



Western NSW Community  
Legal Centre Inc



WESTERN WOMEN'S  
LEGAL SUPPORT

**Western NSW Community Legal Centre Inc. Submission to:  
Audit Office of New South Wales  
Police responses to domestic and family violence**

October 2021

**1. Background**

Western NSW Community Legal Centre Inc. (**WNSWCLC**) is a community-based, not-for-profit organisation located in Dubbo NSW that provides free legal services to people in Western NSW who experience social, economic and/or geographic disadvantage. WNSWCLC provides legal advice, ongoing casework, referrals and representation, and offers outreach services to rural and remote towns, servicing an area of approximately 200,000 square kilometres, bordered by Mudgee in the east, the Queensland border to the north, and Bourke and Cobar in the west. WNSWCLC also engages in community legal education, law reform and offers media comment on issues of importance.

Western Women's Legal Support (**WWLS**) is WNSWCLC's specialist domestic violence unit. WWLS was established in 2015 after the Commonwealth Government identified Western NSW as having some of the highest rates of family and domestic violence in the country. WWLS is one of two specialist family and domestic violence legal services in NSW, specifically funded under the Commonwealth Government's Women's Safety Package to provide holistic support to female victim-survivors. WWLS currently employs two lawyers, one domestic violence caseworker and an Aboriginal support worker and services the same geographic area as WNSWCLC.

The offices of WNSWCLC and WWLS are located on the land of the Tubba-Gah people of the Wiradjuri Nation, who we recognise as its traditional owners and we acknowledge that sovereignty was never ceded. In addition to Wiradjuri Nation, the area of Western NSW which we service spans across the traditional land of the Kamilaroi, Wongaibon, Wailwan, Ngemba, Barkindji and Murrawarri peoples. Western NSW represents approximately 2% of the total population of NSW but is home to over 10.5% of NSW's Aboriginal and Torres Strait Islander peoples. In the 2020/2021 financial year, 36% of our clients identified as Aboriginal or Torres Strait Islander, reflecting the disproportionate disadvantage that Aboriginal and Torres Strait Islander peoples continue to face.

## 2. Police Response to Family and Domestic Abuse

Police play a critical role in the response to family and domestic abuse across Australia. In 2017, 44% of all assaults recorded by NSW police involved family and domestic abuse.<sup>1</sup> In addition to responding to specific incidents of abuse, police also play a vital role in applying for, and enforcing, ADVOs on behalf of victim-survivors. All up, it is estimated that up to 40% of general police officer's duties involve dealing with family and domestic abuse.<sup>2</sup>

WNSWCLC and WWLS acknowledge the efforts of the NSW Police Force in proactively responding to family and domestic abuse and protecting the safety of women and children at risk of abuse. We acknowledge the improvements in policing culture and practice which have been made over the last two decades, in particular through the implementation of recommendations of the 1999, 2006 and 2011 NSW Ombudsman reports into policing of domestic violence in NSW. We also welcome the development and implementation of the Code of Practice for the NSW Police Force Response to Domestic and Family Violence (June 2018) (**NSW Police Code of Practice for DFV**) and commend the sustained commitment of the NSW Police Force to continually strive to strengthen its responses to family and domestic abuse.

However, despite inroads being made, women's experiences of police responses to family and domestic abuse in Western NSW remain varied and many women still report wholly negative experiences in engaging with police. As a result, we believe that there is still significant room for improvement in the way police respond to family and domestic abuse.

### 2.1. Importance of positive police responses to family and domestic abuse

The importance of a victim-survivor having a positive experience with police in relation to an incident of family and domestic abuse cannot be overstated. Positive experiences with police can empower victim-survivors and assist them to reclaim agency over their lives and heal, while negative experiences can compound the psychological impacts of abuse and re-traumatise victims. The nature of a victim-survivor's engagement with police will often also determine whether they report future incidents to police and whether they engage with other support services.<sup>3</sup> For Aboriginal and Torres Strait Islander communities, positive experiences with police are even more important because of historical distrust of police rooted in government displacement and child removal policies.

