

Submission: 'Swift, Certain and Fair' approaches to sentencing and managing family violence offenders

21 April 2017

Introduction

No To Violence Incorporating the Men's Referral Service (NTV/MRS) appreciates the opportunity to provide comment on the Discussion Paper *Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders* (the Discussion Paper).

This submission provides a summary of some evidence and considerations to supplement the issues addressed in the Discussion Paper. Specifically, this submission speaks to the relationship between court and Corrections Victoria referrals into Men's Behaviour Change Programs, and how the system reforms to family violence responses can enhance sentencing outcomes for family violence offenders.

There is evidence to indicate that a 'swift and certain' approach to sentencing, in combination with other system integration measures, can increase men's engagement with and completion of, Men's Behaviour Change Programs. This requires a number of additional measures within courts and Corrections to reinforce the significance of court orders and sentencing conditions, and enable effective program engagement.

About No To Violence Incorporating the Men's Referral Service

No To Violence incorporating the Men's Referral Service (NTV/MRS) is the Victorian peak body for organisations and individuals working with men to end their violence and abuse against family members. NTV/MRS oversees the standards of practice for men's behaviour change programs delivered by more than 100 members, delivers the Graduate Certificate in Male Family Violence which is the core qualification for facilitators of Men's Behaviour Change Programs, and undertakes practice and policy development work to ensure men who use violence are held accountable for their behaviour.

The Men's Referral Service has had over 150,000 conversations with men about their use of violence over the last 23 years. MRS currently engages with more than 10,000 perpetrators per year in Victoria, New South Wales, Tasmania and across Australia. MRS provides the follow up to all weekend police incidents in Victoria – more than 17,000 per year – and provides follow up to all 40,000 men assessed to be victims in family and domestic violence incidents in NSW. In total, NTV/MRS provides support for more than 70,000 men affected by family violence each year.

About Men's Behaviour Change Programs

There are 27 Men's Behaviour Change Program (MBCP) providers in Victoria operating across approximately 40 sites. 2000 places are funded by the Department of Health and Human Services (DHHS), 340 places are funded by Corrections Victoria to work with men on Community Corrections Orders. 450 places are funded by the Magistrates' Court of Victoria (MCV) to work with men on counselling orders made by a specialist family violence division of the MCV.

MBCPs in Victoria are required to meet the *Minimum Standards for Men's Behaviour Change Group Work*, set by NTV/MRS with input from the sector and relevant experts. However, groups vary in their length and approach, as well as the associated support for men and their family members affected by the man's use of violence.

Central to the work of Men's Behaviour Change Programs, and a requirement under the Minimum Standards, is partner contact. Partner contact is required in order to monitor the safety of the man's partner and family while he participates in the group. Most providers receive funding to deliver group sessions and to undertake a little partner contact, however this funding is insufficient to engage men's partners and/or ex-partners effectively (requiring programs to supplement government funding sources with other funding in order to meet demand).

Effectiveness of Men's Behaviour Change Programs

There have been a number of studies¹ demonstrating effective outcomes from MBCPs (variously known as Batterer Intervention Programs in the USA, and Domestic Violence Perpetrator Programs in the UK), using a range of measures:

- Reduced recidivism rates
- Reports from men of the benefit they derived from the program
- Reports from men's partners and ex-partners about changes in the man's behaviour
- Coordination with other agencies and services

Programs linked to sentencing

Programs funded by Corrections Victoria and the MCV all require regular reporting to the referring agency on the man's attendance, and reporting of breaches of court orders or sentencing conditions. Some have reported they are met with inconsistent responses from Corrections to reports of breaches by the men.

Best practice in sentencing and managing family violence offenders

Question 1: Evidence base

In light of the available research:

- a. Is there sufficient evidence for the effectiveness of 'swift, certain and fair' (SCF) approaches to warrant their application in Victoria?
- b. If so, is there sufficient evidence for the effectiveness of SCF approaches to warrant their application to family violence offenders?

Question 2: 'Swift, certain and fair' as a response to family violence

Do SCF approaches align with the evidence of best practice for the sentencing, and management under sentence, of family violence offenders?

The evidence base for applying a SCF approach to sentencing family violence offenders in Victoria is limited. However, some studies have recommended the need for appropriate sanctioning of men who do not comply with court orders to attend intervention programs as a means to improve group attendance.² Further literature speaks to the efficacy of monitoring and close supervision of men referred into perpetrator programs. This involves a broader scope than SCF only, although Gondolf's 2000 study examines a SCF approach combined with regular judicial monitoring.

