

Standing Committee on Social Issues

Domestic violence trends and issues in NSW

Ordered to be printed 27 August 2012 according to Standing
Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues

Domestic violence trends and issues in NSW / Standing Committee on Social Issues. [Sydney, N.S.W.] : the Committee, 2012. – lx,498 p. ; 30 cm. (Report ; no. 46)

“August 2012”.

ISBN: 9781921286834

Chair: Hon. Niall Blair MLC.

Family violence—New South Wales—Prevention.

Family violence—Law and legislation—New South Wales.

Family violence—Government policy—New South Wales.

Restraining orders—New South Wales.

Injunctions—New South Wales.

Title

Blair, Niall.

Series: New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues. Report ; no. 46

362.829 (DDC22)

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Terms of reference

That the Standing Committee on Social Issues inquire into and report on domestic violence trends and issues in New South Wales, and in particular:

1. Strategies to reduce breaches and improve compliance with Apprehended Domestic Violence Orders (ADVOs), including:
 - (a) the use of GPS bracelets
 - (b) whether existing penalties for domestic violence are adequate
2. Early intervention strategies to prevent domestic violence
3. The increase in women being proceeded against by police for domestic violence related assault, and
4. Any other relevant matter.

These terms of reference were referred to the Committee by the Hon Pru Goward MP, Minister for Family and Community Services and Minister for Women and were adopted by the Committee on 25 July 2011.

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Acronyms

ACI	Agency for Clinical Innovation
ADVICE	Area Domestic Violence Integrated Case Management and Education
ADVO	Apprehended Domestic Violence Order
APVO	Apprehended Personal Violence Order
AVL	Audio-visual link
AVO	Apprehended violence order
BEM	Bilateral electronic monitoring
BOCSAR	NSW Bureau of Crime Statistics and Research
CALD	Culturally and linguistically diverse
CARAM	Cross Agency Risk Assessment and Management
CCTV	Closed-circuit television
CISP	Court Intervention Services Program
COAG	Council of Australian Governments
COPS	Computerised Operational Policing System
COTA	Council on the Ageing
CREDIT	Court Referral of Eligible Defendants into Treatment
DAGJ	Department of Attorney General and Justice
DAP	Domestic Abuse Program
DFV	Domestic and family violence
DVICM	Domestic Violence Intervention Court Model
DVIRT	Domestic Violence Intervention and Response Team
DVLO	Domestic Violence Liaison Officer
DVO	Domestic Violence Operative
DVPASS	Domestic Violence Pro-Active Support Service
DVPS	Domestic Violence Practitioner Scheme
EIU	Legal Aid Family Law Early Intervention Unit
EM	Unilateral electronic monitoring
FACS	Department of Family and Community Services (NSW)
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs (Commonwealth)
GLBTI	Gay, lesbian, bisexual, transgender and intersex
GPS	Global Positioning System

ICO	Intensive correction order
LAC	Local Area Command
LGA	Local Government Area
NAHA	National Affordable Housing Agreement
NAPCAN	National Association for the Prevention of Child Abuse and Neglect
NJC	Neighbourhood Justice Centre
ODPP	Office of the Director of Public Prosecutions
PINOP	Person in need of protection
POI	Person of interest
VOCAL	Victims of Crime Assistance League
WDVCAP	Women's Domestic Violence Court Advocacy Program
WDVCAS	Women's Domestic Violence Court Advocacy Service
WEAVE	Women Everywhere Advocating Violence Elimination
WFLSS	Women's Family Law Support Service
WLS	Women's Legal Services
YAPA	Youth Action and Policy Association
YJC	Youth justice conferencing
YOA	<i>Young Offenders Act 1997</i>

Chair's foreword

The momentum is gathering for a comprehensive new approach to domestic violence in New South Wales. The NSW Government is moving to develop a strategic framework for preventing and responding to domestic violence across the State. In undertaking the inquiry, the Committee has sought to identify priorities and imperatives, informed through extensive consultation with stakeholders, to ensure that future action by government addresses the key issues in the right way.

While this inquiry was primarily focused on systems, services and programs, it was fundamentally concerned with violence within intimate partner relationships and families. Domestic violence is a profound betrayal of the love and trust that people have for those closest to them, and the damage it inflicts is equally profound. Domestic violence is also a human rights abuse: victims and children have a fundamental right to be free of it, and government and society have a fundamental responsibility to prevent and address it. The inquiry has highlighted to the Committee that service providers, both government and non government, must focus on addressing people's needs in a timely, holistic and individualised way. They have a responsibility to ensure they are engaging and assisting victims, children and perpetrators as effectively as possible, working together towards the common goals of safety and freedom from violence for victims and children, and accountability and change to non violent behavior for perpetrators. In addition, the system must recognise that domestic violence is an inherently gendered crime, whilst also taking account of, and being effective for, all victims and perpetrators.

The Committee feels strongly that comprehensive change is what is required, perhaps beyond what is presently envisaged for the new framework, and we acknowledge that this will cost money. Substantial additional funds will be essential to improving prevention of domestic violence, as well as responses to it. This money will be well spent, improving the lives of victims and children in basic yet profound ways. It will also save money in the long term: the costs of domestic violence have been estimated at approximately \$4.5 billion per year to individuals, employers, government and the community. We urge the Government to pursue reforms across the policing, court and service systems, matched with a much greater focus on prevention and early intervention. Not to do so would be a greatly missed opportunity.

On behalf of the Committee, I express our gratitude to all who participated in the inquiry: to the non government stakeholders who shared their practical wisdom and knowledge; to the government agencies who took part in good faith; and to the victims who revealed their very personal experiences and unique insights into how the system ought to work.

I thank my Committee colleagues for their substantial work and personal commitment to this demanding inquiry. Each has brought a very valuable perspective, and the comprehensiveness of this report is a reflection of their dedication to addressing this critical social problem.

I also thank the Committee Secretariat for their professionalism, work ethic and determination that this report should reflect the truth of domestic violence, and offer recommendations that will lead to real change for victims. The Secretariat have worked tirelessly to sift through the reams of information,

including the many submissions to this inquiry, available about this contentious issue. The Committee Secretariat's attention to detail ensured that the Committee Members were in a position to make informed decisions and judgments.



Hon Niall Blair MLC
Committee Chair

Executive summary

The inquiry into domestic violence trends and issues in NSW was referred to the Standing Committee on Social Issues by the Hon Pru Goward MP, Minister for Family and Community Services and Minister for Women, on 18 June 2011.

During the inquiry the Committee received 80 submissions and held six public and one *in camera* hearing. We conducted site visits to two local courts and to Forbes in Central West NSW, where we held briefings with a range of police, legal, health and community sector stakeholders. We also visited Victoria to meet with various representatives of its highly regarded system for responding to domestic violence. The Committee's evidence gathering culminated in an innovative and highly successful roundtable discussion with 19 key inquiry stakeholders, in order to gather considered feedback on possible recommendations for the inquiry.

We warmly express our appreciation to all those who contributed to the inquiry, whose views have been vitally important to our findings and recommendations.

Throughout this report, the Committee, like many stakeholders, uses the term 'domestic violence' to refer to both violence between intimate partners and between other family members. We use the term 'victim' to refer to the person subject to violence, 'perpetrator' for the person committing the act of violence, and 'offender' for a person found guilty of a domestic violence offence.

Important recent developments

The establishment of the inquiry was shortly followed by significant developments in domestic violence policy in New South Wales. The first was the announcement of an independent review of the whole of government domestic violence policy, the *NSW Domestic and Family Violence Action Plan*, to examine whether it remains current and effective.

Then, in November 2011, the NSW Auditor-General's released a report, *Responding to domestic and family violence*, based on a performance audit of the key government agencies responsible for prevention, early intervention and tertiary responses to domestic violence: the Department of Family and Community Services (FACS), the Department of Attorney General and Justice (DAGJ), the NSW Police Force and the NSW Ministry of Health. The Auditor-General's report was highly critical of the present system. Its findings included that organisations do not have a strategy for working together across the State in response to domestic violence, that they lack a shared understanding of each others' roles, and that there has been a lack of leadership to drive change for some time. Accordingly, the Auditor-General made a series of detailed recommendations, including that the key agencies agree, in consultation with non government organisations, on a framework for how to respond to domestic violence.

Subsequently, the NSW Government advised that it is preparing the NSW Domestic and Family Violence Framework (hereafter DFV Framework) for release in early 2013. The DFV Framework is intended to deliver an integrated, whole of government response to domestic violence, focused on primary prevention, offender accountability and long term reduction of domestic and family violence. Key components of the Framework will be:

- a robust governance structure

- effective sector consultation
- a prevention plan
- a system performance accountability framework
- clearly articulated service system roles and responsibilities
- referral pathways
- information exchange protocols
- minimum practice standards (including justice agencies)
- early identification of domestic and family violence
- risk assessment and management tools
- a strategy for implementing the operational change required to deliver the framework within agencies.

Specific government commitments in respect of domestic violence that were noted during the course of the inquiry include that:

- the DFV Framework will be developed in consultation with the non government sector, including co-design of some elements
- it will be built on an evidence based approach
- it will set a common definition of domestic violence across all agencies and programs, and of prevention and early intervention
- the present mechanism for regional coordination is being reviewed and will inform new governance arrangements
- DAGJ is developing a Domestic Violence Justice Framework to establish performance measurement for the NSW Police Force, Local Courts, Corrective Services and Legal Aid NSW
- Women NSW (formerly the Office for Women's Policy) is reviewing the Domestic and Family Violence Grants Program in order to enhance the quality and longevity of non government programs
- the NSW Police Force is evaluating the Domestic Violence Pro-Active Referral Support Service (DVPASS), with a view to implementing a best practice program in all local area commands.

As a rule, the Committee has not recommended specific actions to which the Government has already committed itself. However, we explicitly support these commitments and underscore the importance of each of them being carried through to completion.

Key findings of our inquiry

Domestic violence is at once a profoundly personal problem, a destructive social issue and a serious crime. As a violation of trust within people's closest relationships with intimate partners and family members, domestic violence has a deeply harmful effect on victims and children. Domestic violence is also a breach of the human right to freedom from gender based violence. It is linked to death, physical

and mental ill health, disability, child abuse and homelessness, and has been estimated to cost the New South Wales economy at least \$4.5 billion each year.

The Committee agrees with the near-consensus among inquiry participants that domestic violence is an inherently gendered crime, with the majority of violence perpetrated on women by men. This is backed up by State, national and international data, and is rightly recognised in policy and legislation. At the same time, there are male victims and female perpetrators, and the Committee considers that while it must recognise the gendered nature of domestic violence, the system for preventing and responding to such violence needs to take account of, and be effective for, all victims and perpetrators.

The Committee very much welcomes the NSW Government's commitment to develop the DFV Framework. Together, the findings of the Auditor-General and the views of a wide range of inquiry participants highlight the very substantial need to pursue comprehensive, systemic reform in relation to domestic violence. We encourage the NSW Government to embrace this opportunity for wholesale improvements under the umbrella of the Framework. An ambitious, well resourced strategy will provide a vision for the comprehensive reforms that are so necessary and drive them forward over time.

The Committee considers that it the imperative for reform is so significant as to justify a further inquiry on our part, to review progress made in respect of our recommendations in two years' time.

In our view, the DFV Framework should be built on three core principles. First and foremost, it should embody the principle that domestic violence in all its forms is completely unacceptable and as a society, we must make an ongoing effort must to eradicate it.

We consider that there needs to be a new focus on victims within the domestic violence system. Evidence before the inquiry has shown us that at present the system works in silos, is patchy and lacks leadership, with outcomes for victims constrained by system requirements. It has also been overly focused on criminal justice interventions at the expense of victim supports. Thus Framework must reflect a second principle that people's needs are paramount, that the system exists to address those needs, and that all agencies and workers have a responsibility to respond to needs in a timely, flexible, holistic and individualised way.

The third principle is a focus on outcomes. All of our recommendations are geared towards enhancing a practical focus on the needs of and outcomes for the individuals affected by domestic violence: most significantly, the outcome of safety and freedom from violence for victims and children, but also accountability and change to non violent behaviour for perpetrators. Every service that plays a role in the domestic violence system, whether a police station, a local court, a refuge, an emergency department or a women's health centre, should be focused on these goals, and on their own part, integrated with that of other services, in achieving those outcomes.

The right leadership and governance arrangements will be critical to the success of the reforms. We recommend that governance of the NSW DFV Framework be led by a Premier's Ministerial Council comprised of each of the ministers responsible for the following portfolios: Women, Family and Community Services, Attorney General, Justice, Police, Health, Housing and Education. The Premier's Ministerial Council would be an oversight committee that ensures that all of the agencies with a role in the Framework act in a coordinated way to fulfil their respective responsibilities. In addition, we call on the Premier to report to Parliament once a year on the progress being made to address domestic violence in New South Wales.

Government must also formalise the role of non government organisations in decision making by allowing them to take their rightful place in a new statewide steering committee for the Framework.

We strongly believe that just as there needs to be a comprehensive new approach to domestic violence in New South Wales, within that approach government must invest in a long term and strategic commitment to prevention and early intervention that includes primary prevention measures. Moreover, there must be a lead agency to drive and coordinate primary prevention strategies across the State. The Committee understands the enormity of this task, but believes that investing in primary prevention is the only way to make a real, long lasting impact on the incidence of domestic violence.

Given the strong evidence that that domestic violence is inherently gendered, we consider that addressing the causes of violence against women must form the basis for any prevention strategy. This should be complemented by targeted prevention strategies focusing on specific population groups.

We call for specific evidence based strategies to address the link between alcohol and domestic violence, predicated on an acknowledgement of a link between the two, and a commitment to fund further research on the role that alcohol plays in the frequency, severity and effects of domestic violence.

The Committee recognises that many of our recommendations will give rise to an increase in demand for tertiary services for victims and children. If victims are more aware of the supports available to them, and if they and their children are more effectively engaged in the system and referred by service providers for additional support, it is critical that there be adequate services to meet their needs. Yet, the Committee heard that many services for victims, and especially for children, are already in very short supply. It is also vital that there be a menu of options available to respond to those various needs.

The Police Force will be key to the success of the new approach to domestic violence that the Committee is envisaging for New South Wales. While the Police Force has achieved significant improvements in practices in recent years, further improvements are required in relation to the consistency of responses, responses to breaches, and responses in rural and remote areas. These issues should be addressed via enhancements to leadership, training and quality assurance. In addition, Domestic Violence Liaison Officer (DVLO) positions should be funded on the basis of a policy for allocating DVLO positions across the State.

Greater research, data collection and monitoring will be essential to a better understanding of the trend of increased arrests of women, and appropriate responses to it.

Our inquiry presents an opportunity for the NSW Government to rethink what relationships should and should not be classified as ‘domestic’ in the *Crimes (Domestic and Personal Violence) Act 2007*. The Committee considers that the Act should reflect that domestic violence occurs between people in family or family-like relationships. At the same time, owing to the unique vulnerability of people with disability to abuse, neglect and exploitation, there should be no dilution of existing protections for that group.

The Committee strongly believes that the apprehended domestic violence order (ADVO) system as a whole requires improvement. Ensuring ADVO conditions are workable and realistic and that respondents understand those conditions will fundamentally decrease the likelihood of breaches.

The Committee is not convinced that global positioning system (GPS) technology for people subject to an ADVO, which is not a criminal charge or offence, demonstrates tangible benefit to victims of

domestic violence. Accordingly, we recommend that the NSW Government not pursue at this time the use of GPS bracelets as a method to reduce breaches and improve compliance with ADVOs.

The Committee believes that greater availability of advice for respondents, whether through a lawyer or court support worker, will reduce breaches and improve compliance with ADVOs. We recommend that DAGJ work towards implementing a best practice respondent legal advice and support program across NSW Local Courts.

We consider that court support services should be enhanced in order that every court in New South Wales has the same minimum standard of supports available to victims of domestic violence, including that at least one court support worker and one DVLO should be dedicated to every local court on domestic violence list days.

While the establishment of standalone domestic violence courts is neither feasible nor practical at this time, we see great value in implementing elements of the Domestic Violence Intervention Court Model across the state, and the use of domestic violence lists in all local courts. In addition, we recommend that DAGJ work with local courts to establish safe rooms in all local courts.

New technological and legal capacity is required to permit information sharing between NSW courts and the Family Court, so that magistrates and judges in NSW courts are better able to ensure that family law orders and ADVOs are consistent.

While there is already a range of penalties available for domestic violence offences, we recommend a review of alternative sentencing options for domestic violence offences, for example referral to mediation, support services, treatment programs, counselling, and educational or rehabilitative programs.

We call on the NSW Government to develop effective intervention programs for perpetrators of domestic violence, based on thorough research and systemic trial and evaluation. Funding for perpetrator programs should not be at the expense of victims' services and programs.

Finally, we recommend that as part of the DFV Framework, the NSW Government expand the availability of support services for child perpetrators and their families across the State.

A summary of findings and recommendations in each chapter is set out below.

Chapter 2 – What is domestic violence?

In Chapter 2 we set the scene for this report by defining domestic violence and documenting a number of trends and patterns in such violence in New South Wales. We explore the debate on whether domestic violence is gendered, then document the manifestations that it takes among different vulnerable groups.

Trends

Figures provided by the NSW Bureau of Crime Statistics and Research (BOCSAR) show a stable trend or slight increase in the 10 year average trends in offences associated with domestic violence. The latest published crime statistics show that between January and December 2011 there were 26,808 reported incidents of domestic violence assaults in New South Wales. The number of recorded incidents of

domestic violence related assault remained stable between 2007 and 2011, continuing the trend seen over the previous 10 years.

Gender and domestic violence

The Committee recognises that some women perpetrate domestic violence and that some men are victims, and also that male victims have been much less visible and able to access supports than should be the case. We consider that the system for preventing and responding to domestic violence needs to take account of, and be effective for, all victims and perpetrators. Nevertheless, like a number of inquiry participants, we note that the data on domestic violence, in New South Wales, as well as nationally and internationally, clearly shows that men comprise the significant majority of perpetrators and women the significant majority of victims. Thus, like almost all inquiry participants, we are comfortable with the orthodoxy that domestic violence is, generally speaking, a gendered crime.

Like the Australian and NSW Law Reform Commissions, the Committee considers that legislation and policy should be written in gender neutral terms, but that, at the same time, it is appropriate to make explicit reference to the fact that domestic violence is predominantly perpetrated by men against women.

Chapter 3 – A comprehensive new approach to domestic violence in NSW

In Chapter 3 we examine the need for a comprehensive new approach to domestic violence across all relevant programs and services in this State.

The Committee very much welcomes the NSW Government's commitment to develop the DFV Framework, recognising it as an opportunity to deliver fundamental improvements to the way that domestic violence is dealt with in New South Wales. We strongly encourage the Government to embrace an active, comprehensive approach to preventing and responding to domestic violence under the umbrella of the Framework.

Similarly, we strongly encourage our parliamentary colleagues to adopt a cross-party commitment to comprehensive reform of the domestic violence system, noting how vital such a commitment has been to the longevity and success of reforms in Victoria.

We are heartened by the list of components identified in the consultancy tender document for the Framework, which are wide-ranging and ambitious. They reflect the many systemic issues identified by the Auditor-General and by inquiry participants. They also point to the very substantial work to be done to rebuild the system - both its individual components and the system as a whole - so that it operates in an integrated, coordinated way that delivers positive outcomes for victims, children and perpetrators.

Given the wholesale changes that are required within the system, as well as the inherently incremental nature of prevention, the Committee considers that a long-term approach will be essential as will be cross-party commitment on the part of the Parliament, as well as adequate resources to achieve the Framework's objectives. In the interim, it is critical that the timeframes for the development of the DFV Framework and the implementation of the Audit Office's recommendations be met. We endorse those recommendations and strongly encourage the NSW Government in the task of meeting its commitments in line with current timeframes.

The Committee considers that it the imperative for reform is so significant as to justify a further inquiry on our part, to review progress made in respect of our recommendations in two years' time.

In the Committee's view, the substantial reforms that are required will require additional resources. While many improvements can be delivered within agencies' existing budgets, others will necessarily require additional funds, most especially primary prevention, discussed in Chapter 5, certain elements identified in Chapter 4 such as case management, and services for victims, discussed in Chapter 6. Again, we strongly encourage the NSW Government to prioritise allocations to these strategies in the knowledge that they will address the recommendations of the Auditor-General and this Committee, and in the longer term, will reduce the costs to government and the community.

Chapter 4 – Elements of the forthcoming NSW Domestic and Family Violence Framework

Chapter 4 explores the various elements that we believe should comprise the forthcoming Framework.

A common definition

The Committee considers that the present plethora of definitions of domestic violence operating in New South Wales is very problematic. We strongly encourage the NSW Government in its commitment to develop a common definition of domestic violence under the Framework. We recommend that it target violence between intimate partners and family members, and be inclusive of victims and perpetrators of both genders. At the same time, we believe that because of their particular vulnerability, the present protections for people with disability should not be diluted. We make recommendations on this in Chapter 9.

Core policy principles

The Committee considers that the present system for responding to domestic violence impedes a focus on victims and their needs. It is crucial that this fundamental problem be addressed if the new DFV Framework is to bring about systemic change. The core principles underpinning the new Framework must be that peoples' needs are paramount, that the system exists to address those needs, and that all agencies and workers have a responsibility to respond to needs in a timely, flexible, holistic and individualised way.

Similarly, there needs to be a focus on outcomes for victims, children and perpetrators across all government and non government organisations responding to domestic violence. The primary outcome for victims and children should be safety and freedom from violence, with the ultimately goal being their long term wellbeing. For perpetrators, the outcome should be accountability for violence, and ultimately, change to non-violent behaviour. While DAGJ will implement an explicit outcomes focus for criminal justice agencies through its Domestic Violence Justice Framework, the Committee considers that the same approach is imperative for the NSW DFV Framework as a whole.

First and foremost, however, the Committee considers that the DFV Framework should be built on the principle that domestic violence in all its forms is completely unacceptable and as a society, an ongoing effort must be made to eradicate its occurrence.

An evidence based approach

Like many participants, we see significant value in an explicit evidence based approach being built into the Framework and we are pleased that FACS has indicated this will occur. We readily accept that this will necessarily require additional investment by government, and suggest that such investment is prudent in that it will help to ensure that services, both government and non government, are effective into the future.

We feel strongly that much better data collection and reporting is required, to facilitate a more rigorous and evidence based approach to domestic violence. Accordingly we recommend that BOCSAR be provided with the necessary additional resources to coordinate across government agencies the collection and analysis of data and information associated with domestic violence, and that BOCSAR publish an annual report on domestic violence trends in New South Wales.

In addition, we consider that the DFV Framework must grapple with the issue of short term, grant based funds for projects and pilots versus longer term funding for programs that are demonstrated to be effective. There needs to be a mechanism whereby successful innovations are retained and where appropriate, expanded. We welcome the review of the Domestic Violence Grants Program to this end, and further recommend that Women NSW host a yearly forum to enable government and non government organisations to present and share their program evaluation findings.

Coordination and integration

We make a number of recommendations in order to improve coordination and integration across the entire domestic violence system. Like others, the Committee recognises that the right governance arrangements will be critical to the success of the Framework by providing the mechanisms through which leadership, integration and mutual accountability for bringing about change will be achieved. We see real value in the Victorian governance model that formalises the collective leadership of each of the relevant ministers and of senior bureaucrats, as well as the active participation of non government organisations in decision-making.

The Committee is very concerned that if leadership and responsibility for domestic violence policy remains with the Women's portfolio, it will not be given the prominence it requires within the broader context of the NSW Government. We believe that one of the reasons why we have fallen behind other states in this policy area is that the portfolio of Women has not historically been a senior Cabinet role. Consequently it has lacked the leadership and imprimatur to coordinate and improve the actions of other government agencies, such that domestic violence has remained marginalised. While Women NSW in its various iterations has been very committed to this issue, it has lacked the resources, status and operational accountability to lead other government agencies effectively.

Domestic violence is a very widespread and profoundly destructive problem, for individuals, families and the broader community of New South Wales. It is a crime that consumes many government resources across numerous government agencies. Substantial reform is required within each of those agencies, and within the system as a whole, in order to better prevent and address it. For these reasons, we strongly believe that leadership in this policy area must rest with an agency and minister with the authority to bring about the change that is so necessary. This policy area deserves no less than the leadership of the Premier.

We thus recommend that governance of the NSW DFV Framework be led by a Premier's Ministerial Council comprised of each of the ministers responsible for the following portfolios: Women, Family

and Community Services, Attorney General, Justice, Police, Health, Housing and Education. In addition, we call on the Premier to report to Parliament once a year on the progress being made to address domestic violence in New South Wales.

The Premier's Ministerial Council would be an oversight committee that ensures that all of the agencies with a role in the Framework act in a coordinated way to fulfil their respective responsibilities.

It is clear that government needs to actively build its partnership with non government organisations, in recognition of their critical role in addressing domestic violence, and to achieve the goals of integration and coordination. This must occur through consultation as part of the development of the DFV Framework and through the non government sector's representation on a new statewide steering group to drive the Framework's implementation.

We welcome that the current mechanism for regional coordination is being reviewed and that this will feed into decisions about governance under the DFV Framework. Nine Coordinators across the State does not seem sufficient, and participants' reports about ineffectiveness are concerning. In addition, we are not certain as to whether this role best sits within the Police Force. We recommend that the NSW Government, as part of the DFV Framework, determine a new structure for regional coordination that is strategically located and adequately resourced to address service integration.

The Committee recognises that case coordination meetings are a valuable mechanism for local coordination in respect of individual clients and families. Like the Auditor-General and various inquiry participants, we consider that local case coordination meetings should be used more widely, noting that this will be assisted by measures to address information sharing between agencies.

In relation to the sharing of client information between agencies, we acknowledge concern among certain stakeholders about privacy and consent, but at the same time, we are very concerned by the evidence from many others that present provisions significantly impair services' ability to work together, and ultimately, hinder positive outcomes for clients. We understand that that recent recommendations prepared for the approval of the Attorney General, informed by consultation with victims and others, are cautious regarding consent and confidentiality. Like the Auditor-General, we consider that work in this area should proceed as a priority. Accordingly, we recommend that the NSW Government introduce legislative amendments to enable the sharing of information between agencies about individuals in respect of domestic violence, with appropriate privacy protections, and that the amendments be supported by appropriate memoranda of understanding between agencies. At the same time, we consider that it prudent that DAGJ monitor the new provisions for the sharing of information between agencies in terms of any adverse impact on privacy.

The Committee is very pleased that interagency work to develop a shared risk assessment framework is progressing, informed by the evaluation of the Cross Agency Risk Assessment and Management (CARAM) pilot, and that the various government agencies involved are moving forward in agreement. We acknowledge the complexity of this task and note that it will be critical to involve non government agencies in this process. Like a number of participants, we consider that the end product will necessarily be risk assessment and referral tool(s) that are evidence based, flexible to the agency and professional using them, and culturally sensitive.

In light of the strong evidence flowing from the Domestic Violence Intervention Court Model (DVICM) for the significance of case management for integrated service delivery and positive outcomes for victims, the Committee sees real value in an expansion of case management services so

that victims with complex needs across the State can benefit from them. We acknowledge that this will require additional investment by government.

Service standards

The Committee also sees great merit in DAGJ's current work to develop a performance measurement framework to improve service standards across the NSW Police Force, Local Courts, Corrective Services, and Legal Aid NSW as part of its Domestic Violence Justice Framework. We encourage each of these agencies in this task. The Committee considers it highly desirable that this approach serve as a model for the development of a broader performance standards regime for all government and non government services under the DFV Framework. Again, this must be developed in partnership with the non government sector. The Committee also considers it desirable that there be a single reporting mechanism across agencies and programs within the forthcoming DFV Framework, in the interests of transparency and accountability.

Barriers to accessing services

We believe that every agency with a role in responding to domestic violence has a responsibility to ensure that their services are accessible to those who would benefit from using them. Thus we strongly endorse the Auditor-General's recommendation that the forthcoming DFV Framework establish mechanisms to continually address both barriers to reporting, and to accessing support. Information enabling people to recognise their experience as domestic violence and to seek out support services is fundamentally important, and must respond to the various groups in our community that are especially vulnerable or experience practical barriers to access. The Government should examine how it can improve victims' and children's understanding of the range of services available to assist them in respect of domestic violence.

Chapter 5 – Prevention and early intervention

In Chapter 5 we build on the previous two chapters by considering the systems for prevention and early intervention that we believe should be established in New South Wales, with a particular focus on primary prevention programs aimed at preventing violence against women.

Terminology

The Committee notes and endorses FACS' commitment to develop common definitions for prevention and early intervention as part of the DFV Framework. This will enable all services to take a more integrated approach, and to plan, fund and administer their strategies more effectively.

Causes of domestic violence

The causes of domestic violence are very complex and, to a large extent systemic, reflecting deeply held views in our society. There are also a number of factors that greatly exacerbate the likelihood, frequency or severity of domestic violence. Given our firm belief that domestic violence is inherently gendered, we consider that addressing the causes of violence against women must form the basis for any prevention strategy. A multilevel approach is needed. A challenge for the forthcoming DFV Framework will be to identify and harness existing primary prevention programs and strategies in relation to other social problems that potentially have an effect on domestic violence.

Within this multilevel approach, the Committee calls for specific evidence based strategies to address the link between alcohol and domestic violence. These must be predicated on an acknowledgement by government of the link between the two, and matched with a commitment to fund further research on the role that alcohol plays in the frequency, severity and effects of domestic violence

A prevention strategy

Until now, the focus on domestic violence policy and service delivery in New South Wales has been on criminal justice responses and tertiary services. By contrast, in Victoria, the approach has focused on prevention as well as on enhanced delivery of early intervention, criminal justice and tertiary services. We strongly believe that within the comprehensive new approach to domestic violence in New South Wales, government must invest in a long term and strategic approach to prevention and early intervention that includes primary prevention measures. Moreover, there must be a leader to drive and coordinate primary prevention strategies across the State. The Committee understands the enormity of this task, but believes that investing in primary prevention is the only way to make a real, long lasting impact on the incidence of domestic violence.

Based on our position that domestic violence is inherently gendered, and that a range of population groups are victims, we also recommend that the NSW Government make violence against women the focus of universal, primary prevention activities under the NSW Domestic and Family Violence Framework. These are to be complemented by targeted prevention strategies focusing on specific population groups.

Early intervention

Just as there has been insufficient investment to date on prevention, there has also been inadequate focus on early intervention. We acknowledge that the government is increasingly recognising the connection between early intervention and integrated service delivery, so that services identify the range of client needs and refer them to other services in a timely way. We welcome FACS' advice that Women NSW is seeking to enhance the quality and longevity of early intervention programs under the Domestic and Family Violence Grants Program, that it is looking to support integration in early intervention via minimum standards, and that it will examine ways to increase the capacity of non government organisations to deliver high quality early intervention. While we consider that there will be better ways of using existing resources to each of these ends, there may also be a need for greater investment in early intervention. We urge the government to develop a specific plan for early intervention services.

Evidence and evaluation

The Committee recognises that there is a small evidence base about violence against women prevention strategies. However, evaluations are available on the effectiveness of these activities which encourage the development of further prevention-based initiatives. We consider that there is sufficient evidence to justify a comprehensive approach to prevention in respect of domestic violence. The challenge for present policy, as acknowledged by FACS, is to identify the specific evidence supporting effective strategies and have that inform future work. At the same time, there needs to be commitment to, and investment in, the continued development of robust evidence to inform future policy and program design.

Aboriginal communities

The Committee recognises the imperative to develop specific prevention and intervention strategies to tackle the unique and complex factors contributing to domestic violence in Aboriginal communities, and is persuaded by the discussion at the roundtable that a specific NSW Aboriginal Family Violence Strategy, to be developed in consultation with the Aboriginal community, is warranted as part of the DFV Framework.

Screening

The Committee agrees with stakeholders that the NSW Health routine screening program is an excellent example of an effective early intervention program. Its evaluation showed promising results, both for victims and service providers. We note that there are a number of recommendations arising from the evaluation that have not been implemented, and urge NSW Health to implement them. We appreciate that inquiry participants would like the program to be expanded to variously include general practitioners, emergency departments and men. However, we note NSW Health's comments about workforce capability and agree with it and clinicians that it may not be feasible to introduce routine screening across all emergency departments in NSW. Nevertheless, we encourage medical staff in emergency departments to continue to endeavour to identify domestic violence victims and offer assistance where possible, and suggest that NSW Health to further consider this in their review of the *Policy and Procedures for Identifying and Responding to Domestic Violence*.

We welcome the moves by NSW Health to ensure services act by referring identified victims to relevant support services, in keeping with moves towards integrated service delivery. The biggest challenge for NSW Health and the Government as a whole is to integrate services such that where a victim is identified they will be referred in a timely way to the appropriate service. The Committee reiterates the point it has made in previous chapters of this report – that without programs and resources to refer victims to, the effectiveness of the screening tool is diminished.

Chapter 6 – Services for victims and children

In Chapter 6 we consider a range of issues raised by participants in relation to services for victims, focusing on accommodation and therapeutic interventions such as counselling.

Planning for increased demand

The Committee believes it absolutely essential that the government assume and actively plan for an increase in demand for services arising from the reforms that will occur under the NSW DFV Framework. Continued improvements in police practices will increase victims' faith in the system's ability to support them, and build their rates of reporting. More integrated service delivery will inevitably increase the number of referrals made to accommodation, counselling and other services. While we very much welcome a focus on primary prevention to stop violence from occurring in the first place, we consider that this will inevitably be a long term, incremental process. We believe that the issue of increased demand as a result of the Framework would be well considered, at the earliest opportunity, by the Domestic and Family Violence Senior Executive Steering Committee and the new statewide steering group for the DFV Framework that we recommend be established as a priority. We further consider that the collection of data on demand for services will be of critical importance here and we urge the Government to make such data collection a priority.

Accommodation

The Committee also recommends that the NSW Government develop a plan for new investment in emergency accommodation for victims of domestic violence and their children, informed by the current mapping of domestic violence services across the State. We note how critical safe, secure accommodation is at the point of crisis, when a victim is fleeing violence. We are very troubled by the statistic that more than one in two women and children are turned away from refuges, and while we welcome Housing NSW's initiatives to improve the fragmentation of the homelessness system, we are sceptical that this alone will significantly improve access to services. The Committee considers that while it is important that some groups' access to women's refuges improve, for others, most especially male victims, it is more appropriate that alternative emergency accommodation be provided via brokerage services administered by a relevant support service.

The Committee specifically supports greater investment in brokerage funds, which naturally accompany case management – and which we recommend in Chapter 4 be substantially expanded – that facilitates individualised and timely responses to victims' and children's needs.

The rate of domestic violence affecting Aboriginal women is more than six times higher than for non-Aboriginal women. The Committee considers that safe houses provide a very important avenue of safety in isolated communities, where the police are often a considerable distance – and length of time – away. We welcome the progress that has been made under the Orana Far West Safe Houses Project, but note that this will not assist the Aboriginal communities highlighted to us that lie outside its catchment area. We suggest that it would be valuable for the NSW Government to consider, in partnership with the Australian Government, Aboriginal organisations and other stakeholders, where other safe houses are needed.

The Committee is very pleased that Housing NSW has responded to feedback that the Start Safely subsidy period of 12 months is insufficient, and is deterring people from applying. We have no further details of the period to which it will be extended, or when this change will take effect. At the present time it is not reflected on the Department's website, however, we recommend it be extended to two years, consistent with feedback from inquiry stakeholders.

In relation to social housing, the Committee considers that Housing NSW has a responsibility to ensure that staff in all Housing Officers are applying policies appropriately and consistently. We urge it to examine the need for staff training in relation to domestic violence.

Noting the successful evaluation of the Staying Home Leaving Violence program, the Committee sees that its recent expansion to a total of 23 sites is a very valuable step, and considers that further effort should be given to expanding the program in a strategic way over the coming years, including by revisiting the funding model for each site. While the Committee, like inquiry participants, recognises that this program will only be appropriate for some victims, we see it as an excellent example of a non-traditional, victim-focused response that exemplifies the broader shift that must occur across the entire domestic violence system. We also note its explicit focus on integrated service delivery.

Therapeutic interventions

Participants highlighted the profound impact that domestic violence has on the mental health of victims and children. The apparent need for more counselling services for victims and especially for children was well substantiated during the inquiry. We accept that victims will access counselling via a number of avenues: the public health system; women's health centres; and private practitioners. But we

are troubled by the findings of the NSW Health review of counselling services that such services in the public system are very scant and crisis focused, and that there are inequities of access to any counselling in areas of high need, in rural areas, and for Aboriginal and CALD populations. We also note that while NSW Health has highlighted the complementary role of women's health centres in providing counselling, participants from those centres have themselves argued for more counselling services. While we believe more counselling should be funded and made available throughout the health system generally, as a priority we consider that the documented inequities should be addressed, as should the need for services assisting children.

More generally, we consider that there should be a greater focus within each local health district on responses to domestic violence, and suggest that this be achieved through the mechanism of performance measurement. This will not only help to improve the provision of counselling services, but also, as discussed in Chapter 5, will assist in achieving the more integrated responses to victims identified through routine screening.

We further recommend that the DAGJ publicise the Approved Counselling Scheme among the full range of government and non government domestic violence services so that more victims are made aware of the Scheme.

Male victims

The Committee acknowledges again that there are male victims of domestic violence. While men are less likely to be victims, the experience of those that are is equally as bad as that of other victims. We recognise the gap in services for male victims and encourage the government to examine how services can most appropriately be provided to male victims of domestic violence, including via brokerage funds. We make recommendations in Chapters 2, 4, 5 and 6 that we expect will achieve better recognition and responses to male victims. We also note our strong endorsement in Chapter 4 of the Auditor-General's recommendation that the forthcoming DFV Framework establish mechanisms to continually address both barriers to reporting and barriers to accessing supports. Once again, we see male victims as an important group here, and actively encourage the government in this task.

Tension between domestic violence and child protection interventions

The Committee was concerned by reports of a significant mismatch between Community Services and domestic violence services' approach to victims and children. While we understand the historical evolution of this tension, and the statutory responsibilities of Community Services, we are concerned that Community Services' approach may not be helpful to either group in the short and longer term. We recommend that Women NSW and Community Services develop a joint plan to address this tension at the local, regional and State levels, and to promote practices that harness victims' and children's strengths in order to move on from violence and build the relationship between them.

Chapter 7 – Policing

In Chapter 7 we explore participants' views on potential improvements to the policing of domestic violence.

Quality of police responses

It is clear to the Committee from the views of the NSW Ombudsman, as well as those of a range of inquiry participants, that policing practices have improved significantly in recent years, assisted by active commitment on the part of the NSW Police Force, as well as by legislative reform and policy changes. Notwithstanding these improvements, inquiry participants voiced concerns about some police responses in three key areas: the consistency of responses; responses to breaches; and responses in rural and remote areas. The Police Force has acknowledged that there are instances where poor police practices occur, but emphasised the efforts being made to address them.

The Committee agrees that wherever victims reside, they have a right to expect a high standard of service in accordance with the Police Force's Code of Practice for domestic and family violence. Similarly, we consider that where they exist, poor practices detract from the high standards of many police, to which the Police Force itself is very committed. Poor practices also undermine victims' trust in the system, detract from perpetrators' accountability, and contribute to the underreporting of domestic violence. While we acknowledge the many challenges that accompany domestic violence work, and the often understandable frustration that individual officers bear, we believe that it is vitally important that the quality of police responses continues to improve. In relation to rural areas, we are hopeful that the reforms to flow from the recent Parsons Review will address many of the structural resourcing issues we have observed. At the same time, we consider that to address the issues of quality that inquiry participants raised with us, the NSW Police Force needs to act in three areas: leadership, accountability and quality assurance, and training.

Leadership

While there is evidence of very effective leadership within the Police Force with regard to domestic violence, the Committee considers that further effort to strengthen leadership throughout police ranks is highly desirable. The Committee sees merit in the views of senior police from Victoria about the crucial role that leadership from the highest ranks has played in establishing, communicating and maintaining the mandate of responding effectively to domestic violence throughout every level of the organisation, from the Commissioner down. We also see merit in the views of numerous witnesses that leadership at the local area command level has a critical impact on the professionalism and work of officers at the coalface.

Accountability and quality assurance

In the Committee's view, the advent of DAGJ's Domestic Violence Justice Framework provides an ideal opportunity to evaluate and enhance the leadership structure of the NSW Police Force with regard to domestic violence, as a means of improving consistency of standards across New South Wales, through the mechanism of accountability. To this end, the Committee considers that the NSW Police Force should, as a priority, develop and implement a strategy to enhance leadership in respect of domestic violence, to ensure that police responses to domestic violence are of consistently high standard across the State.

The Committee has no detail at this stage on how the performance management approach within the Domestic Violence Justice Framework will be operationalised within the NSW Police Force. However, we believe it has significant potential to improve the quality and consistency of policing practices. We recommend that the NSW Police Force improve quality assurance of police investigations of domestic violence matters, to ensure broader consistency with the Domestic and Family Violence Code of

Practice and Standard Operating Procedures. This work should focus on improving the understanding and accountability of those who supervise others, in particular general duties first responders.

Training

There was a consensus among inquiry participants, including representatives of the NSW Police Force, on the desirability of greater access to training among general duties officers, including among those in rural and remote areas. We recommend that this be addressed. We see great value in making the two-day training course more widely available to general duties officers and others. It may well be that there are many officers whose practices are not seen as poor, who would nevertheless benefit from the course, including those with a special interest in the area. In light of the significant logistical difficulties around releasing general duties staff from rural and remote stations, as well as apparent need for country police to access training, the Committee considers that specific thought needs to be given to how rural and remote police will be supported to attend. If this is not addressed it is very unlikely that rural officers will be released by their commanders to undertake the training.

The Committee believes that additional training for supervising officers will be very important to improving general duties officers' responses to domestic violence. We consider it unacceptable that some supervisors have had no training in domestic violence, which surely impairs their ability to informally train, supervise and provide quality assurance for general duties staff in this demanding aspect of policing. Also, training for supervisors will be especially warranted in light of the proposed role for Sergeants in approving police issued ADVOs, as discussed Chapter 9. We consider that it would be valuable for the Education and Training Command to build on the Investigation of Domestic and Family Violence Workshop to develop a course specifically for supervisors that addresses aspects of supervision and compliance monitoring, as well as of domestic violence itself. Completion of this course should be compulsory to progress through promotional ranks.

Domestic Violence Liaison Officers (DVLOs)

There was much discussion about DVLOs during the inquiry. DVLOs play a very important quality assurance role, and they are critical to the effective functioning of the ADVO system through their role in court. The Committee accepts that Commanders necessarily make the decisions about how they staff DVLO positions and utilise those staff on a daily basis, as they do with other roles. We also accept that increasing the rank and pay of DVLOs is unfeasible for practical reasons, and so we are not recommending this. At the same time, like many inquiry participants, we believe that there are simply not enough DVLOs to effectively fulfil the role, especially in commands with high rates of domestic violence. In addition, many are stretched thinly in part time positions. There appears to be no formal relationship between the needs of a command in light of its rates of domestic violence and the number and full time/part time status of DVLOs, especially in rural commands.

The Committee believes that in order to boost compliance with operational procedures and thus the quality of policing of domestic violence matters, to adequately support victims and to ensure appropriate integration with other services, DVLO positions should be funded on the basis of a policy developed and published by the Minister for Police for allocating DVLO positions across each local area command. The needs of local area commands/districts and patrols with higher rates of domestic violence, greater Aboriginal or other disadvantaged populations and greater geographical coverage, should have these features acknowledged a new allocation model.

The Committee also considers that Local Area Commanders should make it a priority to fill DVLO positions when their incumbent moves on or takes leave, so that their important responsibilities

continue to be fulfilled, and ensure that a back-up officer is available to step in as required. In addition, as far as possible the use of DVLOs for other duties should be avoided.

Domestic Violence Pro-Active Support Services (DVPASS) and the ‘Yellow Card’

The Committee is very pleased to hear that an evaluation of the DVPASS (which includes the ‘Yellow Card’ used as a consent mechanism for referral of victims to other services) will take place, with a view to implementing a best practice program in all local area command. We consider it vitally important that victims be referred in a timely way to the support services that will assist them to obtain an appropriately tailored ADVO, provide them with crisis and ongoing support, and help to address their other needs. To this end, we also recommend that the NSW Police Force draws on the strengths of Victoria’s L17 form to develop and implement a simple electronic risk assessment and referral tool in relation to domestic violence incidents.

Chapter 8 – The increase in police proceedings against women

In keeping with a specific item in our terms of reference, in Chapter 8 we examine participants’ views on the documented increase in police proceedings against women for domestic violence related offences.

The increase in police proceedings against women was one of the more controversial aspects of the Committee’s inquiry, on which views tended to be polarised. While some inquiry participants saw the increase as a welcome reflection of true patterns of male and female offending, the majority who addressed the issue voiced concern about it and many of that group attributed the trend to policing policy and practices. There was, however, a consensus that there is no reliable evidence to elucidate the real cause for the trend, pointing to the need for quality research to this end.

We consider that skilled, thorough investigations of allegations of domestic violence will benefit all victims, whether they are male or female, as they are the gateway to both justice and protection. Like many inquiry participants we believe it imperative that a greater understanding of this issue is gained through research. We encourage the Police Force and its research partners to publish the research they are undertaking on police investigations of the primary aggressor, and urge that the Police Force use the research to inform future decisions regarding legislation, policy, operating procedures, practice, supervision and training. We recommend better data collection and availability on this issue, and that the Police Force monitor this trend.

Chapter 9 – Apprehended violence orders

In Chapter 9 we examine the function and effectiveness of ADVOs, the primary legal mechanism through which individuals are protected from domestic violence. With tens of thousands of ADVOs issued by local courts every year, it is critical that this system is working effectively to protect victims.

The apprehended violence order system

Some concern was expressed during the inquiry that the apprehended violence order (AVO) system, including both ADVOs and apprehended personal violence orders for non-domestic relationships, is abused by frivolous and vexatious litigants. The Committee is of the view that AVOs remain an

important tool in the struggle against domestic violence in New South Wales, although there is room for improvement.

Definition of ‘domestic relationship’ in the *Crimes (Domestic and Personal Violence) Act 2007*

Our inquiry presents an opportunity for the NSW Government to rethink its approach to domestic violence, particularly with regard to what relationships should and should not be classified as ‘domestic’ in the *Crimes (Domestic and Personal Violence) Act 2007*. The Committee understands the Police’s Force’s view that the breadth of the current definition creates challenges and sometimes forces police to make applications for ADVOs in inappropriate circumstances. In addition, it excludes some alleged perpetrators from services and options from which they and their families may benefit. At the same time, like other jurisdictions, the Committee recognises the unique vulnerability of people with disability to abuse, neglect and exploitation, and considers it important that there be no dilution of existing protections for them. We do not consider, however, that the definition should capture relationships such as those between flatmates, people living in university dormitories and people who are not in domestic or family like relationships.

The Committee notes the recommendations of the Australian and NSW Law Reform Commissions’ report, *Family Violence*, and reflected in Victorian legislation, which take individual contexts into account in a way that is not presently possible under the NSW law. In the Committee’s view, a similar strategy should be adopted here. That strategy should acknowledge that, at its core, domestic violence occurs between people in family or family-like relationships. A new definition should make the presumption that relatives and people in intimate relationships are in domestic relationships.

Some relationships between people living in the same residential facility and people reliant on care will be domestic or family-like relationships and others will not. In light of the various forms of modern families and living arrangements, the legislation should permit some discretion for decision-makers in determining this.

Third party applications for apprehended domestic violence orders

Our concerns for vulnerable people also play out in relation to third party applications for AVOs. Although concerned individuals or institutions such as the Public Guardian can request that the police make an application for an AVO, this is a cumbersome process and is not working well. The Committee sees value in the approach recommended by the NSW Law Reform Commission that third party applications for AVOs should be available on behalf of people with cognitive impairment, under guardianship orders, and people with certain physical disabilities. This would work as a mechanism to ensure outcomes of safety and freedom from violence for victims.

Issuing apprehended violence orders

The Committee agrees with Judge Graeme Henson, the Chief Magistrate of New South Wales, that higher courts should not only have the jurisdiction but also the obligation to amend, revoke and finalise AVOs at the same time as determining related criminal matters. This should improve efficiencies and avoid a situation where the victim will need to attend the Local Court again, after the District Court has dealt with the matter, to give substantially the same evidence.

We recognise that the current system of court issued AVOs can result in delay for victims in need of protection where ADVO applications are made outside business hours and consider that this should be addressed. Other states permit a police officer of or above the rank of sergeant to issue an interim

protection order, with a limited power to detain an individual for the service of the order. The Committee heard that Victoria has an especially good model, and we see merit in pursuing a similar system in New South Wales. This will ensure the expedited protection of the victim and reduce or eliminate police time spent locating the respondent to serve the order. Again, this accords with our recommendation that the system responding to domestic violence should be focused on the outcomes of safety and freedom from violence for victims and children.

In the Committee's view a limited power for police to issue protection orders must have appropriate checks built into the system. Any such order must be for only the length of time necessary to provide protection before the first possible appearance in court. In addition, these orders should be issued only in limited circumstances: where the respondent is over 18, is not cognitively impaired, and not already the subject of an existing ADVO in relation to the person in need of protection. It is also important to ensure that the issue of an interim order will not conflict with existing family law orders. Police should be provided with a limited power, both in time and circumstance, to detain an individual for the service of an interim order.

The implementation of police issued interim ADVOs will need to be carefully designed to ensure that it works in New South Wales and that any consequential effects can be coped with. It will be necessary to consider practical mechanisms for issuing orders in regional and rural areas.

Mindful of the concern about how a system of police issued ADVOs would work when the respondent is a police officer, we recommend that the NSW Government develop and implement police procedures sufficient to minimise any conflict of interest and maintain transparency and accountability in decision-making. The Committee also recommends that any breach of an ADVO by a police officer be referred immediately to the Office of the Director of Public Prosecutions.

The Committee also heard that it can be difficult to get an ADVO revoked or amended. Our recommendation to permit authorised third parties to apply to the court for the issuance, variance or revocation of ADVOs, in conjunction with our other recommendations pertaining to greater victim support, will alleviate some of the concerns here. In addition, we recommend that DAGJ develop an effective mechanism for permitting emergency applications for the revocation of ADVOs in appropriate circumstances in its review of the *Crimes (Domestic and Personal Violence) Act 2007*.

Apprehended domestic violence order conditions

Numerous participants advised that ADVO conditions are not always workable for the victim or the perpetrator in practice, and that exclusion orders can be especially problematic. In our opinion, ADVO conditions require tailored consideration. Notwithstanding that tens of thousands of these orders go through the court each year, proper attention should be paid to ensuring appropriate conditions are applied to each set of circumstances. Many ADVO conditions that were impracticable in the circumstances could have been avoided had there been greater consultation with the respondent and the person in need of protection.

However, to a great extent it appears that police and magistrates are already doing the best they can to determine the appropriateness of conditions in difficult circumstances. The Committee considers that improved support services for victims, combined with strengthened advocacy for respondents, will go some way to ensuring that more tailored ADVO conditions are implemented, and consequently that fewer breaches will occur.

In relation to having separate ADVOs for children and other persons in a domestic relationship with the respondent, the Committee accepts the evidence it has received that there will be situations where some parties, particularly a child, will require slightly different protection to their parent. This is especially so where family law orders are in place to allow the defendant or respondent to spend time with their child. It is important that the system caters for these distinctions and avoids a situation where family disputes are exacerbated by orders that inadequately cater for the different needs of family members. Accordingly, the Committee recommends that the NSW Attorney General reverse the presumption that children will be on the same order as their protected parent and instead create a presumption that children will be protected by a separate ADVO, unless circumstances clearly show that they have no distinct or separate protection needs.

Chapter 10 – Breaches of apprehended domestic violence orders

Reflecting another specific term of reference, in **Chapter 10** we examine strategies to reduce breaches or contraventions of ADVO conditions, and to improve compliance with ADVOs. Breach of an ADVO is a criminal offence.

Breaches: an overview

Several stakeholders were concerned about a failure of police to prosecute for ‘technical breaches’, where the person has breached their ADVO because of a poorly planned condition. The Committee accepts that technical breaches create real challenges for the enforcement of ADVOs. In our view, they are best prevented by ensuring that ADVOs have appropriately tailored conditions applied to the orders in the first instance.

On the issue of whether consent should be a defence to breach of an ADVO, in our opinion, it is appropriate that the issue of consent should go to mitigation rather than to guilt. The defence of consent could diminish the effect of an ADVO and it is foreseeable that it would be very difficult for police to enforce in any case.

Improving compliance and avoiding breaches

The most common mechanisms suggested by stakeholders to improve compliance with ADVOs were to ensure workable conditions and improve respondents’ and protected persons’ understanding of what it means to breach an ADVO.

The Committee strongly believes that the ADVO system as a whole requires improvement. Ensuring ADVO conditions are workable and realistic and that respondents understand those conditions will fundamentally decrease the likelihood of breaches. The Committee supports the work that has been done to develop a simple set of instructions for respondents and protected persons to include on the back of an ADVO. Acknowledging that work has already begun in this regard, we recommend that the form of words suggested by Women’s Legal Services NSW and developed in conjunction with other stakeholders be included on each ADVO.

We are not convinced that global positioning system (GPS) technology for people subject to an ADVO, which is not a criminal charge or offence, can yet demonstrate tangible and direct benefit to victims of domestic violence. Such devices have technological limitations and risk giving victims a false sense of security. Thus we recommend that the government not pursue the use of GPS bracelets as a method to reduce breaches and improve compliance with ADVOs at the present time.

Understanding apprehended domestic violence order conditions and consequences of breaches

A central criticism of the current ADVO system is that respondents frequently leave court without an adequate understanding of the conditions applicable to them, even when the orders are granted by consent. Where the conditions of an ADVO and the consequences of breaching them are not properly understood, respondents are greater risk of breaching those conditions.

The Committee believes that greater availability of advice for respondents, whether through a lawyer or court support worker, could reduce breaches and improve compliance. Legal Aid's pilot program allocating a duty solicitor for respondents in ADVO proceedings, shows promise in improving respondent understanding of orders, as do other initiatives brought to our attention during the inquiry. We recommend that DAGJ review Legal Aid's ADVO Defendant Pilot Program and consider the approach taken in Victoria with a view to implementing a best practice respondent legal advice and support program across NSW Local Courts.

Chapter 11 – The legal system

In Chapter 11 we consider the principle of access to justice as it relates to domestic violence, then explore stakeholder views on the value of a bench book and improved judicial education, as well as court support services and legal advice for victims.

Access to justice and the court system

During our site visits to two NSW local courts, the Committee observed first-hand the pressures under which local courts operate on domestic violence list days. We commend court staff and magistrates for the work they do in managing a heavy workload. Given the nature and volume of matters that they deal with it is perhaps not surprising that there can be delay in having matters heard. In addition, workload does not always give magistrates a lengthy period to consider each matter, and we recognise the impact that this pace can have on individuals that come before the courts.

Delays caused by adjournments can be just as problematic. Efficiencies are necessary to avoid further delays but they must be balanced against the principles of access to justice. Accordingly we recommend that as part of its Domestic Violence Justice Framework, DAGJ carefully consider and plan for the impact that the Committee's recommendations may have on the workload of local courts.

Judicial education

The Committee does not believe that judicial officers need better training in respect to the law, but rather, that they could benefit from training in how to implement their knowledge of the dynamics of domestic violence to practical effect in the courtroom. Indeed, results of the Judicial Officers' Survey indicated support for this from the judiciary itself. We are encouraged by judicial officers' suggestions about training and tools that might prove useful in this regard. We see value in a rejuvenated approach to judicial education in respect of domestic violence that continues to include as its basis information on the complex dynamics of such violence, including in mainstream and diverse communities. Given the volume of evidence we received about ADVO conditions (discussed in detail in Chapters 9 and 10), we believe the training could also include components to assist magistrates to ensure that ADVO conditions are appropriate for the individuals involved and are properly understood by the respondent.

The Committee endorses the recommendations made by judicial officers themselves and proposes that the Attorney General request that the Judicial Commission look into developing a risk assessment tool and a checklist for magistrates in accordance with those suggested in the 2010 Judicial Officers' Survey. In the meantime, we recommend that the Attorney General request that the Judicial Commission develop an education guideline covering key domestic violence matters so that presenters and facilitators can keep core concepts in mind when developing their program and ensure that education remains relevant and practical.

We note the recommendation of the Law Reform Commissions for a national domestic violence bench book and that this is currently being considered at the national level. In the Committee's view, there is still room for a complementary domestic violence bench book for NSW local courts, containing New South Wales specific considerations.

Court support services for victims

During our visits to local courts we were impressed by the support for victims of domestic violence provided by WDVCAS support workers, who work collaboratively with registry staff, police and the magistrate to the benefit of victims. Both of the courts we visited had safe rooms.

The Strategic Review of the DVICM highlighted that many of these features are also strengths of that model. At present, not all NSW local courts enjoy court support services and facilities such as safe rooms (which we consider in Chapter 13). The Committee would like to see services enhanced in order that every court in New South Wales has the same minimum standard of support services available to victims of domestic violence, including that every local court is serviced by a DVLO and at least one support worker based on the model currently provided by the WDVCAS. We accept that it may take some lateral thinking to achieve this.

We also recommend that DAGJ ensure that the provision of culturally appropriate legal support services, including enhanced support for victims in high risk and vulnerable groups, forms part of the forthcoming NSW Domestic Violence Justice Framework.

Legal services for victims

With respect to legal services for victims, Legal Aid's Domestic Violence Practitioner Scheme for victims making private applications for ADVOs appears to be making a difference. In our view, such a scheme empowers victims to take steps to protect themselves in circumstances where they may be fearful but police have not become involved, and can make court less frightening and more accessible. We are keen to see the results of an evaluation of the Scheme to determine if it is working effectively. Upon a positive evaluation we would recommend the expansion of the program across the State.

Chapter 12 – Specialisation in courts

In Chapter 12 we explore the arguments for and against specialisation in courts in various forms, as well as the feasibility of this approach.

Specialist courts

It is clear to the Committee that the establishment of standalone domestic violence courts is neither feasible nor practical at this time. We also heed stakeholder concerns that the establishment of

standalone courts could have the converse effect to that intended, by limiting access to justice and diluting the seriousness of domestic violence as a crime. Accordingly, we recommend that the NSW Government not establish standalone domestic violence courts at this time. But we do support other forms of specialisation.

The Committee also recommends that DAGJ monitor the outcomes of domestic violence matters in NSW local courts to ensure that the objectives of the DFV Framework are being met.

Domestic Violence Intervention Court Model

The DVICM is the first step towards a comprehensive integrated approach to domestic violence in New South Wales. In the Committee's view it has key strengths that should be built upon and implemented in local courts across the State. We acknowledge that some steps have already been taken in this regard including the issuing of Practice Note 1 of 2012. The Committee notes the benefits of courts that adopt a degree of specialisation, and believes that government can draw upon those benefits by introducing elements of specialisation into the existing New South Wales court system.

While implementing a carbon copy of the DVICM across the entire State may not be feasible, we are optimistic that many of its aspects, including better case management, improved coordination and availability of support services, specialist lists and improved victim participation are all achievable. We recommend that the NSW Government incorporate the successful elements of the DVICM into the NSW DFV Framework.

Specialist lists

The Committee heard that specialist court lists, in which domestic violence matters are heard alongside each other on a particular day, are a simple tool to help court staff and parties determine what matters are to be heard next and what time people need to come to court. Already a number of local courts successfully operate such lists on a specified day each week, fortnight or month as appropriate. Where specialist lists are not in place, it is difficult to coordinate the attendance of WDVCAS workers and DVLOs at court, such that victims may be left without support. On the other hand, there may not always be enough domestic violence matters to warrant a block of time being dedicated just to them.

The Committee respects the prerogative of magistrates to administer their own courts and that the number of domestic violence matters will impact on this. We accept that there are competing priorities in every court, and that as urgent matters arise, they must be dealt with promptly. Rather than negating the value of a dedicated list in every court, instead this highlights the importance of maintaining some flexibility as to how that list might be managed. In order to facilitate better coordination of support services, we recommend that the Attorney General request that the Chief Magistrate ensure that every local court implements a dedicated domestic violence list which runs on a regular basis, the frequency of which should be determined based on the volume of domestic violence matters each court hears.

Again in the interests of coordination, we recommend that DAGJ instruct court services to take steps to coordinate the availability of domestic violence support services in consultation with relevant non government organisations and in accordance with domestic violence lists.

Specialist magistrates

The Committee understands the call for specialisation within the magistracy, however, we accept that it is not feasible to have specialist domestic violence magistrates exclusively dedicated to domestic

violence matters in all local courts. Instead, in our view, it is critical to make certain that magistrates dealing with the gamut of local courts matters, a great bulk of which is domestic violence related, are well-supported to fulfil their role, including through training.

Chapter 13 – Court procedures and family law

Chapter 13 examines court procedures and family law, focusing on specific procedural aspects of domestic violence matters in NSW local courts, and on the challenges that arise from the interplay between family law and State law governing domestic violence and ADVOs.

Requirement for victims to attend court

The Committee is concerned that the court system can be so traumatic for some victims that they are deterred from ever returning. This is compounded for particular groups including Aboriginal people, people from culturally and linguistically diverse communities and people with disability.

While Judge Henson has written to magistrates advising that victims do not have to appear to give evidence at the first mention unless it is a defended hearing, problems persist and magistrates are taking widely differing approaches. While we accept that magistrates have a broad discretion to run their courts as they see fit, the insistence of some magistrates that the victim must be present at the first mention when it is not a defended hearing is both problematic and unreasonable. Accordingly, the Committee recommends that the Attorney General request that the Chief Magistrate consider issuing a practice note directing that magistrates not require this. We also recommend that DAGJ consider whether the legislation should contain a presumption in favour of making an interim order in the absence of the victim where it is a police application for an ADVO.

Victims withdrawing support for apprehended domestic violence orders or for criminal prosecutions

The Committee understands that when a victim retracts their evidence and support for a prosecution or ADVO application this can be frustrating for police, who may have put considerable effort into the case. It is important that police differentiate between annoyances that a case cannot proceed, and frustration with the victims who may be subject to potential coercion from the perpetrator and other pressures including maintaining and supporting their family. In Chapter 7 we recommend that police receive training on the dynamics of family violence, which may assist in this regard.

Vulnerable witnesses: closed circuit television and audio-visual link

It seems to the Committee that the use of CCTV in domestic violence matters is rare, not because it is not needed, but because it is rarely asked for. Indeed, this option is sometimes not pursued even in appropriate circumstances. In the Committee's view there is benefit to be gained from improved training for prosecutors on the availability and use of CCTV. We recommend that DAGJ assess the operation of the current system for permitting victims of domestic violence to give evidence via audio-visual link and closed-circuit television, to determine whether it is working effectively and to increase the availability and use of these provisions by victims.

Police prosecutors

During its site visits to NSW local courts, the Committee was impressed that police prosecutors were across such a volume of individual matters, but we also observed that they were under a great deal of pressure. There appears to be a lack of support to enable prosecutors to prepare effectively. This can leave victims feeling ‘voiceless’ in the very system that purports to protect them. Moreover, in practical terms, where victims are not adequately consulted, supported and engaged in the court process, the chances of their ADVO containing inappropriate or unworkable conditions is greatly increased.

One of the key observations that the Committee made when visiting Sutherland Local Court was that the court’s effectiveness was due in large part to the team environment in which all the relevant people worked. Thus, the prosecutor did her job to a high standard in part because she was so well supported. DVLOs and WDVCS support workers were negotiating appropriate ADVO conditions in the background and informing the prosecutor of the outcomes as court was in session.

To this end, the Committee perceives that our recommendation that at least one support worker and one DVLO should be dedicated to every local court on domestic violence list day will assist prosecutors to do their job well, as will our recommendation that to the extent possible, domestic violence matters are listed together. More fundamentally, our key recommendations for improvements to the coordination and integration of the domestic violence system will be especially important in courts and to supporting prosecutors.

Court infrastructure

The Committee recognises that the availability of appropriate interpreter services is an ongoing challenge. We commend those courts block booking interpreters and making efforts to organise hearing days in a way that will cater for people who speak languages other than English, and encourage other courts to consider this approach. However, we are concerned by reports that police are failing to notify the court that an interpreter is required. This leads to an inevitable adjournment of the matter and undue delay for the victim in having the case finalised.

We heard that safe rooms operate to strengthen the position of victims at court. There, they can feel confident that they will not inadvertently meet the defendant and can talk openly with WDVCS support workers and DVLOs. The Committee considers that the criminal justice response to domestic violence would be greatly enhanced by safe rooms in all local courts. Although we acknowledge the potential infrastructural obstacles to this proposal, we are of the view that a determined effort and creative thinking could lead to a substantial improvement here.

Interplay of NSW local courts with the Family Court of Australia

The interconnection between Commonwealth family law proceedings and domestic violence matters adds further complexity to the State’s response to domestic violence. Although there are some mechanisms in place to promote cooperation between the Commonwealth and state jurisdictions, there is room for substantial improvement.

The Committee heard that one of the most pervasive problems in the current ADVO system is that conditions are being applied to ADVOS that substantively conflict with family law orders made in the Family Court. Where this occurs, the family law order prevails to the extent of the conflict. While police and courts rely on the parties to inform them of any existing family law orders in order to avoid any conflicting conditions, the Committee heard that this system is not working effectively and needs

to be improved. A new approach is needed that permits information sharing between jurisdictions. This would not only reduce the frequency of ‘technical’ breaches of ADVOs but would also ensure that less court time is taken up with applications to amend ADVO conditions after the conflict is realised.

Magistrates and judges in NSW courts should be given the technological and legal capacity to quickly determine in each case whether a party is subject to a current family law order and what the conditions of that order are. This will enable magistrates and judges in NSW courts to amend, vary, discharge or suspend family law orders as appropriate and in this way ensure that family law orders and ADVOs are consistent. In addition, the Committee recommends that training for magistrates include information on determining family law orders pursuant to the jurisdiction conferred on State courts by the *Family Law Act 1975* (Cth). Moreover, the exercise of this jurisdiction in appropriate circumstances should be encouraged.

Chapter 14 – Sentencing

In Chapter 14 the Committee examines, again in accordance with the terms of reference, whether existing penalties for domestic violence are adequate, with a particular focus on breaches of ADVOs.

Sentencing for domestic violence offences

The available penalties for domestic violence offences, including breach of an ADVO, appear to be adequate. The Committee received very little evidence that maximum penalties needed to be increased although there is some concern about the application of those penalties. Judicial discretion in sentencing is one of the hallmarks of our system of justice, enabling judges and magistrates tailor penalties to the individual and the specific instance of offending, taking into account any mitigating or aggravating factors. Nevertheless, concerns regarding sentencing inconsistency were widespread among stakeholders and should not be ignored.

The Committee notes that technical breaches of ADVOs appear to be contributing to an apparent inconsistency in sentencing. In Chapters 9 and 10 we highlight the importance of ensuring that ADVO conditions are appropriate to individual circumstances to avoid technical breaches and improve compliance. In the Committee’s view, better tailoring of ADVOs to individual circumstances will have a consequential effect on the consistency of sentencing. In Chapter 11 we recommend the adoption of a NSW specific domestic violence bench book to provide judges and magistrates with guidance on the unique dynamics of domestic violence including as they might impact upon sentencing decisions.

A wider range of penalties

While there are already a range of penalties available to magistrates and judges in domestic violence matters, on the basis of the evidence before us, we see merit in a review of the range and use of current sentencing options. This should consider the availability of and potential demand for relevant services to administer alternative penalties such as mediation, treatment programs, or rehabilitation.

The Committee agrees that any consideration of mediation in domestic violence matters would need to be approached with extreme caution and requires thoughtful and detailed consideration, with appropriate checks, balances and protections in place, mediation may be valuable for some families. We recommend that the NSW Law Reform Commission consider in its review of the *Crimes (Sentencing Procedure) Act 1999* the feasibility and desirability of alternative and additional sentencing options for

domestic violence offences including referrals to mediation, support services, treatment programs, counselling, educational or rehabilitative programs.

Many of the social challenges faced by defendants are a contributing factor to their offending and the Committee is heartened by the success of Court Referral of Eligible Defendants into Treatment (CREDIT) to date in addressing these challenges and reducing recidivism. The Committee is not sure that it is realistic for the CREDIT program to be rolled out across the entire State, but we see obvious value in versions of such programs to be tailored and made more widely available. The NSW Government should draw lessons from the CREDIT program as well as interstate approaches that can be applied to local courts across New South Wales.

Chapter 15 – Perpetrator programs

In Chapter 15 we investigate perpetrator programs, considered by many as a key method to reduce recidivism and break the cycle of domestic violence.

The Committee agrees with inquiry participants that effective perpetrator programs are vital in order to break the cycle of violence. Accordingly, we are pleased to note that the Corrective Service's Domestic Abuse Program has shown some positive results in terms of reducing the incidence of reoffending. We share the view of many stakeholders that more research needs to be done to both evaluate the extent to which existing perpetrator programs are working and determine more effective approaches, to ensure investment in effective programs.

In line with our position in Chapter 4 that the DFV Framework must take an explicit evidence-based approach to responses to domestic violence, we recommend that the NSW Government make a determined effort to develop effective intervention programs for perpetrators of domestic violence, based on thorough research and systemic trial and evaluation. Particular attention should be paid to gaps in existing programs including for Aboriginal people, high risk offenders, for women and for perpetrators who may not yet have been convicted of an offence. Funding of perpetrator programs should not come at the expense of victims' services or programs.

Chapter 16 – Young offenders

Our final chapter examines a range of issues associated with domestic violence committed by young people. In Chapter 2 we noted participants' reports of a discernable increase in the number of young people being charged with domestic violence offences.

The Children's Court of NSW

The Committee agrees with the Law Reform Commissions' finding that the best interests of children and those who care for them are served by having all their matters dealt with in one court. We thus support the recommendation that the Children's Court be able to determine parenting orders in the same way as local courts already do, that is, where a related matter is already being heard by the court.

Facilitating interventions for child perpetrators: the availability of support services

The Committee heard that there is a shortage of support services for child perpetrators of domestic violence, for example counselling or restorative services. We consider it very important to address

domestic violence as soon as it is first exhibited. A supportive family unit provides a fundamental basis for fostering healthy relationships and the Committee commends the approach that the Children's Court takes to adjourn appropriate cases to allow time for help to be sought. However, it is concerning that the services are limited to a few geographical locations, such that many children miss out. We recommend that as part of the DFV Framework, the NSW Government expand the availability of support services for child perpetrators and their families across the State.

Apprehended domestic violence orders

The Committee sees some merit in the Children's Court proposal that it should be vested with the power to vary or revoke ADVOs on its own motion or upon application by the person in need of protection to avoid 'technical' breaches of ADVOs against young people, but we are concerned that this could leave some families who need protection without it. The Committee has not received enough evidence on this issue to make a determinative recommendation but considers there would be value in its further consideration under DAGJ's review of the *Crimes (Domestic and Personal Violence) Act 2007*.

The Committee accepts that there are real concerns about the extent to which ADVO conditions and the implications of breaching an order are understood by young people, especially where they have a cognitive impairment or mental illness. Indeed it is questionable whether an application for an ADVO is an appropriate course of action in such circumstances. Features of the Children's Court such as the prevalence of legal representation and the training that magistrates undergo ameliorate this concern but do not extinguish it. We have not received enough evidence to reach a conclusion here, but our preliminary view is that the suggestion that legislation should require decision-makers to consider the age and cognitive capacity of the young offender to determine whether the AVO is justified in the circumstances, is a good starting point for appropriate reform.

The Committee notes that a final ADVO can have disastrous consequences for future employment prospects for young people, who are recognised under many aspects of the law as having diminished criminal responsibility in any case. These consequences may not be realised by the young person at the time the order is consented to. We note that the recent passage of the *Child Protection (Working with Children) Act 2012* through Parliament appears to address participants' concerns such that an AVO alone will no longer be enough to trigger an assessment. This subject is receiving general attention as part of the DAGJ review of the *Crimes (Domestic and Personal Violence) Act 2007*.

Sentencing and young people

The Committee commends the Children's Court's philosophy that it is desirable to limit the involvement of young people with the criminal justice system and to divert them from further offending as early as possible. We agree that a holistic approach, involving the whole family, is laudable. To this end, it is vital that alternatives to court are available.

We agree with the Children's Court that the legislative provision prohibiting diversionary options for young domestic violence offenders is illustrative of policy based on good intentions that has not worked in practice. The determination of whether a matter is suitable for youth justice conferencing or other diversionary options is best made at the discretion of the courts. Accordingly we recommend that the NSW Government seek to amend the *Young Offenders Act 1997* to permit the Children's Court to exercise its discretion as to whether to refer young domestic violence offenders to youth justice conferencing or other alternatives to court available under that Act.

Summary of recommendations

- Recommendation 1** **52**
 That the NSW Government embrace an active, comprehensive and long-term commitment to preventing and addressing domestic violence, and that this be reflected in the forthcoming NSW Domestic and Family Violence Framework.
- Recommendation 2** **52**
 That the NSW Parliament be strongly encouraged to adopt a cross-party commitment to comprehensive reform to the domestic violence system and to the forthcoming NSW Domestic and Family Violence Framework.
- Recommendation 3** **52**
 That the NSW Government ensure that adequate resources are allocated for the forthcoming NSW Domestic and Family Violence Framework, and that the timeframes are met for both the Framework's completion [early 2013] and the implementation of the recommendations of the Auditor-General's Report, *Responding to Domestic and Family Violence* [December 2012].
- Recommendation 4** **53**
 That in two years' time the NSW Government refer terms of reference to the Standing Committee on Social Issues to review progress made in respect of the recommendations set out in this report.
- Recommendation 5** **57**
 That the NSW Government develop a common definition of domestic and family violence setting the scope of the forthcoming NSW Domestic and Family Violence Framework that targets violence between intimate partners and family members, and is inclusive of victims and perpetrators of both genders.
- Recommendation 6** **62**
 That the NSW Government ensure that the forthcoming NSW Domestic and Family Violence Framework is underpinned by three core policy principles, which in turn, should explicitly guide the work of all government and non government agencies with a role to play in responding to domestic and family violence:
- domestic violence in all its forms is completely unacceptable and as a society, an ongoing effort must be made to eradicate its occurrence
 - peoples' needs are paramount and agencies and workers across the system have a responsibility to respond to needs in a timely, holistic and individualised way
 - the system should be focused on the outcomes of safety and freedom from violence for victims and children, and accountability and non-violent behaviour for perpetrators.
- Recommendation 7** **66**
 That the NSW Government build an evidence based approach into the NSW Domestic and Family Violence Framework, with an explicit commitment to research and evaluation and to building the evidence base about prevention, early intervention and tertiary strategies. In doing so, it should develop an approach to funding that provides for long term investment in pilot programs that demonstrate effectiveness in delivering positive outcomes.

- Recommendation 8** 66
That the NSW Government provide the NSW Bureau of Crime Statistics and Research with the necessary additional resources to coordinate across government agencies the collection and analysis of data and information associated with domestic violence, and that BOCSAR publish on an annual basis a detailed report on domestic violence trends in New South Wales.
- Recommendation 9** 66
That Women NSW host a yearly forum to enable government and non government organisations to present and share their program evaluation findings.
- Recommendation 10** 73
That the NSW Government make explicit in the forthcoming NSW Domestic and Family Violence Framework the objective of improved integration and coordination of services, and that to this end, the Framework adopt a cross government approach in respect of governance, including:
- a Premier’s Ministerial Council comprising the Premier and the ministers responsible for the portfolio areas of: Women, Family and Community Services, Attorney General, Justice, Police, Health, Housing and Education
 - a State-wide steering group of senior representatives of government and key non government organisations
 - an interdepartmental committee comprised of senior officers of key agencies
 - specific inter-agency working parties and
 - departmental steering committees.
- Recommendation 11** 73
That the Premier, once a year, report to Parliament on the progress being made to address domestic violence in New South Wales.
- Recommendation 12** 73
That in keeping with the objective of integration and coordination of services, the NSW Government actively build partnerships with the non government sector, including through consultation as part of the development of the NSW Domestic and Family Violence Framework and through their representation on a new statewide steering group to drive the implementation of the Framework.
- Recommendation 13** 75
That the NSW Government, as part of the NSW Domestic and Family Violence Framework, determine a new structure for regional coordination that is strategically located and adequately resourced to address service integration. Consideration should be given to the successful aspects of the former Violence Against Women Coordinator positions and Violence Prevention Coordination Unit.
- Recommendation 14** 78
That the NSW Government systematically implement case coordination meetings at the local level as a mechanism for case tracking, integrated service delivery and accountability of services.
- Recommendation 15** 81
That the NSW Government introduce legislative amendments to Parliament to enable the sharing of information between agencies about individuals in respect of domestic violence, with

appropriate privacy protections, and that the amendments be supported by appropriate memoranda of understanding between agencies about how and in what circumstances information is to be shared.

Recommendation 16**82**

That the Department of Attorney General and Justice monitor the impact of new provisions to enable the sharing of information between agencies in respect of domestic violence in terms of any adverse impact on individuals' privacy.

Recommendation 17**84**

That the NSW Government develop, in partnership with non government organisations, a shared risk assessment framework for domestic violence that is evidence based, flexible to the agency and professional using it, and culturally sensitive.

Recommendation 18**86**

That the NSW Government, as part of the NSW Domestic and Family Violence Framework, significantly expand the availability of case management services, to improve service coordination and outcomes for victims.

Recommendation 19**88**

That the NSW Government, as part of the forthcoming NSW Domestic and Family Violence Framework:

- establish in partnership with non government organisations clear standards for the timeliness and quality of services delivered by all government and non government agencies
- implement a comprehensive performance monitoring system that monitors performance at the local, regional and executive level, and also via the governance mechanisms set out in Recommendation 9.
- establish and publish a single reporting mechanism across agencies and programs within the forthcoming NSW Domestic and Family Violence Framework, in the interests of greater transparency in reporting and greater accountability.

Recommendation 20**93**

That the NSW Government examine ways to improve victims' and children's awareness of services that respond to domestic violence, in order to improve their access to services. Particular attention should be given to the information needs of specific population groups.

Recommendation 21**103**

That the NSW Government acknowledge the link between alcohol and domestic violence and fund research to examine the role alcohol plays in the frequency, severity and effects of domestic violence.

Recommendation 22**103**

That as part of the forthcoming NSW Domestic and Family Violence Framework the NSW Government implement evidence-based initiatives to prevent alcohol related domestic violence.

Recommendation 23**107**

That, as part of the forthcoming NSW Domestic and Family Violence Framework, the NSW Government invest in a long-term and strategic approach to prevention and early intervention that includes primary prevention measures.

Recommendation 24**108**

That the NSW Government make violence against women the focus of universal, primary prevention activities under the NSW Domestic and Family Violence Framework. These are to be complemented by targeted prevention strategies focusing on specific population groups.

Recommendation 25**120**

That the NSW Government, as part of the forthcoming NSW Domestic and Family Violence Framework, develop a specific plan for early intervention services that is:

- based on a clear concise definition of early intervention
- informed by the recent mapping of domestic violence services
- intended to build service capacity, including for integrated service delivery, and
- sufficiently resourced to achieve the outcomes of strengthening victims and eliminating violence or preventing its escalation.

Recommendation 26**122**

That the NSW Government ensure that the NSW Domestic and Family Violence Framework makes strategic use of available evidence on the causes and on the underlying risk factors for domestic violence, and on prevention and early intervention.

Recommendation 27**122**

That the NSW Government embed evaluation requirements into the funding arrangements for prevention and early intervention strategies in respect of domestic violence, and adequately resource non government organisations to do this.

Recommendation 28**124**

That the NSW Government develop, in consultation with Aboriginal stakeholders, a NSW Aboriginal Family Violence Strategy as a specific element of the NSW Domestic and Family Violence Framework that is specifically and adequately resourced, and focuses on prevention and early intervention. This work should include consideration of:

- the establishment of a dedicated crime prevention unit staffed by Aboriginal workers to address violence against women in Aboriginal communities, to provide policy and advice to government, and serve as a resource for Aboriginal communities and services developing community managed strategies
- the development of specific training and support programs to build skills and capacity of Aboriginal community members, especially in rural and remote areas
- the provision of culturally specific education programs to teach Aboriginal children protective behaviours, and parents and communities how to identify when a child is exhibiting signs of abuse
- the development of programs to address intergenerational trauma and entrenched disadvantage
- systemic improvements in respect of policing and other parts of the criminal justice system
- ways to improve access to legal support and advocacy

- ways to improve access to other victims' services including refuges.

Recommendation 29**135**

That the NSW Government actively plan for an increase in demand for services that will arise from the reforms under the NSW Domestic and Family Violence Framework. In particular, this should proceed via discussions:

- in the present Domestic and Family Violence Senior Executive Steering Committee comprised of senior representatives of the Department of Family and Community Services, the NSW Police Force, the Department of Attorney General and Justice, the Ministry of Health, the Department of Education and Communities, and the Department of Premier and Cabinet, and
- in the new statewide steering group of senior representatives of government and key non government organisations that we have recommended be established as a priority (see Recommendation 10).

The planning should include the establishment of mechanisms to effectively track demand for and usage of services.

Recommendation 30**141**

That the NSW Government develop a plan for new investment in emergency accommodation for victims of domestic and family violence and their children, informed by the recent mapping of domestic violence services across the State. This plan should:

- seek to improve access to homelessness services across the State as a whole, and particularly in rural and remote areas
- enhance brokerage funds for both temporary accommodation and other services and supports
- address access among specific population groups
- consider the particular needs of children
- transfer, at an appropriate time, administration of the Temporary Accommodation Program from Housing NSW to specialised homelessness services
- make an explicit commitment to, and set targets for, reducing the number of victims and children turned away from refuges
- be developed in consultation with the NSW Women's Refuge Movement and other relevant stakeholders.

Recommendation 31**142**

That the Department of Family and Community Services, in partnership with the Commonwealth Government, Aboriginal organisations, the NSW Women's Refuge Movement and other relevant stakeholders, examine the need for additional safe houses in remote communities, informed by the recent mapping of domestic violence services across the State.

Recommendation 32**143**

That Housing NSW change the eligibility criteria for the Start Safely subsidy to improve access and increase the subsidy period to a maximum of two years.

Recommendation 33**144**

That Housing NSW ensure that staff in Housing Offices are applying social housing policies accurately and consistently in relation to victims and children seeking housing as a result of

domestic and family violence. Consideration should be given to the need for staff training in relation to domestic violence.

Recommendation 34 **146**

That the NSW Government fund an expansion of the Staying Home Leaving Violence Program across the State, including an expansion of the current funding available to each site.

Recommendation 35 **153**

That the NSW Ministry of Health expand the availability of counselling services to victims of domestic violence and their children, to address the documented inequities of access in areas of high need, in rural areas, for Aboriginal and culturally and linguistically diverse populations, and the significant absence of services for children, and utilise performance measurement mechanisms to improve local health districts' responses to domestic violence.

Recommendation 36 **154**

That the Department of Attorney General and Justice publicise the Approved Counselling Scheme among the full range of government and non government domestic violence services responding to domestic violence so that more victims are made aware of the Scheme.

Recommendation 37 **158**

That Women NSW and Community Services develop a joint plan for addressing the tension between child protection interventions and those for domestic violence. The plan should include strategies to:

- enhance understanding and coordination between child protection and domestic violence services
- promote practices that harness the strengths of victims and children in order to move on from violence, and seek to build the relationship between them
- build integration at the local, regional and State levels.

Recommendation 38 **178**

That the NSW Police Force develop and implement a strategy to enhance leadership in respect of domestic violence, to ensure that police responses to domestic violence are of consistently high standard across the State. The leadership strategy should:

- address how the NSW Police Force will harness the skills and commitment of police in leadership roles at all levels, from the Commissioner down
- strengthen leadership at all levels, especially within all local area commands
- determine the accountability structures that will support the performance measurement approach within the Domestic Violence Justice Framework
- provide mechanisms to ensure that performance monitoring feeds into operational planning, policy development and systemic improvements.

Recommendation 39 **183**

That the NSW Police Force improve quality assurance of police investigations of domestic violence matters, to ensure broader consistency with the Domestic and Family Violence Code of Practice and Standard Operating Procedures. This work should focus on improving the understanding and accountability of those who supervise others, in particular general duties first responders, by:

- ensuring supervisors' participation in specialist domestic violence training

- allocating Sergeants specifically for domestic violence more widely in local area commands with high rates of domestic violence
- developing and trialling innovative models of supervision and review of police responses to domestic violence.

Recommendation 40**189**

That the NSW Police Force increase the availability of the two day Investigation of Domestic and Family Violence Workshop for general duties officers and others, particularly officers working in rural and remote areas, and adopt a strategy to facilitate the participation of rural and remote officers in the Workshop, such as via e-learning course components, use of relief staff from other stations or local area commands, and/or more local training.

Recommendation 41**189**

That the NSW Police Force Education and Training Command develop a specific course for domestic violence supervisors building on the Investigation of Domestic and Family Violence Workshop and incorporating aspects of supervision and compliance monitoring in domestic violence matters. Completion of this course should be compulsory to progress through promotional ranks.

Recommendation 42**196**

That the NSW Government fund Domestic Violence Liaison Officer positions across the State, based on a policy developed and published by the Minister for Police detailing the formula for allocating Domestic Violence Liaison Officer positions across each local area command. The needs of local area commands/districts and patrols with higher rates of domestic violence, greater Aboriginal or other disadvantaged populations and greater geographical coverage, should have these features acknowledged in a new allocation model.

Recommendation 43**196**

The NSW Police Force ensure that all authorised Domestic Violence Liaison Officer and Domestic Violence Operative positions remain filled and that Local Area Commanders ensure there is a suitable experienced backup Domestic Violence Liaison Officer within their respective commands, including those where the Domestic Violence Liaison Officer position is part time.

Recommendation 44**196**

That the NSW Police Force communicate to Local Area Commanders that the practice of deploying Domestic Violence Liaison Officers to other duties be avoided as far as possible.

Recommendation 45**200**

That the NSW Police Force draws on the strengths of Victoria's L17 form to develop and implement a simple electronic risk assessment and referral tool in relation to domestic violence incidents. In doing so consideration is to be given to the outcomes of the evaluation of the Domestic Violence Pro-Active Support Service and the development of common risk indicators being developed by the Cross Agency Risk Assessment Model project.

Recommendation 46**218**

That the NSW Police Force, in partnership with the University of New South Wales, complete and publish its research on police investigations of the 'primary aggressor', and use the findings to identify appropriate actions in respect of legislation, policy, practice and training.

Recommendation 47**218**

That the NSW Police Force and the NSW Local Court collaborate to improve data capture, collection and availability with regard to:

- the gender of applicants and respondents in apprehended domestic violence orders proceedings
- the gender of defendants and victims in domestic violence related criminal proceedings
- the nature of the relationship between the parties, that is, whether they are intimate partners, or share other types of familial or domestic relationships
- the nature of the charges that are laid against women vis-à-vis men
- the resolution of domestic violence criminal charges against women and men, in terms of outcomes, sentence and other relevant matters.

Recommendation 48**219**

That the NSW Police Force monitor the trend in arrests of women for domestic violence offences.

Recommendation 49**231**

That the NSW Government seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to remove the presumption that people living in the same house, living in the same residential care facility and people reliant on care are considered to be in a 'domestic relationship' for the purposes of the Act. All other relationships currently contained within the definition should remain.

Recommendation 50**231**

That the NSW Government seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to create an obligation on police to make an application for an apprehended violence order where the situation involves people living in the same residential facility and people reliant on care in the same way as currently required under sections 27 and 49 of the Act.

Recommendation 51**231**

That the Attorney General seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to permit a sufficiently flexible application of the law to allow decision-makers to determine other relationships to also be deemed a 'domestic relationship' in appropriate circumstances. The amendment should permit the decision-maker to have regard to the circumstances of the relationship including:

- whether the people live together
- whether the people have a relationship of care or dependence
- the reputation of the relationship and cultural recognition of the relationship as like family
- the duration of the relationship.

Recommendation 52**234**

That the NSW Government seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to permit authorised third parties to make applications for the issuance, variance or revocation of apprehended domestic violence orders on behalf of people with cognitive impairment, under guardianship orders, and people with certain physical disability.

Recommendation 53

236

That the NSW Government seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to give the District Court of New South Wales and the Supreme Court of New South Wales the authority and responsibility to amend, revoke and finalise apprehended violence orders when the court is already determining related criminal matters.

Recommendation 54

248

That the NSW Government seek to amend the *Crimes (Domestic Violence and Personal Violence) Act 2007* to permit NSW police officers of or above the rank of sergeant to issue interim domestic violence orders. Such orders may be issued only in circumstances where the police officer reasonably believes the following:

- that the respondent is over the age of 18 years
- that the respondent is not cognitively impaired
- that the respondent is not already the subject of an apprehended domestic violence order in relation to the person in need of protection and
- that issuing an interim domestic violence order will not conflict with existing family law orders.

A police issued interim apprehended domestic violence order should itself constitute both an application by the relevant police officer for a domestic violence order and a summons for the respondent to attend court at the first mention date.

Recommendation 55

248

That in drafting the amendment in Recommendation 54, the NSW Government carefully considers the most appropriate timeframe for police issued apprehended domestic violence notices and take into consideration the experience in other jurisdictions in this regard.

Recommendation 56

248

That the NSW Government seek to amend the *Crimes (Domestic Violence and Personal Violence) Act 2007* to provide police with a limited power both in time and circumstance to detain an individual for the service of an interim apprehended domestic violence order.

Recommendation 57

248

That the NSW Government develop and implement police procedures sufficient to minimise the conflict of interest that can arise where police officers are called to domestic violence incidents involving other sworn police officers. Consideration should be given to:

- whether a senior police officer should be required to attend the scene as a matter of course
- whether interim apprehended domestic violence orders should continue to be overseen by an authorised justice where the order is to be made against a sworn police officer.

Recommendation 58

248

That in every instance where a police officer is alleged to have breached an apprehended domestic violence order, the matter is automatically referred to the Office of the Director for Public Prosecutions. In these cases the NSW Police Force should have no discretion as to whether charges are brought.

Recommendation 59**250**

That, as part of its review of the *Crimes (Domestic and Personal Violence) Act 2007*, the Department of Attorney General and Justice develop an effective mechanism for permitting emergency applications for the revocation of apprehended domestic violence orders in appropriate circumstances.

Recommendation 60**259**

That the NSW Attorney General seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to reverse the presumption that children should be on the same orders as their protected parent and instead create a rebuttable presumption that children should have separate orders to their protected parent.

Recommendation 61**269**

That the Department of Attorney General and Justice ensure that information about the consequences of breaches and what victims should do if they occur as proposed by the NSW Legal Assistance Forum Domestic Violence Working Group, is included on every apprehended domestic violence order issued in New South Wales.

Recommendation 62**274**

That the NSW Government not pursue at this time the use of GPS bracelets as a method to reduce breaches and improve compliance with apprehended domestic violence orders.

Recommendation 63**283**

That the Department of Attorney General and Justice review the Legal Aid NSW Apprehended Domestic Violence Order Defendant Pilot Program and take into account other approaches taken in New South Wales and Victoria with a view to implementing a best practice respondent legal advice and support program across NSW local courts.

Recommendation 64**290**

That as part of its forthcoming Domestic Violence Justice Framework and in the implementation of the recommendations contained in this report, the Department of Attorney General and Justice carefully plan for the impact that the Committee's recommendations may have on the workload of courts and ensure that local courts have adequate resources to meet the demand for their services.

Recommendation 65**298**

That the Attorney General request that the Judicial Commission develop an education guideline covering key domestic violence matters so that presenters and facilitators can keep core concepts in mind when developing their program and ensure that education remains relevant and practical. This guideline should be regularly updated to ensure that its content remains current and include training on:

- the complex dynamics of domestic violence including in mainstream and diverse communities and how to implement that knowledge in practical ways in the courtroom using real case studies
- ensuring that ADVO conditions are appropriate for the individuals involved and properly understood by the respondent
- real case studies and practical challenges that arise in the courtroom.

- Recommendation 66** **298**
 That the NSW Attorney General request that the Judicial Commission of New South Wales develop a comprehensive training program to further and complement the accrued expertise of magistrates in domestic violence matters, which should include training on the elements contained in Recommendation 65.
- Recommendation 67** **298**
 That the Attorney General request that the Judicial Commission of New South Wales develop a domestic violence bench book for use in NSW local courts.
- Recommendation 68** **306**
 That the NSW Government include in the forthcoming Domestic Violence Justice Framework mechanisms to provide access to legal and other support services to victims of domestic violence to the same minimum standard in every local court, including that every local court is serviced by:
- a NSW Police Force Domestic Violence Liaison Officer on domestic violence list days
 - at least one support worker based upon the model currently provided by the Women’s Domestic Violence Court Advocacy Service.
- The implementation of this recommendation should be complementary to that for Recommendation 18.
- Recommendation 69** **306**
 That the Department of Attorney General and Justice ensure that the provision of culturally appropriate legal support services, including enhanced support for victims in high risk and vulnerable groups, forms part of the forthcoming NSW Domestic Violence Justice Framework.
- Recommendation 70** **313**
 That the Department of Attorney General and Justice facilitate an evaluation of the Legal Aid NSW Domestic Violence Practitioner Scheme pilot with a view to expanding the availability of the Scheme across the State if it is proven to be successful.
- Recommendation 71** **317**
 That the NSW Government not establish standalone domestic violence courts at this time.
- Recommendation 72** **318**
 That the Department of Attorney General and Justice monitor the outcomes of domestic violence matters in NSW local courts to ensure that the objectives of the NSW Domestic and Family Violence Framework are being met.
- Recommendation 73** **326**
 That the NSW Government integrate as a key element of the NSW Domestic and Family Violence Framework the most successful aspects of the Domestic Violence Intervention Court Model into all NSW local courts. These include:
- ensuring the presence of victims’ services
 - minimising adjournments
 - reducing court delay
 - a consistent police response to domestic violence
 - consistent evidence collection

- availability of domestic abuse programs to change behaviour and reduce reoffending
- weekly meetings about families to manage and respond to risks to victims and their children
- regular meetings to ensure agencies work together and solve problems as they arise.

This recommendation should be implemented in accordance with Recommendations 14 and 18 of this report.

Recommendation 74 **334**

That the Attorney General request that the Chief Magistrate of New South Wales ensure that every local court in New South Wales implements a dedicated domestic violence list which runs on a regular basis, the frequency of which should be determined based on the volume of domestic violence matters each court hears. These lists should be sufficiently adaptable to permit urgent matters to be heard as they arise and to allow courts to move immediately onto other proceedings when domestic violence matters have concluded.

Recommendation 75 **334**

That the Department of Attorney General and Justice instruct court services to take steps to coordinate the availability of domestic violence support services in consultation with relevant non government organisations and in accordance with domestic violence lists.

Recommendation 76 **341**

That the Attorney General request that the Chief Magistrate consider issuing a practice note directing that magistrates do not require victims of domestic violence to appear at the first mention where it is not a defended hearing.

Recommendation 77 **341**

That the Department of Attorney General and Justice consider whether the *Crimes (Domestic and Personal Violence) Act 2007* should contain a presumption in favour of making an interim order in circumstances where the person in need of protection is not present in court and the application for the apprehended domestic violence order is made by police.

Recommendation 78 **345**

That the Department of Attorney General and Justice assess the operation of the current system for permitting victims of domestic violence to give evidence via audio-visual link and closed-circuit television to determine whether it is working effectively, with a view to increasing the availability and use of closed-circuit television, audio-visual link and other technology by victims of domestic violence.

Recommendation 79 **346**

That the NSW Government request that the Judicial Commission of New South Wales incorporate into its training for magistrates, and its Local Court Bench Book, information on determining applications for evidence to be given by closed-circuit television and audio-visual link.

Recommendation 80 **356**

That the Department of Attorney General and Justice work with local courts to establish victim safe rooms in all NSW local courts.

- Recommendation 81** 366
That the NSW Attorney General consult with the Commonwealth Attorney General to develop an effective method for information sharing between the Family Court of Australia and New South Wales Courts with a view to ensuring that magistrates and judges in New South Wales courts have the technological and legal capacity to quickly determine in each case whether a party is subject to a current family law order and what the conditions of that order are.
- Recommendation 82** 366
That the NSW Attorney General request that the Commonwealth Attorney General amend the *Family Law Act 1975* (Cth) to permit New South Wales courts to make interim parenting orders, as recommended in the report of the Australian and NSW Law Reform Commissions.
- Recommendation 83** 366
That the NSW Government request that the Judicial Commission of New South Wales incorporate into its training for magistrates, and its Local Court Bench Book, information on determining applications for family law orders pursuant to the *Family Law Act 1975* (Cth), and encourage the exercise of this jurisdiction in circumstances where family law orders are known to conflict with conditions to be applied to apprehended domestic violence orders.
- Recommendation 84** 396
That the Attorney General request that the NSW Law Reform Commission consider in its review of the *Crimes (Sentencing Procedure) Act 1999* the feasibility and desirability of alternative and additional sentencing options for domestic violence offences including referrals to mediation, support services, treatment programs, counselling and educational or rehabilitative programs.
- Recommendation 85** 409
That the NSW Government develop an effective intervention program for perpetrators of domestic violence in New South Wales based on thorough research and systematic trial and evaluation. Particular attention should be paid to gaps in existing programs including for Aboriginal people, high risk offenders, women and perpetrators who may not yet have been convicted of an offence. Funding of perpetrator programs should not come at the expense of victims' services or programs.
- Recommendation 86** 414
That the NSW Attorney General consult with the Commonwealth Attorney General to seek an amendment to the *Family Law Act 1975* (Cth) that would give children's courts the same powers as magistrates courts under that Act in respect of parenting orders.
- Recommendation 87** 416
That as part of the NSW Domestic and Family Violence Framework the NSW Government expand the availability of support services for child perpetrators and their families across the State.
- Recommendation 88** 422
That as part of its review of the *Crimes (Domestic and Personal Violence) Act 2007* the NSW Department of Attorney General and Justice consider whether the Children's Court should be vested with jurisdiction to vary or revoke an apprehended violence order made against a child or young person on its own motion or upon application by the protected person.

Recommendation 89

433

That the NSW Government seek to amend the *Young Offenders Act 1997* to permit the Children's Court of New South Wales to exercise its discretion as to whether to refer young people convicted of domestic violence offences to youth justice conferencing or other alternatives to court available under that Act.

Chapter 1 Introduction

This chapter provides an overview of the process of the inquiry and the structure of this report.

Terms of reference

- 1.1 The inquiry was established to examine and report on domestic violence trends and issues in New South Wales. Its terms of reference were referred by the Hon Pru Goward MP, Minister for Women and Minister for Family and Community Services, on 18 June 2011, and were adopted by the Committee on 25 July 2011. The terms of reference are set out on page iv of this report.

Conduct of the inquiry

- 1.2 Government and non government stakeholders had input into the inquiry through submissions, hearings, site visits and a roundtable discussion. The Committee would like to thank all those who participated in the inquiry for their very valuable contributions.

Submissions

- 1.3 The Committee advertised for submissions in the *Sydney Morning Herald* and *The Daily Telegraph* on 3 August 2011. A media release announcing the inquiry and the call for submissions was sent to all media outlets in New South Wales. The Committee also wrote to a broad range of potential stakeholders inviting them to participate in the inquiry process.
- 1.4 The Committee received a total of 80 submissions. Two submission authors requested that their name be suppressed from publication or for some content of their submission to remain confidential. One submission was kept fully confidential by resolution of the Committee. A list of all submissions is contained in **Appendix 1**.

Hearings

- 1.5 The Committee held six public hearings at Parliament House on 17 October and 7 November 2011, and 20 February, 5 March, 26 March and 30 April 2012.
- 1.6 In addition, the Committee held one *in camera* hearing with representatives of the NSW Police Force. The transcript of evidence was subsequently published by the Committee.
- 1.7 A list of witnesses is set out in **Appendix 2** and published transcripts are available on the Committee's website.¹ A list of documents tendered by witnesses at the public hearings is provided in **Appendix 3**. A list of witnesses who provided answers to questions taken on notice during the hearings and/or supplementary questions is provided in **Appendix 4**.

¹ The Committee's website can be found at <www.parliament.nsw.gov.au/socialissues>

Site visits

- 1.8 The Committee travelled to Forbes on 28 February 2012, where, at Jemalong Regional Education Centre, it conducted a series of private briefings with stakeholders from across the Central West area of the State. Briefings were held with victims of domestic violence, community service providers, police representatives, legal practitioners, and health service providers. The transcript, apart from the session with victims, was subsequently published by the Committee.
- 1.9 We express our thanks to Binaal Billa Family Violence Prevention Legal Service and its auspicing organisation, Yoorana Gunya Family Violence Healing Centre, for generously arranging the briefings. We are also very thankful to each of the stakeholders that participated in the discussions for their valuable input.
- 1.10 A list of participants that attended the briefings is included in **Appendix 2** and published transcripts are available on the Committee's website.
- 1.11 In light of the very positive evidence from inquiry participants regarding the Victorian Government's systems for responding to domestic violence, the Committee undertook a research and information gathering visit to Melbourne on 19 and 20 March 2012. During the trip the Committee conducted site visits to:
- the Neighbourhood Justice Centre Collingwood
 - the Family Violence Court in Heidelberg
 - VicHealth, the Victorian Health Promotion Foundation
 - the Melbourne Magistrates Court
 - the office of the Hon Mary Wooldridge who as the Victorian Minister for Minister for Women's Affairs and Minister for Community Services is the lead Minister for the Ministers in Partnership Against Family Violence
- 1.12 We thank all the Victorian representatives we met with for their expertise and insights, as well as representatives of Victoria Police, who took part in a hearing and gave extensive information informally.
- 1.13 A list of participants in the site visits is included in **Appendix 2**.
- 1.14 The Committee also made site visits to observe proceedings at Sutherland Local Court on 21 March 2012 and to Goulburn Local Court on 16 May 2012.

Roundtable discussion

- 1.15 The Committee's evidence gathering culminated in an innovative and highly successful private roundtable discussion with 19 key inquiry stakeholders, in order to gather considered feedback on possible recommendations for the inquiry. The possible recommendations were set out in a confidential discussion paper circulated prior to the meeting. The list of roundtable participants is included in **Appendix 2**, and a published transcript of the roundtable discussion is available on the Committee's website.

Overview of the report

- 1.16** The Committee considered this report on 20 August 2012. Minutes of the deliberative are included in **Appendix 5**.
- 1.17** In **Chapter 2** the Committee sets the scene for this report by defining domestic violence, which we take to mean violence between intimate partners and between other family members. We also document a number of trends and patterns in such violence in New South Wales.
- 1.18** In **Chapter 3** we examine the need for a comprehensive new approach to domestic violence across all relevant programs and services in this State, under the umbrella of the forthcoming NSW Domestic and Family Violence Framework.
- 1.19** **Chapter 4** explores the various elements that we believe should comprise the forthcoming Framework, including the definition that will set the Framework's scope, the core policy principles that should underpin it, coordination and integration of agencies and services, service standards, and measures to address barriers to service access.
- 1.20** In **Chapter 5** we build on the previous two chapters by considering the systems for prevention and early intervention that we believe should be established in New South Wales, with a particular focus on primary prevention programs aimed at preventing violence against women.
- 1.21** **Chapter 6** considers a range of issues raised by participants in relation to services for victims, focusing on accommodation services and therapeutic interventions such as counselling.
- 1.22** In **Chapter 7** we explore in detail participants' views on potential enhancements to the policing of domestic violence, noting three key areas where we consider the NSW Police Force should act: leadership, accountability and quality assurance, and training.
- 1.23** In keeping with a specific item in our terms of reference, in **Chapter 8** we examine participants' views on the documented increase in police proceedings against women for domestic violence related offences.
- 1.24** In **Chapter 9** we examine the function and effectiveness of apprehended domestic violence orders (ADVOs), the primary legal mechanism through which individuals are protected from domestic violence, paying particular attention to what relationships should and should not be classified as 'domestic'.
- 1.25** Reflecting another specific term of reference, in **Chapter 10** we examine strategies to reduce breaches or contraventions of ADVO conditions, and to improve compliance with ADVOs. These include the possible use of global positioning system (GPS) devices and improving respondents' understanding of their orders.
- 1.26** **Chapters 11, 12 and 13** focus on the legal system for responding to domestic violence, including courts. In **Chapter 11** we consider the principle of access to justice as it relates to domestic violence, then explore stakeholder views on the value of a bench book and improved judicial education. We also consider court support services and legal advice for victims of domestic violence.

- 1.27** In **Chapter 12** we explore the arguments for and against specialist courts, as well as the feasibility of this approach. The various forms of specialisation we examine include specialist courts, both standalone or embedded within existing courts, specialist prosecutors, specialist lists and specialist magistrates.
- 1.28** **Chapter 13** examines court procedures and family law, focusing on specific procedural aspects of domestic violence matters in NSW local courts, and on the challenges that arise from the interplay between family law and state law governing domestic violence and ADVOs.
- 1.29** In **Chapter 14** the Committee examines, again in accordance with the terms of reference, whether existing penalties for domestic violence are adequate, taking into account both the statutory maximum penalties and their application. In keeping with the evidence gathered during the inquiry, we pay particular attention to penalties for breaches of ADVOs.
- 1.30** In **Chapter 15** we investigate perpetrator programs, considered by many as a key method to reduce recidivism and break the cycle of domestic violence. We explore the major features that participants advocated be incorporated in future program models.
- 1.31** The report concludes in **Chapter 16** by examining a range of issues associated with domestic violence committed by young people. These include the specialist operation of the Children's Court of New South Wales, the ADVO system as it applies to young people, and sentencing options for young offenders.

Chapter 2 What is domestic violence?

Domestic violence is at once a profoundly personal problem, a destructive social issue and a serious crime. As a violation of trust within people's closest relationships with intimate partners and family members, domestic violence has a deeply destructive effect on victims and children. It is linked to death, physical and mental ill health, disability, child abuse and homelessness, and has been estimated to cost the economy of New South Wales at least \$4.5 billion each year.² Domestic violence is also a breach of the human right to freedom from gender based violence.³

This chapter sets the scene for the Committee's report by defining domestic violence, which we take to include violence between intimate partners and between other family members. It explores the debate on whether domestic violence is gendered, then notes the manifestations that it takes among different population groups: Aboriginal people; gay, lesbian, bisexual, transgender and intersex (GLBTI) people; people with a disability; older people; young people; men; and people from culturally and linguistically diverse (CALD) communities. Finally, the chapter documents a number of patterns and trends in relation to domestic violence in New South Wales.

In the following chapter the Committee examines the need for a common definition of domestic violence across all relevant programs and services in this State, and in Chapter 9 we recommend changes to the definition of domestic violence in the *Crimes (Domestic and Personal Violence) Act 2007*.

Definitions

2.1 There are many definitions of domestic violence, with the term having evolved organically in social and legal discourse since it gained recognition in the 1970s. While initially that recognition focused on violence perpetrated on women by their intimate male partners, in recent years the existence of male victims and female perpetrators has gained recognition, as has violence between other family members such as young people towards parents or siblings and adult children towards older parents.

2.2 Many definitions distinguish between domestic violence and family violence. In the *National Plan to Reduce Violence Against Women and Their Children 2010-2022*, the Council of Australian Governments does this in the following terms:

Domestic violence refers to acts of violence that occur between people who have, or have had, an intimate relationship. While there is no single definition, the central

² NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, p 2.

³ Article 1 of the United Nations (UN) Declaration on the Elimination of Violence Against Women defines violence against women as 'any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.' The full text of the declaration is available at <<http://www.un.org/documents/ga/res/48/a48r104.htm>> (accessed 21 August 2012). The Universal Declaration of Human Rights states that everyone should enjoy human rights without discrimination on grounds of gender. The UN has also declared that violence against women is a human rights violation that requires urgent action, and proclaimed that women's rights are human rights. Amnesty International, 'Stop violence against women', accessed 20 August 2012, <<http://www.amnesty.org.au/svaw/comments/20401/>>.

element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening. In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and non-criminal ... Family violence is a broader term that refers to violence between family members, as well as violence between intimate partners. It involves the same sorts of behaviours as described for domestic violence ... The term, 'family violence' is the most widely used term to identify the experiences of Indigenous people, because it includes the broad range of marital and kinship relationships in which violence may occur.⁴

2.3 The National Plan further defines the physical, sexual, emotional and psychological abuse that comprises domestic violence:

Physical violence can include slaps, shoves, hits, punches, pushes, being thrown down stairs or across the room, kicking, twisting of arms, choking, and being burnt or stabbed.

Sexual assault or sexual violence can include rape, sexual assault with implements, being forced to watch or engage in pornography, enforced prostitution, and being made to have sex with friends of the perpetrator.

Psychological and emotional abuse can include a range of controlling behaviours such as control of finances, isolation from family and friends, continual humiliation, threats against children or being threatened with injury or death.⁵

2.4 The Australian and NSW Law Reform Commissions (hereafter the Law Reform Commissions) noted in their 2010 report, *Family Violence – A National Legal Response*, there is no single nationally or internationally agreed definition of family violence. The Commissions used the term 'family violence' to refer to that between intimate partner and other family members. The Committee acknowledges the recommendation within that report intended to broaden the range of behaviours recognised as violent or threatening:

State and territory family violence legislation should provide that family violence is violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

- (a) physical violence;
- (b) sexual assault and other sexually abusive behaviour;
- (c) economic abuse;
- (d) emotional or psychological abuse;

⁴ Council of Australian Governments, *National Plan to Reduce Violence Against Women and Their Children 2010-2022*, February 2011, accessed 17 July 2012, <http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_plan.pdf>

⁵ Council of Australian Governments, *National Plan to Reduce Violence Against Women and Their Children 2010-2022*, February 2011, accessed 17 July 2012, <http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_plan.pdf>

- (e) stalking;
- (f) kidnapping or deprivation of liberty;
- (g) damage to property, irrespective of whether the victim owns the property;
- (h) causing injury or death to an animal irrespective of whether the victim owns the animal; and
- (i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.⁶

- 2.5** The Committee further notes that the Commonwealth Government recently amended the *Family Law Act 1975* to alter the definition of domestic violence to reflect this recommendation.⁷
- 2.6** Like some stakeholders, in this report the Committee uses the term ‘domestic violence’ inclusively to reflect both intimate partner violence and that between other family members.
- 2.7** Like many stakeholders, we use the term ‘victim’ to refer to the person subject to violence. ‘Perpetrator’ is used to refer to the person committing the act of violence, while ‘offender’ refers to a person found guilty of a domestic violence offence.

Trends in domestic violence in NSW

- 2.8** This section discusses trends in domestic violence in New South Wales. The majority of the data is based on recorded figures from the NSW Police Force and is therefore a reflection of the trends in reported and detected incidents of domestic violence and related offences. There is a limited amount of available research and data for some specific population groups, for example gay, lesbian, bisexual, transgender and intersex people, as we discuss later.
- 2.9** It should be noted that some data in the following discussions will refer specifically to domestic violence assaults and some to a wider pool of data regarding domestic violence related offences. There are several offences which are identified as being related to domestic violence through the use of the ‘DV flag’ when recording the offence on the Computerised

⁶ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, Final Report, Vol.1, October 2010, Recommendation 5-1, p 246.

⁷ The changes broadened the definition of violence in the *Family Law Act 1975* (Cth) beyond physical abuse to also include stalking, repeated derogatory taunts, intentionally destroying or damaging property and preventing someone from having contact with family and friends. Further changes included that the Family Court will now be required to ask parents if there was abuse or a threat of abuse in the relationship. In addition, the Court would be required to ask whether children were exposed to abuse from a parent, and this would be taken into consideration when determining custody arrangements. The Sydney Morning Herald, Net widens on family abuse, 5 June 2012, accessed 21 August 2012, <<http://www.smh.com.au/opinion/political-news/net-widens-on-family-violence-20120602-1zoku.html>>. See also Hon N Roxon MP, Attorney General, ‘New family violence changes take effect’, *Media Release*, 7 June 2012.

Operating Policing Systems (COPS) database. For example, sexual assault, abduction and kidnapping and harassment, threatening behaviour and private nuisance offences.

- 2.10** The actual rates of domestic violence related offences are believed to be higher than the reported figures suggest. The NSW Bureau of Crime Statistics and Research (BOCSAR) recently concluded from the data in the ABS Crime Victimization Survey (2008-2009) that less than half of the survey's respondents had reported the domestic assault to the police.⁸ This figure could be as low as one in three domestic assaults being reported to the police.⁹ The Police Association explained in their submission to the Committee how hard it is to gauge the full extent of domestic violence:

The difficulty in measuring the true extent of violence against women is because most incidences of domestic violence and sexual assault go unreported. In 2005, the Australian bureau of Statistics (ABS) Personal Safety Survey estimated that only 36% of female victims of physical assault and 19% of female victims of sexual assault in Australia reported the incident to police.¹⁰

- 2.11** Figures received from BOCSAR during the inquiry show a stable trend or slight increase in the 10 year average trends in offences associated with domestic violence.¹¹
- 2.12** The latest published crime statistics show that between January and December 2011 there were 26,808 reported incidents of domestic violence assaults in New South Wales. The number of recorded incidents of domestic violence related assault remained stable between 2007 and 2011, continuing the trend seen over the previous 10 years.¹²
- 2.13** A 2011 report from BOCSAR, Trends and patterns in domestic violence assaults: 2001 to 2010, which analysed recorded crime data from 2001 to 2010 showed that levels of reported domestic violence assaults have remained stable over the past 10 years in the Sydney statistical division, whereas in the wider, Regional New South Wales statistical division there has been a slight reduction in the number of reported incidents (0.6 per cent reduction per year).¹³ Figure 1 illustrates this trend.
- 2.14** The 2011 BOCSAR report also concluded that Regional NSW had higher rates of domestic assault than Sydney, although both were lower than recorded rates for non-domestic assaults in both areas and in NSW as a whole.¹⁴ Figure 2 compares the rate of domestic assaults per 100,000 population in NSW, the Regional NSW statistical division and in the Sydney statistical division.

⁸ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011 p 8.

⁹ Tabled document, Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, *DV key facts and findings*, 2012, p 3.

¹⁰ Submission 63, Police Association of NSW, p 13.

¹¹ Tabled document, *DV key facts and findings*, p 5

¹² Goh D and Moffatt S, *New South Wales Recorded Crime Statistics 2011*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 16.

¹³ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 2.

¹⁴ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 3.

