

**WHAT DO WOMEN  
WANT?  
PROSECUTING FAMILY  
VIOLENCE IN THE A.C.T.**

by

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# **WHAT DO WOMEN WANT?**

## **PROSECUTING FAMILY VIOLENCE IN THE A.C.T.**

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Mel Gibson's film character might be able to claim to know 'What Women Want'. Government services, however, need to be able to base assertions on evidence more substantial than being a mind reader! Our paper sets out to explore how we might begin to know what women want from their interactions with the criminal justice system.

### **Family Violence & Criminal Justice**

Advocates for a strong criminal justice response to family violence<sup>1</sup> have done so on the basis of a number of claims. First, that it sends a strong message to the community that this type of violence will not be tolerated. Second, that by punishing transgressors it may act to deter offenders and potential offenders from engaging in family violence, and hence prevent violence occurring in future. Third, that it may protect a victim from further violence. And finally – though perhaps a more recent claim – it may rehabilitate the offender so that he does not again engage in such violence against his partner or another woman. (Lewis, Dobash, Dobash, & Cavanagh,

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<sup>1</sup> In the ACT we use "family violence" as an overarching term to describe the range inter-personal violence that takes place in an intimate or family setting. Within the Family Violence Intervention Program, the types of cases prosecuted include sexual and physical offences where the victim is either a child or an adult, and female or male. The defendant may also be a juvenile or an adult and male or female (although the vast majority of matters are adult to adult and male against female). The relationship context may be parental or sibling assault, spousal assault (or domestic violence), or lesbian or gay.

2000; Stark, 1996) But what, of these claims do women who experience family violence uphold and how do we know?

Some commentators (Snider, 1998; Buzawa, Hotaling & Klein, 1999; Mills, 1999) have begun to throw doubt on these predominating assumptions on the basis of this question. To some extent the positions taken have been influenced by theoretical debates about the role of the state and its agencies – is it enabling or oppressive in its patriarchal authority? Others have examined activity data as providing an indication of ‘successful’ interventions – or, more usually, of failed criminal justice interventions. These activity-based claims argue that increase in arrest, charge and conviction rates are an indicator of an improved and therefore more effective criminal justice responses (Jaffe et al., 1993; Gamache, Edleson & Schock, 1988).

A number of writers (Hanna, 1996; Lewis et al., 2000; Holder, 2001) reflect that, to some extent, the debates originate from a rather fruitless dichotomising of the woman experiencing violence as either a passive victim or an active agent. Women, they say, are not only trying to end the violence but also to minimise its impacts, forestall negative consequences, and continue to manage the usual activities of life. With this more contextualised framework, they suggest that there needs to be an examination of what a woman may seek from the various services she contacts or encounters, and how she experiences the process of her interaction with them.

In our paper we want to acknowledge the importance of the operational context of the criminal justice system in exploring these encounters in two key areas – that of victim satisfaction and victim safety. It is, to a very large extent, a tentative paper in that we want to suggest that these two measures may go some way towards illuminating process, outcome and output as indicators of the effectiveness of the system in meeting both women’s needs and its own corporate goals.

On the issue of process we have focussed on points related to criminal procedure. Partially, this reflects the legislative framework on victims ‘rights’ that exists in the ACT,<sup>2</sup> partially they are actually measurable, and partially this area – called procedural justice – is consistently noted in the crime victim literature as critical to their dissatisfaction with the criminal justice system (Tyler, 1990; Lind, 1990). It is also an area of operations that can have

significant impact on safety, for example, in the area of bail. Responding to applications for bail and for bail variations is a procedural step that, in the ACT, is challenging the traditional passive role – at that stage – of the prosecution. On outcome the measure is of victims' own perceptions of safety, experience of re-assault, and reflections on their participation in the criminal justice system. On the question of output we include activities captured as (now) routine by police, prosecution and courts in the ACT as providing information that is vital to continuing corporate investment in this area of system reform.