¹ See Westmarland, N. & Kelly, L. (2015) *Domestic Violence Perpetrator Programs: Steps Towards Change*, Project Mirabal Final Report, London & Durham, London Metropolitan University & Durham University.
Mackay, E., Gibson, A., Lam, H. & Beecham, D. (2015) *Perpetrator interventions in Australia: Part one – Literature review*, State of Knowledge Paper, ANROWS, Sydney, pp. 30-36.

² Gondolf, E. (2000) 'Mandatory Court Review and Batterer Program Compliance' in *Journal of Interpersonal Violence*, Vol. 15, Issue 4.

Burton, M. (2006) 'Judicial Monitoring of Compliance: Introducing 'Problem Solving' Approaches to Domestic Violence Courts in England and Wales' in *Law, Policy and the Family*, Vol. 20, Issue 3, December.

Accordingly, the implementation of a SCF, or any other approach, to sentencing family violence offenders needs to be situated in a broader service system responding to perpetrators and holding them accountable.

The broader reform process for family violence response in Victoria needs to be considered in the design and implementation of a new sentencing approach. This includes changes within the court system, as well as in broader response systems.

Web of accountability

A best practice approach to sentencing and managing family violence offenders should be part of a *web of accountability*.

A web of accountability around a man comprises:

- attempts to hold him accountable through the formal criminal justice, civil justice and child protection systems (involving informed, consistent and coordinated actions by police, courts, corrections and child protection, where appropriate)
- the actions of non-mandated service systems that attempt to engage him through proactive, assertive outreach (for example, at court through a Respondent Worker or other front-end service system initiatives)
- women's (and in some cases, a community's) own informal attempts to 'draw a line in the sand' about his behaviour, and to hold him accountable to the promises he might have made to change his behaviour, and to her and her children's needs for safety and dignity.³

Women and children, and the services which support them, therefore perform a central role in this web of accountability. While they are not responsible for holding men accountable, they are not passive victims, and accountability is strongest when their existing efforts to hold men accountable are supported, and not undermined, by formal accountability measures. It is vital for family violence systems agencies to listen to, and understand, women's and children's needs and voices in our efforts so support their struggle against the violence, and their (or our collaborative struggle) towards their safety and perpetrator accountability.

Safety

Question 3: Managing risk to victim survivors or protected persons

- a. Would SCF sanctions, in the form of short periods of custody, increase the short-term risk to victim survivors or protected persons?
- b. If so, can this risk be justified by the potential for greater offender accountability, greater offender compliance and a reduced risk to victim survivors or protected persons in the medium to long term?

Approaches to sentencing family violence must prioritise safety over compliance. Management of family violence perpetrators need to take as their first and highest priority the safety of the man's partner/ex-partner, children, and other family members. This priority may at times override other objectives of holding a man accountable, imposing consequences for the man's actions, or changing his behaviour on a longer-term basis.

Some NTV/MRS members have expressed concern that SCF approaches to sentencing are likely to increase the risk of harm from family violence, as men to whom prison sentences are imposed are likely to blame the survivor(s) and may escalate their use of violence. This is particularly likely in cases of men who have high risk factors, previous contact with the criminal justice system, and a

³ See NTV/MRS (2013) *What can be done to strengthen accountability for men who perpetrate family and domestic violence?*, Melbourne, attached.

low level of respect for authority, who are unlikely to respond to the imposition of an immediate consequence.

Compliance and a reduction in recidivism should be treated as secondary goals to the immediate safety of women and children affected by family violence. Effective sentencing outcomes to reduce men's use of violence are more likely to result from a coordinated response across agencies which act to keep the man 'in view' and his partner/ex-partner, children and family safe.

Working with women's and children's family violence services

If a SCF approach is implemented, this sentencing approach needs to be coordinated with safety-focused responses from specialist family violence services. Short periods of custodial sentencing may be useful to ensure the safety of a perpetrator's partner/ex-partner and children by enabling them to relocate or implement any safety and security measures necessary.

Integrating sentencing with other family violence system reforms

Court specialisation and judicial monitoring

Question 5: Reforms to judicial monitoring

- a. Should judicial monitoring form part of an SCF approach to the management of family violence offenders on a CCO, and if so, how?
- b. Should the powers available to a court at a judicial monitoring hearing be expanded, and if so, how?

Question 16: Alternative reforms

Are there alternative reforms to the sentencing, and management under sentence, of family violence offenders that would better promote the principles of 'swiftness', 'certainty' and 'fairness'?