From a victim-survivor's perspective, the act of reporting family and domestic abuse to police is psychologically much more difficult than it is for any other criminal offence (barring sexual assault). This is because family and domestic abuse is deeply personal in nature; the perpetrator is someone the victim loves, or has loved. As a result, many victims report

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<sup>1</sup> Australian Institute of Health and Welfare, above n 3, 20.

<sup>2</sup> Rachel Olding, 'Frontline police now 'better equipped' to deal with domestic violence, Assistant Commissioner Mark Murdoch says', *Sydney Morning Herald* (online), 11 March 2014 <<https://www.smh.com.au/national/nsw/frontline-police-now-better-equipped-to-deal-with-domestic-violence-assistant-commissioner-mark-murdoch-says-20140310-34hvv.html>>.

<sup>3</sup> Heather Douglas, 'Policing Domestic and Family Violence' (2019) 8(2) *International Journal for Crime, Justice and Social Democracy* 43.

experiencing feelings of shame and/or betrayal when reporting abuse. In most circumstances, the abuse also occurred repeatedly over a prolonged period of time and has inflicted long-term complex trauma on the victim-survivor. In reporting the abuse, a victim-survivor is making themselves psychologically vulnerable to re-traumatisation in having to tell their story and putting themselves at significant risk of both physical and psychological harm if they are not believed. Extensive research has shown that the most dangerous time for a victim-survivor is when they are trying to escape abuse.

## **2.2. Improvements to date**

When engagement with police is a positive experience for a victim-survivor, it can assist to break the psychological hold which the perpetrator has over the victim. By proactively taking steps to involve victim-survivors in the policing process, police also have the capacity to assist in the psychological recovery of victim-survivors by empowering them to have control and agency over decisions which affect them.

In the past 10 years, WNSWCLC and WWLS have noticed a significant improvement in police recording and capture of reports of domestic and family violence in event numbers (in COPS). The Domestic Violence Liaison Officer (DVLO) role has also become a critical tool that can help keep victim-survivors safe, when it works well. Case Study 1, below, is an example of a real client's positive experience engaging with a DVLO in our region.

### **Case Study 1: Sasha**

Sasha came to our centre with her NDIS support worker. The NDIS worker believed Sasha to be in a domestic violence relationship, however was having difficulties explaining to Sasha the signs of domestic violence and how she can be supported during/post relationship. Sasha communicated her wishes to our staff and stated she is seeking advice regarding an ADVO revocation.

Sasha and George have been in a relationship for 12 months. Sasha has a cognitive impairment. Sasha reports that George is 'a big drinker' and has been seen hiding in bushes, watching her interact with her friends. Sasha recalls once she declined a kiss from George and he left the premises in frustration slamming a glass door so hard the glass door shattered, resulting in police taking out an ADVO.

Sasha did not understand the ADVO nor its conditions. Our staff explained the no contact ADVO conditions to Sasha. Upon learning the order meant there was to be no contact with George, Sasha became quite distressed and upset. Sasha informed our staff there had never been any physical violence perpetrated against her, and explained that she is not scared of George and wants to be in a relationship with him. Sasha wants to seek revocation of the order to allow her to maintain contact and a relationship with George.

Sasha met our duty solicitors at the Local Court the next day. Our staff assisted Sasha in communicating her wishes to the police DVLO. The DVLO was open to varying the order, after listening to Sasha and understanding that both parties wanted to remain in the relationship and that the order was a very strict no contact order despite there being no physical violence. Our staff and Sasha successfully advocated for a variation to the order, allowing contact between Sasha and George. Sasha reported feeling heard and understood by police despite her previous distrust of them.

### **Case Study 1: Sasha (Continued)**

Approximately one month later, Sasha contacted our office again, stating she would like to get the old ADVO back. Sasha and George had separated. George had increased his consumption of alcohol, and despite being separated, would park his car across the road from Sasha's house and watch her from his car or nearby establishments. Sasha reports she has seen George sleeping in his car out the front her house. George would phone Sasha multiple times during the night and early hours of the morning waking her up. Sasha reported feelings of harassment.