## **Prosecution & Victim Reluctance**

To date in Australia and other countries the primary focus of reform and research has been on police. More recently in the US in particular, and now in the ACT, this focus has begun to shift to examine the role and activities of prosecution.<sup>3</sup> Hence, our paper begins from the conclusion of Garner & Maxwell (2000 p 108) that:

The policy debate on alternative police responses to domestic violence is no longer about alternatives to arrest but alternatives to what the police and other agencies should do after arrest.

Considering arrest as the preferred method of getting a matter into court, the prosecution function then becomes pivotal. Prosecutor and legal academic, Cheryl Hanna (1996), makes a serious claim that prosecutors' lack of resolve in tackling family violence serves to corrupt the very system of justice. So central is the role of the prosecutor that it can, equally – and as has been the case in the ACT – act to transform and revitalise how and with what objectives the criminal justice system processes family violence cases (see also US Department of Justice, 1999).

However, the moment one looks at what happens after arrest, we are confronted by the contentious problem of the so-called 'uncooperative victim' or, in the terms we prefer, the 'ambivalent or reluctant witness'. It is on this critical issue that the so-called 'no drop' prosecution policies of some US jurisdictions founder. Lerman (1986), Rebovtich (1996) and others (Ford &

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<sup>2</sup> The ACT *Victims of Crime Act 1994* located at <[www.legislation.act.gov.au/](http://www.legislation.act.gov.au/)>.

<sup>3</sup> In the ACT all Territory prosecutions are conducted by the ACT Director of Public Prosecutions (ACT DPP). The ACT does not have police prosecutors, unlike many other Australian jurisdictions.

Regoli, 1993; Hoyle, 1998) have identified that the level of victim non-cooperation is far higher in the prosecution of family violence cases than in cases involving stranger violence. In essence, the research (see for example, Hoyle & Saunders, 2000; Hoyle, 1998) indicates that, through police intervention, women have met their short-term goals for the immediate cessation of violence and a readjustment of the power balance (albeit temporary), and are reluctant to participate in a process the outcome of which is shrouded in maybe's and perhaps-es.

In the US, prosecutors have indicated that family violence victims were 'uncooperative' in nearly 50% of cases (Rebovitch, 1996). In Australia's only research in this area, the proportion was far less. In the ACT, 21% of victims surveyed in cases that were prosecuted indicated that they wanted the charges dropped at some point in proceedings (urbis keys young, 2001 p 77).<sup>4</sup> The reasons behind this reluctance are both obvious and subtle.

## **Reasons for Reluctance**

For a significant proportion of victims of family violence fear of retaliation by the alleged perpetrator and an experience of that person being all-powerful drive them to seek, as they see it, the lesser of the two evils.<sup>5</sup>

For others, there is deep confusion about the system and its processes, and a lack of information, experience and understanding of where it is taking her – in essence, taking her interests, her family, her security, and her future. For example, in our base sample in the ACT, 49% felt unsure of what was going to happen next following police attendance at an incident, only 40% of women said that they felt well prepared for giving evidence and 49% indicated that there was a lot they didn't understand during the court case (urbis keys young, 2001). Bennett, Goodman, & Dutton (1999), in their work in the criminal courts in Washington DC, have identified how significant it is to women's choice to participate in prosecution when she is fully informed, involved and supported.

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<sup>4</sup> 51% indicated that they "were determined to see the case through no matter what" whilst a further 23% said that they were "not sure whether or not they wanted to proceed".

<sup>5</sup> For findings about the experience of fear and re-assault see, for example, Ford & Regoli, 1993; Jaffe et.al., 1993; Klein, 1996; Buzawa, Hotaling & Klein, 1999; Goodman, Bennett & Dutton, 1999.

In understanding how prosecution authorities inter-act with a reluctant witness it is critical to understand the legal and policy framework around their profession.

## **The Prosecution Role**

Prosecutors in the ACT are bound by legislative provisions with respect to when and if a prosecution (of any type of offence) can proceed.<sup>6</sup> The initial consideration will be the adequacy of the evidence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible in a court of law that the person accused has committed a criminal offence. This consideration is more than a technical appraisal – the evidence must provide reasonable prospects of a conviction. If a particular case does not pass this evidential test then the case cannot proceed.

