



# Australian Institute of Judicial Administration

## **Workshop on Family Violence**

Melbourne, 8 April 2005

*Summary of Proceedings*



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# Workshop on Family Violence

## *Summary of Proceedings*

### **BACKGROUND**

Cases dealing with violence in a family or domestic situation pose special difficulties for law-makers and those charged with enforcing the law. Recognition of this fact has promoted a series of reform measures in terms of legislation, police practices, support services and court procedures over the last 20-30 years.

The AIJA Education Committee examined this topic in 2004, noting that the incidence of family violence matters in court lists was still an issue of concern and that there were a number of new initiatives being trialled in various jurisdictions. The Committee thought it was timely to convene a conference to look at the impact of family violence applications on the courts and the way they are handed, with a view to determining best practice.

A small Steering Committee was established consisting of Dr Andrew Cannon, Deputy Chief Magistrate, South Australia, Convenor of the AIJA Education Committee, Mr Ron Cahill, Chief Magistrate, Australian Capital Territory, Justice Linda Dessau, Family Court of Australia and Mr Laurie Glanfield, Director-General of the New South Wales Attorney-General's Department, with a view to the organisation of the seminar.

The Steering Committee decided that, as a precursor to a larger event, it should organise a workshop at which information in relation to current practice was discussed by representatives of those courts which are involved in handling these matters. That information would then be collated so as to provide the basis for the larger seminar or conference involving a broader range of interested persons.

### **AIMS AND OBJECTIVES**

The aim of the Forum was to bring together courts and related agencies for the purposes of:

1. Exchanging information on policies and strategies for handling family violence matters in courts; and
2. Identifying current issues and problems.

It was intended that the outcome would be a written summary which would identify current issues and provide the basis for planning a larger and more broadly-based conference or seminar.

## METHODOLOGY

### Participation

All Australian courts involved in hearing family violence matters were invited to nominate two representatives to send to the workshop. Representation was also sought from prosecution agencies, support services and family violence program co-ordinators. Numbers were limited to 50 delegates overall in the interests of enabling the workshop to be as interactive as possible.

The workshop took place in Melbourne on Friday, 8 April 2005 and was hosted by the Family Court of Australia.

### Summary papers

Each of the participating organisations was invited to prepare a summary of information relevant to current practice in their jurisdiction, including the following:

- Definitions of domestic violence/family violence, intimate homicide etc
  - Standard definition?
  - Describe any relevant legislation applicable to your jurisdiction
- Current statistics on levels, prevalence of domestic violence in your jurisdiction
- What needs to be addressed in terms of domestic violence:
  - Causes of domestic violence?
  - Consequences of domestic violence?
- Current programs in your jurisdiction
  - What they are
  - Successes/failures
  - When does any program/intervention occur?
- What is lacking in society/courts to prevent/deal with domestic violence?
- What needs changing?
  - What isn't working that is being done?
  - What can be done instead?
  - What can be improved?
- Difficulties in implementing changes
  - Cost
  - Political issues
  - Barriers: such as lack of formal powers to make/implement certain changes

Participants were also invited to provide information on other matters relevant to current practice in their jurisdiction.

## **Background Material**

Participants were supplied with copies of each other's summary papers.

By way of general overview, they were also directed to the recent consultation paper on Family Violence Laws issued by the Victorian Law Reform Commission.<sup>1</sup>

## **Agenda**

The agenda for the workshop was structured to encourage participation and discussions, rather than formal presentations. It was assumed that all participants would have read the background material.

The workshop began an overview provided by Judith Peirce, Commissioner with the Victorian Law Reform Commission. Following her presentation, each participating jurisdiction was invited to speak to its summary report, focusing on the following issues:

- Definitions of domestic/family violence, intimate homicide etc
- Statistics on levels, prevalence of domestic violence in your jurisdiction
- What needs to be addressed in terms of domestic violence?
- Current programs in your jurisdiction
- What is lacking in society/courts to prevent/deal with domestic violence?
- What needs changing? and
- Difficulties in implementing changes.

Discussion was invited on each presentation.

This report attempts to summarise, in point form, those presentations and discussions. It also attempts to identify some of the current issues and underlying themes emerging from the proceedings.

## **WORKSHOP PROCEEDINGS**

### **Introduction and Overview – Commissioner Judith Peirce**

Commissioner Peirce's paper was intended to provide an introduction to the topic and an overview of approaches in the area. She began with an explanation of the nature and dynamics of family violence, including the 'cycle of violence.' She explained how the effects of these dynamics on individuals, and their reactions, made it important for those involved in court administration and decision-making to have an understanding of this area.

