

### CLEARINGHOUSE NEWS

## Clearinghouse online forms

For the ease of users, two frequently used forms can now be accessed through the website.

They are:

**1** The Good Practice database online submission form to use for consideration for inclusion on the Good Practice database at

[http://www.austdvclearinghouse.unsw.edu.au/gp\\_simple.htm](http://www.austdvclearinghouse.unsw.edu.au/gp_simple.htm)

then click on the hyperlink to online submission form.

Criteria for inclusion on the Good Practice Database are found in **Frequently Asked Questions** which has a link from the main Good Practice page. We hope that the online form will make the submission process more accessible and simpler for many agencies.

**2** The form to apply to become a subscriber to the Clearinghouse's publications, either in hard copy or by email, is located at **Subscribe Now** on the website's home page.

## Clearinghouse freecall number

The Clearinghouse now has a freecall service from fixed phones in Australia.

The number is **1800 75 33 82**.

## Recent presentations

In addition to auspicing seminars (for example, health services for domestic violence and sexual assault in the United States and Canada in March), during 2005 the Clearinghouse has been invited to participate in a number of forums, including advisory committees, training, workshops and conferences.

Jane Mulroney, our Director, has made presentations at Partnerships Against Domestic Violence

### IN THIS ISSUE

<b>Clearinghouse news</b>	<b>1</b>
Clearinghouse online forms	1
Clearinghouse freecall number	1
Recent presentations	1
<b>Legislation and policy</b>	<b>2</b>
Update on family law issues	2
Changes to the family law system:	
Implications for victims of domestic violence	2
Family Law Report, House of Representatives	4
Family violence training for Family Court of Australia	5
Amendments to migration law concerning domestic violence	5
Update on criminal justice responses	6
Safe at Home: Tasmania's whole-of-government program	6
Policing domestic violence in Queensland – review of the report by the Queensland Crime and Misconduct Commission	7
Recent research from the US: conviction and recidivism	9
<b>Practice notes</b>	<b>12</b>
Silent Voices: domestic violence and disability	12
Religion and Family Harmony Conference	13
Launch of Family Harmony and Safety CD in African languages	13
Responding to Violence Against Women: Royal Women's Hospital, Melbourne	14
<b>New resources</b>	<b>15</b>
Point of Contact project: responding to children living with domestic violence	15
How to access PADV documents	15
16 days of activism: 25 Nov–10 Dec 2005	15
<b>Forthcoming conferences</b>	<b>16</b>

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ISSN: 1443-7236

Published by the Australian Domestic and Family Violence Clearinghouse, UNSW Sydney NSW 2052



An Australian Government Initiative



THE UNIVERSITY OF  
NEW SOUTH WALES

showcasing events in Brisbane, Melbourne and Adelaide in March, June and July respectively, and at the Family Relationships Services Program conference in Melbourne. She presented a paper on *Staying home, leaving violence: a real option?* at the *Refocusing women's experience of violence* conference in Sydney.

Jane Mulroney and Julie Stewart both presented papers at the recent Women's Domestic Violence Court Assistance Program on effective networking.

Carrie Chan represented the Clearinghouse on the committee convened by the New South Wales Violence Against Women Strategy Unit to develop minimum standards for domestic violence perpetrator programs.

Maria Hole will present sessions on screening for domestic violence in health service settings at the *Courageous practice in family violence: A call to action* conference in New Zealand in October.

Julie presented papers on domestic violence-related death review processes and on domestic/family violence specialist courts at the *Refocusing women's experience of violence* conference in September.

## LEGISLATION AND POLICY

Recently the Clearinghouse Library and Information Service has received a number of requests for information to assist in the development of new services, such as Family Relationships Centres, and to support the delivery of training for Family Court personnel in line with the Court's Family Violence Strategy. The following items provide an update on family law developments.

### Update on family law issues

#### *Changes to family law system: Implications for victims of domestic violence*

*Julie Stewart, senior research and projects officer at the Clearinghouse, interviewed Cathy-Anne Grew, a solicitor practising in family law in New South Wales, about the proposals for change within the family law system.*

**JS:** There seem to be so many changes about to affect the way in which clients in the family law system will access resolution of their matters, particularly in relation to children. What do you

perceive to be the implications for clients who are victims of domestic violence?

**CATHY-ANNE:** The family law system is difficult to negotiate at the best of times. There have been some welcome developments over the last couple of years but a recent overhaul of the legislation and policy arguably exacerbate the problems that are typically faced by women who have experienced domestic violence.

Entering the family law system can be daunting and confusing. The first step for many women is to make an application for legal aid. If a woman meets the means test and the 'merit' test for legal aid then the matter is in the first instance referred to a Legal Aid Conference. The Conference is facilitated by a mediator (with legal or social work training) and the emphasis is on resolving the matter without the need for litigation. The conference can be extremely useful and can short-circuit a drawn-out court process. However the focus on 'resolution' can sometimes mute or downplay the experience of violence. Further, although the conferences are conducted on a 'without prejudice' basis (things said or done there cannot be used later in Court) the mediator who conducts the conference is obliged to make a recommendation to the Legal Aid Commission about whether or not the party should receive further aid. If the mediator is of the view that a person is not being 'reasonable' then aid can be terminated.

A number of guidelines have been developed to try and ensure that clients are safe. If there is a protection order in place, or a woman fears for her safety, the conference can be held with one party by telephone or in separate rooms. The requirement for a conference can also be waived altogether in certain situations. Similarly, if the matter is urgent (for example, if one parent has abducted the children or refuses to let the other parent have contact with a child), then aid will usually be given to file an application in the court immediately.

As is usually the case, it is important for lawyers and other workers to ensure that the Legal Aid Commission is aware of the domestic violence (and particularly any ADVOs) so that any risk to the client's safety is minimised.

Many matters settle at the conference and parenting orders are subsequently made in the Court by consent. If the matter does not settle, and the Legal Aid Commission is of the view that it has merit, then aid will be extended to enable the client to apply to the Court.

Once an application is filed in Court then the solicitor must apply for an extension of aid at each stage of the court process – for example, for any interim (urgent) hearing, then again to prepare for final hearing, and finally for representation at the final hearing (usually including barrister’s fees). To maintain the grant for representation at a final hearing it is almost essential that the client receive a favourable Family Report.