If the assessment leads the prosecutor to conclude that there are reasonable prospects of a conviction then they are required to apply the second test and consider whether it is in the interests of the public that the prosecution proceeds. There are many factors that may be relevant to that decision.<sup>7</sup> They include seriousness of offence, antecedents and background of the alleged offender, prevalence of the alleged offence and the need for deterrence, both personal and general, whether the alleged offence is of considerable public concern and the attitude of the alleged victim to a prosecution.

## **ACT Prosecution Policy on Family Violence**

Prosecution policy on family violence in the ACT was modified in 2000-2001 to emphasise the importance of continuance with prosecution action.<sup>8</sup> A basic proposition of the new policy is that, in the vast majority of cases, the interests of the public will only be served by the deterrent effect of an appropriate prosecution for family violence matters. Prosecutors have an

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<sup>6</sup> The *Director of Public Prosecutions Act 1990* can be found at <[www.dpp.act.gov.au/](http://www.dpp.act.gov.au/)>.

<sup>7</sup> For the detail of the ACT DPP Policy and Guidelines for Prosecutors see <[www.dpp.act.gov.au/](http://www.dpp.act.gov.au/)>.

<sup>8</sup> Note, however, that the family violence policy is still consistent with the DPP's legislative obligations. A full version of the DPP Family Violence Policy can be requested from the Director of Public Prosecutions, GPO Box 595, Canberra City 2601.

obligation to remind victims throughout the prosecution process that victims do not 'own' prosecutions. Rather, it is the responsibility of the DPP to carry on prosecutions on behalf of the community. Victims cannot "press or drop" charges.

Although it is impossible to generalise, if physical violence is alleged, and the more serious the violence involved is, the ACT DPP has decided that the more likely it is in the public interest to prosecute, notwithstanding a victim's request that the proceedings be terminated.

Prosecutors have been heavily criticised for their inaccessibility to and remoteness from the victim/witness and the lack of transparency in their decision-making (Samuels, 2002, Hart, 1993). However, prosecutors are required to disclose to the defence any inconsistent statement made by the victim. As a result of this, at a practical level, there may be good reasons why a prosecutor may wish to limit his or her exposure to a victim in the interests of justice. A victim/witness who has given a couple of different versions of the events to police may be 'explainable' in terms of the trauma of the event and in relation to other available evidence. However, a victim who gives 5 or 6 different versions may be attacked in court as an unreliable witness who is without credibility. This scenario serves neither the interests of the victim nor the administration of justice.

For these reasons, organisational change has often been found necessary by reformist prosecution offices (Rebovitch, 1996). For the ACT DPP new procedure and new and specialised positions have served to provide clarity of function and of boundaries between prosecutor and victim, between prosecutor and police investigator, and between prosecutor and victim advocacy services. The policy now sets out where and how victim input is sought in the prosecution process. In particular it states that victims should be consulted before making decisions to discontinue any proceedings.<sup>9</sup> Likewise, withdrawal requests are to be examined closely to identify the reasons behind the request. It is relevant, for example, to identify the intimidation, coercion, harassment or inducement of a witness. So far as it is ascertainable, the reasons behind a reluctant attitude of a victim should be learnt and considered. They will often impact on decisions relating to the

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<sup>9</sup> This is consistent with the obligation contained in the *ACT Victims of Crime Act 1994* Part 2 s4(d) and (e). It is also consistent with the recommendations of the Samuels Report into the charge bargaining process within the NSW DPP (2002).

future of the prosecution. A Witness Assistant conducts or facilitates most victim contact in relation to family violence matters.

A dedicated prosecution position also generated and consolidated the specialised knowledge and training required within the Office. If personnel availability is not specifically addressed in the context of the DPP's primary legislative duties, then obligations, particularly to victims of crime, will not be met.

