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## **1. Summary**

### ***Objective***

The objective of the current review of Protection Orders Legislation in the ACT (Australian Capital Territory) is stated to be “to provide adequately for the safety and protection of people from violence, harassment, and intimidation, while not interfering with the civil liberties of the individual”.

The purpose of the review is evidently to tighten up on legislation to facilitate greater control over alleged perpetrators of domestic violence. Some services in the ACT which mainly or entirely assist women claim that 90-95% of these perpetrators are males. Scientific surveys on domestic violence, however, indicate that the reality of domestic violence is very different.

### ***Consultation***

A group of stakeholders was brought together under the chairmanship of the Department of Justice and Community Safety in May 2002 to examine the need or otherwise for amendment of Protection Orders legislation in the ACT.

There has only been one meeting of the group held that the Lone Fathers Association (LFA) is aware of. That meeting was held at GIO House on 14 May 2002. The work of the Discussion Paper has therefore been carried out without any further reference to the LFA, although the LFA contacted the secretariat requesting information about progress and offering to contribute.

The Paper has already been considered by Government, and the Government has come to preliminary conclusions without reference to the LFA for comment.

### ***General assessment of the Paper***

The LFA strongly supports the Government's proposal in the Paper to make greater use of alternative dispute resolution measures, and in particular the “undertakings: withdrawal of application procedure”.

However, most of the other proposals in the Paper are opposed by the LFA, as being apparently part of a sexist agenda, and not in the best interests of families in the ACT.

### ***Significance of domestic violence***

The LFA is very strongly opposed to domestic violence. This opposition applies to violence against children, women, and men, and is not confined, in either principle or practice, to one gender.

Conflict, argumentation, and debate exist in all human institutions, and intimate or family relationships are not exempt from this fact. Mental illness and substance abuse are factors which often add to this volatile mixture. Therefore, conflict reduction and

counselling or other appropriate treatment for specific problems need to be explored in a holistic approach to a solution.

Obviously, custodial restraint and judicial punishment also needs to remain as part of the range of measures to provide for the safety and wellbeing of members of the public. However, outmoded and old-fashioned existing notions of help only being available to women to press charges and a legal system which only sees situations in black and white is ultimately damaging to families, and needs to be institutionally challenged.

### ***Experience of domestic violence***

There appears to be a general opinion in the community that women should receive special consideration, sympathy, and protection in relation to domestic violence incidents, but that this consideration, sympathy, and protection need not be extended to men.

One should have the utmost respect for the view that women should receive special consideration, sympathy, and protection in relation to domestic violence. However, such a view does not need to be (and should not be) bolstered by false information about the nature and distribution of domestic violence.

Also, the experience in practice of many men in the ACT and elsewhere in Australia is that Domestic Violence Protection Orders (DVPO's) are employed as a routine separation procedure, with the focus of the process being on effecting a forced separation rather than any actual violence. Surveys of magistrates in both New South Wales and Queensland and a recent Parliamentary Inquiry into shared parenting have confirmed that this is indeed the case.

### ***Myths about domestic violence***

The myth that domestic violence is “overwhelmingly perpetrated by males” leads to a general suspicion and lack of sympathy for men involved in domestic violence as victims, and also a great reluctance on the part of men to declare their victimhood, for the reason that they expect that they will receive little help and may even be automatically be blamed for the violence.

That then leads to the suppression of information about domestic violence against men and violence against children by their mothers, leading to further distortion of both administration and policy.

### ***The actual situation***

The actual situation with regard to domestic violence in the ACT over a 12-month period is approximately as follows.

Details	Men as victims	Women as victims	Total victims	Proportion of men in total victims
Victims of actual physical violence	5,700	3,700	9,400	61%
Final DVPO's issued	30	370	400	8%
Calls reported by DVCS	550	6,450	7,000	8%

For explanation of the figures, see page 23.

### ***Consequences of working from incorrect information***

Policy based on seriously incorrect information is certain to be bad policy, and, ultimately, likely to harm the very people it is supposedly trying to help.

At present:

- assumptions behind the domestic violence models in use are incorrect and discriminatory, and being used in the ACT to pressure services into applying those approaches;
- the “Duluth model” now dominant in ACT practice is unsuitable in Australian conditions (see page 29); and
- the “education” of judges and magistrates along the above lines is, in consequence, unhelpful.

### ***Non-gender neutral attitudes in agencies***

There are serious issues in the ACT of men and women not being treated equally before the law.

### ***Specific problems with the recommendations in the Discussion Paper***

Specific problems with the recommendations in the Discussion Paper are:

- although originally foreshadowed as an important issue to be discussed in the Discussion Paper, there is, in fact, nothing in it about stopping the “inappropriate use of Domestic Violence Protection Orders (DVPO’s)”, in spite of the many current documented abuses of the system;
- the material in the Paper about “resolving disputes” is unclear in its meaning - e.g., it is not clear what type of “disputes” exactly is being referred to;
- the inclusion of “personal injuries” in the definition of domestic violence is too broad and vague;

- the recommendation that a “victim” of domestic violence can be granted a DVPO without having to establish that she/he is afraid of future violence is unjustified, and contrary to civil rights. It would encourage the summoning up of incidents from the remote past in order to justify a current DVPO, even well beyond the term of any reasonable statute of limitations;
- alleged perpetrators should have the same rights to recover personal possessions as alleged victims;
- orders should always be explained by the police to those affected, or be of no effect. The recipient could, for example, be functionally illiterate and dependent on such an explanation;
- breaches of a DVPO by either party should be punished, not just breaches by the respondent;
- indefinite orders are extreme and unjustifiable; and
- the proposed non-publication of orders suggest, whether rightly or wrongly, that governments are not keen for the public to know what is going on.

In general, the proposals in the Discussion Paper amount to a significant attack on civil liberties and the integrity of families. This in a context where there already are serious issues of gender equity in the current administration of domestic violence matters in the ACT.

On the positive side, the Government's proposal to "encourage the greater use of educational programs and alternative dispute resolution with a view to resolving a larger number of disputes without resort to the court" is, in the LFA's view, worthy of strong support.

### ***Useful measures***

Modifications to existing legislation and other arrangements which would actually be useful in diminishing domestic violence and enhancing justice in these matters would include the following.

#### ***Systems, approaches, and abuses***

##### ***Abuses of the system***

Effective steps should be taken to identify and prevent the frivolous use of DVPO's.

##### ***Non-gender-neutral approaches***

Approaches which are not gender-neutral should be corrected and non-gender-neutral ideology be banned from agencies and services.

Non-gender-neutral material, and especially incorrect statements of fact, should be removed from official material, such as “service standards”.

Non-gender-neutral attitudes and approaches by consultants in producing material on domestic violence should be recognised as unacceptable.

### *Management of the system*

The activities of the DVCS, a private body with a non-gender-neutral charter, but with public responsibilities, should be adequately monitored by a competent authority.

### *Definitions, models, and procedures*

#### *Definitions*

Different levels of “violence” should be properly distinguished and implications for agency procedures properly recognised.

#### *Models*

A Family Systems Model for dealing with domestic violence should be implemented rather than the inappropriate Duluth model and other similar models.

#### *Offences*

Claims of domestic violence should be required to be made on oath.

The offences of “perjury” and “making a false statement to the police” should be resurrected, and sanctions applied in all appropriate cases. These offences should apply, as appropriate, also in the case of persons assisting in the drawing up of affidavits which make allegations.

The proposed offence of “personal injury” should be defined to include cases of oral and physical provocation of men as well as women.

#### *Procedures*

Ex parte applications should be permitted only where essential for the safety of the parties concerned.

There should be time limits on allegations, namely, 6 years for allegations about previous incidents, and 48 hours for a primary incident.

The form of application for a DVPO should include questions along the lines of, “Did you in any way contribute to the incident?”, and “Were drugs or alcohol involved on either side?”

Adequate and proper efforts should be made - if necessary by court officials - to contact the respondent in time to, where possible, avoid the need for an ex-parte hearing.

The Practice Directions of the Family Court in relation to ex parte hearings should be applied also in magistrates' courts.

The family law implications of "admissions" made in consent orders should be explained to both parties.

The present arrangement of a "star chamber" closed court in the ACT should be abandoned. It is not (as far as the LFA is aware) an arrangement followed by any other jurisdiction in the world, and is contrary to natural justice.

Supporting medical affidavits, to be required in cases of alleged injury, should be prepared independently of the DVCS.

Men involved in domestic violence as victims and/or perpetrators should be given exactly the same information as women.

Children should be consulted about their views, and be permitted to remove themselves from DVPO's in appropriate cases.

Firm and reliable guidance on rules for self defence and appropriate restraint should be developed to inform men, in particular, what steps they may take in self defence without laying themselves open to DVPO's and/or criminal charges.

Legal aid in domestic violence cases should be made available equally to both parties, and on a substantially equal basis, by in-house gender-neutral specialists.

### *Information and research*

#### *Presentation and use of information*

Honesty and accuracy should be recognised and applied as the basis for disseminating information about domestic violence.

"Education" of judicial officers should be properly gender-neutral in nature.

#### *Research required*

A thorough, competent, and unbiased investigation of the misuse of DVPO's should be undertaken by a properly balanced panel.

A thorough, competent, and unbiased study should be done of the nature and distribution of domestic violence, resulting in meaningful, accurate and comprehensive statistics.



## **2. The reality and politics of domestic violence**

### **Nature of domestic violence**

#### ***Domestic violence not a gender-based phenomenon***

Domestic violence is not essentially a gender-based phenomenon, but rather a phenomenon reflecting individual personality, cultural attitude, abilities, and opportunities. The way in which it is recorded is greatly influenced by the actions of agencies and law enforcement authorities.

#### ***Significance of domestic violence***

Violence amongst strangers, neighbours, and acquaintances is rightly condemned by society all over the world, in virtually every circumstance and in every country. Significant violence amongst those who know each other and especially those who live with each other and/or who have family ties to each other may be considered to be even more reprehensible, and is properly condemned by all right-thinking individuals. Spousal abuse, child abuse, elder abuse, pet abuse, and indeed all forms of family violence need to be met with deterrents and sanctions, and research about cause and prevention needs to be encouraged.

Conflict, argumentation, and debate exist in all human institutions, and intimate or family relationships are not exempt from this fact. Mental illness and substance abuse are factors which often add to this volatile mixture. Therefore, conflict reduction and counselling or other appropriate treatment for specific problems need to be explored in a holistic approach to a solution.

Obviously, custodial restraint and judicial punishment also needs to remain as part of the range of measures to provide for the safety and wellbeing of members of the public. However, outmoded and old-fashioned existing notions of help only being available to women to press charges and a legal system which only sees situations in black and white is ultimately damaging to families, and needs to be institutionally challenged.

#### ***Special consideration for women***

There appears to be a general opinion in the community that women should receive special consideration, sympathy, and protection in relation to domestic violence incidents, but that this consideration, sympathy, and protection need not be extended to men.

This is evidently because of women's generally (but not always) smaller physical size and strength, their role in bearing and physically nurturing children, and associated traditional and patriarchal notions of chivalry by men towards women.

One should have the utmost respect for the view that women should receive special consideration, sympathy, and protection in relation to domestic violence. However,

such a view does not need to be (and should not be) bolstered by false information about the nature and distribution of domestic violence.

### ***Domestic violence and the law***

The experience in practice of many men in the ACT and elsewhere in Australia is that Domestic Violence Protection Orders (DVPO's) are employed as a routine separation procedure, with the focus of the process being on effecting a forced separation rather than any actual violence. Surveys of magistrates and a recent Parliamentary Inquiry into shared parenting have confirmed that this is indeed the case.

Usually it is the woman who wants the man to leave the family home, pending resolution of questions relating to the custody of children and property. It is easy, in the circumstances, for a party to make up allegations of offensive behaviour, even extending to "personal injury".

### **The ideological view of domestic violence**

#### ***Myths about domestic violence***

There are a number of myths about domestic violence which are constantly put forward by those with a vested interest in the implementation of government policy in this area.

The myth that domestic violence is "overwhelmingly perpetrated by males" leads to a general suspicion and lack of sympathy for men involved in domestic violence as victims, and also a great reluctance on the part of men to declare their victimhood, for the reason that they expect that they will receive little help and may even be automatically blamed for the violence.

That then leads to the suppression of information about domestic violence against men and violence against children by their mothers, leading to further distortion of both administration and policy.

#### ***Recent trends***

Recent trends in the handling of domestic violence in the English speaking world were described by a Canadian senator (Senator Anne Cools) in 1995 as:

"Until the 1970's, family violence has been a neglected subject matter. The treatment of wife abuse, however, is now accompanied by literature, social services, law enforcement response, and coercive actions which largely view the wife as a passive innocent victim, beaten by an aggressive guilty husband. Spouse abuse and wife abuse have become synonymous, and wife battering has become the definition of domestic violence. Here the concept of inherent moral inferiority of the male is buttressed by the male as the innate progenitor of all malice, violence, and aggression. These two concepts are supported by aggressive feminist ideologies, by the terrorism of political correctness, and are consistently seeking dominance in the discussion of domestic violence."

## ***Statements by Australian Ministers***

The then Commonwealth Minister for the Status of Women, Judy Moylan, said in a speech launching the Commonwealth's "Business against Domestic Violence Initiative" on 12 November 1997 that "Around 500,000 women are subjected each year to physical or sexual violence".

What the Minister omitted to say was that, on the basis of the *same definitions*, around 780,000 men are subjected each year to physical or sexual violence. By being so selective, the Minister's statement was sexist in effect, if not in intent.

The Minister remarked, very reasonably and correctly, that "Men must take responsibility for violent behaviour and seek help to stop it". But no mention was made of women taking any responsibility for their violent behaviour, or of the responsibility of both to refrain from mutually violent episodes.

## ***Consultancies***

The report by Keys Young done for the Commonwealth on "Ending Domestic Violence", 1999, and used as a basis for developing programs against domestic violence, basically refers only to men as perpetrators and women as victims, and presents only victim stories for women. For example:

"He broke into the home and I was at home."

"They knew the damage he could do to me."

"He was charged that time."

