



**Women's Domestic Violence**  
Court Advocacy Service NSW Inc

**Women's Domestic Violence Court Advocacy Services NSW  
submission into the NSW Sentencing Council's review of victims'  
involvement into the sentencing of offenders in NSW**

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## **Introduction**

The Women's Domestic Violence Court Advocacy Services of NSW (WDVCAS NSW) appreciate the opportunity to provide a submission into the Attorney General's review of victim's involvement into the sentencing of offenders in NSW.

The Women's Domestic Violence Court Advocacy Services NSW (WDVCAS NSW) is the peak, state-wide organisation representing the 29 individual WDVCAS services across New South Wales, who support women and their children who are experiencing domestic or family violence. The WDVCAS services support women who are seeking legal protection from domestic violence in the Local courts. We also support women and children at risk of harm or serious harm who are referred directly from police following an incident of domestic or family violence regardless of legal intervention.

WDVCAS NSW supports better outcomes for women and children; identifying and advocating on these issues within social, political and legal contexts. WDVCAS NSW operates from a human rights and feminist perspective to support better outcomes for women and children experiencing domestic and family violence. WDVCAS NSW works in the community and with media to increase awareness about domestic and family violence and to improve policy and practice. Our activities include advocacy, support for our members, policy development, lobbying, representation at government forums, information dissemination and media consultation. We are funded by Legal Aid NSW's Women's Domestic Violence Court Advocacy Program and by our members.

Within this submission, the concerns of WDVCAS NSW regarding victim involvement in sentencing are raised specifically about the experience of women who have experienced domestic and/or family violence. The submission is structured according to the topics of the Sentencing Council review's terms of reference, with additional consideration of the effect of the current framework on victims and minimising victim distress in the sentencing process.

### **1. The principles courts apply when receiving and addressing victim impact statements**

WDVCAS support women in the NSW Local court in the process of seeking legal recourse for violence perpetrated against them. WDVCAS workers have provided feedback that Victim Impact Statements (VISs) are not utilised enough at a Local court level, and that the principles supporting VISs at a Local court level need to be readdressed. WDVCAS NSW suggest that the lack of utilisation of VISs at a local court level is due to a lack of understanding and support on a number of levels. It is the experience of WDVCAS staff that VISs are not suggested by the prosecution on a local court level in a large number of domestic violence cases, that they are not requested by Magistrates and that support workers may not have thorough training in order to advise victims of their rights to make a statement. The large volume of domestic violence cases in the Local court mean that implementing VISs more regularly could be challenging, however the benefits are also substantial, as will be discussed later in this submission.

WDVCAS NSW believes that the purpose of the VIS is not clearly stated or available, which can lead to confusion amongst Prosecutors, Police, Magistrates as well as victims. This lack of clear purpose may also lead to expectations from victims which may not be met. It is integral that the purpose of



the VIS is clearly defined in order for victims to make informed decisions on whether to make a VIS, to improve the permissibility of VISs and to clarify to victims the level of the impact on the sentencing they will create. In addition, it is important for victims to understand the possible therapeutic purpose of making a VIS.

The level of impact that a VIS has, and the principles which apply when they are addressed in court are often quite varied depending on the Magistrate who receives them. WDVCAS NSW is of the opinion that the NSW justice system would benefit greatly from regular, compulsory training of judicial officers in domestic and family violence and in the nature of trauma. We believe that such training would ensure that Magistrates thoroughly understand the nature of domestic and family violence and the related issue of trauma which affects all victims, and are therefore better able to assess the risk of defendants to the community when implementing sentencing decisions. Improved judicial education on domestic and family violence is supported not only by WDVCAS NSW, but also by a number of leading specialist organisations, including the United Nations Entity for Gender Equality and the Empowerment of Women, the Australian Law Reform Commission (Family Violence, 2010), the Victorian Royal Commission into Family Violence (2016), and the Australian Women Against Violence Alliance (2017). Judicial officers surveyed on their training needs have indicated that they want to receive further training in domestic and family violence (Wakefield & Taylor, 2015).

## **2. Who can make a victim impact statement?**

WDVCAS NSW believe that the definition of who is a victim and hence who can make a victim impact statement should be broadened to allow direct family members who have been impacted by the offence to be included. We believe this aligns better with interstate and international definitions<sup>4</sup>, and ensures that courts are privy to the suffering of victims in order to inform sentencing. WDVCAS NSW believes that the current provision that family members can only make a VIS when the family member is deceased is too restrictive. Furthermore, WDVCAS NSW believes that the definition of family should include kinship ties in Aboriginal and Torres Strait Islander families. Kinship ties are integral in Aboriginal communities, and the exclusion of them from the current provisions is discriminatory towards different family structures. WDVCAS NSW advocate for the definition of 'Kinship' to be created in consultation with Aboriginal groups. WDVCAS NSW understands that broadening the definition of who can make a statement will potentially increase the number of statements in court, and acknowledges the challenges of this in a court system which is already overloaded. However, we believe that the benefits will outweigh the costs as the court system's purpose is justice and community safety. For victims, the drafting of a VIS can be an instrumental part of the justice process, as will be discussed further in Section 5.

