

Committee Secretary
Senate Select Committee on Mental Health
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

Email: mental.health@aph.gov.au

Senate Select Committee on Mental Health Submission from Newtown WDVCS
Coordinated by Marrickville Legal Centre Summary of Recommendations

1. That both state and federal governments increase the availability of specifically accredited domestic violence counselors to reduce the risk of mental health problems in women and children who have been exposed to domestic violence - see pars 2,7,10,11.
2. It is proposed that a joint partnership be formed between the NSW Victims of Crime Tribunal and its accredited private counsellors, to develop a Specialist DV Counselling Referral List for survivors of domestic violence - see pars 2, 3, 12
3. Expand the Federal Government's scheme to provide 6 free sessions of counselling per year via referral from local GP's.– see pars 2, 3, 7, 12, 13
4. Expand the current provision of section 562AC(3) of the *NSW Crimes Act 1900* (NSW) by including the non physical forms of domestic violence, and the abuse of power in domestic relationships. – see pars 6,7,8,14
5. That the *Family Law Act 1975* (Cth) introduce a principle to protect children from physical and psychological harm; and this should take precedence over the other principles outlined in s60B which give weight to contact with both parents – see pars 5,15
6. Expand the current provision of section 562AC(3) of the *Crimes Act 1900* (NSW) so reference be made to the possible damaging effect that domestic violence can have, NOT only on children's, but also on women's current and future physical, psychological and emotional well-being, And that domestic violence is best addressed through an integrated framework of prevention, support and intervention –see pars 7, 14
7. That Police Prosecutors and Domestic Violence Liaison Officers be specially trained in invoking the provisions of s68T of the *Family Law Act 1975* (Cth) which allows Magistrates in Local Courts to vary, suspend or extinguish existing Family Law Court orders for the purpose of making inconsistent protective AVOs in the local court – see pars 2,16
8. That the NSW Violence Against Women Unit release their recent research paper on exclusion orders to the NSW Police and that training on the provisions of s562D of *Crimes Act 1900* (NSW) be provided to specialist DV Prosecutors; DVLOs and the Police in general – see pars 17
9. That increased funding be made available to the supported accommodation program, to increase refuge places; as well as change the current policy of the Department of Housing so that women in domestic violence situations do not have to be defined as homeless before they are eligible for consideration for priority housing – see pars 2,18

Senate Select Committee on Mental Health
Response from Newtown WDVCS Coordinated by Marrickville Legal Centre

The intersectional effects of domestic violence on mental well being are broad and diverse. This submission will focus only on the role of specialist Domestic Violence counseling services; narrow accommodation needs and some minor law reform proposals that relate to state and federal domestic violence laws. The most relevant terms of reference are those that relate to prevention and include c) d) e) & h).

1. This response is written from the service perspective of the Newtown Women's Domestic Violence Court Assistance Scheme; we are one of 34 funded schemes located throughout NSW. All of our clients are female¹; many have children and all have been victims of domestic violence. Our service assists clients through the court process in seeking apprehended domestic violence orders under Pt 15A of the *Crimes Act 1900* (NSW). We are located at Marrickville Legal Centre which provides further assistance to victims of domestic violence with advice regarding Family Law & Victims Compensation matters. Our Community Legal Centre is located in an inner city suburb of Sydney which services a large multicultural population. The local government area is characterised by no less than 139 different cultural groups. The majority language groups are Vietnamese, Chinese, Arabic, Portuguese, Greek and Spanish. There is also a significant Aboriginal population² and emerging migrant groups are from the Sub Saharan Continent of Africa³

Background Information the Connection Between Mental Health and Domestic Violence

