



Processes for family violence matters in the Magistrates Court: review and recommendations.

December 2014

terms of reference

In making this submission in regards to family violence, Women's Legal Service Tasmania has considered:

- the existing court processes in the Tasmanian Magistrates Courts;
- the existing processes in other jurisdictions;
- minimising the negative impact of the court process on victims whilst ensuring their safety;
- working towards more consistent sentencing and appropriate outcomes for the offender.

scope of reference

Women's Legal Service Tasmania have made recommendations on the following:

- existing Magistrates Court processes that can be improved and if appropriate inserted into legislation;
- a more cohesive working relationship between judicial staff and support services;
- the physical layout of the court room;
- changes to legislation in regards to sentencing options, rules of evidence, bail and plea in mitigation of sentence; and
- improved programs for offender rehabilitation.

participants

Women's Legal Service Tasmania

Police Prosecution

Magistrates Court

Support Help and Empowerment (SHE)

Hobart Women's Health Centre

Centacare

Family Violence Counselling and Support Service

Court Support Services

Legal Aid Commission of Tasmania

recommendations

Recommendation 1

- a. A specialised family violence court list should exist in the Magistrates Court to deal with criminal charges related to family violence and family violence orders. This list should be run on a weekly basis.
- b. The family violence court listing process should be fully implemented into the court's administrative directions and not on an ad hoc basis.

Recommendation 2

That the *Bail Act* be amended to allow the court to bail the defendant to the specialised family violence list and to the Defendant Health Liaison Officer.

Recommendation 3

That a Family Violence Circuit List should be implemented such that a designated Magistrate and police prosecutor be funded to travel within defined circuit areas around the state to hear matters in each specialised family violence list.

Recommendation 4

- a. The Government should initiate discussions between the Court Support and Liaison Service and non-government victim support services to develop a joint approach to victim support. This would include training non-government advocates in the court process.
- b. The Defendant Health Liaison Officer role should be extended and complemented by other non-government organisations and support services, which should be funded accordingly.

Recommendation 5

That victims be fully supported and encouraged to provide victim impact statements to the court, and that all victims be referred by Police and/or Prosecutions to the Victims Support Service as a matter of practice.

recommendations

Recommendation 6

That the courtrooms where family violence matters are held be re-designed to ensure that victims have a separate entrance to the defendant.

Recommendation 7

State legislation should provide that when granting bail, the court should be required to consider whether to impose protective bail conditions, issue or vary family violence orders, or do both.

Recommendation 8

State and territory legislation should impose an obligation on police and prosecutors to inform victims of family violence promptly of:

- a. decisions to grant or refuse bail; and
- b. the conditions of release, where bail is granted.

Victims should also be given or sent a copy of the bail conditions. Where there are bail conditions and a family violence order, police and prosecutors should explain how they interact. Police codes of practice or operating procedures, prosecutorial guidelines or policies, and education and training programs should reflect these obligations.

Recommendation 9

- a. Resources need to be made available to Police Prosecution in order to re-prioritise family violence designated prosecutors.
- b. That the Magistrates Court and Police Prosecution discuss a joint approach to the listing of family violence matters with the intention of ensuring that prosecution has time to adequately communicate with victims and plan evidence.

Recommendation 10

That legislation be amended to allow Magistrates to initiate a disputed facts hearing.

recommendations

Recommendation 11

That legislation be amended to include that evidence is disclosed to the other party as soon as someone is arrested.

Recommendation 12

That the Tasmanian Government should collaborate with relevant stakeholders to develop and maintain a Family Violence Bench Book.

Recommendation 13

- a. That where deemed appropriate, suspended sentences remain as a sentencing option for perpetrators of family violence.
- b. That deferred sentences be considered with a focus on addressing the cause of the offending as a further option to be utilised at a Magistrate's discretion.

Recommendation 14

That the Family Violence Offender Intervention Program be evaluated, and dependent on the outcome of evaluation, properly resourced and implemented.