Our service encouraged Sasha to report to police. Sasha recalled meeting the DVLO at the Local Court and trusted her, remembering she felt supported, heard and understood by the DVLO. The DVLO was very accommodating to Sasha, ensuring she had access to the supports she may need in making her statement/reports.

Case Study 2, below, is an example of a real client who, initially, had a negative experience with misidentification by general duties officers. However, a proactive and collaborative DVLO was able to build a relationship with the client, which police then built upon to help keep the client safe in the long-term.

### **Case Study 2: Jane**

Jane was in a 12 month relationship with Xander. In the last 6 months of the relationship, Jane and Xander's relationship had begun to deteriorate. Xander had increased drug and alcohol consumption and had become significantly and increasingly more violent towards Jane.

Jane recalls incidents where Xander would hold knives to her throat, throw her around and beat her with objects causing injuries such as lacerations to her head. Jane states Xander would often threaten that, if she told anyone about the DV incidents occurring in the home, he would call the police and make allegations about Jane. This eventually led to an ADVO against Jane, and later cross ADVO's on each party.

During an incident Jane had dropped one of Xander's objects/possessions, causing it to break. Xander reported this damage to police, resulting in a breach of the order against her. However, police identified Jane as the victim from this point forward.

Jane engaged with our service, worried that the police had misidentified her as the victim and that she may lose her employment because of the recent ADVO.

Jane relocated due to the violence, however Xander was aware of her location and would regularly drive past her temporary accommodation. Jane developed a good relationship with the police DVLO and felt comfortable disclosing and reporting any breaches to the DVLO.

## **2.3. Key areas for ongoing improvement**

### **2.3.1. Communication**

Despite the aforementioned improvements, many of our clients remain dissatisfied with police responses because police fail to take their complaint seriously, fail to offer the victim due respect and time, fail to explain what is happening and why, fail to inform the victim of charges being laid, and fail to communicate with victims about the status of the matter, including keeping them up-to-date on criminal prosecutions and/or informing the victim of sentencing outcomes.

WNSWCLC and WWLS understand that police are not always able to take out an ADVO when a client may want one. However, taking the time to explain this to the client in a clear and accurate manner is very important to the client's experience engaging with police. There may not be enough for an ADVO at the time of an initial report, but it is important that clients trust police to believe them and take action if they need to get in contact again in the future. Case Study 3 is an example of challenges in the clarity of police communication when declining to take out an ADVO for a client's benefit:

### **Case Study 3: Joanna**

Joanna approached our service feeling very confused about why police wouldn't take out an ADVO for her protection. Joanna reported that her ex-partner was attending her house regularly, screaming at her and threatening her because she had started Family Court proceedings.

Police told Joanna that, unless she had injuries she could show them, or a video recording of her ex-partner threatening her, that they were not allowed to take out an ADVO for her benefit. Joanna was confused because her sister is currently a protected person on an ADVO, made against her wishes, because she had told police her ex-partner had approached her in a park (and doing so was not a breach of any existing orders) to ask if he could see the children. Joanna stated that there was no actual threat of violence against her sister, and no video recording, so Joanna is not sure why she needs a video recording to be protected.

Joanna has tried asking police about this, but the officers just re-state that they cannot take out an ADVO for her benefit. Joanna is currently trying to save for monitoring of security cameras at her house, so she can gather enough evidence (based on police instructions) to allow police to take out an ADVO.

Similarly, when an ADVO is taken out for a client's benefit, it is important that police explain what the ADVO does for the client. As in Case Study 4 below, if the client doesn't have a copy of, and understand, the ADVO they are unlikely to know if the ADVO is being breached.

### **Case Study 4: Charlie**

Charlie and Greg were in a relationship for several years. Approximately six months ago there was an incident of domestic violence where Greg physically assaulted Charlie. Greg and Charlie separated after this and police issued an ADVO for Charlie's protection. Greg was also facing criminal charges.