A further complication faced by prosecutors is the requisite standard of proof required in criminal matters. There is often misunderstanding about what it is that must be established. As part of the inter-agency Family Violence Intervention Program (FVIP), the ACT DPP has been heavily involved with ACT Policing in new training on investigation practice and the preparation of briefs of evidence. Notwithstanding this attention and the emphasis that has been placed on police to explore potential sources of evidence other than the victim, in a large number of matters the only evidence available will be that of the victim to be heard against that of the offender. In these circumstances the Court's duty is to do much more than choose one version over the other. For a Court to find a criminal offence proved it must accept the version of evidence from the victim and positively reject the version given by the defendant – or visa versa. This is often an arduous task. If the Court cannot reach the conclusion that the defendant is not telling the truth, even if the Court has strong suspicions of this, then the offender must be given the benefit of the doubt and the charge dismissed.

## **Case Examples**

Some examples of cases<sup>10</sup> prosecuted in the ACT spotlight some of the complex issues involved in the decision to prosecute.

1. Sue was nearly beaten to death by her de facto partner, Sam. She had initially given a statement to police, having fled to a refuge, and the medical and circumstantial evidence supported the original version of events. When Sam found her and threatened their child Sue went back to him and sought to have charges withdrawn. Despite unwavering support

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<sup>10</sup> Whilst all cases are prosecuted in open court and are therefore public, these examples have been made anonymous so as not to reveal confidential details.

from her sisters, Sue refused any contact with services and refused to talk with the prosecutor. She wrote a letter to the magistrate that she read out in court and pleaded from the witness box that the matter be dropped. Sam was convicted and sentenced to serve 9 months. So far as we are aware, Sue maintained contact with Sam for the duration of his custodial. For Sue, her experience and fear of Sam's violence and omnipotence over-rode the support of her family and the intervention of the criminal justice system.

2. Gordana had been married for 20 years and had experienced varying levels of abuse over that time. The first time the violence came to police attention, Marek was arrested and charged. Gordana gave a full statement on the incident and acknowledged the prior incidents to the police Victim Liaison Officer. Under considerable family pressure however, Gordana later called every single day to the police to seek withdrawal. When Gordana denied what had happened in the witness box, the prosecutor sought to have Gordana declared a hostile witness and to admit the prior inconsistent statements she had made to police. Their 13 year old daughter was subpoenaed to give evidence as a direct witness of the incident and did so by way of CCTV. Marek was convicted and sentenced to probation supervision and participation in the Perpetrator Education Program. At the conclusion of the hearing, Gordana screamed at the prosecutor that she had "ruined" her life and she would never call police ever again. We do not know whether Gordana was re-assaulted or whether she has called for police assistance again. Gordana felt very deeply a sense that the maintenance of family harmony, respectability and cohesion was her responsibility. She experienced considerable blame and pressure from her adolescent children and other family.
3. Anna's husband was arrested and charged when he threatened to kill her with a knife. This wasn't the first time and George had been under the influence of alcohol. Anna and her teenage children attended the hearing and gave evidence in a very distressed state. The Magistrate adjourned the matter and sought the assistance of the victims of crime office. Anna explained that in her Island culture the maintenance of the family was her responsibility and that "things would be made worse". In particular, she worried that, on her testimony alone, George would be sent to prison.

The office spent time with Anna talking about how she felt, explaining the process, how it worked, how long it took and the opportunities she would have for independent input, and the low likelihood of a custodial on the charge. Anna wanted George to “get help”. The matter continued and Anna gave some carefully worded pleas in mitigation for her husband in her Victim Impact Statement. George was convicted and sentenced to supervision and attendance at the Perpetrator Education Program. Anna reported a stronger sense of ‘leverage’ over her husband’s behaviour through the involvement of criminal justice agencies and some sense of control through the contact opportunities provided both at court and during the probationary period.