Recommendation 15

State legislation should provide that victims of family violence are sent details of the defendant's hearing, particularly the charge and the sentencing outcome.

Recommendation 16

A working group should be established that includes a representative from each participant to this submission to ensure that all recommendations that are approved by Government are properly implemented. It should convene on a quarterly basis in order to maintain the focus on family violence and strive for continuous improvement in this area.

Any such working group should report directly to the Attorney-General and be convened with a view to providing expert advice

recommendations

from an “on the ground” perspective rather than departmental policy perspective.

Recommendation 17

- a. That the Tasmanian Government should commence funding the Women’s Legal Service to provide advice, advocacy and representation for women and children experiencing family violence.
- b. That the Tasmanian Government should increase funding to the Legal Aid Commission’s Safe at Home Program as well as funds for private practitioner representation where there is a conflict with the Commission.

introduction

In 2004/05 Family Violence was very much a key focus with the implementation of Safe at Home and the enactment of the *Family Violence Act 2004 (Tas)*. Ten years later it is time to refocus on family violence and review current court processes.

Safe at Home

The Safe at Home Coordination Unit is currently undertaking a Safe at Home internal performance review. This review aims to ensure that Safe at Home continues to meet its original four objectives regarding the safety and security of victims, offender accountability, reducing the incidence of family violence and minimising the negative impact court processes have on victims. This submission may overlap in terms of trying to achieve similar objectives, however it will not be reviewing or making recommendations directly relating to the Safe at Home program.

Interaction of Courts

The scope of this submission is to examine court processes in the Magistrates Court only. A majority of family violence matters are likely to arise first in the Magistrates Court for matters such as family violence orders and summary criminal offences, such as common assault, property damage, stalking, and breach of a family violence order. Committal proceedings for serious criminal offences, such as sexual assault may also be heard in the Magistrates Court.

This submission is primarily based on the processes of the Hobart Magistrates Court. This is only due to time limitations and restricted resources meaning that consultations with stakeholders in other parts of the state were minimal. Some of these submissions and recommendations may be applicable to other parts of the state, however broader consultation would be necessary.

Tasmania's current fiscal environment

It is well documented that Tasmania is currently operating in a tight fiscal environment and all recommendations made in this submission have been made with this as a consideration. It is for this reason that a majority of recommendations build on existing court processes and legislation. All recommendations aim to be realistic in terms of the cost and the ease with which they can be implemented.

family violence court list

Recommendation 1

- a. A specialised family violence court list should exist in the Magistrates Court to deal with criminal charges related to family violence and family violence orders. This list should be run on a weekly basis.
- b. The family violence court listing process should be fully implemented into the court's administrative directions and not on an ad hoc basis.

A specialised family violence list in the Magistrates Court would ensure that support services, specialised family violence prosecutors and Magistrates were all present on the designated day. Each would be trained and practiced at dealing with family violence matters and additional support services would be available to both the victim and perpetrator.

A family violence list does currently run in the Hobart Magistrates Court but is largely at the discretion of the Registry and has not been officially implemented in the court's administrative procedures. Support services are often unaware of when the specialised court lists run and family violence matters are commonly listed alongside other non-related matters, which has the effect of dissipating the family violence focus. This was particularly mentioned by police prosecutors who have to pick up each new matter as it appears before them along with the family violence matters listed.

Recommendation 2

That the Bail Act be amended to allow the court to bail the defendant to the specialised family violence list and to the Defendant Health Liaison Officer.

Family violence matters can be listed in a number of ways:

- Police Family Violence Order – an application by either party to revoke or change conditions of an existing order.
- Family Violence Order – an application to the court for a family violence order by either the victim, police, child affected by the family violence or any other person granted leave of the Court.

family violence court list

- Bail – when police are called to an incident, take a statement and charge the perpetrator for an incident or breach of an order. In this instance the first decision is made around bail.
- A summons or a warrant for the defendant to appear in court at a particular date.
- Child protection – family violence matter co-occurs with a child protection matter.