"I was hoping the police would talk to him ... and take him away."

"I wanted him charged."

"One officer said I'd be better off without him."

"He eventually called the police. He wanted to minimise his risk."

"To not have to walk in there and look at him was good."

The LFA considers the report in that respect to be misleading and prejudicial. For a government-commissioned report to be drafted in such terms is, in the LFA's view, not in the interests of the Australian community.

The ideological doctrine involved in adopting a definition of domestic violence as "Behaviour by the *man*, adopted to control his victim, which results in physical, sexual, and/or psychological damage, forced social isolation or economic deprivation, or behaviour which leaves a *woman*" "living in fear" should, in the LFA's view, have no place in a serious discussion of important policy issues.

### ***Statements by services***

The ACT Domestic Violence Crisis Service (DVCS) stated in the January 2003 edition of the “Australian Domestic and Family Violence Clearinghouse” that:

“we” (the DVCS) “recognise that the vast majority of people who are subjected to domestic violence are women and children, and the vast majority of those using violence in their relationships are men”.

The DVCS has here “recognised” something that is simply not true. In the LFA’s view, the DVCS has in that statement demonstrated a fundamental misunderstanding of the nature of the phenomenon it has been commissioned to deal with. (See also “DVCS and other services” below.)

The myth about domestic violence, continually repeated in certain quarters, is further exemplified in a similar statement by the Domestic Violence Resource Centre Brisbane (DVRC) in 1993 that:

“The National Coalition Against Domestic Violence, USA” states that in 95% of all domestic assaults, the crimes are committed by men against women”, and therefore

“As the vast majority of domestic violence perpetrators are men, this factsheet refers primarily to perpetrators as men and to victims as women.”

The DVRC Brisbane goes on to ask “Why do men abuse?”, but not “Why do women abuse?”, “How can we support women who are victims of domestic violence?”, but not “How can we support men who are victims of domestic violence?”, and “How are we going to change society so that the condoning of (violence against women) is put to an end?”, but not “How are we going to change society so that the condoning of violence against men is put to an end?”.

At the very least, the use of non-gender-specific language would encourage more male victims to utilise existing services which are at present perceived as being only for women.

### ***Data about domestic violence***

In a 1995 Commonwealth Government report entitled “Justice Statement Overview”, the statement was made that, “research on the criminal justice response to violence against women will now be coordinated through the Australian Institute of Criminology (AIC) so that the Government will have reliable national data for the development of models to deal with crimes of violence against women.”

In itself, this was warmly to be welcomed. However, a question is: where is the program to coordinate research on the criminal justice response to violence against men through the AIC so that the Government will have reliable national data for the development of models to deal with crimes of violence against men?

In this general context, the point was made by S A Miller (1994) that:

“One way to trivialise and dismiss a point of view is to call it part of a backlash. That is the contemptuous and derogatory characterisation often applied when the topic of men’s issues arises. Domestic violence is a case in point.”

## **The facts about domestic violence**

### ***The overall picture***

Men are not the “vast majority” of adult users of violence in their personal relationships. Men are not, in fact, even a majority of such users. What is true, however, is that the overwhelming majority of people involved in domestic violence *who contact the police and are taken seriously by the police* are women.

The reason for this is that male victims of domestic violence very seldom contact the police and are taken seriously by them, although female victims very often do.

There are numerous reasons for why men do not contact the police (or the DVCS). These include a belief on the part of men that they should be able to handle the matter themselves without involving outsiders, given that such involvement could have unpredictable and probably highly undesirable effects on the family. They also include a lack of knowledge about the law and about services for men - which in the ACT are very minimal. Also, many men apparently do not know about the DVCS, or possibly are not confident about the DVCS’s ability to handle their affairs in the way they would legitimately expect to see, given the DVCS’s explicitly feminist charter.

For the delusion (or worse) that domestic violence is essentially, or exclusively, violence by men against women, there is no longer any excuse.

There have been scores of careful scientific studies carried out in English-speaking countries in recent decades of the nature and incidence of domestic violence. These studies indicate clearly and consistently that:

- the most frequent form of domestic violence is between siblings living in families;
- there is a lesser amount of violence between parents and children, with women predominating as perpetrators, and
- the least prevalent category of violence is violence between spouses, and of this at least half is violence by women against men, with women also initiating violence at least as often as men.

Murray Straus, a distinguished sociologist and co-director for the Family Research Laboratory at the University of New Hampshire (USA), has observed that “women in the battered (women’s) shelter movement” deny that women physically abuse husbands, ex-husbands, and boyfriends, or play down such abuse. According to Straus, “There’s this fiction that in all cases it’s him not her who’s responsible for the domestic assaults”.

Straus points out that “at least thirty studies” have shown both sexes to be equally culpable ... As these rates are based exclusively on information provided by women respondents the near equality in assault rates cannot be attributed to a gender bias in reporting.”

More than seventy professionally-conducted studies from various English-speaking countries are now available. The total sample size for these studies is more than 60,000.

Calculations based on the research by Headey, Scott, and de Vaus for Australia (1999) indicate that, while approximately 250,000 women in Australia are affected annually by “domestic violence” incidents (as defined by Headey et al) ranging from minor to major in character, there are an estimated 390,000 men in Australia affected annually by similar experiences.

### ***The problem of data methodology***

As pointed out by the authors of one of the major studies:

“Surveys showing that higher rates of men as aggressors invariably are based on National Crime Survey data of official law-enforcement records, but the researchers point out these studies are flawed methodologically because the samples are not representative and because men are less likely to lodge official victimisation reports ... Another problem with much of the domestic violence literature is that it is based on clinical populations, specifically battered women receiving shelter services or therapy. Data collected and conclusions drawn from those who seek shelter or therapy cannot be generalised to the broader population.

Victims who seek services may differ significantly from the broader population, so the values of these studies lies primarily in spawning clinical prescriptions for treatment, not in describing or explaining domestic violence in general ... Studies of residents in shelters for battered women are sometimes cited to show that it is only their male partners who are violent. However, these studies rarely obtain or report information on assaults by women, and when they do, they ask only about self defence ... precluding information on female-initiated assaults.”

### ***Levels of violence***

The analysis of domestic violence in Australia is to a large extent at present compromised by a fundamental failure to distinguish between different levels of “violence” and/or other conflict.

A slight push or a raised voice on the one hand, and a brutal murder on the other, are not equivalent, and not both are crimes.

## ***Violence by women***

Melanie Phillip, in an article in the “Sunday Times” in October 1999, made the points that:

“Women are at least as violent as men, but the evidence is everywhere being dismissed or ignored ...

“Feminism has become the unchallengeable orthodoxy in even the most apparently conservative institutions, and drives forward the whole program of domestic social policy. Yet this orthodoxy is not based on concepts of fairness or justice or social solidarity. It is based on hostility towards men.

“The idea that men oppress women, who therefore have every interest in avoiding the marriage trap and must achieve independence from men at all costs, may strike many as having little to do with everyday life. Yet it is now the galvanic principle behind social, economic, and legal policy making.

“Buried within this doctrine, though, is an even deeper assumption. Male oppression of women is only made possible by the fact that men are intrinsically predatory and violent, threatening both women and children with rape or assault. Men are therefore the enemy – not just of women but of humanity, the proper objects of fear and scorn.

“This assumption runs through feminist thinking as a given ...

“According to Marilyn French, ‘men use violence both to threaten and control as well as actually harm. As long as some men use physical force to subjugate females, all men need not. The knowledge that some men do suffices to threaten all women’...

“These generalisations are now the stuff of public policy. Virtually no-one questioned the premise that men were invariably perpetrators and women always their victims.

“There is no doubt that some men are violent against women: the evidence of female injuries is real enough. However, this is one side of the story only. There is another side: the story of women’s violence against men. That, though, is a story that ... (has been) successfully suppressed.

“There are now dozens of studies which show that women are as violent as their partners, if not more so, than men. Unlike most feminist research, these studies ask men as well as women whether they have ever been on the receiving end of violence from their partners. They are therefore not only more balanced than studies which only ask about violence against women, but are more reliable indicators than official statistics which can be distorted by factors affecting the reporting rate – women using claims of violence as a weapon in custody cases, for example, or men who are too ashamed or embarrassed to admit that they have been abused ...”

## ***Violence between women***

Phillips goes on to note that:

“In any event the idea that women are never the instigators of violence is demolished by the evidence about lesbians. According to Claire Renzetti, violence in lesbian relationships occurs with about the same frequency as in heterosexual relationships.

“Lesbian batterers display a terrifying ingenuity in their selection of abusive tactics, frequently tailoring the abuse to the specific vulnerabilities of their partners. Such abuse can be extremely violent, with women bitten, kicked, punched, thrown down stairs, assaulted with weapons including guns, knives, whips, and broken bottles.’

Renzetti wrote that:

“Bologna, Waterman, and Dee (1987) discovered a high incidence of abuse in their survey of a self-selected sample of 174 lesbians. About 26% of their respondents reported having been subjected to at least one act of violence; 59% had been victims of physical violence; and 81% had experienced verbal or emotional abuse. At the same time, 68% of the respondents reported they had used violence against their current or most recent partner and had been victimised by a partner.

“Similarly, in a survey of a non-random sample of 1,099 lesbians, Lie and Gentlewarrior found that 52% of the respondents had been abused by a female lover or partner and that 30% admitted having abused a former lover or partner. Of those who had been victimised or abused, more than half (51.5%) reported that they also had been abusive towards their partners.”

Others studies show rates for lesbian violence considerably higher than the above, i.e., well above the rates for heterosexual violence.

## ***Victims admitted to hospital***

Calculations based on data received from the Australian Institute of Health and Welfare indicate that hospitalisation rates in Australia from domestic violence are similar for men and women (46% and 54%, respectively, in a recent year).

Babette Francis, in “The New Australian”, May 1998, noted that:

“In Western Australia, 45 per cent of domestic violence victims admitted to hospital are men. This gives feminists a problem, so now not only is ‘domestic’ redefined, but so is ‘violence’ to include almost anything.”

A report by Monash University’s Accident Research Centre, entitled “Domestic violence, patterns, and indicators”, indicated that while women are injured more often



than men, men who are assaulted by their female partners sustain more serious injuries and spend more time in hospital.

The Monash report stated that, “Men were lacerated or punctured by knives far more often than women, especially to the head and arms”.

### ***Arrests of domestic violence offenders***

In countries where pro-arrest policies have been followed, but (compared with the ACT) in a relatively unbiased manner, the results have not been in accordance with feminist expectations.

For example, it has been reported that in relation to the USA:

“An increasing number of females are being arrested for domestic assaults ... In many States women now account for a *quarter to a third* of all domestic violence arrests, up from less than 10% a decade ago. The new statistics reflect a reality documented in research: women are perpetrators as well as victims of domestic violence.”

### **Child abuse by women and men**

The LFA believes that it is extremely important that children should be protected from all violent adults.

However, the issue of violence needs to be properly analysed and understood by identifying who is actually committing the most abuse against children. Court and medical documented statistics show that the leading abusers of children are mothers and their subsequent partners, whether male or female, not the biological fathers of the children.

An Australian Health and Welfare Report shows that most substantiated abuse takes place in single parent households, usually headed by the mother, followed by blended family households involving a step parent. In the case of sexual abuse, also, children are *least* likely to be abused by their biological father, with less than 1% of this type of abuse being attributable to those fathers.

Michael Duffy, in an article in the “The Daily Telegraph”, 18 May 1999 remarked that:

“A fascinating government report on fatherhood has just been released. What it shows is that that social workers have a vastly inflated idea of how often fathers hit and sexually abuse their children.

“In the study, commissioned by the federal Department of Family and Community Services, 313 social workers and counsellors were surveyed and half said they believed that up to a *quarter* of all fathers physically abused their children. Almost a third believed that the same percentage sexually abused their children.

“To their credit, the people conducting the study then asked a large number of randomly selected children aged between five and eleven if they’d been abused. The proportion who had. One per cent.

“Lesley Barclay, Professor of Family Health at the University of Sydney and an author of the study said, ‘We were very surprised by the negative image of fathers held by professionals.’ She shouldn’t have been. Health professionals in Australia have a history of demonisation of husbands and fathers ...

“As it happens, because of the breakdown of marriage and the sharp rise in the numbers of single (usually female) parent families, we now have large numbers of men who are brought up by women. But the outcome was not as some feminists had predicted. Indeed there is evidence that men who’ve had fathers around tend to treat women better than men brought up without fathers. They understand relationships better and how to control violent urges.”

A 2000 paper entitled “Children and domestic violence” by the ACT Community Care Child at Risk Assessment Unit (funded by the ACT taxpayer) attempted to characterise violence against children as always being the consequence, in some way, of domestic violence by the male parent. The paper avoided recognising the very numerous cases of violence by the mother against her children where the male parent was not in any way violent. Given the facts about child abuse, the treatment in the paper, in the LFA’s view, indicates a sexist attitude.

## **Accounts by counsellors**

### ***An account by a woman***

The following account from the (female) manager of a counselling service for male victims of domestic violence tells a typical story of domestic violence by women against men in countries such as Australia:

"I've spoken with thousands, met with hundreds of men who are victims of domestic violence. Knifed, hit over the head with heavy ashtrays, with telephones, pushed through dining room windows, run over, burned, noses broken, beaten, kicked. Do we need ... a centre (to cater for male victims of domestic violence)? Of course we do. The very fact (that such a question is asked) shows why we need it, because so few people take domestic violence against men seriously.

"The situation is ... more complex than it initially appears. Men are not the violent time bombs that propaganda lead us to expect; this false image is the result of politicised hysteria and tendentious surveys ... There are a variety of reasons for the phenomenon of men remaining in violent marriages. Most have been raised to believe that a man should never hit a woman and therefore (they) often accept spousal violence without retaliation. *If there are children in the marriage, men are frightened of the marriage ending and their losing custody in an unbalanced legal system, even if they are the innocent party ...*

"If they do call the cops the cops are extremely reluctant, if not effectively forbidden, to remove a woman from the home. The first thing they will ask is whether the man used any force, even if it is self defence. And then there's the non-physical stuff, emotional humiliation, and that does not require physical strength. And the fear of being laughed at if you say that your partner is beating you. No laughing matter though... Other forms of abuse are suffered by men. *These include constant threats of divorce, and threats to call the police or to deny access to the children.* There is also the destruction of property and using the children or another member of the family to relay spiteful messages.