Charlie was referred to our centre by WDVCAS, following a recent domestic violence incident with her ex-partner, Greg. Upon meeting and speaking with Charlie, it became clear she was somewhat aware there was an ADVO but did not know what the conditions were or how the ADVO worked. Charlie reports she never received a copy of the ADVO.

Charlie reports for the last two months Greg has been contacting her by phone and various social media platforms. Charlie states Greg has also arrived at her house unannounced, uninvited and refuses to leave until Charlie speaks with him. Charlie further reports Greg's family members and friends have contacted her recently asking how she is, which Charlie later found out was at Greg's request. Charlie has seen Greg's car parked out the front of her house late at night and often see's it driving past her house each day.

Charlie expressed she feels intimidated, fearful and harassed by Greg but does not know what to do or if the ADVO is still in effect. Our office (with Charlie's permission) contacted police and obtained a copy of the ADVO. We then advise Charlie of the conditions on the order, that multiple breaches had occurred (based on her instructions), and the process for reporting breaches to police.

### **2.3.2. Misidentification**

In many cases of prolonged emotional or psychological abuse, the abuse will have included attempts by the perpetrator to deter reporting, including the perpetrator telling the victim that they are in control, that there is nothing the victim can do and that the police will never believe them. If the victim-survivor eventually makes a complaint to police and their response, whether actual or perceived on the part of the victim-survivor, aligns with the response predicted by the perpetrator, police can, in the mind of the victim, become a colluder to the abuse which can significantly compound the psychological impact of that abuse. This, in turn, creates a distrust in police for the victim-survivor and significantly reduces the likelihood of them making further complaints in the future.

Case Study 5, below, highlights the importance of correct identification by general duties officers – the first, critical, point of engagement for a victim-survivor with authorities.

#### **Case Study 5: Alice**

Alice and Ben have been married for over 20 years. They have been separated for 6 months but remain living under the same roof. Alice and Ben do not interact with each other whilst at the home, and Alice wishes to relocate from the home.

Alice reports that, throughout the marriage, Ben has been physically, verbally, emotionally and financially abusive. Ben is controlling and manipulative; controlling all finances and monitoring where Alice goes when she leaves the house, also calling Alice to ask where she is and who she is with. Alice reports feeling scared and anxious whenever she leaves the house, fearing what Ben will do when she goes home.

Alice recalls instances of violence where Ben has spat in her face, threw objects at her, threw her from the bed, twisted and bruised her arms.

Recently, Alice and Ben got into an argument in the kitchen when Alice asked to use the caravan to stay at a local caravan park. Ben became angry and accused Alice of trying to steal the caravan. Alice, in frustration, pushed a chopping board that was on the bench. It fell off the bench and hit Ben in the leg. Alice left the home for an appointment. Arriving home, Alice was met with police at the house. Police charged Alice, put her in the paddy wagon and drove her to the police station where they asked her to give a statement. Alice was charged and an ADVO taken out for Ben's protection. Alice was told by police she could not go home, and must find somewhere else to stay.

Ben has been threatening Alice since then, telling her that she is violent and police know that now. Alice has indicated to our service that she will never engage with police for assistance after her recent experiences, even as Ben's threats escalate.

Unfortunately, in our experience, misidentification remains a very real and prevalent issue in policing of domestic violence.

### **2.3.3. Otherwise 'penalising' victim-survivors for police reporting**

Should the victim-survivor be correctly identified, current police procedure in our region regarding firearms 'penalises' victim-survivors for reporting. In the central-west, many of our clients and their families rely on guns for their livelihood (i.e. as farmers, butchers, game shooters and the like).

In Case Study 6, below, police determined that there was insufficient evidence to apply for an ADVO. However, they did decide to remove her father's guns, purportedly for her protection.

#### **Case Study 6: Abbie**

Walter and Abbie have been in a relationship for approximately 2 years. Abbie reports Walter was financially, emotionally and verbally abusive.