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<sup>1</sup> Victorian Law Reform Commission, *Review of Family Violence Laws: Consultation Paper* (2004) at <[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family\\_violence/\\$file/FV\\_Consultation\\_Paper.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/$file/FV_Consultation_Paper.pdf)>.

She noted there had been three different types of approaches to dealing with family violence in the legal system:

- The Mediation/Treatment Approach;
- The Protective/‘Special Response’ Approach; and
- The Law Enforcement/Attitudinal Approach.

The Mediation/Treatment approach sees the violence as arising from underlying relationship conflict (in which case the court may refer the parties to mediation) or the abnormal or unhealthy behaviour of the violent person (in which case the court may make a treatment order).

The Protective or ‘Special Response’ approach takes the view that the special nature of the relationship between the offender and the victim makes normal criminal sanctions inappropriate. Under this model, the role of the law should be to afford protection to the victim (intervention orders or apprehended violence orders), with less emphasis on punishment of the offender.

The Law Enforcement or Attitudinal approach emphasizes family violence as criminal behaviour, but also sees it as part of a wider social system. Under this approach, criminal sanctions are important, but emphasis is also placed on education and public awareness campaigns, with a view to changing the social context.

She noted that recent reform efforts tended to centre on the development of ‘integrated’ or ‘coordinated’ responses to family violence, encouraging collaboration and dialogue between family violence support services, police, courts, correctional staff and behaviour change program providers. Other trends in recent legal reforms included an emphasis on streamlining the legal process, developing specialized family violence courts and a rehabilitative focus in sentencing.

Her paper reviewed some of the recent major reform initiatives in Australia and overseas, noting that there was evidence to suggest that when support services, police and court systems work together to achieve common aims which are supported by appropriate legislation and resources, then significant improvements can be achieved.

However, she suggested that, additional legislative and policy reforms will be difficult to achieve without augmenting existing judicial development programs for magistrates and educational programs for court staff regarding the nature and dynamics of family violence.

She also suggested that legal representation should be much more readily available to improve the relevancy and presentation of issues to the court and to navigate the legal complexities.

A complete copy of Judith Peirce’s paper is available on the AIJA website at <[www.aija.org.au/online/judithpeirce.pdf](http://www.aija.org.au/online/judithpeirce.pdf)>.

In discussion following her presentation, the following points were made:

- The role of the courts is to apply the law, rather than to undertake a social work role. Any judicial education may need to bear that in mind.
- Calls for increased legal representation are unrealistic in some places. For example, in remote communities where there may not be a police presence, the law is often not even being enforced.
- Where remote communities do have a police presence, a new system of 24-72 hour intervention orders given by police (introduced in Western Australia) may be of assistance.
- In New South Wales there is a Women's Domestic Violence Assistance Program, so that in the majority of cases in courts women can get legal representation. In remote courts, police represent applicants.
- Research indicates that successful programs are often localized, that is, they work well in small communities. It can be more difficult to make programs work well in large, scattered areas.
- It was suggested that there was a need to recognize that law is not black and white and is applied by human beings who are coloured by their own experiences and own perceptions of society. By applying the law, a judicial officer can make enormous changes and there is a need to approach the law with an understanding of family violence. Judicial officers need education, not indoctrination, to provide an understanding of community standards and values.
- The three models referred to by Judith Peirce were not mutually exclusive and each jurisdiction may have elements of all three in different proportions. The challenge is to work out what is the most effective balance and what as a society we believe is the right approach.
- The most significant decision may be a choice between the criminal and the civil approach.
- In Tasmania, new legislation has opted for the criminal approach as a vehicle to change the culture, particularly in police. However, even with strong criminal justice approach, there can be a strong protective element for victims.
- In Victoria, the police have taken the lead in trying to change the culture, rather than waiting for legislative change.
- Effecting change is a "whole package", involving not just the courts.

- In Victoria, there is now a mandatory action approach. This means that the police have to do something when they attend an incident. A decision has been made not to use specialist units, but rather to see the approach as a cultural change vehicle for the police force as a whole. The approach is based on a philosophy that early involvement avoids other problems further down track. This is the idea of social crime prevention which the whole force is moving towards. It also involves partnership with local service agencies.
- Integration of different models is the key with synthesis being achieved in the courtroom. In Victoria, the new regime will have to list criminal prosecution and civil protective applications in the same courtroom on the same day.

### **Family Court of Australia**

Jennifer Cooke, Executive Director, Client Services of the Family Court of Australia provided copies of the court's *Family Violence Strategy*.<sup>2</sup> She noted that it had adopted a comprehensive definition of family violence, which also included controlling behaviours of a sexual and/or psychological nature.

