. Clara and Mark have no parenting plan or parenting orders in place, but Clara did not want to prevent Mark from communicating with their children. Clara is now feeling intimidated by Mark's abusive text messages and has reported them to the police as a breach of her VRO against Mark. She is hopeful that being charged with a breach may improve Mark's behaviour. The Police, despite noting that the text messages are abusive, claim they cannot act as the messages Mark sends are still in relation to the children. They therefore inform Clara that they cannot charge him with a breach.

Recommendations

- Breaches of a VRO are serious matters and should be investigated as such. Despite modern communications being harder to track, this does not mean that they should not be investigated.
- If the communication is a breach of a VRO the victim should be able to rely on the police to follow this up and charge the individual with breaching a VRO.