

Friday, 7th September 2012

Mr P McKnight
Executive Director
NSW Law Reform Commission
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**Submission to People with Cognitive and Mental Health Impairments in the
Criminal Justice System, Question Paper 1: Apprehended Violence Orders**

Dear Mr McKnight,

Thank you for the opportunity to make a submission to the Question Paper. Through this submission WIPAN aims to draw the NSWLRC's attention to some important aspects of the broader social context in which AVO laws might operate vis-à-vis women with cognitive and mental health impairments in the criminal justice system.

About WIPAN

The Women in Prison Advocacy Network (WIPAN) is a grassroots organisation governed by a group of women, including ex-prisoners, dedicated to advancing the status and well-being of women in the criminal justice system. WIPAN addresses the many issues facing criminalised women both systemically through advocating for a fairer criminal justice system and individually through mentoring women ex-prisoners. WIPAN operates on the premise that by providing women with gender-responsive social support, recidivism rates and the prison population will be reduced.

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Violence, Trauma and Women with Cognitive and Mental Health Impairments in the Criminal Justice System

WIPAN submits that it is essential to locate a consideration of the legal reform of AVOs in the broader social context for women with cognitive and mental health impairments in the criminal justice system.

Over 75% of women in the criminal justice system have experienced some form of sexual violence, such as childhood sexual abuse or sexual assault as an adult. The percentage in relation to physical and emotional violence is thought to be higher, and domestic violence in adulthood is particularly significant. This violence has numerous complex, ongoing and cumulative effects such as trauma, substance use, physical and mental health problems, homelessness, and social isolation. This is particularly significant for Indigenous women. In this context, women's pathways in the criminal justice system are typically related to offences at the lower end of the spectrum with shorter periods of incarceration for remand and sentence. Women therefore cycle in and out of the criminal justice system and this forms part of a complex cycle of violence, trauma, substance use, social disadvantage and criminalisation.

Issues of violence and trauma and their relationship to criminalisation are particularly significant to women with cognitive and mental health impairments in the criminal justice system. This is because as a group these women are likely to have experienced violence in light of their extreme vulnerability, social isolation, limited access to some support services on the basis of perceived reduced capacity, dependence on others for care and legal barriers to charge, trial and conviction of perpetrators of violence (e.g. stereotypes about women with disability around their sexuality and truthfulness and evidentiary rules discriminating against people with disability). Moreover, some women's impairments themselves might have their origins in violence (e.g. acquired brain injury) or trauma (e.g. mental health impairments, substance use related acquired brain injury). Also the extreme social marginalisation and intergenerational disadvantage of the women in this group, means that women with cognitive and mental health impairments might have an absence of familial or informal social support to assist them in resolving interpersonal conflict or leaving unhealthy or violent relationships which can then result in the intervention of police or the criminal law.

Care Settings

WIPAN submits that it is also important to locate the reform of AVOs in relation to people with cognitive and mental health impairments in the context of the complex dynamics of care settings.

Women with cognitive and mental health impairments in the criminal justice system might have been in a variety of institutional settings from an early age – out of home care, juvenile justice, mental health facilities, prisons, disability care. They might have been subject to violence, abuse or neglect in these settings. By dint of the extreme power differentials inherent to institutions, this might have been ignored and even condoned in forming part of a larger culture of that institution. Women who have experienced such violence, abuse or neglect might have trauma and have complex feelings towards institutional settings and persons in positions of authority, care and trust. WIPAN submits that in reforming AVOs, the NSWLRC should locate a consideration of the appropriate criminal legal response (if any) to any ‘challenging behaviour’, alleged assaults or alleged intimidation by women with cognitive and mental health impairments in group homes, care settings or other institutional contexts in these deeper dynamics.

Moreover, many care settings, such as group homes, are specifically provided for people with no other social support, with ‘complex needs’ and with acknowledged violent or risky behaviours. Whilst this does not mean that the workers in these settings should be exposed to assault or intimidation, it does mean that these services should be flexible and responsive to the needs and circumstances of their clients, particularly where a failure to do so can result in the further criminalisation of their clients.

Effects of AVOs Against Women

WIPAN also wishes to draw the NSWLRC’s attention to the significant effects that AVOs can have on those women with cognitive and mental health impairment whom they are made against. Where these women experience the complex violence, trauma, social marginalisation and criminalisation outlined above, possible breaches of AVOs can compound their criminalisation and social marginalisation insofar as it can result in time in

custody, vulnerability to violence and trauma in prison, exacerbation of physical and mental health problems, separation from children, and loss of housing.

Alternatives to AVOs

In light of our discussions above, AVOs risk criminalising women's relational behaviour which is grounded in complex dynamics of violence, trauma, and absence of positive social support. WIPAN emphasises that a criminal justice response is not always necessary.

In WIPAN's experience, social support is essential to assisting women in the criminal justice system with cognitive and mental health impairments. In particular, mentoring can address social isolation and provide women with informal social support that can assist women in dealing with interpersonal relations and conflict. This is particularly the case given that many women in the criminal justice system have no friends and unsupportive families and have no person to whom they can confide outside of antisocial associates. Mentoring provides positive social capital and offers an alternative to seeking destructive relationships by directly addressing the severe isolation experienced by women in the criminal justice system.

Whilst it might be the case that a variety of therapeutic options are also possible alternatives to AVOs, these should not be provided at the cost of medicalising and pathologising what could be very reasonable responses by women to a particular interpersonal or care situation, and that such approaches must ensure they address underlying issues of trauma and validate women's feelings and experiences.

Any alternatives to AVOs should not be coercive.

Yours sincerely,

Kat Armstrong

Director

Women in Prison Advocacy Network (WIPAN)