In our experience, most victims of family violence have a range of expectations and misunderstandings about the prosecution process. Also in our experience, a more considered and inclusive procedure with clear frameworks for decision-making allows for victim views that change and adapt in the face of an unfolding process. For the prosecutor there is a significant difference between a victim/witness who is reluctant to testify – such as Anna – and one who denies or changes her original statement to police – such as Gordana. But it is cases such as these in the ACT that have forced consideration and still further consideration of practices based on policies of ‘pro-prosecution’. A victim/witness’s attitude is relevant to how or whether a prosecution proceeds. The decision to compel a victim/witness to give evidence is one that should never be made lightly. Indeed, only in 3 of the 20 cases that went to full contested hearing in the ACT in the past year has the prosecutor sought to declare the victim/witness hostile. That is less than 1% of all family violence matters prosecuted.

## **Discontinuing Prosecution**

On the flip side of this argument, there have been a very small number of matters where, despite sufficiency of evidence, prosecutions are discontinued as a direct result of the reluctance of the victim to participate in the process. It is also useful to provide some case examples of the circumstances in which discontinuance may be influenced by a victim’s view.

1. Peter was charged with assault after an incident with his wife, Jane, at a function. He was under the influence of alcohol at the time. Police were

called after he refused to leave the marital home. Jane made a complaint of assault. He admitted slapping her. He was arrested and charged. Jane sought the matter be withdrawn. There was sufficient evidence to proceed. There was no evidence of prior violence, there was no evidence of significant alcohol abuse, and there was evidence that the extended family had been involved in counselling Peter. Peter's employment could have been jeopardised by a conviction. The prosecutor's assessment was that this was an isolated incident involving a low risk of re-offending. To proceed may have resulted in potential for significant financial hardship for all family members. The prosecution was discontinued.

2. Gertrude had been the victim of domestic violence in the past at the hands of her husband, Jim. On this occasion she was charged after Jim called police after an incident. She admitted the offence. He subsequently sought withdrawal of the matter. There was evidence that both parties were attending counselling to address relationship issues and their use of violence. There was no evidence of a need for police intervention subsequent to the offence date. There was evidence of a medical condition that may have contributed to Gertrude's behaviour at the time. The matter was discontinued after a lengthy adjournment without incident. The prosecution assessment was that positive and reliable rehabilitation steps had been taken and it was a minor offence. The history of the relationship between the offender and victim, for the incident in question, was taken into account.

Prosecution authorities are exhorted to prosecute family violence matters on the basis of public interest, that is, the message of disapproval and deterrence. However, each case presents its own complications around the core ambivalence of the victim/witness and the sufficiency of evidence. In now playing a part in the social and political movement to bring private violence into the public arena, the prosecutor must in effect then balance the public interest with that of the private individual.

## Justice Operations as Outputs

Where have these prosecution policies and practices taken us over the last 4 years of the Family Violence Intervention Program (FVIP)?<sup>11</sup> The evaluation of the FVIP was conducted by consultants, urbis keys young. Their work helped us understand what data we needed to collect, to create the means to collect it and established benchmarks from which to measure. Subsequent upon the external evaluation, ACT justice agencies committed themselves to on-going data collection, analysis and publication. These agency sources reveal that:

- The number of cases 'written off' by police as no action down from 39% to 13%;
- 152% increase in matters (including a jump from 181 matters prosecuted in 99/00 to 424 in 00/01);
- increase from 24% to 61% early pleas of guilty;<sup>12</sup>
- increase in numbers convicted by 68% (98-99) and then further 126% (00-01);
- 86% of all family violence matters commenced and completed in 00-01 resulted in a conviction;<sup>13</sup> and,
- the Family Violence Case Management Hearing process saved 120 hours court time and 271 witnesses from attending court in 2001.

The latest available data for 2001/02 will continue to show an increase in family violence matters being prosecuted – almost 27% increase from the previous year. Plea rates are being maintained and there are further increases in savings of both Court time and witness attendance at Court.

