



Domestic Violence Legal Unit of Legal  
Aid: 10<sup>th</sup> Anniversary Forum

*“Domestic Violence, Human Rights and the Law”*

Wednesday, 20 October 2004

By the Hon David K Malcolm AC  
Chief Justice of Western Australia

**City West Function Centre  
West Perth, Western Australia**



**[George Turnbull – Director of Legal Aid  
Deputy Chief Stipendary Magistrate Libby Woods  
Mr Michael Hovane – Manager, DVLU  
Ms Gail Archer – Barrister  
Ms Shirley Thorne - Maamba Aboriginal Corporation]**

Ladies and Gentlemen

I acknowledge the Noongar people as the traditional owners of this land, and thank Ms Shirley Thorne for her Welcome to Country.

I am very pleased to have been invited here today to provide the opening address to commemorate the 10<sup>th</sup> anniversary of the Domestic Violence Legal Unit of Legal Aid WA. I am honoured to have been involved in this unique and key division of Legal Aid, since its inception in 1994.

In 1995, I participated in the official launch of the first *Progress Report* of the Domestic Violence Legal Unit. The final conclusion of the 1995–1996 Report<sup>1</sup> was that the Domestic Violence Legal Unit, “continue[d] to fulfil its objectives by providing an identifiable and accessible resource to assist women escaping domestic violence and its effects”. It was also noted, however, that there was a need for more action, including the promotion of “greater community awareness about the effects of domestic violence, and about the needs of women in such circumstances”. As a consequence, “the recognition of the need for this crime to be appropriately addressed [was] emerging”. Many of the themes and issues which prompted the call for the establishment of the Unit still

---

<sup>1</sup> Legal Aid, *“I Just Want To Be Left In Peace”* (1995 – 1996) Domestic Violence Legal Unit, Inaugural Report



apply today, but I am pleased to say that great strides have been taken as a result of the formation of the specialised Domestic Violence Unit. Nevertheless, the necessity for its work remains.

The Domestic Violence Legal Unit was established to provide a specific service for women seeking assistance on matters relating to domestic violence. It provides advice and assistance, both in person and over the telephone, as well as through its Duty Lawyer service at the Central Law Courts. Its services range from initial advice and referrals by telephone, through to representation on applications for Restraining Orders. The Unit also operates a community education programme, which is designed to ensure that women faced with domestic violence, and the agencies to which they may turn, are aware of the legal avenues which are available, and that the community generally is better informed about domestic violence.

It is extremely important that women faced with domestic violence have easy access to legal information, advice and, where appropriate, representation. Failure to provide easy access to justice can have serious consequences. For example, a study conducted in 1994 by the Domestic Violence Advisory Service of Sydney, before the advent of our Domestic Violence Unit, found that over half of the women interviewed would have stayed in the violent situation from which they wished to escape, if they had received inadequate or inaccurate information about the legal avenues to obtain protection.<sup>2</sup> Based on the result of a special survey in 1994, it was found that every year in Western Australia between 1 and 2% of adult

---

<sup>2</sup> See ALRC (1994) Interim Report *Equality before the law* at 17.



women will suffer an assault of some sort from their partner<sup>3</sup>. Some of these victims will also be the victim of repeated assaults. On average, victims are likely to be physically assaulted twice every year. More than half, or around 62% of these female victims of domestic violence will suffer some injury as a result of the attack.

There is no doubt that women in a domestic situation are a group in our community which is at particular risk of violence. Although some men are the victims of domestic violence, this is much less common. The indications are that 9 out of every 10 domestic violence victims are female<sup>4</sup>. The facts are that women are at a greater risk of suffering from violence at home than they are on the street and are at a greater risk of violence from partners, friends and acquaintances than from strangers.<sup>5</sup> For many women, that level of risk escalates alarmingly at the point of, or just after, separation from a spouse or partner.<sup>6</sup>

It is now recognised that for many years domestic violence was seen as a hidden family problem. The law and the Courts were reluctant to intervene. Historically married couples were regarded at law as being one person and that one person was the husband. In the nineteenth century, women were the property of their husbands and children were simply chattels. During the last century there have been many changes to the law so as to give the wives and partners of men equal rights. Domestic violence is no longer completely hidden behind closed doors. Its effects, however, are far reaching into the community.

