



Women's Legal Service
Submission to Legal Affairs and Community Safety Committee
Inquiry on strategies to prevent and reduce criminal activity in
Queensland
And
Domestic and Family Violence Protection and Other Legislation
Amendment Bill 2014

July 2014

EXECUTIVE SUMMARY OF RECOMMENDATIONS:

Recommendation One:

That the Queensland Government develop a State Plan to respond to and reduce Family Domestic Violence in consultation with the community which includes:

- *clear strategies for reducing FDV;*
- *measurable targets and performance indicators;*
- *consistency with the National Plan to Reduce Violence Against Women and their Children 2010 – 2022;*
- *monitoring and reporting systems to measure the effectiveness of reducing rates of FDV in Queensland;*
- *establishing a FDV and Sexual Violence Taskforce.*

Recommendation Two:

That the Queensland Government, as part of a State Strategy to respond to and reduce FDV, establish a FDV and Sexual Violence Taskforce (the Taskforce) with expert representatives from the law, government, academia and community to report on international best practice responses to domestic violence and sexual violence in the criminal justice system.

Recommendation Three:

That the terms of reference of the Taskforce include a consideration of:

- *The establishment of a standalone offence for domestic or family violence;*
- *The experiences of international jurisdictions where a specific offence has been introduced;*
- *An amendment of S. 320A of the Criminal Code (Qld) to include an example of how the provision could be used in domestic and family violence cases.*

Recommendation Four:

That the Taskforce, as part of its terms of reference examine the experiences of vulnerable women and violence, including women in prison, in order to explore specialised supports.

Recommendation Five:

That the taskforce consider:

- *the high attrition rate of sexual violence victims as they proceed through the criminal justice system and make recommendations accordingly;*
- *the reduction of sex offences committed to trial in the higher courts in Queensland*
- *changes to the criminal justice system to improve outcomes for victims of sexual violence.*

Recommendation Six:

That the Queensland Government commit to prioritising investment in social infrastructure through a Queensland Strategy and provide leadership in adopting international best practice to prevent FDV in the community and reduce lethality rates.

Recommendation Seven:

That Sexual Violence Prevention Services be adequately funded to provide court support to victims of sexual violence in Queensland.

Recommendation Eight:

That Queensland Police Service (QPS) provide civil and criminal responses both at the initial time of attending a DFV incident and any subsequent incident

Recommendation Nine:

That there is increased resourcing for and greater numbers of Domestic Violence Liaison Officers (DVLOs), involved in all stages of the policing and legal process, including attending DFV incidences in the field.

Recommendation Ten:

That best practice policing models in responding to domestic violence be researched by the Taskforce, in particular, the concept of “victim free” prosecutions.

Recommendation Eleven:

That the QPS pay particular attention to the early collection of physical evidence which includes the content and context of the evidence.

Recommendation Twelve:

That the QPS act on all incidents of breaches of Domestic Violence Orders (DVOs) including small technical breaches of the order.

Recommendation Thirteen:

That the QPS explicitly consider extra conditions when applying for DVOs on behalf of victims, which take into account the content and context of the violence.

Recommendation Fourteen:

That the QPS monitor and consider charging practices in instances of breaches of DVOs where other criminal offences may have been committed.

Recommendation Fifteen:

That Queensland establish specialised domestic violence courts which includes specialised divisions, programs, with trained specialist Magistrates.

Recommendation Sixteen:

That the Queensland Government establish and fund a FDV duty lawyer service for women in all Magistrates Courts in Queensland and that it be staffed by lawyers who are trained in the dynamics of FDV.

Recommendation Seventeen:

That victims of FDV have availability to a professional support person available to attend criminal court proceedings with them and provide support throughout the criminal justice process.

Recommendation Eighteen:

That the Queensland Government establish a FDV and sexual assault victims of crime unit within the Office of Director of Public Prosecutions (ODPP) to provide advice, information and support to victims, act as liaisons between the ODPP and victims and assist in broader education of victim perspectives in the criminal justice system.

Recommendation Nineteen:

That the Queensland Government establish involuntary perpetrator programs of 40 – 50 weeks duration to be used as criminal sentencing and parole condition options.

Recommendation Twenty:

That current Voluntary Intervention Order (VIO) programs be reviewed to assess levels of resourcing and length of program.

Recommendation Twenty-one:

That Queensland Government introduce sexual violence counselling notes privilege legislation.

Recommendation Twenty-two:

That the Queensland Government investigate the establishment of high risk teams in Queensland.

Recommendation Twenty-three:

That the Queensland Government provide further funding and resources to establish FDV networks and responses.

Recommendation Twenty-four:

That the Queensland Government, in consultation with FDV networks and responses, develop a common FDV risk assessment framework.

Women's Legal Service

Women's Legal Service Inc. (WLS) is a specialist community legal centre that provides legal and welfare advice and assistance to women in Queensland. We have operated for 30 years and assisted over 60,000 women. In the last financial year (2013/14) we assisted over 2,000 women. We know there are a further 16,000 requests for assistance that we are unable to meet. Forty percent (40%) of our clients are from rural, regional and remote areas of the State. We provide assistance in the areas of domestic violence, family law, child support and some child protection.