The strategy had been developed as a result of a decision in 2002 to re-examine the court's existing policy on dealing with family violence and to take a holistic approach, looking at all the ways family violence impacts on the court and undertaking wide consultation. It was launched in March 2004.

Research on 91 cases the subject of judicial determination in the court, indicated that in 67% of them family violence had been an issue.

The strategy establishes a number of guiding principles:

- Primacy of Safety
- Recognition of the Impact of Family Violence
- Recognition of the Impact of Violence on Children
- Recognition of the Diversity of Court Clients
- Risk Assessment Approach
- Importance of Information Provision
- Community Partnership Approach
- Importance of Development Programs

A Steering Committee and an external Reference Group have been established to implement the strategy.

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<sup>2</sup> Also available on the court's website at [http://www.familycourt.gov.au/presence/connect/www/home/about/family\\_violence/main\\_page\\_family\\_violence\\_site\\_area](http://www.familycourt.gov.au/presence/connect/www/home/about/family_violence/main_page_family_violence_site_area)

The Court has set a two-year timeframe to implement action in these five key areas:

- Information & Communication
- Safety
- Training
- Resolving the Dispute
- Making the Decision

The court considers the partnership approach to be particularly important and an enormous effort is being made at local levels to set up key relationships with stakeholders and to be open to client feedback. The court's experience bears out the importance of operating at a local level.

The court is implementing a training program in two parts. The first covers general principles of awareness raising and attitudinal impacts; the second part is directed towards specific skills. Special attention is being paid to the needs of indigenous clients and to cultural awareness.

The court is running a pilot in its Brisbane registry looking at how to screen for family violence.

The strategy assumes that:

- There is a need for a multi-faceted approach, an integrated, co-ordinated and collaborative approach, which is outward focused;
- Strategies need to be culturally and religiously appropriate; and
- There is a need for education, both awareness-raising and skills training.

The court's experience so far is that:

- Judicial leadership and support from the top is critical;
- Consultation is also important, both internal and external;
- A strategy has to be systemic, that is, to include all aspects of how the court operates;
- Partnership and collaboration with all stakeholders is necessary; and
- Staff training and development is important and a continuing process.

In discussion following her presentation, discussion focused on the interaction between State and Federal courts in relation to family violence. Issues raised included:

- Whether the Family Court would change its procedures so people could deal with their family violence issues in the Family Court as well?
- Or whether the correct view was that policing is a State court function and family violence properly a matter for local, i.e. State-based, criminal law?
- Difficulties that occur where, for example, a State magistrates court may make a protection order and a Family Court judge makes a contact order, which overrides that. In some jurisdictions this causes difficulties with policing of orders.
- Difficulties with the legislation, both State and Federal, and its interaction, which make the task of judicial officers difficult.
- The need for greater information-sharing and co-ordination between different courts and the police.
- It was suggested that courts should share more information about orders made, rather than relying on parties to share information. Victims often do not understand the complexities of the court system and are already under a lot of stress.
- The Federal Magistrates' Court comes under Family Court *Family Violence Strategy*.
- Problems with enforcement and the need for police education about what terms, such as 'save and except for the purposes of contact' mean, and ways of perpetrators abusing orders.
- Money to develop strategy is an issue for many courts. The Family Court's approach, with support from the top, was to make it a priority in court's budget. Also, by taking a systemic approach it is factored into budget for other things, for example, family violence became a priority in the training budget.
- Family violence is a difficult area. Attitudinal factors are important and strategies do encounter resistance with the court. It is here that strong judicial leadership is important.
- The Family Court's experience suggests that it may be better not to be too ambitious to start with. Finalizing the model for the pilot screening for risk assessment took longer and was more controversial than initially anticipated. Another participant reported a similar experience.
- Training is very important, both initial and continuing. Online packages may be useful in relation to continuing training

## **South Australia**

Dr Cannon, Deputy Chief Magistrate, provided an overview of South Australia's family violence initiatives:

- There are two dedicated programs – one in Elizabeth and one in the Adelaide court;
- Funding is uncertain and difficult;
- The use of specialist lists is quite effective;
- There is a special process through protection orders, and criminal charges are sometimes laid. In courts where there is a specialist list both types are dealt with in the same court, which is a criminal court;
- There is an Intervention Program which runs for 12 weeks. There is an attempt being made to run a 26 week program based on the Queensland scheme and to run it as a series of modules so that intakes can be staggered;
- Experience with the intervention program varies; some participants find it a life-changing event, some will not even engage with it;
- There was a lot of judicial training in this area 4-5 years ago. It is probably time for more efforts in this regard;
- They find there is often an interaction between family violence and the Drug Court;
- There is an Adult Conferencing pilot being run, which can take place after a plea of guilty. What role, if any, this might have in family violence matters is still being worked through;
- There is not anything usefully being done about family violence in remote Aboriginal communities. It is often not even seen and when it is, it is often handed badly.