2. This submission to the Mental Health Inquiry arises out of a need for adequate referral and support services for women survivors of domestic violence. In particular it arises from the dearth of counseling services and affordable emergency accommodation available to domestic violence survivors in the Inner West of Sydney. Whilst it is important not to pathologise domestic violence; it is well recognised that there is a direct link between abuse, anxiety & depression;⁴ and that immediate access to specialised counseling services may prevent further deterioration in survivors mental health. The lack of available counseling services, is compounded by the lack of affordable emergency housing which often keeps victims exposed to abusive relationships long after they were prepared to leave. Therefore, this submission focuses on the preventative terms of reference of the mental health inquiry; and makes recommendations with regard to preventative, government and private partnerships.
3. Whilst it is submitted that various aspects of psychological abuse be elevated in the laws regarding domestic violence; it is also recognised that domestic violence can have long term and adverse effects on the psychological health of women and children survivors. Whilst it is submitted that these two notions of mental health be encompassed in the following recommendations, as previously stated it is important not to pathologise domestic violence. By way of example, the use of the "Battered Women's Syndrome" which is a legal defence to murder; has sometimes lead to the pathologising of domestic violence. The defence recognises that women who have been exposed to long term violence develop a syndrome similar to a form of "learned helplessness" which prevents them from leaving an abusive relationship; finally resulting in the murder of the perpetrator as their only means of defence. The defence has resulted in expert witnesses

¹ S126A of the *Anti Discrimination Act 1977* (NSW) - the WDVCS is exempted to assist women only.

² Close to 1,000 Aboriginals live in the Marrickville LGA "Social Plan" Marrickville Council 2003

³ Id – Marrickville Council "Social Plan - Cultural Diversity" 2003

⁴ Moodie, Dr R., "The Health Costs of Violence" - A Summary of Findings Victorian Health Promotion Foundation 2004 at 12

referring to long term survivors of Domestic Violence in court as “born victims”;⁵ rather than focusing on the sociological aspects of domestic violence that locate the prevalence of male violence against women and children as a gendered form of abuse of power.

4. The pathologising of domestic violence shifts the focus of responsibility of abuse from the perpetrator to the victim. A concept that has been ingrained in many of the myths that surround domestic violence and result in a belief, that for whatever reason “she must have deserved it”. These myths are particularly powerful in silencing the voices of the disenfranchised. It comes as no surprise that there are many more women with disabilities that have been exposed to domestic violence than those that have no disability.⁶ Women with a mental illness will also be found amongst this group and are often dependent on carers; who in many cases will also be perpetrators. Sometimes this group of women’s vulnerableness is accentuated by their dependence on carers for physical needs, or because they are afraid to speak out for fear of not being believed; or because they are unaware of their rights. Women with a mental illness often face the added burden of being ignored by the authorities when reporting domestic violence and sexual assault.⁷

The Law and the Psychological Effects of Domestic Violence

5. In the most recent amendments to the Family Law Act 1975 (*Cth*) it has been recommended that a principle to protect children from physical and psychological harm should be introduced; and should take precedence over the other principles outlined in s60B which give weight to contact with both parents. This would counter balance the trend to provide contact with both parents regardless of risk factors involving violence.⁸ Such amendments reflect the need of the courts to consider the detrimental psychological effects to children who witness domestic violence.
6. The NSW Law Reform Commission has also recommended expanding the current provision of section 562AC(3) of Pt15A of the *Crimes Act 1900* (NSW) by including the non physical forms of domestic violence, and the abuse of power in domestic relationships. It also recognizes the particular vulnerability of children witnessing domestic violence and the potential for such damage to have far reaching negative consequences into their adult lives.⁹ The effects of domestic violence on children and its potential to damage their future emotional and mental well being has been well documented in the Victorian Health Promotion Report on the Health Costs of Domestic Violence.¹⁰ It reported that exposure to domestic violence increases children’s risk of mental harm, behavioural and learning difficulties in the short term, and of developing mental health problems later in life.¹¹ The NSW Law Reform Commission have also recommended that AVLICC consider the preferred definitions of domestic violence in the

⁵ Yeo, S., “Case Comments Hickey” (1992) 16 *Crim. L. J.* 271

⁶ Howe, K., “Violence Against Women with Disabilities” (2000)

