

Submission to the Royal Commission into Domestic, Family and Sexual Violence SA.

Qualifications to make a submission

I was a magistrate for [REDACTED] years and witnessed the change in attitude to domestic violence from the common law 'peace complaint', which was ineffective, through the introduction of restraining orders, a stalking offence and the present *Intervention Orders (Prevention of Abuse) Act 2009* (SA). I shall use the term domestic violence to cover the various forms of violence committed by a person on another with whom they have a relationship.

South Australia introduced the first special court list in Australia dealing with domestic violence at [REDACTED] about twenty years ago. This was an initiative by Magistrate [REDACTED] and it was not long before a similar program was introduced in the Adelaide Court. I was the magistrate conducting the [REDACTED] list for more than a decade. These special lists were supported by prosecution and the Salvation Army provided a cognitive behaviour program to try to change the future behaviour of perpetrators. These programs were introduced as a result of greater awareness from education programs that the Australasian Institute of Judicial Administration (AIJA) developed for the judiciary and court staff under my guidance as [REDACTED]. The first of these was in South Australia in 1996 and then nationally these programs followed:

- AIJA national seminar on *Court programs to manage Domestic Violence offences*, Melbourne, 8 April 2005,
- AIJA in conjunction with the Australian Institute of Criminology, *National Family Violence Conference*, Adelaide 23-24 February 2006,
- *Family Violence Conference: Towards Best Practice*, 1-3 October 2009, Brisbane,
- *AIJA Child Protection and Family Violence in Australia and New Zealand – Issues and Challenges for Judicial Administration Conference*, Brisbane 5-7 May 2011.

I also developed a [REDACTED] a [REDACTED] for the AIJA ([REDACTED]) and circulated to AIJA members and I was an invited expert to *Family Violence Expert Consultation Meeting*, [REDACTED] and contributed [REDACTED] to the consultation paper for the ALRC, NSWLRC *Family Violence- A National Legal Response*, Final Report ([REDACTED])

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I had an article published in the Law Society Bulletin and gave presentations to groups of lawyers explaining the intervention order processes. I also wrote the necessary rules of court and procedure manuals for the Magistrates Court special domestic violence programs.

It is good that the media have quite recently finally recognised the ongoing scourge of domestic violence. As I hope this brief history demonstrates it is urgent that we do all we can to address this problem which is endemic rather than an epidemic. When I first became aware of the gravity of this problem nearly three decades ago about half the murders in Australia were caused by domestic violence. This remains the case and is caused by deeply embedded intergenerational social constructs.

I comment briefly on the four areas you identify:

Prevention

Prevention in the first instance lies in the upbringing children have, especially in the first years of their life. If a child is exposed to violence in the home, for females it is normalised and for males it becomes an acceptable form of power abuse to condemn their partners to servitude and often sexual abuse. Once abusers grow up and come to the attention of police and courts there are things that can reduce recidivism which are briefly mentioned below.

At its core domestic violence is an abuse of power. As important as it may be to teach men not to abuse power in relationships it is equally important to empower women so that they do not accept abusive relationships.

Early intervention

The best form of early intervention is to support young parents so that they understand the importance of respectful and caring relationships. The role of the State in supporting and where necessary intervening in the upbringing of young children should be a central topic in your inquiries. Also the role of the education system should be considered. These are not my areas of expertise.

Once people are in domestic relationships I am familiar with the intervention order process. Intervention orders are a front line response to abusive domestic relationships

Response

The legal authority to police to issue intervention orders is a powerful tool to address domestic violence. Once an intervention order is in place it can effectively criminalise controlling behaviours. These police issued intervention orders, and new applications direct to the court, are confirmed by magistrates. If they are contested, then usually an interim order remains in place and there is an obligation on the court to list the trial as soon as possible. In relation to children there is a level of disconnect between the Magistrates Court and the Family Court which has a substantial delay in dealing with access arrangements.

My experience when I was a magistrate was that the response by police to complaints of DV was generally appropriate. As I have noted above there has been a sustained effort to ensure that magistrates are well aware of the issues around abusive domestic behaviours, including violence. If there is a breach of an intervention order, there is a presumption against bail. I do not now have the statistics to hand, but I recall that when I was on the bench as many as half of the defendants in custody on remand at any time were in gaol because they had breached intervention orders. It often happens that they plead guilty and are sentenced to time served which, depending how the sentence is recorded, can look like a conviction without penalty but in reality there has been an immediate gaol penalty for the breach of the intervention order. Although an immediate gaol penalty might have some deterrent effect, and whilst in custody further coercive behaviour is prevented, this does not solve the problem once the offender is released. There is no clear evidence that putting an offender in gaol improves him. Some 60% of people released from prison reoffend within two years of release and one can expect that figure to be at least as high for domestic violence offenders.