Due to the variety of ways a matter can be listed, concerns were raised that it may be difficult to place all matters on a specific family violence list particularly if a victim or a child is at immediate risk. Another issue raised was that offenders may be remanded for longer periods if arrested several days before the day with the specialised list.

Recommendation 2 has been designed to alleviate these concerns. Specialised court lists are already successfully run in the Tasmanian Magistrates Court, such as the Mental Health and Cognitive Disability Diversion list that operates within the existing resources.

Consideration should be given to whether or not a matter that contains issues of child protection and family violence related offences is split or left as is and Magistrates should be empowered to make such decisions.

Other jurisdictions

The ACT Magistrates Court has a specialised family violence list as one component of the ACT's Family Violence Intervention Program. The matters are heard weekly and an independent evaluation indicates that the list and related processes have resulted in the earlier finalisation of cases through guilty pleas, and a majority of victims gave a positive response to the court process.¹

No other jurisdictions have specialised court lists but South Australia, Victoria and Western Australia have separate family violence courts.

¹ Australian Law Reform Commission Report 114 – Family Violence - a

family violence court list

Recommendation 3

That a Family Violence Circuit List should be implemented such that a designated Magistrate and police prosecutor be funded to travel within defined circuit areas around the state to hear matters in each specialised family violence list.

Having a designated team for family violence matters would ensure consistency in court processes and sentencing across the state, consistency in understanding of an attitude towards the complex issues related to family violence and consistency in court processes for all family violence matters.

It would be important that the circuit areas are set up in a way that engages with local support services to ensure that the family violence team is aware of issues specific to that locality, individual, family and community.

In our experience, women from regional, rural and remote areas of Tasmania often find it difficult to arrange transport, childcare and accommodation in order for them to attend the current Magistrates Court locations. A circuit court would make it easier for both victims and perpetrators to attend.

court services and design

Recommendation 4

- a. The Government should initiate discussions between the Court Support and Liaison Service and non-government victim support services to develop a joint approach to victim support. This would include training non-government advocates in the court process.
- b. The Defendant Health Liaison Officer role should be extended and complemented by other non-government organisations and support services, which should be funded accordingly.

The Court Support and Liaison Service that is run through the Safe at Home program is excellent and all that were consulted agreed that the Officers greatly assist victims and play an important role in the court process. Currently the service is limited in that there are only two support officers in the Hobart Magistrates Court and it does not have the resources or capacity to assist all victims. In order to bolster the role of these Officers, services such as Centacare, SHE, Yemaya and Hobart Women's Shelter could be trained to complement the role of the Court Support and Liaison Service. This would have the additional benefit of providing these services with the training and expertise in court processes and advocacy.

The role of the Defendant Health Liaison Officer was also recognised as important and one that needs to be extended. Currently there is only one Officer at the Hobart Magistrates Court who deals with defendants and this is not limited to family violence matters. Defendants in family violence matters often need assistance with accommodation and Centrelink, particularly if there are family violence orders that prevent them from returning to the family home. Magistrates have expressed an interest in the Liaison Officer's role being extended so that they are able to refer the defendant to the service. It is believed that such a service has the potential to reduce the breach of bail conditions or family violence orders.

Funding from as little as \$10,000.00 per year to a service such as SHE would allow for experienced counsellors to attend court and preparation appointments with their clients without losing frontline counselling hours at the service whilst at the same time providing continuity of care and support for the client at what can be a traumatic time. Having experienced counsellors present can save time and resources however the resources of

non-government organisations are already stretched and they should be assisted by the state.

Victim Impact Statements

Recommendation 5

That victims be fully supported and encouraged to provide victim impact statements to the court, and that all victims be referred by Police and/or Prosecutions to the Victims Support Service as a matter of practice.

Victim Impact Statements are an important sentencing tool for Magistrates but are not always available. It is thought that this is largely because victims are not aware of the importance of these statements and are not offered assistance to complete the necessary forms. Filling out the forms can be extremely distressing for the victim.