WDVCAS NSW argue that the type of harm suffered should be expanded to better encompass the types of harm frequently suffered by domestic and family violence victims, as well as to incorporate the type of harm caused to family members and kinship members. We believe that personal harm should be expanded so it includes emotional, financial, social, psychological and harm caused by threatening/coercive behaviour. The current definition ignores numerous types of harm that commonly affect the clients we see, and thus restricts them for giving information to the court to



inform sentencing. If the current definition is not expanded there is also a risk for victims to be labeled as having suffered psychological harm, which could adversely affect them in future family law proceedings and child custody arrangements or other matters where victim's mental health can be negatively taken into consideration. Use of victim statement in the Local Court - Local courts should expand the offences to allow victims to make VIS. The process should be very efficient and timely and victims should be thoroughly informed on when and how to make a VIS.

WDVCAS NSW believes that domestic and family violence offences should be a separate category of eligible offences. We understand that there is sometimes a lack of clarity as to which offences are eligible, and believe this could add somewhat to the clarity for both prosecutors and victims. An additional provision of domestic and family violence offences could also include offences such as the non-consensual sharing of images or fraud against an aged parent which are currently excluded, but could both be considered domestic and/or family violence.

In sexual assault matters, it has been recognised that cross-examination of a complainant by an unrepresented defendant can cause undue distress and humiliation for the complainant and is thus prevented by section 294A of the *Criminal Procedure Act 1986 (NSW)*. WDVCAS NSW argue that a similar exclusion should be explored in relation to domestic violence related offences and specifically VISs related to domestic violence offences. In allowing defendants in domestic violence-related matters to directly cross-examine the complainant, courts permit and enable the defendant to perpetuate the abuse of the victim. Direct cross-examination of complainants can:

- allow the defendant an opportunity to further victimise and traumatise the complainant;
- deter victim-survivors of domestic and family violence from reporting or participating in related court procedures;
- affect the quality of the evidence provided by the complainant (due to elevated stress levels and re-traumatisation);
- cause the complainant undue distress; and
- hinder access to justice for victim-survivors.

### **3. Procedural issues with the making and reception in court of a victim impact statement, including the content of a victim impact statement, the evidential admissibility applied to a victim impact statement, and objections to the content of victim impact statements.**

There are a range of procedural issues regarding VISs which impact on the admissibility and reception in court. As only the Prosecutor can tender a VIS to the court, it is important that there are clear, well understood guidelines on how this discretion is exercised. Prosecutors must be well trained in not only the processes involving a VIS, but the importance of these statements to many victims. If more VISs are introduced at Local courts, Prosecutors can exercise their discretion not to tender VIS to avoid delays in dealing with court matters. This would be at odds with the victim's ability to be involved in sentencing, and the positive outcomes of submitting a VIS.

Providing a template or clearer list of questions for victims to support them in drafting a VIS could be highly beneficial. A template could provide direction for what is admissible and what is not admissible, and guide victims as to the format required to be presented in court. A template may



reduce the number of edits and related court delays as well as the number of objections to the content.

Furthermore, practical considerations are important such as safer exits and entries to courts and Safe Room access for victims of domestic and family violence. Access to video link facilities would support victims to present their VIS in a safer environment. Currently this use can be objected to by a defence lawyer, which creates further barriers to the safety of victims and their ability to have involvement in sentencing

#### **4. The level of support and assistance available to victims and the effect of the current framework on victims**

WDVCAS NSW workers consulted in the preparation of this submission agreed that women in NSW do not get an adequate level of support in preparing for the court sentencing process, and that often information is given at a late stage in the process. It is integral that victims are informed and consulted about VISs and the sentencing process in a timely manner. Workers were also asked who was responsible for informing victims about VISs, and there were mixed responses including Police, Prosecutors, Victim's Services and Magistrates. WDVCAS workers did not believe that victims were being given consistent, thorough information by any of those groups.