The court encourages perpetrators to undertake cognitive behaviour programs. These have some success in giving men insight into their behaviour and improving it. An important aspect of these has been putting the victim in contact with a DV support worker who establishes a relationship with the victim and keeps in contact with the victim to check on their well being. It was reported to me that this had a significant empowering effect for victims.

MAGISTRATES COURT OF SOUTH AUSTRALIA

(Criminal)

POLICE V PERPETRATOR

Judgment of [REDACTED]

[REDACTED]

Assault, domestic violence

Complainant:

Prosecution:

Defendant:

Counsel:

Hearing Date/s:

File No/s:

Police v Perpetrator**████████████████████
Magistrates Court criminal division**

This is an ex tempore judgment. I reserved the right to correct errors of syntax and grammar and to add afterthoughts if the matter goes on appeal, but I would identify any such afterthoughts in any published judgment.

The defendant AB Perpetrator was charged originally on █████ counts. Count 1 for breach of the intervention order, is the matter of aggravation in count 3 so that has been dismissed as duplicitous. He has now pleaded guilty to count 2, that is being in proximity to the protected person in an intervention order. Count 3 is the matter which this judgment is called upon to address. He pleaded guilty to Count 4 resisting police when he was arrested, and I agree with his counsel's submission that no adverse inference is drawn against him in respect of those pleas of guilty.

Count 3, the matter in controversy, is that on a day in █████ at a suburb he assaulted A Victim and thereby caused harm to her and it is in the circumstance of aggravation that that was in contravention of an intervention order. I note the offence is pleaded as having occurred at a suburb and although other assaults are alleged to have occurred along the way clearly the focus of the charge is the incident at the house at a suburb. I did however admit evidence of the whole course of conduct, even though some of it may have itself or clearly was illegal conduct as part of the whole transaction to make it explicable and not to render the last part of it artificial and out of context.

I have three exhibits: P1 is some agreed facts, the relevant restraining order or intervention order, and the summary from the treating doctor of the injury. The injury was a diagnosis on a date at the [REDACTED] of an open [REDACTED] wound, a lower lip laceration left side a bruise to lower left rib and no neurological deficit. It was recommended that she return for plastic surgery review the next morning. And she did on her evidence. She pointed out the remnant scar on her lip when giving evidence. Exhibit P2 is two sheets of photos which she took of herself – three photos in all showing a lacerated [REDACTED]. Exhibit P3 is three statements from an investigating constable part of which go to her endeavours to obtain evidence from other people which efforts were unsuccessful. There is nothing in her conduct to imply criticism due to that lack of success.

The alleged victim gave evidence and hers was the only [REDACTED] evidence. I remind myself the burden of proof is that each element of the charge must be proved beyond reasonable doubt. The defendant is perfectly entitled to remain silent and no inference can be drawn against him because of that.

Her version, in short, is that she went to a party she thought of female persons – in a suburb. She met a couple of girlfriends there and took them to a bottle shop to buy some alcohol for the proposed party. She left some of that in the car so it would not all get drunk at once and walked into the party with them and saw the defendant whom she described by a familiar name. She was aware there was an intervention order in place. She explained that she thought things would be all right though she was surprised he was there thinking it was an all girls party. She went into a bedroom to straighten up her hair and had one-and-a-half bourbons mixed with soft-drink. Someone then said the

party was over and everyone started to leave and go to another party. They were walking down the street. A car pulled up driven by a male. In the car was a girl asking for the keys to her car to get the alcohol which had been left in it. She refused to give the keys to someone else being concerned for the safety of her property. She had kept her bag with her at all times for the same reasons. She thought some of the people in that group are light fingered as she put it. She asked the perpetrator if he wanted to come back in the car with her. Her explanation for that was that she thinks he is very controlling and jealous and she was concerned that if she got in a car with another male person he may react badly to that. He said it was quite okay so she did. When they had got the alcohol it took them a while to find the party on foot and when they did the other man said something: 'How's it going [REDACTED]' or something like that out the window. The Perpetrator was angry and punched that man. That man tried to accelerate off and the perpetrator clung to the vehicle and eventually climbed through the window between the front seats into the back where she was, punched her, tried to open the back door, unsuccessfully initially, but eventually got it open and got her out of the car. She then proceeded on foot with him and was then subjected to significant assaults; punching, pulling hair, pushed up against a fence. She says he then lost his temper completely, he slung her around an open yard and she ended up curled in the gutter where he kicked her in the ribs. His brother came over and said 'Oy. Stop' and he did. She got up and continued to walk with him.