Mick Harper, from the Prosecution Services Branch of the South Australian Police reported that:

- The police are working on a co-operative multi-disciplinary approach. This is based on early intervention and holding people accountable for their behaviour;
- Each policing district (Local Service Area) has established specialist child and family investigation units that deal with the bulk of the domestic violence investigations;
- The Intervention Program is addressing issues and is having a positive effect in recidivism rates. A 26-week program would be better;
- They do a lot of training with patrol officers and station staff so they provide the appropriate information to parties at an early stage;

- They have close working relationships with those running the Intervention Program, as well as the courts; and
- If successfully completed, the Intervention Program goes to mitigation of the penalty. It will not result in the dropping of the charges.

Nicole Middleton, Special Projects and Policy Branch, South Australia Police (SAPOL) reported that:

- Family violence has increasingly become more of a political issue over the past 12 months and the State Government recently released their new Strategy, *Our Commitment to Women's Safety in South Australia*. This work is similar to that of the Victorian experience and may result in more funding to expand some of the pilot programs State-wide; and
- SAPOL has developed a Domestic Violence Strategy which is currently awaiting final ratification. Following on from this work, SAPOL will develop a best practice model for responding to domestic violence at the operational level. She noted there was often criticism for inconsistency in the police response and they would be considering these issues over next 9-12 months and working to improve the response.

In discussion on the South Australian reports the following was noted:

- There was little data collection at the moment, but forthcoming computer enhancements will improve it. This is an area where there is a need to do much better.
- There has not yet been any evaluation of the pilot programs, but there has been a request to government for funding to do that.
- The specialist court programs are being run without legislative base.
- Judith Peirce noted that statistics on family violence generally tend to be unreliable, inconsistent and difficult to work with.
- The new Tasmanian legislation authorizes information-sharing between agencies and their information systems. Cases can be identified from the start and given an electronic flag and a domestic violence reporting number. This is then carried through when it gets to the court and afterwards, to corrections, court programs etc.

### **Victoria**

Victorian Magistrate, Ann Goldsborough, reported on the situation in Victorian courts as follows:

- There is a Supervising Magistrate for family violence. The appointment of this person signals the court taking responsibility for this area. The court has also published

domestic violence protocols. They are designed to provide guidance to registrars and those outside the court as to the court's procedures. They are being constantly reviewed;

- A change in the legislation has established a family violence division of the Magistrates' Court and an Intervention Project (previously known as Men's Behaviour Change Process). There is the capacity for concurrent listing of civil and criminal aspects. The order in Victoria is a civil order, with criminal penalties for breach. This is quite different to other States;
- The new legislation provides for concurrent listing of different matters in different jurisdictions, where they are related;
- Magistrates are selected having regard to their experience in the area. Training is the key (known as 'professional development');
- The court provides a victim support service and remote witness facilities;
- There is also an opportunity to get legal advice;
- The presence of children in court is restricted;
- The Magistrate now has to contemplate the child each time an order is made, that is, the effect of hearing or witnessing violence on the child. The Magistrate can make an order in respect of the child and is obliged to do so;
- There is a clearly defined relationship between the Victorian legislation and the Family Court legislation. Section 68T of the *Family Law Act 1975* (variation of contact orders) is available and used regularly;
- The form of orders is under view;
- There is a Victorian report on the Health Costs of Domestic Violence<sup>3</sup> which provides very important reference material;
- There are a number of programs throughout the State;
- Victoria Police have introduced a Police Code of Practice for Investigation of Domestic Violence, which requires mandatory action. This has had a significant impact;
- There is a Statewide Reference Group, which has a very important role. It includes police, government, non-government organisations, and courts' representation; and
- Training, education and understanding are very important, together with attitudinal and organizational change.

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<sup>3</sup> VicHealth, *The health costs of violence: Measuring the burden of disease caused by intimate partner violence: A summary of findings* (2004) available at <[http://www.rwh.org.au/emplibrary/wellwomens/LOTL\\_DeBasinski.pdf](http://www.rwh.org.au/emplibrary/wellwomens/LOTL_DeBasinski.pdf)>.

