

VICTIMS OF CRIME SUB-COMMITTEE

FINAL REPORT

The purpose of this report is to investigate the impact of gender bias on women as victims of crime in the administration of justice in Western Australia.

The reporting committee did not see as its task the investigation to determine if gender bias does exist. It accepted the finding by His Honour Mr David Malcolm, Chief Justice of Western Australia, that such a bias does exist and that the purpose of commissioning this report is to seek solutions to that problem.

Restraints on time and resources prohibited a complete analysis with case studies, victim surveys and statistical documentation. It is hoped that the material in this report however will act as a catalyst to a more expansive and comprehensive review of gender bias and its impact on women as victims.

The report does not and is not intended to focus criticism on any player in the administration of justice. The police, judiciary, lawyers, court officials and justice administrators, as well as the government at large all bear a responsibility to ensure the system is based on and reflects community standards and values. Acknowledgment also needs to be given to the considerable changes in recent times to improve the administration. Recent advancements are an indication of the system's ability and willingness to change. Yet as this report will argue, there is much more to be done.

By way of explanation as to the setting out of this document, the committee was committed to producing a report which focussed on positive, achievable and practical outcomes. Yet there needs to be some explanatory notes which clarify the perspective adopted by the committee in its examination of women as victims for two reasons; first, men and women have traditionally viewed the crime of violence against women differently, hence the historic tension between women and the Law, and second, men and women do not come to the criminal justice system as equals. Ostensibly unbiased procedures or gender neutral procedures do not necessarily operate as such in the reality of the system.

The key point of the report is that procedures must be set in place which take consideration of the inequality and unmet needs of women. Only then will unbiased treatment be achieved and the inherent power imbalance be addressed.

This report begins this reform.

INTRODUCTION

Only recently have victims become legitimate participants in the process of justice. The administration of law has traditionally focussed on the accused almost to the exclusion of the victim.

Through the process of investigation, mitigation and pre-sentence reports the system has collected an enormous amount of information about and from the accused. Whilst victim impact statements do exist, there is not the same degree of investigation made of the victim's perspective. Victims are treated as witnesses and given the same cursory attention paid all the witnesses, irrespective of their suffering as the result of the crime before the system. As a consequence, the system has come to understand only one side of the story; this has unwittingly reinforced the myths and stereotypes about women victims which maintain and reinforce systemic gender bias.

Statistics that are available on women victims are questionable. Current statistics indicate that women are less likely than men to be victims of crime. Yet the experience of women's refuges, sexual assault referral centres and other community support centres, suggests that the vast majority of women victims in WA do not report the crime against them. This experience is supported by research from America and Canada which indicates that only 10% of all women victims of crime make a complaint to the police. This evidence would suggest that current information gathering practices are seriously flawed and must be supplemented with anecdotal material for purposes of policy and service delivery. Interestingly, the current misleading statistics, by their obvious omissions, support the assertion that the justice system does not serve the needs of women victims, and in this sense they confirm the accusation of systemic gender bias in the legal system.

The subject of gender bias impact on women as victims is enormous. For the purpose of this report, the committee chose to examine only one area of victimology: violence against women. This area was chosen specifically because crimes of violence against women are gender specific. It is where the numbers of women dominate and where their experience is most graphic. Further, more than any other area of the law, it is the legal treatment of crimes of violence against women which has created a crisis of public confidence.

Areas not addressed in this report include the selection of jurors, the enforcement of orders and sentencing. These issues have been identified as important by the sub-committee; however, given the time constraints, they are referred to the Chief Justice for further consideration.

Professor Kathleen Mahoney in her address to the second seminar on Women and Justice in Perth in May 1993, put it this way:

"(The legal response to violence) is almost always a scenario of women versus men. (Conversely) the arena in which it takes place is almost always dominated by men In this setting, the woman complainant must reveal the most personal details of her relationships, her body and the most minute details of her violation.... Women say the system re-victimises them. They say it is insensitive, it is ineffective and it often puts them in a more vulnerable

position than if they had never invoked it in the first place". (Pg 46 Women and Justice II transcript).

MYTHS AND STEREOTYPES

In any study of gender bias, it is important to acknowledge the significant influence myths and stereotypes have on male decision makers and law makers in our community.

Professor Kathleen Mahoney, at the "Women in Justice Seminar", spoke of the "oldest and most durable myth in law ... that women lie about sexual assault". She stated further that interpretations of rape laws have traditionally been based on a deep distrust of the female accuser. Professor Mahoney cited the six stereotypes identified by Justice Claire L'Heaubeaux-Dube which have been seen as tainting the analysis and thinking of people judging women before the courts.

Stereotype 1 - a woman cannot be raped against her will. If she really wants to prevent a rape she can.

Stereotype 2 - true rapists are strangers.

Stereotype 3 - women fall into two categories - good and bad, maternal or sexy (or in Ann Summers terminology - "Damned Whores or God's Police"). Society condones the rape of the former while being sanctimoniously outraged about the assault on the latter.

Stereotype 4 - females are emotional and will react emotionally to a sexual assault.

Stereotype 5 - women are full of spite.

Stereotype 6 - the female victim is trying to escape punishment for her sexual behaviour.

Professor Mahoney observed that the effect of these stereotypes is "that a generalised behaviour defined by the dominant group, men, is ascribed to individual members of the subservient group, women, to their detriment (sic)".

Domestic Violence has its own set of myths and stereotypes. There is the notion that domestic violence is a private matter and that it is therefore inappropriate for outsiders to become involved - "a man's house is his castle", or the belief that the victim "asks for it" and actually enjoys the violence. Lenore E. Walker in "The Battered Woman", refers to the labelling of victims of domestic violence. They are seen as somehow "different" from other women and are believed to suffer from an "assortment of clinically defined defects including learned helplessness, addiction to relationships, co-dependency and a whole variety of personality disorders." Myths and stereotypes such as these are pervasive and evident in the lack of understanding of many police, judges and court employees about the nature of domestic violence. The 1989 Maryland Special Joint Committee on Gender Bias in the Courts noted that "too often judges and court employees deny the victim's experiences, accuse the victim of lying about her injuries, treat the case as trivial and unimportant, blame the victim for getting beaten, and badger the victim for not leaving the batterer".

The point should be made that while the above quotes rely heavily on overseas experiences, the personal stories of women given at all three Women and Justice Seminars in Perth this year indicate that they reflect the West Australian experience.

RECOMMENDATIONS

Recommendation

That the Attorney General have responsibility for carriage of the policy on violence against women. The committee calls on the Government to start a committed, co-ordinated and concentrated campaign of awareness. (Ref : para 7)

Recommendation

The Police Department should adopt Affirmative Action strategies to ensure that every station has access to a trained police woman. (Ref : para 11)

All police officers should be required to undergo regular gender awareness training to sensitise them to the difficulties women face in making a report of sexual assault. The department should be required to make the training a performance indicator and report on its measurement in the department's annual report. (Ref : para 12)

Recommendation

Police should implement procedures for keeping victims informed of the progress of a complaint. (Ref : para 14)

Recommendation

A State data collection program should be developed to record incidents of reported and non-reported sexual assault and to monitor the outcomes of those reports. This State data collection program would become one of a range of data bases that already exist within Western Australia (eg. a data base exists at SARC relating to incidents when doctors are involved with sexual assault cases - it records the number of cases, broad age categories, sex, whether the police were involved or not, whether the assault was recent or in the past, and ethnic background; there are further data bases at SARC relating to counselling statistics and at the Armadale Domestic Violence Intervention Program). (Ref : para 17)

Police training include a component on culture awareness. (Ref : para 18)