"The issue is about fairness, justice. I'd like to introduce some of these radical feminists who blame men for every act of violence to some of the broken bashed men I talk to. It's comforting for some people to think that domestic violence against men is a rarity, an irrelevance in the grander scale of things. But that is absolute nonsense... Just like hatred, racism, and every other negative aspect of the human character, (domestic violence) *can emanate from any source, irrespective of gender or ethnicity*, and ... its victims are similarly universal".

### ***An account by a man***

The following account of the effects of domestic violence on men is given by a man who has had experience in working with abused men.

"There is nowhere for the abused man to go. First ... physical abuse of a man is more damaging than sexual abuse due to the psychology of the average man. His self image is completely shattered. His confidence in his ability to "do" is completely destroyed. Symptoms of this are many and varied, but just as varied as that of a molested woman. When an abused man is asked to recall his experiences in any way he will either (1) deny or (2) relive. If he denies, then he will say that he was not abused. If he relives, he may become hysterical ... When men become hysterical, they are labelled as crazy and/or dangerous. The abused man knows this. So abused men are silent ...

"There are other reasons why the abused ... male is silent. He mentally blocks his experience. Yes, people can do this. If you don't believe it, find a war veteran and ask him/her what some of the people looked like that died. He/she may not be able to respond even if they spent days with the dead ... It's that way with abused men. It's too terrible to think about and there's nothing to be done - there is no help or escape - so the best thing is to forget ...

"Several months ago ... (there was) a news program ... in which a man and a woman talked about her abuse of him. She openly and fearlessly admitted that she had stabbed him in the back with a fork for "trying to leave". When asked why she said that "he deserved it" and that "he is a man - he can take it". The man was asked why he stayed with her. He said he had nowhere to run. This is common too. *Society provides no shelter for the abused man.* I know a man who was stalked for seven years by a mentally ill woman ... He called the police - and they laughed at him.

"Not believing (it) myself I posed as an abused man, and I asked two lawyers for help. They suggested I get help (mental help for me, not her). I called the abuse hotlines and they too suggested that I get help (for me - not her) and explained politely to me that I absolutely could not stay with them ... Faced with society's condemnation of the abused man, it is completely rational for the abused man to give up and become cannon fodder - as the man who was stabbed with the fork did ...

"If an abused man speaks, he is vilified and not protected ... Most of the women will talk quite candidly about it all ... they are proud of it. 'Yes', said one, 'I cracked his skull. But he is bigger than me, so I had to'. It doesn't have anything to do with logic. It is a simple manipulation strategy designed to engender support for her continued control of him ...

"Things are simple now. If there is violence it is the guy's fault. If the novel concept that men (are) hurt when hit is considered, then things become more complicated. How do you tell who started and is continuing the mess ... Many of the indicators currently used are there to simply identify the person with the male genitals - not the person with the abusive behaviour. *Control and not genitals should be what the community looks for.*

The further point was made that:

"... For those who are feministically oriented ... consider this ... It is better for women that abused men are healed properly and completely in a dignified way. A healed abused man will respect your rights. An abused man will look at you as a person which can and will destroy him if given the opportunity ... By ignoring and/or opposing abused men, you are keeping them silenced. Silenced men cannot heal. Part of the healing process is recognising that all disempowerment and total control strategies are wrong - regardless of gender. Which would you rather be doing? Creating allies or opponents? Think about it."

## **Experience with domestic violence in other countries**

Details of selected studies of domestic violence conducted in various English-speaking countries are given below.

### ***New Zealand***

It was reported that:

"As part of a multidisciplinary health and disciplinary longitudinal study of all individuals born in Dunedin, New Zealand, in 1972, researchers with NIJ support, are exploring issues of partner violence. This study is the first to obtain data on cohabiting individuals as well as those who are dating who may or may not have gone to college. Initial findings indicate that 19 per cent of the women and 6 per cent of the men reported that they had performed an act of severe violence against their partners, and 37 per cent of the women and 22

per cent of the men had performed some minor form of violence such as slapping and hitting.

### ***United Kingdom***

It was reported in a BBC program in December 1994 that:

“One in five men have been victims of domestic violence by partners compared with 13% of women, the BBC said before the program was shown yesterday. “You’re confronting here two taboos”, neuroscientist Malcolm George said in an interview for the program. “One is that women can be violent and the second is that men can be beaten up by their wives. And that is something that nobody wants to take on board.”

It was reported in Men’s Library: Domestic Violence that:

“Erin Pizzey, author of “Prone to violence” ... was the founder of ... the first modern battered women’s shelter in the world. She found that of the first 100 women who came to her shelter, 62 were as or more violent than the partners they tried to escape from.”

Pizzey herself has said, in “Working with violent women: pulling aside the blanket on a taboo subject” (December 1997) that:

“Those of us working in the field of domestic violence are confronted daily by the difficult task of working with women in problematical families. In my work with domestic violence I have come to recognise that there are women involved in emotionally and/or physically violent relationships who express and enact disturbance beyond the expected (and acceptable) scope of distress. Such individuals, spurred on by deep feelings of vengeance, vindictiveness, and animosity, behave in a manner that is singularly destructive; destructive to the themselves as well as to some or all of the other family members, making an already bad family situation even worse. These women I have found it useful to describe as “family terrorists”.

... “There seems to be a blanket of silence over the huge figures of violence expressed by women. Because family terrorism is a tactic largely used by women and my work in the domestic violence field is largely with women, I address this problem discussing only my work with women.”

### ***United States***

It was reported in the USA that:

“Men are victims of domestic violence as often as women according to a study involving 516 patients at the emergency department of Charity Hospital, New Orleans, La, in July 1995, conducted by Dr Amy A Ernst of the Vanderbilt University Department of Emergency Medicine and her colleagues. The study is reported in the August 27, 1997 issues of the Journal of the American Medical Society (JAMA, 1997; 278:620). Using the validated Index of

Spousal Abuse, the researchers said 19% of the women patients and 20% of the men had experienced recent physical violence.”

It was also reported by SA Miller and S Sharif (1995) that:

“In 1975 and again in 1985 Murray A Strauss, Richard J Gelles and others conducted one of the largest and most respected studies in family violence ever done. What they found confounded conventional beliefs on the subject. Not only are men just as likely to be the victims of domestic violence, but also the study showed that between 1975 and 1985 the overall rate of domestic violence by men against women decreased, whereas *women’s violence against men increased*.

Responding to accusations of gender bias, Straus recomputed the assault rates based solely on the responses of the women in the 1985 study. He confirmed that even according to the women, men are the ones more likely to be assaulted by their partner.

It was further reported that:

“In 1993 the Children’s Rights Coalition, a children’s advocacy and research organisation in Texas, reviewed every state’s child protective services annual report and found that, overall, mothers physically abuse their children at a rate twice that of biological fathers ... Similar findings were released by the Justice Department in July of 1994 in a report entitled “Murder in families”. The report finds that the majority of the time children are murdered they are murdered by their own mothers ... Biological fathers accounted for only a small percentage of familial child murders.”

According to J Shervin and J Sniechowski, 1999, in respect of the US:

“Half of all spousal murders are committed by wives, a statistic that has been stable over time;

“The 1995 National Family Violence Survey, funded by the National Institute of Mental Health and supported by many other surveys, disclosed that ... wives reported that they were more often the aggressors ...;

“The Journal for the National Association of Social Workers found in 1986 that among teenagers who date, girls were violent more frequently than boys;

“Mothers abuse their children at a rate approaching twice that of fathers, according to state children’s services surveyed by the Children’s Rights Coalition;

“Because men have been taught to ‘take it like a man’ and are ridiculed if they feel they have been battered by women, women are nine times more likely to report their abuse to the authorities.

The situation in Australia is evidently similar to the above.

Experience in other countries with legislation similar to that now implemented in the ACT and some other States/territories indicates that where husbands call on the police to help deal with serious violence by their wives, the police very seldom arrest the female perpetrators of the violence, but frequently, in a travesty of justice, actually arrest the husbands making the complaint. There is evidence that this is now increasingly occurring in the ACT. This result is unacceptable to reasonable people, both men and women, who are properly informed about what is going on.

## **The ACT experience**

While domestic violence statistics in the ACT are not comprehensive or well coordinated, or fully up to date, a broad picture of the numbers for a twelve-month period, based on gleanings from various sources, is as follows.

### *Domestic violence over a 12-month period, ACT, by reporting stage*

Item	Number during year
Calls to Domestic Violence Crisis Service (DVCS)	7,000
Incidents reported to police	3,600
Incidents attended by police	1,700
Crisis visits by DVCS	600
DVPO's issued – interim	600
DVPO's issued – final	400
Offences detected/action by police	800
Arrests by police	400
Matters prosecuted	650
Persons convicted	270

Based on research done in Australia by Headey, Scott, and de Vaus in 1999, the incidence of domestic violence in the ACT, by sex, is approximately as shown in the table below.

The distribution of domestic violence between the sexes, as shown in the first four rows of the table, is consistent with the average of studies done throughout the English-speaking world. (See Attachment A.)

***Domestic violence over a 12-month period, ACT, by sex***

Details	Men as victims	Women as victims	Total victims	Proportion of men in total victims
Victims of actual physical violence (a)	5,700	3,700	9,400	61%
Persons stating they are afraid of violence (a)	4,000	7,600	11,600	34%
Injury needing services of doctor or nurse (a)	1,500	1,100	2,600	58%
Hospitalised (b)	33	39	72	46%
Final DVPO's issued (c)	30	370	400	8%
Prosecutions (d)	40	460	500	8%
Calls reported by DVCS (c)(e)	550	6,450	7,000	8%

(a) Based on Headey, Scott, and de Vaus, 1999 and other studies.

(b) Australian Institute of Health and Welfare.

(c). Based on DVCS.

(d) ACT Victims of Crime Coordinator.

(e) Not the number of distinct persons. Dissection estimated. Official statistics in this area are poor.

***Discrepancy between measures of domestic violence in the ACT***

The yawning discrepancy between the results of the professionally conducted surveys above and the data reported by the Domestic Violence Crisis Service is very clear.

The main reason for the discrepancy, as explained above in “The facts about domestic violence”, is that men who are victims of domestic violence *very seldom report their victimhood to the police or the DVCS*. Women in the ACT are 15-20 times as likely to report their victimhood as men and have their complaint taken seriously by the police. As an indication of the relative distribution of domestic violence, and a consequent guide to policy in that respect, the DVCS and police figures for the ACT are therefore meaningless.

There are serious issues in the ACT of men and women not being treated equally before the law.

During the course of a year, the LFA receives many calls from men in the ACT in connection with domestic violence. Most calls are from men who are victims of domestic violence. A minority of calls are from women, some are from relatives and friends, and some from children. In most cases the men give an account of how they



were accused of domestic violence by their wives. Neighbours who call are usually seeking to tell someone that they have information about what had taken place, and that the accused person was innocent and the accuser had committed the violence.

An example is the case of the woman who asked an LFA person at a public meeting for help in exposing the activities of her own sister. The woman told how her sister had informed her that she (the sister) wanted to get rid of her husband so she could move the boyfriend into the family home, and had rung the police and accused her husband of domestic violence. The husband was quickly moved out of the family home and charged, and the boyfriend was now living with the sister in the man's home.

The total number of reports received by the police from women in the ACT divided by the number of women estimated to have been assaulted by their partners in a recent year was 40-45%. *The corresponding figure for men, estimated on the basis of information from police, was a mere 2-3%.* This indicates that very few men in the ACT who are assaulted by their spouses report their experience to the police and/or are taken seriously by the police, whereas a high proportion of women do report, are encouraged to do so, and are well supported by services when they do.

Police statistics in the ACT therefore underestimate the relative amount of violence against men by about 1,700%.

The pattern of domestic violence in Australia is not dissimilar from what it is in the USA. As indicated above, the arrest rate for women in parts of the USA has increased from 10% to as much as 30%. In the ACT, however, it appears to have actually gone down, from 10% to an unbelievable 8% or less (estimated from DVCS statements).

The LFA considers that this is a very clear indication that there is something untoward going on in the ACT. Either the rate of female arrests in the ACT is far too low compared with the rate of violence actually committed by females, or the rate of arrest of males is far too high in relation to the rate at which men commit violence. Or both.

*Whichever it is, it appears that until the matter is resolved there can, in the LFA's view, be little confidence in the gender equity of the current administration of the domestic violence laws in the ACT. The implementation of the ACT Family Violence Intervention Program in the ACT since 1999, however laudable its stated objectives, has evidently led to the law being administered in a way which is seriously biased against men.*

This should be a matter of grave concern to the Government, as it already is to many members of the community, both men and women.

## **Basing policy on the facts rather than myths**

### ***Consequences of working from incorrect information***

Having incorrect information about the gender distribution of domestic violence is not a matter of small account, because that information is used as a guide to legislation, the formation of models, and background in dealing with individual situations

encountered by the police and other services. The incorrect information then tends to be used largely against men in confused family conflict situations, and further perpetuates domestic violence myths and misinformation.

An example of the above is the supposedly factual claim in a recent official ACT Government document, “Standards for the use of agencies in the ACT in relation to domestic violence”, that “Most studies indicate that the main perpetrators of domestic violence are men”. This statement, which is false, is also entirely out of place in a document whose purpose is to inform the services about their responsibilities, as opposed to inculcating in them a sexist attitude.

Policy based on seriously incorrect information is certain to be bad policy, and, ultimately, likely to harm the very people it is supposedly trying to help.

Misguided policy in relation to domestic violence can be severely damaging to Australian families. At present:

- assumptions behind the domestic violence models in use are incorrect and discriminatory, and being used in the ACT to pressure services into applying those approaches
- the “Duluth model” now dominant in ACT practice is unsuitable in Australian conditions; and
- the “education” of judges and magistrates along the above lines is, in consequence, unhelpful.