Figure 1 Rate of assault in NSW, both domestic and non-domestic per 100,000 population, 2001 to 2010

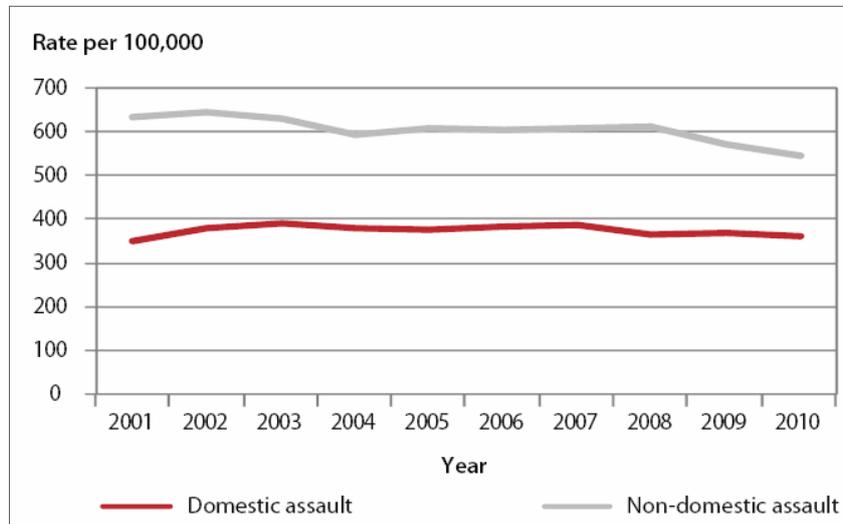
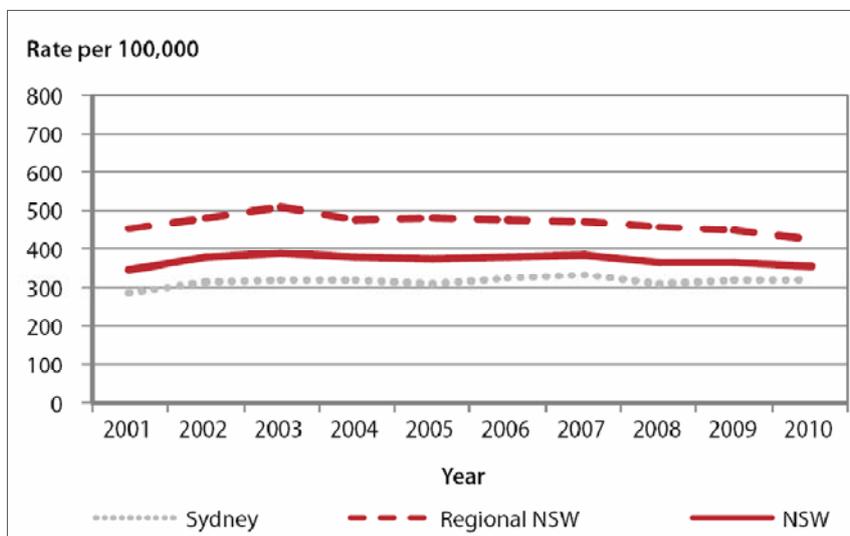


Figure 2 Rate of domestic assault by statistical region, per 100,000 population, 2001 to 2010



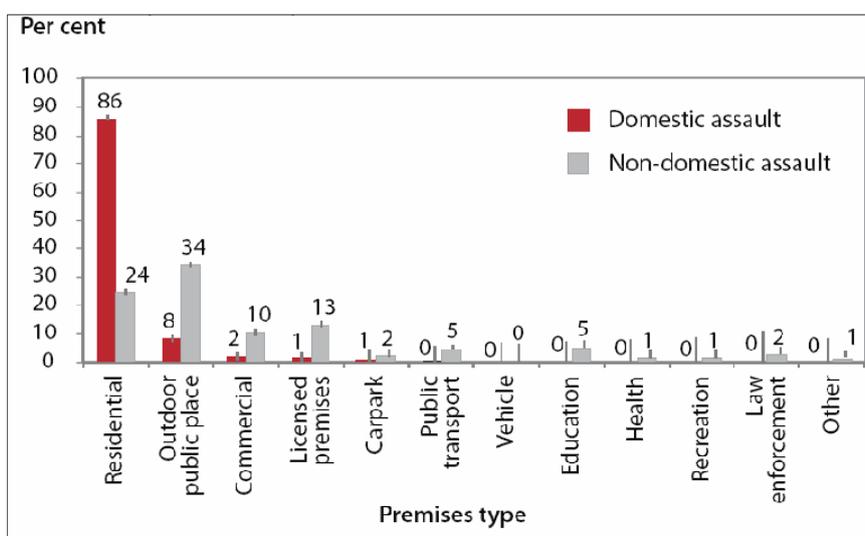
Source: Figure 1 and 2, Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011

- 2.15** The 2011 BOCSAR report found that women were more likely to be victims of domestic assault than men, whereas men were more likely to be the offenders in domestic assaults. Further, the report concludes that almost half of all domestic assaults involved a male – female partner relationship where the woman was the victim:

- females are more likely to be victims of a domestic assault than males (69.2 per cent versus 30.8 per cent) and males are more likely to be victims of non-domestic assault (70.9 per cent versus 29.1 per cent).¹⁵
- males are more likely than females to be the offenders in both domestic (82.1 per cent versus 17.9 per cent) and non-domestic assault (75.6 per cent versus 24.4 per cent).
- not surprisingly, nearly half of all domestic assaults involved a female partner and a male offender who were in a partner relationship (48.3 per cent).¹⁶

2.16 The 2011 BOCSAR report explains that in 2010 most domestic assaults (86.4 per cent) were recorded as taking place in residential premises, with the next highest recorded location being outdoor public places (7.9 per cent). This is illustrated in Figure 3.

Figure 3 Percentages of reported domestic and non-domestic assault by premises type in 2010

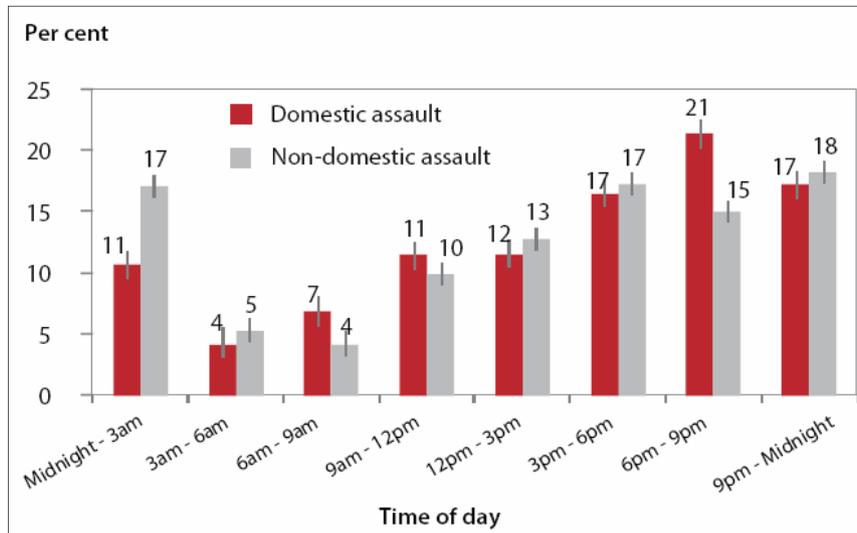
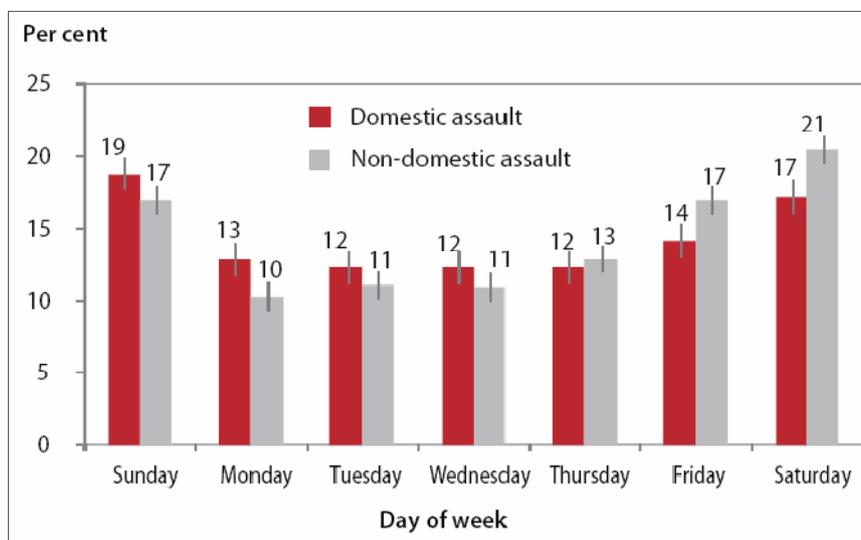


Source: Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011

2.17 Figure 4, reproduced from the 2011 BOCSAR report, demonstrates that the peak period for reports of domestic assaults occurs between 6.00 pm and 9.00 pm (21 per cent), with over half (approximately 55 per cent) of domestic violence assaults taking place between 3pm and midnight. Figure 5 shows the pattern of domestic assaults over the days of the week and highlights that assaults were most commonly reported to the police over the weekend, with 17.2 per cent of reports occurring on Saturday and 18.8 per cent on Sunday.

¹⁵ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 6.

¹⁶ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 7.

Figure 4 Reported domestic and non-domestic assaults by time of day in 2010**Figure 5** Reported domestic and non-domestic assaults by day of the week in 2010

Source (Figures 4 and 5): Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011

2.18 Alcohol was reported to have been a factor in 41 per cent of domestic violence assaults in NSW in 2010. This figure varied by geographical area, ranging from 35 per cent in the Sydney statistical division up to 62 per cent in the Far West statistical division.¹⁷

¹⁷ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 4.

Domestic violence offences

- 2.19** As previously mentioned there are several offences which are identified as being related to domestic violence through the use of the 'DV flag' on the COPS database.
- 2.20** In 2010 more than 10,000 people were convicted of a domestic offence. Table 1 shows a breakdown of offences and the percentage of the overall domestic violence offences they composed. Offenders were most frequently found guilty of common assault (36 per cent), followed by breach of violence orders (33 per cent) and serious assault resulting in injury (20 per cent).¹⁸

Table 1 Principal offences as a per cent of total offences in 2010

Principal Offence	Percent of total, 2010
Common assault	36.4
Breach of violence order	33.1
Serious assault resulting in injury	20.4
Property damage, other	7.1
Stalking	1.7
Serious assault not resulting in injury	0.4
Aggravated sexual assault	0.3
Property damage by fire or explosion	0.2
Resist or hinder police officer or justice official	0.2
Abduction and kidnapping	0.1
Other	0.1

Source: Tabled document, NSW Bureau of Crime Statistics and Research, DV key facts and findings, 2012

- 2.21** Table 2 details the number of incidents and trends of the main offences recorded by the NSW Police Force as domestic violence related between 2001 and 2010. It shows a stable trend or slight increase for most offences, with the exception of the offence of 'harassment, threatening behaviour and private nuisance' which saw an average yearly increase of 15.4 per cent.¹⁹

¹⁸ Tabled document, *DV key facts and findings*, p 4.

¹⁹ Email from Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research, to Secretariat, 25 July 2011.

Table 2 Number of incidents, trend and average yearly per cent change of selected offences recorded by the NSW Police Force as domestic violence related.

Offence	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	10 year trend and average yearly per cent change
Murder	30	25	22	18	22	26	18	26	21	20	no change
Attempted murder	35	27	31	16	11	18	16	12	13	12	no change
Murder accessory, conspiracy	2	-	1	1	3	2	1	2	2	1	no change
Manslaughter	1	-	1	-	-	-	-	-	1	1	no change
Domestic violence related assault	23,016	25,111	26,067	25,525	25,452	26,058	26,654	25,597	26,220	26,111	1.4
Sexual assault	304	334	388	381	421	410	429	465	508	485	5.3
Indecent assault, act of indecency	169	185	209	182	196	221	215	205	224	234	3.7
Other sexual offences	17	18	27	19	38	27	35	25	23	38	no change
Abduction and kidnapping	75	47	60	77	75	79	65	73	56	59	stable
Harassment, threatening behaviour and private nuisance	2,596	3,096	3,967	4,701	8,875	6,688	7,525	7,759	8,908	9,427	15.4
Malicious damage to property	5,257	6,035	6,253	6,603	7,052	7,227	7,411	7,479	7,807	7,705	4.3
Breach Apprehended Violence Order	10,080	10,274	10,609	10,287	9,880	9,676	10,109	10,083	10,337	10,627	stable

Source: Email from Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research, 25 July 2011

Geographical distribution of domestic violence offences

2.22 Broadly speaking, more remote Local Government Areas (LGAs) had higher rates of domestic violence assaults:

- the top five LGAs are classified as ‘very remote’ or ‘remote’ and all but one of the top 20 LGAs are regional (or remote)²⁰
- the State’s average rate for domestic assault in 2010 was 360 incidents per 100,000 population. The top five LGAs had a rate between three and ten times higher than the State average.²¹

2.23 Figure 6 and Table 3 show the spatial distribution for recorded rates of domestic assault across NSW. In Figure 6 the areas shaded in red had the highest rates of domestic violence assaults.

2.24 Table 4 lists the 10 LGAs in the Sydney area which have the highest rates of domestic assaults. Only one of these, Campbelltown, is also in the top 20 highest NSW-wide list, as Campbelltown City Council explained in its submission to the Committee:

Campbelltown is ranked within the top 20 Local Government Areas for domestic assault in 2010 across NSW. As the only metropolitan LGA listed in the top 20, Campbelltown has the highest rate of domestic assault incidents across Sydney at a rate of 680.1 per 100,000 head of population.

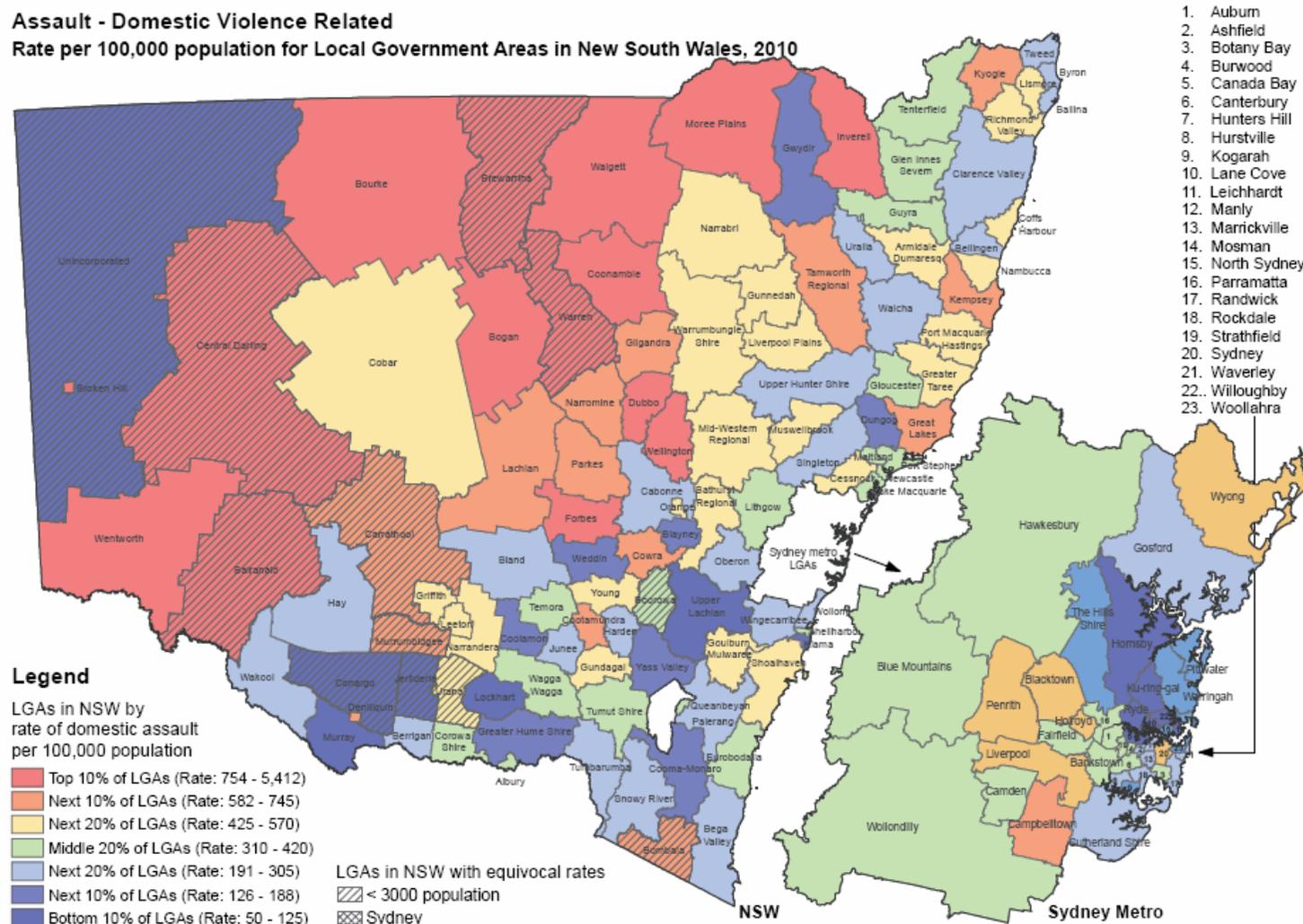
The highest density of reported assaults occurs in the suburbs of Macquarie Fields, Claymore, Rosemeadow, Minto and Airds which also reflect a high level of public housing. BOCSAR 2009 findings show that though the Campbelltown LGA has a high incidence of Domestic Violence compared to other Local Government Areas, the rate has reduced over recent years.²²

²⁰ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 5.

²¹ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 4.

²² Submission 73, Campbelltown City Council, p 2.

Figure 6 Spatial distribution of domestic violence assault rates across NSW local Government Areas in 2010



Source: Grech K and Burgess M, Trends and patterns in domestic violence assaults: 2001 to 2010, NSW Bureau of Crime Statistics and Research, Sydney, 2011

Table 3 The top 20 LGAs in NSW ranked by rate of domestic assault incidents in 2010

Rank	LGA	No. of domestic assault incidents	Estimated population in 2010	Rate per 100,000 population	Degree of remoteness
1	Bourke	114	3,079	3702.5	Very remote
2	Walgett	212	7,235	2930.2	Remote
3	Moree Plains	179	14,425	1240.9	Remote
4	Coonamble	45	4,314	1043.2	Remote
5	Wentworth	74	7,120	1039.3	Remote
6	Forbes	83	9,748	851.5	Outer regional
7	Broken Hill	166	19,818	837.6	Outer regional
8	Bogan	25	3,003	832.5	Remote
9	Wellington	70	8,875	788.7	Outer regional
10	Dubbo	318	41,763	761.4	Inner regional
11	Inverell	127	16,841	754.1	Outer regional
12	Lachlan	51	6,844	745.2	Remote
13	Cowra	91	12,957	702.3	Inner regional
14	Kempsey	205	29,442	696.3	Outer regional
15	Deniliquin	53	7,633	694.4	Inner regional
16	Gilgandra	32	4,700	680.9	Outer regional
17	Campbelltown	1,042	153,222	680.1	Major city
18	Great Lakes	237	35,924	659.7	Inner regional
19	Narromine	44	6,841	643.2	Outer regional
20	Kyogle	61	9,877	617.6	Inner regional

Table 4 Top 10 LGAs in the Sydney metropolitan region ranked by rate of domestic assault incidents in 2010

Rank	LGA	No. of domestic assault incidents	Estimated population in 2010	Rate per 100,000 population	Degree of remoteness
1	Campbelltown	1,042	153,222	680.1	Major city
2	Blacktown	1737	307,816	564.3	Major city
3	Penrith	940	186,221	504.8	Major city
4	Wyong	700	151,527	462.0	Inner Regional
5	Holroyd	452	102,188	442.3	Major city
6	Liverpool	792	185,481	427.0	Major city
7	Auburn	302	78,597	384.2	Major city
8	Hawkesbury	241	64,030	376.4	Outer Regional
9	Fairfield	735	196,567	373.9	Major city
10	Parramatta	633	172,333	367.3	Major city

Source: Tables 3 and 4, Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011

Victims of domestic violence

2.25 As noted above, victims of domestic violence are more likely to be female than male, and very often in a male – female partner relationship. Victims are also more likely to be over 18 (87 per cent) than under 18 (13 per cent) and three quarters of victims of domestic violence assault were either women or children.²³

²³ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 6.

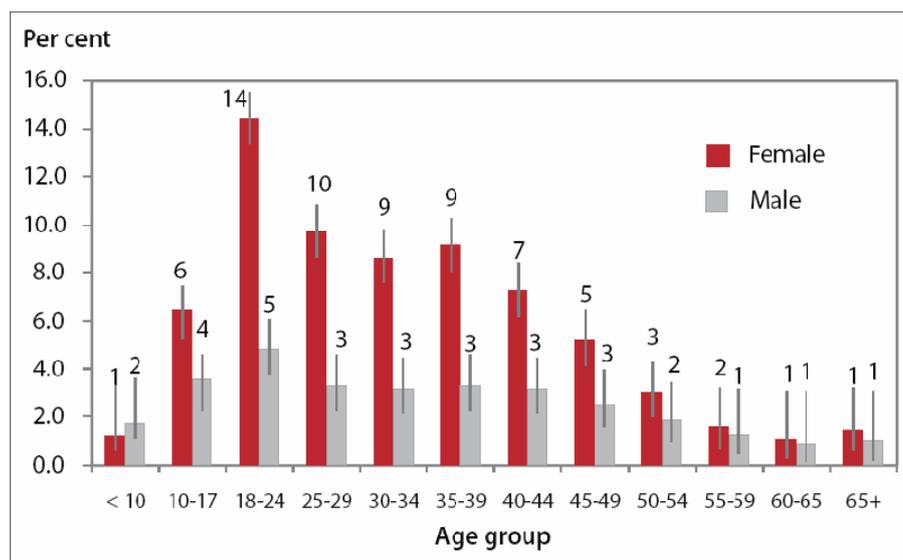
2.26 Where the victim of domestic violence was female they were also likely to have children in their care, as the Benevolent society explained:

One in three Australian women have experienced domestic and family violence at some stage during their lives since the age of 15, while one in five have been sexually abused. Women with children are three times more likely to be subjected to domestic and family violence than women without children.

The ABS Social Trends survey found that 60% of women who experienced partner violence had children in their care, with 68% of those women reporting that their children witnessed the violence.²⁴

2.27 Figure 7 shows the age and gender of the victims of domestic violence assaults in 2010. Female victims were most likely to be aged between 18 and 39 and the percentage of female victims under 17 was the same as that of female victims aged over 50.

Figure 7 Age and gender of domestic violence assault victims, 2010



Source: Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011

2.28 Pregnancy is known to be a time of high risk for domestic violence. For 20 per cent of women who experience domestic violence, pregnancy is the time of onset, while having been pregnant is associated with a 230 per cent increase in partner violence.²⁵

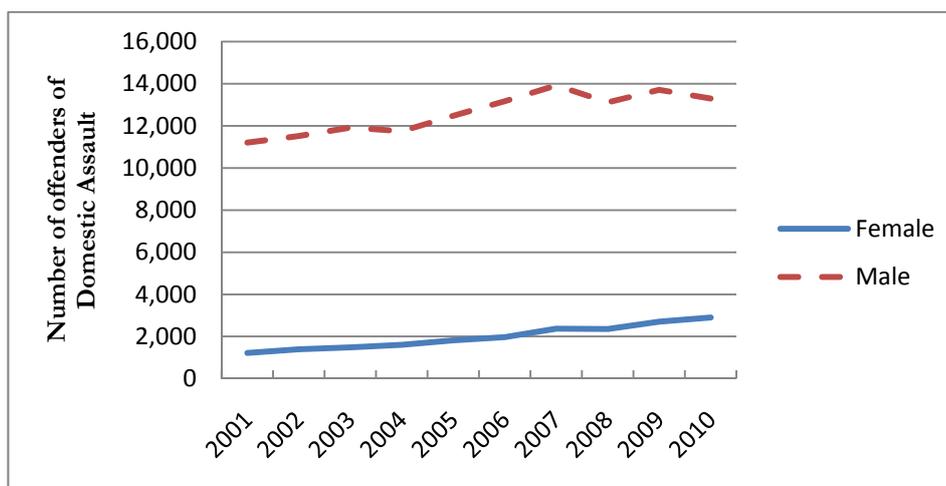
²⁴ Submission 37, Benevolent Society, p 5-6.

²⁵ Australian Bureau of Statistics, *Women's Safety Australia*, Australian Bureau of Statistics 1996; Taft A, Watson L, Lee C, 'Violence against young Australian women and association with reproductive events: a cross sectional analysis of a population sample', *Australian and New Zealand Journal of Public Health*, 2004, Vol 28, No 4, pp 324-29, cited in Spangaro J and Zwi A, *After the Questions: Impact of Routine Screening for Domestic Violence in NSW Health Services*, August 2010, p 15.

Domestic violence offenders

2.29 There were 16,194 persons of interest (POIs) proceeded against for domestic assault in 2010, of these 2,704 were female and 13,710 male. Figure 8 shows the number of male and female POIs who were proceeded against between 2001 and 2010. There was an average increase of 10 per cent per year in the number of female offenders proceeded against, compared to a 2 per cent increase per year in male offenders. The percentage of male offenders decreased from 90 per cent in 2001 to 82 per cent in 2012.²⁶

Figure 8 Number of offenders of domestic assault 2001 to 2010



Source: Tabled document, NSW Bureau of Crime Statistics and Research, *DV key facts and findings*, 2012

2.30 The majority of offenders in 2010 remained male with 13,183 recorded offences having a male offender (82.1 per cent) and 2,881 offences recorded as having a female offender (17.9 per cent).

2.31 Table 5 details the number POI proceeded against between 2001 and 2010. The number of both male and female offenders increased, with female offenders showing a significant increase.

²⁶ Tabled document, *DV key facts and findings*, p 11.

Table 5 Number of persons of interest (POIs) proceeded against by the NSW Police Force for domestic assault plus the trend and average yearly per cent change

Gender	Year										10 year trend and average yearly %change
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Female	1,220	1,391	1,482	1,605	1,815	1,969	2,374	2,355	2,704	2,899	10.1
Male	11,207	11,519	11,920	11,749	12,479	13,171	13,918	13,118	13,710	13,295	1.9

Source: Tabled document, NSW Bureau of Crime Statistics and Research, DV key facts and findings, 2012

2.32 Table 6 shows the relationships between female and male offenders and female and male victims. Female offenders are equally likely to have female and male victims (10.2 per cent and 11.7 per cent respectively) and male offenders are more likely to have female victims than male (61.2 per cent versus 16.8 per cent).

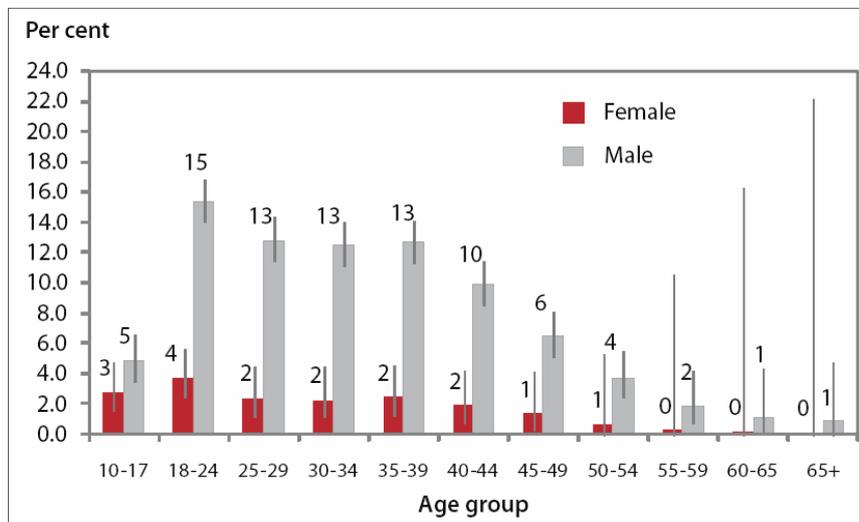
Table 6 Victims and offenders of domestic assaults in 2010

	Male offender	Female offender	All Offenders
Female victim	61.2 %	10.2%	71.4%
Male victim	16.8%	11.7%	28.5%
All victims	78%	22%	100%

Source: Tabled document, NSW Bureau of Crime Statistics and Research, DV key facts and findings, 2012

2.33 Figure 9 demonstrates that of those offending 77.2 per cent were male and over 18, with 15.2 per cent female and over 18. Male offenders aged between 10 and 17 comprised 4.9 per cent. The remaining 2.8 per cent were female and ages between 10 and 17.²⁷

²⁷ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 7.

Figure 9 Age and gender of domestic assault offenders, 2010

Source: Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011

Penalties

- 2.34** In 2010 the principal penalty given to offenders was bond without supervision, comprising 25.7 per cent of all domestic violence related offences. Imprisonment occurred in 10.4 per cent of offences. For both male and female offenders the average minimum length of sentence was five months.²⁸ Table 7 shows the most common penalties issued in 2010.
- 2.35** Table 8 shows that between 2001 and 2010 the number of Apprehended Domestic Violence Orders (ADVOs) issued increased from 19,016 to 24,378,²⁹ increasing again in 2011 to 24,903.³⁰ On average this represents an increase of 2.8 per cent per year over the 10 year period between 2001 and 2010. At the same time the number of personal AVOs granted remained stable.

²⁸ Tabled document, *DV key facts and findings*, p 7.

²⁹ Email from Dr Weatherburn, to Secretariat, 25 July 2011.

³⁰ Goh D and Moffatt S, *New South Wales Recorded Crime Statistics 2011*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 16

Table 7 Principal penalties issued for domestic violence offences in 2010

Principal penalty	Per cent of total, 2010
Bond without supervision	25.7
Fine	15.1
Bond without conviction	14.9
Bond with supervision	14.6
Imprisonment	10.4
Suspended sentence with supervision	4.7
No conviction recorded	3.9
Community service order	3.5
Suspended sentence without supervision	2.5
Conviction without penalty	2.1
Dismissed with Caution	0.9
Probation order	0.8
Periodic detention	0.4
Other proven Outcomes	0.4
Normal sentence	0.1
Control order	0.1

Source: Tabled document, NSW Bureau of Crime Statistics and Research, DV key facts and findings, 2012

Table 8 Number of AVOs granted, trend and average yearly per cent change 2001-2010

Type of AVO	Year										10 year trend and average yearly per cent change
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Domestic	19016	19063	20458	20558	20255	20426	23178	23806	24304	24378	2.8
Personal	7513	7216	7629	6987	6451	6341	6403	6587	7885	7325	Stable

Source: Email from Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research, 25 July 2011

- 2.36** The Far West statistical division had the highest rate of ADVOs granted with 1,315.4 ADVOs per 100,000 population. The Mid-North Coast statistical division had the greatest number by volume (1,399 ADVOs).

Table 9 Top 10 areas for ADVOs, actual and per 100,000 population

Top 10 areas (offenders area of residence)	Number of ADVOs granted	Rate per 100,000 population
Far West	299	1315.4
North Western	920	776.1
Northern	1171	633.6
Murrumbidgee	887	559.3
Central West	898	490.3
Murray	550	464
Outer South Western Sydney	1150	458.8
Blacktown	1355	452
Mid-North Coast	1399	451.9
Richmond-Tweed	910	376.1

Source: Tabled document, NSW Bureau of Crime Statistics and Research, DV key facts and findings, 2012

2.37 Tables 10 and 11 explain the number and percentage of penalties issued for domestic violence related offences. In 2008-2009 there were 4,737 breaches of ADVOs which resulted in 802 imprisonments, 1,016 bonds without supervision and 808 fines.

2.38 The most common penalty for adults committing domestic violence related offences was bond without supervision, followed by fines and then bond with supervision. The penalty of imprisonment occurred in 11 per cent of domestic violence cases in NSW local and higher criminal courts.³¹

Table 10 Principal penalty received for domestic violence related offences most commonly appearing in NSW local and higher criminal courts by amount, 2008-2009

Penalty	Common assault	Breach AVO	Assault occasioning actual bodily harm	Destroy or damage property	Stalk / intimidate intend fear of physical / mental harm	Recklessly wound any other person	Armed with intent to commit an indictable offence	Recklessly cause grievous bodily harm	Behave in offensive manner	Other ³²	Total
Imprisonment (adult)	530	802	611	82	156	47	27	32	1	13	2,301
Home detention	0	1	0	0	0	0	0	0	0	0	1
Periodic detention	35	39	46	5	8	3	0	3	0	0	139
Suspended sentence with supervision (adult)	294	348	264	66	96	21	9	7	0	4	1,109
Suspended sentence without supervision (adult)	168	188	144	42	45	7	2	1	0	7	604
Community service order (adult)	226	191	190	65	53	11	2	3	0	9	750
Bond with supervision (adult)	1,134	621	588	312	226	13	11	2	5	14	2,926
Bond without supervision (adult)	2,177	1,016	1,011	487	440	19	13	5	4	47	5,219
Fine	1,006	808	233	656	131	1	0	0	29	100	2,964
Nominal sentence	50	184	12	35	8	0	0	0	2	6	297
Bond without conviction	1,401	331	317	381	119	2	2	0	3	47	2,603
No conviction recorded	324	208	52	166	24	0	0	0	4	16	794
No action taken	6	0	1	2	1	0	0	0	0	0	10
Total	7,351	4,737	3,469	2,299	1,307	124	66	53	48	263	19,717

Source: Email from Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research, to Secretariat, 25 July 2011

³¹ Email from Dr Weatherburn to Secretariat, 25 July 2011.

³² Column includes the following offences: use carriage service to menace/harass/offend; use offensive language; affray; enter enclosed land not permitted premises without lawful excuse.

Table 11 Principal penalty received for domestic violence related offences most commonly appearing in NSW local and higher criminal courts by percentage, 2008-2009

Penalty	Common assault	Breach AVO	Assault occasioning actual bodily harm	Destroy or damage property	Stalk / intimidate / intend fear of physical / mental harm	Recklessly wound any other person	Armed with intent to commit an indictable offence	Recklessly cause grievous bodily harm	Behave in offensive manner	Other ³³	Total
Imprisonment (adult)	7.2	16.9	17.6	3.6	11.9	37.9	40.9	60.4	2.1	4.9	11.7
Home detention	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Periodic detention	0.5	0.8	1.3	0.2	0.6	2.4	0.0	5.7	0.0	0.0	0.7
Suspended sentence with supervision (adult)	4.0	7.3	7.6	2.9	7.3	16.9	13.6	13.2	0.0	1.5	5.6
Suspended sentence without supervision (adult)	2.3	4.0	4.2	1.8	3.4	5.6	3.0	1.9	0.0	2.7	3.1
Community service order (adult)	3.1	4.0	5.5	2.8	4.1	8.9	3.0	5.7	0.0	3.4	3.8
Bond with supervision (adult)	15.4	13.1	17.0	13.6	17.3	10.5	16.7	3.8	10.4	5.3	14.8
Bond without supervision (adult)	29.6	21.4	29.1	21.2	33.7	15.3	19.7	9.4	8.3	17.9	26.5
Fine	13.7	17.1	6.7	28.5	10.0	0.8	0.0	0.0	60.4	38.0	15.0
Nominal sentence	0.7	3.9	0.3	1.5	0.6	0.0	0.0	0.0	4.2	2.3	1.5
Bond without conviction	19.1	7.0	9.1	16.6	9.1	1.6	3.0	0.0	6.3	17.9	13.2
No conviction recorded	4.4	4.4	1.5	7.2	1.8	0.0	0.0	0.0	8.3	6.1	4.0
No action taken	0.1	0.0	0.0	0.1	0.1	0.0	0.0	0.0	0.0	0.0	0.1

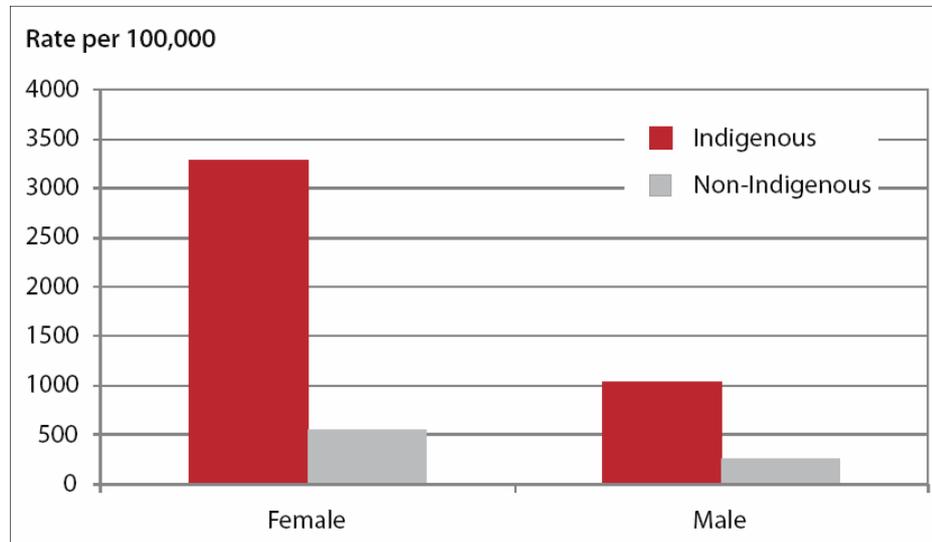
Source: Email from Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research, 25 July 2011

Aboriginal communities

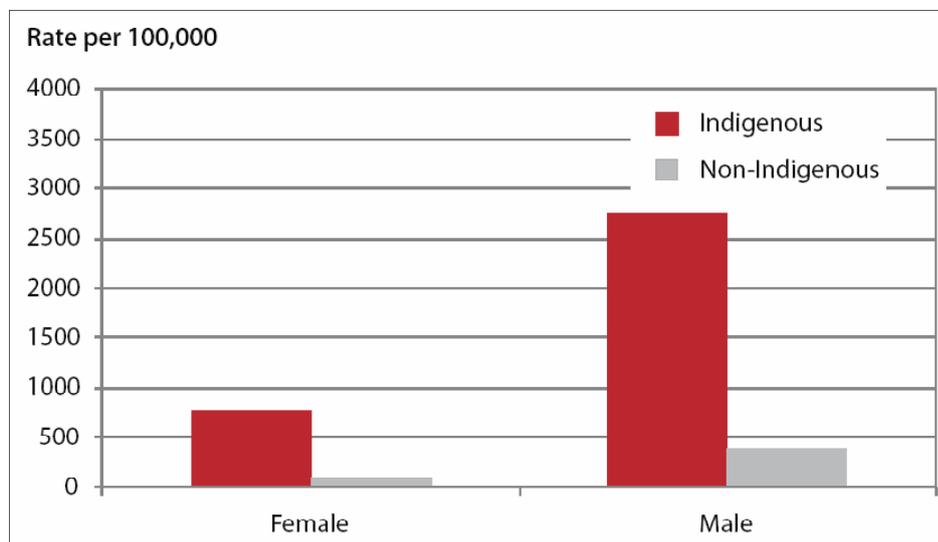
2.39 In 2010 the rates of reported victims of domestic violence were 6 times higher for Indigenous females than non-Indigenous females (3,275 per 100,000 versus 544 per 100,000) and 4 times higher for Indigenous males than non-Indigenous males (1,043 per 100,100 versus 260 per 100,000).³⁴ Shown in Figure 10.

³³ Column includes the following offences: use carriage service to menace/harass/offend; use offensive language; affray; enter enclosed land not permitted premises without lawful excuse.

³⁴ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 7.

Figure 10 Rate of domestic violence victims by gender and Indigenous status in 2010

2.40 Figure 11 shows the rate per 100,000 of domestic assault offending in both Indigenous and non-Indigenous males and females in 2010. Indigenous males and females had substantially higher rates of offending in both cases.

Figure 11 Rate of domestic assault offenders by gender and Indigenous status in 2010

Source (Figures 10 and 11): Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011

2.41 Wirringa Baiya Aboriginal Women's Legal Centre explained that Aboriginal women are more likely to be hospitalised for domestic violence related assault:

It has also been found that nationally Indigenous women are 31 times more likely than other Australian women and men to be hospitalised for family violence related assaults (Steering Committee for the Review of Government Service Provision,

“Overcoming Indigenous Disadvantage: Key Indicators 2011” Productivity Commission, Canberra at page 23).³⁵

2.42 Indigenous women comprised 30 per cent of the female prison population in 2008. The overwhelming majority of Indigenous women in custody had experienced sexual or domestic violence, as Wirringa Baiya illustrated in their submission:

Research conducted by the New South Wales Aboriginal Justice Advisory Council in its report “Speak Out, Speak Strong” (2002), showed that an overwhelming majority of Aboriginal women in custody were the victims of sexual and domestic violence.

The survey found:

- 70% had been sexually assaulted as children
- 44% were victims of sexual assault as an adult
- 61% were victims of physical violence.

Our Centre, in partnership with the Women’s Legal Service NSW and Hawksbury Nepean Community Legal Centre, run an outreach advice clinic in the three main women correctional centres in metropolitan Sydney. That program has found that 80% of the Aboriginal clients reported having experienced domestic violence.³⁶

Young people and domestic violence

2.43 In 2010 juvenile offenders (aged 10-17) composed 7.6 per cent of all domestic assault offenders.³⁷ This was explained to the Committee by the Children’s Court of NSW:

There were 1693 charges of domestic violence brought against a child or young person in the Children’s Court in 2010³⁸. The majority did not involve stereotypical partner-partner domestic violence. Most of the violence matters that come before the Children’s Court involve young people being violent or threatening to be violent to a parent or parents and siblings are often witnesses to the violence.³⁹

2.44 Between 1999 and 2009 there was an increase in both female and male juvenile offending in domestic violence assaults, with the number of female juvenile offenders showing an average yearly increase of 19.3 per cent and male juvenile offenders a 10.3 per cent increase.⁴⁰ There was also a significant increase in the number of female juvenile offenders breaching Apprehended Domestic Violence Orders, with an average annual increase of 10.2 per cent.⁴¹

³⁵ Submission 43, Wirringa Baiya Aboriginal Women’s Legal Centre, p 3.

³⁶ Submission 43, p 16.

³⁷ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 7.

³⁸ In answers to Questions on Notice the Children’s Court of NSW confirmed that this figure refers to the number of charges brought, rather than the number of persons charged. The figure was confirmed as 1,683. Answers to questions on notice taken during evidence 5 March 2012, Mr Paul Mulrone, Magistrate of the Children’s Court of New South Wales, Question 6, p 1.

³⁹ Submission 32, Children's Court of NSW, p 1.

⁴⁰ Submission 32, p 1.

⁴¹ Holmes, J, *Female offending: has there been an increase?*, Sydney, NSW Bureau of Crime Statistics and Research, 2010, p 7.

2.45 The 2005 Personal Safety Survey undertaken by the Australian Bureau of Statistics reported that in over 25 per cent of domestic violence cases, children witness the violence:

- 49 per cent (111,700) of men and women who had experienced violence by a current partner reported that they had children in their care at some time during the relationship. An estimated 27 per cent (60,700) said that these children had witnessed the violence.
- 61 per cent (822,500) of persons who experience violence by a previous partner reported that they had children in their care at some time during the relationship and 36 per cent (489,400) said that these children had witnessed the violence.⁴²

2.46 The UnitingCare organisation suggested to the Committee that domestic violence and child abuse often occur together:

A growing body of international research confirms that domestic and family violence and child abuse frequently co-occur within the same families.⁴³

Female offenders and domestic violence

2.47 As discussed previously, the number of female offenders increased significantly between 2001 and 2010 with an average yearly increase of 10 per cent, compared to the average yearly increase of male offenders of 2 per cent. Although most domestic violence offences were still committed by males, the proportion of domestic violence offenders who were female increased over this time period (Figure 8).⁴⁴

2.48 In the 10 years between 1999 and 2009 women committing domestic violence assaults composed 5.1 per cent of all female offenders in NSW. Female domestic violence offenders were the fifth largest group of offenders after shoplifting, non-domestic violence assaults, fraud and possession and/or use of drugs. This compares with male domestic violence offenders who composed 8.1 per cent of all male offenders over the same time period and represent the largest proportion of male offenders.⁴⁵

2.49 Table 12 shows the geographical location of female offenders and shows that the Far West and North West regions had the highest rates of female offending in 2010.

⁴² Australian Bureau of Statistics, *Personal Safety Survey*, p 11, accessed 22 August 2012, <[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/056A404DAA576AE6CA2571D00080E985/\\$File/49060_2005%20\(reissue\).pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/056A404DAA576AE6CA2571D00080E985/$File/49060_2005%20(reissue).pdf)>

⁴³ Submission 62, UnitingCare Children, Young People and Families, p 4.

⁴⁴ Tabled document, *DV key facts and findings*, p 11.

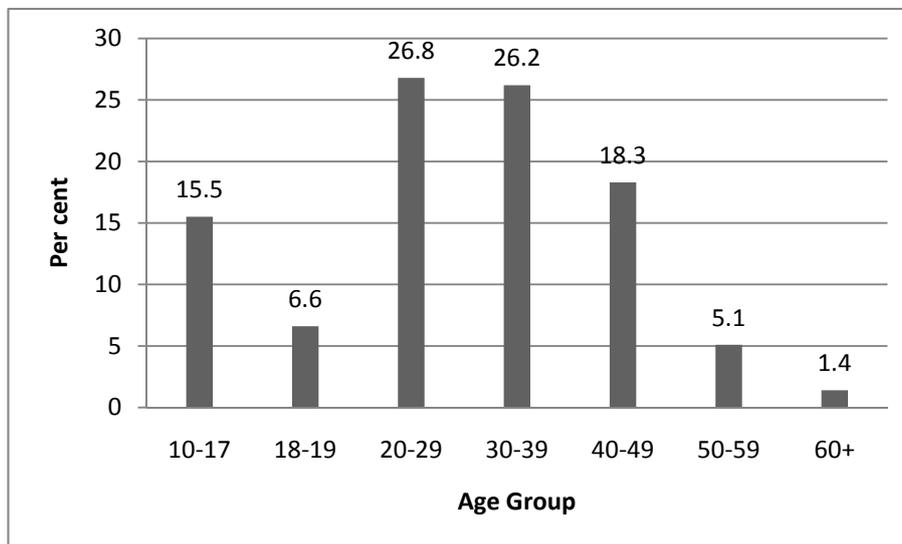
⁴⁵ Holmes, J, *Female offending: has there been an increase?*, Sydney, NSW Bureau of Crime Statistics and Research, 2010, p 3.

Table 12 Area and rate of female offending for domestic violence in 2010

Top 10 areas (female offenders area of residence 2010)	Number	Rate per 100,000 female population
Far West	41	417.8
North Western	129	271.5
Outer South Western Sydney	175	174.5
Northern	130	171.8
Central West	121	163
Murrumbidgee	95	149.7
Murray	71	146.5
Mid-North Coast	169	131.3
Blacktown	141	122.5
Inner Sydney	148	105.1

Source: Tabled document, NSW Bureau of Crime Statistics and Research, *DV key facts and findings*, 2012

2.50 Women aged between 20 and 39 years old composed the largest proportion of female domestic violence offenders in 2010 (Figure 12). Although a higher number of non-Indigenous women were persons of interest in domestic violence assaults in 2010, the rates per 100,000 of Indigenous female domestic violence offenders were significantly higher than non-Indigenous females (Table 13).⁴⁶

Figure 12 Age group of female offenders as a percentage of all female domestic violence offenders in 2010

Source: Tabled document, NSW Bureau of Crime Statistics and Research, *DV key facts and findings*, 2012

⁴⁶ Tabled document, *DV key facts and findings*, p 13.

Table 13 Indigenous status of female persons of interest in domestic assaults in 2010

Indigenous Status	Number	Rate per 100,000 (females aged 10+)
Indigenous	529	996.4
Non-Indigenous	2250	83.59
Unknown	126	

Source: Tabled document, NSW Bureau of Crime Statistics and Research, *DV key facts and findings*, 2012

- 2.51** In accordance with the inquiry terms of reference, the increase in police proceedings against women for domestic violence offences, including potential causes and actions in respect of them, is examined in detail in Chapter 8.

Gender and domestic violence

- 2.52** As noted above, victims of domestic violence are markedly more likely to be female, and offenders are markedly more likely to be male. Of victims of domestic assault in 2010, 69.2 per cent were female, while 30.8 per cent were male.⁴⁷ Of persons proceeded against for domestic assault in 2012, 82 per cent were male, and 18 per cent female (up from 10 per cent in 2001).⁴⁸
- 2.53** There was some discussion during the inquiry about the appropriateness of legislation and policy making explicit reference to domestic violence as ‘gendered’, identifying perpetrators as predominantly male and victims as predominantly female.
- 2.54** Three individual men made submissions on this point, as did the organisations the One in Three Campaign and FamilyVoice Australia. They argued that domestic violence policy and legislation is overly focused on male violence against women, such that it fails to recognise and assist male victims of violence. One male victim stated in his submission:

I was regularly assaulted by my ex-partner, I have now moved to Queensland. She has admitted to viciously biting me in several affidavits but maintains it was my fault as I was walking away from a verbal argument. The police despite me having an intervention order refused to press charges against her once she had provided the Family Court a sworn admission. I was assaulted regularly but there is nowhere for men to go and no one really cares anyway. She was found to have internationally abducted our sons ... and has been repeatedly accused of child abuse yet the system takes no action against her and continues to allow her to have access to our sons ... I can now provide proof of the abduction which is, in and by itself a severe form of domestic violence and child abuse. Unfortunately there is little justice for male victims of DV nor protection of their children with us being labelled as only perpetrators

⁴⁷ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 6.

⁴⁸ Tabled document, *DV key facts and findings*, p 11.

never victims. There are a lot of male victims that simply don't come forward and why would they, they get ridiculed and degraded even by those who are there to protect.⁴⁹

2.55 The One in Three Campaign's submission cites a number of statistics to argue that around one in three victims of domestic violence are male, and that correspondingly, there is a substantial proportion of female perpetrators. Its citations include:

The most conservative recent estimates (from police reports, which do not cover the vast majority of male victims who never report their assaults) show that 82 per cent of offenders in NSW between 2001 and 2010 were male, while 30.8 per cent (almost one in three) victims of domestic assault were male.⁵⁰ ...

28 per cent (around one in three) of people who experienced physical assault by an intimate partner (current partner, previous partner, boyfriend, girlfriend or date) in the last 12 months were male

29.8 per cent (almost one in three) victims of current partner violence since the age of 15 were male

24.4 per cent (almost one in four) victims of previous partner violence since the age of 15 were male.⁵¹

The NSW Bureau of Crime Statistics and Research (BOCSAR, 2005) found that between 1997 and 2004, 28.9 per cent (almost one in three) of victims of domestic assault in NSW were male.⁵²

2.56 In written answers to questions the One in Three Campaign stated that it does not argue that gender does not play a part in some cases of domestic violence, but rather, that it is highly critical of the 'current feminist paradigm on domestic violence based on the ideological premise that domestic violence is caused by males holding rigid and erroneous patriarchal attitudes.'⁵³ Its representatives argued in evidence that this paradigm has the effect that many male victims do not identify as victims, and cannot access appropriate services.⁵⁴ Like FamilyVoice Australia, the One in Three Campaign called for section 9 of the *Crimes (Domestic and Family Violence) Act 2007*, which states that 'Parliament recognises that domestic violence is predominantly perpetrated by men, and against women and children' to be repealed.⁵⁵ FamilyVoice Australia also recommended that all policy documents be non-discriminatory:

⁴⁹ Submission 1, Mr Craig Cannock, p 1.

⁵⁰ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, Sydney, NSW Bureau of Crime Statistics and Research, 2011, cited in Submission 40, One in Three Campaign, p 5.

⁵¹ Australian Bureau of Statistics, *Personal Safety Survey, 2006*, cited in Submission 40, One in Three Campaign, p 5.

⁵² People J, *Trends and patterns in domestic violence assaults*, Crime and Justice Bulletin, 2005, 89, cited in Submission 40, p 7.

⁵³ Answers to questions on notice taken during evidence 20 February 2012, One in Three Campaign, Additional information, p 14.

⁵⁴ Mr Andrew Humphreys, Member, One in Three Campaign, Evidence, 20 February 2012, p 16.

⁵⁵ Mr Greg Andresen, Senior Researcher, One in Three Campaign, Evidence, 20 February 2012, p 16; Submission 7, FamilyVoice Australia, p 4.

All action plans, campaigns and other government responses to domestic violence should be non-discriminatory and acknowledge that men as well as women can be victims of domestic violence and that perpetrators of domestic violence include women as well as men.⁵⁶

2.57 Greg Andresen, Senior Researcher with the One in Three Campaign advocated that the term ‘family violence’ replace ‘domestic violence’ as it is inclusive of violence within all familial relationships, not simply intimate partners.⁵⁷

2.58 A number of other inquiry participants including the Chief Magistrate of NSW Local Courts, His Honour Judge Graeme Henson, Dr Don Weatherburn, Director of the Bureau of Crime Statistics and Research, Professor Julie Stubbs, Faculty of Law, University of New South Wales, responded to this issue by acknowledging that while there are female perpetrators and male victims, the evidence is that the majority of victims are women and perpetrators are men.⁵⁸ Professor Stubbs argued that an approach which recognises the gendered pattern of domestic violence will be more effective in addressing that violence, and does not necessarily exclude male victims:

I also do not think a gendered analysis necessarily detracts from recognising that some men and people in same-sex relationships are also victims. I saw the One in Three submission and I could quibble with some of the emphasis given to some of the data, but there is not much point in doing that. Whether men are one in three, one in four or one in five, they are also victims and they are important. It still tells us that it is a gendered offence and that there are gender patterns in the offence, and that helps us to come up with evidence-based, targeted strategies. However, it does not have to make us blind to the needs of people who are not women and children.⁵⁹

2.59 The Committee notes the view expressed by the Law Reform Commissions, that definition should be gender neutral, but that legislation may well acknowledge that family violence is primarily a male offence:

Definitions of family violence should be gender-neutral. As any person can be a victim of family violence or use family violence, family violence legislation must be capable of operating to protect all victims of violence—whether female or male—and to prevent further commission of violence by anyone—whether female or male. However ... it is appropriate and important for state and territory family violence legislation to contain a provision that explains the features and dynamics of family violence, including that while anyone can be a victim of family violence or use family violence it is predominantly committed by men.⁶⁰

⁵⁶ Submission 7, p 4.

⁵⁷ Mr Andresen, Evidence, 20 February 2012, p 16.

⁵⁸ Judge Graeme Henson, Judge of the District Court, Chief Magistrate of the Local Court of New South Wales, Evidence, 5 March 2012, p 29; Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 7 November 2011, p 11; Professor Julie Stubbs, Faculty of Law, University of New South Wales, Evidence, 7 November 2011, p 7. See also Mr Brendan Thomas, Assistant Director General, Department of Attorney General and Justice, Evidence, 17 October 2011, p 15.

⁵⁹ Professor Stubbs, Evidence, 7 November 2011, p 7. See also Dr Wangmann, Evidence, 20 February 2012, p 26.

⁶⁰ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, p 234.

Committee comment

- 2.60** The Committee recognises that some women perpetrate domestic violence and that some men are victims, and also that male victims have been much less visible and able to access supports than should be the case. We consider that the system for preventing and responding to domestic violence needs to take account of, and be effective for, all victims and perpetrators, and we address this further in Chapter 4 concerning the forthcoming NSW Domestic and Family Violence Framework, Chapter 5, concerning prevention and early intervention, Chapter 6, concerning services for victims, Chapter 10 concerning legal representation for respondents in ADVO matters, Chapter 11 regarding legal services for victims, Chapter 14 on sentencing and penalties, and Chapter 15 on perpetrator programs.
- 2.61** Nevertheless, like a number of inquiry participants, we note that the data on domestic violence, in New South Wales, nationally and internationally, clearly shows that men comprise the majority of offenders and women the majority of victims. In addition, like the majority of inquiry participants, we are comfortable with the orthodoxy that domestic violence is, generally speaking, a gendered crime.
- 2.62** Like the Australian and NSW Law Reform Commissions, the Committee considers that legislation and policy should be written in gender neutral terms, and, at the same time, that it is appropriate to make explicit reference in policy or legislation to the fact that domestic and family violence is predominantly perpetrated by men.
- 2.63** The specific issue of the documented increase in police proceedings against women, contained in the terms of reference for the inquiry, is explored in detail in Chapter 8.

Specific population groups

- 2.64** In addition to male victims, a number of population groups were identified during the inquiry as in need of special consideration with regard to domestic violence: older people; young people; Aboriginal people; GLBTI people; people from culturally and linguistically diverse (CALD) backgrounds; and people with a disability. Representatives of these groups all pointed to the particular manifestations of domestic violence among their constituents and argued the need for greater recognition and more effective responses to them.
- 2.65** In Chapter 4 the Committee considers the barriers affecting access by these groups within the domestic violence system as whole, and in Chapter 5 we consider the issues of prevention and early intervention in respect of these groups. In Chapter 6, which examines services for victims and children, we again consider ways that services can become more inclusive of and responsive to specific groups. Chapter 16 looks at issues specifically in relation to young people and domestic violence.
- 2.66** At this stage we simply note the particular vulnerabilities and manifestations pointed out to us, noting also that the groups are not necessarily discrete, but may intersect and overlap.

2.67 We also note the Law Reform Commissions' recommendation that these groups achieve greater recognition in the legislation in the following way:

State and territory family violence legislation should include examples of emotional and psychological abuse or intimidation and harassment that illustrate conduct that would affect—although not necessarily exclusively—certain vulnerable groups including: Indigenous persons; those from a culturally and linguistically diverse background; the aged; those with a disability; and those from the gay, lesbian, bisexual, transgender and intersex communities. In each case, state and territory family violence legislation should make it clear that such examples are illustrative and not exhaustive of the prohibited conduct.⁶¹

Older people

2.68 Both the Older Women's Network and Council on the Ageing NSW (COTA) raised the issue of violence against older people. Whilst the former focused on older women experiencing perhaps long term violence, the latter focused on 'abuse of older people' or 'elder abuse'. Mr Ian Day, Executive Officer for COTA, defined such abuse as 'any act occurring within a relationship where there is an implication or expectation of trust, which instead gives rise to harm to an older person'. He went on to differentiate between domestic violence and elder abuse by stating that while the former is gendered, the latter is 'perpetrated almost in equal proportions by males and females, on older people (with a gender split almost equal to the general population at a specified age) and most often by family members who are in a carer relationship where there is an implication of trust.' He further stated that while there are an estimated 50,000 cases of elder abuse in New South Wales each year, few cases are reported.⁶²

2.69 Referring to Australian Bureau of Statistics Personal Safety Survey data, the Older Women's Network noted that one in four women who had experienced violence in the previous twelve months were aged 45 and over. It also cited a study showing that between 1996 and 2006, the greatest increase in those reporting violence was by women aged 55 and over.⁶³

2.70 COTA reported that research suggests that physical forms of abuse and neglect of older people are not as common as psychological or financial abuse. It also demonstrates that the majority of abusers of older people are close family members, and that the major factors that contribute to abuse are the personality of the abuser, psychopathology, alcoholism, drug abuse, psychiatric illness and cognitive impairment or dementia. Broader social factors, reflected in power based differentials in the family and wider society, may also be at work. In addition, a number of researchers point to caregiver stress as a major contributing factor.⁶⁴

⁶¹ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, Recommendation 5-2, p 246. The Committee also notes that the NSW Police Force recognised each of these groups as more vulnerable: see Answers to supplementary questions 20 February 2012, NSW Police Force, Question 1, p 2.

⁶² Mr Ian Day, Executive Officer, Council on the Ageing NSW, Evidence, 30 April 2012, p 40.

⁶³ McFerran L, *The Disappearing Age: strategies to address violence against older women*, Sydney, Older Women's Network, 2009, cited in Submission 72, Older Women's Network NSW, p 2.

⁶⁴ Kurrle, S, 'Elder abuse', *Australian Family Physician*, 2004, Vol 33, No 10, pp 807-812; Biggs S, Phillipson C and Kingston P, *Elder Abuse in Perspective*, Open University Press, Buckingham, 1995; Penhale B and Kingston P, 'Elder abuse, mental health and later life: steps towards an understanding,' *Aging and Mental Health*, 1997, Vol 1, No 4, pp 296-304; Wolf R, 'The nature and

Young people

- 2.71** Several inquiry participants advised the Committee that they are seeing increasing numbers of young people, including increasing numbers of young women, committing family violence offences.⁶⁵
- 2.72** The Children's Court of New South Wales advised that of the cases it deals with involving young people, the majority were not partner-partner domestic violence, but rather, involved young people being violent or threatening violence towards one or more parents, with their siblings often witnessing the violence. It went on to explain the very different dynamics at work here:

In these cases, the power dynamic is often quite different from spousal violence. In cases of spousal violence, it is often the man who has financial control and is exploiting the power imbalance already established. In cases of child-parent violence, parents have direct control of the finances and other resources, including accommodation and allowances. Parents are also in a position of internal conflict because they usually feel a sense of responsibility as the parent or support person to the child.⁶⁶

- 2.73** Asked whether the increase in family violence perpetrated by young people is occurring among children from a range of socio-economic backgrounds, Mr Paul Mulrone, a Children's Court Magistrate, indicated that anecdotally this is so in general terms, but that the violence is nevertheless committed disproportionately by young people from socially and economically disadvantaged backgrounds, as is the case with most offences involving young people.⁶⁷

Aboriginal people

- 2.74** In its submission, Wirringa Baiya Aboriginal Women's Legal Centre noted that Aboriginal women are dramatically over-represented among victims of family violence, with the rate of domestic violence for Aboriginal women six times that for non-Aboriginal women.⁶⁸ It also

scope of elder abuse', *Generations*, 2000, Vol 24, No 2, Summer, pp 6-12; Ramsey-Klawnsnik H, 'Elder abuse offenders: a typology,' *Generations*, 2000, Vol 24, No 2, Summer, pp 17-22; Brandl B, 2000, 'Power and control: understanding domestic abuse in later life,' *Generations*, Vol 24, No 2, pp 39-45, cited in Submission 24, Council on the Ageing NSW, p 3.

⁶⁵ Submission 32, pp 1-2; Sergeant Prue Burgun, Treasurer, NSW Police Association, Evidence, 20 February 2012, pp 62; Mr Pat Gooley, Vice President, NSW Police Association, 20 February 2012, p 61; Ms Melina Isgro-Rarp, Program Manager, Centre for Women's Health, Macarthur Benevolent Society, Evidence, 17 October 2011, p 61; Mr Mulrone, Evidence, 5 March 2012, p 36.

⁶⁶ Submission 32, p 1. See also Mr Mark Marien, Judge, President, Children's Court of New South Wales, Evidence, 5 March 2012, p 34; and Answers to questions on notice 5 March 2012, Children's Court of New South Wales, Attachment 2, pp 11-12.

⁶⁷ Mr Mulrone, Evidence, 5 March 2012, p 36.

⁶⁸ Grech K and Burgess M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, NSW Bureau of Crime Statistics and Research, Sydney, 2011, p 8, cited in Submission 43, Wirringa Baiya Aboriginal Women's Legal Centre, p 3.

reported that nationally, Aboriginal women are 31 times more likely to be hospitalised for family violence related assault than other Australian women and men.⁶⁹

- 2.75** In evidence, Ms Rachel Martin, Principal Solicitor at Wirringa Baiya, explained how the dynamics of violence between kin are fundamentally different to that between intimate partners. She stated that intimate partner violence primarily involves ‘male power being used against their female partner and their children to maintain control’ over them. It tends to have a more long term and cyclical nature, often involving sexual intimacy and romantic love, as well as economic dependence of the victim on the perpetrator. She suggested that by contrast, violence between family members is less complicated psychologically, and there is often no economic dependence on the abuser. She also suggested that that violence tends to be less cyclical and less aimed at maintaining control, and more incidental, over a specific issue.⁷⁰
- 2.76** The Committee also heard that for Aboriginal people, a range of factors including the trauma and grief of removal of children, alcohol and other substance abuse, significant social and economic disadvantage, inadequate housing, and a lack of appropriate services combine to create highly stressed communities, in turn leading to a higher incidence of dysfunctional and violent behaviour.⁷¹

Gay, lesbian, bisexual, transgender and intersex people

- 2.77** In its submission, ACON reported that domestic violence is understood to be experienced at the same rate in gay and lesbian relationships as in heterosexual relationships, with 2006 research indicating that 41 per cent of lesbians and 28 per cent of ‘same sex attracted men’ had experienced some form of abuse in their current or former relationship. Rates are significantly higher for transgender and intersex people, with 61.8 per cent of transgender males and 42.9 per cent of intersex females reporting having been abused in a relationship.⁷² ACON went on to observe that there is a growing recognition of domestic violence among GLBTI people, especially same sex couples:

Recently there has been progress made in developing a more nuanced understanding of the intricate nature of domestic violence, especially when it comes to same sex domestic violence. The historical understanding of domestic violence as a form of gendered violence involving a male perpetrator and female victim has grown to recognise that while this remains the dominant form of domestic violence, there are incidents that do not fit this model. GLBT people are also concerned with the family violence that they experience, which is another experience that adds to the complexity of domestic violence. It is now time for program funding and policy settings to catch up to this understanding.⁷³

⁶⁹ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission, Canberra, 2011, p 23, cited in Submission 43, p 3.

⁷⁰ Ms Rachel Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women’s Legal Centre, Evidence, 5 March 2012, p 6.

⁷¹ Ms Martin, Evidence, 5 March 2012, pp 4-5.

⁷² Australian Research Centre in Sex, Health & Society, *Private Lives: a report on the health and wellbeing of GLBTI Australians*, 2006, p 31, cited in Submission 46, ACON, p 1; see also Mr Senthoran Raj, Senior Policy advisor, Gay and Lesbian Rights lobby, Evidence, 30 April 2012, p41.

⁷³ Submission 46, p 2.

2.78 In terms of the manifestations of domestic violence among GLBTI people, both the Inner City Legal Centre and the Gay and Lesbian Rights Lobby noted that same sex couples may experience the same forms of relationship abuse as heterosexual couples. In addition, they may be subject to threats and abuse related to their sexuality or gender, such as ‘outing’ to family, friends and others. Both groups also noted violence perpetrated between family members involving GLBTI people, for example by young people against other family members.⁷⁴

People from culturally and linguistically diverse communities

2.79 The Committee was advised that there is limited research on the extent of domestic violence within CALD communities. However, one study indicated that women from migrant and refugee backgrounds more likely than non-immigrant women to experience domestic violence homicide, and are less likely to access services, or to receive appropriate supports from those services, when they seek to leave a violent relationship.⁷⁵

2.80 Inquiry participants identified a number of especially vulnerable groups among people of CALD origin:

- women migrating to Australia on partner visas, who are generally unaware of their rights, and may be given false information by their partners⁷⁶
- newly arrived refugee and humanitarian entrants, who are affected by the stress and trauma of fleeing their country, living in refugee camps and detention, coupled with the challenges of finding work, accommodation and so on in their new country⁷⁷
- women forced into marriage by their families, who find it extremely difficult to leave a relationship and sever ties with their family⁷⁸
- older women from established communities who might experience violence, emotional abuse and controlling behaviour, often as a result of gambling, alcohol abuse and mental health issues⁷⁹
- migrant women in rural areas, who may be especially isolated by cultural difference and geography.⁸⁰

⁷⁴ Australian Domestic and Family Violence Clearinghouse, ‘Special Collections – Same sex’, <<http://www.adfvc.unsw.edu.au/specialcollectionssamesex.htm>>, cited in Submission 26, Inner City Legal Centre, pp 1-2; Ms Kate Duffy, Solicitor, Inner City Legal Centre, Evidence, 5 March 2012, pp 52-53; Submission 27, Gay and Lesbian Rights Lobby, p 2; Mr Raj, Evidence, 30 April 2012, p 41; Ms Rosslyn Mayne, Principal Solicitor, Inner City Legal Centre, Evidence, 5 March 2012, p 52.

⁷⁵ Eastaerl PW, ‘Violence against immigrant women in the home’, *Alternative Law Journal*, 1996, Vol 21, No 2, pp 53-57, cited in Submission 19, NSW Consumer Advisory Group, p 5.

⁷⁶ Submission 68, Immigrant Women’s Speakout Association, p 5; Ms Catherine Gander, Executive Officer, NSW Women’s Refuge Movement, Evidence, 26 March 2012, p 30.

⁷⁷ Submission 20, Metro Migrant Resource Centre, p 1.

⁷⁸ Ms Jane Brock, Executive Officer, Immigrant Women’s Speakout Association, Evidence, 30 April 2012, p 46.

⁷⁹ Submission 20, p 1; Submission 68, p 8.

⁸⁰ Submission 20, p 1; Submission 68, p 11.

2.81 The Metro Migrant Resource Centre also noted some particular features of many CALD victims' lives that prevent them from reporting domestic violence or leaving their violent partner. These include cultural and religious shame, religious beliefs about divorce, fear of isolation from their extended family, not knowing the law and who they can seek assistance from, and a fear among those without permanent residency that they may be deported.⁸¹ It argued that an understanding of the cultural context of domestic violence is critical to working effectively with these victims.⁸²

People with disability

2.82 As is discussed in detail in Chapters 4 and 9, the key legislation for domestic violence in New South Wales, the *Crimes (Domestic and Personal Violence) Act 2007* currently includes violence towards people in residential care settings in the definition of domestic violence. According to People with Disability Australia, women with disability are especially vulnerable to violence and abuse, with evidence suggesting that women with disability are at least twice as likely as those without to experience violence and abuse, and that those living in residential care settings are particularly susceptible.⁸³ It went on to identify a number of reasons why people with disability are at greater risk of violence and abuse than those without:

- social isolation which limits opportunities to form healthy relationships or to provide opportunity to tell someone about the abuse
- greater dependency on others, including for intimate personal care
- learned compliance and powerlessness
- less physical ability to defend themselves or remove themselves from situations of harm
- societal values, discrimination and stereotypes
- limited knowledge and access of services
- lack of credibility and the tendency to be disbelieved
- lack of information and education, particularly on sexuality and healthy relationships
- communication difficulties and
- lack of choice or control over their circumstances.⁸⁴

Men

2.83 The proportion of male victims and female perpetrators is discussed in the previous section. The One in Three Campaign argued strongly that male victims of domestic violence have historically been excluded from domestic violence policy and service delivery.

⁸¹ Submission 20, p 2 and 4.

⁸² Submission 20, p 4.

⁸³ Submission 50, People with Disability Australia, p 4.

⁸⁴ Submission 50, p 4.

- 2.84** In terms of the manifestations highlighted to us, the One in Three Campaign's submission summarised a number of points comparing male and female perpetrated domestic violence. These points included that:
- overall, women are injured more than men, but men are injured too, and often seriously
 - the overall physical and psychological effects of intimate partner violence are similar for men and women
 - women and men who use intimate partner violence hurt their partners in similar ways (kicking, biting, punching, choking, stabbing, burning, etc), however men are as likely or significantly more likely than women to experience assaults using a weapon
 - men and women bear similar intentions when using intimate partner violence, leading to similar results when their average differences in physical strength are taken into account (such as when weapons are used)
 - men and women initiate intimate partner violence (both minor and severe) at around the same rates and women are equally likely or more likely to perpetrate violence against a non-violent partner
 - dominance by either partner is a risk factor for intimate partner violence (both minor and severe).⁸⁵

Conclusion

- 2.85** The definitions and trends documented in this chapter, along with our discussion of the issue of gender and domestic violence, set the scene for the main body of this report.
- 2.86** The following chapter focuses on the need for a comprehensive new approach to preventing and addressing domestic violence in New South Wales, to be achieved via the forthcoming NSW Domestic and Family Violence Framework. Chapter 4 examines the various elements that the Committee considers should comprise the Framework, then Chapter 5 builds on those chapters by considering how prevention and early intervention systems might look in practice.
- 2.87** From there, the Committee moves on to examine specific sub-systems of the larger domestic violence system: services for victims and children (Chapter 6); policing (Chapters 7 and 8); apprehended violence orders (Chapters 9 and 10); the legal system and courts (Chapters 11, 12 and 13).
- 2.88** The report concludes with examinations of issues with regard to sentencing (Chapter 14), perpetrator programs (Chapter 15), and young offenders (Chapter 16).

⁸⁵ Submission 40, pp 15-16.

Chapter 3 A comprehensive new approach to domestic violence in NSW

This chapter focuses on the need, implicit in much of the evidence before the Committee, for a comprehensive new approach to preventing and addressing domestic violence in New South Wales. It begins by providing a brief overview of the present legislative and policy landscape, then documents the very critical findings of the 2011 report of the Auditor-General, *Responding to Domestic and Family Violence*, which emphasised the need for stronger coordination between the police, the courts, health services, victims services and other agencies with a role in responding to domestic violence, in order to provide a more responsive and effective system.

The chapter then documents the NSW Government's commitments to develop a NSW Domestic and Family Violence Framework (hereafter DFV Framework), the policy vehicle through which it intends to deliver better integration and coordination, which is to be completed in early 2013. The chapter concludes with the Committee's key recommendation for this inquiry: that the NSW Government must embrace an active, comprehensive approach to preventing and responding to domestic violence in New South Wales under the umbrella of the forthcoming DFV Framework.

The following chapter examines elements that the Committee considers should comprise the forthcoming DFV Framework. These include: the definition that will set the ambit of the Framework; the core policy principles that should underpin it; coordination and integration of agencies and services; service standards; and measures to address barriers to service access.

Together, the findings of the Auditor-General and the views expressed by a wide range of participants in our inquiry point to the very substantial need to pursue comprehensive, systemic reform. We encourage the NSW Government to embrace this opportunity for wholesale improvements.

The national context

- 3.1** At the federal level, the Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) leads and coordinates policy in respect of domestic and family violence. Relevant Commonwealth Government responsibilities include family law, Indigenous affairs, homelessness, and the provision of income support, family payments and crisis payments. The Commonwealth plays a key role in the prevention of violence, via its Primary Prevention Program including respectful relationships projects, 'The Line' social marketing campaign, and community action grants.⁸⁶
- 3.2** The Commonwealth's Office for Women coordinates the *National Plan to Reduce Violence Against Women and Their Children 2010-2022*, the action plan adopted by the Council of Australian Governments. The National Plan provides a framework for action by the Commonwealth and each state and territory government to reduce levels of violence against women. It sets out actions in respect of six national outcomes:
- communities are safe and free from violence

⁸⁶ Council of Australian Governments, *National Plan to Reduce Violence Against Women and Their Children 2010-2022*, February 2011, accessed 17 July 2012, <www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_plan.pdf>

- relationships are respectful
- Aboriginal communities are strengthened
- services meet the needs of women and their children experiencing violence
- justice responses are effective
- perpetrators stop their violence and are held to account.⁸⁷

NSW legislative and policy response to domestic violence

3.3 The NSW Government agencies with a key role in respect of domestic and family violence are the Department of Family and Community Services (FACS), the NSW Police Force, the Department of Attorney General and Justice (DAGJ) and the NSW Department of Health. Government agencies work in conjunction with the non government sector to deliver domestic violence programs, most notably support programs for victims and behaviour change programs for offenders.

Legislation

3.4 The *Crimes (Domestic and Personal Violence) Act 2007* is the principal piece of domestic violence legislation in New South Wales. It defines key terms, including:

- ‘personal violence offence’ – includes offences such as murder, manslaughter, grievous bodily harm, assault, attempting to choke and using an intoxicating substance to commit an indictable offence, as described under the *Crimes Act 1900*
- ‘domestic violence offence’ – includes personal violence offences, such as those described above, as well as stalking and intimidation, that are committed by persons in, or previously in, a domestic relationship
- ‘domestic relationship’ – includes persons who are, or have been, married, in a de facto partnership, in an intimate partner relationship, living in the same household, living as long term residents in the same residential facility, in a caregiving relationship, are relatives, or in the case of an Aboriginal person, in an extended kinship relationship
- ‘relative’ – includes persons who are, or are a partner of, a mother, father, son, daughter, aunt, uncle, niece, nephew or cousin.⁸⁸

3.5 The legislation sets out that a person who commits a domestic violence offence may be subject to criminal proceedings or to an Apprehended Domestic Violence Order (ADVO). It also codifies the offence of contravening or ‘breaching’ an ADVO. ADVOs are examined in detail in Chapter 9, including issues associated with the definition of ‘domestic relationship’ in the legislation. The issue of breaches is explored in Chapter 10.

⁸⁷ Council of Australian Governments, National Plan to Reduce Violence Against Women and Their Children 2010-2022, February 2011, pp 14-29, accessed 17 July 2012, <www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_plan.pdf>

⁸⁸ *Crimes (Domestic and Personal Violence) Act 2007*, ss 4, 5 and 6.

- 3.6 The *Law Enforcement (Powers and Responsibilities) Act 2002* provides for the search, entry and seizure powers of police in relation to domestic violence incidents.

Domestic violence policy

- 3.7 The NSW Government has a number of policies that specifically target domestic violence. Relevant policy documents include:

- *Stop the Violence, End the Silence: NSW Domestic and Family Violence Action Plan* released in June 2010, is the whole of government document setting out strategic directions, priorities and action in relation to domestic violence across each of the relevant government agencies in New South Wales.⁸⁹ It is to be replaced by the forthcoming NSW Domestic and Family Violence Framework discussed in detail in this and the following chapter.
- *NSW 2021*, the 10 year plan for the NSW Government, identifies initiatives to significantly reduce domestic and sexual violence against women and their children as a priority action in respect of the goal to prevent and reduce the level of crime. Initiatives include providing long term accommodation and support, expanding the availability of legal advice and support, delivering a more coordinated police and service response, and ensuring appropriate court support is available to victims. In addition, in respect of the goal to protect the most vulnerable members of our community and break the cycle of disadvantage, it identifies the priority action, implementing integrated housing and support initiatives for women and children escaping domestic violence who are homeless or at risk of homelessness.⁹⁰
- *A Way Home: Reducing Homelessness in NSW – NSW Homelessness Action Plan 2009-14*, sets out the strategic directions for specialist homelessness services, including refuges, primarily funded under the Supported Accommodation Assistance Program. A priority of the Action Plan is to provide safe, appropriate long term accommodation and /or support to people experiencing domestic and family violence.⁹¹
- *Keep Them Safe: A Shared Approach to Child Wellbeing*, released in 2009, is a five year plan to reform the child protection system and deliver services to children and young people.⁹²

- 3.8 A brief overview of the responsibilities of key government departments in relation to domestic violence is set out below.

⁸⁹ Department of Premier and Cabinet, *Stop the Violence, End the Silence: NSW Domestic and Family Violence Action Plan*, accessed 23 July 2012, <www.dpc.nsw.gov.au/__data/assets/pdf_file/0005/93920/Stop_the_Violence._End_the_Silence._Domestic_and_Family_Violence_Action_Plan_-_Web2.pdf>

⁹⁰ NSW Government, *NSW 2021*, 2011, p 28 and 34, accessed 23 July 2012, <http://2021.nsw.gov.au/sites/default/files/NSW2021_WEB%20VERSION.pdf>

⁹¹ Housing NSW, *A Way Home: Reducing Homelessness in NSW – NSW Homelessness Action Plan 2009-14*, accessed 23 July 2012, <www.housing.nsw.gov.au/NR/rdonlyres/070B5937-55E1-4948-A98F-ABB9774EB420/0/ActionPlan2.pdf>; Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Additional information, pp 11-12.

⁹² Department of Premier and Cabinet, *Keep Them Safe: A Shared Approach to Child Wellbeing*, accessed 27 July 2012, <www.dpc.nsw.gov.au/__data/assets/pdf_file/0004/57145/Keep_Them_Safe.pdf>

Women NSW

3.9 Women NSW (formerly the Office for Women's Policy) is a strategic policy unit within FACS which develops policies to the benefit of women in New South Wales. While it sits within FACS, it reports both directly to the Minister for Women, the Hon Pru Goward MP, and to FACS. Its responsibilities in relation to domestic violence include:

- oversight of the development of the forthcoming NSW DFV Framework
- management of the \$2.9 million Domestic and Family Violence Grants Program, funding prevention and early intervention programs
- secretariat support for the Premier's Council on Preventing Violence Against Women, an expert panel advising the NSW Premier.⁹³

Department of Family and Community Services

3.10 Within FACS, Community Services and Housing NSW have key roles in relation to domestic violence.

3.11 Community Services delivers a wide variety of programs aimed at the prevention and early intervention of domestic violence:

- the Domestic Violence Line telephone service that provides counselling, information, support and referral services for women
- the Staying Home Leaving Violence program for women who have separated from their violent partner but want to remain in the family home
- Integrated Domestic and Family Violence Services Program, to prevent the escalation of domestic violence in high risk groups and in targeted communities.⁹⁴

3.12 Housing NSW provides certain programs for people experiencing or at risk of homelessness as a result of domestic violence, including:

- the Start Safely Private Rental Subsidy Scheme providing time limited subsidised rent to women and women with children escaping domestic and family violence.
- long term accommodation and support for women and children experiencing domestic and family violence in the Western Sydney, Illawarra and Hunter areas
- Safe Accommodation for families escaping violence, targeting Aboriginal women and children in Western NSW.⁹⁵

⁹³ Women NSW, Who we are, accessed 23 July 2012, <www.women.nsw.gov.au/about_us/who_we_are>

⁹⁴ Council of Australian Governments, *National Plan to Reduce Violence Against Women and Their Children*, 2009, p 35; Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Additional information, pp 11-12.

⁹⁵ Housing NSW, Domestic and Family Violence Overview, accessed 23 July 2012, <www.housing.nsw.gov.au/Help+with+Housing/Domestic+and+Family+Violence/Domestic+Violence+and+Homelessness.htm>; Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Additional information, p 12.

- 3.13** Housing NSW administers emergency accommodation and affordable housing, which are joint Commonwealth and State responsibilities under the National Affordable Housing Agreement (NAHA) of the Council of Australian Governments, commenced in January 2009. The NAHA is supported by National Partnership Agreements on: social housing; homelessness; and Aboriginal people living in remote areas.⁹⁶ Housing and Community Services programs are discussed in detail in Chapter 6 on services for victims and children.

NSW Police Force

- 3.14** The NSW Police Force provides front line first response to domestic violence incidents. Police have a number of specific roles including investigation on specific incidents, providing safety and support to victims, and bringing offenders before the court. Police also assist in prevention and early intervention by identifying high risk offenders and repeat victims and referring them to other agencies that provide support services.⁹⁷ Policing of domestic violence is examined in detail in Chapters 7 and 8.

Department of Attorney General and Justice

- 3.15** DAGJ oversees the court system, including local courts throughout NSW which deal with ADVOs and criminal proceedings in respect of domestic violence. Within the cluster of agencies reporting to DAGJ are the Attorney General's Division, Corrective Services NSW, Juvenile Justice, and the Legal Aid Commission of NSW (Legal Aid NSW).
- 3.16** DAGJ's Crime Prevention and Community Programs Division has administered the Domestic Violence Intervention Court Model (DVICM), a pilot program operating in two NSW courts providing an integrated criminal justice and social welfare response to domestic violence. Key elements of the model are now being implemented in local courts throughout the State.⁹⁸ The DVICM model is discussed in detail in Chapter 12 concerning specialisation in courts.
- 3.17** The Victims Services business unit provides support and information to victims of crime, and administers a counselling scheme and a compensation scheme for victims of violent crime.⁹⁹
- 3.18** DAGJ also runs the CREDIT program operating in two courts targeting adult defendants at local courts, by facilitating access and support to a range of services including treatment, rehabilitation, education and training.¹⁰⁰ CREDIT is discussed in Chapter 14 on sentencing.
- 3.19** The Domestic Violence Death Review Team within the NSW State Coroner's Office reports to the Courts and Tribunal Services Division, within the Attorney General's Division of DAGJ. Its role is to:

⁹⁶ The Department of Families, Housing, Community Services and Indigenous Affairs, National affordable housing agreement, accessed 1 August 2012, <<http://fahcsia.gov.au/our-responsibilities/housing-support/programs-services/housing-affordability/national-affordable-housing-agreement>>

⁹⁷ Submission 74, NSW Police Force, p 4.

⁹⁸ Submission 61, NSW Government, p 10.

⁹⁹ NSW Department of Attorney General and Justice, Victims Services-About us, accessed 23 July 2012, <www.lawlink.nsw.gov.au/vs>

¹⁰⁰ Answers to question on notice taken during evidence 7 November 2011, Department of Attorney General and Justice, Question 8, p 10.

- to review closed cases of domestic violence deaths occurring in New South Wales
- to analyse data to identify patterns and trends relating to such deaths
- to make recommendations as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of such deaths
- to establish and maintain a database about such deaths
- to undertake, alone or with others, research that aims to help prevent or reduce the likelihood of such deaths.¹⁰¹

Legal Aid NSW

3.20 Legal AID NSW provides criminal law, family law and civil law services in relation to domestic violence. This includes:

- criminal law duty services to defendants charged domestic violence related offences at most local courts in New South Wales
- funding and administration of the Women's Domestic Violence Court Advocacy Program, which runs Women's Domestic Violence Court Advocacy Services (WDVCAS services) for victims of domestic violence in 28 locations, across 108 local courts
- the Domestic Violence Practitioner Scheme (DVPS), a duty service which assists women and children to obtain legal protection through an ADVO at 32 local courts
- funding for specialist community legal centres including Women's Legal Services NSW and Wirringa Baiya Aboriginal Women's Legal Centre.¹⁰²

3.21 WDVCAS services and the DVPS are discussed at length in Chapter 11 on the legal system.

NSW Ministry of Health

3.22 The NSW Ministry of Health delivers a range of prevention and intervention strategies to assist victims of domestic violence, via local health districts around the State. These include:

- the Domestic Violence Routine Screening Program targeting women attending at antenatal, mental health, drug and alcohol and early childhood services across the State, which identifies women in recent or current domestic violence situations and provides information, support and referral¹⁰³
- counselling services provided through social work departments.

3.23 Routine screening and counselling are discussed in Chapters 5 and 6 respectively.

¹⁰¹ Submission 33, Domestic Violence Death Review Team, p 3; Coroner's Court, Domestic Violence Death Review Team - Annual Reports, accessed 1 August 2012, <www.coroners.lawlink.nsw.gov.au/coroners/dv_annual_reports.html>

¹⁰² Submission 34, Legal Aid NSW, pp 2-3.

¹⁰³ Submission 61, p 7.

3.24 In addition, the Ministry of Health funds and administers:

- sexual assault services in certain hospitals across the State
- the NSW Rape Crisis Centre
- the Education Centre Against Violence, which provides training, consultancy and resource development for services assisting victims of domestic and family violence.¹⁰⁴

A comprehensive new approach

3.25 There have been several important developments in domestic violence policy in New South Wales since the establishment of this inquiry. The first was the announcement of the review of the *NSW Domestic and Family Violence Action Plan*, followed by the release of the NSW Auditor-General's Report, *Responding to domestic and family violence*, and subsequently, the announcement that a strategic policy framework for domestic violence, the NSW Domestic and Family Violence Framework, is being prepared for release in early 2013. Each of these developments is documented below, followed by the Committee's conclusions and recommendations that encourage the NSW Government to seize the opportunity to take a comprehensive new approach to domestic violence in this State.

Review of the *Stop the Violence, End the Silence Action Plan*

3.26 At the commencement of our inquiry, the NSW Government advised the Committee that the Minister for Community Services had initiated an independent review of the *NSW Domestic and Family Violence Action Plan*, to consider whether it remains current and effective and ensure that it aligns with work at the national level.¹⁰⁵

3.27 A number of inquiry participants criticised the Action Plan as lacking in substance and strategic direction for domestic violence policy. For example, Ms Gaby Marcus, Director of the Australian Domestic and Family Violence Clearinghouse, stated in her hearing:

This is an interesting document full of motherhood statements, all of which are very valuable but it has no targets. It has got very little money allocated towards anything. It has got no measures. It has got no proper targeting of suggested interventions and most of all, it does not have any set of government structures as to how it is going to be implemented ...¹⁰⁶

3.28 Both Ms Marcus¹⁰⁷ and the criminologist Professor Julie Stubbs of the Faculty of Law, University of New South Wales, observed that New South Wales used to be considered a policy leader among Australian jurisdictions in its initiatives to address violence against

¹⁰⁴ NSW Health, Welcome, accessed 23 July 2012, <www.ecav.health.nsw.gov.au/ecav/index.asp?pg=0>

¹⁰⁵ Submission 61, p 10; see also Ms Annette Michaux, General Manager, Policy and Research, The Benevolent Society, Evidence, 17 October 2011, p 57.

¹⁰⁶ Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 38.

¹⁰⁷ Ms Marcus, Evidence, 17 October 2011, p 33.

women, but in recent years had fallen behind others. Professor Stubbs observed a number of ways in which NSW policy is now lacking:

I think New South Wales at one point of time was leading in its notions about how best to respond and the current policies it was adopting. But that is no longer true. I think sadly our responses have become a little ad hoc. We do not have a longer-term vision. We do not have the recognition that we need to build an evidence base. We do not build capacity as well as we might. We are not sufficiently committed to integration across the range of portfolio areas that have a role to play and neither between the government and the non-government sectors.¹⁰⁸

NSW Auditor-General's Report, *Responding to Domestic and Family Violence*

3.29 Shortly after our inquiry commenced, the NSW Auditor-General released the report, *Responding to domestic and family violence*, based on a performance audit of FACS, DAGJ, the NSW Police Force and Ministry of Health. The audit assessed how well government and non-government organisations work together to respond to domestic and family violence.

3.30 The key findings of the Auditor-General are summarised as follows:

- Organisations do not have a strategy for working together across the State in response to domestic and family violence, and lack a shared understanding of each others' roles (page 2).
- In its current form, the *NSW Domestic and Family Violence Action Plan* does not provide an adequate framework for improving the response to domestic and family violence. It has no implementation plan or performance indicators to monitor its progress, and was not informed by a comprehensive mapping of services (page 14).
- While government organisations recognise that domestic and family violence creates a lot of work, most do not know how much. This information could inform a considered and strategic response and the allocation of resources to core activities (page 12).
- Government organisations are not required to document strategies and many are unclear about their objectives in relation to domestic and family violence (page 14).
- While police and courts are enforcing laws more vigorously, the amount of domestic and family violence reported has remained stable. Most violence is not reported to Police (page 14).
- Unlike some jurisdictions, New South Wales has no minimum standards across organisations for identifying domestic and family violence, assessing risk, prioritising services, sharing information, making referrals or working with victims (page 17).
- There has been a lack of leadership to drive change for some time (page 18).
- There is no common approach to identify and assess the risk of domestic and family violence (page 18) and no standard referral pathways (page 20).

¹⁰⁸ Professor Julie Stubbs, Faculty of Law, University of New South Wales, Evidence, 7 November 2011, p 2.

- There are barriers to information sharing between agencies about individual clients (page 19).
- There is insufficient training for services responding to domestic and family violence (page 23).
- There is a lack of information about services available to assist victims (page 24).
- Where cooperation occurs, it is short-lived and crisis-driven (page 24).
- Organisations are not dealing effectively with repeat domestic and family violence (page 27).
- Organisations do not have the service information needed to inform collaborative planning to reduce the level of domestic and family violence. There is an absence of mechanisms and authority to bring organisations together to make such plans (page 29).¹⁰⁹

3.31 On the basis of these findings, the Auditor-General made a series of detailed recommendations welcomed by the relevant government agencies.¹¹⁰ These, and more detailed findings, are referred to throughout the following chapter. The key recommendation was as follows:

We recommend that by December 2012, the Chief Executives of the NSW Police Force, Department of Family and Community Services, NSW Ministry of Health and the Department of Attorney General and Justice: ... agree, in consultation with non-government organisations, on how to respond to domestic and family violence. This framework should:

- a) establish minimum standards for identifying domestic and family violence, assessing and prioritising risk, making referrals and working with victims and perpetrators
- b) be based on a comprehensive service gap analysis
- c) establish mechanisms to continuously address the barriers to victims reporting violence and the barriers to victims and perpetrators seeking and being provided with help
- d) spell out the responsibilities of each service in respect of domestic and family violence and the referral pathways between services
- e) require organisations to provide cross-sectoral training to staff responding to domestic and family violence services

¹⁰⁹ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011.

¹¹⁰ Correspondence from Mr Jim Moore, Acting Director-General, Department of Family and Community Services, to Mr Peter Achterstraat, Auditor-General, 1 November 2011, replicated in the NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 5-7.

- f) revise governance structures to ensure that organisations are accountable for working together to deliver domestic and family violence services at the State and local level
- g) ensure joint planning with each other and with non-government organisations
- h) be signed off by the four Chief Executives.¹¹¹

3.32 Inquiry participants told us that they welcomed the Auditor-General's report, and called on the NSW Government to develop a comprehensive way forward to drive and augment reform. Ms Marcus of the Clearinghouse, for example, argued:

I think the thing that Government should be looking at first is the development of a comprehensive, integrated strategy, because without that you are going to repeat the errors that have already been made and come up with a scattergun approach. Without an integrated strategy that puts in place all of the infrastructure that is required, and that is not only financial infrastructure like resources, but the governance, the protocols, the policies, the information exchange requirements, without those things, we are going to continue to make the same mistakes. It actually needs to be something that starts at the top, at the highest level of ministerial accountability, and cascades down through the layers with some bridging of the gulf between the community sector and the Government sector, so that there is a trust built up, there is an understanding of what both sectors do and there are proper protocols put in place around the required services and how they operate together.¹¹²

3.33 Ms Betty Green, Convener of the NSW Domestic Violence Coalition, argued strongly that a new way forward must be adequately funded, with non-government services sufficiently resourced to perform their role.¹¹³

3.34 Both Ms Marcus and Professor Stubbs singled out Victoria as the exemplary Australian jurisdiction in its approach to domestic violence, with the former noting that it is well resourced, well informed through consultation, with good governance structures and an explicitly integrated approach.¹¹⁴ The latter highlighted Victoria's long-term view and its sophisticated, evidence based approach to prevention and early intervention.¹¹⁵

3.35 Dr Jane Wangmann of the Faculty of Law, University of Technology, Sydney, agreed with other inquiry participants that to date, domestic violence policy in New South Wales has been overly focused on the role of the police and the courts, with comparably less attention given to other services for victims and children. She noted that the importance of other services is highlighted by the large proportion of incidents that are never reported to the police, and so are not subject to criminal law or the subject of ADVOs. She went on to argue that the issue

¹¹¹ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 3-4.

¹¹² Ms Marcus, Evidence, 17 October 2011, p 35.

¹¹³ Ms Betty Green, Convener, NSW Domestic Violence Coalition and Manager Liverpool Women's Health Centre, Evidence, 17 October 2011, p 31.

¹¹⁴ Ms Marcus, Evidence, 17 October 2011, p 33; Professor Stubbs, Evidence, 7 November 2011, p 2.

¹¹⁵ Professor Stubbs, Evidence, 7 November 2011, p 2; Submission 60, Professor Julie Stubbs, p 4.

is not about one system or the other, but the need for an integrated response that meets all of victims' and perpetrator's needs – legal and otherwise.¹¹⁶

- 3.36** At the Committee's roundtable discussion, held with key inquiry participants in June 2012, Ms Lyn Walker, Executive Manager of Participation and Equity for Health, VicHealth, which oversees Victoria's prevention strategy for violence against women, urged New South Wales to think well into the future, mindful of where it wants the system to be in ten years, then work back from there in terms of components and the resources required.¹¹⁷

Forthcoming NSW Domestic and Family Violence Framework

- 3.37** When they appeared before the Committee in February, representatives of Women NSW and FACS advised that they were working with DAGJ, NSW Police Force and the Ministry of Health to develop a strategic policy framework for domestic violence in New South Wales, informed by the recommendations of the Auditor-General. This initiative now known as the NSW Domestic and Family Violence Framework (hereafter the DFV Framework or Framework) is intended to deliver a much more positive response to domestic violence.¹¹⁸

- 3.38** Ms Maura Boland, Deputy Director-General, Strategy and Policy, FACS, identified four key areas of work that were informing the development of the DFV Framework:

- a more strategic approach to prevention and early intervention, including common definitions for each and a 'whole of lifespan' approach to prevention commencing in early childhood
- high impact, evidence based strategies
- effective perpetrator interventions and accountability
- a common interpretive framework, whereby all players are using a common language for what they are doing.¹¹⁹

- 3.39** A document tendered at the hearing set out that the Framework would have three key elements:

- Primary prevention strategies
- Service response – system components, which include:
 - Service roles and responsibilities
 - Information directory
 - Governance arrangements
 - Referral pathways
 - Joint service planning

¹¹⁶ Answers to questions on notice taken during evidence 20 February 2012, Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, Sydney, Question 11, p 6.

¹¹⁷ Ms Lyn Walker, Executive Manager, Participation and Equity for Health, VicHealth, Evidence, 18 June 2012, pp 7-8.

¹¹⁸ Ms Maura Boland, Deputy Director-General, Strategy and Policy, Department of Family and Community Services, Evidence, 20 February 2012, pp 3-4.

¹¹⁹ Ms Boland, Evidence, 20 February 2012, pp 3-4.

- Sexual assault response
- Performance measures.
- Service response – practice components
 - Information sharing protocols
 - Risk management tools
 - Practice standards
 - Integrated case coordination
 - Cultural change and training.¹²⁰

3.40 Ms Boland advised that the consulting firm KPMG, which was involved in the development of the National Plan and various elements of the Victorian system, had been engaged by FACS, initially to conduct the review of the *NSW Domestic and Family Violence Action Plan*. However, since the handing down of the Auditor-General's report, its role has changed to assist as 'an expert resource' with the much larger task of developing the new DFV Framework. She also advised that FACS and the other government agencies will take a partnership approach involving 'co-design' of various components with the non government sector. A Senior Executive Steering Committee, comprised of representatives of FACS, NSW Police, DAGJ, the Ministry of Health, Department of Premier and Cabinet and Department of Education and Communities, has been established. The Framework has received no additional resources to date, although partner agencies have contributed funds to cover the cost of the consultancy.¹²¹

3.41 In written answers to questions following the hearing FACS detailed how the Framework will address the Auditor-General's recommendations.¹²² It also advised the Committee that the DFV Framework is expected to be completed in early 2013, with many intermediate deliverables finalised by December 2012.¹²³

3.42 In June 2012 FACS established a tender for a consultancy to develop the DFV Framework. The tender specifications state that:

The development of a Framework will improve the NSW response to DFV via better integration by mainstream service providers and better coordination between government and non government agencies. NSW aims to improve responses to victims (including children) of domestic and family violence and achieve a significant and sustained reduction in domestic and family violence in NSW. The Framework will be underpinned by the following objectives:

1. Demonstrably holding perpetrators to account to change their behaviours and deter others from offending;

¹²⁰ Tabled document, Ms Maura Boland, Deputy Director-General, Strategy and Policy, Department of Family and Community Services, *Project plan for the Domestic Family and Sexual Violence Framework*, 20 February 2012.

¹²¹ Ms Boland, Evidence, 20 February 2012, pp 4, 5, 7-8 and 10.

¹²² Answers to questions on notice taken during evidence 20 February 2012, Family and Community Services, pp 23-24.

¹²³ Correspondence from Ms Maura Boland, Deputy Director General, Policy and Strategy, Department of Family and Community Services, 28 May 2012, p 1.

2. Reforming service delivery systems to deliver a coordinated response, underpinned by assertive outreach to identify those experiencing violence at the earliest possible stage;

3. Changing attitudes and perceptions that support violence in the general community through universal awareness campaigns to address the underlying causes of DFV, including innovative primary prevention campaigns targeting boys and men.¹²⁴

3.43 The specifications identify two key deliverables:

1. The development of a framework that delivers an integrated, whole of state government response to domestic and family violence, focused on primary prevention, offender accountability and the long term reduction of DFV; and

2. The implementation strategy and approach to deliver the operational change required to support the framework.

The key components required for these deliverables include:

- a robust governance structure
- effective sector consultation
- a prevention plan
- a system performance accountability framework
- clearly articulated service system roles and responsibilities
- referral pathways
- information exchange protocols
- minimum practice standards (including justice agencies)
- early identification of domestic and family violence
- risk assessment and management tools
- a strategy for implementing the operational change required to deliver the framework within agencies.¹²⁵

Committee comment

3.44 The Committee welcomes the NSW Government's commitment to develop the NSW DFV Framework. We recognise it as an opportunity to deliver fundamental improvements to the way that we deal with domestic violence in New South Wales. We strongly encourage the government to embrace an active, comprehensive approach to preventing and responding to domestic violence in NSW under the umbrella of the Framework.

3.45 Similarly, we strongly encourage our parliamentary colleagues to adopt a cross-party commitment to comprehensive reform of the domestic violence system, noting how vital such a commitment has been to the longevity and success of reforms in Victoria.

3.46 We are heartened by the list of components identified in the consultancy tender document for the Framework, which are wide-ranging and ambitious. They also reflect the many systemic

¹²⁴ Department of Family and Community Services, *Specification, Consultancy – NSW Domestic and family Violence (DFV) Framework*, RFT Number 1200939/OFWP/2012, p 1.

¹²⁵ Department of Family and Community Services, *Specification, Consultancy – NSW Domestic and family Violence (DFV) Framework*, p 3.

issues identified in both the Auditor-General's report, and in evidence from inquiry participants, which are examined in the following chapters. Together, the views of participants and the findings of the Auditor-General highlight the very substantial work to be done to build the system - both its individual components and the system as a whole - so that it operates in an integrated, coordinated way that delivers positive outcomes for victims, children and perpetrators. At present the domestic violence system works in silos, is patchy, lacks leadership, and outcomes for victims are constrained by system requirements. An ambitious, well resourced strategic framework will be essential to provide a vision for and drive the comprehensive reforms that are so necessary.

3.47 Given the wholesale changes that are required within the system, as well as the inherently incremental nature of prevention, a long-term approach will be essential, as will be cross-party commitment on the part of the Parliament, as well as adequate resources to achieve the Framework's objectives. In the interim, the Committee considers it critical that the timeframes for the development of the DFV Framework and the implementation of the Audit Office's recommendations be met. We endorse those recommendations and strongly encourage the NSW Government in the task of meeting its commitments in line with current timeframes.

3.48 In the Committee's view, the substantial reforms that are required are very likely to require additional resources. While many improvements can be delivered within agencies' existing budgets, others will necessarily require additional funds, most especially primary prevention (as discussed in Chapter 5), as well as other elements identified in the next chapter, such as case management, and services for victims and children, discussed in Chapter 6. Again, we strongly encourage the NSW Government to prioritise allocations to these strategies in the knowledge that they will address the recommendations of the Auditor-General and this Committee, and in the longer term, will reduce the costs to government and the community.

Recommendation 1

That the NSW Government embrace an active, comprehensive and long-term commitment to preventing and addressing domestic violence, and that this be reflected in the forthcoming NSW Domestic and Family Violence Framework.

Recommendation 2

That the NSW Parliament be strongly encouraged to adopt a cross-party commitment to comprehensive reform to the domestic violence system and to the forthcoming NSW Domestic and Family Violence Framework.

Recommendation 3

That the NSW Government ensure that adequate resources are allocated for the forthcoming NSW Domestic and Family Violence Framework, and that the timeframes are met for both the Framework's completion [early 2013] and the implementation of the recommendations of the Auditor-General's Report, *Responding to Domestic and Family Violence* [December 2012].

- 3.49** Finally, the Committee considers that it the imperative for reform is so significant as to justify a further inquiry on our part, to review progress made in respect of our recommendations in two years' time.

Recommendation 4

That in two years' time the NSW Government refer terms of reference to the Standing Committee on Social Issues to review progress made in respect of the recommendations set out in this report.

- 3.50** In the following chapter the Committee considers a number of specific elements of the forthcoming DFV Framework.

Chapter 4 Elements of the forthcoming NSW Domestic and Family Violence Framework

In the previous chapter the Committee explored the imperative to develop a comprehensive new approach to preventing and addressing domestic and family violence in New South Wales, recommending that the NSW Government embrace such an approach under the umbrella of the forthcoming NSW Domestic and Family Violence Framework (hereafter DFV Framework). This chapter examines the views of inquiry participants about the various features and elements of that comprehensive new approach, and documents the Committee's conclusions about them.

The comprehensiveness of the reforms that are so necessary is reflected in the numerous sections that make up this chapter. We start by considering the need for a common definition of domestic violence across all relevant agencies that will set the ambit of the forthcoming DFV Framework, and the core policy principles that should underpin it. We then examine and make recommendations on a number of measures to improve coordination and integration of services, including governance arrangements, regional and local coordination, information sharing between agencies, a shared risk assessment framework, and case management. We then explore the desirability of service standards and strategies to address barriers to service access.

All of our recommendations are geared towards enhancing a practical focus on the needs of and outcomes for the individuals affected by domestic violence: most significantly, the outcome of safety and freedom from violence for victims and children, but also accountability and change to non-violent behaviour for perpetrators. Every service that plays a role in the domestic violence system, whether a police station, a local court, a refuge, an emergency department, a women's health centre, should be focused on these goals, and on their own part, integrated with that of other services, in achieving those outcomes. In addition, the NSW Government, and specifically Women NSW, is responsible leading others towards these goals as it develops and oversees the implementation of the comprehensive new approach.

A common definition

- 4.1 Several government and non government inquiry participants advocated that a common definition of domestic and family violence be adopted for all agencies and services comprising the domestic violence system in New South Wales, in order to provide clarity regarding the target group of services. At present there are many different definitions of domestic violence governing the ambit of legislation, policy and programs in this State. The specific issue of the definition of 'domestic relationship' in the *Crimes (Domestic and Personal Violence) Act 2007* (hereafter the Act) is canvassed briefly here, but examined in detail in Chapter 9 concerning apprehended domestic violence orders (ADVOs) (see paragraphs 9.19 to 9.45).
- 4.2 The NSW Police Force highlighted the plethora of definitions operating in New South Wales at the present time, and the implications for clients' access to services:

At present there are 17 different definitions of domestic violence across agencies in NSW. This means that a victim of domestic violence may be able to access one service

because she/he fits their definition, but may not be able to access another service because she/he doesn't fit their definition.¹²⁶

- 4.3** Noting that its response to domestic violence is governed by the definitions in the Act, the NSW Police Force argued that the definition of 'domestic relationship' is too broad in that it encompasses non-family households such as share houses, boarding houses and university dormitories. It contended that violence in these settings is fundamentally different to that between intimate partners and family members, and would be better dealt with under the umbrella of 'personal violence'.¹²⁷ In evidence, Assistant Commissioner Mark Murdoch, Spokesperson for Domestic and Family Violence for the NSW Police Force argued that the present definition prevents police from directing their resources where they are most needed.¹²⁸ The NSW Police Association shared this view, whilst calling for greater clarity and consistency in general.¹²⁹
- 4.4** On the other hand, participants such as Women's Legal Services NSW and disability advocates argued strongly for people with disability, whom they argued are especially vulnerable to violence in boarding houses and residential settings, to retain their place within the current definition of domestic violence offences under the Act.¹³⁰
- 4.5** The NSW Ministry of Health (NSW Health) noted that the definition in the Act is broader than that used in the health system, which focuses on violence between intimate partners and family members. It indicated that one of the outcomes it is seeking from the DFV Framework is a 'common language and understanding of domestic and family violence'.¹³¹
- 4.6** Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice (DAGJ), spoke in evidence about the need 'to set common definitions, common goals and a clear framework for the provision of service that is not departmental specific but is governmental specific', contending that this will be very important in breaking down the silos that currently exist in responses to domestic violence in New South Wales.¹³² Similarly, the Victims of Crime Assistance League (VOCAL) argued that a common, comprehensive definition across government and non-government services will be vital to those organisations collaborating towards a common goal.¹³³
- 4.7** As noted in the previous chapter, representatives of the Department of Family and Community Services (FACS) advised the Committee that one of four key areas of work within

¹²⁶ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 1, p 1.

¹²⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 1, p 1; Assistant Commissioner Mark Murdoch, Commander, Central Metropolitan Region and Corporate Spokesperson for Domestic and Family Violence, NSW Police Force, Evidence, 20 February 2012, p 39.

¹²⁸ Mr Murdoch, Evidence, 18 June 2012, p 39.

¹²⁹ Submission 63, Police Association of NSW, p 6; Sergeant Prue Burgun, Treasurer, Police Association of New South Wales, Evidence, 20 February 2012, p 53.

¹³⁰ Ms Janet Loughman, Principal Solicitor, Women's Legal Service NSW, Evidence, 18 June 2012, p 3; Submission 50, People with Disability Australia, pp 5-8.

¹³¹ Answers to supplementary questions 30 April 2012, NSW Ministry of Health, Question 2, p 2.

¹³² Mr Brendan Thomas, Assistant Director General, Department of Attorney General and Justice, Evidence, 30 April 2012, p 33.

¹³³ Supplementary submission 3a, Victims of Crime Assistance League NSW, p 7.

the DFV Framework will be the development of a ‘common interpretive framework’ providing common definitions so that all agencies with a role to play in addressing domestic violence use the same language and understand the same context in which the behaviour takes place. Ms Maura Boland, Deputy Director-General, Strategy and Policy, in FACS described this as ‘one of the foundation pieces for making sure that people receive a much more seamless service, rather than a very fragmented service.’¹³⁴

Committee comment

- 4.8** The Committee considers that the present situation of many different definitions of domestic violence operating in New South Wales is very problematic for clarity of purpose and ease of access by service users. We strongly encourage the NSW Government in its commitment to develop a common definition of domestic violence under the forthcoming NSW DFV Framework.
- 4.9** We agree in principle with the NSW Police Force’s position that ‘domestic violence’ in the NSW legislative and policy context should encompass only intimate partner and family violence, but at the same time we are very concerned that because of their particular vulnerability, the protections for people with disability should not be diluted. Recommendations 49, 50 and 51 in Chapter 9 capture the Committee’s conclusions on this issue.
- 4.10** As noted in Chapter 2, the Committee considers that the system for preventing and responding to domestic violence needs to be inclusive of victims and perpetrators of both genders. We agree with the near-consensus among inquiry participants that domestic violence is inherently gendered, with the majority of violence perpetrated on women by men. However, we also recognise that there are female perpetrators and male victims, and that violence also occurs in same sex relationships. It is important that all these permutations of intimate partner violence be addressed in the forthcoming DFV Framework, as well as violence in non-intimate family relationships such as that against parents by young people or between siblings, and domestic violence in specific population groups.
- 4.11** The Committee was advised that sexual assault will be included in the forthcoming DFV Framework, following feedback from key non government stakeholders. This issue was not examined as part of our inquiry.

Recommendation 5

That the NSW Government develop a common definition of domestic and family violence setting the scope of the forthcoming NSW Domestic and Family Violence Framework that targets violence between intimate partners and family members, and is inclusive of victims and perpetrators of both genders.

¹³⁴ Ms Maura Boland, Deputy Director-General, Strategy and Policy, Department of Family and Community Services, Evidence, 20 February 2012, pp 3-4.

Core policy principles

- 4.12** Various government and non government inquiry participants identified an imperative for a wholesale shift in policy and programs towards a focus on client needs, especially those of victims, and a corresponding emphasis on outcomes for victims, children and offenders.

A new focus on people's needs

- 4.13** The apparent value in a shift within the system towards a focus on individual clients' needs was exemplified during our visit to the Central West of New South Wales, when the Committee heard that a community support service was instructed by its funding body not to transport women and children:

I find the difficulty with my service when there is any domestic violence and a family member or the person themselves who is suffering the violence comes to me and there are little children involved. I cannot take them anywhere because the Department ... in all its wisdom says that my program is not a community transport service; I am not a taxi and car seats are not provided. It is not in our position description. I cannot provide community transport because it is for Home and Community Care clients and they do not transport children because they do not have car seats. These mums are running [away], they are not going to think about transport or driving or who is going to drive them.¹³⁵

- 4.14** The Outer West Domestic Violence Network, MetWest Violence Prevention Network and Mt Druitt Family Violence Response and Support Strategy Leadership Group all noted their dismay at increasing restrictions being placed on non government service providers working with domestic violence clients within early intervention programs. They argued that these restrictions serve to limit support, education and advocacy for victims and children.¹³⁶ The Mt Druitt Family Violence Response and Support Strategy Leadership Group also contended that such restrictions compromise the safety and wellbeing of families, whilst duplicating services by encouraging victims to seek additional support from an agency that is 'allowed' to provide it. It went on to argue that services that are responsive to individual client needs are more likely to demonstrate sustainable outcomes and are especially important in ensuring safe support for victims and children.¹³⁷
- 4.15** Ms Debbie Bliss, Chief Executive Officer of the Yoorana Gunya Family Violence Healing Centre told the Committee that recent changes to tender arrangements have meant that large charity organisations are gaining funding that used to be quarantined for Aboriginal organisations. She asserted that that is reducing holistic responses to clients' needs, because

¹³⁵ Ms Julie Webb, Coordinator, Aboriginal Community Support Services Care West, Evidence, 28 February 2012, p 5.

¹³⁶ Submission 29, Outer West Domestic Violence Network, p 2; Submission 11, MetWest Violence Prevention Network, p 2; Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group, p 8.

¹³⁷ Submission 23, pp 8-9.

Aboriginal organisations have greater autonomy to work with clients in a flexible way than do many other services.¹³⁸

- 4.16** VOCAL pointed to the way that the child protection system places significant pressure on women to leave a violent relationship by ‘threatening’ the potential consequence of removing the child from their care (this issue is discussed in greater detail in Chapter 6, which focuses on services for victims). It argued that this makes the victim the problem, rather than assisting them, while also taking the focus off the perpetrator’s accountability to change. VOCAL went on to contend that rather than setting people up to fail, services should work in a coordinated way that is responsive to victims needs:

We (services, agencies and courts) in the state scene need to be able to respond to victims of DV in ways that do not set them up to fail in a later, related system, simply because we do not have a properly coordinated system.¹³⁹

- 4.17** Representatives of both the Department of Attorney General and Justice (DAGJ) and the NSW Police Force also called for a new focus on people’s needs. Assistant Commissioner Murdoch argued that the ADVO system needs to be more ‘victim-friendly’, with greater onus put on the perpetrator, suggesting that this will serve to increase reporting by victims:

I have a very firm view that we need to start to put some onus back on the perpetrator. Currently the whole system is skewed in favour of the perpetrator, not the victim. The victim has to do everything. They need to make the complaint, they need to go to court and prosecute the matter, and if they want their order registered in another State—they move interstate to avoid the perpetrator—they need to register the order. If they do not, it is not enforceable. Everything falls to the victim to do. The perpetrator just goes about their merry way. We need to get the balance right ... if we want victims to report, they need to feel supported ...¹⁴⁰

- 4.18** Mr Thomas of DAGJ called for a clear policy direction that people’s needs are paramount and that all agencies should be focused on meeting those needs. Correspondingly, he argued that, ‘the traditional response that this is not in my bailiwick or it is outside my area of responsibility needs to go.’¹⁴¹ He emphasised the importance of timely response and service coordination to addressing those needs.¹⁴²

- 4.19** This same emphasis informed the evidence of Sergeant Sharon Walker, a Police Prosecutor at Sutherland Local Court, who suggested that a major element of the success of the system there is its focus on supporting the victim in their journey through the court process via cooperation between all the agencies and the magistrates that comprise it.¹⁴³ Dr Jane Wangmann of the Faculty of Law, University of Technology, Sydney, agreed that one of the

¹³⁸ Ms Donna Bliss, Chief Executive Officer, Yoorana Gunya Family Healing Centre Aboriginal Corporation, Evidence, 28 February 2012, p 2; Email from Ms Bliss to Senior Project Officer, 12 March 2012.

¹³⁹ Submission 3, Victims of Crime Assistance League, p 9.

¹⁴⁰ Mr Murdoch, Evidence, 20 February 2012, p 40.

¹⁴¹ Mr Thomas, Evidence, 30 April 2012, p 36.

¹⁴² Mr Thomas, Evidence, 30 April 2012, p 31.

¹⁴³ Sergeant Sharon Walker, Police Prosecutor, NSW Police Force, Evidence, 20 February 2012, pp 44-45

successful elements of the Sutherland Women's Domestic Violence Program that she evaluated was its holistic support for individual victims' needs.¹⁴⁴

4.20 In written answers to questions, the NSW Police Force also called for domestic violence to be viewed holistically for the couples/families involved, with offenders and victims in one family able to access complementary and concurrent programs, with similar supports provided to children, upon whom the impact of domestic violence is profound.¹⁴⁵

4.21 Interestingly, Dr Lesley Laing of the Faculty of Education and Social Work at the University of Sydney stated that in her view, part of the problem stems from the legal system's focus on accountability of offenders, which does not naturally sit with a focus on support for victims:

I think part of the issue we have in using the legal system is that it is very focused on holding offenders accountable. It is not an easy fit to have that system think about safety of women and children. It is really stretching to try and get it to be more responsive and that is a lot of our struggle.¹⁴⁶

4.22 Like the NSW Police Force, Ms Claudia Guajardo, Community Safety and Crime Prevention Officer with Fairfield City Council, emphasised the need for holistic support for individual victims and families, whereby their various needs are assessed and communicated to other relevant agencies, to ensure that those needs are addressed.¹⁴⁷ The issue of coordination of services is discussed in detail in a later section of this chapter.

A new focus on outcomes

4.23 Dr Laing advised the Committee that in her view, the main goals of the domestic violence system should be the safety and autonomy of victims and children, and the accountability of offenders.¹⁴⁸

4.24 Representatives of the Attorney General's Division of DAGJ told the Committee that having reviewed the Domestic Violence Court Intervention Model, they are now developing a Domestic Violence Justice Framework as a key vehicle to improve the criminal justice system's responses to domestic violence. An important goal will be to improve people's experience of the system, including by making the system less complicated for those accessing it.¹⁴⁹ In written answers to questions, DAGJ advised that the Framework seeks to achieve the following seven outcomes from the services provided by police, local courts, and Legal Aid NSW, including its Criminal Division and Women's Domestic Violence Court Advocacy Services:

¹⁴⁴ Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, Sydney, Evidence, 20 February 2012, p 34.

¹⁴⁵ Answers to supplementary questions, NSW Police Force, pp 2-5.

¹⁴⁶ Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney, Evidence, 17 October 2011, p 45.

¹⁴⁷ Ms Claudia Guajardo, Community Safety and Crime Prevention Officer, Fairfield City Council, Evidence, 26 March 2012, p 43 and 57.

¹⁴⁸ Dr Laing, Evidence, 17 October 2011, p 45.

¹⁴⁹ Mr Thomas, Evidence, 30 April 2012, p 24.