Recommendation

The DPP should institute specialist training in taking evidence from victims of sexual assault and ensure that an appropriately trained woman be present during taking of evidence to assist the DPP and to provide support to the victim. (Ref : para 23)

Recommendation

Expert witnesses should be specifically asked to provide evidence on the psychological effects of sexual assault and resultant injury to victims. (Ref : para 25)

Recommendation

A process must be established for monitoring and recording of the points of distribution of victim statements. The process should require people requesting statements to provide written justification of need, and details of how they will ensure the confidentiality of statements. (Ref : para 27)

Recommendation

The DPP should provide information to victims and their families and support workers on the realities of the judicial process to prepare them for the trial. This information should be gender and culturally sensitive and utilise a wide range of media including print, video, public lectures and training for victim support workers. (Ref : para 29)

Recommendation

Vulnerable witness mechanisms currently available should be adapted to the special needs of sexual assault victims as witnesses, including closed court TV, video and screens. (Ref : para 33)

Recommendation

Separate and private waiting areas should be provided for women victims and their families and supporters. (Ref : para 34)

Recommendation

The gender balance of court personnel should be examined and the courts be required to adopt an affirmative action policy as a matter of urgency. (Ref : para 36)

Recommendation

Guidelines be made available to the judiciary, lawyers and juries that clarify matters such as intrinsic biases in sexual assault trials and which emphasise that sexual assault is a crime of violence and violation of human rights.

The guidelines need to be culturally and regionally sensitive. (Ref : para 38)

Recommendation

Courts should adopt a child protective focus in the design and delivery of their services. Specifically, courts need to provide for adequate childcare and should take into account school hours and holidays when scheduling trials. (Ref : para 40)

Recommendation

The Ministry of Justice be required to produce a Disabilities Plan for all courts.
(Ref : para 42)

Recommendation

Education campaigns for the judiciary, Police, DPP etc to clarify notions of consent and the power nature of the crime with particular emphasis on the immateriality of the victims profession must be developed. (Ref : para 44)

Recommendation

Mediation and alternative dispute resolution remedies not be used, until after sentencing, when there are accusations of sexual assault. (Ref : para 46)

The State has a responsibility to prosecute in sexual assault cases. (Ref : para 47)

Recommendation

An official register should be established to document complaints regarding the administration of the law. (Ref : para 49)

Recommendation

The Review of the Bail Act be supported and urged to give serious consideration to the safety needs of the victims of sexual assault. (Ref : para 51)

Recommendation

That minimum awards for criminal injuries are reviewed regularly to take account of improved understanding of psychological, social and economic suffering and loss caused by a sexual assault. (Ref : para 54)

Criminal Injuries compensation is publicised as a right and that women victims be made aware of the provision which waives the three year time-line. (Ref : para 55)

Recommendation

The Commissioner of Police initiate affirmative action strategies so that the membership of and promotion within the police force reflects the composition of the community, with specific recruitment and promotion policies aimed at women and Aboriginal people. The Equal Opportunity Commission audit the processes and outcomes of this strategy.
(Ref : para 74)

Recommendation

The police recruit training includes an assessable component on domestic violence.
(Ref : para 78)

Regular in-service training includes a component on domestic violence.

Demonstrated skills in the management of domestic violence be a criteria of promotion.

Recommendation

The Commissioner of Police institute policies and procedures to ensure that crimes involving domestic violence are given the same attention as any other serious crime.

(Ref : para 81)

Police orders and regulations are to reflect the seriousness of domestic violence complaints and appreciate the urgency and danger involved therein. (Ref : para 82)

The police be required to make a written report of all calls which involve domestic violence, whether or not a offence report will be made. (Ref : para 83)

The police be required, when responding to a domestic violence call, to provide all victims with a brochure which clearly outlines all community resources available for victims, inform them of their legal rights, and provide a comprehensive list of emergency numbers.

(Ref : para 84)

The Commissioner be required to publish an annual report which informs the public and government of the number of crimes involving domestic violence, the type of crime involved, the police response to the crime as far as arrests made and charges laid, and provide the routine orders and regulations which police are to follow when responding to crimes involving domestic violence. (Ref : para 85)

Recommendation

Current police routine orders, policy, or instructions which recommend counselling or mediation for victims of domestic violence be immediately amended to conform with the Nation Committee on Violence Against Women's Mediation Guidelines. (Ref : para 87)

Recommendation

The police be required to actively collect evidence, interview witnesses, and investigate allegations of crimes involving domestic violence. (Ref : para 90)

Recommendation

Murdoch University School of Law and University of Western Australia School of Law incorporate within their curriculums specific units to address domestic violence.

(Ref : para 94)

The Law Society of Western Australia provide continuing legal education programs and professional outreach which will educate lawyers on the special needs of victims of domestic violence. (Ref : para 95)

On the job training for Court personnel include a component on domestic violence and that component emphasise the importance of serving the needs of victims in a sensitive manner. (Ref : para 96)

As part of the Chief Justice's judicial education program, specific training should be incorporated to address domestic violence and appropriate judicial response to it. (Ref : para 97)

Recommendation

Current Judicial policies or programs which recommend counselling or mediation for victims of domestic violence be immediately amended to ensure compliance with the National Committee on Violence Against Women's Mediation Guidelines. (Ref : para 99)

Recommendation

That there be an evaluation of how Victim Impact Statements are used and their impact upon victims of domestic violence in court. (Ref : para 101)

Recommendation

The Justices Act 1902, Section 172 be immediately amended to streamline the restraining order (r/o) application process. The "show cause" hearing be set only upon application of the defendant. When served with the restraining order, the defendant shall have 30 days in which to object to the order. Defendant's application for hearing must clearly state the grounds upon which he objects to the r/o. Upon receipt of defendant's objection, a hearing date shall be set to occur within 21 days. (Ref : para 104)

Recommendation

The Justices Act 1902 Section 172 (5) and (6) should be amended to read :

(5) Justices may make an order under this section or under section 174 restraining the defendant from entering premises, or limiting his access to premises, whether or not the defendant has a legal or equitable interest in the premises. In making such an order, the justices shall consider the safety of occupiers of said premises, other than the defendant, to be of paramount concern. (Ref : para 107)

In making such an order the justices shall consider-

(a) the effect of declining to make such an order on the person against whom the behaviour that forms the subject-matter of the complaint was directed;
and (Ref : para 109)

(b) the effect of declining to make the order on any children of, or in the care of, the person against whom the behaviour that forms the subject-matter of the complaint was directed. (Ref : para 110)

(6) When making an order under this section or under section 174 restraining the defendant from entering premises, the justices may provide for suitable arrangements to be made whereby the defendant may take possession of personal effects or other belonging of the defendant that are in the premises. (Ref : para 111)

Recommendation

To assist the Court and victims of domestic violence lay advocates, with leave of the Court, be allowed to appear on behalf of victims during all restraining order proceedings.
(Ref : para 113)

Recommendation

The WA Evidence Act 1906 Section 9 be amended to allow the court to find a victim of domestic violence not compellable to testify against the alleged abuser where it is found that preserving the safety of the victim outweighs the prosecutor's need for her evidence.
(Ref : para 116)

Recommendation

Recommendations on the entitlements of women victims of domestic violence to Criminal Injuries Compensation will be offered by the victims of crime subcommittee after this report becomes available.

