



21 May 2007

Review of SA Domestic Violence Laws
C/- Justice Strategy
Policy Planning and Legislation Division
Attorney-General's Department
GPO Box 464
Adelaide SA 5001

Marjorie Black House
47 King William Rd
Unley SA 5061

P. 08 8305 4222
F. 08 8272 9500
E. sacoss@sacoss.org.au
www.sacoss.org.au

ABN 93 197 662 296

Dear Attorney General,

The South Australian Council of Social Service (SACOSS) is pleased to have been given the opportunity to comment on the current review of South Australian Domestic Violence Laws.

SACOSS is the peak body for social services in South Australia and we advocate for and represent the interests of low income and disadvantaged groups in South Australia. We are a not for profit, independent organisation that has been advocating for better public policy for 60 years. We have close to 300 members who represent a wide range of interests in social welfare, health and community services.

SACOSS is concerned regarding the extent and the effect of violence against women and children in South Australia and we are pleased that the *Domestic Violence Act 1994 (SA)* is being discussed and revised to work to address this social issue.

We believe that in order for legislation to be relevant it has to be contemporary and keep up with changing societal expectations and what is considered 'a family'. The definition of what is considered domestic violence and what constitutes a domestic partnership has changed in recent years and the legislation must reflect this if it hopes to offer protections for those experiencing violence and those who are vulnerable to violence and abuse in domestic partnerships in South Australia.

SACOSS is looking forward to the outcome of the Domestic Violence laws reform process and would be pleased to be included in the process of South Australian law reform in the future.

Yours sincerely,

Karen Grogan
EXECUTIVE DIRECTOR



South Australian Council of Social Service

South Australian Domestic Violence Laws

Discussion and Options for Reform

May 2007



SOUTH AUSTRALIAN COUNCIL OF SOCIAL SERVICE

Review of SA Domestic Violence Laws – 2007

Foreword

Within this submission we have chosen sections of the review that we find particularly relevant and important and have included comment as to the appropriateness of reviewing these laws. SACOSS has also included recommendations that we believe would strengthen the laws that apply to domestic violence that will ultimately create a safer environment for those vulnerable to violence and abuse within domestic relationships.

The client base of several of our member organisations, are dependent on the form of these laws and the protections that they provide, therefore this submission is a broad commentary based upon the interests of several organisations informed by our commitment to the protection of the vulnerable and disadvantaged in South Australia.

Introduction

Domestic violence is a substantial cross-sectoral public health issue in Australia. The breadth and complexity of the issues involved within domestic violence impact upon the economy, health services, policing, the courts and community services¹.

It is difficult to present a true picture of the actual incidences of domestic violence in Australia as it is widely acknowledged that most incidences go unreported. To qualify this view, a study by Carcach² found that a majority of assaults against women are not only perpetrated by someone known to the victim but many of these assaults go

¹ Sherrard, J., Ozanne-Smith, J., Brumen, I., Routley, V & Williams, F, 1994, 'Domestic Violence: patterns and indicators, *Monash University, Accident and Research Centre, Report No. 63.*

² Carcach, C 1997, 'Reporting crime to the police', Trends and Issues in Crime and Justice, *Australian Institute of Criminology*, No. 68, March 1997.

unreported. However, within the statistics that are known, deaths among women due to assault are overwhelmingly as a result of domestic violence³.

In addition, according to the Personal Safety Survey published by the ABS statistics demonstrate an increase in the incidence of violence reported to the police between 1996 and 2005. In 2005, 36% (70,400) of women who experienced physical assault by a male perpetrator reported it to the police in 2005 compared to 19% (54,400) in 1996. Further, 19% (19,100) of women who experienced sexual assault by a male perpetrator reported it to the police in 2005 compared to 15% (14,700) in 1996⁴. It is clear that as rates of violence are not decreasing - current strategies and legislation are not fully addressing the complex issues connected with domestic violence.

Within this submission we will articulate a broad and common message that represents the members of SACOSS in our response to these proposed reforms. This submission has been written after consultation with the SACOSS Policy Council⁵ which has informed and shaped the content and message contained within this document. In this submission we intend to outline our position in regards to these proposed reforms in relation to just legislation that protects the most vulnerable in society and creates safer environments for the victims of domestic violence.

³ Sherrard, J., Ozanne-Smith, J., Brumen, I., Routley, V & Williams, F, 1994, 'Domestic Violence: patterns and indicators, *Monash University, Accident and Research Centre, Report No. 63.*

⁴ Trewin, D 2005, 'Personal Safety Survey', Australian Bureau of Statistics.