---

<sup>3</sup> Ferrante et al. (1996) *Measuring the Extent of Domestic Violence*. NSW Hawkins Press

<sup>4</sup> Ferrante et al. (1996) *Measuring the Extent of Domestic Violence*. NSW Hawkins Press

<sup>5</sup> See Blazejowska, L. *Sorting the Myths and Reality of Domestic Violence* (1994) 32 LSJ 41 at 42.

<sup>6</sup> See Nicholson, A. *Foreword* (1995) 9 Australian Journal of Family Law 1.



Domestic violence includes not only physical and sexual violence, but also the use of fear, threats, psychological, social and economic abuse and sexual harassment. Research carried out shows that violence against women is widespread and that almost 90% of the victims of domestic violence are women.<sup>7</sup> What is being emphasised and what must continue to be emphasised is that assault is against the law and that the violent partner should be held responsible for the violence. While individual perpetrators may not be responsible for the social norms of the past or present that permit or condone domestic violence, they are individually responsible for their own violent acts.

In 1998 23% of women who had ever been married or in a de facto relationship, experienced violence by their partner either during or following their relationship.<sup>8</sup> Of women who reported violence from their current partner, 12% said that they currently lived in fear.<sup>9</sup> Women are more likely to report incidents to the Police that were perpetrated by a stranger than by somebody they know.<sup>10</sup> Once the victims of domestic violence have taken the first significant step toward confronting their abuser, the community, the police and the courts must act quickly to ensure that community censure, backed by appropriate orders, reinforces the unacceptability of the abusers behaviour.<sup>11</sup>

In April 1994, I was pleased to have the opportunity of speaking at the launch of the Armadale Domestic Violence Intervention Project. I have

---

<sup>7</sup> Crime Research Centre UWA, *Estimating the Incidence and Prevalence of Domestic Violence in Western Australia*, (1995), p. 17

<sup>8</sup> *Special Article - Violence Against Women (Year Book Australia, 1998)*, Australian Bureau of Statistics at <http://www.abs.gov.au/ausstats/>, 16 May 2001

<sup>9</sup> *Ibid.*

<sup>10</sup> *Id.*



been involved with ADVIP since its establishment in 1993, and co-Patron of the Project with Mrs Ruth Reid since 1997. In 1994, the Victims of Crime Sub-Committee of the Task Force on Gender Bias, which I established in the preceding year, made some preliminary findings on domestic violence. One of the major findings was the importance of recognising domestic violence as a crime. To answer the criticism that domestic violence was not being treated as a serious crime, it was decided to create ADVIP based upon the effective inter-agency criminal justice response developed in Minnesota in the United States. The basis of the response was that all agencies and personnel involved in intervening in domestic violence, including police, courts corrections and victims should have a consistent, co-ordinated response to family violence. The key principles of the Armadale Domestic Violence Intervention Project were:

- Violence in the home be dealt with as a crime;
- The abuser be made accountable for his or her actions;
- The onus of intervention be shifted from the victim to the community and agencies which deal with domestic violence;
- All agencies involved – police, courts, victim support, social services, community corrections and abuser education counselling – integrate and be consistent in their approach through co-ordinated policy development; and
- All systems be monitored to ensure accountability and compliance with policies.