Recommendation

The Law Society of Western Australia Professional Conduct Rules be amended to include the following rule under Chapter 3 : Maintaining Professional Integrity:

"A practitioner shall not, in the performance of professional duties, by words or conduct, knowingly or with callous indifference, disparage, humiliate or discriminate against parties, witnesses, counsel or others on account of race, gender, ethnicity, religion, national origin, disability, marital status, sexual orientation, or age. (Ref : para 124)

This does not preclude legitimate advocacy when race, gender, ethnicity, religion, national origin, disability, marital status, sexual orientation, age or other similar factors are issues in proceedings." (Ref : para 125)

Recommendation

The Victim Support Service be resourced to provide a specific domestic violence program for victims who come in contact with the criminal justice system. (Ref : para 13)

Recommendation

Prior to sentencing in relation to domestic violence or sexual assault matters the court shall inform the victim that she has the option of tendering a Victim Impact Statement.
(Ref : para 13)

Recommendation

Appropriate accommodation within the court building be made for victims of domestic violence. (Ref : para 13)

Recommendation

An independent, non partisan body be established to monitor the treatment of victims of domestic violence within the community and to ensure coordination of all governmental departments and private agencies who offer services to victims. Membership should be composed of, but not limited to, individuals from church organisations, marriage guidance associations, refuges, legal aid, community legal centres, health services, and other relevant community groups and public agencies.

(Ref : para 13)

Recommendation

The State of Western Australia adopt the following declarations, charters and recommendations and strive to ensure that all laws, governmental policies, and procedure, and governmental services abide by and meet the guidelines set out therein:

National Committee on Violence Against Women Recommendations: October 1992

UN Declaration of Basic Principles of Justice Relating to Victims of Crime 1986

UN Declaration on the Elimination of Violence Against Women, when declared.

Western Australian Charter of Victims' Rights (Ref : para 141)

Recommendation

The Attorney General be made responsible for domestic violence policy and the design, co-ordination and monitoring of prevention strategies. (Ref : para 14)

PROCESS

Membership of Committee:

Lynne McGuigan, Chair

Vince Jones, Director, Victim Support Services

Linda Jurevic, Lecturer in Law, Murdoch University Law School

Felicity Child, Social Worker, Sussex Street Community Law Service

Sue Allen, Manager, Sexual Assault Referral Centre

Meeting Times:

The committee met three times to determine the issues and structure of the report (September 9 & 16 and October 28, 1993) and three times to edit the report (November 11, 24 and December 6, 1993).

Identification of key areas:

It was resolved that the committee would focus on two key areas - sexual assault and domestic violence and that the areas would examine issues by principal players - Police, Public Prosecutor, Courts, Victim Services and Justice Administrators. Working parties on each key area were formed. The Office of Women's Interests played a co-ordinating role.

Consultations:

Given the tight constraints, it was not possible to consult widely with groups with special needs. Contact was made with the following:

Rural Women

The Country Women's Association of W.A. (Inc) made contact with women in Narembeen, Wyalkatchem, Wongan Hills and Perenjori. The four participants consulted in their own communities and completed a pro-forma which outlined issues of importance.

Women with Disabilities

Several meetings were held with the Bureau for Disability Services. The first was with the policy staff only and the second with policy staff and community representatives from key disability groups.

Women from Non-English speaking background

An initial meeting was held with the Office of Multicultural Interests which referred the committee to three key multi-cultural groups. The Women's Refuges Multicultural Service and the Migrant Women's Interests Committee completed the pro forma.

(Note: The above responses were based on anecdotal evidence only)

Aboriginal women

As a result of several telephone discussions with the Women's Policy Unit at the Aboriginal Affairs Planning Authority a meeting was organised with three policy officers and a representative from the Aboriginal Visitor's Scheme.

The AAPA did not complete the pro-forma but requested that a special recommendation regarding a research project and strategic consultations be considered by the committee.

Consultations were also made with:

The Criminal Injuries Compensation Act Reform Working Party
(which is composed of community legal centre workers, refuge workers,
solicitors, and law students actively involved in assisting victims of domestic
violence)

Ms Jennifer Gardiner, Lecturer in Social Work, Curtin University
(co-convenor - Domestic Violence Action Groups of WA)

Senior Detective T M Andrews

Literature Search:

The following publications and reports were referred to by the sub-committee in the compilation of this report.

ALRC 1993: Australian Law Reform Commission, *Equality before the law*. Discussion paper 54.

Biemesderfer 1992: Susan C Biemesderfer *Begging Their Pardon* - latest in domestic violence laws in the States, *State Legislatures*, v18 (2), February 1992.

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Department of Community Development (1990) : *Report to the Community from the Domestic Violence Co-ordinating Committee*. Government of Western Australia.

Department of Community Development (1992) : *Taking Action: Domestic Violence Programs and Policies*. Government of Western Australia.

Department of Prime Minister and Cabinet: Consultancy Brief discussion paper on *Sexual Assault Law Reform*. (Canberra, Australian Government Publishing Service).

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Equal Opportunity Commission Report (1990) : *Discrimination in Government Policies and Practices*. Government of Western Australia.

Equal Opportunity Commission (1993) : *Media Awards*. J. Malcolm AC, Chief Justice, W.A. Government of Western Australia.

Federation of Community Legal Centres (1993) : *Brute Force*.

Graycar and Morgan (1990) : Regina Graycar and Jenny Morgan, *Hidden Gender of Law*. Sydney, The Federation Press.

Hamilton Abuse Intervention Pilot Project (HAIPP) (1992): Neville R Robertson, Ruth Busch, Marewa P Glover and Jane A Furness. *The first year*. HAIPP Monitoring Team, University of Waikato, Report No.4.

Harvard Law Review 1993 : *Developments in the law: Legal responses to domestic violence*. Vol. 196. No.7. May 1993.

Hatty 1988 : Suzanne Hatty *Policing Male Violence in Australia* in J. Hamnmer J. Radford and E S.....(eds) *Women, Policing and Male Violence*. (Routledge London and New York) (page 82) (in Jude McCulloch and D Schetzer, *Brute Force* Federation of Community Legal Centres March 1993).

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Mahoney 1992 : Kathleen E. Mahoney *Gender Bias in Fundamental Decisions*. Supreme Court, W.A.

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McGregor, Hopkins, Wenbury for Change (1991) : Heather McGregor, Andrew Hopkins, Wenbury for Change *The Movement Against Domestic Violence*, (Sydney, Allen & Unwin).

Morley & Mullender: Rebecca Morley and Audrey Mullender. *Hype or Hope?* The importation of pro-arrest policies and batterer's programs from North America to Britain as key measures for preventing violence against women in the home, in *International Journal of Law and Family*, Vol 6., No. 2. 1992.

National Committee on Violence Against Women (1992) : *National Strategy on Violence Against Women* (Commonwealth of Australia 1992).

New National Agenda for Women 1993-2000 (1993) : *Women - Shaping and Sharing the Future* (Commonwealth of Australia 1993).

Office of Women's Interests (1993) : *Women and Justice Seminar II* Report. Government of Western Australia.

Ralph 1991 : Alan Ralph, Preliminary Report *The Effectiveness of Restraining Orders for Protecting Women*. Centre for Behaviour Analysis. August 1991.

Ruhl 1992 : Dawson Ruhl, Domestic Violence Action Groups of W.A. (Inc) *Proposal to develop a Domestic Violence Community Intervention Project Within the Armadale Region*. October 1992.

Seddon N. (1989/1993): Nicholas Seddon, *Domestic Violence in Australia - the legal response*. (Sydney, The Federation Press, first edition 1989, second edition 1993).

Scutt J.A. (1990): Jocelynn A. Scutt *Women and the Law, Commentary and Materials*. (The Law Book Company Limited).

Scutt J.A. (1990): Jocelynn A. Scutt *Even in the Best of Homes : Violence in the Family* (McCulloch Publishing).

Summers A (1975) : Ann Summers *Damned Whores and God's Police, The Colonisation of Women in Australia* (Penguin).

