

LEGISLATION AND POLICIES

New domestic and family violence legislation in Western Australia

Michael Hovane and Philippa Harrison, Domestic Violence Legal Unit, Legal Aid WA describe changes to the WA domestic violence legislation that came into force on 1 December 2004.

The Acts Amendment (Family and Domestic Violence) Act 2004 was passed on 19 October 2004 and came into operation on the proclamation date of 1 December 2004. The Amendment Act originated from an electoral commitment of the present Labor government to review restraining orders and other domestic violence related legislation. The changes also flow from recommendations made in a Ministry of Justice review of the existing legislation in 2003. The review examined restraining orders laws in other states as well as overseas and recommended amending the existing Restraining Orders Act 1997, rather than passing separate new legislation for family and domestic situations.

Below is a summary of some of the major changes to the laws:

1 Definitions – ‘family and domestic relationship’ and ‘act of family and domestic violence’/broader grounds for a VRO where there is a family and domestic relationship

The Amendment Act defines a ‘family and domestic relationship’ at section 4. The definition is very broad and based on the model laws and includes partners, ex-partners, children, step-children and other family members and potentially carers. The Amendment Act then broadens the

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grounds for a violence restraining order (VRO) for family and domestic relationships and includes behaviours which were previously only grounds for a misconduct restraining order and adds a new ground of 'ongoing emotionally abusive behaviour'. This is designed to reflect the fact that certain conduct, such as property damage or intimidating behaviour may be more serious and a greater indicator of future risk of violence when it occurs in the context of a domestic relationship.

In order to get a VRO, a person must show:

Either that an act of abuse has occurred and is likely to again occur,
or that they reasonably fear that an act of abuse will occur

And that an order is appropriate in all the circumstances

'Act of abuse' for family and domestic situations is called an 'act of family and domestic violence'. This is defined at section 6 to include:

- Assault, personal injury, kidnapping, deprivation of liberty
- property damage (including harming pets) and ongoing intimidating or offensive behaviour
- threats of violence or property damage
- stalking
- ongoing emotional abuse.

Emotional abuse is not defined in the Act but is intended to have broad interpretation and application. Further, there is a new ground under section 12 which must be considered by the court in deciding whether to grant a VRO. Section 12(da) will require the court to look at the past restraining order history of the respondent and also the applicant, but the court can not make a presumption that past interim applications which did not proceed had no merit. This is an important amendment for women applicants who may not have been able to proceed with their applications in the past.

2 New ground for a VRO in relation to children/other child specific provisions

Section 11A sets out a new ground to get a VRO for a child where there is a family and domestic relationship. It is sufficient to obtain an order in this situation by showing that the child has been exposed to an act of family and domestic violence and is likely to again be exposed, or that there is a reasonable fear that the child will be

exposed to an act of domestic violence. Therefore it is no longer necessary to show that there is a likelihood that a person will be directly violent against a child. 'Exposed' means to see or hear an act of domestic violence or see physical injuries arising from an act of domestic violence. This change is designed to reflect research showing exposure to family and domestic violence to be extremely damaging and correlated with child abuse.

Under section 53A, children are not to be summonsed and are not to give oral evidence without the court making an order to do so. It is intended that such orders are only to be made in exceptional circumstances. If leave is given by the court for a child to be a witness, then special supports and protections will apply to the child under sections 53B-D and the child cannot be directly cross-examined by an unrepresented person. Evidence given by a child, relevant to the application, is admissible as evidence despite the rule against hearsay. These provisions bring the treatment of children as witnesses in line with other areas of the law.

3 Removal of consent defence

Section 62 of the Act is amended to remove the consent defence to a breach of a restraining order. This effectively placed the onus on the respondent to comply with the terms of the order, and was based on feedback from police and other stakeholders that the existence of the consent defence undermined the effectiveness of restraining orders (ROs) and made enforcement of breaches potentially problematic. The amendment will apply to breaches committed after the operation of the Act even if the restraining order was made prior to this time.

4 Obligation on police to investigate acts of domestic violence/police rrders and other police specific provisions

Section 62A sets out a statutory obligation on the police to investigate if they have a reasonable suspicion a person is committing an act of family and domestic violence that is also a criminal offence, or where the safety of a person is at risk. This is designed to improve police response. Police have also been given expanded police powers to enter premises to investigate. Under section 62B, if police have reasonable suspicion that an act of family and domestic violence was

committed prior to the officer's arrival, the officer may, with the approval of a senior officer, enter and search premises and make certain investigations. A senior officer is an officer of the rank of Inspector or above.

Officers may remain on the premises

- as long as necessary to investigate whether there has been an act of FDV
- to ensure there is not imminent danger of a person committing an act of FDV
- to render such assistance as may be necessary.

Under section 62C if police investigate under section 62A or enter premises under section 62B, they must apply for a restraining order, make a police order, or make a written record of the reasons why no action was taken to make an application or an order.

Police will be able to issue on-the-spot VROs, especially in circumstances where it is impractical for an application to be made to the court (outside court hours or in remote areas) and where an order is necessary to ensure the safety of a person.

Police can now represent applicants for VROs at any stage of the proceedings.

5 Miscellaneous other provisions designed to support people in restraining order proceedings

Section 27 will mean that interim hearings will take place in closed court and a person will have the right to give evidence by affidavit and have support people present (who are not witnesses) if they choose. Amendments ensure that applicants cannot be directly cross-examined by the respondent, who may be unrepresented, if they are in a domestic relationship. Further safety measures have been enshrined in the legislation which include provisions that state the court or court staff cannot disclose any information that would reveal the address of the applicant.

In circumstances where the respondent does not attend the court at a final hearing and the person already has an interim order, the court will automatically make a final order in the same terms without there having to be a hearing or further evidence given.