In 1994, ADVIP was recognised on a national level for its pioneering work in developing an interagency integrated response to

---

<sup>11</sup> The Hon Chief Justice David K Malcolm AC, *In Brief*, Agenda, September 1999, Volume 2



domestic and family violence, by an Australian Violence Prevention Award. In 1996, ADVIP members developed an extensive regional domestic violence action plan as part of the government requirements. In 1997, ADVIP was successful in obtaining funding for the Men's Perpetrator Group for the Department of Justice. In later years, Relationships Australia was successful in obtaining the funding and continues to be a highly regarded member of ADVIP. In 2001, ADVIP members participated in three planning sessions to explore agency-service linkages. Individual agency-service responses were created in the form of Prevention, Intervention and Follow Up Charts and where appropriate, process referral flow charts. A victim safety framework was also created to enhance shared understanding of intervention. ADVIP was successful in obtaining funding in 2001 from the Department of Indigenous Affairs and in 2002 from Safer WA. In 2002, another regional domestic violence committee was created in the Peel Region. Also in 2002, ADVIP members developed a Commitment Statement for all relevant agencies and service providers to sign. The Commitment Statement acknowledged membership of the Project and was based on adherence to the Principles of Intervention and a shared understanding of the power and control dynamics of domestic violence, and the impact of domestic violence on all family members. In 2003, ADVIP grew in stature by the inclusion of more government and non-government agencies. The field of domestic violence now has a much higher public profile.

It remains true that the best and most sophisticated legislation will not have an impact upon the social problem with which it is concerned,



unless it is properly and conscientiously implemented by those involved in the legal system and the administration of justice. In particular, it is important that the attitudes of all the people involved, including police and judicial officers are informed and educated in order to be fully aware of the problem of domestic violence and the harm which can be suffered by its victims.

In December 1999 the Joondalup Family Violence Pilot Court was created. The establishment of this Court acknowledges the seriousness of domestic violence and the resulting harm to its victims. The WA Police Service has joined forces with the Court and created a Domestic Violence Investigation Unit that has adopted the aims of the Court. Counselling services are provided by the Ministry of Justice to support and assist victims throughout the process.

Through its sentencing and bail options the Court has the potential to assist in changing attitudes to domestic violence. The Court also has the unique responsibility of maintaining family ties within the criminal justice system without sacrificing the victims of violence.<sup>12</sup> Phase one of the Joondalup Project involved assigning a dedicated magistrate, prosecutor and courtroom to hear all matters relating to family violence.

The work of the Court culminated in a final evaluation report which revealed some interesting trends and statistics<sup>13</sup>. During the period 1 February 2000 to October 2001, the Court dealt with a total of 867 Restraining Order matters, averaging 46 applications per month. The average restraining order applicant appearing in the JFVC was non-

---

<sup>12</sup> *ibid.*

<sup>13</sup> Department of Justice, Court Services Division (2002) *Joondalup Family Violence Court: Final Report*



Aboriginal; not in any paid work; had children in care; and was more likely to have finished school at or before the year 10 level. Other key findings were:

- There were 241 defendants listed to appear in the JFVC – an average of 12 matters per month. 12% were female and 88% were male, with an average age of 35;
- Approximately a third of offenders (28%) appearing in the JFVC had a prior assault conviction, and a higher percentage (36%) had previous offences relating to disorderly conduct or damage, suggesting that these offenders may display aggressive behaviours in a variety of situations;
- Males appeared less likely to use the court system as a means of resolving domestic conflict situations and significantly less likely to utilise the support services offered by the court;
- People from Aboriginal backgrounds do not appear to be utilising the resources of the court, indicating that the issue of Aboriginal family violence does not appear to be addressed through the use of court-based interventions, and alternatives need to be considered.