**JS:** Who prepares the Family Report?

**CATHY-ANNE:** In most cases the Family Report is prepared by a counsellor at the Court following a series of interviews with the parties and the children and any other significant people. In cases where there are allegations of sexual abuse or where one (or both) parties has/have a mental illness/substance abuse problem the Court may appoint a relevant expert, such as a psychiatrist, to prepare the report. Reports can be (and are) successfully challenged in Court; however they are generally very influential in the final determination. A grant of legal aid will almost certainly be terminated upon receipt of an adverse Report – leaving the client to represent himself or herself at final hearing.

If a client is not eligible for legal aid and is representing herself in Court, then it is just as important for her to ensure that the Court is aware of the history of abuse. As with most legal proceedings the Court will usually require specific details about incidents of violence – not always easy when someone has been subject to many years of abuse. Workers can assist by encouraging women to report incidents of violence and/or harassment to the police and any concerns about the children’s safety to the Department of Community Services (DOCS). The records kept by DOCS and the police are very commonly used in Court to corroborate allegations of abuse.

**JS:** There are quite a number of changes on the table. Can you tell me something about them?

**CATHY-ANNE:** Over the last eighteen months there has been a trial program running – initially in the Parramatta Registry of the Court and more recently in Sydney – called the Children’s Cases Program. This program addresses delay, as well as quality of the Family Court experience. After initial contact with the Court the parties move to an intake session with a judge. In effect the final hearing commences on that day – the parties give sworn evidence and the judge maintains carriage of the case. The judge can make orders (including

an order for a Family Report) in a manner that is sensitive and specific to the particular case. The content of affidavits is strictly controlled and the matter is directly managed by the judge. It is my experience that speaking directly with a judge early in the matter means that clients not only ‘feel heard’ but that they are more acutely aware of what the litigation actually involves. Of course there are the usual problems for women who are experiencing violence – they may feel overwhelmed or intimidated with the perpetrator present in Court and unable to articulate their concerns about the reality and effect of the violence, and so on. Further, if there are criminal proceedings for sexual assault or other assault pending, then the program may not be appropriate.

Entry to the program is voluntary. In the early days of the program the progress of the matter was very fast – a final hearing listed only two or three months after the matter was commenced. However the popularity of the program has seen delays creeping back in and the timeframe for a Children’s Cases Program matter is now almost the same as those in the ordinary system. I must qualify my comments by saying that my experience of the program has been almost entirely in the Parramatta Registry but it seems very likely that the current round of evaluations will be positive and the program will probably be extended.

**JS:** Can you comment on the announcement by the Attorney General that parents should have equal parenting time?

**CATHY-ANNE:** The current system is based on the premise that parenting arrangements will be determined in the ‘best interests of the child’ and, while that is a criterion that can be subjective and manipulated, it does allow the Court to look at the situation for the child/ren in each particular case. The legislation already enshrines the principle that parents will share responsibility for the long-term care, welfare and development of their children. Major decisions relating to education, health, religion, etc are at law to be shared.

Prescribing a norm of equal parenting time is risky – it may not be in the best interests of the children and it places the onus on parents to accept a situation which may not be suitable to them. The research about shared residence is not conclusive – it works best where children are older, where parents live very close to each other and where

parents are amicable. However these are not the people who use the Family Court! Equal parenting time (and presumably more frequent contact changeover times) may be particularly problematic where the mother is subject to violence and harassment from her ex-partner.

**JS:** It seems to me that it would be enormously expensive for both parents to have to establish two whole households to accommodate their children comfortably and appropriately. There would undoubtedly be a flow-on effect regarding child support.

**CATHY-ANNE:** The child support system and the formula which determines who pays how much is complex, being based on how many nights a parent has contact, whether they have other dependent children, what their respective salaries are, etc. In general the more contact a person has with their child the less child support they pay.

The reality of separation is that both parties (but particularly women) are poorer, and if child support is linked directly with the amount of time a child spends with each parent then the quantity of contact becomes an economic issue – and a legal one. For many years the Court has worked to keep the issues of child support and contact separate but this appears to be a losing battle.

**JS:** Do you think this position of a presumption of equal parenting time is purely economically driven?

**CATHY-ANNE:** There is no doubt that there is an economic factor underpinning this policy shift but it is not just economically driven. Women have pressed for more involvement of fathers in their children's lives for decades and, with both parents working and contributing financially to the household, many parents have developed shared parenting arrangements to fit in with each other's working lives. Ideally this co-operative arrangement will continue when couples separate and parents get on with their lives and organise their children's care.

However many families still have women in a primary caregiving role, particularly while the children are young. A presumption of a shared care arrangement in the post-separation family would be a major change for the children and during a traumatic period in their lives. The existing law usually provides for a continuation of the pre-separation status quo until such times as the competing parenting proposals of the parents can be investigated.

Further, it seems likely that for women victims of domestic violence there will be now more to 'prove' – not only that they and their children have experienced abuse but that it is not in the children's best interests to spend equal amounts of time with each parent.

The most recent proposal that the 'definition of domestic violence be tightened' is unclear and raises questions.

**JS:** What do you think is the purpose of establishing Family Relationship Centres?

**CATHY-ANNE:** I understand that \$400 million has been allocated to establish 30 new contact centres (acknowledging the continuing risks to women's and children's safety and the need to provide for safe handover of children for contact) and that 65 Family Relationships Centres will be established over three years. As well as providing information, advice and dispute resolution, the centres will work closely with other agencies and refer families to get the help they need.

The Centres will hopefully be able to provide some services in a vastly under-resourced area. We are just not yet sure how they will work and what training the staff at the Centres will have. Obviously there will need to be policies in place to deal with a number of issues but importantly domestic violence and child abuse. There is a concern that unless they seek concurrent legal advice clients may not be aware of their legal entitlements and responsibilities and may enter into agreements or even binding orders without being informed.

### *Family Law Report released on 18 August 2005*

*(source: Media release by Liaison and Projects Office, House of Representatives)*

"Significant changes to the Family Law system have been endorsed by the House of Representative's Legal and Constitutional Affairs Committee. Tabling the report on the Family Law Amendment (Shared Parental Responsibility) Bill 2005 in the House of Representatives today (18 August), the Chairman of the Committee, Peter Slipper MP, said 'The Committee has reviewed the draft Bill and has concluded that it largely implements the key reforms in the family law area announced by the Government in June 2005'.