Astrid Birgden from the Family Violence Division Development, Court Services in the Department of Justice, Victoria advised that:

- The Department is trying to set up additional services for the pilot projects. This also involves setting up outreach programs so that there is support beyond the court;
- Attitudinal change is a long-term process. It involves addressing attitudes first, and then providing skills-based training; and
- The Department is trying to improve data collection. The pilot program provides an opportunity to get better data. The court can then use the data to model the projected case load to estimate how much court time will be required and to argue for resources.

The following points were noted in discussion on the Victorian presentation:

- The importance of thinking through the resource implications, for example, when the South Australian specialist programs were established, extra resources were obtained for support programs, but not for extra magistrates.
- Amendments to the Victorian legislation provide a legislative basis for allowing victims of family violence to give evidence from remote rooms. The court can also receive affidavit evidence.
- In Western Australia the legislation also provides for the use of remote evidence, although the facilities are not available. The legislation also prohibits direct cross-examination, so in effect cross-examination is often conducted through the magistrate.
- New South Wales has some facilities for the use of remote evidence.

### **Australian Capital Territory**

Richard Refshauge, Director of Public Prosecutions for the ACT provided the following overview of the handling of family violence matters in the Territory:

- The ACT is the only jurisdiction where the DPP prosecutes all summary offences;
- The ACT has been running a Family Violence Intervention Program since 1998. It operates very successfully, partly because it is a small jurisdiction and all agencies involved work co-operatively;
- Training is very important. There is a prepared program which is delivered to every police officer. It is a three-day program directed to investigating, law and evidence-gathering etc. Training also offered and taken advantage of in the other agencies involved, including most of the prosecutors. This is

very important because it gives a uniform platform for all the agencies involved and made it clear that it is important to all the agencies involved. The training is always opened by the DPP or his Deputy;

- The police were provided with additional resources, including investigation kits;
- The Domestic Violence Crisis Service (DVSC) has to be advised of every domestic violence incident the police attend. The victim must also be advised of the capacity of DVSC to come out to them and provide assistance and support;
- There is a Legal Aid Domestic Violence lawyer present at the Magistrates Court all time to assist applicants, without means test;
- There have been specific amendments to the Bail Act which make the safety of the victim the prime consideration (at the level of police bail). This relies on US research which suggests that the most vulnerable time for the victim is during the 24 hours after police intervention;
- Police have a pro-arrest policy;
- There are two dedicated DPP domestic violence prosecutors and some others associated with that group, so there is some expertise. The leader is a senior prosecutor. This made domestic violence a high profile; not a second-rate, prosecuting role;
- There is generally a ‘no drop’ policy, that is, the DPP will prosecute unless the evidence will not support a conviction. Even when the victim wishes to withdraw or is un-co-operative, the DPP will prosecute;
- The DPP is aware of the concern that a ‘no drop’ policy can result re-victimising the victim, and the rule is not absolute;
- The ACT Law Society has issued an ethical direction in relation to contact by defendant lawyers with victims. The DPP used to receive letters saying the defence had spoken with the victim and she wanted to withdraw the complaint. Now there are strict ethical guidelines about that contact and if, or how at all, it can occur;
- The ACT Magistrates’ Court runs a family violence list on one day. The handling of domestic violence matters is expeditious. The DPP can get a case on in 21 days. There is a modified case management process. The conviction rate is very substantial;
- There is a Perpetrators Program run by Relationships Australia. It is a module program, so an offender can start virtually straight away. It has been evaluated and is very successful;

- The ACT Family Violence Intervention Program has been going for 7-8 years. It is possibly time to re-examine it and look at what other jurisdictions doing;
- Family Violence matters are flagged at first instance by police and the court uses a red family violence stamp to assist in identifying these matters and ensuring they are fast-tracked; and
- The court has a Practice Direction on family violence. It is issued to the legal profession who are encouraged to adhere to it and it does help. Issues are discussed at case management conferences. A case-tracking meeting is held every Monday morning, at which representatives of all the agencies attend and look at and discuss each case and what needs to be done.