WDVCAS NSW provide a range of services to support women experiencing domestic and family violence who are involved in local and district court matters. Unfortunately our limited funding means that ADVO list days are prioritised over hearings, as we can support a larger volume of clients. We acknowledge the importance of providing support to women at hearings and further mentions, and provide this support to the extent that is possible- always providing information about processes to expect and equipping them about the court process. We note that in relationships involving domestic and family violence, victims often have their power and control removed, so it is essential that our support services are offered in an empowering manner which offers victims the resources and information they require to make informed decisions. WDVCAS NSW are currently advocating for additional funding to provide case management to clients, which would also enable us to provide support to clients at mentions and at hearings. The Macarthur and Wagga Wagga services are currently funded to provide case management, which also ensures that victims are more comprehensively supported throughout the related court matters.

WDVCAS NSW members also noted the difficult reality that due to the procedural issues noted above and the lack of support for VISs in the Local court, some workers are reluctant to encourage victims to write and present a VIS, as workers have experienced that the results have not been beneficial to clients.

NSW Police and Prosecutors should be responsible for providing information to victims, however in the experience of WDVCAS staff, this does not always happen in practice. Both Police and Prosecutors are extremely busy and often simply provide a card with a contact number for Victim Services. In AVO cases at Local courts, victims are not clear about criminal proceedings and convictions, and quite often do not understand that they have to attend hearings and what will happen at these hearings. Most likely the AVO will be finalised as well as a conviction made subject



to the Magistrate determining that the offence is proven and/or that on the balance of probabilities there are fears warranting an ADVO. WDV CAS services provide this valuable information and support to female victims of domestic and family violence. Furthermore, any worker working with the victim should be able to explain the purpose, procedure and admissible content of a VIS, and training should ensure that workers including support workers, court staff and police are well trained to offer this information.

Victims Services is an important source of information and support for victims, which requires additional resourcing. The supports available including financial support, recognition payments and counselling are invaluable, however there is a substantial problem with the length of time victims need to wait before they receive these services. It is important that the information provided about VIS and other services is accessible to all victims in different formats and languages with clear instructions and purpose. The information on Victims Services website is generally easy to find, however it could be more accessible and easy to read, and it is important to have hard copies of the information, which is easily accessible for victims. It would be good to have a broader range of printed materials about victim rights and VISs which are easily downloadable and free to order which have design features to target different audiences- e.g. youth focus, Aboriginal focus.

Victim expectations and understanding are integral, and these are formed by the type and adequacy of the support they receive. When drafting a VIS, having a support person to help victims is invaluable and WDV CAS NSW suggest that this role is resourced in a new independent role, or through an existing service such as WDV CAS or the local community legal centre. WDV CAS currently provides support regarding drafting of VISs where resourcing allows, or refers clients for legal advice. If a dedicated support position were to be funded, WDV CAS believes that the support person should come from a trauma informed background and have a sound understanding of criminal justice process. It would be helpful for information to be provided to victims about VISs early so that they have an opportunity to consider if it is a good option for them. WDV CAS NSW assert that well-resourced victims' advocates who can help victims at every stage at the criminal justice process would be highly beneficial.

## **5. The effect of the current framework on victims and minimising victim distress in the sentencing process.**

Victims experience a wide range of impacts from participating in the justice process from fear, anxiety and stress to satisfaction and relief (Liang, 2013). In order to provide an example of the effect of the current framework on victims, WDV CAS NSW presents the following case study which highlights some of the impacts upon victims.

Case Study<sup>1</sup>: Ruth is the victim of a very serious assault. She has been in a domestic violence relationship for 3 years with numerous incidents involving the police, none of which had led to a conviction. Her previous ADVO had lapsed. Ruth was supported by her local women's service to attend court, where she also met a WDV CAS worker for additional support and a referral to free legal advice.

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<sup>1</sup> Note: Identifying features have been changed.



The Department of Public Prosecutions had elected to keep the matter in the Local court. The defendant was convicted and sentenced to 2 years in prison, however Ruth was not given the opportunity to present a VIS, as neither the primary support worker or Prosecutor had given her the option. Ruth was very traumatised by the process and by her lack of involvement. Not only was the court process confusing and she didn't understand what was happening, she did not feel that her experience was understood by the Magistrate. Ruth asked her support worker for support to see a counsellor as she was experiencing nightmares involving the court process and her ex-partner, and was feeling generally demoralised.

The defendant later appealed his conviction and sentence, and after a case conference with WDV CAS, Ruth's support worker and the Prosecutor, the victim was given the opportunity to present a VIS in the District court. The WDV CAS worker and support worker both supported Ruth to write her VIS, and to receive legal advice to ensure the content was admissible. Ruth was extremely anxious prior to the hearing, she didn't sleep the nights prior to the court date and was extremely nervous about reading the statement in front of her ex-partner and his family, however she was determined to do so. Ruth read her statement and the defendant was reconvicted. Ruth was happy about the manner in which her VIS was eventually presented at court, and the outcome of sentencing. For Ruth, the sentencing outcome was important, but it was also vital that her story was heard and her experience of violence validated.



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