⁷ Connelly, G & Keilty, J., “Barriers Facing Women with Intellectual Disabilities” *IDRS Surry Hills* (2000) at 11 -12

⁸ Fletcher, J., *National Network of Women’s Legal Services* – “Comments on a New Approach to the Family Law System” Implementation of Reforms Discussion Paper (2004) 29

⁹ NSW Law Reform Commission, *Report 103 Apprehended Domestic Violence Orders Reforms to Part 15A Crimes Act (NSW) 1900* at Rec 5

6. Moodie, Dr R., “The Health Costs of Violence” – Op., cit. 12 - An estimated one in four Victorian children and young people have witnessed intimate partner violence (OWP 2002).

¹¹ Moodie, Dr R., Id, at Edleson 1999.

*Crimes Act 1900 (NSW) with the Children and Young Persons (Care and Protection) Act 1988 (NSW) and the Family Law Act 1975 (Cth).*¹²

7. Whilst legal considerations of psychological abuse do not necessarily suggest that all domestic violence will result in mental illness. It focuses the court's attention to the non-physically disabling aspects of domestic violence, which if prolonged and untreated can lead to many types of mental unwellness. In its report on the health costs of domestic violence the Victorian Health Promotion Foundation estimated that domestic violence was prevalent throughout the world. It found that it is a problem best addressed within a human rights, legal and health framework, through the development of multi-level strategies across sectors. It found around one in five Australian women reported being subject to some type of violence at some time in their adult lives; and it also found that women who have been exposed to violence have a greater risk of developing a range of health problems including stress, anxiety, depression, pain syndromes, phobias, somatic and medical symptoms. It also estimated one in four Victorian children and young people have witnessed intimate partner violence and that such exposure increased their risk of developing mental health problems later in life.¹³
8. In its final recommendation the Victorian Report stressed the need for primary prevention in relation to the health impacts of domestic violence. It stated "Given the serious health impacts of the problem and evidence that broader social and economic factors contribute, there is a need for a greater emphasis on primary prevention. This has implications not only for planners and service providers in the health sector, but also for those in the areas of law enforcement, education, housing and social and economic policy".¹⁴

Recommendations to Reduce the Adverse Effects of Domestic Violence on Mental Health

9. Given the previous discussion & findings; the following recommendations will focus on preventive measures which aim to reduce the damaging effects of domestic violence on mental well being. They are largely related to specialist DV counseling services; minor reform to state and federal protective laws and increased funding to emergency accommodation services.
10. Both state and federal governments need to increase the availability of specifically accredited domestic violence counsellors. In the Inner West city areas of Sydney alone, there are three services that provide counseling to survivors of domestic violence The Marrickville Community Health Centre; The Belmore Women's Centre and Leichhardt Women's Health Centre – all these services have long waiting lists; or indeed are unable to offer specialised DV counselling. The Marrickville Community Health Centre which has the local state mandate for related community health services, including preventative mental health measures; is now only able to see women for counselling when the focus of domestic violence is in relation to the children.¹⁵
11. In 2001 there were 362 domestic violence matters determined at Newtown Court and the court assistance scheme, saw 171 of those women at court. In 2002/2003 there were 228 clients who attended the WDVCS at Newtown Court; 40% of those women were born overseas; 20% spoke a language other than English and 65% had children living at home. Whilst we acknowledge that not all of those women will take up the option for

¹² NSW Law Reform Commission, Report 103 op.,cit. 11

¹³ Moodie, Dr R., "The Health Costs of Violence" op.,cit. 13

¹⁴ Moodie, Dr R., Id. 30

¹⁵ A recent referral of a women who had experienced years of domestic violence, had her children in care via DOCS with their father about to be released from prison; was ineligible for any counseling at the local community health centre. Even though the focus of the counseling was about the effects of DV on herself and children, she was ineligible because they were not currently in her care.