The following points were noted in discussion on the ACT presentation:

- Partnerships are important. They enable agencies to ‘work smarter, not harder’ and share information, better allocate resources and achieve inter-agency co-operation.
- There is a view that a ‘no drop’ policy can override the victim’s wishes. However, the intention of the policy is to empower and teach the offender what is acceptable behaviour. It may also improve the relationship with education etc.
- Does a ‘no drop’ policy deter reporting of family violence? There is evidence from Manitoba that suggests not. The ACT experience is that most victims do not think through the consequences of calling for police assistance.
- The ACT does not publicise its policy as a ‘no drop’ policy, but does state that the DPP will prosecute if the evidence is sufficient and that it is not the victim’s decision. The decision is taken on evidentiary grounds and public interest factors.
- The Northern Territory has a ‘no drop’ policy, but the prosecution process does not start until a statement is made the next day, rather than when the incident is reported.
- A ‘no drop’ policy may be counter-productive, unless it is introduced with all the other support services. Otherwise women may be dragged reluctantly into the witness box and not co-operate.
- International studies show victims will still ring the police, despite knowing about a ‘no drop’ policy, especially where they think the offender will be given help not go to gaol.
- In the Northern Territory the policy is that the prosecution will refer a victim who wants to withdraw a complaint to a victim support service and a decision about prosecution is not made until that has happened. Unfortunately that does not always

happen because resources are not available, particularly in remote communities. South Australia has a similar policy.

### **Western Australia**

Chief Magistrate Steven Heath reported on the practice in Western Australia as follows:

- A successful pilot program has been run in the Joondalup Family Violence Court. However, it was too expensive a model to be implemented throughout the State and is suffering from a reduction in resources and judicial interest;
- Legislative amendments that took effect from 1 December 2004 have been introduced in an attempt to change police culture;
- The police have not, historically, been involved in the restraining order process. These changes try and put an obligation on them to take out an order, to assist with a restraining order or complete a written report, i.e. the intention is to put an onus on the police to do something in relation the incident;
- Under the new regime, the initial application is heard in closed court. A child cannot be called to give evidence without leave, and hearsay evidence is permitted for initial applications;
- Police can now issue a temporary restraining order. The period varies from 24 hours to 72 hours (the latter with consent). The order can be granted on scene and has been an outstanding success;
- The consent defence to a breach of restraining order has been removed;
- Aside from legislative changes, there are issues for courts in how to manage these cases. For example, there is continuing growth in the number of applications for restraining orders. A magistrate can be assigned to sit all day in Perth hearing these matters. However, the difficulty is in suburban and country courts where the court has to balance competing demands. This may involve a magistrate having to decide, for example, whether to hear an application for a restraining order, or a hearing with a defendant in custody. This raises difficulties in assessing the relative degrees of urgency of different types of cases; and
- Once an interim order is served, the onus is then on the defendant to respond to the court. So if the defendant does nothing within 21 days it becomes a final order administratively.

Senior Sergeant John Waghorn from the WA Police Prosecuting Division added the following observations:

- One concern about the amendments is that police officers might concentrate on police orders as a soft option and not follow through with restraining orders. The emotion may go out of the situation, but the threat may remain. However, the victim may not follow through and neither may the court. There is no onus on the police to follow up with an interim order;
- These reforms are much in early stages and there is a need to try and get maximum value from the amendments; and
- Putting police officers into remote communities is a slow process. Most of the police orders are taken out on behalf of indigenous women, but if police do not follow up with interim order, chances are unlikely that the women will.

In discussion on the Western Australian report, the following points were noted:

- The Northern Territory drafted similar legislation in 2001 but it was never enacted;
- There can be difficulties in placing the onus on a defendant, because people served with an order often do not understand it.
- In Western Australia, the police have a role in explaining the order and what it means. The police practice has been good.
- There have been approximately 1800 police orders issued so far, and 140 breaches resulting in 120 charges.

### **Northern Territory**

Magistrate Dick Wallace reported on the Northern Territory situation as follows:

- The Northern Territory legislation is like most others. The police commence action on behalf of victim and become a party. The police can take the matter to hearing even if the victim does not want to;
- Almost half of victims have legal representation;
- Police in remote places can apply for orders by telephone. This facility is used a lot;
- There are large numbers of breaches. Many are semi-consensual, particularly in the indigenous community;
- For a second offence there is a minimum penalty of seven days imprisonment for breach. This seems to have some deterrent effect, but is not effective in remote indigenous communities; and
- There is a considerable problem with family violence among the indigenous community, which is under immense

difficulties. These include overcrowding, stress, alcohol and drug problems, and growing levels of domestic violence associated with generational experience of violence (sometimes now spanning three generations). The solutions to these problems are outside the capacity of the courts.

Sergeant David Bishop of the Northern Territory Police Violent Crime Reduction Strategy advised that:

- The police are reviewing how they deal with family violence. They have reasonably good legislation, but are seeking changes similar to the Western Australian police orders. Statistically offences are increasing and the police cannot afford to become complacent about how we are dealing with it; and
- The NT police have two dedicated units to deal with recidivists. Hopefully by concentrating on recidivist offenders they can make some headway.

