19 March 2012

The Director
Standing Committee on Social Issues
Parliament House
Macquarie St
Sydney NSW 2000
Fax: (02) 9230 2981

**Re: Inquiry into domestic violence trends and issues in NSW – supplementary questions & corrected transcript**

Please find enclosed a copy of the corrections I submit should be made to the uncorrected proof of the evidence I gave to the Committee on 20 February 2012 – these are indicated in red on the hardcopy. Arising from this evidence there is also one area in which I seek to provide further information or clarification:

- *Research methodology* (pp. 27-28 of the transcript). In addition to my comments made to the committee, I would also like to emphasise that when considering the most appropriate research methodology, one needs to be very aware of the research question that is being examined and the best way of obtaining data that assists in exploring that research question. This may involve quantitative research, qualitative research or mixed methods. In the context of the research question, one needs to be very aware of the strengths and limitations of the research methodology that has been adopted, what it can reveal and what it is unable to. It is about selecting the most appropriate method(s) for the question being examined and the resources available. In this way it is not possible to provide a 'benchmark' answer to this question.

In my evidence I indicated that I would forward to the Committee a copy of my thesis, pointing to the sections of my thesis that are relevant to the questions and answers I provided during my oral evidence:

- The full electronic copy of my full thesis can be accessed at: http://ses.library.usyd.edu.au/bitstream/2123/5819/1/01%20J%20Wangmann%202009%20Thesis.pdf
- I suggest that the Committee may like to read the discussion of terminology (pp. 21-23). I adopted the term 'domestic violence' for the purposes of my thesis given the legislation and jurisdiction in which I was writing. This section briefly raises some of the competing arguments regarding terminology in this area.
- The Committee may also be interested in *Chapter 8: Dual Applications* (pp. 198-218). This chapter contains information about dual applications, some examples of dual application complaint narratives, and a discussion about primary/ predominant aggressor policies.
- A more general discussion about the adequacy of complaint narratives is addressed at pp. 92-100.

I have also enclosed my responses to the supplementary questions.

Please do not hesitate to contact me if you require further information or have any questions about my comments or suggestions.

Yours faithfully

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**Dr Jane Wangmann**

**SUPPLEMENTARY QUESTIONS**

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**Apprehended Domestic Violence Orders (ADVOs)**

1. In evidence to the Committee (Evidence, 20 February 2012, p 27) you suggested that there needs to be much more detail and specificity in ADVO complaints. Can you elaborate on this suggestion? What further detail and specificity should be included and what is currently being left out?

It is important to recognise that the level of specificity and detail that might be required in a complaint for an ADVO is a very careful balancing process. Complainants are recounting events that took place (and were often repeated) over a long period of time – this necessarily impacts the ability to provide for full accurate recall. They are recounting events perpetrated by a current or former, intimate partner[1] (or other relationship). It is also important to recognise that the nature of intimate partner violence means that there are frequently no witnesses to the event, other than the victim and perpetrator – so any traditional legal notions of evidence, corroboration, and reports to the police are generally absent or of a completely different quality to violence and abuse that takes place where there is no relationship between the parties.

However, at the same time, some of the complaints that I examined in my study barely set out information that would meet the legislative requirements. They were incredibly vague, lacking in detail, and often referred to only single incidents (which is not necessarily problematic, but fails to present a full picture of domestic violence which is, by its very nature, a patterned and repeated offence). While for some cases the poor drafting or focus on a single incident may have little impact on the resolution of the matter – it does become a more important concern where there are competing versions of the same incident, where there is a cross application, where the victim does not easily fit within traditional notions of a 'real' or 'genuine' victim, where the victim may experience difficulties communicating orally, or where the incident mentioned (often being the most recent) is of a more minor nature. These cases are what Alesha Durfee in her study of protection orders in Washington State (USA) referred to as 'border cases'.[2] Clearly the adequacy of a complaint narrative becomes critical where it is contested or the court is not quite clear whether the requirements of the legislation have been satisfied or not.

My examination of court files as part of my study on cross applications revealed that a number of complaints were very poorly drafted. As I stated at page 95 of my thesis:

> Many complaints analysed for this thesis were clearly inadequate; by and large they focused on a single incident, there was often too little information, too little detail, and/or a considerable amount of irrelevant information.

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[1] I refer to intimate heterosexual partners as this has been the focus of my research to date.

[2] Alesha Durfee, *Domestic Violence in the Civil Court System* (PhD dissertation, University of Washington, 2004) 135-136.

