



# ON DOMESTIC VIOLENCE

**O**dds are you, or someone you know, will undoubtedly fall victim to domestic violence at some point. The high rate of such a horrific crime requires a greater level of public attention to ensure easier access to services and information for victims is made available.

Currently, access to the legal system appears to adequately support the diverse Australian population. Initiatives such as Legal Aid have been established to help disadvantaged groups access the legal system and grasp a more comprehensive understanding of the law. While access issues are continually revised and improved, a major concern that continues in society today is the attitude towards certain crimes and the stigma that accompanies these crimes. This paper will explore the issues surrounding access to the legal system for a particular group of disadvantaged peoples: the victims of domestic violence.

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If Max punches Jack in the face, all else being equal, the police will be called and Max arrested for assault. When appearing in court the case will be a relatively straight forward one; once the main elements of the crime are proven, a guilty verdict is likely to prevail. Presuming this scenario falls into the more serious end of the spectrum, Max is likely to face time in prison.

Now, if Max punches his wife Josephine, all else being equal, the outcome is likely to be very different. Firstly, Josephine is unlikely to report the crime at all. The matter will probably go no further than the four walls of their family home. If she does report the crime, the police are unlikely to act as efficiently as they would with an average and straightforward assault case; the stigma remains: 'it's a family matter.' At best, Max will be prosecuted for assault under the *Crimes (Domestic and Personal Violence) Act 2007 (NSW) ('DPV Act')*.

This simple scenario poses serious concerns for not only victims of domestic violence, but the Australian legal system at large. Why should assault be any different based on gender and the relationship of the victim to perpetrator?

Access to the legal system centres around the ability of an individual to source legal information, legal representation as well as understanding

the language of the law itself. The latter poses a great barrier for most people simply due to the sophistication of the language used. In the context of domestic violence, the disparity between the language used in the DPV Act and that of what the average person would explain domestic violence to be, is enormous. To simply define the term domestic violence, three separate terms have to be individually defined. There is also reference to different statutes in order to define domestic violence.<sup>1</sup>

For individuals trying to access the legal system, the language of the law poses yet another barrier. Once sourced, legal information is often unreadable and therefore rendered unusable. This barrier is only intensified when the victim is placed in an abusive relationship. Imagine Josephine – hurt, alone, and confused – trying to decipher the complex words of the statute(s) and what they mean for her situation.<sup>2</sup> While it is necessary to have legislation written in a manner that provides clear guidance to the courts, it is equally necessary in my opinion to have laws that the average person can understand. While it would be utopian to believe that open access to legal language is possible, in certain situations, such as domestic violence, I believe there is a greater sense of urgency to find a solution to the problem of incompressible legal language. One way to overcome this would be to have a separate, reader-friendly version of

the statute that can be understood by everyone. For legislation such as this, where the subjects are in a position of particular terror and danger, understanding their rights would create a greater sense of security for the victim and encourage them to firstly report the crime, and secondly have faith in the legal system and its ability to uphold justice. This is the first step that needs to be taken in order to create equal access to the legal system for victims. To encourage victims to engage with the legal system, it is necessary to have a legal system that can be understood by these individuals. Mere accessibility from the standpoint of sourcing material is simply not enough to invoke change and create an environment where victims feel comfortable in reporting such crimes; comfortable from a safety point, as well as feeling comfortable with the ability of the legal system, to ensure justice prevails.

Research conducted by the Bureau of Crime Statistics and Research (BOCSAR) in 2004 found that the top three incidents per head of domestic violence in New South Wales were in Bourke, Walgett and Connambie. Statistics show that the level of domestic violence reported in these areas was at least 3.9 times the average for the State as a whole.<sup>3</sup> Victims in these towns face even greater barriers to the legal system than their city counterparts due to their low socio-economic status resulting from lower levels of education and lower incomes. Recent research shows that victims from low socioeconomic backgrounds are more likely to have a lower social wellbeing after the crime.<sup>4</sup> Therefore for these three areas in particular, not only do they have the highest reported levels of domestic violence in New South Wales, they are also expected, according to research, to have a lower level of social wellbeing following such attacks. Communities that have such inherent disadvantages require greater assistance to legal information and advice. Simply establishing services is only the first step. Victims in these areas particularly need active assistance to even report such violence.

The low socio-economic background of many victims of domestic violence means that they

face greater barriers to seeking justice due to their inability to access the legal system. Julia Wentz in a recent article discussed the advantages the internet provides as a platform to access the legal system and the opportunities this can provide for victims of crime.<sup>5</sup> The disjunction between disadvantaged groups and the rest of society is never more obvious than in this context. As discussed previously, the areas where domestic violence is most prominent in New South Wales are areas where internet access would be scarce, if at all. Wentz argues that 'access to information is the linchpin for achieving legal justice'; equally, very limited access often results in injustice. This is the current state of affairs for the majority of domestic violence victims. An inability to easily access legal information, coupled with high rates of domestic violence, creates a real problem for these victims.