WLS has a particular interest in the intersection of violence against women and children, as well as legal processes and the law. Our submission is informed by the direct experience we have with women providing legal advice, representation and support. In particular, the relevant services to this Inquiry include:

- weekly domestic violence duty lawyer service to women at Holland Park Magistrates Court;
- legal outreach advice services to women at the Gold Coast Centre Against Sexual Violence;
- legal outreach advice services to women at the Brisbane Women's Correctional Centre; and
- specialist domestic violence social work to provide practical support to women.

Background

WLS welcomes the opportunity to provide a submission to the Inquiry, and in particular, will confine our comments to the term of reference relating to sexual violence and domestic violence:

the experiences of Queenslanders with regard to the criminal justice system, including the experiences of victims of sexual violence and/or domestic violence including their interactions with the Queensland Police Service, the courts, prosecuting authorities, legal and support services and compensation processes.

The key recommendations of this submission involve the areas of:

1. Queensland Domestic Violence Strategy;
2. Policing;
3. Courts; and
4. Coordinated Community Responses

Definition of Family and Domestic Violence

Family and Domestic Violence (FDV) is about attaining, keeping and maintaining power and control over another individuals, usually in an intimate partner relationship. It is selective, uninvited and repetitive oppression of another person. It can include one incident when that incident is used against the person to threaten, coerce or control them. It is instrumental rather than emotionally reactive and a person uses the behaviour to gain benefits and resources in the relationship (Johnson 2006; Kimmel 2002; Stark 2010). There is a gendered experience to the violence.

Separation is well recognised as the most dangerous time for women and children escaping violence. However, danger for women and children peaks again when women take steps post-separation towards permanent separation eg. the finalisation of family law matters that can take place 12-18

months after separation.¹ Interactions with the police and with other service providers at the time of separation are taking place in a time of heightened risk and danger to the victim and their children.

Incidences of Family and Domestic Violence

The statistics are clear that violence against women and children in Australia is extensive and at unacceptably high rates. One in three women experience violence and one in five women experience sexual violence in their lifetime. One in four children witness violence in their home².

The unofficial statistics from the Queensland Police Service for 2012/13 state:

- There has been a 10% increase in reported FDV incidents in Queensland;
- There have been 12 228 breaches, an increase from 10 997 from the previous year;
- There have been 14 659 police applications for protection orders and 8 241 private applications, an increase from 12 845 and 7 444 respectively from the last financial year;
- One in three homicides in Queensland involve domestic violence.

Intimate partner violence was found to be the main contributor to death and disability to women aged 15 to 44 in Victoria.³

Domestic violence claims the lives of more Australian women under 45 than any other health risk, including cancer.⁴

Every three hours, a woman is hospitalised from domestic violence.⁵

Indigenous women are up to 35 times more likely to be hospitalised.⁶

Domestic violence is not a “post code” crime and affects all socio-economic, cultural and religious groups.

Economic Cost of Family and Domestic Violence

Apart from the impact on the emotional health of individuals and the community as a whole, FDV has a significant economic cost, estimated to be (US \$) 14.7 billion in 2013.⁷ Without action to address violence against women and their children, approximately three quarters of a million Australian women will experience and report violence by 2021-22, costing the Australian economy \$15.6

¹ Hardesty Jennifer L. "Separation Assault in the Context of Post-divorce Parenting: An Integrative Review of the Literature" Violence against Women 2002 quoting Ellis (1992) at p.600.

² ABS 2006

³ <http://www.vichealth.vic.gov.au/Programs-and-Projects/Freedom-from-violence/Intimate-Partner-Violence.aspx>

⁴ *ibid.*

⁵ Pointer S & Kreisfeld R (2012) Hospitalised interpersonal violence and perpetrator coding, Australia, 2002-05. Injury research and statistics series no. 77

⁶ Australian Institute of Health and Welfare (2006) Family Violence among Aboriginal and Torres Strait Islander peoples

⁷ Presentation by Ms Liz Forsyth, Partner KPMG at the WLS *Thought Leader forum* on 20th May 2014 at Queensland Parliament House.

billion, approximately 1.1% of Australia's GDP.⁸ These are conservative figures as they are based on reported incidents of violence.⁹ The KPMG report on the economic costs of violence against women was ground breaking, as it highlighted the economic cost on businesses, government, not-for-profit organisations and individuals measuring the problem in the same 'currency' as other economic and social issues.¹⁰

In 2008, it was estimated that the estimated expenditure on responding to domestic violence in Queensland was \$111 million.¹¹ This figure is projected to increase. Although we exist in a tight fiscal environment, the KPMG report makes clear that there is a significant cost to the community by **not** appropriately responding to FDV. It is also clear that public education campaigns and media reports of violence increase awareness about violence in the community, but as a result of increased awareness, rates of domestic violence reporting will increase before they begin to decrease. Increased reporting rates can be a result of greater awareness of the issues and a greater confidence in getting a positive community response.¹² The investment for government is worthwhile, as it has been shown that for every woman whose experience of violence can be prevented there is a cost saving of approximately \$20,766 across all affected groups in society.¹³

Family and Domestic Violence and Criminal Justice System

Women's Legal Service recognises that there are complex issues involved in the dynamics of family and domestic violence (FDV) and sexual violence and the criminal justice response to them. The most important of these issues being the safety of women and children. These issues have been considered in the recent reports of the Australian Law Reform Commission and the Western Australian Law Reform Commission. We commend these reports to this Inquiry.¹⁴

A common experience of our clients is that crimes committed within a domestic setting are less likely to result in criminal justice responses comparable with crimes committed in the public domain. This is also confirmed through research by Dr Samantha Jeffries and Dr Christine Bond at the Griffith University who concluded that:

⁸ KPMG, *The Costs of Violence Against Women and their Children*, a Report prepared for the National Council to Reduce Violence against Women and their Children, March 2009.