The following are two examples of poor quality complaint narratives that emerged in my study:

> *The defendant and the PINOP have been married since* [date]. *The* [defendant] *has an issue with alcohol and this has caused several problems including an eviction from a previous address. The couple are constantly the subject of domestic altercations, in the past the defendant has sometimes been* [the] *PINOP…*
>
> *The parties have been married for about four years. Police were called to the premises today by a third party. Police have attended and found there has clearly been an altercation between the parties, however it is unclear who may have been the aggressor and who may have been the victim. Both parties have suffered injury consistent with some parts of their story and Police are satisfied that unless an order is made against each party there is the likelihood or probability of further violence between the parties. The matter still remains subject to further investigation.*

This assessment of complaint narratives as inadequate was confirmed by a number of legal professionals that I interviewed. The following is taken from pp. 96-97 of my thesis:

> This assessment that many complaints are of poor quality was confirmed in the interviews with key professionals.[3] MAG4 described the quality of complaints as '*atrocious*' with complaints generally being just '*bare bones…with very little information*' resulting in a '*wonderful story which says nothing*'. MAG3 noted the variability of complaints, with some being incredibly detailed, while others are '*a load of absolutely incomprehensible garbage*'. Police prosecutors were similarly scathing:
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> > *…there's not enough put in the actual allegation itself to get the order. Say for example, … a PINOP makes* [a complaint that]*… she was harassed on a particular day and that's why she wants the application and that's all that appears in the* [complaint]. *And when you roll along to court she'll walk in with you know a trolley load of documents and records and 'oh this has been going on for months' but the actual* [complaint] *itself is…confined to a very small time frame. That's probably the biggest problem*.[4]
>
> While both DVLOs and police prosecutors made critical comments about the standard of complaints written by police, they invariably asserted that there had been improvements in recent years as a result of the training provided to general duties officers.[5]

The adequacy of the complaint narrative is not only important for the decision to be made in the Local Court, in addition that complaint, and any decision made on its basis may have repercussions for other legal proceedings for example, Family Law proceedings.

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[3] See DVLO1, DVLO3, DVLO4, DVLO5, MAG2, MAG3, MAG4, MAG5, PP1, PP2, PP3, PP5, WDVCAS2 and WDVCAS3. Compare MAG1 who noted that while complaints were '*fairly…brief*' they generally provided '*adequate* [information]…*to ascertain…the circumstances of the dispute*'.

[4] PP1. See also PP3.

[5] See DVLO3, DVLO4 and PP1.

On this question of improving evidence of family violence (whether written or oral) I refer the Committee to the detailed work of the Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response,* ALRC Report 114, NSWLRC Report 128 (2010), ch 18 'Evidence of Family Violence'.

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| 2. At the Committee's first hearing, Dr Lesley Laing urged the Committee to consider whether victims receive justice from the current legal system, and asked whether ADVOs only give women "a cheap form of justice" (Evidence, 17 October 2011, p 50). What does your research tell us about women's experience of ADVOs, as well as of the legal system more broadly? |

My reading of Dr Laing's evidence is that she was referring to the resources that the government makes available to facilitate the implementation and functioning of the ADVO system. In summary I agree that there are concerns about the level of funding made available to the Local Court system given the large number of AVO matters that are dealt with by the system each year. My study on cross applications, which involved interviews with a small number of magistrates and observations of court proceedings, revealed the following:

- A number of magistrates (particularly in metropolitan Sydney) are expected to deal with a large number of matters on a given list day (and the range of legal matters that might appear on that day, even if it is nominally recognised as the 'AVO day');
- As a result matters were generally deal with in a brief fashion – my observations revealed that generally matters were dealt with within three minutes (a similar finding was made by Rosemary Hunter in respect of the Victorian Magistrates Court handling of protection orders[6])

This has a number of repercussions for the process, the orders that result, and how victims (and defendants) find the process:

- Matters are more likely to be dealt with in a routinised and habitual fashion;
- There is little opportunity for victims to have their story about violence told, listened to, and affirmed;
- There is little opportunity for the court to address lack of community tolerance for intimate partner violence; and
- There is little opportunity for key legal players, such as magistrates, to convey important information about the way in which domestic violence is responded to in this legal arena.

[6] See Rosemary Hunter, *Domestic Violence Law Reform and Women's Experience in Court* (Cambria Press, 2008) 81.