Amendments have been included that clarify and strengthen provisions concerning costs. Costs

orders can only be made against applicants in VROs if frivolous or vexatious.

To recognise the seriousness of offences and the risks to those subjected to violence, lifetime VROs will automatically be granted for very serious offences such as sexual assault, grievous bodily harm, sexual coercion and attempted murder unless the victim does not wish to have an order. These will be made in the criminal proceedings at the same time as sentencing.

6 Penalties

The penalties for a breach of a VRO have been increased to \$6,000 or imprisonment for two years, or both. A breach of a VRO or police order that exposes a child who is in a domestic relationship with the offender will be an aggravating factor for sentencing under the Sentencing Act 1995. Changes to the Criminal Code mean there will be higher maximum penalties for certain violent offences, including assault, if:

- the offender is in a domestic relationship with the victim
- a child was present when the offence was committed
- the victim already had an RO against the offender.

Finally the Act specifies that there will be a review by the Minister for Justice of the new police orders as soon as practicable following the first two years of operation.

Footnote:

The WA Police State Domestic Violence Coordinator advises that, in relation to the new police orders (which were introduced partially to improve immediate police response and partially because of perceived failings with the existing after-hours telephone VRO system from duty magistrates), there have already been more police orders made in the three days since the commencement of the Amendment Act than the total number of telephone VROs issued in the whole past 12 months.



The deadline for contributions to the next newsletter is 11 March 2005:

Brief, newsworthy contributions are invited.

Update on Tasmanian legislation

The Tasmanian government announced \$17 million in their budget for domestic violence initiatives. This includes plans to enhance the criminal justice response as was set out in the Options Paper (2003) *Safe at Home: A Criminal Justice Framework for Responding to Family Violence in Tasmania*.

<http://www.justice.tas.gov.au/legpol/Safe%20at%20home%20final.pdf>

New legislation has been drafted resulting in the 'Family Violence Bill 2004'

<http://www.justice.tas.gov.au/legpol/Family%20Violence%20%28V9%29.pdf>

This Bill has been passed by Parliament and is awaiting a date for proclamation.

Review of Victorian Crimes (Family Violence) Act

The Victorian Law Reform Commission (VLRC) is currently reviewing the Crimes (Family Violence) Act 1987. Amongst their terms of reference the VLRC aims to:

- 1 Consider whether the **Crimes (Family Violence) Act 1987** is based on a coherent philosophy and whether, having regard to national and international experience, its approach to family violence is the best approach available to Victoria.
- 2 Identify any procedural, administrative and legislative changes that may be necessary to ensure that the **Crimes (Family Violence) Act** provides the best available response to the problem of family violence.

The Victorian Law Reform Commission has released its Review of Family Violence Laws Consultation Paper. Remember that there is still time to respond to the paper, as the closing date for submissions is **28 February 2005**. To see summary report go to:

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/\\$file/FV_Consultation_Paper_Summary.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/$file/FV_Consultation_Paper_Summary.pdf)

The Legislation database found on our State Resources webpage will be updated when relevant domestic violence legislation is

enacted. To assist us in keeping information up to date, please let us know about legislative reviews or amendments to legislation occurring in your state/territory.

Proposed Family Law reforms

On 10 November 2004 the Australian government released a discussion paper seeking input from the community into the implementation of wide-ranging reforms to the family law system. The reforms follow the report of the parliamentary Inquiry into child custody arrangements in the event of family separation, *Every Picture Tells a Story*, and include the establishment of a new network of 65 community-based Family Relationship Centres that are intended to help parents reach agreement on parenting arrangements after separation. The discussion paper is available from:

<http://www.ag.gov.au/agd/WWW/familylawhome.nsf/AllDocs/5557139904E4673ECA256F47007D1165?OpenDocument>

Submissions closed on 14 January 2005 and it is important that future proposals are examined in light of the enormous impact they are likely to have for women and children leaving domestic violence situations.

A significant research project is also being undertaken by the Domestic Violence and Incest Resource Centre in Victoria to assess the impact of mediation processes for women survivors of domestic violence. See page 14 in this newsletter, which provides more detail about the research project.

NEW PUBLICATIONS/REVIEWS

Defences to Homicide: Final Report

Zoe Craven, Clearinghouse Research Assistant provides a summary of the key issues concerning domestic violence identified within the Victorian Law Reform Commission's Defences to Homicide: Final Report prepared by Siobhan McCann, Victoria Moore, Marcia Neave & Alison Hetherington

In September 2001, pursuant to terms of reference issued by the Attorney General, the

Victorian Law Reform Commission (VLRC) began a three year research and consultation process aimed at examining defences and partial defences to homicide within Australia and assessing the appropriateness of a range of reforms to existing laws, procedures, plea and sentencing practices in this area. In 2003, an Options Paper was published by the Commission inviting submissions and forming the basis for a series of public and professional forums directed at stimulating debate over the question of how criminal laws can most effectively take account of the variety of circumstances in which homicide occurs. While the recommendations made and draft Bill prepared by the Commission are specific to the Victorian context, the Report raises issues emerging across jurisdictions and makes an important contribution to policy and practice in the field of domestic and family violence.

The central position taken by the authors of the Report is that, in the majority of cases, the circumstances in which homicide occurs are most appropriately taken into account by the courts at the point of sentencing, rather than at trial. For example under present Victorian law, the partial defence of provocation can be raised by an accused and result in the reduction of a charge of murder to manslaughter. According to the VLRC, such an approach tends to privilege certain classes of behaviour while failing to recognise others, which may equally diminish a person's moral culpability for murder. As current sentencing regimes are flexible enough to take into account factors such as provocative conduct or mental conditions not amounting to legal 'impairment', the Commission found there is little justification for the maintenance of provocation or the introduction of diminished responsibility as partial defences. On the other hand, the Commission mounts a persuasive argument for the retention of certain full defences to homicide, specifically where mental impairment, involuntariness or a belief in a serious threat of harm can be established, and recommends the alternative verdict of infanticide remain available to women who kill their children, subject to modifications that would bring the law in line with modern medical analyses of this particular type of homicide. The extension of situations recognised by the law as providing a complete defence to homicide to include circumstances of duress and 'sudden or extraordinary emergency' is also advocated by the Commission, as is the re-

introduction of the partial defence of 'excessive self defence' where a person is unable to meet the standard of reasonableness required for the complete defence.