⁹ Presentation by Ms Liz Forsyth, Partner KPMG at the WLS *Thought Leader forum* on 20th May 2014 at Queensland Parliament House.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² Quote MS Liz Forsyth, Partner KPMG at the WLS Thought Leader Forum 20th May 2014 at Queensland Parliament House

¹³ KPMG, *The Costs of Violence Against Women and their Children*, a Report prepared for the National Council to Reduce Violence against Women and their Children, March 2009.

¹⁴ <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

http://www.lrc.justice.wa.gov.au/files/P104_FDV_FinalReport.pdf

*when sentenced under statistically similar circumstances, domestic violence offenders are less likely than those convicted of crimes outside of domestic contexts to be sentenced to prison.*¹⁵

It is our client's experience that the criminal justice response to reported incidences of violence has ramifications for post-separation legal proceedings and the future safety of women and children. For example, without criminal processes, women often have no other 'third party' verification of the violence as it often occurs 'behind closed doors' without witnesses. This can affect women's ability to obtain adequate or any legal aid assistance in the Family Courts and can result in their acceptance into mediation services, sometimes inappropriately, to work out parenting arrangements. If the Family Courts do make determinations, it may be in circumstances where there may not be enough evidence of the violence to make protective orders for the children. In many instances, the police are important gatekeepers to the evidentiary process. This is recognised by the Australian Law Reform Commission in their report *Family Violence – A National Legal Response*, where they noted:

*It is well recognised that initial positive police response is not only vital to victim safety, but to also whether victims report further victimisation or seek engagement with the legal system more generally.*¹⁶

There are two fundamental issues for our clients who have been victims of FDV and/or sexual violence, in their interactions with the police and the criminal justice system:

1. Obtaining safe outcomes for themselves and their children; and
2. That that their concerns for their safety are 'heard'.

Being heard means that their concerns are taken seriously; they are assessed and acted upon with appropriate speed; their safety is prioritized; they are communicated with in a respectful and courteous manner; and they are kept informed of their case progression. The establishment of victim centred approaches and processes together with specialised responses that support victims through the criminal justice system are just as important (arguably even more important) as any changes to the law itself.

It is our view that legislative change or increasing penalties in isolation of broader systemic changes will not guarantee better safety for women and children. It is important that this Inquiry takes a systemic approach to these issues.

Sexual Violence

Levels of sexual violence in the community are high with one in five women and one in twenty men experiencing sexual violence since the age of 15 years.¹⁷ In 2012, it was estimated that 51 000

¹⁵ Research presentation delivered by Dr Christine Bond and Dr Samantha Jeffries on 19th June at Griffith University "Sentencing Domestic Violence Offenders : Are they treated differently to other violent offenders?"

¹⁶ <http://www.alrd.gov.au/publications/Executive%20Summary/improving> practice at p.3

¹⁷ ABS, *Personal Safety Survey 2006*

people aged 18 years and over were victims of sexual assault and less than a third of these reported the incident to the police.¹⁸ In Queensland, there were 3896 victims of sexual assault of whom 3270 (84%) were female¹⁹.

There is a very high attrition rate of victims in matters of sexual assault in the criminal justice system. One in six reports to police and less than 1 in 7 reports of incest or sexual penetration of a child result in prosecution²⁰. There may be sound reasons for not proceeding in certain circumstances however, we believe there are systemic improvements that can be made to better enable the system to respond sensitively and in a timely manner, be victim focussed, provide support and prioritise issues of safety.

We note that according to the *Review of the Resourcing of the Office of the Department of Public Prosecutions* there has been a 25% reduction in Adult Sex Offences Committed to District and Supreme Courts between 2009/2010 and 2012/2013 for 'no apparent reason'. There has been an almost 50% reduction in Child Sex Offences committed to District and Supreme Courts between 2009/2010 and 2012/2013 and a recommendation was made for this to be urgently explored.

The last time Queensland has given any serious consideration to the issue of sexual violence, or FDV and the criminal justice system, was in the *Women and the Criminal Code Review* in 1999 when a number of recommendations for legal reform were made, including recommendations concerning sexual violence. However, there has been no consideration of the criminal justice system's response to sexual violence in Queensland since this review.

1. Queensland Family and Domestic Violence Strategy

There is currently no State-wide strategy in Queensland to respond to FDV since the finalisation of "*For our Sons and Daughters – 2009 – 2013*". A State strategy with objectives and targets to reduce the rates of FDV provides a coordinated approach to developing systemic strategies across the community. Consistency with the *National Plan to Reduce Violence against Women and their Children 2010-2022* would be critical in harnessing resources and reducing different jurisdictional responses. A plan should be developed with broad consultation with community groups, government, experts and academics in FDV and consideration of best practice both in Australia and internationally. The strategy should also establish a taskforce that undertakes a detailed examination of FDV and sexual violence.