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<sup>11</sup> The FVIP is an integrated and coordinated criminal justice and community program focussing on improving the criminal justice system response to family violence. The program commenced formally in 1998 and has progressed in a series of planned phases. Evaluation reports on phases one and two, and on the Corrective Services/ Relationships Australia perpetrator education program were funded by the national initiative, *Partnerships Against Domestic Violence*. They can be located via <[www.padv.dpmc.gov.au/publications](http://www.padv.dpmc.gov.au/publications)> or through [robyn.holder@act.gov.au](mailto:robyn.holder@act.gov.au)

<sup>12</sup> Early pleas of guilty include all pleas entered prior to the police being required to submit a full brief of evidence. This outcome results in a significant resource saving for police. From April 2000 to end June 2001, 835 police days were saved from attending court on family violence matters.

<sup>13</sup> The term "conviction" includes matters where the Court found the offences proved but proceeded without recording a formal conviction.

These latter indicators are amongst the most important to court administrators concerned about improved efficiencies in the criminal justice system.

Sentencing patterns are also evolving – five years ago it would have been commonplace for the imposition of a fine or monetary penalty in a family violence matter. This practice is now almost obsolete with a marked increase in the number of offenders referred to the ACT Corrective Services mandated perpetrator program.<sup>14</sup> This may reflect a change in judicial attitudes based on a better understanding of the dynamics of family violence. Alternatively, it may also reflect the availability of better range of more appropriate sentencing options.

## **Processes and Outcomes**

Most jurisdictions would probably be content to rest on their laurels with 86% of criminal family violence matters resulting in conviction.<sup>15</sup> However, this increased and improved level of criminal justice activity is only regarded by FVIP agencies as a beginning. The data has enabled us to form a clear picture of the volume, nature and processing of matters before us. It has enabled us to reach the stage at which we can ask – “to what effect” are we charging, prosecuting and convicting?

Hence to the key issues of victim satisfaction and victim safety. We offer the results of two surveys conducted with women whose family violence matter was prosecuted and finalised in the criminal court – one after finalisation and the other in a 12-month follow-up.<sup>16</sup>

The ACT’s FVIP is a developmental program that is still evolving. We offer our research not as providing conclusive findings but rather as indicators towards more accurate and more focussed questions for the future. In so doing we would like to emphasise our experience of how profoundly the policy, procedural and operational environment of the criminal justice system

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<sup>14</sup> Provided under contract by Relationships Australian (ACT). Contact <dymphna.lowrey@act.gov.au>.

<sup>15</sup> The term “conviction” includes matters where the Court found the offences proved but proceeded without recorded a formal conviction.

<sup>16</sup> The first survey was conducted by urbis keys young as part of the evaluation of Phase II of the FVIP. Thirty nine (39) victims (20% of total) were surveyed. Twenty (20) consented to be contacted again in 12 months time. This second survey was conducted by the Victims of Crime Coordinator. Sixteen (16) or 80% of the total responded to this second survey. The small numbers mean that the results are indicative only.

can affect research and evaluation – although perhaps this is also a feature of the unique characteristics of the ACT, including its size.

## **Satisfaction Measures**

Eminent criminologist, Eve Buzawa, has asserted that measures of victim satisfaction may present more meaningful and accurate indicators for justice reform in the area of family violence (Buzawa, Hotaling & Klein, 1999) than do conviction rates. However, this begs the question of ‘satisfaction with what?’ We think it is possible to link a subjective assessment from the victim/witness to concrete procedural issues and to outcomes on individual cases.

Tyler (1990) and Lind (1990) have identified how important the perception and experience of procedural fairness in the criminal justice system is to both victims and offenders. For crime victims, this boils down to notification, participation, information and respectful acknowledgement.

Victim/witnesses seek notification on a range of things – dates, decision-making points, decisions (charge, prosecution, bail, court outcome), and identities of key participants. Linked to notification is the need for information about the system, how it works, the role of the prosecution and of the victim/witness, and – crucially – comment on the range of likely sentences. In the main, victim/witnesses also seek opportunities for participation through the provision of a full statement to police, offering (or not) background and relationship history, consultation on their views and opinions, input at bail, input at post conviction through the Victim Impact Statement and Pre-Sentence Report, and finally – for family violence victims – input into the assessment for the offender’s suitability for the court-mandated Perpetrator Education Program and, where applicable, considerations of parole.