- victims' safety is achieved immediately and risk of further violence is reduced
- victims have confidence in the justice system and are empowered to participate
- victims have the support they need
- abusive behaviour is stopped
- perpetrators are held to account
- perpetrators change their behaviour and reoffending is reduced or eliminated
- the court process for domestic violence matters is efficient.¹⁵⁰

4.25 DAGJ further advised that the framework will establish a performance measurement approach for justice agencies that uses outcomes measures as one of three means of measuring performance. The outcome measures will consider whether combined strategies have made an appreciable difference to victim safety and participation in the justice system, and reduced reoffending.¹⁵¹ The measurement of service standards is discussed again in a subsequent section of this chapter.

Committee comment

4.26 The Committee considers that the present system for responding to domestic violence impedes a focus on victims and their needs. We agree with numerous participants that there must be a reorientation of both government and non government service systems so that they are more cognisant of and responsive to people's needs, most especially those victims. It is crucial that this fundamental problem be addressed if the new DFV Framework is to bring about systemic change. The core principles underpinning the new Framework must be that people's needs are paramount, that the system exists to address those needs, and that all agencies and workers have a responsibility to respond to needs in a timely, flexible, holistic and individualised way.

4.27 Similarly, there needs to be a focus on outcomes for victims, children and perpetrators across all government and non government organisations responding to domestic and family violence. The primary outcome for victims and children should be safety and freedom from violence. Ultimately, the goal should be their long term wellbeing. For perpetrators, the outcome should be accountability for violence, and ultimately, change to non-violent behaviour. While DAGJ will implement an explicit outcomes focus for criminal justice agencies through its Domestic Violence Justice Framework,¹⁵² the Committee considers that the same approach is imperative for the NSW DFV Framework as a whole.

¹⁵⁰ Answers to questions on notice 30 April 2012, Department of Attorney General and Justice, Question 6, p 7.

¹⁵¹ Answers to questions on notice 30 April 2012, Department of Attorney General and Justice, Question 6, p 7.

¹⁵² Answers to supplementary questions 30 April 2012, Department of Attorney General and Justice, Question 6, p 7.

- 4.28** First and foremost, however, the Committee considers that the DFV Framework should be built on the principle that domestic violence in all its forms is completely unacceptable and as a society, an ongoing effort must be made to eradicate its occurrence.
- 4.29** The Committee notes the first two objectives of the DFV Framework, as set out in the tender specification document and documented in the previous chapter. The first emphasises holding perpetrators to account, while the second is ‘Reforming service delivery systems to deliver a coordinated response, underpinned by assertive outreach to identify those experiencing violence at the earliest possible stage’. While both objectives are most welcome, in light of the comments of Dr Laing and others above, we have some concern that the accountability of offenders remains pre-eminent, and that a focus on the needs of victims is not yet made explicit. We strongly urge Women NSW to address this as it oversees the Framework’s development.

Recommendation 6

That the NSW Government ensure that the forthcoming NSW Domestic and Family Violence Framework is underpinned by three core policy principles, which in turn, should explicitly guide the work of all government and non government agencies with a role to play in responding to domestic and family violence:

- domestic violence in all its forms is completely unacceptable and as a society, an ongoing effort must be made to eradicate its occurrence
- peoples’ needs are paramount and agencies and workers across the system have a responsibility to respond to needs in a timely, holistic and individualised way
- the system should be focused on the outcomes of safety and freedom from violence for victims and children, and accountability and non-violent behaviour for perpetrators.

An evidence based approach

- 4.30** There was also a call among participants for an evidence based approach to be built into the DFV Framework, and a number of participants linked this issue to funding arrangements for non government organisations.

Evidence based strategies and programs

- 4.31** This was a strong message from NSW Health, with Dr Kerry Chant, Chief Health Officer and Deputy Director-General, Population and Public Health, calling for a commitment to evidence-informed models of service, and to ‘an evidence generation framework’ that enables government to prioritise the best models of service into the future.¹⁵³
- 4.32** Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research (BOCSAR), highlighted the poor evidence base for the effectiveness of domestic violence

¹⁵³ Dr Kerry Chant, Deputy Director General, Population and Public Health, and Chief Health Officer, New South Wales Ministry of Health, Evidence, 30 April 2012, p 3; see also Evidence, 18 June 2012, p 5.

programs at present, despite the seriousness of domestic violence as a problem and the range of responses to it. He called for a careful process of program implementation, where new measures are piloted in an area, tested carefully, and if they shown to be effective, then refined and expanded, as occurs in other areas of policy:

We would have this ongoing process of testing, developing, refining and expanding programs that work and taking off the plate the ones that do not. It is just that we do that automatically in public health and traffic but we do not do it automatically in criminal justice.¹⁵⁴

- 4.33** Women's Legal Services supported this approach, whilst also calling for non-government organisations to be adequately funded to conduct rigorous, longer term evaluations. Representatives from Women's Legal Services explained that many non government organisations receive small project grants, some as low as \$5,000, which correspondingly have quite superficial evaluations. They argued it would be preferable for organisations to evaluate larger scale pilots.¹⁵⁵
- 4.34** A number of participants including the NSW Police Association, Youth Action Policy Association and Dr Jane Wangmann of the University of Technology, Sydney, called for substantial improvements to data collection by agencies with a role in preventing or responding to domestic violence.¹⁵⁶ The issue of evidence and evaluation specifically in respect of prevention and early intervention services is explored in greater detail in Chapter 5, with Recommendations 22 and 23 addressing this issue.
- 4.35** Like Dr Weatherburn and other inquiry participants, Dr Jane Wangmann acknowledged the substantial costs associated with rigorous evaluations. She called for investment in both quantitative and qualitative research, emphasising that simply looking at numbers will only furnish so much information. Important insights into the experience of victims and the changes in violent behaviour that may or may not have taken place, can only be gained through qualitative methods.¹⁵⁷
- 4.36** At the Committee's roundtable Ms Denele Crozier, Executive Officer of Women's Health NSW, suggested a mechanism where agencies and workers could share their knowledge of what works and what doesn't gained through evaluations, suggesting that a yearly forum would fill an important gap here, whilst also enhancing interagency communication.¹⁵⁸
- 4.37** Ms Boland of FACS advised the Committee that her Department is looking to build an evidence based approach into the DFV Framework, with individual strategies supported by available evidence.¹⁵⁹ We do not have further information on its plans at this stage.

¹⁵⁴ Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 7 November 2011, p 15 and 17.

¹⁵⁵ Ms Helen Campbell, Executive Officer, Women's Legal Service NSW, Evidence, 7 November 2011, pp 47-48; Ms Edwina MacDonald, Law Reform and Policy Coordinator, Women's Legal Service NSW, Evidence, 7 November 2011, p 48.

¹⁵⁶ Dr Wangmann, Evidence, 20 February 2012, pp 28.

¹⁵⁷ Dr Wangmann, Evidence, 20 February 2012, pp 28.

¹⁵⁸ Ms Denele Crozier, Executive Officer, Women's Health NSW, Evidence, 18 June 2012, p 5.

¹⁵⁹ Ms Boland, Evidence, 20 February 2012, p 3.

Funding for non government organisations

4.38 A number of participants linked the issue of an evidence based approach to the desirability of long term funding for pilot programs that are demonstrated to be effective.

4.39 Several witnesses spoke of their frustration at having developed innovative programs under the Domestic Violence Grants Program or other 'buckets' of funding, for which they were subsequently unable to secure ongoing funding. For example, Ms Betty Green, Manager of the Liverpool Women's Health Centre and Convenor of the NSW Domestic Violence Coalition spoke of two programs developed in Liverpool that were carefully evaluated by academic researchers and demonstrated positive outcomes, but were not able to continue because no longer term funding stream was available. The first, known as Women Educating Each Other Women in Safe and Equal Relationships (WEEO WISER), targeted young women in year nine, training them to go into schools to educate other young women. The second focused on the intersection of domestic violence and mental health. Ms Green commented on how frustrating it is to demonstrate positive outcomes via quality evaluations, then be unable to obtain long term funding:

I guess as services when you go to the trouble to also get them properly evaluated, you have got your evidence base, to know that it does work but you still cannot get ongoing funding for something; that can be really quite morale blowing.¹⁶⁰

4.40 Her colleague from the Domestic Violence Coalition, Ms Julie Stewart, suggested that funding projects from a short term grants program might seem good at the time, but it creates expectations that cannot be met without an avenue for organisations to gain long term funds. She called for a more proactive approach to funding innovative services:

I think it is a shame that in New South Wales there has only been recourse to small buckets of money for short term projects and often services are delivered which will come to an end inevitably. There needs to be a better planned approach to funding programs, especially something like that that works.¹⁶¹

4.41 Ms Rachel Martin, Principal Solicitor with Wirringa Baiya Aboriginal Women's Legal Centre, observed that funding programs to address family violence in Aboriginal communities necessarily require a long term approach operating at multiple levels at the same time, given the complexity of the issue:

Certainly we stress and lots of other reports stress that we are looking for local solutions but having said that, multi-level solutions are needed ... For us the bottom issue is the dollar and there needs to be investment in long-term programs not pilot programs because programs need a while to get themselves established; they need a while to get the trust of the community and so two- or three-year funding cycles are

¹⁶⁰ Ms Betty Green, Convenor, NSW Domestic Violence Coalition and Manager Liverpool Women's Health Centre, Evidence, 17 October 2011, pp 28-29. See also Dr Laing, Evidence, 17 October 2011, p 53 and Professor Julie Stubbs, Faculty of Law, University of New South Wales, Evidence, 7 November 2011, p 2.

¹⁶¹ Ms Julie Stewart, Secretary, NSW Domestic Violence Coalition and Coordinator, Manly Warringah Women's Resource Centre, Evidence, 17 October 2011, p 28.

just not going to work. There needs to be long-term investment because for solutions in terms of intervention and prevention, we are talking many years.¹⁶²

- 4.42** Similarly, the Mt Druitt Family Violence Response and Support Strategy Leadership Group, the Nepean Blue Mountains Local Health District and Western Sydney Local Health District all argued that pilot programs that demonstrate strong outcomes and fill gaps within the service system should have the option for ongoing funding. They pointed to the resources that are wasted when programs fold, and like Ms Martin, highlighted that effecting sustainable change in respect of domestic and family violence will only be achieved through an ongoing approach.¹⁶³
- 4.43** Professor Julie Stubbs of the Faculty of Law, University of New South Wales, agreed that a short term approach to funding has been an issue in domestic violence service planning in New South Wales, and reported that Victoria has been wiser in recognising the deficits in capacity among service providers, and in investing in capacity building so that a sustainable program emerges. She gave the example of ‘train the trainer’ programs that diffuse the benefits of programs to other organisations, rather than retaining them within one organisation.¹⁶⁴
- 4.44** In written answers to questions Women NSW advised that it is reviewing the Domestic and Family Violence Grants Program, ‘in acknowledgement that short, one-off funding is unlikely to deliver sustainable outcomes, and in recognition of the need to improve the quality of the programs.’¹⁶⁵

Committee comment

- 4.45** Like numerous participants, the Committee sees significant value in an explicit evidence-based approach being built into the forthcoming NSW DFV Framework and we are pleased that FACS has indicated this will occur. Such an approach is essential to ensuring that scarce resources are spent on measures that are effective in preventing and addressing domestic violence. The Committee envisages two essential components of this approach: data collection about the characteristics and experiences of service users; and quality evaluations by government and non government service providers, including through quantitative and qualitative means. We readily accept that this will necessarily require additional investment by government, and suggest that such investment is prudent in that it will help to ensure that services, both government and non government, are effective into the future.
- 4.46** We feel strongly that much better data collection and reporting is required, to facilitate a more rigorous and evidence based approach to domestic violence. Accordingly we recommend that BOCSAR be provided with the necessary additional resources to coordinate across government agencies the collection and analysis of data and information associated with

¹⁶² Ms Rachel Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women’s Legal Centre, Evidence, 5 March 2012, p 3.

¹⁶³ Submission 23, pp 8-9; Submission 16, Nepean Blue Mountains Local Health District, p 3; Submission 30, Western Sydney Local Health District, p 3.

¹⁶⁴ Professor Stubbs, Evidence, 7 November 2011, p 2.

¹⁶⁵ Answers to supplementary questions, Department of Family and Community Services, Question 7, p 14.

domestic violence. Furthermore, BOCSAR should publish on an annual basis a detailed report on domestic violence trends in New South Wales.

- 4.47 In addition, we consider that the agencies developing the DFV Framework must grapple with the issue of short term, grant based funds for projects and pilots versus longer term funding for programs that are demonstrated to be effective. There needs to be a mechanism whereby successful innovations are retained and where appropriate, expanded. Thus we welcome the review of the Domestic Violence Grants Program.
- 4.48 We also see value in the suggestion that a yearly forum be held in which government and non government agencies share the findings of their evaluations. This would not only enable the sharing evidence, but would help to build communication and collaboration between services, as well as transparency.
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Recommendation 7

That the NSW Government build an evidence based approach into the NSW Domestic and Family Violence Framework, with an explicit commitment to research and evaluation and to building the evidence base about prevention, early intervention and tertiary strategies. In doing so, it should develop an approach to funding that provides for long term investment in pilot programs that demonstrate effectiveness in delivering positive outcomes.

Recommendation 8

That the NSW Government provide the NSW Bureau of Crime Statistics and Research with the necessary additional resources to coordinate across government agencies the collection and analysis of data and information associated with domestic violence, and that BOCSAR publish on an annual basis a detailed report on domestic violence trends in New South Wales.

Recommendation 9

That Women NSW host a yearly forum to enable government and non government organisations to present and share their program evaluation findings.

Coordination and integration

- 4.49 The key message of the Auditor-General's report, *Responding to domestic and family violence* (hereafter the Auditor-General's report), released in November 2011, is the need for coordination between and integration of the various systems responding to domestic and family violence, in order to encourage people to seek and to assist them effectively when they do. As noted in the previous Chapter, the Auditor-General made a series of detailed recommendations welcomed by the relevant government agencies.¹⁶⁶

¹⁶⁶ Letter from Mr Jim Moore, Acting Director-General, Department of Family and Community Services, to Mr Peter Achterstraat, Auditor-General, 1 November 2011, replicated in the NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 5-7.

4.50 The Audit Office's Recommendations 5, 6 and 7, focusing on integration, were as follows:

We recommend that by December 2012, the Chief Executives of the NSW Police Force, Department of Family and Community Services, NSW Ministry of Health and the Department of Attorney General and Justice: ... agree, in consultation with non-government organisations, on how to respond to domestic and family violence. This framework should:

- a) establish minimum standards for identifying domestic and family violence, assessing and prioritising risk, making referrals and working with victims and perpetrators
- b) be based on a comprehensive service gap analysis
- c) establish mechanisms to continuously address the barriers to victims reporting violence and the barriers to victims and perpetrators seeking and being provided with help
- d) spell out the responsibilities of each service in respect of domestic and family violence and the referral pathways between services
- e) require organisations to provide cross-sectoral training to staff responding to domestic and family violence services
- f) revise governance structures to ensure that organisations are accountable for working together to deliver domestic and family violence services at the State and local level
- g) ensure joint planning with each other and with non-government organisations
- h) be signed off by the four Chief Executives.

We recommend that by December 2012, the Chief Executives ... ensure that organisations comply with the framework ... and attend inter-sectoral committees for the reduction of domestic and family violence.

We recommend that by December 2012, the Chief Executives ... publish their strategies including output or outcome measures that can be used to monitor their impact on domestic and family violence over the following five years (2013 to 2018).¹⁶⁷

4.51 The Committee also notes that the Australian and NSW Law Reform Commissions explored this issue in their joint reference on family violence, observing that integrated responses will improve key players' understanding and practice, and enhance service delivery to victims.¹⁶⁸ The Commissions' recommendations included that governments, in establishing or further developing integrated responses to family violence, ensure ongoing collaboration via protocols

¹⁶⁷ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 3-4.

¹⁶⁸ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report 114, p 76.

and memorandums of understanding, information-sharing arrangements and regular meetings, and where possible, designated liaison officers.¹⁶⁹

4.52 Many inquiry participants addressed the issues of integration and coordination, whether at the central, regional and local level.

4.53 For example, the Australian Domestic and Family Violence Clearinghouse, the Domestic Violence Coalition and the Metro Migrant Resource Centre underscored the importance of a shared framework to guide policy and service delivery.¹⁷⁰ This imperative was noted in the previous chapter. Ms Julie Stewart, Secretary of the Domestic Violence Coalition, told the Committee that this issue was longstanding:

My particular concern and it has been probably since the time I first worked for the public service, was the lack of co-ordination and integration of service delivery. Currently there is no mechanism to ensure co-ordination or consistent policy implementation, consistent practice responses, [or] shared views about the way in which services should be delivered.¹⁷¹

4.54 Concerns about poor integration focused on both government and non government services. For example, the Australian Domestic and Family Violence Clearinghouse representatives spoke of a lack of integration between the various government agencies and within the community sector, while the Consumer Advisory Council – Mental Health observed that ‘the domestic violence sector, mental health sector and legal sector do not seem to work together and people are falling through the cracks.’¹⁷²

4.55 The integration of criminal justice and social welfare responses to domestic violence has been at the heart of the Domestic Violence Intervention Court Model (DVICM) managed by DAGJ (including the Attorney General’s Division, Corrective Services NSW and Legal Aid NSW) in collaboration with the NSW Police Force and FACS (Housing NSW and Community Services).¹⁷³ The DVICM is discussed in detail in Chapter 12 on specialization in courts. It has been implemented in two sites – Campbelltown and Wagga Wagga – and those elements that have been evaluated as effective are progressively being expanded across the State.¹⁷⁴ The final report of the Strategic Review of the DVICM identified that the inconsistent availability of integrated programs is one of numerous challenges that the justice system faces in relation to responding to domestic and family violence and went on to explain what integration looks like in this context:

¹⁶⁹ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report 114, Recommendation 29-2, p 44. See also Recommendation 29-1, p 43.

¹⁷⁰ Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 35; Ms Stewart, Evidence, 17 October 2011, p 23; Submission 20, Metro Migrant Resource Centre, p 4.

¹⁷¹ Ms Stewart, Evidence, 17 October 2011, p 23.

¹⁷² Dr Rochelle Braaf, Senior Research Officer, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 35; Ms Tara Dias, Senior Policy Officer, NSW Consumer Advisory Group – Mental Health, Evidence 30 April 2012, p 43.

¹⁷³ Department of Attorney General and Justice, *Strategic Review of the Domestic Violence Court Intervention Model: Final Report*, December 2011, p 3.

¹⁷⁴ Mr Thomas, Evidence, 17 November 2011, p 12.

Within integrated programs each agency has an understanding of how their practice impacts on others, and there is collaboration to ensure that victims, children and offenders receive effective support and intervention. Agencies have mechanisms in place for referrals, collaboration about families and problem solving about systemic issues. There have been several pilots and trials of integrated domestic violence programs, but these are not yet widespread, and no one program has statewide coverage.¹⁷⁵

- 4.56** Recognising that achieving effective integration will require a multi-pronged approach, the Committee now considers specific measures necessary to an integrated approach: governance arrangements, regional coordination, local coordination, information sharing between agencies, a shared risk assessment framework and case management.

Governance arrangements

- 4.57** The Auditor-General's report observed that there has been a lack of leadership to drive reform for some time in the domestic violence system, that there is no mechanism for government and non government agencies to work together, and that the scope given to the non government sector to contribute to policy is limited.¹⁷⁶ As noted earlier, the Auditor-General's key recommendation to establish the framework included that governance structures be revised to ensure that organisations are accountable for working together to deliver domestic violence services at State and local levels.
- 4.58** Many participants validated the Auditor-General's recommendation. For example, Assistant Commissioner Mark Murdoch of the NSW Police Force commented at the Committee's roundtable discussion in June that leadership and accountability will be a critical aspect of the Framework, as did the Australian Domestic and Family Violence Clearinghouse in written answers to questions.¹⁷⁷
- 4.59** From the start of our inquiry, participants such as the Clearinghouse and Professor Stubbs highlighted the value of the Victorian model in respect of coordination and integration,¹⁷⁸ and the Committee saw this for itself when we visited Melbourne in February. There, integration has been driven by a hierarchical committee structure that provides active leadership, formalises cooperation towards shared goals, and serves to hold each participant accountable for their role in bringing about change. These committees are as follows:

¹⁷⁵ Department of Attorney General and Justice, *Strategic Review of the Domestic Violence Court Intervention Model: Final Report*, December 2011, p 9.

¹⁷⁶ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 3-4.

¹⁷⁷ Mr Murdoch, Evidence, 18 June 2012, p 4; Answers to questions on notice taken during evidence 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 10, p 5.

¹⁷⁸ Ms Marcus, Evidence, 17 October 2011, pp 35-36; Dr Braaf, Evidence, 17 October 2011, p 36; Professor Stubbs, Evidence, 7 November 2011, p 3. See also Ms Isgro-Rarp, Program Manager, Centre for Women's Health, Macarthur, The Benevolent Society, Evidence, 17 October 2011, p 64; Ms Catherine Gander, Executive Officer, Women's Refuge Movement, Evidence, 26 March 2012, p 30.

- the Ministers in Partnership Against Violence, comprising the Minister for Women and for Family and Community Services, Minister for Health, the Attorney General and Minister for Justice, and Minister for the Police
- the Family Violence Statewide Advisory Committee comprised of senior government and key non government representatives
- a Family Violence Interdepartmental Committee comprised of senior officers of key agencies
- specific inter-agency working parties and
- departmental steering committees.¹⁷⁹

4.60 According to Mr Marcus, one of the extraordinary aspects of these arrangements in Victoria is that officers at very senior levels have attended their interagency meetings consistently over many years, precisely because of the accountability built into the governance structure. She also highlighted the cascading levels of integration, with structured integration replicated from the top level to the local level.¹⁸⁰ Superintendent Rod Jouning, Head of the Sexual and Family Violence Division of Victoria Police, underscored the active commitment at the highest levels to the success of Victoria's work in addressing domestic violence. Ms Catherine Gander of the Women's Refuge Movement noted that such strong and ongoing commitment has not been a feature of the system in New South Wales. She further noted that in Victoria's system of governance, accountability is operationalised through targets and actual outcomes.¹⁸¹

4.61 The Committee also heard that in Victoria, government has forged partnerships with non government agencies, with integration resting on a 'shared understanding' between government and non government stakeholders.¹⁸²

4.62 Non government inquiry participants sought a new recognition of their role in the governance arrangements for domestic violence in New South Wales. Ms Stewart argued that because they provide the majority of service responses in relation to domestic violence, it is extremely important that non government organisations be represented at a very senior policy level.¹⁸³ Similarly, several participants such as Ms Gander, Dr Laing of the University of Sydney and Ms Melina Isgro-Rarp, Program Manager with the Benevolent Society's Centre for Women's Health in Macarthur, all stressed the difference between an 'advice' role and a 'decision making' role for non government organisations.¹⁸⁴ Ms Gander put it in terms of equality of relationships, such that non government organisations achieve purchase at the policy table:

¹⁷⁹ Superintendent Rod Jouning, Sexual and Family Violence Division, Victoria Police, Evidence, 30 April 2012, p 15; Ms Claire Waterman, Senior Project Coordinator, Violence Against Women and Children Strategy Group, Victoria Police, Evidence, 30 April 2012, p 14.

¹⁸⁰ Ms Marcus, Evidence, 17 October 2011, pp 35-36

¹⁸¹ Ms Gander, Evidence, 26 March 2012, p 30.

¹⁸² Ms Waterman, Evidence, 30 April 2012, pp 15 and 20.

¹⁸³ Ms Stewart, Evidence, 17 October 2011, p 23.

¹⁸⁴ Ms Gander, Evidence, 26 March 2012, p 32; Ms Melina Isgro-Rarp, Program Manager, Centre for Women's Health, the Benevolent Society, Evidence, 17 October 2011, p 62. Dr Laing, Evidence, 17 October 2011, p 47.

It is also about equality in relationships between the non-government organisation sector and the government sector. Sometimes I think there is a view that the non-government organisation sector is something of a poor relation; they can be advocating and so on, but they cannot get the same purchase at the table as do government departments. To shift that, we need to look at a system where the roles, responsibilities and accountabilities of people are much better understood and defined.¹⁸⁵

- 4.63** The Auditor-General's recommendation that government agencies agree on a framework stipulated that the framework should ensure joint planning with each other and with non government organisations.¹⁸⁶
- 4.64** Representatives of Women NSW and FACS indicated to the Committee that they will be working closely with the non government sector as they develop and implement the DFV Framework, including co-design of aspects of the Framework, where appropriate. They further advised that having recognised that non government organisations have historically been excluded from governance arrangements, this will be addressed in the development of the DFV Framework, with its implementation 'very much about government working with the non-government sector'.¹⁸⁷ As of June 2012, however, consultation with non government agencies to feed into the Framework's development had not yet occurred.¹⁸⁸
- 4.65** FACS representatives informed the Committee that the forthcoming DFV Framework draws heavily on the Victorian approach, but we have only some detail here at this stage. We are aware that the Framework's development is being overseen by a steering committee comprised of senior executives from the government agencies of Family and Community Services, Premier and Cabinet, Police, Attorney General and Justice, Health, and Education and Communities.¹⁸⁹

Committee comment

- 4.66** Like others, the Committee recognises that the right governance arrangements will be critical to the success of the forthcoming NSW DFV Framework. The right structures will provide the mechanisms through which leadership, shared commitment to integration, and mutual accountability for bringing about change will be achieved. We see real value in the Victorian governance model in that it formalises the collective leadership of each of the ministers with a role in relation to domestic violence, as well as that of senior bureaucrats. It also formalises the active participation of non government organisations in decision-making, and provides a cascading mechanism for communication, joint action and accountability. We strongly encourage all stakeholders to embrace the opportunity to forge a new approach to domestic

¹⁸⁵ Ms Gander, Evidence, 26 March 2012, p 32.

¹⁸⁶ NSW Auditor-General, Responding to Domestic and Family Violence, Audit Office of NSW, November 2011, pp 3-4.

¹⁸⁷ Ms Boland, Evidence, 20 February 2012, p 5, 6 and 12; Ms Alison Frame, Executive Director, Office for Women's Policy, Department of Family and Community Services, Evidence, 18 June 2012, p 4.

¹⁸⁸ Ms Boland, Evidence, 18 June 2012, p 3.

¹⁸⁹ Ms Boland, Evidence, 20 February 2012, p 4; Correspondence from Ms Maura Boland, Deputy Director-General, Strategy and Policy, Department of Family and Community Services, *Terms of reference for the Domestic and Family Violence Senior Executive Steering Committee*, p 1.

and family violence in New South Wales through robust and effective governance arrangements.

- 4.67** The Committee is very concerned that if leadership and responsibility for domestic violence policy remains with the Women's portfolio, it will not be given the prominence it requires within the broader context of the NSW Government. We believe that one of the reasons why we have fallen behind other states in this policy area is that the portfolio of Women has not historically been a senior Cabinet role. Consequently it has lacked the leadership and imprimatur to coordinate and improve the actions of other government agencies, such that domestic violence has remained marginalised. While Women NSW in its various iterations has been very committed to this issue, it has lacked the resources, status and operational accountability to lead other government agencies effectively.
- 4.68** Domestic violence is a very widespread and profoundly destructive problem, for individuals, families and the broader community of New South Wales. It is a crime that consumes many government resources across numerous government agencies. Substantial reform is required within each of those agencies, and within the system as a whole, in order to better prevent and address it. For these reasons, we strongly believe that leadership in this policy area must rest with an agency and minister with the authority to bring about the change that is so necessary. This policy area deserves no less than the leadership of the Premier.
- 4.69** We thus recommend that governance of the NSW DFV Framework be led by a Premier's Ministerial Council comprised of each of the ministers responsible for the following portfolios: Women, Family and Community Services, Attorney General, Justice, Police, Health, Housing and Education. In addition, we call on the Premier, once a year, to report to Parliament on the progress being made to address domestic violence in New South Wales.
- 4.70** The Premier's Ministerial Council would be an oversight committee that ensures that all of the agencies with a role in the Framework act in a coordinated way to fulfil their respective responsibilities.
- 4.71** The Committee also considers that government agencies should actively build their partnership with the non government sector, in recognition of the critical role that non government organisations play in this policy and service area, and in order to achieve the goals of integration and coordination. We note that at the roundtable discussion, representatives of FACS strongly endorsed our possible recommendation to this end. However we also note that to date there has been no consultation with non government organisations in developing the DFV Framework.

Recommendation 10

That the NSW Government make explicit in the forthcoming NSW Domestic and Family Violence Framework the objective of improved integration and coordination of services, and that to this end, the Framework adopt a cross government approach in respect of governance, including:

- a Premier's Ministerial Council comprising the Premier and the ministers responsible for the portfolio areas of: Women, Family and Community Services, Attorney General, Justice, Police, Health, Housing and Education
- a State-wide steering group of senior representatives of government and key non government organisations
- an interdepartmental committee comprised of senior officers of key agencies
- specific inter-agency working parties and
- departmental steering committees.

Recommendation 11

That the Premier, once a year, report to Parliament on the progress being made to address domestic violence in New South Wales.

Recommendation 12

That in keeping with the objective of integration and coordination of services, the NSW Government actively build partnerships with the non government sector, including through consultation as part of the development of the NSW Domestic and Family Violence Framework and through their representation on a new statewide steering group to drive the implementation of the Framework.

Regional coordination

- 4.72** Victorian representatives also emphasised the complexity of the task of integration, and argued that resources to support integration at the regional level were critical to the success of that State's approach.¹⁹⁰ Beyond some innovations aimed at regional and local integration, the six NSW Police Force Region Domestic Violence (RDV) Coordinators operating around the State, and the regional homelessness committees, it was difficult for the Committee to ascertain what coordination is occurring at the regional level in New South Wales.
- 4.73** The nine Region Domestic Violence Coordinators were established in 2009, replacing the Violence Against Women Regional Coordinator positions within the Violence Prevention Coordination Unit that originated in the former Attorney General's Department and subsequently moved to the then Department of Community Services, followed by the then Premier's Department. The NSW Police Force advised that these positions report to their respective Region Operations Managers and provide a vital link between the NSW Police Force and other government and non government organisations to facilitate an integrated response to domestic violence.¹⁹¹

¹⁹⁰ Ms Waterman, Evidence, 30 April 2012, pp 15 and 20.

¹⁹¹ Submission 74, NSW Police Force, p 6.

4.74 The Committee heard that this model is not working well at present. The Women’s Refuge Movement said that when the positions were created they supported the intention behind the model, but was concerned that the number of these positions would be insufficient to address the challenges they faced. It and a number of other non government participants suggested that these positions have not been successful in leading interagency collaboration, owing to a number of reasons:

- the focus of the role on coordination issues within the NSW Police Force
- RDV Coordinators’ geographical responsibilities are too great
- the positions were ‘devalued’ when they were established.¹⁹²

4.75 The Nepean Blue Mountains Local Health District and the Western Sydney Local Health District argued that the disestablishment of the Violence Against Women positions ‘resulted in a loss to the strategic and coordinated approach to domestic violence prevention and intervention’.¹⁹³ Similarly, the Mt Druitt Family Violence Response and Support Strategy Leadership Group stated, ‘we deeply regret the loss of NSW’s [Violence Against Women] program and recommend you immediately reconvene the Violence Prevention Coordination Unit’.¹⁹⁴ The Australian Domestic and Family Violence Clearinghouse also highlighted the value of the positions, saying that they worked effectively with local communities and took a broader focus on violence against women rather than simply domestic violence.¹⁹⁵

4.76 The final report of the Strategic Review of the DVICM concluded that there is insufficient regional coordination of domestic violence programs and agencies at present. It stated:

Effective regional coordination means that there is leadership to ensure there are referral protocols, forums for collaboration about families, and problem solving meetings involving both government and non-government agencies. NSW Police currently has regional coordination positions however these do not have a mandate to hold others accountable, and there is no clarity about the standards for interagency work. Regional leadership is needed to reform local networks so that they are effective and accountable.¹⁹⁶

4.77 At the Committee’s roundtable discussion there was agreement between government and non government stakeholders that it is too early to determine the most appropriate mechanism for regional coordination under the forthcoming DFV Framework. Participants observed that the tasks of mapping the existing system, identifying service gaps and deciding the governance structure should all take priority and would naturally inform this decision.¹⁹⁷

¹⁹² Submission 16, p 3; Submission 30, p 3; Submission 23, p 7; Submission 11, p 2.

¹⁹³ Submission 16, p 3; Submission 30, p 3.

¹⁹⁴ Submission 23, p 7.

¹⁹⁵ Ms Marcus, Evidence, 17 October 2011, p 33.

¹⁹⁶ Department of Attorney General and Justice, *Strategic Review of the Domestic Violence Court Intervention Model: Final Report*, December 2011, p 9.

¹⁹⁷ Ms Crozier, Evidence, 18 June 2012, p 4; Mr Murdoch, Evidence, 18 June 2012, p 4; Dr Chant, Evidence, 18 June 2012, p 4; Ms Gander, Evidence, 18 June 2012, pp 4-5.

- 4.78 Roundtable participants made other specific comments in relation to regional coordination:
- that as far as possible, existing interagency structures should be utilised¹⁹⁸
 - that consideration be given to mechanisms whereby systems failures in regional areas can be raised at a higher level.¹⁹⁹
- 4.79 The Committee was advised by FACS that as part of the initial work to develop the DFV Framework, a review of the Police RDV Coordinators is well underway and is expected to be finalised in July 2012. The review is considering:
- the extent to which they achieved their role and fulfilled their responsibilities
 - the outcomes they have achieved
 - the challenges to fulfilling their role and achieving outcomes
 - whether their role, responsibilities and location within the NSW Police Force remain appropriate.²⁰⁰
- 4.80 FACS advised that the review will provide significant input into the proposed governance structure to drive the new DFV Framework.²⁰¹

Committee comment

- 4.81 It appears to the Committee that there are problems with the present regional coordination mechanism of RDV Coordinators within the NSW Police Force, so the review of these is welcome, as is the fact that it will feed into decisions about governance under the NSW DFV Framework. On the face of it, nine Coordinators across the State does not seem sufficient, and participants' reports concerning ineffectiveness are concerning. In addition, we are not certain as to whether this role best sits within the NSW Police Force. Again, we note the Victorian comment that integration is difficult and requires sufficient resourcing. We encourage the NSW Government in its commitments here, and suggest that in fulfilling them, it carefully consider the successful aspects of the former Violence Against Women positions and the Violence Prevention Coordination Unit.

Recommendation 13

That the NSW Government, as part of the NSW Domestic and Family Violence Framework, determine a new structure for regional coordination that is strategically located and adequately resourced to address service integration. Consideration should be given to the successful aspects of the former Violence Against Women Coordinator positions and Violence Prevention Coordination Unit.

¹⁹⁸ Dr Chant, Evidence, 18 June 2012, p 4; Ms Heather Blackley, Youth Services Manager, Western Plains Regional Development Incorporated, Evidence, 18 June 2012, p 4.

¹⁹⁹ Ms Gander, Evidence, 18 June 2012, pp 4-5.

²⁰⁰ Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 1, p 1.

²⁰¹ Correspondence from Ms Boland to Chair, 28 May 2012, p 1.

Local coordination, including case coordination meetings

- 4.82** Numerous participants spoke of the need to improve local coordination, where the range of local services ‘at the coalface’ collaborate to meet the needs of individual families.
- 4.83** Representatives of the Benevolent Society, for example, spoke of the complexity of clients’ needs – whether mental health, drug and alcohol, domestic violence or more – and observed a ‘lag’ in how local services are coming together with a shared understanding and approach to families’ needs that will help to sustain victims’ safety and perpetrators’ behaviour change.²⁰²
- 4.84** Relationships Australia suggested that collaboration and coordination is particularly lacking in rural and remote areas.²⁰³ Participants in our consultations from organisations in the Central West acknowledged that they are working in silos²⁰⁴ and that there should be a more proactive approach to addressing the needs of individual families:

As far as communication goes, we have got all these interagencies which are working but it is still not good enough. The court system should be notifying the relevant authorities. We have got a family coming through, we need to see [the Aboriginal family violence support service], now we need to see the youth workers at CentaCare for the children, the school needs to be notified, and put it all in the one package. It is just too fragmented.²⁰⁵

- 4.85** Dr Lesley Laing spoke about research she had conducted with practitioners about what facilitates coordination, suggesting that it is about building relationships and understanding at the local level:

[W]e have done interviews with the practitioners about what made it work, and it was about getting to know people, building relationships, developing what they call institutional empathy, which is when you understand not just what your other agencies do but what they cannot do, because they have all had fantasies. There was words like: If only the police did this. Knowing the constraints of each other, they said really broke down that tendency to blame each other. There are processes and we know what helps collaboration and co-ordination ... they are hard to do, but they are doable.²⁰⁶

- 4.86** Acknowledging that collaboration requires significant work, service providers from the Fairfield area emphasised the importance of working towards a common goal, with the key organisations in an area actively committing to collaboration.²⁰⁷

²⁰² Ms Annette Michaux, General Manager, Policy and Research, The Benevolent Society, Evidence, 17 October 2011, p 59; Ms Isgro-Rarp, Evidence, 17 October 2011, p 59.

²⁰³ Submission 25, Relationships Australia, p 4.

²⁰⁴ Ms Bliss, Evidence, 28 February 2012, p 2.

²⁰⁵ Mr Grant Neilsen, Branch Manager, CentaCare Wilcannia-Forbes, Evidence, 28 February 2012, p 15.

²⁰⁶ Dr Laing, Evidence, 17 October 2011, p 48.

²⁰⁷ Ms Guajardo, Evidence, 26 March 2012, p 52; Ms Ranna Peera, Child, Youth and Family Worker, Community First Step, Evidence, 26 March 2012, p 52.

4.87 The Committee heard that the DVICM had succeeded in achieving effective collaboration in the two sites where it has been implemented. Ms Carolyn Thompson, Manager, Domestic and Family Violence, DAGJ, told the Committee:

[I]n the Domestic Violence Intervention Court Model [DVICM] sites there is a real culture of working together across all of the justice and human service agencies. Integration in the DVICM occurs in two ways: one is in a sort of problem-solving management way, joint management of those sites where people are looking at all of the different aspects of the justice response to domestic and family violence, integrated with community services and victims' services. Then there are very regular meetings in response to individual families who have experienced domestic violence and the joint risk assessment and management of those families.²⁰⁸

4.88 Correspondingly, the DVICM strategic review report noted that the weekly local 'case coordination' meetings comprised of representatives of the police, victims services agencies, Corrective Services and FACS enable tracking of cases, are focused on the needs of victims, offenders and children, and their effectiveness lies in holding each organisations' representative accountable for their actions.²⁰⁹

4.89 In respect of local coordination, the Auditor-General recommended that FACS, NSW Police, NSW Health and DAGJ ensure that local staff from police, prosecutors, child protection, probation, health, housing and appropriate non-government organisations meet regularly. These meetings should use existing forums where available and should:

- identify victims and perpetrators most at risk, share information and agree on a plan of response
- monitor whether these plans are keeping victims safe and perpetrators accountable and revise plans as things change
- provide feedback to senior management about opportunities to improve coordination between services.²¹⁰

Committee comment

4.90 The Committee recognises that case coordination meetings are a valuable mechanism for local coordination in respect of individual clients and families. By tracking cases as they move through the criminal justice system and have their other needs addressed, these meetings facilitate integrated service delivery by taking a holistic approach to people's needs, and keeping services accountable as they play their respective part in meeting those needs in a timely and effective way. Like the Auditor-General and various inquiry participants, we consider that local case coordination meetings should be used more widely, noting that this will be assisted by measures to address information sharing between agencies discussed in the following section.

²⁰⁸ Ms Carolyn Thompson, Manager, Domestic and Family Violence, Department of Attorney General and Justice, Evidence, 30 April 2012, p 34.

²⁰⁹ Mr Thomas, Evidence, 30 April 2012, p 36-37; Ms Thompson, Evidence, 30 April 2012, pp 36-37.

²¹⁰ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, p 4.

Recommendation 14

That the NSW Government systematically implement case coordination meetings at the local level as a mechanism for case tracking, integrated service delivery and accountability of services.

- 4.91** The issue of local coordination is intimately linked to three further aspects of integration and coordination: information sharing about specific clients between local agencies; shared risk assessment and referral pathways; and case management. Each of these is discussed below.

Information sharing

- 4.92** The Committee heard that information sharing between local agencies about individual clients and families is an important aspect of integrated service delivery. Two scenarios in which an individual's information might be shared are when he or she is referred to another agency or when agencies with a common client discuss that client, such as in case conference meetings.

- 4.93** The Auditor-General's report explored in detail the issue of information sharing, noting that the inability of organisations to share information about clients impairs their ability to work together to keep victims safe and perpetrators accountable. The report noted that there are legislative and organisational impediments to sharing information, and recommended that the NSW Police Force, FACS, NSW Health and DAGJ establish domestic and family violence protocols that:

- clarify what, and how, information can be shared between organisations within the existing law around privacy and
- implement privacy codes of practice, or promote legislative reform, for the appropriate exchange of information.²¹¹

- 4.94** A number of inquiry participants addressed this issue. In particular, the NSW Police Force emphasised that the inability to share information in a timely way is 'arguably the single biggest issue' that requires addressing in respect of domestic and family violence.²¹² It identified a number of problems with present arrangements:

- while there are some exemptions to privacy legislation that enable information exchange, there is continued uncertainty about how the information can be used or further shared by the receiving agency
- there is inconsistency around the State whether consent is required before a victim's personal information can be shared
- the present situation requires victims to repeatedly tell their stories to different agencies, exacerbating their trauma
- as well as impeding timely service response, the present arrangements inhibits effective early intervention and prevention strategies and case management with high risk

²¹¹ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 19-21.

²¹² Mr Murdoch, Evidence, 20 February 2012, p 51.

families, which could potentially reduce repeat offending, homicides and the very negative impact of domestic violence on children.²¹³

4.95 Correspondingly, the NSW Police Force argued strongly for amendments to privacy legislation to address this. Specifically, it proposed that the *Privacy and Personal Information Protection Act 1988* and the *Crimes (Domestic and Personal Violence) Act 2007* be amended to facilitate the lawful exchange of information. In doing so, it pointed to the precedent set under child protection legislation, which provides for the exchange of information between agencies for the purpose of protecting children at risk of harm.²¹⁴

4.96 NSW Health, Legal Aid and the WDVCAS Network all explicitly supported action on this issue, so as to facilitate the timely sharing of information.²¹⁵ Ms Bev Lazarou, Project Officer, Mentoring with the WDVCAS Network, saw it as imperative, suggesting that their services are currently ‘somewhat paralysed’ in delivering services to victims, and in making early contact with them to ensure that apprehended domestic violence orders are tailored to meet their needs.²¹⁶ Similarly, Ms Eleonora Raffo, Coordinator of the Fairfield Liverpool Staying Home Leaving Violence Project also reported that the present situation can work to the detriment of clients:

We are all trying to work for the same outcome in terms of improving that situation for that woman but we are not allowed to share information, we are not allowed to talk about what is really happening, and I think it will often hinder what we can do, and in fact, sometimes put that woman more in danger.²¹⁷

4.97 Ms Gander observed that sharing information has been very important to successful models in other jurisdictions including Austria and Victoria, and suggested that information sharing between agencies also enables transparency between agencies and thereby, enhances their accountability to one another.²¹⁸

4.98 In Victoria, referral information is shared by the police with service agencies under exceptions to Federal and Victorian privacy legislation.²¹⁹ This means that where police arrive at a domestic violence incident and believe that a person’s welfare is at risk, they can provide that person’s details to a service agency without the affected person’s consent. This occurs where apprehended violence orders are in place or being applied for, or where criminal charges have

²¹³ Submission 74, p 21; Answers to supplementary questions 20 February 2012, NSW Police Force, Question 1, p 1.

²¹⁴ Mr Murdoch, Evidence, 20 February 2012, p 51; Answers to supplementary questions 20 February 2012, NSW Police Force, p 5.

²¹⁵ Submission 34, Legal Aid NSW, p 21; Dr Chant, Evidence, 30 April 2012, p 7.

²¹⁶ Ms Beverly Lazarou, Project Officer: Mentoring, Women’s Domestic Violence Court Advocacy Program Evidence, 18 June 2012, p 5.

²¹⁷ Ms Eleonora Raffo, Coordinator, Fairfield Liverpool Staying Home Leaving Violence Project, Evidence, South West Sydney Legal Centre, Evidence, 26 March 2012, p 44.

²¹⁸ Ms Gander, Evidence, 26 March 2012, p 31.

²¹⁹ See: *Children Youth and Families Act 2005* (Vic) ss 28 and 31; *Information Privacy Act 2000* (Vic) IPP 2.1, 2.1(a), 2.1(d)(ii), 2.1(e); *Health Records Act 2005* (Vic) HPP 2.2(h)(i), 2.2(h)(ii), 2.2(i); *Privacy Act 1988* (Cth) IPP 10(1)(b), 10(1)(d), 11(1)(c), (1)(e), NPP 2.1(e)(i), 2.1(e)(ii). See also: Victorian Government, *Family Violence Risk Assessment and Risk Management: Information Sharing in the Context of Family Violence*, 2009, p 6.

been laid. Victoria Police can also exercise professional judgment as to whether a person's safety is at risk and make referrals based on that judgment. See Recommendation 45 in relation to this issue in Chapter 7 on policing.

- 4.99** The Strategic Review of the DVICM report explained that while the two DVICM sites have privacy codes of practice authorising referrals from police to victims' services and also information sharing about families at risk, these provisions do not operate outside those areas. The review identified a need to expand the codes or similar provisions across the State, and to develop interagency guidelines for information exchange.²²⁰
- 4.100** In June 2012, DAGJ representatives advised the Committee that a working group comprised of relevant agencies had examined this issue, and that they were about to make recommendations to the Attorney General on the most appropriate options here, taking into account the issue of victims' consent. They further advised that the likely outcome would be memoranda of understanding between relevant agencies, as well as legislative amendments. In relation to the issue of consent, they advised that their consultations suggested that 'there is a community expectation that victims will be asked for their consent to share their information, except where it provides a barrier for them to access services that they will benefit from.' Further, their consultation with victims indicated 'overwhelming support' to have their information shared by police with support services as early as possible.²²¹
- 4.101** At the Committee's roundtable discussion with key stakeholders, representatives of both Women's Legal Services and Warringa Baiya Aboriginal Women's Legal Centre voiced strong concerns about privacy and consent. Ms Martin of Warringa Baiya urged that other options for managing referrals and working with victims instead of overriding consent be explored,²²² while Ms Janet Loughman, Principal Solicitor with Women's Legal Services explained that her concern relates to the accuracy of the information that is shared, as well as the safety of the person whose information is being shared.²²³
- 4.102** After the roundtable, Women's Legal Services documented their concerns in detail in a supplementary submission. They argued strongly that the makers of disclosures must be fully informed of the consequences of disclosure and have control over the accuracy of the information and how the information is used. They then identified a number of risks arising from overriding consent in this area:
- contacting a victim who has not given informed consent to be contacted by other agencies may actually endanger her further
 - there is potential for information to be used against a victim of domestic or family violence in proceedings such as care proceedings, family court matters and defended ADVO matters. This can act as a barrier to disclosing domestic violence and women seeking assistance in the first place.

²²⁰ Department of Attorney General and Justice, *Strategic Review of the Domestic Violence Court Intervention Model: Final Report*, December 2011, p 9.

²²¹ Mr Thomas, Evidence, 30 April 2012, pp 37-38; Ms Thompson, Evidence, 30 April 2012, p 38; Mr Thomas, Evidence, 18 June 2012, p 5.

²²² Ms Martin, Evidence, 18 June 2012, p 5-6

²²³ Ms Loughman, Evidence, 18 June 2012, p 6.

- incorrect information could be exchanged and circulated that may, for example, be called as evidence in a subsequent ADVO hearing or sexual assault prosecution
- a woman dealing with domestic violence is likely to feel disempowered and isolated, and compulsory notification to agencies without her knowledge or consent may compound that feeling and make her less likely to attempt to form relationships of trust
- a failure to indicate family violence could inappropriately lead to an assumption that there is no family violence and opportunities to be asked about family violence will be reduced.²²⁴

4.103 Women’s Legal Services further argued two imperatives: that any model involving the sharing of information has the victim at the centre and the needs of agencies as secondary; and that there must be control over how the information is used and the right to access and view the information prior to and after it has been shared, as well as a right to amend the information.²²⁵

Committee comment

4.104 The Committee acknowledges the concerns of Women’s Legal Services and Wirringa Baiya Aboriginal Women’s Legal Centre about privacy and consent, which highlight how complex and important these issues are. At the same time we are very concerned by the evidence from many other participants that present information sharing provisions are significantly impairing services’ ability to work together, and ultimately, are impairing positive outcomes for clients, not least their safety.

4.105 We understand that the recommendations prepared for the approval of the Attorney General are cautious regarding consent and confidentiality. They provide for the timely referral of victims to services without consent, however, the ongoing sharing of more detailed information would require victims’ consent. In addition, we note that the recommendations were prepared on the basis of strong support from victims and other stakeholders. Like the Auditor-General, we consider that the Government’s work in this area should proceed as a priority.

4.106 At the same time, we consider that it would be prudent for DAGJ to monitor the new provisions for the sharing of information between agencies in terms of any adverse impact on privacy.

Recommendation 15

That the NSW Government introduce legislative amendments to Parliament to enable the sharing of information between agencies about individuals in respect of domestic violence, with appropriate privacy protections, and that the amendments be supported by appropriate memoranda of understanding between agencies about how and in what circumstances information is to be shared.

²²⁴ Submission 45a, Women’s Legal Services NSW, pp 5-6.

²²⁵ Submission 45a, pp 57.

Recommendation 16

That the Department of Attorney General and Justice monitor the impact of new provisions to enable the sharing of information between agencies in respect of domestic violence in terms of any adverse impact on individuals' privacy.

Shared risk assessment framework

- 4.107** A common feature of jurisdictions whose domestic violence services are integrated at the local level is a shared risk assessment process which encourages a uniform approach to clients' safety and needs, so that victims receive an appropriate response according to an agreed level of risk.²²⁶ The Auditor-General noted that such a process is lacking in New South Wales, and recommended that the forthcoming DFV Framework establish minimum standards for identifying domestic and family violence and assessing and prioritising risk – that is, the extent to which a victim is at risk of serious harm from violence.²²⁷
- 4.108** During the inquiry, the need for a shared risk assessment framework was agreed by a number of non government participants including UnitingCare Children and Families, the WDVCS Network, the Australian Domestic and Family Violence Clearinghouse, and Dr Lesley Laing of the University of Sydney.²²⁸ There was some caution, however, that the right balance needs to be struck so that a 'one size fits all' approach that takes insufficient account of agencies' respective roles and expertise, is not adopted.²²⁹
- 4.109** The Auditor-General's report also noted that results of the three month trial in 2010 of the Cross Agency Risk Assessment and Management (CARAM) project overseen by NSW Health and intended to facilitate such an approach, 'were not encouraging'. Many organisations did not make initial assessments of whether domestic violence was present, and those that did, failed to do so in a standardised way that could facilitate referrals and prioritisation of cases by others.²³⁰
- 4.110** NSW Health advised the Committee that the CARAM pilot evaluation found that while interagency coordination had improved in the trial sites, future work 'would be improved by a longer time period for the trial [six months instead of three] and more focus on managing the changes involved in introducing a new initiative.'²³¹ In addition, while training and implementation of specialist assessments were found to be effective, training for initial

²²⁶ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 18-19; Submission 62, UnitingCare Children and Families, p 20.

²²⁷ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 18-19.

²²⁸ Submission 62, UnitingCare Children and Families, p 20; Answers to supplementary questions 26 March 2012, Women's Domestic Violence Court Advocacy Service Network, p 76; Ms Marcus, Evidence, 17 October 2011, p 40; Dr Laing, Evidence, 17 October 2011, pp 45-46.

²²⁹ Answers to question on notice taken during evidence 26 March 2012, Women's Domestic Violence Court Advocacy Service Network, Question 10, p 5.

²³⁰ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 19.

²³¹ Answers to supplementary questions 30 April 2012, NSW Ministry of Health, Question 4, p 4.

assessors required further review. According to NSW Health, '[t]he evidence suggests that a shared understanding or acceptance of the evidence-based risk factors was not achieved, and there were different views about need assessment or risk assessment.'²³²

- 4.111** It appears that the NSW Police Force shared concerns about a one size fits all approach to risk assessment and referral. Its submission pointed to the fundamentally different operating environment in which police work. The NSW Police Force expressed support for the concept of a shared risk assessment tool, but noted its preference for 'an agency specific response that enables police to carry out their duties more effectively.'²³³
- 4.112** NSW Health further advised that since the evaluation, its partner agencies (NSW Police, DAGJ, and FACS) have agreed that effective integrated risk assessment and management will be essential to an integrated system of domestic and family violence services, but they do not support the current model. NSW Health recently presented an options paper to the Justice and Human Services CEOs proposing next steps for the Government towards this goal, with the group resolving to undertake this work 'concurrently with, and informed by' the development of the DFV Framework.²³⁴
- 4.113** At the roundtable discussion, Dr Chant suggested that any future risk assessment tool must be validated as effective in its task, and that it may be appropriate to have slightly different tools used in different settings.²³⁵ Assistant Commissioner Murdoch responded in agreement:

I totally agree with Dr Chant. Many government agencies performing those immediate intervention or response roles are dealing with a crisis management environment. What is relevant in a policing context might not be relevant in a health context and what is relevant in a health context might not be relevant in a welfare context. We need some common risk assessment criteria, but how it is applied on the ground and who is applying it needs to be taken into account.²³⁶

- 4.114** Ms Martin advocated that any future tool needs to take adequate account of cultural differences, working effectively for both Aboriginal and non-Aboriginal women.²³⁷
- 4.115** Ms Boland reported that in recent discussions, the interagency Steering Group overseeing the development of the DFV Framework agreed that the tool must be evidence based and validated, and also that the new risk assessment framework must be practice based, taking account of the role of agencies and workers. In relation to the latter point, she elaborated:

If people have high-volume slight contact with people, obviously we cannot do a detailed assessment. If people are in a position where they sit down with a woman and talk about her experiences, it may be more appropriate to ask lots of questions. We are conscious that those things have to be brought together. One of the very good findings that the current project came up with is that it is not possible to have a single comprehensive risk assessment framework that will work in all jobs in New South

²³² Answers to supplementary questions 30 April 2012, NSW Ministry of Health, Question 4, p 4.

²³³ Submission 74, p 19.

²³⁴ Answers to supplementary questions 30 April 2012, NSW Ministry of Health, Question 4, p 4.

²³⁵ Dr Chant, Evidence, 18 June 2012, p 6.

²³⁶ Mr Murdoch, Evidence, 18 June 2012, p 6.

²³⁷ Ms Martin, Evidence, 18 June 2012, p 6.

Wales and that we must be practical as we apply it. We have to ensure it is effective and that it is used. If it is not being used it will not pick up the information it needs to.²³⁸

Committee comment

- 4.116** The Committee is very pleased that interagency work to develop a shared risk assessment framework is progressing, informed by the evaluation of the CARAM pilot, and that the various government agencies involved are moving forward in agreement. We acknowledge the complexity of this task and consider that it will be critical to involve non government agencies in the process of determining the framework, and then testing and implementing it.
- 4.117** Like the participants noted above, we consider that a shared risk assessment framework for domestic violence needs to arrive at tool(s) which are evidence based, flexible to the agency and professional using it, and culturally sensitive.

Recommendation 17

That the NSW Government develop, in partnership with non government organisations, a shared risk assessment framework for domestic violence that is evidence based, flexible to the agency and professional using it, and culturally sensitive.

Case management

- 4.118** The final mechanism we consider in this chapter to better integrate service delivery in relation to domestic violence is case management.
- 4.119** A number of participants raised with the Committee the need for more case management services for those who have entered the domestic violence intervention system. Mr Thomas of DAGJ told the Committee that the ‘biggest challenge’ in relation to coordination and integration identified through the DVICM is the current lack of case management services.²³⁹ The DVICM strategic review report states:

While case management services are resource intensive they have been demonstrated to improve victims’ safety, help them recover from violence, and remain safe over time. In NSW some case management services exist, but these are not always available, and are often not part of an integrated response ... Services are scarce in rural communities, despite these often having a high rate of domestic violence per population.²⁴⁰

- 4.120** In evidence, Mr Thomas elaborated on the benefits of case management demonstrated through the DVICM, including timely, tailored, holistic provision of services:

²³⁸ Ms Loughman, Evidence, 18 June 2012, p 6.

²³⁹ Mr Thomas, Evidence, 30 April 2012, p 36.

²⁴⁰ Department of Attorney General and Justice, *Strategic Review of the Domestic Violence Intervention Court Model: Final Report*, p 9.

In instances where we have put in case management, we can ensure that people are getting immediate access to services when they need them and that they are not falling through or falling behind in terms of how people are providing services to them. If someone needs immediate housing or they need to get to a doctor quickly or they need to have the situation with their children resolved, that type of local level coordinated case management can start to resolve some of those things in really a meaningful way.²⁴¹

- 4.121** In written answers to questions DAGJ explained that in addition to there being inadequate case management services available, those that do exist operate under different programs, do not have consistent coverage, and tend to be ‘siloe’d’ into court support or supporting victims to remain in their own homes. Beyond the domestic violence system, some case management is available through generalist organisations such as family support services.²⁴²
- 4.122** DAGJ advocated that improved case management should commence with the mapping of availability across the State (as is occurring in relation to all domestic violence services following the Auditor-General’s report) and the realignment of services so that a single service responds to victims’ immediate needs, provides court preparation, legal advice and support where appropriate, and case management in relation to client needs for housing, financial support, mental health services and so on. DAGJ argued that this would result in greater administrative and management efficiency, with the potential for greater coverage across the State. It would also enable better provision for geographical areas with greater concentrations of domestic violence and vulnerable populations.²⁴³
- 4.123** The Auditor General’s report notes that FACS is reviewing a range of integrated case management models with a view to developing a consistent response to clients with multiple and complex needs including domestic violence. The Committee has no further detail on this and we are unsure as to whether it specifically relates to domestic violence or other matters within that Department’s jurisdiction. During the roundtable discussion, FACS representatives noted that case management is a relatively expensive service owing to its intensive support model and its potential provision for brokerage funds, and suggested that any expansion of case management would have funding implications.²⁴⁴

Committee comment

- 4.124** In light of the findings of the strategic review of the DVICM concerning the value of case management to integrated service delivery and positive outcomes for victims in terms of safety and longer term recovery, the Committee sees real value in an expansion of case management services so that victims across the State can benefit from them. Many victims of domestic violence have significant and complex needs, for example in relation to health, housing, employment, child welfare and so on, perhaps exacerbated by their entry into the criminal justice system. Some will necessarily benefit from a more intensive approach via case management. While we acknowledge that this will require additional investment by

²⁴¹ Mr Thomas, Evidence, 17 October 2011, p 19.

²⁴² Answers to questions on notice taken during evidence 30 April 2012, Department of Attorney General and Justice, Question 3, p 6.

²⁴³ Answers to questions on notice taken during evidence 30 April 2012, Department of Attorney General and Justice, Question 3, p 6.

²⁴⁴ Ms Frame, Evidence, 18 June 2012, p 18.

government, we note that there has been a commitment that the forthcoming DFV Framework will take an evidence based approach - and that the DVICM was carefully evaluated by BOCSAR in both 2008 and 2011. There is strong evidence flowing from the DVICM that case management within an integrated system can achieve positive outcomes in terms of victims' immediate and longer term safety, and their longer term recovery via timely access to the range of supports they require.

Recommendation 18

That the NSW Government, as part of the NSW Domestic and Family Violence Framework, significantly expand the availability of case management services, to improve service coordination and outcomes for victims.

Service standards

- 4.125** Moving beyond the issue of integration and coordination, the desirability of a formal mechanism to monitor and ultimately improve service standards was raised by some inquiry participants as well as the Auditor-General. The Committee considers this issue in relation to policing in Chapter 7.
- 4.126** The Auditor-General's key recommendation included that the new Framework should establish minimum standards for identifying domestic and family violence, assessing and prioritising risk, making referrals and working with victims and perpetrators. A further recommendation was that the government agencies publish their strategies, including output or outcome measures that can be used to monitor their impact on domestic and family violence over the following five years.²⁴⁵
- 4.127** Earlier in this Chapter (see paragraphs 4.23-4.25) concerning the need for a new focus on outcomes for clients of domestic and family violence services) the Committee noted DAGJ's work to develop a Domestic Violence Justice Framework as a vehicle through which it will improve responses to domestic violence on the part of the NSW Police Force, local courts and Legal Aid (including its Criminal Division and WDVCS services). Mr Thomas advised the Committee that the Justice Framework will set clear standards for the timeliness and levels of service that individuals affected by violence can expect, wherever they reside.²⁴⁶ It will require 'a high degree of accountability' for agencies' performance through close monitoring against seven identified outcomes (set out in paragraph 4.24), and will include benchmarks against which performance will be measured. Three performance measures will be used:
- outcome measures - to consider whether combined strategies have made an appreciable difference to victim safety and participation in the justice system, and reduced reoffending
 - process tracking - to assess whether each part of the process is meeting defined time standards, and whether the system as a whole is working effectively

²⁴⁵ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, pp 3-4.

²⁴⁶ Mr Thomas, Evidence, 30 April 2012, p 33.

- quality of service measures - to consider the extent to which strategies are accessible to victims and defendants.²⁴⁷

4.128 DAGJ representatives told us that they have advocated for this approach to be written into the broader NSW DFV Framework.²⁴⁸

Committee comment

4.129 The Committee sees great merit in DAGJ's current work to develop a performance measurement framework for the NSW Police Force, local courts, Corrective Services, and Legal Aid as part of its Domestic Violence Justice Framework, and we encourage each agency in this task. While the Committee heard about and observed high quality service provision on the part of police, the courts and other services, a key message for the inquiry is that service quality varies within each system. Lack of consistency is a very significant issue. It is discussed in detail in relation to policing in Chapter 7 and victim support services in Chapter 11.

4.130 The Committee considers it highly desirable that the approach DAGJ is taking to improving service standards among justice agencies serve as a model for the rest of the domestic violence system, in the interests of quality and timely service delivery across all services. We recognise that this would entail a significant shift for the non government sector which may seem quite threatening. It is perhaps fortuitous that DAGJ taking the initiative here will mean that the key government agencies in this field – police and local courts – will be required to comply with a standards regime before most non government agencies are required to. Given the potential sensitivities, it will of course be critical that a broader performance standards regime under the DFV Framework be developed in partnership with the non government sector.

4.131 The Committee also considers it desirable that there be a single reporting mechanism across agencies and programs within the forthcoming DFV Framework. This will serve the public interest by facilitating transparency, ease of access to performance information, and ultimately, accountability of government and non government services alike.

²⁴⁷ Answers to supplementary questions 30 April 2012, Department of Attorney General and Justice, Question 6, p 7.

²⁴⁸ Mr Thomas, Evidence, 30 April 2012, p 33.

Recommendation 19

That the NSW Government, as part of the forthcoming NSW Domestic and Family Violence Framework:

- establish in partnership with non government organisations clear standards for the timeliness and quality of services delivered by all government and non government agencies
 - implement a comprehensive performance monitoring system that monitors performance at the local, regional and executive level, and also via the governance mechanisms set out in Recommendation 10.
 - establish and publish a single reporting mechanism across agencies and programs within the forthcoming NSW Domestic and Family Violence Framework, in the interests of greater transparency in reporting and greater accountability.
-

Barriers to accessing services

4.132 A further issue which arose in the inquiry and which was identified in the Auditor-General's report, is that of barriers impeding potential clients' access to services. The Auditor-General recommended that the framework for responding to domestic and family violence should 'establish mechanisms to continuously address the barriers to victims reporting violence and the barriers to victims and perpetrators seeking and being provided with help.'²⁴⁹ Illustrating these barriers to access is the statistic cited by the Auditor-General that only a third of all interpersonal violence is reported to police.²⁵⁰

4.133 The views of participants on this issue coalesced into two key areas: information about services, and barriers experienced by particular population groups.

Information

4.134 In its submission and when giving evidence, VOCAL emphasised that many victims do not identify what is happening to them, and as a result do not know where to seek support:

It's important to make crystal clear that domestic violence is something that is often not recognised by the victim for what it is, and neither may the offender link their behaviour and purpose with this term. It is commonly found that victims of even severe violence, do not necessarily identify their situation with DV, and it follows that they will therefore not know where to go for help, or what systems require of them.²⁵¹

4.135 Ms Marcus pointed to the invisibility and variability of services supporting victims, which include women's health centres, family support and other services, depending on where a

²⁴⁹ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, p 4.

²⁵⁰ NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, p 8.

²⁵¹ Submission 3a, p 1; Ms Robyn Cotterell-Jones, Executive Director, Victims of Crime Assistance League, Evidence, 26 March 2012, pp 14-15.

person lives. She suggested that the effect is that many people would not naturally know where to go to get support.²⁵² With respect to Legal Aid, Ms Lumsden acknowledged that making people aware of the services that Legal Aid offers is a continual challenge for that organisation.²⁵³

- 4.136** Dr Rochelle Braaf of the Clearinghouse emphasised information about domestic violence and the services available to respond to it as an important vehicle for early intervention, noting that certain groups will inevitably have additional information needs:

One of the areas we would see as incredibly valuable is any kind of education that offers information or advice or support for when victims may first be experiencing violence or when they think they may be at risk of experiencing violence, and providing that information as early as possible to give people an opportunity to make an informed decision about what their choices might be. We have done such projects in the past when women say to us that they did not know what supports were out there. Providing that information and advice is critical. There are always going to be parts of the community that have less access to that information because of disability or regional isolation or language barriers or other communication issues. Being able to support them around accessing that information is really important.²⁵⁴

Barriers to particular groups

- 4.137** A larger number of inquiry participants raised the issue of barriers to access affecting particular population groups who may need to access domestic violence services. In Chapter 2 the Committee documented a number of population groups identified as in need of special consideration with regard to domestic violence: older people; people with a disability; young people; gay, lesbian, bisexual, transgender and intersex (GLBTI) people; people from culturally and linguistically diverse (CALD) backgrounds; men; and Aboriginal people. In that chapter we documented the particular vulnerabilities and manifestations pointed out to us in respect of each group, noting that they may in fact overlap. In Chapter 10 we examine how services for victims and children can become more inclusive of and responsive to specific groups. In keeping with the present chapter's focus on how the forthcoming DFV Framework should address system-wide issues, here we briefly document the systemic barriers that participants brought to our attention in relation to a number of groups.

Older people

- 4.138** The Council on the Ageing cited research that identified a range of barriers affecting older people. Those relating specifically to age included:
- diminished cognitive capacity
 - mental or physical disability
 - restricted mobility

²⁵² Ms Marcus, Evidence, 17 October 2011, p 39.

²⁵³ Ms Annemarie Lumsden, Executive Director, Strategic Policy Planning and Management Reporting, Legal Aid NSW, Evidence, 7 November 2011, p 32.

²⁵⁴ Dr Braaf, Evidence, 17 October 2011, p 37.

- social isolation or fear of alienation
- dependency on others
- perceived or actual lack of options.²⁵⁵

People with disability

4.139 In their submission, People with Disability Australia noted a number of barriers affecting the access of people with disability to services with a role in responding to domestic violence:

- poor understanding of domestic violence within the disability sector
- poor understanding of disability within the domestic violence system
- poor understanding of domestic violence among people with disability
- lack of accessible information on domestic violence.²⁵⁶

4.140 The Deaf Society of New South Wales also highlighted a number of factors in relation to deaf and hard of hearing people:

- absence of information in Auslan
- inconsistent use of Auslan interpreters, sometimes owing to funding constraints among service providers
- the general perception among deaf people that legal processes are inaccessible to them
- sourcing and booking of interpreters may not take account of client needs or preferences, or the need of interpreters to prepare for interpreting assignments.²⁵⁷

GLBTI people

4.141 According to ACON, the Gay and Lesbian Rights Lobby and the Inner City Legal Centre, barriers affecting GLBTI victims' access to supports include:

- fear of homophobia, transphobia, intersex phobia and societal discrimination
- lack of awareness and responsiveness on the part of service providers about the issues GLBTI people face
- lack of services for male victims
- absence of services for female perpetrators
- poor understanding among service providers of the dynamics of domestic violence in GLBTI relationships
- gendered language around domestic violence
- homophobia and discrimination on the part of service providers

²⁵⁵ Submission 24, Council on the Ageing NSW, p 3.

²⁵⁶ Submission 50, pp 8-10.

²⁵⁷ Submission 14, Deaf Society of New South Wales, p 2.

- lack of training for police and others about responding to GLBTI domestic violence and
- poor availability of specialist GLBTI services.²⁵⁸

Culturally and linguistically diverse communities

4.142 The Immigrant Women's Speakout Association, Metro Migrant Resource Centre Consumer Advisory Group – Mental Health and Women's Legal Services highlighted a number of barriers affecting people in CALD communities' access to services:

- lack of information in community languages about domestic violence, legal rights and available services, which are complex topics and may be incongruous with people's powerful social and religious values
- CALD and Aboriginal people are sometimes seen as too difficult to work with
- many services lack cultural awareness, and the skills or resources to respond with cultural sensitivity
- victims are hesitant to access services they do not understand and that do not understand them
- many are unaware of their rights and options in Australia
- language barriers and inconsistent or poor use of interpreters
- lack of capacity or expertise among mainstream organisations to appropriately address the complex needs of migrant and refugee victims experiencing domestic violence, which adds pressure on CALD specific services to support all such victims
- victims on partner visas have very poor knowledge of their rights and believe perpetrators are better connected to police and other authorities
- fear of deportation among those who are not permanent residents
- mistrust of authorities, shaped by experience in their home country
- misunderstanding of ADVOs and the consequences of them, such as believing they require separation or divorce.²⁵⁹

²⁵⁸ Submission 26, Inner City Legal Centre, pp 5-6; Answers to questions on notice taken during evidence 5 March 2012, Inner City Legal Centre, Question 4, p 1; Submission 27, Gay and Lesbian Rights Lobby, pp 3-4; Mr Senthoran Raj, Senior Policy advisor, Gay and Lesbian Rights lobby, Evidence, 30 April 2012, p 41; Submission 46, ACON, p 5.

²⁵⁹ Submission 68, Immigrant Women's Speakout Association, pp 10 and 13; Ms Jane Brock, Executive Officer, Immigrant Women's Speakout Association, Evidence, 30 April 2012, p 41 and 53-54; Submission 20, pp 5- 6; Ms Dias, Evidence 30 April 2012, p 46; Ms Rebecca Hitchcock, Solicitor, Women's Legal Services NSW, 7 November 2011, p 43.

Male victims

- 4.143** The One in Three Campaign identified a number of barriers to male victims' access to services, including:
- poor recognition of them, and of female perpetrators, in legislation, policy and programs
 - lack of services for male victims
 - discrimination, in that many domestic violence services are not made available to all perpetrators and victims, regardless of gender or sexuality
 - the unhelpfulness of services provided within the feminist 'Duluth Model' for male victims
 - the invisibility and shame associated with being a male victim of female violence
 - the domestic and family violence system's inability to recognise female perpetrators including young women.²⁶⁰

Aboriginal people

- 4.144** Two organisations, Binaal Billa Aboriginal Family Violence Prevention Legal Service and Wirringa Baiya Aboriginal Women's Legal Centre identified barriers impacting on Aboriginal people's access to domestic and family violence services:
- the strong, historical mistrust of Aboriginal people towards the police and the legal system more generally
 - the belief that their family violence is too trivial to report, matched with a lack of confidence that they will achieve the outcome they desire
 - geographical isolation from services.²⁶¹
- 4.145** Presumably, other barriers include discrimination, institutional complacency about the extent of family violence in Aboriginal communities and lack of cultural awareness among service providers. Specific strategies to improve early intervention in relation to Aboriginal people are discussed in detail in Chapter 5.

Committee comment

- 4.146** The Committee considers that every agency with a role in responding to domestic and family violence has a responsibility to ensure that their services are accessible to those who would benefit from using them. Thus we strongly endorse the Auditor-General's recommendation that the forthcoming DFV Framework establish mechanisms to continually address both barriers to reporting, and barriers to accessing support.

²⁶⁰ Submission 40, pp 4, 12, 17 and 18; Answers to questions on notice 20 February 2012, One in Three Campaign, pp 11-12.

²⁶¹ Submission 38, Binaal Billa Aboriginal Family Violence Prevention Legal Service, p 7; Submission 43, Wirringa Baiya Aboriginal Women's Legal Centre, p 9.

- 4.147** On the issue of reporting, a number of our recommendations about policing in Chapter 7 are predicated on the assumption that continued improvements in policing will service to enhance victims' faith in police, and therefore their rates of reporting. However, we also believe that many victims will never want police involvement, preferring non-legal interventions and supports to bring a stop to the violence they are experiencing. This being the case, information about the range of services available to assist victims and children is very important. Aside from that, it is desirable that whatever entry points exist, they operate effectively.
- 4.148** We believe that information enabling people to recognise their experience as domestic and family violence and to seek out support services is fundamentally important to addressing barriers to reporting such violence, and in turn, to assisting people to gain the supports that they need – and are entitled to. Such information needs to respond to the various groups in our community that require special consideration, and that experience practical barriers to access.
- 4.149** The Committee also believes that the Government should examine how it can improve victims' and children's understanding of the range of services available to assist them in respect of domestic violence, for example via the Domestic Violence Line.

Recommendation 20

That the NSW Government examine ways to improve victims' and children's awareness of services that respond to domestic violence, in order to improve their access to services. Particular attention should be given to the information needs of specific population groups.

Chapter 5 Prevention and early intervention

In Chapter 3, the Committee outlined the elements of the forthcoming NSW Domestic and Family Violence (DFV) Framework, which included primary prevention strategies informed by a more strategic approach to prevention and early intervention with prevention commencing in early childhood.²⁶² In Chapter 4, we recommended that the Government commit to research and evaluation to build the evidence base about prevention, early intervention and tertiary strategies. This Chapter builds on the previous two chapters by considering how this prevention and early intervention may look in practice. It begins by explaining the terminology around prevention and early intervention, before exploring factors that can contribute to domestic violence that would be the focus of primary prevention strategies. The Chapter then considers the need for a more strategic commitment to prevention in this State and elements that may constitute a prevention strategy. Finally, it looks at whether there is a need for an Aboriginal specific prevention strategy and examines NSW Health's routine screening program.

Terminology

- 5.1** In its submission, the NSW Women's Refuge Movement stated that despite broad support for prevention and early intervention strategies, there was no common understanding of what these terms mean in New South Wales at the present time:

It is clear that there is a broad consensus of support for the implementation of prevention and early intervention strategies. What is perhaps lacking is a shared understanding of what prevention and early intervention activities are, and an understanding of the range of prevention and early intervention strategies already undertaken in NSW.²⁶³

- 5.2** Ms Maura Boland, Deputy Director General of Strategy and Policy in the Department of family and Community Services (FACS), noted that this issue had been raised by a number of submission authors and suggested the Department could work towards providing a set of definitions:

The submissions to the inquiry so far have highlighted the need for common definitions about what is a prevention approach and what is an early intervention approach across government. So I think we could do something about trying to get some common definitions there.²⁶⁴

- 5.3** FACS expanded on this issue in its answers to supplementary questions, suggesting that the 'development of common primary prevention definitions, principles and best practice standards may be helpful in ensuring a more integrated approach to prevention and early intervention initiatives.'²⁶⁵

²⁶² See paragraphs 3.35 to 3.40.

²⁶³ Submission 54, NSW Women's Refuge Movement, p 5.

²⁶⁴ Ms Maura Boland, Deputy Director General, Strategy and Policy, FACS, Evidence, 20 February 2012, p 3.

²⁶⁵ Answers to supplementary questions, 20 February 2012, FACS, Question 6, p 13.

Primary prevention

5.4 In answers to supplementary questions, FACS provided a definition of ‘primary prevention’:

Primary prevention is intended to prevent violence occurring in the first place. It focuses on strategies to reduce the risk in the total population and on preventing potentially vulnerable individuals and groups from experiencing an initial violent incident.²⁶⁶

5.5 Other definitions of primary prevention that were raised during the inquiry include that adopted by VicHealth, which also defines primary prevention strategies as those that aim stop violence before it takes place, while explaining the range of strategies available here:

Primary prevention strategies seek to prevent violence before it occurs. Interventions can be delivered to the whole population (universal) or to particular groups that are at higher risk of using or experiencing violence in the future (targeted or selective). Some primary prevention strategies focus on changing behaviour and/or building the knowledge and skills of individuals. However, the structural, cultural and societal contexts in which violence occurs are also very important targets for primary prevention. Strategies that do not have a particular focus on violence against women but address its underlying causes (such as gender inequality and poverty) are also primary prevention strategies.²⁶⁷

5.6 The *National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Plan) provides a framework to make a sustained reduction in the level of violence against women, particularly domestic and family violence and sexual assault, across all levels of Australian government.²⁶⁸ The National Plan’s definition of primary prevention also focuses on preventing violence before it occurs:

Primary prevention involves taking action to prevent the problem of violence before it occurs. It means working to change the underlying causes of the problem, in the different environments where people live and work. Strategies such as social marketing, school-based programs or work to promote positive and equitable workplace cultures are all examples of primary prevention.²⁶⁹

5.7 Drawing from the National Plan, the Women’s Refuge Movement provided the Committee with its understanding of primary prevention:

Prevention: strategies can target the population as a whole or particular groups or communities at high risk and aim to prevent violence from happening in the first place.²⁷⁰

²⁶⁶ Answers to supplementary questions 20 February 2012, FACS, Question 6, p 9.

²⁶⁷ VicHealth, *Preventing violence before it occurs. A framework and background paper to guide the primary prevention of violence against women in Victoria*, December 2007, p 9.

²⁶⁸ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010-2022*, p 1.

²⁶⁹ *National Plan to Reduce Violence against Women and their Children 2010-2022*, p 14.

²⁷⁰ Submission 54, p 5.

Early intervention

- 5.8** The fundamental difference between prevention and intervention is that whereas prevention occurs before violence has happened, intervention happens after it has occurred, aiming to minimise or prevent future occurrences of violence. FACS provided the committee with a definition of early intervention:

Early intervention focuses on relationships or communities where limited violence has occurred, but there are realistic prospects that the violence can be eliminated or its escalation prevented.²⁷¹

- 5.9** The VicHealth understanding of early intervention refers to strategies that address individuals and groups who display early signs of perpetrating violent behaviour or of being subject to violence:

Early intervention (sometimes referred to as secondary prevention) is targeted at individuals and groups who exhibit early signs of perpetrating violent behaviour or of being subject to violence. Early intervention strategies can be aimed at changing behaviours or increasing the skills of individuals and groups. Violence against women takes many forms. It often begins with subtly controlling behaviours and escalates into a pattern of coercion and physical violence. At the individual level early intervention can seek to address controlling behaviours before they become established patterns. Early intervention strategies can also be targeted at environments in which there are strong signs that violence may occur (for example, peer groups or sporting clubs in which there is a strong culture of disrespect for women).²⁷²

- 5.10** Again drawing from the National Plan, the Women's Refuge Movement described its understanding of early intervention:

Early intervention responses for women and children who are experiencing domestic and family violence are those that are targeted at individuals or groups to prevent the escalation of violence and increasing the skills of individuals and groups to respond to violence and the risk of it.²⁷³

- 5.11** The difference between prevention and intervention was neatly summarised by Ms Lyn Walker, Executive Manager, Participation and Equity for Health, VicHealth during the Committee's roundtable:

The extent to which it is able to be integrated in the framework is anyone's guess but I think it is really critical that you are very clear because secondary prevention to me is basically intervention. Secondary prevention to me is good practice at a tertiary level; it is not prevention. You have not prevented anything; it has already happened. At best, you will prevent the ongoing incident.²⁷⁴

²⁷¹ Answers to supplementary questions 20 February 2012, FACS, Question 6, p 9.

²⁷² VicHealth, *Preventing violence before it occurs. A framework and background paper to guide the primary prevention of violence against women in Victoria*, December 2007, p 8.

²⁷³ Submission 54, p 5.

²⁷⁴ Ms Lyn Walker, Executive Manager, Participation and Equity for Health, VicHealth, Evidence, 18 June 2012, p 9.

Committee comment

- 5.12** The Committee notes and endorses FACS' commitment to developing common definitions for prevention and early intervention as part of the DFV Framework and agrees that a consistent understanding of what these terms mean will enable the range of government and non government services to take a more integrated approach, and to plan, fund and administer these strategies more effectively.

Causes of domestic violence

- 5.13** Consistent with the Committee's approach adopted in Chapter 2, that domestic violence is inherently gendered, with predominantly female victims and male perpetrators, the Committee considers that primary prevention should also focus on preventing violence against women. The Committee received a great deal of evidence about the need to have a comprehensive understanding of the causes of violence against women to ensure the development of successful prevention and early intervention campaigns.²⁷⁵

Unequal distribution of power and resources between men and women

- 5.14** Many inquiry participants including VicHealth considered that the primary cause of violence against women is the unequal distribution of power and resources between men and women, and adherence to rigidly defined gender roles.²⁷⁶ It was accepted that this power imbalance is manifest in community environments such as workplaces and universities, as well as in personal relationships. For example, the South Western Sydney Area Health District told the Committee that 'domestic and family violence is a result of gender inequality in social and power relationships, and is rooted in structural inequality rather than individual pathology'.²⁷⁷ Speaking about intimate partner violence, Ms Susan Peir, Coordinator, Women's Domestic Violence Court Advocacy Service (WDVCAS) Network, referred to the power imbalance in terms of control within a relationship:

[w]hen we normally discuss intimate partner violence it is about power and control, and someone trying to control someone else.²⁷⁸

- 5.15** Ms Betty Green, Convenor of the NSW Domestic Violence Coalition and Manager of the Liverpool Women's Health Centre, also spoke about power and control:

[I]t is very difficult to go beyond my understanding that the cause [of domestic violence] is about privilege and entitlement and use of power, control and coercion in a relationship to maintain that power within it.²⁷⁹

²⁷⁵ See for example, Submission 37, The Benevolent Society, pp 15-16 quoting Grech, K. and M. Burgess (2011) and Carrington, Dr Kerry and Phillips, Janet (2006).

²⁷⁶ VicHealth, *Preventing violence against women in Australia, Research summary*, October 2011, p 8 quoting VicHealth 2007.

²⁷⁷ Submission 56, South Western Sydney Area Health District, p 10.

²⁷⁸ Ms Susan Peir, Co-ordinator, Women's Domestic Violence Court Advocacy Service (WDVCAS) Network, Evidence, 5 March 2012, p, 16.

²⁷⁹ Ms Betty Green, Convenor, New South Wales Domestic Violence Coalition and Manager Liverpool Women's Health Centre, Evidence, 17 October 2011, pp 30-31.

5.16 Ms Green acknowledged that changing entrenched community values about such matters is challenging as it requires a multifaceted approach that enhances the role of women.²⁸⁰ In its submission to this inquiry, the Benevolent Society explained that the community needs to challenge negative attitudes towards women and promote gender equality to ensure violence against women is no longer tolerated. They called for prevention campaigns to directly challenge the acceptability of domestic and family violence and to explicitly spell out the scope and impact of such abuse.²⁸¹

5.17 A ‘fundamental power imbalance’ within a relationship was identified as the cause of domestic violence by the Australian Domestic Violence Clearinghouse:

Domestic violence is the result of a fundamental power imbalance between two people involved in the relationship. Primarily it is because of the gender imbalance/inequity between men and women which is still so prevalent in our society. Men hold the power and women don’t and this is carried through to the domestic sphere.²⁸²

5.18 Similarly, Women’s Legal Services stressed the importance of changing entrenched attitudes about the role of women, as well as justifications for the use of force:

Preventative strategies implemented must be long-term strategies, engaging all members of society, aiming to change deeply entrenched attitudes about women, inequality, power imbalances and the justification of violence within society.²⁸³

5.19 White Ribbon campaigns also focus on male perpetrated violence against women, hence the campaigns are lead by males.²⁸⁴ Inquiry participants were supportive of this approach for a number of reasons, including:

- men’s predominant role as perpetrators of domestic violence.²⁸⁵
- the importance of providing positive male role models to teenage males.²⁸⁶
- men can promote respectful relationships.²⁸⁷

Embedded levels of causality

5.20 Professor Julie Stubbs of the Faculty of Law at the University of New South Wales, spoke about the ‘ecological’ model for understanding violence against women which looks at the context in which violence occurs:

²⁸⁰ Ms Green, Evidence, 17 October 2011, p 31.

²⁸¹ Submission 37, p 18.

²⁸² Answers to supplementary questions, 17 October 2011, Australian Domestic Violence Clearinghouse, Question 2, p 1.

²⁸³ Submission 45, Women’s Legal Services NSW, p 5

²⁸⁴ Ms Davies, Evidence, 26 March 2012, p 2.

²⁸⁵ Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group, p 5.

²⁸⁶ Submission 4, Barnardos Australia, p 13.

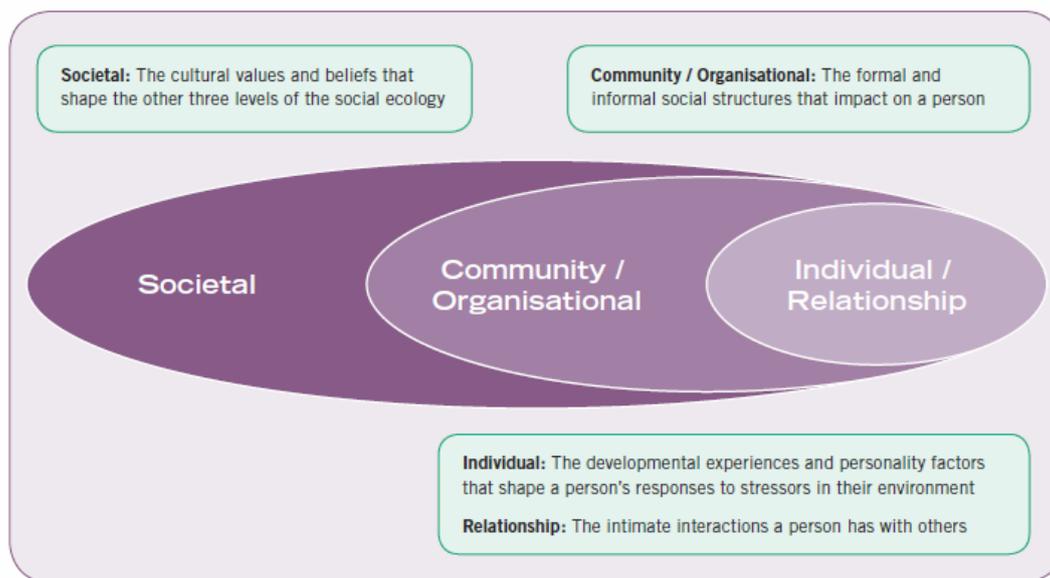
²⁸⁷ See for example, Submission 64, Northern Sydney Local Health District, p 5.

A lot of utility can be gained from an ecological model which recognises that what happens between individuals and within relationships has a context. That context relates to attitudes and values in workplaces, organisations and the broader context, the wider community. Our interventions need to be cognizant that issues at each of those levels—the individual, the community and then the broader social setting—all have a role to play. We need to have some interventions that are shaped at bringing about individual behaviour change but recognise individuals also [also] supported in their attitudes, their values and their behaviours by their peer groups, work organisations and the broader culture.

None of that excludes the possibility that financial stress, disadvantage and social structural features underpin violence but that does not take away responsibility for the individual for their own behaviours.²⁸⁸

5.21 The ecological model is also used by VicHealth, and is illustrated in Figure 13. According to this model, the various levels of factors (societal, community/organisational and individual/relationship) that increase the risk of violence are ‘nested’ and interact.

Figure 13 Ecological understanding of violence against women



VicHealth, *Preventing violence before it occurs, a framework and background paper to guide the primary prevention of violence against women in Victoria*, 2007, p 26.

5.22 VicHealth identified a number of social and structural factors that contribute to violence against women, including:

- a cultural ethos condoning violence as a means of settling disputes
- a cultural approval or (weak sanctions against) violence against women
- colonisation and the ongoing impacts of cultural dispossession in Aboriginal communities
- cultural support for the privacy of the family

²⁸⁸ Professor Julie Stubbs, Faculty of Law, University of New South Wales, Evidence, 7 November 2011, p 2.

- neighbourhood, peer and organisational cultures that are violence-supportive or have weak sanctions against violence against women
- attitudinal support for violence against women
- use and acceptance of violence as a means of resolving interpersonal disputes
- individual support for the privacy of the family.²⁸⁹

5.23 Dr Chant, Deputy Director General, Population Health and Chief Health Officer, NSW Ministry of Health, also referred to the need ‘to do a myriad of things to construct the society and create safety, and long-term attitudinal societal change’. Dr Chant highlighted that the responsibility for this rests with all government agencies, and a challenge for the DFV Framework will be to capture all the work that various agencies are doing:

I think one of the challenges for the framework is to pick up activities that agencies are doing that are not badged with the domestic violence label but, hopefully, with one of the consequences of the programs working well, maybe a reduction in domestic violence. I give an example of our early childhood programs and our parenting programs supporting new families. In our drug and alcohol setting there would similarly be programs that, hopefully, have as an outcome a reduction in domestic violence also.²⁹⁰

5.24 Individual factors such as alcohol, illicit drug use or childhood exposure to violence were seen by VicHealth as being factors that exacerbate the frequency or severity of violence rather than being precursors to violence.²⁹¹

Factors exacerbating violence against women

5.25 The Committee’s attention was drawn to a number of factors that can exacerbate violence towards women, including alcohol and drug use, exposure to pornography, violence in the media and exposure to violence as a child. Many of these factors are also discussed in the context of programs for perpetrators in Chapter 15, in recognition that addressing these behaviours will have an impact on the chance of the perpetrator reoffending. Dr Chant discussed the importance of considering the impact of these factors in the context of programs offered by NSW Health:

Some of our broader programs can be seen as having a broad stabilising effect on people’s lives which may reduce either triggers to domestic violence or some of the antecedents for domestic violence. Some of our early childhood programs—our Sustaining Brighter Futures and home visiting programs—that are worked across agencies obviously try and develop a strong framework around early childhood. Similarly, some of our drug and alcohol, mental health and our services servicing vulnerable groups also aim to provide high-quality health services and care and

²⁸⁹ VicHealth, *Preventing violence against women in Australia, Research summary*, October 2011, p 8.

²⁹⁰ Dr Kerry Chant, Deputy Director General, Population Health and Chief Health Officer, NSW Ministry of Health, Evidence, 18 June 2012, p 10.

²⁹¹ VicHealth, *Preventing violence before it occurs, A framework and background paper to guide the primary prevention of violence against women in Victoria*, 2007, p 28.

wellbeing, which hopefully will also mitigate risks of domestic violence but also maybe the severity and intensity of domestic violence.²⁹²

Alcohol and drug abuse

5.26 Most stakeholders accepted that alcohol and drug use is not, by itself, a cause of domestic violence. Nevertheless, there is a strong correlation between high levels of domestic violence and alcohol in particular, as demonstrated by NSW Bureau of Crime Statistics and Research (BOCSAR) research:

- in 2010 over 10,000 (41 per cent) of domestic violence related assaults were alcohol related
- the percentage of domestic assaults that are alcohol related varies across geographical areas, with a low of 35% in the Sydney Statistical Division to a high of 62% in the Far West Statistical Division.²⁹³

5.27 Superintendent Robert Ryan, Commander, Lachlan Area Command, NSW Police Force, described the relationship between alcohol and domestic violence in his command, which supports BOCSAR's research:

In the Lachlan area command in 2011, in Parkes police attended 428 domestics, and 110, or roughly 25 per cent, were alcohol related; in Forbes, there were 410, and 134 were alcohol related. The percentage goes up as you go further west. There were 142 in Condobolin, and 90 of those were alcohol related, 81 at Lake Cargelligo and 42 were alcohol related, and 158 at Peak Hill, of which 73 were alcohol related.²⁹⁴

5.28 Ms Peir referred to alcohol and drugs as serving to heighten conflict in a relationship.²⁹⁵ Ms Walker referred to alcohol as a 'disinhibitor' that heightens the frequency and severity of domestic violence. Accordingly she argued that prevention needs to focus on more than alcohol:

In terms of the alcohol issue I believe that is a relatively populous view in terms of prevention. We believe that alcohol acts as a disinhibitor so you actually have to have a man who is prone to violence to be perpetrating it in the first place. Alcohol will make it every night as opposed to Friday night and it will not be the fist; it will be the axe. So every blow for alcohol in terms of reduction of consumption is critical but we should not be hanging our hat on if we reduce alcohol we will prevent violence against women. We will not; we will prevent secondary occurrence.²⁹⁶

5.29 Dr Don Weatherburn, Director of BOCSAR, agreed that programs targeted towards alcohol abuse would not, by themselves, stop domestic violence. However, he elaborated on the impact of alcohol during the Committee's roundtable, and advocated for programs targeting alcohol abuse to be part of the response to domestic violence:

²⁹² Dr Chant, Evidence, 30 April 2012, p 2.

²⁹³ Grech K and Burgess M, *Trends and patterns in domestic violence assaults : 2001 to 2010*, NSW Bureau of Crime Statistics and Research (BOCSAR), Sydney 2011, p 4.

²⁹⁴ Superintendent Robert Ryan, Commander, Lachlan Local Area Command, NSW Police Force, Evidence, 28 February 2012, p 38.

²⁹⁵ Ms Peir, Evidence, 5 March 2012, p 16.

²⁹⁶ Ms Walker, Evidence, 18 June 2012, p 9.

I am also mindful of the fact that none of the existing programs seem to deal with the issue of alcohol. Alcohol is a factor in 40 per cent to 60 per cent of domestic violence incidents, depending on where you live. I am not so naive as to believe that domestic violence can be cured just by changing alcohol consumption, but it is not as if we have so much control over this problem that we can afford to be picky and choosy about levers we try.²⁹⁷

- 5.30** Within this multilevel approach, the Committee calls for specific evidence based strategies to address the link between alcohol and domestic violence. These must be predicated on an acknowledgement by government of the link between the two, and matched with a commitment to fund further research on the role that alcohol plays in the frequency, severity and effects of domestic violence.

Recommendation 21

That the NSW Government acknowledge the link between alcohol and domestic violence and fund research to examine the role alcohol plays in the frequency, severity and effects of domestic violence.

Recommendation 22

That as part of the forthcoming NSW Domestic and Family Violence Framework the NSW Government implement evidence-based initiatives to prevent alcohol related domestic violence.

Exposure to pornography

- 5.31** The White Ribbon Foundation (White Ribbon) raised concerns about whether exposure to pornography impacts on violence towards women and referred to the Victorian Women's Trust's research that examined how pornography and social media relate to the incidence of sexual violence:

[The] research has identified that the pornographic material young people are exposed to and easily access through social media increasingly has shown sexual violence as part of the sexual act and that that is a deliberate strategy by the producers of pornography because that is what the market is asking for.²⁹⁸

- 5.32** White Ribbon expressed concern that exposure to this genre of pornographic material was linked to increasing levels of sexual assault experienced by women.²⁹⁹
- 5.33** Ms Kate Alexander, National Marketing and Communications Manager and New South Wales Executive Officer, White Ribbon Foundation, also alerted the Committee to the potential impact pornography played on the construction of male identity:

²⁹⁷ Dr Don Weatherburn, Director, BOCSAR, Evidence 18 June 2012, p 9.

²⁹⁸ Ms Libby Davies, Chief Executive Officer, White Ribbon Foundation, Evidence, 26 March 2012, p 5.

²⁹⁹ Ms Davies, Evidence, 26 March 2012, p 5.

I also think it is about the constructions of masculinity that are presented in the media. It all comes back to that power: coercive control of men over women. The issue of online sexualisation of women, particularly pornography, is borne out in the increase in sexting amongst young people and cyber bullying as well.³⁰⁰

Violence in the media

- 5.34** The Committee received limited evidence of whether violence in the media impacts on a person's propensity to commit acts of domestic violence. The issue was raised by Magistrate Paul Mulrone of the Children's Court of New South Wales, who referred to the rise of child perpetrators of domestic violence as being partly the result of constant exposure to violence in the media, on television and in films.³⁰¹ Young offenders are considered in detail in Chapter 16.

Exposure to violence as a child

- 5.35** Certain inquiry stakeholders referred to domestic violence as being intergenerational, and evidence that exposure to violence as a child may be a precursor to being a victim or perpetrator in later life. For example, Dr Katrina Grech, Senior Project Officer with the NSW Bureau of Crime Statistics and Research, referred to past research that has shown a link between exposure to violence as a child and being a victim of violence as an adult:

We have done past research where we have used national surveys—in the original survey on violence against women we found that being a victim of violence as a child was a very big risk factor in being a victim of violence as an adult. Practically every survey that has been done has found the same thing.³⁰²

- 5.36** Similarly, the Children's Court stated that young people who are exposed to domestic violence are at a real risk that they also resort to domestic violence to resolve conflict.³⁰³
- 5.37** In its submission to this inquiry, Jenny's Place Women and Children's Refuge was concerned that behavioural patterns in relationships and responses to conflict are learnt during children's developmental stages and taken into adulthood. Hence it agreed that prevention and early intervention strategies needed to address these issues.³⁰⁴ The effect of domestic violence on children is discussed again in Chapter 6.

Committee comment

- 5.38** The causes of domestic violence are very complex and, to a large extent systemic, reflecting deeply held views in our society. There are also a number of factors that greatly exacerbate the likelihood, frequency or severity of domestic violence.

³⁰⁰ Ms Kate Alexander, National Marketing and Communications Manager and New South Wales Executive Officer, White Ribbon Foundation, Evidence, 26 March 2012, p 5.

³⁰¹ Magistrate Paul Mulrone, Children's Court, Evidence, 5 March 2012, pp 34-35.

³⁰² Dr Katrina Grech, Senior Project Officer, BOCSAR, Evidence, 7 November 2011, p 18.

³⁰³ Submission 32, Children's Court of NSW, p 3.

³⁰⁴ Submission 18, Jenny's Place Women and Children's Refuge Inc, p 3.

- 5.39** As stated in Chapter 2 and again at the beginning of this section, the Committee firmly believes that domestic violence is inherently gendered, and thus addressing the causes of violence against women must form the basis for any prevention strategy.
- 5.40** A multilevel approach is needed to address these causes to prevent and minimise domestic violence. The Committee recognises that while not targeted specifically towards domestic violence, primary prevention strategies in relation to other social problems that are delivered across government will potentially have an effect on reducing domestic violence. The challenge for the forthcoming DFV Framework will be to identify and embrace these existing programs and strategies.

A prevention strategy

- 5.41** In Chapter 3, the Committee recommended that the Government adopt a comprehensive and long term approach to preventing and addressing domestic violence in New South Wales. While the Committee is not suggesting that attention is diverted from responding to domestic violence once it occurs, nor from preventing further incidences of domestic violence, a commitment to primary prevention programs is a vital part of the new approach. Responding to comments at the round table about a lack of evidence on the effectiveness of primary prevention, Ms Walker asserted that primary prevention ‘does work’:

If people think that primary prevention is beyond reach one only has to look at longitudinal studies and attitude surveys over the past 20 to 30 years in this country to be proved wrong. Primary prevention in the right circumstances does actually work ³⁰⁵

Strategic direction

- 5.42** The Committee received evidence from a range of stakeholders advocating the need for the government to provide strategic direction concerning the development and implementation of domestic violence prevention strategies. For example, Ms Davies told the Committee that more collaboration and coordination is needed:

[T]here is still a need for a more integrated, co-ordinated and collaborative approach between and across the Government, communities and individuals to address the contributors and determinants of violence.³⁰⁶

- 5.43** Furthermore, Ms Davies encouraged bipartisan support for violence prevention programs and noted that the long-term nature of prevention programs means that it is hard for governments to prioritise resources and funding here:

We would encourage every government of every persuasion—that is, all of us—to commit to this. It should not be politicised if we want to try to turn this around. It should be an ongoing expression of social responsibility across every government ... We believe it is easier for a government to deliver the results of prevention activity that is in the secondary and tertiary space ... I think it is much harder to measure interventions in early prevention campaigns, such as something like White Ribbon,

³⁰⁵ Ms Walker, Evidence, 18 June 2012, p 9.

³⁰⁶ Ms Davies, Evidence, 26 March 2012, p 3.

because it is a longitudinal process and you do not begin to see the evidence of longitudinal processes until 10 years out ... So that is a very difficult space for governments to attach funding to because of the nature of the political cycle.³⁰⁷

- 5.44** Ms Rachel Martin, Principal Solicitor with Wirringa Baiya Aboriginal Women's Legal Centre, also supported a long-term investment in prevention "because for solutions in terms of intervention and prevention, we are talking many years."³⁰⁸
- 5.45** Some inquiry participants were concerned that the Government does not currently provide a strategic approach to domestic violence prevention.³⁰⁹ For example, the Mt Druitt Family Violence Response and Support Strategy Leadership Group went so far as to argue that prevention activities were not adequately funded, resourced or coordinated.³¹⁰ The organisation's submission further added that the Government undermined prevention efforts by not having a single agency responsible for domestic violence.³¹¹
- 5.46** The Nepean Blue Mountains Local Health District and Western Sydney Local Health District both argued that "... early intervention and prevention strategies need to be funded, valued, collaborative and supported by coordination at all government levels."³¹² Both organisations further noted that the current system for prevention and early intervention is not sustainable in the long term as local service providers are expected to fund and deliver these types of programs as well as their core business of providing tertiary services.³¹³
- 5.47** Ms Davies did not regard these issues as insurmountable, arguing that adequately funding and implementing prevention programs was not only financially sound but would "turn around the attitudes and behaviours that are so institutionalised, genderised and endemic across our society that have allowed this violence to occur."³¹⁴
- 5.48** FACS advised that it is developing new prevention strategies in response to the Audit Office's report, and that it anticipated that the forthcoming DFV Framework will lead to a more strategic approach to both prevention and early intervention. It indicated that as part of the development of the Framework, work is being undertaken to:
- review the extent of current primary prevention activity in NSW, including State and Commonwealth funded initiatives.
 - identify any gaps or weaknesses in the current primary prevention efforts.
 - identify strategies for inclusion in the Framework.³¹⁵

³⁰⁷ Ms Davies, Evidence, 26 March 2012, p 8.

³⁰⁸ Ms Rachel Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, Evidence, 5 March 2012, p 3.

³⁰⁹ See for example, Submission 11, MetWest Violence Prevention Network, pp 2-3.

³¹⁰ Submission 23, pp 5-6.

³¹¹ Submission 23, pp 5-6.

³¹² Submission 16, Nepean Blue Mountains Local Health District, p 1 and Submission 30, Western Sydney Local Area Health District, p 1.

³¹³ Submission 16, p 1.

³¹⁴ Ms Davies, Evidence 26 March 2012, pp 4-5.

³¹⁵ Answers to supplementary questions 20 February 2012, FACS, Question 5, p 9.

- 5.49 FACS further advised that it will explore the development of best practice guidelines and minimum standards for effective early intervention approaches, to better support integration. It will also consider increasing the capacity of the non government sector to provide high quality early intervention and prevention programs.³¹⁶ Early intervention is considered at the end of this Chapter.

Who should drive prevention?

- 5.50 Many inquiry participants endorsed the Victorian Government's focus on prevention of domestic and family violence led by the VicHealth, which for the last decade has taken a public health approach to defining and addressing violence against women.³¹⁷
- 5.51 VicHealth is an independent statutory authority established and substantially funded under the *Tobacco Act 1987*. It works in partnership with organisations, communities and individuals to promote good health and prevent ill-health in a range of areas. It received funding of approximately \$35 million in 2010-2011.³¹⁸

Committee comment

- 5.52 The Committee observes that, until now, the focus in New South Wales has been on criminal justice responses to domestic and family violence, and the delivery of tertiary services. By contrast, in Victoria, the approach has focused on prevention as well as on enhanced delivery of early intervention, criminal justice and tertiary services.
- 5.53 We strongly believe that just as there needs to be a comprehensive new approach to domestic violence in New South Wales, within that approach there needs to be an equally comprehensive, strategic commitment to prevention and early intervention. Moreover, in the absence of an agency such as VicHealth, there must be a leader to drive and coordinate primary prevention strategies across the State.
- 5.54 The Committee understands the enormity of this task, but believes that investing in primary prevention is the only way to make a real, long lasting impact on the incidence of domestic violence in New South Wales.

Recommendation 23

That, as part of the forthcoming NSW Domestic and Family Violence Framework, the NSW Government invest in a long-term and strategic approach to prevention and early intervention that includes primary prevention measures.

³¹⁶ Answers to supplementary questions 20 February 2012, FACS, Question 7, p 14.

³¹⁷ For example Ms Green, Evidence, 17 October 2011, p 27; Ms Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 37; Professor Stubbs, Evidence, 7 November 2011, pp 2-3.

³¹⁸ VicHealth, *Annual Report of Operations and Financial Statements 2010-11*, 2011, p 10.

- 5.55** The Committee accepts VicHealth's rationale for focusing on the prevention of male violence towards women and considers that this should be the major focus of universal, primary prevention activities in New South Wales. We also consider that, given that older people, people with disability, young people, culturally and linguistically diverse people, men, Aboriginal people, and gay, lesbian, bisexual, transgender and intersex people are also victims of domestic violence, it is important that complementary prevention strategies be implemented for specific population groups.

Recommendation 24

That the NSW Government make violence against women the focus of universal, primary prevention activities under the NSW Domestic and Family Violence Framework. These are to be complemented by targeted prevention strategies focusing on specific population groups.

Elements of a prevention strategy

- 5.56** There was some discussion among inquiry participants as to what an effective prevention strategy would encompass. For example, Ms Marcus cautioned against equating a prevention strategy with a community education campaign:

I think the focus on prevention is really important, but I think it needs to be clear. I think you are saying here that there is a definition, but prevention does not equate to community education campaigns, so I think the outcome must not be another set of advertisements or another set of posters. We need to be looking at prevention, not community education.³¹⁹

- 5.57** According to VicHealth, Violence prevention campaigns need to include both universal and targeted interventions to ensure maximum effectiveness.³²⁰ VicHealth primarily delivers universal campaigns that are directed across the entire population, such as social norms campaigns, education programs in schools and organisational development initiatives. In addition, in keeping with its 'nested' framework for prevention, it has also assisted in the development of targeted programs that address the needs of specific population groups or groups experiencing certain life-cycle and relationship stages.³²¹

- 5.58** Elements of a comprehensive prevention strategy will include:

- community awareness campaigns
- school-based programs
- workplace programs

³¹⁹ Ms Marcus, Evidence, 18 June 2012, p

³²⁰ VicHealth, *National Survey on Community Attitudes to Violence against Women 2009*, March 2010, p 9.

³²¹ Committee meeting with representatives of VicHealth, 20 March 2012; VicHealth, *Preventing Violence Before it Occurs: A Framework and Background Paper to Guide the Primary Prevention of Violence Against Women in Victoria*, December 2007, p 14.

- targeted prevention campaigns

5.59 Each of these is considered in turn in the following sections.

Community awareness campaigns

5.60 The purpose of this type of campaign is to target the entire community in an effort to promote the idea that preventing violence against women is everyone's responsibility.³²² The Mt Drutt Family Violence Response and Support Strategy Leadership Group surmised this stance declaring "the whole community has a responsibility to work towards the prevention of domestic violence and to demonstrate the unacceptability of all forms of violence."³²³

5.61 Likewise, the South Western Sydney Local Health District supported the development of such campaigns, on the basis that they unite the community against domestic violence and encourage victims to report abuse:

We know that many women do not report domestic and family violence or access services due to fear, shame and lack of community support. All levels of our community must unite to condemn violence against women and raise future generations knowing that violence is not tolerated. This process is aided by government support for national and international awareness raising days, advertising campaigns and education programs in schools. These sorts of community awareness raising processes educate and enable all individuals and communities to play a part in preventing domestic and family violence happening in the first place. They also assist in creating a safe, understanding space for victims of domestic and family violence to disclose their experience and move forward with community support, thereby preventing violence recurring.³²⁴

5.62 It was also noted by some inquiry participants, such as Ms Kristy Kennedy, a participant at the Committee's public forum in Forbes, that advertising campaigns targeting domestic violence, often act as a catalyst for opening dialogues about the topic.³²⁵

5.63 Considering the content of these campaigns, Women Everywhere Advocating Violence Elimination suggested that they should inform people about healthy and unhealthy relationship practices as young women often confuse male control for love:

One way to prevent domestic violence is to engage in community education with regard to attitudes to women, beliefs about relationships and recognizing healthy and unhealthy relationships. There is considerable evidence that community attitudes which support views of male control of women are dangerous. Many young women also confuse controlling jealousy with love and do not recognise that an obsessive need to monitor their every movement is a sign of danger. Young women need education in recognising health and unhealthy relationships.³²⁶

³²² See for example: Ms Boland, Evidence, 20 February 2012, p 3.

³²³ Submission 23, p 6.

³²⁴ Submission 57, South Western Sydney Local Health District, p 10.

³²⁵ Ms Kristy Kennedy, Evidence, 28 February 2012, pp 30-31.

³²⁶ Submission 6, Women Everywhere Advocating Violence Elimination, p 8.

5.64 The Benevolent Society advocated for community awareness campaigns to address the scope and impact of violence against women, rather than simply focusing on physical violence:

Community awareness campaigns should be explicit in spelling out the scope and impact of domestic and family violence. Campaigns which, for example, only focus on physical abuse do not communicate the relentless fear, control and isolation experienced by women, or the devastating effect that violence and witnessing violence can have on infants' and children's brain development and behaviour.³²⁷

5.65 The Committee received evidence about two community campaigns, The White Ribbon campaign and the *Violence against Women Australia says no* campaign. During her evidence to the Committee, Ms Libby Davis, Chief Executive Officer, White Ribbon Foundation, explained the role of White Ribbon in the prevention of violence towards women:

White Ribbon is a primary prevention campaign that delivers a range of prevention strategies and measures of the national plan through initiatives with schools, universities, workplaces, and through the national awareness campaign that, most importantly, is conducted through our social media.³²⁸

5.66 White Ribbon has developed a range of community prevention campaigns that target men's violence towards women, notably:

- the White Ribbon Ambassador Program which primarily sees men and boys pledge never to commit, excuse or be silent about violence against women, and take an active stand against such abuse.
- the sale of White Ribbons, wristbands and other merchandise.
- a \$2 million pro bono national media campaign in capital cities and major regional centres.
- a social media initiative that focuses on the use of Twitter.
- 'My Oath' campaign.³²⁹

5.67 The Committee received evidence about a Commonwealth Government campaign that ran in the mid-2000s – the *Violence against women, Australia says no* from JayGrey, the organisation responsible for delivering the campaign on behalf of the Commonwealth Government in June 2004. The campaign included television advertising that provided realistic examples of the impacts of violence against women and encouraged viewers to take a stand against such abuse.³³⁰ The campaign also provided a confidential phone line that people could call to discuss issues concerning violence against women.

5.68 JayGrey stated that the success of the campaign lay in its ability "... to tread a fine line between sense and sensation, between facts and statistics and between hyperbole and truth... [as campaigns about] sensitive issues such as domestic violence can only work if there is a

³²⁷ Submission 37, p 19.

³²⁸ Ms Davies, Evidence, 26 March 2012, p 2.

³²⁹ Submission 49, White Ribbon Foundation, p 10.

³³⁰ Submission 78, JayGrey, Appendix 1.

sense of realism...³³¹ The submission further noted the impact the campaign had on respondents, as well as the number of calls made to the dedicated phone line:

“Violence against women, Australia says no” was without a doubt one of the most successful public awareness campaigns against domestic violence which resulted in 90% of researched respondents recalling the campaign within only two months of being on air. It also saw more than 60,000 phone calls made to the dedicated Helpline, of which 75% were from female victims of violence and sexual assault.³³²

School-based programs

5.69 There was consensus from inquiry participants about the need for violence prevention programs to be delivered in schools,³³³ which were seen as an effective means of:

- teaching young people about safe and respectful relationships, and enhancing their communication and dispute resolution skills;
- challenging social attitudes towards violence, and;
- complementing universal prevention campaigns.³³⁴

5.70 For example, Dr Wangmann told the Committee that ‘If we are talking about prevention the Department of Education would be a key body’.³³⁵ The Youth Action and Policy Association argued that school-based violence prevention programs were desirable because it is during a person’s teenage years that they are most likely to start dating, potentially increasing their risk for violence and their receptivity to messages about relationships.³³⁶ Similarly, the Nepean Community & Neighbourhood Services acknowledged that “early adolescence is a time of great change and great challenge” and that these types of programs would greatly assist young people who are same-sex attracted.³³⁷

5.71 The Nepean Community & Neighbourhood Services also noted the increasing prevalence of violence in relationships between young people and believed that school-based programs were the most effective means of combating this problem:

Grech & Burgess (2011) - majority of domestic violence incidences occur in residential premises on Saturday and Sundays and the peak time is between 6 and 9pm. Interestingly the report also highlights that 20 percent of all victims of recorded domestic assault are aged 10-24 years.

³³¹ Submission 78, p 2.

³³² Submission 78, p 2.

³³³ See for example, Submission 34, NSW Legal Aid, p 14; Submission 44, Fairfield Domestic Violence Committee, p 4; Submission 58, Green Valley Liverpool Domestic Violence Service, p 5; Submission 69, Ms Catherine Smith, p 3.

³³⁴ See for example: Submission 57, p 10; Submission 4, Barnardos Australia, p 11; Submission 10, Nepean Community & Neighbourhood Services, pp 1-2; Submission 16, p 1; Submission 25, Relationships Australia, p 3; Submission 36, Youth Action and Policy Association, p 6.

³³⁵ Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology Sydney, Evidence, 18 June 2012, p 5.

³³⁶ Submission 36, p 6.

³³⁷ Submission 10, p 2.

We believe that this statistic in and of itself suggests that early intervention needs to be targeted at the 10-15 yr age group... However this statistic has come about it highlights the need for programs targeted universally at children and young people during the latter years of Primary school and the early years of High school.³³⁸

- 5.72** However, the organisation's submission added that despite the availability of prevention programs there has not been a decrease in the number of young people in violent relationships.³³⁹
- 5.73** Various inquiry stakeholders recommended that the government explore opportunities to build on existing school-based programs, as well as develop new strategies that teach students about domestic violence, particularly the importance of respectful relationships, how to identify abusive situations and violence de-escalation skills.³⁴⁰ Other recommendations included promoting awareness of alcohol and drug use as a contributing factor to domestic violence and addressing violence in gay, lesbian, bisexual, transgender and intersex relationships.³⁴¹
- 5.74** Alongside school-based strategies the Network of Community Activities was keen to promote the possibilities of prevention and early intervention programs delivered through Out of School Hours Services because these organisations have the ability to develop and deliver prevention programs to children in a supportive environment.³⁴² Two particular school-based programs were brought to the Committee's attention – LOVE BiTES and Breaking the Silence.

LOVE BiTES

- 5.75** The LOVE BiTES program has been provided to over 130 communities across NSW It was seen by many stakeholders as an example of a highly successful school-based program.³⁴³ In its submission to this inquiry the organization that runs the LOVE BiTES program, the National Association for the Prevention of Child Abuse and Neglect (NAPCAN), described the format of the current program:

... a multi-lessoned program, followed by a youth-led community campaign, which is run in or out of the school environment. LOVE BiTES ... is a Respectful Relationships education program focusing on relationship violence prevention for 14-16 year olds. It aims to break inter-generational cycles of family violence, and the increasing rates of sexual assault, by supporting young people to develop respectful relationships. Young people develop the skills to:

³³⁸ Submission 10, p 2.

³³⁹ Submission 10, p 2.

³⁴⁰ Submission 36, p 6; Submission 10, p 3; Answers to supplementary questions 17 October 2011, Benevolent Society, Question 7, pp 5-6; Submission 25, p 4.

³⁴¹ Submission 66, Australian Council on Alcoholism and Drug Dependence Use, p 6; Submission 26, Inner City Legal Centre, p 6 and Submission 46, ACON, p 4.

³⁴² Submission 17, Network of Community Activities, pp 4-7.

³⁴³ See for example Submission 28, Women's Domestic Violence Court Advocacy Network Inc, p 7 and Submission 74, NSW Police Force, p 18; Ms Kerrie Radford, Family Support and Sexual Assault Worker, Binaal Billa Family Violence Prevention Legal Service, Evidence, 28 February 2012, p 16, Ms Cathie Schatz, Outreach Worker, Forbes Women's Refuge, 28 February 2012, p 16.