Recommendation One:

That the Queensland Government develop a State Plan to respond to and reduce FDV in consultation with the community which includes:

- **clear strategies for reducing FDV;**

¹⁸ ABS, 2013

¹⁹ ABS, *Victims of Crime 2011*

²⁰ *Sexual Offences: Law and Procedure Final Report, Victorian Law Reform Commission*

- measurable targets and performance indicators;
- consistency with the National Plan to Reduce Violence Against Women and their Children 2010 – 2022;
- monitoring and reporting systems to measure the effectiveness of reducing rates of FDV in Queensland;
- establishing a FDV and Sexual Violence Taskforce.

1.1. Taskforce

While the Parliamentary Inquiry is an important first step in bringing the issues to light, due to the complexity of social, cultural and justice issues, a taskforce should be established as part of the State strategy. A FDV and Sexual Violence Taskforce (the Taskforce) could afford a closer and lengthier expert examination of the issues and identify any necessary reform to the criminal justice system in this area. The Taskforce could comprise of legal, government, academic and community experts on domestic and sexual violence. Broad taskforce terms of reference could consider changes to legislation, policy and practice.

Recommendation Two:

That the Queensland Government, as part of a State Strategy to respond to and reduce FDV establish a FDV and Sexual Violence Taskforce with expert representatives from the law, government, academia and community to report on international best practice responses to domestic violence and sexual violence in the criminal justice system.

1.1.1. Domestic Violence as a criminal offence

Family and domestic violence often occurs over many years and includes numerous specific behaviours and patterns of behaviours, that when viewed in isolation would not be deemed as serious but when considered ‘as a whole’ are very serious. This can make criminal prosecution difficult.

In 2000, the *Women and the Criminal Code Taskforce* recommended that the Queensland Government investigate the creation of a specific offence of domestic or family violence. It recommended that the creation of such an offence canvass the creation of a course of conduct offence in similar terms to the offence of torture in S.320A of the *Criminal Code* (Qld). The Taskforce also recommended an amendment to S. 320A to specifically include an example of how the provision could be used for offences involving family and domestic violence.

The Australian Law Reform Commission (ALRC) in its report on Family Violence at Chapter 13 considered the establishment of a specific offence of FDV in some detail. At paragraph 13-13 it noted that several European jurisdictions (eg. Sweden, Spain, Portugal, Romania, Norway) have a specific offence of family violence. Ultimately, the ALRC recommended against the development of such a specific offence because of, amongst other things, the substantial difficulties in drafting the offence effectively. The Commission was not opposed to the development of an offence in the future but preferred an approach that focused on improving existing frameworks through specialised policing, specialised courts and wider education about the dynamics of domestic violence.

However, if a new Taskforce under a State strategy is established we would support that it consider the previous recommendations by the *Women and the Criminal Code Taskforce* and investigate the European experience.

Recommendation Three:

That the terms of reference of the FDV and Sexual Violence Taskforce include a consideration of:

- **The establishment of a standalone offence for domestic or family violence;**
- **The experiences of international jurisdictions where a specific offence has been introduced;**
- **An amendment of S. 320A of the *Criminal Code* (Qld) to include an example of how the provision could be used in domestic and family violence cases.**

1.1.2. Vulnerable groups – Women in Prison

Over many years, WLS has provided legal advice and assistance to women in prison. The majority of these women, despite sometimes being perpetrators of violence or other offences, have been victims of horrific violence and abuse, often commencing in their childhood. The FDV and childhood abuse, including childhood sexual abuse, which has been perpetrated against them, are rarely reported to authorities. The violence perpetrated against them has impacted on their life trajectory and has contributed to them ultimately ending up serving a prison sentence, along with other issues such as poverty. Their needs are high and there is a risk that once they leave prison, they will have little choice but to return to their violent partner without support and specialised assistance and/or return to being subjected to his harassment and intimidation.

The terms of reference for a FDV and Sexual Violence Taskforce need to take in account the range of vulnerable groups who are victims of violence, including women in prison. The Taskforce could explore the range of specialised supports, including legal assistance that is required for safe release that is free from violence.

Recommendation Four:

That the Taskforce as part of its terms of reference examine the experiences of vulnerable women and violence, including women in prison, in order to explore specialised supports.

1.2.3 Sexual Assault

The successful prosecution of offenders in sexual violence matters relies on victims of sexual assault and rape being supported to engage with the criminal justice system. Other States in Australia have from undertaken system reviews and they have delivered concrete recommendations and improvements for victims of sexual violence. We believe that the Taskforce could do the same in Queensland.