Family violence victims expressed a 74% satisfaction rate with the response of ACT police at the time of the incident, and – of those who had contact with the Office of the Director of Public Prosecutions (DPP) – over half said they were satisfied (urbis keys young, 2001). Satisfaction measures are particularly useful in revealing the tension between the public and private interest. For example, research into the ‘full enforcement jurisdiction’ of Quincy (Mass) revealed a high level of satisfaction (82%) with police action

(Buzawa, Hotaling, Klein & Byrne, 1999). However, they identified a direct correlation between victim dissatisfaction and preference against arrest.

In the ACT, we identified a further direct correlation between dissatisfaction with prosecution authorities and a victim's preference that the case not proceed. There is a link here too with the issue of 'respectful acknowledgement' for the victim/witness. Those respondents who made comment that their views were not heard or were marginalised by the Office of the DPP, were also those who did not want the matter prosecuted. It is extremely unlikely in the current procedure, therefore, that a prosecutor would have direct contact with the victim.

Interestingly, in the follow-up victim survey (on an admittedly small sample size) 3 respondents (n=15)<sup>17</sup> were originally unsure whether they wanted the prosecution to proceed but, 12 months later, now expressed satisfaction with the outcome and that justice was done. In both the first and second surveys of victims within the FVIP we noted that women changed their views as the case progressed through the system. For example, one woman was adamant that she did not want the matter prosecuted, was dissatisfied with the Office of the DPP and yet, at the finalisation of the matter (a conviction) expressed satisfaction with the outcome and that justice had been done. These findings suggest that evaluations of satisfaction must acknowledge the context, location (in the system) and the time frame at which the survey is conducted in order to achieve more accurate interpretation.<sup>18</sup>

Returning to measures of satisfaction with procedural points we identified: that victims, in the main but not the majority, received notification and feedback from police or prosecution. For example, 49% received police follow-up, 45% were informed of bail conditions,<sup>19</sup> 53% disagreed with the statement that they had received short notice to attend court, and 14% reported being unsure as to court outcome (urbis keys young, 2001).

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<sup>17</sup> One response was excluded from these calculations as the incident described did not have a family or relationship context.

<sup>18</sup> The full findings of this survey are found in *ACT Family Violence Intervention Program: Combined Annual Report 2000-2001 and 2001-2002*, ACT Department of Justice & Community Safety (forthcoming 2002).

<sup>19</sup> This finding may relate to a requirement in s27A of the *Bail Act 1992*. This provision requires an officer to take all reasonable steps to advise a victim of the decision to grant bail and its conditions if the officer is aware that a victim has expressed concern about the need for protection from violence or harassment.

The findings in relation to opportunities for meaningful participation and acknowledgement were again rather mixed. 60% of victim/witnesses reported that they had sufficient contact with police/prosecutor:

- 55% said that they had plenty of opportunity to ask questions; and,
- 28% were given the opportunity to submit VIS (although this low figure may relate to the category of offences prosecuted)<sup>20</sup> (urbis keys young, 2001).

These two sets of findings on procedure and process revealed what we already suspected. Our systems for providing certain key 'deliverables' consistently were just not working effectively. Again, however, we must point out the importance of operational context. Some victim/witnesses do not receive contact from prosecution authorities in part because the matter has resolved by way of an early plea of guilty. For 2000-2001 this occurred in nearly 80% of matters. The victim/witness is thereby saved from the stress of waiting and the distress of giving evidence (although early finalisation without the victim does generate its own concerns).

Another example occurs when a Court is considering bail for a defendant. The ACT has a specific legislative provision<sup>21</sup> which enables the prosecutor to put before the Court any concerns a victim may have expressed, without the need to call direct evidence of this. This negates the requirement for a victim to attend Court and give evidence. Any dissatisfaction expressed of not being given an opportunity to participate in the bail process may be reflective of this.