'However, the Committee has made a number of recommendations to ensure that there is an

opportunity for both parents to continue their involvement as parents following separation,' Mr Slipper said.

Key recommendations include:

- Use of the term 'equal shared' parental responsibility rather than the term 'joint parental responsibility' to describe the presumption of the sharing of major decisions about a child by both parents;
- An obligation to consider whether it is in the best interests of the child and reasonably practical for a child to spend 'equal time', not just 'substantial' time with both parents;
- Provision for family law courts to directly access reports about investigations into violence and abuse conducted by State and Territory agencies;
- A specific cost provision where the court is satisfied that there are reasonable grounds to believe a person has knowingly made a false allegation; and
- The development of accreditation standards for Family Relationship Centres, family dispute practitioners, and contact centres as a matter of urgency."

A copy of the report can be obtained from the committee secretariat on (02) 6277 2358 or visit the inquiry website at:

<http://www.aph.gov.au/house/committee/laca/familylaw/index.htm>

## Family violence training for Family Court of Australia

In April 2005 the Australian Institute of Social Relations, a division of Relationships Australia South Australia (RASA), won the contract to deliver family violence training to all Client Services staff, Mediators and Registrars of the Family Court of Australia nationally. Training was held in Family Court registries in Canberra, Hobart, Adelaide, Newcastle, Melbourne, Dandenong, Darwin, Sydney, Parramatta, Townsville, Cairns and Brisbane.

The training was developed for Client Services staff as a one-day program focussing on information and skills about family/domestic violence, skills in prioritising safety for victims and children, understanding risk factors, making safety options

within the court visible to clients, considerations for clients from Indigenous and culturally and linguistically diverse communities and building and maintaining community networks.

A two-day program was developed for Mediators and Registrars focussed on critical engagement with current issues in family/domestic violence, including analysis of models of practice, prioritising safety for victims and children, safety planning, risk factors and risk assessment, considerations for clients from Indigenous and culturally and linguistically diverse communities, interviewing children and building and maintaining community partnerships.

### For further information

about the training, please contact Claire Ralfs [c.ralfs@rasa.org.au](mailto:c.ralfs@rasa.org.au) or Mailin Suchting [m.suchting@rasa.org.au](mailto:m.suchting@rasa.org.au)

## Amendments to migration law concerning domestic violence

### *Effective from 1 July 2005*

'Changes to the special provisions relating to domestic violence and the limitation of sponsorships for spouse, prospective spouse and interdependency visas – (in brief) ...

Amendments to the Migration Regulations 1994 enhance the integrity of provisions relating to applicants who seek to obtain a spouse, prospective spouse or interdependency visa, or a specified permanent skilled or business visa on the grounds that the applicant or another person has suffered domestic violence. These amendments enable the Minister to assess evidence of domestic violence that is not supported by a court order or court finding. If the Minister is not satisfied that the alleged victim has suffered domestic violence, the Minister must refer the evidence to an independent expert for an opinion, which the Minister is to take as being correct. Unsupported statements by the alleged victim from police records of assault are excluded because this information generally reflects the statutory declaration made by the applicant in support of their claim.

Where a visa has already been granted as a result of domestic violence committed by the sponsor,

the sponsor is prevented from lodging more than one further partner sponsorship. This provision avoids an unintended outcome of the previous legislation. While limits were previously imposed on the number and frequency of partner migration sponsorships, visas granted following cessation of the relationship as a result of domestic violence committed by the sponsor were not counted against the sponsor. As a result, these sponsors previously encountered no obstacle to continued sponsorships in multiple applications.

Subparagraph 1.20J(1)(c)(ii) prevents the approval of further sponsorships where more than one person has previously been granted a visa on the grounds of having ceased a partner relationship with the sponsor after the person (or another person, such as a member of the sponsor's family unit) suffered domestic violence committed by the sponsor.' (Source: Legislative change list)

## Update on criminal justice responses

### AUSTRALIA

In this newsletter the Clearinghouse is highlighting the systemic changes occurring in Tasmania and the recently released report on the policing of domestic violence in Queensland.

### TASMANIA

#### *Safe at Home: Tasmania's whole-of-government program*

*Based on an interview with Liz Little, Principal Consultant, Whole-of-Government Safe at Home Project, Department of Justice, Tasmania, in Sydney in August 2005*

#### Background

The *Safe at Home* strategy to address family violence in Tasmania was a development of a pre-existing 20-year government initiative for community safety, *Tasmania Together*. On a background of an extremely broad community consultation which indicated community concern to stop domestic violence and the tragedies of seven domestic homicides over the previous three years, the Tasmanian Government resolved to address domestic/family violence as a tier of the *Tasmania Together* strategy. To do so, the Government began to plan from a 'green fields' approach. As

opposed to amending existing civil and criminal law, a new law was enacted, the *Family Violence Act*. \$17 million of new money was allocated to the strategy over four years for increased policing positions and resources, legal aid, counselling services for women and children and for men, including on-call extended-hours services, a 24-hour seven-day-a-week crisis information and referral telephone service, court support and professional training.

#### Legislative change

The most significant vehicle for systemic change was the introduction of the *Family Violence Act* on 1 March 2005, which provided for a range of new powers. For example, one such power relates to the requirement for a magistrate to be sure of safety and risk factors before granting bail to a defendant, based on evidence from the police and the prosecutor. As a result, a number of family violence offenders have been remanded in custody. Another power provides for police to issue Family Violence Orders on the spot; these last for 12 months unless otherwise prescribed by a court or appealed.

#### Lead agency

The changes to Tasmania's response to family violence have been driven from the highest level of government, in particular, by the Premier and the Attorney General. The Department of Justice is the lead agency and reports back on the program to the Treasury.

#### Frontline responses

Tasmania has a population of 450,000 and a police service of 800 members, many of whom have already been trained to undertake their new role. The role of police is substantially changed: police are now the primary service agency and provide all crisis intervention, as well as adopting a pro-arrest, pro-prosecution approach. A risk assessment (using a tool, RAST) and safety audit are conducted at every domestic violence incident to direct the appropriate response: incidents are assessed as low, medium or high risk. Police can assist victims to develop a safety plan. Risk assessment takes into account a history of domestic violence, a course of conduct, rather than a 'single-incident' focus.