A 1990 evaluation of the Duluth model found that the Duluth program was a failure in that participation in the program had no impact on recidivism after five years (National Institute of Justice). (See Domestic violence models and policy” below).

### ***Governmental integrity***

As a matter of principle, it would be unacceptable for governments to be continually drawing attention to the crime rate for migrants without ever referring to corresponding crime rates for the native-born, in order implicitly to denigrate migrants as a group.

Similarly, it would be unacceptable for governments to be continually drawing attention to health problems being experienced by homosexual persons without ever referring to corresponding health problems being experienced by heterosexual persons, in order implicitly to denigrate homosexuals as a group.

Equally, it is unacceptable for governments to be continually drawing attention to rates of domestic violence by men without ever referring to corresponding rates of domestic violence by women, in order implicitly to denigrate men as a group.

Nevertheless, this last is what governments have been doing for quite some time.

### ***Non-gender neutral attitudes in agencies***

Many and various governmental authorities and agencies are involved in dealing with domestic violence. If justice is to be done in relation to these matters, it is essential that these authorities and agencies operate as objectively as possible, and avoid adherence to any type of sexist ideology.

It is also essential that such authorities or agencies be of high integrity, and not use their position to work in a partisan manner on people who as a result of family conflict are in a weakened emotional state

### **Domestic violence models and policy**

#### ***Planned dismantling of families***

It has been well documented by leading feminist writers that they seek to dismantle the family as we know it. The Duluth and similar models favoured by professional feminist (see “Feminist models” below) have supplied them with a vehicle for that, and, unwittingly, governments are increasingly supplying the funds to carry out such a program.

By contrast to the Duluth approach, the Australian way has traditionally been to protect families and endeavour to by-pass the criminal justice system using a health model and alternatives to imprisonment. This is in line with international declarations, conventions, and agreements, many of which Australia has signed or ratified.

A far more appropriate model than the Duluth model under Australian conditions would be the Family Systems Model which advocates working with the family or couple together, providing support with the goal of keep the family intact - not with the goal of gaol.

The LFA’s experience has been that men are seriously discriminated against in the ACT (and elsewhere in Australia) in endeavouring to obtain legal aid, and often have to remain unrepresented while there are special women’s legal aid services. Under the present legislation in the ACT, domestic violence orders are granted by phone disallowing men to enter their homes even to get a few belongings or their tools for work. They are often prevented from phoning, writing, or emailing their children under threat of gaol. Usually men are prevented by the order from establishing contact to arrange mediation, conflict resolution, reconciliation, or access, or as a result of not being to afford legal representation, to afford those services.

This results in the destruction of families that might, in many cases, with more perceptive and sympathetic understanding and assistance, have stayed together and resolved their problems.

### ***Definition of domestic violence in models***

The politically correct definition of “domestic violence” is being continually widened to include just about anything that a politically correct person might choose to object to. (See “Detailed comments” below).

As an example, one study of domestic violence, reported in “The Age”, 22 January 1996, implied that if a wife taunts her husband about her adultery, and he storms out of the room in response, she is now a “victim” of domestic violence

### ***Only a perpetrator, or only a victim?***

In general, there is a fundamental problem with the politically correct approach to domestic violence in its underlying assumptions, in both principle and/or practice, that:

- domestic violence always involves, firstly, a person who is a "perpetrator" and only a perpetrator, and, secondly, a person who is a "victim" and only a victim; and
- perpetrators are always or nearly always males, and victims are always or nearly always females.

The domestic violence legislation model in the ACT, and elsewhere in Australia, is evidently based on the stereotyped mode of thinking, over-prominent in Australia's legal system, that in any situation there must be a "good guy" and a "bad guy" - in this case, called "victim" and "perpetrator". Some involved, for example, in providing advice on new legislation or in Parliament as legislators may be overly steeped in this mindset. The result can then be, as in the present case, poor legislation. It is undesirable for there to be opportunities for individuals to benefit financially from a legal situation so obviously biased against one party that it encourages the other party to take legal action, even if this may not be in the community's interest.

The above approach is bound to be seriously inequitable and counterproductive in its application, unless there is a major and even fundamental change in the knowledge base and attitude of many crisis services, police officers, courts, and government departments in Australia.

This change will need, inter alia, to recognise the endemic nature of domestic violence by women against men and children as well as by men against women and children. Solutions to the difficult and perennial problem of domestic violence will not be achieved through a one-sided and overly judgemental approach which demonises men, or for that matter women, as the sole source of this violence. A balanced and comprehensive approach is required. And this will be especially likely to be to the benefit of women.

### ***Supposed best practice – a pro-arrest policy***

The allegedly “best practice” model in policing family violence supported under the current ACT Family Violence Intervention Program requires that the Australian Federal Police “will seek to consistently apply and follow a pro-arrest, pro-charge policy where prima facie evidence of an offence exists, and a presumption against bail procedure in responding to incidents of domestic violence”.

This effectively means that the police are required, whether they believe this to be sensible and just or not, to:

- arrest a man who may have, for example, allegedly said something to his wife in an argument that she claimed “offended her”, even though he was heavily provoked;
- charge the man on the say-so of the wife, who may have been motivated by the desire to get the upper hand in a argument or even to find some convenient way to initiate a separation advantageous to her; and
- deny bail to the man, thereby removing him from the family home and his position as protector of his children, and separating him from personal resources that he may need to defend himself.

The LFA considers that the above approach amounts to a serious attack not only on basic civil liberties but also on common sense. It fails to make essential distinctions between different types and level of “violence”. It will be and is used, in practice, overwhelmingly against men. It has the hallmarks of a totalitarian approach. And it is fundamentally sexist.

### ***Feminist models***

The feminist model adopted in Duluth, Minnesota (USA) following severe social upheavals in the 1980’s has been increasingly adopted in spirit throughout Australia, largely unknown to the silent majority of Australian men and women. The problem with the Duluth model is that it destroys families.

The model originated in an area in the USA where there had been a history of lynchings by the Ku Klux Klan and other very serious racial tensions due to unfair treatment of the native American community. It is highly unlikely that politicians in Australia acquiescing in the introduction of the model were aware of the circumstances in Duluth decades ago when the model was originally developed. The extreme violence due to tensions in the Duluth community has nothing to do with Australian’s family oriented society.

The Duluth way is enforced mandatory arrest and imprisonment of males, removing them from their home and family. It also involves encouraging women to prosecute their husbands and requiring public prosecutors to continue on with the cases where the women do not wish to continue with them.

Unless there is much good fortune, this destroys families, occupies gaols, removes employment opportunities, has males unable to support their wives and children, and makes family reunion almost impossible. This is socially dysfunctional and incurs a

large cost to society. There are a sufficient number of families now broken up in Duluth to require a large and busy “Family Visiting Centre” in that town.

It is significant that native Americans living in the Fond du Lac Reservation, for example, finding the Duluth-style programs inappropriate, have felt compelled to develop their own community response model to protect their families from violence and disintegration. Contrary to the Duluth model, their model is community based and includes the imperatives of fairness, respect, trust, and support, economic partnership, shared responsibility, honesty, and accountability, as well as responsible parenting by both parents. It has worked much better than the Duluth model.

The manager of another native American program, in Canada (L Oates, December 1995) noted that:

“I operate a Domestic Violence Program for couples only (Native in orientation and philosophy) in Terrace BC. Out of 126 people involved in our program, we found the violence to be mutual both in degree and numbers. We have also faced serious opposition from a *small but vocal group of non-native women* over the last five years.”

“We have found that it is almost impossible to attain funding for our native programs because our traditional values towards families are not politically correct, i.e., they are family oriented. Our solutions to family violence are based on both people taking full responsibility for their behaviour, and not to fall into the Blame Game.

“Unfortunately, current non-native approaches to family violence appear to be based on male-bashing, rather than healing relationships between people. We estimate that we have had about a 95% success rate to date.” (A rate more than 20 times higher than the rate achieved in “perpetrator programs.) “We do follow up with our couples.”

The question may be asked: does the “small group” referred to above has a counterpart in the ACT?

### ***Programs for perpetrators***

Australian authorities have tended to follow US practices in the area of domestic violence – but with the typical lag in Australia-US cultural contacts of about 5 years and 5% of the scale.

“Programs for perpetrators” may be seen, in part, as an avenue for the employment of persons of a certain ideological persuasion.

A recent report by the US Department of Justice entitled “Do batterer intervention programs work?” found that:

“Batterer intervention programs do not change batterer attitudes, and may have only minor effects on behaviour ... The Florida study found no significant differences between those who had treatment and those who did

not as to whether they battered again or their attitudes towards domestic violence.”

It appears that to a large extent the lecturers in those programs may have been talking to themselves. This is not an encouraging prognosis for proposed Australian programs.

A pamphlet produced by the Commonwealth Government in 1998 entitled “Ending domestic violence, programs for perpetrators” stated that “Most programs” (in Australia) “reported that they cover such issues as:

- “challenging men’s tactics of power and control;
- “challenging social and cultural myths which support male domination of women and children ...”

The above approach is redolent of sexist ideology. There is in it no acknowledgement or analysis of the tactics of power and control employed, for example, by women – ignoring, for example, the pervasive influence for good or ill exercised over children by their mothers.

The pamphlet makes the point in relation to Australian programs that, “There is also evidence that some women may experience an increase in physical abuse when their partner/ex partner participates in a program”. This is an acknowledgment that the programs may actually in some cases be making matters worse.

The programs, while they continue to exclude women batterers, are likely to continue to be of extremely limited value.

## **DVCS and other services/groups’ views and preferences**

### ***The DVCS constitution***

The constitution of the DVCS includes, as a key objective:

“(b) To change the inherent power difference between men and women which creates and perpetuates domestic violence.”

The DVCS’ activities (see also “Statements by services” above) are therefore based on the dogma that domestic violence is due to “the inherent power difference between men and women”. This dogma is an opinion only, and a baseless one. There is, as far as the LFA knows, no evidence that the community as whole agrees with it. To demonstrate the ideological basis of the above objective, it is hardly necessary to do more than point out, as already explained, that:

- women are at least as violent as men in domestic situations; and
- lesbian relationships are at least as violent as heterosexual ones.

If gender was the key factor in domestic violence, and women were always the non-violent ones, there could, by definition, be no violence in lesbian relationships, where there are only women and no men. The compelling conclusion must be that gender is not the key factor in domestic violence, and that domestic violence is essentially non-gender specific.

In relation to the first statement above by the DVCS, it is necessary also to appreciate that most violence against children is by women rather than men. Without that clarification, the statement is entirely misleading.

### ***DVCS attitudes***

The LFA recognises that the DVCS does much good and necessary work in helping women in genuine domestic violence situations, and applauds this work.

However, there is also another side.

The following are opinions from ACT police officers, of both sexes, quoted in the ACT Community Law Reform Committee's "Research Paper No 1, Domestic violence", published in March 1993.

"I find DVCS's attitude to males ridiculous. I find their attitude as a collective, sexist and anti-police. Why do we have to tie up our resources baby-sitting them and having to stand by while they speak to the female partner with the male not even present. They obviously are not interested in recommending counselling or reconciliation. DVCS always assume the male is the party in the wrong."

"I do think of myself as a feminist – the majority of the women you come across in DVCS are avid feminists ... A little bit chauvinistic, they say the male is always the violator, the female is always the victim. In a lot of cases it's not that clear. (In case referred to) he was really, really hard up and he was really copping it from all sides and no-one would help him. DV crisis teams wouldn't help him because he was a man. I'm sure it was because he was a man which is sad."

"From my experience, I hate to say it, they (the DVCS) tend to be very one-sided. Even in some cases they have refused to speak to my male partner."

"Then you have got the DVCS breathing down your neck who are very keen to make allegations against the police not doing their job properly ... they are likely to go around and interview the people behind our backs and then convince the woman that she should have had the DVCS there ..."

"(Some women) have said to me that they have been bullied into taking an Order against their own particular wishes because they realise that the taking of the Order puts that wedge between any reconciliation that they might have in the family. They have felt that they have to do something to appease the Domestic Violence Crisis Service."



“In my dealings with the DVCS I have never found them terribly helpful or terribly appreciative. I always found that – I know for a fact, I know for myself that they ignore a male police officer if he is there. They will walk past him before they speak to him but I find them to be very aggressive and they will blame always the male in the situation. It is always the male in the wrong and they will always – basically siding with the female. I find the DVCS approach to be: get in there, get the man out, preferably arrested by the police, if you can go at the police hard enough, get the man out, get him arrested, get the woman to get a DVO out against him and you never want to see him again as long as anyone lives sort of thing. I have found them exceedingly unhelpful in any other matters.”

“... the women at the DVCS, there are some who are very anti male and they immediately come in and assume that the male has been wrong and they immediately want the male arrested no matter what the circumstances ... They only see one particular facet themselves, and they are quite unaware of the whole circumstances in relation to it ... I really believe that there are organisations that do the same job that they do better and far less drastically.”

“It seems to me that they (the DVCS) are not interested in reconciliation at all and they are only interested in worsening the situation by splitting up the parties. Their object seems to be to get the rotten filthy man out and the woman can survive quite well on her own forever. A lot of women are really interested in saving their relationship or saving the marriage. It seems to me that DVCS just want split it up and that is the end of it.”

It is not clear to the LFA why the above claims, if correct, could not be regarded as evidence of sexual discrimination against men.

A former manager of the DVCS indicated that:

"We see, then, that both strands of the women's movement ... the femocracy and the refuge movement played central roles in the establishment of the DVCS ... The DVCS is located in the non-government sector, unlike any other in Australia, and has a clearly specified feminist philosophy, unlike any other in Australia ... This was the particular achievement of the womens' movement in Canberra, an achievement for which the femocrat-refuge worker partnership was vital".

The LFA sees problems with both the DVCS's location in the non-government sector and the fact that it has a clearly specified feminist philosophy.

DPVO's can often cause more problems than they solve. It is vitally important that agencies and services with responsibilities in the domestic violence area display great sensitivity and objectivity in dealing with such cases. Perceived injustice and even arrogance on the part of agencies and services will often further poison relationships already in trouble.