- Identify and have safe, equal and healthy relationships;
- Develop respectful conflict resolution and problem solving skills;
- Access support services in their community if they need help.³⁴⁴

5.76 The program focuses on the most predominant types of violence against women - domestic violence and sexual assault – and explores the definitions of these types of abuse, myth deconstruction, consent, ethical bystander strategies, and skills building activities; and the promotion of and modelling of respectful relationships.³⁴⁵

5.77 NAPCAN consults with local service providers to ensure the program effectively targets its intended audience. For example, NAPCAN worked closely with the Lakemba branch of the Department of Community Services to implement LOVE BiTES in Bankstown and is engaged in consultations with services providers in Bourke to provide the program in their local area.³⁴⁶ LOVE BiTES has also attracted international funding from the UBS Optimus Foundation and continues to receive support from the Government.³⁴⁷

5.78 NAPCAN attributes the success of LOVE BiTES to:

- The development of high quality respectful relationships programming and resources that address issues that are relevant to, and have been identified by, young people.
- The program's adaptability to suit the needs of local communities.
- The high quality professional development offered to program facilitators.
- The provision of ongoing support and mentoring to program participants.
- The NSW government's commitment to, and financial support of, violence prevention programs.³⁴⁸

5.79 In their evidence to the Committee NAPCAN representatives also stressed the importance of including boys in the program and having male facilitators.³⁴⁹

5.80 There have been three evaluations of LOVE BiTES. The North Coast Area Health Service and the North Coast Institute of TAFE conducted a retrospective study of LOVE BiTES in 2007. The evaluation examined the long term impact the program had on Year 10 and Year 11 students at two local high schools and concluded:

The Love Bites program is an effective and youth friendly method of teaching young people about Domestic Violence and Sexual Assault. The content, activities and trainers are effective and 'safe' for young people to enable exploration of these issues.³⁵⁰

³⁴⁴ Submission 75, National Association for Prevention of Child Abuse and Neglect, (NAPCAN) p 4.

³⁴⁵ Tabled document, NAPCAN, *NAPCAN's Growing Respect*, p 2.

³⁴⁶ Ms Angela Walsh, National Manager, Growing Respect/Research and Evaluation, NAPCAN - LOVE BiTES, Evidence, 26 March 2012, p 37.

³⁴⁷ Submission 75, p 4.

³⁴⁸ Submission 75, p 4 and Submission 61, NSW Government, p 6.

³⁴⁹ Ms Walsh, Evidence, 26 March 2012, p 36 and Ms Bonnie Souter, Manager, Community Partnerships Growing Respect, NAPCAN -LOVE BiTES, Evidence, 26 March 2012, p 36

³⁵⁰ Tabled document, NAPCAN, TAFE North Coast Institute, *LOVE BiTES Evaluation 2007*, p 6.

Breaking the Silence

- 5.81** White Ribbon has provided *Breaking the Silence* to more than 60 schools in the Sydney region since 2010 and plans to expand the program into another 25 schools in 2012. Ms Davies explained that the program operators work with school executives over three workshops to develop strategies that embed attitudes that prevent violence towards young women into the curriculum. Ms Alexander attributed the success of the program to its ability to be adapted to different school environments and age groups:

The success of the Breaking the Silence program is that teachers can adapt the program to their school context and the age of the children who are participating. The kids in primary school receive more messages about respectful relationships in general and how to live and enact respectful relationships amongst themselves and within the wider community. We see them taking those messages out to the broader community beyond the school yard and to their family and friends outside of that community.³⁵¹

- 5.82** Furthermore, an evaluation of the pilot program found that the playground culture of participating schools had turned around since the program's implementation.³⁵²
- 5.83** The program has received funding from White Ribbon's corporate sponsorship with Suzanne Grae. However in the future, White Ribbon is looking to receive additional funding from the State and Commonwealth governments to expand the program nationwide.³⁵³
- 5.84** White Ribbon also works with universities to combat violence against women. For example, during O-Week the foundation collaborated with St Andrew's College at the University of Sydney to encourage students to prevent violence against women through a range of activities such as the distribution of pamphlets and designing anti-violence t-shirts.³⁵⁴ White Ribbon is also looking to adapt some Canadian resources regarding violence prevention at universities to an Australian context.³⁵⁵

Women Educating Each Other Women in Safe and Equal Relationships (WEEO WISER) program

- 5.85** The WEEO WISER program was run by the Liverpool Women's Health Centre originally under now-defunct Western Sydney Area Assistance Scheme funding. Ms Green described the structure and benefits of the program which was run with female students in year 9, aged 13 to 14 'when they are starting to get into relationships' and are vulnerable:

It had the potential to disrupt generational cycles of violence. One of the domestic violence services, a mother was seeing a work colleague of mine and she is talking to my work colleague about this fantastic program my daughter went to at school and here she is telling her mum: You know mum, you can get an AVO and you can do this and you can do that.

³⁵¹ Ms Alexander, Evidence, 26 March 2012, p 6.

³⁵² Ms Davies, Evidence, 26 March 2012, p 6.

³⁵³ Ms Davies, Evidence, 26 March 2012, p 6.

³⁵⁴ Ms Alexander, Evidence, 26 March 2012, p 10.

³⁵⁵ Ms Alexander, Evidence, 26 March 2012, p 10.

It cost a bit more because it is pure education. You are training up young women to go into schools to talk to other young women. Kids hear things from adults; we know it as parents, and yet when they hear the same information from somebody else, it can make a whole world of difference.

Of the 13 young women that we trained up to deliver that program, that also meant for a number of them that they went on to university; some are working in social work, in the domestic violence hotline; so you are building community capacity with women that you are training up but also capacity of young women that you are often working with..³⁵⁶

- 5.86** Ms Green advised the Committee that the program had been ‘rigorously evaluated by Dr Margot Rawsthorne from the University of Sydney’, and that the evaluations demonstrated that ‘that young women clearly understood what violence in relationships was and the behaviour, and they were able then to make some clear decisions in rejecting abusive and violent behaviour in relationships.’³⁵⁷ However, the program did not receive ongoing funding and was wound up when ‘we were working with 15 high schools in the Liverpool area.’

Professional development for teachers

- 5.87** There was some suggestion during this inquiry about the need to provide teachers and child care workers with training in violence prevention. For example, the Fairfield Domestic Violence Committee said “teachers across all educational institutions need to receive appropriate training on domestic and family violence issues, how to respond and where to refer clients to.”³⁵⁸

- 5.88** Ms Cathie Schatz, Outreach Worker, Forbes Women’s Refuge, argued that this type of professional development would encourage teachers to have a better understanding of why children may act out in class:

But also I believe that the police and the teachers and all of those people, they also need to be educated too on what domestic violence is and the effects that it can have on the children that are living in these abusive homes. I do not believe that the teachers are really fully aware of the consequences of these abusive families. It is put down to—children are known to have behavioural issues that live in abusive homes but the teachers are unaware of this and so they are just marked as naughty children rather than worked with to help them through their issues. I think something needs to be done about that.³⁵⁹

- 5.89** The Network of Community Activities supported training out of school educators about domestic violence believing that a lack of awareness about this issue meant that there were missed opportunities for early intervention. It was recommended that regular professional development for out of school educators could incorporate:
- indentifying the indicators of domestic violence
 - managing disclosure by children of domestic violence.

³⁵⁶ Ms Green, Evidence, 17 October 2011, p 28.

³⁵⁷ Ms Green, Evidence, 17 October 2011, p 28.

³⁵⁸ Submission 44, p 3.

³⁵⁹ Ms Schatz, 28 February 2012, p 16.

- reporting domestic violence
- explaining Apprehended Domestic Violence Orders
- providing referrals to agencies and support groups.³⁶⁰

Workplace-based programs

- 5.90** There were a small number of inquiry stakeholders who expressed support for workplace-based prevention programs. For example, Professor Stubbs referred to the ability of such programs to challenge workplace cultures that may hold violence supportive attitudes.³⁶¹ Similarly, Relationships Australia viewed workplace-based programs as an opportunity to teach business and community leaders about domestic violence, and would allow them to respond more effectively should such abuse be revealed in their workplaces.³⁶²
- 5.91** Other participants, such as BoysTown and the South Western Sydney Area Health Service provided brief discussions about professional opportunities in such fields as health and community services.³⁶³
- 5.92** An example of workplace strategy is the White Ribbon workplace accreditation program. The program initially received commonwealth government funding in 2011 and since this time an advisory committee has worked to develop a scheme that offers "... [a] more responsive approach by workplaces to the issue of violence not only within the workplace but the impact of external violence impacting on the workplace and their workers."³⁶⁴
- 5.93** Ms Davis explained that the accreditation scheme needed to meet legal obligations, such as those embedded in the in the *Fair Work Act* but be flexible enough to meet the requirements of individual workplaces. For example, organisations should provide leave entitlements that accommodate the impact of violence on women.³⁶⁵ The accreditation model is expected to affect cultural change in workplace attitudes towards women and has three tiers that organisations are to be assessed against:
- Tier one – organisations are to demonstrate awareness and commitment of the issues regarding violence towards women.
 - Tier two - organisations are to self-assess, identify gaps and implement standards that may be within their policies and procedures regarding violence towards women.
 - Tier three – organisations are to take on a broad leadership role on violence towards women both within the organisation and in public.³⁶⁶

³⁶⁰ Submission 17, p 7.

³⁶¹ Professor Stubbs, Evidence, 7 November 2011, p 3.

³⁶² Submission 25, p 4.

³⁶³ Submission 41, BoysTown, p 6 and Submission 57, p 6. Also see Submission 40, One in Three Campaign, p 13 and Submission 64, p 4.

³⁶⁴ Ms Davies, Evidence, 26 March 2012, p 6.

³⁶⁵ Ms Davies, Evidence, 26 March 2012, p 6.

³⁶⁶ Ms Davies, Evidence, 26 March 2012, p 7.

- 5.94 The White Ribbon board ratified an accreditation model in March 2012 and plans to pilot it in a range of small, medium and large organisations later in the year.³⁶⁷

Early intervention

- 5.95 As noted earlier in the chapter, early intervention refers to strategies that come in to play after violence has occurred, with the aim of eliminating violence or preventing its escalation. Currently, the major early intervention programs for domestic violence in New South Wales are as follows:

- **NSW Health's Domestic Violence Routine Screening Program**, in which standardised questions are asked of all women attending public antenatal, early childhood, mental health and drug and alcohol services, at the first point of presentation, to identify those in recent or current situations of domestic violence, and provide information, support and referral.³⁶⁸
- **Community Services' Brighter Futures Program**, delivered by 14 lead agencies across New South Wales, which provides early support to help prevent problems from escalating to crisis point for families requiring long term support who are experiencing at least one program vulnerability, of which domestic violence is included.³⁶⁹
- **Community Services' Early Intervention and Placement Prevention Program**, comprising 430 services by providing support to vulnerable children, young people and families to stop problems (including domestic violence) from escalating and to reduce the likelihood of children and young people entering or remaining in child protection and out-of-home care.³⁷⁰
- Various projects run by non government organisations funded under Women NSW's **Domestic and Family Violence Grants Program**.³⁷¹

- 5.96 The Committee heard that just as there has been insufficient attention to prevention of domestic violence in New South Wales, so too has there been insufficient focus on early intervention.

- 5.97 Representatives of the Benevolent Society, one of the lead agencies funded to deliver Brighter Futures, noted that over half of its 1600 client families in the program were experiencing domestic violence, and that an increasing proportion were of Aboriginal or CALD background. Ms Jenni Hutchens, Senior Manager, South West and Western Sydney, with the Benevolent Society, emphasised the complex needs of the families participating in Brighter Futures and told the Committee that she did not consider it to be an early intervention program:

Brighter Futures was originally badged as an early intervention program but clearly through an evaluation of Brighter Futures it is not. It is a secondary program that

³⁶⁷ Ms Davies, Evidence, 26 March 2012, p 7.

³⁶⁸ Submission 61, p 7.

³⁶⁹ Answers to questions taken on notice, FACS, Question 5, p 12.

³⁷⁰ Answers to questions taken on notice, FACS, Question 5, p 12.

³⁷¹ Answers to questions taken on notice, FACS, Question 5, p 13.

families really are requiring some multiple and complex problems to really be able to access [the] program.³⁷²

- 5.98** Accordingly, Benevolent Society representatives emphasised the need for a greater focus on early intervention, such as via early years centres, which they described as ‘soft entry points where you get to talk to women and children very early in the life of a problem, before it escalates’.³⁷³ More generally, they called for greater investment in ‘evidence-informed’ early intervention, as well as specific strategies for a range of disadvantaged groups.³⁷⁴
- 5.99** Other participants such as the NSW Domestic Violence Coalition, Barnardos Australia, the Victims of Crime Assistance League (VOCAL) and the Mt Druitt Family Violence Support Strategy Leadership Group all called for a greater focus on early intervention - although not necessarily at the expense of tertiary interventions.³⁷⁵ For example, Mr Howard Brown of VOCAL emphasised that ‘[t]he earlier we intervene ... the less chance there is of an escalation in the levels of violence.’ He went on to argue that to secure the best possible outcomes for all parties domestic violence programs need to take an integrated approach incorporating the range of relevant justice, health and education services.³⁷⁶
- 5.100** Barnardos Australia underscored the long term approach that is necessary for early intervention to be effective:

As an early response to the identification of families at risk or experiencing domestic violence, families need sustained support over the long term to reduce risk factors such as poverty, homelessness, financial hardship, alcohol and drug addictions, cultural differences, resettlement pressures, poor parenting practices, poor understanding of the impact of domestic violence on children and the family etc.³⁷⁷

- 5.101** Finally, as we note in Chapter 17 concerning interventions focused on victims and children, both the Women’s Refuge Movement and Jenny’s Place Women’s and Children’s Services pointed to the early intervention role that many refuges play in the lives of victims, calling for additional investment from government to support this work.³⁷⁸ Jenny’s Place described how its resource centre delivers early intervention:

Outreach services such as our [Domestic Violence] Resource Centre are a form of early intervention and a service that is often the first contact a client has had to discuss her/their individual situation. This is where the parent learns about healthy/unhealthy relations, their options etc. Both adult [and] child are referred to the individual services they require and receive the support to live violent free lives in the future.³⁷⁹

³⁷² Ms Jenni Hutchins, Senior Manager, South West and Western Sydney, The Benevolent Society Evidence, 17 October 2011, p 57.

³⁷³ Ms Annette Michaux, General Manager, Policy and Research, The Benevolent Society, 17 October 2011, p 57.

³⁷⁴ Submission 37, pp 7, 15-16 and 22.

³⁷⁵ Ms Green, Evidence, 17 October 2011, p 27; Mr Howard Brown, Vice-President, VOCAL, Evidence, 26 March 2012, p 15; Submission 23, pp 5-6.

³⁷⁶ Mr Brown, Evidence, 26 March 2012, p 15.

³⁷⁷ Submission 4, p 10.

³⁷⁸ Submission 54, p 8; Submission 18, p 6.

³⁷⁹ Submission 18, p 6.

- 5.102** In terms of the government's intentions with regard to early intervention under the DFV Framework, in written answers to questions, FACS indicated that it is looking to build a greater focus on integration into early intervention services:

[Women NSW] is keen to explore the development of best practice guidelines and minimum standards around effective early intervention approaches to support more integrated approaches. Future work in this area will, in part, be guided by a literature review currently being undertaken as part of the NSW Domestic and Family Violence Framework.

Consideration also needs to be given to ways of increasing the capacity of the non-government sector to provide high quality early intervention programs, and for all to build robust evaluation of programs and their impact on behaviour change.³⁸⁰

- 5.103** It also indicted that the Domestic and Family Violence Grants Program, which funds a range of early intervention programs, is under review, 'in acknowledgement that short, one-off funding is unlikely to deliver sustainable outcomes, and in recognition of the need to improve the quality of the programs.'³⁸¹

- 5.104** In the following section on routine screening we discuss how NSW Health is also moving towards a greater focus on referral of victims identified via screening, to achieve a more integrated approach.

Committee comment

- 5.105** Consistent with our position in Chapter 4 that there needs to be a greater focus in the domestic violence system on people's needs, and that all agencies have a responsibility to respond to those needs in a timely, flexible, holistic and individualised way, our understanding is that early intervention is largely focused on strengthening victims to cope with and move beyond violence, as well as assisting perpetrators to change their abusive behaviour.
- 5.106** The line between early intervention and tertiary programs in New South Wales does not appear to be clear cut, and the Committee suspects that there has been an element of 'bracket creep' in that various strategies intended to have an early intervention focus have actually acquired a tertiary focus during implementation. We acknowledge the greater emphasis that government has been placed in recent years on early intervention, not least through the Brighter Futures program, but like some inquiry participants we consider that the complexity of needs among their client groups is such that these programs are effectively tertiary interventions.
- 5.107** This accords with the broad observation informing our inquiry that to date there has been a very significant focus on tertiary interventions and the criminal justice response to domestic violence in New South Wales, with insufficient attention to both prevention and early intervention. Just as we observed in an earlier section that there is a need for clear, concise definitions of prevention and early intervention, we also consider that early intervention and tertiary services should be better differentiated, in order to more effectively plan, fund and administer the full spectrum of domestic violence programs.

³⁸⁰ Answers to supplementary questions, 20 February 2012, FACS, Question 7, p 15.

³⁸¹ Answers to supplementary questions, 20 February 2012, FACS, Question 7, p 14.

- 5.108** We acknowledge that the government has increasingly recognised the strong connection between early intervention and integrated service delivery, so that services identify the range of clients needs and refer them to other services in a timely way. As we noted in Chapter 4, this is a core principle underpinning recent initiatives including the Cross Agency Risk Assessment and Management (CARAM) project (see paragraphs 4.109 to 4.110), as well as the NSW Police Force's 'Yellow Card' or Domestic Violence Proactive Support Service (DVPASS) (see paragraphs 7.139 to 7.155).
- 5.109** The present focus on tertiary interventions, matched with participants' call for greater investment in early intervention, begs the question as to exactly how much early intervention does occur beyond the routine screening system, end whether this is sufficient. We welcome FACS' advice that Women NSW is seeking to enhance the quality and longevity of early intervention programs under the Domestic and Family Violence Grants Program, that it is looking to support integration in early intervention via minimum standards, and that it will consider ways to increase the capacity of non government organisations to deliver high quality early intervention. While we consider that there will be better ways of using existing resources to each of these ends, there may also be a need for greater investment in early intervention. We urge the government to carefully consider this issue in light of the service mapping of domestic violence now taking place.

Recommendation 25

That the NSW Government, as part of the forthcoming NSW Domestic and Family Violence Framework, develop a specific plan for early intervention services that is:

- based on a clear concise definition of early intervention
 - informed by the recent mapping of domestic violence services
 - intended to build service capacity, including for integrated service delivery, and
 - sufficiently resourced to achieve the outcomes of strengthening victims and eliminating violence or preventing its escalation.
-

Evidence and evaluation

- 5.110** The Committee recommended that the Government build an evidence based approach into the DFV Framework with an explicit commitment to evaluation and to building the evidence base about prevention, early intervention and tertiary strategies in Chapter 4. The same issues were raised with respect to prevention programs. It appears that one of the historical barriers to a strategic approach to prevention and early intervention has been a perceived lack of evidence about the effectiveness of such measures. A number of inquiry participants also argued that by developing a strong-evidence base about the effectiveness of prevention initiatives, this will further develop sound strategies in terms of greater investments.
- 5.111** Ms Boland advised the Committee that FACS is working to strengthen its evidence-base for prevention programs but is already using available evidence to develop and implement strategies:

[I]n the Department of Family and Community Services we are really looking at trying to get an evidence-based approach to the way we respond and the way we implement

strategies and, in fact, we are looking at how we invest. I have said the evidence is not very good but I do think that we can develop strategies based on the evidence that we have and that we can discover.³⁸²

- 5.112** The Benevolent Society provided a number of recommendations about how to overcome some of the concerns surrounding the effectiveness of prevention-based activities, including in respect to evidence that research efforts be directed to gathering information about evidence-informed community awareness strategies about domestic violence, as well as evidence-informed approaches to working with men to prevent and respond to violent behaviour.³⁸³
- 5.113** To build a sound evidence base and inform future policy and programs, a number of inquiry participants argued that prevention strategies need to be properly evaluated, for example by embedding evaluation requirements into funding, and that additional funds should be invested in research and evaluation.³⁸⁴ Dr Don Weatherburn of the Bureau of Crime Statistics and Research underscored the methodological challenges and accompanying costs of rigorous research in this area, but nevertheless, argued that such research is vital to ensure effective public policy.³⁸⁵
- 5.114** NSW Health explained that a public health approach to addressing violence that deals with the underlying risk factors that increase the likelihood an individual becoming a victim or perpetrator of violence requires ‘an empirical and scientific approach to investigating the causes and consequences of violence before developing the policy response, including the primary prevention response.’³⁸⁶

Committee comment

- 5.115** The Committee recognises that there is a small evidence-base about violence against women prevention strategies. However, the evaluations that are available on the effectiveness of these activities and should encourage the development of further prevention-based initiatives.
- 5.116** The Committee considers that there is sufficient evidence to justify a comprehensive approach to prevention in respect of domestic violence. The challenge for present policy, as acknowledged by FACS, is to identify the specific evidence supporting effective strategies and have that inform future work. At the same time, there needs to be commitment to, and investment in, the continued development of robust evidence to inform future policy and program design.

³⁸² Ms Boland, Evidence, 20 February 2012, p 3.

³⁸³ Submission 37, pp 15-16 and answers to supplementary questions 17 October 2011, The Benevolent Society, Question 1, pp 3-4.

³⁸⁴ Ms Davies, Evidence, 26 March 2012, p 4; Submission 37, pp 15-16; answers to supplementary questions 17 October 2011, The Benevolent Society, Question 1, pp 3-4.

³⁸⁵ Dr Don Weatherburn, Director, BOCSAR, Evidence, 7 November 2011, p 16.

³⁸⁶ Answers to supplementary questions 30 April 2012, NSW Ministry of Health, Question 8, p 6, citing the World Health Organisation, ‘The public health approach: Violence Prevention Alliance’, 2012.

Recommendation 26

That the NSW Government ensure that the NSW Domestic and Family Violence Framework makes strategic use of available evidence on the causes and on the underlying risk factors for domestic violence, and on prevention and early intervention.

Recommendation 27

That the NSW Government embed evaluation requirements into the funding arrangements for prevention and early intervention strategies in respect of domestic violence, and adequately resource non government organisations to do this.

Aboriginal communities

- 5.117** The Committee heard that for Aboriginal people, gendered abuse is often exacerbated by a range of factors including the trauma and grief of removal of children, alcohol and other substance abuse, significant social and economic disadvantage, inadequate housing, and a lack of appropriate services. These factors combine to create highly stressed communities, in turn leading to a higher incidence of dysfunctional and violent behaviour.³⁸⁷ Participants spoke about the need to break the intergenerational cycle of violence, targeting children from a young age, and noting that the problem is so pervasive that significant investment of resources is required.³⁸⁸
- 5.118** NSW Women's Legal Service called for an action plan specifically focused on strategies preventing family violence in Aboriginal communities.³⁸⁹ Wurringa Baiya Aboriginal Women's Legal Centre recommended the establishment of an independent, dedicated crime prevention unit staffed by Aboriginal workers including counsellors, educators, child protection workers, and legal and health professionals, specifically to address violence against women in Aboriginal communities. The unit would have two functions: providing policy and advice to Government; and serving as a resource for Aboriginal communities and services to access when developing community managed initiatives.³⁹⁰
- 5.119** In addition to strategies to improve police responses to family violence among Aboriginal people, as well legal and victim supports, Wurringa Baiya also recommended specific prevention initiatives such as:
- developing specific training and support programs that build the capacity and skills of members of Aboriginal communities especially in rural and remote areas
 - providing culturally specific education programs that teach Aboriginal children protective behaviours, and parents and communities how to identify when a child is exhibiting signs of abuse

³⁸⁷ Ms Martin, Evidence, 5 March 2012, pp 4-5.

³⁸⁸ Ms Heather Blackley, Youth Services Manager, Western Plains Regional Development, Evidence, 28 February 2012, p 17.

³⁸⁹ Submission 45, p 6.

³⁹⁰ Submission 43, Wurringa Baiya Aboriginal Women's Legal Centre, p 15.

- developing programs that address the intergenerational trauma of the Stolen Generation and the ongoing effect this legacy has of individuals, their families and communities.³⁹¹

5.120 When a proposed recommendation along these lines was discussed during the Committee's round table, there seemed to be some confusion over whether the Committee was recommending Aboriginal-specific programs, or an Aboriginal-specific response. With respect to services, Ms Boland observed that the DFV Framework steering committee had agreed that 'that it was very important that most Aboriginal people were serviced through mainstream services. So the absolute more important thing to do is to make sure our mainstream services work as well as they possibly can.'³⁹² Ms Boland also commented on the importance of the mainstream services being culturally appropriate:

It is absolutely integral that we build the concept of cultural appropriateness into mainstream services. But if we want to improve the response to Aboriginal family violence more people are helped through mainstream services than they are through anything else. So let us get them right.³⁹³

5.121 Ms Martin from Wurringa Baiya responded that her organisation acknowledges that Aboriginal people use a whole range of non-Aboriginal specific services, but that there should also be a number of Aboriginal-specific services considering the high incidence of domestic violence within Aboriginal communities across Australia.³⁹⁴ Ms Martin also explained the rationale behind her centre's recommendation, which formed the basis for the Committee's proposed recommendation:

I thank the Committee for putting up that recommendation. ... What we are basically saying is not that we should have a new program; but that we create a unit staffed by Aboriginal specialists working across a broad range of backgrounds and skills—it is in the recommendation—both to work with governments across agencies to properly advise them—it could be with Health, it could be with Police or it could be with any number of different agencies and services—as well as working with Aboriginal communities to improve their capacity building.³⁹⁵

5.122 In relation to the question about mainstream or specialist services, Ms Gander referred to remote communities that she has worked and the benefit of both specialist domestic violence services as well as specialist Aboriginal services, where she has 'seen the difference in the approaches and the knock-on effect that has had on mainstream services in that town' and that 'the services women are getting from the specialist services are not necessarily what they would be getting from a mainstream service that would be looking through that domestic violence lens.'³⁹⁶ Ms Gander summarised her view:

I think having a specialist approach and having people who have that domestic violence lens in Aboriginal communities is important. I have also worked for many years for the Aboriginal and Torres Strait Island Commission [ATSIC] in this

³⁹¹ Submission 43, p 20.

³⁹² Ms Boland, Evidence, 18 June 2012, p 11.

³⁹³ Ms Boland, Evidence, 18 June 2012, p 11.

³⁹⁴ Ms Martin, Evidence, 18 June 2012, p 12.

³⁹⁵ Ms Martin, Evidence, 18 June 2012, p 12.

³⁹⁶ Ms Gander, Executive Officer, NSW Women's Refuge Movement, Evidence, 18 June 2012, p 12.

particular area so I know the difference it makes in remote communities. I want to make that point quite strongly.³⁹⁷

5.123 Ms Green also supported the specialist approach, referring to her own experience in Liverpool:

In Liverpool where I am based Liverpool Women's Health Centre has had an Aboriginal-specific position for a very long time. While I agree that Aboriginal people may use mainstream services from time to time they also have a preference to want to use services where there are either Aboriginal workers or it is a service that they trust and know they will get a good service. When we conducted some consultations with Aboriginal women in our community on what would make a difference in terms of working with young Aboriginal women, one of the key things they talked about was how important it was to have specialist Aboriginal workers. I know if I discussed that recommendation with Aboriginal women in our community in Liverpool they would be quite stoked that that kind of recommendation was even being looked at.³⁹⁸

Committee comment

5.124 The Committee recognises the imperative to develop specific prevention and intervention strategies to tackle the unique and complex factors contributing to domestic violence in Aboriginal communities, and is persuaded by the discussion at the round table that a specific NSW Aboriginal Family Violence Strategy is warranted as part of the DFV Framework, to be developed in consultation with the Aboriginal community.

Recommendation 28

That the NSW Government develop, in consultation with Aboriginal stakeholders, a NSW Aboriginal Family Violence Strategy as a specific element of the NSW Domestic and Family Violence Framework that is specifically and adequately resourced, and focuses on prevention and early intervention. This work should include consideration of:

- the establishment of a dedicated crime prevention unit staffed by Aboriginal workers to address violence against women in Aboriginal communities, to provide policy and advice to government, and serve as a resource for Aboriginal communities and services developing community managed strategies
- the development of specific training and support programs to build skills and capacity of Aboriginal community members, especially in rural and remote areas
- the provision of culturally specific education programs to teach Aboriginal children protective behaviours, and parents and communities how to identify when a child is exhibiting signs of abuse
- the development of programs to address intergenerational trauma and entrenched disadvantage
- systemic improvements in respect of policing and other parts of the criminal justice system
- ways to improve access to legal support and advocacy
- ways to improve access to other victims' services including refuges.

³⁹⁷ Ms Gander, Evidence, 18 June 2012, p.12

³⁹⁸ Ms Green, Evidence, 18 June 2012, pp 12-13.

Screening

5.125 Since 2003 the domestic violence screening program has been implemented in certain public health services to screen for women who may be experiencing domestic violence. In its submission to the inquiry the NSW Government described the program as a ‘system wide early intervention strategy’, and outlined some of its key features to be that it:

- identifies female clients in recent or current domestic violence situations providing information, support and referral.
- targets women presenting to mental health and drug and alcohol services in recognition of the impact of domestic violence on the short and long term physical, mental and emotional health and wellbeing of victims, including children.
- targets women presenting at antenatal and early childhood health services in recognition of the high prevalence of domestic violence in these clinical populations and the greater risk posed to women who are pregnant, and to infants and young children.
- minimises ill health as a result of domestic violence.³⁹⁹

5.126 Routine screening currently occurs in all public antenatal services, drug and alcohol services and mental health services across the State. In addition, some local health districts have introduced it in other settings such as child health services and sexual assault services in response to local needs.⁴⁰⁰ Further, NSW Health advised that there has been some non-government interest in the tool as well, with Family Planning NSW recently seeking to use the tool across its services.⁴⁰¹

5.127 During her evidence to the Committee, Ms Mailin Suchting, Acting Associate Director, Children, Young People and Family Health and Wellbeing Unit, New South Wales Ministry of Health, explained the screening process:

Broadly the mechanism that is described is a simple process of a preamble and two questions. If domestic violence is identified a further question is asked about whether or not the woman is safe to go home at this point, or safe at this point. A response to that that she is unsafe is a trigger for a further referral and [a] risk assessment process...⁴⁰²

5.128 Ms Suchting continued to explain that screening for domestic violence is integrated into existing screening process, ensuring a streamlined approach. For example, domestic violence screening in mental health facilities is integrated into the mental health outcomes assessment tool.⁴⁰³ In each setting, the screening occurs in private, away from the woman’s partner or

³⁹⁹ Submission 61, p 7.

⁴⁰⁰ Dr Chant, Evidence, 30 April 2012, p 5; Ms Mailin Suchting, Acting Associate Director, Children, Young People and Family Health and Wellbeing Unit, NSW Ministry of Health, Evidence, 30 April 2012, p 5.

⁴⁰¹ Ms Suchting, Evidence, 30 April 2012, p 8.

⁴⁰² Ms Suchting, Evidence, 30 April 2012, p 5.

⁴⁰³ Ms Suchting, Evidence, 30 April 2012, p 5; Dr Chant, Evidence, 30 April 2012, p 7.

children. To provide context, women are given a fold-out 'Z-Card' providing basic information about domestic violence and how to get help if you are experiencing abuse.⁴⁰⁴

5.129 Dr Chant explained that where domestic violence is identified, there is an 'immediate sort of risk assessment process implemented. Then, depending on what that risk assessment shows, a range of interventions will be brought into it.'⁴⁰⁵

5.130 Inquiry participants, including the Western Sydney Local Area Health District and the Illawarra Shoalhaven Local Health District, noted the impact screening had on raising the awareness of domestic violence amongst health workers and the local community.⁴⁰⁶ Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney, praised the program for reaching a wide range of women and encouraging, but not pressuring, them to report abuse:

Having said that, I think one thing New South Wales does really well on early intervention is its health policy on routine screening in alcohol, other drugs, maternity, mental health and child and family. As I said before, maybe 20 per cent of women come through the legal system. Many more women dealing with violence are in the health system with all of the effects, but they are so different and varied the effects that they are not easy to fix and women do not disclose unless they are asked...

I think we should be proud in New South Wales we actually have got I think what I would call an effective early intervention program. We know there are victim survivors in our health system. Without pressuring them - it can go wrong if people pressure people to tell. Women have good reason for when they choose to tell and when it is safe to tell, but it certainly is a way of reaching a lot more women than ever come through the criminal justice system. That is probably the one I would think and I think that is going very well from what I understand.⁴⁰⁷

Evaluation of NSW Health screening program

5.131 In 2010 Dr Jo Spangaro and Dr Anthony Zwi of the School of Community Medicine, University of New South Wales, evaluated domestic violence screening in NSW health services and found that the intervention had a positive impact on women, including increasing their awareness about abuse:

Screening operates as a complex intervention by assisting women who are screened in diverse ways, that include provision of opportunities for first disclosure, provision of information about abuse, and after six months, evidence of increased awareness about abuse and reduced abuse as well as reduced isolation and being prompted to evaluate the situation.⁴⁰⁸

⁴⁰⁴ Dr Chant, Evidence, 30 April 2012, p 5; tendered document, *Domestic Violence Z-Card*, Dr Chant, 30 April 2012.

⁴⁰⁵ Dr Chant, Evidence, 30 April 2012, p 5.

⁴⁰⁶ Submission 30, Western Sydney Local Area Health District, p 3 and Submission 15, Illawarra Shoalhaven Local Health District, p 1.

⁴⁰⁷ Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney Evidence, 17 November 2011, p 52.

⁴⁰⁸ Spangaro J and Zwi A, *After the Questions: Impact of Routine Screening for Domestic Violence in NSW Health Services*, August 2010, p 7.

- 5.132** Dr Spangaro and Dr Zwi also found that since the program's inception 5.6 per cent to 7 per cent of all women screened reported abuse.⁴⁰⁹ Additionally, it was found that for 23 per cent of women who disclosed abuse during the screening process it was their first time for doing so.⁴¹⁰
- 5.133** In its submission, the NSW Government lauded the success of the screening program, referring to the Spangaro and Zwi's evaluation as finding "... [the] program is strongly established, with a sustained screening rate higher than found in similar programs internationally. The program increases workers' responsiveness to, and awareness of domestic violence as an issue."⁴¹¹
- 5.134** Dr Spangaro and Dr Zwi's evaluation made a number of recommendations to improve the domestic violence screening program, including:
- Proposal 1 Mandated screening should continue in the four programs and consideration be given to extending mandated screening for DV to additional programs including post-natal wards, gynaecology, sexual health and oral health clinics.
 - Proposal 2 Routine screening for DV should also be introduced in private antenatal, mental health and substance abuse clinics.
 - Proposal 4 The brief screening tool comprising two questions and embedded into assessment schedules should be sustained and the preamble positioned prominently in the tool and emphasised in training.
 - Proposal 5 Minor amendment of the questions should be considered and tested, to include choking, controlling behaviour and actions that create fear.
 - Proposal 10 The screening protocol should be amended to direct that disclosures of current abuse in response to screening should be responded to with a formalised risk assessment process.
 - Proposal 14 The annual one month snapshot should continue, with reporting back to AHS within six months of data collection. Consideration should be given to extending the monitoring to include training coverage.
 - Proposal 17 All women need to be asked and responded to in ways that that are respectful, caring, promote choice and minimise shame, without making assumptions.
 - Proposal 19 Referrals need to be actively facilitated, in order to promote uptake.
 - Proposal 21 Reports to Community Services need to be based on assessment of risk rather than presumed as automatically indicated when DV is disclosed and women informed that a report has been made unless this is not possible.
 - Proposal 23 Each Area Health Service should establish area-wide strategies to ensure that all new staff attend the training course within six months of commencement of their role.

⁴⁰⁹ *After the Questions: Impact of Routine Screening for Domestic Violence in NSW Health Services*, p 7.

⁴¹⁰ *After the Questions: Impact of Routine Screening for Domestic Violence in NSW Health Services*, p 77.

⁴¹¹ Submission 61, p 7.

Proposal 24 Each Area Health Service should establish a process for monitoring completion and currency of staff training in screening for DV.⁴¹²

5.135 In its submission, the NSW Consumer Advisory Group - Mental Health Inc underscored the findings and proposals of the Spangaro and Zwi evaluation.⁴¹³ Dr Laing also referred to the research findings:

Some research by Jo Spangaro has followed up some of the women who were screened in New South Wales, whether or not they disclosed, and it is very interesting. I did not bring the reference with me, but she did find that six months after the screening the women in the abused group were more likely to agree with statements around domestic violence and that it was harmful and there was an actual reduction in abuse.⁴¹⁴

Improvements to current screening program

5.136 While the Committee heard overall support for NSW Health's screening program, there were some stakeholders who suggested improvements to the program. For example, the South Western Sydney Local Health District suggested that General Practitioners should be encouraged to screen female patients during their annual health checks and the Northern Sydney Local Health District wished to see the program trialled in a public hospital Emergency Department.⁴¹⁵ Both the One in Three Campaign and Mr Trevor Farrell, a victim of domestic violence, suggested that the program be expanded to include men:⁴¹⁶

No men are screened officially. ... We really feel that if that screening tool could be expanded to include men even on a trial basis it would actually be a great way that prevention and early intervention services could reach the men that are victims. It would capture data on the incidence and prevalence of male victims of family violence and it would alert health professionals to one of the possible contributors to the physical and mental health issues and substance abuse issues that their client is presenting with. Really importantly, it would increase the safety of children by identifying families in which exposure to violence is an issue. ...⁴¹⁷

5.137 The Committee questioned representatives from the Ministry of Health about the possibility of expanding the program into different health services. Dr Chant, advised that the Department was currently reviewing the policies surrounding the program and that the screening program may be introduced into other health services.⁴¹⁸ She stated that any potential expansion would need to address workforce capacity and training, as well as referral pathways:

In expanding any screening to any new sites, there is workforce capacity and training and we would have to certainly do a lot of significant work around workforce capacity

⁴¹² *After the Questions: Impact of Routine Screening for Domestic Violence in NSW Health Services*, pp 83-89.

⁴¹³ Submission 19, NSW Consumer Advisory Group - Mental Health Inc, p 5.

⁴¹⁴ Dr Laing, evidence, 17 November 2011, p 52.

⁴¹⁵ Submission 57, p 5 and Submission 64, p 6.

⁴¹⁶ Submission 40, p 18 and Submission 65, Mr Trevor Farrell, p 2.

⁴¹⁷ Submission 65, p 2.

⁴¹⁸ Dr Chant, Evidence, 30 April 2012, p 6.

and training. We also need to ensure that there is a model of care and a referral pathway that can act on the screening.⁴¹⁹

- 5.138** Others questioned the efficacy of screening in emergency departments. In response, Dr Chant acknowledged there were some barriers to expanding the program into emergency rooms, including the ability to provide the woman with the requisite privacy and safety, and issues concerning workload and prioritisation in an emergency care setting.⁴²⁰ While Dr Chant also observed value in stronger engagement with general practitioners, she also identified a number of potential obstacles to introducing the program into general practices:

I suspect in general practice there are similar issues. It is not an area that I can speak authoritatively on, but I suspect the same issues of workforce capacity and concerns around what to do when they find domestic violence—the complexities of the fact that they are often treating both, potentially the perpetrator and the victim, within a family practice, and how they manage those circumstances. In working and engaging with general practice, we will need to work through all of these issues and not underestimate the complexity. But if the evidence is that screening and intervention will deliver best outcomes for the family and the victim, then we need to pursue those.⁴²¹

- 5.139** At the Committee's round table, Dr Chant again discussed the possibility of introducing screening into emergency departments, and highlighted some challenges including that the perpetrator may accompany the victim and privacy concerns. Nevertheless, she acknowledged the informal screening role that clinicians have in questioning the basis for a woman's injuries:

[C]linicians have a role in gleaning a clinical history to determine any incompatibility with the purported mechanism of the injury. That is one of the bases for child protection issues and reporting child injuries. Even though there is no formal screening process in our accident and emergency departments, in treating women clinicians should be alert to signs, histories and notes consistent with unexplained injury.⁴²²

- 5.140** Dr Chant undertook to consult with the Agency for Clinical Innovation (ACI) with regard to the feasibility of introducing routine screening for domestic violence in emergency departments. In answers to questions on notice after the round table, Dr Chant confirmed that ACI considers that while clinicians will 'endeavour to identify victims of domestic violence and offer assistance wherever possible', to routinely screen all women attending [emergency departments] routine screening is neither feasible nor possible for the vast of female patient encounters' on the basis of the following points:

- Emergency departments (ED) have no redundant capacity, often experiencing excess demand for their services;
- EDs do not have the ability to maintain privacy during screening;

⁴¹⁹ Dr Chant, Evidence, 30 April 2012, p 7.

⁴²⁰ Dr Chant, Evidence, 30 April 2012, pp 6-7.

⁴²¹ Dr Chant, Evidence, 30 April 2012, p 7.

⁴²² Dr Chant, Evidence, 18 June 2012, p 26.

- EDs are focused on clinical treatment for the sickest and most unstable new patients, and thus resources must be focused on this, meaning screening may not always be able to be achieved;
- Many women attending EDs are very sick when they present and unlikely to want, or to be able to focus on the screening questions.
- EDs already focus on identifying where patients are affected by domestic violence, and implement follow up and support as appropriate.⁴²³

5.141 Dr Chant noted that in forming this conclusion, ‘the ACI also considered that all EDs have their own procedure or policy for contacting social work and/or other relevant agencies when victims of domestic violence are referred for assistance. All Local Health Districts are likewise required to have their own policies in accordance with the NSW Health Policy and Procedures for Identifying and Responding to Domestic Violence (2003).’⁴²⁴

5.142 Asked about potential improvements in respect of data collection, Ms Suchting indicates that the Ministry is considering potential improvements to data collection in respect of routine screening:

[W]e collect an annual snapshot of data on routine screening across the whole of New South Wales Health. That is collected every November. We would see that the policy review process, and the review of routine screening as part of that policy review process, provides us with an opportunity to review that data collection process also, and to look at ways in which it may benefit from refreshing.⁴²⁵

5.143 The Sydney Local Area Health District suggested that the screening tool should be improved because while it assists in intervention and referral, it does not encourage coordinated collaborative care with other agencies or stakeholders. To overcome this issue the Sydney Local Area Health District recommended that “NSW Health enhances its framework for domestic violence by incorporating case planning and case co-ordination processes, as seen in child protection matters.”⁴²⁶

5.144 Dr Chant also highlighted to the committee that she saw the priority as looking at referral pathways, so as to effectively engage the person, once screened, in support services should they choose to access them:

We certainly need to think now across the continuum from the screening. Women can choose whether they are ready to access the referral pathways. The question is: what can we do to increase their likelihood if that is the thing that is going to be the most effective for them in the outcome? That is the area where we need to review the evidence about what Health’s role to support the woman or what interventions can Health put in place to support the journey, acceptance and referral pathways?⁴²⁷

⁴²³ Answers to questions taken on notice during hearing, 18 June 2012, Dr Chant, pp. 1-2.

⁴²⁴ Answers to questions taken on notice during hearing, 18 June 2012, Dr Chant, p. 1.

⁴²⁵ Ms Suchting, Evidence, 30 April 2012, p 7.

⁴²⁶ Submission 35, Sydney Local Area Health District, p 1.

⁴²⁷ Dr Chant, Evidence, 30 April 2012, p 11-12.

Committee comment

- 5.145** The Committee agrees with stakeholders that the NSW Health routine screening program is an excellent example of an effective early intervention program. Dr Spangaro and Dr Zwi's evaluation of the program had promising results, particularly that six months after their first disclosure women had increased awareness about abuse, experienced reduced isolation and were encouraged to evaluate their situation. It is also important to note that health care workers believed the program enhanced their awareness of domestic violence in the community. We note that there are a number of recommendations arising from this evaluation that have not been implemented, and urge NSW Health to implement them.
- 5.146** The Committee appreciates that inquiry participants would like the program to be expanded to variously include general practitioners, emergency departments and men. However, we note NSW Health's comments about workforce capability and agree with NSW Health and clinicians that it may not be feasible to introduce routine screening across all emergency departments in NSW. Nevertheless, we encourage medical staff in emergency departments to continue to endeavour to identify domestic violence victims and offer assistance where possible, and for NSW Health to further consider this in their review of the *Policy and Procedures for Identifying and Responding to Domestic Violence*.
- 5.147** We welcome the moves by NSW Health to ensure services act by referring identified victims to relevant support services, in keeping with moves towards integrated service delivery. The biggest challenge for NSW Health and the Government as a whole is to integrate services such that where a victim is identified they will be referred in a timely way to the appropriate service. The Committee reiterates the point it has made in previous chapters of this report – that without programs and resources to refer victims to, the effectiveness of the screening tool is diminished.

Chapter 6 Services for victims and children

In Chapter 4 the Committee has emphasised the imperative for a greater focus on the needs of victims within the domestic violence system, noting that to date that system has been overly focused on criminal justice responses, as well as on service requirements. In keeping with this important principle, we now consider the need for greater investment in and strategic planning for services for victims and children. The Committee recognises that many of our recommendations will give rise to an increase in demand for tertiary services for victims and children. If victims are more aware of the supports available to them, and if they and their children are more effectively engaged in the system and referred by service providers for additional support, it is critical that there be adequate services to meet their needs. Yet, the Committee heard that many services for victims are already in very short supply. It is also vital that there be a menu of options available to respond to those various needs.

This chapter first considers the need to plan for increased demand as a result of the reforms that will take place under the forthcoming NSW Domestic and Family Violence Framework (hereafter DFV Framework). It then examines accommodation services including emergency accommodation, safe houses, Housing NSW's Start Safely Subsidy, social housing, and the Staying Home Leaving Violence Program. Next, it considers participants' call for greater access to therapeutic interventions for victims and children, such as counselling. We then briefly examine the call for greater provision for male victims of domestic violence. Finally, the Committee considers the need for a better interface between the child protection and domestic and family violence systems.

Planning for increased demand

6.1 In its submission the NSW Women's Refuge Movement argued strongly that when government encourages victims to leave a violent relationship, it has an ethical obligation to provide services that will meet their needs as they take this very difficult step:

The NSW [Women's Refuge Movement] believe that Governments that state a zero tolerance approach to domestic violence, and encourage women through a range of policies, and community and media education programs, to leave a relationship and seek help if domestic violence occurs, have an ethical obligation, to provide services when women make that courageous and often dangerous decision to leave.⁴²⁸

6.2 Noting that there is significant unmet need for a range of victims' services at present, for example refuges and other accommodation services (as discussed below), the Women's Refuge Movement also argued that government needs to plan now for an increase in demand arising from the reforms that are taking shape in New South Wales. They noted the experience of Victoria, which has seen a 75 per cent increase in demand for services responding to domestic and family violence, as more people have been brought into the system in that State.⁴²⁹

⁴²⁸ Submission 54, NSW Women's Refuge Movement, p 6.

⁴²⁹ Ms Catherine Gander, Executive Officer, NSW Women's Refuge Movement, Evidence, 26 March 2012, p 30.

- 6.3 In Chapter 4, we noted that the NSW Police Force argued that a holistic approach to people's needs will ideally see victims, children and perpetrators all accessing interventions simultaneously.⁴³⁰
- 6.4 At the Committee's roundtable discussion in June 2012, Ms Maura Boland, Deputy Director, Strategy and Policy in the Department of Family and Community Services (FACS), responded to a possible recommendation that government set targets for reducing the number of victims and children turned away from refuges. She emphasised that an overarching aim of the forthcoming DFV Framework is to reduce demand for services, via a new focus on primary prevention. She stated, 'We need to become effective in primary prevention to try to see, over time, things reduce even if there will be a short-term increase.'⁴³¹
- 6.5 In relation to the spectrum of prevention and tertiary services, Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research, stated his position strongly:
- I do not see any inconsistency between pursuing broad-based primary prevention programs and tertiary programs but I do see a real problem in simply leaving it all to primary prevention programs.⁴³²
- 6.6 Representatives of Women NSW and FACS also informed us that in keeping with a recommendation of the Auditor-General, one of the first tasks taking place as the DFV Framework is developed is the statewide mapping of the various services with a role in responding to domestic violence, and the identification of gaps in those services.⁴³³

Committee comment

- 6.7 The Committee considers it absolutely essential that the government assume and actively plan for an increase in demand for services arising from the reforms that will occur under the NSW DFV Framework. Continued improvements in police practices will increase victims' faith in the system's ability to support them, and build their rates of reporting and seeking help. More integrated service delivery across all services responding to domestic violence, assisted by a common risk assessment and referral process and greater use of case management and case coordination, will inevitably increase the number of referrals made to accommodation, counselling and other services.
- 6.8 While we very much welcome a focus on primary prevention in order to help stop violence occurring in the first place, we consider this will inevitably be a long term, incremental process. It has taken ten years to discern any preventive effect in Victoria, and we assume that a similar scenario will play out in New South Wales. In the meantime, we consider that the

⁴³⁰ Answers to supplementary questions 20 February, NSW Police Force, Question 2, p 4.

⁴³¹ Ms Maura Boland, Deputy Director, Strategy and Policy, Department of Family and Community Services, Evidence, 18 June 2012, pp 24-25.

⁴³² Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 18 June 2012, p 10; See also Ms Libby Davies, Chief Executive Officer, White Ribbon Foundation, Evidence, 26 March 2012, p 5.

⁴³³ See NSW Auditor-General, *Responding to Domestic and Family Violence*, Audit Office of NSW, November 2011, p 4.

Government must plan for - and fund - more services to meet the demand that could well rise quite suddenly, and remain high for some years, under the DFV Framework.

- 6.9** We believe that the issue of increased demand under the Framework would be well considered, at the earliest opportunity, by the Domestic and Family Violence Senior Executive Steering Committee comprised of senior representatives of FACS, NSW Police Force, the Department of Attorney General and Justice (DAGJ), Ministry of Health, Department of Education and Communities, and Department of Premier and Cabinet. Given their central role in service delivery, we also consider that non government organisations should, as soon as possible, have input into these discussions via the new State-wide steering group for the DFV Framework that we have recommended be established as a priority (see Recommendation 10 in Chapter 4).
- 6.10** We further consider that the collection of data on demand for services will be of critical importance here and we urge the Government to make such data collection a priority.

Recommendation 29

That the NSW Government actively plan for an increase in demand for services that will arise from the reforms under the NSW Domestic and Family Violence Framework. In particular, this should proceed via discussions:

- in the present Domestic and Family Violence Senior Executive Steering Committee comprised of senior representatives of the Department of Family and Community Services, the NSW Police Force, the Department of Attorney General and Justice, the Ministry of Health, the Department of Education and Communities, and the Department of Premier and Cabinet, and
- in the new State-wide steering group of senior representatives of government and key non government organisations that we have recommended be established as a priority (see Recommendation 10).

The planning should include the establishment of mechanisms to effectively track demand for and usage of services.

Accommodation

- 6.11** The Committee heard that accommodation is a fundamental support for victims and children fleeing domestic and family violence, and that it is critical that there be sufficient services to meet their needs in a timely way, in order to ensure their safety and well being, both at the point of crisis, and as they stabilise and rebuild their lives.
- 6.12** The Women's Refuge Movement reported that domestic violence is the leading cause of homelessness in Australia, and the most commonly cited reason for women accessing specialist homelessness services, including refugees.⁴³⁴

⁴³⁴ Ms Gander, Evidence, 26 March 2012, p 24.

- 6.13** A number of participants including Homelessness Australia, Mt Druitt Family Violence Response and Support Strategy Leadership Group, the Women's Refuge Movement, Ms Betty Green, Manager of the Liverpool Women's Health Centre and Convenor of the NSW Domestic Violence Coalition, and the Immigrant Women's Speakout Association all argued that without safe, affordable housing, victims risk becoming homeless, or may stay in or return to situations of violence.⁴³⁵ For example, Homelessness Australia explained:

Leaving violence, like any pathway into homelessness can be understood as a process. Upon leaving the immediate priority must be safety. This means that women (and children) must be able to quickly access accommodation that is safe and secure upon leaving a violent partner. Women frequently find themselves with nowhere to go after summoning the courage to leave a violent situation and in fact may feel coerced to stay because of a lack of accommodation options, particularly those that offer anonymity, safety and security.⁴³⁶

- 6.14** Carries' Place Women's and Children's Services noted that income is a key determinant of victims' accommodation options, such that a lack of independent income for women affected by domestic and family violence is a major cause of homelessness.⁴³⁷

- 6.15** In its submission, the Mt Druitt Family Violence Response and Support Strategy Leadership Group reported that research has demonstrated the risk of homelessness faced by victims and children escaping domestic violence, as well as the long term impact that homelessness can have in terms of poverty, disrupted education and dislocation from social and support networks. Correspondingly, it argued that having already experienced significant trauma, and often with few independent financial resources, victims and children require prompt access to stable and secure housing in order to ensure their safety and minimise the ongoing consequences of the violence they have experienced. It pointed out that without adequate housing options, victims often come under the scrutiny of Community Services for failing to protect and keep safe their children.⁴³⁸ The interface between the domestic violence and child protection systems is examined in the final section of this chapter.

Emergency accommodation

- 6.16** As noted in Chapter 3, emergency accommodation and affordable housing are joint Commonwealth and State responsibilities governed under the National Affordable Housing Agreement of the Council of Australian Governments (COAG). These initiatives are managed in this State by NSW Housing.⁴³⁹

⁴³⁵ Submission 13, Homelessness Australia, p 1; Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group, p 12; Submission 54, p 6; Ms Betty Green, Manager, Liverpool Women's Health Centre and Convenor, NSW Domestic Violence Coalition and, Evidence, 17 October 2011, p 24; Submission 68, Immigrant Women's Speakout Association, p 9-10.

⁴³⁶ Submission 13, p 1.

⁴³⁷ Flinders University, *Women, Domestic and Family Violence and Homelessness – A Synthesis Report*, 2008, quoted in Submission 8, Carries' Place Women's and Children's Services, p 9.

⁴³⁸ Submission 23, p 12.

⁴³⁹ Department of Families, Housing, Community Services and Indigenous Affairs, accessed 1 August 2012, <<http://fahcsia.gov.au/our-responsibilities/housing-support/programs-services/housing-affordability/national-affordable-housing-agreement>>

- 6.17** Numerous participants highlighted the need for more homelessness services, or emergency accommodation, for victims of domestic violence and their children.⁴⁴⁰ The Women's Refuge Movement, for example, cited Australian Institute of Health and Welfare data showing that 54 per cent of women and children are turned away from homelessness services, including those seeking accommodation from refuges for women and children escaping domestic violence.⁴⁴¹ In addition, it cited a 'snapshot survey' undertaken between 22 August and 4 September 2011, which found that of 18 refuges surveyed, 17 refuges turned away 165 women and 229 children during that period, with only one refuge able to accommodate all requests made of it.⁴⁴²
- 6.18** Both Homelessness Australia and the Women's Refuge Movement acknowledged the State and Commonwealth Governments' significant new investment of funds in homelessness programs since 2008, but pointed to a need for more resources for homelessness services for those affected by domestic violence. Homelessness Australia observed that the recent investment should significantly increase the availability of short and medium term accommodation for victims and children, as should the recent investment in social housing, half of which will be allocated to people experiencing or at risk of homelessness. At the same time, it called on the NSW Government to commit to ensuring that homelessness services for victims of domestic violence 'are sufficiently well funded to accommodate every person seeking refuge, every night.'⁴⁴³
- 6.19** Similarly, the Women's Refuge Movement called for greater investment still, noting that there has been no increase in funding for existing services for many years, despite greater demand and growing expectations on them.⁴⁴⁴ Both the Women's Refuge Movement and Jenny's Place Women's and Children's Refuge highlighted that refuges provide not only accommodation and intensive support to accommodated victims and children, but also prevention, early intervention and longer term support to those who remain in their homes, for example via women's support groups, parenting groups, children's support groups, outreach support, shop fronts and resource centres, and court support.⁴⁴⁵ The case study on the following page, provided by Carrie's Place, illustrates the holistic and ongoing support that many women gain from refuges.
- 6.20** The Women's Refuge Movement recommended that both the State and Commonwealth Governments make an explicit commitment to and set targets for reducing the number of women and children turned away from refuges. Here, it noted that effective monitoring will require urgent improvements in data collection and reporting on demand.⁴⁴⁶

⁴⁴⁰ Submission 23, p 12; Submission 54, p 8; Submission 13, p 1; Submission 68, p 9.

⁴⁴¹ Australian Institute of Health and Welfare, *People turned away from government-funded specialist homelessness accommodation, 2009-10*, Cat No. HOU 248, AIHW, Canberra, cited in Submission 54, p 6. This figure includes women and children seeking accommodation from women's refuges targeted at women and children escaping domestic violence.

⁴⁴² Submission 54, p 8.

⁴⁴³ Submission 13, p 1.

⁴⁴⁴ Submission 54, p 8.

⁴⁴⁵ Submission 54, p 8; Submission 18, Jenny's Place Women's and Children's Refuge, p 6.

⁴⁴⁶ Submission 54, pp 7-8; Answers to questions on notice taken during evidence 26 March 2012, NSW Women's Refuge Movement, p 12.

Case study: Sue

Sue, who has four children, had been living in an abusive relationship for over 10 years. The abuse included physical, sexual and emotional violence. She stayed in the relationship because she was married and believed she was supposed to stick by her husband. She also stayed because of her children and the fear that their financial life would be extremely difficult.

Sue first came to the Resource Centre at Carrie's Place Women's and Children's Services in 2008. She was supported by a case worker to identify that this was not a safe and healthy environment for either herself or her children. She was assisted to leave the violent relationship and obtain private rental accommodation. Our court advocacy workers supported her to obtain an apprehended domestic violence order (ADVO). She attended our workshops, and then felt confident enough to participate in our vocational education and training program. There she identified her desire to become a nurse. Initially she stated that she doubted her ability as she never been any good at school, and her husband had always been the "clever one".

She was supported firstly to participate in a computer introduction course (Statement of Attainment). Then she was supported to go to TAFE, where she flourished, and attained high distinctions in the Tertiary Preparation Course (Certificate II).

This year she has commenced a Bachelor of Midwifery at university. Sue stills "checks in" with the Education Worker regularly. She and her children now live violence free, and Sue is on the way to achieving her goals and providing a vital service in our community.⁴⁴⁷

6.21 Both the Women's Refuge Movement and the Mt Druitt Family Violence and Support Strategy Leadership Group further argued for a significant increase in brokerage funds for refuges to purchase flexible and timely services for individual clients, for example security upgrades, new telephone lines, school fees, counselling and utilities.⁴⁴⁸ In addition, the Women's Refuge Movement suggested that accommodation brokerage currently administered by NSW Housing under the Temporary Accommodation Program would be better administered by specialist homelessness services, based on their target group, as these services have strong working relationships with alternative accommodation providers such as motels and can act more effectively to support victims and children.⁴⁴⁹

6.22 At the roundtable, Ms Gaby Marcus, Director of the Australian Domestic and Family Violence Clearinghouse also called for greater investment in brokerage under the forthcoming DFV Framework, noting that it is a natural corollary to case management (discussed in detail in Chapter 4), with its focus on an individual client's range of needs:

I would like to ask that we have a very broad view of what women need and look at the potential of ... providing brokerage funds so that you can tailor the provision of what women need. It could be counselling. Often it is services for their children ... It could be driving lessons, it could be scope to go to a physiotherapist, it could be parenting—it could be anything. I think that is the thing about case management, that

⁴⁴⁷ Submission 8, p 13.

⁴⁴⁸ Ms Gander, Evidence, 26 March 2012, p 30; Answers to questions on notice during evidence 26 March 2012, NSW Women's Refuge Movement, p 5. See also Submission 23, p 12.

⁴⁴⁹ Ms Gander, Evidence, 26 March 2012, pp 28-29.

it provides the opportunity to tailor what you provide to the woman's specific needs, instead of just moving down an "everybody gets this" kind of model.⁴⁵⁰

6.23 Issues identified by stakeholders concerning particular groups' access to emergency accommodation included:

- the concentration of refuges along the eastern seaboard, and the poorer proximity to services faced by victims in rural and remote communities⁴⁵¹
- that domestic violence services discriminate against gay, lesbian, bisexual, transgender and intersex people, particularly homosexual men⁴⁵²
- the inability of some migrant women to access refuges due to overwhelming demand, matched with the need for greater use of translators and bicultural workers⁴⁵³
- policies that exclude victims using drug and alcohol from some services⁴⁵⁴
- the widespread inability of people with disability to access refuges.⁴⁵⁵

6.24 Correspondingly, further specific recommendations from participants in relation to emergency accommodation included those for:

- a greater range of provisions in homelessness services, for example independent living units as opposed to communal living settings, and provision for families including adolescent boys to stay together⁴⁵⁶
- specific provision to accommodate perpetrators so that police and the courts can exclude them from the home to ensure the safety and wellbeing of victims⁴⁵⁷
- mandatory cultural competency training for refuge staff and volunteers, and more bicultural workers to assist with accommodation transitions⁴⁵⁸
- mandatory disability awareness training and compliance with the *Disability Discrimination Act 1992* (Cth), for example by linking service finding to such a requirement.⁴⁵⁹

6.25 We specifically examine provisions for male victims later in this chapter.

6.26 Ms Maura Boland of FACS addressed a number of the recommendations of the Women's Refuge Movement and others at the Committee's roundtable discussion. Her points included:

⁴⁵⁰ Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 18 June 2012, p 8.

⁴⁵¹ Submission 38, Binaal Billa Family Violence Prevention Legal Service, p 6.

⁴⁵² Submission 40, One in Three Campaign, pp 18-19; Answers to questions on notice taken during evidence 20 February 2012, One in Three Campaign, Additional information, p 7.

⁴⁵³ Submission 68, p 9-10.

⁴⁵⁴ Submission 6, Women Everywhere Advocating Violence Elimination (WEAVE), p 11.

⁴⁵⁵ Ms Ngila Bevan, Advocacy Projects Manager, People with Disability Australia, Evidence, 30 April 2012, p 41.

⁴⁵⁶ Submission 23, p 12.

⁴⁵⁷ Submission 23, p 12.

⁴⁵⁸ Submission 68, p 9-10.

⁴⁵⁹ Ms Bevan, Evidence, 30 April 2012, p 39.

- Emergency accommodation and support reflect two different needs among victims. Some will need both, while others will only need support, for example via the Staying Home Leaving Violence Program (discussed below).
- FACS acknowledges that the homelessness system in New South Wales is fragmented, and believes that this is affecting access to emergency accommodation, rather than simply inadequate accommodation supply. To address this, Housing NSW is currently examining how to make that system more coherent and efficient, and will provide a single point of access for clients.
- There is a challenge for government in getting the right mix between accommodation and other services, and Housing NSW is also examining this issue.
- The suggestion that the Temporary Accommodation Program be administered by specialist homelessness services might work in a system that is not fragmented, but until a single access system is established, it should stay in Housing NSW.
- With regard to data collection, a new specialist homeless service data collection was implemented from 1 July 2011, which will deliver significantly improved data, especially in relation to children.
- On the issue of setting targets, as noted above, FACS considers that while it is important to track long term levels of demand, its ultimate goal is to reduce violence and thereby reduce demand for tertiary services.⁴⁶⁰

Committee comment

- 6.27** The Committee sees merit in many of the suggestions raised by participants in relation to emergency accommodation, noting how critical safe, secure accommodation is at the point of crisis, when a victim is fleeing violence. We are very troubled by the statistic that more than one in two women and children are turned away from refuges, and while we welcome Housing NSW's initiatives to improve the fragmentation of the homelessness system, we are sceptical that this alone will significantly improve access to services.
- 6.28** In relation to access to refuges, the Committee considers that while it is important that some groups' access to women's refuges improve, for others, most especially male victims, it is more appropriate that alternative emergency accommodation be provided via brokerage services administered by a relevant support service. This is discussed further in a later section on services for male victims.
- 6.29** The Committee specifically supports greater investment in brokerage funds, noting that they work well under the Staying Home Leaving Violence model discussed in a later section. They naturally accompany case management which we recommended be substantially expanded in Chapter 4, and that they facilitate individualised and timely responses to victims' and children's needs.

⁴⁶⁰ Ms Boland, Evidence, 18 June 2012, pp 24-25.

Recommendation 30

That the NSW Government develop a plan for new investment in emergency accommodation for victims of domestic and family violence and their children, informed by the recent mapping of domestic violence services across the State. This plan should:

- seek to improve access to homelessness services across the State as a whole, and particularly in rural and remote areas
- enhance brokerage funds for both temporary accommodation and other services and supports
- address access among specific population groups
- consider the particular needs of children
- transfer, at an appropriate time, administration of the Temporary Accommodation Program from Housing NSW to specialised homelessness services
- make an explicit commitment to, and set targets for, reducing the number of victims and children turned away from refuges
- be developed in consultation with the NSW Women's Refuge Movement and other relevant stakeholders.

Safe houses

6.30 Several participants expressed a strong need for more safe houses - secure buildings where victims and children can temporarily retreat to escape violence - in remote Aboriginal communities. This issue arose at several points during our visit to the Central West. We heard that a safe house in the Aboriginal Community of Lake Cargelligo had been converted to nurses accommodation.⁴⁶¹ Also, Mr Kevin Read, Aboriginal Community Liaison Officer in the Lachlan Area Command, reported that at a recent consultation with Aboriginal communities at Peak Hill and Lake Cargelligo, participants stressed the need for a safe house for victims to access 24 hours a day, as well as a place where the perpetrator can go while they are intoxicated.⁴⁶² A safe house was also sought for the Condobolin community.⁴⁶³ More generally, in its submission, Western Plains Regional Development called for safe houses in close proximity to communities - 'not 100 km away with limited transport support.'⁴⁶⁴ As noted in Chapter 7, some communities are hundreds of kilometres and several hours' drive away from a police station.

6.31 In reply to a general question about provisions for Aboriginal women, FACS indicated that the NSW Government has recently worked in collaboration with the Australian Government, the Women's Refuge Movement and other stakeholders to improve service delivery to Aboriginal women and children in five isolated communities through the Orana Far West Safe Houses Project. The project is funded from the Remote Indigenous National Housing

⁴⁶¹ Ms Donna Bliss, Chief Executive Officer, Yoorana Gunya Family Healing Centre Aboriginal Corporation, Evidence, 28 February 2012, p 4.

⁴⁶² Mr Kevin Read, Aboriginal Community Liaison Officer, NSW Police Force, Evidence, 28 February 2012, p 37.

⁴⁶³ Ms Beryl Powell, Family Support Worker, Condobolin Family Support, Evidence, 28 February 2012, p 4.

⁴⁶⁴ Submission 77, Western Plains Regional Development, p 1

Partnership and is led by Community Services. It provides crisis accommodation and support for women and children experiencing domestic violence. Under the initiative, Housing NSW has had a lead role in the provision of:

- one new safe house, two transition houses and one exit house in Bourke
- one new safe house, two transition houses and one exit house in Brewarrina
- one new safe house and two exit houses in Lightning Ridge
- two exit houses in Walgett
- one new safe house, two transition houses and two exit houses in Wilcannia.⁴⁶⁵

6.32 FACS further stated that each of these communities has high rates of domestic and family violence and the establishment of crisis accommodation for women and children has been a priority.⁴⁶⁶

Committee comment

6.33 We note, as we did in Chapter 2, that the rate of domestic violence affecting Aboriginal women is more than six times higher than for non-Aboriginal women. The closure of a safe house to provide nurses' quarters in a remote community perhaps reflects the dilemmas that government faces with regard to competing demands for scarce facilities in remote communities. The Committee considers that safe houses provide a very important avenue of safety in isolated communities, where the police are often a considerable distance – and length of time – away. We welcome the progress that has been made under the Orana Far West Safe Houses Project, but note that this will not assist the Aboriginal communities which lie outside its catchment area. We suggest that it would be valuable for the NSW Government to consider, in partnership with the Australian Government, Aboriginal organisations and other stakeholders, where other safe houses are needed. We presume that this will be informed by the service mapping process that has been undertaken as part of the development of the NSW DFV Framework.

Recommendation 31

That the Department of Family and Community Services, in partnership with the Commonwealth Government, Aboriginal organisations, the NSW Women's Refuge Movement and other relevant stakeholders, examine the need for additional safe houses in remote communities, informed by the recent mapping of domestic violence services across the State.

⁴⁶⁵ Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 3, p 6.

⁴⁶⁶ Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 3, p 6.

Start Safely Subsidy

- 6.34** A number of participants praised the practical support provided to victims and children via Housing NSW's Start Safely Subsidy, which may be paid for three to twelve months, to assist them to access affordable and safe housing in the private rental market.⁴⁶⁷
- 6.35** Ms Gander noted that take-up of the program had been lower than expected, and suggested that this was related to its eligibility guidelines, especially the requirement that applicants demonstrate an ability to afford private market rent within one year. She advocated that the period of the subsidy be extended to two years, observing that this is often the time required to stabilise and establish financial independence, especially where children are present and Family Court proceedings are involved.⁴⁶⁸ The Mt Druitt Family Violence Strategy Leadership Group also sought that the subsidy period be extended.⁴⁶⁹
- 6.36** At the roundtable discussion, Ms Boland advised that during a recent review of Start Safely, Housing NSW had taken on board the Women's Refuge Movement's feedback that the 12 month subsidy period might be insufficient for many victims.⁴⁷⁰

Committee comment

- 6.37** The Committee is very pleased to hear that Housing NSW has responded to the feedback that the Start Safely subsidy period of 12 months is insufficient, and is deterring people from applying. We have no further details of the period to which it will be extended, or when this change will take effect. At the present time it is not reflected on the Department's website, however, we recommend it be extended to two years, consistent with feedback from inquiry stakeholders.

Recommendation 32

That Housing NSW change the eligibility criteria for the Start Safely subsidy to improve access and increase the subsidy period to a maximum of two years.

Social housing

- 6.38** As she did in relation to homelessness services, Ms Gander acknowledged in evidence the very significant State and Commonwealth investment in social housing, that is, longer term public, community and Aboriginal housing. She reported that around 9,000 additional units of housing stock will become available in New South Wales. However, she went on to advocate that Housing NSW examine where it is targeting that new housing, suggesting that women and children escaping violence should be benefiting more than they presently are. She also

⁴⁶⁷ Ms Eleonora Raffo, Coordinator, Liverpool and Fairfield Staying Home, Leaving Violence Project, South West Sydney Legal Centre, Evidence, 26 March 2012, p 53; Ms Gander, Evidence, 26 March 2012, p 25; Housing NSW, *Start Safely Subsidy*, August 2010, p 1.

⁴⁶⁸ Ms Gander, Evidence, 26 March 2012, p 25.

⁴⁶⁹ Submission 23, p 13.

⁴⁷⁰ Ms Boland, Evidence, 18 June 2012, pp 24-25.

argued that there needs to be a strategy at the Commonwealth and State level for how investment in social housing will be maintained into the future, with consideration given to how programs such as Start Safely can bridge the gap between demand and supply over time.⁴⁷¹

6.39 In written answers to questions the Women's Refuge Movement suggested that the difficulties women experiencing domestic violence face in accessing social housing arise not so much from Housing NSW's policies as from a combination of a lack of housing stock and the inconsistent application of policies by Housing NSW staff. It reported that some Housing Offices:

- are now only accepting police statements or copies of ADVOs as evidence of domestic violence despite policies clearly identifying that numerous other forms of evidence can be provided
- are offering the Start Safely as the only option for victims
- are informing victims that they are unable to apply for social housing or other Housing NSW products if they are currently being accommodated by a specialist homelessness service, including women's refuges and transitional women's housing services
- are telling victims not to bother applying because of the waiting list but this would mean that their eligibility is not being assessed for other housing products or priority housing.⁴⁷²

6.40 The Women's Refuge Movement noted that it had contacted Housing NSW about these matters. It also pointed to the recommendations of a study it had conducted in partnership with the University of Western Sydney Urban Research Centre, that Housing NSW increase training to its staff on domestic and family violence, and that new regional specialist domestic and family violence workers be established to support Housing NSW staff to strengthen interagency partnerships with domestic violence services.⁴⁷³

Committee comment

6.41 The Committee considers that Housing NSW has a responsibility to ensure that staff in Housing Offices across New South Wales are applying policies appropriately and consistently.

Recommendation 33

That Housing NSW ensure that staff in Housing Offices are applying social housing policies accurately and consistently in relation to victims and children seeking housing as a result of domestic and family violence. Consideration should be given to the need for staff training in relation to domestic violence.

⁴⁷¹ Ms Gander, Evidence, 26 March 2012, p 26.

⁴⁷² Answers to questions on notice taken during evidence 26 March 2012, NSW Women's Refuge Movement, Question 2, p 3.

⁴⁷³ Answers to questions on notice taken during evidence 26 March 2012, NSW Women's Refuge Movement, Question 2, p 3.

Staying Home Leaving Violence Program

6.42 Many inquiry participants praised the Staying Home Leaving Violence Program for its innovation in providing intensive, long-term, needs-based case management for victims who have separated from a violent partner or family member and who choose to remain in the family home.⁴⁷⁴ The NSW Government submission described the program:

The Staying Home Leaving Violence program, operating in 18 locations across the State, helps to prevent homelessness by removing the perpetrator from the family home, so that victims, typically women and children, can remain safely where they are. The program places accountability with the offender and ensures women and children are not made homeless, or displaced from families, friends and schools.⁴⁷⁵

6.43 A key feature of the program is the coordination of government and non government services to ensure the most effective outcomes for program participants. Case managers assist program participants to live safely in their own homes through measures such as:

- conducting comprehensive risk assessments and safety audits
- upgrading security in the home (through the use of brokerage funding)
- developing personalised safety plans
- working with the police and local courts to remove the offender
- providing court support and advocacy in applying for ADVOs and at family court proceedings
- providing case work to address financial and tenancy issues
- providing referrals to legal advice and other support services.⁴⁷⁶

6.44 UnitingCare Children and Families noted that the Staying Home Leaving Violence service model rests on early intervention and prevention principles, with case management focusing on the prevention of homelessness. It went on to report key findings from the evaluation of the South East Sydney Staying Home Leaving Violence (SHLV) pilot:

The evaluation of the South East Sydney SHLV pilot found that the project was achieving its aim of expanding the choices available to women who are victims of domestic violence. 63% of SHLV clients were able to remain living in their home without the perpetrator of violence, while a further 17% made planned relocations to another home, enabling them to minimise the disruption to their family, while still improving their safety. 80% of clients experienced no further violence, 91% of women employed at the time of referral were able to keep their jobs and 88% of children remained in their schools or child care arrangements.⁴⁷⁷

⁴⁷⁴ Submission 61, NSW Government, p 8.

⁴⁷⁵ Submission 61, p 8.

⁴⁷⁶ FACS, *Staying Home Leaving Violence*, accessed 3 April 2012, www.community.nsw.gov.au/for_agencies_that_work_with_us/our_funding_programs/shlv.html.

⁴⁷⁷ Submission 62, UnitingCare Children, Young People and Families, p 16.

- 6.45** Minister Goward announced a \$2.5 million expansion of Staying Home Leaving Violence in December 2011 which will see the program rolled out to five additional sites, enabling the service to reach more than 700 families across the State in 23 sites.⁴⁷⁸
- 6.46** Participants including Uniting Care Children and Families, Nepean Blue Mountains Local Health District, Western Sydney Local Health District, MetWest Violence Prevention Network, Outer West Domestic Violence Network and the Women's Refuge Movement all strongly advocated for Staying Home Leaving Violence to be implemented more widely.⁴⁷⁹ The Women's Refuge Movement also argued that the current funding model of around \$150,000 for each site, intended to support around 30 families per year, is 'absolutely inadequate', with a number of sites having closed their books as they cannot take on any more women and children. Accordingly, Ms Gander called for the present funding model to be reviewed.⁴⁸⁰

Committee comment

- 6.47** Noting the successful evaluation of the Staying Home Leaving Violence program, the Committee sees that its recent expansion to a total of 23 sites is a very valuable step, and considers that further effort should be given to expanding the program in a strategic way over the coming years, including by revisiting the funding model for each site.
- 6.48** While the Committee, like other inquiry participants, recognises that this program will only be appropriate for some victims, we see it as an excellent example of a non-traditional, victim-focused response that exemplifies the broader shift that we consider must occur across the entire domestic violence system. We also note its explicit focus on integrated service delivery, emphasised by the Auditor-General and examined in detail in Chapter 4.

Recommendation 34

That the NSW Government fund an expansion of the Staying Home Leaving Violence Program across the State, including an expansion of the current funding available to each site.

- 6.49** On a different but related matter, the Committee was advised of a situation where a woman who had left a domestic violence situation was in jeopardy of losing her jointly owned home because she could not afford the mortgage payments.⁴⁸¹ The Committee considers that there may be some women in some circumstances who would benefit from further mechanisms to enable them to remain in their home.

⁴⁷⁸ Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 3, p 6.

⁴⁷⁹ Submission 62, p 16; Submission 16, Nepean Blue Mountains Local Health District, p 3; Submission 30, Western Sydney Local Health District, p 3; Submission 11, MetWest Violence Prevention Network, p 2; Submission 29, Outer West Domestic Violence Network, p 2; Ms Gander, Evidence, 26 March 2012, p 26.

⁴⁸⁰ Ms Gander, Evidence, 18 June 2012, p 26.

⁴⁸¹ Ms Raffo, Evidence, 26 March 2012, pp 51-52.

Therapeutic interventions

- 6.50 Numerous inquiry participants pointed to the profound psychological impact that domestic violence has on victims and children, and their resultant need for therapeutic interventions such as counselling.

The impact of domestic violence on victims and children

- 6.51 Ms Libby Davies of the White Ribbon Foundation spoke to the Committee about the impact of domestic violence on victims' mental health:

The effects of domestic and family violence have a cumulative impact on the mental health of the victim. Many women describe the long-term psychological impacts of emotional, verbal, social and economic abuse as being more devastating than just the physical abuse. Women who experience partner violence are also more likely to suffer mental health issues, including post-traumatic stress disorder, depression, anxiety, self-harm tendencies and suicidal thoughts and actions.⁴⁸²

- 6.52 Other participants such as the NSW Consumer Advisory Council – Mental Health spoke of the long term traumatic impact of violence⁴⁸³ and the growing recognition that the effects of domestic violence are to be understood and addressed within a 'trauma framework'.⁴⁸⁴
- 6.53 While the impact of domestic violence on victims has perhaps been well accepted and understood for some time, numerous participants pointed to a growing recognition of the equally profound impact of domestic violence on children. Participants including the Benevolent Society, BoysTown, NSW Consumer Advisory Group – Mental Health, Victims of Crime Assistance League (VOCAL) all highlighted this issue, as did a health service provider on our visit to the Central West.⁴⁸⁵
- 6.54 As noted in Chapter 2, Australian Bureau of Statistics data from 2005 indicated that 49 per cent of women and men who had experienced violence by a *current* partner reported that they had children in their care at some time during the relationship, and an estimated 27 per cent said that these children had witnessed the violence. In addition, 61 per cent of persons who experienced violence by a *previous* partner reported that they had children in their care at some time during the relationship, and 36 per cent said that these children had witnessed the violence.⁴⁸⁶

⁴⁸² Ms Davies, Evidence, 26 March 2012, p 2.

⁴⁸³ Ms Annette Michaux, General Manager, Policy and Research, The Benevolent Society, Evidence, 17 October 2011, p 57; Ms Tara Dias, Senior Policy Officer, NSW Consumer Advisory Group – Mental Health, Evidence 30 April 2012, p 43; NSW Consumer Advisory Group – Mental Health, p 4; Ms Green, Evidence, 17 October 2011, p 22.

⁴⁸⁴ Ms Dias, Evidence 30 April 2012, p 43.

⁴⁸⁵ Submission 37, Benevolent Society, p 6; Submission 41, BoysTown, p 9; Mr Howard Brown, Vice-President, Victims of Crime Assistance League, Evidence, 26 March 2012, p 18; Submission 19, NSW Consumer Advisory Group – Mental Health, p 7; Ms Cherie Crothers, Community Liaison Officer, NSW Central West Division of General Practice, Evidence, 28 February 2012, p 42.

⁴⁸⁶ Australian Bureau of Statistics, *Personal Safety Survey 2006*, Cat No 4906.0, p 11.

6.55 The Benevolent Society advised the Committee of the evidence concerning the long term effects of domestic violence on children:

We know that living with domestic and family violence has negative effects on children's overall development, including mental health, self-esteem and social competence ... The effects on children are widely under-estimated, yet can cause long term psychological, emotional, physical, social, and behavioural problems.⁴⁸⁷

6.56 Carrie's Place Women's and Children's Services cited research showing that children exposed to domestic violence have a greater likelihood than their peers of experiencing:

- issues related to cognitive, emotional and social functioning and development which can lead to behavioural and learning difficulties
- an increase in the risk of mental health issues, including depression and anxiety disorders
- issues related to education and employment prospects
- greater acceptance of, or willingness to excuse, violence against women
- involvement in violent relationships with peers and conflict with adults and other forms of authority
- increased risk of becoming perpetrators or victims themselves, and
- a detrimental impact on their future parenting capacities.⁴⁸⁸

6.57 In addition, BoysTown's submission addressed the impact of domestic violence on children in detail, providing the case study on the following page.

⁴⁸⁷ Submission 37, p 6.

⁴⁸⁸ Flinders University, *Women, Domestic and Family Violence and Homelessness – A Synthesis Report*, 2008, cited in Submission 8, pp 15-16. See also Submission 41, p 9.

Case study: Angela

BoysTown staff provided family support services to Sebastian (aged nine years), Damien (aged six years) with their mother, Angela. Angela spoke with staff on several occasions about significant domestic violence the children had been exposed to in the past, adding that the children's father was incarcerated due to domestic violence and other related crimes.

Staff noticed that the children were often hyper-vigilant around other people. Damien in particular experienced extreme separation anxiety from his mother. At school, Sebastian became known as a 'bully' and aggressive in his interactions with other children. Angela (who had been diagnosed with a bipolar disorder) found the children's care difficult to cope with. She struggled to put in place basic parenting strategies to assist in creating a stable home environment for her children.

Staff worked with Angela to help her conceptualise the impact of the trauma her children had been exposed to, and to put in place some parenting strategies that would provide appropriate support once they had moved to a home environment. Angela was also referred to the local domestic violence service for follow-up counselling for herself and her children. BoysTown staff worked with the school welfare team to assist the school in understanding Sebastian's experiences and putting in a complementary plan for Damien to help address his needs at school.

The children now interact with their peers appropriately, are doing well at school, and the home environment and parenting strategies provided by Angela continue to support the children to grow and learn.⁴⁸⁹

Counselling services

- 6.58** Many participants including the NSW Domestic Violence Coalition, the Australian Domestic and Family Violence Clearinghouse, the Benevolent Society and several local health districts highlighted a significant need for more therapeutic counselling services.⁴⁹⁰ Ms Betty Green, Manager, Liverpool Women's Health Centre and Convenor of the NSW Domestic Violence Coalition, underscored the need for more such services, for both victims and children:

In particular [there is a need for more] access to therapeutic counselling for women. Therapeutic counselling is very important in terms of women rebuilding their lives and also recovering from the trauma of domestic violence. There is a lack of access in that regard ... There is also a lack of access for counselling for children who have witnessed or experienced domestic violence and also a lack of access to counselling and programs where reparative work is done with mothers and children where domestic violence has disrupted the parental link.⁴⁹¹

- 6.59** Ms Marcus of the Australian Domestic and Family Violence Clearinghouse highlighted the dearth of specialist services for children in particular.⁴⁹² Ms Annette Michaux, General Manager of Policy and Research at the Benevolent Society observed that the services that are

⁴⁸⁹ Submission 41, p 8.

⁴⁹⁰ Ms Green, Evidence, 17 October 2011, p 22; Ms Gabby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 39; Ms Michaux, Evidence, 17 October 2011, p 57; Submission 23, p 12.

⁴⁹¹ Ms Green, Evidence, 17 October 2011, p 22.

⁴⁹² Ms Marcus, Evidence, 17 October 2011, p 39.

available are generally focused at the point of crisis, and are not able to address the trauma-related needs of victims.⁴⁹³

6.60 The Central Coast Local Health District noted that on the Central Coast there are neither domestic violence specific counselling services nor generalist counselling services which might assist victims of domestic violence, such that unless victims present for another reason such as for drug and alcohol dependence, they cannot accessing counselling within the public health system. Accordingly, it recommended that all local health districts provide either specific domestic violence counselling services or at least generalist ones.⁴⁹⁴

6.61 Similarly, the Northern Sydney Local Health District reported that many local health districts rely on non government services for domestic violence counselling, while private generalist counsellors are available at cost, which disadvantages victims with limited resources. It also reported that while hospital social workers provide counselling to inpatients, victims not admitted to hospital 'fall through the cracks'. It recommended that dedicated counselling services for domestic violence be established in all local health districts and that generalist counsellors be employed through key community health centres.⁴⁹⁵

6.62 Ms Jenny Hutchins, also of the Benevolent Society, told the Committee about the small Kids Create Tomorrow program in Campbelltown targeting children affected by domestic violence. While its evaluation showed positive outcomes, it has not received ongoing funding, and is self funded by the Benevolent Society through philanthropic funds.⁴⁹⁶

6.63 BoysTown highlighted the shortage of specialist counselling services for victims and children impacted by domestic violence. Noting that the attachment between mothers / primary carers and their children is often affected as a result of the dynamics of domestic and family violence, it called for more domestic violence specific support programs, parenting programs and counselling aimed at enhancing victims' resilience, assisting them to develop coping strategies and strengthening or rebuilding the mother-child relationship.⁴⁹⁷

6.64 The Mt Druitt Family Violence Response and Support Strategy Leadership Group argued that the present lack of therapeutic services actually prevents victims and children from rebuilding their lives after violence:

The absence of funding in the Blacktown LGA (and statewide) for therapeutic programs for women and children who have experienced domestic violence denies them the opportunity to rebuild their lives and ensure a healthy trajectory for them and their children.⁴⁹⁸

6.65 Finally, both Relationships Australia and VOCAL pointed to the growing numbers of grandparents caring full time for children affected by domestic violence, who would benefit

⁴⁹³ Ms Michaux, Evidence, 17 October 2011, p 57.

⁴⁹⁴ Submission 67, Central Coast Local Health District, p 4.

⁴⁹⁵ Submission 64, Northern Sydney Local Health District, p 6.

⁴⁹⁶ Ms Jenni Hutchins, Senior Manager, South West and Western Sydney, The Benevolent Society, Evidence, 17 October 2011, p 61

⁴⁹⁷ Submission 41, p 9.

⁴⁹⁸ Submission 23, p 11.

from understanding the impact the violence has had on those children and how they can best support them.⁴⁹⁹

NSW Health counselling services

- 6.66** The Committee was advised that the NSW Ministry of Health recently undertook a review of counselling services across the State. The review, conducted by ARTD Consultants, examined NSW Health's specialist network of counselling services for sexual assault and child abuse and neglect, that is, Child Protection Counselling Services, Sexual Assault Services and Child Protection Units. Specifically in relation to domestic violence, it also mapped NSW Health funded and delivered domestic and family violence counselling responses.⁵⁰⁰ The review identified a strong concern among stakeholders that there are no services for families experiencing violence, who are not subject to the child protection system:

A clear concern identified in consultations with both services and stakeholders was that counselling and support services were not available to children and families identified as at risk of violence, abuse and neglect and in need of support but where Community Services had not substantiated the abuse and neglect. These children and families, however, are not those that [Child Protection Counselling Services, Sexual Assault Services or Child Protection Units] were developed to support.⁵⁰¹

- 6.67** In relation to the mapping of domestic violence services, the report concluded that NSW Health counselling responses are dispersed, hidden and poorly networked. In addition, those funded by non government organisations such as women's health centres are poorly understood:

Except for a few designated, specialised, domestic and family violence services, counselling responses for domestic and family violence (DFV) are diffuse, fragmented and difficult to identify. There is currently no network of DFV counselling services as exists for sexual assault, child abuse and neglect ... Most [local health districts] have oversight of at least one NGO, usually a Women's Health Centre, which is at least partly funded to provide a counselling response to DFV. Most [local health district] informants, however, had very little information on the nature or extent of [domestic and family violence] counselling services provided by these NGOs.⁵⁰²

- 6.68** The review concluded that more information is required to clearly understand NSW Health funded and delivered counselling for domestic violence, and that the role of both government and non government services needs to be clarified:

The domestic and family violence mapping exercise found a small number of specialised DFV services but the majority of DFV counselling support within the health system is provided by social workers in hospital emergency departments and generalist counsellors (also mostly social workers) in community health centres. While the mapping exercise has provided initial information regarding provision of DFV

⁴⁹⁹ Submission 25, Relationships Australia (NSW) p 4; Ms Robyn Cotterell-Jones, Executive Director, Victims of Crime Assistance League, Evidence, 26 March 2012, p 18; Mr Brown, Evidence, 26 March 2012, pp 19 and 21.

⁵⁰⁰ ARTD Consultants, *Review of NSW Health Counselling Services*, February 2011, p iv.

⁵⁰¹ ARTD Consultants, *Review of NSW Health Counselling Services*, February 2011, pp vi-vii.

⁵⁰² ARTD Consultants, *Review of NSW Health Counselling Services*, February 2011, pp ix.

counselling responses, additional information is required to give a clearer picture of NSW Health funded and delivered DFV counselling interventions. This should include clarification of the roles of mainstream services in providing a DFV counselling response, and services provided by NGOs.

6.69 The review further noted that equity of access is an issue:

Evidence from [local health district] staff indicates that there is a need to review equity of access to publicly funded DFV counselling responses, especially in areas of high need, in rural locations and for Aboriginal and [culturally and linguistically diverse] communities.⁵⁰³

6.70 The Committee sought further information on these aspects of the review from representatives of NSW Health. In written answers to questions, NSW Health advised that as of June 2012 it was considering a range of strategies to address the review's recommendations. In relation to the perceived need among participants for more counselling services, it responded:

Frontline social workers within public hospitals provide tertiary therapeutic responses to victims of domestic violence who present to Emergency Departments. Providing a response at the time of crisis proves an effective intervention to improve safety in both the women's and children's lives. A crisis response can only be provided by these workers as they are also responsible for responding to high levels of child protection, bereavement and other trauma admissions.

Referrals can also be made to appropriate local non government organisations (NGOs), such as Women's Health Centres ... funded by the Ministry of Health [that] ... aim to improve the health status of women by providing a unique, holistic, woman-centred approach to primary health care. Responding to domestic violence is a key priority for these centres as identified in the *NSW Women's Health Plan 2009-2011* (active until 2013). Domestic and family violence counselling services is offered by most of the 22 Women's Health Centres located across NSW.⁵⁰⁴

6.71 At the hearing with NSW Health representatives in April 2012, Dr Kerry Chant, Chief Health Officer and Deputy Director-General, Population and Public Health, acknowledged the views in local health district submissions to the inquiry seeking more counselling support, and that social work services are a scarce resource in the health system. She pointed to the need to build models of care that are evidence based and interagency in nature:

I am sure there will be some significant service gaps where additional resources will be needed to support them but we also need to look at ways in which we can support social workers, have models of care that work across the agencies that are effective and not duplicative.⁵⁰⁵

6.72 Ministry of Health representatives further advised that this work is being undertaken as part of a broader review by NSW Health of the *Policy and Procedures for Identifying and Responding to*

⁵⁰³ ARTD Consultants, *Review of NSW Health Counselling Services*, February 2011, pp ix.

⁵⁰⁴ Answers to supplementary questions 30 April 2012, NSW Ministry of Health, Questions 5 and 6, pp 4-5.

⁵⁰⁵ Dr Kerry Chant, Deputy Director General, Population Health and Chief Health Officer, NSW Ministry of Health, Evidence, 30 April 2012, pp 11-12.

Domestic Violence to reflect policy and practice changes since the policy was developed in 2003. This work includes the review of routine screening discussed in Chapter 5, and in line with Dr Chant's comments on integration, is placing significant emphasis on integrated service delivery. At the roundtable discussion, Dr Chant indicated that a review of gaps in counselling services had been completed, and that the review of the policy, including in relation to counselling, is expected to be completed by the end of the year.⁵⁰⁶

Committee comment

- 6.73** Given the impact that domestic violence has on the mental health of victims and children, we strongly believe that the NSW Government has a responsibility to address those mental health needs via therapeutic interventions including counselling, just as it has a responsibility to meet victim's physical needs when they are injured. The apparent need for more counselling services for victims and especially for children was well substantiated during the inquiry. We consider that the long term consequences for children who witness domestic violence – not least that they are more likely themselves to become a victim or perpetrator – provides a very powerful argument for more therapeutic services to assist them in their own right, and to repair their relationship with the victim where this is an issue. We heard evidence that at present such services for children are very few indeed.
- 6.74** We accept that victims will access counselling via a number of avenues: the public health system, women's health centres and private practitioners. But we are troubled by the findings of the NSW Health review of counselling services that counselling services for victims in the public system are very scant and crisis focused, and that there are inequities of access to any counselling in areas of high need, in rural areas, and for Aboriginal and culturally and linguistically diverse populations. We also note that while NSW Health has highlighted the complementary role of women's health centres in providing counselling, participants from those centres have themselves argued for more counselling services. While we believe more counselling should be funded and made available through the health system generally, as a priority we consider that the documented inequities should be addressed, as should the need for services assisting children.
- 6.75** More generally, we consider that there should be a greater focus within each local health district on responses to domestic violence, and suggest that this be achieved through the mechanism of performance measurement, to increase accountability. This will not only help to improve the provision of counselling services, but also, as discussed in Chapter 5, will assist in achieving the more integrated responses to victims who are identified through routine screening.

Recommendation 35

That the NSW Ministry of Health expand the availability of counselling services to victims of domestic violence and their children, to address the documented inequities of access in areas of high need, in rural areas, for Aboriginal and culturally and linguistically diverse populations, and the significant absence of services for children, and utilise performance measurement mechanisms to improve local health districts' responses to domestic violence.

⁵⁰⁶ Dr Chant, Evidence, 18 June 2012, p 26.

6.76 The Committee is aware that victims of domestic violence can access free counselling services through the Approved Counselling Scheme for victims of violent crime administered by Victims Services in DAGJ. The Scheme's counsellors are social workers, psychologists and psychiatrists in private practice who have proven experience in working with victims of crime. They are paid by Victims Services and are available in the metropolitan and most rural and regional areas across the State.⁵⁰⁷ Few participants mentioned this service during our inquiry, so we are unsure how well utilised and well known the Scheme is. We do suggest that DAGJ ensure that the service is well publicised among the full range of domestic violence services including police, Women's Domestic Violence Court Advocacy Services, refuges, women's health centres and so on, so that more victims are made aware of it.

Recommendation 36

That the Department of Attorney General and Justice publicise the Approved Counselling Scheme among the full range of government and non government domestic violence services responding to domestic violence so that more victims are made aware of the Scheme.

Male victims

6.77 The Committee now briefly considers the specific recommendations put forward by stakeholders to improve male victim's access to the range of services for victims.

6.78 Representatives of the One in Three Campaign highlighted the recommendations arising from recent research into intimate partner abuse of men conducted at the Psychology Department of Edith Cowan University to call for investment in services specifically for male victims. The four recommendations were that:

- government funded public awareness campaigns be conducted to raise awareness of intimate partner violence against men
- consideration be given to providing publically-funded services specifically for male victims
- consideration be given to how services for male victims can be integrated with services for female victims and general services for victims of family violence in all its forms, recognising that some types of service can be effectively integrated while others will need to be gender-specific
- workers in the broader health and welfare fields be provided with training to assist them to respond effectively to male victims, in particular, in how to dismantle the barriers to men disclosing their abuse and strengthen the factors that facilitate men's disclosure.⁵⁰⁸

⁵⁰⁷ Department of Attorney General and Justice, Victim Services, accessed 1 August 2012, <http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/pages/VS_counsellingapprove dcounselling>

⁵⁰⁸ Tilbrook E, Allan A and Dear G, *Intimate Partner Abuse of Men*, Men's Advisory Network, Edith Cowan University, 2010, cited by Mr Greg Andresen, Senior Researcher, One in Three, Evidence, 20 February 2012, pp 17-18, and in answers to questions on notice 20 February 2012, One in Three Campaign, Additional information, p 11.

- 6.79** In evidence, Mr Greg Andresen, Senior Researcher, and Mr Andrew Humphreys, Member, One in Three Campaign, argued that until the current feminist paradigm for domestic violence services shifts, gender specific services will be necessary because of the unique issues that male victims face relating to their masculinity and the internal barriers affecting men's access, such as shame, embarrassment and social stigma.⁵⁰⁹
- 6.80** In written answers to questions, the One in Three Campaign argued for several other steps to improve male victims access:
- inclusion of male victims of family violence and abuse in the *National Plan to Reduce Violence Against Women and Their Children* and associated COAG systemic reforms
 - better Australian Bureau of Statistics and other data
 - education of Members of Parliament and the public service about male victims so that they stop talking about domestic violence as something that men do to women and children (and rolling out programs that exclude male victims)
 - the opening up of domestic violence services and sexual assault services to employ male workers.⁵¹⁰
- 6.81** The Committee was advised that while many victims' services are women specific, others are not.⁵¹¹
- 6.82** ACON's recommendation in respect of male victims were as follows:
- As a matter of priority, a range of culturally appropriate housing options be explored and developed for gay, bisexual and transgender men by NSW Housing and other relevant stakeholders. This includes short, medium and longer term housing such as supported accommodation, refuge services and public housing options.
 - That existing programs such as the Start Safely Subsidy are reworked to be inclusive of male victims of domestic violence and their children.
 - That support services for gay, lesbian, bisexual, transgender and intersex (GLBTI) people are resourced to provide training to mainstream domestic violence services to assist them to recognise the unique cultural, legal and structural nature of GLBTI families, the diversity of parenting and care giving roles, and the specific impact that domestic violence has on these units.
 - Ensure that key telephone counselling and support services are supported to improve their capacity, knowledge and skills to better meet the needs of GLBTI people from regional and rural communities experiencing domestic violence.⁵¹²

⁵⁰⁹ Mr Andresen, Evidence, 20 February 2012, pp 21-22.

⁵¹⁰ Answers to questions on notice taken during evidence 20 February 2012, One in Three Campaign, Additional information, p 11.

⁵¹¹ Mr Brendan Thomas, Assistant Director General, Department of Attorney General and Justice, Evidence, 17 October 2011, p 15.

⁵¹² Submission 46, ACON, pp 5-6.

Committee comment

- 6.83** The Committee acknowledges again that there are male victims of domestic violence. While men are less likely to be victims, the experience of those that are is equally as bad as that of other victims. We recognise the gap in services for male victims and encourage the government to examine how services can most appropriately be provided to male victims of domestic violence, including via brokerage funds.
- 6.84** At the outset of this report we made it clear that we consider that the forthcoming DFV Framework needs to take account of and be effective for all victims and perpetrators. Correspondingly, our Recommendation 5 was that the Framework be inclusive of both genders.
- 6.85** In relation to prevention, we envisage that our Recommendation 24, for universal primary prevention strategies focusing on violence against women to be complemented by strategies targeting specific population groups, would necessarily address violence against men.
- 6.86** In addition, we commented in relation to Recommendation 30, which calls for an expansion to brokerage funds, that these would be an appropriate way to respond to the emergency accommodation needs of male victims. It is foreseeable that there would be other needs that brokerage funds can address for this group.
- 6.87** Furthermore, in order to improve male victims' access to victims services, we also consider that the needs of male victims would be an important focus of the responses to Recommendation 20 in Chapter 4, to improve victims' awareness of domestic violence services, with particular attention to the needs of specific population groups. Finally, we note our strong endorsement in paragraph 4.146 of the Auditor-General's recommendation that the forthcoming DFV Framework establish mechanisms to continually address both barriers to reporting and barriers to accessing supports. Once again, we see male victims as an important group here, and actively encourage the government in this task.

The tension between domestic violence and child protection interventions

- 6.88** As a final issue for this chapter, a significant number of inquiry participants noted the tension between domestic violence services' approach towards victims and that of Community Services. The Mt Druitt Family Violence Response and Support Strategy Leadership Group, for example, stated:

Improved coordination and interface with the Child Protection system is needed. In particular what may appear to be punitive practices by FACS that effectively hold women responsible for violence in the home need to be addressed.⁵¹³

- 6.89** Two Aboriginal organisations raised particular concerns about this issue. In its submission, the Binaal Billa Family Violence Prevention Legal Service reported that many of its clients have found that reporting breaches, even minor, may result in having their children removed. It suggested that victims are being blamed for their failure to act in removing themselves and

⁵¹³ Submission 23, p 7. See also Submission 16, p 3; Submission 30, p 3 and Answers to supplementary questions 26 March 2012, Victims of Crime Assistance League, Question 3, p 2.

their children from the domestic violence, with Community Services staff acting not in an objective manner, but rather, on the basis of personal beliefs or preconceived notions.⁵¹⁴

- 6.90** Wurringa Baiya Aboriginal Women's Legal Centre also saw Community Services as 'victim blaming', noting that there are many complex reasons why women find it difficult to leave abusive partners. It suggested that a fairer, more effective approach is to provide intensive support to enable the woman to leave the relationship. It recommended training for Community Service caseworkers to enable them to better understand the complexity of domestic violence and the reasons why women find it hard to leave.⁵¹⁵
- 6.91** Dr Lesley Laing of the Faculty of Education and Social Work at the University of Sydney explained that this issue is longstanding, in that the child protection model prioritises children's safety first, whilst the women's sector places women's safety first, although it is increasingly acknowledging the impact of domestic violence on children. She further suggested that the power imbalance between a large statutory agency and small non government organisations has contributed to these tensions. Dr Laing suggested that while the statutory system is more likely to want to impose a legal solution, and there may be sometimes be good reasons for this, at other times an approach that understands and harnesses what women are already doing to keep themselves and their children safe is more desirable. She concluded that bringing the understanding of the government and non government sectors together is an imperative for New South Wales.⁵¹⁶
- 6.92** The Women's Refuge Movement addressed this issue in detail in its submission. Echoing Dr Laing's suggestions, it recommended that there be greater coordination between child protection and domestic violence services to further develop practices and programs that support and re-establish the relationship between the mother and child where domestic violence is occurring. The supports should work towards identifying with the mother the strengths and strategies that children have adopted to 'cope' with the violence and to equip and empower the mother to parent after leaving violence. It also called for better integration of domestic and family violence services and child protection responses at regional and state levels.⁵¹⁷
- 6.93** In answers to supplementary questions, FACS advised that Community Services had developed a joint domestic violence training strategy to meet the Special Commission of Inquiry into Child Protection Services in NSW recommendation that Community Services caseworkers receive domestic violence training. This was conducted in partnership with the Department of Premier and Cabinet and NSW Health. FACS reported that:

The training strategy was very well received; access to all the components of the training was promoted in work locations across the state and the demand for these places, programs and kits was significant.

Key achievements in this initiative have included:

⁵¹⁴ Submission 38, p 6.

⁵¹⁵ Answers to questions on notice during evidence 5 March 2012, 6.86 Wurringa Baiya Aboriginal Women's Legal Centre, Question 4, pp 9-10.

⁵¹⁶ Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney, Evidence, 17 October 2011, p 48.

⁵¹⁷ Submission 54, p 15.

- funding 55 places at the Australian Domestic and Family Violence Seminar on *Mothers, Children and Change – Strengthening service support and safety*, auspiced by the Australian Domestic and Family Violence Clearinghouse in 2010 (these places were occupied by Community Services caseworkers, and other government and NGO staff)
- coordination and delivery of 11 domestic violence training courses (five different courses run multiple times), occupied by Community Services caseworkers and other government and NGO staff – a total of 203 staff were trained
- development and dissemination of 200 domestic violence resource kits.⁵¹⁸

Committee comment

6.94 Notwithstanding Community Services' 2010 joint training strategy to enhance caseworkers' understanding of domestic violence, the Committee is concerned by the reports of a significant mismatch between the approach taken by Community Services and domestic violence services in relation to victims and children. While we understand the historical evolution of this tension, and the statutory responsibilities of Community Services, we are concerned that Community Services' approach may not be helpful to either group in the short and longer term. We recommend that Women NSW and Community Services develop a joint plan to address this tension at the local, regional and State levels, and to promote practices that harness victims' and children's strengths in order to move on from violence and build the relationship between them.

Recommendation 37

That Women NSW and Community Services develop a joint plan for addressing the tension between child protection interventions and those for domestic violence. The plan should include strategies to:

- enhance understanding and coordination between child protection and domestic violence services
 - promote practices that harness the strengths of victims and children in order to move on from violence, and seek to build the relationship between them
 - build integration at the local, regional and State levels.
-

⁵¹⁸ Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 2, pp 2-3.

Chapter 7 Policing

During the roundtable discussion, a participant observed that the NSW Police Force will be key to the success of the new approach to domestic violence that the Committee is envisaging for New South Wales.⁵¹⁹ This chapter explores in detail inquiry participants' views on potential enhancements to the policing of domestic violence in this State, commencing with a discussion of recent improvements. The Committee then examines the significant issue of the quality of policing responses, in terms of consistency in response, the investigation of breaches of apprehended domestic violence orders (ADVOs), and responses in rural and remote communities. We then explore and make recommendations on three key areas where we consider the NSW Police Force needs to act: leadership, accountability and quality assurance, and training. We then consider the key role of Domestic Violence Liaison Officers (DVLOs), the Domestic Violence Proactive Support Scheme (DV PASS), specialist teams and skilled investigation, and measures to prevent and address the 'vicarious trauma' that individual officers may experience.

At the outset, the Committee acknowledges the significant and invaluable work that police do in respect of domestic violence. Police attend incidents in the most difficult of circumstances, where tensions are high, people are hurt, aggressive and in need of protection. The Committee also recognises the difficulty of this work and we were impressed by the commitment of the members of the NSW Police Force that we met during the inquiry. Our recommendations are aimed at further improving police responses, to the benefit of people in need of protection as well as the police involved in domestic violence matters.

The role of police in domestic violence

7.1 Each year police respond to over 120,000 domestic violence incidents across the State.⁵²⁰ The police are the first contact point for many victims, and indeed, victims' perceptions of the effectiveness and responsiveness of police will have a major bearing on whether they are prepared in the first place to report and seek assistance for domestic violence. How police respond at the scene, investigate the matter and link the victim to other services affects the victim's immediate and longer term safety, and goes on to shape their experience of the criminal justice system. It is vital that victims have confidence in police to respond appropriately. By continuing to respond with greater effectiveness, police will continue to build the trust of victims.

7.2 Police have five key roles in relation to domestic and family violence. They:

- investigate incidents
- provide safety and support to victims
- bring offenders before the court
- proactively prevent violence and

⁵¹⁹ Ms Lyn Walker, Executive Manager, Participation and Equity for Health, VicHealth, Evidence, 18 June 2012, p 15.

⁵²⁰ Assistant Commissioner Mark Murdoch, Commander, Central Metropolitan Region and Corporate Spokesperson for Domestic and Family Violence, NSW Police Force, Evidence, 20 February 2012, p 40.

- work with local service providers to reduce incidents.⁵²¹

7.3 The NSW Ombudsman advised the Committee that his office has been working closely with the NSW Police Force for a number of years to improve the policing of domestic violence matters. In 2006 the Ombudsman's Office made a special report to Parliament, *Domestic violence: improving police practice*, which made 42 recommendations focusing on three key areas:

- enhanced support for victims
- better cooperation with other agencies
- more effective front line policing responses.⁵²²

7.4 The Ombudsman's recommendations addressed a range of areas including the use of minimum standards to promote good practice, tools for frontline police, enhancing the role of DVLOs, training, supporting effective prosecutions, working with Aboriginal women, protecting children and effective interagency responses.⁵²³

7.5 A key recommendation was that, 'NSW Police develop ... a comprehensive, publicly available Code of Practice outlining NSW Police's strategic response to domestic violence and how that response is implemented at both the corporate and local level.'⁵²⁴ The Ombudsman advocated that the document consolidate relevant legislation and policy and procedure, setting out the roles and responsibilities of police and police prosecutors, along with processes to be followed. He proposed that 'a code will help ensure a consistent, equitable and accountable response by police officers, and reinforce what is expected of them,' seeing the document as a key step in the NSW Police Force 'making a public commitment to improve service'.⁵²⁵

7.6 The audience of the Code of Practice, subsequently published in 2009, is the public. It is complemented by the more comprehensive NSW Police Force *Domestic and Family Violence Standard Operating Procedures*, which guides police practice and sets out in detail the methodology for responding to, investigating and managing incidents of domestic and family violence. The Standard Operating Procedures are confidential to the NSW Police Force.⁵²⁶

7.7 In his submission to the inquiry, the Ombudsman advised the Committee that he is pleased with the NSW Police Force's implementation of the 2006 recommendations, noting that improvements in police responses have also been informed by the introduction of the *Crimes (Domestic and Personal Violence) Act 2007* and the Keep Them Safe reforms flowing from the 2008 Special Commission of Inquiry into Child Protection Services:

I am very pleased that almost all of the recommendations contained within the [2006] report have now been implemented. Since the report there have been significant changes and improvements to the way police respond to domestic violence. These changes are reflected in the revised Domestic and Family Violence Standard

⁵²¹ Submission 74, NSW Police Force, p 5.

⁵²² Submission 53, NSW Ombudsman, p 1.

⁵²³ NSW Ombudsman, *Domestic violence: improving police practice*, December 2006.

⁵²⁴ NSW Ombudsman, *Domestic violence: improving police practice*, December 2006, Recommendation 42, p 92.

⁵²⁵ NSW Ombudsman, *Domestic violence: improving police practice*, December 2006, p vii.

⁵²⁶ Submission 74, pp 8-9.

Operating Procedures implemented by the [NSW Police Force] in 2008 and the Code of Practice for the NSW Police Force Response to Domestic and Family Violence released in 2009.⁵²⁷

- 7.8 The Ombudsman went on to advise the Committee that his Office made a further report to Parliament, *Audit of NSW Police Force handling of domestic and family violence complaints*, in May 2011. The Ombudsman's Office found that those complaints subject to the audit 'were generally well-handled' by the NSW Police Force, but that some were not. The Ombudsman informed the Committee that the NSW Police Force 'has responded positively and constructively to our report', taking up its recommendations and working with his Office to implement them.⁵²⁸ Certain findings are discussed in greater detail in the following chapter on the increase in police proceedings against women.

Key challenges for police

- 7.9 Asked by the Committee to identify the key challenges associated with the policing of domestic violence, the NSW Police Force provided a detailed response that gave insights into the complexities of domestic violence itself, the demands of the front line policing role, and the NSW Police Force's commitment to quality policing and optimal outcomes for victims and children. Their response documented the following challenges, summarised below:

Under reporting

- 7.10 The NSW Police Force stated that, historically, domestic violence is generally under reported to the police. This is thought to be because it mainly occurs in a private context within a personal or intimate relationship, and the victim may be dependent on and afraid of the perpetrator. Not all domestic violence victims recognise themselves as such, and many are embarrassed and shamed by their circumstances; they may also fear the consequences of reporting for themselves and their children. While victims may disclose to friends, family and others, police can only respond to the reports they receive.⁵²⁹

Community attitudes

- 7.11 The NSW Police Force noted that while community attitudes have slowly changed over the last three decades, many people still consider domestic violence to be a private matter in which the police should not be involved, and this is more likely for victims of a culturally and linguistically diverse or Aboriginal background. Other cultural issues may also be at work, as well as a general lack of understanding how police can assist.⁵³⁰

Courts

- 7.12 The NSW Police Force reported that for police and for many victims the penalties given out by the courts often seem to demonstrate a lack of understanding about the impact of domestic violence on individuals, families and the broader community. Police often feel let down when

⁵²⁷ Submission 53, p 1.

⁵²⁸ Submission 53, pp 1-2.

⁵²⁹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 2-3.

⁵³⁰ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, p 3.

offenders are given a bond rather than a sentence, which they see as sending a message to both the victim and the offender that domestic violence is not really a serious crime. Police are also frustrated by what they see as a lack of consistency by magistrates regarding whether or not victims should attend court on first mention to give evidence.⁵³¹ Court procedures are examined in detail in Chapter 13.

Complexity of domestic violence

7.13 According to the NSW Police Force, because of the complexities of domestic violence and the coercive control used by offenders, it is not uncommon for a victim to encourage police to withdraw an ADVO application or try to recant their statement. While police need no longer rely on victim's statement, it is still very frustrating for them when a victim who is expected to attend court does not, or becomes a hostile witness. Further, despite the best efforts of police to protect the victim through taking out an ADVO or laying charges against the offender, as domestic violence involves people in intimate relationships who may attempt to reconcile, it often becomes a 'revolving door' situation, with police repeatedly returning to the same house.⁵³²

7.14 This perceived challenge was echoed by the Police Association, which also pointed to the volatility of domestic violence incidents and the unknown risks and unpredictable outcomes that accompany them. It noted that domestic violence incidents are often complex and time-consuming, with some members feeling hopeless and powerless to effect real change in the lives of victims.⁵³³

Lack of appropriate programs for offenders

7.15 The NSW Police Force noted that historically, programs for offenders have been established as 'anger management' groups, but only those that address beliefs, attitudes and behaviour will effect long term change. While significant work has been done in the last two years to develop minimum standards for behaviour change programs, the standards are still being implemented and longitudinal research will be required to determine their success. In addition, it argued that concurrent programs are important, so that victims can address the underlying issues that compel them to return to an abusive relationship, or consider themselves unworthy of a healthier, more positive relationship. Similarly, it suggested that children need to be placed in programs to teach them about protective behaviours, building their support networks, respectful relationships and what to do if the violence continues.⁵³⁴

Administrative demands

7.16 The Police Association reported that police find the administrative and legislative requirements associated with responding to domestic violence onerous.⁵³⁵ In evidence, Sergeant Prue Bergun, Treasurer of the Police Association, highlighted the laborious process

⁵³¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, p 3.

⁵³² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 3-4.

⁵³³ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 1, p 1.

⁵³⁴ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 4-5.

⁵³⁵ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 1, p 1.

of applying for an ADVO then documenting a report in the Computerised Operational Policing System (COPS), calling for this to be streamlined.⁵³⁶

- 7.17** The NSW Police Force acknowledged the administrative difficulties with its information technology systems, noting that the COPS is an old DOS-based system, agreeing that there is much duplication in the input of information for domestic violence events and that it would be preferable for appropriate fields to be copied automatically. However, it reported that the amendments required to address this are ‘cost prohibitive’. It further agreed that the ADVO computer system does not interact well with COPS, such that the COPS entry must be complete before the ADVO can be applied for, and in order to create, apply for and serve a Provisional ADVO, police must access three different computer systems. The NSW Police Force stated that streamlining the process and allowing for ADVOs to be created on the COPS system would alleviate this.⁵³⁷ Proposals in relation to this are discussed in detail in Chapter 9.

Rural and remote communities

- 7.18** Further significant challenges, this time highlighted during our visit to the Central West area of New South Wales, are those associated with the inherent difficulties of policing in isolated areas. Superintendent Robert Ryan, Lachlan Local Area Commander, spoke about the enormous distances covered by some commands, and how this affects police response times. He also spoke about the way that black spots in the telecommunication system mean that police are ‘forever going back to the station’ to process ADVO applications.⁵³⁸ His colleague, Superintendent Martin Fileman, Mudgee Local Area Commander, reported that resources are extremely thin on the ground, inevitably affecting staffing decisions and the availability of police.⁵³⁹

Innovations

- 7.19** In the face of these significant challenges, the Committee was pleased to hear that many local area commands are developing innovations, not only in responses to domestic violence, but also in terms of prevention.
- 7.20** In written answers to questions after their hearing, the NSW Police Force explained that innovations in prevention, especially with regard to repeat domestic violence, vary between local area commands, and are dependent on the resources of each command. Certain commands have dedicated teams specifically focused on domestic violence, for example:
- Brisbane Waters Local Area Command: Domestic Violence Intervention and Response Team (DVIRT), in which team members work closely with victims including via home visits and counselling

⁵³⁶ Sergeant Prue Burgun, Treasurer, Police Association of New South Wales, Evidence, 20 February 2012, p 53.

⁵³⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, p 9.

⁵³⁸ Superintendent Robert Ryan, Commander, Lachlan Local Area Command, NSW Police Force, Evidence, 28 February 2012, pp 32-33.

⁵³⁹ Superintendent Martin Fileman, Commander, Mudgee Local Area Command, NSW Police Force, Evidence, 28 February 2012, p 35.