Walker, Lenore E., *The Battered Woman* (New York: Harper Colophon, Harper and Row Books, 1979) in Maryland Special Joint Committee 1989 Report: *Gender Bias in the Courts*
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SEXUAL ASSAULT

1. Sexual assault is a crime involving the misuse of power. It is an act of aggression, a violent crime. Sexual Assault is not a crime of passion, it is not a sexual crime, or the result of an 'uncontrollable sexual urge'. It is a crime of violence which can be all embracing, completely disrupting the victim's life. It causes physical, social and psychological change which affects the victim, her family, friends, her whole social system.
2. In fact, sexual assault is such a powerful crime that it affects community behaviour on a broad scale. Women do not generally go out alone at night, in the dark, (effectively a curfew). When an assailant is 'on the loose' women are instructed by the police, especially if they live alone, to close the windows and be on the lookout. It does not matter that it is the middle of summer and sweltering. It does not matter that a woman loses her freedom and her rights are severely restricted. Ultimately, one must describe sexual assault as a violation of human rights. Indeed, predominantly a violation of women's rights, because, statistically a greater number of women are victims, and the vast majority of assailants are men.
3. The legal system is operating within the broader social context, it must be influenced by prevailing community myths and stereotypes. A consequence of this is that many women see the legal system as unsympathetic to their plight and even, biased against them. These perceptions lead to a low level of reporting which in turn compounds the gaps and errors in law and decision makers' judgement about the nature of sexual assault and while the true extent of the crime of sexual assault remains unknown, prevention will remain difficult and elusive.
4. Sexual assault is a violation of a person's sexuality and sexuality in our community is a private matter. Yet women who report the crime must publicly discuss matters which in our society are generally reserved for the most intimate of relationships and situations. They must face the reality of having their intimate details exposed to predominantly male courts, press and, possibly, prison officers. Personal information, articles of clothing, medical evidence are all publicly displayed. The trauma of such appearances cannot be underestimated.
5. Additionally, because sexual assault involves such a degree of personal violation and intrusion, a woman may fear for her safety over a long period, before and after each stage of reporting, a trial, and even a prison sentence for an assailant, if indeed, charges are ever laid.

Issue

6. Recent debate in the judiciary has focused on whose responsibility it is to change community attitudes. The National Committee on Violence Against Women (National Strategy, October 1992) argues that the judiciary has a responsibility for 'the common good' and should effectively be a change agent. This report supports the call for the judiciary to have carriage of this issue, but stresses that the process of change requires a consistent, and co-ordinated effort by all players in the administration of the Law. No one player working alone, will be successful.

Recommendation

7. That the Attorney General have responsibility for carriage of the policy on violence against women. The committee calls on the Government to start a committed, co-ordinated and concentrated campaign of awareness.

POLICE

8. There has undoubtedly been some degree of positive change in relation to police responses to sexual assault crimes. Notably, the joint training initiatives in WA between police recruits, new detectives and the Sexual Assault Centre. The training acknowledges the specialist nature of dealing with sexual assault, and as a consequence, more sensitive responses have emerged eg, the use of female officers to question victims. Further, WA is fortunate in offering a sexual assault service which has medical support and forensic collection attached to the unit, and this provides a far more responsive service to victims than the other models of police surgeons or emergency hospital units providing forensic collection. However, WA country areas still face some difficulties, especially where there is no SARC service, or no female police officer available to deal with a case. The lack of rural services is acutely felt in the more remote areas of the Kimberley and Pilbara where women are isolated from other womens services which provide alternative sources of protection, advice and support - such as womens refuges, womens health care centres, and womens legal services.
9. The isolation factor is compounded by race. Aboriginal women and women of Non English Speaking Background (NESB) generally advise that where services do exist they are inappropriate to their requirements. Evidence in support of their claim for culturally specific services is seen in the low reporting rates of these two groups.

Issue

10. The Police force consists predominantly of male officers. In the metropolitan area this imbalance can be remedied by a call on women officers working in other parts of the service. This solution is less available in the country which means that victims must give their statements to male officers. Because of the sensitive nature of sexual assault and because women often perceive a confraternity between the assailant and the male police officer (they may be team mates in the local football team), they are less likely to report or give full and accurate details of the assault.

Recommendation

11. The Police Department should adopt Affirmative Action strategies to ensure that every station has access to a trained police woman.
12. All police officers should be required to undergo regular gender awareness training to sensitise them to the difficulties women face in making a report of sexual assault. The

department should be required to make the training a performance indicator and report on its measurement in the department's annual report.

Issue

13. Victims need to be kept informed of the progress of an investigation and charge . This would increase their feelings of power over the process and enable them to take whatever steps are necessary for their safety and sense of wellbeing. Currently the onus is on the victim to find out what is happening and 'chase up' the police. Often they feel they do not have a right to do so. If closer contact was maintained it could reduce the traumatic impact of reporting on victims and their sense of powerlessness in the pursuing process.

Recommendation

14. Police should implement procedures for keeping victims informed of the progress of a complaint.

Issue

15. The public perception of gender bias in the judicial system in relation to sexual assault may be an explanation of why many women choose not to report.
16. There are undoubtedly lower levels of reporting by Aboriginal and NESB women in remote areas, possibly due to some difficulties in police/Aboriginal relations and insensitivities on the part of many police in the handling of non-Australian women. These difficulties need to be acknowledged.

Recommendation

17. A State data collection program should be developed to record incidents of reported and non-reported sexual assault and to monitor the outcomes of those reports. This State data collection program would become one of a range of data bases that already exist within Western Australia (eg. a data base exists at SARC relating to incidents when doctors are involved with sexual assault cases - it records the number of cases, broad age categories, sex, whether the police were involved or not, whether the assault was recent or in the past, and ethnic background; there are further data bases at SARC relating to counselling statistics and at the Armadale Domestic Violence Intervention Program).
18. Police training include a component on culture awareness.

DEPARTMENT OF PUBLIC PROSECUTIONS

19. How well a person gives evidence will influence the length and process of a trial. DPP's rely on the victim to give thorough, accurate, clear and concise information. It is important therefore that the relationship between Prosecutor and victim is one of trust

and understanding. DPP has a duty to assist in reducing trauma on the victim through the prosecution process.

20. Training to provide Prosecutors with skills in interviewing sexual assault victims will assist the DPP to form this relationship quickly and adequately. A key part of this training will be advice and to assess or call for assessments of the psychological as well as the physiological impact of the crime.
21. The DPP also needs to draw on sufficient evidence, in terms of the impact on the woman of the crime, eg: psychological impact.
22. Victims need to be clear about the process and progress of a prosecution and their rights at every stage of the process, eg: confidentiality relating to statements made.

Recommendation

23. The DPP should institute specialist training in taking evidence from victims of sexual assault and ensure that an appropriately trained woman be present during taking of evidence to assist the Prosecutor and to provide support to the victim.

Issue

24. The psychological effects of sexual assault are currently given little weight when determining the extent of victim's injuries.

Recommendation

25. Expert witnesses should be specifically asked to provide evidence on the psychological effects of sexual assault and resultant injury to victims.

Issue

26. Victims are often unaware of the destination of their statements and most would not know that they can be accessible to a wide range of people. Because many statements contain material of the most personal and intimate nature, the court must ensure that the statements are only released to individuals with official need of the statement.

Recommendation

27. A process must be established for monitoring and recording of the points of distribution of victim statements. The process should require people requesting statements to provide written justification of need, and details of how they will ensure the confidentiality of statements.

Issue

28. To achieve an efficient and fair trial, victims must be well prepared to offer testimony. Support workers and families can also be of assistance if they are informed of what is likely to be required of the victim.