Recommendation Five:

That the taskforce consider:

- **the high attrition rate of sexual violence victims as they proceed through the criminal justice system and make recommendations accordingly;**
- **the reduction sex offences committed to trial in the higher courts in Queensland;**
- **changes to the criminal justice system to improve outcomes for victims of sexual violence.**

1.2 Social Investment

Strong leadership is required to make a change to current institutional responses to FDV in Queensland, including from parliamentary leaders, the Police Commissioner, community leaders, judges and the courts. If significant change is to occur there has to be real financial and leadership investment in change and often this involves a “top down” approach. The development of a Statewide strategy can plan for the social investment required to develop more appropriate responses to FDV and sexual violence, and provide strong leadership on the issue.

Recommendation Six:

That the Queensland Government commit to prioritising investment in social infrastructure through a Queensland Strategy and provide leadership in adopting international best practice to prevent FDV in the community and reduce lethality rates.

1.2.1 Sexual Violence Prevention Programs

If vulnerable women are going to utilise the criminal justice system then they need to be professionally supported through the process by Sexual Violence Prevention Services.

Recommendation Seven:

That Sexual Violence Prevention Services be adequately funded to provide court support to victims of sexual violence in Queensland.

2 Police

2.2 Civil vs Criminal Responses

Heather Nancarrow succinctly summarises the evolution of protection order legislation in Australia and the policy thinking behind its development. Her summary makes clear that protective legislation was developed as an **adjunct** to criminal responses to domestic violence and **not instead** of a criminal response.

Civil law responses to domestic and family violence were established in jurisdictions across Australia in the 1980s and were intended to be used in conjunction with the criminal law, where there was evidence that a criminal offence had been committed. The advantages of having a civil law response in addition to the criminal law are two-fold, and relate primarily to the nature of domestic and family violence. First, there is reluctance on the part of victims to engage the full force of the law against the abuser because of the personal relationship involved. Secondly, a lack of witnesses or corroborating evidence to prove the facts to the criminal standard of proof, particularly where the victim is unwilling to give evidence against their partner, can hamper the application of the criminal law. Essentially, the domestic and family violence civil laws were designed to fill a gap in legislative protection for victims, and were not intended to replace the application of criminal law where that was a viable option. However, it seems that the application of the civil law alone is largely assumed by police to be the appropriate response to domestic and family violence, raising concerns that the civil law has 'de-criminalised' domestic and family violence.²¹

There is little doubt that responding to the criminal nature of domestic violence by the police is more complex than other sorts of crime when there is no relationship or history of relationship between the offender and victim. **However, WLS has concerns that the overwhelming response to FDV in Queensland is civil rather than any other response.** An exclusively civil response is also contrary to the current legislative position in Queensland as set out in Section 4 (2) (e) of the *Domestic and Family Violence Protection Act (Qld)2012* that states *a civil response under this Act should operate in conjunction with, not instead of, the criminal law.*

WLS sees clients who have been raped, stalked, assaulted, strangled, threatened to be killed (including their children), deprived of their liberty, had petrol poured over them, been held in siege situations and more by the perpetrator of FDV. Although these clients may have protection orders, it is a rare case where the perpetrator is also charged for their crimes. In our experience, most women do not even know that there is an option of criminal proceedings, the only option provided to them by the police and others is a protection order. In instances where women are given the option of criminal charges, it is not uncommon for this to occur at the time of the FDV incident within 'earshot' of the perpetrator. They are often traumatised, concerned about their children's safety, and scared about future consequences to them if they agree to charge. Unsurprisingly, many are unwilling to proceed.

The end result is that protection orders have sometimes become the only legal response to FDV in Queensland. This inaction sends a strong message to the community that domestic violence crimes are viewed as less important than other crimes and less worthy of a State response or community resourcing²². There is often little accountability for the perpetrator and violence, intimidation and

²¹ Nancarrow Heather "Time is of the essence: Progress on the national council's plan for Australia to reduce violence against women and their children" UNSW Law Journal Volume 33(3) at p836.

²² See the research by [Dr Samantha Jeffries](#) and [Dr Christine Bond](#) at the [Griffith University](#), whose research showed that *when sentenced under statistically similar circumstances, domestic violence offenders are less likely than those convicted of crimes outside of domestic contexts to be sentenced to prison.*"

harassment continue unabated. A recent tragic example is the South Australian murder of Zahra Abrahamzadeh where the Coroner heavily criticised police inaction regarding criminal charges against her ex-husband before her eventual and very public murder by him²³.

Recommendation Eight:

That Queensland Police Service (QPS) provide civil and criminal responses both at the initial time of attending a DFV incident and any subsequent incident.

2.3 Police Procedures

2.3.1 Specialised Policing

Police play a very important role in FDV, often being the first responders to an emergency call out. As noted by the ALRC, the initial positive police response is vital not only to victim safety but also to further engagement by the victim with the legal system.²⁴ We have no doubt there are many dedicated police officers in Queensland that have a passion for this work and work hard in the community and within the QPS to get appropriate recognition of the importance of FDV. However, there is still an attitudinal approach to FDV within the QPS that minimises the impact of FDV on women and children and views it as “just a domestic” and not real police work. This response may be more prominent in some vulnerable communities. In Chapter 32 of the ALRC report a number of recommendations are made about policing, including the establishment of specialised units.