Within Tasmania Police, four 10-member specialist family violence units (one per police district) have been established to oversee all domestic

violence incidents on a daily basis to ensure appropriate policing, including a higher rate of enforcement of family violence orders, quality brief preparation and management of cases, including referral only after safety can be assured; and six specialist prosecutors have been appointed to improve prosecution rates.

### Structure, monitoring and accountability

The Department of Justice is the central agency for co-ordination, data collection and analysis and accountability; an Interdepartmental Committee meets weekly and regular regional interagency meetings take place in the three regions of Tasmania.

All data concerning every case are collected on a common server and can be accessed by police and the Department of Justice. To date, the arrest rate has increased by 40%.

### New offences

Economic violence and emotional violence are defined as offences and are yet to be tested.

### Penalty structure

In addition to aggravating factors of family violence offences (such as pregnancy of the victim or committing an offence in the presence of a child), penalties are also increased with each subsequent conviction for a family violence offence and, after four convictions for an offence or a breach of a Family Violence Order, the offender will be sentenced to imprisonment.

Serious offenders will be offered rehabilitation through a cognitive-behavioural treatment program as a sentencing option consisting of 100 contact hours over 10 weeks.

### Case management and integration of responses

The *Safe at Home* strategy addresses the gaps between service delivery into which victims may have previously fallen. All cases are managed initially by police and referred on once safety measures are in place. Case management ensures integration of service delivery through the sharing of information and mutual accountability for the safety of victims and their families.

**Deadline for next newsletter:  
4 November 2005**

## QUEENSLAND

*Carrie Chan, senior researcher at the Clearinghouse, reviews the Queensland Crime and Misconduct Commission's recent report, Policing Domestic Violence in Queensland: Meeting the Challenges March 2005; she critically analyses the findings, highlighting the inquiry's strengths and limitations.*

Police are often the first official response to a domestic violence incident and have a significant role in ensuring the immediate safety of the victim. The Queensland inquiry was prompted by concerns in relation to the ability of police to provide an efficient and effective response to domestic violence in Queensland. It sought to identify the challenges that confront police and to recommend strategies to meet these challenges and thereby improve the quality of policing of domestic violence.

In summary, the inquiry found the following main results:

- domestic violence takes up a considerable amount of police officers' time
- police officers' decisions at domestic violence incidents are influenced by factors such as:
  - > the seriousness of victims' injuries
  - > the use of a weapon
  - > the seriousness of the offence
  - > officers' prior experience and belief that victims do not wish offenders charged and/or will drop charges.

Some of the main barriers to effective police response include:

- not knowing how to deal with repeat victimisation
- processes involved in applying for a protection order
- not dealing appropriately with breaches of orders
- the workload of prosecutors.

Victims' experiences with police showed that only half were satisfied with the police response and that there was less likelihood of conducting investigations and collecting evidence to proceed with criminal charges than obtaining a protection order.

### Literature review

Inter alia, the report provides a literature review on the effectiveness of protection orders, deterrence

of arrest, decision-making by victims and by police officers; brief reference is made to studies which indicated that legal control of domestic violence worked more effectively when combined with other social control mechanisms, and that the deterrent effect of police action could be undermined by inaction at the prosecutorial and judicial level. Had these issues been further integrated into the inquiry's framework, the focus of the literature review may have been broadened and thus guided the direction of the inquiry.

An examination is made of the factors affecting officers' decisions to proceed with criminal charges or to apply for a protection order; the results presented show four key factors that influence officers' decisions:

- their perceptions of the likelihood of violence occurring again
- the victim's willingness to co-operate
- their perceptions that the victim is at fault
- and, interestingly, the monitoring of officers' actions.

Most of these, with the exception of the last factor, amount to officers' perceptions or attitudes (attitudinal variables) rather than situational variables. One of the most important factors influencing an officer's decision not to proceed with criminal charges is that the victim does not want the offender to be charged, in contrast to other results which show that the least important factor influencing an officer's decision to arrest is the victim's request for the perpetrator to be arrested. Further investigation of this contradiction may have been helpful.

### **Police attitudes and decision-making**

A survey was distributed to a random sample of 900 operational police officers and the response rate was relatively high at 50% (given the average response rate to surveys is approximately 30%). The aim of the survey was to assess the impact of different circumstances on officers' decisions, a first significant attempt by an Australian jurisdiction to examine the influence of situational variables on police officers' decision-making at domestic violence incidents. Disturbingly, the results indicate that officers are significantly less likely to take action if it is the first time police have been called to deal with a domestic violence incident at the address. A finding was that, even if the victim supported the arrest of the partner,

the officer's past experience with victims withdrawing charges was likely to influence him/her to disregard the victim's wishes. Not available in the report is further analysis of, and comment on police organisational cultures, reward systems (career progression, service awards or recognition) and quality of monitoring, supervision and management systems or approaches which may affect proactive policing.

Police officers reported their perceptions of their role in relation to domestic violence and specific challenges that they identify as barriers to effective and efficient responses – in particular, that domestic violence calls for assistance do not involve criminal behaviour but rather are low-level arguments due to poor relationship skills and socio-economic factors.

The workload of prosecutors was reported as of major concern but many police prosecutors also complained of poor quality briefs presented to them which do not even meet the standard of proof for domestic violence offences.

Consultations with domestic violence services and legal services consistently found that police failed to respond appropriately to breaches of protection orders. This is not a new problem, nor is it unique to Queensland: inappropriate police responses to breaches of protection orders have been raised in previous reviews of police operations in other Australian jurisdictions (for example, by the NSW Ombudsman in 1999, by the WA Ombudsman in 2003 and by the NSW Law Reform Commission in 2004).