3. What other strategies would you recommend to reduce breaches and improve compliance with ADVOs?

I don't have any detailed comments to make in response to this question. However I suggest that if more time were able to be made available to each case when it is dealt with (as discussed above) – then there will be more time in which the court can convey the seriousness in which these matters are seen, that the law takes it seriously, the terms of the order, and that there will be consequences for the breach. There is much to be said about the messages that are conveyed via the process itself – victims will be believed and supported, that the system does not tolerate IPV, and that perpetrators of such violence will be responded to accordingly.

**Penalties and the court system**

4. Some submissions have suggested that the existing penalties for domestic violence offences are adequate but are applied inconsistently (see for example Mt Druitt Family Violence Response and Support Strategy Leadership Group, Submission 23, pp 3-4 and Legal Aid NSW, Submission 34, p 9). On the other hand, the NSW Police Association (Submission 63, pp 5-6) considers that the courts are too lenient and refuse to impose available penalties, and recommends that penalties for domestic violence be reviewed in light of research. What is your view of these perspectives?

The matters raised in this question do not fall within my current research – I therefore am unable to provide a response to this question.

5. Inquiry participants have suggested that magistrates could benefit from further training, a bench book and/or comprehensive practice note to improve their decisions about domestic violence matters. Have you any comments on whether and how magistrates' work should improve?

I agree that there is a need for further training – again I refer the Committee to the extensive work of the ALRC and NSWLRC (see ch 31 'Education & Data Collection').

I would however like to draw to the Committee's attention that the need for training, how it might be implemented and so on, is not a simple question – the nature and content of that training, and the work environment in which it is expected to be implemented (discussed above) also needs attention and focus. Many of the legal professionals I interviewed for my PhD research (magistrates, police prosecutors, solicitors etc) provided well developed and nuanced definitions/ understandings of domestic violence when asked a general question to that effect. However when more practice orientated questions were asked respondents invariably returned to more narrow incident-based definitions. There is a need then to be able to move beyond training that is focused on generally developing understandings about domestic violence, and instead ask how this can be more effectively translated by magistrates into their work environment. This necessitates not only changes to the content and nature of training, but an appreciation of (and commitment to change) the work environment. One magistrate in my study reflected on the schism between 'ideological based training' and the work environment:

> *…the sheer volume of getting through 80 matters in an AVO list … what you need training in is recognising the matters where you're going to have to spend more time* [on] *… given that if you've got 80 matters in a five-hour day how many minutes is that per matter? Not very many.*

It is not possible to only make changes in regard to the content of the education and training that judicial officers engage in – without also addressing the demands of the work environment that sometimes make it impossible to implement such training.

6. Have you any further recommendations about how the court system should be improved in NSW?

No.

**Police practices**

7. A number of participants report that the quality of police practices can vary from area to area, for example in relation to the charges that are laid and whether victims are referred to other services. They pointed to the role of leadership in a local area command in ensuring effective responses by officers, supporting DVLOs, making sure training takes place etc, and also suggested that additional training for police is warranted. What is your view on these suggestions?

8. Have you any comments or recommendations with regard to Domestic Violence Liaison Officers?

9. Have you any further recommendations for how the police system could improve in its responses to domestic violence?

I made a number of comments in my oral evidence regarding the police, the important role of the DVLO which needs to be supported and enhanced, and the critical role of support from the police hierarchy. I do not have anything further to add to the responses that I then provided – I do however draw to the Committee's attention the relative consistency of statements and recommendations over the last 15 or so years calling for greater seniority of DVLOs, the need for additional resourcing to police prosecutors and so on.

**Service provision and early intervention**

10. Do you have any comments or recommendations with regard to prevention and early intervention in relation to domestic violence?

No.

11. At our first hearing, some non-government stakeholders suggested that on balance, domestic violence policy has been too focused on the role of the police and the courts in NSW, at the expense of other services for victims and children.

- What is your response to this?
- Have you any recommendations in relation to non-legal services for victims and children?

I agree that there has been considerable focus placed on legal responses to domestic violence and that there is a need to provide similar focus on other responses – the importance of a more varied service response is particularly highlighted when we recognise that a large proportion of domestic violence incidents are never reported to the police, and hence never come to the attention of the criminal law or are the subject of ADVOs. Responding appropriately to domestic violence is not the sole response of one government agency (or type of service) – rather it necessitates an integrated whole of government response in effective collaboration with the non-government sector. It is not an either/or response – many victims require and seek out legal responses, others will not for a considerable period of time, if at all – all of these victims and perpetrators have a wide range of needs of which the law can only provide a limited response.