In particular, paragraph 32.124 of the ALRC report states:

Although there is little information or research available on the role and value of specialised police units in Australia, a significant number of stakeholders reported positive experiences with such units. The Commissions have formed the view that there is substantial merit in the use of specialised police in family violence, sexual assault and child protection matters. Liaison officers provide an important early point of contact for victims and assist them in navigating the legal system. Specialised police at all levels provide contact points for inter-agency collaboration, and may form a key element of integrated responses. Further, monitoring and supervision by specialised police is likely to improve consistency in the application of laws in the context of family violence.

We acknowledge that Domestic Violence Liaison Officer (DVLOs) exist in Queensland. However, each DVLO has to cover significant geographical areas across a number of police stations. This means they are often not in the field attending FDV incidences at the point where specialised policing is most critical.

Recommendation Nine:

²³ <http://www.theaustralian.com.au/news/latest-news/coroner-slams-sa-police-over-murder/story-fn3dxiwe-1226980280682?nk=c916d2dee9ae114fa2f4e506d4802afe>

²⁴ <http://www.alrc.gov.au/publications/32.%20Specialisation/specialised-police>

That there is increased resourcing and numbers of DVLOs , involved in all stages of the policing and legal process, including attending DFV incidences in the field.

2.3.2 Victim-Free Prosecutions and Evidence Collation

In some jurisdictions, specialised officers conduct “victim free” prosecutions, where the police gather evidence of the FDV incident and attempt to prosecute the case against the perpetrator without the need for the victim to give evidence in court. The increased specialisation and evidence gathering can result in more guilty pleas.²⁵ When called to an incident, police officers who are fitted with cameras and video recording equipment record the evidence of the crime, amongst other strategies. These approaches have been in place in some jurisdictions in the United States for approximately 15 years.

Prosecution of offences related to FDV requires meticulous evidence gathering, often over a period of time to establish patterns of behaviour and before evidence is destroyed. In our client’s experience the police usually only take a statement. It is important that police collate physical evidence in the form of photographs of injuries and scenes, damage to property, weapons etc. It is also important for the evidence to place in the content and context of evidence of violence. For example, text messages may or may not be intimidation or harassment, depending upon the history of the violence

In Tasmania, since the introduction of their *Safe at Home Policy* in 2004, the Tasmanian Police have a number of policies that guide decision-making when they are arresting the perpetrator or laying charges; that the perpetrator is told that the police have the discretion to criminally prosecute without involvement of the victim.

Recommendation Ten:

That best practice policing models in responding to domestic violence be researched by the Taskforce, in particular, the concept of “victim free” prosecutions.

Recommendation Eleven:

That the QPS pay particular attention to the early collection of physical evidence which includes the content and context of the evidence.

2.4 Police Responses to Breaches

Although women may be reluctant to be a complainant in criminal charges against the perpetrator for offences perpetrated against them, there is less reticence in relation to breaches of domestic violence orders (DVOs) and women more often actively seek assistance from QPS over charging the perpetrator for breaches. This may be because:

²⁵ <http://www.forbes.com/sites/rahimkanani/2012/03/08/doj-director-on-violence-against-women-in-the-united-states/>

- women pursue DVOs as a means of obtaining safety for themselves and their children and they therefore want the conditions enforced to ensure their safety;
- They are told by the court and lawyers they have a right to report breaches;
- By the time a DVO has been made, the parties are often separated and this may make it easier and safer to pursue criminal action;
- The perpetrator has often been given multiple warnings by the court, and the police, and the wording on the order itself that breaches of the conditions of the order will not be tolerated and are a criminal offence.

Women can experience enormous difficulty in having these breaches treated seriously by the QPS. This is even in circumstances when women have documentary evidence on their mobile phones of contact by the perpetrator or threats being made that are a direct breach of the no contact conditions. When clients have approached the police, following the advice that they should report breaches, they can be belittled by the police and can be made to feel “stupid” for reporting “technical breaches”. They can also be told, “it's your word against his” and that the police won't act. As mentioned above, the involvement of more specialised police officers at the incident or at the point of reporting breaches would assist to alleviate these concerns. (see Recommendation Nine)

Perpetrators of violence will often test out the orders by making small infringements and waiting to see if there are any repercussions. This is often the case in circumstances where the sole condition of a DVO requires the perpetrator to “be of good behaviour and not commit domestic violence” (“standard conditions”). In our experience, women who have police initiated protection orders often only have the standard conditions.

Recommendation Twelve:

That the QPS act on all incidents of breaches of domestic violence orders including small technical breaches of the order.

Recommendation Thirteen:

That the QPS explicitly consider extra conditions when applying for DVOs on behalf of victims which takes into account content and context of the violence.

2.4.1 Charging perpetrators with Criminal Code offences in instances of DVO breaches

It is the view of WLS that committing an offence that is in breach of a domestic violence order is a more serious offence than committing that same offence otherwise, and should result in more serious penalties. This is because the perpetrator of the violence has already been given a warning by authorities, via the making of the order that their behaviour towards the aggrieved is unacceptable and that they will be criminally prosecuted if they breach the order. The QPS practice is one of simply charging for the breach only, even when there have been severe assaults and other criminal offences committed.

Recommendation Fourteen:

That the QPS monitor and consider charging practices in instances of breaches of DVOs where other criminal offences may have been committed.

3. Courts

4.