Abbie recalls instances where Walter tried to convince her to have an abortion, called and threatened suicide, and threatened physical violence. Abbie reports receiving a multitude of verbally abusive message and phone calls from Walter. Abbie states Walter would take her money and spend it on alcohol and drugs, leaving her with no money.

Abbie states she has made reports to police regarding the abusive relationship, however police refused to take out an ADVO as there was not enough evidence to prove the domestic violence. However, after she made these reports of domestic violence to police, her father's firearms were seized by police. Abbie expressed frustration, disappointment and confusion that police believed the domestic violence perpetrated by Walter to be enough to seize her father's firearms but did not believe it to be enough to take out an ADVO for her protection.

Abbie's father relies on his guns to earn money, which he is currently using to help rent Abbie and her kids an apartment so they can live away from Walter. Police involvement in this matter has actively reduced Abbie's ability to secure her ongoing safety, and has penalised her for trying to seek help.

#### **2.3.4. Disenfranchising victim-survivors**

Finally, a more complex complaint made by a number of our clients in relation to police responses is that, in circumstances where a victim-survivor has sought police assistance because they want the abuse, not the relationship, to end, police have taken action against the perpetrator against the wishes of the victim. Case Studies 7 and 8 outline how actions taken against victim-survivors' wishes can irretrievably damage their relationship with police, causing victim-survivors to disengage from police and other services.

#### **Case Study 7: Naomi**

James and Naomi have been in a relationship for over 10 years. They have a pre-teen daughter, Sophie, and Naomi is currently pregnant with their second child. There have been sporadic incidents of violence over the course of the relationship, which always occur when James is drunk. Three months ago, a violent incident occurred, and Naomi called the police just wanting the violence to stop. Naomi was hoping police would put a Condition 1 ADVO in place, to help her set boundaries with James, and hopefully put some sort of treatment/drug and alcohol counselling in place.

Police charged James and put a no contact ADVO in place, naming both Naomi and Sophie, against the wishes of Naomi. James has never been violent towards Sophie. Naomi asked the DVLO to vary the ADVO to at least allow contact with Sophie, however the police have refused. James is now facing incarceration. Naomi has told police that she would never have reported the violence if she knew that James would be charged and would not be allowed to see Sophie. Sophie blames Naomi for stopping her from seeing her Dad and there is now significant tension in the family.

### Case Study 8: Angela

Angela and her daughter Samantha have both been caring for Angela's elderly mother, Lianne, and had just been told Lianne's treatment was now considered palliative. Angela and Samantha came home from the appointment upset and had a disagreement about who was to clean the kitchen. A scuffle occurred over a pan and Angela fell over. Samantha immediately called the ambulance.

When the ambulance attended, Angela told them what had happened and an ambulance officer notified police. Police took out an ADVO for Angela's benefit, preventing Samantha from attending Angela's house. Samantha and Angela live together at Angela's house with Lianne. Lianne is not able to leave the house. Angela is overwhelmed taking on the caring duties alone, and Samantha is very distressed that she is missing her last days with her grandmother.

Angela has tried calling police every day since the ADVO was made to try to update her statement to be clearer about how minor the scuffle was, and to ask that the conditions be varied to allow Samantha to visit the house. Angela has asked for the DVLO every time and has been told a DVLO is not available, she is not allowed to give an updated statement, and the DVLO will not speak to her. After more than 10 calls Angela was told she could speak with the prosecutor for her matter. Angela then began calling the prosecutor's office but the assigned officer was never available.

Angela was eventually told the prosecutor would not be returning to the office until her Court date, but she could speak with him then. Two days before the Court date Angela received a call from the officer in charge who told her she cannot go to Court due to COVID-19 precautions.

Angela has stated, to our service, that she is never going to call emergency services because all that comes of it is harm.