counseling. It is estimated that 75% of these women would have sought assistance from appropriate counseling services had they been accessible and available.¹⁶ Such support is crucial in enabling women to rebuild confidence in their lives so that they may gain ongoing access to other practical support services such as income, housing and child care. The well being of an isolated single parent is imperative to rebuilding networks in the community and developing support systems. Regular ongoing therapeutic and practical support helps to identify risk factors and can prevent further family breakdown. It is also noteworthy that the estimated need captured at Newtown Court is replicated in at least another 34 courts throughout NSW. Further though, the need for such counseling services has been supported by local representatives from the NSW AG's; the NSW Department of Community Services; Local Women's Refuges; the NSW Domestic Violence Advocacy Service and the NSW Victims of Crime Bureau.¹⁷

12. To address the need for DV counselling services it is proposed that a joint partnership be formed between the NSW Victims of Crime Tribunal and its accredited private counsellors, to develop a Specialist DV Counselling Referral List. Accredited counsellors under the VC Scheme would be specifically trained in Feminist Domestic Violence Competencies before being able to participate on the list. In NSW domestic violence victims can be eligible for up to 20hrs free counselling under the Victims Compensation Scheme. In 2003 thirty five local counsellors in the inner west of Sydney were contacted about participating in such a project, with 20 counsellors enthusiastically supporting participation. This project would require funding to coordinate; develop and deliver the training package. The specialist referral list would be made available to local government and community organisations working with DV survivors, who could then confidently refer women survivors to counsellors¹⁸
13. In further addressing the dearth of available domestic violence counsellors, another joint government/private partnership which has merit; is the Federal Government's scheme to provide 6 free sessions of counselling per year via referral from local GP's. This scheme could be expanded to train GP's in recognising mental health problems associated with domestic violence; to specifically train the counsellors in Feminist DV Competencies and to provide the accredited list of both the participating GP's and counsellors to the relevant community and government organisations. Such an approach could also be transferable to the NSW transcultural mental health team, where local GPs are able to provide referral to 6 free sessions with the identified language counsellor. Again these specific language counsellors could be appropriately trained and accredited in Feminist DV Competencies.¹⁹
14. To give some legislative weight to the above proposals this submission supports the NSW Law Reform Commission's recommendation to expand 562AC(3) of the *Crimes Act* 1900 (NSW). to provide that, Parliament recognises:
 - that domestic violence, in all its forms, is unacceptable behaviour; and
 - that domestic violence extends beyond physical violence, and
 - may involve the exploitation of power imbalances and patterns of abuse over many years; and

¹⁶ Marrickville Legal Centre – “Newtown WDVCS Court Statistics 2001/ 2002/ 2003”

¹⁷ Marrickville Legal Centre for the Marrickville/Leichhardt Domestic Violence Committee “NSW Clubs Submission” 2003/2004 at 5

¹⁸ *Id.*, 4

¹⁹ It is recommended that any feminist DV training modules be developed in conjunction with specialist DV community groups, such as the NSW DVAS; ECAV; Immigrant Women's Speakout and Community Legal Centres.

- that domestic violence is predominantly perpetrated by men against women and children; and that domestic violence occurs in all sectors of the community in traditional and non-traditional settings; and
- the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and
- the impact that such exposure can have on their current and future physical, psychological and emotional well-being;
- and that domestic violence is best addressed through an integrated framework of prevention and support.²⁰

However it is also recommended that reference be made to the possible damaging effect that domestic violence can have, not only on children's, but also on women's current and future physical, psychological and emotional well-being, And that domestic violence is best addressed through an integrated framework of prevention, support and intervention.