3.1 Specialised DV Courts

There is compelling local and international evidence that specialised court and police responses result in earlier and increased successful prosecutions. In an interview with the Director of the United States' Department of Justice's Office on Violence Against Women it was stated that:

"Jurisdictions with specialized domestic violence prosecution programs generally have the highest rates of successful prosecution.[32] From July to December 2010, 81 Arrest Program and Rural Program grantees reported that they developed or supported a specialized prosecution unit. In two years, a specialized domestic violence prosecution unit in Chicago convicted 71% of defendants compared to 50% of domestic violence defendants convicted by the rest of the Cook County office.[33] Four years after Milwaukee implemented a specialized prosecution unit, felony convictions had increased five-fold.[34] Significantly, VAWA Grants to Encourage Arrest Program-funded prosecutors' offices had a 76% conviction rate for sexual assault cases in the second half of 2010.

There is also a body of research indicating that the increased availability of legal services has significantly contributed to a decline in domestic violence in the United States.[35] Obtaining a protection order has been shown in multiple studies to reduce future assault and improve quality of life.[36] Even when orders were violated, there was a significant reduction in subsequent abuse.[37] A recent study showed that the state of Kentucky averted \$85 million in costs by reducing violence and improving victims' quality of life through protection orders.[38]"²⁶

The Australian Law Reform Commission recommended the establishment of specialised domestic violence courts. This includes divisions, programs, lists or a specialised court room within existing Magistrates Courts as they would enhance the efficacy and effectiveness of the courts in dealing with domestic violence²⁷.

Recommendation Fifteen:

That Queensland establish specialised domestic violence courts which includes specialised divisions or programs, with trained specialist magistrates.

3.2 Legal Assistance for Women at DV Courts

WLS currently provides a duty lawyer service to any women who presents to the Holland Park Magistrates Court for domestic violence matters. There is currently no Statewide DV duty lawyer

²⁶ <http://www.forbes.com/sites/rahimkanani/2012/03/08/doj-director-on-violence-against-women-in-the-united-states/>

²⁷ <http://www.alrd.gov.au/publications/Executive%20Summary/improvingpractice>

service available at every Queensland Magistrates Court. Domestic Violence Duty lawyers should be trained in the dynamics of FDV. The legal response should be part of a broader coordinated community response to domestic violence that provides additional welfare support services at the court, and where all professionals and the court work from a focus of prioritising women and children's safety.

Recommendation Sixteen:

That the Queensland Government establish and fund a FDV duty lawyer service for women in all Magistrates Courts in Queensland and that it be staffed by lawyers who are trained in the dynamics of FDV.

3.3 Victim Support

The criminal justice system can be a difficult system for victims of violence and many women who have experienced violence can be re-traumatised. If we are serious about more vulnerable women who have been victims of FDV pursuing criminal action, or the police actioning criminal processes on a more regular basis, then victims require professional support throughout the court process.

Recommendation Seventeen:

That victims of FDV have availability to a professional support person available to attend criminal court proceedings with them and provide support throughout the criminal justice process.

Recommendation Eighteen:

That the Queensland Government establish a FDV and sexual assault victims of crime unit within the Office of Director of Public Prosecutions (ODPP) to provide advice, information and support to victims, act as liaisons between the ODPP and victims and assist in broader education of victim perspectives in the criminal justice system.

3.4 Perpetrator Programs

Under the current DFV legislation there is an option for voluntary involvement in perpetrator programs called Voluntary Intervention Orders (VIOs). In our experience the VIO programs are at capacity and experiencing lengthy delay in perpetrators being able to enter the program

In international jurisdictions, involuntary perpetrator programs have been effective in trying to changing behaviour of perpetrators, monitoring their levels of dangerousness and as a means of accountability. These programs could be used in criminal sentencing and are currently being used in limited jurisdictions as conditions of parole. Experts in domestic violence have recommended to us that an effective perpetrator program has to be of at least 40–50 weeks duration. Current perpetrator programs in Queensland are of 15-25 weeks' duration.

Recommendation Nineteen:

That the Queensland Government establish involuntary perpetrator programs of 40 – 50 weeks duration to be used as criminal sentencing and parole condition options.

Recommendation Twenty:

That current VIO programs be reviewed to assess levels of resourcing and length of program.

3.5 Sexual Assault Counselling Privilege

Queensland is the only State or Territory in Australia without some form of legislation to protect the unfettered use of counseling records by defence counsel in sexual violence criminal trials.

Recommendation Twenty-one:

That the Queensland Government introduce sexual violence counselling notes privilege legislation as a matter of urgency.

4 Coordinated Community Response

In Queensland, there are a number of DFV networks and integrated responses such as Brisbane Integrated Response to Domestic Violence (BIRDV), Domestic Violence Court Assistance Network (DVCAN), Gold Coast Domestic Violence Integrated Response (GCDVIR) and Domestic Violence Assistance and Support Service (DVASS). Many of these networks and responses have limited or no funding. WLS is involved on a voluntary and unfunded basis in BIRDV, DVACN and DVASS. These networks provide valuable opportunities to share information amongst stakeholders and case manage high risk matters.