The approach taken by the VLRC emphasises the role of social context in shaping the criminal law and the need to recognise the manner in which certain defences and partial defences are gender biased, particularly in situations of family and domestic violence. Women who have been victims of domestic violence face a number of legal and evidentiary hurdles in attempting to establish that the killing of an abusive partner was carried out in self-defence or was 'provoked', while legal definitions and standards very often excuse or reduce the culpability of perpetrators who 'lose control'. While the Commission's position is not necessarily that women who kill an abusive partner should automatically be entitled to an acquittal, the authors argue for a number of reforms which might better reflect the reality of women's experiences of violence and allow courts to consider important antecedents to the actions of an accused.

Firstly, it is argued that, where either the perpetrator of prior violence or the victim of prior violence is the accused, the history of the relationship between the accused and the deceased and evidence of the cumulative impact of the abuse should be relevant to the court's determination and that the status of such evidence must be clarified by legislative reform. Incorporated into these reforms should, according to the Commission, be some recognition of the social, cultural and economic factors that shape and limit the options available to an accused at the time of the relevant act. Ultimately the Commission advocates an approach that is flexible enough to enable a jury or judge to place themselves, as far as possible, in the position of the accused and to understand the context within which the homicide occurred.

Secondly, it is suggested that, if evidence of prior violence is to be taken into account by courts, significant changes to existing laws of evidence, such as the hearsay rule, rules governing the admission of expert and 'social framework' evidence and rules pertaining to propensity evidence, must be made. Under current legislation, certain kinds of statements, such as statements made out of court by the deceased, prior complaints about violence made by an accused,

or expert opinion held to be within the 'common knowledge' of the jury, are not admissible to support a full or partial defence to homicide. According to the Commission, such restrictions place victims of family violence at a significant disadvantage in the trial process and may allow perpetrators of family violence to present their story uncontested. For example, the hearsay rule may prevent an accused who was the victim of abuse from bringing evidence she had told others of the abuse or, conversely, may prevent the prosecution from bringing similar evidence against an accused, who was the perpetrator of prior abuse. The introduction of specific exceptions to existing rules of evidence is recommended by the Commission as a way of addressing some of these issues and the need to redefine the scope and content of 'expert evidence' to include professional assessments of the social context within which battered women kill is examined.

In addition to identifying specific areas for legislative reform, the Report highlights the importance of developing training and education in family violence issues for police, lawyers, judges and others working within the criminal justice and legal systems. While public knowledge of the nature and extent of domestic and family violence in the community has improved markedly over the last decade, the consultations undertaken by the Commission revealed an ongoing need for greater understanding of the relevance and impact it may have at each stage of the legal process. The capacity of existing defences, plea bargaining and sentencing practices to operate effectively is diminished where those making decisions have only a limited understanding of the nature and dynamics of abusive relationships and the social context within which family violence occurs. The Commission suggests that through improving education and training many of the barriers faced by victims of violence, from investigation through to sentencing, might be overcome.

Finally, utilising a series of case studies the Commission has identified a range of limitations inherent within current sentencing processes and practices in homicide cases and has developed a series of recommendations for reform on the basis of this analysis. It is argued that, where the accused has suffered previous violence at the hands of the deceased, the full range of sentencing options, including suspended and non-custodial sentences, should be considered

by the judge, even where a murder conviction has been obtained, and that greater guidance should be given to trial judges in exercising their discretion to take into account various factors, such as mental impairment. The establishment of a data base for monitoring sentencing trends and the implementation of protocols for making this information available to judges and other legal professionals is also considered.

The work of the VLRC, in preparing this Report, represents a major step forward in the debate over the capacity of current criminal legal categories, rules and principles to adequately respond to increasingly complex social problems. As the authors of this Report note, there may not be any 'right' approach to the complex moral and legal issues that arise in the context of homicide cases, but there is certainly a need for greater consistency in how questions of culpability are dealt with by the criminal law. While knowledge of family and domestic violence within the legal system is gradually becoming more sophisticated, the legislative framework within which victims and perpetrators of such violence face criminal charges of homicide remains largely unchanged across Australia. *Defences to Homicide* provides a strong and considered basis upon which to implement long overdue reforms within Victoria and supplies a model to other States seeking to undertake a similarly arduous task.

Defences to Homicide: Final Report can be downloaded from:

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Homicide_Final_Report/\\$file/FinalReport.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Homicide_Final_Report/$file/FinalReport.pdf)

'A Powerful Journey'

Women's Health Goulburn North East has released the research report 'A Powerful Journey: Women Reflect on What Helped Them to Leave'. The research work was undertaken with sixteen women living in the Hume region of Victoria, who had left a violent situation, mostly between 18 months to three years prior to the research. Fifteen of the women's stories are in the accompanying publication 'A Powerful Journey: Stories of Women Leaving Violent Situations'.

The research was planned on feminist principles of hearing and foregrounding women's stories, of including the women participating in launching

and speaking publicly about the work, and of using their recommendations to improve responses of the service sector and the informal sector to women who experience violence.