In discussion on the report from the Northern Territory, the following points were noted:

- Reported incidents total approximately 3800 per year in the ACT. In Darwin alone there is an average of 100 a week and in Alice Springs, 50 per week. So there is a much larger problem in the Northern Territory.
- Police culture in the Northern Territory changed about 10 years ago and there is no indication that the police are not supportive of the legislation and its intent.
- Most jurisdictions have a 24 hour service for urgent orders.
- There are no intervention programs in the Northern Territory. There was a program some years ago but the funding was for a one off- pilot.
- Police can issue more than one protection order against the same offender – on separate facts.

### **New South Wales**

Deputy Chief Magistrate Helen Syme reported on the situation in New South Wales as follows:

- Most applications start with a telephone interim order. This forms the application for an Apprehended Violence Order (AVO) when it comes to court. Police can also takeout an AVO directly;
- The statistics indicate that the numbers of AVOs are decreasing, but the percentage of final orders made is increasing;
- Nearly all AVOS are taken out by the police;
- Most courts have dedicated AVO days;

- There is a trend to different solutions in different communities. There are differences in the types of support services and sentencing alternatives available in different courts and differences in the way these matters are dealt with in different courts;
- New South Wales is instituting a scheme similar to that in the ACT in two courts, in Campbelltown and Wagga. It is anticipated that the scheme will work differently in each of these places –because they are different communities and there are different solutions in place already;
- There is a Domestic Violence Intervention Court program, a cross-agency program that provides intensive support for victims and a perpetrator program. This is run on the lines of a pilot perpetrator program run out of the Penrith Court a few years ago. The key difference is that perpetrator program comes after sentencing. It is run by the Department of Corrective Services;
- A cultural change has happened in the police service over the last 10 years. This model takes us to the next level; and
- Details of the Domestic Violence Interagency Guidelines in New South Wales can be found on the Lawlink website at <http://www.lawlink.nsw.gov.au/dvig>.

### **Queensland**

Magistrate Basil Gribbin reported on the situation in Queensland as follows:

- The legislation in Queensland is currently under review and police orders are under consideration;
- Orders can be applied for by an aggrieved person or the police. The majority of applications are not made by the police, but this may be changing;
- There are no dedicated courts or magistrates – all magistrates deal with family violence matters;
- There are court-mandated perpetrator programs, which exist as part of the sentencing options;
- There is a Domestic Violence support service available in almost every court. For example, the Beenleigh court has a domestic violence assistance program run by a Catholic nun and a couple of support workers. They appear in court with applicants and generally provide assistance in referring to other agencies etc;
- A police officer has power to release a respondent from custody on conditions with the same effect as a Temporary Protection Order;
- Legal Aid Queensland provides assistance and representation to eligible parties;

- Applications are heard in closed court;
- The civil standard of proof applies whether the application is made by the aggrieved or a police officer;
- The court is not bound by the rules of evidence or procedure; and
- No child may be called as a witness unless the court orders otherwise.

Senior Sergeant Ross Patching, the State Domestic Violence Coordinator from the Queensland Police Service advised that:

- There is a network of full-time and part-time domestic violence liaison officers (DVLOs) in the Queensland Police force each officer in charge is automatically a DVLO;
- The co-ordinator's role is a considerable task and he has one person assisting him;
- There can be a problem with statistics being interpreted differently by different agencies e.g. justice agencies are interested in the number of appearances, while community services are interested in the numbers of applications; and
- There are a few problems with the current legislation. These include legislative exculpations/defences for assault charges and the ability for the perpetrator to intimidate or coerce a victim to withdraw charges, which enable a perpetrator to avoid criminal accountability.

Dayle Marino, Senior Advocate from the Brisbane Domestic Violence Advocacy Service noted the following issues:

- The impact of family violence on children and the importance of child protection;
- The importance of co-ordination between the Family Court and others; and
- The importance of support for people going through the process.

In discussion on the situation in Queensland, it was noted that:

- More integration between the policy and support services would be useful, but there are also privacy issues involved.