There are, in the LFA's view, major problems in having gender-ideological groups operate in such a sensitive area, involving the most intimate relations between men and women, where objectivity, sensitivity, and fairness are of the essence.

It is noted that there is no reference in the Discussion Paper to statistics of domestic violence by sex. This appears to be encouraging an implicit assumption that the great majority of perpetrators are men and all victims are females, as no statistics are given to counter that impression.

### ***Client and service provider evaluation of the DVCS and more recent evaluations***

A client and service provider evaluation of the DVCS was carried out in 1997. There were a number of themes arising from client comments in that evaluation.

According to the DVCS, in an article in "Clearinghouse Newsletter", January 2003:

"(The) themes from clients were:

- that we (the DVCS) were not really listening to them
- that we had set ideas about what their solutions should be
- that we tried to break up their families."

However, in responding to those criticisms, the article by the DVCS contains many references such as:

- "In order to respect and really hear what women were telling us ...
- "The use of the word victim to describe women who had survived ...
- "We wanted to join with women in their stories ...
- "women who have been subjected to domestic violence ...
- "This terminology speaks to the idea that living with domestic violence is only a part of her current life experience...
- "For these reasons we now use the language of 'men who use violence in their relationships. This names the problem, his use of violence, clearly and concisely.
- "I work with men to reduce their violence ..."

No mention is made of men as victims, or of the opinions expressed by men, and all perpetrators are identified by the DVCS as male. It seems legitimate, therefore, to raise the question of whether the DVCS has really changed its approach in response to the issues identified in its review.

### ***DVCS practices***

The practice of the DVCS is that, when a person rings them, DVCS workers, traditionally always women, travel to the house with the police. They knock on the door and ask to see the wife. If they are allowed in they usually take the wife to a bedroom and talk to her. If they are not allowed in, then the police come.

In many cases, as explained above, where domestic violence has occurred it is the wife or defacto wife who actually committed the violence. But when a man rings the DVCS he is told the service is for women only, and that he must have been the originator of the violence. Complaints made to the LFA indicate that the DVCS typically ignore the man and refuse to listen to his side of the story. According to these complaints, the DVCS appears to take the view that if there is an accusation it must be true, and the man is always in the wrong.

### ***Assessments of service outcomes by male clients***

A client's testimonial with regard to the Men's Accommodation and Crisis Service (MAACS) said that:

"I write this in regard of the care and attention I have received at MAACS. I have found this to be exemplary in every way ... I also found the accommodation both homely and comfortable for both myself and my children which was much appreciated in my time of need. ... as a facility to help men in time of need I found this facility unsurpassable.

"I would however like to mention that whilst in MAACS I had numerous contact(s) with my wife which had left me feeling that most of our problems had been overcome. Alas each time she returned to her own women's refuge and counselling sessions" (not necessarily the DVCS) "her attitude and opinions had drastically been altered. I was left of the opinion that the counsellors in her women's refuge had forced ideas on her in an outright biased way without knowing myself or personal circumstances. I feel as if this matter should be looked into and if at all possible corrected."

Another testimonial remarked that:

"No doubt this has been the most difficult period in my life, being thrown into the alleged domestic violence situation with no justification. This is done to such a extent that I still cannot believe that this can actually happen in this great country.

"The concrete advice and discussion you people provided has certainly improved my ability to ability to manage and handle the situation. Most importantly, you have helped me to regain my confidence. I can imagine life would be much harder if it was not because of this help.

In another case, reported to the LFA, a migrant woman who evidently had no understanding of Australian law had been influenced into taking out a DVPO against her husband. The husband, by her own account, was a loving spouse who had never

been violent to her. According to the information given to the LFA, the DVPO in the case had been associated with pressure on the husband to sell his share in the family home. After being given a jolly farewell party by the members of the family on his travelling overseas to see relatives, the husband was on return presented at the airport with a DVPO. He had no idea what was going on and was devastated. It appears that the wife did not have much idea what was going on either.

As the affair progressed, workers attempted, according to the wife, to convince her that the husband was a violent man and that she should leave him. The workers were, according to her account, not especially interested in what she had to say, and continued to tell her that she should take further action to get rid of the man. She eventually had to tell the workers that she did not want them to contact her again. The LFA assisted the man with a serious medical condition (requiring a visit to the hospital) arising from the stress of the above events, and the man then returned home to his wife in accordance with her strong wish.

### ***University of NSW***

The material in an official magazine on domestic violence published by the University of NSW as part of “Partnerships Against Domestic Violence”, and funded by the taxpayer, almost exclusively addresses violence against women.

There are many anecdotes given in the magazine about violent men, but virtually none about violent women. To restore some balance, it is appropriate to provide some anecdotal information about domestic violence by women against men. Some examples of this are given in Attachment B.

### ***Male feminist groups***

There is a small but noisy and well-funded group of male feminists, centred particularly in the ACT, which claims that women are overwhelmingly the victims of domestic violence, and that the large body of international research in this area has got it all wrong. This group claims that “men’s rights and fathers’ rights groups” are misguided because “they draw on a particular body of American studies which use a particular methodology for measuring violence”. That statement is wrong, as the studies in question have been carried out in all the major countries in the English-speaking world, and have employed a range of methodologies. These methodologies, because objective and scientific, are greatly superior to the flawed methodologies employed in the type of advocacy research evidently favoured by the male feminist group.

Virtually all the other statements made on domestic violence by the male feminist group are also wrong. There is insufficient space here to go through and refute in detail all the statements made. However, to take a small selection, members of the group have claimed, inter alia, that violent acts by husbands are repeated more often, that the scientific studies of domestic violence referred to above have all excluded reference to post-separation violence, that no attention has been paid in the studies to whether violence was in self defence, that none of the studies have cross-checked stories by men and women, that none of the studies have paid attention to how badly a person was hurt, that men are more likely to call the police than women, that “actual

research” shows that women never use DVPO’s to gain a tactical advantage in divorce settlements, that domestic violence perpetrated against adult men is a tiny proportion of such violence, and that “men’s rights activists” have attacked women’s refuges and women’s health centres.

*Every one* of the above statements by the male feminists is incorrect, and demonstrably so.

The actual facts are that violent acts by husbands are not repeated more often than similar acts by women, that many of the scientific studies of domestic violence referred to (including the study done for Australia by Headey, Scott, and de Vaus, 1999) have specifically included post-separation violence, that some of the studies have specifically considered whether violence was in self defence, that some of the studies have carefully and deliberately cross-checked stories by men and women, that many of the studies have paid attention to how badly persons were hurt, that women are overwhelmingly more likely to call the police than men, that research based on information from hundreds of magistrates in Australia has established that women often use DVPO’s to gain a tactical advantage in divorce settlements, that domestic violence perpetrated against adult men far from being a “tiny proportion” of such violence actually accounts from the greater part of such violence (and violence against men is increasing while violence against women is decreasing), and that “men’s rights activists”, far from opposing them, have supported women’s refuges and women’s health centres, while at the same time requesting that male victims not be discriminated against by being excluded from similar services.

For so many incorrect claims to have been made by the male feminist group seems a clear indication that their statements have proceeded from ideology rather than facts.

As the statements made by that group so obviously contradict the experience of so many ordinary citizens, those claims damage the credibility of the group and lose sympathy for other statements made by the group which could be legitimate and important. That is a pity, because not helpful to families.

### **3. Selected areas for improvement**

#### ***Current abuses and unacceptable procedures***

It is a sad fact (see “Nature of domestic violence” above) that many women in the ACT and elsewhere in Australia seek DVPO’s as a routine separation procedure and/or as a vindictive retaliatory act on their estranged spouses. They often claim that their spouses “criticise and nag” them and are “rude and offensive”, as well as putting them “under pressure”. These allegations are made especially when child access and property matters are being debated and are claimed by these women to be “acts of violence” in themselves.

Where a relationship has become estranged and where there are children involved and where there is often the joint ownership of property, it is usually the woman who wants the man to leave the matrimonial home pending the resolution of disputes involving the children and property. Legally and morally, neither party can demand the other vacate the premises. Each can and is entitled to live in the house, albeit separately.

However, the ACT Domestic Violence Act provides a woman with what appears to have become an irresistible and often vindictive means of forcing the man out of the home against his will, by allowing her to apply to the courts for a DVPO.

The LFA believes that unless there has been proven physical violence and/or a genuine and credible fear of such, the granting of DVPO’s merely to prevent annoyance by a party to a domestic relationship, and with the calculated intention of forcing the man out of his domicile, is a serious abuse of the system.

#### ***False allegations***

Claims of violence, abuse, etc. made by women against men, and vice versa, should be made on oath. If such claims are found to be false, malicious, and/or vexatious in nature, then such disproved allegations should be treated as perjury and subject to criminal prosecution. This would reflect the serious nature of such allegations and the consequential disastrous impact that false allegations can have on respondents.

Criminal sanctions should also be applied to those who knowingly aid and abet a person in making malicious, vexatious, and/or misleading allegations.

The Family Law Act should be amended so that where allegations of domestic violence are found to have been made falsely or unnecessarily made for the purpose of assisting a party in respect of Family Court proceedings, the Court is obliged to take that into account when making any decisions in relation to the parties in question.

In this context, NSW magistrate Pat O’Shane was reported as having remarked that, “A lot of women manufacture a lot of stories about men”. Ms O’Shane’s credentials in this matter as an Aboriginal person, a woman, and a senior and experienced jurist are beyond reproach.

There should be a time limit of 6 years on allegations of previous violence. In relation to allegations of primary (recent) incidents there should be a time limit of 48 hours.

### ***Ex parte procedures***

The law relating to domestic violence in the ACT should be amended to end the denial of natural justice to an accused person which currently results when orders are made in his/her absence. The law should stipulate that orders compelling a person to leave or stay away from a family home should only be made on an ex parte basis where *essential* for the welfare of children and/or spouse. The existence of a domestic violence order made "without admission" or without a determination by a court should not be taken to constitute evidence that any violence has occurred.

Practice Directions relating to ex parte hearings in the Family Court are designed to afford proper respect to the rights of individuals in those cases. The same Directions should be applied also to hearings in magistrate's courts. Currently they are not. Ex parte proceedings should be avoided wherever possible, and where such proceedings are unavoidable a proper hearing should be held with both parties present within 24 hours. Applications for Interim Orders under such circumstances should include a proper explanation as to why the application cannot be served on the respondent, and should also include (as they already do in the Family Court) an undertaking by the applicant as to damages.

### ***Community attitudes and services***

If marriage, whether formalised or de facto, is to be regarded and regulated as a familial partnership or as a dissolvable contractual arrangement between equals, then it should be recognised and treated as such. Men and women should be equal before the law. They should be provided by domestic violence support systems, irrespective of gender, that recognise the parental needs of children and facilitate if possible familial reconciliation.

They should not be provided by domestic support systems whose workers, possibly in pursuit of own personal social and political agendas, are seen as acting in a way as that tends to aggravate the situation and prey on the emotional conditions of parties to a domestic incident.

### ***Alternative dispute resolution***

The greater use of alternative dispute resolution, in the LFA's view, is imperative to ameliorate the dysfunctional family-dismantling system in operation at present. Mediation/counselling involving two mediators/counsellors, one female and one male, as currently provided by some services, would be highly desirable.

The ACT Government's proposal to "encourage the greater use of educational programs and alternative dispute resolution with a view to resolving a larger number of disputes without resort to the court" is therefore strongly supported.

Similarly, the greater use of the acceptance of undertakings by alleged "perpetrators", with applications for DVPO's to be withdrawn without resort to the court, should be mandated. Mediation needs to encompass use of this undertakings-withdrawal-of-application procedure as a priority.

To prolong the availability of these dispute resolution mechanisms until the arbitrary time of a Preliminary Conference cannot be justified, as it keeps parties at risk and prolongs family dysfunction. The measures need to be put into effect at the earliest opportunity. Therefore, the Police also need to be given the discretion to accept a written undertaking from the "perpetrator" where they have reasonable cause to believe that the matter is amenable to mediation as an alternative to arrest or expulsion from the household.

### ***Effective counselling, as opposed to biased criminalisation***

As pointed by W Farrell (1993), "Laws that make one sex more powerful than the other boomerang against both sexes - no one makes a commitment to a disadvantage. And when one sex doesn't commit, both sexes lose love. We can see this happening in Australia, for example ..."

"The solution to abuse ... comes with resocialising both sexes to listen in new ways -ways most of our parents never had the luxury to learn; it comes with resocialising both sexes to select partners who are secure enough to listen before they attack, and secure enough to leave if repeatedly attacked - either verbally or physically ... The solution comes with requiring communication in school ... with being as sensitive to the 20:1 ratio at which schoolgirls hit schoolboys as we are to the 1:20 ratio at which schoolboys hit schoolgirls. In brief, solutions to abuse start with counselling, not killing; with both sexes knowing how to protect themselves rather *than permitting only one sex to use the government as a protector*".

### ***Culpable provocation and threatening behaviour***

On the matter of "culpable provocation" and threatening behaviour, the law should, in the LFA's view, recognise and apply sanctions against oral and physical provocation by women against men (as well as the reverse).

### ***Guidance on self defence***

Something that the domestic violence legislative model could do which would be especially useful would be to provide some guidance as to the steps which a man could legally take to defend himself against physical and other assaults by his wife (and vice versa). This is vital if the legislation is not to be used simply as a means of victimising men in the ways described above.

See, for example, the recent Michael Diamond case. Diamond was fortunate enough to have sufficient funds to pay for the running of a competent defence, and public interest to focus on his case. Many men are not so lucky.



### ***Advice from medical practitioners***

In the event that any application is made for a protection order, there should be a requirement for a supporting medical affidavit. It may also be necessary to require evidence from the medical practitioner who assessed the applicant. Oral evidence on oath by people suffering psychological disorders, persons unable to express themselves effectively, or persons claiming to have been psychologically abused by their spouses should be referred to a competent medical practitioner who is *not* associated with representatives of the DVCS.

### ***Legal aid***

Legal information should be made available to both parties to a dispute and repaid to the Legal Aid Office over a period negotiated between the parties and the LAO. In cases where allegations have proved to be false, the litigant should be responsible for repaying the legal costs of the entire proceedings of both parties.