Women made very clear recommendations to friends and family and professionals supporting women, and asked community workers to teach others:

- That family violence is real, it happens, and is a crime
- That the perpetrator could be their good mate, the school president, their brother
- That it has a ripple effect through the community and through generations
- That family violence has no excuse

An encouraging outcome of the report is that there was a consistently good experience of contact with the family violence sector. Women said they felt supported, not judged, that workers were patient and that they were 'in it together'.

Eight women completed a formal evaluation of the project. All said that they would recommend such a project to other women. They felt proud of having left such difficult situations and felt that they could help other women by telling their stories. The report can be bought from Women's Health Goulburn East or can be downloaded from their website at www.whealth.com.au.

Shaping the Future: Practice Framework and Training Resources

Shaping the Future is written by Di O'Neil, Deputy Chief Executive Officer, St Luke's Anglicare, in collaboration with Chris Burke, former Executive Director, Jannawi Family Centre and Carla Meurs, Coordinator, EASE. *Shaping the Future* includes a comprehensive *Practice Framework* document and *Training Resources* designed to enable trainers to deliver workshops promoting a strengths-based framework when working with children living with domestic violence.

During development of the resources the project group (which also included Burnside UnitingCare) extensively trialled the training resources in 2002. Over 100 participants attended training that piloted the resources and extensive feedback was given to the authors. The publications

consequently represent practical, readily useable supports to individuals and organisations working with children in domestic violence contexts.

The *Practice Framework* builds on current learnings in the areas of child inclusive practice and strengths-

based approaches. It focuses on the professionals' therapeutic role with the child. It acknowledges the reality of working with families experiencing domestic violence – that the context is inherently abusive, that power differences raise issues about how to engage respectfully with all members of the family in a way that promotes change and addresses the child's needs. The *Framework* and associated *Training Resources* place the child and their needs, perspectives and resources at the centre; they identify and harness the resources beside and behind the child.

These publications are available free of charge through the PADV website:

<http://www.padv.dpvc.gov.au/contact.html>



PRACTICE NOTES

Victorian Family Violence Court pilots

Victoria is one step closer to a specialist Family Violence Court under new laws recently passed by State Parliament. Claire Brown from the Family Violence Court Project Team provides an update.

The Magistrates' Court (Family Violence) Act 2004 will enable the court to direct men who have used violence against their family to participate in counselling to help them stop their violent behaviour. The Act, which received Royal Assent in November, also provides further protection for children from family violence and minimises their involvement in court proceedings.

In June, Attorney-General Rob Hulls announced that Ballarat and Heidelberg Magistrates' Courts

would trial the Family Violence Court, a division of the Magistrates' Court. The State Government has committed \$5.2 million over four years to develop and pilot the Family Violence Court from early 2005.

'The Family Violence Court will serve as a "one stop shop" for those experiencing family violence – bringing together specialist magistrates and support services to provide a more integrated response to victims seeking intervention orders or giving evidence,' Mr Hulls said.

The Family Violence Court will have the capacity to hear different types of matters involving family violence within the jurisdiction of the Magistrates' Court. These include intervention orders, criminal prosecutions, crimes compensation and some family law matters. Wherever possible, court matters will be consolidated to reduce the number of court appearances required.

The Family Violence Court seeks to enhance the safety of people who have experienced family violence and increase the accountability of those who have used violence on family members. It will encourage respect for the rights – and enhance the safety – of those who have experienced family violence, with a particular focus on increasing the recognition of the rights of children.

The project recognises that family violence exists in all communities, across all socio-economic, ethnic and religious groups. In establishing the Family Violence Division, the government will be working to overcome barriers faced by people from culturally and linguistically diverse backgrounds who come before the court. This will occur via the use of specialist support workers, professional interpreting services and improved translated information.

The Heidelberg Court catchment area includes a large Indigenous population and has been selected because it is well placed to leverage initiatives of the Indigenous Family Violence Strategy. The Ballarat Magistrates' Court operates in a region where there are strong partnerships between agencies and services that respond to family violence. The court will seek to enhance the integration of the justice system with other support services for women, children and men affected by family violence.

Professional development, education and training will be provided to magistrates, registrars and

court staff on the special dynamics of family violence cases and cultural diversity issues.

The Magistrates' Court (Family Violence) Act 2004 will give the court power to direct defendants who are subject to an intervention order to be assessed for their eligibility for compulsory men's behavioural change programs. Counselling and support will also be provided for women and children who have experienced violence. The state government has allocated \$1.65 million to trial and assess this program.

It is important that practices and procedures developed during the pilot phase of the Family Violence Court can be applied to other metropolitan courts. Independent evaluation of the court will give the opportunity to apply what is learnt in Ballarat and Heidelberg to other locations.

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Domestic Violence Intervention Court Model for NSW

Annette Cairnduff provides detail about the establishment of two pilot specialist courts in NSW to respond to domestic violence matters.

The trial of the Domestic Violence Court Intervention Model (DVCIM) in two courts in NSW was one of the NSW government domestic violence election commitments in 2003. The DVCIM is an integrated criminal justice and community social/welfare response to domestic violence. Its principal aim is to improve safety for victims and increase perpetrator accountability through improved management of criminal domestic violence cases.

The DVCIM involves a broad range of agencies working together to improve responses to domestic violence at each stage of the criminal justice process – from the reporting of the violent incident through to the sentencing and management of the offender. The model adapts international and national best practice to improve the

policing and prosecution of domestic violence, increase collaboration between legal and welfare agencies, develop specialist knowledge and expertise among magistrates and other stakeholders, and ensure greater integration of post-conviction offender management, including standardisation of court referred perpetrator programs.

The DVCIM further enhances improvements made in response to domestic violence offences in NSW, specifically by:

- providing quick and seamless support to victims of domestic violence, through the entire prosecution process.