4.1 High Risk Assessment Teams

In the United States, such as in Cambridge, Arlington, Belmont and Maryland, establishment of multi-disciplinary high risk teams have been established that pool expert knowledge, information and resources to provide, guidance, assistance, support and strategise to avoid lethality in identified high risk domestic violence cases. These multi-disciplinary teams are made up of police, victim advocates, perpetrator program professionals, child welfare, lawyers, probation officers and other relevant organisations that meet and discuss cases, including strategies to reduce the risk of lethality.

A risk assessment is undertaken by a first responder to an incident, usually the police, who make a referral into the high risk team. A high risk domestic violence screening tool was developed with expert knowledge to support this approach and assist in identification of appropriate cases. There is some evidence that the high risk teams are working. For example, in the Maryland District, there has been a reduction in murders from 89 in 2003 to 38 in 2010 and there is support for the model by the Director of the United States' Department of Justice's Office on Violence Against Women²⁸.

²⁸ <http://www.forbes.com/sites/rahimkanani/2012/03/08/doj-director-on-violence-against-women-in-the-united-states/>

We note that the Victorian Government recently announced that they would introduce an extra \$30 million into preventing domestic violence and they have adopted some of these strategies in relation to assisting high risk management. We would recommend the investigation of these high risk teams and their success in light of there being 22 deaths so far this year in Queensland as a result of domestic violence.²⁹

Recommendation Twenty-Two:

That the Queensland Government investigate the establishment of high risk teams in Queensland.

Recommendation Twenty-Three:

That the Queensland government provide further funding and resources to establish FDV networks and responses.

4.2 Common FDV Risk Assessment Framework

Victoria and Western Australia have developed a common FDV risk assessment framework that assists service providers and the community respond effectively to FDV³⁰.

The Family Violence Risk Assessment and Risk Management Framework, also known as the Common Risk Assessment Framework (CRAF), has been designed to help practitioners working in a wide range of fields to understand and identify risk factors associated with family violence and respond consistently and appropriately³¹.

The framework comprises six components to identify and respond to victims of family violence:

- a shared understanding of risk and family violence across all service providers;
- a standardised approach to recognising and assessing risk;
- appropriate referral pathways and information sharing;
- risk management strategies that include ongoing assessment and case management;
- consistent data collection and analysis to ensure the system is able to respond to changing priorities; and
- quality assurance strategies and measures that underpin a philosophy of continuous improvement.

Recommendation Twenty-Four:

²⁹ Unofficial records of DV deaths in Queensland obtained from DV Connect.

³⁰ <http://www.dhs.vic.gov.au/for-service-providers/workforce,-careers-and-training/workforce-training/child,-youth-and-family-services-workforce/family-violence-and-risk-assessment,-and-risk-management-training>

³¹ *ibid*

That the Queensland Government, in consultation with FDV networks and responses, develop a common FDV risk assessment framework.

Conclusion

WLS looks forward to the outcomes of the Committee's inquiry and are happy to be contacted to provide oral submissions to the Committee.

Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014

We thank the Labor Party for giving consideration to these important issues as raised by the Bill. The Bill raises many complex policy and legal issues about responding to FDV. As recommended in our response to the current Crime Inquiry, we think it more appropriate for these issues to be considered in detail by a Domestic Violence and Sexual Violence Taskforce.

We have not had time or resources to consider this Bill in detail but in relation to the objectives of the bill as outlined to us in a letter dated 29th March 2014 from the Legal Affairs and Community Safety Committee, we make the following preliminary observations:

- Increasing penalties for breaches that involve physical violence

We support an increase in penalties for breaching domestic violence orders however, our preferred approach would be for the offender to be charged with the underlying offence as well as the breach of the domestic violence order. Our arguments are outlined in our response to the Crime Inquiry. We also refer to our comments in this response that a multi-faceted approach to decreasing the rates of FDV in Queensland is required and there is no simple 'quick fix'. We question why the increase in penalties only relates to acts of physical violence as this would not cover other non-physical but highly dangerous activities such as stalking and threats to kill.

- Evidence Act changes to incorporate a history of domestic violence

We would prefer this issue to be considered in detail by an expert Taskforce. We are concerned about unintended consequences for victims of FDV.

- Penalties and Sentence Act changes to incorporate domestic violence as an aggravating factor

Again, this is best to be carefully considered by an expert Taskforce to avoid unintended consequences. Whether to establish a specific aggravated offence with a higher maximum penalty or to consider the issue in sentencing as an aggravating factor are complex issues. The Australian Law Reform Commission in its report on Family Violence gave considerable attention to these alternatives and also to the establishment of a specific standalone offence of domestic violence.

- The Victims of Crime Assistance Act 2009

We support the idea that the fundamental principles of justice apply to victims of domestic violence. We agree in principle with the approach that victims of domestic violence, including non-criminal domestic violence be compensated through the victims of crime scheme. It is our understanding the *Victims of Crime Assistance Act* is currently being reviewed and that this issue has been raised as a point of discussion. It is our understanding that the Attorney-General's Department may well be considering legislative ways for this to occur, including a consideration of other legislative schemes and how they establish evidence of domestic violence without involving a police notification. It may be prudent to wait for this review to be undertaken before making any changes to the legislation. We are concerned that this bill may allow perpetrators of FDV to be eligible for compensation against the victim.