### **Tasmania**

Chief Magistrate Arnold Shott reported on the situation in Tasmania as follows:

- At the moment there are two systems running in parallel – an earlier restraint order system under the Justices Act and the Family Violence Act which commenced operations a week ago;

- There was a lot of consultation in the drafting of the new legislation and the court had a high degree of input into the mechanics;
- The essential difference between the two regimes is in the nature of the relationships involved. The Family Violence Act covers spouses/partners and other significant relationships defined in the Relationships Act;
- The new system involves a whole of government approach with the Justice Department as the lead agency. Policy and courts are heavily involved, along with Health. The Legal Aid Commission is also involved to a lesser extent;
- The definition of family violence includes economic abuse and intimidation. This has implications for what is a family violence offence;
- Tasmania Police has instituted a 'pro arrest policy' since September last year and are now increasingly opposing bail;
- Police also have responsibility for conducting 'safety audits' to make sure the victim's premises are more secure;
- All police officers in the State have been trained in, and will be conducting, a risk assessment at each family violence incident. The Risk Assessment Screening Tool (RAST) has been developed to screen for risk factors that predict the likelihood of a further family violence incident. The methodology is currently being evaluated at the University of Tasmania and it is not yet in operation;
- Police have power to issue a police family violence order, which is the most far-reaching police power of any police force in the country. It enables a police officer of the rank of Sergeant or above to serve a police family violence order on an alleged offender which remains in force up to 12 months unless varied or revoked by the court;
- A person charged with a family violence offence is not to be granted bail unless the judicial officer or police officer is satisfied that the safety, well-being and interests of the victim(s) - both adults and children - are not likely to be adversely affected;
- The court has the power to send an offender to a family violence offender program. The first step is to send them for assessment and if the offender is assessed as suitable, then to rehabilitation;
- The offender programs involve 100 contact hours over a ten week period;
- Listing arrangements have been changed to have special family violence sessions in each of the four registries around

the State. This will also enable better co-ordination of all the specialist family violence services;

- The legislation contained provision for exchange of information to promote more holistic case management. This involves interfaces between the various IT services to enable a central repository of data about the family that is affected by family violence – “so the right hand knows what left hand is doing”;
- An amendment to the legislation requires the Act to be reviewed three years after commencement. Following the review, funding will be dependant on whatever increased activity there has been in the particular agencies;
- The legislation has only just commenced operation so the impact on the court is as yet unknown;
- The intention is that police orders would be used in incidents in the lower to medium range of seriousness, with court orders used in the medium to extreme range;
- In any case in the extreme category there would now be automatic opposition to bail;
- All police that attend family violence incidents have received training in risk assessment tools;
- Police are taking on much more of a role in providing practical assistance. Depending on the risk assessment they will be providing security upgrades to the victim’s premises. The safety of the victim is the priority and a lot of emphasis is being put on enabling victims to stay in their homes;
- The Victim Safety Response Team came into operation in September. It involves extra police officers, specially trained to take a pro-active role in management of safety issues. They are not the first attending the scene, they go in after the event;
- The police also receive specialist training for enhanced investigation;
- There are weekly case management meetings of all relevant agencies; and
- The mandatory reporting part of the legislation has not been proclaimed yet;

In discussion on the Tasmanian report, the follow points were made:

- The Risk Assessment Tool was developed from another model. It is now with the University of Tasmania for validation.
- The exchange of information involves a family violence management system. The police will start it off with their report and the information goes through the firewall to other agencies, and can be accessed and updated by those agencies.

## SUMMARY AND CONCLUSION

### Issues identified

During the reports and discussion at the workshop, the following issues emerged:

- **The relationship between courts in different jurisdictions and the importance of greater co-ordination and co-operation.**  
This was noted not only as an issue between Federal and State and territory courts, but between courts in different States and Territories, in ensuring the effectiveness and enforceability of orders.
- **The need for attitudinal and organizational cultural change** was identified as a key issue in reform initiatives, both within the police, prosecution agencies and the courts.
- **Education and training** is important not only in relation to attitudinal change, but also in providing specific skills.
- **A co-ordinated multi-disciplinary approach** is necessary. Courts cannot perform all the roles necessary to deal effectively with family violence.
- **The impact of family violence on children and their protection** is being seen as increasingly important.
- **Management and resourcing** to deal with family violence is being increasingly important, as jurisdictions move towards legislative regimes which are increasingly similar. This is particularly an issue in remote and regional Australia, where there are special needs, for example, in indigenous communities.
- **There is a need for more accurate statistics on family violence.**
- A tendency to remove enforcement from the courts to the police, by giving the **police power to issue restraint orders** was noted.

### Looking ahead

The AIJA Steering Committee is looking to organise a broader conference, taking on board the issues identified at this workshop. That will be held in 2006, possibly in partnership with another organisation.

The AIJA is also happy to provide a clearing house service to courts to exchange information on this topic. Information can be posted on the AIJA website at: <http://www.aija.org.au/info/familyviolence.htm> - please email to [aija@law.monash.edu.au](mailto:aija@law.monash.edu.au) with your suggestions.