## **4. Detailed comments on the Paper**

### **General**

#### ***Purpose of the Paper***

According to the present Discussion Paper (“the Paper”), the object of the review of the POA was “to discharge the requirement in section 107 of the POA to review the Act and its regulations for consistency with the model domestic violence laws, and to examine whether the protection order legislation provides adequately for the safety and protection of people from violence, harassment, and intimidation, while not unduly interfering with the civil liberties of the individual.”

One of the key considerations in the review of the legislation is therefore to “not unduly interfere with the civil liberties of the individual”. There is, however, reason to believe that some of the provisions in the proposed new legislation will in fact infringe the civil rights of individuals in many cases.

#### **Foreword (page 7)**

The ACT Attorney General refers in the Foreword to the rights of all people to live in a safe community. “All” clearly embraces men as well as women. The LFA heartily concurs with that reference, and strongly recommends that the Government proceeds down that path.

“Stakeholders” include more than just women and those who provide services to women. They also include people, whether men or women, accused of domestic violence, and whether falsely accused or otherwise.

The LFA represents separated fathers and their children. There are numerous aspects of the Discussion Paper with which the LFA disagrees, and to which the LFA is seeking substantial changes.

It is not clear whether the purpose of the paper to “address the issues identified by stakeholders and the Department during the development of the POA” (as stated in the Foreword) or to address the issues identified by stakeholders and the Department during the *review* of the POA. This should be clarified.

## **Chapter 1. Introduction (page 10)**

### ***General comments***

#### ***The model domestic violence legislation***

An objective of the review was to achieve consistency with regard to standard legislation. It is not appropriate for the review to be limited to what feminist lawyers have been able to get enacted in other States of Australia. In other countries, legislation has been able, for example, to include the wider concept of “primary” and “secondary offenders” where there was recognised to be mutual violence. These wider points should be properly considered in the Australian context also.

At the present time in the ACT, whoever wins the race to the police, with better information and better assistance, i.e., almost always the woman, is the victor. The other party, who does not know anything about how the system works, is always the one branded by the system as the offender. There is therefore no equal treatment under the law. Both parties are not given the same information. The DVCS advises the women to fill out particular forms with legal implications. The male partners are not told about this.

The review of the present system is supposed to be concerned with the way in which the system operates in practice as well as in theory. The system, and particularly the proposed amendments to it, do and will often, in practice, interfere with the civil liberties of respondents.

The persons who put together the Model Domestic Violence Legislation (August 2002) were not, in the LFA’s view, a cross-section of stakeholders. They appear to have been mainly a group of feminist academic lawyers and associated departmental officials. They apparently took little interest in, and derived few lessons from the UK, USA, where the civil liberties of “respondents” are better protected by specific charters and equity clauses, e.g., the European charter and equality clauses under the US constitution. In the USA there is a much better balance in public discussion and analysis of policy, because there are university chairs of men’s studies as well as chairs of women’s studies, and there is also a vigorous discussion of the subject of adversarial versus other models.

The ACT is at present something of a haven where women from other States, if they want to claim to be abused can, by applying in the ACT, go to the top of the list for housing, etc. More conciliatory models are in use in other States, and those models are, in general, better models than the one in use in the ACT.

### ***Children***

Children have no power to defend their own essential interests by being permitted to ask to be excluded from particular DVO’s. And the time limit for interim orders is far too long – with alleged perpetrators excluded from their homes for up to 21 weeks, even if they are innocent.

## *References to “victims”*

There is a major problem throughout the Paper in that it refers throughout to “victims” as though “victim” was an exclusive description, and as if a victim could not also be a perpetrator. The reality however, is that many people involved in domestic violence are both victims and perpetrators of violence, in a situation which could fairly be described as mutual brawling. According to professional scientific studies, about half of the people involved in domestic violence fall into this category. Being clear about this point is essential to sound policy.

## *Inadequate statistics*

Information is needed on how many protection orders are issued in the ACT broken down by sex. And there should be semi-annual reporting on these statistics, with an associated press conference. The statistics need to be made available in order to test the statements made about the gender distribution of domestic violence and to examine whether there is discrimination in the system.

Much depends here on the width of the definition of domestic violence, and there is a need for the use of an internationally acceptable definition. The subject of a proper standard of proof needs to be discussed.

The Chapter refers to the ABS 1996 survey of “Women’s Safety in Australia”, but omits to point out that the ABS, in spite of complaints at the time, failed to extend that survey to cover violence against males as well as females.

That decision by the ABS to not extend the survey arose because of a decision by the Government of the day to not provide any funding for that purpose. It would have been a simple matter at the time to extend the survey to cover all members of the community and not just females. The decision by the Government not to do so suggested that there was no interest on the part of the Government in having comparable figures for domestic violence against males. The failure to collect comparable information about men means, of course, that the 1996 survey is worthless as an indication of distribution of violence between men and women.

Virtually all large-scale professional surveys of domestic violence in the English-speaking world have indicated that domestic violence is engaged in roughly equally by both sexes, with women being rather the more violent. The facts about domestic violence against males in Australia were revealed in the 1999 study by Headey et al. (See the studies listed in Attachment A.)

## *Domestic violence models*

### *The Duluth model*

The supposedly “best practice” model in policing family violence supported under the current ACT Family Violence Intervention Program requires that the AFP “will seek to consistently apply and follow a *pro-arrest, pro-charge policy* where *prima facie*

evidence of an offence exists, and a *presumption against bail* procedure in responding to incidents of domestic violence”.

As indicated earlier in these comments (see “Feminist models” above), the Duluth model is draconian and damaging to families. It assumes that the man is always the perpetrator. The proposed legislation in the ACT will be effectively based on the Duluth model and other similar models. When the police are called out the male is to be arrested. The court must convict the man. The parole officers must put the man through a perpetrator program. And so on.

In Duluth, USA, with a notorious past for lynchings, there were serious racial problems and quite a number of murders. That was an unusual situation, which does not apply in Australia. The different models for dealing with domestic violence need to be assessed one against the other. It is necessary to look at dysfunctionality in the family, as opposed to just ejecting the man from his family.

The “Pathways” report to the Commonwealth Government suggested counselling and mediation in all cases *except* domestic violence. That is not good enough. Usually a DVPO will say the man cannot contact the wife or family. Yet in many cases, when contact is made, reconciliation occurs.

### ***Inappropriate seeking or use of protection orders***

It is claimed that that “The Government ... proposes amendments to address the concerns that protection orders are being inappropriately sought or used”. But the question is: where are these proposed amendments with regard to DVPO’s?

## **Chapter 2. The Protection Orders legislation (page 11)**

### ***General comments***

There is no recognition in the Paper of the reality that domestic violence is often mutual. The assumption is made throughout the Paper that there can only ever be one “aggrieved” person, and that this is overwhelmingly likely to be the female. Both assumptions are wrong.

Also, the word “aggrieved” (page 12) is an emotive and may be a misleading word in the context. In cases of false allegations, the respondent is indeed likely to be more aggrieved than the so-called “aggrieved person”.

Even at an early stage in the Paper, it is implicitly assumed that allegations by women of violence against them are the same thing as actual violence. But the two are not the same thing at all. Allegations must be properly tested before such a conclusion can be arrived at.

There is no discussion in the Paper here about mandatory counselling, mediation, or psychological testing.

The objective suggested in this Chapter refers to persons who “fear” violence. But a woman only has to claim that she “feels uncomfortable”. The criterion for violence has gone from an objective fact to a subjective feeling. For the “fear” to be a basis for serious sanctions against another party, in justice there must be a realistic fear. There must be protection against the subjecting of people to serious sanctions because they are not expert mind readers.

There is a strong need to in future take the crime of perjury seriously, and apply sanctions to those who commit it in these cases. Sanctions should be applied in cases where the crime is committed of making a false statement to the police. Close attention should also be given to the serious mischief of coaching children to give evidence on behalf of the parent making the application.

### ***Objects and principles (page 11)***

Why is a “greater” protective response required? Given, particularly, that there is greater scope for counselling and mediation.

The statement made about 84% versus 37%, etc. is confusing. Only 37% of personal violence orders relate to a victim having been pushed, grabbed, or shoved. But what accounts for the remaining 63% in those cases? The statement should be redrafted to express the comparisons clearly.

The statement is made in the Paper (page 11) that DVPO’s are not intended to be “economic punishment” of the respondent. Given that DVPO’s are a civil measure, not a criminal sanction, it is surprising that it should be necessary to say this at all. However, the point is that DVPO’s in practice very often do amount to (and may even deliberately be used as) economic punishment. What is “intended” is interesting, but

what actually happens is vital. As a result of DVPO's, men may lose their jobs as well as incurring all the financial penalties that inevitably result from their separation from their families.

The economic consequences flowing from DVPO's can be and frequently are extreme. Children, in particular, will often suffer. There is little evidence that the agencies involved in alleged domestic violence pay any particular regard to these factors or give them any weight. In fact, they may often make matters worse by advising a woman to clean out the couple's joint account, change the locks in the family home, effectively restrict employment opportunities, and so on.

While protection orders may not be "intended to inflict economic punishment on the parties" (page 11), they frequently in practice have very severe damaging economic effects on the respondent, at least. If the statement is not to be misleading, this point must be recognised.

What does "to facilitate the resolution of disputes without resort to violence" mean? What sort of disputes exactly? What sort of violence, to what apparent end, and in what circumstances? The reference is ambiguous. If correctly expressed, it could be an important idea, and avoid the need for many DVPO's. It is a positive point in the paper.

### *Consent*

"Consent" appears to have been defined in the Paper as the making of a consent order. But these two things are not the same. Informed consent is often not involved. Consent orders are often signed under duress and in a state of ignorance about both options and consequences. The man is urged to "sign here" to give consent, and it is not explained that such a consent in effect criminalises (on the basis of an allegation) future actions that would not otherwise be criminal. It is essential to explain to both parties the family law implications of "admissions" made in consent orders.

Legal aid which might have partially overcome these problems is often not provided. Any legal aid that is provided to the man by an outside solicitor is likely to be well below the standard of the aid provided directly by the Legal Aid Office to the woman.

The man is usually treated less favourably than the woman in that the woman is provided with a private room while interaction with the man is in public. There is a need to treat both parties to the action, not just one of them, with dignity.

Informed consent would require that the man consenting to a court order be informed that:

- there are provisions whereby if he gives undertakings it is possible to have the application withdrawn without resort to the court; and
- a formal consent order by the court is not a requirement where that procedure is followed.

The Deputy Registrar (or authorised person) should be required to attempt to settle the matter without resort to the court, in accordance with the following priorities. Firstly he/she should attempt to settle the matter and have the application withdrawn. Secondly, he/she should attempt to settle the matter with undertakings and have the application withdrawn, thirdly he/she should attempt to settle the matter by mediation and have the application withdrawn. Should a matter be brought before the court, the Deputy Registrar should be required to certify that he/she attempted to settle the matter in the order of the priorities set out above.

### ***Principles (page 12)***

The statement is made that “If a protection order is to be made, it must be the protection order that is the least restrictive of the personal rights and liberties of the respondent as possible”. These are excellent words, but the principle is often breached in reality. It often happens, for example that children are included on protection orders quite illegitimately, even in some cases where the “children” are over 18 years of age.

Page 13 fails to make a necessary distinction between actual violence on the one hand and alleged violence and possible future violence on the other.

Under “Structure of the legislation” it should be explicitly stated that in some procedures an order may be made without receiving testimony from the respondent.

The phrase “similar dynamics” (page 14) applied to other supposed “relevant persons” is too vague. Who could potentially be included? Carers? Nurses? This sort of thing is not what the legislation was supposed to be about.

### ***Structure of the legislation (page 13)***

#### ***Diagram***

The diagram (page 13) should, in a box before the Protection Order box, show Settlement Without Resort to Court. Arrows should lead to boxes entitled "Settlement and Withdrawal", "Settlement on Undertakings and Withdrawal", and "Settlement on Mediation and Withdrawal." And the Protection Orders box should be entitled Protection Orders after Certificate of Deputy Registrar.

### ***Domestic violence as opposed to other violence***

The Government intends to review the issue of whether separate domestic violence legislation is necessary.

This will not, in the LFA’s view, be desirable if its purpose is to give extra powers to organisations which have ideological charters.

Identification of the reason for treating domestic violence separately from other violence only covers part of the identifying characteristics of “domestic”. That identification fails to mention that “domestic” also involves close, ongoing, and



intimate relationships between people who support each other and their children in families. Those relationships are just as important if not more important than that the one emphasised in the legislation.

Also, the notion behind the statement that domestic violence may require a higher level of protection seems to be that there would only ever be one “victim” and one “perpetrator”. But that assumption is not true in at least half of cases (see above).

R L Davis - a senior police officer with advanced criminal justice qualifications - has recently remarked that:

“It is vital for the feminist agenda that domestic violence continue to be perceived only, or primarily, as *a crime against women* and that it remain *dramatically distinct and different from violence in general*.

“Fundamental feminists have melded the issues of domestic violence with their agenda of women’s rights so that any attack on one is seen as an attack on the other. Hence they have turned our valid concerns about the issues of domestic violence (child, sibling, spousal, intimate partner, and elder abuse) into a “war between the genders”.

“The vast majority of demographic characteristics of domestic violence are similar to those of strangers: the majority of criminologists understand that the dominant variables for all crimes are opportunity and ability ...The only distinction between domestic violence and stranger violence is the location and number of the victims; the distinction is not in the dynamics.”

The LFA strongly suggests that the Government not succumb to the partisan and ultimately unhelpful agenda described above.

Davis also goes on to say that:

“Then how does the fundamental feminist claim that that domestic violence occurs because “the patriarchy makes men do it” account for child, sibling, same sex partner, and elder abuse? How is it that the vast majority of men are unaffected by their patriarchal past and do not beat and batter women? How does the patriarchy account for the fact that more women assault children than men?

“And none of these feminist claims can be used to dispute the reality of violence by women. Fundamental feminists continue to exclude violent behaviour by women as a non-event. When female violence cannot be excused, fundamental feminists require, with a complete lack of data, that it is most often defensive in nature.”