This includes the employment of a Victim's Advocate in each of the trial locations who will provide and coordinate support to victims of domestic violence through the prosecution process; ensuring that victims are aware of exclusion orders and the use of strict bail conditions in domestic violence matters.

- improving the quality of the prosecution process in order to obtain better criminal justice system outcomes.

This includes enhanced evidence collection at the scene, a pro-charge pro-arrest policy, improved brief preparation, specialist training for Police Prosecutors, tracking of files throughout the process and timely outcomes.

- finding the balance between individual victim concerns and criminal justice system responsibilities to uphold law.

This includes reducing attrition of victims' involvement in the criminal process by streamlining and speeding up finalisation of domestic violence matters; providing support to victims of domestic violence through the process; and improvements in brief preparation and evidence collection to lessen the need for victims as witnesses.

- the provision of integrated offender victim and children's programs aimed at reducing repeat offending.

The majority of the pilot is being funded from within agency resources, with a further \$1 million dollars over two years contributed through the Community Solutions Funding Program, Department of Community Services, NSW Strategy to Reduce Violence Against Women and the Attorney General's Department. These funds

will go towards the funding of the capital equipment associated with evidence collection, a Victim's Advocate in each of the trial locations, women's and children's support programs in each of the locations, a Systems Change Manager to be based in NSW Police, a Project Manager and evaluation procedures.

Progress

The Premier announced the locations of the trial in Parliament at the end of October. The regional location is Wagga Wagga and the metropolitan site is Campbelltown. Consultation has begun in Wagga Wagga, with a series of meetings with stakeholders during November. A Regional Working Group will be established in each location. Implementation is planned for April 2005 in Wagga and June 2005 in Campbelltown.

A Senior Officers Group has been established to coordinate agency participation in the pilot and oversee its development and implementation. The SOG has begun developing performance indicators and has drafted a Memorandum of Understanding.

The Chief Magistrate, Judge Price has formally appointed Deputy Chief Magistrate Syme as the 'senior magistrate to provide judicial leadership in the area of domestic violence and encourage ongoing education of other magistrates'. Magistrate Syme will sit on the DVCIM Senior Officer's Group.

For further information

about the DVCIM you can contact
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Don't Cry For Me: Poetry as a healing experience

Cheryl Munzel Family Violence Prevention Networker, Loddon Campaspe, Victoria, shares the creative work she developed in supporting an older woman Betty who had experienced domestic violence over many years.

After 45 years of violence from her husband, Betty left and found healing through poetry.

Betty's husband stood in her bedroom doorway holding a shotgun. His low voice threatened, 'Don't think I'm too frightened to pull the trigger, you bitch'. She lay motionless in the dark and prayed she would live. After a long moment, she heard him walk away. It was a pivotal moment. 'I decided I had to leave', she later admitted.

Betty is now 78 years old. Just seven years ago, she left the man who terrorised her over 45 years of marriage. This is her story.

Aged 25 years, Betty married Danny in a Catholic Church in a town in central Victoria. Her faded wedding photograph portrays a handsome couple: the tall dark groom smiling beside his blonde, blue-eyed bride in white. Never having known him to be violent, she was shocked to the point of disbelief when her husband first hit her.

On their honeymoon, Danny gave Betty a backhander across her face with such force that she fell backwards. Apparently he did not appreciate her suggestion of how they might spend the day. She couldn't believe he'd meant it. Hadn't he promised to 'love and cherish her till death parted them'?

Betty's absolute belief in their wedding vows seems naïve in this, the new millennium, with the divorce rate nudging 50 percent of all first marriages in Australia. In the 1950s, however, people 'married for life'; or at least, that was the expectation.

Talking about her marriage now, it is not the violence that leaves Betty most angry: it was her husband's betrayal. She remarked bitterly 'He deceived me...married me, knowing he was going to treat me like that'. Having spent a lot of time asking herself what went wrong in her marriage, Betty now believes Danny wanted her as 'a trophy': she was pretty, popular and well-known locally for her beautiful singing voice.

Betty and Danny had seven children – five boys and two girls – who are all middle-aged now. As is often the case where there is violence between the parents, Danny was verbally and physically abusive towards the children, who also witnessed the violence their mother was subjected to. Betty remembers being dragged across the kitchen floor by her husband, while her young children watched. With some forethought, Danny had sent them outside and snibbed the backdoor before assaulting his wife but they had climbed onto a bench and watched through the kitchen window.

In the neat one bedroom flat in the retirement village where she now lives, Betty has found a sanctuary. She has surrounded herself with pretty, feminine ornaments: ceramic dolls dressed in 18th century fashion; teddy bears, clowns; and crocheted throw rugs. With the sun streaming through the window, she brought out a scrapbook, the cover decorated with cut out pictures of flowers. Inside, were some yellowing newspaper clippings from the local newspaper. One shows a younger Betty dressed in a 1950's evening gown, having just sung solo with a Melbourne choir.

Throughout her marriage, singing offered Betty welcome, but brief, escape from the torment of her home life – though there were times when Danny did not give her permission to go – or, as happened on more than one occasion, she arrived home to find the doors of the house locked and her clothes and bedding thrown out into the yard.

Betty's expectation that she would be loved and respected did not include being slapped across the face until her face went numb, being punched or having her head banged into the architrave. Nor did she expect to be verbally abused; told she was mad so many times that she came to believe it herself.

Australian women in their older years have not been exposed to influence from the feminist movement as younger women have. To some extent they have mostly continued the compliant female culture typical of their mothers' generation; mothers who told them 'You made your bed – you must lie in it', when violence was their regular lot. So they were discouraged from changing or leaving the violent situation. Their male partners generally expected to dominate, and sometimes felt it was their right to possess their partner.