15. Also to give further legislative weight to the vulnerability of children exposed to domestic violence and to reduce the development of future mental health problems it is recommended that the *Family Law Act 1975* (Cth) introduce a principle to protect children from physical and psychological harm; and this should take precedence over the other principles outlined in s60B which give weight to contact with both parents. Consideration should also be given to the powers under the *Children and Young Persons (Care and Protection) Act 1988* (NSW) for cross referencing of matters of child protection with those under the *Family Law Act 1975* (Cth) and vice versa.
16. Another legislative provision under the *Family Law Act 1975* (Cth) which can further reduce women and children's exposure to domestic violence is s68T. The provision allows Magistrates in lower courts, such as those that hear matters relating to apprehended domestic violence orders to suspend, vary or extinguish an existing Family Law Court Order for the purpose of making an inconsistent apprehended domestic violence order. Such an order for example may prevent contact with an abusive perpetrator. The provision conflicts with the general principle which holds that federal laws override inconsistent state laws and may account for the reluctance of both private and police practitioners using s68T. Therefore it is recommended that women's court assistant schemes be more proactive in encouraging both private practitioners and the police to invoke the provisions under the Act. However it is the police who bring the majority of AVO applications in the local courts and it is therefore recommended that Police Prosecutors and Domestic Violence Liaison Officers be specially trained in such domestic violence provisions.
17. One of the reasons women and children remain exposed to domestic violence for long periods, further increasing the risk of developing mental health problems; is their lack of affordable alternative accommodation. Another provision which is rarely used in the courts is s562D of the *Crimes Act 1900* (NSW). This provision provides a magistrate with the power to exclude a perpetrator from a property, regardless of equitable interests; and is commonly referred to as an exclusion order. Again legal domestic violence advocates have been reluctant to invoke the provisions because of the belief that property rights somehow take precedence over personal and safety rights. However, for those women who feel adequately safe and supported to remain in their own homes this provision provides a real, immediate and safe alternative to long waiting lists associated with refuge accommodation or medium term housing. It is therefore recommended that the NSW Violence Against Women Unit release their recent research on exclusion orders to the NSW Police and that training on the provisions be provided to specialist DV Prosecutors; DVLOs and the Police in general.

²⁰ NSW Law Reform Commission, Op.,cit. 6

18. Finally, any submission relating to domestic violence has to recognize the link between affordable and available accommodation to women and children escaping domestic violence. Women often remain in abusive relationships long after they were prepared to leave because they have no income support, nor alternative accommodation. In 2001 a brief survey of accommodation needs of women's refugees in the inner west indicated that most women had been waiting for emergency accommodation for over four weeks before they were able to escape a violent perpetrator.²¹ Also some service providers suggested that there was a need for medium term housing for migrant women who were waiting the outcome of their residence applications. It was stated that DOH waiting lists were too long and any migrant women in the above category who had been unable to access a refuge, had absolutely no alternative support or accommodation open to them under the present system.²² Therefore this submission recommends increases in funding to supported accommodation programs, as well as a change in the current policy of the Department of Housing so that women in domestic violence situations do not have to be defined as homeless before they are eligible for consideration for priority housing.
19. Thankyou for the opportunity to participate in the Senate Committee's Mental Health Inquiry. We welcome any request for further participation in the inquiry and would greatly appreciate the opportunity to comment on the implementation of the strategies recommended in this submission.

Contact:

Toni Brown
Coordinator WDVCS
Marrickville Legal Centre
338 Illawarra Rd
Marrickville 2204

Ph: 9559-2899
Fax: 9558-5213
toni_brown@fcl.fl.asn.au

²¹ Marrickville Legal Centre – "Council Cultural Diversity Plan – Domestic Violence & NESB Women" July 2001

²²For those immigrant women experiencing domestic violence who cannot obtain an AVO; there is great difficulty in escaping domestic violence because there is a reluctance on the part of government to grant permanent residence under the "competent persons" declaration. This means many women must return to violent partners or their country of origin, which is often unviable. This has resulted in more and more women and children facing homelessness and seeking accommodation in women's refuges. In a 12mth period in 1999, there were 96 migrant women and their 111 children who did not have access to financial assistance, housed in women's refuges in NSW; 64 women were ineligible for income support due to their visa classification whilst the remaining 32 were awaiting permanent residence. The study also noted 42 women who had returned to their partners in the 12mths prior to the survey taking place. Pham, A., "Migrant Women Trapped in Violence" Immigrant Women's Speakout Newsletter Issue 8 Autumn 2000. at p5