Recommendation

29. The DPP should provide information to victims and their families and support workers on the realities of the judicial process to prepare them for the trial. This information should be gender and culturally sensitive and utilise a wide range of media including print, video, public lectures and training for victim support workers.

COURTS

30. For many women the idea of going to court is important because it signifies an opportunity for justice, and yet, at the same time, it is a frightening awesome event, which is dreaded, feared and for some, presents a traumatic reliving of the sexual assault events. Therefore the importance of making the administration of justice 'user friendly' in this context, is of paramount importance. However, there are many ways in which the court system remains unresponsive to the needs of the victims. There is a need to reduce the fear many victims encounter, and thus make the legal system more accessible. A number of recommendations are made here, which would empower the public generally, as well as the sexual assault victim specifically, in utilising the court system. This would have a positive impact on a sexual assault victim, who is disempowered by the violating crime experienced. If a sense of power and control, in terms of at least understanding the system, can occur then the court can become part of the healing process, rather than part of the victimisation.

Issue

31. Women are the victims and the main witness for the prosecution in most sexual assault trials. The dual role however is not recognised, and women victims are treated as is any other witness. This however denies the reality of the victim's situation, i.e. she has suffered as the result of the crime and is likely to be still suffering. Further, the power difference between women and men is such that women are more likely to be worried and even intimidated by the necessity to face their accused and his family in the court room. Entering and leaving the court, and sitting in the waiting room, are all likely to be highly stressful moments.
32. The stress can affect how well a woman gives her evidence and her ability to reappear on repeated occasions. By facilitating access and by providing a special "victim" waiting room, this stress may be minimised and the court process improved.

Recommendation

33. Vulnerable witness mechanisms currently available should be adapted to the special needs of sexual assault victims as witnesses, including closed court TV, video and screens.

Recommendation

34. Separate and private waiting areas should be provided for women victims and their families and supporters.

Issue

35. The majority of court officers are male and this has consequences for the confidence and clarity with which women victims give their evidence.

Recommendation

36. The gender balance of court personnel should be examined and the courts be required to adopt an affirmative action policy as a matter of urgency.

Issue

37. Many matters within the court procedures are left to judicial discretion. Judges are also susceptible to gender myths and stereotypes; they would benefit from guidelines that inform on such issues.

Recommendation

38. Guidelines be made available to the judiciary, lawyers and juries that clarify matters such as intrinsic biases in sexual assault trials and which emphasise that sexual assault is a crime of violence and violation of human rights.

The guidelines need to be culturally and regionally sensitive.

Issue

39. Many women victims have primary care giving responsibilities for children. These children are also likely to be traumatised by the assault on their mother. They can be doubly victimised by having to "appear" at court or by being separated from their mother during the trial period.

Recommendation

40. Courts should adopt a child protective focus in the design and delivery of their services. Specifically, courts need to provide for adequate childcare and should take into account school hours and holidays when scheduling trials.

Issue

41. There is a requirement for special needs to be taken into account in terms of physical access, height of furniture etc for people with disabilities. Such women are at added disadvantage. The Disability Commission has called on all government departments to produce a Disabilities Plan in which strategies for meeting the needs of disabled clients are outlined.

Recommendation

42. The Ministry of Justice be required to produce a Disabilities Plan for all courts.

ADMINISTRATION OF JUSTICE

Issue

43. Sex industry workers are particularly vulnerable to the myth "Damned Whores or God's Police". That is, society condones the rape of the former while vigorously prosecuting rapists of the latter.

Recommendation

44. Education campaigns for the judiciary, Police, DPP etc to clarify notions of consent and the power nature of the crime with particular emphasis on the immateriality of the victims profession must be developed.

Issue

45. Women have unequal bargaining power with men. In the counselling, arbitration and mediation procedures which are favoured as an alternative to adversarial hearings, the unequal position of parties who have had an abusive relationship may be overlooked.

Recommendation

46. Mediation and alternative dispute resolution remedies not be used, until after sentencing, when there are accusations of sexual assault.
47. The State has a responsibility to prosecute in sexual assault.

Issue

48. No specific or comprehensive statistics are kept regarding victims' complaints about the judicial process. As a result, it is difficult to monitor, analyse and improve the law and its procedures.

Recommendation

49. An official register should be established to document complaints regarding the administration of the law.

Issue

50. Women who have been sexually assaulted are concerned for their safety, and fear the assailant obtaining bail and returning to fulfil their threats. The Attorney General is undertaking a major review of the Bail Act with a view to withholding bail on persons accused of serious violence. The review needs to recognise that any sexual assault is an act of serious violence regardless of the extent of physical trauma. There have been

cases where the assailant has come back and assaulted the victim again and, in one case, has murdered the victim.

Recommendation

51. The Review of the Bail Act be supported and serious consideration be given to the safety needs of the victims of sexual assault.

Issue

52. There are several gender bias issues within the Criminal Compensation Process. One problem is the difficulty of placing a monetary value on the nature and extent of physical injury and psychological harm. Given that sexual assault is more likely to result in psychological damage rather than physical injury, and that the assessment of this damage is subjective and susceptible to gender myths and stereotypes, a process is needed to ensure that the full impact of a woman's suffering is understood.
53. Further, there is a time problem in the compensation process. Applications must be lodged within three years of the criminal act occurring. Some women however feel unable to disclose abuse in that time period, and while there is provision in special circumstances for late application, this fact is not well known.

Recommendation

54. That minimum awards for criminal injuries are reviewed regularly to take account of improved understanding of psychological, social and economic suffering and loss caused by a sexual assault.
55. Criminal Injuries compensation is publicised as a right and that women victims be made aware of the provision which waives the three year time-line.

DOMESTIC VIOLENCE

56. This section of the report examines criminal domestic violence, that is, violence directed toward women in the context of day-to-day relationships which is currently actionable under the Criminal Code, specifically physical violence, threats of violence, and sexual assault. The focus is on domestic violence which can be addressed by the criminal justice system because:
57. "The criminal justice system is one of the primary institutions to which battered women and their families turn for help and protection. By virtue of its power to enforce existing laws, it is also the institution critical to public condemnation of violence, wherever it may occur. However, the criminal justice system shares the biases of society at large, biases which hold that family matters are private. Such a bias has led to the selective non-enforcement of laws when violence occurs between family members. This stance of non-intervention indirectly condones violence and ignores the frequent escalation which all too often ends in homicide." (Hamilton Abuse Intervention Pilot Project (HAIPP))

58. All domestic violence must be stopped and the criminal justice system is the first place that can affirm and enforce societal condemnation of violence against women. Two themes run throughout this section. The first theme is that domestic violence is a crime and must be consistently treated as such by the criminal justice system; it is not a social problem to be "managed" by welfare agencies. The second theme is that the myths surrounding domestic violence result in inappropriate and harmful stereotypes. Strategies for eliminating this crime must address its multifaceted, heterogeneous nature; there is no single stereotypical victim, abuser, or family situation wherein violence typically occurs.
59. Domestic violence is prevalent and deadly. "Forty percent of all homicides in WA in 1987/88 occurred within the home. All the victims were women or children. Nearly half of women murdered by their spouses had left or were in the process of leaving at the time of their death. Violence in the home is a major community problem affecting at least one in five Australian families. One in ten women face regular, shattering abuse from their partners. Millions of dollars are spent annually on legal, health and welfare services as a result of domestic violence." Domestic Violence Information Kit, Office of the Family, Government of WA.
60. In the 1980's community based groups throughout Australia raised society's awareness of the dangers, costs, and tragedies caused by drunk drivers. Society rapidly became unwilling to remain victimised by drunk drivers. The police and the judiciary responded by enforcing existing legislation against drunk drivers and, where necessary, amending it to increase penalties. Drink driving became a crime which was to be punished without hesitation. Old stereotypes of such as "having one for the road" soon became abhorrent. Today, drink driving is no longer a viable or tolerated option.
61. While domestic violence is now receiving the same attention that drunk driving did in the eighties, society is not responding to the call for help. Admittedly, there is a plethora of information regarding domestic violence. Domestic violence is not an unknown or hidden problem. Within the past eight years, two major task force groups in Western Australia have studied the issue and made recommendations. (*Break the Silence, Report of the Task Force on Domestic Violence to the Western Australian Government (1986), Domestic Violence Advisory Council (WA), A Discussion Paper on a Proposal to Enact Family Violence Legislation, (1992).*)
62. The latter group's final report to government, which contains a comprehensive review of the restraining order process, has not been made available to the public by the Minister for Community Development. Unfortunately, the problem of domestic violence remains largely unsolved; legislation remains unchanged, and governmental funding and policy undeveloped.
63. Even when domestic violence becomes acknowledged by society as a significant crime which results in unacceptable social costs, society will still need to overcome its misunderstanding as to its causes and effects. To develop an effective strategy to prevent and control domestic violence, we must rid ourselves of inappropriate stereotypes so that we can respond to the authentic needs of victims.