Betty is typical of her generation: in believing that she had no choice but to suffer in silence, because the alternative – to tell someone about the violence – was too humiliating to consider. Sadly, this attitude is still prevalent today. Betty believes people knew about the violence but did nothing. Even if she did decide to leave, there were few options. 'I didn't go to the priests because I didn't think they would be able to help...there was nothing they could do' and calling the police was not considered.

The impact of living with fear and violence took its toll: Betty began to suffer from anxiety and panic attacks. Like many women in her situation, Betty sought help from her family doctor. Dr R. knew of her situation at home because Betty told him, so he prescribed tranquillisers. 'I used to take three pills a day or more if it was bad.'

In 1997 Betty finally left her violent husband with the help of one of her sons and grandsons. She was 70 years of age. Now she finally feels safe. 'He (her husband) knows where I am but he wouldn't dare show his true colours in public.' We can only imagine the courage she drew on to take that step so late in life.

Writing poetry has brought about some healing. In the spare lines of her poems, she rejects sympathy:

*Don't cry for me
When told my story,
Cry for those who didn't survive.*

*Those who left one hell for another.
Those whose strength seeped away,
Those who now live in another mind.
Those stolen lives.*

*Don't cry for me,
Because I survived.*

The writing group she joined encouraged her to self-publish a book of her poems, *Don't Cry For Me*. She generously donated some of her books of poems to the family violence support agency, EASE. Later, she wept when they agreed to give them to other women who have had to leave their homes due to domestic violence.

Copies of her book of poems can be obtained for \$6 inc. postage and handling from:

Betty
Suite 218, 16 Strath Hill Centre
Edwards Road
Bendigo VIC 3550

Further information:

Cheryl Munzel
Family Violence Prevention Networker
Loddon Campaspe sub-region
C/- EASE, P.O. Box 958, Bendigo, 3550
Ph: 03 54 434 945
Fax: 03 54 434 844

Interpersonal violence, suicide & cultural diversity – what are the links?

Sarah Stewart, Senior Project Officer at the Education Centre Against Violence (ECAV) in NSW reports on an innovative two-year project recently funded through the National Suicide Prevention Strategy to investigate the links between interpersonal trauma, suicidality and cultural diversity.

There is a substantial body of literature that explores the relationship between suicide and experiences of interpersonal violence. The association between childhood trauma and suicidal behaviour, in particular, has been well documented over the last two decades, with physical abuse and neglect emerging as strong independent risk factors (Browne & Finkelhor 1986; Briere 1992; Santa Mina & Gallop 1998).

A solid research base also exists correlating histories of sexual assault with suicidal behaviour (Fergusson et al 2000; Beckinsale et al 1999; Garnekski & Arends 1998; Martin et al 2004). A number of studies have demonstrated that abused women are significantly more likely to be suicidal than non-abused women (Taft 2003). Almost a decade ago, Stark & Flitcraft (1995) identified domestic violence as possibly the single most important precipitant of female suicide, a finding that has subsequently been confirmed by a number of other studies, both overseas and in Australia (Allen 2004; VicHealth 2004).

The prevalence and manifestations of intimate gender-based violence is also a growing field of cross-cultural research (Counts 1987; Heise et al 1994; Fischbach & Herbert 1997; Krantz 2002), as is the area of child abuse and protection (Levinson 1989; Korbin 1991; Cohen et al 2001). Further, a growing body of research into suicide across cultures (Dusevic et al 2001) and the impact of migration and refugee experiences on vulnerability to suicide (McDonald & Steel 1997; Kliewer & Ward 1988) also exists.

However, studies that specifically investigate the prevalence of suicidality in relation to experiences of domestic violence, sexual assault and childhood abuse in a cross-cultural context are scant. Indeed, a review of the international literature indicates a significant gender and cultural blindness in this area.

The focus of most of the current suicide prevention initiatives is on men because statistically more men than women die as a result of suicide and data in relation to non-fatal suicidal behaviour (such as thoughts of suicide and acts of deliberate self-harm) are difficult to capture.

In addition to this gender blindness there is a cultural bias in much of the research. Apart from research into suicide prevention in Indigenous communities (for which there is an urgent need), there is very little cross-cultural research in the area of suicide prevention in this country. This is a glaring gap given the diversity of Australia's population and the fact that we know that there are cultural differences in understandings and expressions of suicidality – and indeed in perceptions of and responses to domestic and family violence. The compounding effects of these gender and cultural biases renders the suicidal experiences of some groups of people (specifically women from culturally and linguistically diverse backgrounds) all but invisible.

It is hoped that the project currently being undertaken by ECAV will stimulate the interest of both researchers and practitioners in this complex area of cross-cultural work.

The project is presently in the consultation and data-gathering phase. It is anticipated that the findings will inform the development of a learning resource to respond to identified needs of frontline service providers working with people from non-dominant cultural groups in addressing the risk of suicide in the context of interpersonal trauma.

If you want more information about the project, would like a copy of the literature review or are interested in being involved by taking part in a focus group discussion or an individual interview, please contact:

Sarah Stewart, Senior Project Officer
Education Centre Against Violence
Ph: (02) 9840 3791
Email: Sarah_Stewart@wsahs.nsw.gov.au

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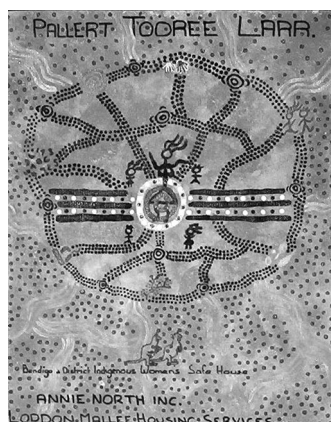
New Good Practice database entries

Maria Hole, Good Practice database worker, reports on some recent entries added to the Good Practice database.