It is important to note that these statistics are generated from reported cases of domestic violence. Domestic violence crimes are notoriously unreported and therefore these statistics arguably elucidate only the most serious of cases. This is evidenced by the fact that from 2000–2004 the number of female victims reporting domestic violence only increased by 2% from 45% to 47%.<sup>6</sup> These statistics suggest that victims of domestic violence are generally remaining silent about these crimes. This can be attributable to issues of individual safety and an inability to access the relevant legal advice and information when needed.

The services provided for domestic violence victims such as the Women's Legal Services are a great entry point into the legal system for victims. However, an even larger matter arises from this point: male victims. While females make up the majority of domestic violence victims, it is a great misnomer that only females can be victims; 28.9% of reported victims are in fact male.<sup>7</sup> It is at this stage that there appears to be the greatest gap between the needs of victims and their ability to access the legal system. The services that are provided to help victims of domestic violence, not only get out of abusive relationships, but gain an entry



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point into the legal system are predominately focussed towards women. This misconception surrounding the victims of such a crime have emerged out of the attitudes and stigma attached to the family relationship, whereby the male is in charge and holds all the power. Male victims therefore face an added barrier to achieving justice for these types of crimes that are deemed crimes against ‘females’.

The Law Council of Australia released the Family Law Committee Report in 1980, written over three decades ago. This paper gives an insight

into the attitudes towards domestic violence in the 1980s which can be compared to that of today. In particular, the report deals with issues surrounding the police’s reluctance to intervene. While several reasons were suggested, the report was based around a recurring theme: ‘the victim may change her story’.<sup>8</sup> Noticeably, the victim is referred to as feminine. This continues throughout the entire report, where male victims have failed to be mentioned. Unfortunately it appears that this misnomer has carried on through the decades with victims generally referred to, and expected to be female. This is

an area where access to support services in the short run and the legal system in the long run is lacking. Access for domestic violence victims needs to be unisex. The establishment of male only services, mirroring that which already exists for females, is the first step in ensuring justice for male victims. The second interesting point made by the report is that there was ‘a police belief (often based on rumour) that the victim deserved what she got.’<sup>9</sup> This perception has arguably improved over the last 30 years due to greater education for the police and the public in general.

However, the low rates of reported cases infer that the stigma attached to this crime is not yet eradicated and remains dominant throughout society. A report written in 2009 discusses the influence that different attitudes can have concerning victims of domestic violence. The ‘contextual factors’ result in different sub-populations holding differing views on such violence. For example, in many Aboriginal communities, and among people with disabilities, such violence is more accepted and generally deemed a family matter.<sup>10</sup> This mentality creates problems for victims accessing the legal system for the very fact they fail to report the issue in the first place. The fear of speaking out because of such societal mentalities is intensified for male victims. Through improved services, both legal and non-legal victims may be encouraged to get help; after all, domestic violence is one of the most horrific and, unfortunately, common crimes there is. Victims that fall into especially disadvantaged groups such as those mentioned above require a higher level of assistance when engaging with the legal system.

The major barrier to any legal service provided to victims is the state of mind of the victim themselves. Finding one’s self in an abusive relationship no doubt is a traumatic experience and one where victims often feel very alone. The inability for victims to then think logically during such a traumatic situation hinders their ability to access the appropriate information and help even when it is available. Access to legal information is therefore only as helpful as the individual will allow it to be. This is the legal system’s main folly.

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## REFERENCES

- 1 *Crimes (Domestic and Personal Violence) Act 2007* s11 – meaning of ‘domestic violence offence’; s4 – meaning of ‘personal violence offence’; s5 – meaning of ‘domestic relationship’.
- 2 *Crimes (Domestic and Personal Violence) Act 2007* s 11.
- 3 Don Weatherburn, ‘Trends and Patterns in Domestic Violence’ (Media Release, NSW Bureau of Crime Statistics and Research, 2005) [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/pages/bocsar\\_mr\\_cjb89](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_mr_cjb89).
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- 5 Julia Wentz, ‘Justice Requires Access to the Law’ (2005) 36 *Loyola University of Chicago Law Journal* 641–647.
- 6 Weatherburn, above n 3.
- 7 *Ibid.*
- 8 Law Council of Australia, ‘Committee Report c 80 Family Law Committee’ (Law Council of Australia, The Federal Council of Bar Associations and Law Societies, 1980)
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- 10 Australian Bureau of Statistics, ‘Conceptual Framework for Family and Domestic Violence’ (2009) <http://www.abs.gov.au/ausstats/abs@.nsf/Products/90CB5D75D47DDF3BCA2575B700176CDD?opendocument>.



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