She has been criticised in this version of it being just not credible that she would remain in his company. She had opportunities to escape from his company. When she

first saw him at the party she could have left. When she left the party, she could have, when everyone else left, gone back to it where the girls had remained. She could have when she went to her car, got in her car. She says she did not want to drive because she had had something to drink. The perpetrator was nowhere nearby. She clearly could have removed herself from his company. This was put to her of course and she explained that she was in fear of him. He has an explosive temper, is extremely violent and it was her fear that if she had not gone along with him he would have come and exacted punishment against her on a later occasion.

They made it eventually to the other party. She stayed in his company. She said she cannot outrun him. It was put to her and she acknowledged that a police patrol pulled alongside during their journey on foot and she made no complaint to the police. Her explanation was that by the time the police got out their notebook and started to take her details the Perpetrator would have fled and having escaped the scene would have been at large and able to come and exact revenge against her shortly after. She would have lain in bed in terror wondering when that was going to happen.

Having made it to the other party she remembers there was a trampoline in the backyard. The other man's car pulled up. The other man was actually not driving, it was his mother that was driving, but when the Perpetrator saw the car this made him angry again and he punched her in the mouth and she fell back and that is the punch in the mouth that caused the damage to her lip. She hit the [REDACTED] as well. She ran off and got inside the house and she hid in the lady's front room of the house. There was a man at the back stopping entry. A lady come in, she apologised to her. She asked her not to

call the police. She did not want to shut her party down. She acknowledges, inconsistent with that behaviour, she herself later called the police. His sister came in and said 'Come outside or he's going to run through the house.' Shortly after she saw that he was in the backyard and thought this was an opportunity, she being in the front of the house, for her to escape and she ran out the front, told a girl who was there to lock the door and ran down the street and into a neighbouring house and hid under a veranda and called the police.

The police arrived. She revealed herself to the police. She identified what the Perpetrator was wearing and his whereabouts and police went and arrested him. An ambulance was called. She went to the [REDACTED]

Later in the proceedings before the court she gave a statement to the police saying she did not want to proceed with this matter. She explained that by saying she wanted to help him. She had been in contact with him after the assault, that she had told him she had to end their relationship because of his drug problem.

It is said that I should find doubts that are reasonable in that story and so acquit the defendant. Her evidence is uncontradicted. There are some matters in it that have been criticised. Although she went to the first party not knowing that AB Perpetrator was there, when he was in fact there, she did not take all opportunities to absent herself from him but in fact stayed in his company. I have already related that she had multiple opportunities to escape and did not take those opportunities. Her evidence about timing, when the vehicle was on her version under attack by the Perpetrator, is clearly not accurate. She has minutes, cars accelerating, him being able to cling on while it was a

car accelerating flat out and then when he climbs through the window and she was pushed out near to the people who were on the footpath still being in the proximity of the vehicle. Clearly a vehicle has travelled for some minutes under acceleration would be nowhere near the people on the footpath who were where it started that journey. But witnesses are notoriously inaccurate in their assessment of time under crisis. Time stands still when one is under stress and our memory of how much time has lapsed reflects that subjective experience of everything happening much more slowly than it actually is.

Although she had opportunities to leave I found her explanations entirely credible and that they are based on the fact that she was under such extreme fear of him that she felt that if she took an opportunity to leave she would be at risk of suffering a more dire consequence later and so it was better to go along.

I thought she was a good witness. I thought she was entirely credible. I believe her. I have no doubt. I find him guilty of assaulting her by punching her to the mouth at the suburb, cutting her lip, in breach of an intervention order and she fell over and hit the trampoline. And the background context which itself has various assaults in it are not charged but I believe them all. I add that this background material was used as a large part of the basis to criticise the victim. I did not use it in my mind to show that the defendant was more likely to have committed the offence because of that conduct.

Guilty.