Anecdotally victims are given the forms at the time of giving their police statement. Providing these types of forms when reporting to the police is not the most opportune time for a victim to be able to verbalise the total impact the behaviour of the perpetrator has had on them. In Victoria, as a matter of routine police give the names of victims to the Victim Support Service who contact the victim several days after the event and offer to assist the victim with their Victim Impact Statement. Such a process should be implemented in Tasmania and Government should assist support services to facilitate this role.

Recommendation 6

That the courtrooms where family violence matters are held be re-designed to ensure that victims have a separate entrance to the defendant.

Currently all parties to family violence matters must enter the court through the same doorway and wait together prior to their matter being heard. All who were consulted commented on the issues surrounding this, in particular the intimidation and fear felt by the victim when faced with the defendant who is often with family members or friends. This is an issue in other areas of proceedings and the existence of a separate entrance is strongly supported by court staff and Magistrates.

bail

Protection through bail conditions or a protection order

Recommendation 7

State legislation should provide that when granting bail, the court should be required to consider whether to impose protective bail conditions, issue or vary family violence orders, or do both.

There is a general consensus that bail conditions are not a good way to manage family violence. Police prosecution have said that it is unusual practice for bail conditions to be used instead of a Family Violence Order and it is generally only done if a condition of an Order is about to expire and bail is used while the condition is under review. Family Violence Support Services have reported instances where perpetrators have breached protective bail conditions multiple times with little repercussion.

When perpetrators of family violence are before the Magistrates Court regarding bail, it should be standard practice for police to check whether there is a current Family Violence Order in place or whether they need to apply for, or apply to renew, a Family Violence Order to protect the victim.

Informing victims of bail conditions

Recommendation 8

State and territory legislation should impose an obligation on police and prosecutors to inform victims of family violence promptly of:

- a. decisions to grant or refuse bail; and
- b. the conditions of release, where bail is granted.

Victims should also be given or sent a copy of the bail conditions. Where there are bail conditions and a family violence order, police and prosecutors should explain how they interact. Police codes of practice or operating procedures, prosecutorial guidelines or policies, and education and training programs should reflect these obligations.

bail

Victims of family violence have an obvious interest in knowing when a person who has used family violence against them is released on bail, and in understanding the conditions of bail and how those conditions might interact with any relevant family violence order. Police prosecution have said that providing such information to the victim is common practice, however it largely up to the individual officer and sometimes they are too busy.

evidence

Prosecution be resourced in order to communicate with victims to plan evidence

Recommendation 9

- a. Resources need to be made available to Police Prosecution in order to re-prioritise family violence designated prosecutors.
- b. That the Magistrates Court and Police Prosecution discuss a joint approach to the listing of family violence matters with the intention of ensuring that prosecution has time to adequately communicate with victims and plan evidence.

Currently police prosecution do not always have time to discuss the case with the victim prior to the day when the matter is to be heard. This is problematic, particularly if the victim arrives to court with new evidence. Reportedly this is generally not the case for high risk victims as prosecution are allocated these files in advance, however in the majority of cases prosecution only speaks to the victims on the day.

When the Safe at Home program was first implemented there were six designated police prosecutors linked to the program. Currently there are only two in Hobart and these prosecutors deal with family violence matters as well as any other matter that comes before the court when they are in attendance.

It was acknowledged by both Magistrates and prosecution that better communication between the Magistrates Court and prosecution regarding the lists and the readiness of a matter to proceed would be beneficial.

Recommendation 10

That legislation be amended to allow Magistrates to initiate a disputed facts hearing.

There has been much criticism from community organisations, the public and the media as to the perceived leniency of family violence related sentences. Magistrates can only make decisions based on the information before them. If prosecutors are placed in the position where they have only minimal or insufficient preparation time it is highly likely that the full extent

evidence

of the matter is not being put before the Magistrate resulting in lower sentences. This in itself can be a deterrent to future reporting of family violence incidents by victims and the public.