⁵ The Policy Council is a group of 40 people that is generally representative of the community sector and informs the work that SACOSS perform within the broader community.

Chapter 1

Whether the Domestic Violence Act 1994 ("The Act") should contain a Preamble of Guiding Principles, and if so what should they be?

SACOSS contends that the Act in its current form does not adequately reflect the diversity of relationships and domestic partnerships in which domestic violence can occur in the community and as such is unsatisfactory in its protection of those vulnerable to violence in domestic relationships. SACOSS supports the inclusion of a preamble which contains statements that set out what the purpose of the legislation is, a set of clearly delineated definitions of what constitutes domestic violence and who is considered to be in a domestic relationship.

The objects and principles should contain statements regarding the purpose of this legislation and who is covered under its provisions. SACOSS asserts that a major principle should be to protect children and women who are two of the most vulnerable groups within our community and the most vulnerable to domestic violence in all its forms. This priority is contained within the SACOSS Blueprint and we argue the importance of this issue as a foundation principle for a healthy society⁶.

We further assert the importance of the principles and objects of these laws should guide and inform the work and rulings of the courts. If the courts do not recognise the importance of the objects and principles of domestic violence laws then it calls into question the validity of a preamble.

We recommend that the Act be amended and that principles and objects be inserted that outline the purpose of this legislation.

SACOSS acknowledges that all people should feel safe within society particularly children and women. We also advocate for justice processes that are more accessible and inclusive of the victims of crime. Victims are still often excluded from many justice processes with the exception of restorative processes such as conferencing. Victim participation within the justice system needs to be based upon the notions of access and equity.

SACOSS asserts that the victims of crime need to be afforded the opportunity to be included within the justice process. This is provided for within our Blueprint document⁷ in which we recommend reducing the impact of crime on victim's by increasing the use of restorative justice processes within the justice system that includes victim participation as much as is practicable.

⁶ SACOSS 2005, 'Extending opportunity for all: a blueprint for the elimination of poverty in South Australia', *South Australian Council of Social Service*, 2005

⁷ Ibid.

Chapter 2

The Grounds for making Restraining Orders

SACOSS contends that domestic violence constitutes more than physical assault and asserts that the definition of what constitutes domestic violence be broadened markedly. According to NSW Health⁸ domestic violence can be:

- Physical assault, including slapping, punching, kicking, choking or the use of a weapon. It is important to note that all acts of physical assault are criminal offences.
- Emotional or verbal abuse, for example, the use of words or other acts to threaten, insult, abuse or put the victim down. These verbal assaults compound over time to subjugate the victim and destroy their self esteem.
- Social abuse, including being stopped from seeing friends and family or in seeking support services.
- Economic abuse, which includes the prevention of an individual from having access to money or the family resources such as goods or property.
- Sexual assault, which includes forcing someone to have sex against their will (Rape), indecent assault or being forced to watch or look at pornography against their will.

Economic abuse is an important addition to the forms of domestic violence and can be defined as the act of preventing someone from accessing money and/or their own or family goods and property. Economic abuse creates an environment of dependence and fear within the relationship and assists the violent partner in controlling most aspects of the victim's life. Economic abuse can be a major contributing factor to women becoming 'trapped' in violent relationships and leading to their eventual social exclusion⁹.

SACOSS supports the inclusion of emotional, psychological and economic abuse within this legislation as their validity and impacts as forms of domestic violence are similarly as damaging and wide-reaching as physical assault.

⁸ New South Wales Health, 'A-Z Health Topics: domestic violence, viewed 17 May 2007, <<http://www.health.nsw.gov.au/topics/domestic.html>>

⁹ Puller, D., Brown & Bradley. L, 2006, 'Transition from domestic violence to sustainable employment in an era of Workchoices', Our work, our lives: National Conference on Women and Industrial Relations, *Griffith University*, Brisbane 12-14 July 2006.

Chapter 3

Whether there is a need to broaden the relationships to which the Act applies

SACOSS believes that the definition of a domestic relationship and the term 'family' contained within the Domestic Violence Act should be broadened to reflect the diversity in relationships that are represented within domestic partnerships in South Australia.

SACOSS acknowledges the definitions of domestic partnerships contained within the Domestic Partners Act 2006 (SA) and as such recommends that a broadened definition of domestic partners be included within the new legislation that reflects this. This definition should be expanded to include the definitions contained within the act to include same sex partners, carers, family members, extended family members, couples who are not co-domiciled and individuals who live together who are not related or in intimate relationships. The Act defines domestic partners as;

"In a close personal relationship which means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis"¹⁰.