64. Firstly, it must be remembered that domestic violence occurs throughout all segments of society and is totally unrelated to the particular characteristics of the victim. All too often we seek to ascribe negative attributes to the victim so as to "fairly" apportion the blame. As a result, counselling is often seen to be an appropriate remedy when in fact such efforts are dangerous and ineffective. "The focus of intervention in family violence should be on ending the violence, not fixing or ending the relationship between abuser and victim. Intervention should have as its highest priority protecting the victim from further harm." (Hamilton Abuse Intervention Pilot Project.) Any other approach tends to deflect from the most important matter at hand which is protecting the victim from further violence. The perpetrator must be made to remain fully accountable for his actions, and not be given the opportunity to shift blame to the victim. A drunk driver is not asked what caused him to drink. He is punished, he is prevented from driving, and then, maybe, he is offered rehabilitation. As one police officer remarked: "When we arrest a man for drunk driving, he knows he has committed a crime. He just regrets getting caught. When we arrest a man for assaulting his wife, he denies he has committed any crime and believes he is being arrested for something that is not a crime and that is none of our business."
65. Secondly, it must be acknowledged that the vast majority of law enforcement officers reflect the values of the general male population. When responding to crimes of domestic violence, police currently have sufficient powers to enter private residences, to search and seize, to arrest, to detain, to set bail conditions, and to lay charges. Unfortunately, police often seem unwilling to apply current law to domestic violence crimes.
66. One obvious explanation for this reluctance to enforce the law is that they hold the same values and rely on the same defective stereotypes as the community does. As a result, many police are unable to respond appropriately to domestic violence calls. They perceive that domestic violence is a private problem or a problem that is somehow different from other crimes. Again, when a drink driver is picked up the police do not ask him why he got drunk; nor do they ask other drivers whether they want to lay charges. The driver is arrested and charged. However, when police respond to domestic violence calls, it is not uncommon for the police to attempt to figure out what caused the fight, to attempt to mediate it, and then to refuse to lay charges unless the victim specifically demands that they be laid, even when an indictable offence has occurred.
67. Given proper and thorough training on the dynamics of domestic violence, police will not be able to use the excuse of vague policies or incomplete powers when failing to respond appropriately to domestic violence crimes. Police will be held accountable for their actions and will be required to enter premises where danger exists or an assault has occurred, arrest when an arrestable offence has occurred, detain a defendant when it is determined that he will continue to be a threat, ask that appropriate bail conditions be set to ensure compliance with the law, affirmatively seek and gather evidence in support of a charge, and lay charges when an offence has occurred.
68. Judicial response to domestic violence has traditionally left women victims without sufficient protection or remedy. The court system, as the police system, tends to view domestic violence as a family/private problem. The judiciary relies on the same stereotypes as society. Victims are advised to seek the civil remedy of obtaining a

restraining order. The criminal nature of the act is downplayed and abusers escape sanction. In "Women as Victims, Litigants, and Offenders" Laura Crites writes:

69. "Though many judges are sensitive to the complex issues of wife abuse and are responding appropriately, a large group of judges are influenced, if not controlled, by their traditional sexist beliefs. As a result, many women who turn to the courts for protection from abuse by their husbands, or lovers, are not only not afforded that protection, but are left even more vulnerable to abuse for having tried. A man who feels justified in assaulting his wife or lover may become even more violent when she attempts to confront and stop his abuse through use of civil or criminal remedies, especially if those within the justice system appear to support him by refusing to apply sanctions."
70. To accord justice to the victims, the judiciary must act without bias and with full information. To accomplish this, the bench must be educated about the dynamics involved in domestic violence.
71. The crime of domestic violence must be combated on all fronts. The police, the judiciary, government departments responsible for welfare benefits, housing, and health care, victims support groups, refuges, community education projects, schools, and prisons must all be involved and work together to create strategies to address this problem. The following issues and recommendations are not comprehensive. Due to the limited time and resources available to address this issue, selected issues were addressed. We largely focused on the police and the judiciary as they have significant power to immediately effect change in the way domestic violence is treated by the criminal justice system. The following recommendations reflect this focus.

POLICE

Issue

72. In the Western Australian police force, women make up only nine percent of officers, the lowest proportion of women officers in Australia. Of 395 women police officers in WA, only two are above the rank of inspector. Recent Australia research indicates that "one of the reasons" women do not seek police assistance in domestic violence situations is that the overwhelming majority of police are male.
73. A combination of an increased female presence in the force, including senior ranks, through Affirmative Action strategies, compliance with the Equal Opportunity Act regarding work place sexual harassment and promotion linked training on domestic violence, may reduce the clear perception in the community that policing in Western Australia is discriminatory and unresponsive to the victims of domestic assaults.

Recommendation

74. The Commissioner of Police initiate affirmative action strategies so that the membership of and promotion within the police force reflects the composition of the community, with

specific recruitment and promotion policies aimed at women and Aboriginal people. The Equal Opportunity Commission audit the processes and outcomes of this strategy.

Issue

75. Domestic violence is not understood by the majority of society. Many individuals who are required to assist victims of domestic violence as part of their job are hired, retained, or appointed without benefit of proper training on the causes and effects of domestic violence and the most effective ways to handle situations where it is involved. Victims are forced to rely on ill equipped and ill trained individuals for assistance, and as a result are often inappropriately advised or treated.
76. In other situations involving dangerous or high risk situations, public servants receive specialised training, for example on how to handle bomb threats, hostage takings, environmental contaminations. Domestic violence is a high risk situation. Police Routine Order 4-7.4 states: "Caution should be exercised when attending domestic disputes as they are high risk areas for police." Appropriate training is imperative to ensure the safety of the victim and the employee.
77. Training should occur through the public and private sector to ensure proper servicing of the needs of victims. Training should be targeted for, but not limited to, law students, lawyers, court personnel, judges, magistrates, and police.

Recommendation

78. The police recruit training includes an assessable component on domestic violence.

Regular in-service training includes a component on domestic violence.

Demonstrated skills in the management of domestic violence be a criteria of promotion.