### **Victims' experiences of police attending domestic violence incidents**

Victims' experiences with police and their reasons for dissatisfaction were sought by way of a survey which yielded a very low response rate of 10.3% (53 of 510) – not surprisingly, as this method is not the most appropriate means by which to obtain such sensitive and complex details. Police had attended incidents in relation to 24 of the survey respondents who had physical injuries and, of these, 17 had sought medical attention for their injuries. Irrespective of the poor response rate, it is of major concern that offenders were charged with assault in only five of the seventeen cases where medical assistance was sought and that the offenders were arrested in only three of the cases, and this finding is not supported by the report's literature review, which reported studies that

showed that police decision-making is influenced by situational variables such as the seriousness of injuries to the victim.

## Recommendations

### *Police-issued orders*

Just three recommendations were made by the report: a comprehensive review to consider the merits of police-issued protection orders, for example, issued on-the-spot, at the incident, instead of making an application through the court, to overcome the challenges of administrative and time barriers reported in the findings. This recommendation does not take into account the persisting reluctance (and likelihood of failure) to pursue investigation for criminal charges and prosecution when appropriate. The poor quality of police response to breaches of protection orders is not addressed, nor are supervision or monitoring strategies.

### *Case management*

A case management approach is recommended to address chronic repeat calls for assistance to domestic violence incidents. The recommendation did not include issues such as the desirability of an integrated interagency approach, appropriate referrals and systemic and case co-ordination within and across criminal justice agencies, as is developing in other states and territories.

### *Policies and procedures*

The report recommends policies and procedures to direct officers to investigate and collect evidence with a view to proceeding with criminal charges where evidence exists. In the 2001 evaluation of the Woden Police Reference Group for Phase II of the ACT's Family Violence Intervention Program by urbis keys young, police reported that prosecution 'back-up' (follow-through by prosecutors) was one of the most important factors influencing them to change their practice in relation to arrest and charging. The recommendation could have gone further to propose appropriate training for all police, including supervisors, to overcome any cultural barriers that reinforce attitudes and practices of viewing domestic violence as a private matter, not criminal.

## Monitoring

The report refers to performance management but there is no specific recommendation which might emphasise measures that take into account

appropriate policing of domestic violence and enable the measurement and evaluation of effective criminal justice intervention, including proceeding with criminal charges where appropriate, as well as the outcomes of police investigations and prosecutions. On the other hand, additional research and consultations are required to discover the impact on Indigenous communities, especially in the light of policing practices and the disproportionate rates of arrests and charges among Indigenous women compared with non-Indigenous women. Community-controlled approaches integrated with the criminal justice process, with the strong involvement of Indigenous women, may be an effective strategy.

Its limitations notwithstanding, the inquiry has provided a useful framework for understanding police officers' decision-making and the major challenges in the police response to domestic violence. The outcome is a welcome opportunity to highlight the problems encountered by police and victims of domestic violence, and, although the inquiry examined the Queensland context, the issues addressed have clear relevance and implications for other state systems. It provides a unique opportunity to apply the lessons learnt through this inquiry, which resonate beyond Queensland.

## RECENT RESEARCH FROM THE UNITED STATES

### CONVICTION AND RECIDIVISM

*Carrie Chan, senior policy and projects researcher at the Clearinghouse, reviews a journal article, 'Domestic Violence: Court Case Conviction and Recidivism', Violence Against Women, Vol. 11, no. 2, February 2005: 255-277. The authors outline their study in the United States into domestic violence court case convictions and recidivism. Key findings and implications for Australia from this under-researched area of criminal justice interventions are highlighted.*

This article meticulously examines the effect of convictions for domestic violence offences or related charges on the rate of recidivism (re-offending), by domestic violence offenders in the authors' study of a Midwestern United States urban area. Dr Lois Ventura, an assistant professor in the Department of Criminal Justice, College of Health and Human Services at the University of Toledo, Ohio, USA, has experience in the

administration of counselling and social work services in the criminal justice system. Gabrielle Davis is a clinical instructor at the University of Toledo College of Law, where she directs a domestic violence clinic for law students to work with local city prosecutors on misdemeanour domestic violence cases.

The study explores the effects of domestic violence convictions while controlling for and examining the effects of the offenders' backgrounds on domestic violence recidivism. A good literature overview is provided on the deterrence of criminal justice interventions on domestic violence and their rigorous methodology is outlined. The study posed two interrelated questions:

- how comparable are the characteristics, violent acts and criminal histories of defendants whose domestic violence cases result in dismissal as opposed to some form of conviction?
- what are the effects of case convictions on domestic violence recidivism in the one-year follow-up period?

The research sample was taken from the population of a larger study, which tracked data from all domestic violence charges (1982) filed in the local municipal court from 1 April 2000 to 31 March 2001. Of the 1982 cases, 67.6% were dismissed. Only 23.8% resulted in conviction and 8.6% were still pending. Samples of convicted and dismissed cases were randomly selected from the complete data set, resulting in a total sample of 519 cases – 315 dismissed cases and 204 convicted cases. Each offender was tracked for one year following the disposition of their case.

In summary, the following main findings of the study were:

- conviction was significantly associated with reduced domestic violence recidivism even when the offenders' histories of domestic violence arrests and demographic and socio-economic characteristics were considered
- the longer an offender's history of domestic violence, the greater the likelihood of domestic violence recidivism
- the younger the offender, the greater the likelihood of domestic violence recidivism
- offenders who were male had a greater likelihood of domestic violence recidivism than female offenders

- there were statistically significant differences in case dispositions associated with an offender's criminal history and certain acts of violence
- on average, defendants whose domestic violence charges were dismissed had a higher number of violent felonies in their history
- in most of the cases that were dismissed dismissal was due to failure of the victim to appear at court
- fear of reprisal was one of the reasons they failed to appear
- type of violence was significantly associated with case outcome
- offenders who had punched or thrown their victims had a higher rate of conviction.

### Detailed findings

452 (87.1%) of the domestic violence victims in the sample were women. Men were the accused defendants in 454 (87.5%) of the domestic violence cases; only 143 (28.4%) of the offenders were married at the time of their arrest. Offender characteristics were almost the same in the group of cases resulting in conviction and those resulting in dismissal. Bivariate and multivariate analyses found no statistically significant differences between any of the variables (gender, race, age, marital status, employment, education, legal representation) and court case outcome.

