

THE FUTURE OF PROTECTION ORDERS - PANEL -

Pam Godsell
Convenor, DVCAN

In the 16 years since the Domestic Violence (Family Protection) Act 1989¹ was first introduced, we've come a long way. At times, it seems like we've got a long way to go, and we have got a very long way to go, in order to enhance safety in the lives of the women children and men that we see, but we have come a long way.

Initially there were no court assistance workers. There were no safety protocols or safe rooms set aside for women applicants. There was little informed knowledge about domestic violence by those with whom the women came in contact. Although the legislation was drafted to make it easier and free for applicants to gain protection orders, many women understandably had difficulty knowing what to put in the forms and what to ask for. In fact it is very difficult even knowing what orders to ask for without consulting with a worker for example, about what the implications might be concerning child access or 'contact' as it is now called. As we all know each situation is different and complex and planning for safety requires an individualized response.

Changes

Since then, there has been a range of legislative and other improvements to make the process safer and more supportive for applicants. In 1999 in response to persistent lobbying by DVCAN, the first recurrent funding was made available for domestic violence court assistance workers. Prior to this, community organisations did what they could to support women through the process but because of the demands on the services it was very limited and sporadic.

Additional monies were made available for counselors and court assistance workers in 2003 to cover the additional categories when the legislation was broadened. However, not all courts have funded workers and although the Department of Communities has recognized the need for a funded Co-ordinator for DVCAN, the money has not been made available and it has been quite a struggle to progress the issues we see. At this point I'd like to point out that the NSW Women's Domestic Violence Court Assistance Program has a funded Training and Support Unit of 2.8 positions and the Legal Aid Commission allocates over 2 full time positions to assist with administering the program.

¹ Now Domestic and Family Violence Protection Act 1989.

Other improvements have included the development of the Domestic Violence Protocol by the Department of Justice and Attorney-General, and the provision of safe rooms. (Discussion during this conference has highlighted the need for safe rooms in some courts.) Over a period of time there has been training of magistrates, court staff, police and court assistance workers; the development of *Practice Standards of Working with Women Affected by Domestic and Family Violence* by the then Department of Families; and some community organisations have been instrumental in forging the development of local integrated and co-ordinated responses to domestic violence within the confines of their funding. For example, some of you would have heard Christine Potito's presentation yesterday on Project Safer which is part of the Gold Coast Domestic Violence Prevention Centre's Integrated Response and which has won a number of awards including the *Australian Crime and Violence Prevention Award*.

Protocol development

I'd like to speak now about some of immediate challenges we, as a community, face in providing a service which enhances the safety of women and children, and then look at the longer term picture.

When workers from the community sector first started assisting women in court, there was no precedent for what they were attempting to do. It was all a matter of testing the waters. Some workers would try sitting at the bar table to provide support, and get away with it. Others would be disallowed. Some would ask to be able to say something. Sometimes they could and in other courts the magistrates would not allow them.

Similarly, their role and resourcing within the courthouse has been and continues to be subject to negotiation. On the whole this works surprisingly well given that the workers are not Department of Justice staff but are often co-located and share resources. I think it has also been particularly useful for DVCAN members to have an ongoing dialogue with the Department at the State level during our 6 weekly teleconferences. This enables community workers to have a greater understanding of how the Department works and to share ideas and strategies for better practice with other workers and with Justice. However, as you would expect given the structure, problems do occur. For example, staff change and the court assistance worker has to start at the beginning with asserting their role and expertise. This sort of situation happens in any organisation but its more difficult when there are no formal expectations.

Also, the prime focus of the court assistance worker is about 'safety'. This includes the safety of the women in and around the court, safety of workers, safe components of the protection order and safety for the woman and her family at home. She is also concerned about the court experience for the respondents and the impact this might

have on the woman when she leaves court. For this reason, it is important for courts to recognize the role and skills of the workers so that they are consulted with and are party to any changes that may occur which affect domestic violence matters - Whether its court renovations, waiting area structure and procedures, information provision, court times etc.

I was therefore wondering whether it might be useful for us to think about developing formal protocols or a 'memorandum of understanding' between the Department of Justice and Domestic Violence Court Assistance Workers. Such protocols would include the development of a shared vision and a recognition of the role and expertise of court assistance workers. So for instance, you would expect that if any decisions were being made about domestic violence, that the court assistance worker would be consulted.

I'm aware that in those courts with Integrated Responses, formal protocols have been developed on a local level. I am not suggesting that the development of State-wide formal protocols would override the specific agreements entered into, but rather, further support the development of local agreements.

Other challenges

I mentioned that there has been a range of training initiatives of Justice staff and magistrates around domestic violence. The recent training of Justice staff, which involved collaboration with and the participation of DVCAN workers has received very positive feedback. This training is essential and must contribute to better service delivery and improved safety. However, safe interventions in the lives of those affected by domestic violence are extremely complex and become even more complex for a mainstream legal system when there are culturally and linguistically diverse and indigenous communities. With the best of intentions, the actions of any workers within the legal system can and do have the reverse impact to what was intended. Having spent 14 years working full time in the area of domestic violence I am continually learning about the nature of domestic violence, it's impact, and ways of improving our response. So for workers whose roles are varied, one off training has significant limitations.