- Tuggerah Lakes Local Area Command: Area Domestic Violence Integrated Case Management and Education (DV ADVICE), which seeks to empower victims through information, support and case management strategies. The team also conducts a preventative ‘compliance’ operation to increase repeat domestic violence offenders’ compliance with ADVO conditions. The team is headed up by a Sergeant specifically allocated for domestic violence. This model is also in place in five other local area commands.⁵⁴⁰

7.21 Another initiative highlighted by the NSW Police Force was the creation of 35 ‘Domestic Violence Operative’ position across 22 local area commands, whose role is to proactively identify, target and monitor repeat and high risk offenders, in order to reduce their offending. DVOs provide advice and assistance to investigating police, coordinate compliance operations and work closely with government and non government agencies.⁵⁴¹

7.22 The NSW Police Force noted two more innovative strategies:

Further to specific compliance operations, it is commonplace within high volume domestic violence [local area commands] that repeat and high risk offenders are subject to the Suspect Target Management Plan II. This process involves regular contact by police with the target for the purpose of intelligence gathering and potentially deterring recidivist offending.

The NSWPF Domestic and Family Violence Team [in NSW Police Force headquarters] in consultation with NSWPF Business Technology Services, has recently created a high risk domestic violence victim management process that when finalised will be available for all NSW police officers within the existing COPS database. Once this case management process is implemented it will create for the first time within NSWPF an accurate and accountable record for the ongoing management of high risk/repeat domestic violence victims.⁵⁴²

7.23 Finally, when the Committee visited the Central West area, police representatives told us about a program they had initiated targeting both victims and perpetrators, which they run in conjunction with a local women’s refuge, Corrections NSW, Department of Family and Community Services and other service providers. Perpetrators convicted of a domestic violence must undertake the program developed by Probation and Parole, while their victim partners are engaged by women’s refuge staff to participate in their own complementary program. The police advised us that they are observing very positive outcomes, with victims now more willing to take out ADVOs, to report breaches, and to assist police with prosecuting their matters through court. Offender outcomes have been very positive too, with offending behaviour among participants improving not just in relation to domestic violence, but also other crimes.⁵⁴³ Perpetrator programs are discussed in detail in Chapter 15.

⁵⁴⁰ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 4, pp 6-7; Submission 63, Police Association of NSW, pp 34-35.

⁵⁴¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 4, p 7; Submission 74, p 8.

⁵⁴² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 4, pp 6-7; Submission 63, pp 34-35.

⁵⁴³ Inspector Paul Jones, Crime Manager, Lachlan Local Area Command, NSW Police Force, Evidence, 28 February 2012, p 40.

Committee comment

- 7.24** It is clear to the Committee from the comments of the NSW Ombudsman, as well as those of a range of inquiry participants that policing practices have improved in recent years, assisted by a commitment to improvement, as well as by legislative reform and policy changes. The NSW Police Force takes domestic violence more seriously, with a proactive approach that encourages all police to conduct thorough investigations to support prosecution, with charges laid against offenders where evidence exists to support them. In addition, applications for apprehended domestic violence orders are used proactively to provide safety to victims and prevent further violence. The Committee also observed that the NSW Police Force places significant emphasis on early intervention with victims and offenders, and on collaborating with support services and the community to prevent violence.⁵⁴⁴ We also see great value in the local and systemic innovations brought to our attention. However, further improvements are required, and these are the focus of the remainder of this chapter.

Quality of police responses

- 7.25** Notwithstanding these significant improvements, inquiry participants voiced concerns about the quality of some police responses in relation to three key areas: the consistency of responses; responses to breaches of ADVOs; and responses in rural and remote areas.

Consistency of responses

- 7.26** The Committee heard that while standards are very high among many commands and individual officers, among others they are less so. For example, inquiry participants reported that police responses to calls for assistance can be slow, breaches of ADVOs reported by victims may not be recorded or acted upon, investigations of incidents can be inadequate, and the choice of charges laid for the same offences can vary.⁵⁴⁵ The issue of consistency was raised by a range of inquiry participants and is salient in respect of general duties officers and supervising officers.⁵⁴⁶
- 7.27** Dr Lesley Laing, Senior Lecturer in the Faculty of Education and Social Work at the University of Sydney told the Committee that while the domestic violence sector recognised that policing had improved, the quality of responses still varied:

I think there is probably agreement across the sector that there has been a great change in the policing and a willingness to take domestic violence seriously. There has

⁵⁴⁴ See for example, in Answers to supplementary questions 20 February 2012, NSW Police Force, Question 5, p 8; Submission 74, p 5; NSW Police Force, Code of Practice: NSW Police Force Response to Domestic and Family Violence, 2009, p 14.

⁵⁴⁵ Professor Julie Stubbs, Faculty of Law, University of New South Wales, Evidence, 7 November 2011, p 4.

⁵⁴⁶ In addition to those participants referred to in this section, see also Submission 54, NSW Women's Refuge Movement, p 4; Ms Rachelle Johnston, Project Officer, Women's Domestic Violence Court Advocacy Program, Legal Aid NSW, Evidence, 7 November 2012, p 23.

been a change that should be acknowledged within police, but it is still patchy and it depends on who you get in attitudes.⁵⁴⁷

- 7.28** The Benevolent Society noted that despite the clear guidelines in the Code of Practice, its services have reported numerous instances where officers attended domestic and family violence callouts but did not charge the perpetrator or take out an ADVO. It suggested that this was done on the grounds that there was insufficient evidence to prove that violence had taken place, or that the assault was not ‘serious’ enough, and would be dismissed in court.⁵⁴⁸ In evidence, Ms Annette Michaux, General Manager, Policy and Research with the Benevolent Society, elaborated:

For example, a woman can go to the police and say: I would like to make an application because this and this is happening; depending on who she will get and what station or what area command, her response might be completely different ... So often it is about her fears were not taken seriously, there was not enough evidence to prove what she is claiming; it was his word against her word; the police do not think that will stand up in court. All those sorts of subjective type interpretations will then have an impact, which then means that there is a barrier for the woman to then approach and say: I am feeling unsafe and would like some protection ... A victim should be able to approach an agency and expect a certain response.⁵⁴⁹

- 7.29** A rural service provider talked about the situation where a victim experiencing ongoing violence may find that police are less responsive over time, because of their frustration at the situation:

If it is a woman that has called the police numerous times, and we all know that with domestic violence that will happen, their response times do tend to get slower and slower. The police’s response to those women if they are by themselves is not very nice at times. The whole question of, “You go back, why do you go back?”⁵⁵⁰

- 7.30** Wirringa Baiya Aboriginal Women’s Legal Centre provided a case study of an instance of poor police practice in relation to an apprehended domestic violence order:

Client 4 contacted Wirringa Baiya after she had ended her violent relationship and was attempting to report the domestic violence to the police. She reported the violence to the counter staff at the local police station but was advised that “as the relationship had ended, it was no longer ‘domestic’ violence, but personal violence” and she was directed to report the violence to the Local Court Chamber Registrar and seek a private ADVO. She attended the local courthouse and was advised by the Registrar that the Police should be applying for the ADVO due to the seriousness of the violence. She returned to the local police station only to be advised that she should wait for the DVLO, as he, (rather than the [general duties] officer) was in the best position to take out the ADVO for her.⁵⁵¹

⁵⁴⁷ Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney, Evidence, 17 October 2011, p 49.

⁵⁴⁸ Submission 37, Benevolent Society, p 10.

⁵⁴⁹ Ms Melina Isgro-Rarp, Program Manager, The Benevolent Society, Centre for Women’s Health, Macarthur, Evidence, 17 October 2011, pp 59-60.

⁵⁵⁰ Ms Cathie Schatz, Outreach Worker, Forbes Women’s Refuge, Evidence, 28 February 2012, p 6.

⁵⁵¹ Submission 43, Wirringa Baiya Aboriginal Women’s Legal Centre, pp 11-12.

- 7.31** The Shopfront Youth Legal Centre noted their concerns about instances where criminal charges were laid and ADVO applications made in respect of violence by a young person towards a parent, when in their opinion, the situation called for a mental health response.⁵⁵²
- 7.32** Some participants distinguished between policy and its application. Ms Rosslyn Mayne, Principal Solicitor with the Inner City Legal Centre, suggested that while police policies are not lacking, individual application of them can be. At the same time, she pointed to the bearing that the ‘culture’ of a local area command will have on practices on the ground, stating ‘we have a sense that some commands are much better than others generally in how they will respond and how seriously they will take things. It depends on the culture of the individual command.’⁵⁵³
- 7.33** Mr David Porter, Solicitor with the Redfern Legal Centre, argued that inconsistency in policing practices contributes to the significant under reporting of domestic violence incidents, as did the Benevolent Society.⁵⁵⁴ Mr Porter stated in evidence:

If [victims] do not perceive that they are being listened to or respected by the police officer involved, whether that is because the police officer involved has an enormous caseload and is run off their feet and is just trying to keep their head above water or whether it is because there is a different perception about the importance of domestic violence related offences, that will discourage complainants from coming forward the next time it happens or it may mean that a witness does not attend. It can have the sorts of repercussions that mean that domestic violence offences are perceived as something that an offender might be able to get away with, that it will not go to court, that the hearing will not run to a conclusion—those sorts of elements. So there is a very important role for the general perception of domestic violence within the Police Force and within a specific local area command.⁵⁵⁵

Breaches

- 7.34** In light of the inquiry’s terms of reference to consider strategies to reduce breaches and improve compliance with apprehended domestic violence orders, many inquiry participants raised concerns about the consistency of police responses to breaches. The Committee considers the broader issue of breaches and strategies to increase compliance with ADVOs in Chapter 10.
- 7.35** While an ADVO is a civil provision with no implications for criminality, the act of contravening or breaching an order is a criminal offence.⁵⁵⁶ A person who breaches an ADVO may be imprisoned for up to two years, fined up to 50 penalty units (that is, \$5,500), or both.⁵⁵⁷

⁵⁵² Answers to supplementary questions 5 March 2012, The Shopfront Youth Legal Centre, Question 3, p 2.

⁵⁵³ Ms Rosslyn Mayne, Principal Solicitor, Inner City Legal Centre, Evidence, 5 March 2012, p 54.

⁵⁵⁴ Submission 37, p 10.

⁵⁵⁵ Mr David Porter, Solicitor, Redfern Legal Centre, Evidence, 7 November 2011, p 51.

⁵⁵⁶ NSW Police Force, *Domestic & Family Violence*, Factsheet, p 3.

⁵⁵⁷ Section 14 *Crimes (Domestic and Personal Violence) Act 2007*.

7.36 The Police Code of Practice states that:

AVOs are strictly interpreted and enforced.

There is no such lawful term as a 'technical' or 'minor' breach and any breach will be treated the same. Ignoring the breach conveys to the defendant and the victim that the order is not taken seriously. An outcome of this could be continued abuse, further police involvement in subsequent breaches and possible harm to victims and/or their children.

What do police do if they detect a breach?

If the alleged offender is at the scene Police have a responsibility to ensure the safety and wellbeing of all persons. They have the power to arrest for a breach of an AVO and will use it where it is appropriate to impose bail conditions.

If the alleged offender is not at the scene

Regardless of the seriousness of the alleged breach, police must conduct a thorough investigation to identify and locate the offender. When the offender is located they must be interviewed regarding the alleged breach.

Interview with the offender

Where there are indictable offences involved, police are required in most circumstances to tape record any interview with the offender. In other cases, interviews may be recorded digitally (the preferred option) or in writing.⁵⁵⁸

7.37 Despite this public commitment, numerous participants such as Ms Kerry Stewart, Secretary of the NSW Domestic Violence Coalition and Coordinator of the Manly Warringah Women's Resource Centre, stated in evidence that many reported breaches are not acted on:

We do know that there are a lot of breaches that are reported that are not dealt with as serious offences. They have been named technical breaches and they have been called minor breaches and there has been no evidence and so they are not prosecuted.⁵⁵⁹

7.38 Like a number of city based and rural services, Kempsey Family Support Services documented a number of ways that some police seem not to take breaches seriously:

In our experience, Police do not always respond appropriately to the reporting of breaches and do sometimes minimise the level of violence that the victim is reporting. Often when staff members are assisting women to report breaches police officers show a lack of sensitivity in their response and sometimes actively discourage the reporting of the breach. Police do not always act on the reporting of breaches often requesting women to return the next day when more staff are available. This

⁵⁵⁸ NSW Police Force, *Code of Practice: NSW Police Force Response to Domestic and Family Violence*, November 2009, p 34.

⁵⁵⁹ Ms Julie Stewart, Secretary, NSW Domestic Violence Coalition and Coordinator, Manly Warringah Women's Resource Centre, Evidence, 17 October 2011, p 29.

sometimes deters women from returning to report the breach because it has not been shown the importance and urgency of the incident.⁵⁶⁰

7.39 Similarly, the Benevolent Society reported inadequate responses to breaches including:

- failing to attend in a timely manner
- not believing that the breach took place
- failing to understand the terror induced in the victim by such actions as the perpetrator driving up and down her street or sending a constant stream of seemingly benign text messages
- refusing to take any action against the perpetrator in the absence of physical evidence and
- suggesting that actions of the victim were responsible for the perpetrator breaching the ADVO.⁵⁶¹

7.40 Professor Julie Stubbs of the Faculty of Law at the University of New South Wales observed that these concerns are longstanding and widespread, being held by practitioners, the Ombudsman and others. While police practices have improved significantly, she suggested that, ‘they are still variable at best’. She went on to explain some of the evidentiary difficulties that police face, as well as the difficulties arising from the range in apparent seriousness of individual breaches:

Some of the difficulty is around genuine evidentiary problems. An apprehended domestic violence order often involves controls over behaviours that are not criminal - things like unwanted phone calls or breaching proximity requirements. There can be genuine problems for police in getting enough evidence to proceed with a breach ... It is also the case that what makes up the breach of an apprehended violence order can range from what looks on the face of it to be something quite minor to something that is quite major, right up to perhaps an attempted murder.⁵⁶²

7.41 Others who noted concerns about inaction in relation to breaches included Wirringa Baiya Aboriginal Women’s Legal Centre,⁵⁶³ and Legal Aid.⁵⁶⁴ The latter provided the case study set out below and argued that, ‘Reports of breaches of ADVOs to Police need to be investigated with the same veracity as other alleged criminal conduct’.⁵⁶⁵

⁵⁶⁰ Submission 79, Kempsey Family Support Service Inc, pp 1-2. For other rural and regional participants’ views on this issue, see also Submission 77, Western Plains Regional Development, p 2; Submission 18, Jenny’s Place Women’s and Children’s Refuge, p 6; Mr Ralph Smith, Aboriginal Men’s Worker, CentaCare Wilcannia-Forbes, Evidence, 28 February 2012, p 10; and Ms Schatz, Evidence, 28 February 2012, p 2.

⁵⁶¹ Submission 37, p 9.

⁵⁶² Professor Stubbs, Evidence, 7 November 2011, p 4.

⁵⁶³ Submission 43, p 12.

⁵⁶⁴ Submission 34, Legal Aid NSW, p 11.

⁵⁶⁵ Submission 34, p 11. See also Submission 6, Women Everywhere Advocating Violence Elimination (WEAVE), p 6.

Case study: Police investigations of breaches

The Women's Domestic Violence Court Advocacy Service (WDVCAS) assisted the female victim of domestic violence to obtain an ADVO.

On a certain date, the victim contacted the WDVCAS advising that the defendant had attempted to strangle her in breach of the ADVO. She had contacted the Police immediately and was told her report would be sent to a second police station in the area where the defendant lived.

The following day the WDVCAS called the second police station. Police advised that there was no record of the breach in the COPS system and stated that the victim 'still had the protection of the ADVO' in any case. The WDVCAS then contacted the original police station and were informed that it could take up to one week for the incident to be transferred to the second police station. At the insistence of the WDVCAS, the victim's report was found and faxed to the second police station.

Two days later, the WDVCAS learnt Police had still not taken any action to investigate the breach. Police at the second police station advised that they were sending the report to a third police station that may have more capacity to investigate the matter. The victim had stayed with her friend for three days waiting for Police to contact her to let her know the defendant had been arrested and it was safe for her to return home.

The defendant was eventually arrested and charged the next day.⁵⁶⁶

7.42 Pointing to the consequences of inadequate responses to breaches, the WDVCAS Network and Legal Aid both argued that they undermine victims' confidence in ADVOs and the criminal justice system more broadly.⁵⁶⁷ The broader issue of breaches and ways to reduce them are discussed in detail in Chapter 10. The former also argued that inadequate responses discourage victims from reporting and entrench the cycle of domestic violence,⁵⁶⁸ while the latter suggested that they undermine the effectiveness of other responses and services for victims of domestic and family violence.⁵⁶⁹

7.43 Dr Jane Wangmann, Lecturer in the Faculty of Law, University of Technology, Sydney, reported that many police complain that when they do charge a defendant for a breach, the court often minimises the matter and gives a minor penalty. In relation to consequences, she argued that 'if they are not taken seriously the defendant in the matter then gets the impression that the apprehended domestic violence order is not worth anything and they can continue to breach it.'⁵⁷⁰ This observation was reinforced by Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research (BOCSAR), who argued that in order for ADVOs to be effective in reducing violence, intimidation and harassment, which they have been shown to be, it is vital that breaches are responded to, because as action does seem to show offenders that the person who is taking out the order is serious about stopping the

⁵⁶⁶ Submission 34, p 11.

⁵⁶⁷ Submission 8, Women's Domestic Violence Court Advocacy Network, p 6; Submission 34, p 11.

⁵⁶⁸ Submission 8, p 6; see also Submission 18, p 6.

⁵⁶⁹ Submission 54, p 4.

⁵⁷⁰ Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, Sydney, Evidence, 20 February 2012, p 35.

violence.⁵⁷¹ Dr Gaby Marcus of the Australian Domestic and Family Violence Clearinghouse put it in these terms:

If they know they can breach and there are going to be no consequences; that is not going to stop them breaching again. So those breaches actually need to be thoroughly investigated and charges need to be laid because breaching is a criminal offence.⁵⁷²

- 7.44** In terms of ways to improve practice, Women’s Legal Services called for the Standing Operating Procedures to stipulate that police always record when breaches are reported, as well as the decision made about whether action will be taken, and rationale for that decision.⁵⁷³ Similarly, Legal Aid called for the Police Standard Operating Procedures be amended ‘to regulate Police response to breaches, including timeframes for investigation, and contact with victims in relation to the progress and outcomes of the investigation’. It suggested that by requiring the police to record their reasons for not charging for an alleged breach, these records ‘would then be available for use in future investigations that may lead to applications for subsequent ADVOs or criminal conduct involving the original victim.’⁵⁷⁴ Redfern Legal Centre and the Sydney Women’s Domestic Violence Court Advocacy Service (WDVCAS), as well as Ms Betty Green, Convenor of the NSW Domestic Violence Coalition, each called for all breaches to be investigated in a robust and consistent fashion. Ms Green argued that such decisions should not rest with desk sergeants, but should be routine, with the magistrate responsible for the decision as to whether breach should be punished when the matter goes to court.⁵⁷⁵
- 7.45** Further suggestions to improve police responses to breaches included the One in Three Campaign’s recommendation for widespread adoption of breach diaries and wallet breach cards, like those produced by Women’s Legal Services, but with gender neutral language.⁵⁷⁶
- 7.46** Wirringa Baiya recommended the establishment of a statewide, 24 hour free call (including from mobiles) ADVO Breach Line, staffed by police officers trained in domestic violence and sexual assault. The Breach Line would have response, liaison and intelligence gathering functions, with the advantage of providing a consistent, systematic response in the first instance.⁵⁷⁷ These and other suggestions are discussed in detail in Chapter 10).

⁵⁷¹ Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 7 November 2011, pp 11-12.

⁵⁷² Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 39. See also Ms Helen Campbell, Executive Officer, Women’s Legal Service NSW, Evidence, 7 November 2011, p 46.

⁵⁷³ Ms Edwina MacDonald, Law Reform and Policy Coordinator, Women’s Legal Service NSW, Evidence, 7 November 2011, p 46.

⁵⁷⁴ Ms Johnston, Evidence, 7 November 2012, p 31.

⁵⁷⁵ Submission 39, Redfern Legal Centre and Sydney Women’s Domestic Violence Court Advocacy Service, p 6; Ms Betty Green, Convenor, NSW Domestic Violence Coalition and Manager, Liverpool Women’s Health Centre, Evidence, 17 October 2011, p 29.

⁵⁷⁶ Submission 40, One in Three Campaign, p 10.

⁵⁷⁷ Submission 43, pp 12-14.

NSW Police Force views

7.47 Asked to respond to participants' concerns about the inconsistency in police responses to breaches, Assistant Commissioner Mark Murdoch, the NSW Police Force Corporate Spokesperson for Domestic and Family Violence, acknowledged that, 'my main challenge, as the corporate spokesperson, is to ensure that the consistency of our service delivery improves.'⁵⁷⁸ He went on to note the difficulties associated with gathering evidence, but argued that in the vast majority of cases, where the evidence is there, police act in response:

We still have a way to go to improve but I would like to think that there would not be too many local area commands around and Local Area Commanders about whose police do not act on breaches, where there is evidence of a breach. A lot of the time the evidence of a breach may be pretty skimpy, in terms of it boils down to one person's word against another. Those matters are investigated to try and find evidence in support of each of those versions. But I accept that not all victims are going to be happy with the response they get from us 100 per cent of the time. But I would also suggest that, in the vast majority of cases, when a breach is reported it is investigated and where there is evidence to support that breach, action is taken ... Each case needs to be assessed on its merits and I would be disappointed if the police did not do that.⁵⁷⁹

7.48 In written answers to questions following the hearing, the NSW Police Force provided further detail on their responses to breaches:

The NSWPF provide specialised training into the investigation of domestic violence, including the investigation of breaches. Successful prosecution of breaches are dependent on the credibility of the evidence and the support of magistrates.

Presently, the NSWPF record all breaches reported by victims and reasons for not proceeding or taking action are noted in meeting with the *Crimes (Domestic & Personal Violence) Act 2007*. This process is also quality reviewed by senior officers and the DVLO.⁵⁸⁰

Rural and remote communities

7.49 As noted in Chapter 2, data from BOCSAR shows that domestic violence is more prevalent in rural areas, and is especially concentrated in remote Aboriginal communities.

7.50 During the Committee's visit to the Central West of the State, inquiry participants voiced a number of issues in relation to the quality of police responses in rural and remote areas:

- the perception that there are 'not enough feet on the ground' to cover the whole area⁵⁸¹
- the distances between towns, affecting the timeliness of response⁵⁸²

⁵⁷⁸ Mr Murdoch, Evidence, 20 February 2012, p 40.

⁵⁷⁹ Mr Murdoch, Evidence, 20 February 2012, pp 40-41.

⁵⁸⁰ Answers to supplementary questions 20 February 2012, NSW Police Force, p 23.

⁵⁸¹ Ms Heather Blackley, Youth Services Manager, Western Plains Regional Development, Evidence, 28 February 2012, p 4.

⁵⁸² Ms Blackley, Evidence, 28 February 2012, p 3.

- the need for culturally sensitive service delivery in relation to Aboriginal communities⁵⁸³
- the challenges of recruiting to the domestic violence liaison officer (DVLO) role⁵⁸⁴
- the potential in a small community for police to be friends or associates of the perpetrator.⁵⁸⁵

7.51 On the issue of timeliness of response, the Immigrant Women's Speakout Association reported that this had arisen in a recent consultation in Coffs Harbour:

Another issue was the police gap response times to emergency calls regarding domestic violence. Women in the Coffs Harbour area reported their calls for help regarding domestic violence weren't answered until almost 3 days after the incident, or not at all. This was attributed to the vast area in which rural police are expected to operate. Without the timely support of authorities, women's fear of being assaulted or killed by their partners increased – also making them jaded or more reluctant to rely on emergency services.⁵⁸⁶

7.52 Correspondingly, Immigrant Women's Speakout Association recommended a review examine emergency response systems and police resources in rural areas, to gauge effectiveness, assess the adequacy of provisions to meet the needs of remote communities, and determine whether a new system for dealing with domestic violence calls should be developed.⁵⁸⁷

7.53 Ms Catherine Smith, a victim of very serious domestic violence, spoke of the substantial distance between stations affecting response times. She also spoke of her physical isolation for many years, and her mistrust in police who failed to act on her husband's violence.⁵⁸⁸ Ms Susan Smith, Solicitor and Coordinator of the Sydney WDVCS observed that despite the significant time that had passed since Ms Smith's experience, many rural women share the same vulnerability now:

But I do have concerns for women in country towns. Even now, I wonder where they would go and what they would do when they want to report violence and then get some support, especially if they are living on rural properties and the other party owns guns, as Catherine's husband did, or they have children.⁵⁸⁹

7.54 Mr Porter referred to the 2011 NSW Ombudsman's report on the audit of police complaints, stating that several of its case studies are from rural and regional areas where police failed to act in accordance with procedure. He noted an example was where two probationary constables were sent to attend a domestic violence incident.⁵⁹⁰

⁵⁸³ Ms Donna Bliss, Chief Executive Officer, Yoorana Gunya Family Healing Centre Aboriginal Corporation, Evidence, 28 February 2012, p 6.

⁵⁸⁴ Ms Bliss, Evidence, 28 February 2012, p 2.

⁵⁸⁵ Ms Schatz, Evidence, 28 February 2012, p 2.

⁵⁸⁶ Submission 68, Immigrant Women's Speakout Association, pp 11-12.

⁵⁸⁷ Submission 68, p 12.

⁵⁸⁸ Ms Smith, Evidence, 7 November 2011, pp 37-38.

⁵⁸⁹ Ms Susan Smith, Solicitor and Coordinator, Sydney Women's Domestic Violence Court Advocacy Service, Redfern Legal Centre, Evidence, 7 November 2011, p 58.

⁵⁹⁰ Mr Porter, Evidence, 7 November 2011, p 58.

- 7.55** As noted in the challenges identified by the Police at the start of this chapter, Superintendent Ryan, Lachlan Local Area Commander, acknowledged the issue of response times in rural and remote areas, and explained the difficulties from his perspective:

One of the issues for us is that we have enormous distances to travel and that affects response times. Only one of the stations in my command operates 24 hours a day. We have a lot of call-outs. Quite often domestic violence does occur within the towns, but a lot of people in these towns are unemployed, alcohol is a problem. There are delays ... because of the electronic document lodgement approach to having to make an application. Quite often you cannot do that in the field because the telecommunication system has black spots in it. You cannot make application over the radio, you cannot process those things, so you are forever going back to the station. Police from some of these stations travel 100 kilometres to get to a job. So from that point of view that affects the timeliness of the service delivery.⁵⁹¹

Committee comment

- 7.56** As noted earlier, both the Ombudsman and a number of participants have acknowledged the significant progress that the NSW Police Force has made in improving its practices in relation to domestic violence. At the same time, the collective views expressed during the inquiry indicate that there is more work to be done. For example the discrepancy between the NSW Police Force's position that all reported breaches and any reasons for not acting on them are noted, and the evidence of numerous participants that this is not the case, is of concern.
- 7.57** The Committee believes that while the NSW Police Force has very good policies and procedures for dealing with domestic violence, the issue is the consistent use of those procedures on the ground. Many police officers perform their role in domestic violence matters effectively, but others need to improve. The Assistant Commissioner has acknowledged that there are instances where poor practices occur, but emphasised the efforts being made to address this.⁵⁹²
- 7.58** The Committee agrees that wherever victims reside, they have a right to expect a high standard of service in accordance with the Code of Practice for domestic and family violence. Similarly, we consider that where they exist, poor practices detract from the high standards exemplified by many police and to which the NSW Police Force itself is very committed. Poor practices also undermine victims' trust in the system, detract from perpetrators' accountability, and contribute to the under reporting of domestic violence.
- 7.59** The Committee acknowledges the many challenges that accompany domestic violence work, and the often understandable frustration that individual officers bear. However, for all the reasons noted above, we believe that it is vitally important that the quality of police responses continues to improve.
- 7.60** In rural and remote areas a number of the issues are structural and not easily addressed, not least in relation to the resources that are spread thinly across vast areas, the very substantial distances that police must travel to attend incidents, and the finite hours that many police

⁵⁹¹ Mr Ryan, Evidence, 28 February 2012, pp 32-33.

⁵⁹² Mr Murdoch, Evidence, 20 February 2012, (in camera evidence subsequently published by the Committee), p 2.

stations are open. The Committee notes that the *Ministerial Audit of the NSW Police Force* conducted by Peter Parsons (referred to as the Parsons Review) and handed down in February 2012 made recommendations on the allocation of police resources, including personnel, across the State. The Review report outlines the proposed reforms in terms of: more focus on regional policing; more police on the front line and less ‘top brass’; less police in the ‘back office’; local problems, local solutions, local police; more focus on victims of crime; significant savings over the longer term.⁵⁹³ The Committee is very hopeful that these reforms will address in significant terms the structural resourcing issues we have observed.

7.61 At the same time, we consider that to address the issues of quality that inquiry participants raised with us, the NSW Police Force needs to act in three key areas: leadership, accountability and quality assurance, and training. These are discussed in turn in the following sections.

Leadership

7.62 While there is evidence of very effective high level leadership within the NSW Police Force with regard to domestic violence, the Committee considers that further effort to strengthen leadership and explicit commitment throughout police ranks to addressing domestic violence is highly desirable as a means of further improving the quality and consistency of responses to domestic violence.

7.63 The NSW Police Force has advised that the present structure of leadership in respect of domestic and family violence is provided through:

- DVLOs in each local area command, who work with victims, provide a key link between community based issues, information and intelligence, and perform a quality assurance role
- Region Domestic Violence Coordinators in each of the six regions across the State, who report to Regional Operations Managers, and work with Region Domestic Violence Sponsors and other government and non-government organisations to provide an integrated response
- Region Domestic Violence Sponsors, who are Superintendent Local Area Commanders, and whose role is to build awareness and understanding of contemporary policing in investigation and management, providing a key link between operational response and corporate requirements
- the Corporate Spokesperson, whose responsibilities include providing advice to the Commissioner, participating in interagency activities, overseeing and monitoring the development of policy and practice, and managing internal activities and priorities
- the Domestic and Family Violence Team supporting the NSW Police Force senior executive and field officers on operational, legal and corporate issues.⁵⁹⁴

7.64 A number of witnesses argued that leadership at the Local Area Commander level is critical to ensuring that domestic violence is seen as a priority and high standards of service are maintained. Some commanders have a more active commitment than others.

⁵⁹³ Peter C Parsons, *Ministerial Audit of the NSW Police Force*, Version 2, October 2011, p ix.

⁵⁹⁴ Submission 74, p 5.

7.65 Both Legal Aid and the Redfern Legal Centre suggested that leadership was the heart of the consistency issue.⁵⁹⁵ Ms Susan Smith of the Sydney WDVCS commented on the difference that good leadership makes:

I think we would say that it is about leadership within a command. We have had different commanders; we work with ... 11 different commands across the courts that we go to and when they have a commander that is very focused on domestic violence and making sure that his troops do the right thing when a domestic violence incident has occurred it makes a lot of difference.⁵⁹⁶

7.66 Ms Smith went on to note that those commands with strong leadership on domestic violence will have more DVLOs than others, the DVLOs will receive more support to fulfil their role effectively, and local training of officers will occur more regularly. She also suggested that in those commands taking domestic violence more seriously, she sees a difference in the number of applications coming through the court. By contrast, in a command without strong leadership on this issue, the DVLO might also have other responsibilities and be taken onto general duties when the need arises.⁵⁹⁷

7.67 Similarly, the Benevolent Society noted that the commander's view will determine not only the level of ongoing training and professional development in respect of family violence, but also the extent to which the command prioritises an integrated 'partnership' approach with other local agencies.⁵⁹⁸ Likewise, Legal Aid observed that where a Local Area Commander prioritises domestic violence, DVLOs will always be present at court on list days.⁵⁹⁹ Sergeant Sharon Walker, Police Prosecutor at Sutherland Court, emphasised the passion of the commanders she works with and how this influences the effectiveness of her team.⁶⁰⁰

7.68 Professor Julie Stubbs of the Faculty of Law, University of Sydney, reported that leadership from the highest levels is also critical. Referring to the high profile stand that Police Commissioners in Victoria have taken in respect of domestic violence, she also noted their active engagement on the issue:

They participated in many of the high-level meetings and they tried to translate that into practice within their organisation and gave it their own stamp. So, senior leadership is also important.⁶⁰¹

7.69 The Committee asked Superintendent Rod Jouning, Head of the Sexual and Family Violence Division for Victoria Police about this. Asked whether he believed that leadership at the highest levels had contributed to the effectiveness of the approach in Victoria, he responded that in his view it has:

⁵⁹⁵ Ms Johnston, Evidence, 7 November 2012, p 29; Ms Smith, Evidence, 7 November 2011, p 51.

⁵⁹⁶ Ms Smith, Evidence, 7 November 2011, p 51.

⁵⁹⁷ Ms Smith, Evidence, 7 November 2011, p 51; see also Ms Claudia Guajardo, Community Safety and Crime Prevention Officer, Fairfield City Council, Evidence, 26 March 2012, p 47.

⁵⁹⁸ Ms Isgro-Rarp, Evidence, 17 October 2011, p 63; Submission 37, p 12.

⁵⁹⁹ Ms Johnston, Evidence, 7 November 2012, p 29.

⁶⁰⁰ Sergeant Sharon Walker, Evidence, 20 February 2012, p 49.

⁶⁰¹ Professor Stubbs, Evidence, 7 November 2011, p 8.

I can say unequivocally that is the case. The commitment of government to address this issue has been very strong ... the Police Minister made it very clear that it is an important aspect of the policing function and a judicial function more broadly. Our Chief Commissioner, going back to when we had Christine Nixon as our Chief Commissioner, right through to our current Chief Commissioner, Ken Lay, have made it clear it is a mandate to keep this as one of the targeted areas of this term moving forward over the next five years. I think that has been heard clearly throughout the organisation. I think it has dramatically changed management's views of the importance of it in responding appropriately and having an impact within the community.⁶⁰²

7.70 In evidence, Mr Murdoch agreed with the link between the leadership in a command and quality of service, stating:

What you say is right: leadership is crucial to everything we do ... Without leadership, nothing happens, particularly in terms of domestic violence. We are an organisation of 16,000 sworn members. We have 80 local area commanders at superintendent level. Without doubt, some take domestic violence more seriously than do others. Some deal with it a whole lot better than others. My ultimate challenge is to get the same level of consistency and service delivery in protection and support of victims right across the organisation.⁶⁰³

Committee comment

7.71 While there is evidence of very effective leadership within the NSW Police Force with regard to domestic violence, particularly from Mr Murdoch, the Committee considers that further effort to strengthen leadership throughout police ranks is highly desirable.

7.72 The Committee notes the crucial role that leadership from the highest ranks in has played in establishing, communicating and maintaining the mandate of responding effectively to domestic violence throughout every level of Victoria Police, from the Commissioner down. We also see merit in the views of numerous witnesses that leadership at the local area command level has a critical impact on the professionalism and work of officers at the coalface.

7.73 In Chapter 3 we noted the link between leadership and accountability, with executive level interagency structures serving as a crucial mechanism for accountability within and between organisations. Similarly, leadership structures within the NSW Police Force should hold those in authority accountable for their performance in improving the consistency of service standards. In Chapter 4, we noted that the Department of Attorney General and Justice (DAGJ) is developing a Domestic Violence Justice Framework that will establish performance measurements for the NSW Police Force and other criminal justice agencies in relation to their role in responding to domestic violence.

7.74 In the Committee's view, the advent of this and the NSW Domestic and Family Violence Framework (hereafter the NSW DFV Framework) provides an ideal opportunity to evaluate and enhance the leadership structure of the NSW Police Force with regard to domestic

⁶⁰² Superintendent Rod Jouning, Head, Sexual and Family Violence Division, Victoria Police, Evidence, 30 April 2012, p 15.

⁶⁰³ Mr Mark Murdoch, Evidence, 20 February 2012, p 38.

violence, as a means of improving consistency of standards across New South Wales, through the mechanism of accountability. It will be very important that the high level interagency governance structures put in place under the NSW DFV Framework, through which leadership at the ministerial and executive levels are exercised, are complemented by appropriate leadership structures within the NSW Police Force.

- 7.75** To this end, the Committee considers that the NSW Police Force should, as a priority, develop and implement a strategy to enhance leadership in respect of domestic violence, to ensure that police responses to domestic violence are of consistently high standard across the State. The leadership strategy should address how the NSW Police Force will harness the skills and commitment of police in leadership roles at all levels, from the Commissioner down to the Sergeant supervising general duties officers and the DVLO responsible for quality assurance of other officers' work. The aim should be to strengthen leadership at all levels, especially within the senior ranks of all local area commands. The strategy should also decide the accountability structures that will support the performance measurement approach within the Domestic Violence Justice Framework, and provide mechanisms to ensure that performance monitoring feeds into operational planning, policy development and systemic improvements.

Recommendation 38

That the NSW Police Force develop and implement a strategy to enhance leadership in respect of domestic violence, to ensure that police responses to domestic violence are of consistently high standard across the State. The leadership strategy should:

- address how the NSW Police Force will harness the skills and commitment of police in leadership roles at all levels, from the Commissioner down
 - strengthen leadership at all levels, especially within all local area commands
 - determine the accountability structures that will support the performance measurement approach within the Domestic Violence Justice Framework
 - provide mechanisms to ensure that performance monitoring feeds into operational planning, policy development and systemic improvements.
-

Accountability and quality assurance

- 7.76** Evidence before the Committee indicates that further action to improve accountability and quality assurance will be another important means to enhance the quality of service so that is consistently high across individual members and local area commands.
- 7.77** As noted at the beginning of this chapter, the NSW Police Force *Code of Practice for Domestic and Family Violence* serves as an important mechanism for transparency and public accountability for the role and responsibilities of police.
- 7.78** During the inquiry, several organisations including the Women's Legal Services, Redfern Legal Centre and Legal Aid sought access to the NSW Police Force's Standard Operating Procedures, which are confidential to the NSW Police Force, as a means to gain greater insight into specific police procedures, and thereby achieve greater accountability for police

actions.⁶⁰⁴ For example, Ms Annemarie Lumsden, Executive Director, Strategic Policy Planning and Management Reporting, Legal Aid stated in evidence:

[W]hen we go along to forums and we suggest that something should be done, we are often told: This is in the Standard Operating Procedures of the police. The problem is that the Standard Operating Procedures of the police are secret; it is not a public document. We do not know what is in those procedural documents of the police. I think it would be of use for our organisation, in particular the Women's Domestic Violence Advocacy workers, to be aware of what is contained within those Standard Operating Procedures so that they could say to the relevant police officer or to the client: The police should be doing this.⁶⁰⁵

7.79 Mr Murdoch explained that the key reason for the confidentiality of the Standard Operating Procedures is that they might be used tactically against police in court, such that offenders might escape responsibility for their actions.⁶⁰⁶ He went on to argue that the Code of Practice and Standard Operating Procedures are very similar, and should afford the same level of accountability:

Our code of practice is ostensibly the Standard Operating Procedures without the methodology. So, if the groups you mention are keen to hold us to account in terms of our actions ... I would say that they can do so pretty much as well from the Code of Practice as they could from the Standard Operating Procedures.⁶⁰⁷

7.80 In its submission, the One in Three Campaign commended the Code of Conduct but argued that it needs to be more fully implemented. It made a number of recommendations to this end:

The NSW Police Domestic Violence Code of Conduct ... while an excellent document, needs to be implemented more fully in certain areas. We would recommend that:

- (a) Police Local Area Commanders specifically instruct their officers to follow the Code of Conduct
- (b) Local Area Commanders take a more active role in listening to local family violence committees and demonstrate to the Commissioner and the Minister that this has occurred
- (c) In-services for police regarding the Code of Conduct are implemented
- (d) Records of police attendance at Domestic Violence Committee meetings are kept

⁶⁰⁴ Ms Annemarie Lumsden, Executive Director, Strategic Policy Planning and Management Reporting, Legal Aid NSW, Evidence, 7 November 2011, p 28; Ms Campbell, Evidence, 7 November 2011, p 43.

⁶⁰⁵ Ms Lumsden, Evidence, 7 November 2011, p 28.

⁶⁰⁶ Mr Murdoch, Evidence, 20 February 2012 (in camera hearing subsequently published by the Committee), p 1.

⁶⁰⁷ Mr Murdoch, Evidence, 20 February 2012 (in camera hearing subsequently published by the Committee), p 1.

(e) Provision is made for victims to be able to lodge complaints where they feel they have been poorly treated by police. A log of such complaints is to be kept

(f) The content of the Code of Conduct be widely publicised

(g) A pamphlet summarising police responsibilities in family violence matters be widely distributed through services.⁶⁰⁸

7.81 Mr Murdoch also spoke about the work that had been done to publicise the Code of Practice, arguing this has been very extensive:

I do not know what more we can do to promote the code of practice; it is publicly available on our internet site; we launched the code of practice during the 16 Days of Activism in 2010 around White Ribbon Day; we did that very publicly and we did it with some fanfare; we invited various members of the sector to be present during the launch, and it was launched by our Commissioner; we talk about it to the sector all the time; I know where to find it and I would think that many of them have their own copies that they have downloaded; we refer to it in a lot of our publicly available information that we disseminate for domestic violence in police stations; we have various information guides printed in lots of languages, which make reference to the Code of Practice.⁶⁰⁹

7.82 During the hearings, the Committee sought information on what quality assurance mechanisms are in place in respect of domestic violence policing. Mr Murdoch said that in his view, this comes down to supervision, and that this occurs via senior officers attending some incidents and their review of each incident report lodged in the COPS system. DVLOs also review incident reports for both information gathering and quality assurance purposes.⁶¹⁰ Mr Murdoch acknowledged that there are instances where poor practices occur, but emphasised the efforts being made to address them, stating firmly his disapproval of them:

So in terms of that compliance, it starts with the individual officer and supervisor, continues with the DVLO and it should be picked up somewhere along the line. Is it always picked up? Clearly not, but we are doing our absolute best to minimise the risk of that sort of thing happening. I suppose in an organisation as large as we are, as widespread as we are, in dealing with a problem as immense as domestic violence is we are always going to have instances of this sort of stuff happening and we just cannot afford it.⁶¹¹

7.83 In written answers to questions after the hearing, the NSW Police Force further indicated that recorded incidents are regularly 'dip sampled' by Duty Officers to ensure compliance with operating procedures. When poor practices are identified, the events are resubmitted to the officer with instructions on how to correct any errors. Further follow up may occur with the education officer or team leader where systemic problems are identified.⁶¹²

⁶⁰⁸ Submission 40, p 17.

⁶⁰⁹ Mr Murdoch, Evidence, 20 February 2012 (in camera hearing subsequently published by the Committee), pp 2-3.

⁶¹⁰ Mr Murdoch, Evidence, 20 February 2012 (in camera hearing subsequently published by the Committee), p 2.

⁶¹¹ Mr Murdoch, Evidence, 20 February 2012 (in camera hearing subsequently published by the Committee), p 2.

⁶¹² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 8, p 13.

7.84 According to Mr Murdoch, 'For a blatant continuous breach of our policies there would be disciplinary action embarked upon, but in the overwhelming majority of cases non-compliance with our policies would be addressed locally by the DVLO or at a higher level by the Local Area Commander with the individual officer.'⁶¹³ The NSW Police Force subsequently reported that:

When an officer is identified as not handling domestic violence incidents appropriately, the first consideration would be to ensure that they have received adequate training. Arrangements would be made for the officer to attend the next available two-day workshop in domestic violence to refine their skills in this area. If the officer was not handling domestic violence incidents appropriately due to conduct or other performance issues, they would be placed on the relevant performance or conduct management plan where they would be closely monitored by senior staff to ensure their performance improved.⁶¹⁴

7.85 Very interestingly, Ms Julie Stewart, Secretary of the NSW Domestic Violence Coalition and Coordinator of the Manly Warringah Women's Resource Centre, advised the Committee that she has been developing a pilot proposal in the North Western Sydney Area that would trial a new kind of quality assurance mechanism. She explained that in most local area commands, the initial response is generally made by quite junior police, within the first five years of their practice as police officers, who are running from one job to another and have many different issues they be across besides domestic violence. She reported that in that region, wherever possible, a supervisor attends the domestic violence incident with the Constables, supporting and directing them as needs be. Acknowledging the reality of finite numbers of supervisors and the volume of domestic violence reports, she described an alternative:

What we are looking at is a different system of review, not just one DVLO being responsible for quality control with no power or authority to change things, but perhaps a team that can provide better oversight I suppose ... It would be driven from the region level and the oversight would be provided from a superintendent's position and there is a commitment for it actually to be put in place, but the nuts and bolts of it we want to look at more closely. The idea would be to trial it in a low volume domestic violence incident command and a higher volume.⁶¹⁵

Committee comment

7.86 The Committee has no detail at this stage on how the performance management approach within the Domestic Violence Justice Framework currently being developed by DAGJ will be operationalised within the NSW Police Force. However, we believe it has significant potential to improve the quality and consistency of policing practices.

7.87 The Committee sought the views of key inquiry participants in relation to a possible recommendation '[t]hat the NSW Police Force monitor compliance with the Domestic and Family Violence Code of Practice as part of the performance management approach within

⁶¹³ Mr Murdoch, Evidence, 20 February 2012 (in camera hearing subsequently published by the Committee), p 2.

⁶¹⁴ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 9, p 13.

⁶¹⁵ Ms Stewart, Evidence, 17 October 2011, p 26.

the NSW Domestic Violence Justice Framework.’ At the roundtable discussion, Mr Murdoch welcomed the intent of the proposal, to enhance compliance monitoring:

I have said during evidence to the Committee previously that our biggest issue is we have very robust policies and great training but unless people do what they need to do and apply the training and the policy it all falls apart. Our problem is not our procedures or our training; it is our compliance. Compliance and quality assurance are the issues for us.⁶¹⁶

7.88 However, Mr Murdoch advised that it is not practically feasible to monitor compliance against the Code of Conduct:

The only reason I do not support that is it is just too hard to do. We really cannot monitor compliance with that document aside from victims making complaints about lack of service and proper investigation or inadequate investigation. We are really monitoring complaints rather than compliance; it is just too difficult to do.⁶¹⁷

7.89 Instead, he suggested that recommendation be ‘rolled into’ the next possible recommendation put forward by the Committee:

That the NSW Police Force improve quality assurance of police investigations of domestic violence matters, to ensure broader consistency with the Domestic and Family Violence Code of Practice and Standard Operating Procedures. This work should focus on improving the understanding and accountability of those who supervise general duties officers, and may include:

- training of supervising officers
- allocation of Sergeants specifically for domestic violence more systematically throughout local area commands.

7.90 Mr Murdoch also suggested that having a Sergeant allocated to domestic violence in every local area command might not be the best use of police resources,⁶¹⁸ and suggested that the proposed recommendation be amended to read:

That the NSW Police Force improve quality assurance of police investigations into matters of domestic and family violence and compliance with the Domestic and Family Violence Standard Operating Procedures by raising the level of understanding and accountability of officers who supervise others; in particular General Duties first responders, by ensuring [supervisors’] participation in the two day Investigation of Domestic Violence Workshop.⁶¹⁹

7.91 The Committee welcomes the support of Mr Murdoch in recognising the need to enhance quality assurance of police investigations and accepts his view that it is not feasible to monitor them against the Code of Practice.

⁶¹⁶ Mr Murdoch, Commander, Central Metropolitan Region and Corporate Spokesperson for Domestic and Family Violence, NSW Police Force, Evidence, 18 June 2012, p 13.

⁶¹⁷ Mr Murdoch, Evidence, 18 June 2012, p 13.

⁶¹⁸ Mr Murdoch, Evidence, 18 June 2012, p 13.

⁶¹⁹ Attachment to email from Assistant Commissioner Murdoch to Principal Council Officer, 3 July 2012, p 1.

7.92 To clarify our intent with regard to the allocation of Sergeants specifically to domestic violence matters, we do not consider that this should occur in every local area command, but rather, that it should occur more widely, on an informed basis, than is currently the case. It already occurs in some areas with high rates of domestic violence, and may be desirable in other such areas. We have reworded the recommendation to convey this. In addition, we have further refined the recommendation to emphasise the overarching goal of improving quality assurance, and have called for the NSW Police Force to develop and trial new models of review of service provision, such as that raised in evidence by the NSW Domestic Violence Coalition. A specific, complementary recommendation on training for supervising officers is made in the following section.

Recommendation 39

That the NSW Police Force improve quality assurance of police investigations of domestic violence matters, to ensure broader consistency with the Domestic and Family Violence Code of Practice and Standard Operating Procedures. This work should focus on improving the understanding and accountability of those who supervise others, in particular general duties first responders, by:

- ensuring supervisors' participation in specialist domestic violence training
 - allocating Sergeants specifically for domestic violence more widely in local area commands with high rates of domestic violence
 - developing and trialling innovative models of supervision and review of police responses to domestic violence.
-

Training

7.93 In tandem with measures to improve quality assurance in respect of compliance with operational procedures for domestic violence, many inquiry participants emphasised the need for greater training for both front line and supervising police officers. These participants included the Australian Domestic and Family Violence Clearinghouse,⁶²⁰ the WDVCAS Network,⁶²¹ the Benevolent Society,⁶²² and the Women's Refuge Movement.⁶²³ For example, Ms Joanna Shulman, Chief Executive Officer of Redfern Legal Centre argued that from her perspective, inconsistency in police practices largely reflected a lack of training among some officers:

Police officers who are specialised in domestic violence and have received comprehensive and regular training around domestic violence deal with it much better than police officers who are not.⁶²⁴

⁶²⁰ Answers to questions on notice 17 October, Australian Domestic and Family Violence Clearinghouse, Question 5, p 3.

⁶²¹ Submission 28, Women's Domestic Violence Court Advocacy Network, p 7.

⁶²² Ms Isgro-Rarp, Evidence, 17 October 2011, p 63.

⁶²³ Ms Catherine Gander, Executive Officer, NSW Women's Refuge Movement, Evidence, 26 March 2012, pp 32-33. See also Ms Heather Blackley, Evidence, 28 February 2012, p 3.

⁶²⁴ Ms Joanna Shulman, Chief Executive Officer, Redfern Legal Centre, Evidence, 7 November 2011, pp 51-52.

7.94 Notably, the Police Association argued strongly that ‘comprehensive and regular’ training be offered to members of the NSW Police Force:

Because the police officer is usually the first on the scene of family violence situations they should be receiving regular family violence and cultural awareness training to assist them in their investigative roles. Training is a fundamental starting point for effective responses. The training should include understanding the dynamics of relationships, communication skills, including cross-cultural communication to address the different needs and contexts of family violence in the case of marginalized groups.⁶²⁵

7.95 A particular message from a number of participants was that such training should engender an understanding of the complex dynamics of domestic violence so that individual police are more sensitive to the experience of victims, and less frustrated by the cycle of violence. A number of rural and regional participants raised this as a significant issue.⁶²⁶ For example, in its submission, Jenny’s Place Women’s and Children’s Refuge suggested:

Police need to have a comprehensive understanding so they can respond appropriately so that further incidents can be prevented. They need to learn that asking a woman in front of the perpetrator details of abuse or if they want him charged will result in further abuse once the police leave. They need to know that women who are abused often have had all self-worth destroyed through abuse whether it be verbal or physical and cannot stand up or speak up for themselves or their children. A comprehensive knowledge base is necessary for all police to ensure responses are relevant, informed and accurate.⁶²⁷

7.96 Similarly, the Mt Druitt Family Violence Response and Support Strategy Leadership Group emphasised that police - as well as magistrates - require an understanding of the ‘trauma framework’ as it applies to victims of domestic violence. The Leadership Group argued that a lack of understanding about the impact of domestic violence on victims can lead professionals to have expectations of and make judgements about victims ‘that are often inappropriate, if not shaming and re-victimising’. In turn, victims whose experience of the criminal justice system is negatively shaped by such expectations and judgements will be less likely to access support to improve their safety.⁶²⁸

7.97 Participants such as Legal Aid and the Gay and Lesbian Rights Lobby emphasised that many police require training in investigation of domestic violence incidents, including in relation to identifying the ‘primary aggressor’ in intimate partner relationships.⁶²⁹ This issue is examined in detail in the following chapter.⁶³⁰

⁶²⁵ Submission 63, p 16.

⁶²⁶ See for example Submission 79, p 2; Mr Stephen Lawrence, Solicitor Advocate Western Zone, Aboriginal Legal Service, Evidence, 28 February 2012, p 26; Ms Anna Todd, Registrar Clinical Psychologist, Sexual Assault Services, Parkes Community Health, Evidence, 28 February 2012, pp 42 and 43.

⁶²⁷ Submission 18, p 6.

⁶²⁸ Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group, p 10.

⁶²⁹ Submission 27, Gay and Lesbian Rights Lobby, p 4.

⁶³⁰ Submission 34, p 18; Submission 27, p 4.

- 7.98** A number of inquiry participants argued for training that increased police officers' understanding of and sensitivity to various special interest groups. For example, People with Disability Australia sought ongoing training for police on working with people with disability, including in situations of violence, noting that some police see domestic violence involving people with disabilities as an issue more for disability services than for police. It also recommended that this be done in consultation with disability peak bodies.⁶³¹
- 7.99** Mr Senthoran Raj, Senior Policy Advisor with the Gay and Lesbian Rights Lobby praised the training provided to Gay and Lesbian Liaison Officers in building the relationship between police and gay, lesbian, bisexual, transgender and intersex communities, and sought ongoing training on the dynamics of domestic violence in same sex relationships.⁶³² Mr Ian Day, Executive Officer of Council on the Ageing noted that police are expected to be experts in everything, and called for training that enabled police to identify elder abuse then refer the matter on to a service with expertise in the area.⁶³³
- 7.100** Several organisations working with people from culturally and linguistically diverse communities emphasised the need for cultural sensitivity training and/or training in the use of telephone and other interpreters.⁶³⁴ The Fairfield Domestic Violence Committee, for example, noted that interpreters are essential to accurate investigation, as well as for reliable evidence in court.⁶³⁵ Wurringa Baiya Aboriginal Women's Legal Centre proposed that police working with Aboriginal communities should have comprehensive training that involves:
- working with young people and the complex issues that affect their lives, and awareness of youth justice conferencing
 - Aboriginal cultural awareness including the impact of forced removal of Aboriginal children from their families and deaths in custody
 - interaction with positive Aboriginal role models.⁶³⁶
- 7.101** More broadly, in order to improve the relationship between police and Aboriginal communities, Wurringa Baiya proposed that community policing, including by participating in community activities to enable police and Aboriginal people to have positive experiences of each other, is critical. It offered several examples of community policing: attending Aboriginal events such as NAIDOC celebrations; being involved in Police Citizens Youth Clubs; walking the streets of communities rather than driving; and using the Mounted Police, which is popular with children. Wurringa Baiya further warned against over-reliance on Aboriginal officers, stating:

⁶³¹ Ms Ngila Bevan, Advocacy Projects Manager, People with Disability Australia, Evidence, 30 April 2012, pp 41 and 47; Submission 50, People with Disability Australia, p 9.

⁶³² Mr Senthoran Raj, Senior Policy Advisor, Gay and Lesbian Rights lobby, Evidence, 30 April 2012, p 46.

⁶³³ Mr Ian Day, Executive Officer, Council on the Ageing NSW, Evidence, 30 April 2012, p 47.

⁶³⁴ Ms Jane Brock, Executive Officer, Immigrant Women's Speakout Association, Evidence, 30 April 2012, p 47; Submission 58, Green Valley Liverpool Domestic Violence Service, pp 4 and 5.

⁶³⁵ Submission 44, Fairfield Domestic Violence Committee, p 5.

⁶³⁶ Answers to questions on notice 5 March 2012, Wurringa Baiya Aboriginal Women's Legal Centre, Question 14, p 17.

We also stress that police must not rely too heavily on Aboriginal identified positions, such as Aboriginal Client Liaison Officers as the source of all information and guidance on community issues. This places too much of a heavy burden on one or two individuals in a local area command.⁶³⁷

- 7.102** The Committee heard that training of both supervisors and front-line officers has been very important to the effectiveness of the Victorian system. Superintendent Jouning of Victoria Police provided some detail on the training for different officers with a role in domestic violence:

Then also the family violence training, not just for the front-line operators but more for the supervisors, and how they ensure that there is a proper risk assessment done and how the members respond accordingly and there is proper follow-up, right through to our detective training so that they are fully aware of the impact of family violence and their role in that and then through various management structures within the organisation. So the training has been fairly broad. That is not to say that we are there entirely, and there is probably scope for that to be rolled out further and actually deliver that training a little bit better, but I think we are well on the way in that respect.⁶³⁸

- 7.103** The need for training for both supervisors and investigating officers was reinforced by Professor Julie Stubbs. She referred to the research of her criminologist colleague, Professor Janet Chan, who found that the content of police academy training for newly recruited officers is very important in shaping their knowledge and skills, but once they are in the field, that training is often challenged by senior officers and colleagues. On this basis, Professor Stubbs argued that the NSW Police Force needs to think strategically about training for supervising officers, alluding also to the leadership issue discussed in the previous section:

The issue is how we reinforce the messages and ideas given to young officers ... how do we get senior officers on side and encourage them to reinforce the message? We need to think strategically about different training at different levels of the organisation but all aimed at reinforcing a uniform message across the organisation about the way forward.⁶³⁹

- 7.104** The Committee was advised that training at the Goulburn Academy on domestic violence occurs in two sessions, one comprised of four hours and the second of 20 hours, with both theoretical and practical components.⁶⁴⁰
- 7.105** For operational police, alongside the informal training that occurs in local area commands, formal post-academy training is provided by the NSW Police Force's Education and Training Command, via the 16 hour, two day Investigation of Domestic and Family Violence Workshop. In addition, the Education and Training Command is responsible for the Domestic Violence Liaison Officers Course, the Domestic Violence Trainers Update, and

⁶³⁷ Answers to questions on notice 5 March 2012, Wirringa Baiya Aboriginal Women's Legal Centre, Question 14, p 17.

⁶³⁸ Mr Jouning, 30 April 2012, pp 18-19.

⁶³⁹ Professor Stubbs, Evidence, 7 November 2011, p 8.

⁶⁴⁰ Sergeant Allison Guthrie, Principal Tutor, Domestic and Family Violence, Education and Training Command, NSW Police Force, Evidence, 20 February 2012, p 46; Submission 74, p 12.

Domestic and Family Violence training modules delivered within a range of other specialised courses.⁶⁴¹

7.106 While the Domestic and Family Violence Workshop is available to anyone from probationary Constable up to Sergeant, as well as Region Domestic Violence Coordinators, Aboriginal Community Liaison Officers and civilians with an interest in domestic violence, it is generally targeted towards junior police. The training is run every month as part of a Constable development program, and is not compulsory. Rather, officers are referred on an as needs basis. Demand is strong, with classes of 30 participants generally full.⁶⁴²

7.107 Sergeant Prue Burgun of the Police Association, who supervises general duties officers, reported that participants are generally those 'who are not up to scratch' on domestic violence investigations. She spoke very highly of the course and the appreciable difference it makes to the understanding and skills of those who undertake it:

When you see the young ones go and do the two-day course and come back and see them use those skills with an intervention in domestic violence it is a whole new ball game. They have picked up so many different skills in respect to identification of some of those issues [for example on identifying and effectively intervening with repeat offenders and victims] ... Their awareness of the cycle of violence and how the police impact in the criminal justice system with respect to domestic violence has increased. This has not been surveyed with our members; it is my experience from policing. It makes them better at dealing with domestic violence matters, better able to respond to the needs of the victim and at times consider the needs of the offender. Quite often they are in an at-risk situation as well and I find they are in a better position to respond after they have gone to that two-day course.⁶⁴³

7.108 Mr Murdoch acknowledged that there could be more post-academy training, whilst also pointing out the practical challenges of ensuring that sufficient officers are available to conduct general duties, attend court and so on.⁶⁴⁴ Similarly, Superintendent Robert Ryan, Lachlan Local Area Commander, and Superintendent Martin Fileman, Mudgee Local Area Commander, both explicitly supported more training for front line staff, but spoke of the significant practical difficulties of operating a small station while staff are sent away to training. Superintendent Ryan stated:

The difficulty ... is putting car crews on the road. I have 32,000 square kilometres and I have four one-man stations, one three-person station, one five-person station and a seven-person station. By the time you take into account leave, sick leave, pregnancy and a whole range of other things, including corporate commitments, that spreads very thin, so to take someone off the road for two days is nearly impossible.⁶⁴⁵

7.109 The Committee was advised that in light of these logistical challenges in rural areas, a proposal was developed that the face to face component of the training be reduced to one day, and the

⁶⁴¹ Submission 74, p 12.

⁶⁴² Ms Guthrie, Evidence, 20 February 2012, p 46; Answers to supplementary questions 20 February 2012, NSW Police Force, p 14.

⁶⁴³ Ms Burgun, Evidence, 20 February 2012, pp 55-56; Mr Patrick Gooley, Vice-President, Police Association of New South Wales, Evidence, 20 February 2012, p 55.

⁶⁴⁴ Mr Murdoch, Evidence, 20 February 2012, p 49.

⁶⁴⁵ Mr Ryan, Evidence, 28 February 2012, p 36.

other parts completed via e-learning, but that this was not supported by the NSW Police Force.⁶⁴⁶

- 7.110** In relation to training for those who supervise general duties staff, the Committee was advised that officers need not have undertaken training in domestic violence before progressing to a supervisory role, and that it was quite possible for supervising officers in high domestic violence areas to have no specialist training on this aspect of policing.⁶⁴⁷ We note that in their joint report on family violence the Australian and NSW Law Reform Commissions recommended that ‘specially trained police have responsibility for supervising, monitoring or assuring the quality of police responses to family violence incidents, and providing advice and guidance in this regard.’⁶⁴⁸
- 7.111** A Police Association representative reported that the two day investigation workshop would not be so appropriate for supervisors as it is aimed at the ‘grass roots’ level, but she did see merit in perhaps reshaping it to include some supervisory aspects, for example in relation to the bail to be applied in domestic violence matters.⁶⁴⁹

Committee comment

- 7.112** The Committee believes that there is a strong consensus among inquiry participants, including representatives of the NSW Police Force, on the desirability of greater access to training among general duties officers, including among those in rural and remote areas. We recommend that this be addressed. We see great value in making the two-day training course more widely available to general duties officers and others. It may well be that there are many officers whose practices are not seen as poor, who would nevertheless benefit from the course, including those with a special interest in the area.
- 7.113** In light of the significant logistical difficulties around releasing general duties staff from rural and remote stations, as well as apparent need for country police to access training, the Committee considers that specific thought at Police Headquarters needs to be given to how rural and remote police will be supported to attend. We believe the proposal to shorten the Investigation of Domestic and Family Violence Workshop to one day, with an e-learning component, for these staff, should be revisited. If this is not supported, then an alternative strategy such as use of relief staff and/or local training should be developed. In this regard we note the 2006 recommendation of the Ombudsman emphasising local training.⁶⁵⁰ If this is not addressed it is very unlikely that rural officers will be released by their commanders to undertake the training.

⁶⁴⁶ Ms Rebecca Camilleri, Domestic Violence Coordinator, Western Region, NSW Police Force, Evidence, 28 February 2012, p 37.

⁶⁴⁷ Ms Burgun, Evidence, 20 February 2012, p 57.

⁶⁴⁸ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, Final Report, Volume 1, October 2010, p 74, quoted in Submission 63, NSW Police Association, pp 42-43.

⁶⁴⁹ Ms Burgun, Evidence, 20 February 2012, pp 57.

⁶⁵⁰ NSW Ombudsman, *Domestic violence: improving police practice*, December 2006, Recommendation 27, p 89.

- 7.114** The Committee notes the views of a number of participants that many police could be trained and sensitised to the particular needs of the full range of special interest groups in relation to domestic and family violence, including, in no particular order, those from culturally and linguistically diverse (CALD) backgrounds, gay, lesbian, bisexual, transgender and intersex people, Aboriginal communities, people with disabilities, young people and older people. We do consider, however, this learning is as much a local area command responsibility as a training command responsibility. It is also a matter that extends beyond domestic violence into all aspects of policing.

Recommendation 40

That the NSW Police Force increase the availability of the two day Investigation of Domestic and Family Violence Workshop for general duties officers and others, particularly officers working in rural and remote areas, and adopt a strategy to facilitate the participation of rural and remote officers in the Workshop, such as via e-learning course components, use of relief staff from other stations or local area commands, and/or more local training.

- 7.115** The Committee believes that additional training for some supervising officers will be very important to improving general duties officers' responses to domestic violence. We consider it unacceptable that some supervisors have had no training in domestic violence, which surely impairs their ability to informally train, supervise and provide quality assurance for general duties staff in this demanding aspect of policing. We also consider that training for supervisors will be especially warranted in light of the proposed role for Sergeants in approving police issued ADVOs, as discussed Chapter 9 dealing with ADVOs.
- 7.116** In the previous section, our Recommendation 39 was to improve quality assurance by ensuring supervisors' participation in specialist domestic violence training. Given the critical role that supervising officers play in quality assurance, and the evidence we have received that points to variations in quality of supervision, we consider that it would be valuable for the Education and Training Command to build on the Investigation of Domestic and Family Violence Workshop to develop a course specifically for supervisors that addresses aspects of supervision and compliance monitoring, as well as of domestic violence itself.

Recommendation 41

That the NSW Police Force Education and Training Command develop a specific course for domestic violence supervisors building on the Investigation of Domestic and Family Violence Workshop and incorporating aspects of supervision and compliance monitoring in domestic violence matters. Completion of this course should be compulsory to progress through promotional ranks.

Domestic Violence Liaison Officers

- 7.117** DVLOs play a fundamentally important role within local area commands in police responses to domestic violence. The NSW Police Force submission to the inquiry details their wide-ranging responsibilities:

DVLOs are members of [local area command] Crime Management Units ... This specialist role supports the [local area command] by providing vital linkages between community based issues, information and intelligence, while forming partnerships for victim support and follow-up. Responsibilities include but are not limited to:

- maintain liaison with local support agencies or services to ensure consistency and continuity of the victim follow-up process
- ensure a detailed list of appropriate services and their role within the Command is supplied to all police with the Command
- assist victims through the court process ... [which] may include attending court on domestic violence list days, explaining the process to victims, obtaining detailed instructions from the victims and liaising with police prosecutors, ensuring the protection of the victim if the defendant is also in attendance and any other relevant tasks
- liaise with court staff and prosecutors to ensure local procedures are complied with and that police within the Command are aware of these procedures
- keep police abreast of the latest legislative changes and research in domestic and family violence, and bring such changes to the attention of police within the Command
- conduct quality assurance of domestic and family violence related Events recorded on COPS and bring any deficiencies to the notice of the Team Leader and creating officer. Ensure such tasks relating to 'resubmitted' and 'incomplete' Events are conducted in a timely manner.
- monitor repeat victims and repeat offenders.⁶⁵¹

7.118 In light of the pivotal role of DVLOs, a range of concerns were raised by numerous inquiry participants which are summarised as follows:

- the pay and status ascribed to the DVLO role are not commensurate with their responsibilities, not sufficient to attract and retain the best people in the role, and do not provide DVLOs with sufficient authority to exercise their leadership and quality assurance role as fully as they might⁶⁵²
- some DVLOs are more effective and respected than others⁶⁵³
- the level of support that DVLOs receive from their Local Area Commanders and other senior officers vary, and has a major bearing on their effectiveness in the role⁶⁵⁴
- DVLOs are often too stretched at present to fulfil their role effectively, especially in commands with high rates of domestic violence⁶⁵⁵

⁶⁵¹ Submission 74, pp 7-8.

⁶⁵² See Ms Lumsden, Evidence, 7 November 2011, p 30; Dr Laing, Evidence, 17 October 2011, p 49; Ms Gander, Evidence, 26 March 2012, pp 32-33; Mr Patrick Gooley, Evidence, 20 February 2012, p 52; Ms Burgun, Evidence, 20 February 2012, pp 52-53; Ms Eleonora Raffo, Coordinator, Liverpool and Fairfield Staying Home, Leaving Violence Project, South West Sydney Legal Centre, Evidence, 26 March 2012, p 45; Submission 37, p 10; Ms Green, Evidence, 17 October 2011, p 22.

⁶⁵³ Ms Eleonora Raffo, Evidence, 26 March 2012, p 45; Professor Stubbs, Evidence, 7 November 2011, p 8.

⁶⁵⁴ Dr Wangmann, Evidence, 20 February 2012, p 31; Ms Johnston, Evidence, 7 November 2012, p 29; Professor Stubbs, Evidence, 7 November 2011, p 8.

⁶⁵⁵ Answers to questions on notice 17 October 2012, Australian Domestic and Family Violence Clearinghouse, Question 5, p 3; Mr Howard Brown, Vice-President, Victims of Crime Assistance

- numerous DVLOs, including in rural areas with high rates of domestic violence and significant geographic areas to cover, work only part time⁶⁵⁶
- DVLOs in non-metropolitan commands are frequently called away from their court, victim support and interagency duties to work 'on the trucks'⁶⁵⁷
- in some commands the DVLO also fulfils other roles such as Youth Liaison Officer or Gay and Lesbian Liaison Officer, effectively reducing their time on domestic violence⁶⁵⁸

7.119 WDVCS Coordinators across the State provided feedback on aspects of DVLO staffing compiled by the Sydney WDVCS at Redfern Legal Centre. Their compiled comments were as follows:

- 'We had a commitment to 2 full-time DVLOs in the 4 [local area commands], but in the last 6 month as one DVLO leaves or transfers there has increasingly been a delay to fill the position.'
- 'DVLO role needs to be better recognised and supported within police – it's a difficult role.'
- 'DVLO should be a higher rank, better paid.'
- 'DVLO position is full time but she has to spend most of her time on the trucks.'
- 'Unable to fill the second DVLO position for 3 years.'
- 'No applicants for the DVLO position which becomes vacant next month.'
- 'No DVLO for almost 12 months.'
- 'The DVLO has to go out on the trucks.'
- 'Have put a general duties officer in the DVLO position – mostly does not attend court.'
- 'Full time DVLO often gets only 2 days each week in the position because required for other duties.'
- 'DVLO often poached to other duties.'
- 'Two previous DVLOs on stress leave for [extended period of time].'
- 'If we get a more senior officer in the position they do not stay long – I've heard it said that it's a waste of a senior officer.'
- 'DVLO position vacant for 6 months or more - no-one wants the position.'
- 'The position is supposed to be full time but it isn't really because the DVLO keeps getting put back into other duties.'
- 'One officer willing to do the DVLO role asked if she could job share with another willing officer so she could spend more time with children, but this was knocked back by the LAC.'

League, Evidence, 26 March 2012, p 13; Submission 23, p 7; Submission 37, p 10; Mr Jeff Fox, Registrar, Forbes Local Court, Evidence, 28 February 2012, p 34.

⁶⁵⁶ Submission 79, p 2.

⁶⁵⁷ Survey of WDVCS Support Workers across the State conducted by Ms Susan Smith, Solicitor and Coordinator of the Sydney WDVCS, answers to questions on notice taken during evidence, 7 November 2011, Redfern Legal Centre and Sydney Women's Domestic Violence Court Advocacy Service, Question 1, pp 1-5; Mr Porter, Evidence, 7 November 2011, p 57; Ms Jane Beach, Coordinator, Women's Health/Domestic Violence, Western NSW Local Health Network, Evidence, 28 February 2012, p 44.

⁶⁵⁸ Ms Smith, Evidence, 7 November 2011, p 55; Mr Brown, Evidence, 26 March 2012, p 13.

- ‘Even though the DVLO was supposed to be for [the area] she was never in three years able to attend [the area] court because the other court was on the same day, meaning the first court has never had a DVLO.’
- ‘It seems police do not want to take on the role of DVLO as it is a quite significant drop in wages as they do not get the regular penalty rates, even though DVLOs have a greater responsibility. They are quite often put in a leadership role or as a spokesperson for community work.’
- ‘We support our DVLOs as much as we can – their role is not an easy one and they often don’t get the support they need at their station.’
- ‘We have a full-time DVLO ... unless of course they are short staffed and ‘chuck him on the truck’ as they say.’⁶⁵⁹

7.120 In light of the very important victim support and court liaison role that DVLOs fulfil, the Committee was concerned to hear during our regional visit that not all courts are supported by a DVLO.⁶⁶⁰ We were advised by Ms Beverly Walker, Registrar at Parkes Local Court, that the local magistrate, Mr Terry Lucas, thought greater priority should be afforded to DVLOs attending court:

[Magistrate Lucas] would like more priority to be given to the Domestic Violence Liaison Officer—the police officer that represents the protected persons at court. He feels they play a very important role and it is necessary that they are there every court day.⁶⁶¹

7.121 On the issue of whether some DVLOs are adequately resourced, the Committee heard for example that there is only one DVLO for Lachlan Local Area Command, despite extremely high levels of domestic and family violence there, and the significant distances to be travelled:

The difficulty is that this one position is covering the whole of the Lachlan Area Command. They go to Parkes, Forbes, Condobolin and out to Lake Cargelligo. Lake Cargelligo is 200 kilometres away. It is a major concern ... It really is difficult for the service providers because there is not enough connection with them. Forbes is fifth in the State for domestic violence and Condobolin is tenth.⁶⁶²

7.122 The Committee also heard that Bankstown Local Area Command, which we understand has a very large catchment population as well as high rates of domestic violence, has a team of three DVLOs headed up by a Leading Senior Constable.⁶⁶³ Ms Eleonora Raffo, Coordinator of the Liverpool and Fairfield Staying Home Leaving Violence Project, attested to the effectiveness of the DVLOs she works with:

Having someone who can look at all the issues for CALD women in terms of some of the complexities of going through the legal process, the shame, the language barriers,

⁶⁵⁹ Answers to questions on notice taken during evidence, 7 November 2011, Redfern Legal Centre and Sydney Women’s Domestic Violence Court Advocacy Service, Question 1, pp 1-5.

⁶⁶⁰ Ms Schatz, Evidence, 28 February 2012, p 13; Ms Blackley, Evidence, 28 February 2012, p 13.

⁶⁶¹ Ms Beverly Walker, Registrar, Parkes Local Court, Court Services, Department of Attorney General and Justice, Evidence, 28 February 2012, p 33.

⁶⁶² Ms Blackley, Evidence, 28 February 2012, p 3.

⁶⁶³ Ms Raffo, Evidence, 26 March 2012, pp 45-46.

the lack of knowledge of what is going to happen through that process—having someone who gets it has been really fantastic.⁶⁶⁴

- 7.123** In its submission, the Children’s Court of New South Wales sought greater provision for DVLO attendance at court, explaining that difficulties arose from the attachment of DVLOs to particular commands, while Children’s Courts have greater catchment areas.⁶⁶⁵

NSW Police Force views

- 7.124** In response to the concern among inquiry participants that the pay and rank of DVLOs is not commensurate with their responsibilities, Mr Murdoch argued strongly that an increase in status and pay would have difficult ‘knock-on’ implications for other roles:

It would be fantastic to have them all as Sergeants or possibly above, depending on workload, and paying them more for the fantastic work they do but again if we have a number of liaison officer positions across the police: we have Licensing Officers, Crime Prevention Officers, Education Officers, Violence Liaison Officers, Aboriginal Community Liaison Officers and a whole range of people. If we give a pay rise to one what is to say that their peer or colleague, doing just as important work, do not need recognition and extra pay?⁶⁶⁶

- 7.125** Instead, the NSW Police Force argued that it is more important to recruit the right people to the role and ensure that they receive ongoing training and support.⁶⁶⁷ With regard to the importance of supportive command leadership, Mr Murdoch agreed, also pointing to the leadership role of the six Regional Domestic Violence Sponsors, who are themselves Commanders.⁶⁶⁸ In written answers to questions, the NSW Police Force stated, ‘In order to broaden the effectiveness of DVLOs, each [local area command] within the [Police Force] must take domestic and family violence matters seriously. Leadership starts at the top.’⁶⁶⁹
- 7.126** On the issue of unfilled positions, the NSW Police Force reported that its records showed that each of the 80 local area commands has an officer performing the role of DVLO, whether this position is an allocated DVLO position or another officer (generally general duties officers or Domestic Violence Operatives)⁶⁷⁰ redeployed to DVLO duties. Those commands without a specifically allocated position for DVLO at the time were City Central, The Rocks, Castlereagh, Darling River, Lachlan, Mudgee, New England and Oxley.⁶⁷¹

⁶⁶⁴ Ms Raffo, Evidence, 26 March 2012, pp 45-46.

⁶⁶⁵ Answers to questions on notice 26 March 2012, Children’s Court of New South Wales, Question 1, p 2.

⁶⁶⁶ Mr Murdoch, Evidence, 18 June 2012, p 15.

⁶⁶⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, pp 14-15.

⁶⁶⁸ Mr Murdoch, Evidence, 18 June 2012, p 38.

⁶⁶⁹ Answers to supplementary questions 20 February 2012, NSW Police Force, pp 14-15.

⁶⁷⁰ The role of Domestic Violence Operatives (DVOs) is to proactively identify, target and monitor high risk offenders. There are 35 DVOs around the State, in commands with higher rates of domestic violence: Submission 74, p 8.

⁶⁷¹ Answers to supplementary questions 20 February 2012, NSW Police Force, p 15.

- 7.127** In relation to the reports that DVLOs are often redeployed to first response duties, the NSW Police Force acknowledged that this is not ideal but said that is difficult to avoid in the unpredictable environment of policing, especially in rural areas. In evidence, Superintendent Martin Fileman explained his perspective as a rural Local Area Commander:

As a commander, it is very difficult where I need to balance up putting a car on the road, especially when ... I have 10 sectors that stretch 38,000 square kilometres where I have got to ensure that I have cars on the road and that is my priority. So it is very difficult to balance up the fact that I have got to drag staff from first response or from the frontline staff and pull them into the crime management unit ... Our biggest issue is the resources we face in the country areas.⁶⁷²

- 7.128** On the matter of part time staff, the NSW Police Force reported that eight local area commands have part-time officers in the DVLO role, with many working a minimum of three days per week, but that this only occurs in locations where there is a lower volume of domestic violence.⁶⁷³

- 7.129** When asked to advise how the rate of domestic violence in area influences resourcing, for example in relation to the number of DVLOs in any command, the NSW Police Force advised that DVLOs were allocated to specific local area commands when the current command structure was established in 1997. In 2007 the position of Domestic Violence Operative (whose role is to proactively identify, target and monitor repeat and high risk offenders, and to advise and assist investigating police) was established, with 35 positions placed around the State on the basis of highest need. Each Commander has discretion over whether more than the allocated number of DVLOs will perform DVLO duties.⁶⁷⁴

- 7.130** Finally, in relation to attendance of DVLOs at Children's Courts, in its submission the NSW Police Force explained the challenges of supporting this function within the local area command structure and the other demands of the DVLO role, and concluded, 'if the expectation of Children's Courts Magistrates is to expand the attendance of DVLOs to all Children's Courts in the State, then our ability to meet the demand without additional resources being supplied will severely compromise our service delivery.'⁶⁷⁵

Committee comment

- 7.131** Earlier in this chapter the Committee noted the critical difference that supportive leadership within a command can make to how domestic violence is prioritised and managed, and we reiterate that message here in relation to DVLOs. It is vital that DVLOs are supported to fulfil their roles effectively, whether in respect of attending court, liaising with other services, working directly with victims, and not least, conducting their quality assurance roles.

- 7.132** Given the critical role of DVLOs the Committee considers that each DVLO in every local area command should be adequately resourced to fulfil their role, and as far as possible, this role should never be left unfilled.

⁶⁷² Mr Fileman, Evidence, 28 February 2012, p 33.

⁶⁷³ Answers to supplementary questions 20 February 2012, NSW Police Force, p 15.

⁶⁷⁴ Answers to supplementary questions 20 February 2012, NSW Police Force, p 16.

⁶⁷⁵ Submission 74, pp 29-30.

- 7.133** The Committee recognises the operational challenges that police face on a daily basis, and for this reason we understand that there may be situations where DVLOs must be called to matters other than domestic violence. In the Committee's view, however, the deployment of DVLOs to other policing duties should occur only in exceptional circumstances and should not be routine.
- 7.134** The Committee sought comment on a possible recommendation '[t]hat the NSW Police Force ensure that all local area commands have at least one full time equivalent DVLO position, and that DVLO positions are, as far as possible, not left unfilled.' Mr Murdoch stated at the roundtable discussion that he supported this recommendation in principle as an aspiration, but again pointed to the practical reality that Local Area Commanders are responsible for decisions about resourcing, based on local demands.⁶⁷⁶ The NSW Police Force subsequently proposed that the recommendation be modified to read, '[t]he NSW Police Force ensure that all authorised DVLO and DV Operative positions remain filled and that Local Area Commanders ensure there is a suitable experienced backup DVLO within their respective Commands, including those where the DVLO position is part time.'⁶⁷⁷
- 7.135** The Committee accepts that Commanders necessarily make the decisions about how they staff DVLO positions and utilise those staff on a daily basis, as they do with other roles. We also accept that increasing the rank and pay of DVLOs is not feasible and so we are not recommending this. At the same time, like many inquiry participants, we believe that there are simply not enough DVLOs to effectively fulfil the role, especially in commands dealing with high rates of domestic violence. In addition, many DVLOs are stretched thinly in part time positions. As noted earlier in this chapter, DVLOs have vital responsibilities in terms of quality assurance of other officers' work, and in Chapter 9, we detail how critical they are to the effective functioning of the ADVO system through their role in court.
- 7.136** There appears to be no formal relationship between the needs of a command in light of its rates of domestic violence and the number and full time/part time status of DVLOs. It especially seems to be the case that in rural commands, which are generally higher in domestic violence, DVLOs are stretched very thinly. The fact that the DVLO positions were allocated across the command structure some 15 years ago, and that the NSW Police Force is to be restructured in accordance with the 'district and patrol' model recommended by the Parsons Review,⁶⁷⁸ indicates to us that a fresh, dispassionate assessment of the most appropriate resourcing of DVLOs within each local area command is highly desirable. We consider that DVLO positions should be funded on the basis of a policy developed and published by the Minister for Police for allocating DVLO positions across each local area command.
- 7.137** Commands with higher rates of domestic violence, greater Aboriginal populations, and greater geographical areas to cover should have these features acknowledged accordingly. The Committee believes that in order to boost compliance with operational procedures and thus the quality of policing of domestic violence matters, to adequately support victims and to ensure appropriate integration with other services, the number of DVLOs should be

⁶⁷⁶ Mr Murdoch, Evidence, 18 June 2012, p 13.

⁶⁷⁷ Attachment to email from Assistant Commissioner Murdoch to Principal Council Officer, 3 July 2012, p 2.

⁶⁷⁸ Parsons Review, Recommendation 10, p 77. <http://www.emergency.nsw.gov.au/media/1408.pdf> (accessed 11 July 2012)

increased. In turn this will also assist to improve victims' confidence in the system and therefore reporting.

Recommendation 42

That the NSW Government fund Domestic Violence Liaison Officer positions across the State, based on a policy developed and published by the Minister for Police detailing the formula for allocating Domestic Violence Liaison Officer positions across each local area command. The needs of local area commands/districts and patrols with higher rates of domestic violence, greater Aboriginal or other disadvantaged populations and greater geographical coverage, should have these features acknowledged in a new allocation model.

- 7.138** The Committee also considers that Local Area Commanders should make it a priority to fill DVLO positions when their incumbent moves on or takes leave, so that their important responsibilities continue to be fulfilled, and ensure that a back-up officer is available to step in as required. In addition, as far as possible the use of DVLOs for other duties should be avoided.
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Recommendation 43

The NSW Police Force ensure that all authorised Domestic Violence Liaison Officer and Domestic Violence Operative positions remain filled and that Local Area Commanders ensure there is a suitable experienced backup Domestic Violence Liaison Officer within their respective commands, including those where the Domestic Violence Liaison Officer position is part time.

Recommendation 44

That the NSW Police Force communicate to Local Area Commanders that the practice of deploying Domestic Violence Liaison Officers to other duties be avoided as far as possible.

Domestic Violence Pro-Active Support Services and the 'Yellow Card'

- 7.139** In Chapter 4 the Committee examined in detail the need, documented by the Auditor-General and discussed by many inquiry participants, for services with a role in responding to domestic violence to work in a more integrated way, in order to better protect and support victims. Timely referral of victims from one local agency to another is a very important aspect of coordination. For example, when police refer a victim to a WDVCS straight after an incident in which they instigate proceedings for an ADVO, the WDVCS support worker can contact the victim prior to the matter coming before a magistrate, help the victim to understand what will happen in court and assist them to obtain an order which is tailored to their individual circumstances and needs. The WDVCS support worker can also support the victim through the court process, identify their other needs, and in turn refer them to other appropriate services. The importance of support to enable the development of individually tailored orders is discussed in detail in Chapter 9.

- 7.140** Referral to other services is also an aspect of the shared risk assessment framework to be developed under the DFV Framework (informed by the Cross Agency Risk Assessment and Management (CARAM) Pilot), because referral is the corollary to assessment of an individual's needs.
- 7.141** In Chapter 4 we also noted evidence that service integration, including timely referral of clients, is impeded at present by restrictions on the sharing of information between services about individual clients. There, we recommended that the NSW Government introduce legislative amendments to Parliament to enable the sharing of information between agencies about individuals in respect of domestic violence, with appropriate privacy protections, and that amendments be supported by appropriate memoranda of understanding between agencies, and service level agreements about how information will be shared between local service providers. We also recommended that the impact of these new provisions be monitored for adverse impact on people's privacy.
- 7.142** During the inquiry there was much discussion of the 'Yellow Card' used by police as the consent mechanism for the timely referral of victims to support agencies under the Domestic Violence Pro-Active Support Service (DVPASS).
- 7.143** The NSW Government submission explains the purpose of the service, an initiative of the NSW Police Force:
- The Domestic Violence Pro-Active Support Services (DVPASS), operating in 11 locations across the State, provides coordinated, integrated responses and support to assist victims of domestic violence with a range of housing, criminal justice, child care, health and financial issues. The DVPASS has a unique role in program delivery in its proactive approach which involves bringing services to a person rather than having them seek those services out.⁶⁷⁹
- 7.144** The Yellow Card itself is the mechanism by which a victim gives consent for police to being contacted by a support service. When police are called to a critical incident they offer the victim the card, and if the victims chooses, they fill out their details and phone number, and the police pass the cards on to the relevant support service.⁶⁸⁰
- 7.145** Witnesses from Redfern Legal Centre, which operates a funded DVPASS, praised the Yellow Card as a means of support workers engaging with a victim and assisting them to obtain an order that is tailored their individual needs, as well as other appropriate supports. They suggested this is possible because support workers look at victims' needs holistically. These witnesses reported that the Yellow Card's success in any command depends on the individual will and knowledge of police officers at the scene, with some officers more skilled, committed and better resourced to issue the cards than others.⁶⁸¹
- 7.146** Similarly, Ms Catherine Gander, Executive Officer of the Women's Refuge Movement regarded the Yellow Card as an excellent initiative, but suggested that its effectiveness in an area relies on the relationship between police and the relevant service provider.⁶⁸² Ms Eleonora

⁶⁷⁹ Submission 61, NSW Government, p 8.

⁶⁸⁰ Ms Smith, Evidence, 7 November 2011, p 54.

⁶⁸¹ Ms Smith, Evidence, 7 November 2011, pp 54-55; Ms Shulman, Evidence, 7 November 2011, p 55.

⁶⁸² Ms Gander, Evidence, 26 March 2012, p 31.

Raffo of Liverpool and Fairfield Staying Home Leaving Violence Project saw that its success rests on the support of command leadership, so that it is used consistently and explained to victims in a meaningful way.⁶⁸³

7.147 The Redfern Legal Centre representatives and the WDVCAS Network called for the program to be implemented more widely and funded accordingly.⁶⁸⁴

7.148 An evaluation of the program in Sutherland by Dr Jane Wangmann found key benefits in police and non government service providers working together to encourage victims to follow through with legal action, in facilitating timely linking to services for victims who do not require a legal response, and in them gaining holistic support.⁶⁸⁵ Dr Wangmann told the Committee:

I interviewed people and examined a number of matters. A number of the people for whom there was no response were linked into services earlier. The event was minor and it did not require police action. However, someone said, "You need some assistance with finances, housing and so on." The victims I spoke to felt gratitude that they were being asked questions about things other than the law ... This is a key project and it is very important to do things outside the law.⁶⁸⁶

7.149 By contrast, Police Association representatives (who were not from the evaluated area) reported cynicism about the program among many officers, who rarely see the outcome of referrals via the card or obtain feedback on them.⁶⁸⁷ Others supported information sharing but questioned whether the Yellow Card was the best mechanism to achieve this.

7.150 The NSW Police Force advised that the Yellow Card system operates in 69 local area commands, however only five have received specific DV PASS funding under the *NSW Domestic and Family Violence Action Plan*.⁶⁸⁸

7.151 Victoria Police take a different approach. At every incident of domestic violence police are required to make either a formal or informal referral to support services. An informal referral occurs in all family violence incidents responded to by police and involves the police providing people with the contact details of support services. The police will make a formal referral to a service agency where they are concerned for the health or welfare of a person, where criminal charges have been laid in relation to the incident or where they have made an application for an intervention order. Under a formal referral, police will provide the aggrieved person's name and contact details to a service provider.⁶⁸⁹ They can do this without the party's consent under exceptions to Federal and State privacy legislation.⁶⁹⁰ These referrals are made

⁶⁸³ Ms Raffo, Evidence, 26 March 2012, p 47.

⁶⁸⁴ Ms Smith, Evidence, 7 November 2011, p 50; Answers to supplementary questions 26 March 2012, Women's Domestic Violence Court Advocacy Network, Question 7, p 5.

⁶⁸⁵ Dr Wangmann, Evidence, 20 February 2012, p 34.

⁶⁸⁶ Dr Wangmann, Evidence, 20 February 2012, p 34.

⁶⁸⁷ Ms Burgun, Evidence, 20 February 2012, pp 62-63.

⁶⁸⁸ Answers to supplementary questions 20 February 2012, NSW Police Force, p 16.

⁶⁸⁹ Victoria Police, *Code of Practice for the Investigation of Family Violence*, 2004, pp 24-25.

⁶⁹⁰ See: *Children Youth and Families Act 2005* (Vic) ss 28 and 31; *Information Privacy Act 2000* (Vic) IPP 2.1, 2.1(a), 2.1(d)(ii), 2.1(e); *Health Records Act 2005* (Vic) HPP 2.2(h)(i), 2.2(h)(ii), 2.2(i); *Privacy Act 1988* (Cth) IPP 10(1)(b), 10(1)(d), 11(1)(c), (1)(e), NPP 2.1(e)(i), 2.1(e)(ii). See also: Victorian

using the same form, the 'L17', that serves as both the incident report and the risk assessment. Victoria Police are currently working to make this mechanism electronic.⁶⁹¹

- 7.152** The NSW Police Force advised the Committee that since 2009 it has sought funding from Women NSW (formerly the Office for Women's Policy) for a formal evaluation of the DVPASS, in order to implement a best practice model across all local area commands. Funds have recently been made available from the NSW Police Force's own budget, and a tender process for the evaluation is expected to commence shortly.⁶⁹²
- 7.153** At the Committee's roundtable discussion, Dr Wangmann noted her concern that limited funding is currently provided to the existing DVPASS services, and already they struggle to provide timely follow up to those clients who have given consent. Should New South Wales move to a non-consent based system, as operates in Victoria, she foresaw that services would struggle greatly to follow up all victims. The likely effect would be a cut back on assisting those clients who do not require a legal response, who currently benefit from the DV PASS system. She also expressed a general concern about moving away from a consent based system as this may actually serve to disempower victims.⁶⁹³

Committee comment

- 7.154** The Committee is very pleased to hear that an evaluation of the DVPASS will take place, with a view to implementing a best practice proactive referral program in all local area commands. We strongly encourage the NSW Police Force and other relevant stakeholders such as Legal Aid and the WDV CAS Network in this task. We assume that the proposed legislative amendments to enable the sharing of personal information between agencies (as reflected in Recommendation 15 in Chapter 4) will have significant implications for the program. We consider it vitally important that victims be referred in a timely way to the support services that will assist them to obtain an appropriately tailored ADV O, provide them with crisis and ongoing support, and help to address their other needs.
- 7.155** At the roundtable discussion, Mr Murdoch gave feedback on a possible recommendation that the NSW Police Force draws on the strengths of Victoria Police's L17 form to develop and implement a single form to serve as an incident report, a risk assessment tool and a referral in relation to domestic violence incidents. His concern was as the L17 is lengthy and currently paper based, it would place significant extra demands on police officers who are required to complete it. He was reassured when advised by the Chair that the intention behind the possible recommendation was to simplify the process for sharing information with other agencies by replacing the Yellow Card, which is used inconsistently, and utilising the mechanism that serves as an initial response and incident report as the referral. The Committee has slightly modified our recommendation accordingly, and with some further input from Mr Murdoch, we have also made the link between this task and the work being

Government, *Family Violence Risk Assessment and Risk Management: Information Sharing in the Context of Family Violence*, 2009, p 6.

⁶⁹¹ Ms Kerry Hynam, Detective Inspector, Officer in Charge Violence Against Women and Children Strategy Group, Victoria Police, Evidence, 30 April 2012, p 21.

⁶⁹² Answers to supplementary questions 20 February 2012, NSW Police Force, p 16.

⁶⁹³ Dr Wangmann, Evidence, 18 June 2012, p 15.

done on common risk assessment as part of the Cross Agency Risk Assessment Model (CARAM) project detailed in Chapter 4.⁶⁹⁴

Recommendation 45

That the NSW Police Force draws on the strengths of Victoria's L17 form to develop and implement a simple electronic risk assessment and referral tool in relation to domestic violence incidents. In doing so consideration is to be given to the outcomes of the evaluation of the Domestic Violence Pro-Active Support Service and the development of common risk indicators being developed by the Cross Agency Risk Assessment Model project.

Specialisation and skilled investigations

7.156 Several inquiry participants sought greater investment by the NSW Police Force in specialised domestic violence teams and/or skilled investigators within local area commands.

7.157 Dr Lesley Laing of the University of Sydney noted the high level investigation of some crimes against women, suggesting that a comparable investment in specialist investigation of domestic violence would enable more effective prosecution and safety for those victims:

We actually have high level investigation of some crimes against women, primarily women, not only women, [via the serious sex crimes squad] but we do not have that level of resources into the investigation of domestic violence and there are some very dangerous situations where you would think excellent evidence collection by skilled investigators would lead to strong cases which would actually answer some of the questions about the adequacy of penalties. If you do not have the evidence or the good brief, then you are not going to get a good response [in court] ... police putting resources perhaps into their specialist investigation of cases would be a way of really upping the chances that women will get greater safety and contact with the legal system rather than an inadequate response, because perpetrators are very clever at playing the system.⁶⁹⁵

7.158 Similarly, the Australian Domestic and Family Violence Clearinghouse recommended the establishment of domestic violence units in each area, staffed by detectives and other specialists to enable better investigation and forensic evidence gathering, and in turn, more effective prosecution.⁶⁹⁶ VOCAL sought 'a core group within each local area command who are trained to a much greater level in relation to domestic violence.'⁶⁹⁷ Wurringa Baiya Aboriginal Women's Legal Centre argued for specialised multidisciplinary units with both an investigative and victim support functions:

⁶⁹⁴ Attachment to email from Assistant Commissioner Murdoch to Principal Council Officer, 3 July 2012, p 2.

⁶⁹⁵ Dr Laing, Evidence, 17 October 2011, p 49.

⁶⁹⁶ Answers to questions on notice 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 5, p 3.

⁶⁹⁷ Mr Brown, Evidence, 26 March 2012, p 13.

We think consideration should be given to the establishment of specialised local police units that specialise in domestic violence and sexual assault matters. We support these units being multi-disciplined teams that include counsellors to assist in supporting victims of violence. We think the multidisciplinary model of the Victorian Sexual Offences and Child Abuse Investigative Teams (SOCITs) is an interesting model to consider.⁶⁹⁸

- 7.159** In addition, the Police Association noted that the New South Wales and Australian Law Reform Commissions, in their joint reference into family violence, saw value in specialisation of both courts and police units in the domestic violence context. The Association noted that the Commissions recommended that ‘specialised family violence and sexual assault units are fostered’, and quoted the Commissions’ report, which seems to the Committee to focus less on investigative functions than on integration, monitoring and supervision of police staff:

Although there is little information or research available on the role and value of specialised police units in Australia, a significant number of stakeholders reported positive experiences with such units. The Commissions concluded that there is substantial merit in the use of specialised police in family violence, sexual assault and child protection matters. Liaison officers provide an important early point of contact for victims and assist them in navigating the legal system. Specialised police at all levels provide contact points for inter-agency collaboration, and may form a key element of integrated responses. Further, monitoring and supervision by specialised police is likely to improve consistency in the application of laws in the context of family violence.⁶⁹⁹

- 7.160** Superintendent Jouning of the Victorian Police identified that the Family Violence Teams of that state as one of the key elements of that system that has helped bring about the cultural change that has occurred in relation to policing of domestic violence in that State. His colleague, Kerry Hynam, Detective Inspector, Officer in Charge Violence Against Women and Children Strategy Group, Victoria Police, explained that the teams are specialised units in areas of greatest demand in terms of domestic violence. The teams have evolved over time, and since 2006 those areas with greatest demand have been gradually working towards a specialised approach.

- 7.161** In 2010 the Violence Against Women and Children Strategy Group finished a mapping process examining service delivery and demand across the whole State. This informed Victoria’s Enhanced Family Violence Service Delivery model launched in November 2011, which encourages more family violence teams to be established. While until now the teams have had a response and investigation focus, under the Enhanced Family Violence Service Delivery Model there will now be a greater focus on recidivist offending in particular, and also on repeat victimisation and victims at high risk. While there are 14 units at the present time, it is anticipated that the majority of divisions will have a unit in place by mid 2014.⁷⁰⁰

⁶⁹⁸ Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Women’s Legal Centre, Question 18, p 18.

⁶⁹⁹ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, Final Report, Volume 1, October 2010, p 74, quoted in Submission 63, pp 42-43.

⁷⁰⁰ Ms Hynam, Evidence, 30 April 2012, pp 19-20.

- 7.162** Very interestingly, Detective Inspector Hynam told the Committee that there is a requirement that as part of their foundation training, all new recruits to the Victorian Police must spend a week working with one of those units.⁷⁰¹
- 7.163** New South Wales makes some use of specialist teams, for example the DV ADVICE pilot funded by the Department of Family and Community Services (FACS) and operating in six commands, as well as the DVIRT model operating in Brisbane Waters, as noted in paragraph 7.20 in the section on innovations near the start of this chapter. In the DVIRT model, team members work closely with victims through home visits and counselling, while the DV ADVICE program focuses on information, support and case management as well as compliance of repeat domestic violence offenders.⁷⁰² The Police Association submission gives some detail on the DV ADVICE model and includes a comment from a member from its own consultations:

“The operation is having a tremendous effect on repeat offenders as they are being held to account and the victims are impressed because the police follow up regularly.”

It must be noted that this particular Command has the relative luxury of the ADVICE model and commitment to personnel for the Unit which makes this a viable option in their particular circumstance. It may however be too labour intensive and unrealistic in some other [local area commands] where only 1 DVLO operative works.⁷⁰³

Committee comment

- 7.164** The Committee did not explore the issue of specialist teams and skilled investigations with representatives of the NSW Police Force in either their hearing or in written questions. We have no information as to what if any specialist investigation occurs with regard to domestic violence in NSW and so are unable to make any recommendations on this issue here. We do, however, see value in the comments of Dr Laing and the Australian Domestic and Family Violence Clearinghouse that skilled investigation will lead to more effective prosecution and greater safety for victims.
- 7.165** Presumably any specialisation is at the discretion of Local Area Commanders and is resource intensive, as the above quote from the Police Association attests, as does the fact that the DV ADVICE model is funded by FACS. The Committee regards the DV ADVICE and DVIRT innovations highly, and we acknowledge FACS’ and the NSW Police Force’s investment in them. We also have no information about what if any formal evaluation is taking place with regard to either program, but consider it valuable that this occur, with a view to informing a plan to implement the model more widely over the longer term. Like the Australian and NSW Law Reform Commissions, we see real value in specialist domestic violence units being fostered, and in keeping with our recommendations earlier in this report, we consider this should be done on a strong evidence base.

⁷⁰¹ Ms Hynam, Evidence, 30 April 2012, pp 19-20.

⁷⁰² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 4, p 7.

⁷⁰³ Submission 63, p 35.

Vicarious trauma

- 7.166** In its submission the Police Association reported that working in domestic violence can have serious effects on the mental health of police officers:

[D]ue to the gravity and intensity of hearing victims' stories of abuse, police are at risk themselves of secondary or vicarious trauma ... which causes the officer to experience vicarious trauma symptoms similar to the original victims', after hearing about the victim's experiences with abuse.⁷⁰⁴

- 7.167** On this basis, the Association recommended that the NSW Police Force provide programs for police to prevent this vicarious trauma that domestic violence can cause for police officers.

- 7.168** In answers to written questions, the Association detailed research about vicarious trauma, noting evidence that effective supervision is very important to prevention and recovery, and that debriefing and peer support are valuable strategies after witnessing trauma, saying that '[p]olice dealing with trauma need to have access to regular debriefing.'⁷⁰⁵

- 7.169** The Association then went on to quote two police members:

"I put some thought into the problem and also into what could be done in order to achieve the goals of general duties police which is pretty simple. We want to go to fewer Domestic Violence incidents. Domestic Violence incidents is one of those areas of policing that can be extremely rewarding if you can have an impact but it is also quite soul destroying because we show up at the same addresses for the same problem time and time again and feel like we are wasting our time."

"Over many years the increased intervention by police into the domestic environment has changed the face of policing and the impact on police - policing DV (its outcomes) and the impact on police need to be examined. Low staffing in high DV areas is a significant issue and is impacting on police. I'd suggest policing DV over a lengthy period causes anxiety due to the heightened levels of tension and aggression - anecdotally I'd suggest this is more of a problem than [post traumatic stress disorder] and is impacting on [death and disability claims]. Pro-active welfare management and respite from [domestic violence] will have beneficial outcomes for all involved."⁷⁰⁶

- 7.170** The Committee asked the NSW Police Force how it promotes self-care practices among officers to protect their wellbeing, and received the following advice:

The NSWPF has a number of welfare systems in place including Peer Support Officers, access to 24 hour counselling through the Employee Assistance Program (EAP) and access to Police Chaplains. DVLOs are part of the NSW Police WellCheck process whereby they are required to participate in a one-on-one session with an EAP psychologist on a three or four monthly basis to discuss their work, their emotional reactions to their work, the manner in which their work and personal lives interact and any other things that might impact on their ability to perform their job safely.

⁷⁰⁴ Submission 63, p 6.

⁷⁰⁵ Answers to supplementary questions 20 February 2012, Police Association of NSW, Question 11, pp 9-10.

⁷⁰⁶ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 11, pp 9-10.

WellCheck is a preventative strategy – not therapy. If more intense counselling is required it is provided via other programs such as general EAP counselling.⁷⁰⁷

Committee comment

- 7.171** The Committee holds the work of police officers in very high esteem, and empathises with them in the frustration, disillusionment and indeed great distress that they may feel as a result of domestic violence – as well as many other aspects of police work. We also recognise the reality of the traumatic effects that work of this kind can have on mental health. Our reading of the NSW Police Force’s response above is that it takes officers’ mental health seriously, and makes appropriate provision for peer support mechanisms, the WellCheck process and professional counselling. We are not aware of what provision is made for regular or incidental debriefing; presumably this occurs within supervisory arrangements, which may vary in quality according to the individual supervisor. This, and the ‘proactive welfare management’ advocated by the Police Association member above could potentially be addressed in supervisor training.
- 7.172** Respite from domestic violence will inevitably depend on the ability to share such work among station or command colleagues, which will vary from place to place. Acknowledging the practical difficulties, we do encourage the NSW Police Force to be mindful of the welfare of its members in this regard. As noted earlier, we also consider that training that provides insights into the dynamics of domestic violence, as recommended earlier in this chapter, should assist to prevent the frustration and cynicism that understandably occurs in this work.
- 7.173** The following chapter explores the increase in police proceedings against women for domestic violence related offences.

⁷⁰⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 28, p 25.

Chapter 8 **The increase in police proceedings against women**

In the previous chapter the Committee examined participants' views on potential improvements to the policing of domestic violence in New South Wales, and made recommendations to enhance leadership on domestic violence throughout the ranks of the NSW Police Force, to enhance quality assurance, and to improve training of general duties and supervising officers. In this chapter the Committee considers the evidence it received in relation to the documented increase in police proceedings against women for domestic violence offences, in keeping with a specific item in the inquiry terms of reference. In Chapter 2 the Committee noted the debate concerning male and female perpetrators of domestic violence, and the growing recognition that there are female perpetrators and male victims, as well as the predominant view among commentators and inquiry participants that while such occurrences are real, domestic violence is still a 'gendered' crime, with the substantial majority of perpetrators being male and the substantial majority of victims being female.

The increase in police proceedings against women was one of the more controversial aspects of the Committee's inquiry, on which views tended to be polarised. While some inquiry participants saw the increase as a welcome reflection of true patterns of female offending, the majority who addressed the issue voiced concern about it and many of that group attributed the trend to policing policy and practices. There was, however, a consensus that there is no reliable evidence to elucidate the real cause for the trend, pointing to the need for quality research to this end.

This chapter begins by noting the available data and findings on this issue, then documents participants' views in relation to the perceived reasons for the trend and their proposals to address it. It concludes with recommendations to conduct research on the issue, to establish better data collection, and to monitor the trend.

The documented increase in arrests

- 8.1** In Chapter 2 the Committee reported the increase in the number of women proceeded against by the NSW Police Force for domestic violence assault, documented by the NSW Bureau of Crime Statistics and Research (BOCSAR) (see Figures 7 and 9 and Tables 5 and 6).
- 8.2** Dr Don Weatherburn, Director of BOCSAR, advised the Committee, that the available data is not clear as to whether the trend reflects a real increase in the incidence of domestic assaults where women are the perpetrators or some other factor. He cautioned, '[t]here is no decent evidence whatsoever to resolve that increase definitively one way or the other.'⁷⁰⁸
- 8.3** Interestingly, the Victorian Police reported that they have not experienced the trend of increased arrests of women in their State.⁷⁰⁹
- 8.4** In its submission to the inquiry, the NSW Government provided further insights into the reason for the inclusion of this issue in the inquiry terms of reference, pointing to different perspectives on the matter. It noted that community sector organisations have voiced concerns about the increase in the numbers of women being proceeded against for domestic

⁷⁰⁸ Dr Don Weatherburn, Director, BOCSAR, Evidence, 7 November 2011, p 11.

⁷⁰⁹ Answers to questions on notice 5 March 2012, Victoria Police, Question 5a, p 2.

related offences, and whether police are correctly identifying the 'primary aggressor' in a domestic violence incidents. On the other hand, data from Corrective Services NSW indicates that the number of female offenders sentenced to custody for domestic violence offences has remained relatively stable, with a small increase in female domestic violence offenders managed in the community, and Corrective Services has observed that this is consistent with the overall increases in rates of offending across all categories of offences. In addition, Police data does not reflect a failure on the part of police to identify the primary aggressor in domestic violence incidents. The submission further pointed to the findings of the NSW Ombudsman's 2011 *Audit of NSW Police Force handling of domestic and family violence complaints* that there was no evidence to support that police were unable to identify the primary aggressor at the scene.⁷¹⁰

8.5 The submission from the Office of the NSW Ombudsman explains that it examined this issue to the extent that it was reflected in complaints about police handling of domestic violence matters, in response to concerns raised by the non government sector. The relevant complaints included one that specifically alleged a failure by police to correctly identify the primary aggressor, along with all complaints arising from events where the woman was alleged to be the offender. The Ombudsman's submission confirmed its findings:

While based only on a sample of complaints and the records available to us as part of our audit, we found no evidence to indicate that police may have failed to correctly identify the primary aggressor in any matter.

However, what the audit did reveal is that a relatively significant number of women were considered offenders in events giving rise to domestic violence complaints, and that the majority were in a current or former relationship where there was a history of domestic violence against one or more parties. Additionally, a significant proportion of women were charged with an offence or the subject of an [apprehended domestic violence order].⁷¹¹

8.6 Asked for its views on the potential reasons why arrests of women are increasing, the NSW Police Force stated that there appear to be a number of reasons at work including:

- an increase in offending by women
- an increase by men in reporting violence
- excessive self defence by women in retaliation to violence
- opportunistic attacks on male offenders, for example whilst incapacitated, drunk or asleep
- that the female victim may threaten to call the police so male offender gets in first and claims to be the victim.⁷¹²

8.7 Notwithstanding the absence of information to elucidate the issue, many inquiry participants documented strong views about the increase in arrests of women in their submissions and

⁷¹⁰ Submission 61, NSW Government, p 9.

⁷¹¹ Submission 53, NSW Ombudsman, pp 2-3.

⁷¹² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 17, p 17.

evidence, and made corresponding proposals for policy. These are documented in the following section.

Views of participants supporting the trend

8.8 Several inquiry participants told the Committee that they welcomed the trend in increased arrests of women for domestic violence, arguing that it reflects the reality of female domestic violence offenders which has historically gone unrecognised and unaddressed.

8.9 In his submission, Mr Trevor Farrell, a victim of verbal, emotional and physical violence perpetrated by his wife, wrote of the police's disinclination to believe he was the victim, to the extent that they issued an apprehended domestic violence order (ADVO) against him. He argued that the media and special interest groups equate domestic violence with 'men bashing women', supported by crime statistics which are inherently biased because: women are encouraged to report domestic violence, while men are not; less reputable divorce lawyers encourage women to exaggerate or even fabricate their claims; and police tend to believe the woman. He went on to welcome the trend stating:

The increase in numbers of women being proceeded against is a good thing, it indicates that the "men bashing women" myth is failing of its own accord! Be prepared for the numbers to continue to even out, as they inevitably will do.⁷¹³

8.10 Another male victim also documented 'extreme resistance' on the part of the police to recognise the violence perpetrated against him. He pointed to published data on the increase in violent offending by girls and spoke of his experience as a security guard, whereby he witnessed 'as many fights and assaults involving or caused by women as I have men'.⁷¹⁴ In relation to the wording of the inquiry terms of reference, 'the increase in women being proceeded against by police for domestic related assault', the submission author stated:

Does that not suggest that the increase is not in the rate of assault but only in the action of police ... Does it not suggest that the problem is the police? This typical choice of language to describe violence from women inhibits us as a community to deal with the problem as it restricts us identifying the true cause of this problem. Likewise to blame women's assault on being 'pushed too far' by a man, as I have heard dozens of times, stops us dealing with violent women and instead focus[es] our attention on what men may be doing to upset women.⁷¹⁵

8.11 The One in Three Campaign identified three possible reasons for the increase in arrests of women:

- that men may be becoming more willing to report women's violence against them
- that the police are applying the law more fairly and justly, shifting away from the historical approach of arresting the man at the scene, based simply on his gender, and more towards arresting the perpetrator on the basis of the evidence before them

⁷¹³ Submission 65, Mr Trevor Farrell, p 65.

⁷¹⁴ Submission 48, Partially confidential, pp 3-4 and 8.

⁷¹⁵ Submission 48, pp 7-8.

- that the socialisation – and behaviour – of young women appears to be changing, with young women increasingly likely to consume alcohol at harmful levels, and to use violence.⁷¹⁶

8.12 In written answers to questions after their hearing, the One in Three Campaign representatives noted their concern ‘that there seems to be a desire to prevent police from acting against female perpetrators’, stating that from their experience, violent women are less likely to be acted against by police, while many men who have complained of being assaulted by their partner are told to ‘man up’. It pointed to the under reporting of female violence documented in numerous research studies such as:

- the South Australian Interpersonal Violence and Abuse Survey, which found that females (22 per cent) were more likely to report the domestic violence incident(s) to the police than males (7.5 per cent)
- Canada’s 2004 General Social Survey on victimisation, which found that fewer than three in ten (28 per cent) victims of spousal violence reported the abuse to the police (36 per cent of female victims and 17 per cent of male victims).
- the 2008-09 Scottish Crime and Justice Survey on Partner Abuse, which found that men were significantly more likely not to have told anyone about the abuse they suffered in the last 12 months (40 per cent compared with 21 per cent of women), and that while 35 per cent of women who experienced partner abuse in the last 12 months said the police did come to know about the most recent/only incident, this was the case for only 8 per cent of men.⁷¹⁷

8.13 The One in Three Campaign also pointed to research about ‘reciprocal’ and ‘unilateral’ violence:

The research evidence also demonstrates that the most common form of domestic violence is reciprocal violence (making up around half of all violence in the home), with unilateral ‘perpetrator-victim’ violence by male perpetrators making up around 25%, and unilateral ‘perpetrator-victim’ violence by female perpetrators making up the other 25%.

Therefore, while it is possible that some female victims are arrested by police lacking the necessary tools and training, it is equally possible that some male victims also experience this.

⁷¹⁶ Submission 40, One in Three Campaign, pp 13-14.

⁷¹⁷ Dal Grande, E, Woollacott, T, Taylor, A, Starr, G, Anastassiadis, K, Ben-Tovim, D, et al. (2001), Interpersonal violence and abuse survey, September 1999, Adelaide, Epidemiology Branch, Department of Human Services, <http://www.health.sa.gov.au/pros/portals/0/interpersonal-violence-survey.pdf> (retrieved 21 September 2009); Statistics Canada (2009), Family violence in Canada: A statistical profile 2009, Ottawa, Statistics Canada, Canadian Centre for Justice Statistics, Ministry of Industry, <http://www.statcan.gc.ca/pub/85-224-x/85-224-x2009000-eng.pdf> (retrieved 29 August 2010); MacLeod, P, Kinver, A, Page, L and Iliasov, A (2009), 2008-09 Scottish crime and justice survey: Partner abuse, Edinburgh, Scottish Government, <http://www.scotland.gov.uk/Resource/Doc/296149/0092065.pdf> (retrieved 15 January 2010) cited in answers to questions on notice 20 February 2012, One in Three Campaign, Additional information, pp 12-13.

Control and domination is not always achieved by the use of physical violence, and if the police arrest the person who has been using physical violence, they might not be arresting the abusive partner (the victim might be retaliating physically to years of sustained emotional, psychological, financial and/or social abuse). In this case, the children will be left with the abusive parent.

It is also likely that in many if not most cases there is no primary aggressor as both parties are perpetrators and victims of violence (the relationship itself is violent and dysfunctional).⁷¹⁸

- 8.14** Two further inquiry participants noted that their experience accorded at least to some extent with the trend towards increasing arrests of women. Sergeant Prue Bergun, Treasurer of the Police Association, reported that in her duties at an inner Sydney local area command, she had seen an increase in men reporting because they are now more aware of the options available to them, and because the stigma of reporting seems to be decreasing. She also observed more reporting of violence among same sex couples, and more female offenders generally. In relation to men reporting violence perpetrated by women, she stated:

A classic example: yesterday I was the custody manager and the females we had in custody were all domestic violence matters, and all for a range of different reasons. I spoke to two of the victims and they said it is because we feel we can report it and that is the right thing to do. We need to take action to be able to help ourselves, our family and our partner—who obviously needs help. I think it is not a gender thing anymore whereas it used to be, I think it is now a family issue as opposed to a male or female issue.⁷¹⁹

- 8.15** Similarly, the Central Coast Local Health District reported that anecdotally, there has been an increase in health staff seeing male victims of domestic violence, reciprocal violence between both members of a couple, and violence by young people against other family members.⁷²⁰

Views of those with concerns about the trend

- 8.16** Many inquiry participants expressed strong concerns about the trend towards the increase in proceedings against women.
- 8.17** Very many of these organisations saw the growing arrests of women as a reflection of the policing of domestic violence rather than the violence itself. Specifically, they proposed that the trend reflects the unintended consequence of the ‘pro-arrest policy’ underpinning police action in respect of domestic violence in New South Wales, and the inability to identify the ‘primary aggressor’ in a domestic violence situation. This ‘pro-arrest’ or ‘proactive’ policy was

⁷¹⁸ Dutton, DG (2010), ‘The gender paradigm and the architecture of antiscience’, *Partner Abuse*, 1(1), pp 5-25; Straus, MA (2005), ‘Women’ violence toward men is a serious social problem’, in DR Loseke, RJ Gelles and MM Cavanaugh (eds), *Current controversies on family violence*, 2nd Edition, pp 55-77, Newbury Park, Sage Publications; Dutton, DG and Nicholls, TL (2005), ‘The gender paradigm in domestic violence research and theory: Part 1 - The conflict of theory and data’, *Aggression and Violent Behavior*, 10(6), pp 680-714, cited in answers to questions on notice 20 February 2012, One in Three Campaign, Additional information, pp 12-13.