To assist victims of domestic violence in accessing the criminal justice system, since 30 June 2000 the Family Court of Western Australia has had jurisdiction to grant restraining orders. Under section 63 of the *Restraining Orders Act 1997* the Family Court and the Court of Petty Sessions at 150 Terrace Road, when hearing proceedings under the *Family Court Act 1997* or the *Family Law Act 1975*, can grant a restraining order



against a party to the proceedings or any person giving evidence. The request for such an order is made orally during other proceedings that are already before the Court, or the Court may make the order of its own motion. The respondent must be present when the order is made and must be given an opportunity to be heard on the application. If the application is opposed the Court may make an interim order. If an interim order is made the Court will fix a date for a final hearing as soon as practicable. This area has been under close scrutiny in terms of statutory reform and also the media, due to several high-profile perceived failings in the system. Substantial amendments have been proposed to bring our system in line with those in Canada, New Zealand and the United Kingdom. I shall leave further comment on this matter to the Attorney General, the Hon Jim McGinty MLA, who will be speaking on reforms in this area later today.

The early 90s were a burgeoning area for the initiation of reforms. Another of these which I pursued was that of gender inequality within the legal context culminating in the 1994 Report of my *Gender Bias Taskforce*<sup>14</sup>. The Report contained 198 recommendations under the headings: education, access to justice, women in the legal profession, appointments to the judiciary, the courts, women as victims, protection of Aboriginal women from violence, particular laws, police officers and the punishment of women. The recommendations of the individual sub-committees, including the Victims of Crime Sub-committee, were found to overlap to a large extent in some areas. This indicated the commonality of many of the problems experienced by women.

---

<sup>14</sup> Chief Justice Malcolm AC, *Report of Chief Justice's Taskforce on Gender Bias*, (1994), (hereinafter "Gender Bias Taskforce")



In terms of addressing gender bias within the legal framework, the Law Society of Western Australia and the Women Lawyers of Western Australia Inc have been two of the many relevant bodies to offer their support for the promotion and adoption of the recommendations over the past 10 years. Recent efforts by the Law Society include mentoring programs for young lawyers, and the adoption of stricter professional conduct rules on sexual harassment. I have recently reconstituted a Taskforce, chaired by the Hon Justice Christine Wheeler of the Supreme Court, to conduct a further review to determine what has been achieved, and what still needs to be done.

Although domestic violence knows no boundaries of race, religion or social standing, indigenous Australian women die as a result of domestic or “family” violence at a rate 10 times that of non-indigenous Australian women.<sup>15</sup> These statistics exclude the deaths of women following long term spousal violence where the immediate cause of death can be attributed to other factors.<sup>16</sup> Women from non-English speaking backgrounds are also particularly vulnerable when faced with domestic violence. They not only face obstacles because of ignorance about the recourse available to them, but once they get to the courts they are faced with language and comprehension difficulties.

It is important that the legislative framework relating to domestic violence is kept constantly under review. It is also important that where domestic violence takes the form of a criminal assault it should be dealt

---

<sup>15</sup> Paul Memmott, Rachael Stacy, Catherine Chambers and Catherine Keys, *Violence in Indigenous Communities, Report to Crime Prevention Branch of the Attorney General’s Department*, 2001

<sup>16</sup> *Ibid.*



with as such. Whenever appropriate courts should not hesitate to compel perpetrators to seek appropriate help and counselling.

In the past some criticism has been levelled at the Judiciary as a result of the perceived attitudes of some members with regards to restraining order applications. Today, it would be an even larger cause for regret if a judicial officer did not treat an applicant with a complaint of domestic violence with appropriate respect and care. As members of the Judiciary, we may not be able to solve the problems of domestic violence but we can send a clear message to the community and the victims of domestic abuse. The message is that the Courts are aware of the impact of domestic violence and are committed to helping the police and other organisations find a solution. In my role as Chief Justice, I am grateful to have the opportunity to offer my complete support on behalf of myself and the Judiciary, to the maintenance and ongoing success of specialist agencies such the Domestic Violence Legal Unit of Legal Aid.

I am reminded by the old African proverb, “It takes a village to raise a child”. This is a reminder that crime and prevention of crime are community problems. We should be more demanding of ourselves, of our communities, of our governments. Agencies such as ADVIP and the Domestic Violence Legal Unit are key ingredients to progressing this noble cause, and I wish them continued success.