Court case outcomes and domestic violence recidivism findings show that, after a year, 169 (32.6%) of the offenders were arrested on another domestic violence charge. Fifteen (7.4%) of the 204 convicted offenders received only a suspended jail sentence or fines and court costs. The most common sanction for a convicted offender was probation with all or part of a jail sentence suspended. Seventy-three (35.8%) were sentenced to spend some time in jail – on average, less than two months. Bivariate and multivariate analyses were conducted and the only sanction found to be significantly associated with recidivism was a suspended sentence or a fine. Ten (66.7%) of the 15 offenders who only received a suspended sentence or a fine committed another domestic violence offence during the one-year follow-up period. By contrast, of the 189 convicted offenders who received sanctions of imprisonment, work-release sentence, electronic monitoring or probation, only 44 (23.3%) were re-arrested for domestic violence during the follow-

up period. An offender's history of prior arrests on domestic violence charges and employment status were significant but no other variables were statistically significant in the multivariate analysis on sanctions and recidivism.

The findings show that convictions reduce the likelihood of domestic violence recidivism. Consistent with earlier research findings, the results take into account the influence of a history of prior domestic violence as the variable that explains the greatest amount of the variance in recidivism. While these findings are specific to the USA (or to Ohio), their most important conclusions are arguably both relevant and imperative for examination in the Australian context. These are: the importance of the only independent intervention (that is, court disposition) being associated with domestic violence recidivism, rather than an offender's individual characteristics; and, similar to arrest, the apparently modest deterrent effect of conviction on reduced domestic violence re-offending. Importantly, the authors note that any deterrent effect of conviction may be negated when the sanctions are only suspended sentences or fines. If a convicted offender is penalised only by a fine or a suspended sentence without probation, there are no rules or compliance requirements necessary to avoid jail. They discuss the implication that the lack of monitoring and lack of accountability could be perceived by the offender as a message that they can re-offend without consequence or sanction.

## Discussion

The two research questions are well addressed by the research but the authors note that the impact of sanctions on convicted offenders' recidivism requires further investigation involving a larger sample, since this study only consisted of 15 sample cases resulting in sanctions of suspended sentences or fines and this is a major weakness of the research. They also rightly note that future investigation is needed to find out if conviction remains significantly associated with reduced recidivism during a follow-up period which is longer than one year.

Another major limitation of the study's research design is that it has confined criminality of domestic violence to rely on evidence of physical abuse only. On the one hand, they argue for prosecutions to be based on better quality investigation and evidence-gathering, including hard forensic evidence, medical records and eye-

witness testimony, to obviate the need to rely solely on the victim's testimony and to allow for cases to proceed in the absence of the victim's testimony. On the other hand, this position is likely to lead to a situation whereby police charges arise only from cases of serious physical abuse where such evidence is available.

Other limitations of this study are recognised by the authors: their study did not explore the criminal justice system's screening or decision-making processes with regard to filing charges; it did not examine or take into account issues influencing prosecutors' decisions to file charges; they also openly acknowledged that future research should include victims' voices of their experiences with court and the effects of court outcomes on their safety – both issues were missing from this study.

## Implications for Australian jurisdictions

The significance of this article lies in its research implications for Australia as it draws attention to the fact that, out of all the criminal justice interventions, the effects of domestic violence court case processing and outcome dispositions (conviction or dismissal) on victims and defendants have received the least amount of empirical research. Importantly, the authors draw attention to the paucity of research into the correlation between demographic characteristics, violent acts and criminal histories of domestic violence offenders whose cases result in conviction and those of offenders whose cases result in dismissal. This study directs our focus to address these under-researched areas and fills a gap in the existing literature.

Within the Australian context, recidivism research has been conducted on juvenile offending and other types of offending – for example, recidivism of sexual offenders (Australian Institute of Criminology 2004) – but there has been little comprehensive empirical research on court outcome (conviction or dismissal) and domestic violence re-offending. It appears that most of the earlier research in North America, the United Kingdom and Australia has been on police response. In particular, the Australian research focus has been on police, arrests and protection orders. Over the years, as this field of research developed, more studies conducted overseas have examined prosecution and integrated court responses. In Australia there remains little in the way of detailed research on these areas.

The Ventura and Davis article makes a significant contribution to empirical research and draws attention to an ongoing need for greater understanding of the relevance and implications of a fundamental area of criminal justice intervention, hitherto largely neglected: the effects of court outcomes on domestic violence recidivism, controlling for and taking into account the impact of other variables (such as the offender's background), in cases which resulted in conviction compared with those that resulted in dismissal. Striving for a stronger evidence-based approach to acquire a more robust understanding of prosecutors' decision-making and the impact of court outcomes on deterring domestic violence re-offending, before evaluating alternative interventions or social responses, seems a responsible direction for research on the grounds of effectiveness of interventions and victims' safety. Despite the US context of the Ventura and Davis study and some of its limitations, an opportunity awaits Australia to apply the learning from this study's design and methodology and to pose such research questions for rigorous investigation.

## PRACTICE NOTES

*Maria Hole, research officer into Good Practice at the Clearinghouse, writes on recent good practice projects and resources and a recent addition to the Good Practice Database, a research report on responding to domestic violence and disability:*

### Silent Voices: domestic violence and disability

'Women with disabilities (as victims of domestic violence) face the silence of double oppression', concludes a recent research report on a joint project of People with Disabilities (WA), the Ethnic Disability Advocacy Centre and the Centre for Social Research, Edith Cowan University, Western Australia. The research project is a recent addition to the Clearinghouse Good Practice Database. It addresses a major gap in current knowledge and practice, the rights and the needs of women with a disability who also experience domestic violence. Emerging evidence is that women with a disability face equal or greater levels of domestic violence than non-disabled women. Sometimes a disability has been directly caused by abuse.