In addition, we would like to see the legislation go further to acknowledge violence within households that are shared by people who are not in 'intimate relationships' for example share houses, extended family members, and in the individual/carer relationship.

Women with disabilities require the same laws and protection from violence and abuse that non-disabled women who experience family and domestic violence are provided with. It is imperative that laws are enacted to protect the vulnerable against violence within domestic partnerships by recognizing that abuse within carer relationships exists.

Domestic violence also exists within extended families and abuse of parents or older people by children is a significant issue that must also be acknowledged and provided for within the legislation.

¹⁰ Domestic Partners Act 2006 (SA)

Chapter 4

Children and the Domestic Violence Act 1994 – Whether the Act is effective in: Protecting children who are at risk of experiencing or witnessing domestic violence; providing appropriate processes and penalties where the perpetrator is juvenile

Children are most vulnerable within households experiencing domestic violence. The psychological effects of witnessing or experiencing violence can be far reaching and negatively impacted upon by Police and Court processes. We advocate for reform within Court processes that are more cognisant of the effect that domestic violence has on children and how processes such as being an applicant or a witness for the prosecution can have emotional and psychological consequences.

In relation to a child being a respondent to a domestic violence prosecution, SACOSS advocates for the use of restorative justice principles broadly but particularly in regards to juvenile justice issues. It is acknowledged that children and youth who enter the criminal justice system are affected negatively by this process, which increases the risk of recidivism.

There is a growing body of evidence that has demonstrated that early intervention can be effective in achieving significant reductions in the involvement of crime and recidivism. Of note, strategies that encompass early intervention and primary prevention have shown that long term, they are more cost effective than conventional retributive approaches to crime. The Select Committee on the Youth Justice System report¹¹ recommends that the justice system should be based upon early intervention and restorative justice strategies that serve to limit the engagement that young people have with the justice system.

SACOSS supports the recommendations of the Select Committee on the Youth Justice System and emphasises that early intervention and prevention strategies are the key to youth offending and recidivism. Empirical and anecdotal evidence indicates that early intervention based upon holistic, developmental strategies and education has a greater effect upon community building, offending and recidivism rates than introducing harsher penalties, and punitive sanctions which further alienate youth from society.

In addition, SACOSS supports the recommendation that hearings for children under 18 years be heard in the Youth Court. We further suggest that it is imperative that any changes to legislation that provides for children under 18 years to be tried in the youth court is also accompanied by adequate resourcing in order for Magistrates to use the laws to their full effect.

¹¹ Select Committee on the Youth Justice System 2005, 'Report', *The Select Committee on the Youth Justice System*, 4 July 2005.

Chapter 5

Whether the Act should give greater emphasis to the removal of the alleged perpetrator or defendant rather than the victim from the victim's usual place of residence

SACOSS believes that a greater emphasis should be included in legislation that requires the removal of the perpetrator from the home rather than the victim.

This is extremely important to preserve the social connectedness that the victim and the victim's children have to their local community. Community ties and community connectedness are vitally important for increased wellbeing. Social support and good social relations are known to make important contributions to our overall health and wellbeing and are increasingly important during a period in which individuals or families are affected by domestic violence¹².

Children who witness or are victims of domestic violence are particularly vulnerable to the emotional distress and upheaval that this can cause. For this reason, it is recommended that children are not removed from the environment that they know and from the support networks that they have access to.

SACOSS also supports changes to the legislation that provide powers to the courts to make orders of occupancy, tenancy and consequential furniture orders as well as having the power to amend South Australian Housing Trust Tenancy agreements in a similar way to private Residential Tenancy agreements. We contend that the perpetrator being removed from the shared or family home is demonstrative of the gravity of the crime of domestic violence

¹² Wilkinson, R and Marmot, M 2003, *Social Determinants of Health: The Solid Facts. 2nd edition*, World Health Organisation, Denmark.

Chapter 6

Whether Police should have the authority to remove an alleged perpetrator of domestic violence from the victim's home to prevent ongoing abuse

Following on from the comments from above, in order to affect the recommendations in chapter 5, SACOSS supports the recommendation that police should be conferred the authority to remove the perpetrator from the home to decrease the chance of further violence.

We further support the recommendation that Police officers should have a mandatory obligation to investigate and intervene if they reasonably suspect that an offence of domestic violence has occurred or is likely to occur (See Chapter 11 comments re: Police training).