December will see some exciting new entries on the Good Practice database:

Pallert Tooree Larr (Strong Black Women's camp)

is a project from Annie North Women's Refuge and Domestic Violence Service and Loddon Mallee Housing Services in Bendigo Victoria. Planning was done over a twelve-month period, in partnership with members of the Bendigo Indigenous community and *Purple Kangaroo Consultants*.



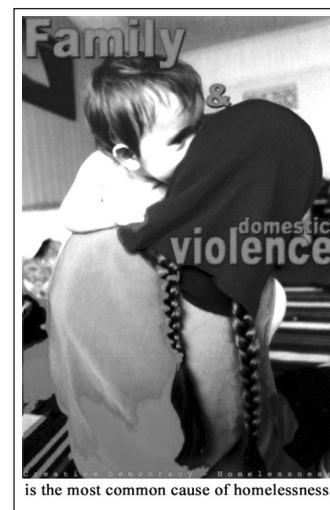
The name comes from the language of the Jaara people from the land where the project is based. The project was to develop better ways to support Indigenous women with or without children. Some objectives were:

- To operate a transitional house for Indigenous women, supported by family violence workers
- To improve links to Indigenous and mainstream services and to improve pathways to assistance
- To identify early intervention strategies for families and for the community
- To provide stable transitional accommodation to allow time to work out problems
- To bring services and support for the family into one place
- To focus on the wellbeing of the whole family, including children
- To keep a strong focus on community connection, including work, recreation, counselling, health, and justice.

Since the programme started crisis referrals of Indigenous women with children to Annie North have increased dramatically. An evaluation is ongoing. The service can be contacted at ani@infoxchange.net.au.

'Creative Democracy – Homelessness'

is a project of Brisbane City Council as part of its 2004 Homelessness Strategy. In conjunction with the Australian Network for Arts and Health and Open Minds, a series of photographs were projected onto Brisbane landmarks and public sites as a way of engaging the community with the issue of homelessness.



Photographs and stories were gathered with the informed consent of those whose images were used. The project aimed to be respectful of individuals and their circumstances. In recognition of the high incidence of homelessness attributable to domestic and family violence, one of the images shows a young woman and baby, and the caption *Family and domestic violence is the most common cause of homelessness*.

The project can be viewed at

www.creativedemocracy.net.au/.

Brisbane City Council contact centre number is (07) 3403 8888.

To view all current Good Practice entries, you can go the Clearinghouse website and click on the red 'cog wheel' symbol on the left of the homepage.



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Risks and opportunities in mediation and primary dispute resolution for women survivors of domestic violence

Allie Bailey, Trainer with the Domestic Violence and Incest Resource Centre (DVIRC), reports on a research project about the experiences of survivors of domestic violence who have negotiated the mediation process.

Separating parents are increasingly required to use mediation or other forms of primary dispute resolution to resolve parenting and/or other family disputes. Current federal government proposals for reforming the Family Law System are likely to mandate families to attend some form of accredited mediation before accessing the Family Court. While resolving disputes outside the legal system is cheaper, easier and less adversarial, it can also mean that women have a greater opportunity to advocate for their own wishes, and families generally feel happier with solutions that they have agreed on outside the court system.

However, mediation is a process that relies on two people coming together to resolve their disputes with relatively equal bargaining power. This is not possible when domestic violence prevents women from being able to identify and negotiate for their wishes without fear or intimidation. A major concern within the sector is how to ensure that victims of domestic violence are not disadvantaged or put at risk by these changes, while at the same time allowing them to benefit from some of the opportunities that primary dispute resolution can potentially deliver.

The DVIRC are interested in hearing about the experiences of women survivors of domestic violence who have undertaken mediation or other primary dispute resolution. We would like to hear from a range of people about their experiences, including: women who have experienced domestic violence and have used mediation for a family dispute; professional mediators or other primary dispute resolution practitioners; workers that have supported or advocated for women survivors of domestic violence that have used mediation.

The project would like to find out about a number of things, including: what happened; how well the process and practitioner supported you around issues of domestic violence; whether the mediation was helpful; or what might have been more helpful; what other information or supports would assist women using mediation. Project workers will survey, and/or interview interested people, either in focus groups or individual interviews.

These findings will inform a number of possible outcomes, including:

- A better understanding of women's experiences and needs about mediation will provide us with an increased capacity to advocate for women survivors of domestic violence;
- The development of a resource kit, in hard copy and on-line, to support women required, or choosing, to use mediation or other dispute resolution services;
- The development of specialised training for mediators and other dispute resolution practitioners about working with families where domestic violence exists.
- This research is part of a wider study that has been developed with Relationships Australia (Victoria) to assist them to develop a service delivery model for mediators that details referral mechanisms, exclusion criteria, assessment methodologies and specific clinical interventions that are appropriate for this client group. The early stages of an evaluation of the outcomes of this model will also be presented at the Australian Institute of Family Studies conference, February 2005.

The DVIRC consider this work with Relationships Australia as an important opportunity to support women in dispute resolution pathways that are likely to become widespread. We hope that these outcomes can be informed by survivors and support workers, to best address the challenges of mediating where domestic violence is present.

Contact:

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Training, Development and Consulting
Domestic Violence and Incest Resource Centre
Ph: 9486 9866; Fax: 9486 9744
www.dvirc.org.au

International Violence Against Women Survey: Australian Component Report

Jenny Mouzos provides the following summary of the recently released Australian Institute of Criminology report 'Women's experiences of male violence: Findings from the Australian component of the International Violence Against Women Survey (IVAWS)'.

In September last year, the report 'Women's experiences of male violence: Findings from the Australian component of the International Violence Against Women Survey (IVAWS)' published by the Australian Institute of Criminology, was released. This report, funded by the Australian Government Office for Women, outlines the findings from the International Violence Against Women Survey. This survey was conducted across Australia between December 2002 and June 2003. A total of 6,677 women aged between 18 and 69 years participated in the survey, and provided information on their experiences of physical and sexual violence by current and former male intimate partners, other known males, such as relatives, friends and acquaintances, and strangers.