In 1999 a working party representing domestic violence and disability groups was established

and in 2000 the working party held a community forum which strongly recommended research to address the gaps in knowledge in the area of domestic violence and women with a disability. The research was subsequently undertaken by Dr Judith Cockram of Edith Cowan University. The Ethnic Disability Research Centre, the People 1st Program and Women's Health Care Australia supported the research. The project embodies a number of Good Practice principles: it incorporates current research and evidence of need; it is based on strong intersectoral collaboration; it takes account of the needs of diverse communities; importantly it adopts a feminist approach that is respectful of the experience of women and that prioritises women's safety. Some of the report's conclusions and recommendations are:

- that women with a disability face both the same range of abuse tactics as non-disabled women and, as well, a range of additional tactics, such as the use of the disability itself as a means of discrediting, isolating or degrading the woman
- that some myths around disability add to disabled women's experiences of domestic violence, such as the myth that women with a disability cannot contribute equally in a relationship
- that domestic violence and disability services should undertake training and should address shortcomings in services to disabled women; in particular, disability services need to be prepared to face the possibility of domestic violence in their clients' lives and to routinely ask about abuse, and conversely domestic violence services need to be knowledgeable about the disability rights movement, current legislation and best practice in communication and service delivery to people with disabilities.

The voices of women come through strongly in the report. Six of the stories of the thirty-two women who participated in face-to-face interviews are given in detail. One woman said:

*'He really believed he was owed everything because he cared for me, but he took my independence and nearly my life. Then I started to paint and I got a friend to take me to get my pension back. She took me to a lawyer. He started to lose control over me...'*

As a result of the research, funding has been made available to provide training for domestic violence and disability services. Kaye Regan from People

with Disabilities (WA) said, 'Domestic violence is hidden in the mainstream, let alone with women with disabilities'. Kaye is especially pleased that training is underway for workers and agencies.

### For further information

Contact Kaye Regan at [kaye@pwdwa.org](mailto:kaye@pwdwa.org) or on (08) 9386 6477. The report can be read on our Research and Resources Database at

<http://www.pwdwa.org/userData/documents/Silent%20Voices%20Report.pdf>

## Religion and Family Harmony Conference

On the 22 June the Religion and Family Harmony partnership working group in Western Sydney held a one-day conference at the Holroyd Centre, Merrylands, to highlight the messages of the project – that domestic violence is not part of any religion and that by taking a stand against violence, religious leaders can be a powerful influence for family harmony and happiness in their communities. 'This conference was one of the major activities of the *Religion and Family Harmony Project* which has been engaging with religious and community leaders for the past three years in Western Sydney. It was a way of acknowledging the importance of the spiritual and intellectual strengths of religious leaders in responding to domestic violence and promoting family harmony', said Rugmini Venkatraman from the NSW Strategy to Reduce Violence Against Women, who has been co-ordinating the Religion and Family Harmony Project in partnership with Cumberland Women's Health Centre and NSW Police Parramatta, Holroyd and Rosehill Local Area Commands. 'We want to further consolidate this partnership between religious leaders and service providers to ensure there is continued engagement by these leaders in the prevention work.' The project has produced a number of resources, including a poster proclaiming *All religions say no to domestic violence*.

The conference featured as keynote speaker ABC Radio National presenter, Dr Rachel Kohn, and, as guest speaker, Eric Hudson, Manager of Relationships Australia Sydney West Area. Dr Kohn stated the need to 'continue the faith, but not the oppression' of women. Mr Hudson spoke of the many myths surrounding domestic violence,

including myths that violence is less common in religious families, that violence will stop through forgiveness and prayer, and that if a man is remorseful he will change. The Reverend Dorothy McRae McMahon chaired the conference and noted that if the outcome of our beliefs is harmful we need to question if they are true.

### Further information

regarding the project and its resources can be obtained from Rugmini Venkatraman, Regional Violence Prevention Specialist for Western Sydney at [Rugmini.Venkatraman@community.nsw.gov.au](mailto:Rugmini.Venkatraman@community.nsw.gov.au) or on (02) 9633 0717.

## Launch of Family Harmony and Safety CD in African languages

On 27 July the Immigrant Women's Speakout launched an audio CD as part of a community education project for new communities in Australia. The CD is designed as a radio announcement which includes vignettes on domestic violence in Krio, Somali, Dinka, Dari and African (Sudanese Arabic). It features women and men speaking about domestic violence and sends the message that domestic violence is unacceptable, that it is against the law, that it breaks up families and that it is more than physical violence. Names and contact numbers for New South Wales services are included for listeners seeking information and assistance. The project was built on strong community involvement from each of the language groups represented on the CD. Announcements will be aired on SBS radio in all languages.

**For copies** of the CD and the English language booklet contact the Immigrant Women's Speakout at [women@speakout.org.au](mailto:women@speakout.org.au).

### With thanks

This will be my last article as Good Practice Worker at the Clearinghouse, as my period of leave from my position with St George Hospital and Community Health Services will end in November this year. My thanks to the St George Domestic Violence Counselling Service and its management for their patience with my numerous extensions of

leave and to my colleagues at the Clearinghouse, who have taught me an enormous amount about providing a service from an Australia-wide perspective and who have been at the same time wonderful colleagues. I would like to especially thank our Director, Jane Mulrone, who has been extraordinarily generous with her support and encouragement throughout my work here.

I would like to thank as well the agencies and workers who have contributed Good Practice submissions. I appreciate that in the constant demands of providing a service it is very difficult to take the time out to let others know about what you are doing. By taking this extra step many other services can benefit from your experience and can work better for their clients and for the community.

**Maria Hole**

## Responding to Violence Against Women: Royal Women's Hospital, Melbourne

Three significant pieces of research have influenced the commitment to developing a policy and clinical practice guidelines on violence against women at the Royal Women's Hospital. CASA House conducted a survey on barriers to cervical screening experienced by victims/survivors of sexual assault. The survey found that one impact of sexual assault was a level of distress and trauma associated with pap tests. Deb Walsh and Associate Professor Wendy Weeks conducted a survey on the support and safety of women during pregnancy. This study found that 27% of women attending antenatal clinics had experienced violence from a current partner and 20% experienced physical violence during their pregnancy. The report on the VicHealth study, Intimate Partner Violence and the Burden of Disease, raised awareness that violence against women can pose a significant risk to health and wellbeing and that health providers have a key responsibility in prevention.

Following on from those studies two departments of the Melbourne Royal Women's Hospital, CASA House and Women's Social Support Services, have begun developing guidelines to influence the practice of medical, nursing and allied health staff. Maria Vucko conducted an analysis of the help-seeking questions in the support and safety survey, as well as a literature review.

Consultations were held with women who had experienced violence, particularly domestic violence and sexual assault, and with staff at the hospital. Keran Howe was awarded a Churchill Fellowship to examine current trends in health services in Canada and in the United States.