It is not explained in the Paper why there is considered to be a need for a “political edge” (page 14), or why it is necessary to have separate legislation for domestic violence as opposed to other personal violence, but perhaps the above comments will explain it.

## ***Summary of issues (page 15)***

### *Greater level of response required?*

Domestic violence does not require a “greater” level of response, so much as a more sensitive, sympathetic, effective response. Criminalisation is not the answer except in severe cases.

### *Legally enforceable mechanism*

This proposes a “legally enforceable mechanism” for stopping something that was in many cases not going to happen anyway.

### *Resolution of disputes*

It is not clear what the point here about “disputes” means. See above.

The phrase proposed by the Government, “to facilitate the resolution of disputes without resort to violence” is general, and may be misleading in this context. The natural meaning of the phrase would be “to facilitate the resolution of disputes that gave rise to the violence”. But what appears to be intended is “to facilitate the securing of agreement by the alleged perpetrator to the placement on him/her of a protection order”. If that is what is meant, it should be said plainly.

## **Chapter 3. Effectiveness of the legislation (page 16)**

### ***Abuse of the protection orders legislation (page 16)***

#### *General*

One of the main purposes of the Discussion Paper was to examine concerns that “protection orders are being inappropriately sought and used for frivolous or vexatious purposes, and that this has in turn reduced the effectiveness of the legislation”.

The treatment of this matter in the Paper is dismissive. The claim is made that “there is no research to support this assertion”. There is, in fact, a very large amount of evidence available to anyone interested in the subject. The fact that there may not be “research” as defined by the author of the Discussion paper is an indication that research institutions have not been funded to investigate the issues, for reasons that require close examination.

Some considerable effort should have been put into the analysis of this issue by the drafters of the Paper. However, it appears that little was. The entire issue, of such importance to the legislation, is dismissed in two short paragraphs, even though one of the considerations in the review of the legislation is to “not unduly interfere with the civil liberties of the individual”.

The report fails to deal with the frequent misuse of DVPO’s to remove a man from his home, for other than genuine DV reasons, and to gain an advantage in family law proceedings. The Report just dismisses this common practice as a fiction. This is not acceptable. It is essential if justice is to be done in these cases to punish people who commit perjury.

The claim is made that there have been “numerous reviews” of the allegation that domestic violence applications are frequently made to gain some tactical advantage over an ex partner in family law proceedings”. These “numerous reviews” are not listed. There is, in fact, very strong evidence that this type of abuse does occur, and on a large scale.

Janine O’Neil, in an article in Canberra Times, August 1999, entitled “Frivolous violence orders clog court system, magistrates say”, noted that:

“Police should have the discretion to filter out frivolous apprehended violence orders, a survey of magistrates has revealed. The Judicial Commission of New South Wales survey of 122 magistrates, issued today, found that many wanted changes to legislation governing the areas of apprehended violence orders flooding the Local Court system ...

“Most (91 per cent) also believed domestic violence orders *were sometimes used as a tactic in Family Court proceedings* to deprive partners from access to children; 40 per cent agreed with deferring final orders where proceedings were pending.”

As well, 74% of magistrates in Queensland in 2000 agreed that DVPO's are *often used by applicants in Family Court proceedings* as an aid to their case and deprive their partner from contact with the children.

There is no identification in the Discussion Paper of the material supposedly addressing concerns that protection orders are being sought by men for malicious reasons. The reality is that some men on being served with a DVO point out quite accurately that they are also victims of assault by their wives, or even sole victims.

What, by contrast, the model legislation *should* be doing, inter alia, is taking effective steps to help bring about:

- a much better understanding of the true nature and causes of domestic violence, and its relationship to other aspects of family life and the legal system;
- a much stronger emphasis on effective relationship counselling for married partners and those contemplating the possibility of marriage; and
- serious and effective attempts to bring disputing married partners together, rather than to break up their families in pursuit of the agendas of ideological groups.

The above involves, inter alia, obtaining accurate and unbiased information about domestic violence in Australia, conducting a thorough education program for courts, the police, DVCS's, and government departments, etc., providing the Family Court with much better legislative guidance than it currently has, providing advice about legitimate measures for self-defence against attacks by an abusive spouse, obtaining advice where appropriate from medical practitioners, providing legal aid where necessary, and dealing effectively with perjury in domestic violence cases.

It is especially necessary to recognise and allow for the fact that men are almost always very reluctant to inform the police about violence by their wives, because of their belief that they should try to manage the situation themselves, and for fear of breaking up their families. It is primarily this belief and fear which accounts for the very low percentage recorded in police and court statistics, but not however the *reality* of domestic violence against men. As already noted above, women are *at least 15-20 times* more likely to report domestic violence against themselves to the police than men are.

### *Domestic violence orders (page 16)*

Mss Spowat and Neil are mentioned, but not the fact that the title of their article is drawn from an American pop song composed by two self-proclaimed feminists.

The NSW Criminal Law Review Division, quoted in the Paper, is understood to be largely composed of feminist lawyers and sympathisers, and it would be prudent to regard research coming from that quarter with reserve. Much more cogent and reliable information is likely to be that available from the recent surveys, reported above, of magistrates working in New South Wales and Queensland.

Jennifer Saunders of Canberra (page 17) is mentioned as contributing a letter to the Canberra Times entitled “Abuse of restraining orders must be curbed”. It is not mentioned, however, that Ms Saunders is a Canberra solicitor.

In another letter to the Canberra Times, dated 10 December 2003, Ms Saunders said:

“The current prosecution policies on family violence are really out of control.

“The police have told me they always – no exceptions – issue a warrant for the arrest of an alleged offender, even if they know he (it is usually a he) is, and even if he has no unsupervised contact with the family member said to be the victim

“I presently have two cases, one in NSW, one in the ACT, where loving, decent fathers have been dragged into the criminal courts because they smacked their children who were sitting in the back seat of the car while the father was driving.

“And what parent has never done that? I think it is wicked to make children give evidence against their parents – the scene in the court room is harrowing for all concerned.

“Can you image the harm done to the parent-child relationship when the child is forced to give evidence against the father? It comes as no surprise to learn that both cases arise out of bitter family court proceedings where the mother has vowed the children will have no more contact with their father.”

The Discussion Paper states that, “Parties to family court proceedings must inform the court of any protection order that applies to a child or a member of the child’s family in determining what order to make the court must ensure that any court order made is not inconsistent with any protection order and that the child is not subject to an unacceptable risk of family violence.”

However, the court would automatically assume that the protection order was justified and properly made - even though it may not have been.

### *Personal protection orders (page 17)*

No comment.

### *Power to refuse to accept an application (page 17)*

The form of application for a DVPO should include questions along the lines of, “Did you in any way contribute to the incident?”, and “Were drugs or alcohol involved on either side?”

In practice, respondents are often not told that they can make an application for the action to be dismissed.

The court is not required to receive evidence at hearing, and may not receive information from both partners. This sounds like a kangaroo court.

Marriage licences list on the back of the licence what the person's rights are. There should be a comparable listing in the case of DVPO's.

### *Application fees (page 17)*

Page 18. The fact that a fee would be incurred would have the effect of reducing frivolous applications.

The names and addresses should be listed of those assisting in the filling in of applications. There should be fines for the making of false or vexatious application, and these should where appropriate be applied to those assisting in the preparation of such applications.

### *The use of alternative dispute resolution (page 18)*

#### *Preliminary conferencing (page 18)*

Deputy Registrars usually do not facilitate discussion in practice. There are question about the type of communication training undergone by these people, and their mediation and psychology experience. It is necessary for Registrars to do more than just conclude that "there is no agreement". The discussions usually seem to involve "shuttle diplomacy", and they are often carried out in a public or semi-public place for the man (but not for the woman, who will be offered a private room). The dignity of the parties involved should be preserved, whether offenders or not.

To give the parties a mere 30 minutes to explain what has happened and what they think about and "develop solutions" is extremely inadequate.

Assistance in court should not be confined to one party (at present nearly always the woman), but should be provided equally to both.

Section 39 of the POA says that magistrates can formally recommend counselling. But magistrates apparently hardly ever do this. There is scope here for guidance by the parties.

#### *Undertakings (page 21)*

The Paper makes the point that contempt of court to be dealt with by a magistrates court must be "in the face of the court". Does this mean that there have been illegal gaolings of people in the past on the basis of an incorrect interpretation of "contempt of court"? It is proposed for powers to be given to magistrates to punish contempt of court. This would be a dangerous step to take, as magistrate's courts are not superior courts. Superior courts, by contrast, are concerned with a wider jurisdiction.

It would also be a dangerous escalation to mix civil and criminal aspects by having criminal consequences follow from a breach of an undertaking. An undertaking is a

civil contract. The proposed change is obviously seen as a pathway into turning the entire process into a criminal one.

The greater use of alternative dispute resolution (page 22) is imperative to ameliorate the dysfunctional family-dismantling system presently operating. The Government's proposal to "encourage the greater use of educational programs and alternative dispute resolution with a view to resolving a larger number of disputes without resort to the court" is strongly supported.

The Government is to give effect to this measure by expanding the objects of the Preliminary Conference to find out whether the matter is amenable to mediation. If the Deputy Registrar forms the view that the matter could be more effectively resolved by mediation, the proceedings are to be adjourned and the parties to be provided with contact details of relevant services. This procedure should be supported at the Preliminary Conference.

Similarly, the greater use of the acceptance of undertakings, with applications for DVO's to be withdrawn without resort to the court, should be mandated.

The LFA strongly supports the Government's proposal to use the *undertakings-withdrawal of application procedure*, as part of the proposed alternative dispute resolution measures. Mediation needs to encompass use of this undertakings-withdrawal of application procedure, as a priority. This important procedure, with its psychological advantage for parties and families, must not be supplanted by duress to use the undertakings in a court- approved consent order "in order to avoid more trouble".

To prolong the availability of these dispute resolution mechanisms until the arbitrary time of the Preliminary Conference cannot be justified, as it unnecessarily keeps parties at risk and prolongs family dysfunction. The measures need to be put into effect at the earliest opportunity. Therefore, the Police need to be given the discretion to accept a written undertaking from the "perpetrator" where they have reasonable cause to believe that the matter is amenable to mediation as an alternative to arrest or expulsion from the household.

Greater use should be made of the "stay away" model, under which one party is instructed to stay away from the family home for 24 or 48 hours rather than that person being arrested.

## **Chapter 4. Who may apply for a protection order? (page 23)**

### ***Who may apply for a protection order (page 23)***

See previous comment about the meaning of “aggrieved”.

No comments.

### ***Applications by children (page 23)***

Mothers are currently including children in DVPO’s almost as a matter of course. Children should be able to remove themselves from a DVPO. In the Family Court, children may have a third party to act on their behalf.

### ***Applications by third parties (page 24)***

Does “agent acting for a person” include the DVCS?

DVCS staff should be required to put their names on applications where they have assisted in the preparation of the application.

### ***Applications by police officers (page 24)***

The Legal Aid Office in practice helps women directly, but seldom men. Men, if assisted, are passed on to outside solicitors, whose motivations and capacities to assist, in the LFA’s view, are often weak.

The Family Violence Intervention Program (FVIP) (page 25) is largely a female-dominated program.

### ***Court initiated orders (page 25)***

Agreed.



## **Chapter 5. When may a court make an order (page 27)**

### ***Grounds for a domestic violence order (page 27)***

#### ***What is domestic violence? (page 27)***

The current definition of “domestic violence” in the ACT under the POA includes “behaviour which is offensive towards a relevant person”.

This definition is too broad and vague. What is considered to be “offensive” could be almost entirely subjective. Also, “offensive” cannot properly come under the definition of “violent”. “Violent” is an ordinary English word that has a specific meaning. The word means “involving great physical force, involving unlawful exercise of force” (Australian Concise Oxford Dictionary). There is no mention in that definition of “offensive”. The legal application of the word “violence” to something that someone claimed to find “offensive” is an abuse of the English language.

It is essential that a proper distinction is made between different levels of “violence”. Some people wish to regard a raised voice as “violence”. It is important that the ordinary meanings of words are not abused.

Property of the “relevant person” is referred to. A woman can at present, after her spouse has been ejected from the family home, put the spouse’s dog in a pound without telling him.

There should be a caveat here that allegations have to be proved.

The question may be asked: why is it considered necessary to expand the schedule of domestic violence offences to include the offence of burglary (page 28). That offence is already included in a general list of crimes, so why the duplication? Is it intended to prevent men from recovering their personal possessions where they may need them to defend themselves against a DVPO application.

What is meant by “domestic violence offences”. A DVPO does not record “offences” but refers rather to alleged “behaviour”.

#### ***Personal/physical injury (page 28)***

To define domestic violence as including “personal injury” of a non-physical kind is an abuse of language, whether the definition is in use in other legislation or not.

The question may be asked: what exactly is the difference between physical injury and personal injury?

A DVPO is not an order to prevent the commission of any crime; it is an order to prevent the commission of acts of domestic violence, so the logic of the argument given does not follow.

*Who is a relevant person (page 29)*

No comment.

*Who is a relative (page 30)*

No comment.

***Grounds for a personal violence order (page 31)***

No comment.

***Reasonable fear or likelihood of future violence (page 31)***

The court should be required to satisfy itself that domestic violence is likely before making an order. The Discussion Paper does not want to accept the MDVL model on this point, but prefers to make the provisions more draconian.

Under the proposed situation, persons do not have to actually fear violence at all, whether reasonably or not. The question may be asked: if other jurisdictions in Australia will be happy with the criterion of realistic fear, why does the ACT wish to be different? There should be a reasonable test, and the situation carefully analysed. As a result of the application of the present law, people are being deprived of their livelihood, and the test applied should be weighty.

***Grounds for a workplace order (page 33)***

No comment.

*Workplace interim orders (page 33)*

No comment

***Summary of issues (page 34)***

“Personal injury” is too broad a term to be applied within the meaning of domestic violence.

The question may be asked: what is meant by “a parent of the child of the original person”? Would it include another “parent” of the same sex?