Issue

79. Domestic violence is considered to be a social problem that should be handled by social services agencies. Domestic violence is a crime and should be treated as such by the police who are often the first contact by victims. If domestic violence is not treated seriously by the police, a victim will believe that the behaviour of the abuser is non-criminal or will believe that protection is not available. The police have adequate power under the law to respond effectively to crimes involving domestic violence. What is needed is that they in fact fulfil their legal obligations to enforce the law in a consistent manner.
80. When any criminal offence is reported, an officer is required to write an offence report if evidence of the offence exists or if a complaint is made by the victim. In domestic violence situations, if an officer appears at the scene and there is evidence of an offence but the victim does not wish to make a complaint, the officer often does not write an offence report, even if independent evidence of an offence exists. It is reported by some victims that even if they wish to make a complaint, the officer may decide that an offence has not occurred and therefore does not write an offence report. If officers responding to

a domestic violence call are required to submit a report outlining the result of their call, more care and deliberation will go into that decision. This report could then also be also used to assist the victim in obtaining a restraining order.

Recommendation

81. The Commissioner of Police institute policies and procedures to ensure that crimes involving domestic violence are given the same attention as any other serious crime.
82. Police orders and regulations are to reflect the seriousness of domestic violence complaints and appreciate the urgency and danger involved therein.
83. The police be required to make a written report of all calls which involve domestic violence, whether or not a offence report will be made.
84. The police be required, when responding to a domestic violence call, to provide all victims with a brochure which clearly outlines all community resources available for victims, inform them of their legal rights, and provide a comprehensive list of emergency numbers.
85. The Commissioner be required to publish an annual report which informs the public and government of the number of crimes involving domestic violence, the type of crime involved, the police response to the crime as far as arrests made and charges laid, and provide the routine orders and regulations which police are to follow when responding to crimes involving domestic violence.

Issue

86. Mediation or counselling presumes the parties' relationship is the problem, both spouses are at fault, and that compromise is the appropriate goal. In domestic violence, however, the focus should remain on the perpetrator's criminal behaviour. The position paper from the National Committee on Violence Against Women, February 92 states: "Mediation strategies are generally based on an assumption of equality and do not deal with inequality as an issue. Because women may be threatened with violence (or even death) if they reveal the violence to outsiders, they are unlikely to reveal the existence or extent of violence during mediation or conflict resolution processes. Because the interests of both parties must be taken into account in the mediation process, the safety of the woman is generally not addressed."

Recommendation

87. Current police routine orders, policy, or instructions which recommend counselling or mediation for victims of domestic violence be immediately amended to conform with the National Committee on Violence Against Women's Mediation Guidelines.

Issue

88. Women who decide not to testify against their abuser often do so for life saving reasons. Until society can offer victim's continued and effective protection from an abuser's

retribution, it must appreciate a women's decision not to testify. Because wife abusers are known for relentless pursuit of their victims and are most resistant to court control, we should not force a woman to choose between her family's safety and obeying the law.

89. Because the police often will leave the scene of a crime involving domestic violence if the victim is hesitant to lay charges, independent evidence which could be gathered to allow the police to lay charges without the victim's cooperation goes uncollected. The police should be required to perform their duty of determining whether a crime has been committed, regardless of the victim's level of cooperation. This duty also requires the police to actively collect and gather evidence as they would in any other crime.

Recommendation

90. The police be required to actively collect evidence, interview witnesses, and investigate allegations of crimes involving domestic violence.

COURTS

Issue

91. Domestic violence is not understood by the majority of society. Many individuals who will be required to assist victims of domestic violence as part of their job are hired, retained, or appointed without benefit of proper training on the causes and effects of domestic violence and the most effective ways to handle situations where it is involved. Victims are forced to rely on ill equipped and ill trained individuals for assistance, and as a result are often inappropriately advised or treated.
92. In other situations involving dangerous or high risk situations, public servants receive specialised training, for example on how to handle bomb threats, hostage takings, environmental contaminations. Domestic violence is a high risk situation. Police Routine Order 4-7.4 states: "Caution should be exercised when attending domestic disputes as they are high risk areas for police." Appropriate training is imperative to ensure the safety of the victim and the employee.
93. Training should occur through the public and private sector to ensure proper servicing of the needs of victims. Training should be targeted at, but not limited to, law students, lawyers, court personnel, judges, magistrates, and police.

Recommendation

94. Murdoch University School of Law and University of Western Australia School of Law incorporate within their curriculums specific units to address domestic violence.
95. The Law Society of Western Australia provide continuing legal education programs and professional outreach which will educate lawyers on the special needs of victims of domestic violence.

96. On the job training for Court personnel include a component on domestic violence and that component emphasise the importance of serving the needs of victims in a sensitive manner.
97. As part of the Chief Justice's judicial education program, specific training should be incorporated to address domestic violence and appropriate judicial response to it.

Issue

98. Mediation or counselling of the victim is not an appropriate remedy at Law.

Recommendation

99. Current Judicial policies or programs which recommend counselling or mediation for victims of domestic violence be immediately amended to ensure compliance with the National Committee on Violence Against Women's Mediation Guidelines.

Issue

100. There is a growing concern that Victim Impact Statements are used against women in the courts - their effectiveness is yet to be evaluated.

Recommendation

101. That there be an evaluation of how Victim Impact Statements are used and their impact upon victims of domestic violence in court.

Issue

102. The restraining order process under the Justices Act, wherein victims of domestic violence can obtain orders prohibiting their abuser having further contact with them, is time consuming for the court, court personnel, and victims. Currently, a victim must apply to court personnel for a restraining order, return the following day for an *ex parte* hearing, return in two or three weeks for a confirmation hearing, and yet return for a third hearing should the defendant contest the order. Quite often the defendant fails to appear at the confirmation hearing.
103. To streamline this process the court, upon receiving sworn testimony by the victim which establishes the incident of abuse or threat of abuse, should issue an *ex parte* restraining order. After service the defendant, if he chooses to object, would be required to formally object with his reasons of objection and request a hearing. The court could then schedule a date and advise the plaintiff of the defendant's reasons for objection. Two hearing dates would be eliminated automatically.

Recommendation

104. The Justices Act 1902, Section 172 be immediately amended to streamline the restraining order (r/o) application process. The "show cause" hearing be set only upon application of the defendant. When served with the restraining order, the defendant shall have 30 days

in which to object to the order. Defendant's application for hearing must clearly state the grounds upon which he objects to the r/o. Upon receipt of defendant's objection, a hearing date shall be set to occur within 21 days.

Issue

105. Currently, it is the practice of many magistrates to deny a restraining order if the victim is still residing in the same household as the defendant. A common remark is that the magistrate "is not about to kick a man out of his own home." As a result, victims and innocent family members are forced to flee the family home, and in the process, face great hardship. On balance, it is more appropriate to require the defendant to vacate the family home as it is generally far easier for one man to find accommodation rather than an entire family. Furthermore, allowing the man to remain in the home perpetuates the myth that a man's home is his castle which results in property interests taking precedence over a victim's right to safety and freedom from abuse.

Recommendation

106. The Justices Act 1902 Section 172 (5) and (6) should be amended to read :
107. (5) Justices may make an order under this section or under section 174 restraining the defendant from entering premises, or limiting his access to premises, whether or not the defendant has a legal or equitable interest in the premises. In making such a order, the justices shall consider the safety of occupiers of said premises, other than the defendant, to be of paramount concern.
108. In making such an order the justices shall consider-
109. (a) the effect of declining to make such an order on the person against whom the behaviour that forms the subject-matter of the complaint was directed;
and
110. (b) the effect of declining to make the order on any children of, or in the care of, the person against whom the behaviour that forms the subject-matter of the complaint was directed.
111. (6) When making an order under this section or under section 174 restraining the defendant from entering premises, the justices may provide for suitable arrangements to be made whereby the defendant may take possession of personal effects or other belonging of the defendant that are in the premises.