As a result, we recognise the health impacts of all forms of violence against women, using the United Nations definition which includes physical, sexual or psychological harm or suffering, threats, coercion or arbitrary deprivation of liberty and violence which occurs in public and private life. The focus of the draft guidelines are not on routine screening but are based on the premise that good health care for women must recognise that 1 in 3 women will have experienced some form of violence over their lifetime (Mouzos, J. and Makkai, T., 2004, *Women's experiences of male violence: findings from the Australian component of the International Violence Against Women Survey*, Australian Institute of Criminology) and that this will impact on the way in which they access health care. The basis of good practice therefore is to provide women with as much control as possible through:

- communication, which includes active listening, using language that is easily understood, using qualified interpreters where necessary, obtaining the woman's consent before taking any action and asking about violence if a woman has visible or suspected injuries
- respect, which includes respecting her choices, being non-judgemental, taking time to identify and respond to her needs, discussing confidentiality and ensuring privacy
- information – being informed about how being a victim/survivor of violence may impact on access to health care – for example, the experience may cause the patient to be reluctant to have internal vaginal examinations or pap tests; explaining one's role; providing information about waiting times and reasons for certain procedures; explaining options about appropriate services or ways of approaching particular health issues; referral information where necessary.

Two issues were raised by staff: (i) how to provide a safe space when women attend appointments with their partners (a group of Public Health students consulted with staff to identify appropriate and sensitive strategies for ensuring that

women are seen on their own for at least part of the appointment); and (ii) the fact that staff at the Royal Women's Hospital are primarily women, some of whom may themselves have been subjected to violence and the importance of addressing the need for support for staff in introducing the guidelines.

Our next steps are to finalise the guidelines and develop education and training to ensure all staff are aware of them and understand why they are critical to good practice. We will be seeking champions at the senior clinical level to lead the way in developing best practice in health care for women who have experienced violence. This is a significant step for the hospital and we expect that it will be a long process to ensure all staff are fully aware of, and practise within, the guidelines. With the leadership that has so far been shown at the executive and senior medical level, we believe that this is possible.

*Marg D'Arcy*  
[marg.darcy@rwh.org.au](mailto:marg.darcy@rwh.org.au)

## NEW RESOURCES

### Point of Contact project: Responding to children living with domestic violence

Relationships Australia South Australia has completed a national project on domestic violence, conducted in collaboration with the Centre for Gender-related Violence at the University of New South Wales and Family Transitions, a consultancy based in Victoria. Stage One involved developing a training resource, a response framework, for frontline workers who deal with children affected by domestic violence. The resource is aimed at nine professional groups: police, teachers, general practitioners, Family Court workers, refuge workers, contact centre workers, maternal and child health nurses, childcare workers and child welfare workers.

Stage Two, carried out in 2004, involved an evaluation process consisting of trialling the resource kit nationally. All participants and trainers completed detailed questionnaires and all trainers were followed up with phone interviews. The overall response to the evaluations was extremely positive, with trainers stating that the resource was an important and useful addition to their training program.

The final product consists of 11 booklets; each can be used alone or cross-referenced. The titles are:

- How to use the Point of Contact training resource
- Training programs
- A frontline response framework
- Family and domestic violence: an overview
- History of family and domestic violence and children
- The impact of family and domestic violence on children
- Children, family and domestic violence and the law
- Working with children and their families
- Working with diversity
- Values exercises
- Resource list.

The revised resource was handed over to the Office for Women as part of the Partnerships Against Domestic Violence. As at August 2005, printing of the resource has been completed and we are awaiting the launch and release in the near future.

### How to access Partnerships Against Domestic Violence (PADV) documents

Online documents published under the Partnerships Against Domestic Violence initiative are available on the Office for Women website within the Australian Department of Family and Community Services. Although the PADV program ended on 30 June this year, some of the program's publications can be found at ([http://ofw.facs.gov.au/womens\\_safety\\_agenda/elimination\\_of\\_violence/previous\\_initiatives/padv\\_resources.html](http://ofw.facs.gov.au/womens_safety_agenda/elimination_of_violence/previous_initiatives/padv_resources.html)). Orders for hard copies of some reports can be made through this site also.

### 16 days of activism: 25 November – 10 December

Please let us know what activities you have planned for the 16 days of activism so they can be published on the News Page of the Clearinghouse website.

Check the website <http://www.cwgl.rutgers.edu/16days/home.html> for further detail about international events.

## White Ribbon Day, November 25

In 2005 our readers are urged to

- buy a white ribbon to wear on 25 November for yourself or others
- become a distributor selling white ribbons
- become a project partner, promoting participation in White Ribbon Day by giving white ribbons to all the men in your workplace, to your members, your family and throughout your community.



See the website at [www.whiteribbonday.org.au](http://www.whiteribbonday.org.au)

## FORTHCOMING CONFERENCES

### Safe Transitions: Managing conflict and responding to violence in post-separation families

*Relationships Australia NSW and UnitingCare Unifam conference*

**24 and 25 November 2005, Sydney Hilton**

For the particular interest of the legal profession, courts, State and Federal government departments, community-based organisations, clinical practitioners and researchers, the aim of the conference is to identify and develop models of good practice across the new Family Law system, in order to achieve better outcomes for children and their families, who are affected by high conflict or violence.

#### For further information

and early registration, contact the Conference Secretariat at: [info@safetransitions.com.au](mailto:info@safetransitions.com.au) or visit the website at:

<http://www.safetransitions.com.au>

### Courageous Practice in Family Violence – A call to action

**20-22 October 2005**

**Waipuna Hotel and Conference Centre, Auckland, New Zealand**

The conference presents an opportunity for researchers, policymakers, medical and legal practitioners and other service providers to demonstrate innovation in practice, research, law, projects and community development.

Speakers include Graham Barnes from the Duluth Abuse Intervention Program.

## Change of address

We are currently updating and amending our mailing lists of some 3000 subscribers nationally. Could you please notify us if your address details are incorrect, including spelling and position title, etc, by completing the box below with your correct details and then send it to us either by fax on 02 9385 2993 or by sending us an email to [clearinghouse@unsw.edu.au](mailto:clearinghouse@unsw.edu.au).

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