Chapter 8

Whether victims of domestic violence should be liable for offences of contravening domestic violence restraining orders or aiding or abetting such offences

SACOSS is concerned with the potential of re-victimising victims by the inclusion of clauses within this legislation that holds them liable for breaches of restraining orders. Put simply, women who are living in violent and abusive relationships are the victims of an environment of control and fear. The environment of control and fear does not necessarily cease once the perpetrator leaves the home. They may also feel a sense of guilt for having the abusive partner removed from the home. There are personal, sociological and financial factors that impact upon the psychology of a victim that may cause them to breach domestic violence restraining orders that need to be accepted and taken into account.

SACOSS does not support increasing penalties for the victims' of domestic violence and believe that the pursuit of victims in this way detracts from the primary focus of the sanctions provided for within this legislation which is keeping women and children safe in violent and abusive relationships.

Chapter 9

Whether the Act provides an appropriate range of penalties to ensure that the perpetrator takes sufficient responsibility for the consequences of and prevention of their domestic violence.

Whether the sentencing principles and penalties that apply to offenders who contravene domestic violence restraining orders are appropriate and give sufficient weight to the offenders past history of domestic violence.

Again SACOSS maintains that the safety and wellbeing of those vulnerable to becoming the victims of domestic violence or continuing to be victimised are paramount. SACOSS supports the Act containing appropriate penalties for the commission of domestic violence to ensure that perpetrators are cognisant of the effect of their actions and to minimise the potential of further violence on victims. However we strongly advocate for penalties that are rehabilitative rather than retributive and offer real and meaningful programs to assist offenders in changing their behaviour. This assertion is informed by our 'Blueprint'¹³ document in which we assert restorative justice principles and rehabilitation are necessary to assist offenders to acknowledge the effect of their violence while having access to effective rehabilitation programs.

Chapter 11

Whether there is a need for a community based public awareness program on domestic violence laws?

In order for the community to become aware of the forms, extent and social cost of abuse, it is vitally important for education programs to begin early and be sustained across the community.

Research has supported what has been anecdotally known for many years that early experience and developmental issues can contribute greatly to the probability of engaging in offending behaviours, including the use of violence later on in life¹⁴.

In order to identify the contributing factors to violence within domestic partnerships it is acknowledged that a focus upon early intervention and prevention needs to occur to change perceptions and potential behaviour in young people.

¹³ SACOSS 2005, 'Extending opportunity for all: a blueprint for the elimination of poverty in South Australia', *South Australian Council of Social Service*, 2005

¹⁴ Cashmore, J., Gilmore, L., Goodnow, J., Hayes, A., Homel, R., Lawrence, J., Leech, M., Najman, J., O'Connor, I., Vinson, T., Western, J 2002, 'Pathways to prevention: developmental and early intervention approaches to crime in Australia', *National Anti-Crime Strategy*, National Crime Prevention Towards a Safer Australia, Commonwealth of Australia.

SACOSS strongly supports the development and implementation of life-long public awareness programs that begin early on the school system and continue through to high school, TAFE, Universities and the workplace. This education should be clear in its message regarding zero societal and institutional tolerance for violence against women and children and be unambiguous in its delineation of the forms of violence and abuse. Education programs should also go further to be disseminated throughout the media to inform the general public of the moral and legal parameters of violence within domestic partnerships.

Public awareness campaigns should also be broadened to include wider definitions of 'domestic partnerships' (including same sex partnerships, family living together and share houses) and include references to violence against children, older people and men. It is also important for public awareness campaigns to include references to violence that occurs within relationships that are non-domiciled.

The campaigns should target the perpetrators of violence to inform them that violence within relationships is not only unacceptable but is also illegal. The victims of domestic violence should be provided with the knowledge that violence and abuse should not be tolerated as well as knowledge on current legislation and their rights. Children also need to be targeted to inform them of how violence is unacceptable and is enforceable by law.

Finally, SACOSS believe that to adequately address the often complex emotional and psychological elements that ensue from cases of domestic violence, institutional awareness programs also need to be developed and implemented. The Police should receive education and training regarding best practice when attending calls regarding violence in domestic partnerships. This training should similarly train the officers to more adequately identify cases of domestic violence, provide more broad definitions of domestic partnerships, provide more detailed definitions of the forms of violence and abuse and guide them in their actions to prevent any further distress to the victims of violence. Correspondingly, the Courts should develop training that creates awareness and a cognisance of the delicate nature of domestic violence especially on the psychological wellbeing of children. Processes should then be informed by this knowledge that limit further distress as much as possible.