Police prosecution have said that if they are aware of a misrepresentation being made by the defendant they will apply for a disputed facts hearing and that additional Court Support Staff and advocates would be helpful in the courtroom to ensure that prosecution is aware of the misrepresentation. After sentencing, victims often report that defendants misrepresent their circumstances with the intention of gaining a lighter sentence. Examples include alleging provocation and the relationship continuing.

Magistrates are skilled at identifying where a matter would benefit from a disputed facts hearing and should have the ability to initiate such a hearing.

Early disclosure of evidence

Recommendation 11

That legislation be amended to include that evidence is disclosed to the other party as soon as someone is arrested.

It is understood that proposed changes to the law of disclosure are currently being considered by the State Government. The general consensus amongst those consulted is that changes in line with Recommendation 11 would be welcome

Disclosure should occur as a matter of course as soon as practicable after arrest and fees for doing so should be abolished. This would lead to fewer court adjournments due to delayed FOI requests and defendants using their (alleged) inability to pay fees as a delaying tactic.

Family Violence Bench Book

Recommendation 12

That the Tasmanian Government should collaborate with relevant stakeholders to develop and maintain a Family Violence Bench Book.

A bench book on family violence could play a significant and valuable role in guiding Magistrates in sentencing in family violence matters. The bench book would draw attention to the particular features and dynamics of family violence and would consolidate the guidance contained in existing case law and research and present it in an accessible format.

In Victoria a family violence bench book has been developed and recent statistics have seen a more consistent approach to family violence in terms of sentencing. It may be possible that this resource could be amended so it is in line with Tasmanian legislation.

Sentencing Options

Recommendation 13

- a. That where deemed appropriate, suspended sentences remain as a sentencing option for perpetrators of family violence.
- b. That deferred sentences be considered with a focus on addressing the cause of the offending as a further option to be utilised at a Magistrates' discretion.

It is important that Magistrates have a range of sentencing options when it comes to family violence, one of which should be a suspended sentence. Alternative options such as home detention are not suitable for family violence matters and in certain instances a suspended sentence is an effective deterrent to further offending.

Sentences that focus on behavioural change can be more beneficial to both the perpetrator and the victim in certain circumstances. Family violence is complex and often has many contributing factors. In order to support behavioural change

sentencing

principles it is important that the court is able to refer defendants to programs related to anger management, mental health, drug and alcohol use or if suitable relationship, financial or personal counselling.

Changes to the *Sentencing Act* should allow the courts to have a continuing supervisory approach by way of deferred sentences where the defendant must report back on their behavioural change and reports are given to the court to assess the defendant's progress. For this to be effective however, appropriate funding would need to be provided to perpetrator programs to provide them with sufficient capacity.

Recommendation 14

That the Family Violence Offender Intervention Program be evaluated, and dependent on the outcome of evaluation, properly resourced and implemented.

Magistrates have said they are hesitant to refer defendants to the Family Offender Intervention Program because it has not been evaluated and it is extremely under resourced with only one designated officer for the State.

Offender or perpetrator programs are essential to combat family violence and they need to be properly funded to alleviate the long waiting times that currently serve as a deterrent to those wishing to enter them. Magistrates need to be sure that such programs will be available to deliver the service they are referring offenders to as well as address the causes of offending in the perpetrator.

sentencing

Recommendation 15

State legislation should provide that victims of family violence are sent details of the defendant's hearing, particularly the charge and the sentencing outcome.

It is a common experience among our clients that they are not updated on the progress of their ex-partner's matter, whether they have entered a plea, and if they have been sentenced, what the sentence is. Currently if the defendant pleads guilty then the victim does not have to attend court and is therefore often unaware of the outcome. Knowledge of the charge and sentence is important for the victim's recovery as well as for other related matters, particularly regarding family law.

moving forward

Recommendation 16

A working group should be established that includes a representative from each participant to this submission to ensure that all recommendations that are approved by Government are properly implemented. It should convene on a quarterly basis in order to maintain the focus on family violence and strive for continuous improvement in this area.

Any such working group should report directly to the Attorney-General and be convened with a view to providing expert advice from an “on the ground” perspective rather than departmental policy perspective.

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