⁷¹⁹ Sergeant Prue Bergun, Treasurer, NSW Police Association, Evidence, 20 February 2012, p 54.

⁷²⁰ Submission 67, Central Coast Local Health District, p 3.

instituted to support the *Crimes (Domestic and Personal Violence) Act 2007* by encouraging police to investigate all allegations of domestic violence and lay criminal charges where evidence exists to support them.⁷²¹ Legal Aid, for example, stated in its submission:

Legal Aid NSW notes that Police officers must apply for an ADVO where the officer suspects that a domestic violence offence or a stalking offence has been, or is likely to be, committed. Sections 27 and 49 of the *Crimes (Domestic and Family Violence) Act 2007 (NSW)* effectively limit discretion amongst the Police to arrest and prosecute a defendant, even when a victim is reluctant for an application to be made.

Anecdotal evidence suggests that the increase in the number of female defendants in NSW is a consequence of these provisions, together with proactive policing policies that result in dual arrests of both the primary aggressor and victim and cross applications for ADVOs.⁷²²

- 8.18** Numerous participants argued that the effect of the pro-arrest policy is that many women are being arrested for violence and/or having police initiate an ADVO against them despite a history of abuse towards them.⁷²³ The Women's Domestic Violence Court Advocacy Service (WDVCAS) Network, for example, suggested that:

Women who are the defendants in domestic violence related assault matters often have a long history as a victim of violence or trauma (or both). In the WDVCAS Network's experience, a woman will suffer years of domestic violence in silence but, in a single act of self defence or retaliation against the perpetrator, will find herself immersed in the criminal justice system having to defend an ADVO and criminal charges ... The WDVCAS Network is extremely concerned that police officers are actively pursuing women as defendants in domestic violence matters without thoroughly investigating the circumstances leading up to the incident and the history of violence experienced by the women and children.⁷²⁴

- 8.19** The Benevolent Society noted instances where women have been arrested for defending themselves against physical abuse, suggesting that in situations where the woman is emotional or angry by the time police arrive, while the male perpetrator appears more calm and rational, police may be more inclined to believe the male. It suggested that to some extent at least this is attributable to insufficient understanding of perpetrator tactics against victims, and pointed to the need for training on the dynamics of domestic violence and identification of the 'primary aggressor'.⁷²⁵
- 8.20** Similarly, Redfern Legal Centre and Sydney WDVCAS advised that its clients report that police tend to accept the male party's suggestion that the woman has lied, overreacted or has a mental illness, and that many female defendants report they were initially either too distressed by the assault to provide a coherent version of events, or too scared by possible repercussions from the other party.⁷²⁶ It suggested that research on women's use of force against their

⁷²¹ Answers to supplementary questions 20 February 2012, NSW Police Force, p 8.

⁷²² Submission 34, Legal Aid NSW, p 16

⁷²³ See Submission 7, Women's Legal Services NSW, p 6.

⁷²⁴ Submission 28, Women's Domestic Violence Court Advocacy Network, pp 7-8.

⁷²⁵ Submission 37, Benevolent Society, p 25.

⁷²⁶ Submission 39, Redfern Legal Service and Women's Domestic Violence Court Advocacy Service, pp 7-8.

partners indicates that it is generally used in self-defence, self-protection or retaliation for past abuse. Research on male motivations for domestic violence on the other hand indicates that abusive men use violence in a more instrumental, goal directed manner to obtain a desired outcome, and that their violence is often directed at controlling their partner. In addition, it commonly forms part of a continued cycle of abuse aimed at instilling fear and terror.⁷²⁷ Redfern Legal Centre and Sydney WDVCAS provided the case study of Lara below indicating poor investigation of the history of violence.

Case study: Lara

Lara, a young Aboriginal woman, reported that she had been assaulted by her ex-partner over a number of hours and in front of her two young children. She reported she had been choked, thrown to the ground several times during the assault, hit with an implement, and forced over the back of a chair causing injuries to her neck and back.

When police finally arrived after being called by a neighbour, Lara ran from the house to the neighbour's house, which meant that police spoke to Lara's ex-partner before speaking to her. He had been bitten on the finger (his own statement to police said he was bitten when he 'put his finger in her mouth') and scratched on the face by Lara during the assault. Lara was so distressed she was unable to provide a coherent statement to police on the night, and she was subsequently arrested and charged with the assault of her ex-partner, notwithstanding the fact that she had severe injuries, and the ex-partner had two previous ADVOs against him protecting Lara and her children and had served two lengthy custodial sentences (one very recently) for breaching these ADVOs with violence. Only two days before the assault, Lara had been pressured by her ex-partner to go to court with an application to revoke the most recent ADVO, and police had not opposed the application.

When Lara spoke to the WDVCAS service on the day after the assault, she had many visible injuries. We assisted Lara to make a private application for an interim ADVO protecting herself and her children. We also organised for an experienced DVPS practitioner to represent Lara at the defended hearing. When the assault charge against Lara and both ADVOs went to hearing, the charges and the ADVO against Lara were dismissed by the magistrate and an ADVO was made against the ex partner. A costs order was also made against police.⁷²⁸

8.21 Like the Benevolent Society, the Victims of Crime Assistance League (VOCAL) underscored perpetrators' tactical use of the legal process. It also suggested that the pro-arrest policy can encourage a 'first in best dressed' approach to policing, and works against proper investigation:

The police have admitted to me that under the DV guidelines, it can be a case of 'first in best dressed'. If there is a complaint and any evidence of injury, they will arrest and prosecute without a proper investigation. They may not even interview the alleged perpetrator, seek witnesses until afterwards, if at all. They do not get the other side's version, or necessarily consider self-defence, hear about injuries, or compare and assess one person's word against another's as they do in other crime types, or also as they often do in other cases, apply their discretion not to charge.⁷²⁹

⁷²⁷ Submission 39, pp 7-8.

⁷²⁸ Submission 39, pp 7-8.

⁷²⁹ Submission 3, Victims of Crime Assistance League, p 6.

8.22 The Australian Domestic and Family Violence Clearinghouse reported its understanding of the anecdotal evidence concerning poor investigation by some police:

Anecdotal evidence from legal services and domestic violence services in NSW suggests that police do not routinely properly assess the domestic violence situation before making an arrest, including: checking the COPS database to identify any previous history of violence by either party; looking for evidence of injury; use of weapons; taking witness statements, including speaking to the woman directly; collecting forensic evidence; or assessing if violence used was in retaliation or self defence.⁷³⁰

8.23 Women's Legal Services identified a number of factors associated with police practices which they consider lead to proceedings against the victim as opposed to the 'primary aggressor':

- failure to speak to the woman independently
- failure to ask directly if she has been hurt or holds fears because she was not the person who made the call to police
- police officers making a quick judgment that it was a mutual fight without getting the full picture, or being eager to believe men who allege violence without recognising that calling the police could be part of the domestic violence
- victims sometimes being told that if they want the police to proceed with charges they would have to charge her as well
- physical evidence such as bruising often does not show immediately.⁷³¹

8.24 Asked for their perspective on this term of reference, Mr Greg Elks and Mr Brett Thomas, Solicitors representing the Law Society of New South Wales, agreed that anecdotally, women are being arrested for injuring their male partner in self defence, when he is the primary aggressor with a history of violence towards her.⁷³² Mr Elks pointed to the issue of investigation, and what he sees as a lack of police discretion in the process:

In some respects that comes back to the investigation conducted by the police at the time. There is not a lot of discretion. When the police receive a complaint they cannot sort out at the time they just take the position, "We'll throw them both in and we'll let the court sort it out later on." They just do not have that discretion at a local area command level. That would indicate why we are seeing a rise in numbers. Of course, what is being caught in that net—it is like a net-widening situation—are women where they are not necessarily the primary aggressor.⁷³³

8.25 Barnardos' submission pointed to 'an unofficial policy of dual arrests' when a victim inflicts injuries while attempting to protect herself or her children, calling this a 'dangerous trend'.⁷³⁴

⁷³⁰ Answers to questions on notice 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 4, p 2.

⁷³¹ Submission 7, p 6.

⁷³² Mr Greg Elks, Solicitor and Member, Criminal Law Committee, Law Society of NSW, Evidence, 7 November 2011, p 61; Mr Brett Thomas, Solicitor and Member, Criminal Law Committee, Law Society of NSW, Evidence, 7 November 2011, p 61.

⁷³³ Mr Elks, Evidence, 7 November 2011, p 61.

⁷³⁴ Submission 4, Barnardos Australia, p 7

Dr Jane Wangmann of the Faculty of Law, University of Technology, Sydney, examined dual arrests as part of her doctoral research on cross applications for apprehended domestic violence orders. Dr Wangmann went into some detail on her research during her hearing. In terms of its implications, she suggested that some police, when faced with a very complex situation, do not know what to do, and may not ask the investigative questions that they should, opting instead to arrest both parties. She also suggested that this varies from command to command, perhaps indicating that it reflects an issue of practice, or a cultural issue in some commands. She also suggested that it points to an effect of the pro-arrest policy as well as a training issue.⁷³⁵ Like Dr Lesley Laing of the Faculty of Education and Social Work at the University of Sydney, Dr Wangmann observed that there is a tension between current law, which requires a focus on specific incidents of violence in order to gather evidence to put before a court, and the nature of domestic violence, which is an ongoing process.⁷³⁶ Dr Laing also emphasised the complexity of these matters for police, observing that, 'It is a very difficult area of policing'.⁷³⁷

Further research

8.26 In her submission, Professor Julie Stubbs of the Faculty of Law, University of New South Wales, noted that studies in the United States, Canada and the United Kingdom have documented an increase in the number of women arrested either solely or at the same time as their current or former partner, as an unintended consequence of mandatory or pro-arrest policing policies.⁷³⁸ She gave further detail when she appeared before the Committee in evidence:

In jurisdictions that have taken a very firm mandatory arrest approach—our policy in Australia is presumptive of arrest or pro-arrest but not such a harsh mandatory arrest approach as some other jurisdictions—there is some suggestion that police faced with the complexities of domestic violence when they arrive on the scene, often without appropriate tools and training to sort out what is happening and having to work with

⁷³⁵ Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, Sydney, Evidence, 20 February 2012, p 29-30.

⁷³⁶ Dr Wangmann, Evidence, 20 February 2012, p 29-30.

⁷³⁷ Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney, Evidence, 17 October 2011, pp 49-50.

⁷³⁸ Hirschel D & Buzawa E (2002), 'Understanding the Context of Dual Arrest with Directions for Future Research', *Violence Against Women*, Vol. 8, No. 12, pp. 1449-1473; Hirschel D, Buzawa E, Pattavina A & Faggiani D (2008), 'Domestic Violence and Mandatory Arrest Laws: To What Extent do they Influence Police Arrest Decisions?', *Journal of Criminal Law and Criminology*, Vol. 98, No 1, pp. 255-298; Lyon, A (1999), 'Be Careful What you Wish For: An Examination of Arrest and Prosecution Patterns of Domestic Violence Cases in two Cities in Michigan', *Michigan Journal of Gender and Law*, Vol. 5, pp. 253-298; Miller S (2001), 'The Paradox of Women Arrested for Domestic Violence', *Violence Against Women*, Vol. 7, No. 12, pp. 1339-1376; Dasgupta S (2002), 'A Framework for Understanding Women's use of Nonlethal Violence in Intimate Heterosexual Relationships', *Violence Against Women*, Vol. 8, No. 11, pp 1364-1389; Comack E, Chopyk V & Wood L (2000), *Mean Streets? The Social Locations, Gender Dynamics, and Patterns of Violent Crime in Winnipeg*, Canadian Centre for Policy Alternatives, Ottawa; Hester, M (2009), *Who Does What to Whom? Gender and Domestic Violence Perpetrators*, research commissioned by Northern Rock Foundation. Available at <http://www.nrfoundation.or~.uk/tiownloads/Who%20Does%20What%20to%20Whom.pof> cited in Submission 60, Professor Julie Stubbs, pp 4-5.

competing and conflicting statements in evidence, may simply arrest both parties as the easiest course. Sometimes by the time the police arrive what they witness is retaliatory violence, the victim fighting back. That sometimes means it is the victim who is arrested because the police witness that retaliatory violence.⁷³⁹

- 8.27** In relation to the earlier observation made by Law Society representatives, Dr Wangmann reported that there is some suggestion from the international research ‘that taking away the discretion has meant that police feel they have little choice about whether or not they arrest a party if there has been an incident of some kind.’⁷⁴⁰ In both her submission and evidence, Professor Stubbs emphasised that without further research on this issue in New South Wales, these concerns remain anecdotal.⁷⁴¹
- 8.28** Indeed, there was a consensus among inquiry participants including the NSW Police Force that research on this issue in New South Wales is very much required. The NSW Police Force advised that it had previously attempted to investigate the trend by conducting an audit of COPS events, but was unable to gain insights apart from identifying that in the majority of instances of mutual violence, alcohol or drugs was a contributing factor.⁷⁴²
- 8.29** The Police Force further advised that in keeping with its commitment to examine this issue, it has entered into partnership with Professor Stubbs, Dr Laing and Dr Wangmann to undertake research ‘to determine whether there is a systemic problem identifying the primary victim and aggressor, and whether subsequently there is a need or a change of practice or legislation’. The study will involve the examination of 12 months of COPS data.⁷⁴³
- 8.30** In addition, Dr Wangmann advocated for better data capture and data availability on this issue, arguing that it is vital to informed policy and decision making. In particular, she called for data to be furnished by the police and the courts, concerning:
- the gender of applicants and respondents in ADVO proceedings
 - the gender of defendants and victims in domestic violence related criminal proceedings
 - the nature of the relationship between the parties, that is, whether they are intimate partners, or share other types of familial or domestic relationships
 - the nature of the charges that are laid against women vis-à-vis men
 - the resolution of domestic violence criminal charges against women and men, that is, what are the outcomes, sentence and so on.⁷⁴⁴
- 8.31** She pointed to a useful data set established in Victoria, where a nine year report on family violence statistics from the courts and police has been compiled, which might serve as an example for New South Wales.⁷⁴⁵

⁷³⁹ Professor Julie Stubbs, Faculty of Law, University of New South Wales, Evidence, 7 November 2011, pp 5-6.

⁷⁴⁰ Dr Wangmann, Evidence, 20 February 2012, p 29-30.

⁷⁴¹ Submission 60, p 5.

⁷⁴² Submission 74, NSW Police Force, p 19

⁷⁴³ Submission 74, p 19

⁷⁴⁴ Submission 47, Dr Jane Wangmann, Lecturer, University of Technology, Sydney, p 1.

⁷⁴⁵ Department of Justice, *Victorian Family Violence Database Nine Year Report*, cited Submission 47, p 1.

Potential strategies

- 8.32** Notwithstanding the present absence of research, many participants like the Benevolent Society noted above pointed to an apparent need for training of police with a view to improving their understanding of the dynamics and domestic violence, and the veracity of their investigations.⁷⁴⁶ It pointed to the recommendation of Australian and New South Wales Law Reform Commissions that '[p]olice should be trained to better identify persons who have used family violence and persons who need to be protected from family violence, and to distinguish one from the other. Guidance should also be included in police codes of practice and guidelines'.⁷⁴⁷
- 8.33** The Police Association argued this strongly, and like many participants, pointed to the inherent complexity of the police task:
- Following on with the issue of understanding the dynamics of relationships, when police are attending domestic violence incidents it is difficult at times to identify the 'primary aggressor' and the 'primary victim' ... Thus it is important for police to have an understanding of the complex nature of domestic violence and the manipulation and power dynamics that are involved to aid them in their role as domestic violence officers. Police need to know who is at greater risk and who should be excluded from the home. Sometimes the aggressor gets to the police first; sometimes the victim is not a strong communicator. A female victim might be upset and take it out on the police officer and thus seem to be the aggressor when in fact she is not. As one can understand, this is a very complex area and training should be comprehensive.⁷⁴⁸
- 8.34** Participants such as Binaal Billa Family Violence Prevention Legal Service and Women's Legal Services saw a greater role for skilled police officers in undertaking investigations or supervising staff and providing guidance on identifying the primary aggressor as a way to ensure that the appropriate party is arrested or protected.⁷⁴⁹
- 8.35** Finally, various inquiry participants including Women's Legal Services, Redfern Legal Centre and Sydney WDVCS argued strongly for a 'primary aggressor assessment tool' to be included in the NSW Police Force's Standard Operating Procedures for Domestic and Family Violence, requiring police to examine the prior history of violence within the relationship as indicated by COPS events, the type and seriousness of the injuries inflicted, and whether the injuries indicate that one party may have been acting in self defence.⁷⁵⁰ They argued that this

⁷⁴⁶ See for example, Submission 34, p 18; Ms Rachelle Johnston, Project Officer, Women's Domestic Violence Court Advocacy Program, Legal Aid NSW, Evidence, 7 November 2012, p 24; Submission 38, Binaal Billa Family Violence Prevention Legal Service, p 5; Submission 43, Wirringa Baiya Aboriginal Women's Legal Centre, p 22; Submission 54, NSW Women's Refuge Movement, p 11

⁷⁴⁷ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, 2010, cited in Submission 37, p 11.

⁷⁴⁸ Submission 63, Police Association of NSW, p 16.

⁷⁴⁹ Submission 38, p 7.

⁷⁵⁰ Submission 39, p 9; Ms Susan Smith, Coordinator, Sydney WDVCS, Evidence, 7 November 2011, p 55. See also Submission 6, Women Everywhere Advocating Violence Elimination (WEAVE), pp 9-10; Answers to questions on notice, Australian Domestic and Family Violence Clearinghouse, Question 4, p 2; Mr Senthoran Raj, Senior Policy advisor, Gay and Lesbian Rights lobby, Evidence, 30 April 2012, p 47.

would hold police accountable for the actions they take in such investigations and provide an evidence base on which to judge whether the increase in women being proceeded against is a result of police practices or something else.⁷⁵¹ The One in Three Campaign also indicated its support for such a measure, as long as the tool contains no gender bias and allows for situations where both parties are violent and there is no primary aggressor.⁷⁵²

NSW Police force views

- 8.36** In evidence, Assistant Commissioner Murdoch acknowledged that it is possible the pro-arrest policy has had the unintended effect of increasing arrests of women, he was also clear that he was not willing to concede, based on the absence of research at the present time, that this is the case. He explained the effect of the pro-arrest policy as he sees it:

[W]hat it has done is that since 2008 police need very good reason not to take action when they attend a domestic incident rather than the reverse, whereas it could have been argued previously, before 2008, that there was not sufficient to hold police to account for their actions at a domestic and that a proportion of victims who should have had orders applied for on their behalf by police or offenders who should have been arrested and charged by police were not.⁷⁵³

- 8.37** He went on to argue that the NSW Police Force is trying hard to address this issue through thorough investigation of the evidence, as reflected in both the Standard Operating Procedures and Code of Practice.⁷⁵⁴ Senior Constable Brian Johnston, Domestic Violence Liaison Officer at Mt Druitt in Western Sydney, an area of high domestic violence, explained how he sees the issue and acts to respond:

When we touch on the primary aggressor, it comes in two definitions: primary aggressor of the incident at hand but also the primary aggressor during the course of the relationship, which can be decades. Firstly, we look at the primary aggressor of the incident at hand. Your question was, how do we investigate and how do we ascertain who we are going to take action against? I am not a fan of the term the “pro-arrest policy”. We tend to lean a bit more to a pro-investigation policy and it is exactly that—investigating the incident at hand. So looking into the basics of who contacted the police; who is telling us what; what witnesses are available; the demeanour of the parties; and from those pieces we break it down. Then, from what is in front of us, we will identify the primary aggressor and take the appropriate action for the incident at hand.

Secondly, we look at the primary aggressor over the length of the relationship—over a protracted period of time. In Mount Druitt we touch on that more when we are looking at an incident where we are going to a property and we cannot ascertain who is at fault at the particular time or what has actually occurred. In that case we will drill back and look at the history—how many times we have been contacted and who has

⁷⁵¹ Ms Helen Campbell, Executive Officer, Women’s Legal Services NSW, Evidence, 7 November 2011, p 43.

⁷⁵² Answers to questions on notice 20 February 2012, One in Three Campaign, Additional information, p 13.

⁷⁵³ Assistant Commissioner Mark Murdoch, Corporate Spokesperson for Domestic and Family Violence, NSW Police Force, Evidence, 20 February 2012, p 40.

⁷⁵⁴ Assistant Commissioner Murdoch, Evidence, 20 February 2012, p 40.

been nominated as the person of interest in previous police attendances. That is normally what comes into play when we are looking at leaning towards an apprehended violence order, as opposed to preferring criminal charges.⁷⁵⁵

- 8.38** Mr Murdoch advised the Committee that the NSW Police Standard Operating Procedures, which are confidential to police, include ‘consideration of whether there is a history of domestic violence between the parties, the relative degree of injury inflicted on each person, and the extent to which each person present appears to fear any party.’⁷⁵⁶ He further stated that what the Standard Operating Procedures say about investigating the primary aggressor is exactly the same as what is in the Code of Practice, noting that significant emphasis is placed on investigation:

[O]n the aspect of primary aggressor what is in the SOPs on the primary aggressor aspect is exactly the same as what is in the code of practice, and talks about, as Senior Constable Johnson has told the Committee today, how we are pro-investigation. While we are pro-arrest we really push the aspect of investigation, and you need to take action where the evidence warrants. If there is evidence that warrants action being taken that is what you need to do.⁷⁵⁷

- 8.39** The Code of Practice states:

NSWPF discourages police from arresting and charging both parties arising out of a domestic or personal violence incident with limited exception (eg outstanding warrants (or if a victim maliciously damages an offenders property after being assaulted). To determine who the primary victim is when attending the scene, police will consider whether there is any prior history of domestic violence or AVOs, witness statements, the behaviour of the people involved, etc. If an officer is having difficulty determining the primary victim at the scene they are to consult their Supervisor or the DVLO for advice.⁷⁵⁸

Committee comment

- 8.40** The Committee acknowledges and appreciates the willingness of the NSW Police Force to engage with us, with inquiry participants and researchers on the issue of the increase in police proceedings against women. This is a sensitive issue that polarises some stakeholders, while also pointing to important issues of quality of police practices. Once again the discussion among inquiry participants has highlighted to us the complex dynamics of violence within intimate partner relationships, as well as the substantial demands upon police responding to domestic violence.

⁷⁵⁵ Assistant Commissioner Murdoch, Evidence, 20 February 2012, pp 40-41; Senior Constable Brian Johnson, Domestic Violence Liaison Officer, Mt Druitt, NSW Police Force, Evidence, 20 February 2012, p 41

⁷⁵⁶ Submission 74, p 19.

⁷⁵⁷ Assistant Mark Murdoch, Evidence, 20 February 2012 (in camera hearing subsequently published by the Committee), p 3.

⁷⁵⁸ NSW Police Force, *Code of Practice: NSW Police Force Response to Domestic and Family Violence*, 2009, p 24.

- 8.41** We consider that skilled, thorough investigations of allegations of domestic violence will benefit all victims, whether they are male or female, as they are the gateway to both justice and protection.
- 8.42** Like many inquiry participants we believe it imperative that a greater understanding of this issue is gained through research. We encourage the NSW Police Force and its research partners to publish the research they are undertaking on police investigations of the primary aggressor, and that the NSW Police Force use the research to inform future decisions regarding legislation, policy, operating procedures, practice, supervision and training.
- 8.43** We also consider that there is strong merit in Dr Wangmann's call for better data collection and data availability on this issue, agreeing that this is important for informed policy and decision making, not just with respect to the arrests of women vis-à-vis men, but also on all applicants' and defendants' experience of the criminal justice system.
- 8.44** In the previous chapter the Committee made recommendations to improve police practices through enhanced quality assurance, supervision and training (Recommendations 38, 39, 40 and 40), and in Chapter 4 we noted that the Domestic Violence Justice Framework to be implemented by justice agencies is intended to improve service standards, including those of police. It may be that as the consistency of police practices continues to improve, there is a shift in the trend in arrests of women. We suggest that it would be valuable to monitor this.
- 8.45** The Committee notes that there was a broad recognition among inquiry participants that women offenders and male victims do exist. Each element of the criminal justice system, as well as the range of support services, needs to be sensitive to the needs of both groups. It is important to ensure that these systems are resourced and equipped to respond appropriately.
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Recommendation 46

That the NSW Police Force, in partnership with the University of New South Wales, complete and publish its research on police investigations of the 'primary aggressor', and use the findings to identify appropriate actions in respect of legislation, policy, practice and training.

Recommendation 47

That the NSW Police Force and the NSW Local Court collaborate to improve data capture, collection and availability with regard to:

- the gender of applicants and respondents in ADVO proceedings
 - the gender of defendants and victims in domestic violence related criminal proceedings
 - the nature of the relationship between the parties, that is, whether they are intimate partners, or share other types of familial or domestic relationships
 - the nature of the charges that are laid against women vis-à-vis men
 - the resolution of domestic violence criminal charges against women and men, in terms of outcomes, sentence and other relevant matters.
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Recommendation 48

That the NSW Police Force monitor the trend in arrests of women for domestic violence offences.

Chapter 9 Apprehended domestic violence orders

In New South Wales, apprehended domestic violence orders (ADVOs) are the primary legal mechanism through which individuals are protected from domestic violence. With tens of thousands of ADVOs issued by local courts each year, it is critical that these orders are working effectively to protect victims of domestic violence.

This chapter examines the function and effectiveness of the New South Wales system for ADVOs. It begins by outlining the volume and operation of apprehended violence orders and considers stakeholder comments about community perceptions of ADVOs. The chapter then considers the law which governs the ADVO process with particular focus on the divergence of stakeholder views about what relationships should and should not be classified as ‘domestic’. Whether police should be able to issue orders was a key question in the inquiry and is also considered in this chapter. The following chapter examines some of the issues raised about breaches of ADVOs including the adequacy of conditions and the extent to which those conditions are understood by the parties.

The Department of Attorney General and Justice (DAGJ) has been conducting a review of the *Crimes (Domestic and Personal Violence) Act 2007* concurrently with this inquiry. DAGJ is looking primarily at whether the Act is meeting its objectives and other matters related to the law which governs the criminalisation of domestic violence in New South Wales.⁷⁵⁹ In addition, in August 2012 the NSW Law Reform Commission issued a Question Paper asking for public input on questions considering the application of ADVOs to people with cognitive and mental health impairment. The Committee notes that there will be areas of overlap between this inquiry and both of these reviews, especially within this chapter.

The apprehended violence order system

- 9.1** An apprehended violence order (AVO) is a court order that places restrictions on a person’s behaviour. It can be applied for by the police or by a person who is fearful for their safety. There are two kinds of AVOs. An apprehended domestic violence order (ADVO) and an apprehended personal violence order (APVO).
- 9.2** An ADVO will be ordered only where the person in need of protection and the other person are in a ‘domestic relationship.’ The term ‘domestic relationship’ has a specific meaning defined in legislation and will be addressed later in this Chapter. It includes people who are in an intimate relationship and family members.
- 9.3** An APVO protects people who are not in a domestic relationship. For example, if a person is fearful of their next-door neighbour they could apply for an APVO.⁷⁶⁰
- 9.4** The restrictions that an AVO can place on a person’s behaviour are called ‘conditions.’ One condition is common to all AVOS: that the person to whom the AVO applies must not intimidate, harass or stalk the other person. The remaining conditions are discretionary: they are determined by the court and are different for different people. The conditions might

⁷⁵⁹ Ms Penelope Musgrave, Director, Criminal Law Review, Department of Attorney General and Justice, Evidence, 17 October 2011, p 5.

⁷⁶⁰ *Crimes (Domestic and Personal Violence) Act 2007* s 18.

include that the person cannot come within a certain distance of the other person's house, or that they are not allowed to go near that person within 12 hours of drinking alcohol.

- 9.5** If someone has an AVO against them, it does not mean that they have been found guilty of a criminal offence. An AVO is a civil proceeding, not a criminal one. As such, the person whose behaviour is restricted is referred to as the 'respondent' in the matter (not the 'defendant'). It is common for an AVO to be granted with the consent of the respondent without that person making any confessions or admissions as to what they did.
- 9.6** The matter becomes an issue for the criminal law if the respondent does not comply any of the conditions on his or her order. A breach of an AVO condition is a serious criminal offence, the consequences of which are outlined in Chapter 14 on sentencing.
- 9.7** There were 24,903 apprehended violence orders (AVOs) in 2011, including both ADVOs and APVOs. This is an increase from approximately 19,000 in 2001.⁷⁶¹ In describing the increase in the number of AVOs issued, Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research (BOCSAR) explained that the entry into force of the *Crimes (Domestic and Personal Violence) Act 2007* is one likely cause because it requires police to apply for AVOs in some circumstances:

[T]here is a particular increase just before 2006-07 and you will see it continues to rise thereafter ... One reason [for this] is that there were reforms to the domestic violence laws in 2007. Those laws require the issuing of an apprehended violence order automatically with a serious domestic violence offence. But there is a jump just before that and that may be an anticipated policing effect or police taking the issue more seriously than previously—it is impossible to be sure. But on average the number of apprehended violence orders has gone up by 2.8 per cent a year over that period.⁷⁶²

- 9.8** Indeed, since 2007 the NSW Police Force has been under a statutory obligation to apply for ADVOs if they suspect or believe a 'domestic violence offence' has recently been committed, is imminent, or is likely to be committed, against the person in need of protection.⁷⁶³ Assistant Commissioner Mark Murdoch, Corporate Spokesperson on Domestic and Family Violence for the NSW Police Force observed a discernible increase in the number of applications made by police as a result:

[T]he *Crimes (Domestic and Personal Violence) Act 2007* ... has, as I have just indicated, created a number of responsibilities for police when they turn up at a domestic. In essence, they need to take action where evidence exists to support action to be taken. We have seen our legal action rates or our prosecutions for domestic violence rise as a consequence.⁷⁶⁴

⁷⁶¹ NSW Bureau of Crime Statistics and Research, 'Apprehended Violence Orders Granted from 1996', accessed 27 July 2012, <www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_pub_atoc#avo>.

⁷⁶² Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 7 November 2011, p 11.

⁷⁶³ *Crimes (Domestic and Personal Violence) Act 2007* ss 27 and 49.

⁷⁶⁴ Assistant Commissioner Mark Murdoch, Corporate Spokesperson for Domestic and Family Violence, NSW Police Force, 20 February 2012, p 40.

- 9.9 Some inquiry participants are of the view that ADVOs are overused and that there are too many orders in force, which may impact on their effectiveness.

Community perceptions of the apprehended violence order system

- 9.10 Numerous inquiry participants felt that the status of the ADVO as a serious deterrent for domestic violence has been eroded because the orders are being misused and that applications are being made too frequently and in inappropriate circumstances. Some inquiry participants pointed out that an ADVO is not providing actual protection to a victim. Instead, they describe the order as a ‘warning’ that is often trivialised by respondents and the police.⁷⁶⁵ Concerns about the misuse of APVOs for trivial matters were also raised.
- 9.11 When the Committee met with service providers in Forbes several felt that community perceptions of ADVOs are worse in regional areas. The investigation of a breach of an ADVO can be delayed because of the distances that police must travel. There was a view that ADVOs are being treated as ‘just a piece of paper’⁷⁶⁶ and as such are not providing the protection that they were intended to have. Ms Mary Dempsey, Principal Solicitor, Binaal Billa Family Violence Prevention Legal Service, drew on her professional experience of the system:

Most of my victims will say that an AVO is just a piece of paper, it does not protect them. We say if you report each breach then that is how you are protected. They say we can report the breach in Lake Cargelligo but if the police are in Condobolin they probably will not come until the next day, so I am just exposing myself to more violence by reporting it. So they really do not hold a lot of faith in AVOs, to be honest.⁷⁶⁷

- 9.12 Another concern raised in submissions and hearings was that sometimes ADVOs are used in tactical ways in family law disputes. Women Everywhere Advocating Violence Elimination Inc (WEAVE) and the One in Three Campaign both quoted from Professor Patrick Parkinson that ‘there is now a very widespread view in the community that some family violence orders are sought for tactical or collateral reasons to do with family law disputes.’⁷⁶⁸ The One in Three Campaign suggested that the Committee consider changes to the system to address this, including the implementation of a higher standard of proof in ADVO matters.⁷⁶⁹

The use of apprehended personal violence orders

- 9.13 Registrars of local courts hold the discretion to refuse to file an application for an APVO if it is frivolous, vexatious or holds no reasonable prospect of success. The Committee heard from some stakeholders that applications for trivial APVOs are commonplace. Mr Stephen

⁷⁶⁵ Submission 3a, VOCAL, p 4; Submission 4, Barnardos Australia, p 6.

⁷⁶⁶ Ms Mary Dempsey, Principal Solicitor, Binaal Billa Family Violence Prevention Legal Service, Evidence, 28 February 2012, p 25; Ms Kristy Kennedy, Graduate Solicitor, 28 February 2012, Evidence, 28 February 2012, p 28.

⁷⁶⁷ Ms Mary Dempsey, Principal Solicitor, Binaal Billa Family Violence Prevention Legal Service, Evidence, 28 February 2012, p 25.

⁷⁶⁸ Submission 6, Women Everywhere Advocating Violence Elimination, p 4; Answers to supplementary questions 20 February 2012, One in Three Campaign, Question 1, p 6.

⁷⁶⁹ Answers to supplementary questions 20 February 2012, One in Three Campaign, Question 1, p 6.

Lawrence, Solicitor Advocate, Western Zone, Aboriginal Legal Service informed the Committee that the seriousness of the conduct giving rise to an APVO is not always as great as for an ADVO. In his view it is notable that whereas an application for an ADVO will often be in conjunction with criminal charges, applications for APVOs by individual applicants are often not.⁷⁷⁰

- 9.14** Much of the benefit of ADVOs derives from community respect for the seriousness of the ADVO process.⁷⁷¹ Some inquiry participants thought that APVOs are being used in a manipulative way by parties to deal with trivial disputes and that this undermines the AVO system as a whole. Ms Donna Bliss, Chief Executive Officer, Yoorana Gunya Family Healing Centre Aboriginal Corporation, explained what she sees happening:

They are going down and doing a bit of a story at the courthouse, so they are writing out apprehended personal violence orders, and then the next person thinks, “Well, you’re not going to get away with it, so I will go down and do the same.” The court is just jam-packed with personal violence orders that are nitty-natty. It is pathetic. It is taking away from the serious violence orders that are in the court.⁷⁷²

- 9.15** A number of participants felt that it was important to highlight the distinction between ADVOs and APVOs and suggested that there should be systemic measures to ensure that the two remain functionally and perceptively distinct. The Women’s Domestic Violence Court Advocacy Service (hereafter WDVCAS) Network referred to the NSW Law Reform Commission’s 2003 report, which said that the conflation of APVOs and ADVOs can detract from the seriousness of domestic violence:

Submissions to the NSW Law Reform Commission’s inquiry into Apprehended Violence Orders highlighted the importance of separating ADVOs and APVOs, including:

- having ADVOs and APVOs together detracts from the seriousness and particular dynamics of domestic violence; and
- media criticism about the abuse of AVOs (in the generic sense) through the making of frivolous complaints does not distinguish between APVOs and ADVOs. This trivialises the gendered consequences of domestic violence and undermines the integrity of the ADVO legislation.⁷⁷³

- 9.16** In response to reports that frivolous applications for APVOs were becoming ubiquitous, BOCSAR undertook to conduct research on the issue. In a research paper published in March this year, it found that most magistrates had not reported a glut of frivolous APVO

⁷⁷⁰ Mr Stephen Lawrence, Solicitor Advocate Western Zone, Aboriginal Legal Service, Evidence, 28 February 2012, p 21.

⁷⁷¹ NSW Law Reform Commission, *Apprehended Violence Orders*, Final Report, Report 103, 2003, p 53; Ms Donna Bliss, Chief Executive Officer, Yoorana Gunya Family Healing Centre Aboriginal Corporation, Evidence, 28 February 2012, p 11; Ms Heather Blackley, Youth Services Manager, Western Plains Regional Development, Evidence, 28 February 2012, p 11; Mr Lawrence, Evidence, 28 February 2012, p 21.

⁷⁷² Ms Bliss, Evidence, 28 February 2012, p 11.

⁷⁷³ Answers to supplementary questions 5 March 2012, Women’s Domestic Violence Court Advocacy Service Network, Appendix 1, p 5.

applications. Despite this, 10 per cent of those surveyed were of the view that more than half of the APVOs they dealt with were frivolous or vexatious in nature.⁷⁷⁴

Committee comment

- 9.17** The community perception that the AVO system is abused by frivolous and vexatious litigants is not new. It was dealt with by the NSW Law Reform Commission in its 2003 Report and has also received more recent attention from BOCSAR. This research indicates that although frivolous and vexatious applications do happen, particularly for APVOs, they are not as common as some may perceive. The Committee approaches these findings with caution as sometimes conduct that appears to be trivial or frivolous on its own can be part of a pattern of behaviour that, over time, is enormously controlling or harmful.
- 9.18** The Committee is of the view that AVOs remain an important tool in the struggle against domestic violence in New South Wales, although we note that there is room for improvement and the recommendations contained in this chapter aim to achieve that. In addition, we believe that systemic strengthening of the response to domestic violence in New South Wales as recommended in this report should go some way towards improving the community perception of the AVO system.

Definition of ‘domestic relationship’ in the *Crimes (Domestic and Personal Violence Act) 2007*

- 9.19** In this section the Committee considers whether the current definition of ‘domestic relationship’ in the *Crimes (Domestic and Personal Violence) Act 2007* is too broad. No participants questioned that ‘domestic relationship’ should include married and de facto spouses, people in intimate personal relationships and family members. However, some stakeholders were of the view that the definition of domestic relationship should not include people living in the same house, or relationships involving a reliance on paid or unpaid residential care. It was suggested that these affiliations are inherently different from those that might be categorised as domestic, notwithstanding the elements of power and control that can exist in other relationships too.
- 9.20** The definition is important because sections 27 and 49 of the *Crimes (Domestic and Personal Violence) Act 2007* oblige police officers to apply for ADVOs in any circumstances where there is evidence that a domestic violence offence has or might be committed. There is no such obligation on police in relation to any other types of offences.
- 9.21** For an offence to be a domestic violence offence, it must have occurred within a ‘domestic relationship’. An expansive definition of domestic relationship, it was argued, can mean that the police are sometimes forced to apply for ADVOs in situations where it may not be necessary or appropriate. This means that police resources can be tied up in making apparently unnecessary applications rather than prioritising services when they are needed elsewhere.⁷⁷⁵

⁷⁷⁴ NSW Bureau of Crimes Statistics and Research, *Apprehended Personal Violence Orders – A Survey of NSW Magistrates and Registrars*, Crime and Justice Bulletin No 161, March 2012, pp 5-6.

⁷⁷⁵ Mr Murdoch, Evidence, 18 June 2012, p 3.

- 9.22** The NSW Police Force firmly believes that the definition is too wide. In its view, the definition should not encompass disputes between co-tenants or co-residents, for example, in dormitory accommodation, and that violence in these relationships should be defined as ‘personal violence’.⁷⁷⁶
- 9.23** Shopfront also expressed concern about other ‘unintended consequences’ of an expansive definition of ‘domestic relationship’ including the loss of the presumption in favour of bail, offences being listed as ‘domestic violence offences’ on a person’s criminal record, mandatory ADVOs being issued upon conviction and the impact on eligibility for future sentencing options including home detention.⁷⁷⁷
- 9.24** Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, DAGJ, raised another unintended consequence of the definition. He suggested that the current definition of ‘domestic relationship’ was excluding some perpetrators from programs from which they might benefit and questioned whether this effect was really the intention of the legislative drafters.
- I suppose the flipside to the definitional issue in dealing with domestic violence is that we do have a range of services and programs available for offenders that often exclude people where the offence is a domestic violence offence. Under the current definition there is a range of people who get excluded from certain programs but I do not think that the intent to exclude them is real. It is important to consider that I think in any of these definitional issues.⁷⁷⁸
- 9.25** On the other hand, Women’s Legal Services commented that narrowing the definition of domestic violence could have implications for victims’ access to services. People who are no longer classified as being in a ‘domestic relationship’ for the purpose of an order may lose access to services established specifically for victims of domestic violence.⁷⁷⁹
- 9.26** Indeed, Women’s Legal Services argued that the definition is not broad enough and should also include in the definition of ‘domestic relationship’ the new partners of ex-partners. Women’s Legal Service referred to cases where their clients had been subject to violence from the new spouse of an ex-partner and put forward that a context of power and control exists in these relationships too.⁷⁸⁰

Ensuring adequate protection for people with disabilities

- 9.27** Advocates for people with disability strongly argued that it was important to retain reference to people in supported accommodation and reliant on care services in the definition of domestic relationship. In their view, to remove these categories from the definition would

⁷⁷⁶ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 1, p 1.

⁷⁷⁷ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 4.

⁷⁷⁸ Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice, Evidence, 18 June 2012, p 18.

⁷⁷⁹ Submission 45a, Women’s Legal Services NSW, p 2.

⁷⁸⁰ Submission 45a, p 3.

mean that people with disability could lose access to the ADVO as an important avenue for protection.⁷⁸¹

9.28 As outlined above, the *Crimes (Domestic and Personal Violence) Act 2007* requires police officers to apply for ADVOs where a domestic violence offence has or might be committed but the same obligation does not apply for other offences. Thus, from the point of view of disability advocates, APVOs do not offer the same level of protection as ADVOs. They agreed that the absence of an obligation on police to apply for them is problematic because people with disabilities may not have the capacity or wherewithal to make an application themselves.

9.29 The Committee heard that people with disabilities are uniquely vulnerable to abuse.⁷⁸² Ms Ngila Bevan, Advocacy Projects Manager for People with Disability Australia, pointed out that people with disabilities are significantly more likely to be abused than people without disability and that it is important that this is recognised in the definition of domestic violence. In her view, relationships between people in a residential care facility or between an individual and their carer constitute domestic relationships:

[M]uch of this violence and abuse is perpetrated by people who are in a domestic relationship with their victims, albeit they are not always intimate partners or family members, but co-residents of the same group-home, or carers (paid or unpaid) of residential accommodation such as staff of boarding houses or larger more formal institutions.⁷⁸³

9.30 In this regard, Ms Bevan emphasised that the current definition of domestic relationship could be critical to ensure that people with disability are protected from neglect and abuse:

The *Crimes (Domestic and Personal Violence) Act 2007*... includes co-residents and carers as within the scope of people whose behaviour can constitute acts of [domestic violence] under the legislation. This legislation has the potential to become a key tool of protection for [people with disability], especially those living in institutions where the power imbalance between service providers, primary carers and the person with disability as a ‘care recipient’ can increase the risk of violence, abuse, neglect and exploitation, as can the congregation of people with disabilities compelled to live together in one place.⁷⁸⁴

9.31 Ms Bevan accepted that more work needed to be done to ensure that the definition is working effectively.⁷⁸⁵

9.32 Others put forward the view that the relationship between a carer and a care recipient does not neatly fall within the definition of ‘domestic relationship’. For example, in considering children who are in supported accommodation, Mr Paul Mulroney, Magistrate of the Children’s Court of New South Wales, noted that the carer usually will not live in the same

⁷⁸¹ Ms Janet Loughman, Principal Solicitor, Women’s Legal Services NSW, Evidence, 18 June 2012, p 3; Ms Ngila Bevan, Advocacy Projects Manager, People With Disability Australia, Evidence, 30 April 2012, p 39; Ms Rachael Martin, Principal Solicitor, Warringa Baiya Aboriginal Women’s Legal Centre, Evidence, 18 June 2012, p 3.

⁷⁸² Submission 45a, p 1; Ms Bevan, Evidence, 30 April 2012, p 39.

⁷⁸³ Ms Bevan, Evidence, 30 April 2012, p 39.

⁷⁸⁴ Ms Bevan, Evidence, 30 April 2012, p 39.

⁷⁸⁵ Ms Bevan, Evidence, 30 April 2012, pp 41-42.

location as their client and even when they do, it is their job to be there and although a power dynamic exists, it is different to that between family members. Mr Mulronev suggested that different circumstances should be dealt with by the courts on a case by case basis.

There is a real issue as to if a person is a carer in supported accommodation perhaps funded by Community Services is that domestic violence? The carer does not live there. My view, without it having been hugely considered or argued in court, is that it is not domestic violence but there would be some places where the carer will be a live-in person; it is their job to be there rather than the fact that they are part of a family or some other sort of domestic relationship and there is a different power dynamic there as well.⁷⁸⁶

- 9.33** Those who suggested narrowing the definition did not dispute that people with disabilities are vulnerable to abuse and agreed that it was important to ensure that any amendments do not dilute or erode the protections available for them.⁷⁸⁷ However, these stakeholders argued that the unique characteristics of the carer/care recipient relationship require a distinct legal response.⁷⁸⁸ Mr Murdoch, for example, supported the idea that any removal of reference to people dependent on care or in long-term residential facilities should be accompanied by specific protective measures for people with disabilities.

If we restrict the current definition, we put in place appropriate measures so that people with disabilities and carers are catered for and that they do not fall outside the protections currently provided by the ADVO process, which do not necessarily apply to the apprehended personal violence orders.⁷⁸⁹

- 9.34** Mr Murdoch explained that the NSW Police Force would have no problem with having the same obligation to make an application for an apprehended violence order in respect of people with disabilities as currently required for people in a domestic relationship. He and the Police Association suggested that there needs to be greater definitional clarity as to the circumstances in which police have that obligation so that they are not forced to make applications in inappropriate circumstances such as in respect of flatmates.⁷⁹⁰

The Australian and NSW Law Reform Commissions' view

- 9.35** The Australian and NSW Law Reform Commissions (hereafter the Law Reform Commissions) *Report Family Violence – A National Legal Response* observed that NSW legislation is notable in its failure to define 'domestic violence'. The legislation defines only 'domestic violence offence', thus not taking account of situations that might constitute domestic violence while not strictly amounting to a criminal offence. The report states that '[i]t is

⁷⁸⁶ Mr Paul Mulronev, Magistrate, Children's Court of New South Wales, Evidence, 5 March 2012, p 42.

⁷⁸⁷ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, pp 4-5; Mr Murdoch, Evidence, 18 June 2012, p 3.

⁷⁸⁸ Ms Rachelle Johnston, Project Officer, Women's Domestic Violence Court Advocacy Program, Legal Aid NSW, Evidence, 11 November 2011, p 23; Mr Murdoch, Evidence, 18 June 2012, p 3.

⁷⁸⁹ Mr Murdoch, Evidence, 18 June 2012, p 3.

⁷⁹⁰ Mr Murdoch, Evidence, 18 June 2012, p 18; Submission 63, Police Association of New South Wales, p 14.

important for the definition to capture conduct which, of itself, may not amount to a criminal offence, expanding the circumstances in which victims of violence may seek protection.⁷⁹¹

- 9.36** The Law Reform Commissions' view was that family violence should be defined as 'violent or threatening behaviour or any other form of behaviour that coerces or controls a family member or causes that family member to be fearful' which was the approach also recommended by the Victorian Law Reform Commission in its 2006 report.⁷⁹² Some stakeholders to the present inquiry also preferred the Victorian definition.⁷⁹³

The Victorian approach

- 9.37** The approach taken in Victoria broadly aligns with the views contained in the Law Reform Commissions' report. The Victorian definition was advocated by Ms Rachael Martin, Principal Solicitor, Wirringa Baiya Aboriginal Legal Centre, and generally supported by Women's Legal Services and others⁷⁹⁴ as striking the right balance between the challenges that the definition of domestic relationship creates and ensuring the protection of people with disabilities:

I agree with Mr Murdoch, the definition as it is currently is very broad and we all struggle with this, but I think there are other ways to do it differently. In our submission we actually refer to definitions in Victorian legislation, which I think reaches a nice compromise around some of these issues, particularly capturing women, people with disabilities and, say, in carer relationships or people living in residential facilities.⁷⁹⁵

- 9.38** The *Family Violence Protection Act 2008* (Vic) defines 'family violence' as behaviour undertaken by one family member against another family member where that behaviour is physically, sexually, emotionally, psychologically or economically abusive, threatening, coercive, or in any other way controls or dominates the family member and causes that family member to feel fear for themselves or someone else. It also includes any of the above behaviour that causes a child to witness or be exposed to the effects of it.⁷⁹⁶

- 9.39** 'Family member' is defined broadly and includes a spouse, relative or a child normally living with the relevant person. However, it is also someone who it is reasonable to regard as being a family member to the relevant person. The factors to be weighed in determining this include:

- the nature of the social and emotional ties between them

⁷⁹¹ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, Final Report, Vol.1, October 2010, p 236.

⁷⁹² Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, p 235.

⁷⁹³ Mr Senthoran Raj, Senior Policy Officer, Gay and Lesbian Rights Lobby, Evidence, 30 April 2012, p 42; Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, pp 4-5; Ms Martin, Evidence, 18 June 2012, p 3.

⁷⁹⁴ Submission 45a, p 4; although Women's Legal Services was of the view that flatmates should also be included in the definition which is not included in the Victorian legislation; Mr Raj, Evidence, 30 April 2012, p 42; Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, pp 4-5; Ms Martin, Evidence, 18 June 2012, p 3.

⁷⁹⁵ Ms Martin, Evidence, 18 June 2012, p 3.

⁷⁹⁶ *Family Violence Protection Act 2008* (Vic) s 5.

- whether they live together
- the reputation or cultural recognition of the relationship as being like family in their community
- the duration of the relationship and the frequency of contact
- financial or other dependence or interdependence between them
- the provision of any responsibility or care, whether paid or unpaid, by one person for the other person
- the provision of sustenance or support by one person for the other person.⁷⁹⁷

9.40 The legislation stipulates that conduct may constitute family violence even where it does not amount to a criminal offence. This can be important in the context of service provision.

Committee comment

9.41 The present inquiry presents an opportunity for the NSW Government to rethink its approach to domestic violence, including the way it is criminalised. The Committee empathises with the view expressed by the NSW Police Force that the breadth of the current definition can create challenges and sometimes forces police to make applications for ADVOs in inappropriate circumstances. The Committee also notes the point raised by DAGJ and the Shopfront Youth Legal Centre that the effect of the current definition can be to exclude alleged perpetrators from services and options from which they and their families may benefit insofar as these programs may reduce recidivism.

9.42 However, the Committee also recognises the unique vulnerability of people with disability to abuse, neglect and exploitation. We recognise that it is important that there are mechanisms built into the legal system to protect vulnerable people and that there is no dilution of existing protections for them. Indeed, we understand that this is the reason that other jurisdictions have opted to retain these relationships within the definition of ‘domestic relationship’.

9.43 The Committee is of the view that the current definition is not working as effectively as it could. It captures people that, in our view, it was not intended to, including flatmates, people living in university dormitories and people who are not in domestic or family like relationships.

9.44 The Committee notes the recommendations contained in the Law Reform Commissions’ report and in Victorian legislation which take individual contexts into account in a way that is not presently possible under the law in New South Wales. In the Committee’s view, a similar strategy should be adopted here. That strategy should acknowledge that, at its core, domestic violence occurs between people in family or family-like relationships. A new definition should make the presumption that relatives and people in intimate relationships are in domestic relationships.

9.45 Some relationships between people living in the same residential facility and people reliant on care will be domestic or family-like relationships and others will not. The various forms of

⁷⁹⁷ *Family Violence Protection Act 2008* (Vic) s 8.

modern families and living arrangements makes determining a proscriptive definition for all possible forms of ‘domestic relationship’ close to impossible because in each case it will depend on the circumstances. Accordingly, the legislation should permit some discretion for decision-makers in determining this.

Recommendation 49

That the NSW Government seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to remove the presumption that people living in the same house, living in the same residential care facility and people reliant on care are considered to be in a ‘domestic relationship’ for the purposes of the Act. All other relationships currently contained within the definition should remain.

Recommendation 50

That the NSW Government seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to create an obligation on police to make an application for an apprehended violence order where the situation involves people living in the same residential facility and people reliant on care in the same way as currently required under sections 27 and 49 of the Act.

Recommendation 51

That the Attorney General seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to permit a sufficiently flexible application of the law to allow decision-makers to determine other relationships to also be deemed a ‘domestic relationship’ in appropriate circumstances. The amendment should permit the decision-maker to have regard to the circumstances of the relationship including:

- whether the people live together
- whether the people have a relationship of care or dependence
- the reputation of the relationship and cultural recognition of the relationship as like family
- the duration of the relationship.

Third party applications for apprehended domestic violence orders

9.46 A question arose during the inquiry as to the wisdom of permitting only police and victims to make applications for AVOs.⁷⁹⁸ It was suggested that restricting eligible applicants to only persons in need of protection and police excludes some of the more vulnerable victims of domestic violence, such as young people, people under guardianship orders and people with disability, from accessing the protection afforded by AVOs. A number of inquiry participants advocated that in certain circumstances third party applications for AVOs should be available.⁷⁹⁹

⁷⁹⁸ *Crimes (Domestic and Personal Violence) Act 2007* s 48(2).

⁷⁹⁹ Submission 50, People with Disability Australia, p 12; Submission 51, Shopfront Youth Legal Centre, p 12; Submission 59, NSW Public Guardian, p 6; Mr Ian Day, Chief Executive Officer,

- 9.47** The Shopfront Youth Legal Centre advocated the potential value of permitting a carer to make applications for AVOs on behalf of young people with a cognitive or mental health impairment.⁸⁰⁰ Shopfront noted that at present only a parent who is protected under a related AVO or the police can apply for an AVO for a person who is under 16 years old and that even young people who are over 16 can find it difficult to make an application themselves, particularly where they have a mental health impairment:

It is worth considering amending the *Crimes (Domestic and Personal Violence) Act* to allow a carer to apply for an AVO on behalf of a young person with a cognitive or mental health impairment.

Unfortunately, police may not always be proactive in making applications, or a young person may be reluctant to involve the police, particularly if the young person has had negative experiences with police in the past. Young people over 16, particularly if they have a cognitive or mental health impairment, may find it very difficult to apply for an AVO in their own right.⁸⁰¹

- 9.48** The Committee also heard from People with Disability Australia⁸⁰² and the Public Guardian⁸⁰³ that people with cognitive impairment, under guardianship orders, or with certain physical disability, may be unable to pursue an AVO themselves. The Public Guardian concurred with the position of the NSW Law Reform Commission in its 2003 Report on AVOs that people with disabilities have limited access to the protection offered by the AVO system.⁸⁰⁴

- 9.49** The Committee was advised that sometimes people with disabilities or with mental illness can be fearful to make a complaint. For example, Ms Tara Dias, Senior Policy Officer with the NSW Consumer Advisory Group – Mental Health, explained that people with mental illness may not have the confidence to make an application and sometimes feel that their illness is used to discredit them.⁸⁰⁵

They feel they are outside the system because of their mental health status, and perhaps in addition because of their cultural and linguistic backgrounds, they feel the perpetrators of these crimes are better at establishing allegiances with police and other authorities and fear being completely discredited.⁸⁰⁶

- 9.50** Ms Bevan noted that people with disabilities can become used to abusive behaviour in an institutional setting. Ms Bevan provided an example to the Committee where perhaps as a punishment a paid carer might refuse to change the bed linen of a person with continence issues, leaving that person to remain in their soiled chair or bed. It might be that this happens from time to time in such a way that the person with a disability becomes used to it. In Ms

Council on the Ageing, Evidence, 30 April 2012, p 53; Ms Tara Dias, Senior Policy Officer, NSW Consumer Advisory Group – Mental Health Inc, Evidence, 30 April 2012, p 46; Ms Bevan, Evidence, 30 April 2012, p 51.

⁸⁰⁰ Submission 51, p 12.

⁸⁰¹ Submission 51, p 12.

⁸⁰² Submission 50, p 12; Ms Bevan, Evidence, 30 April 2012, p 39.

⁸⁰³ Submission 59, p 6.

⁸⁰⁴ Submission 59, p 6.

⁸⁰⁵ Ms Dias, Evidence, 30 April 2012, p 46.

⁸⁰⁶ Ms Dias, Evidence, 30 April 2012, p 46.

Bevan's view this is the kind of situation in which it would be useful for an organisation like People with Disability Australia to be able to intervene such as through an application for an AVO.⁸⁰⁷

- 9.51** Guardians are appointed under guardianship orders for people who are incapable of making their own decisions regarding, in particular, their health care, finances and living arrangements. These guardians will take over responsibility for such decisions in the best interests of the person. However, guardians do not have the right to make an AVO application. The Public Guardian explained that instead it will advocate for service providers to support a person under a guardianship order to apply for an AVO themselves or request that the police make an order for a person under guardianship. Nonetheless, it reported that these measures are not always effective:

[T]he degree of police discretion involved in this process of applying for an AVO creates some uncertainty and may place too great a burden on the person in need of protection to pursue the matter. This can be further complicated by individual police officers having varying degrees of knowledge and experience of people with disability, of the authority of a guardianship order and the role of a guardian.⁸⁰⁸

- 9.52** The Public Guardian advised the Committee that in at least one case it has successfully sought a declaration of the local court that it could be recognised as an applicant for an AVO for a woman under guardianship.⁸⁰⁹ However, the Public Guardian is reluctant to rely on solicitors to have to argue the case each time it would like to seek an AVO on behalf of a person already subject to a guardianship order. Accordingly it recommended that section 48 of the *Crimes (Domestic and Personal Violence) Act 2007* be amended to allow for an application for an AVO to be made by the person, and/or their appointed guardian, and/or the NSW Police Force.⁸¹⁰

The NSW Law Reform Commission 2003 report on apprehended violence orders

- 9.53** In its 2003 report on AVOs, the NSW Law Reform Commission did not support the general availability of third party applications for AVOs.⁸¹¹ However, it recognised that 'there are some groups that are disadvantaged by their lack of understanding or physical incapacity who would benefit from third party applications being made possible.'⁸¹² As such, the Commission recommended that:

Authorised third parties should be allowed to make applications on behalf of people with an intellectual disability, people under Guardianship orders and people with certain physical disabilities.⁸¹³

⁸⁰⁷ Ms Bevan, Evidence, 30 April 2012, p 51.

⁸⁰⁸ Submission 59, p 6.

⁸⁰⁹ Submission 59, pp 7-8.

⁸¹⁰ Submission 59, p 9.

⁸¹¹ Cf the Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010 which is silent on the question of third party applications for AVOs.

⁸¹² NSW Law Reform Commission, *Apprehended Violence Orders*, Final Report, 2003 [6.8].

⁸¹³ NSW Law Reform Commissions, *Apprehended Violence Orders*, Final Report, 2003, Recommendation 18; Also quoted in Submission 50, p 13.

- 9.54 The Commission suggested that this amendment would provide greater protection from domestic violence for people with disability and would also assist guardians to promote individual welfare and protect people from abuse or neglect.⁸¹⁴

Committee comment

- 9.55 Consistent with the previous section concerning the definition of ‘domestic relationship’, the Committee acknowledges that people with disabilities are especially vulnerable to abuse. The Committee is troubled that the current system of applications for ADVOs is not always effective at protecting some of the most vulnerable members of our society. Although concerned individuals, or institutions such as the Public Guardian, can request that the police make an application for an AVO, this is a cumbersome process and is not working well.
- 9.56 The Committee sees value in the approach recommended by the NSW Law Reform Commission that third party applications for AVOs should be available in some circumstances. In our view this would work as one mechanism to ensure outcomes of safety and freedom from violence for victims in line with Recommendation 6 in Chapter 4.

Recommendation 52

That the NSW Government seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to permit authorised third parties to make applications for the issuance, variance or revocation of apprehended domestic violence orders on behalf of people with cognitive impairment, under guardianship orders, and people with certain physical disability.

Issuing apprehended violence orders

- 9.57 AVOs are issued by magistrates. Where an AVO is needed after hours, the police can make an application to an authorised justice, an employee of DAGJ, who can issue a provisional order which will last for up to 28 days.⁸¹⁵ The authorised justice is an employee of the DAGJ who is available 24 hours a day.⁸¹⁶ The provisional order will be listed for consideration in a local court within that time period so that it can be reviewed, amended, revoked or finalised by a local court magistrate.
- 9.58 The Committee has heard that there are some problems with this system. These include that the District Court does not have the authority or responsibility to amend, revoke, or finalise AVOs and that the afterhours system is inadequately protecting victims of domestic violence and is cumbersome in practice.

⁸¹⁴ Submission 59, pp 6-7.

⁸¹⁵ *Crimes (Domestic and Personal Violence) Act 2007* s 25.

⁸¹⁶ Judge Graeme Henson, Chief Magistrate of New South Wales, Evidence, 5 March 2012, p 29; Mr Thomas, Evidence, 30 April 2012, p 26.

Higher courts' authority to amend, revoke and finalise apprehended violence orders

9.59 Where an ADVO is issued against a person who has also been charged with a serious criminal offence, the local court has jurisdiction to hear the application for the ADVO. This will occur at the same time as the criminal case is remitted for trial in a higher court (either the District or Supreme Court). An anomaly in this system is that the higher court does not have the power to revoke, vary or finalise the ADVO. As such, at the conclusion of the criminal case, the ADVO matter is remitted back to the local court for finalisation. The Committee was told that this creates both a duplication of process and also a burden on the victim who will have to appear in the local court again and, if the ADVO is contested, give substantially the same evidence once more. This issue is being considered by DAGJ in its review of the *Crimes (Domestic and Personal Violence) Act 2007*. Judge Graeme Henson, Chief Magistrate of New South Wales, explained the problem as he sees it:

It gets to the ludicrous stage where somebody who is subject to a domestic or personal violence order and is also found guilty of a criminal offence appeals to the District Court, which has the power to deal with appeal, no power to deal with the revocation or confirmation of the other order. So I am totally in agreement that if one lot goes up then the associated civil proceedings go up with it to the District Court. I am not really sure that the Supreme Court would be entering into this arena but certainly the District Court does in its appellate role.⁸¹⁷

9.60 Mr Thomas of DAGJ speculated that the issue of the jurisdiction of higher courts to deal with AVOs was likely not considered at the time the *Crimes (Domestic and Personal Violence) Act 2007* was drafted. He acknowledged that it 'is a jurisdictional problem that serves no purpose and we need to fix it'.⁸¹⁸

9.61 Women's Legal Services advocated that the matter should be dealt with by the higher court at the time that the criminal matter is being dealt with, emphasising the importance of avoiding the further traumatisation of the victim by requiring him or her to appear to give evidence again:

The approach taken should preserve natural justice and fairness for all parties while minimising the extent to which the victim is retraumatised by having to reappear to give evidence about the same fact situation.⁸¹⁹

9.62 Judge Henson emphasised that it was important that higher courts are not only given the jurisdiction to hear AVO matters but have a responsibility to deal with them, rather than retain the option to remit the AVO matter back to the Local Court.

[The District Court] should be given the responsibility, not just the opportunity—there are two different outcomes in that—to deal with it at the same point in time.

Why I differentiate between responsibility and opportunity is because quite often where there are summary proceedings attached to indictable proceedings that go to the District Court, even though they have the power to deal with them a lot of judges

⁸¹⁷ Judge Henson, Evidence, 18 June 2012, p 19.

⁸¹⁸ Mr Thomas, Evidence, 30 April 2012, p 29.

⁸¹⁹ Answers to questions on notice taken during evidence 7 November 2011, Women's Legal Services NSW, Attachment A.

send them back to the Local Court rather than deal with them themselves. Unless you make the District Court responsible for determining it to finality without that outcome you will simply create administrative difficulties and expectation difficulties and increase the workloads in both jurisdictions.⁸²⁰

Committee comment

- 9.63** The Committee acknowledges that consideration is being given to matters of jurisdiction as part of the DAGJ review of the *Crimes (Domestic and Personal Violence) Act 2007*. Nevertheless, we are of the view that the District and Supreme Courts of New South Wales should exercise authority to amend, revoke and finalise apprehended violence orders.
- 9.64** The Committee agrees with Judge Henson that higher courts should not only have the jurisdiction but also the obligation to deal with related civil matters at the same time as determining the criminal matter. This should improve efficiencies, permitting matters to proceed through the legal system with fewer court appearances necessary. More importantly, it should avoid a situation where the victim will need to attend the Local Court again, after the District Court has dealt with the matter, to give substantially the same evidence.
- 9.65** For the sake of clarity, the Committee is not recommending that applications for ADVOs or APVOs should be initiated in the District or Supreme Courts.
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Recommendation 53

That the NSW Government seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to give the District Court of New South Wales and the Supreme Court of New South Wales the authority and responsibility to amend, revoke and finalise apprehended violence orders when the court is already determining related criminal matters.

Police issued apprehended violence orders

- 9.66** Most incidents giving rise to an application for an ADVO occur outside business hours. They constitute more than 80 per cent of the orders applied for by the NSW Police Force. The Committee heard evidence that the current system whereby police can apply to an authorised justice outside business hours for a provision ADVO causes delay in the serving of orders and that this leaves the victim without protection in the meantime. It also creates administrative and operational challenges for police: when an order is granted, police can spend a great deal of time searching for the respondent in order to serve it.
- 9.67** In practice, the application is made through the Computerised Operational Policing System (COPS). Ms Elizabeth Munce, Domestic Violence Liaison Officer with Hurstville Local Area Command, explained to the Committee how it works:

You have to create a Computerised Operational Policing System [COPS] event outlining the incident that occurred, fill in some other paperwork for the AVO and it then gets transferred by our electronic system where the registrars will then hopefully

⁸²⁰ Judge Henson, Evidence, 18 June 2012, p 19.

grant the order. They scan it. It comes back on a field computer system. We print it out and serve it on the defendant.⁸²¹

- 9.68** Several stakeholders were concerned about this process. One of the more pressing issues is that this system involves several points of delay and the longer it takes to issue and serve the order, the greater the length of time for which a victim is left without protection.
- 9.69** Other states have sought to address this by permitting a police officer of or above the rank of sergeant to issue an interim safety notice, having the same effect as an interim ADVO for a limited time until the matter can be listed in court. Indeed, New South Wales is the only Australian jurisdiction that does not allow police to issue interim orders.⁸²²
- 9.70** Over the course of the inquiry the Committee heard mixed views about whether police issued ADVOs are a good idea. Some inquiry participants were in favour of it, others were fundamentally opposed,⁸²³ and yet others were concerned about aspects of how it would work in practice. Issues related to accountability, detaining people to serve orders and how long police issued orders should last.

Accountability

- 9.71** A prevalent criticism of police issued ADVOs was that there would be a loss of accountability if the independent oversight that exists through the authorised justice was abolished.⁸²⁴ Judge Henson explained this:

[T]he importance of the authorised justice is that it provides a measure of accountability ... The police know that they have to provide a level of evidence up to a point to get a level of satisfaction to generate the order and there is a temptation in this for police officers to take the easy way out. I do not say that they will, but the temptation is there.⁸²⁵

- 9.72** More philosophical objections to a further level of intrusion into people's lives were also voiced.⁸²⁶ For example, Mr Lawrence of the Aboriginal Legal Service was concerned that a police issued ADVO would be an intrusion into people's lives and potentially capricious:

I think there are philosophical problems with it because it is another level of intrusion into people's lives. It is ordered by the police, it is potentially arbitrary and I do not know that it is a real solution, but it is an interesting idea.⁸²⁷

⁸²¹ Ms Elizabeth Munce, Domestic Violence Liaison Officer, Hurstville Local Area Command, Evidence, 21 March 2012, p 8.

⁸²² Mr Thomas, Evidence, 18 June 2012, p 18.

⁸²³ Submission 71, Hawkesbury Nepean Community Legal Centre, p 28; Judge Henson, Evidence, 18 June 2012, p 17.

⁸²⁴ Submission 45a, p 4; Ms Blackley, Evidence, 28 February 2012, p 14; Dr Jane Wangmann, Lecturer in the Faculty of Law, University of Technology Sydney, Evidence, 18 June 2012, p 18; Ms Loughman, Evidence, 18 June 2012, p 16; Judge Henson, Evidence, 18 June 2012, p 17;.

⁸²⁵ Judge Henson, Evidence, 18 June 2012, p 17.

⁸²⁶ Judge Henson, Evidence, 18 June 2012, p 17; Mr Lawrence, Evidence, 28 February 2012, p 23.

⁸²⁷ Mr Lawrence, Evidence, 28 February 2012, p 23.

- 9.73** In country areas, police are often friends with most of the community and at least one stakeholder was concerned that this might mean that police in regional communities could have more difficulty issuing the order. Ms Heather Blackley, Youth Services Manager with Western Plains Regional Development, for example, expressed concern about a conflict of interest that might arise in a system that would be asking police to issue orders against their friends:

I would have some really major concerns with local police stations where the police officers have been there for a long, long period of time... they are mates with lots of other members, these are small communities, they play sport together, they go to the clubs together, they drink together. I would have some concerns unless there was really major training done for them that the decision that they made in signing off or not signing off for an AVO would really worry me.⁸²⁸

- 9.74** A similar issue was raised by Judge Henson in relation to situations where a sworn police officer is accused of domestic violence. Judge Henson suggested that an obvious tension that would arise, particularly for police working in regional or remote areas, where a sergeant must make a decision as to whether to issue an AVO against his or her colleague, the consequences of which would be to remove that officer from frontline duties:

You should understand that it is not unknown for serving police officers to be the subject of domestic violence complaints. Once that interim order is made they are required to surrender their equipment and they go from being front-line police to police confined to barracks, as it were... you may be asking a sergeant within a particular country area that is short on staff to make a decision as to whether that front-line police officer is taken out of availability by the making of an order on the spot or not, and we can understand that the opportunity for people to criticise that particular sergeant when an order is not made is manifest.⁸²⁹

- 9.75** The Office of the Director of Public Prosecutions (ODPP) suggested steps that could be taken to address the reluctance of some police to proceed against their colleagues. The ODPP put forward that there should be a protocol that in any domestic violence incident involving a sworn police officer, a senior officer should attend the scene to ensure proper procedures are followed. It added that if a police officer is alleged to have breached an ADVO, it should automatically be referred to the ODPP to manage the case, not the police prosecutor:

[T]o overcome this bias, the ODPP suggests that there should be in place a protocol that a senior officer, (either a duty officer or at least an Inspector) attends the scene of the alleged crime so that proper procedures are followed. There should also be an automatic referral to the ODPP if the person of interest, namely a police officer, breaches an ADVO. That is there should be no police discretion as to whether charges should be laid.⁸³⁰

Detention for service of an order

- 9.76** The police already have some powers to detain individuals pursuant to the *Crimes (Domestic and Personal Violence) Act 2007*⁸³¹ but the Committee was told that these powers are not adequate in

⁸²⁸ Ms Blackley, Evidence, 28 February 2012, p 14.

⁸²⁹ Judge Henson, Evidence, 5 March 2012, p 29 and also Evidence, 18 June 2012, p 17.

⁸³⁰ Submission 22, Office of the Director of Public Prosecutors New South Wales, p 1.

⁸³¹ *Crimes (Domestic and Personal Violence) Act 2007* ss 89 and 90.

practice. Section 89 provides that if a police officer is about to make an application for a provisional order, he or she can direct the respondent to remain at the scene and if they refuse, the police officer may arrest and detain the person until the order is served.⁸³²

9.77 If the person agrees that they will stay at that location, then assuming there are no criminal charges, the police cannot detain the person or convey them to a police station. The Committee heard that it is commonly the case that the respondent will leave the scene before police return to serve the order and, consequently, police resources are taken up trying to locate that person.

9.78 The Committee was informed that a great deal of police time is spent trying to locate respondents to serve provisional ADVOs.⁸³³ This is especially concerning because the ADVO is not effective until it is served. Sergeant Prue Burgun, Treasurer of the NSW Police Association, explained that every shift she supervises will involve tasking officers to serve orders on ADVO respondents and that victims are left unprotected in the meantime.⁸³⁴ Ms Eleonora Raffo, Coordinator of the Liverpool and Fairfield Staying Home Leaving Violence Project, South West Sydney Legal Centre, held a similar view and pointed out that under the present system it can take months for ADVOs to be served. In her view, police issued orders are ‘a great idea’ because they will ensure immediate protection for the victim.⁸³⁵

9.79 Ms Susan Pier, Coordinator of the WDVCAS Network was supportive of police issued ADVOs so long as they were provisional and in force only until the nearest court date. In her view this is a practical measure to ensure that respondents are served with interim orders in a timely fashion:

[T]hey have the defendant or the perpetrator with them so they can actually serve those orders on them immediately. The concern at the moment is either the time they ring for an on-call magistrate—yes, magistrates are on call but there is a time delay when a perpetrator may not be able to be retained or has left the scene, so the order is in place but because it has not been served on the defendant they are not being able to be acted upon. So we can see some merit in senior police being able to take out provisional orders that are in place until the first court date mention.⁸³⁶

9.80 Section 90 of the *Crimes (Domestic and Personal Violence) Act 2007* provides that police may detain at the scene a person whom they reasonably suspect will be a respondent in an ADVO matter in order to serve the provisional order. However, the Committee was informed that this is also impractical because it requires another car to go and get the order and bring it to the scene.⁸³⁷

⁸³² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 11-12.

⁸³³ Sergeant Prue Burgun, Treasurer, Police Association of New South Wales, Evidence, 20 February 2012, p 53.

⁸³⁴ Ms Burgun, Evidence, 20 February 2012, p 53.

⁸³⁵ Ms Eleonora Raffo, Coordinator, Liverpool and Fairfield Staying Home, Leaving Violence Project, South West Sydney Legal Centre, Evidence, 26 March 2012, p 46.

⁸³⁶ Ms Susan Peir, Coordinator, Women’s Domestic Violence Court Advocacy Service Network, Evidence, 5 March 2012, p 14.

⁸³⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 11-12.

- 9.81** The NSW Police Force explained that it is not possible for the police to leave an officer with the person at the scene due to resource constraints and also for the safety of the officers:

Police do not have adequate resources to maintain a vigil with the defendant while the informant leaves the scene. Most car crews have two officers. For OH&S reasons it is impractical to split a crew as the lone officer is at risk in an already volatile situation. The officer returning to the station is also at risk as there is a chance that they might come across other urgent duties or situation on the way. The other option to maintain a vigil with the defendant is to tie up a second crew which is also impractical. Many police stations only have one car crew, particularly in remote locations.⁸³⁸

- 9.82** The Committee heard that as a result, police will often leave the respondent at the scene while they return to the police station to complete the application for an ADVO:

In reality most police have no option but to leave the defendant at the scene. If the defendant leaves after police have gone no offence is committed and no powers exist to detain him/her. There is also a risk of further violence to the victim if left behind and/or to the victim's property. Where the defendant has left the scene police have to waste resources trying to locate him/her for service.⁸³⁹

- 9.83** The NSW Police Force and the Police Association both advocated that police be given the power to detain the defendant and convey him or her to the police station until an authorised officer has determined whether a provisional order will be made and for service if such an order is granted.⁸⁴⁰ The rationale for this request was explained by the NSW Police Force as follows:

[A]mendments are sought to allow police to arrest and detain a person for the purpose of making and serving a provisional order. The proposal would deliver to victims and their families the immediate support and protection of an enforceable order. It also provides a lawful and very effective means of removing the offender from the site of the domestic incident, which has the immediate effect of de-escalating the violence and creating a sense of safety for the victim. Furthermore, it would also reduce the time and resources currently expended in trying to locate offenders to effect service.⁸⁴¹

- 9.84** An analogy given by the Police Association was that of a breath test. Where an individual has a roadside alcohol reading that is positive they are taken back to the station for another test, which is a deprivation of liberty without conviction for the purpose of eliminating risk of harm to others.⁸⁴²

⁸³⁸ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 11-12.

⁸³⁹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 11-12.

⁸⁴⁰ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 11-12; Mr Murdoch, Evidence, 18 June 2012, p 16.

⁸⁴¹ Submission 74, NSW Police Force, p 22.

⁸⁴² Ms Burgun, Evidence, 20 February 2012, p 58.

9.85 Some stakeholders in favour of police issued ADVOs pointed to police responsibilities under the Bail Act 1978 as another analogous power held by police.⁸⁴³ Under the *Bail Act 1978*, police have the power to deny a person bail and detain them in custody.⁸⁴⁴

9.86 Civil liberties arguments were common among stakeholders objecting to a proposed police power to detain for service. Some stakeholders were of the view that detention for service of an ADVO is not comparable to bail because in relation to the ADVO, a criminal offence is not alleged to have occurred.⁸⁴⁵ Mr Lawrence was of this view:

You can compare it to bail, but it is philosophically different because with bail you are talking about someone who has been arrested for a criminal offence. In this case you are talking about someone who has not committed a crime who is to be ordered out of their own home by a police officer.⁸⁴⁶

9.87 Ms Annmarie Lumsden, Executive Director of Strategic Policy Planning and Management Reporting at Legal Aid, was also of the view that the comparison with bail is not quite right and that serious consideration should be given to gaps in the system, rather than giving police a broad authority to detain for service:

Deprivation of liberty is a fairly serious step. It is done in terms of bail because a person has committed a criminal offence, which may or may not occur in these circumstances. I think rather than giving carte blanche to detention that perhaps we should look at the circumstances in which detention is allowed and try to determine whether there are any gaps and if there are gaps then plug them.⁸⁴⁷

9.88 In response to these arguments, Mr Murdoch stated that in his view the concerns about civil liberties were being taken too far and that, on balance, it was better to detain a person for a few hours to serve them with an ADVO than to leave them behind at the scene without police supervision:

We need some balance in this whole argument about domestic violence. There are the civil liberties of the perpetrator and the rights of the victim. We heard, quite rightly, from Ms Walker that it is a basic human right for a woman to live her life free from violence. Let us get the balance right, human rights and civil liberties. If someone has to spend an hour or so at a police station while we make application for an order to protect someone I think that is a fair compromise to make in my view.⁸⁴⁸

9.89 The NSW Police Force also pointed out that leaving the respondent at the scene without a police presence can place the person in need of protection at risk.⁸⁴⁹ It suggested that if police have the authority to detain the alleged offender it can permit both parties to cool down and

⁸⁴³ Mr Murdoch, Evidence, 18 June 2012, p 16; Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 9-10; Mr Chris Helby, Solicitor, Callachor and Helby Solicitors, Evidence, 28 February 2012, p 23.

⁸⁴⁴ Mr Murdoch, Evidence, 18 June 2012, p 16.

⁸⁴⁵ Ms Annmarie Lumsden, Executive Director, Strategic Policy Planning and Management Reporting, Legal Aid NSW, Evidence, 18 June 2012, p 17.

⁸⁴⁶ Mr Lawrence, Evidence, 28 February 2012, p 23.

⁸⁴⁷ Ms Lumsden, Evidence, 18 June 2012, p 17.

⁸⁴⁸ Mr Murdoch, Evidence, 18 June 2012, p 17.

⁸⁴⁹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 11-12.

the victim to be immediately protected.⁸⁵⁰ Mr Murdoch explained that the fundamental priority of police issued ADVOs would be to better protect the victim of domestic violence, while not denying the alleged perpetrator access to court oversight:

This is all about improving outcomes for victims, all about immediate care and protection. It is not about—not about—making life easier for police; it is about better supporting the victim and getting immediate care and protection. ... We would also argue that having the ability to remove the perpetrator from the home, if that is where the incident has occurred, gives time for the whole situation to de-escalate, gets the perpetrator out of the place and cools his heels at the police station for so long as it takes to make application for the order, do the paperwork and give it to him. He still gets his day in court.⁸⁵¹

9.90 Indeed, the Committee was told that this has been the Victorian experience. In that State, because safety notices can be issued only by a police officer of the rank of sergeant or above, police usually take the respondent back to the police station in order to serve the order. Detective Inspector Kerryn Hynam, Officer in Charge of the Violence against Women and Children Strategy Group with Victoria Police, explained that this had the positive effect of providing immediate safety to the victim:

That has provided additional benefits, such as the immediate safety of affected family member was assured because the respondent was taken from the scene; so ongoing issues were not occurring.⁸⁵²

9.91 Detective Inspector Hynam also told the Committee that in the evaluation of their police issued safety notices, perpetrator feedback was that they when they were given a safety notice at the scene, they viewed it as no more serious than a parking ticket. However, when they were taken back to the police station to be served with an order, they took the notice much more seriously.⁸⁵³

9.92 The NSW Law Reform Commission recommended in its 2003 report on AVOs that police should have the power to detain a person for the purpose of serving an interim AVO.⁸⁵⁴

How long should a police issued apprehended domestic violence order remain in force?

9.93 Among those who supported the idea of police issued ADVOs, there were varying views as to how long a police issued ADVO should operate before the matter must be brought before the court.

9.94 Victoria Police reported that while the capacity for police to issue safety orders has improved a number of aspects of the police response to domestic violence, both for victims and for police, there are some aspects of the system that prove challenging. In particular, there are

⁸⁵⁰ Mr Murdoch, Evidence, 18 June 2012, p 17; Mr Jeff Fox, Registrar, Forbes Local Court, Evidence, 28 February 2012, p 38.

⁸⁵¹ Mr Murdoch, Evidence, 18 June 2012, p 16.

⁸⁵² Detective Inspector Kerryn Hynam, Officer in Charge Violence Against Women and Children Strategy Group, Evidence, 30 April 2012, p 17.

⁸⁵³ Ms Hynam, Evidence, 30 April 2012, pp 17-18.

⁸⁵⁴ NSW Law Reform Commission, *Apprehended Violence Orders*, Final Report, Report 103, 2003, Recommendation 52.

difficulties with the timeframe for which safety notices last. Superintendent Rod Jouning from the Sexual and Family Violence Division of Victoria Police explained that the safety notices last for 72 hours and it can be difficult to get alleged perpetrators before a court within that timeframe.

[I]t does have its limitations, as Kerry Hynam has already pointed out, particularly in rural areas, where 72 hours has been a bit of a difficulty because country members quite often just cannot have the matter put before a court within that time; it could be two or three weeks between sittings.⁸⁵⁵

- 9.95** Mr Murdoch noted the timeframe problems in Victoria and suggested that courts are under even greater pressure in New South Wales. He advocated that police issued ADVOs should last for up to 28 days until the matter can come to court.

The legislation provides for 28 days and we advocate that being maintained. Again, the paper talks about the difficulty of getting matters listed and the problems they have encountered in Victoria.⁸⁵⁶

Should a police issued apprehended domestic violence order go to court at all?

- 9.96** Most stakeholders strongly agreed that police issued orders should be interim and last only for a short period until the matter can be heard before a court.⁸⁵⁷ However, other inquiry participants thought that a police issued ADVO should not be subject to court oversight at all unless the order is contested or breached.⁸⁵⁸ The Police Association, for example, prefer a model whereby orders would be issued on the spot and if the victim and perpetrator agreed to the order, then there should be no need to go to court.

If both the victim or the person in need of protection and the offender agree to those conditions then that is it, no-one goes to court... the final position of our organisation is that it should be a final order to prevent those issues of victims having to go to court.⁸⁵⁹

- 9.97** The Police Association put forward in its submission that the necessity for ADVO matters to go to court is overstated and potentially discourages victims of domestic violence from coming forward:

[W]e believe that the necessity for a Courtroom is overstated. The advantages of uncontested orders not having to go to Court far outweigh attendance at Court. A Courtroom is seen as adversarial, confrontational, intimidating and often inconvenient for people who have work commitments.

⁸⁵⁵ Superintendent Rod Jouning, Sexual and Family Violence Division, Victoria Police, Evidence, 30 April 2012, p 18.

⁸⁵⁶ Mr Murdoch, Evidence, 18 June 2012, p 16.

⁸⁵⁷ Ms Peir, Evidence, 5 March 2012, p 14.

⁸⁵⁸ Mr Helby, Evidence, 28 February 2012, p 22; Mr Fox, Evidence, 28 February 2012, p 38; Mr Paul Jones, Crime Manager, Lachlan Local Area Command, Evidence, 28 February 2012, p 38; Mr Robert Ryan, Commander, Lachlan Local Area Command, Evidence, 28 February 2012, p 39.

⁸⁵⁹ Ms Burgun, Evidence, 20 February 2012, p 58.

In fact the immediacy of being able to obtain an order can quite cogently be argued reflects the seriousness of a defendant's actions. Further it may even encourage people to come forward and report domestic violence, as victims would be aware that they would not have to go through the Court process for uncontested ADVO applications.⁸⁶⁰

9.98 In its answers to supplementary questions the Police Association suggested that a system that did not automatically require the parties to attend court would give domestic violence liaison officers (DVLOs) more time to actively target recidivist offenders. This system, in its view, would also reduce the volume of domestic violence matters before courts.⁸⁶¹

9.99 The Association suggested that such orders should remain in effect for 12 months from the date of issue.⁸⁶² Other inquiry participants thought that parties often just need some time apart and a short-term police issued ADVO, lasting only a few days, could achieve this aim without involving courts.⁸⁶³ Mr Jeff Fox, Registrar at Forbes Local Court advocated that the system should cater for police issued ADVOs without needing to go to court:

Often it needs only a day or two for alcohol intoxication or the effects of drugs to wear off and everybody is back together. It would be good if the police could issue a temporary order separating the parties without having to go to court. If there are repeat offences, more serious action could be taken. At present they are obliged to bring the matters to court. As I said, many people do not want to do that and there are inappropriate orders for those circumstances.⁸⁶⁴

Technological challenges

9.100 Mr Murdoch noted in evidence that in the Victorian system of police issued ADVOs, the orders are issued as hardcopy documents. In New South Wales, police work electronically and enter the information into their systems and this is something police want to retain.⁸⁶⁵

9.101 The NSW Police Force suggested that, where a police officer of the requisite rank is present at the domestic violence incident, an ADVO could be created on the spot through mobile data terminals in police cars, or handheld devices similar to those currently used by parking inspectors. In their view this could streamline police processes and minimise the need to take the respondent into custody:

Sergeants attending domestic violence incidents would have the capacity to consider ADVO applications at the scene if the ADVO system could be accessed through mobile data terminals in police cars or if a hand held device similar to those issued to council rangers and parking officers were implemented. Such device could print out an instant provisional order in receipt form. Alternatively, supervisor and duty officer vehicles fitted with printers could print out provisional orders etc ... This capacity at the scene, when adopted could significantly streamline the process removing the

⁸⁶⁰ Submission 63, Attachment 1, p 11.

⁸⁶¹ Answers to supplementary questions 2 February 2012, Police Association of New South Wales, Question 1, p 1.

⁸⁶² Submission 63, p 13.

⁸⁶³ Mr Fox, Evidence, 28 February 2012, p 38.

⁸⁶⁴ Mr Fox, Evidence, 28 February 2012, p 38.

⁸⁶⁵ Mr Murdoch, Evidence, 18 June 2012, p 16.

requirement to convey the defendant to a police station, time spent in the custody process and time waiting for an ADVO.⁸⁶⁶

- 9.102** In rural and regional NSW this use of technology is not always effective. The NSW Police Force acknowledged the challenges that inadequate satellite coverage in regional and remote areas can present.⁸⁶⁷ Commander Marty Fileman, Mudgee Local Area Command, elaborated that in his view the use of mobile data terminals might not work in the country so police should still be able to issue paper-based ADVOs at the scene:

It is different in the city because they have laptops in their car. In the country you lose coverage five minutes out of town. It might have to be paper based depending on where you are. It will save a lot of time and it will allow the perpetrator ... to receive the paperwork straight away.⁸⁶⁸

NSW Law Reform Commission's views

- 9.103** The NSW Police Force referred to the recommendations contained in the 2003 NSW Law Reform Commission Report on AVOs. The Report recommended something slightly different to that which is being considered in the present inquiry. It proposed giving a limited power to issue ADVOs to police of or above the rank of Inspector where an authorised justice cannot be contacted. An interim ADVO issued under these circumstances, it suggested, would be in force for 48 hours.⁸⁶⁹

The Victorian approach

- 9.104** Victoria Police have the capacity to issue an on the spot 'safety notice' (equivalent to an interim AVO) to the alleged perpetrator of domestic violence pursuant to the *Family Violence Protection Act 2008* (Vic). For police to issue such a notice, the alleged perpetrator must be an adult, be at the scene when the police attend and not have a cognitive impairment or a safety notice already in place. The safety notice lasts for 72 hours, within which time the alleged perpetrator must be brought before a court to have the order finalised, amended or revoked.
- 9.105** Family violence safety intervention orders are distinct from personal violence safety intervention orders. Indeed, they are even governed by separate legislation with the *Personal Safety Intervention Orders Act 2010* (Vic) dealing with neighbourhood, flatmate or other disputes that do not involve family-like relationships.⁸⁷⁰
- 9.106** The Committee heard from Victoria Police that the use of their safety notices in domestic violence matters had improved the police response to domestic violence. Detective Inspector Hynam expressed the view that the advantages of the use of safety notices include:
- immediate safety to the victim

⁸⁶⁶ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 9-10.

⁸⁶⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 9-10.

⁸⁶⁸ Commander Marty Fileman, Mudgee Local Area Command, Evidence, 28 February 2012, p 38.

⁸⁶⁹ NSW Law Reform Commission, *Apprehended Violence Orders*, Final Report, Report 103, 2003, Recommendation 23.

⁸⁷⁰ Detective Inspector Kerry Hynam, Officer in Charge Violence Against Women and Children Strategy Group, Evidence, 30 April 2012, p 21.

- empowering the police to respond
- a reduction on the administrative burden for police
- providing a clear message of accountability to perpetrators of violence.⁸⁷¹

9.107 Detective Inspector Kerry Hynam, Officer in Charge of the Violence Against Women Strategy Group with Victoria Police, elaborated that an evaluation of the safety notice system showed that police felt that the safety notice ‘was a really important part of their tool kit’ to respond effectively to less serious conflict that might not involve a criminal offence. Where a criminal offence has occurred the police would usually arrest the person and take them back to the station for an interview anyway, but prior to the entry into force of the *Family Violence Protection Act 2008* (Vic), police had fewer options to deal with other conflict.⁸⁷²

9.108 Superintendent Jouning told the Committee that the availability of police issued safety notices has contributed to a positive cultural change within Victoria Police and a greater interest in domestic violence matters by police:

For many years our frontline police have been saying that they have been fairly hamstrung by the administrative burden associated with attending these incidents. Family violence notices have probably been one of the biggest contributors to their change in attitude. It is fairly anecdotal, but it is clear to us that members have taken a greater interest right across the board in relation to this crime theme, because we have given them the tools to be able to do their job. We would say the family violence notice probably has been one of the biggest drivers of that cultural change.⁸⁷³

9.109 Mr Thomas advised the Committee that the Attorney General has approved work to commence on adopting the Victorian system in NSW for police issued AVOs.⁸⁷⁴

Committee comment

9.110 The Committee recognises that the current system can result in delay for victims in need of protection where ADVO applications are made outside business hours and that this should be addressed. Other states have sought to do this by permitting a police officer of or above the rank of sergeant to issue an interim safety notice, having the same effect as an interim ADVO. Victoria has been highlighted as having an especially good model and the Committee sees merit in pursuing a similar system in New South Wales. This would ensure the expedited protection of the victim and reduce or eliminate police time spent locating the respondent to serve the order. It is also in line with our recommendation that the system responding to domestic violence should be focused on the outcomes of safety and freedom from violence for victims and children (Recommendation 6 in Chapter 4).

9.111 We are supportive of the idea of a limited power for police to issue protection orders, and recommend that they should be introduced in New South Wales. Granting police powers to issue orders is something that the Committee has approached with caution. An ADVO limits

⁸⁷¹ Ms Hynam, Evidence, 30 April 2012, pp 17-18.

⁸⁷² Ms Hynam, Evidence, 30 April 2012, pp 17-18.

⁸⁷³ Mr Jouning, Evidence, 30 April 2012, p 18.

⁸⁷⁴ Mr Thomas, Evidence, 30 April 2012, p 26.

a person's liberty and for that reason appropriate checks must be built into the system. Accordingly, in the Committee's view, any such order must be for only the length of time necessary to provide protection before the first possible appearance in court. In Victoria, the first mention date must be within 72 hours from when the notice is served upon the respondent.⁸⁷⁵ For Victoria Police this timeframe has been challenging to meet, especially in regional and rural areas where arranging a mention in the court at such short notice is not always practicable.

- 9.112** Moreover, and on the basis of the Victorian model, these orders should be issued only in limited circumstances: where the respondent is over 18, is not cognitively impaired, and not already the subject of an existing ADVO in relation to the person in need of protection. It is also important to ensure that the issue of an interim apprehended domestic violence order will not conflict with existing family law orders.
- 9.113** The implementation of police issued interim apprehended domestic violence orders will need to be carefully designed to ensure that it works in a New South Wales context and that any consequential effects can be coped with adequately. Moreover, it will be necessary to consider practical mechanisms for issuing orders in regional and rural areas. This could include, if necessary, an upgrade in equipment currently available to police in regional and rural areas.
- 9.114** Cognisant of the concerns raised by some stakeholders as to how a system of police issued apprehended violence orders would work when the respondent is a police officer, the Committee can see that a conflict could arise where police officers are called to a domestic violence incident where the alleged perpetrator is their colleague. It is desirable to avoid a situation where police in these circumstances may be criticised, for example, for not applying for an interim ADVO or not attaching certain conditions. This will not only be beneficial for the police involved but will also ensure public confidence in the system.
- 9.115** The ODPP has come up with a sensible option of requiring a senior officer to attend any incident where a police officer has been involved to ensure proper procedures are followed. It is possible also that the current procedure whereby interim ADVOs are issued by authorised justice could continue to apply in relation to any domestic violence incidents involving a police officer. We recommend that the NSW Government develop and implement police procedures sufficient to minimise this conflict of interest and maintain transparency and accountability in decision-making. The Committee also recognises the value in having any breach of an ADVO by a police officer being referred immediately to the ODPP and recommends that this should become standard practice.
- 9.116** The Committee agrees with the 2003 report of the NSW Law Reform Commission that, on balance, the advantages of a limited police power to detain an individual for the service of an interim order outweigh the disadvantages. In so doing police can ensure the protection of the victim in the meantime, the separation of the parties can allow time for the heat of the conflict to dissipate, and the immediate service of the order avoids a situation where police are forced to spend time tracking down the respondent.

⁸⁷⁵ *Family Violence Protection Act 2008* (Vic) s 31(3).

Recommendation 54

That the NSW Government seek to amend the *Crimes (Domestic Violence and Personal Violence) Act 2007* to permit NSW police officers of or above the rank of sergeant to issue interim domestic violence orders. Such orders may be issued only in circumstances where the police officer reasonably believes the following:

- that the respondent is over the age of 18 years
- that the respondent is not cognitively impaired
- that the respondent is not already the subject of an apprehended domestic violence order in relation to the person in need of protection and
- that issuing an interim domestic violence order will not conflict with existing family law orders.

A police issued interim apprehended domestic violence order should itself constitute both an application by the relevant police officer for a domestic violence order and a summons for the respondent to attend court at the first mention date.

Recommendation 55

That in drafting the amendment in Recommendation 54, the NSW Government carefully considers the most appropriate timeframe for police issued apprehended domestic violence notices and take into consideration the experience in other jurisdictions in this regard.

Recommendation 56

That the NSW Government seek to amend the *Crimes (Domestic Violence and Personal Violence) Act 2007* to provide police with a limited power both in time and circumstance to detain an individual for the service of an interim apprehended domestic violence order.

Recommendation 57

That the NSW Government develop and implement police procedures sufficient to minimise the conflict of interest that can arise where police officers are called to domestic violence incidents involving other sworn police officers. Consideration should be given to:

- whether a senior police officer should be required to attend the scene as a matter of course
- whether interim apprehended domestic violence orders should continue to be overseen by an authorised justice where the order is to be made against a sworn police officer.

Recommendation 58

That in every instance where a police officer is alleged to have breached an ADVO, the matter is automatically referred to the Office of the Director for Public Prosecutions. In these cases the NSW Police Force should have no discretion as to whether charges are brought.

Revoking or amending an order

- 9.117** An issue that arose during the inquiry is that it can be difficult to get an ADVO revoked or amended. The *Crimes (Domestic and Personal Violence) Act 2007* permits a court to hear an application for an ADVO to be varied or revoked.⁸⁷⁶ The application can be made by only the protected person, a police officer or the defendant, unless a child is listed as a protected person on the order in which case the application may be made only by a police officer.⁸⁷⁷
- 9.118** A primary obstacle identified by some stakeholders to revoking or amending an order is having the legal wherewithal to know that it needs to be amended in the first place. Shopfront Youth Legal Centre suggested that it is not sufficient to rely on the parties to apply for an AVO to be varied or revoked:

It is not sufficient to rely on parties to apply for an AVO to be revoked or varied if they reconcile. As pointed out in our previous submissions, parties in AVO matters are often disadvantaged and unsophisticated when it comes to legal proceedings. They may find it difficult to make a variation or revocation application, especially at short notice; they may even be unaware of the availability or necessity of such an application.⁸⁷⁸

- 9.119** Ms Bev Maher, Family Support Worker with Lake Cargellico Family Support, provided an example where a victim of severe domestic violence was seeking to get an ADVO amended because the perpetrator was due out of prison. Ms Maher transported the victim more than a hundred kilometres to the nearest court and when the matter was heard the magistrate quickly dismissed the request:

He just said, “No, she doesn’t need it.” It was horrendous for the girl. I had to bring her all the way over here just to have that done to her. That was not very good.⁸⁷⁹

- 9.120** Others commented that the length of time it takes to get an order revoked can be lengthy and lead to situations where ADVOS are breached. Ms Jane Sanders, Principal Solicitor with Shopfront Youth Legal Centre, suggested that there should be provision in the Act for emergency revocation of orders in certain circumstances. Ms Sanders gave an example where the order may have an exclusion order condition and until the order is revoked the person may have to choose between breaching the order and homelessness:

Say you have a young person who has been excluded from the family home and has been staying somewhere temporarily and then finds themselves homeless. Mum or dad says, “It’s all right, you can come home again.” As far as I know they cannot go and make an emergency application to get the AVO varied or revoked. It is not that quick and it is not that easy. It is possible to get it revoked in a couple of weeks but that does not necessarily help the person who is homeless get to move back into the

⁸⁷⁶ *Crimes (Domestic and Personal Violence) Act 2007* s 72(2).

⁸⁷⁷ *Crimes (Domestic and Personal Violence) Act 2007* s 72(3).

⁸⁷⁸ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 13.

⁸⁷⁹ Ms Bev Maher, Family Support Worker, Lake Cargellico Family Support, Evidence, 28 February 2012, p 12.

family home. Are they supposed to remain homeless for those two weeks. There is no method to get an emergency revocation.⁸⁸⁰

- 9.121** Only a police officer can apply to revoke an order where one of the protected persons is a child. This too can be time consuming and the Committee heard it is not always a priority for police.⁸⁸¹ Indeed, Mr Lawrence was of the view that police were extremely reticent to revoke an order in which a child is a named person.

[Y]ou cannot apply to vary if there is a child named in the order. You can knock down the police's door asking them to vary and they will not do it.⁸⁸²

Committee comment

- 9.122** The Committee acknowledges an inherent tension regarding revoking or amending ADVOs. On the face of it, it is reasonable that a person in need of protection should be able to seek to have an order on which she or he is listed revoked. On the other hand, the very nature of domestic violence could place pressure on the person in need of protection to apply to revoke an order that really should remain in place.
- 9.123** The Committee's Recommendation 52 would permit authorised third parties to apply to the court for the issuance, variance or revocation of ADVOs. In our view, the implementation of this recommendation in conjunction with our other recommendations pertaining to greater victim support will alleviate some of the concerns outlined in this section.
- 9.124** We accept the evidence that in some situations there is a need for an ADVO to be revoked quickly in order that it is not breached. However, the Committee has not received evidence as to how this might be achieved. The Committee sees value in investigating the possibilities and this would fit neatly alongside the work being undertaken by DAGJ in its review of the *Crimes (Domestic and Personal Violence) Act 2007*. The Committee recommends that this investigation take place.

Recommendation 59

That, as part of its review of the *Crimes (Domestic and Personal Violence) Act 2007*, the Department of Attorney General and Justice develop an effective mechanism for permitting emergency applications for the revocation of apprehended domestic violence orders in appropriate circumstances.

Apprehended domestic violence order conditions

- 9.125** Every ADVO includes conditions with which the respondent must comply. These conditions will always include a condition not to assault, molest, harass, threaten or otherwise interfere with the person in need of protection or anyone that they are in a domestic relationship with.

⁸⁸⁰ Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre, Evidence, 5 March 2012, p 48.

⁸⁸¹ Ms Sanders, Evidence, 5 March 2012, p 48.

⁸⁸² Mr Lawrence, Evidence, 28 February 2012, p 24.

Other conditions placed on the order are discretionary and might include, for example, that the respondent must not come within a certain distance of a particular address.⁸⁸³

- 9.126 The Committee heard that ADVO conditions are not always workable for the victim or the perpetrator in practice and that exclusion orders can be especially problematic. Stakeholders advocated that a more tailored approach granting greater consideration to individual circumstances would be more effective.

Unworkable apprehended domestic violence order conditions

- 9.127 A key criticism of the current ADVO system is that decision-makers may not always take the time to ensure that the discretionary conditions on ADVOs are realistic, workable and necessary for the protection of the individual concerned.⁸⁸⁴ Legal Aid expressed a sentiment typical of many: that ‘inappropriate and unworkable conditions for ADVOs, by definition are susceptible to breach’, and when conditions that are unworkable are breached, there is ‘a reluctance on the part of police officers to prosecute.’⁸⁸⁵
- 9.128 Discretionary conditions that can be made on ADVOs are listed in section 35(2) of the *Crimes (Domestic and Personal Violence) Act 2007*. These include not to contact the protected person except through their legal representative, not to approach the protected person within 12 hours of consuming alcohol, not to approach the protected person or to stay a certain distance from the family home. There is also a catchall condition which prohibits specified behaviour by the defendant that might affect the protected person.⁸⁸⁶ However, this discretion is not often used and instead decision-makers tend to choose from a list of possible restrictions contained in the legislation.⁸⁸⁷
- 9.129 Several stakeholders provided the Committee with examples of how these conditions are not always effective in practice. Ms Julie Hourigan-Rouse, Executive Officer with the WDVCS Network said that the ADVOs that work most effectively are those that have been created with input from both the person in need of protection and the respondent:

Certainly the best AVOs—if there is such a thing as the best AVO—is where there has been interaction between the woman and the perpetrator about what their circumstances are so that people are not being set up to fail. People’s lives are inherently complex. You need to make arrangements to drop children off and pick children up. They may need to attend medical centres in a certain zone so just having a blanket condition that says no contact or you can’t go within 500 metres of this location will not work for everybody and to just tick that box is setting people up to fail.⁸⁸⁸

⁸⁸³ Mr Patrick Latham, Acting Solicitor-in-Charge, Legal Aid NSW, Evidence, 28 February 2012, p 24.

⁸⁸⁴ See, eg, Ms Matilda Julian, Solicitor, Evidence, 28 February 2012, p 24; Submission 34, Legal Aid NSW, p 18.

⁸⁸⁵ Submission 34, p 18.

⁸⁸⁶ *Crimes (Domestic and Personal Violence) Act 2007* s 35(2)(f).

⁸⁸⁷ *Crimes (Domestic and Personal Violence) Act 2007* s 35(2)(a) to (e).

⁸⁸⁸ Ms Julie Hourigan-Rouse, Executive Officer, Women’s Domestic Violence Court Advocacy Service Network, Evidence, 5 March 2012, p 5.

- 9.130** Ms Hourigan-Rouse emphasised the importance of tailoring ADVO conditions to take into account the complexities of modern daily life and that no workable condition can ever be ‘one size fits all’. She also explained that it is important that the people involved are informed of the options available to them.⁸⁸⁹
- 9.131** ADVO conditions were also criticised for ambiguity in their application.⁸⁹⁰ Mr Patrick Latham, Acting Solicitor in Charge, Legal Aid, gave an example where the condition is not to contact the protected person by any means.

[S]ome of these say not to contact a protected person by any means, including through a third party, except through the defendant’s legal representative. What if they are not legally represented? Is the Family Relationship Centre a third party? If you have an AVO but you want to be able to see the kids, you contact the Family Relationship Centre and they say, “We cannot do anything about it, you have to go back to the court and get the order varied.”⁸⁹¹

- 9.132** The Committee heard that in some courts a genuine effort is put into ensuring that ADVO conditions are workable. Ms Janelle Charlesworth, a DVLO working out of Sutherland Local Court, emphasised that in facilitating the negotiation of conditions, DVLOs in that court will try to ensure that the conditions are realistic. Ms Charlesworth explained that, from a police perspective, trying to prosecute a condition that is obscure or ambiguous will not work:

And also for the police who are going to be enforcing it and trying to prosecute a condition that is obscure. We have to do it for the whole system to work really. If we put something on there or they ask for something inappropriate the police will not be able to enforce that. They might want a condition I do not want them within two kilometres of where I live but if it is right next to a main road, there will be thoroughfare issues. We experience that sort of thing a lot. We need to explain these things to them, when there are main roads in the area. We need something that we are able to prosecute.⁸⁹²

- 9.133** Other police also spoke about enforcement challenges that arise with ADVO conditions. Mr Paul Jones, Crime Manager, Lachlan Local Area Command, provided the Committee with the example of conditions that require the respondent to stay a certain distance from the family home. He questioned how this condition could be accurately measured or enforced and explained that it can be quite onerous:

The condition could be that they are not to go within 50 metres of the house. Who measures it? They might be able to go to certain parts of the street. Those types of things are quite onerous. Non-attendance at a residence or at work is certainly required. There is no problem with that. It could involve someone ringing up to organise a child access visit and getting into an argument and it then becomes a breach. That is where these issues get really clouded and difficult. We are obliged to act because that is what our policies say.⁸⁹³

⁸⁸⁹ Ms Hourigan-Rouse, Evidence, 5 March 2012, p 5.

⁸⁹⁰ Mr Brett Thomas, Member, Criminal Law Committee, Law Society of New South Wales, Evidence, 7 November 2011, p 66; Mr Latham, Evidence, 28 February 2012, pp 29-30.

⁸⁹¹ Mr Latham, Evidence, 28 February 2012, pp 29-30.

⁸⁹² Ms Janelle Charlesworth, Domestic Violence Liaison Officer, NSW Police Force, Evidence, 21 March 2012, pp 11-12.

⁸⁹³ Mr Jones, Evidence, 28 February 2012, p 38.

- 9.134** The Committee was informed that the ‘not consume alcohol’ condition also raises problems.⁸⁹⁴ Mr Lawrence explained that the condition can sometimes increase the likelihood of breach in practice in way that is unreasonable:

You see very commonly orders that have conditions that are very specific, for example, not consume alcohol within 12 hours of being in contact with the protected person, which means that if you are living with the protected person—and a lot of these orders allow that—you cannot have a beer after work, effectively, without being in breach.⁸⁹⁵

- 9.135** On the other hand, the Mt Druitt Family Violence Response and Support Strategy Leadership Group was in favour of the greater use of orders limiting the consumption of alcohol when returning to the family home because alcohol is a factor in many instances of domestic violence:

Where alcohol is a factor (affecting between 30% - 40% of callouts to police for domestic violence), it should be mandatory to include as a condition of an AVO that the perpetrator should not return home under the influence of alcohol (waiting up to 12 hours after consumption before returning home, assuming an exclusion order is not also in place).⁸⁹⁶

- 9.136** Several stakeholders observed that some of the matters which hinder workable and effective ADVO conditions from being implemented are inherent to the way ADVOs are issued. Some inquiry participants alleged the discretionary conditions are often just ticked off by police at the scene without much thought. Ms Matilda Julian, Solicitor, argued that too much attention is paid to what victims want and there is not always adequate consideration of what is necessary and reasonable in the circumstances for the purpose of individual protection.⁸⁹⁷ Mr Latham noted that part of the problem lies with the police approach at the scene:

It is all those other non-mandatory conditions that police just tick. Really they are just saying, “Do you want contact with them? No”. Often it is just a tick box thing and not enough thought goes into maybe in 10 days’ time this victim or [person in need of protection] is going to try and get back with them so they are going to breach the order by contacting them. That is where it becomes really difficult I think. It is not that condition one is so unreasonable, in my view, but it is all those other conditions that not enough thought is going into.⁸⁹⁸

- 9.137** Mr Lawrence stated that where the ADVO travels through the system with an associated criminal charge it can take more than three months for the order to be finalised. In this period of time circumstances may have changed, the parties may have reconciled, and it may not be appropriate to make the conditions of the interim order the same that apply to the final order:

⁸⁹⁴ Mr Lawrence, Evidence, 28 February 2012, p 19; Ms Susan Smith, Solicitor and Coordinator, Sydney Women’s Domestic Violence Court Advocacy Service, Evidence, 7 November 2011, p 55.

⁸⁹⁵ Mr Lawrence, Evidence, 28 February 2012, p 19.

⁸⁹⁶ Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group, p 4.

⁸⁹⁷ Ms Julian, Evidence, 28 February 2012, p 20.

⁸⁹⁸ Mr Latham, Evidence, 28 February 2012, pp 29-30.

In the context of apprehended violence orders or domestic violence orders that travel through the system with a criminal charge, so that if the victim has spoken to the police at the time when it happened and said, “I do not want contact, I do not want him in the house”, et cetera, it might then have the criminal charge travel through the court system for three, six or nine months. Then the same police officer who has conducted the prosecution, who will not have spoken to the victim in that entire time, will stand up and ask for an order.⁸⁹⁹

- 9.138** Mr Lawrence speculated that there is a tendency for magistrates to issue ADVOs with ‘draconian’ conditions because they know that the respondent can apply to the family court for parenting orders that would trump a conflicting condition in an ADVO. He stated that this provides a less than ideal form of justice and means that some people slip through the system:

[T]his sort of AVO/DVO system delivers B-grade justice that is impacting adversely on a range of people who do not often have the wherewithal to access the Family Court or for various reasons slip through the system and might have no contact with their children for four or five years because of that.⁹⁰⁰

- 9.139** At Sutherland Local Court the conditions of an ADVO are negotiated between the person in need of protection and the respondent through the auspices of the DVLO. Sergeant Sharon Walker, Police Prosecutor, Sutherland Local Court explained the benefits of this approach:

[D]omestic violence liaison officers ... provide information as to the process, the options. They then will, for want of a better term, negotiate. As Senior Constable Charlesworth was just saying, there may be conditions where, in effect, what we are doing is to the benefit of the defendant. What we are doing is making it workable for all parties.⁹⁰¹

- 9.140** The Shopfront Youth Legal Centre contended that magistrates seldom take steps to satisfy themselves that conditions are necessary or appropriate.⁹⁰² Ms Sanders explained that occasionally you find a magistrate who has the time and patience to scrutinise each individual condition but this is rare because of the pressures that the courts are under.⁹⁰³

Exclusion orders

- 9.141** Stakeholders suggested that exclusion orders could be used differently. An exclusion order can be a condition of an ADVO and stipulates that a person cannot attend a particular place, for example, the family home or the protected person’s place of employment.
- 9.142** Several participants were of the view that exclusion orders should be more widely used. The Benevolent Society, for example, noted that the imposition of exclusion orders requiring perpetrators to leave the family home are rarely exercised and suggested that this course of

⁸⁹⁹ Mr Lawrence, Evidence, 28 February 2012, p 20.

⁹⁰⁰ Mr Lawrence, Evidence, 28 February 2012, p 20.

⁹⁰¹ Sergeant Sharon Walker, Police Prosecutor, NSW Police Force, Evidence, 21 March 2012, p 12.

⁹⁰² Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 11.

⁹⁰³ Ms Sanders, Evidence, 5 March 2012, p 45.

action should be utilised more frequently.⁹⁰⁴ The exclusion of the alleged perpetrator from the family home is a key element of the Staying Home Leaving Violence program which is considered in Chapter 6.

- 9.143** The Mt Druitt Family Violence Response and Support Strategy Leadership Group advocated for greater use of exclusion orders in the days and hours immediately after a domestic violence incident has taken place:

Many women have stated they feel trapped after finally getting the courage to ring the police only to have them send the offender home again even angrier than before, placing them more at risk. One strategy might be that when police have intervened in the home and taken the perpetrator back to the station for questioning, and/or to prepare an AVO, that an exclusion order is immediately applied, and for there to be a releasing address for the offender that is not the residence of the victim.⁹⁰⁵

- 9.144** On the other hand, several inquiry participants lamented the application of exclusion orders for people who would usually live together or are in an ongoing relationship.⁹⁰⁶ In the normal course of events it is likely that they will continue to live together or go to one another's home. The Sydney WDVCS noted that in their experience, orders often need to be changed to remove an exclusion order where it is not appropriate in the circumstances:

We often find that an order police originally deemed appropriate needs to be reconsidered in the light of the client's instructions. For example an exclusion order might not be appropriate where the person in need of protection no longer wants to live with the defendant, but would still like the defendant to attend her home from time-to-time. Here, we might request that the exclusion be revoked and instead an order be made that the defendant not reside at the house.⁹⁰⁷

- 9.145** If these amendments are not made, the likelihood of a breach is very high. Ms Matilda Julian, Solicitor, gave an example whereby an ADVO condition is in place that the respondent cannot contact the person in need of protection. They have children together and an on-off relationship and the person in need of protection invites the respondent to her house. Ms Julian explained that this scenario is common and that she has to advise her clients not respond:

I have to advise my clients: If she calls you, you have kids with her, you have been with her for the last 10 years, if she calls you have to hang up otherwise you would be subject to arrest and then you would be in custody, because that is what it happens.⁹⁰⁸

- 9.146** An ancillary concern in relation to exclusion orders relates to ownership of the home from which one party is excluded. Ms Claudia Guajardo, Community Safety and Crime Prevention

⁹⁰⁴ Submission 37, Benevolent Society, p 13.

⁹⁰⁵ Submission 23, p 4.

⁹⁰⁶ Ms Smith, Evidence, 7 November 2011, p 55; Ms Julian, Evidence, 28 February 2012, p 24; Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 5, pp 7-8.

⁹⁰⁷ Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 5, pp 7-8.

⁹⁰⁸ Ms Julian, Evidence, 28 February 2012, p 24.

Officer with Fairfield City Council, said that there are a number of legal obstacles to be navigated in these circumstances, including not only ownership but also mortgage repayments:

It is more problematic when you have your own property where it may be in one or joint names and there are all of the legalities of being able to go through that process to say, "Well, okay, we've owned this house together for the last 10 or 15 years, but now you've been excluded." There is a range of legal hurdles that people have to navigate through, which I guess are many reasons why when women are in those situations they decide to actually leave the property ... Unless you are going to take over the mortgage repayments, if there are mortgage repayments, then again we come back to the same point, "Can you afford that?"⁹⁰⁹

- 9.147** Mr Brett Thomas, Member of the Criminal Law Committee of the Law Society, pointed out that conflict can be exacerbated because sometimes people mistakenly assume that if they are not living in the home that they own then they may lose their property interest in it.⁹¹⁰

Improving the effectiveness of apprehended domestic violence order conditions: a tailored approach

- 9.148** The Committee heard from a number of stakeholders that the best way to ensure workable ADVO conditions is to tailor each set of conditions to the individuals who will be affected by them.⁹¹¹ The Committee was told that interim orders are often converted to final orders at court without any negotiation. This is problematic because the interim ADVO is determined at the height of the dispute, when parties are upset and likely not thinking clearly, and as such may not incorporate the most appropriate conditions.

- 9.149** Nevertheless, as long as it is commonplace that interim orders are converted to final orders without further consideration, stakeholders felt that it is important that the interim orders are carefully drafted in the first instance. Ms Julie Stewart, Secretary of the NSW Domestic Violence Coalition and Coordinator of the Manly Warringah Women's Resource Centre, shared this view, although she and others acknowledged that it can be very difficult to get ADVO conditions right at the scene of the domestic violence incident:⁹¹²

The initial orders are the ones that you have to get right, the police have to get it right, and I have to say it is a big ask for any constable to ask the victim and find out every single circumstance that is going to mean that the end orders are going to be workable. The first thing is the orders have to be workable and suit those particular circumstances.⁹¹³

⁹⁰⁹ Ms Claudia Guajardo, Community Safety and Crime Prevention Officer, Fairfield City Council, Evidence, 26 March 2010, p 51.

⁹¹⁰ Mr Thomas, Evidence, 7 November 2011, p 67.

⁹¹¹ Ms Julie Stewart, Secretary, NSW Domestic Violence Coalition and Coordinator of the Manly Warringah Women's Resource Centre, Evidence, 17 October 2011, p 29; Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 5, pp 7-8; Ms Lumsden, Evidence, 11 November 2011, p 26.

⁹¹² Ms Johnston, Evidence, 11 November 2011, p 25; Ms Stewart, Secretary, Evidence, 17 October 2011, p 29.