The Paper’s recommendation that a person need not have a reasonable “fear” of violence before an order is made is an infringement of the civil liberties of the person against whom the order is being made. Dredging up incidents from the remote past when there is no real current fear of violence is a process which can be abused to get rid of a spouse. To be just, for the granting of a DVPO there must be a genuine current fear.

What is implied by the reference to a “person loitering near school grounds” (page 35)? Is this meant to apply, for example, to a man who is keen to see his own children, and has effectively been prevented from doing so, e.g., by a failure of the other parent to comply with a court order for access? What does it have to do with domestic violence?

## **Chapter 6. Interim orders (page 36)**

### ***Grounds for making an interim order (page 36)***

An interim order is an order made on an allegation from one person - moreover someone with an obvious vested interest.

This is too one-sided. No account has been taken here of those cases where property is destroyed or damaged by the persons taking out the order.

What the grounds fail to recognise is that interim DVPO's are often used to eject men from their homes without permitting them to take essential personal possessions, including personal records that may be needed to defend themselves against a final DVPO and maybe criminal charges. The applicant for the DVPO is then free to destroy or misplace those possessions with impunity, thereby bolstering her/his position in family law proceedings. Those actions by the applicant for the DVPO may and frequently does cause very severe damage to the respondent's property and financial position. Why is that aspect not considered in the Paper?

### ***What conditions or restrictions may an interim order contain? (page 36)***

If the child is a joint child, the child should be asked for his/her view, and this should especially be the case for 14 year-olds and older.

It is highly undesirable to be dragging children into a DVPO which should really only be about the spouse. This could be used to make it easier to affect the interests of the husband and father, by including the children in the DVPO unnecessarily and unjustifiably. Children can be covered by a separate DVPO now – so why not just continue with that arrangement?

There is no reference here to return of personal items reasonably needed by the respondent to defend him/herself against allegation, including false allegations. Such a provision is essential as a matter of justice

### ***Length of interim orders (page 37)***

A respondent should on an ex parte interim order be excluded for the home for no longer than 1 month.

The issue is raised here of criminal charges requiring to be defended, in effect, during protection order hearings, but the issues are not explained.

### ***Crystallisation of interim orders (page 38)***

Crystallisation of an interim order into a final order appears to be intended to convert interim orders into final orders if for any reason a “defendant” is not aware of what is going on. It has at least the appearance of a process operating by stealth – to catch the

husband/father out when he is not aware of what is going on. The approach, as in all such matters, should be up-front, honest, and straightforward.

Crystallisation should not be implemented.

## **Chapter 7. Emergency orders (page 40)**

### ***Grounds for making an emergency order (page 40)***

These provisions need to be closely monitored to make sure they are in fact administered in such a way as to properly carry out the intentions of the legislation.

### ***Explanation of emergency order (page 41)***

A good suggestion.

### ***Length of emergency protection order (page 41)***

Point (d) does not appear to make sense when compared with the text material.

## **Chapter 8. Enforcement of orders (page 42)**

No comment.

### ***Explanation of order (page 42)***

OK.

### ***Contravention of order (page 42)***

Proposed prison terms seem far too high when there are provisions in the criminal code for dealing with these offences. Why are they so high? For what sort of breaches? And what is the comparability with other types of offences. What type of “offences” are the \$5,000 fine and 5 years’ imprisonment supposed to apply to?

No satisfactory explanation was given by government previously of the need for changes to penalties for breaches of "domestic violence" increasing them, in some cases, to five years gaol. It is now proposed to go even further and apply an extreme penalty in the ACT to a first breach. If consistency between provisions relating to first and subsequent breaches is appropriate, the financial penalty for a first breach should be reduced to \$2,000.

It is noted in, this context, that an individual involved some years ago in a billion dollar fraud in Australia, i.e., the equivalent of stealing a *million dollars* from each of *a thousand* families, was gaoled for four years with a non-parole period of slightly over twelve months. Putting the enormous level of damage to thousands of families in that case on the same level as (or even below) one infringement of a ADVO by one desperate parent is absurd and offensive.

These provisions, furthermore, are proposed for introduction at a time when the Family Court's failure to enforce its own orders for access by fathers to their own children is notorious.

### ***Summary of issues (page 43)***

It is proposed that the court must explain to the aggrieved party that if they aid or abet the respondent to contravene the order they “may” commit an offence. Why is it a case of “may be”, and not a case of “will”. The second party could be aiding and abetting the first party to commit an offence which will put him/her in gaol for 5 years. Failure to propose punishment of deliberate breaches of DVPO’s by applicants amounts to discrimination.

What happens/should happen if an “aggrieved” woman deliberately rings up the respondent to abuse him? A great many DVPO’s are in fact deliberately breached by the so-called victim.

This is of particular concern given that the Government does *not* propose to introduce as a defence to the breach of a protection order that the aggrieved person consented to the breach.

The whole question of commission of offences and aiding and abetting commission of offences must be considered and explained properly.



## **Chapter 9. Extension, amendment, and revocation of final orders (page 44)**

### ***Extension of final orders (page 44)***

Why does the government propose to remove the time restriction of one year on the extension on DVPO's to "bring it into line with personal protection orders". If personal protection orders and DVPO's are considered to be so clearly different in other respects why are they so conveniently considered to be the same in this context?

Indefinite orders are unreasonable. 12 months is long enough under an order which may have been unjust anyway and stops legitimate contact with children. Indefinite orders will be used against men and their children.

Why does the MDVL recommend establishing a process that requires the court to conduct a preliminary "ex parte" hearing to determine the merits of an application to amend or revoke a protection order? Why is it to be ex parte? To what extent has this been an actual problem in the past?

### ***Amendment or revocation of final orders (page 44)***

How often do "defendants" make unmeritorious applications in fact, and why are they called "defendants" here? DVPO's are a civil process.

## **Chapter 10. Information arising from proceedings (page 46)**

### ***Restriction on publication of information about proceedings (page 46)***

Why is publication of proceedings restricted? Publication would have an important educational value. The strong impression is left that the DVCS and the courts do not want people to know what is going on. The principle should be that justice must not only be done but also be seen to be done.

Why is it intended that there be express allowance for the provision of information about a protection order going to the Director of Corrective Services? If this is prohibited at present does that mean that the previous transfer of information between the Police and Corrections illegal?

Additional relevant information is shown in Attachments A and B following.

April 2004

## Attachment A

## Summary of Studies of Violence Between Partners

Author	Country	Type of violence	Violence by women (%)	Violence by men (%)
Headey, Scott, and de Vaus, 1999	Australia	Slap, shake, or scratch partner during previous twelve months	5.1	3.2
	Australia	Hit partner with fist or with something held in hand or thrown during previous twelve months	4.1	2.5
	Australia	Kicked during previous twelve months	2.1	1.4
	Australia	Any physical assault during previous twelve months	5.7	3.7
Sherrard et al, 1994	Australia	Violence in the home	Same as men	Same as women
Stuart, 1996	Australia	Violence in the home	Same as men	Same as women
Monash University Accident Research Centre	Australia	Assault on partner causing hospitalisation through attacks to the head with a knife	More than men	Less than women
NSW Bureau of Crime Statistics and Research	Australia	Homicides involving victims under ten years of age	53 (a)	47 (a)
NSW Youth and Community Services	Australia	Physical abuse of children	55 (a)	45 (a)
NJ (study of all individuals born in Dunedin in 1972)	New Zealand	Minor forms of violence against partners, such as slapping and hitting	37	22
	New Zealand	Severe forms of violence against partner	19	6
Archer and Ray, 1989	UK	Physical violence against partner	More than men	Less than women
Carrado, George, Loxam, Jones, Templar, 1996	UK	Violence against partner	18	13
Russell and Hulson, 1992	UK	Severe violence against partner	11.3	5.8

Bland and Orne, 1986	Canada	Engagement in and initiation of violence	More than men	Less than women
Brinkerhof and Lupri, 1988	Canada	Violence towards partner	10.7	4.8
Daly and Wilson, 1988	Canada	Parent-child murders	54 (a)	46 (a)
Sommer, 1994	Canada	Violence against partner	39.1	26.3
	Canada	Slapped, punched, or kicked partner	23.6	15.8
	Canada	Severe violence against partner	16.2	7.6
	Canada	Struck partner with a weapon	3.1	0.9
Mwamwenda, 1997	South Africa	Violence as seen by children	18	2
Tang, 1994	Hong Kong	Violence against partner	Same as men	Same as women
Aizenman and Kelly, 1988	USA	Courtship violence	Same as men	Similar to women
Arias, Samos, and O'Leary, 1987	USA	Aggression in dating history	49	30
Arias and Johnson, 1989	USA	Aggression against partner	19	18
Bernard and Bernard, 1983	USA	Dating violence against partner	21	15
Billingham and Sack, 1986	USA	Initiation of violence	9	3
Bookwala, Frieze, Smith, and Ryan, 1992	USA	Initiating of violence	22	17
Brush, 1990	USA	Violence towards spouse	Same as men	Same as men
Brutz and Ingolby	USA	Violence towards partner	15.2	14.6
Burke, Stets, and Pirog-Good, 1988	USA	Violence towards partner	Similar to men	Similar to women
Carlson, 1987	USA	Dating violence	Same as men	Same as women
Cascardi, Langhinrichsen, and Vivian, 1992	USA	Violence against partner	Same as men	Same as women
Caulfield and Riggs, 1992	USA	Slapped	19	7

Caulfield and Riggs, 1992	USA	Kicked	13	3
Deal and Wampler, 1986	USA	Dating violence, other than reciprocal	Three times the rate for men	One third the rate for women
DeMaris, 1992	USA	Violence in current or recent dating relationships	The usual initiator of violence	Not the usual initiator of violence
Ernst et al, 1997	USA	Physical violence	20	19
Flynn, 1990	USA	Violence against partner	Comparable to men	Comparable to women
Follingstad, Wright, and Sebastian, 1991	USA	Dating violence	Twice the rate for men	Half the rate for women
Hampton, Gelles, and Harrop, 1989	USA	Severe violence against partner	10.8	6.4
Henton, Kate, Koval, Lloyd, and Christopher, 1983	USA	Violence in dating relationships	Similar to men	Similar to women
Jouriles and O'Leary, 1985	USA	Severe aggression against partner	4.6	3.8
Lane and Gwartney-Gibbs, 1985	USA	Courtship violence	Same as men	Same as women
Laner and Thompson	USA	Violence in dating relationships	Similar to men	Similar to women
Langhinrichsen, Rohling, and Vivian, 1994	USA	Severely aggressive towards partner	53	36
Lo and Sporakowski, 1989	USA	Violence against partner	More than men	Less than women
Makepeace, 1986	USA	Courtship violence	Similar to men	Similar to women
Malone, Tyree, and O'Leary, 1989	USA	Violence against partner	More than men	Less than women
Margolin, 1987	USA	Violence against partner	41	39

Marshall and Rose, 1990	USA	Premarital violence against partner	More than men	Less than women
Mason and Blankenship, 1987	USA	Violence against partner	Same as men	Same as women
McKinney, 1986	USA	Dating violence	47	38
McLeod, 1984	USA	Use of weapons as percentage of total assaults	86	25
McNeely and Robinson-Simpson, 1987	USA	Violence against partner	More than men	Same as women
Morse, 1995	USA	Violence against partner	48	37
	USA	Severe violence against partner	22.8	9.5
O'Keefe, Brockopp, and Chew, 1986	USA	Teen dating violence	11.9	7.4
O'Leary, Barling, et al, 1979	USA	Physical aggression against partner during the course of the year, at 18 months after marriage	35.9	24.6
	USA	Kicking, biting, or hitting partner during the course of the year, at 18 months after marriage	10.4	3.9
O'Leary, Barling, Arias Rosenbaum, Malone, and Tyree, 1989	USA	Violence against partner, at premarriage	44	31
	USA	Violence against partner, at 18 months of marriage	36	27
Pillimer and Finklehor, 1986	USA	Abuse of elderly partner	52(a)	48(a)
Plass and Gessner, 1983	USA	Slap partner	Three times the rate for men	One-third the rate for women
	USA	Kick, bite, or hit partner with fist	Seven times the rate for men	One-seventh the rate for women
Riggs, O'Leary, and Breslin, 1990	USA	Violence against partner	39	23

Rollins and Ohenaba-Sakyi, 1990	USA	Severe violence against partner	5.3	3.4
Rouse, Breen, and Howell, 1988	USA	Cause injury to spouse requiring medical attention	More than men	Less than women
	USA	Dating and marital relationships violence	More than men	Less than women
Sack, Keller, and Howard, 1982	USA	Violence against partner	Same as men	Less than women
Saenger, 1963	USA	Violence against partner	11.3	5.8
Sigelman, Berry, and Wiles, 1984	USA	Violence in dating relationships	More than men	Less than women
“Social Work”, 1989	USA	Violence in adolescent dating relationships	More than men	Less than women
Sorensen and Telles, 1991	USA	Hitting, throwing objects, initiating violence, and striking first against partner	More than men	Less than women
Statistical Abstract of the United States, 1987	USA	Child maltreatment cases	57-61	39-43
Steinmetz, 1977	USA	Violence against partner	More than men	Less than women
Stets and Henderson, 1991	USA	Aggression against partner	40	22
	USA	Severe aggression against partner	19.2	3.4
Stets and Pirog-Good, 1987	USA	Violence against partner	Similar to men	Similar to women
Stets and Straus, 1990	USA	Violence against partner	52.7(a)	47.3(a)
Straus, 1985	USA	Assault on partner	12.4	12.2
Straus, 1993	USA	Severe violence against partner	4.0	1.9
Straus, Hamby, Boney-McCoy, and Sugarman, 1996	USA	Violence against partner	4.9	3.1
Sugarman and Hotaling, 1989	USA	Violence in dating relationships	39.3	32.9

Szinovacs, 1983	USA	Violence against partner	More than men	Less than women
Thompson, 1990	USA	Violence against partner within the last two years	28.4	24.6
US Justice Department, 1995	USA	Slayings of offspring (defendants)	55	45
White and Kowalski, 1994	USA	Aggressive acts committed in the family	Equal to or more than men	Less than or equal to women

(a) Percentage of total women and men combined.