Courts specialising in family violence related legal matters are the best practice approach to addressing family violence comprehensively. Gondolf's 2000 study demonstrated that additional judicial monitoring increased the rates of program attendance by men who were ordered as part of the swift and certain response in Pittsburgh, USA. The implementation of a swift and certain response in the court was accompanied by increased judicial review.⁴

As per recommendation 60 from the Royal Commission into Family Violence, all headquarter courts of the Magistrates' Court of Victoria (MCV) will have the functions of specialist family violence courts. Trained judicial officers and Court Services staff, specialist support services for applicants and respondents, dedicated police prosecutors, access to legal services, and other services will be available, according to the Victorian Government's commitment to implement the Royal Commission's recommendations. These courts will have processes to 'fast-track' criminal proceedings and implement other measures that are likely to increase the safety of victims/survivors and to hold men who use violence accountable.

In particular, the expansion of specialist family violence courts to all headquarter MCV courts will enable more specialised judicial monitoring and ongoing risk assessment of perpetrators. These additional features will enable a stronger and more targeted justice response.

Critically, judicial monitoring reduces the onus on the man's partner, ex-partner or other family members to report breaches of court orders or sentencing conditions.

⁴ Gondolf, E. W. (2012) *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, Boston, Northwestern University Press, pp. 210-11.

The additional court powers need to be supplemented by information sharing and reporting arrangements between the courts and Men's Behaviour Change Programs. With the current specialist family violence courts which mandate men to attend MBCPs under Counselling Orders, there is no requirement for programs to report back to the court on men's attendance. This needs to be remedied and resourced appropriately within both agencies.

Integration of sentencing with these changes should be considered, particularly with evidence indicating the efficacy of an approach combining judicial monitoring with swift and certain sanctions.

Coordination and collaboration between Men's Behaviour Change and Corrections

As discussed above, a combined approach where there is coordination between agencies involved, as well as outreach and engagement with the man, is more likely to promote long-term change.

MBCP providers who work with men on CCOs report that this is the missing factor in Corrections-funded programs. The length of groups and the resourcing of individual engagement with each man is insufficient to work effectively with men who have complex needs or high risk factors. NTV/MRS has recommended, as part of the review of the Minimum Standards for Men's Behaviour Change Group Work, an increase in the length of groups and the amount of individual work that programs can offer to participants. This is intended to enable providers to undertake more individual work with participants in order to promote their motivation to engage in groups and change their behaviour.

There is also evidence to suggest that a greater degree of individual engagement with program participants, especially court-ordered participants, results in better engagement and more sustained change. Some providers have expressed concerns that swift and certain sentencing alone would not increase a man's engagement with program content, even if it increases compliance with the conditions of a court order.

Strengthening individual motivational interviewing and preparation as part of MBCPs needs to be complemented by increased supervision and case management from Community Corrections officers. This needs to be informed by a collaborative and multi-agency risk assessment approach that will take all opportunities to access relevant information about the man's risk of using violence. This should include Corrections Victoria working with the man to address criminogenic needs, and on addressing any barriers to accessing MBCPs or other support services (e.g. transport).

Sharing information

As discussed above, conditions need to be supplemented by greater opportunities for programs to engage, to provide timely reports back to courts or Corrections.

There will also be greater opportunities for agencies engaged with perpetrators of family violence to share information with one another, without requiring prior consent from the perpetrator, under family violence information sharing reforms.

The majority of relevant agencies, including courts and Corrections Victoria, are likely to be prescribed agencies under the legislation underpinning the reforms. This will enable them to share information with one another to manage risk of family violence.

Sufficient resourcing for Men's Behaviour Change Programs to work with Corrections

Evidence has demonstrated the importance of collaborative information sharing and reporting between Men's Behaviour Change Programs and Corrections agencies to promote compliance and

engagement.⁵ This requires sufficient resources for programs to provide individual engagement with men, to work more consistently with the man's partner, ex-partner and other family members, and to collaborate with other agencies.

Current MBCP funding is insufficient to fulfil all of these functions for each man mandated by Corrections and MCV to attend Men's Behaviour Change Programs. Most programs are currently only funded to work with men in a group setting, along with a small component of partner and family safety contact work. NTV/MRS has recommended that resourcing for MBCPs needs to increase to incorporate significantly more contact hours and preparation time per man, and with the man's partner, ex-partner, children and other family members.

For further information

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⁵ Gondolf (2012), Op. Cit.