As court assistance workers, we are aware that the experiences for women going through the courts are very patchy but we also know that this is avoidable.

What next?

I believe that the worldwide trend towards specialization of domestic violence courts with dedicated specialist magistrates, dedicated specialist prosecutors all specially trained in domestic violence, must contribute significantly to enhancing safety in the lives of those affected by domestic violence.

Overseas programs, local initiatives and our own practice wisdom tell us that we can build more effective processes for enhancing safety.

I'm going to read to you an excerpt from the Australian Domestic and Family Violence Clearinghouse² article on specialist courts by Julie Stewart where she lists the key personnel in a domestic violence court.

“These officers share a common understanding of the principles and objectives of the specialist domestic violence court and work in close liaison and co-operation with each other.

- Dedicated specialist judge or magistrate presiding exclusively or part-time over domestic violence matters
- Dedicated specialist prosecutor, specially trained in domestic violence and the intricacies of the array of laws which are relevant to domestic violence proceedings (and, in some courts, ancillary matters, such as family law)
- Specialist witness assistant or victim advocate to provide information, advocacy, support (pre-court, during court and post-court) and referral to services, which are available and accessible within the community to provide appropriate domestic violence service responses to victims, offenders and their children and to ensure appropriate referral on to other services to meet the multiple needs of victims and their children
- Investigating police officers highly skilled in crime scene investigation, evidence-gathering and brief preparation
- Specialist officer to assess eligibility and suitability of the offender for treatment where accredited services are available
- Dedicated specially trained probation officers
- Defendants' legal representatives who are sympathetic to and prepared to support the aims of the court
- Court staff trained to be sensitive and responsive to domestic violence issues

Descriptions of ideal models of specialist domestic violence courts outline the way in which all the above key personnel consult and cooperate, working together to manage cases and the workflow and to develop expeditious but realistic and manageable timeframes for return appearances at court for presentation of reports ordered by the bench.”

² Stewart, J., Australian Domestic and Family Violence Clearinghouse, Issues Paper No. 10, 2005

There are many issues around the setting up of such courts. Primary, is that they be “victim/and safety focused” rather than “offender” focused as with other specialized courts (for an excellent analysis of this, see the Clearinghouse paper referred to, authored by Julie Stewart).

Such courts would provide special challenges for Queensland where specialization becomes difficult because of the many smaller courts. However, I’m sure there are ways around this - maybe, for instance, a traveling court which could either sit in smaller locations; or provide support and resources to the local workers in their courts. Proper consultation with indigenous communities would need to be undertaken.

Local initiative

The recent Victorian piloting of two specialist domestic violence courts is of particular interest.

In his Second Reading Speech to Parliament on the Magistrates Court (Family Violence) Bill Attorney General Robert Hills, says³

“At the moment, the Magistrates Court has separate lists for each division which means that from the one family violence incident the victim, children and defendant may be required to come back to the court numerous times to different divisions without any continuity of dealings with the matters and have to repeat their stories many times over to different court staff and service providers.

After one incident of family violence, the Magistrates Court currently deals with matters as follows:

- intervention orders in the crimes family violence division;
- summary offences and bail applications in the criminal division;
- contact and residency matters in the Family Court;
- crimes compensation applications in the Victims of Crime Assistance tribunal

Each court and tribunal has different personnel, different parties to proceedings and a different set of professionals from varied disciplines, which may require a mother and child to relive traumatic events several times in the different jurisdictions for different legal purposes.

³ Attorney General Robert Hills, Victorian Hansard 26.8.2004 Second Reading Speech, <http://tex.parliament.vic.gov.au>

The family violence court will have concurrent jurisdiction to hear any matters currently within the jurisdiction of the Magistrates Court, which arise from or include allegations of family violence.”

Some of the feedback coming from Victorian women who've previously had protection orders has been that the experience of the new system was excellent and that they wished they'd had the same experience before.

Given the concerning changes that the Federal Government plans to introduce to Family Law, it will be very important to follow the progress of these courts. \$5.2m is being provided by the Victorian Government for 4 years and it is being carefully evaluated to assess its ability to be transferred to other courts and regions.

The Victorian Government has recently been particularly proactive and committed to policy reform with family violence. They announced that the 2005-06 Budget includes \$35.1m over 4 years ... to develop the first integrated and consistent system for addressing family violence in Victoria. Their statement, “A New Approach to Family Violence in Victoria” goes on to say “To date family violence has been addressed through a highly dedicated and experienced network of community agencies and refuges. But the response remains fragmented and inconsistent in different parts of the State, and does not provide broad enough support.” Does this sound familiar?

Summing up, I think the actions taken by the Victorian government are very heartening and exciting. In Queensland the community sector has been very innovative, and we need to learn from our own experiences and from elsewhere. We need to start the debate at a State level about the need for specialized domestic violence courts within an integrated response to domestic violence, and how they would look in order to be most effective. Leadership from and participation of the community sector is crucial.

Concurrently, we need to review our current practice and how this can be improved. Provision of funding for a full time DVCAN co-ordinator would assist with possibly the development of protocols between the Department of Justice and court assistance workers.