Finally although 68% of respondents indicated that their matter had resulted in a conviction, only 47% expressed satisfaction with the outcome and felt that justice had been done (urbis keys young, 2001 p 81). Why? Respondents indicated their dissatisfaction with being "unable to have had proper say in proceedings" and a perception of "leniency or ineffectiveness of the sentence". The first comment harks back to the importance of procedural fairness for victim/witnesses; and the second relates in part, we believe, to that relatively small proportion of family violence perpetrators who, in

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<sup>20</sup> The provision for Victim Impact Statements (VIS) is contained within s343 *Crimes Act (ACT) 1990* located at <[www.legislation.act.gov.au/](http://www.legislation.act.gov.au/)>. A VIS may be tendered by the prosecution after conviction and before sentence. They are only available to a crime victim if the offence is one for which the sentence is a maximum of 5 years imprisonment. A VIS is voluntary, in the victim's own words and must contain a *durat* to be tendered in court.

<sup>21</sup> Section 23A of the *Bail Act ACT (1992)*

women's experience, remain either dangerous or harassing irrespective of conviction and even irrespective of the type of sentence imposed.<sup>22</sup>

## **Safety Measures**

One of the overarching aims for all agencies participating in the FVIP is to improve safety for victims of family violence. This is, however, one of the hardest aspects to measure. As mentioned earlier, our evaluation captured the victims' subjective assessment at different points of case processing, and the reports of a self-selecting group for the 12-month follow-up. The recidivism rates of those sentenced or directed to participate in the PEP, and of those who come to police attention again is a whole other paper.

In the first survey (n=39 or 20% of all victims of finalised cases),

- 71% of respondents felt reasonably safe once police left the scene of the initial incident; and,
- at the finalisation of the case 57% indicated that they felt very or fairly safe (urbis keys young, 2001).

We cannot claim – because we do not know – whether these feelings of safety following police intervention and at case finalisation relate to the incidents having resulted in an arrest or, at the end, in a conviction.

The second survey revealed that, whilst at the time of the earlier incident 75% were residing with the perpetrator, only 31% continued to do so 12 months later. While 25% had a protection order at the time of the original incident, 44% did 12 months later. These findings may go towards other studies that show separation as being a time of heightened risk for victims of family violence (Humphreys, 2002 forthcoming).

The second survey sample size is very small but 12/16 (75%) said that they felt very safe or fairly safe since the finalisation of the incident. Four of those who felt very or fairly safe linked this to the impact of the court case on the perpetrator – an impact that led to changed behaviour. All of these four women continue to reside with the offender. Out of all respondents to the follow-up survey only 1 person had been physically assaulted since case

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<sup>22</sup> Buzawa, Hotaling, Klein & Byrne (1999) arrived at similar conclusions in their evaluation of the Quincy jurisdiction.

finalisation but 3/16 (19%) indicated that they had had to call for police assistance again. However, nearly all of the women who were no longer residing with the offender had experienced some form of verbal abuse, harassment and intimidation since case finalisation.<sup>23</sup>

## Conclusions

For the ACT criminal justice and victim agencies participating in the FVIP the investment in data collection and analysis has been huge. We now have three years data on: number of incidents, number resulting in arrest or other action, number resulting in charge and prosecution, the reasons why charges may not be prosecuted, the proportion of male to female defendants (and of juveniles to adults), when a matter has entered a plea, the number that have gone to full contested hearing, the time taken to finalise a matter, the number of convictions, and type of sentence. We even have some early indications of recidivism in offenders sentenced to the PEP. Incredibly, all of this is far more than the system knows about any other type of criminal offence. For non-government organisation such as the Domestic Violence Crisis Service it is part of what they have been struggling towards for over 10 years. We are very proud of these achievements.

But has it got us any closer to knowing what women want from the criminal justice system? In the beginning we thought we knew. Then we didn't. Now we think it is what so many women and children have been saying year in year out for decades all over the world. And that is that they want the violence to stop.

We would have to say, however, that while we think we now have clearer ideas about some of the things that matter to women in their encounters with our agencies, we are not – yet – confident in claiming that criminal justice can be effective in getting the violence to stop.

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<sup>23</sup> Women made comments that the harassment and intimidation occurred through other legal proceedings especially over child contact.

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