Issue

112. The restraining order process is a particularly stressful event for victims of domestic violence. For some, it is the first time they have told anyone that they have been abused. A court is an inherently intimidating arena; it is even more so for a frightened and abused woman. It is unrealistic to expect a traumatised victim to articulate her experience and her needs within this intimidating atmosphere. Lay advocates will be able to inform the

judge or magistrate what has occurred and what the victim requires. The victim will be available to give testimony but should not be forced to present her case solo.

Recommendation

113. To assist the Court and victims of domestic violence lay advocates, with leave of the Court, be allowed to appear on behalf of victims during all restraining order proceedings.

Issue

114. Women who decide not to testify against their abuser often do so for life saving reasons. Until society can offer victim's continued and effective protection from an abuser's retribution, it must appreciate a women's decision not to testify. Because wife abusers are known for relentless pursuit of their victims and are resistant to court control, a woman should not be forced to choose between her family's safety and obeying the law.
115. Additionally, because the police often will leave the scene of a crime involving domestic violence if the victim is hesitant to lay charges, independent evidence which could be gathered to allow the police to lay charges without the victims cooperation goes uncollected. The police should be required to perform their duty of determining whether a crime has been committed, regardless of the victims level of cooperation. This duty also requires the police to actively collect and gather evidence as they would in any other crime.

Recommendation

116. The WA Evidence Act 1906 Section 9 be amended to allow the court to find a victim of domestic violence not compellable to testify against the alleged abuser where it is found that preserving the safety of the victim outweighs the prosecutor's need for her evidence.

Issue

117. Women victims of domestic violence should be entitled to receive compensation for criminal injuries under the WA Criminal Injuries Compensation Act 1985. The current act, as applied and interpreted by the assessor, contains procedural and substantive hurdles for women victims of domestic violence. Further, most women victims are unaware of the availability of compensation via this act. A working party of refuge workers, lawyers, law students, and community legal centre workers has recently been formed which will examine the Act in depth and will make specific recommendations for its reform. This report will be available in mid to late 1994.

Recommendation

118. Recommendations on the entitlement of women victims of domestic violence to Criminal Injuries Compensation will be offered by the victims of crime subcommittee after this report becomes available.

Issue

119. The Law Society of Western Australia Professional Conduct Rules set out "requirements for the way in which legal practitioners should conduct themselves and their practices."
120. Rule 1.4 states:

"It is the duty of every practitioner:

(b) not to engage in conduct (whether in pursuit of his profession or otherwise) which is illegal, unprofessional, dishonest or which may otherwise bring the legal profession into disrepute or which is prejudicial to the administration of justice;"
121. The following proposed amendment to the Rules should serve as a reminder to the profession that discriminatory and sexist conduct is prejudicial and unprofessional. As a profession, practitioners must maintain the highest degree of integrity and have respect for all members of the community whom they are charged to represent.
122. Offensive conduct by members of the profession, in and out of the courtroom, is often permitted to continue because there is no formal mechanism to stop it. This rule will have the dual function of alerting members that such conduct is unprofessional and sanctionable and require accountability for its breach.

Recommendation

123. The Law Society of Western Australia Professional Conduct Rules be amended to include the following rule under Chapter 3 : Maintaining Professional Integrity:
124. "A practitioner shall not, in the performance of professional duties, by words or conduct, knowingly or with callous indifference, disparage, humiliate or discriminate against parties, witnesses, counsel or others on account of race, gender, ethnicity, religion, national origin, disability, marital status, sexual orientation, or age.
125. This does not preclude legitimate advocacy when race, gender, ethnicity, religion, national origin, disability, marital status, sexual orientation, age or other similar factors are issues in proceedings."

VICTIM SERVICES

Issue

126. There is a need for a specific service for victims of domestic violence when they have contact with the criminal justice system. Appropriate services would range from lay advocates, counselling, witness preparation, assistance with a Victim Impact Statement, and information about compensation.

127. The Victim Support Service has a strong link with the police and is in a position to provide this service. Community outreach would be a key strategy to inform the public of services.
128. Currently, the Victim Support Service does do some work with victims of serious domestic violence and the counselling staff have a strong experiential background in this area. In addition, the trained volunteers could be used as lay advocates with some additional training.
129. Resources at Victim Support Service are currently stretched to the limit and extra resources would be required for this initiative.

Recommendation

130. The Victim Support Service be resourced to provide a specific domestic violence program for victims who come in contact with the criminal justice system.

Issue

131. Victims should have the option of tendering a Victim Impact Statement to the Sentencing Court. The Victim Statement allows the court to be informed of any emotional, physical, social or financial harm arising out of the offence. It is important as a formal acknowledgment that they were a party involved in the offence and in providing the court with a balance of information. This is of greatest importance if the offender pleads guilty and the victim is not called as a witness. Without the option of a Victim Impact Statement, victims in this scenario can feel left out of what they perceive to be a totally offender oriented process. Experience at Victim Support Service has shown that a Victim Impact Statement can be very influential in domestic violence cases. Through a Pre-Sentence Report and a Plea for Mitigation an offender can be seen in a very favourable light and the offence can be seen as 'out of character'. A Victim Impact Statement can supply pertinent information to balance this perception.
132. The Victim Support Service has produced interim guidelines for the preparation of Victim Impact Statement pending legislation in 1994.

Recommendation

133. Prior to sentencing in relation to domestic violence or sexual assault matters the court shall inform the victim that she has the option of tendering a Victim Impact Statement.

Issue

134. Victims who appear at court either in the restraining order process or to testify against their abuser during criminal matters are often forced to wait in the same area as the abuser or his friends and family. Separate accommodation should be available for these women to avoid this confrontation. Additionally, rooms where women with children can comfortably wait should be made available.

Recommendation

135. Appropriate accommodation within the court building be made for victims of domestic violence.

ADMINISTRATION OF JUSTICE

Issue

136. Currently the coordination of services for victims of domestic violence is disjointed and uncoordinated. A central body would be able to ensure that all needs of the victim were being met and that agencies were not unnecessarily duplicating services.

Recommendation

137. An independent, non partisan body be established to monitor the treatment of victims of domestic violence within the community and to ensure coordination of all governmental departments and private agencies who offer services to victims. Membership should be composed of, but not limited to, individuals from church organisations, marriage guidance associations, refuges, legal aid, community legal centres, health services, and other relevant community groups and public agencies.

Issue

138. Both national and international concern has been expressed for improving the government and community response to domestic violence. In effect, it has become increasingly apparent that the issue of domestic violence is a human rights issue.
139. It is appropriate that the Western Australian Government adopt measures to recognise that domestic violence is a crime and, more importantly, that women have a human, social, and political right to be protected from the abuses and dangers of domestic violence.
140. The state must meet minimum standards contained in national and international human rights documents and declarations. In other words, state action and legislation must comport with protection of human rights when providing protection and assistance to victims of domestic violence.

Recommendation

141. The state of Western Australia adopt the following declarations, charters and recommendations and strive to ensure that all laws, governmental policies, and procedure, and governmental services abide by and meet the guidelines set out therein:

National Committee on Violence Against Women Recommendations: October 1992

UN Declaration of Basic Principles of Justice Relating to Victims of Crime 1986

UN Declaration on the Elimination of Violence Against Women, when declared.

Western Australian Charter of Victims' Rights

Issue

142. In WA it remains unclear which Minister has carriage of domestic violence policy.
143. The Minister for Community Development has the lead role and the consequence of this is twofold. First, it reinforces the impression that domestic violence is a family/private matter. Second, it focuses prevention strategies on management and support of the victim. True prevention however lies in the hands of the assailant, in the same way that the prevention of drink driving is the responsibility of the drinker.
144. As domestic violence is a crime, carriage of both issues must rest with the Attorney General and her Department.

Recommendation

145. The Attorney General be made responsible for domestic violence policy and the design, co-ordination and monitoring of prevention strategies.