### 3. Proposed Recommendations

- a) Introduce a set of national police guidelines (to be implemented by each state/ territory police force) for responding to family and domestic abuse in a victim-centred and trauma-informed way that considers the views of victim-survivors and seeks to support and empower victim-survivors as part of the policing process.**
- b) Introduce and fund ongoing, regular mandatory training for all police officers on family and domestic abuse (including coercive control), how it affects victim-survivors and on victim-centred and trauma-informed approaches to policing.**

Each of the deficiencies in police response, discussed in this submission, could be overcome if police adopted a more victim-centred approach to policing family and domestic abuse. By imposing a positive obligation on police to communicate and support victim-survivors, the experiences of victim-survivors could be improved several-fold.

Currently, the NSW Police Code of Practice for DFV places very little value on the victim during the policing process. Other than requiring police to follow-up with a victim within seven days of them making a face-to-face report and to consult persons in need of protection when making a police application for an ADVO (which, in our experience, often does not actually occur), the NSW Police Code of Practice for DFV does not impose any positive obligations on police to support, consult with, or empower a victim in relation to

their matter.<sup>4</sup> To enhance the experiences of victim-survivors in engaging police, WNSWCLC and WWLS believe that:

1. police need to adopt a more victim-centred approach in policing family and domestic abuse; and
2. police need more training in recognising, understanding and responding to family and domestic abuse, in particular non-physical abuse. This is crucial to help minimise the likelihood of misidentifying the victim as the perpetrator of violence. It is our view that expert led, ongoing education around coercive control across the police force is crucial in educating officers to correctly identify victims and perpetrators when responding to domestic violence complaints. For example, a response by police should not just be to enquire about the incident alleged (such as Case Study 5 above), but needs to delve into the dynamic of the relationship as a whole to properly understand any power and control issues at play between the parties.

It is common in family and domestic abuse matters for women to call the police because they are seeking short-term safety, rather than prosecution and conviction.<sup>5</sup> A victim-survivor may not want the perpetrator to be charged for a number of reasons including because the victim still loves the perpetrator and wants to make the relationship work, because the victim is financially dependent on the perpetrator, because the victim wants their children to have a relationship with the perpetrator and/or because the victim does not want to see the perpetrator in gaol or their life ruined.<sup>6</sup> Each of these reasons highlight how family and domestic abuse is a uniquely personal crime.

However, despite the unique nature of the offending, the policing and justice responses to family and domestic abuse are the same as to any other offence. Police adopt a perpetrator-centred approach, focused on bringing the perpetrator to account through ADVOs and prosecution, without listening to, or considering, a victim-survivor's perspective and needs. This failure of police to listen to, consult, inform and generally communicate with victim-survivors is problematic for a number of reasons:

- victim-survivors feel disempowered in not having control or agency in matters which affect them (this often compounds existing feelings of disempowerment and inadequacy arising from the nature of the original abuse);
- victim-survivors often self-blame (or are blamed by their children) for breaking-up their family; and
- victim-survivors feel betrayed by police and are less likely to report future incidents, with many victims saying they would never contact the police again.

We recognise that there are often various issues at play in policing family and domestic abuse and that there is a delicate balance to be achieved between respecting the wishes of

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<sup>4</sup> NSW Police Force, *Code of practice for the NSW Police Force response to Domestic and Family Violence* (June 2018) 65, 104.

<sup>5</sup> Dowling et al, above n 33.

<sup>6</sup> Ibid 65, 72.

victim-survivors and ensuring their safety; balancing interests and safety is no easy task. But it is essential that police recognise the psychological consequences of not involving victim-survivors in the process and shift towards a more victim-centred approach where victim-survivor's perspectives, interests and needs are, at the very least, considered.

Should you wish to discuss this submission please do not hesitate to contact Patrick O'Callaghan, Principal Solicitor, at [patrick.ocallaghan@wnswclc.org.au](mailto:patrick.ocallaghan@wnswclc.org.au) or on (02) 6884 9422.

Yours faithfully,

**Western NSW Community Legal Centre Inc.**

Per:

A handwritten signature in black ink that reads "P K O'Callaghan". The signature is written in a cursive, slightly slanted style.

Patrick O'Callaghan

Principal Solicitor