⁹¹³ Ms Stewart, Secretary, Evidence, 17 October 2011, p 29.

- 9.150** The Committee heard that Mt Druitt Local Area Command is making a particular effort to improve the quality of ADVO conditions. Senior Constable Brian Johnson, Mt Druitt Domestic Violence Liaison Officer, said that he and his colleagues are trying to spend more time learning about the context within which the order must work before determining conditions. This avoids a situation where the ADVO conditions imposed are impracticable to comply with:

[W]e are starting to spend a lot more time ... trying to get a little bit of history of what the family dynamic is without going into too much detail. Having an order with no contact is going to be totally unworkable if there are three children to the relationship. It is setting everyone up for failure and you are going to have problems. So we are just trying to make the orders workable at the start so therefore we do not end up having the inevitable breach down the track. We have actually been working quite on hard on that lately.⁹¹⁴

- 9.151** Determining conditions when the matter gets to court is not easy either. The Committee observed that it is commonly the case that ADVO conditions are being quickly negotiated between the parties on the day the matter is listed. Ms Cheryl Alexander, Chair of the WDVCAS Network called this the '10 o'clock rush' and described that it can be quite chaotic:

We might have 20 or 30 clients to talk to, catch up and see if there are any changes or anything to be made. DVLOs have to speak to them, we have to speak to them, and all of this before 10 o'clock. So it is quite chaotic up until 10... It is the rush. When the DVLOs speak to defendants or try to negotiate orders it is sometimes a little bit rushed.⁹¹⁵

- 9.152** Mr Thomas from the Law Society described to the Committee that determining workable conditions in this manner is 'hugely difficult' in practice.⁹¹⁶

Should children be on the same apprehended domestic violence order as their victim parent?

- 9.153** At present when an ADVO is issued for the protection of a parent, the order will also list as protected persons the protected parent's children. The Committee heard that this is not working well.⁹¹⁷ It was suggested that the needs of children are often different and they may still have some contact with the perpetrator. Therefore, it may be that the conditions on the children's order need to be different.

- 9.154** Women's Legal Services explained that the law in New South Wales creates a rebuttable presumption that the children in a domestic relationship with a protected person should be included on the same ADVO.⁹¹⁸ Women's Legal Services observed that a potential

⁹¹⁴ Senior Constable Brian Johnson, Mt Druitt Domestic Violence Liaison Officer, Evidence, 20 February 2012, p 42.

⁹¹⁵ Ms Cheryl Alexander, Chair, Women's Domestic Violence Court Advocacy Service Network, Evidence, 5 March 2012, pp 16-17.

⁹¹⁶ Mr Thomas, Evidence, 7 November 2011, p 66.

⁹¹⁷ Submission 45, Women's Legal Services, p 14; Ms Smith, Evidence, 7 November 2011, p 55; Ms Johnston, Evidence, 7 November 2011, p 26; Ms Angela Jones, Senior Solicitor, Family and Domestic Violence, Legal Aid NSW, Evidence, 11 November 2011, p 26.

⁹¹⁸ *Crimes (Domestic and Personal Violence) Act 2007* s 38.

consequence of this is that more orders might be contested where children are involved and the hearings may take longer:

There is often a complex interplay between family law and ADVO provisions. The most recent domestic violence legislation in NSW created a rebuttable presumption that children in a domestic relationship with a protected person should be included on the ADVO. A possible consequence is an increase in the proportion of ADVO matters going to hearing, as parties are less likely to consent if children are listed as protected persons. A corollary increase in evidence about children in ADVO matters may also result in longer hearings.⁹¹⁹

- 9.155** Several inquiry participants stated that having separate orders for the children permits consideration of the differing needs of individual family members and caters for defendant contact with their children.⁹²⁰ Mr Lawrence of the Aboriginal Legal Service considered that there are too many people covered by individual orders and that where a child is listed on an order it is only the police who can apply to vary it. In his view this puts a lot of power in the hands of the police:

There are too many people covered by the orders—it is not just the person named, it is people in a domestic relationship with the person named. It is not possible, for example, in respect of an order which names a child specifically as a protected person, for anyone but the police to vary that order, which puts a lot of power in the hands of the police, so that is a particular problem that we experience in terms of those orders.⁹²¹

- 9.156** As mentioned above, once a child is a protected person listed in an ADVO, it is difficult to vary the order insofar as only the police can apply to do so. The Committee has heard of occasions where ADVOs are used in a manipulative way. Ms Angela Jones, Senior Solicitor, Family and Domestic Violence with Legal Aid, noted also that having children listed on a separate order avoids a situation where they could be used tactically in disputes:

In relation to the children and parents being listed separately, that is a really important point to make. At a very base level, children then will not be used as a tactic to further the violence in the family and the two issues will be dealt with separately. That is important for the protection of women and also of children because they often face different issues from the perpetrator. So to do that separately would allow tailoring to individual needs.⁹²²

Committee comment

- 9.157** A key theme of this report is that the response to domestic violence should be victim centric. Part of that focus requires an assurance that, to the extent possible, individual victims are protected in a way that works best for them. At the same time, ADVO conditions need to be practicable in their implementation.

⁹¹⁹ Submission 45, p 14.

⁹²⁰ Ms Johnston, Project Evidence, 7 November 2011, p 26; Ms Stewart, Evidence, 17 October 2011, p 29; Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 5, pp 7-8.

⁹²¹ Mr Lawrence, Evidence, 28 February 2012, p 19.

⁹²² Ms Jones, Senior Evidence, 11 November 2011, p 26.

- 9.158** In the Committee's opinion, many of the conditions that have been imposed in ADVOs that were impracticable in the circumstances could have been avoided had there been greater consultation with the respondent and the person in need of protection. We accept that in some circumstances the respondent may not be receptive to consultation. However, in other cases it seems that even a relatively short conversation with the respondent could have made a difference. This is especially so in relation to exclusion orders that inadvertently place people in breach of the order for going to places that they might quite reasonably need to go.
- 9.159** ADVO conditions require tailored consideration. Notwithstanding that tens of thousands of these orders go through the court each year, proper attention should be paid to ensure appropriate conditions are applied to each set of circumstances.
- 9.160** However, to a great extent it appears that police and magistrates are already doing the best they can to determine the appropriateness of conditions in difficult circumstances. It is the Committee's view that improved support services for victims as contained in Recommendations 29, 73, 75 and 80 combined with strengthened advocacy for respondents as suggested in Recommendation 70, will go some way to ensuring that more tailored ADVO conditions are implemented, and consequently that fewer breaches will occur.
- 9.161** In relation to having separate ADVOs for children and other persons in a domestic relationship with the respondent, the Committee accepts the evidence it has received that there will be situations where some parties, particularly a child, will require slightly different protection to their parent. This is especially so where family law orders are in place to allow the defendant or respondent to spend time with their child. It is important that the system caters for these distinctions and avoids a situation where family disputes are exacerbated by orders that inadequately cater for the different needs of family members.
- 9.162** Accordingly, the Committee recommends that the NSW Attorney General reverse the presumption that children will be on the same order as their protected parent and instead create a presumption that children will be protected by a separate ADVO, unless circumstances clearly show that they have no distinct or separate protection needs.

Recommendation 60

That the NSW Attorney General seek to amend the *Crimes (Domestic and Personal Violence) Act 2007* to reverse the presumption that children should be on the same orders as their protected parent and instead create a rebuttable presumption that children should have separate orders to their protected parent.

- 9.163** The following chapter examines a range of issues raised during the inquiry regarding breaches of ADVOs.

Chapter 10 Breaches of apprehended domestic violence orders

The terms of reference for the inquiry specifically sought that the Committee examine ways to reduce breaches and improve compliance with apprehended domestic violence orders (ADVOs). While breach of an ADVO condition is a criminal offence, the Committee heard that the consequences for violating an ADVO condition were mixed. This chapter examines issues raised by stakeholders in relation to breaches of ADVOs, including the overarching concern that there are too many. It considers the challenges that arise from ‘technical’ breaches of ADVOs and the possibility of a defence of consent to charges arising out of a contravention of an order as well as perpetrator attitudes to breaches generally. The chapter goes on to examine mechanisms for improving compliance and reducing breaches of ADVOs, including the possible use of global positioning system (GPS) devices and improving respondents’ understanding of ADVO conditions.

The Committee notes at the outset that many of the recommendations contained in other chapters of this report should go some way towards minimising breaches of ADVOs. These recommendations include, among others, those aimed at bringing about a more holistic approach to domestic violence, legal advice for respondents and victims, better court support and coordination, and steps to make ADVO conditions more tailored to individual circumstances.

Breaches: an overview

- 10.1** A person in need of protection has a responsibility to report breaches to the police. If police believe on reasonable grounds that a condition of the order has been violated, they can arrest the respondent without a warrant. The maximum penalty for breach of an ADVO is 2 years imprisonment, a fine of up to \$5,500, or both.⁹²³
- 10.2** The Benevolent Society reported that ‘the rate of breaches and non-compliance is unacceptably high.’⁹²⁴ By contrast, Ms Gaby Marcus, Director of the Australian Domestic and Family Violence Clearinghouse, explained that in her view it was not the volume of breaches that were disturbing but the manner and extent of the response from police and the courts:
- I do not really identify that the number of breaches is such a big issue. From my perspective it is the way the breaches that occur are being dealt with that is the key issue, because if you do not deal with the breaches adequately, how many there are is irrelevant. The best way to stop breaching is for the police and the courts to deal with the breaches in an effective way, which then sends out a strong deterrent message to perpetrators about breaching.⁹²⁵
- 10.3** A breach of an ADVO is a crime that occurs where the respondent does not comply with a condition of the order. The Judicial Commission reported that in the three years from March 2008 to March 2011, 9,044 defendants were sentenced for a breach of an ADVO.⁹²⁶ With

⁹²³ *Crimes (Domestic and Personal Violence) Act 2007* s 14(1).

⁹²⁴ Submission 37, Benevolent Society, p 7.

⁹²⁵ Ms Gaby Marcus, Director, Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 39.

⁹²⁶ Submission 21, Chief Magistrate of New South Wales, p 2.

more than 100,000 orders issued over the same period, it is clear that the majority of ADVOs do not lead to charges for breach.⁹²⁷

- 10.4** Stakeholders frequently asserted that two factors contribute to the volume of breaches. Firstly, as discussed in the previous chapter, the Committee heard that conditions imposed as part of an ADVO, while perhaps sensible at first glance, have not always proved practical or workable for the parties. For example, if a condition of an ADVO is that the respondent must not come within 100 metres of the victim's place of employment, but the entrance to the only supermarket in town is within 50 metres of the front door of the victim's workplace, it is likely that the respondent will have to breach the ADVO to go grocery shopping. Secondly, both the person in need of protection and the respondent do not always adequately understand the meaning and consequences of the conditions imposed.⁹²⁸
- 10.5** A number of inquiry participants also alleged that breaches of ADVOs are not always thoroughly investigated by police.⁹²⁹ Chapter 7 considers police practices in the investigations of breaches and makes recommendations for improvements to the police response.

'Technical' breaches

- 10.6** The term 'technical' breach is used to describe situations where a person has, technically, breached the ADVO but the breach was due to the application of a poorly planned condition. Using the supermarket example above, if the person had walked past the victim's workplace to get to the supermarket he would have been in 'technical' breach of the order. He would have breached the order to complete a task that was objectively reasonable in the circumstances and that he really should not have been prevented from doing. Technical breaches might also arise where the person has misunderstood the conditions of the order or the way the order works.
- 10.7** Assistant Commissioner Mark Murdoch, Corporate Spokesperson on Domestic and Family Violence for the NSW Police Force, explained that police may be less inclined to pursue charges for breach where it is a 'technical breach' and it appears to have occurred as a result of parties' misunderstanding the terms:

I suppose why police may become a little bit hesitant to prosecute them as vigorously as they may, is that a lot of them are constructive breaches brought around by the parties just not knowing exactly what the conditions of the orders are.⁹³⁰

- 10.8** This approach was criticised by some inquiry participants. There was a view that the exercise of police discretion not to pursue charges for a technical breach can contribute to police being

⁹²⁷ NSW Bureau of Crime Statistics and Research, 'Apprehended Violence Orders Granted from 1996', accessed 27 July 2012, <http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_pub_atoc#avo>.

⁹²⁸ Ms Thea Deakin-Greenwood, Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, Evidence, 5 March 2012, p 9.

⁹²⁹ Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 7 November 2011, pp 12-13; Ms Cathie Schatz, Outreach Worker, Forbes Women's Refuge, Evidence, 28 February 2012, pp 10-11; Ms Marcus, Director, Evidence, 17 October 2011, p 39.

⁹³⁰ Assistant Commissioner Mark Murdoch, Corporate Spokesperson on Domestic and Family Violence for the NSW Police Force, Evidence, 20 February 2012, p 42.

less inclined to take other breaches of ADVOs seriously and to respondents holding an indifferent attitude towards breaching ADVO conditions.

- 10.9** Several stakeholders were concerned about a failure of police to prosecute for technical breaches.⁹³¹ Ms Julie Stewart, Secretary of the NSW Domestic Violence Coalition and Coordinator of the Manly Warringah Women's Resource Centre, was of the view that technical breaches should be acted upon more rigorously by police:

We do know that there are a lot of breaches that are reported that are not dealt with as serious offences. They have been named technical breaches and they have been called minor breaches and there has been no evidence and so they are not prosecuted. So there are quite a number of breaches that are actually reported but not acted on.⁹³²

- 10.10** The importance of ensuring that technical breaches are acted upon by police was further emphasised by some stakeholders as a mechanism to ensure that victims have faith in the system and continue to report breaches.⁹³³ The NSW Women's Refuge Movement Inc noted that without a consistent and effective response to breaches, victims' confidence in the system can be undermined:

A lack of consistency and effectiveness in responses to ADVO breaches undermines the effectiveness of other responses and services for victims of domestic and family violence as well as undermining the confidence of victims in ADVOs and legal and justice responses more broadly.⁹³⁴

- 10.11** Ms Betty Green, Convenor of the NSW Domestic Violence Coalition added that it is inappropriate for police to decide whether or not a breach is worth investigating. In her view, 'it should not be up to the desk sergeant to determine that is a breach or it is not a breach.' Instead, Ms Green argued, each report should be thoroughly investigated and then taken to court as appropriate.⁹³⁵

- 10.12** Other stakeholders felt that a more discerning approach to technical breaches was needed on the basis that the pursuit of charges for a technical breach contributes to the criminalisation of a cohort of people who might not otherwise be criminalised.⁹³⁶ The Shopfront Youth Legal Centre perceived that charging individuals for technical breaches of ADVOs is a failing of the system, particularly for young people, and does not deal well with the common scenario where parties reconcile and move back in together, such as in a parent-child relationship:

⁹³¹ Ms Julie Stewart, Secretary of the NSW Domestic Violence Coalition and Coordinator, Manly Warringah Women's Resource Centre, Evidence, 17 October 2011, p 29; Ms Marcus, Evidence, 17 October 2011, p 39; Ms Helen Campbell, Executive Officer, Women's Legal Services NSW, Evidence, 7 November 2011, p 46; Dr Jane Wangmann, Lecturer in the Faculty of Law, University of Technology Sydney, Evidence, 20 February 2012, p 35.

⁹³² Ms Stewart, Evidence, 17 October 2011, p 29.

⁹³³ Submission 54, New South Wales Women's Refuge Movement, p 4.

⁹³⁴ Submission 54, p 4.

⁹³⁵ Ms Betty Green, Convenor, NSW Domestic Violence Coalition and Manager, Liverpool Women's Health Service, Evidence, 17 October 2011, p 29.

⁹³⁶ Mr Stephen Lawrence, Solicitor Advocate Western Zone, Aboriginal Legal Service, Evidence, 28 February 2012, pp 19-20; Submission 51, Shopfront Youth Legal Centre, p 7.

A common scenario is where a parent calls the police to have their teenage or young adult child removed from the home following an argument or altercation. It is common for an ADVO to be taken out against the young person, often with a condition prohibiting the young person from residing at or attending the family home. Typically the parents and child reconcile some weeks or months later, after a final ADVO is made. The parent invites the child home without taking steps to have the ADVO revoked or varied. In many cases, neither the parent nor the child understands that the acceptance of such an invitation constitutes a breach, nor do they know how to get the order varied.⁹³⁷

- 10.13** The Shopfront Youth Legal Centre continued that where technical breaches are pursued by the police, magistrates will typically exercise appropriate leniency. Nevertheless, it argued that ‘the impact on the respondent is still unfair in many cases, and a significant amount of police and court time is wasted in dealing with such matters.’⁹³⁸
- 10.14** The NSW Police Force told the Committee that one of the pervasive challenges of prosecuting for breach of an ADVO is proving the breach in court. Commonly the only evidence of an alleged breach is the eye witness account of the victim, and where the alleged offender denies the breach, it can be difficult to meet the criminal standard of proof.⁹³⁹

Attitudes to breaches

- 10.15** Many inquiry participants were also of the view that compliance with ADVOs is a problem in part because people who are subject to ADVOs do not care about breaching them.⁹⁴⁰ The Committee was informed that this is compounded where reported breaches are not thoroughly investigated. Dr Jane Wangmann, Lecturer in the Faculty of Law at the University of Technology Sydney, argued that if reported breaches are not taken seriously, then any concern on the part of the respondent about breaching the order will wane:

If they are not taken seriously the defendant in the matter then gets the impression that the apprehended domestic violence order is not worth anything and they can continue to breach it. Breaches are the crux of the matter.⁹⁴¹

- 10.16** Ms Mary Dempsey, Principal Solicitor with the Binaal Billa Family Violence Prevention Legal Service advised the Committee that it is not only the person themselves but sometimes also their family and friends who can have a poor attitude towards breaches, or act on behalf of the perpetrator to undertake threatening behaviour:

I often hear that the community turned a blind eye because it is not their business. If they get involved they might get in trouble as well from the perpetrator and the perpetrator’s family, because they do not act alone frequently, and it is females as well, not just males. I am talking about the mothers and sisters of the perpetrators that

⁹³⁷ Submission 51, p 7.

⁹³⁸ Submission 51, p 8.

⁹³⁹ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 3, p 3.

⁹⁴⁰ Ms Stewart, Evidence, 17 October 2011, p 29; Submission 18, Jenny’s Place Women and Children’s Refuge, p 2.

⁹⁴¹ Dr Wangmann, Evidence, 20 February 2012, p 35.

would pursue the [persons in need of protection] out of town. It is not just the perpetrators.⁹⁴²

- 10.17** The need for respondents to take the potential breach of ADVO conditions more seriously was put to the Committee by Ms Green of the NSW Domestic Violence Coalition, who suggested that consistent investigation of all allegations of breaches, including technical breaches, would improve compliance with ADVOs because potential offenders would realise that there were serious consequences for violating the order.⁹⁴³

Consent as a defence to a charge of breaching an apprehended domestic violence order

- 10.18** The Shopfront Youth Legal Centre advocated that in certain limited circumstances consent to breach of an ADVO should be available as a defence. It provided an example where the respondent is prohibited from contacting the protected person but receives repeated and persistent phone calls and text messages from the protected person. If they reply to just one, then they will be in breach.⁹⁴⁴ The Shopfront Youth Legal Centre argued that there should be a defence of consent where the protected person has incited the breach:

We support a review of the relevant legislative provisions, and consideration being given to making consent an available defence to certain types of breach. ... In many of these cases the protected person has incited or contributed to the breach, but without any consequences to themselves, as the Act provides that consent is not a defence to a charge of breaching an AVO, and specifically prohibits a protected person from being charged with aiding, abetting or inciting a breach. Problems have been exacerbated by the police not exercising discretion in dealing with technical breaches of this nature.⁹⁴⁵

- 10.19** When asked for his opinion on the possible defence of consent to breach of an ADVO, Mr Paul Mulrone, Magistrate of the Children's Court of NSW, argued that this was 'dangerous ground', and raised the question 'how can a victim's consent be seen as being a way of excusing a particular behaviour?'. Although he understood the problem being identified, Mr Mulrone advocated against a limited defence of consent as a means to address it:

I can see there is an issue there but I think it is dangerous ground and better dealt with by ordinary sentencing principles so that they actually get found guilty of the offence but we say, "Well, we are not going to impose a penalty or whatever penalty we impose would be at the very low end of the scale", rather than the fact that it is not a breach.⁹⁴⁶

⁹⁴² Ms Mary Dempsey, Principal Solicitor, Binaal Billa Family Violence Prevention Legal Service, Evidence, 28 February 2012, p 28.

⁹⁴³ Ms Green, Evidence 17 October 2011, p 29.

⁹⁴⁴ Submission 51, p 7.

⁹⁴⁵ Submission 51, pp 7-8.

⁹⁴⁶ Mr Paul Mulrone, Magistrate, Children's Court of New South Wales, Evidence, 5 March 2012, p 41.

Committee comment

- 10.20** The Committee accepts that technical breaches create real challenges for the enforcement of ADVOs. In our view, technical breaches are best prevented by ensuring that ADVOs have appropriately tailored conditions applied to the orders in the first instance. In Chapters 7 and 13 we make some recommendations aimed to achieve this through improved policing and a better coordinated and collaborative court system.
- 10.21** The Committee notes that the issue of whether consent should be a defence to breach of an ADVO was considered by the NSW Law Reform Commission in 2003. At that time, Western Australia was the only State that offered consent as a defence to breaches and it has since repealed that provision. The Committee heeds the advice of Mr Mulroney that a victim's consent cannot excuse a particular behaviour. In our opinion, it is appropriate that the issue of consent to an ADVO should go to mitigation rather than to guilt. The defence of consent could diminish the effect of an ADVO and it is foreseeable that it would be very difficult for police to enforce in any case.

Improving compliance and avoiding breaches

- 10.22** The most common mechanism suggested to improve compliance with ADVOs was to ensure workable ADVO conditions and improving respondents' and protected persons' understanding of what it means to breach an ADVO. The Committee received a volume of evidence on these two issues. The former is considered at paragraphs 9.127 to 9.162 of the preceding chapter and the latter at paragraphs 10.59 to 10.97 below. Other mechanisms suggested to improve compliance and reduce breaches were better policing, consistent penalties, further and better information to be contained in the order itself and the establishment of a breach line.

Policing

- 10.23** Some stakeholders made specific recommendations concerning changes to police practices that might improve the investigation and charging of individuals where they have breached ADVO conditions. The suggested methods included better resourcing and training of police, improved police follow up with victims after an ADVO has been issued,⁹⁴⁷ and improving police relationships with Aboriginal communities.⁹⁴⁸ These have been addressed in Chapter 7 concerning policing.

Penalties for breach of an apprehended domestic violence order

- 10.24** Ensuring adequate penalties for breaches exist and are enforced was also highlighted by stakeholders as an important tool for improving compliance with conditions.⁹⁴⁹ The Committee considers the adequacy of penalties and their application in Chapter 14 on sentencing. Several inquiry participants suggested that a more consistent application of strong penalties for breaches would have a deterrent effect on potential perpetrators.

⁹⁴⁷ Submission 43, Wirringa Baiya Aboriginal Women's Legal Centre, p 11.

⁹⁴⁸ Submission 43, p 10.

⁹⁴⁹ Ms Campbell, Evidence, 7 November 2011, p 45.

Breach diaries

- 10.25** As outlined in Chapters 4 and 5, for a variety of reasons individuals can be reluctant to report domestic violence. Those same reasons can contribute to a reluctance to report breaches and this reluctance can be intensified where there is a lack of faith that police will investigate ‘technical’ breaches.
- 10.26** Several stakeholders suggested that victims of domestic violence can assist police in their investigations by keeping a ‘breach diary’.⁹⁵⁰ Women’s Legal Services encourages its clients to use a breach diary to record instances when ADVOs are breached.

I think we can do some things about breach ... One of the things we have done at Women’s Legal Services NSW is to produce what we call a breach diary. It is a simple thing to put in your handbag that enables you to quickly contemporaneously record details of breaches of apprehended violence orders that can then be used as memory aides for preparing statements and so on.⁹⁵¹

- 10.27** Forbes Women’s Refuge, for example, instructs its clients to not only call the police on each instance of breach but also to create a diary note of any breach that occurs, with the date time recorded along with exactly what happened.⁹⁵² Many organisations encourage victims of domestic violence to report every single instance where the ADVO is breached, even if they think that police will not investigate it, to ensure there is a formal record of each occasion.⁹⁵³

Information about breaches provided on the order

- 10.28** Women’s Legal Services suggested that compliance might be improved if information about consequences of a breach is included on the back of the ADVO itself along with what the person in need of protection should do if this occurs. The Committee was advised that the form of words for this addition to the order document has been developed by the NSW Legal Assistance Forum Domestic Violence Working Group and agreed to by key stakeholders including the Law Society, the Chief Magistrate of NSW and Legal Aid.⁹⁵⁴
- 10.29** The Committee was advised that the form of words to be added to the notes on the final page of ADVOs is proposed to read:

Breach of the order

It is an offence for the defendant to disobey the order on purpose. The defendant could go to prison for up to 2 years or be fined up to \$5,500 or both.

⁹⁵⁰ Answers to supplementary questions 20 February 2012, One in Three Campaign, Question 1, p 5.

⁹⁵¹ Ms Campbell, Evidence, 7 November 2011, p 46.

⁹⁵² Ms Schatz, Evidence, 28 February 2012, p 10.

⁹⁵³ Ms Susan Peir, Coordinator, Women’s Domestic Violence Court Advocacy Service Network, Evidence, 5 March 2012, p 15.

⁹⁵⁴ Ms Campbell, Evidence, 7 November 2011, p 46; Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Evidence, 30 April 2012, p 27; Answers to questions on notice taken during evidence 7 November 2011, Women’s Legal Services NSW, Question 1, p 2.

Notice to the defendant

You must obey this order for the period stated in it, unless a court revokes the order or makes another order.

You can get more information about this document from:

- The court registry
- A legal practitioner
- LawAccess NSW on 1300 888 529 (Mon-Fri 9am-5pm) or www.lawaccess.nsw.gov.au

Notice to the protected person(s)

If the defendant disobeys (breaches) the order, contact NSW Police at your nearest police station, or in an emergency ring 000 for help.

You can get more information about this document from:

- The court registry
- NSW Police
- A legal practitioner
- LawAccess NSW on 1300 888 529 (Mon-Fri 9am-5pm) or www.lawaccess.nsw.gov.au.⁹⁵⁵

- 10.30** Women's Legal Services recommended that this amendment to ADVOs be implemented as a matter of priority.⁹⁵⁶

Breach line

- 10.31** The Wirringa Baiya Aboriginal Women's Legal Centre suggested the establishment of a dedicated 'breach line' staffed by police.⁹⁵⁷ The Centre envisions that the breach line would identify which orders had been breached and how, conduct a risk assessment, provide safety planning advice, gather intelligence, receive feedback on police practices, contact the local police, collect statistical data and provide a referral pathway to other services such as the Domestic Violence Line or the Women's Domestic Violence Court Advocacy Service (WDVCAS).⁹⁵⁸

- 10.32** It suggested that the advantages of a breach line include enhancing the consistency of the police response, increased transparency and consistency, and improved confidence in the ADVO system as a mechanism for addressing domestic violence.⁹⁵⁹ Wirringa Baiya suggested

⁹⁵⁵ Answers to questions on notice taken during evidence 7 November 2011, Women's Legal Services NSW, Question 1, Attachment B, p 28.

⁹⁵⁶ Answers to questions on notice taken during evidence 7 November 2011, Women's Legal Services NSW, Question 1, p 2.

⁹⁵⁷ Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Women's Legal Centre, Question 8, pp 12-13.

⁹⁵⁸ Submission 43, p 13.

⁹⁵⁹ Submission 43, p 13; Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Women's Legal Centre, Question 8, pp 12-13.

that information on the breach line could be printed on the last page of the ADVO or provided to persons in need of protection on a separate card.⁹⁶⁰

Committee comment

- 10.33** The Committee strongly believes that the ADVO system as a whole requires improvement. Ensuring ADVO conditions are workable and realistic and that respondents understand those conditions will fundamentally decrease the likelihood of breaches.
- 10.34** We were heartened by the enthusiasm of participants who put forward ideas about how to reduce breaches and improve compliance. The Committee thinks the breach diary is a simple example of an effective mechanism for victims to use to protect themselves by assisting police in their investigations. We support the ongoing encouragement of these.
- 10.35** Although we see some merit in establishing a dedicated domestic violence breach line we have some concerns whether it would duplicate existing services and would be sufficiently busy to warrant its establishment. We acknowledge the advantages that such a service may provide, including referrals and the assurance of a consistent response. In our view, more work needs to be done to consider the form that such a service might take. For example, we are not convinced that it would be practical for the line to be staffed by sworn police officers.
- 10.36** The Committee supports the work that has been done to develop a simple set of instructions for respondents and protected persons to include on the back of an ADVO. Acknowledging that work has already begun in this regard, we recommend that the form of words suggested by the Women's Legal Service and developed in conjunction with other stakeholders be included on each ADVO.

Recommendation 61

That the Department of Attorney General and Justice ensure that information about the consequences of breaches and what victims should do if they occur as proposed by the NSW Legal Assistance Forum Domestic Violence Working Group, is included on every apprehended domestic violence order issued in New South Wales.

GPS as a strategy to reduce breaches and improve compliance with apprehended domestic violence orders

- 10.37** One of the Committee's terms of reference requested that the Committee examine the use of GPS bracelets as a strategy to reduce breaches and improve compliance with ADVOs. An overwhelming majority of inquiry participants opposed the use of GPS bracelets in this way. The prevailing mood is captured in this quote from Legal Aid:

Although we acknowledge there are some benefits to victims of GPS bracelets being introduced in NSW as a penalty for domestic violence offences, Legal Aid NSW

⁹⁶⁰ Submission 43, p 13; Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Women's Legal Centre, Question 8, pp 12-13.

considers the risks and intrusive nature of the technology, as well as the high costs of implementation and maintenance, far outweigh the benefits of the technology. Ultimately we do not believe GPS bracelets will address offending behaviour and lead to reduced re-offending in the long-term.⁹⁶¹

- 10.38** Many participants commented that they would need a clear context and more specificity regarding the proposal in order to have more considered input, with several lamenting the lack of a model on which to comment. Women's Legal Services, for example, was of the view that although the terms of reference sought comment on this term of reference, 'there is no background information to provide a context or proposal on which to comment.'⁹⁶²
- 10.39** Participants wondered at what stage of the criminal justice process GPS bracelets would be used: when an ADVO is granted, as a result of a breach, or as an alternative to incarceration. Issues surrounding the impact on civil liberties and the effectiveness of GPS were also raised.
- 10.40** Some inquiry participants firmly objected to the use of GPS to in any way permit offenders to avoid a custodial sentence.⁹⁶³ Others made suggestions for alternative uses in relation to domestic violence offences. For example, Mr Howard Brown, Vice-President of the Victims of Crimes Assistance League was of the view that GPS trackers would best be used on domestic violence offenders who come before the Courts on multiple occasions for multiple breaches.⁹⁶⁴ Another idea put forward by the Nepean Blue Mountains and Western Sydney Local Health Districts was that 'an initiative like this may be useful to collect data relating to breaches of ADVOs and may also act as a possible deterrent for perpetrators'.⁹⁶⁵

Technology

- 10.41** Corrective Services NSW advised the Committee that there are two types of GPS tagging programs – unilateral electronic monitoring (EM) and bilateral electronic monitoring (BEM). EM programs involve monitoring undertaken by a third party who contacts the offender's parole supervisor to alert them to a possible breach. The supervisor then contacts the offender to investigate further. Corrective Services NSW currently utilises EM tagging for people who have been convicted of serious sex offences and are subject to extended supervision orders under the *Crimes (Serious Sex Offenders) Act 2005* (NSW).⁹⁶⁶
- 10.42** BEM programs, on the other hand, require the cooperation and participation of victims. The BEM devices include, for example, a tracking device placed in the home, a pager to receive messages from a monitoring centre, a duress pendant, and a GPS bracelet or a cellular phone programmed to notify authorities if the offender commits a breach.⁹⁶⁷ The NSW Police Force

⁹⁶¹ Submission 34, Legal Aid NSW, p 9.

⁹⁶² Submission 45, Women's Legal Services NSW, p 3.

⁹⁶³ Submission 18, p 2; Submission 74, New South Wales Police Force, p 14; Submission 28, Women's Domestic Violence Court Advocacy Service Network, p 4.

⁹⁶⁴ Mr Howard Brown, Vice-President, Victims of Crime Assistance League, Evidence, 26 March 2012, p 20.

⁹⁶⁵ Submission 16, Nepean Blue Mountains Local Health District, p 1; Submission 30, Western Sydney Local Health District, p 1.

⁹⁶⁶ Submission 34, p 5; Ms Julie Webber, Acting Executive Director for Community Offender Management, Corrective Services, Evidence, 17 October 2011, pp 6-7.

⁹⁶⁷ Submission 34, p 4.

raised concerns that requiring the victim to wear a monitoring bracelet would raise a host of compliance issues.⁹⁶⁸

- 10.43** The reliability of GPS technology was a major concern among inquiry participants. GPS is subject to satellite coverage and only works outdoors. In order to work effectively the tagging equipment would need to be within range of a mobile phone network.⁹⁶⁹ Ms Julie Webber, Acting Executive Director, Community Offender Management, Corrective Services observed that the technology is fallible and may actually place victims at risk:

With our views of the GPS at the moment, there has been some potential for technical breaches, if you like, because some of the GPS equipment can drop out of signal in areas where there is high rise or if you go into tunnels, or sometimes it can be affected by the weather, and then you have got some room for risk. If the signal dropped out, it might make someone vulnerable in that sort of sense.⁹⁷⁰

- 10.44** Others noted that the use of this technology might give victims a false sense of security. Women's Legal Services pointed out that 'there can be no guarantee that authorities will be able to intervene before a victim is harmed, raising a false sense of security.'⁹⁷¹ In line with this observation, Binaal Billa Family Violence Prevention Legal Service questioned the suitability of the technology in rural areas, both due to the lack of satellite coverage and the lack of police personnel to respond to breaches.⁹⁷²
- 10.45** Some inquiry participants observed that tracking devices can be tampered with.⁹⁷³ Moreover, Wirringa Baiya Aboriginal Women's Legal Centre noted that the introduction of GPS monitoring would not prevent offenders from contacting their victims through other means such as a telephone, the internet or a third party.⁹⁷⁴

Civil liberties concerns

- 10.46** A major concern raised during the inquiry was that requiring a person who has not been convicted of a criminal offence to be fitted with a GPS bracelet would be a serious invasion of their civil liberties. ADVO applications are civil, not criminal, proceedings, and when contested the standard of proof required is less than in criminal matters. ADVOs can also be made by consent without admitting liability, as noted by Judge Graeme Henson, Chief Magistrate of New South Wales:

It should be noted that the determination of these application proceedings is to the civil standard of proof, that is, on the balance of probabilities. In making an ADVO,

⁹⁶⁸ Submission 74, p 14.

⁹⁶⁹ Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 12(b), p 17.

⁹⁷⁰ Ms Webber, Evidence 17 October 2011, pp 6-7.

⁹⁷¹ Submission 45, p 4.

⁹⁷² Submission 38, Binaal Billa Family Violence Prevention Legal Service, p 2.

⁹⁷³ Mr Gregory Elks, Member, Criminal Law Committee, Law Society of New South Wales, Evidence 7 November 2011, p 63; Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 12(b), p 17.

⁹⁷⁴ Submission 43, p 4.

the Court is not finding that the defendant has committed a crime. Indeed, in many cases ADVOs are made by consent on a without admissions basis.⁹⁷⁵

- 10.47** Similarly, Mr Greg Elks, Member of the Criminal Law Committee of the Law Society, pointed out that there may be a stigma of criminalisation associated with the use of GPS which may not be justified in circumstances where the person has not been convicted of an offence:

We have to remember ... that an apprehended violence order is not a criminal sanction. Yet we are talking about perhaps shackling the complainants with a device that will stand out ... Quite frankly, it will not take long for people to wake up to that fact that it is a form of tracking device. Kids then start to ask about it and they are picked on at schools. There is that stigma that can flow from it.⁹⁷⁶

Apprehended domestic violence orders and Family Court orders

- 10.48** Various stakeholders noted that the system would not be effective where family law orders are in place, which can give perpetrators legitimate reasons for being at a victim's residence, or in a situation where a victim is in hiding. For example the Department of Attorney General and Justice (hereafter DAGJ) expressed the view that:

GPS tracking will not be an appropriate strategy for victims who are living with the offender, in families where the offender does not already know the victim's location (because the defendant cannot avoid a location if he is unaware of the victim's whereabouts), or where there are requirements for ongoing contact because of family law orders. The device will also not prevent a determined offender from approaching a victim or family member.⁹⁷⁷

- 10.49** Shopfront Youth Legal Centre made a similar point that many ADVOs did not involve a complete prohibition on approaching the protected person or attending certain premises and therefore GPS bracelets could only be justified in a very small minority of cases involving serious breaches and repeat offenders.⁹⁷⁸ Accordingly, some stakeholders warned that if the technology was to be used, it would have to be targeted carefully and implemented in only very limited circumstances.

Evidence of a breach

- 10.50** Generally, inquiry participants thought that a possible positive benefit from the use of GPS bracelets might be in their use as an evidence collecting tool capable of providing evidence of a breach.⁹⁷⁹ However, several legal service providers noted that the devices would not be capable of providing evidence of a breach in a strictly legal sense. For example, Mr David Porter, Solicitor at Redfern Legal Centre, asserted that GPS data could not go to substantive evidence of a breach such as proof of violence or intimidation:

⁹⁷⁵ Submission 21, p 3.

⁹⁷⁶ Mr Elks, Evidence 7 November 2011, p 63.

⁹⁷⁷ Answers to supplementary questions 17 October 2011, Department of Attorney General and Justice, Question 2, p 6.

⁹⁷⁸ Submission 51, p 3.

⁹⁷⁹ Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group p 2. Submission 28, p 3; and Submission 54, p 2.

As you have noted, in our submission, one of my primary concerns is that GPS devices would not be capable of providing evidence. They provide a bare minimum of evidence in terms of a breach. They do not go to the substantive matters that really characterise the offence committed, particularly if the breach is one of violence or intimidation.⁹⁸⁰

- 10.51** Wirringa Baiya Aboriginal Women's Legal Centre pointed out in its submission that to achieve sentences at the higher end of the spectrum for breaches in ADVO cases, evidence from the person in need of protection is required and therefore the GPS data would not obviate the need for the victim to attend Court and provide oral evidence.⁹⁸¹

Whether GPS monitoring would deter breaches of apprehended domestic violence orders

- 10.52** Inquiry participants pointed to a lack of any reliable data that the use of GPS monitoring would lead to a reduction of reoffending or an enhancement of compliance with orders. The Committee heard that EM pilots conducted in New Zealand and Queensland did not lead to schemes being introduced.⁹⁸² Ms Michelle Jeuken, then Acting Executive Director of the Office for Women's Policy, pointed out that much of the research done on the topic of the effectiveness of GPS was performed by companies that implement the systems and were not independent evaluations free from bias.⁹⁸³ Legal Aid called for a thorough review of current and past trials before any decision was made regarding implementation.⁹⁸⁴
- 10.53** Related to the argument that there is no evidence that GPS tracking works, was the suggestion that there is evidence for other measures that are proven effective in enhancing compliance with ADVOs. These include support services for victims, training of police and judicial officers and public awareness campaigns.⁹⁸⁵

Cost

- 10.54** It was noted that to be effective the scheme would require ongoing adequate monitoring at a significant cost. This would be in addition to the initial cost of the devices and the cost of maintenance. The cost of each monitoring system was estimated to be in the domain of about \$20,000.⁹⁸⁶
- 10.55** The evidence before the Committee was overwhelmingly that the costs of such a scheme would be far better employed in front line services.⁹⁸⁷ Redfern Legal Centre and Sydney WDVCS summed it up thus:

⁹⁸⁰ Mr David Porter, Solicitor, Redfern Legal Centre, Evidence, 7 November 2011, pp 52-53.

⁹⁸¹ Submission 39, Redfern Legal Centre and Sydney Women's Domestic Violence Court Advocacy Service, p 4; Submission 74, p 14.

⁹⁸² Submission 34, p 5; Submission 74, p 14.

⁹⁸³ Ms Michelle Jeuken, then Acting Executive Director, Office for Women's Policy, Department of Family and Community Services, Evidence 20 February 2012, p15.

⁹⁸⁴ Submission 34, p 4.

⁹⁸⁵ Ms Joanna Shulman, Chief Executive Officer, Redfern Legal Centre, Evidence, 7 November 2011, p 53.

⁹⁸⁶ Ms Jeuken, Evidence 20 February 2012, p15.

⁹⁸⁷ Submission 39, p 4; Submission 43, p 5.

We are of the opinion that any introduction of electronic tracking devices in the context of ADVO matters will have little deterrent effect and will be largely irrelevant in sentencing. In this context, the likely expense cannot be justified and the relevant funding would be better used to increase the personnel in the field.⁹⁸⁸

- 10.56** It appears that the NSW Government shares the general view put to the Committee, although the Office of Strategy and Policy, Department of Family and Community Services, suggested that it was desirable to keep a watching brief in the area over time and that new developments in the field may make the technology more suitable in the future.⁹⁸⁹

Committee comment

- 10.57** The Committee was convinced by the evidence heard during the inquiry that using GPS for people subject to an ADVO, which is not a criminal charge or offence, would need to demonstrate tangible and direct benefit to victims of domestic violence. We are not convinced that this is the case, based on technological limitations and a lack of evidence that GPS of itself improves compliance with and/or reduces breaches of ADVOs.
- 10.58** We acknowledge the risk raised by some stakeholders that the use of such devices could give victims of domestic violence a false sense of security. In this regard, the Committee is not convinced that a duress alarm for victims would be any more effective in terms of obtaining help more quickly than calling the police. The Committee recommends that the NSW Government not pursue the use of GPS bracelets as a method to reduce breaches and improve compliance with ADVOs.

Recommendation 62

That the NSW Government not pursue at this time the use of GPS bracelets as a method to reduce breaches and improve compliance with apprehended domestic violence orders.

Understanding apprehended domestic violence order conditions and consequences of breaches

- 10.59** A central criticism of the current ADVO system is that respondents frequently leave court without an adequate understanding of the conditions applicable to them, even when the orders are granted by consent. It is apparent that where the conditions of an ADVO and the consequences of breaching them are not properly understood, respondents are greater risk of breaching those conditions.⁹⁹⁰

⁹⁸⁸ Submission 39, p 4.

⁹⁸⁹ Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 12(a), p 17.

⁹⁹⁰ Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, p 4.; Answers to supplementary questions 20 February 2012, One in Three Campaign, Question 2, p 7.

- 10.60** Mr Lawrence of the Aboriginal Legal Service explained to the Committee that many of the standard conditions imposed as part of an ADVO are technical and in his view only a lawyer could properly understand them:

I think a lot of people do not truly understand the conditions. In saying that, I suppose I am bearing in mind that some of the orders include conditions—such as do not interfere with, do not intimidate, do not harass—that really only a lawyer can properly understand, and even in court sometimes there is very detailed argument about whether that particular order is offended or not.⁹⁹¹

Who ensures that respondents and victims understand orders?

- 10.61** An explanation of the conditions of a particular order can be given by a variety of personnel in the criminal justice system including the respondents' lawyer, the magistrate, court support workers, court staff, the domestic violence liaison officer (DVLO) or police prosecutor. Nevertheless, the Committee heard that a number of respondents are leaving the court without an understanding of what the order means for them.
- 10.62** At some local courts it is common for the DVLO to have a key role in explaining ADVO conditions to respondents. This is a common occurrence at Sutherland Local Court where DVLOs provide information about the process and the options and will negotiate appropriate conditions between the person in need of protection and the respondent.⁹⁹²
- 10.63** Mr Elks of the Law Society suggested that having DVLOs explaining conditions does give rise to something of a conflict of interest insofar as the police have a certain interest in the conditions that might be imposed. He noted that although he was 'not suggesting for a moment that the domestic violence liaison officers are giving inappropriate advice' their role is nevertheless 'a bit different to that of providing legal advice'.⁹⁹³
- 10.64** Although support services are available in many local courts in New South Wales to assist the person in need of protection, there are no support workers available to respondents in ADVO matters. Legal Aid can be accessed where an individual is facing related criminal charges, but not for advice or assistance on the ADVO matter alone. The Committee heard that the practical effect of this can be that respondents do not adequately understand their ADVO conditions and thus are more likely to breach them, placing victims at greater risk.
- 10.65** Police prosecutors also have a role to play in ensuring conditions are understood. The Committee visited Sutherland Local Court, highlighted as being an example of best practice in New South Wales. Sergeant Sharon Walker, Police Prosecutor emphasised that at Sutherland police do not pursue conditions that might be difficult to understand.

We do not put in an order conditions that are hard to understand. We do the exact opposite. We do our level best to make it very easy to understand and as uncomplicated as possible, for our benefit as well as the person in need of protection's benefit and the defendants benefit—at the end of the day, as simple as possible.⁹⁹⁴

⁹⁹¹ Mr Lawrence, Evidence, 28 February 2012, p 19.

⁹⁹² Sergeant Sharon Walker, Police Prosecutor, NSW Police Force, Evidence, 21 March 2012, p 12.

⁹⁹³ Mr Elks, Evidence, 21 March 2012, p 1.

⁹⁹⁴ Ms Walker, Evidence, 21 March 2012, p 11.

- 10.66** Several inquiry participants expressed the view that where the respondent is in court, it is the responsibility of the magistrate to explain what the orders mean, although some magistrates do this better than others.⁹⁹⁵ Judge Henson told the Committee that magistrates understand that not everybody who comes before the court is educated to the same standard or has the same language skills and that the court goes to some effort to explain conditions in a way that respondents will understand.⁹⁹⁶
- 10.67** Nevertheless, His Honour also said that some people are unwilling to listen to what is being explained to them by the magistrate and then later, when they have breached the ADVO, they accuse the court of not having properly dealt with the matter. Judge Henson added that sometimes a defendant saying, “I never understood what I was told” is a convenient excuse and that ‘people really did understand what the restrictions were but ignored them nonetheless.’⁹⁹⁷ It is for this reason that the court ensures that every respondent who leaves the court has a physical copy of the orders served on them.⁹⁹⁸
- 10.68** NSW local courts have a heavy and increasing workload and with so many matters to get through on a given day, the Committee was informed that it is not always possible for the magistrate to explain AVO conditions to respondents as thoroughly as they might like. Accordingly, Judge Henson suggested that the question of whether a respondent fully understands the conditions of an ADVO cannot be resolved from the bench:
- We have 40,000 of these matters that go through the courts per year, on average. The time taken to conduct a question and answer with somebody who may have consented—you assume when somebody consents to an order that they understand what they are consenting to but that is a presumption, I accept—some people just want to consent so they can get out of there because they do not want to be there in the first place. I do not know how you resolve that to be quite honest.⁹⁹⁹
- 10.69** The One in Three Campaign was firmly of the view that police and courts are not adequately explaining the full consequences of the ADVO system to respondents. The Campaign submitted that while the conditions of an order might be conveyed, police do not adequately inform respondents that ‘once finalised, the ADVO remains on that person’s record forever’ unless it is revoked.¹⁰⁰⁰ Moreover, the One in Three Campaign argued, the consequences of having a final ADVO issued are not adequately outlined such as the potential limitation on access to children, family court proceedings, employment, travel and study.¹⁰⁰¹

Challenges to understanding for particular community groups

- 10.70** The Committee heard that comprehending the effect and consequences of an ADVO can be especially difficult for people from particular community groups including people with

⁹⁹⁵ Ms Rachael Martin, Principal Solicitor, Wirringa Baiya Aboriginal Legal Centre, Evidence, 5 March 2012, p 9.

⁹⁹⁶ Judge Graeme Henson, Chief Magistrate of New South Wales, Evidence, 5 March 2012, p 27.

⁹⁹⁷ Judge Henson, Evidence, 5 March 2012, pp 26-27.

⁹⁹⁸ Judge Henson, Evidence, 5 March 2012, p 27.

⁹⁹⁹ Judge Henson, Evidence, 5 March 2012, p 27.

¹⁰⁰⁰ Answers to supplementary questions 20 February 2012, One in Three Campaign, Question 1, p 5.

¹⁰⁰¹ Answers to supplementary questions 20 February 2012, One in Three Campaign, Question 2, p 7.

disabilities, people from culturally and linguistically diverse (CALD) communities and Aboriginal people.

- 10.71** Ms Ngila Bevan, Advocacy Projects Manager for People with Disability Australia, told the Committee that it is common for people with disabilities to not fully comprehend the ADVO. This includes not only the consequences of a breach, but also what the order permits and forbids them to do:

[S]ometimes [ADVOs] can be applied on people who do not fully comprehend the full extent of the order and what it means. As a quick example, we had one case of a man with an intellectual disability who did not fully understand that the apprehended violence order meant that he could not go to certain places and he went every week to do his laundry at a certain place which was a breach of his apprehended violence order, and there were serious consequences of that.¹⁰⁰²

- 10.72** This perspective was echoed by the Shopfront Youth Legal Centre, which suggested that the *Crimes (Domestic and Personal Violence) Act 2007* should be amended to require magistrates to be satisfied that the respondent to the ADVO has the capacity to understand the effect of the order. It pointed out that under the current law a person who could not be found guilty of a criminal offence due to mental incapacity, could still have an ADVO issued against them:

We support an amendment to the *Crimes (Domestic and Personal Violence) Act* to the effect that an AVO may not be made unless the court is satisfied that the respondent has the capacity to understand the effect of the order. This would mean amendments to sections 39 and 40 so that AVOs are not always mandatory upon charge or conviction for certain offences ... We currently have the anomalous situation where a person who could not be found guilty of a criminal offence (e.g. because of *doli incapax* or a defence of mental impairment) can have an enforceable AVO against them.¹⁰⁰³

- 10.73** Other inquiry participants also highlighted that communication about ADVO conditions should occur in a culturally appropriate context.¹⁰⁰⁴ Ms Rebecca Hitchcock, Solicitor, Women's Legal Services, outlined that this is especially important for CALD communities. Ms Hitchcock conveyed to the Committee that in her experience, individuals sometimes misunderstand that an ADVO could mean that they have to divorce and that people often have concerns about implications that an ADVO may have for their visa status. For these reasons, she explained, many CALD communities prefer to deal with domestic violence themselves:

[T]here is misunderstanding about what apprehended violence orders mean and their consequences for the family. In particular, they think it means you must separate or you must divorce. They also have concerns that there will be implications for their visa status and things like that, which are obviously significant. So there tends to be a feeling within some communities that it is best dealt with by community leaders or religious leaders. That also, I think, is a system that they are more used to, rather than engaging directly with police.¹⁰⁰⁵

¹⁰⁰² Ms Ngila Bevan, Advocacy Projects Manager, People with Disability Australia, Evidence, 30 April 2012, p 51.

¹⁰⁰³ Submission 51, p 12.

¹⁰⁰⁴ Submission 14, Deaf Society of New South Wales, p 7; Ms Rebecca Hitchcock, Solicitor, Women's Legal Services NSW, Evidence, 7 November 2011, p 41.

¹⁰⁰⁵ Ms Hitchcock, Evidence, 7 November 2011, p 41.

- 10.74** The Committee heard that Aboriginal respondents rarely leave court with a complete comprehension of what an ADVO means. Mr Ralph Smith, Aboriginal Men's Worker, CentaCare Wilcannia-Forbes said that a major part of his job is to work with men to help them understand their orders, but that this is challenging:

That is a major part of my job—trying to get those blokes to understand that they should not go within 200 yards; that they should not go there. They do not understand, especially when three days later they get a phone call telling them that the kid wants them to come to a birthday party or whatever. They go because they have no comprehension of what the AVO is about. They do not seem to have any fear of the AVO or going to jail over it.¹⁰⁰⁶

Methods to improve respondents' understanding of apprehended domestic violence order conditions

- 10.75** The Committee heard a number of ideas about how ADVO conditions could be better understood. The most common suggestion was legal representation for the respondent, but there were also ideas about the role of workshops run by Legal Aid, court support workers and perpetrator programs in conveying the meaning and consequences of ADVOs.

Legal representation for respondents

- 10.76** A widespread view among stakeholders was that a lack of legal representation contributed to a poor understanding of ADVO conditions,¹⁰⁰⁷ leaving unrepresented respondents at a 'considerable disadvantage'.¹⁰⁰⁸ There was little doubt among stakeholders that where a person is legally represented they are more likely to understand ADVO conditions and accordingly to comply with them.¹⁰⁰⁹ To this end, several inquiry participants advocated for greater availability of legal services for respondents in ADVO matters.¹⁰¹⁰
- 10.77** The Committee was advised that the advantages of legal representation include ensuring more tailored ADVO conditions¹⁰¹¹ and a related reduction in the likelihood of breaches,¹⁰¹² that

¹⁰⁰⁶ Mr Ralph Smith, Aboriginal Men's Worker, CentaCare Wilcannia-Forbes, Evidence, 28 February 2012, p 11.

¹⁰⁰⁷ Submission 34, p 12; Submission 51, p 8; Ms Jacqueline Trad, Magistrate, Sutherland Local Court, Evidence, 21 March 2012, p 11; Ms Martin, Evidence, 5 March 2012, p 9; Ms Rachele Johnston, Project Officer, Women's Domestic Violence Court Advocacy Program, Legal Aid NSW, Evidence, 11 November 2011, p 27; Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 1, p 1.

¹⁰⁰⁸ Submission 51, p 8.

¹⁰⁰⁹ Submission 34, p 12; Ms Trad, Evidence, 21 March 2012, p 11; Ms Martin, Evidence, 5 March 2012, p 9.

¹⁰¹⁰ Submission 34, p 12; Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre, Evidence, 5 March 2012, p 45; Ms Johnston, Evidence, 11 November 2011, p 27; Answers to supplementary questions 7 November 2011, Women's Legal Services NSW, Question 3, p 3; Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 10.

¹⁰¹¹ Submission 51, p 8; Ms Johnston, Evidence, 11 November 2011, p 27; Ms Sanders, Evidence, 5 March 2012, p 45; Mr Patrick Latham, Acting Solicitor-in-charge, Legal Aid NSW, Evidence, 28 February 2012, p 22.

respondents have a better understanding of the consequences if conditions are breached (including in relation to access to children,¹⁰¹³ housing and employment),¹⁰¹⁴ and that matters are finalised more quickly, saving time for both the court and the parties.¹⁰¹⁵

- 10.78** Not all inquiry participants agreed on the significance of legal advice to ensure compliance. Wurringa Baiya Aboriginal Legal Centre supported the idea of greater availability of legal advice, but was careful to impress upon the Committee that the lack of legal advice available to respondents is not in their view the primary cause of breaches:

We think that a problem with compliance may be that defendants don't understand the terms of the conditions granted, whether ordered by the Court after a defended hearing, or consented to by the defendant. Certainly having a legal representative to explain those conditions and what they mean would be a good thing ... We want to press that we do not think that lack of representation for offenders to explain the terms of an ADVO is the main reason for non-compliance.¹⁰¹⁶

- 10.79** In any event, legal advice is inaccessible for many respondents to ADVOs. As noted above, respondents do not have access to free legal advice through Legal Aid unless there is an associated criminal charge. Respondents can and sometimes do seek independent legal advice privately, but this is an expensive option that many people simply cannot afford.¹⁰¹⁷
- 10.80** During our visit to Sutherland and Goulburn Local Courts, the Committee observed several unrepresented respondents consent to ADVOs. Mr Elks of the Law Society was in court that day and told the Committee that what they had seen was the norm.¹⁰¹⁸
- 10.81** The Committee heard from Judge Henson that when parties are unrepresented, magistrates go to some effort to ensure that they understand the process.¹⁰¹⁹ Indeed, on the Committee's site visit to the Sutherland Local Court, Magistrate Jacqueline Trad did just this. However, some stakeholders felt that although magistrates do make an effort to assist unrepresented parties, respondents without legal representation still often leave the court confused.¹⁰²⁰
- 10.82** The Children's Court of NSW said that it was aware of a number of cases where an order is made against an unrepresented parent in the local court prohibiting all contact with children while the parent might be bewildered or disengaged or sometimes not even be present. In their view, legal representation might avoid this outcome:

¹⁰¹² Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 2, p 2.

¹⁰¹³ Submission 34, p 8.

¹⁰¹⁴ Submission 34, p 12.

¹⁰¹⁵ Submission 34, p 8.

¹⁰¹⁶ Answers to supplementary questions 5 March 2012, Wurringa Baiya Aboriginal Women's Legal Centre, Question 9, pp 13-14.

¹⁰¹⁷ Mr Elks, Evidence, 7 November 2011, p 66.

¹⁰¹⁸ Mr Elks, Evidence, 21 March 2012, p 1.

¹⁰¹⁹ Judge Henson, Evidence, 5 March 2012, p 26.

¹⁰²⁰ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 11.

We are aware of a number of cases arising in the Care and Protection jurisdiction of the Children's Court where an order will be made against an unrepresented parent in the Local Court prohibiting all contact with children when appropriately supervised contact would be in the best interests of the children. Often these orders will be consented to by a bewildered or disengaged parent. Sometimes it will be made in the absence of the parent, and therefore absent relevant information. Some form of representation or support might have avoided this outcome.¹⁰²¹

- 10.83** Mr Patrick Latham, Acting Solicitor-in-Charge, Legal Aid, stated that in his experience when respondents are unrepresented 'they do not know what is happening and do not understand the implications of the conditions being imposed.'¹⁰²² Ms Jane Sanders, Principal Solicitor with Shopfront Youth Legal Centre, noted that even a little legal advice can be important: many respondents do not understand that conditions can be negotiated at all. With representation an individual may be more comfortable to query the practicality of some of the conditions imposed:

I am a lawyer and it would be easy for me to say that legal representation is the answer to everything. It is not, but I think that it would definitely be part of the solution because it would enable people who may not feel assertive enough to stand up in court and say, "This condition is quite unworkable" or "I know that you want me to abide by a condition that I don't contact this person, but she rings me up all the time. What do I do about that? I'm not allowed to contact her but she's constantly contacting me." So I think some legal representation or some high-quality court support to assist people to come to a resolution about what conditions are workable would have great benefit.¹⁰²³

- 10.84** Mr Elks contended that the availability of free legal advice only after a person has committed an offence is too late. He suggested that had that person been entitled to the legal advice at the point at which the ADVO was sought, it is foreseeable that the later offence, especially where that offence is a breach of the ADVO, could have been avoided.¹⁰²⁴
- 10.85** Several stakeholders including Legal Aid suggested that legal advice should occur before the matter gets to court. This would ensure that peripheral civil law issues and family law issues can be dealt with contemporaneously with the criminal or ADVO matter.¹⁰²⁵
- 10.86** An ancillary concern related to the lack of legal representation for defendants was that where they are not legally represented, defendants can intimidate the victim complainant through cross-examination. Ms Julie Hourigan-Rouse, Executive Officer with the WDVCAS Network described this as a 'free kick' for the defendant.¹⁰²⁶

¹⁰²¹ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 1, pp 1-2.

¹⁰²² Mr Latham, Evidence, 28 February 2012, p 22.

¹⁰²³ Ms Sanders, Evidence, 5 March 2012, p 45.

¹⁰²⁴ Mr Elks, Evidence, 21 March 2012, p 3.

¹⁰²⁵ Ms Johnston, Evidence, 11 November 2011, p 25.

¹⁰²⁶ Ms Julie Hourigan-Rouse, Executive Officer, Women's Domestic Violence Court Advocacy Service Network, Evidence, 5 March 2012, p 17.

Legal Aid pilot: representation for respondents

- 10.87** Legal Aid has recently developed an ADVO defendant pilot program which allocates a duty solicitor for respondents in ADVO proceedings. The program is being trialled in local courts in Mt Druitt and Dubbo local courts.¹⁰²⁷
- 10.88** Under this program, the role of the duty solicitor is to work with the WDVCAS worker and DVLOs on behalf of the respondent to negotiate workable conditions applicable to the ADVO. The solicitor will also explain ADVO conditions to the respondent and the implications of breaching the ADVO, including likely sentences. Importantly, the program also provides for follow-up after the ADVO is in place to ensure that the order is working and seek variation of the order if necessary.¹⁰²⁸
- 10.89** The Committee was advised that this approach is ‘more holistic’ than just the provision of legal advice.¹⁰²⁹ It includes referral of ADVO respondents to other legal services (including for advice about family law), crisis accommodation and behaviour change programs.¹⁰³⁰ Mr Elks said that in his view the program would save court time, reduce police investigations and save the community a ‘great deal’ of money in the long-term.¹⁰³¹

Legal Aid workshops

- 10.90** Legal Aid has also been running information sessions for ADVO respondents in some local courts¹⁰³² and stakeholders commented that these have been quite successful.¹⁰³³ Indeed, the WDVCAS Network told the Committee that the Legal Aid program was a critical step in ensuring offender understanding and reducing recidivism and advocated that the program should be expanded.¹⁰³⁴

The [Legal Aid information sessions are] a critical step in the ADVO process as [they] can remove some of the uncertainty about what each of the conditions of an ADVO mean, and the reality of what may constitute a breach of those conditions. The expansion of these sessions is integral to reducing reoffending.¹⁰³⁵

- 10.91** The Shopfront Youth Legal Centre also saw the benefit of these workshops. It argued that they were helpful and a good use of Legal Aid’s resources but still not the same as legal advice. To this end, Shopfront Youth Legal Centre suggested the expansion of the free legal advice service offered by Legal Aid to include ADVO respondents. While Shopfront acknowledged

¹⁰²⁷ Submission 34, p 12; Ms Michelle Jones, Manager of Funding Program for Women’s Domestic Violence Court Advocacy Service, Evidence, 21 March 2012, p 3.

¹⁰²⁸ Submission 34, p 12.

¹⁰²⁹ Submission 34, p 12; Mr Elks, Evidence, 7 November 2011, p 66.

¹⁰³⁰ Submission 34, p 12.

¹⁰³¹ Mr Elks, Evidence, 7 November 2011, p 66.

¹⁰³² Ms Annmarie Lumsden, Executive Director, Strategic Policy Planning and Management Reporting, Legal Aid NSW, Evidence, 11 November 2011, p 26.

¹⁰³³ Submission 51, p 8.

¹⁰³⁴ Submission 28, p 4.

¹⁰³⁵ Answers to supplementary questions 5 March 2012, Women’s Domestic Violence Court Advocacy Service Network, Appendix 1, p 4.

that this would be costly it pointed to potential cost savings in the long-term as fewer people would breach their orders as a result.¹⁰³⁶

Court support workers

- 10.92** Court support workers are not available to defendants in New South Wales. At the Heidelberg Magistrates' Court in Victoria, the Committee observed that there were separate support workers available to the person in need of protection and the respondent. The Committee heard that this meant that both parties had representation and advice in negotiations on ADVO conditions which led to improved conditions, as well as improved compliance and thus greater protection of victims. These support workers were not lawyers, but had been trained to provide assistance to victims and respondents in ADVO and criminal matters.
- 10.93** The Shopfront Youth Legal Centre has suggested that an enhanced use of court support workers in New South Wales could reduce the incidence of breaches. In their view, court support workers can play a valuable role, especially where legal representation is not available:

The Court Support Worker could either be a lawyer or a trained professional in social work or a similar field. They would be responsible for meeting with all respondents, adequately and fully explaining what it means to have an AVO, how the AVO could be breached (providing examples of such) and the consequences of a breach.¹⁰³⁷

- 10.94** The Shopfront Youth Legal Centre suggested that the court support worker might also refer the person to counselling and other services 'particularly where the respondent is a young person or has an intellectual disability, mental health problems or alcohol and other drug dependency issues.'¹⁰³⁸

Perpetrator programs

- 10.95** Police from Mt Druitt informed the Committee of a perpetrator program they run that targets offenders from the local Pacific Island community. Most of the offenders are on probation or parole and subject to ADVOs. The officers observed that participation in the program gives staff an opportunity to educate offenders about ADVO conditions and how they work.¹⁰³⁹

Committee comment

- 10.96** The Committee believes that greater availability of advice for respondents, whether through a lawyer or court support worker, could reduce breaches and improve compliance with ADVOs. The Legal Aid pilot program shows promise as a method for improving respondent understanding of orders through the provision of legal advice, as do other initiatives that have been brought to our attention during the inquiry.

¹⁰³⁶ Submission 51, p 8.

¹⁰³⁷ Submission 51, p 8.

¹⁰³⁸ Submission 51, p 8.

¹⁰³⁹ Mr Wayne Cox, Superintendent of Police, Local Area Commander, Mt Druitt Police Station, Evidence, 20 February 2012, p 42; Mr Brian Johnson, Senior Constable of Police, Mt Druitt Police Station, Evidence, 20 February 2012, p 42.

- 10.97** However, we also acknowledge that more work needs to be done to determine the effectiveness of these schemes and their feasibility State-wide. Accordingly, the Committee recommends that DAGJ review the ADVO Defendant Pilot Program being undertaken by Legal Aid and take into account the approach taken in Victoria with a view to implementing a best practice respondent legal advice and support program across NSW Local Courts.

Recommendation 63

That the Department of Attorney General and Justice review the Legal Aid NSW Apprehended Domestic Violence Order Defendant Pilot Program and take into account other approaches taken in New South Wales and Victoria with a view to implementing a best practice respondent legal advice and support program across NSW local courts.

Chapter 11 The legal system

The volume of domestic violence matters in local courts has steadily increased over the past decade, with the 160 local courts in New South Wales now dealing with over 56,000 domestic violence matters every year. As the enforcement end of the domestic violence system, decisions made in local courts have a discernable impact on the New South Wales response to domestic violence as a whole and it is important we get this right.

This chapter begins by considering access to justice as it relates to domestic violence. It reflects on stakeholder views about the need for a bench book and improved judicial education before turning to support services and legal advice for victims of domestic violence. The following three chapters also deal with the court system. Chapter 12 considers specialisation in courts in relation to domestic violence, Chapter 13 considers technical aspects of court procedure and Chapter 14 canvasses stakeholder views on sentencing for domestic violence offences.

Access to justice and the court system

11.1 Access to justice considerations weave throughout this report and arise especially in these chapters concerning the justice system. Particular obstacles to justice exist for Aboriginal people, people from culturally and linguistically diverse (CALD) communities, people with disabilities, young people, older people, gay, lesbian, bisexual, transgender and intersex (GLBTI) people and people living in regional and rural areas. The barriers to services that these groups face were discussed in detail in Chapter 2. In relation to the legal system, the barriers are compounded by the heavy and increasing workload of courts. This section will focus especially in the latter two concerns: the availability of services in regional areas and the workload of the entire court system.

Regional services

11.2 Access to justice was raised by inquiry participants particularly in the context of regional and remote communities. Ms Jacqueline Trad, Magistrate at Sutherland Local Court articulated this widely held view:

There will always in the criminal justice system be differences between resources available in the metropolitan area and country areas. It is a reality, even at the most basic level with sentencing options.¹⁰⁴⁰

11.3 The 2010 Judicial Officers Survey concurred that there is a wide gap between the services available in urban courts and those in regional courts, including in relation to sentencing options:

Magistrates and others who have had experience in working in these environments noted significant differences between regional and metropolitan courts, including the range of sentencing options available, the accessibility of support services, the

¹⁰⁴⁰ Ms Jacqueline Trad, Magistrate, Sutherland Local Court, Evidence, 21 March 2012, p 13.

availability of experienced/skilled workers, and the nature and level of engagement with the community.¹⁰⁴¹

- 11.4** Sentencing options are considered further in Chapter 14. Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney, commented that her recent research has shown that there are geographical differences not only in terms of court services but also in relation to getting help in urgent circumstances and the speed with which assistance can be rendered when some towns are hours away from police assistance:

One woman says it takes four hours for the police to get to this little town. The police are mates with everyone in town. She actually had to drive to a bigger regional centre and stay with a friend and escaped that way and moved actually out of the small town.

I have not looked, as I say, at all that data in depth yet but there are particular issues, as you can imagine, in terms of fast assistance in terms of danger and even just accessing court.¹⁰⁴²

- 11.5** The Committee also heard that referrals to support services in regional parts of the State can also be problematic where people must often travel long distances to reach the services they need:

There is a challenge between rural and urban areas where the urban areas might have greater volume of services and greater options to access services, and people in country areas may have to travel greater distances ... We found a big gap in some areas, for example, crisis accommodation for young people aged between 18 and 25.¹⁰⁴³

- 11.6** The cost of getting to court or to support services can be prohibitive for some people. The outlay often includes not only the cost of transport but also, potentially, taking a day off work or paying for child care, and as Dr Laing observed is compounded where the case is adjourned:

The travel costs, when you think of cases being adjourned many times as women say, the cost or just being able to get there, childcare, travel in the country are enormous barriers for women.¹⁰⁴⁴

- 11.7** An issue in the provision of services to regional areas is balancing the availability of those services against the need for them. Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice (DAGJ) explained that some courts sit once a fortnight or once a month and this must be taken into account when allocating resources:

¹⁰⁴¹ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p 6.

¹⁰⁴² Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney, Evidence, 17 October 2011, p 55.

¹⁰⁴³ Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice, Evidence, 30 April 2012, pp 29-30.

¹⁰⁴⁴ Dr Laing, Evidence, 17 October 2011, p 55.

We have some courts that deal with people who experience domestic violence and the court might sit once a fortnight or once a month. So there is a great balance in terms of providing a service when it is needed and not over servicing a particular location. I do not know that we have got that balance right. Some of the court support services do provide that type of outreach work, but there is a challenge more broadly the further west you get in New South Wales to the quality and the rigour and availability of services and that is a challenge that needs to be addressed.¹⁰⁴⁵

Workload of courts and access to justice

- 11.8** The legal maxim ‘justice delayed is justice denied’ resonated during the inquiry. Stakeholders voiced concern that with the courts so overwhelmed, cases are being rushed and backlogs in the system are commonplace. Mr Thomas agreed that inefficiencies can lead to individual disenchantment with the justice system:

If the justice system is slower, that makes people less inclined to be involved in it and see it through to the end. So anything that makes the justice system itself work more efficiently is welcome.¹⁰⁴⁶

- 11.9** Local courts in New South Wales deal with more than 54,000 charges for domestic violence related offences each year.¹⁰⁴⁷ In 2011 the courts granted almost 25,000 apprehended domestic violence orders (ADVOs), up from just over 19,000 in 2001.¹⁰⁴⁸ A significant proportion of each court’s workload is the determination of apprehended domestic violence orders (ADVOs) and related criminal proceedings for domestic violence offences.¹⁰⁴⁹ The Committee heard that the colossal and increasing workload of most courts is contributing to delay within the system.¹⁰⁵⁰
- 11.10** The NSW Chief Magistrate has taken steps to address delay in domestic violence proceedings. His Honour advised the Committee that every court in the State has procedures in place to prioritise the hearing of proceedings for domestic violence matters.¹⁰⁵¹ Practice Note 1 of 2012 is a consolidated practice note that provides that domestic violence matters will be listed for hearing within three months of the charges being laid. By comparison, most other summary criminal trials in the local court are to be finalised within six months.¹⁰⁵²
- 11.11** Even though it is comparatively quick, some stakeholders such as the Fairfield Domestic Violence Committee commented that the delay between the first mention of a case and its eventual hearing was unacceptably long and could have negative consequences for victims:

¹⁰⁴⁵ Mr Thomas, Evidence, 17 October 2011, p 19.

¹⁰⁴⁶ Mr Thomas, Evidence, 30 April 2012, p 31.

¹⁰⁴⁷ Attachment to email from Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, to Principal Council Officer, 25 July 2011.

¹⁰⁴⁸ NSW Bureau of Crime Statistics and Research, ‘Apprehended Violence Orders Granted from 1996’, accessed 26 July 2012, <http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_pub_atoc#avo>.

¹⁰⁴⁹ Submission 21, Chief Magistrate, p 1.

¹⁰⁵⁰ Submission 3a, Victims of Crime Assistance League, p 3.

¹⁰⁵¹ Judge Graeme Henson, Chief Magistrate of New South Wales, Evidence, 18 June 2012, p 19.

¹⁰⁵² Submission 21, p 2.

Waiting times between court mentions and hearings are too long, sometimes up to six months. This leaves the victim in constant fear for safety and forces the victim to leave their home whilst increasing the likelihood of developing additional mental health issues, such as anxiety and depression.¹⁰⁵³

- 11.12** Stakeholders also suggested that when matters do come before a magistrate they are often dealt with in haste and that this has diminished individual access to justice. Mr Stephen Lawrence, Solicitor Advocate, Western Zone, Aboriginal Legal Services, said that he has a sense that magistrates do not want to hear these matters because there are so many of them. He suggested that with such a volume of cases, the court may not be the best place to resolve these issues:

I just have a sense that they do not want to hear these cases because every time they go there, there is a great stack of them and they are all the same ... but there are so many of these things that really should be resolved in some way that the court is not involved with. People do not have the capacity to resolve their own problems any more or to go and get some help. Maybe the court system will just keep handling them, I do not know, but you guys are paying somebody \$300,000 a year to do these things and it seems a waste to me.¹⁰⁵⁴

- 11.13** Dr Jane Wangmann, Lecturer in the Faculty of Law, University of Technology Sydney, described her research which found, among other things, that the level of funding available to local courts challenged courts' ability to meet the demand for their services. As a result magistrates are required to get through a large volume of matters very quickly. Dr Wangmann identified a number of repercussions including that this situation leaves little opportunity for magistrates to convey important information about the way in which domestic violence is responded to, or for victims to have their stories told.¹⁰⁵⁵

I agree that there are concerns about the level of funding made available to the Local Court system given the large number of AVO matters that are dealt with by the system each year. My study on cross applications, which involved interviews with a small number of magistrates and observations of court proceedings, revealed the following:

- A number of magistrates (particularly in metropolitan Sydney) are expected to deal with a large number of matters on a given list day (and the range of legal matters that might appear on that day, even if it is nominally recognised as the 'AVO day')
- As a result matters were generally dealt with in a brief fashion – my observations revealed that generally matters were dealt with within three minutes ...

This has a number of repercussions for the process, the orders that result, and how victims (and defendants) find the process:

- Matters are more likely to be dealt with in a routinised and habitual fashion
- There is little opportunity for victims to have their story about violence told, listened to, and affirmed

¹⁰⁵³ Submission 44, Fairfield Domestic Violence Committee, pp 2-3.

¹⁰⁵⁴ Mr Stephen Lawrence, Solicitor Advocate Western Zone, Aboriginal Legal Service, Evidence, 28 February 2012, p 27.

¹⁰⁵⁵ Answers to supplementary questions 20 February 2012, Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, Sydney, Question 2, p 3.

- There is little opportunity for the court to address lack of community tolerance for intimate partner violence.¹⁰⁵⁶

11.14 Others compared the rapid pace of cases through the courts to a ‘sausage factory’ and felt that this undermines the objectives of the court system.¹⁰⁵⁷ Mr Chris Helby, Solicitor, Callachor and Helby Solicitors, Parkes, was one participant who held this view:

It is like all the courts—it is a sausage factory and they get churned through. My friend is indicating that these things are not given much thought; they are just pushed through. It ain’t what it was supposed to be.¹⁰⁵⁸

11.15 In this context, some stakeholders urged the Committee to consider the workload of local courts when developing our recommendations for reform. For example, Victoria Police noted that the transition to the use of safety notices in that jurisdiction improved police use of them which in turn increased the volume of matters that local courts were hearing. The Committee was advised that implementing a system like Victoria’s should be contemporaneous with measures to ensure that courts can cope with the likely increased workload.¹⁰⁵⁹

11.16 Mr Thomas of DAGJ similarly warned that an improved system for responding to domestic violence may lead to a greater number of legal proceedings initiated by police, which may have obvious flow on effects to the court system and must be planned for.¹⁰⁶⁰ He noted that New South Wales had some experience of this in the implementation of the Domestic Violence Intervention Court Model (DVICM) at Wagga Wagga and Campbelltown Local Courts:

We have learned some lessons from the domestic violence court intervention model [DVICM] ... As a result of improvement, suddenly the courts in that particular area got a significantly larger number of people coming before them, which had an impact not just on their ability to deal with that but their ability to deal with everything else that a court deals with. I mean, a court does not just deal with domestic violence. It deals with a whole range of other completely unrelated things.

So, while not properly planning for that influx, it meant not only was it more difficult for the court to be able to meet the standard for domestic violence cases but it was having an effect on everybody else’s ability to access the service of the court. So, part of establishing these performance measures and managing the system as a whole is for us to be able to plan better how impacts on one part or changes in one part of the criminal justice system will impact on others.¹⁰⁶¹

¹⁰⁵⁶ Answers to supplementary questions 20 February 2012, Dr Jane Wangmann, Question 2, p 5.

¹⁰⁵⁷ Mr Chris Helby, Solicitor, Callachor and Helby Solicitors, Evidence, 28 February 2012, p 21; Ms Matilda Julian, Solicitor, Evidence, 28 February 2012, p 21; Mr Chris Latham, Acting Solicitor-in-Charge, Legal Aid NSW, Evidence, 28 February 2012, p 22.

¹⁰⁵⁸ Mr Helby, Evidence, 28 February 2012, p 21.

¹⁰⁵⁹ Superintendent Rod Jouning, Sexual and Family Violence Division, Victoria Police, Evidence, 30 April 2012, p 20.

¹⁰⁶⁰ Mr Thomas, Evidence, 30 April 2012, p 24.

¹⁰⁶¹ Mr Thomas, Evidence, 30 April 2012, p 24.

- 11.17** The Committee was informed that DAGJ is already working on strategies to improve workload management in the criminal justice system through the development of a Domestic Violence Justice Framework'.¹⁰⁶²

Committee comment

- 11.18** During its site visits to two NSW local courts the Committee observed first-hand the pressures under which local courts operate on domestic violence list day. We commend court staff and magistrates for the work they do in managing a heavy workload.
- 11.19** Given the nature and volume of matters that local courts deal with it is perhaps not surprising that there can be delay in having matters heard. We also acknowledge that workload does not always give magistrates a lengthy period to consider each matter, and we recognise the impact that this pace can have on individuals that come before the courts.
- 11.20** The Committee accepts that delays caused by adjournments can be just as problematic. We acknowledge that efficiencies are necessary in order to avoid further delays but these efficiencies must be balanced against the principles of access to justice. Accordingly we recommend that as part of its Domestic Violence Justice Framework and in considering the implementation of the recommendations contained in this report, the Department of Attorney General and Justice carefully consider and plan for the impact that the Committee's recommendations may have on the workload of local courts.

Recommendation 64

That as part of its forthcoming Domestic Violence Justice Framework and in the implementation of the recommendations contained in this report, the Department of Attorney General and Justice carefully plan for the impact that the Committee's recommendations may have on the workload of courts and ensure that local courts have adequate resources to meet the demand for their services.

Judicial education

- 11.21** Judicial education in this State is provided through the Judicial Commission of New South Wales. Judge Graeme Henson, Chief Magistrate of New South Wales, explained that the local court also has its own education committee comprised of magistrates and assisted by the Judicial Commission. Judge Henson provided the Committee with a list of short training programs relevant to domestic violence that had been given in the past ten years. Most of those related to evidence and eight pertained to domestic violence more specifically. Each averaged about one hour in length.¹⁰⁶³

¹⁰⁶² Mr Thomas, Evidence, 30 April 2012, pp 23-24.

¹⁰⁶³ Tendered document, Judge Graeme Henson, *Domestic Violence Sessions / Evidence Sessions*, p 1.

- 11.22** The Children’s Court of NSW welcomed ongoing training of magistrates but also noted that it already occurs.¹⁰⁶⁴ Judge Henson detailed that every magistrate in the local court is provided with five days of judicial education every year.¹⁰⁶⁵ In addition, when first appointed, they will undertake a week of training provided by senior magistrates, which covers domestic and personal violence:

Every magistrate appointed within 18 months of their appointment will be taken out of court ... and put into a week-long residential program conducted by senior magistrates of the court, and within that orientation program domestic and personal violence are part and parcel of the component in terms of evidence, in terms of practice and procedure, in terms of sentencing and a whole host of other aspects that those who have been on the bench for a little bit of time at least understand better than they did at the beginning.¹⁰⁶⁶

- 11.23** The Committee was told that every training session provided to magistrates is evaluated by education professionals employed by the Judicial Commission, rated by the individual participants and its effectiveness reviewed by the local court’s education committee.¹⁰⁶⁷
- 11.24** Mr Brett Thomas, Member of the Criminal Law Committee of the Law Society, argued in favour of judicial education as a means of promoting consistency of practice across local courts, using implementation of specialist lists as an example:

You then have to ensure through judicial education that that is implemented by the bench in the same way across the board, otherwise it defeats the purpose of having a specialist list.¹⁰⁶⁸

- 11.25** Inquiry participants pointed out that judicial education is especially important in the context of particular community groups.¹⁰⁶⁹ For example, Ms Jane Sanders, Principal Solicitor with Shopfront Youth Legal Centre, said that efforts made in the last decade to improve magistrates’ understanding of people with mental illness or intellectual disability, have made tangible improvements to the court process:

I do think training is important. In relation to mental health and intellectual disability over the past 10 years we have seen a vast improvement in training and in the knowledge and understanding of Local Court magistrates. I have really noticed it. It has improved out of all sight.¹⁰⁷⁰

- 11.26** The Judicial Commission of NSW provided the Committee with a copy of the 2010 Judicial Officers’ Survey. It found that further education was needed in relation to cross-cultural issues, general dynamics and unconscious, personal biases:

¹⁰⁶⁴ Answers to supplementary questions 5 March 2012, Children’s Court of New South Wales, Question 4, p 4.

¹⁰⁶⁵ Judge Henson, Evidence, 5 March 2012, p 26.

¹⁰⁶⁶ Judge Henson, Evidence, 5 March 2012, p 25.

¹⁰⁶⁷ Judge Henson, Evidence, 5 March 2012, p 26.

¹⁰⁶⁸ Mr Brett Thomas, Member, Criminal Law Committee, Law Society of New South Wales, Evidence, 7 November 2011, pp 64-65.

¹⁰⁶⁹ Ms Kristy Kennedy, Graduate Solicitor, Evidence, 28 February 2012, p 27; Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre, Evidence, 5 March 2012, p 51.

¹⁰⁷⁰ Ms Sanders, Evidence, 5 March 2012, p 51.

The impact of decisions on children, victims and offenders was also included in the top 17 priority topics, with the judiciary indicating a desire to play more of a problem-solving role. This would require learning realistic and effective ways to deal with offenders and victims. Research indicates that further education may need to be conducted to enhance an awareness of cross-cultural issues, gender dynamics, and unconscious, personal biases.¹⁰⁷¹

- 11.27** These findings are consistent with stakeholder views. Ms Kristy Kennedy a graduate solicitor attending our Forbes consultation, advocated that magistrates have cultural awareness training, especially regarding the complex needs of Aboriginal people.

Cultural awareness training is always a good thing because, me being Aboriginal, I have a different perspective. I look at an Aboriginal person applying for an AVO with other more complex needs and social implications that would come for a black family but not necessarily a non-Aboriginal family, so for me I would always want the magistrate, if possible, talking about AVOs, to have general training but also more specific cultural awareness training.¹⁰⁷²

- 11.28** The Inner City Legal Centre advocated for more training for judicial officers, including on the dynamics of domestic violence in gay, lesbian, bisexual, transgender and intersex (GLBTI) relationships.¹⁰⁷³

- 11.29** The Committee heard from some stakeholders that some magistrates have exhibited a failure to understand the dynamics of domestic violence. Ms Rebecca Hitchcock, Solicitor with Women's Legal Services described several experiences where magistrates have refused to hear about the history of domestic violence:

I have had more than one comment from magistrates saying "I don't want to hear about the history, just tell me about what happened on that day". People that understand domestic violence realise that it is a pattern of abuse and behaviour and so it has to be put into context to describe why someone acted the way they did on that particular day ... I cannot believe the amount of times magistrates have pulled me up when I am just trying to say, "These are my instructions. This is what has happened" just to put everything in context as to why this person fears certain consequences and wants the AVO in place. I think that a combination of training would be good.¹⁰⁷⁴

- 11.30** The Benevolent Society described scenarios where victims of domestic violence were not willing to report domestic violence again because of their experiences with magistrates on previous occasions. The Benevolent Society's submission quoted from a woman victim of domestic violence:

"I didn't want to do it again and I finally worked out why. Because I remember the judge, like he had glasses on him and he leaned over [and] he said 'oh, he's broken

¹⁰⁷¹ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p iii.

¹⁰⁷² Ms Kennedy, Evidence, 28 February 2012, p 27.

¹⁰⁷³ Answers to supplementary questions 5 March 2012, Inner City Legal Centre, Question 8, p 3.

¹⁰⁷⁴ Ms Rebecca Hitchcock, Solicitor, Women's Legal Services NSW, Evidence, 7 November 2011, p 47.

your jaw'. He said 'they're very serious allegations there missy', like he didn't believe me ... so that was the process [that] scared me off.'¹⁰⁷⁵

- 11.31** Accordingly, the Benevolent Society went on to call for greater professional development for magistrates.¹⁰⁷⁶ Legal Aid and the Sydney Women's Domestic Violence Court Advocacy Service (WDVCAS)¹⁰⁷⁷ also highlighted that judicial officers should receive training on the complex nature of domestic violence and in particular its impact on victims and children:

Judicial officers should undertake specialist domestic violence training on the complex nature of this violence and in particular, the impact on victims and children, as well as ensuring that sentences reflect the seriousness of the breach of an ADVO and the context of violence.¹⁰⁷⁸

- 11.32** Judge Henson was not receptive to the suggestion of an education program to assist magistrates to explain orders to people more effectively:

Running an education program to educate magistrates to explain orders to people, really? Magistrates tell people they are bound by the conditions of the order. Every person who leaves a court is given a copy of their order ... Unless you have got some sort of information that I am not aware of that establishes that is real problem, I do think running an education program to tell magistrates what the legislation requires them to do is worthwhile.¹⁰⁷⁹

- 11.33** Judge Henson's view was borne out in the 2010 Judicial Officers' Survey. An important finding of the Survey was that the judiciary did not want to be given the 'same old thing' in relation to domestic violence education and opposed being told how to do their jobs. Survey respondents were critical of training that was either too basic or too theoretical¹⁰⁸⁰ and wanted more practical assistance.

A substantial number of respondents voiced concern at the prospect of hearing the "same old thing" in relation to domestic violence education, and objected to the feeling that they were in danger of being told how to do their jobs. In addition, while theory and information-based education may be useful to some, the majority of judicial officers stated they need education that will provide them with practical assistance in undertaking their responsibilities.¹⁰⁸¹

- 11.34** Ms Matilda Julian, a solicitor who attended the Committee's consultation at Forbes, also questioned the value of further training in domestic violence matters for magistrates. In her

¹⁰⁷⁵ Submission 37, Benevolent Society, p 12.

¹⁰⁷⁶ Submission 37, pp 12-13.

¹⁰⁷⁷ Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 6, pp 8-13.

¹⁰⁷⁸ Submission 34, Legal Aid NSW, p 18.

¹⁰⁷⁹ Judge Henson, Evidence, 18 June 2012, p 24.

¹⁰⁸⁰ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p iii.

¹⁰⁸¹ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p 11.

view, distinctions in approach simply reflect the different personalities of individual magistrates who are fully aware of the context of domestic violence:

I think that they completely understand what is going on, it is just their personality coming out and I do not think any training would take away their personality. They understand the context and they understand what is going on as much as we do in these domestic violence situations. Where some magistrates interrogate alleged victims as much as any defence lawyer would, it is their personality, it is not that they would need training in my view.¹⁰⁸²

- 11.35** Stakeholders suggested a more practical approach to judicial education. Legal Aid suggested greater use of real case studies in judicial education.¹⁰⁸³ Dr Wangmann called for training that takes into account the reality of the environment in which magistrates work and how to translate their understanding into courtroom practice:

[T]he need for training, how it might be implemented and so on, is not a simple question – the nature and content of that training, and the work environment in which it is expected to be implemented ... also needs attention and focus ... There is a need... to move beyond training that is focused on generally developing understandings about domestic violence, and instead ask how this can be more effectively translated by magistrates into their work environment. This necessitates not only changes to the content and nature of training, but an appreciation of (and commitment to change) the work environment ... It is not possible to only make changes in regard to the content of the education and training that judicial officers engage in – without also addressing the demands of the work environment that sometimes make it impossible to implement such training.¹⁰⁸⁴

- 11.36** In line with the desire for a more practical approach, the Judicial Officers' Survey found that judicial officers wanted education that will address personal challenges including interpersonal communication and interagency cooperation.¹⁰⁸⁵ The Survey also found that judicial officers wanted an education policy guideline covering key domestic violence matters so that presenters and facilitators can keep the core concepts in mind when developing their program and ensure that education remains relevant and practical.¹⁰⁸⁶

- 11.37** The judicial officers surveyed thought that while ongoing education and training is beneficial, the underlying causes of inconsistencies and lack of understanding are broader than an education program alone can address.¹⁰⁸⁷ Survey participants suggested that a risk assessment tool, checklist and bench book could all be usefully incorporated into an education program:

¹⁰⁸² Ms Julian, Evidence, 28 February 2012, p 27.

¹⁰⁸³ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 16, p 8.

¹⁰⁸⁴ Answers to supplementary questions 20 February 2012, Dr Jane Wangmann, Question 5, pp 4-5.

¹⁰⁸⁵ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p 13.

¹⁰⁸⁶ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p 11.

¹⁰⁸⁷ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, pp iii-iv.

Respondents suggested a number of strategies, specifically targeted at the judiciary, which could be incorporated into an educational program. These include:

- developing a risk assessment tool for magistrates including: defendant's prior history, what other agencies were involved, the age of the victim, whether separation is immediate or able to occur, access to firearms, victim pregnancy, custody and separation issues, recent immigration (cultural considerations)
- developing a checklist for magistrates to ensure that all the relevant areas of concern are covered regarding: the needs of the victim, mental health concerns (both victim and defendant), family law issues, whether there is a DOCS referral
- developing a bench book similar to the Canadian model (L Neilson, *Domestic Violence and Family Law in Canada: A Handbook for Judges*, 2009).¹⁰⁸⁸

11.38 The development of a bench book for domestic violence matters was mentioned by other stakeholders and is addressed below.

11.39 Mr Thomas of DAGJ advised the Committee in late 2011 that the Judicial Commission was then finalising some education packages which would include a range of initiatives:

They are at the moment finalising some information on judicial education training packages for the judiciary around the issue of domestic violence and that includes a whole range of different things around behavioural information, information around the law ... also information around trends and services that are available for them as judicial officers.¹⁰⁸⁹

Bench book

11.40 Bench books are a practical guide for judges and magistrates in carrying out their judicial function. Although several of the bench books have some pertinence to domestic violence matters, three are especially relevant. The *Equality Before the Law Bench Book* delineates how judicial officers can take account of values, cultures, lifestyles and socioeconomic disadvantage in proceedings before them. It includes a chapter on women who are victims of domestic violence and a chapter on young people. The *Sentencing Bench Book* provides guidance for magistrates and judges in sentencing individuals. The *Local Court Bench Book* deals with domestic violence matters in its section on apprehended violence orders (AVOs) and its 'practical notes' on taking evidence from vulnerable persons, costs in criminal matters and interpreters among others.

11.41 Mr Thomas from the Law Society noted that the current *Local Court Bench Book* deals with domestic violence only cursorily:

Part of the Local Court bench book deals with domestic violence, but not in any detailed way. There is a general document on the Judicial Commission website—I forget the title—relating to the administration of the Local Court. It is meant to be for

¹⁰⁸⁸ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p 13.

¹⁰⁸⁹ Mr Thomas, Evidence, 17 October 2011, p 16.

the benefit of magistrates. It contains a chapter dealing with domestic violence lists covering about two pages.¹⁰⁹⁰

- 11.42** Numerous inquiry participants suggested either the expansion of the existing bench books to better incorporate the dynamics of domestic violence or the establishment of a new bench book. The Shopfront Youth Legal Centre commended the *Equality Before the Law Bench Book* for its discussion of issues faced by women of domestic violence, but suggested that the *Local Court Bench Book* could do more than deal with only procedural aspects of matters:

We note that there is a Local Court Bench Book provided by the Judicial Commission of NSW. This includes a section on apprehended violence orders and a section on the Children's Court (which in itself includes two paragraphs on AVOs). However, this Bench Book deals only with legal and procedural requirements and does not assist judicial officers to understand the dynamics of domestic violence and some of the factors they may need to consider.¹⁰⁹¹

- 11.43** The Inner City Legal Centre suggested that there should be a bench book devoted to domestic violence, which includes information about the dynamics of domestic violence in GLBTI relationships.¹⁰⁹²

- 11.44** During the inquiry there was some discussion about the recommendations of the NSW and Australian Law Reform Commissions' report *Family Violence – A National Legal Response* that a national bench book be established, including support for the Canadian bench book model.¹⁰⁹³ The Sydney WDVCAS advocated for a domestic violence bench book or practice note and emphasised the importance of magistrates understanding the gendered dynamic of domestic violence and the needs of marginalised victims including Aboriginal people and people from CALD communities.

In our opinion, education and training about the nature and dynamics of domestic violence and its impact on victims, and a bench book or comprehensive practice note would assist in ensuring consistency of decision making and application of penalties ... the Law Reform Commissions' report notes 'the development of a national bench book would be a useful resource for judicial officers in Australia, and should be pursued ... such a book would promote consistency in the interpretation and application of laws across jurisdictions, offer guidance and promote best practice among judicial officers.' In Canada, an electronic bench book has been developed to assist in providing social context information and information about victim and offender behaviour. Ideally, judicial officers would have an understanding of the gendered nature of domestic violence and an understanding of the needs of marginalised victims, for example Aboriginal or Torres Strait Islander victims, victims from culturally diverse backgrounds and victims with disabilities.¹⁰⁹⁴

¹⁰⁹⁰ Mr Thomas, Evidence, 7 November 2011, p 64.

¹⁰⁹¹ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Question 5, p 3.

¹⁰⁹² Answers to supplementary questions 5 March 2012, Inner City Legal Centre, Question 8, p 3.

¹⁰⁹³ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p 13.

¹⁰⁹⁴ Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 6, pp 8-13.

- 11.45 In addition, respondents to the Judicial Officers Survey suggested, among other things, that the development of a bench book similar to the Canadian model would be of benefit in domestic violence matters.¹⁰⁹⁵

Committee comment

- 11.46 The Committee does not think that judicial officers need better training in respect to the law. Rather, the evidence the Committee has received would indicate that judicial officers could benefit from training in how to implement their knowledge of the dynamics of domestic violence to practical effect in the courtroom. Indeed, results of the Judicial Officers' Survey indicated support for this from the judiciary itself.
- 11.47 The Committee is encouraged by suggestions from judicial officers about training and tools that might prove useful in this regard. We see value in a rejuvenated approach to judicial education in respect of domestic violence that continues to include as its basis information on the complex dynamics of domestic violence including in mainstream and diverse communities. Given the volume of evidence we received about ADVO conditions (discussed in detail in Chapters 9 and 10), the Committee believes the training could also include components to assist magistrates to ensure that ADVO conditions are appropriate for the individuals involved and are properly understood by the respondent.
- 11.48 The Committee endorses the recommendations made by judicial officers themselves and proposes that the Attorney General request that the Judicial Commission look into developing a risk assessment tool and a checklist for magistrates in accordance with those suggested in the 2010 Judicial Officers' Survey. In the meantime, the Committee recommends that the Attorney General request that the Judicial Commission develop an education guideline covering key domestic violence matters so that presenters and facilitators can keep core concepts in mind when developing their program and ensure that education remains relevant and practical.
- 11.49 The Committee notes the recommendation of the Law Reform Commissions for a national domestic violence bench book and that this is currently being considered at the national level.¹⁰⁹⁶ In the Committee's view, there is still room for a domestic violence bench book for NSW local courts which would be complementary to the national book and contain New South Wales specific considerations.

¹⁰⁹⁵ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p 13 referring to L Neilson, *Domestic Violence and Family Law in Canada: A Handbook for Judges*, 2009.

¹⁰⁹⁶ Ms Penelope Musgrave, Director, Criminal Law Review, Department of Attorney General and Justice, Evidence, 17 October 2011, p 5.

Recommendation 65

That the Attorney General request that the Judicial Commission develop an education guideline covering key domestic violence matters so that presenters and facilitators can keep core concepts in mind when developing their program and ensure that education remains relevant and practical. This guideline should be regularly updated to ensure that its content remains current and include training on:

- the complex dynamics of domestic violence including in mainstream and diverse communities and how to implement that knowledge in practical ways in the courtroom using real case studies
- ensuring that ADVO conditions are appropriate for the individuals involved and properly understood by the respondent
- real case studies and practical challenges that arise in the courtroom.

Recommendation 66

That the NSW Attorney General request that the Judicial Commission of New South Wales develop a comprehensive training program to further and complement the accrued expertise of magistrates in domestic violence matters, which should include training on the elements contained in Recommendation 65.

Recommendation 67

That the Attorney General request that the Judicial Commission of New South Wales develop a domestic violence bench book for use in NSW local courts.

Court support services for victims

11.50 The Committee heard that the formal legal process through which ADVOs are obtained can be daunting for victims of domestic violence.¹⁰⁹⁷ Support services provided at court help to reduce the anxiety that many victims feel and provide important information about the process. Court support services available for victims of domestic violence range from legal advice to information and referral services.

11.51 It is also important that advice is provided in an environment where victims feel safe and freely able to discuss their circumstances. Some courts have dedicated safe rooms where victims can sit before their matter is heard. The availability of safe rooms and other court infrastructure to support victims in the court process is considered by the Committee in Chapter 13.

Women's Domestic Violence Court Advocacy Service

11.52 The foremost court support service for victims of domestic violence in New South Wales, as distinct from legal advice, is WDVCS. Funded by Legal Aid, WDVCS operates at 108 local courts in New South Wales to assist women and children who are experiencing domestic

¹⁰⁹⁷ Ms Catherine Smith, victim of domestic violence, Evidence, 7 November 2011, p 38.

violence obtain the protection of court orders and to access support services that can assist them with their other legal and social needs.¹⁰⁹⁸ These might include needs related to emergency housing, family law, victims' compensation and counselling.¹⁰⁹⁹

11.53 The Committee was advised that in 2011, 75,400 services were provided by WDVCAS to women and children experiencing domestic violence. 13,033 of these 75,400 services (17.29 per cent) were provided before court and the remaining 62,367 services (82.71 per cent) were provided at or after court. These statistics do not represent the number of clients who were provided with services as some clients may have received more than one service.¹¹⁰⁰

11.54 Legal Aid provides funding for 28 WDVCAS' in New South Wales. Ms Cheryl Alexander, Chair, WDVCAS Network told the Committee that WDVCAS support workers that assist people at court are not lawyers but trained staff of non government organisations:

Legal Aid fund 28 Women's Domestic Violence Court Advocacy Services [WDVCAS] around the State. The funding is provided to non-government organisations, so it could be women's health centres, refuges, mini legal centres; we are all in different types of organisations depending on what was available to auspice the service. So we are spread around the State. Our role is specifically around domestic violence matters prior to coming to court, working with the women during the court process and getting them through them that part.

[W]e provide information about how court works and we go through the orders as to what might be required for the women because we find from the time that an ADVO is taken out to a couple of weeks later when we get to court changes need to be made. It is a bit of a settling process. Police may have put stringent conditions on the apprehended violence order or we may need to be adding some more conditions. So a lot of the work we do is going through that with the women; we will advocate to try to have some changes made. Then after that a lot of our work is referral.¹¹⁰¹

11.55 The Committee heard that WDVCAS will tailor its services as appropriate to the local community. In outlining the aspects of court that Sutherland Local Court does well, Ms Rachelle Johnston, Project Officer for the WDVCAS Program with Legal Aid, pointed out that there are specialist Aboriginal as well as CALD WDVCAS workers available:

We also have specialist culturally and linguistically diverse workers at Sutherland and Aboriginal specialist workers. Those workers were employed by services in that area as a result of a funding increase that the Women's Domestic Violence Court Advocacy Service received in 2009 to recognise that there is a lot of underreporting in those vulnerable communities and to encourage people to attend court and to get into those communities.¹¹⁰²

¹⁰⁹⁸ Submission 39, Redfern Legal Centre, p 13.

¹⁰⁹⁹ Submission 28, Women's Domestic Violence Court Advocacy Service, p 2.

¹¹⁰⁰ Answers to questions taken on notice during evidence 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Question 3, p 1.

¹¹⁰¹ Ms Cheryl Alexander, Chair, Women's Domestic Violence Court Advocacy Service Network Evidence, 5 March 2012, p 13.

¹¹⁰² Ms Rachelle Johnston, Project Officer, Women's Domestic Violence Court Advocacy Program, Evidence, 7 November 2011, p 30.

- 11.56** Also referring to Sutherland Local Court, Ms Beverly Lazarou, Mentor for the Funding Program of WDVCAS, reported that a key feature of the service is that court support workers have established solid working relationships with domestic violence liaison officers (DVLOs). She suggested that this leads to better outcomes for the parties, which is underpinned by a commitment from the police local area commands:

I just wanted to say that as we are delivering services at court, where we have very strong relationships with DVLOs we know that we have better outcomes for women ... We value our relationship with the police. We would not be able to operate effectively if we did not have that close working relationship. We know at the courts where our services work well, they have very strong relationships and there is a great commitment regarding the issue of domestic violence by those local area commands.¹¹⁰³

- 11.57** The WDVCAS is supported by an overarching coordination body, the WDVCAS Network. Established in 1996, the WDVCAS Network brought together the 28 individual WDVCAS operating throughout NSW to become the peak body for women and their children experiencing domestic violence who require legal protection.¹¹⁰⁴ The Network works to improve service delivery, consult with government agencies and formulate recommendations for policy reform.¹¹⁰⁵
- 11.58** The WDVCAS was commended by several stakeholders as a valuable support mechanism for victims of domestic violence.¹¹⁰⁶ For example, Judge Henson outlined the impact of court support in providing victims of domestic violence with information and guidance through the court process:

People who appear at court are more comfortable because they have people who talk to them as real people operating outside the realms of the court, as it were, to explain the process, to guide them and to act as a human face on the otherwise blank face of justice.¹¹⁰⁷

- 11.59** The pre-court contact that court support services have with victims of domestic violence was argued to be particularly valuable.¹¹⁰⁸ Legal Aid stated that people are more likely to come to court and support the ADVO application if they have been given information in advance of the court date. To this end, Legal Aid advocated that police should give WDVCAS the contact details of victims at the earliest possible opportunity.¹¹⁰⁹ Referrals by police under the domestic violence proactive support service (DVPASS) are considered in Chapter 7.

¹¹⁰³ Ms Beverly Lazarou, Mentor, Funding Program, Women's Domestic Violence Court Advocacy Program, Evidence, 18 June 2012, p 25.

¹¹⁰⁴ Submission 28, p 2.

¹¹⁰⁵ Submission 28, p 2.

¹¹⁰⁶ Submission 4, Barnardos Australia, p 4; Dr Laing, Evidence, 17 October 2011, p 46; Ms Susan Smith, Solicitor and Coordinator, Sydney Women's Domestic Violence Court Advocacy Service, Evidence, 7 November 2011, p 59; Mr Brian Johnson, Senior Constable of Police, Mt Druitt Local Area Command, Evidence, 20 February 2012, p 45; Judge Henson, Evidence, 5 March 2012, p 23.

¹¹⁰⁷ Judge Henson, Evidence, 5 March 2012, p 23.

¹¹⁰⁸ Ms Johnston, Evidence, 7 November 2011, p 30.

¹¹⁰⁹ Answers to questions on notice taken during evidence 7 November 2011, Legal Aid NSW, Question 6, pp 3-4.

- 11.60** The court date itself is also an important point of contact between service providers and victims. Stakeholders commented on the importance of court support workers providing victims with information and referrals at this stage. The Committee was informed that DAGJ has recently produced a document to be given to victims of domestic violence at court which outlines the main legal processes:

The issue of providing information to people, particularly at court, around core processes is a really important one. We have recently produced some information specifically targeted towards the victims of domestic violence about the core processes, including ADVOs, and producing more information for defendants. One of the big challenges though is people do not seek this information out until they need it. So we need to provide it in a concise way, in an immediate way, at the point at court.¹¹¹⁰

- 11.61** Understandably, victims are often intimidated by the court experience and traumatised by the incident that brought them there. Mr Thomas of DAGJ advised that feedback from victims of domestic violence has been that they would prefer information in hard copy that they can take home with them to consider in their own time:

[I]t is always a challenge in terms of giving information to people at court when they are in a position where they are already traumatised, when they are in an environment they do not really want to be in, and nobody comes to court as a matter of choice. They want to be out of there as quickly as they possibly can. So there is a challenge in getting that information to them quickly in a plain English format, but in a manner that is going to stick with them once they leave ... One important piece of feedback that we got from victims was that they wanted information that they would be able to take away and digest after court about the court proceedings. Again, they are not always in a good situation to digest complicated information when they are at court, but we can continue to improve the procedures. I do not know that we have got a perfect answer for that.¹¹¹¹

Accessibility and expansion of court support services

- 11.62** WDVCAS is widely but not universally available, operating across 108 local courts in rural and urban New South Wales. Ms Johnston explained that Legal Aid determined the allocation of the WDVCAS service based on need, as reflected in the volume of domestic violence matters heard in various courts:

In determining where those services were to be located—which was an assessment made by Legal Aid NSW—we did an extensive analysis of where there was a high prevalence of domestic violence across the State. We looked at Local Court statistics for a five-year period, to see how many applications were being made in metropolitan, regional and rural areas. From that data, we then looked at areas with the greatest need. But we also looked at whether or not services were already being provided in regional and rural areas, to work out how we could best provide funding to assist as many people as possible across New South Wales.¹¹¹²

¹¹¹⁰ Mr Thomas, Evidence, 17 October 2011, p 6.

¹¹¹¹ Mr Thomas, Evidence, 17 October 2011, p 6.

¹¹¹² Ms Johnston, Evidence, 7 November 2011, p 21.

- 11.63** Ms Gaby Marcus, Director of the Australian Domestic and Family Violence Clearinghouse acknowledged the logic of providing support services according to the volume of matters heard in a particular location. However, she expressed concern that the people that miss out on services could be those most in need, suggesting that people who live in areas that do not have a large volume of domestic violence matters will not only have no access to court support, but likely have limited access to other support services too. Ms Marcus urged that the Committee should consider other mechanisms to provide these people with support if it is not practicable for a court support worker to physically attend:

In terms of the provision of court advocacy services, while I understand it is really difficult in some of the smaller courts that sit less frequently, in some ways those could be the most vulnerable clients because they are possibly in a location where there are very few other services. Especially in rural and remote areas they might have had access to very little else by way of support. I would like to urge those agencies to look at alternative ways of providing them with support if, for example, they cannot provide someone on the ground. They could look at a different model such as potentially having a telephone advocate. Other models have been used in other places that I think might be worth investigating to ensure that those women are getting some level of support and input to assist them in going towards their court date. Otherwise they are basically left with nobody.¹¹¹³

- 11.64** A number of inquiry participants thought that court advocacy services should be expanded. The Mt Druitt Family Violence Response and Support Strategy Group felt that the service should be available to women in a wider range of legal proceedings, including contested hearings and prolonged court processes.¹¹¹⁴

- 11.65** The One in Three Campaign advocated that court support services should be equally available to male victims of domestic violence. The Campaign reported that men had been turned away from accessing court support at the Downing Centre Central Court and courts in the Central Coast:

Men must be allowed to avail themselves of domestic violence assistance services throughout the legal/court process. Currently many are turned away. There are examples at the Downing Centre Criminal Court and Central Coast where domestic violence centres declared to the former Attorney General that they would rather close than serve men.¹¹¹⁵

- 11.66** The majority of inquiry participants who suggested the expansion of court support advocated for its availability in more or all local courts. Ms Susan Smith, Solicitor and Coordinator, Sydney WDVCS, expressed the view that WDVCS has the capacity and willingness to expand:

The Sydney Women's Domestic Violence Court Advocacy Service would also like to see what we do at our courts perhaps spread across the State. We have a list of 50 agencies that work as seconded workers on apprehended violence order list day at our courts. Those agencies are from counselling services, victim's services or refuges, and

¹¹¹³ Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 18 June 2012, p 21.

¹¹¹⁴ Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group, p 13.

¹¹¹⁵ Answers to supplementary questions 20 February 2012, One in Three Campaign, Question 1, p 5.

they will come to court on the day and they help us with interviewing clients, finding out what that client needs and carrying it forward for the client.¹¹¹⁶

- 11.67** In considering the expansion of a court support service like WDVCAS to all courts in New South Wales, Mr Thomas of DAGJ observed that while it is a challenge to implement services in remote courts, it is a worthwhile aspiration.¹¹¹⁷ Ms Lazarou also supported the consideration of expanding the service to remote courts. She suggested the provision of a brokerage service to achieve this and highlighted the benefit of having local people providing court support:

Looking at other options in relation to providing an advocate at those more remote courts is a really good idea. We have found by experience that if you can engage with services in those smaller towns there might be an opportunity to provide a brokerage-style service that might be based on a WDVCAS model of service provision and they could oversee the person. We know there are better results in those towns if those local workers who are already connected and are known in the communities provide those services. It would be a cost-effective option to do that in terms of travel. We know when we provide outreach services and people are travelling long distances and they are blowing in and blowing out, so to speak, that the people on the ground who require that service do not take it up as well. If there was an opportunity to broker with a local service that would be quite effective in that respect.¹¹¹⁸

- 11.68** Conversely, although agreeing in spirit with the idea of expanding WDVCAS services, Ms Annmarie Lumsden, Executive Director Strategic Policy Planning and Management Reporting, Legal Aid, expressed reservations about this suggestion in terms of resourcing, where many courts sit infrequently:

[T]here are 158 local courts in New South Wales. Not all of them sit— some of them only sit once every month or once every two months. I question the feasibility of being able to provide that sort of service at all local courts throughout New South Wales. We provide WDVCAS service at 108 local courts across New South Wales and we have the domestic violence practitioner scheme at 32 of those local courts. Clearly, being able to provide WDVCAS services throughout local courts is a resource issue.¹¹¹⁹

- 11.69** While WDVCAS is the predominant court support service for victims of domestic violence, it is not the only victim support service available. General support services for victims are considered in depth in Chapter 4.

The Law Reform Commissions' view

- 11.70** The Sydney WDVCAS considered the findings of the Law Reform Commissions' report on family violence and agreed that support services play a significant role in assisting victims to navigate the legal system:

The Australian and New South Wales Law Reform Commissions' report emphasised the importance of an integrated response to domestic violence and the pivotal role

¹¹¹⁶ Ms Smith, Evidence, 7 November 2011, pp 58-59.

¹¹¹⁷ Mr Thomas, Evidence, 18 June 2012, p 21.

¹¹¹⁸ Ms Lazarou, Evidence, 18 June 2012, pp 21-22.

¹¹¹⁹ Ms Annmarie Lumsden, Executive Director, Strategic Policy Planning and Management Reporting, Legal Aid NSW, Evidence, 18 June 2012, p 20.

played by support services in ‘integrating’ the system for victims by helping them to navigate between the different legal frameworks.¹¹²⁰

- 11.71** The Law Reform Commissions recommended that the Australian, state and territory governments prioritise culturally appropriate victim support including enhanced support for vulnerable groups and that this support should form part of an integrated response to family violence.¹¹²¹

Coordination of court support

- 11.72** Although stakeholders praised the work of court support services generally, there were concerns that, as a whole, support services suffer from a lack of resourcing and a lack of coordination.¹¹²² As a result, whereas in some areas there is a wealth of support available to victims, in others there is no court support other than private legal advice. Improved coordination of victim support services generally is considered in Chapter 4 at paragraphs 4.82 to 4.90.

- 11.73** A critical element of the DVICM is a coordinated approach to support services. Mr Thomas of DAGJ told the Committee that the advantage of this approach is a victim-centred and holistic response to a broad set of needs of any individual victim.¹¹²³ The Committee saw a comparable model in the Collingwood Neighbourhood Justice Centre in Victoria. There, like the DVICM, case coordination meetings involving magistrates, court staff and support services are held regularly and deal not only with the legal issues for individual cases but also their particular support needs that people might have.

- 11.74** Some stakeholders referred to a similar model adopted in some courts in New York and Canada where courts have a more holistic, problem-solving approach to domestic violence.¹¹²⁴ Ms Marcus explained that in the New York model, every person with business in the court is allocated a case manager who refers each person to the services that they need most. These might be, among other things, housing services, financial advice or counselling:

Basically you walk in, it is located next to the court, you see a receptionist; you fill out a basic questionnaire. Within half an hour every single person has been allocated a case manager. The case manager then refers you, while you are there waiting, to the service of your highest need. So if your crucial need is you have got no money, they will put you in touch with a food stamps person or if your most urgent need is that you are homeless, your first port of call will be a housing service. If you have to go to court the next day, your first port of call will be the legal support team.

¹¹²⁰ Answers to supplementary questions 20 February 2012, Sydney Women’s Domestic Violence Court Advocacy Service, Question 8, p 9.

¹¹²¹ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, Final Report, Vol.1, October 2010, pp 44 and 76, Recommendation 29-3.

¹¹²² Ms Betty Green, Convenor, New South Wales Domestic Violence Coalition, Evidence, 17 October 2011, p 31.

¹¹²³ Mr Thomas, Evidence, 17 October 2011, p 17.

¹¹²⁴ Ms Thea Deakin-Greenwood, Solicitor, Wirringa Baiya Aboriginal Women’s Legal Centre, Evidence, 5 March 2012, p 8.

All those agencies are sitting in that building, all working together. They have all got information sharing protocols. There is a children's counselling service there. So basically you can get all your needs met and you do not have that process where what often happens here is that people approach a service and they are told: Sorry, we haven't got any appointments for the next two weeks, but we'll put you on the waiting list.¹¹²⁵

- 11.75** In the Heidelberg Magistrates' Court, the Committee observed that the Victorian equivalents of WDVCAS court support workers were available to both applicants and respondents in ADVO matters. This meant that both parties had a person to guide them through the system, explain ADVO conditions and support them in negotiating terms. Overall, the Committee heard that this led to better compliance with ADVOs. The Committee has recommended improved support for respondents to ADVOs in Chapter 9.
- 11.76** Referring to the DVICM program, Mr Thomas from DAGJ said there were observable benefits in improved case coordination of support services and referrals in courts and that these have been 'outstanding' in terms of individual satisfaction in the courts where the DVICM operates. He added that on the basis of these results, there is a need to provide case management at more local courts in New South Wales:

In instances where we have put in case management, we can ensure that people are getting immediate access to services when they need them and that they are not falling through or falling behind in terms of how people are providing services to them. If someone needs immediate housing or they need to get to a doctor quickly or they need to have the situation with their children resolved, that type of local level coordinated case management can start to resolve some of those things in really a meaningful way ... the challenge is they are only available in a couple of locations and we need to get them in there. There is no doubt about that.¹¹²⁶

Committee comment

- 11.77** During its visit to Sutherland and Goulburn local courts, the Committee was impressed by the support available to victims of domestic violence that was provided and facilitated by WDVCAS support workers. There was an obvious collaborative spirit between registry staff, support workers, police and the magistrate, which seemed an important source of support for vulnerable witnesses. Both Goulburn and Sutherland Local Courts had a support room where victims could wait before going into court. These rooms make support more accessible by placing somewhere away from the perpetrator to talk openly about the support they need. We consider safe rooms further in Chapter 13 of this report.
- 11.78** The Strategic Review of the DVICM highlighted that many of these features are also strengths of that model. At present, not all NSW local courts enjoy court support services and facilities such as safe rooms. Indeed, the Committee heard that there are 'black spots' across New South Wales where local courts do not have the staff or facilities to provide support services to victims such as that provided by WDVCAS.

¹¹²⁵ Ms Marcus, Evidence, 17 October 2011, p 40.

¹¹²⁶ Mr Thomas, Evidence, 17 October 2011, p 19.

- 11.79** The Committee would like to see services enhanced in order that every court in New South Wales has the same minimum standard of support services available to victims of domestic violence. We accept that it may take some lateral thinking to achieve this. The support may have to be provided remotely in areas where it is not possible for a support worker to physically attend, or it may be that the provision of support can be provided through an existing service in that region whose staff could be trained to provide occasional court support.
- 11.80** The Committee notes that support services for respondents to ADVOs and defendants in criminal matters are an important element of the response to domestic violence, particularly in terms of preventing recidivism and breaches of ADVO conditions. We have made recommendations on legal services for defendants in Chapter 9.
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Recommendation 68

That the NSW Government include in the forthcoming Domestic Violence Justice Framework mechanisms to provide access to legal and other support services to victims of domestic violence to the same minimum standard in every local court, including that every local court is serviced by:

- a NSW Police Force Domestic Violence Liaison Officer on domestic violence list days
- at least one support worker based upon the model currently provided by the Women's Domestic Violence Court Advocacy Service.