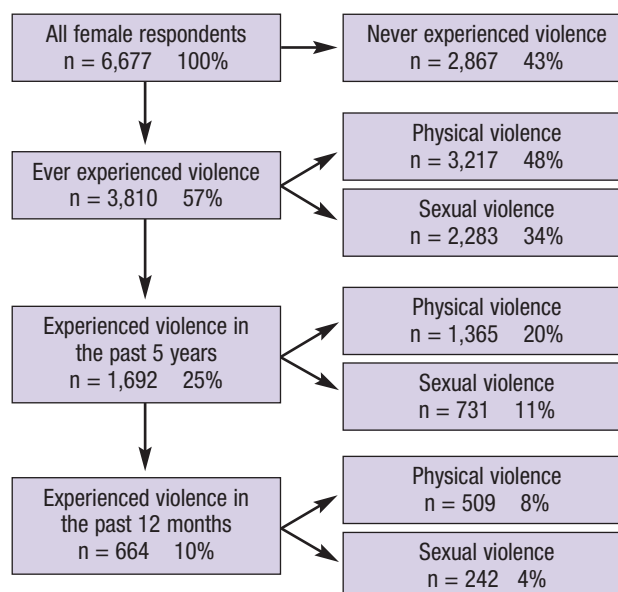
Overall violence

Figure 1 provides an overall picture of the number and estimated proportion of women who, in the five years or the 12 months preceding the survey either experienced physical or sexual violence or harm or did not experience any violence during their lifetime (that is, since the age of 16 years).

Overall, 57 per cent of women surveyed reported some level of physical and/or sexual violence harm over their life course. This reduces to 10 per cent during the past 12 months.

Women reported experiencing higher levels of physical violence than sexual violence. Forty-eight per cent of women reported experiencing at least one incident of physical violence over their lifetime compared with 34 per cent of women who ever experienced sexual violence. Sexual touching was the most common form of sexual violence experienced by the women (about a quarter over the lifetime).

Figure 1: Women's experiences of violence



Source: Australian Institute of Criminology, IVAWS 2002/03 weighted data [computer file]

Intimate Partner Violence

Over a third of women who had a current or former intimate partner reported experiencing at least one form of violence during their lifetime. However, the levels of violence experienced from a former partner (36%) were much higher than from a current partner (10%). Women who experienced violence from former partners were also more likely to sustain injuries and feel that their lives were in danger.

The strongest risk factors for current intimate partner violence (9%) were associated with aspects of male behaviour. These were:

- drinking habits (gets drunk a couple of times a month or more);
- general levels of aggression (violent outside of the family); and
- controlling behaviour.

Non-Partner Violence

Two out of five women surveyed reported that since the age of 16 years they had experienced at least one incident of physical/sexual violence from a male other than a partner (other relative, other known male or stranger; 7% in the past 12 months). Unlike intimate partner violence, where the women reported experiencing higher levels of physical than sexual violence, women who experienced non-partner violence reported similar levels of physical and sexual violence (27% respectively).

Of the three main categories of non-partners, women reported higher levels of violence from some other known male (23%), followed by a stranger (20%), and a relative (10%).

Childhood Victimization

Overall, 29 per cent of women surveyed reported that they had experienced physical and/or sexual violence before the age of 16 years, almost one in five by parents, and the same proportion by some other person (relative or some other male). Women who experienced abuse during childhood were one and a half times more likely to experience any violence in adulthood.

Perceptions and Reactions to Violence

Women were also asked about their perceptions of the most recent incident of intimate and non-partner violence. They were asked to consider the most recent incident in terms of its seriousness and whether they regarded it as a crime. A number of differences emerged:

Women who experienced violence in a former relationship or sexual violence by a parent or someone else in childhood were mostly likely to regard the experience as 'very serious';

Stranger perpetrated incidents were perceived as 'crimes' more often than incidents from known males (intimate partners, other relatives, friends or acquaintances); and

One in ten victims of physical and/or sexual violence by current spouses and one in five victims of physical and/or sexual violence by boyfriends regarded the incident as a crime.

Women were also asked if they sought assistance from a specialised agency or contacted police. Very few women sought assistance from a specialised agency. They did, however, indicate that they had spoken to someone else, usually a friend or neighbour about what had happened to them.

Few women reported the most recent incident of physical and/or sexual violence to police:

- 14 per cent of women victimised by an intimate partner; and
- 16 per cent of women victimised by any non-partner.

Incidents perpetrated by strangers were more likely than incidents by known males to be

reported to the police (27% compared to 10%). While the reasons for not reporting to the police are varied, almost half of the women who did not report the incident thought that it was too minor to involve the police or judicial authorities.

Policy initiatives

The analyses of the responses of the women who participated in the IVAWS suggest a number of avenues for policy in terms of intervention and prevention of violence against women. Future efforts could include:

- early interventions to reduce risks and harms associated with childhood abuse, and the prevention of intergenerational transmission of violence;
- targeting young persons with education on how to build healthy relationships;
- increasing assistance to women to escape domestic violence situations. This could include: increasing community awareness of the issue, information for women of their rights and available support, as well as a greater availability of support services;
- emphasising that violence is recognised and responded to as a crime; and,
- innovations in the criminal justice system such as specialised courts for domestic/family violence.

The full report can be downloaded from the AIC website:

<http://www.aic.gov.au/publications/rpp/56/index.html>

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and

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Director, Australian Institute of Criminology

The views expressed in this Newsletter do not necessarily represent the views of the Australian Government or the *Partnerships Against Domestic Violence* Taskforce.

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