The implementation of this recommendation should be complementary to Recommendation 18.

- 11.81** The Committee notes that efforts have been made to provide culturally appropriate support for victims of domestic violence, including people from especially vulnerable groups. However, it appears that these efforts have been ad hoc and could benefit from a more coordinated approach to ensure that nobody is left without the services they need. We agree with the recommendation of the Law Reform Commissions that these services should be a priority.
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Recommendation 69

That the Department of Attorney General and Justice ensure that the provision of culturally appropriate legal support services, including enhanced support for victims in high risk and vulnerable groups, forms part of the forthcoming NSW Domestic Violence Justice Framework.

Legal services for victims

- 11.82** In the preceding chapter the Committee considered the importance of legal advice for ADVO respondents and defendants in criminal domestic violence matters. The Committee heard that legal advice is also useful and empowering for victims of domestic violence.
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- 11.83** Dr Laing referred to international research that shows that where victims have received independent legal advice there is greater likelihood that civil protections such as ADVOs will be appropriately tailored and there is a decreased risk of the individual being subjected to further abuse:

There is research from overseas that says you are more likely to get the civil protection tailored to what you need if you have independent legal advice. There is also one study that found women who had intensive legal advocacy right through the process, their own legal advice, actually had less reabuse as their psychological outcome.¹¹²⁷

- 11.84** Moreover, the Victims of Crime Assistance League argued that a victim who is properly prepared for court will avoid being further traumatised by the experience.¹¹²⁸ Barnardos expressed a similar view and stated that it is helpful for the victim to have a proper understanding of the significance of their testimony before the matter goes to hearing.¹¹²⁹

- 11.85** However, there were also concerns about a lack of accessible legal services for victims of domestic violence. The NSW Police Force told the Committee that victims are often left to represent themselves or gain legal representation at great expense:

[B]ecause the self represented victim does not get DVLO and prosecution support they are left to obtain private legal advice and support often at great expense, or to go it alone. There are not many services providing free legal support to victims of domestic violence.¹¹³⁰

- 11.86** In Dr Laing's view, where the ADVO is being applied for by the police, there is a moral and ethical obligation to provide the victim with legal advice about the implications arising from this intervention into her life:

The other thing too is if a woman is swept up because the police come one night and she is suddenly in court, she might have a long-term plan to leave when she is finished the training. We have overridden that. So I think we have a moral obligation and ethical then to say here is advice about Family Law, tenancy, all the other things that come up in a crisis that we have created by our intervention, that if she had had time to plan her escape, that is what she is eventually doing. She may have actually had the time to get legal advice about all those things. As I say, ethically, if we are saying this is our police policy, you go through this process, we could really enhance that if there was legal advice available and particularly because of the interface with Family Law.¹¹³¹

- 11.87** There are a number of legal advice services available to victims of domestic violence, including Legal Aid and Community Legal Centres, although not all are free nor focused especially on victims.

¹¹²⁷ Dr Laing, Evidence, 17 October 2011, p 51.

¹¹²⁸ Submission 3, Victims of Crime Assistance League, p 5.

¹¹²⁹ Submission 4, p 3.

¹¹³⁰ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, pp 10-11.

¹¹³¹ Dr Laing, Evidence, 17 October 2011, p 51.

Legal Aid

11.88 In relation to criminal law, Legal Aid prioritises the provision of legal advice to defendants although it also provides information, community legal education, and funds non government organisations including WDVCAS. The Committee heard that because Legal Aid's services are directed towards indigent or socially disadvantaged defendants, it is not always available to victims of domestic violence, although they may be able to apply to Legal Aid for legal advice pertaining to some family law matters.¹¹³²

11.89 Legal Aid has recently piloted a Domestic Violence Practitioner Scheme (DVPS) which provides free legal advice and representation to people who make private applications for ADVOs. Legal Aid described the objective of DVPS as to assist women and children to get protection orders that are suited to their needs and to intervene early to address other legal needs related to domestic violence:

The objective of the DVPS is to assist women and children to obtain effective protection orders and to provide early intervention to address their other legal needs related to the domestic violence. Women experiencing domestic violence experience many barriers in enforcing their rights relating to victim's compensation; family law parenting plans; housing; financial entitlements; and general credit and debt and social security liabilities arising from financial abuse. The DVPS provides a single avenue in which these issues can be addressed.¹¹³³

11.90 In September 2011 the DVPS was in operation in 32 local courts in New South Wales.¹¹³⁴ The initial pilot of the scheme revealed that it had led to a reduction in victim withdrawals of ADVO applications and to better outcomes for victims. A pivotal element of its success has been its partnership with WDVCAS:

The service has also led to a reduction in the rate of withdrawals of ADVOs in NSW ... Since the expansion of the [Women's Domestic Violence Court Advocacy Service Program] in 2009 and the DVPS in 2010, both services have been instrumental in working together to reduce the total number of withdrawals of ADVO applications in NSW. Across 2008-09, 2.42% of all service events recorded by WDVCASs resulted in an ADVO application being withdrawn. Across 2010-11 this percentage has reduced to 1.83%.¹¹³⁵

11.91 However, the Committee heard that there are restrictions on eligibility for free legal representation through DVPS. Women's Legal Services advised that although the Scheme will assist a victim with an ADVO application, a means test applies for her to attain legal representation in the hearing of the criminal matter. Women's Legal Services argued that this is anathema to the purpose of the legal aid system:

There are limited legal services available to women seeking private ADVOs. In NSW, the Domestic Violence Practitioner Scheme operates in some, but not all, courts to assist women at the mention stage. However, means testing removes support for

¹¹³² Submission 34, p 2; Ms Helen Campbell, Executive Officer, Women's Legal Services NSW, Evidence, 7 November 2011, p 47.

¹¹³³ Submission 34, p 13.

¹¹³⁴ Submission 34, p 13.

¹¹³⁵ Submission 34, p 13.

women just as they reach the most complex and arguably most crucial time for representation in the ADVO process: the hearing. There is limited value in supporting an applicant through court mentions if she is not prepared or unable to self represent, or if she loses a hearing she may have otherwise won with legal representation. Even if an applicant successfully represents herself at a hearing, the process can place unnecessary stress and trauma on someone who is already a victim of violence. Having to rely on self or pro bono representation to secure protection against violence undermines the efficacy of the legal aid system, which should prioritise such human rights issues.¹¹³⁶

- 11.92** Many women fall just outside the test to access Legal Aid but are still financially impeded from seeking private legal advice. For this reason, Women’s Legal Services advocated the abolition of the means test for victims of domestic violence in ADVO matters and recommended that a less stringent means test should apply in family law matters where domestic violence is a factor:

Following the breakdown of a relationship many women are just above the means test but barely coping financially. The impecunious circumstances of women during this period have a significant impact on their access to domestic violence legal services. Having to pay for an ADVO hearing may be impossible – as a result women may be forced to self-represent if representation by a community legal service or pro bono representation is not available.

[Women’s Legal Services] is of the view that the legal aid means test should be abolished for women who are victims of domestic violence in ADVO or ancillary matters. A less stringent means test should also be applied in family law matters where the client has experienced domestic violence.¹¹³⁷

Community legal centres

- 11.93** Legal Aid also funds other community legal centres in New South Wales. Women’s Legal Services distinguished community legal centres from Legal Aid. For example, Ms Hitchcock pointed out that Women’s Legal Services have the capacity to spend a little extra time with clients and that this can sometimes lead to critical disclosures by the victim:

Sometimes, whereas you might get a 20-minute appointment with Legal Aid we can spend up to an hour or an hour and a half on the phone, and often it is in the last 5 or 10 minutes where a sexual assault or something quite significant might be disclosed to you, because these people have finally built up a trust and rapport through being heard.¹¹³⁸

- 11.94** Ms Helen Campbell, Executive Officer of Women’s Legal Services, noted that, although funded by Legal Aid, community legal centres have a greater degree of independence than Legal Aid and as such can undertake a wider range of activities:

One of the things is a distinctive feature of community legal centres is we are able to do quite a wide range of community education activities and law reform activities

¹¹³⁶ Submission 45, Women’s Legal Service NSW, pp 13-14.

¹¹³⁷ Submission 45, p 14.

¹¹³⁸ Ms Hitchcock, Evidence, 7 November 2011, p 42.

which are not the core business of a statutory authority such as Legal Aid. Being independent we have got more freedom to be critical of the government and its various policies and so on. We have also got a lot more flexibility because we are based in our communities, either our geographic communities or our communities of interest and we are directed by our voluntary management committees.¹¹³⁹

Legal advice for specific community groups

11.95 The Committee also heard that there are also programs targeted to assist vulnerable communities. Several legal services provide specialist legal advice to Aboriginal people. These include the Binaal Billa Family Violence Prevention Legal Service,¹¹⁴⁰ Wirringa Baiya Aboriginal Women's Legal Centre¹¹⁴¹ and Women's Legal Services.¹¹⁴² These organisations take into account the particular experiences of Aboriginal women who continue to be over-represented as victims of domestic violence.¹¹⁴³

11.96 An initiative of the Inner City Legal Centre is the Safe Relationships Project which provides specialist legal advice service for people in same sex relationships or who are transgender or intersex. Ms Kate Duffy, Solicitor, Inner City Legal Centre outlined that the Project provides advocacy, referrals and information and assists people to access legal representation and to apply for ADVOs. Although located in Kings Cross, the Project provides a telephone advice service for the whole of the State:

The Safe Relationships Project [SRP] is primarily a court assisted scheme for people in same sex relationships or transgender and intersex and living in New South Wales. The aim of the Safe Relationships Project is to assist clients in accessing legal representation and applying for apprehended violence orders as well as providing support, advocacy, referrals and information. The Safe Relationships Project was officially launched on 1 July 2009 and is currently funded until 30 June 2014 by the Public Purpose Fund.

... The SRP is there to assist people who live in Broken Hill and Bourke if they contact the SRP prior to a court date and want help escaping domestic violence. We are here to assist those people and we have that capacity. That capacity is limited for face-to-face support. We do provide telephone support for all people living across New South Wales. Are people actually coming to the service? Not many—it is mostly people from the inner city, but that has to do with the referrals.¹¹⁴⁴

11.97 Ms Campbell explained that Women's Legal Services works collaboratively with other service providers to provide legal advice in a manner that meets the needs of the woman:

We provide services by way of three telephone advice lines: a specialist domestic violence legal advice phone service, a general women's advice service and a specialist service provided for and by Aboriginal women. We provide outreach services to

¹¹³⁹ Ms Campbell, Evidence, 7 November 2011, p 47.

¹¹⁴⁰ Submission 38, Binaal Billa Family Violence Prevention Legal Service.

¹¹⁴¹ Submission 43, Wirringa Baiya Aboriginal Women's Legal Centre.

¹¹⁴² Ms Campbell, Evidence, 7 November 2011, p 40.

¹¹⁴³ Submission 43, pp 1-2.

¹¹⁴⁴ Ms Kate Duffy, Solicitor, Inner City Legal Centre, Evidence, 5 March 2012, p 52.

women in women's health centres, particularly in disadvantaged areas of western Sydney, so we regularly work collaboratively with other providers of services to women. If women are attending a health centre for counselling, family support or for follow-up with a health issue we send a solicitor to sit with them in the health centre so they can get legal advice about their circumstance at the same time in a private environment. If they have concerns about the perpetrator it is a subtle way of getting access to legal advice without signalling that that is what they are going to get when they go there.¹¹⁴⁵

Family law services

- 11.98** Legal Aid incorporates a Family Law Early Intervention Unit (EIU) which provides free family law services throughout New South Wales. It is commonly the case that family law issues progress through the court system contemporaneously with related domestic violence charges. The objective of the EIU is to avoid protracted legal disputes by resolving family law issues as early as possible. Legal Aid advised the Committee that on ADVO list day, EIU solicitors will ensure that ADVO conditions are appropriate and do not conflict with existing family law orders:

While the Federal and Family Court jurisdiction takes precedence over Local Courts, early intervention strategies can play a crucial role at a local court level to assist people to resolve their family law issues efficiently.

The EIUs provide a crucial role on AVO list days in assisting victims or defendants to resolve family law issues and to obtain conditions on ADVOs that meet their circumstances. It is imperative that protection orders provide the fullest protection necessary for victims, and include exclusion orders where there are strong allegations of domestic violence. However, it is the experience of Legal Aid NSW that ADVO conditions relating to children... can provide necessary boundaries and protection for victims while facilitating the children having a relationship with the defendant.¹¹⁴⁶

- 11.99** Women's Legal Services again expressed concern about the application of the Legal Aid means test and posited that sometimes women may not meet the means test because of their asset wealth, which might not reflect their immediate financial position. Furthermore, it argued that because mediation is often not appropriate in domestic violence matters, the family law aspects of domestic violence will often end up being battled out in court rather than resolved privately, making legal representation especially important:

Access to domestic violence legal services is a particularly significant issue for women who are involved in family law proceedings and do not meet the Legal Aid means test, either because of their assets – which may not be accessible to them – or their income. As mediation may not be appropriate for victims of domestic violence and as high conflict relationships are more likely to lead to family law litigation, victims of domestic violence will be disproportionately represented in family law litigation.¹¹⁴⁷

- 11.100** The NSW Women's Refuge Movement also provides a family law support service, the Women's Family Law Support Service (WFLSS), established in partnership with the Sydney

¹¹⁴⁵ Ms Campbell, Evidence, 7 November 2011, p 40.

¹¹⁴⁶ Submission 34, p 13.

¹¹⁴⁷ Submission 45, p 14.

Registry of the Family Law Court. The WFLSS facilitates coordination between the client, solicitor, court staff and other organisations to improve access to justice. The Women's Refuge Movement argued that there is room to improve support services for victims of family and domestic violence involved in family law proceedings.¹¹⁴⁸ Issues about the interplay between family law and the operation of ADVOs are considered in detail in Chapter 13 of this report.

Legal services for new migrants

11.101 The Committee heard that new migrants to Australia can be especially vulnerable to abuse and that some new migrants may be reluctant to report domestic violence due to misplaced concerns that to do so could affect their visa status or have other adverse consequences.¹¹⁴⁹

11.102 Ms Catherine Gander, Executive Officer of the New South Wales Women's Refuge Movement explained that the issues have become so prevalent as to have warranted legislative amendment to ensure that where there has been domestic violence, the victim can apply for Australian residency. She described other obstacles to new migrants reporting domestic violence including language barriers, a dependence on the perpetrator for income and a lack of local family and community connections:

For example, somebody coming out from the Philippines to marry somebody in the outback—they have not married yet but they have come out on a spousal visa. It may be that violence occurs quite quickly. The woman may not speak English, does not have family or connections and does not have her own income. The sponsor, or the man that has brought her out to marry her, may not marry her and gives her a whole lot of misinformation about how our system works in Australia. We have many examples of this. It has been such an issue for women's refuges for so many years that there are provisions in the migration Act that when there is domestic violence a woman can apply for residency in Australia. Women's refuges can fill in the forms that are part of that process. It is a huge amount of work.¹¹⁵⁰

11.103 Women's Legal Services works with newly arrived migrant and refugee communities in the Riverina. Ms Campbell described that many of these women are isolated and unfamiliar with Australian legal and cultural concepts:

We are also working with recently arrived migrant women and refugee women, chiefly around the south-western Riverina area of New South Wales where those communities are likely to go on first arrival because there is fruit picking work. They are otherwise quite isolated and new to the concepts of Australian family law, child welfare law and domestic violence law, which are very different from those in the societies they came from. There is also the fact that they have been in refugee camps for a long time and have not had any kind of civil infrastructure that might be able to deal with those issues.¹¹⁵¹

¹¹⁴⁸ Submission 54, NSW Women's Refuge Movement, p 18.

¹¹⁴⁹ Ms Hitchcock, Evidence, 7 November 2011, p 41; Ms Catherine Gander, Executive Officer, New South Wales Women's Refuge Movement, Evidence, 26 March 2012, pp 30-31.

¹¹⁵⁰ Ms Gander, Evidence, 26 March 2012, pp 30-31.

¹¹⁵¹ Ms Campbell, Evidence, 7 November 2011, p 40.

- 11.104** A question arose as to whether there should be a requirement that the person that is sponsoring a new migrant to Australia through a spousal visa should be responsible for ensuring that the new migrant obtains independent legal advice on their rights and obligations in Australia as part of the application process.¹¹⁵² Ms Jane Brock, Executive Manager of the Immigrant Women's Speakout Association supported the idea of legal advice for some new migrants but not all. For example, Ms Brock queried whether this would work for people who come to Australia on short term employment visas:

There was an assurance of support before but that has now been cancelled. I guess that is one thing that they can do. In place of the assurance of support that was cancelled—I believe it is in operation now—there should be support for legal advice and the sponsor should really pay for it. But in the case of 457 visa holders I do not know whether employers will be happy to spend money on some legal advice session before they come here.¹¹⁵³

Committee comment

- 11.105** The Domestic Violence Practitioner Scheme for victims of domestic violence who seek to make private applications for ADVOs appears to be making a difference for victims. In our view, such a scheme empowers victims to take steps to protect themselves in circumstances where they may be fearful but police have not become involved. As stakeholders have highlighted, appearing in court can be a daunting experience and legal advice and support can make it less frightening for victims and thus provides greater accessibility to the court system.
- 11.106** We are keen to see the results of an evaluation of the Scheme to determine if it is working effectively. Upon a positive evaluation we would recommend the expansion of the program across the State.

Recommendation 70

That the Department of Attorney General and Justice facilitate an evaluation of the Legal Aid NSW Domestic Violence Practitioner Scheme pilot with a view to expanding the availability of the Scheme across the State if it is proven to be successful.

- 11.107** The Committee is concerned that new migrants in Australia, who might already feel isolated, may fear reporting incidents of domestic violence because of concerns that to do so might result in their losing residency in Australia. While the Committee sees some merit in the provision of legal advice for new migrants, the matter is more appropriately dealt with by the Federal Government in accordance with its responsibilities for Australia's migration law and policy.
- 11.108** Accordingly, the Chair has forwarded the evidence it received on this issue to the Hon Chris Bowen MP, Minister for Immigration and Citizenship, the Hon Julie Collins MP, Minister for Community Services, Minister for Indigenous Employment and Economic Development and

¹¹⁵² Evidence 30 April 2012, p 54.

¹¹⁵³ Ms Jane Brock, Executive Officer, Immigrant Women's Speakout Association, Evidence, 30 April 2012, p 54.

Minister for the Status of Women, and Ms Cate McKenzie, Chair of the Implementation Panel for the National Plan to Reduce Violence Against Women.

Chapter 12 Specialisation in courts

A number of stakeholders posited that specialisation would improve the courts' capacity to deal with domestic violence. There were varying views on the most effective forms of specialisation and they included standalone or embedded specialist courts as well as specialist prosecutors, lists and magistrates. This chapter considers the arguments in favour of specialisation and the feasibility of this approach. The Committee also reflects on the advantages of the Domestic Violence Court Intervention Model that has been piloted in New South Wales.

Specialist courts

- 12.1** There was much discussion throughout the inquiry about whether New South Wales should implement specialist domestic violence courts. Stakeholders had various interpretations of what this meant. Some suggested that a specialist court should be a standalone institution separate from other local courts. Others advocated for specialist courts that would exist within the local court system, with staff including magistrates, prosecutors, support workers and police, trained in domestic violence matters. It was not always clear which model inquiry participants were advocating.
- 12.2** The Police Association of New South Wales described the divergent uses of the term 'specialised court'. It noted that the expression can refer to standalone courts dealing only with domestic violence or to divisions within existing courts within which there may be a degree of specialisation:

[T]he term can be used to refer to separate stand alone courts that deal only with a particular subject matter – such as the Family Court of Australia, which 'specialises' in matters under the Family Law Act. Children's courts, similarly, may be considered as specialised courts dealing with child-related matters ...

In courts that deal with a range of subject matters, there can be a division or special program embedded within existing court structures that deals with a particular subject matter. For example, in Victoria, there is the Family Violence Division of the Magistrates' Court of Victoria. In other instances, a court may operate a 'specialised list', in which certain categories of cases are heard on certain days of the week, often by dedicated judicial officers.¹¹⁵⁴

Standalone domestic violence courts

- 12.3** An idea considered by some stakeholders was that the ideal way for the legal system to address domestic violence is through specialist domestic violence courts.¹¹⁵⁵ Such courts would be characterised by specialist personnel, procedures, offender programs, and support services, arrangements for victim safety, problem solving or therapeutic approaches and an emphasis on specialised support services.¹¹⁵⁶

¹¹⁵⁴ Submission 63, Police Association of New South Wales, p 39.

¹¹⁵⁵ Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 2, p 5.

¹¹⁵⁶ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 6, p 3; Answers to supplementary questions 17 October 2011, Benevolent

- 12.4 Although there are no specialised, standalone domestic violence courts in Australia,¹¹⁵⁷ most states and territories operate embedded specialised family violence courts within the existing court infrastructure. For example, in one courthouse there might be a single courtroom, magistrate and staff dedicated to hearing family violence matters.
- 12.5 The state and territory family violence courts deal with quite different family violence matters depending on administrative arrangements and the extent of the jurisdiction they exercise. For example, family violence courts in Western Australia and the ACT deal exclusively with criminal matters related to family violence, whereas in South Australia they deal with both criminal matters and applications for protection orders.¹¹⁵⁸ The family violence court in most of these jurisdictions operates in only one or two locations.¹¹⁵⁹

Feasibility of implementing standalone domestic violence courts

- 12.6 The Committee heard that the establishment of specialist domestic violence courts has been considered by the Department of Attorney General and Justice (DAGJ) in the past. Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, DAGJ, commented that the challenge in implementing the suggestion is how it could be reproduced across New South Wales:

Over the years the department has considered specialist courts for domestic violence and a range of other things. The challenge we have in having specialised, stand-alone courts is how will we replicate this service across the State. In New South Wales we have about 160 courts. The challenge is if we have a court that specialises just in one particular jurisdiction we have to have 160 of them to provide effective services across the State. It is difficult to centralise all particular types of crime into one particular court area. It can then have an adverse effect on people wanting to access that service. The idea of having specialist courts is to improve the service, particularly to victims of domestic violence, but if all the domestic violence cases are being funnelled through one or two locations it can have an adverse effect where it takes longer to deal with these things than it otherwise might have.¹¹⁶⁰

- 12.7 Judge Graeme Henson, Chief Magistrate of New South Wales, shared Mr Thomas' concern and voiced strong opposition to the creation of a central specialist court on the basis that it would hinder access to justice:

[I]t depends on what you mean by a "specialist domestic violence court". If you mean one edifice that deals with nothing but domestic violence located at a central spot somewhere in New South Wales then I am totally opposed to it for the obvious reason that access to justice is fundamental to any legal system. To concentrate all the resources in one location simply for the appeasement, for want of a better term, of

Society, Question 6, pp 5-6; see also Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, Final Report, Vol.2, October 2010, p 1489.

¹¹⁵⁷ Submission 63, p 39.

¹¹⁵⁸ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, p 1494.

¹¹⁵⁹ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, p 1494.

¹¹⁶⁰ Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice, Evidence, 30 April 2012, pp 24-25.

interest groups within the community denies the wider community the opportunity to get such access to justice ... My belief is that removing local access to justice would be a very detrimental step in the social equation.¹¹⁶¹

12.8 Judge Henson further suggested that the establishment of a limited number of specialist courts could result in 'two-tiered access to justice' where legal services will be effectively discriminatory depending on where people reside.¹¹⁶²

12.9 An additional reservation voiced by the Inner City Legal Centre was that a standalone specialist court might diminish the seriousness of domestic violence as a crime.¹¹⁶³

We support the submissions given by Redfem Legal Centre and Sydney Women's Domestic Violence Court Advocacy Service regarding the extension of domestic violence court lists. We do not support a specialist domestic violence court as separating domestic violence from the criminal court would in our view, diminish domestic violence as a crime. We support the domestic violence court lists as a more appropriate alternative.¹¹⁶⁴

Committee comment

12.10 Inquiry participants agreed on the benefits of having a better structured and resourced specialist legal system to combat domestic violence. It was less clear whether these perceived benefits are best housed in a standalone specialist court or a specialist court within the existing court structure.

12.11 It is clear to the Committee that the establishment of standalone domestic violence courts is neither feasible nor practical. Putting issues of practicality aside, we also heed the concerns of some stakeholders that the establishment of standalone courts could have the converse effect to that intended by limiting access to justice and diluting the seriousness of domestic violence as a crime. Accordingly, we recommend that the NSW Government not establish standalone domestic violence courts. But we do support specialisation in other forms.

12.12 The Committee also recommends that in the context of the forthcoming and overarching Domestic and Family Violence Framework (DFV Framework), the Department of Attorney General and Justice monitor the outcomes of domestic violence matters in NSW local courts to ensure that the objectives of the DFV Framework are being met.

Recommendation 71

That the NSW Government not establish standalone domestic violence courts at this time.

¹¹⁶¹ Judge Graeme Henson, Chief Magistrate of New South Wales, Evidence, 5 March 2012, p 22.

¹¹⁶² Judge Henson, Evidence, 5 March 2012, p 22.

¹¹⁶³ Answers to supplementary questions 5 March 2012, Inner City Legal Centre, Question 9, p 3.

¹¹⁶⁴ Answers to supplementary questions 5 March 2012, Inner City Legal Centre, Question 9, p 3.

Recommendation 72

That the Department of Attorney General and Justice monitor the outcomes of domestic violence matters in NSW local courts to ensure that the objectives of the NSW Domestic and Family Violence Framework are being met.

Specialisation within existing local courts

- 12.13** Notwithstanding objections to standalone domestic violence courts, there was broad support for incorporating some of the features of a specialist system into existing local courts.¹¹⁶⁵ Inquiry participants suggested that the combination of specialised personnel and processes would lead to a network of local courts with an improved capacity to handle domestic violence matters without the need to establish standalone domestic violence courts. Mr Brett Thomas, Member of the Criminal Law Committee of the Law Society, argued that focus should be on specialist methods rather than specialist courts:

I do not think it is a case of having a specialist court. It goes back to what we were saying about the system we have at Sutherland that works so well. It is about having a specialist list or a specialist way of doing things.¹¹⁶⁶

- 12.14** Complex issues such as domestic violence are often intertwined with other legal matters including especially family law. Currently in New South Wales, one set of circumstances can be presented before different courts to address distinct but related legal issues. As a result, 'no one [judge] gets the whole picture' and offenders 'often end up with conflicting orders from different courts'.¹¹⁶⁷ The complex interplay of family law and state and territory law is addressed in Chapter 13. To achieve a more seamless approach, stakeholders suggested that domestic violence and family law matters should be dealt with contemporaneously and within the same court.
- 12.15** The Redfern Legal Centre and the Sydney Women's Domestic Violence Court Advocacy Service (WDVCAS) elaborated on how local courts could shift towards dealing with domestic violence matters in a more specialised way, as did the broader WDVCAS Network:
- listing all domestic violence matters on the same day, including related amendments to parenting orders

¹¹⁶⁵ Submission 34, Legal Aid NSW, p 22; Submission 39, Redfern Legal Centre and Sydney Women's Domestic Violence Court Advocacy Service, p 14; Mr Thomas, Evidence, 17 October 2011, p 12; Ms Cheryl Alexander, Chair, Women's Domestic Violence Court Advocacy Service Network, Evidence, 5 March 2012, p 11; Answers to supplementary questions 17 October 2011, Benevolent Society, Question 6, pp 5-6; Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 14, p 7; Answers to supplementary questions 5 March 2012, Warringa Baiya Aboriginal Women's Legal Centre, Question 11, pp 14-15; Answers to supplementary questions 5 March 2012, Inner City Legal Centre, Question 9, p 3; Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 2, p 5;

¹¹⁶⁶ Mr Brett Thomas, Member, Criminal Law Committee, Law Society of New South Wales, Evidence, 7 November 2011, pp 64-65.

¹¹⁶⁷ Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 42.

- separating apprehended personal violence order (APVO) applications from apprehended domestic violence order (ADVO) applications
- providing legal advice to the person in need of protection and respondents / defendants
- ensuring that specialist magistrates preside in domestic violence matters
- developing a model bench book for judicial officers to improve consistency and outcomes
- ensuring specialist prosecutors prepare briefs of evidence that are thorough and complete, all evidence is admissible and the victim has been interviewed before the hearing
- ensuring specialist victim advocates are available to attend domestic violence list day and enable those people to have access to the information provided to the court
- inviting local domestic violence workers to attend the ADVO list day on a rostered basis
- providing facilities to ensure the safety of women and children attending court.¹¹⁶⁸

12.16 Inquiry participants noted that the move to specialisation need not require significant changes to current practices. Rather, most of the elements of specialist courts already exist in NSW local courts:¹¹⁶⁹

The WDVCAS Network believe this model of specialisation is readily achievable because the key elements already exist across all courts, with only the need to provide specialist training to selected personnel; the need to further expand the provision of legal advice to both the persons in need of protection and to defendants; and the need to include non-legal service providers in the integrated response.¹¹⁷⁰

12.17 Both the Australian Domestic and Family Violence Clearing House and the NSW Police Force argued that the advantages of a court with a specialist approach to domestic violence matters was said to include improving consistency of outcomes, the safety of victims and the reduction of recidivism with appropriate ADVO conditions more likely to be implemented.¹¹⁷¹

Australian and NSW Law Reform Commissions' approach

12.18 The WDVCAS Network observed that the adoption of a specialist approach within NSW local courts would accord with the recommendations of the Australian and NSW Law Reform Commissions (hereafter the Law Reform Commissions).¹¹⁷² The Law Reform Commissions

¹¹⁶⁸ Submission 39, pp 10-11; Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, pp 2-3.

¹¹⁶⁹ Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 2, p 5.

¹¹⁷⁰ Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, pp 1-3.

¹¹⁷¹ Ms Marcus, Evidence, 17 October 2011, p 42; Answers to supplementary questions 20 February 2012, NSW Police Force, Question 22, p 22.

¹¹⁷² Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 2, p 5; Ms Alexander, Evidence, 5 March 2012, p 11.

drew from the experiences of Australian and overseas jurisdictions and summarised the key benefits of specialised family violence courts as follows:

- greater sensitivity to the context of family violence and the needs of victims through the specialised training and skills of staff
- greater integration, coordination and efficiency in the management of cases through identification and clustering of cases into a dedicated list, case tracking, inter-agency collaboration, and the referral of victims and offenders to services
- greater consistency in the handling of family violence cases both within and across legal jurisdictions
- greater efficiency in court processes
- development of best practice, through the improvement of procedural measures in response to regular feedback from court users and other agencies
- better outcomes in terms of victim satisfaction, improvement in the response of the legal system (for example, better rates of reporting, prosecution, convictions and sentencing in the criminal context), better victim safety, and—potentially—changes in offender behaviour.¹¹⁷³

12.19 The Law Reform Commissions recommended that existing specialist family violence courts in Australian states and territories should be expanded.¹¹⁷⁴ The Committee considers these recommendations further in Chapter 13 where we contemplate the challenges that arise due to family law being governed by Commonwealth legislation.

Domestic Violence Intervention Court Model

12.20 The Domestic Violence Court Intervention Model (DVICM) was adopted as a pilot at Campbelltown and Wagga Wagga Local Courts in 2005 and takes a specialist approach to hearing domestic violence. It incorporated many of the specialist mechanisms suggested to this inquiry to improve domestic violence in this State. Described as ‘an integrated criminal justice and social welfare response to domestic and family violence’, the project has been managed by DAGJ and involves Legal Aid, the NSW Police Force and the Department of Family and Community Services.¹¹⁷⁵

12.21 The DAGJ explained that the DVICM reduces recidivism through an emphasis on perpetrator accountability and improved support to victims:

The Domestic Violence Intervention Court Model (DVICM) prevents reoffending through several integrated strategies: an emphasis on perpetrator accountability with proactive arrest, seamless service delivery to victims, sharing information about risks to victims, and offender behaviour change programs. The program also aims to

¹¹⁷³ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, p 1490.

¹¹⁷⁴ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, p 1505, Recommendation 32-1.

¹¹⁷⁵ Submission 61, NSW Government, p 10.

prevent revictimisation by ensuring that victims have access to intensive case management support for the duration of the matter at court.¹¹⁷⁶

12.22 The DVICM is characterised by the following strategies to support domestic violence cases through the court:

- consistent police response to domestic violence
- consistent evidence collection
- victims' services
- minimised adjournments
- reduced court delay
- domestic abuse programs to change behaviour and reduce reoffending
- weekly meetings about families to manage and respond to risks to victims and their children
- regular meetings to ensure agencies work together and solve problems as they arise.¹¹⁷⁷

12.23 In its first evaluation of the DVICM, the NSW Bureau of Crime Statistics and Research (BOCSAR) 'did not find any particular benefits except for a reduction in the time taken to finalise matters'.¹¹⁷⁸ A second longer-term study, conducted four and half years after the model commenced, heralded similar results with notable differences being a measurable reduction in court delay. These studies are limited in that they reflect only whether the DVICM correlated with statistical changes in police and court outcomes and thus other potential benefits of the system, including broader social benefits, were not considered.¹¹⁷⁹

12.24 BOCSAR found that victims have reported high levels of satisfaction with police responses and victim support services and felt their safety had increased at the closure of the matter in court.¹¹⁸⁰ Mr Thomas from DAGJ acknowledged that qualitative research had shown some very positive results and that the next challenge is rolling out the strengths of the model to other locations:

We have seen that in the two locations that we have been doing this work in, Wagga Wagga and Campbelltown and the evaluations that we have done and the surveys that we have done for the people who have gone through that have just been outstanding in terms of the success and satisfaction people have, but the challenge is they are only

¹¹⁷⁶ Answers to supplementary questions 17 October 2011, Department of Justice and Attorney General, Question 8, p 10.

¹¹⁷⁷ Submission 61, pp 10-11.

¹¹⁷⁸ Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 7 November 2011, p 19.

¹¹⁷⁹ Emma M Birdsey and Nadine Smith, NSW Bureau of Crime Statistics and Research, *The Domestic Violence Intervention Court Model: A Follow-up Study*, Crime and Justice Bulletin No 155, January 2012, p 13.

¹¹⁸⁰ See Laura Rodwell and Nadine Smith, NSW Bureau of Crime Statistics and Research, *An Evaluation of the NSW Domestic Violence Intervention Court Model*, 2008.

available in a couple of locations and we need to get them in there. There is no doubt about that.¹¹⁸¹

12.25 The Committee heard that one of the hallmarks of the DVICM approach is a culture of working together across all of the justice and human service agencies.¹¹⁸² In advocating an evidence-based approach, the Australian Domestic and Family Violence Clearinghouse emphasised that domestic violence courts operate most effectively where there is a commitment from all personnel involved:

It is my view that domestic violence specialist courts operate most effectively when there is strong leadership and commitment from all the personnel involved. In principle, I don't believe in taking some aspects of the model and rolling them out in other places as you end up perpetuating an inadequate system. There is a considerable amount of research material available on what constitutes good practice with regard to the operation of specialist domestic violence courts and it is my contention that NSW should be building on and improving its court model based on the evidence available.¹¹⁸³

12.26 Although there was widespread support for the DVICM, stakeholders such as the Australian Domestic and Family Violence Clearinghouse noted the limitations of the model and argued that it does not go far enough.¹¹⁸⁴ Wirringa Baiya Aboriginal Women's Legal Centre suggested that a better model would offer more intensive case management and support, including greater victim participation and more effective outcomes that lead to a decrease in domestic violence:

[T]he DVICM does not go far enough in offering a real alternative to the current adversarial system. We noted in our evidence ... that models that offer intensive case management, overview and support (such as the NSW Drug Court) and overseas specialist domestic violence courts provide better models and we would like to see the DVICM expanded to include some of these features.

We note that the primary features Domestic Violence Problem Solving Courts are:

- Involvement/participation of the victim and offender
- Integrated service delivery including lots of local service providers
- Intensive case management
- Individualised management of matters
- Expediency
- Outcomes - reductions in domestic violence
- Not diversionary
- Problem solving/therapeutic courts
- Encourages victim participation
- Non-adversarial approach and alternative to usual courts

¹¹⁸¹ Mr Thomas, Evidence, 17 October 2011, p 19.

¹¹⁸² Ms Carolyn Thompson, Manager, Domestic and Family Violence, Department of Attorney General and Justice, Evidence, 30 April 2012, p 34; Mr Thomas, Evidence, 30 April 2012, p 36.

¹¹⁸³ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 6, p 3.

¹¹⁸⁴ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 6, p 3.

The DVICM has not adopted all of these characteristics and the current criminal justice/ADVO process is a one size fits all approach, which is also not working.¹¹⁸⁵

- 12.27** Several inquiry participants, while broadly supporting the DVICM initiative, were critical of its scope because it deals only with ADVO matters where there are associated criminal charges.¹¹⁸⁶ Implicit in the evidence of the WDVCS Network was that the DVICM should be expanded to provide support to victims where criminal charges have not been brought:

The WDVCS Network agrees with the conclusion of BOCSAR that “the DVICM was successful in achieving some but not all of its aims”. In the opinion of the WDVCS Network, the DVICM is an expensive model that targets victims who meet very specific criteria.¹¹⁸⁷

Introducing elements of the DVICM to other parts of NSW

- 12.28** In the December 2011 *Strategic Review of the DVICM Model*, the DAGJ sought to determine how to implement the positive elements of the DVICM model across New South Wales.¹¹⁸⁸ Mr Thomas advised the Committee that DAGJ is now implementing a model that draws on the successes of the DVICM and applies them to the operation of individual courts from policing practices to evidence collection and court processes.¹¹⁸⁹
- 12.29** Some steps have already been taken. Local Court Practice Note 1 of 2012 operates to ensure that a plea of guilty is entered at the first available opportunity, or if there is a plea of not guilty, that the matter is expeditiously brought on for hearing.¹¹⁹⁰ In a domestic violence matter where criminal charges have been laid, matters are to be listed within 3 months.¹¹⁹¹ An expedited process has been enabled by courts now accepting a ‘mini-brief of evidence’ at the first mention. These are smaller briefs of evidence put together by the prosecutor which take less time to prepare, but still provide an overview of the case for the first mention in the court.¹¹⁹²
- 12.30** While Judge Henson pointed to some benefits in the new approach, His Honour also cautioned that not all of the consequences of prioritising domestic violence matters in NSW local courts have been positive, mainly because this can increase delay for other matters:

¹¹⁸⁵ Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Women’s Legal Centre, Question 11, pp 14-15.

¹¹⁸⁶ Submission 39, p 14; Ms Thea Deakin-Greenwood, Solicitor, Wirringa Baiya Aboriginal Women’s Legal Centre, Evidence, 5 March 2012, p 8; Answers to supplementary questions 5 March 2012, Women’s Domestic Violence Court Advocacy Service Network, Question 13, p 6.

¹¹⁸⁷ Answers to supplementary questions 5 March 2012, Women’s Domestic Violence Court Advocacy Service Network, Question 13, p 6.

¹¹⁸⁸ Submission 61, p 10.

¹¹⁸⁹ Mr Thomas, Evidence, 17 October 2011, pp 11-12 and 30 April 2012, p 25.

¹¹⁹⁰ Local Court of NSW, *Local Court Practice Note No 1 of 2012: Procedure for Summary Hearing of Domestic Violence Offences*, 13 February 2012, accessed 10 April 2012 <www.localcourt.lawlink.nsw.gov.au/agdbasev7wr/_assets/localcourts/m4015511422001/pn1of2012_hearing_of_dv_offences.pdf>.

¹¹⁹¹ Submission 21, Chief Magistrate of New South Wales, p 2.

¹¹⁹² Mr Thomas, Evidence, 17 October 2011, p 9; Answers to supplementary questions 5 March 2012, Chief Magistrate of the New South Wales, Judge Graeme Henson, Question 1, p 2.

Those groups whose focus is on domestic violence should understand that the priority given to these types of matters comes at the cost of longer sitting hours and increased delays within other areas of the broad jurisdiction of the Local Court.¹¹⁹³

- 12.31** Case coordination is a pivotal element of the DVICM. Legal Aid noted that the DVICM had illustrated the value of a more coordinated response by criminal justice agencies and NGOs.¹¹⁹⁴ It also allows the court and relevant associated services to allocate resources more efficiently and to more effective use. The DAGJ advised the Committee that improved case coordination is currently being considered by the Government:

I mentioned as part of the DVICM we [are working] with case tracking processes. It allows for those processes to work more effectively when people know their resources are required at court on particular days. We are aware that those submissions are being put to the Attorney and our department's view is that they are quite positive practices where they do exist.¹¹⁹⁵

- 12.32** Doubts were expressed by some stakeholders about the practicality and cost of implementing the DVICM across the State. For example, the Sydney WDVCS stated that it would be cost prohibitive to do so, but that certain elements of the model might valuably be adopted:

We say we cannot hope to replicate the DVICM across the state – it would be cost prohibitive - but it would be in keeping with our recommendation to take elements of this model and incorporate them into every local court.¹¹⁹⁶

- 12.33** Some stakeholders went further and observed that State-wide implementation of the DVICM would be impractical and argued instead that implementation of specialist lists would be a better use of resources. The Redfern Legal Centre took this approach:

While these courts provide an excellent model of domestic violence intervention, the establishment of similar courts in regional and remote communities is not feasible or practical. Specialist ADVO lists could achieve similar interventions at far less cost.¹¹⁹⁷

- 12.34** The WDVCS Network similarly suggested that the establishment of the DVICM in regional and remote communities 'is not feasible or practical' and that specialist lists 'could achieve similar interventions, reaching far more women and children who have experienced domestic violence, at far less cost.'¹¹⁹⁸ The WDVCS expressed a willingness to work with the Government towards implementing aspects of the DVICM:

[A]s the only statewide domestic violence court service operating in NSW, the WDVCS would be perfectly positioned to adopt and incorporate successful elements of the DVICM, like case management, if resourced to do so. Such a course

¹¹⁹³ Answers to supplementary questions 5 March 2012, Judge Henson, Question 1, p 2.

¹¹⁹⁴ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 14, p 7.

¹¹⁹⁵ Mr Thomas, Evidence, 17 October 2011, p 12.

¹¹⁹⁶ Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 2, p 5.

¹¹⁹⁷ Submission 39, p 14.

¹¹⁹⁸ Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, p 5.

of action would build on a widely respected service and facilitates the coordinated and integrated response.¹¹⁹⁹

- 12.35** More broadly, stakeholders advocated for greater involvement of the non government organisations in the expansion of the DVICM. The Benevolent Society praised the DVICM for prioritising victim safety and improved case coordination, and supported its implementation across the State, however also felt that there could be more resources dedicated to the project and better involvement of NGOs:

We also recommend greater inclusion of NGOs in the model. For example, local NGOs who provide support services to victims / offenders could be invited to case coordination meetings so that all services are clear about their involvement with the victim/offender. This may go some way to reducing duplication of services and be less confusing for clients.¹²⁰⁰

- 12.36** Mr Thomas from the Law Society emphasised that in order for the expedited process to work effectively it is important that practicing solicitors are informed of its processes:

You will get a lawyer who comes along and thinks, “I am going to have the standard six weeks to consider the brief of evidence.” They get told, “No, sorry, you get your mini brief now. Come back and tell us if you are pleading guilty or not guilty in a week’s time. If you are pleading not guilty we will give you a hearing date within three months.” We do not have a criticism of that. It is like anything, so long as the lawyers know that is how the system works they adapt accordingly and it should not be a problem.¹²⁰¹

Committee comment

- 12.37** The DVICM is the first step towards a comprehensive integrated approach to domestic violence in New South Wales. In the Committee’s view the DVICM has key strengths that should be built upon and implemented in local courts across the State. We acknowledge that some steps have already been taken in this regard including the issuing of Practice Note 1 of 2012.
- 12.38** The Committee also notes the benefits of courts that adopt a degree of specialisation. The Committee believes that we can draw upon those benefits by introducing elements of specialisation into the existing New South Wales court system and we will address some of these elements in later sections of this chapter.
- 12.39** The Committee is mindful of stakeholder concerns about the feasibility of implementing a carbon copy of the DVICM across the entire State. However, we are optimistic that many aspects of the DVICM including better case management, improved coordination and availability of support services, specialist lists and improved victim participation can be achieved and recommend that the NSW Government incorporate the successful elements of the DVICM into the NSW Domestic and Family Violence Framework.

¹¹⁹⁹ Answers to supplementary questions 5 March 2012, Women’s Domestic Violence Court Advocacy Service Network, Question 13, p 6.

¹²⁰⁰ Answers to supplementary questions 17 October 2011, Benevolent Society, Question 6, pp 5-6.

¹²⁰¹ Mr Thomas, Evidence, 7 November 2011, p 63.

Recommendation 73

That the NSW Government integrate as a key element of the NSW Domestic and Family Violence Framework the most successful aspects of the Domestic Violence Intervention Court Model into all NSW local courts. These include:

- ensuring the presence of victims' services
- minimising adjournments
- reducing court delay
- a consistent police response to domestic violence
- consistent evidence collection
- availability of domestic abuse programs to change behaviour and reduce reoffending
- weekly meetings about families to manage and respond to risks to victims and their children
- regular meetings to ensure agencies work together and solve problems as they arise.

This recommendation should be implemented in accordance with Recommendations 14 and 18 of this report.

Specialist prosecutors

12.40 Several inquiry participants thought that having specialist domestic violence prosecutors would improve the criminal justice system's response to domestic violence.¹²⁰² Redfern Legal Centre and Sydney WDVCAS commented that specialist domestic violence prosecutors are reported to have higher rates of successful prosecutions. Their joint submission quoted from a journal article that considers domestic violence courts in Canada where expert prosecutors are reported to have been 'the single greatest factor' in the success of specialist family violence courts in that jurisdiction.¹²⁰³ The submission listed the responsibilities of a specialist domestic violence prosecutor to include:

- ensuring the brief of evidence is thorough, complete and all evidence admissible
- interviewing the victim before the hearing
- liaising with other court advocates and support persons as appropriate
- prosecuting with a high level of skill and interpreting relevant legislation
- understanding the type of order appropriate to the victim's circumstances.¹²⁰⁴

12.41 Redfern Legal Centre and the Sydney WDVCAS were of the view that 'the prevalence of significant concerns about prosecutors' failure to confer with victims, DVLOs and advocates

¹²⁰² Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 6, p 4; Submission 39, p 12.

¹²⁰³ Submission 39, p 12.

¹²⁰⁴ Submission 39, p 12.

and to advocate effectively on victims' behalf substantiates the need for specialist prosecutors.¹²⁰⁵

- 12.42** The Police Association of New South Wales also posited the benefits of specialist prosecutors and referred to relevant recommendations in the Law Reform Commissions' report on family violence.¹²⁰⁶ The Law Reform Commissions' perspective was that 'specialised prosecutors – working in cooperation with magistrates, police and victim support workers – can play an important role in achieving consistent and quality outcomes for victims of family violence.'¹²⁰⁷
- 12.43** The NSW Police Force advised the Committee that some of its most talented prosecutors have contributed to the development of a specialist domestic violence prosecutor's course. The Committee understands that this was first held in May this year and that it is to run every three months until the end of 2013 at which point the program will be assessed.¹²⁰⁸ The Domestic Violence Prosecutor Initiative is considered in more detail in Chapter 13.
- 12.44** A number of stakeholders referred to domestic violence lists as the cornerstone for establishing specialist domestic violence courts.¹²⁰⁹

Specialist lists

- 12.45** When a legal matter is to be heard in court it is added to a list alongside all the other cases coming to court that day. The list is a simple tool to help court staff and parties determine what matters are to be heard next and what time people need to come to court. The list can be coordinated in a way that groups similar matters together. Over the course of the day it often happens that the list will change slightly, for example if there is a delay in bringing people to court from custody or where other matters were completed more quickly than expected. Ultimately it is up to the magistrate to coordinate the list of matters as she or he sees fit.
- 12.46** A domestic violence list is one which groups domestic violence matters together. For example, the Sutherland Local Court runs its domestic violence list on a Wednesday. Depending on how many domestic violence matters they have listed, the cases may conclude at lunch time, or keep going right through until the end of the day. Where the domestic violence list finishes part way through the day, the court then continues on to hear other cases that are not related to domestic violence.
- 12.47** The Committee was informed by Judge Henson that every local court has a domestic and personal violence list and that a particular time and day is dedicated to hearing those matters:

¹²⁰⁵ Submission 39, p 11.

¹²⁰⁶ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 6, p 4.

¹²⁰⁷ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, p 1510.

¹²⁰⁸ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 19, pp 19-20.

¹²⁰⁹ Ms Alexander, Evidence, 5 March 2012, p 11; Ms Susan Smith, Solicitor and Coordinator, Sydney Women's Domestic Violence Court Advocacy Service, Evidence, 7 November 2011, p 50; Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, pp 1-2.

Every court in New South Wales has a domestic and personal violence list. A particular day is allocated to hear and to determine domestic or personal violence orders. They tend to be more prevalent in the city because the body of matters there is manifestly greater. In the country they tend to be on general list days because the workload in the country is less than that in the city and managing it requires an amalgamation of different types of proceedings before the court.¹²¹⁰

- 12.48** On this basis, Judge Henson was perplexed as to what the problems could be, given that every NSW court already has a dedicated list.¹²¹¹ However, stakeholders reported that dedicated domestic violence lists are not the practice of every local court.¹²¹² Ms Cheryl Alexander, Chair, WDVCS Network described current practices as ‘ad hoc’ and variable depending on the wishes of individual magistrates. She added that unpredictable listings can make appearing at court difficult for victims of domestic violence:

On the day we are dealing with a little bit of domestic violence and then we will jump into traffic and there might be a sentence matter, a couple of custody matters and so we are often seeing women with children waiting until the afternoon. Many women have to leave court because they have children to pick up from school so they cannot even stay to the end of their proceedings. So what is happening at the moment is quite ad hoc and it is different in different courts, depending on the magistrate and how they choose to run their court. But that is where the dedicated list, a block of time is given that all the matters can be proceeded through, whether that is first thing in the morning or whether that is given a little bit of time.¹²¹³

- 12.49** Contrary to Judge Henson’s views, some participants in the Committee’s community forum at Forbes commented that the courts in that region have inconsistent approaches. Ms Cathie Schatz, Outreach Worker, Forbes Women’s Refuge¹²¹⁴ and Ms Leanne Walsh, Community Development Coordinator with Cowra Neighbourhood Centre agreed that people can be waiting ‘all day’ for ADVOs to be finalised:

It is the same in Cowra. Victims are sitting around all day waiting for the ADVOs to be done and they are with the perpetrators. It is terrible for them.¹²¹⁵

- 12.50** In its 2010 Judicial Officers’ Survey findings, the Judicial Commission of NSW noted that judicial officers reported wide inconsistencies in the management of domestic violence lists and respondents called for greater streamlining of the process:

Issues were raised concerning the wide ranging practices around managing domestic violence lists and other practical aspects in relation to the management of court lists. A lack of consistency in the management of [apprehended violence order] list days was commonly cited as a particular problem, which was attributed to low levels of individual skill, lack of experience and knowledge across diverse roles and

¹²¹⁰ Judge Henson, Evidence, 5 March 2012, p 22.

¹²¹¹ Judge Henson, Evidence, 5 March 2012, p 28.

¹²¹² Mr Thomas, Evidence, 30 April 2012, p 25; Ms Leanne Walsh, Community Development Coordinator, Cowra Neighbourhood Centre, Evidence, 28 February 2012, p 13.

¹²¹³ Ms Alexander, Evidence, 5 March 2012, pp 16-17.

¹²¹⁴ Ms Cathie Schatz, Outreach Worker, Forbes Women’s Refuge, Evidence, 28 February 2012, p 13.

¹²¹⁵ Ms Walsh, Evidence, 28 February 2012, p 13.

responsibilities, a poor degree of effective collaboration across organisations and sectors, and inconsistent administrative systems and processes.¹²¹⁶

- 12.51** Inquiry participants were quite specific about what would make an ideal domestic violence court list. The Redfern Legal Centre, Sydney WDVCAS and WDVCAS Network were supported by the Inner City Legal Centre in their view that a specialist list should deal with only ADVOs, domestic violence offences and amendments to parenting orders.¹²¹⁷ The Redfern Legal Centre and Sydney WDVCAS submitted:

A specialist court list would deal only with ADVOs, domestic violence related charge matters, and related amendments to inconsistent parenting orders, and at the same time would bring together domestic violence experts to assist [persons in need of protection] on ADVO list days and thereafter.¹²¹⁸

- 12.52** The WDVCAS Network, Redfern Legal Centre and Sydney WDVCAS provided the Committee with a detailed inventory of key features that a specialist domestic violence list should have, which include to:

- identify and list domestic violence matters, related criminal proceedings and applications to amend related parenting orders on the same day
- list applications for APVOs separately to ADVOs
- coordinate the provision of specialist domestic violence legal advice, victim support services to be available at that time.¹²¹⁹

Advantages of domestic violence lists

- 12.53** Among the benefits that the WDVCAS Network felt domestic violence lists could bring were consistency in outcomes, improved safety and reduced recidivism:

The Women's Domestic Violence Court Advocacy Service Network recommends the development of specialised domestic violence court lists within all local courts in New South Wales as a cost-effective means of improving the legal framework relating to domestic violence by:

- promoting consistent outcomes;
- improving the ongoing safety of victims;
- reducing re-offending; and
- influencing the broader legal system and community perceptions of domestic violence.¹²²⁰

¹²¹⁶ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, p iii.

¹²¹⁷ Submission 39, p 9; Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, pp 2-3; Answers to supplementary questions 5 March 2012, Inner City Legal Centre, Question 13, p 3.

¹²¹⁸ Submission 39, p 9.

¹²¹⁹ Submission 39, Redfern Legal Centre, pp 10-11; Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, pp 2-3.

- 12.54** Ms Angela Jones, Senior Solicitor Family and Domestic Violence for Legal Aid observed that the operation of a dedicated list at Sutherland Local Court leads to better overall coordination of services and improved victim safety:

There is a sense of safety as well, which also leads to more communication between the client, the domestic violence liaison officer, the Women's Domestic Violence Court Advocacy Service and we also have the [Domestic Violence Practitioner Scheme], which is the Domestic Violence Practitioner Scheme funded by Legal Aid. That also runs on a duty day at Sutherland. So there is legal assistance as well as the Women's Domestic Violence Court Advocacy Service support. I think it is a combination of all of that.¹²²¹

- 12.55** The Committee heard that domestic violence lists work well.¹²²² Mr Thomas and the WDVCAS Network¹²²³ noted that such lists allow for the better coordination of domestic violence services to be at court at one time. Mr Thomas elaborated:

[W]here domestic violence court lists have been established it allows for some specialisation to occur around the management of those matters. It allows for the prosecutions to be managed in a coordinated way, it allows for the support services that sit around the court to attend court on that particular day and for people to manage their resources a lot better.¹²²⁴

- 12.56** The NSW Police Force also highlighted that courts with domestic violence lists work effectively because they permit DVLOs, police prosecutors and support workers to coordinate their resources:

NSWPF agrees that where courts have specialist domestic violence court lists they work effectively as DVLOs in collaboration with Police Prosecutors and WDVCAS can dedicate their time and resources to providing support, information and further referrals. Additionally, courts where this is taking place reflect that the Police Prosecutors are often able to manage and provide coordination to the court process.¹²²⁵

- 12.57** Mr Thomas of the Law Society promoted judicial education as an important element of ensuring consistency of practice across specialist lists in different courts:

If they have a different way of approaching their domestic violence list, it does not matter how good the prosecutor, the domestic violence liaison officers or the system are, it will not work as well. Some magistrates will be guided and others will not. They will say, "No, this is the way I am doing it." It usually takes twice as long and everyone gets incredibly frustrated. That goes back to specialist lists. You are not dictating to them; you are simply saying, "This is the generally accepted specialised way of dealing

¹²²⁰ Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, p 1.

¹²²¹ Ms Angela Jones, Senior Solicitor, Family and Domestic Violence, Legal Aid NSW, Evidence, 7 November 2011, p 30.

¹²²² Mr Thomas, Evidence, 17 October 2011, p 12.

¹²²³ Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Appendix 1, pp 2-3.

¹²²⁴ Mr Thomas, Evidence, 17 October 2011, p 12; Judge Henson, Evidence, 5 March 2012, p 28.

¹²²⁵ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 23, p 22.

with these types of issues. It will save you time, you will get through the work and everyone will know what was happening in a proper way and that is how the system is supposed to work.” That is the advantage of it. The specialist list is the way to go, together with judicial education.¹²²⁶

- 12.58** Several stakeholders suggested that the list at Sutherland Local Court was an example of how domestic violence lists can work well. Ms Jones from Legal Aid stated that at Sutherland the list runs in its own dedicated court room which means that domestic violence cases are not mixed up with other proceedings:

The list runs in its own court, which means that those matters are given priority. They are not shuffled in and out between other matters on the day. There also is a safe room that is quite large, which allows people to speak reasonably privately and confidentially without the defendant lurking around.¹²²⁷

- 12.59** Some inquiry participants suggested that implementing domestic violence lists are a good way to convey the message that domestic violence is taken seriously.¹²²⁸ For example, Mr David Porter, a solicitor with Redfern Legal Centre, posited that specialisation will send a clear signal to defendants that domestic violence is a priority within the legal system:

The other thing a specialist court would do is send a clear signal to defendants that it is a prioritised matter on the part of the courts which I think would be an efficient way of escalating the prominence of domestic violence responses by the court system.¹²²⁹

- 12.60** Ms Julie Stewart, Secretary of the NSW Domestic Violence Coalition and Coordinator of the Manly Warringah Women’s Resource Centre, said that implementing domestic violence lists is a practical and achievable idea:

I would like to say that I support the submission from the Sydney Women’s Domestic Violence Court Advocacy Service and the Redfern Legal Centre, which recommends the establishment of specialist lists for ADVO matters in all local courts, with specialist judicial officers and specialist prosecutors. That is really do-able, it is manageable, it is do-able and it is affordable and it just needs having someone set it up and provide the appropriate training for the judicial officers and the prosecutors, but you need a commitment from both the magistracy and from the New South Wales Police.¹²³⁰

Challenges for implementing specialist lists

- 12.61** The Committee understands that dedicating time to hear domestic violence matters consecutively is not always simple. The work of the courts is complex and the court must be adaptable to changing needs. An example given by Judge Henson is that people detained in

¹²²⁶ Mr Thomas, Evidence, 7 November 2011, pp 64-65.

¹²²⁷ Ms Jones, Evidence, 7 November 2011, p 30.

¹²²⁸ Answers to supplementary questions 5 March 2012, Women’s Domestic Violence Court Advocacy Service Network, Appendix 1, p 5.

¹²²⁹ Mr David Porter, Solicitor, Redfern Legal Centre, Evidence, 7 November 2011, p 59.

¹²³⁰ Ms Julie Stewart, Secretary, NSW Domestic Violence Coalition and Coordinator, Manly Warringah Women’s Resource Centre, Evidence, 17 October 2011, p 25.

custody without conviction and awaiting a bail hearing are often prioritised because their liberty is at stake.¹²³¹ Mr Thomas also advised that the listing of domestic violence matters needs to be balanced against a number of competing priorities:

They need to be balanced with a couple of other things. Courts have a number of other priority lists. A number of courts have custody lists to make sure that people are not spending undue periods of time on remand for instance, so they might be heard early. A number of courts, particularly in country areas, allow for Aboriginal legal services to represent their clients on particular days, so that their solicitors are not required to be in more than one place on the same occasion.¹²³²

12.62 Judge Henson was concerned to ensure that courts are not unreasonably asked to allocate time to domestic violence matters exclusively, at the expense of the use of the court's time on other matters:

If you have a list which says that from 9.30 until 12.30 domestic violence matters are to be dealt with at Tumbarumba court and there are no matters listed between 9.30 and 12.30 because we have had an outbreak of hospitality within that particular region, then the court is simply not doing anything.¹²³³

12.63 While the Children's Court of New South Wales supported the idea of domestic violence lists in principle, it questioned whether there is enough demand to justify its implementation in all courts and also queried how such a list could be implemented in practice:

The proposal is good in principle but doesn't address how it should be implemented in detail. There is a special [apprehended violence order] call-over at Parramatta Children's Court and an assigned prosecutor attends. In other courts there is not the volume of work that would justify a special list if that means that time is set aside exclusively on a particular day to deal with domestic violence matters.¹²³⁴

12.64 Inquiry participants observed that a dedicated list may not be feasible or practical in regional local courts because they have too few domestic violence matters to justify a distinct dedication of time.¹²³⁵ For example, although Legal Aid supports the implementation of specialist domestic violence lists in general,¹²³⁶ Ms Annmarie Lumsden, Executive Director Strategic Policy Planning and Management Reporting with Legal Aid, noted that 'one reason why there is not a dedicated domestic violence list day is because it is just not necessary in all the local courts across New South Wales.'¹²³⁷

¹²³¹ Judge Henson, Evidence, 5 March 2012, p 29.

¹²³² Mr Thomas, Evidence, 17 October 2011, p 12.

¹²³³ Judge Henson, Evidence, 18 June 2012, p 20.

¹²³⁴ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 4, p 4.

¹²³⁵ Mr Thomas, Evidence, 7 November 2011, p 63; Ms Annmarie Lumsden, Executive Director Strategic Policy Planning and Management Reporting, Legal Aid NSW, Evidence, 18 June 2012, p 20.

¹²³⁶ Answers to supplementary questions 17 November 2011, Legal Aid NSW, Question 15, p 8.

¹²³⁷ Ms Lumsden, Evidence, 18 June 2012, p 20.

- 12.65** On the other hand, the Redfern Legal Centre and Sydney WDVCS felt that the universal implementation of domestic violence court lists across New South Wales would improve access to services for people in regional communities:

One of the primary advantages of a specialist list for all courts is the potential to provide domestic violence expertise to all [persons in need of protection] in New South Wales, whether they live in Waverley or Wilcannia. Too often we hear stories of women and children in rural and remote communities who are living in fear and unable to escape the violence because of lack of services, lack of support and lack of any understanding of the dynamics of domestic violence.¹²³⁸

- 12.66** Ms Jacqueline Trad, Magistrate at Sutherland Local Court, agreed that domestic violence lists need to be carefully managed to ensure they work effectively and this can take some coordination between local courts. Ms Trad reported that when she worked in the Hunter, for example, limited resources across the region meant that individual courts ensured that they each heard domestic violence matters on different days of the week:

Then of course other court resources and court support organisations are further stretched, so much so that in the Hunter we ensured our domestic violence days were on different days, as we had several courts in the region, so they could get around to it.¹²³⁹

Committee comment

- 12.67** Already a number of local courts in New South Wales successfully operate domestic violence lists on a specified day each week, fortnight or month as appropriate. This allows support services such as WDVCS to make staff available at that time, and for local area commands to send DVLOs to the court on that day. The Committee experienced firsthand the benefits of this approach when it visited Sutherland and Goulburn Local Courts.
- 12.68** Where specialist lists are not in place, it is much more difficult for services to coordinate their staff to attend the court, such that victims may be left without the same support. On the other hand, the Committee acknowledges that there may not always be enough domestic violence matters to warrant a block of time being dedicated exclusively to domestic violence matters.
- 12.69** The Committee respects the prerogative of magistrates to administer their own courts and that the number of domestic violence matters will impact on this. We accept that there are competing priorities in every court, and that as urgent matters arise, they must be dealt with promptly. However, this does not negate the value of having a dedicated list in every court and instead highlights the importance of maintaining some flexibility as to how that list might be managed. We are also of the view that the widespread implementation of domestic violence lists in New South Wales local courts will facilitate the better coordination of support services.
- 12.70** Accordingly, we recommend that the Attorney General request that the Chief Magistrate of New South Wales ensure that every local court in New South Wales implements a dedicated domestic violence list which runs on a regular basis, the frequency of which should be determined based on the volume of domestic violence matters each court hears.

¹²³⁸ Submission 39, Redfern Legal Centre, p 9.

¹²³⁹ Ms Jacqueline Trad, Magistrate, Sutherland Local Court, Evidence, 21 March 2012, p 10.

- 12.71** The Committee is not suggesting a proscriptive approach that could result in a court sitting idle to run out the clock if there are only a few domestic violence matters on a given day. Where there are domestic violence matters to be heard, to the extent possible, they should be heard concurrently on the same day. When domestic violence matters are concluded for the day, of course, the court should immediately move on to other proceedings.
- 12.72** The Committee recognises that a key element of having domestic violence matters listed together is to allow support services and DVLOs to coordinate their attendance at court. Accordingly we recommend that the DAGJ instruct court services to take steps to coordinate the availability of domestic violence support services in consultation with relevant non-government organisations and in accordance with domestic violence lists.
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Recommendation 74

That the Attorney General request that the Chief Magistrate of New South Wales ensure that every local court in New South Wales implements a dedicated domestic violence list which runs on a regular basis, the frequency of which should be determined based on the volume of domestic violence matters each court hears. These lists should be sufficiently adaptable to permit urgent matters to be heard as they arise and to allow courts to move immediately onto other proceedings when domestic violence matters have concluded.

Recommendation 75

That the Department of Attorney General and Justice instruct court services to take steps to coordinate the availability of domestic violence support services in consultation with relevant non government organisations and in accordance with domestic violence lists.

Specialist magistrates

- 12.73** Some inquiry participants suggested that specially trained domestic violence magistrates should preside in domestic violence cases. The Mt Druitt Family Violence Response and Support Strategy Leadership Group was one group that advocated this approach:

[There should be a] domestic violence magistrate. A magistrate that has specialist knowledge in [domestic violence] related matters and deals with [domestic violence] matters. One who understands the varying needs of the victims in relation to interim and exclusion orders from the family home (specifically when it involves children).¹²⁴⁰

- 12.74** However, participants were not united in this view. The Children's Court warned that the dedication of magistrates to domestic violence matters only would be 'extremely de-skilling' and observed that all magistrates should be trained in hearing domestic violence matters:

¹²⁴⁰ Submission 23, Mount Druitt Family Violence Response and Support Strategy Leadership Group, p 14.

The prevalence of domestic violence is such that all magistrates should be adequately trained. It would also be extremely de-skilling to have a magistrate exclusively devoted to presiding in domestic violence matters.¹²⁴¹

- 12.75** Sergeant Patrick Gooley, Vice-President of the Police Association of New South Wales, also commented briefly on the role of magistrates and noted that if they were to become anything more than an arbiter of the law, it would be important that magistrates have appropriate training to take on additional roles:

We would certainly advocate more training for magistrates. I think we need to be careful that if a magistrate is purely going to be an arbiter of the law though that we maintain that. However, if it was something like the drug court program that we spoke about earlier where they actually become involved in the outcomes, the solutions and the case management, I think that would be a good thing. But while ever a magistrate is sitting there purely dealing with the law I think it can be dangerous for them to, whilst they are untrained, start delving too far into those long-term issues and long-term matters.¹²⁴²

- 12.76** Mr Thomas contended that although DAGJ would be pleased to consider the feasibility and practicality of dedicated and specialist domestic violence magistrates in NSW local courts, the idea is one that is unlikely to occur.¹²⁴³ The Committee addressed further issues related to judicial education in Chapter 11, paragraphs 11.21 to 11.49.

Committee comment

- 12.77** The Committee believes that domestic violence proceedings are benefited by magistrates who have specific expertise in hearing them, in the same way that magistrates in the Children's Court are specially trained to hear proceedings involving children and young people. A specialist domestic violence magistrate understands the varying and nuanced needs of the victims and their families in relation to apprehended domestic violence orders, and the court process.
- 12.78** The Committee understands the call for specialisation within the magistracy, however, we accept that it is not feasible to have specialist domestic violence magistrates exclusively dedicated to domestic violence matters in all local courts in New South Wales. Indeed, in our view, it is critical to make certain that magistrates dealing with the gamut of local courts matters, a great bulk of which are domestic violence related, are well-supported to fulfil their role, including through training. The Committee recognises the importance of judicial education in domestic violence and ensuring that this knowledge is put into practical use in the courtroom.

¹²⁴¹ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 4, p 4.

¹²⁴² Sergeant Patrick Gooley, Vice-President, Police Association of New South Wales, Evidence, 20 February 2012, pp 60-61.

¹²⁴³ Mr Thomas, Evidence, 18 June 2012, p 19.

Chapter 13 Court procedures and family law

This chapter deals with specific procedural aspects of domestic violence matters in local courts other than sentencing, which is considered in Chapter 14. Although somewhat technical, these aspects are crucial to the effective and efficient functioning of courts.

The chapter commences by considering issues related to a victim's court experience and giving evidence, the requirement for victims to attend court, victim withdrawal of support for the prosecution or apprehended domestic violence order (ADVO), vulnerable witnesses, and the admissibility of a filmed first statement. The chapter also reviews the function and role of police prosecutors and court infrastructure, including the availability of interpreters and safe rooms. It concludes by looking at the challenges that arise from the interplay between family law and state and territory law governing domestic violence offences and ADVOs.

Victims' evidence

- 13.1** Over the course of the inquiry several issues have arisen regarding victims' evidence in a domestic violence hearing or an application for an ADVO. These include the effect of withdrawing support for the order, whether victims should have to attend court every time a relevant matter is considered, protocols for vulnerable witnesses and the admissibility of certain evidence.¹²⁴⁴

The court experience for victims of domestic violence

- 13.2** The Committee heard that victims' experiences of NSW courts are mixed. The Victims of Crime Assistance League (VOCAL) expressed the view that the criminal justice system is loaded in favour of the offender and has little room for the voice of victims:

If there was ever a process that validated and made excuses for the behaviour of a [domestic violence] offender, while silencing and limiting the victim's voice, it is the criminal legal system.¹²⁴⁵

- 13.3** Dr Lesley Laing, Senior Lecturer in the Faculty of Education and Social Work at the University of Sydney, reported that her research has found that while some victims have a more positive experience, most victims are turned off courts for good, thus placing them further at risk:

Some of them have had a good, well supported experience, but most have not I have to say and most are saying that they would never go near the court again. That puts them more at risk. They might only have one go at getting a supportive outcome. So it is really important that, if we sweep people up into the justice system, that we actually do a good job when they get there. That means legally and also that that is a point for

¹²⁴⁴ Local Court Practice Note 2 of 2012 commenced in May 2012 and establishes steps to improve consistency and efficiency in the determination of domestic and personal violence matters in local courts. The Committee has not received evidence on the practical impact that this Practice Note has had on domestic violence proceedings.

¹²⁴⁵ Submission 3, Victims of Crime Assistance League, p 5.

getting in touch with other services if that is their service connection, the legal system.¹²⁴⁶

- 13.4** Dr Laing advised the Committee that service providers often lament a lack of consistency in approach between different magistrates. She argued that this makes the court process unpredictable and consequently it is hard to advise clients on what to expect. She gave an example that one woman came to court only to find that an interpreter was not available for her and so the matter was adjourned. When she came back at a later date, a different magistrate did not want to hear her evidence in any case. Dr Laing observed that these inconsistencies only add to existing anxiety for victims of domestic violence:

The people, mostly from the women's legal services or community services, say it is very hard to advise women what is going to happen because the magistrate might be here and then it is another one. There was an example where a magistrate wanted a woman to give evidence and she needed a deaf interpreter, so it was adjourned. When they came back it was a different magistrate and he did not want to hear the evidence after all. So the woman went through all that for nothing. It is very hard then to advise women what is likely to happen and that just adds to their trepidation.¹²⁴⁷

- 13.5** The Committee heard that courts can be especially daunting for particular community groups including Aboriginal women, people from culturally and linguistically diverse (CALD) communities and people with disabilities.¹²⁴⁸ Women's Legal Services was one of several¹²⁴⁹ who observed that Aboriginal women face particular challenges in accessing justice:

Aboriginal women face particular obstacles in accessing services and justice. In our experience, Aboriginal women will access a service once a relationship of trust has developed between that service and the Aboriginal community. The disadvantage, discrimination, dispossession, the Stolen Generations and poor experiences of Aboriginal people with the police, courts, Department of Community Services and legal services in the past, continue to linger today for many Aboriginal people, particularly Aboriginal women.¹²⁵⁰

- 13.6** Women's Legal Services referred to two reports it had published on access to justice in relation to domestic violence and reported that the most recent of these reports.¹²⁵¹ Its report *A Long Way to Equal*, showed that barriers to justice for the CALD community related especially to cost, language challenges and the availability of support services.

- 13.7** People in the CALD community can also be cautious about accessing services with which they are not familiar. The Immigrant Women's Speakout Association argued that access to appropriate legal services and advice is critical in this context:

¹²⁴⁶ Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work, University of Sydney, Evidence, 17 October 2011, p 51.

¹²⁴⁷ Dr Laing, Evidence, 17 October 2011, p 50.

¹²⁴⁸ Submission 45, Women's Legal Services NSW, pp 10 and 12.

¹²⁴⁹ See also Ms Thea Deakin-Greenwood, Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, Evidence, 5 March 2012, p 5.

¹²⁵⁰ Submission 45, p 11.

¹²⁵¹ These were *Quarter Way to Equal* (1994) and *Long Way to Equal* (2004).

Immigrant and refugee women often have difficulty accessing legal assistance in matters concerning domestic violence. Aside from the costs associated with legal action, CALD women are also hesitant to access services they're not familiar with. Language barriers also prevent them from giving information in a clear way, made more difficult if police officers and legal counsel are not trained in assisting culturally or linguistically diverse women. This issue is also linked with the availability and related costs of interpreters and caseworkers, as well as having a support person in court. Access to appropriate and affordable legal services and advice is vital for women applying for ADVOs, trying to escape violence.¹²⁵²

- 13.8** Chapter 4 of this report considers barriers to accessing services and support for victims of domestic violence and Chapter 11 looks at access to legal services.

Requirement for victims to attend court

- 13.9** The extent to which victims are required to attend court is an important consideration. It can affect victims' willingness to support the prosecution and impacts upon their experience of the court system and their readiness to engage with it again.
- 13.10** Inquiry participants explained that court appearances can cause ongoing trauma to the victim because on each occasion they are asked to retell their story and to confront the perpetrator.¹²⁵³ The NSW Police Force observed that the stress of these factors can be compounded by 'having to organise childcare, time off work and transport to and from the court.'¹²⁵⁴
- 13.11** Mr Peter Harris, Outreach Worker with Weigelli Centre Aboriginal Corporation, said that in his experience it is common for victims not to arrive at court. He said that the approach taken by the courts in which he has experience is that after the victim has failed to appear three times the matter is dismissed:

For me anyway, I have been involved with a lot of court support from young fellas out at Lake Cargelligo and Condobolin and here, but the fact is it is only the blokes, the perpetrators, that go to the court. I do not see the women there most of the time ... For me again, I notice that every time they come back, the women are not there and then all of a sudden the magistrate says, "Well, the women are not here. Shut her off. Dismiss it." Three times and it is dismissed if the women do not turn up.¹²⁵⁵

- 13.12** The NSW Police Force told the Committee that the approach of different magistrates and courts varies widely. Some magistrates insist that the victim attend court on each occasion and summarily dismiss ADVO applications if the victim fails to turn up, notwithstanding that they

¹²⁵² Submission 68, Immigrant Women's Speakout Association, p 10.

¹²⁵³ Assistant Commissioner Mark Murdoch, Corporate Spokesperson on Domestic and Family Violence, Evidence, 20 February 2012, p 44; Submission 22, Office of the Director of Public Prosecutions, p 2; Submission 74, NSW Police Force, p 25.

¹²⁵⁴ Submission 74, p 25.

¹²⁵⁵ Mr Peter Harris, Outreach Worker, Weigelli Centre Aboriginal Corporation, Evidence, 28 February 2012, p 14.

could make an interim order in the absence of the victim.¹²⁵⁶ Others ‘flatly refuse’ to have victims present.¹²⁵⁷ The NSW Police Force further argued that the inconsistency in court practice highlights the importance of victims being able to give evidence in a pre-recorded form.¹²⁵⁸

13.13 On the other hand, the NSW Police Force conceded that where a victim attends court they will generally have better access to Women’s Domestic Violence Court Advocacy (WDVCAS) workers who can connect them with necessary support services. They conceded that ‘in some circumstances the victim’s appearance at court may be the only way these services are able to communicate with the victim.’¹²⁵⁹

13.14 Ms Susan Peir, Coordinator of WDVCAS, said that it is important that the prosecutor has the victim’s instructions to ensure that the ADVO is appropriately tailored to his or her circumstances. To this end, she said that there can be some value in having the victim at the first mention so that, if circumstances have changed since the interim ADVO was issued, the victim can ask the prosecutor to change those conditions. Although Ms Peir noted that this could be done by phone too.¹²⁶⁰

13.15 Some inquiry participants observed that there have been substantial changes to the law of evidence in New South Wales to diminish the prosecution’s reliance on oral evidence from the victim on the day of the hearing.¹²⁶¹ Mr Stephen Lawrence, Solicitor Advocate with the Aboriginal Legal Service explained:

Previously that was the law, that his or her previous statements outside court could not be used if the story had changed once they got to court, but the Evidence Act now facilitates those earlier statements being put in front of the magistrate or jury and the person can be convicted for it.¹²⁶²

13.16 The Committee was also informed that approximately three years ago Judge Graeme Henson, Chief Magistrate of New South Wales, wrote to all magistrates in the State to say that his position was that victims are not required to attend court on the first mention date unless it is

¹²⁵⁶ By admitting written statements of attending police or the victims themselves that were made at the time police applied for the provisional order: Submission 74, p 25.

¹²⁵⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, p 3.

¹²⁵⁸ Submission 74, p 25.

¹²⁵⁹ Submission 74, pp 25-26.

¹²⁶⁰ Ms Susan Peir, Coordinator, Women’s Domestic Violence Court Advocacy Service, Evidence, 21 March 2012, p 17.

¹²⁶¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 3-4; Mr Stephen Lawrence, Solicitor Advocate Western Zone, Aboriginal Legal Service, Evidence, 28 February 2012, p 25.

¹²⁶² Mr Lawrence, Evidence, 28 February 2012, p 25.

a defended hearing.¹²⁶³ Although some local courts have adopted this approach, for example Sutherland Local Court,¹²⁶⁴ the Committee was informed that others have not.

Committee comment

- 13.17** The Committee is concerned that the court system can be so traumatic for some victims of domestic violence that they are deterred from ever returning to court again. This is compounded for particular community groups. We believe that our recommendations to ensure better coordination, integration and cohesion in the system wide response to domestic violence as well as improved judicial education will improve the experiences of victims of domestic violence in courts.
- 13.18** We appreciate that the Judge Henson has written to magistrates advising that victims do not have to appear to give evidence at the first mention unless it is a defended hearing. However, it is also apparent that problems persist and magistrates are taking widely differing approaches. The Committee considers more consistent approaches to listing domestic violence matters in court paragraphs 12.45 to 12.72 of Chapter 12.
- 13.19** While we accept that magistrates have a broad discretion to run their courts as they see fit, we are also of the view that the insistence by some magistrates that the victim must be present at the first mention when it is not a defended hearing is both problematic and unreasonable. Accordingly, the Committee recommends that the Attorney General request that the Chief Magistrate consider issuing a practice note directing that magistrates not require victims of domestic violence to appear at the first mention. We also recommend that the Department of Attorney General and Justice (DAGJ) consider whether the legislation should contain a presumption in favour of making an interim order in the absence of the victim where it is a police application for an ADVO.

Recommendation 76

That the Attorney General request that the Chief Magistrate consider issuing a practice note directing that magistrates do not require victims of domestic violence to appear at the first mention where it is not a defended hearing.

Recommendation 77

That the Department of Attorney General and Justice consider whether the *Crimes (Domestic and Personal Violence) Act 2007* should contain a presumption in favour of making an interim order in circumstances where the person in need of protection is not present in court and the application for the apprehended domestic violence order is made by police.

¹²⁶³ Judge Graeme Henson, Chief Magistrate of New South Wales, Evidence, 5 March 2012, p 29; Submission 74, p 25. Although it was apparent during the course of this inquiry that not all stakeholders were completely aware that the Chief Magistrate had taken this step: Ms Cathie Schatz, Outreach Worker, Forbes Women's Refuge, Evidence, 28 February 2012, p 14. Local Court Practice Note 2 of 2012 goes some way in this regard but does not make this explicit.

¹²⁶⁴ Sergeant Sharon Walker, Police Prosecutor, Sutherland Local Court, Evidence, 20 February 2012, pp 49-50.

Victim withdrawal of support for the apprehended domestic violence order or criminal prosecution

- 13.20** The Committee heard that it is common that victims either do not support the ADVO application made on their behalf by police, or support it initially but later withdraw that support.¹²⁶⁵ Indeed, the NSW Police Force advised the Committee that victims will often encourage police to drop the application or will recant their original statement.¹²⁶⁶
- 13.21** The Office of the Director of Public Prosecutions (ODPP) referred the Committee to its Protocol for Reviewing Domestic Violence Offences.¹²⁶⁷ The Protocol acts as a guide to prosecutors in dealing with situations where a victim withdraws support for the prosecution. It recognises a variety of reasons why this might occur and places an obligation on the prosecutor to determine the basis on which the victim does not want to proceed. These include:
- the victim and the accused reconcile
 - the victim is financially dependent on the accused
 - threats, harassment or intimidation by the accused
 - disillusionment with the criminal justice system.¹²⁶⁸
- 13.22** Several other stakeholders gave similar explanations and added that victims will often need a lot of support and education to guide them through the legal system¹²⁶⁹ and that they do not always understand what is happening when they are in it.¹²⁷⁰ Mr Paul Mulrone, Magistrate at the Children's Court of New South Wales, emphasised for example that it can be extremely difficult for parents to give evidence against their children.¹²⁷¹ Sergeant Prue Burgun, Treasurer for the Police Association, suggested that there can also be geographical, cultural and family network issues that discourage victims from engaging in the process.¹²⁷²
- 13.23** The NSW Police Force advised the Committee that police continue to find it frustrating when a victim recants their previous evidence or fails to arrive at court to give it.¹²⁷³ Mr Lawrence

¹²⁶⁵ Mr Lawrence, Evidence, 28 February 2012, p 26; Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 3-4; Ms Prue Burgun, Treasurer, Police Association of New South Wales, Evidence, 20 February 2012, p 59; Submission 22, p 2.

¹²⁶⁶ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 3-4.

¹²⁶⁷ Submission 22, p 2.

¹²⁶⁸ Office of the Director of Public Prosecutions, *Protocol for Reviewing Domestic Violence Offences*, 2003, accessed 16 August 2012

<www.odpp.nsw.gov.au/Guidelines/APPENDIX%20%20E.html> at 11 July 2012.

¹²⁶⁹ Submission 4, Barnados Australia, p 5.

¹²⁷⁰ Mr Howard Brown, Vice-President, Victims of Crime Assistance League, Evidence, 26 March 2012, pp 21-22.

¹²⁷¹ Mr Paul Mulrone, Magistrate, Children's Court of New South Wales, Evidence, 5 March 2012, p 37.

¹²⁷² Ms Burgun, Evidence, 20 February 2012, p 60.

¹²⁷³ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 3-4; Ms Burgun, Evidence, 20 February 2012, p 59.

contended that sometimes police can be too quick to assume that a victim's withdrawal of support for the prosecution is because they have been manipulated by the offender. He conceded that this was sometimes the case, but not always:

[P]olice will often impute the worst and believe that the accused has made threats to the victim and that is why she has changed her mind, or the accused's family is bearing down on her. That is true sometimes definitely but what is also true is that people are involved in these relationships and all of a sudden having their husband go to jail who is the father of their children, which seemed like a great idea when they were involved in this sort of awful fight at the house, no longer seems like a good idea.

Sometimes the police I deal with, you talk to them and get the impression that they struggle to understand that kind of dynamic. They get so annoyed and frustrated by the fact that the person has changed their mind, but it is just, I guess, reality.¹²⁷⁴

The Australian and NSW Law Reform Commissions' view

- 13.24** The Police Association referred the Committee to recommendations contained in the Australian and NSW Law Reform Commissions (the Law Reform Commissions) report *Family Violence – A National Legal Response*. The Police Association referred to recommendations about 'how the dynamics of family violence might affect the decisions of victims to negate the existence of family violence or to withdraw previous allegations.'¹²⁷⁵
- 13.25** The Law Reform Commissions were gravely concerned about the practice of charging victims of family violence with conspiracy or attempting to pervert the course justice where they were trying to mitigate the culpability of family violence offenders. In the Commissions' view this course of action ignores the coercion and control elements of family violence that the victim is subject to.¹²⁷⁶
- 13.26** The Commissions emphasised the importance of education, training and cultural change in this area and relevantly recommended that police and prosecutors should receive training on how the dynamics of family violence might affect a victim's decision to negate the existence of family violence or withdraw previous allegations.¹²⁷⁷

Committee comment

- 13.27** The Committee understands that when a victim retracts their evidence and support for a prosecution or ADVO application this can be frustrating for police involved who may have put considerable effort into the case. We are pleased to have received no evidence alleging that victims are being charged with criminal offences for withdrawing allegations or recanting.

¹²⁷⁴ Mr Lawrence, Evidence, 28 February 2012, p 26.

¹²⁷⁵ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 6, p 4.

¹²⁷⁶ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, Final Report, Vol.1, October 2010, pp 523-524.

¹²⁷⁷ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, pp 523-526.

- 13.28** It is nevertheless important that police differentiate between annoyances that a case cannot proceed, and frustration with the victims who may be subject to potential coercion from the offender and other pressures including maintaining and supporting their family. We support the recommendations made by the Law Reform Commissions that police receive training on the dynamics of family violence, as considered in Chapter 7. The Committee makes recommendations about judicial education in respect of the dynamics of domestic violence in Chapter 11.

Vulnerable witnesses: closed-circuit television and audio-visual link

- 13.29** Legislation permits the use of audio-visual link (AVL) and closed-circuit television (CCTV) in courts to receive evidence remotely in certain circumstances.¹²⁷⁸ AVL is used in courts to hear from police and perpetrators who are not present in the courtroom. CCTV is used to facilitate *vulnerable persons* giving evidence from another location in the courthouse.
- 13.30** The phrase ‘vulnerable person’ does not have its ordinary meaning but is defined in legislation to mean only a child or cognitively impaired person.¹²⁷⁹ For certain sexual offences, the same legislation allows victims to give evidence via CCTV so that they do not have to sit in the courtroom and face the alleged perpetrator.¹²⁸⁰
- 13.31** Other witnesses may also seek leave to give evidence via AVL and CCTV.¹²⁸¹ These witnesses do not enjoy an entitlement to give evidence this way, but may be permitted to do so at the discretion of the court. A court may refuse leave to hear evidence via AVL or CCTV where it is satisfied that ‘the evidence or submission can more conveniently be given or made in the courtroom or other place where the court is sitting’.¹²⁸² While the *Local Court Bench Book* includes procedures on how to work with the technology in court but it does not provide guidance on determining an application for its use.¹²⁸³
- 13.32** The Committee was informed by Judge Henson that there are 82 courthouses in New South Wales with CCTV facilities available for use by vulnerable witnesses and 73 without. Judge Henson told the Committee that courts which do not sit fulltime are less likely to have the technology installed.¹²⁸⁴
- 13.33** Several stakeholders argued that victims of domestic violence should have the same access to support mechanisms currently available to victims of sexual violence.¹²⁸⁵ In its submission, the ODPP stipulated that the dynamics and challenges faced by victims of domestic violence face

¹²⁷⁸ *Criminal Procedure Act 1986* s 306ZA; *Evidence (Audio and Audio Visual Links) Act 1998* s 5B.

¹²⁷⁹ *Criminal Procedure Act 1986* s 306M.

¹²⁸⁰ *Criminal Procedure Act 1986* s 294B(3).

¹²⁸¹ Submission 74, p 23.

¹²⁸² *Evidence (Audio and Audio Visual Links) Act 1998* s 5B.

¹²⁸³ Judicial Commission of New South Wales, ‘Operational Guidelines for Judicial Officers: Remote Witness Video Facilities’, *Local Court Bench Book*, accessed 23 May 2012
<www.judcom.nsw.gov.au/publications/benchbks/local/toc_practical_notes.html>.

¹²⁸⁴ Answers to questions on notice taken during evidence, 5 March 2012, Judge Graeme Henson, Chief Magistrate of New South Wales, Question 1, pp 1-2.

¹²⁸⁵ Submission 74, p 23; Submission 3a, Victims of Crime Assistance League, p 3; Submission 22, p 2.

in attending court are largely the same as for victims of sexual violence. The ODPP contended that victims of domestic violence should be able to provide evidence through alternative methods:

In our submission domestic violence victims should be entitled to the same alternative provisions currently available to sexual assault complainants and vulnerable people such as giving evidence via CCTV, support persons, closed courts, non-publication orders, not being directly cross examined by an unrepresented accused and use of recorded evidence in a re-trial.¹²⁸⁶

- 13.34** Judge Henson explained that it is customary for the prosecutor to ask the court to arrange CCTV evidence on a case-by-case basis and that he was not aware of any problems with the existing process for facilitating a victim to give evidence via CCTV.¹²⁸⁷

Committee comment

- 13.35** The Committee accepts that it would not be practical for all witnesses in domestic violence matters to give evidence remotely, or necessary in most circumstances. However, it seems to us that the use of CCTV for this purpose is rare, not because it is not needed but because it is rarely asked for. It is an option sometimes not pursued even in appropriate circumstances.
- 13.36** In the Committee's view there is benefit to be gained from improved training for prosecutors on the availability and practical use of this option. In addition we think that further work needs to be done to assess the effectiveness of the current system, with particular consideration of feasibility in regional courts.
- 13.37** Moreover, greater consideration could be given to the form of technology that could be used. It appears arbitrary that AVL is used for perpetrators and police but CCTV for victims. Questions arise as to whether victims could give evidence from another location in the same way that offenders do, or could appear via AVL from the local police station in the same way that police do.
- 13.38** We empathise with the view that victims of domestic violence should be entitled to give evidence remotely. At the same time we can imagine situations where other victims of serious crime might argue that they too should be so entitled.

Recommendation 78

That the Department of Attorney General and Justice assess the operation of the current system for permitting victims of domestic violence to give evidence via audio-visual link and closed-circuit television to determine whether it is working effectively, with a view to increasing the availability and use of closed-circuit television, audio-visual link and other technology by victims of domestic violence.

¹²⁸⁶ Submission 22, p 2.

¹²⁸⁷ Judge Henson, Evidence, 18 June 2012, p 24.

Recommendation 79

That the NSW Government request that the Judicial Commission of New South Wales incorporate into its training for magistrates, and its Local Court Bench Book, information on determining applications for evidence to be given by closed-circuit television and audio-visual link.

Admissibility of a filmed first statement

- 13.39** The Committee was told that the NSW Police Force introduced domestic violence evidence kits at significant cost. Domestic violence evidence kits contain paperwork, a digital video camera and a digital still camera. Police will take photographs of the scene and film the victim telling his or her version of events.¹²⁸⁸ The kits were developed as a mechanism to encourage victims to not recant their evidence but, the Committee was advised that in practice they have not had this effect.¹²⁸⁹
- 13.40** At the time the evidence kits were introduced, the police also sought legislative amendment to permit evidence gathered through the kits to be admissible in court.¹²⁹⁰ That amendment did not occur and the NSW Police Force¹²⁹¹ and others would still like to see that change. Ms Beverly Walker, Registrar of Parkes Local Court, explained that Magistrate Lucas of the same court sought that a filmed first statement of the victim to be admissible:

Magistrate Lucas was also hoping that the victims' statements that are taken by police in [apprehended violence order] applications could be granted admissible in evidence in the application proceedings because often it happens when court does not sit for a month that during that month's period they have made up again, but then things deteriorate and they are back at court in another month's time. So he would like to see the statements that are taken on the report of the initial incident being taken as admissible evidence.¹²⁹²

- 13.41** The ODPP also considered that this evidence should be admissible and elaborated that currently all a prosecutor can do to get the video recording admitted into evidence is to attempt to have it tendered as evidence of a prior inconsistent statement:

[T]here are no legislative provisions allowing for the admissibility of the original taped statement. At the moment all the prosecutor can do is attempt to have the DVD tendered as a prior inconsistent statement. We suggest that consideration is given to amending the *Criminal Procedure Act 1986* to allow for the admission of this evidence.¹²⁹³

¹²⁸⁸ Submission 74, p 23.

¹²⁸⁹ Sergeant Patrick Gooley, Vice-President, Police Association of New South Wales, Evidence, 20 February 2012, p 59; Submission 74, p 23.

¹²⁹⁰ Submission 74, p 23.

¹²⁹¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, p 12.

¹²⁹² Ms Beverly Walker, Registrar, Parkes Local Court Evidence, 28 February 2012, p 33.

¹²⁹³ Submission 22, p 2.

- 13.42** The NSW Police Force advised the Committee that in practice, the video recording equipment has become underutilised because ‘police cannot see the point in gathering this evidence when it is not being admitted into evidence’.¹²⁹⁴ However, Sergeant Patrick Gooley, Vice-President of the Police Association, acknowledged that there were some problems with video recording a victim immediately after, and at the scene of, a domestic violence incident and then hoping that the statement will bind them at court later.¹²⁹⁵

Committee comment

- 13.43** The Committee accepts that the evidence gathered at the scene of a crime is highly valuable and that a video recording of the victim’s account of what happened at the time of the event is likely to be most persuasive. Nevertheless, such evidence has been gathered at the height of a dispute when victims are likely to be highly emotional, fearful and not thinking clearly. We encourage the DAGJ to further consider whether evidence of this nature should be admissible and to consult with victims, their families and representatives to this end.

Police prosecutors

- 13.44** The vast majority of domestic violence incidents, including applications for ADVOs, are managed and prosecuted by police prosecutors. These are sworn members of the NSW Police Force who have undertaken the Prosecutor Education Training Program through the NSW Police Force to assume the role of prosecutor in hearings.¹²⁹⁶ Where domestic violence matters involve serious indictable offences, the prosecution is handled by the ODPP although this is rare.
- 13.45** The NSW Police Force clarified that all prosecutors are generalists and have a wide range of knowledge beyond domestic violence matters.¹²⁹⁷ It also refuted the proposition that domestic violence matters are the training ground for new prosecutors¹²⁹⁸ and explained that traffic hearings are commonly used for training conducted under the supervision of an experience prosecutor.¹²⁹⁹ It further advised that as part of their preparation for court, fledgling prosecutors receive one day of training dedicated to domestic violence.¹³⁰⁰
- 13.46** Some stakeholders suggested that there should be specialist prosecutors dedicated to run domestic violence matters. This is considered further in Chapter 12 regarding specialisation.

¹²⁹⁴ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, p 12.

¹²⁹⁵ Mr Gooley, Evidence, 20 February 2012, p 59; Submission 74, p 23.

¹²⁹⁶ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 19, pp 19-20.

¹²⁹⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 19, pp 19-20.

¹²⁹⁸ Ms Joanna Shulman, Chief Executive Officer, Redfern Legal Centre, Evidence, 7 November 2011, p 57.

¹²⁹⁹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 19, pp 19-20.

¹³⁰⁰ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 19, pp 19-20.

Police prosecutors' workload

- 13.47** A number of stakeholders commented that police prosecutors have insufficient time to prepare each case¹³⁰¹ and as a consequence are preparing for court hurriedly and with scant consultation with the victim. Ms Matilda Julian, a solicitor, explained:

A prosecutor on a list day has no time for anyone—a lawyer or a person in need of protection. No-one will be heard on that day; I have to fight to be heard.¹³⁰²

- 13.48** The Committee heard that police prosecutors are commonly given upwards of 60 briefs in the morning and are expected to be fully conversant with the content of each within a few hours.¹³⁰³ Mr Howard Brown, Vice-President of VOCAL, described the prosecutors' workload and argued that the prosecution of domestic violence is wholly under resourced:

They receive 65 briefs at seven o'clock in the morning. They are expected to be fully across all those issues by 10 o'clock when court convenes, and then it just turns into a bunfight because you have within the court environment victims and perpetrators... Under those circumstances... it is quite clear that the resources we are making available in apprehended violence order matters is well and truly below the needs that we have.¹³⁰⁴

- 13.49** The NSW Police Force also told the Committee that police prosecutors have an 'incredible workload'.¹³⁰⁵ Not only do they have a bulk of briefs with which to familiarise themselves before court, but sometimes matters that the prosecutors has not seen will be drawn into the court room at the last minute, which gives prosecutors minimal time to familiarise themselves with the case:

It is not uncommon that matters listed for one court are transferred to another court room. When this occurs the prosecutor despite preparing for numerous hearings the same morning ends up having a matter that he/she has not previously seen drawn into his/her court room. In this case there is very little time to read the documentation, any notes or instructions from the prosecutor to whom it was originally assigned, instructions from the informant etc before the hearing commences.¹³⁰⁶

- 13.50** The NSW Police Force observed that over time prosecutors can and do become adept at coping with the workload and suggested that it is testament to the capability of police prosecutors that successful prosecutions are as frequent as they are.¹³⁰⁷ Nevertheless, the

¹³⁰¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 20, p 20; Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, Sydney, Evidence, 20 February 2012, p 34; Mr Brown, Evidence, 26 March 2012, p 14; Ms Matilda Julian, Solicitor, Evidence, 28 February 2012, p 22.

¹³⁰² Ms Julian, Evidence, 28 February 2012, p 22.

¹³⁰³ Mr Brown, Evidence, 26 March 2012, p 14.

¹³⁰⁴ Mr Brown, Evidence, 26 March 2012, p 14.

¹³⁰⁵ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 20, p 20.

¹³⁰⁶ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 20, p 20.

¹³⁰⁷ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 20, p 20.

prevailing view was that police prosecutors display a ‘frequent pattern of inadequate preparation’.¹³⁰⁸

Prosecutor consultation with victims

- 13.51** Legal Aid NSW emphasised that police prosecutors play ‘a key role in advocating on behalf of victims in NSW local courts.’¹³⁰⁹ However, a number of stakeholders lamented that police prosecutors do not spend more time with victims before a matter comes on for hearing.¹³¹⁰ Ms Donna Bliss, Chief Executive Officer of the Yoorana Gunya Family Healing Centre Aboriginal Corporation argued that without proper consultation with victims, prosecutors could not ensure that ADVO conditions are appropriate.¹³¹¹
- 13.52** Ms Catherine Smith, who was a victim of very serious domestic violence over a number of years, expressed frustration with the exercise of prosecutorial discretion in her case. Ms Smith explained that she begged them to prosecute the case against her husband but was left feeling that prosecutors were not interested in the case even though they knew what was going on.¹³¹²
- 13.53** Some inquiry participants described that there are commonly situations where prosecutors have not spoken to the victim at all.¹³¹³ Ms Susan Smith, Solicitor and Coordinator of the Sydney WDVCAS was troubled that prosecutors are overworked and do not spend enough time with victims. Accordingly, in her view, ‘they do not have enough time to prosecute in the way that they should’.¹³¹⁴ Ms Mary Dempsey, Principal Solicitor with Binaal Billa Family Violence Prevention Legal Service, agreed and elaborated that this leaves the victim without a voice in the process:

When they get to court many of my clients do not even speak to the prosecutor. The prosecutor will frequently speak to me to put her story across and she does not get a say in the matter. These are the orders—x, y and z—and it is done. She does not have a voice much of the time.¹³¹⁵

- 13.54** Dr Laing of the University of Sydney questioned how prosecutors could be expected to do a satisfactory job when they are under resourced, describing this situation as providing ‘cheap justice’ to victims of domestic violence:

¹³⁰⁸ Answers to supplementary questions 5 March 2012, Children’s Court of New South Wales, Question 4, p 4.

¹³⁰⁹ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 17, p 8.

¹³¹⁰ Ms Donna Bliss, Chief Executive Officer, Yoorana Gunya Family Healing Centre Aboriginal Corporation, Evidence, 28 February 2012, p 13; Ms Mary Dempsey, Principal Solicitor, Binaal Billa Family Violence Prevention Legal Service, Evidence, 28 February 2012, p 22; Dr Wangmann, Evidence, 20 February 2012, p 34; Dr Laing, Evidence, 17 October 2011, p 50; Ms Susan Smith, Solicitor and Coordinator, Sydney Women’s Domestic Violence Court Advocacy Service, Evidence, 7 November 2011, p 57.

¹³¹¹ Ms Bliss, Evidence, 28 February 2012, p 13.

¹³¹² Ms Catherine Smith, victim of domestic violence, Evidence, 7 November 2011, p 38.

¹³¹³ Ms Bliss, Evidence, 28 February 2012, p 13; Ms Dempsey, Evidence, 28 February 2012, p 22.

¹³¹⁴ Ms Smith, Evidence, 7 November 2011, p 57.

¹³¹⁵ Ms Dempsey, Evidence, 28 February 2012, p 22.

[H]ow you can actually present a case and get decent results where you have not got resourced prosecutors. It is not their fault. The court is a team. If you go on an [apprehended violence order] day, the women's domestic violence court advocacy, it is pretty cheap justice when you look at what we are offering women to be frank. A lot of the women that I have looked at their transcripts have said they had one minute with the prosecutor.¹³¹⁶

- 13.55** A different perspective was provided by Mr Greg Elks, Member of the Criminal Law Committee of the Law Society, who defended police prosecutors for spending a limited amount of time with victims. He explained that it is important for a prosecutor to maintain their objectivity and suggested that 'I just do not think that the police and sometimes people that are associated with assisting victims in this situation are aware of the responsibilities that a prosecutor has and that they must remain somewhat detached.'¹³¹⁷ The Law Society elaborated that 'police prosecutors have a duty to the court to present the case in a fair and objective manner, whether or not it favours the prosecution'.¹³¹⁸

The position of police prosecutors within the NSW Police Force

- 13.56** Police prosecutors are employees of the NSW Police Force. They are sworn officers but do not fall within the local area command structure, although they are briefed by domestic violence liaison officers (DVLOs) who are connected to a particular command.¹³¹⁹
- 13.57** The result of this can be that prosecutors are difficult to access, in part because they stand outside the traditional command structure. This view was expressed by Ms Julie Stewart, Secretary of the NSW Domestic Violence Coalition and Coordinator of the Manly Warringah Women's Resource Centre:

I have to say that it is my current experience ... that prosecutors are a very difficult group of professionals to actually get to and to make accountable and to discuss matters with. Structurally they stand outside of the local area command structure. So it is not so easy to actually get to them.¹³²⁰

- 13.58** Conversely, the Law Society argued that it was important that police prosecutors are not within the local command to maintain their independence.

We do not agree that police prosecutors need to be part of the local area command structure. Police prosecutors have a duty to the court to present the case in a fair and objective manner, whether or not it favours the prosecution. Police prosecutors need to be separate from everyday police officers to maintain their independence and objectivity.¹³²¹

¹³¹⁶ Dr Laing, Evidence, 17 October 2011, p 50.

¹³¹⁷ Mr Greg Elks, Member, Criminal Law Committee, Law Society of New South Wales, Evidence, 7 November 2011, p 62.

¹³¹⁸ Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 6, p 3.

¹³¹⁹ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 17, p 8.

¹³²⁰ Ms Julie Stewart, Secretary, NSW Domestic Violence Coalition and Coordinator, Manly Warringah Women's Health Centre, Evidence, 17 October 2011, p 25.

¹³²¹ Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 6, p 3.

- 13.59** Mr Elks explained further that if police prosecutors were located within the local area commands they would ‘get too close’ and lose their objectivity in relation to the cases they deal with.¹³²²

Domestic violence prosecutor initiatives and domestic violence clinics

- 13.60** The NSW Police Force advised the Committee of some domestic violence prosecutor initiatives. Working with the Blue Mountains’ WDVCAS, a series of ‘domestic violence clinics’ were organised and facilitated by a police prosecutor and ran in early 2011. At these clinics information was provided about what to expect at court and victims had an opportunity to ask questions.¹³²³
- 13.61** Later in 2011, a ‘domestic violence prosecutor initiative’ was trialled at local courts in Campbelltown, Fairfield, Sutherland and Wollongong Local Courts that prepared victims to give evidence at hearings.¹³²⁴ This initiative also worked with victims to provide them with information about court processes and what to expect when giving evidence. Feedback from participants at the conclusion of this trial indicated that most respondents felt more comfortable to ring police about future incidents of domestic violence as a result of having attended.¹³²⁵
- 13.62** Another pilot program ran at Manly Local Court until May 2012, incorporating elements of the domestic violence clinics and the prosecutor initiative. Group sessions were held for victims who would be giving evidence prior to their attendance at court. For those participants that required it, police arranged for them to talk with the prosecutor individually after they took part in a group session. This trial is currently being evaluated.¹³²⁶
- 13.63** Legal Aid NSW advocated the rollout of a program based on these pilots to the rest of the State and added that domestic violence training for police prosecutors should include input of key stakeholders and partners, including the WDVCAS.¹³²⁷

Committee comment

- 13.64** During our site visits to NSW local courts, the Committee was impressed that police prosecutors were across such a volume of individual matters. We also observed that prosecutors were under a great deal of pressure. They seemed overworked and did not always appear to have had time to prepare each case thoroughly.
- 13.65** However, there appears to be a lack of support to enable prosecutors to prepare effectively. This can leave victims feeling ‘voiceless’ in the very system that purports to protect them. Moreover, in practical terms, where victims are not adequately consulted, supported and

¹³²² Mr Elks, Evidence, 7 November 2011, p 62.

¹³²³ Submission 74, pp 9-10; Answers to supplementary questions 20 February 2012, NSW Police Force, Question 20, p 21.

¹³²⁴ Submission 74, p 10.

¹³²⁵ Submission 74, p 10.

¹³²⁶ Submission 74, p 10.

¹³²⁷ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 17, p 8.

engaged in the court process, the chances of the ADVO containing inappropriate or unworkable conditions is greatly increased.

- 13.66** One of the key observations that the Committee made when visiting Sutherland Local Court was that the court's effectiveness was due in large part to the team environment in which all the relevant people worked. Thus, the prosecutor did her job to a high standard in part because she was so well supported. DVLOs and WDVCS support workers were negotiating appropriate ADVO conditions in the background and informing the prosecutor of the outcomes while court was in session. In addition, the court itself listed domestic violence matters together.
- 13.67** The Committee perceives that its Recommendation 68, that at least one support worker and one DVLO should be dedicated to every local court on domestic violence list day, will improve the capacity of prosecutors to do their jobs well. Our Recommendation 74 to ensure that, to the extent possible, domestic violence matters are listed together will also assist.

Court infrastructure

- 13.68** The Committee both observed and heard about aspects of local courts' procedural and physical infrastructure that could be improved. These included the use and availability of interpreters, safe rooms and appropriate technology.

Interpreters

- 13.69** A witness has the right to give evidence via an interpreter if they do not speak or understand English sufficiently to reply to questions put to them.¹³²⁸ Whether an interpreter will be used is at the discretion of the court. However, a refusal to adjourn a matter to provide an interpreter may violate rules of procedural fairness.¹³²⁹ The *Local Court Bench Book* provides magistrates with some guidance on determining whether the use of an interpreter is called for.¹³³⁰
- 13.70** Interpreters used in local courts are coordinated through the Community Relations Commission. They are not specifically trained to interpret in court environments but have been trained as professional interpreters. The Deaf Society of NSW expressed some dissatisfaction with the process of booking interpreters through the Community Relations Commission on the basis that they do not sufficiently cater for individual needs:

The sourcing and booking of interpreters for domestic violence matters by the Community Relations Commission sometimes appears to be handled in a way that

¹³²⁸ *Evidence Act 1995* s 30.

¹³²⁹ Judicial Commission of New South Wales, 'Right to an Interpreter', accessed *Local Court Bench Book*, 16 August 2012 <www.judcom.nsw.gov.au/publications/benchbks/local/interpreters.html/> referring to the decision of the NSW Court of Appeal in *Cucu v District Court (NSW)* (1994) 73 A Crim R 240 [243-244, 250].

¹³³⁰ Judicial Commission of New South Wales, 'Right to an Interpreter', *Local Court Bench Book*, accessed 16 August 2012 <www.judcom.nsw.gov.au/publications/benchbks/local/interpreters.html/> at 18 July 2012.

does not take account of client needs or preferences, or the need of interpreters to prepare for interpreting assignments.¹³³¹

- 13.71** It is for the police to notify the court before the first mention whether interpreters will be required.¹³³² Not all local area commands are equally efficient at this. The Committee heard that while some do it well,¹³³³ others are systemic in their failure to notify the court of the need for an interpreter. Ms Helen Campbell, Executive Officer with Women's Legal Services explained:

We find often the police have not arranged for an interpreter to attend the court on the first return date of court. The matter then has to be put over to another day while the court orders an interpreter. We were given as an explanation for this if the police book the interpreter it came off the police budget, if the court booked the interpreter it came off the court budget—so there was some budget shifting there. We have recently clarified that is not in fact the case. The police can book an interpreter without it having any impact on their budget.¹³³⁴

- 13.72** Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs for DAGJ, identified several challenges for the courts in relation to using interpreters. One of these was that there is a shortage of skilled interpreters available for some languages.

There is a real challenge in New South Wales for certain language types where we do not have a large pool of accredited interpreters. We have been doing a lot of work recently with communities, particularly people from Sudan who we see appearing in our courts at a rate larger than their population would suggest. There are challenges in that some are coming from parts of that country where a very small number of people speak a particular language.¹³³⁵

- 13.73** The Committee was informed that the same interpreters are used by a number of different services including the courts, health services and others. Mr Thomas noted that the practice of courts listing matters for particular language groups together helps to address the issue of interpreter availability:

There is the problem that there is a draw on the interpreter services from a whole range of different sources, the court being one draw, the health system being another, and there are others. There might be a challenge if someone turns up at court and speaks a language for which there are not a large number of interpreters in the State and those interpreters are engaged somewhere else at the time the matter is in court, and the matter may have to be held over. We have tried to improve the way we manage that by encourage courts to list matters where we know that interpreters are needed on particular days, so that the system becomes more efficient.¹³³⁶

¹³³¹ Submission 14, Deaf Society of NSW, p 2.

¹³³² Ms Peir, Evidence, 21 March 2012, p 4.

¹³³³ Ms Peir, Evidence, 21 March 2012, p 4.

¹³³⁴ Ms Helen Campbell, Executive Officer, Women's Legal Services NSW, Evidence, 7 November 2011, p 42.

¹³³⁵ Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice, Evidence, 30 April 2012, p 32.

¹³³⁶ Mr Thomas, Evidence, 30 April 2012, pp 31-32.

- 13.74** Judge Henson also noted that some courts have taken steps to manage the need to have interpreters available, including block booking interpreters on domestic violence list day. His Honour said Burwood Local Court was an example:

Burwood court has a block booking of interpreters on their apprehended violence order day because they recognise that a large number of the people who appear before them are not conversant in English as their first language. What tends to happen is that there is an adjustment made based upon the quality, quantity and diversity of support services at particular courts against the capacity of the court to work efficiently.¹³³⁷

- 13.75** A further difficulty raised by some stakeholders is that where the relevant language community is small, the interpreter will sometimes personally know the people involved.¹³³⁸ Ms Claudia Guajardo, Community Safety and Crime Prevention Officer with Fairfield City Council, was of the view that when an interpreter knows the parties it can affect whether the victim wants to give evidence. She felt it was especially problematic where the interpreter is translating for both parties:

In the past where it has been problematic is with particular cultures where actually talking to an interpreter means that that information might filter through to your community or that you might recognise the interpreter. If, for example, the interpreter is very unique in the community so there is only one or two of them in a whole community, women might be reluctant to actually discuss anything. Again, if there is only one interpreter for that community, that interpreter will interpret for both parties... In many case studies women have been shunned by their community because they have gone through the legal system. There are really complex issues with interpreters.¹³³⁹

- 13.76** Ms Guajardo and Ms Eleonora Raffo, Coordinator of the Liverpool and Fairfield Staying Home Leaving Violence Project, South West Sydney Legal Centre, were both concerned about situations where interpreters might be interpreting for both parties and not conveying accurately what was being said.¹³⁴⁰ Ms Guajardo said she knew of one situation where the interpreter was giving the parties advice:

[I]n the past we had situations where the interpreter was giving advice that was completely way off base—you should be doing this and you should be doing that and you should really go back to your husband—that kind of stuff. It was only because there was a worker nearby who spoke the language and understood what was being said and thought, “Hang on a minute. This is not right.”¹³⁴¹

- 13.77** Ms Raffo explained that although there are standards which interpreters must meet, you cannot always get an interpreter of the highest level, especially in languages that are less

¹³³⁷ Judge Henson, Evidence, 5 March 2012, p 23.

¹³³⁸ Mr Thomas, Evidence, 30 April 2012, p 32.

¹³³⁹ Ms Claudia Guajardo, Community Safety and Crime Prevention Officer, Fairfield City Council, Evidence, 26 March 2010, p 50.

¹³⁴⁰ Ms Eleonora Raffo, Coordinator, Liverpool and Fairfield Staying Home, Leaving Violence Project, South West Sydney Legal Centre, Evidence, 26 March 2012, p 50.

¹³⁴¹ Ms Guajardo, p 50.

common.¹³⁴² Also on the issue of qualification, the Deaf Society of NSW was concerned that the importance of providing ‘Interpreter Level NAATI accredited interpreters’ is not widely understood.¹³⁴³

Committee comment

- 13.78** That victims who give evidence can understand what is being said in the courtroom where their matter is being heard is a critical element of access to justice that is recognised by DAGJ and NSW courts. Courts go to some lengths to ensure that interpreters are available on the day of the hearing including by block booking interpreters for particular days.
- 13.79** The Committee recognises that the availability of appropriate interpreter services is an ongoing challenge. We commend those courts block booking interpreters and making efforts to organise hearing days in a way that will cater for people who speak languages other than English, and encourage other courts to consider this approach. However, we are concerned by reports that police are failing to notify the court that an interpreter is required. This leads to an inevitable adjournment of the matter and undue delay for the victim in having the case finalised.

Safe rooms

- 13.80** A number of courts in New South Wales have dedicated ‘safe rooms’ accessible to victims of domestic violence before proceedings commence. The Committee observed these rooms in operation in Sutherland and Goulburn Local Courts. In Sutherland the safe room was recently renovated and very well equipped.¹³⁴⁴ Goulburn Local Court is housed in an historic building which limits the scope for renovations or extensions. Nevertheless a room has been set aside for victims’ use. Both rooms had tea and coffee making facilities, some toys for children and information on support services. WDVCS workers also work out of these rooms.
- 13.81** However, the Committee heard that safe rooms are not available in all local courts and this can leave victims of domestic violence feeling vulnerable. Ms Julie Webb, Coordinator of Aboriginal Community Support Services Carewest explained that in the local court where she works, victims have to stand in front of the courthouse and wait with the perpetrators before coming into court:

There is no special room. They have to stand out the front with the perpetrators and wait for their name to be called out. There are not enough court support people to guide them to a room where they feel safe. At the North Coast where I come from, there is a specific room with a labelled door at the courthouse and they go there. There are volunteers who sit there with them.¹³⁴⁵

¹³⁴² Ms Raffo, Evidence, 26 March 2012, p 50.

¹³⁴³ Submission 14, p 2.

¹³⁴⁴ Sergeant Walker, Evidence 20 February 2012, p 50.

¹³⁴⁵ Ms Julie Webb, Coordinator, Aboriginal Community Support Services Carewest, Evidence, 28 February 2012, p 12.

- 13.82** Explanations provided for the lack of safe rooms in some locations included that many courthouses are heritage listed buildings and as such there is limited to scope to renovate them to create a safe room while other courthouses are very small.¹³⁴⁶
- 13.83** Some stakeholders pointed to funding as a factor in the safe rooms not being available across the New South Wales court network.¹³⁴⁷ Ms Heather Blackley, Youth Services Coordinator with Western Plains Regional Development, also raised funding as an ongoing issue:

We have had a safe room in the past, but that is only because of the funding available. There was a worker there on duty, but now we have to rely on Yoorana Gunya staff who might be there for the court support service or whoever else might be there. It is not a regular, ongoing thing.¹³⁴⁸

Committee comment

- 13.84** Safe rooms operate to strengthen the position of victims at court. There, victims of domestic violence can feel confident that they will not inadvertently meet the perpetrator. Victims can talk openly with WDVCAS support workers about the implications of court proceedings and available support services, and with DVLOs about conditions that might be attached to the ADVO. This in turn contributes to the operational effectiveness of the conditions.
- 13.85** The Committee is of the view that the criminal justice response to domestic violence would be greatly enhanced by the widespread availability of safe rooms in NSW local courts. Although we acknowledge the potential infrastructural obstacles to this proposal, we are of the view that a determined effort and creative thinking could lead to a substantial improvement in the number of courthouses that currently provide safe rooms.

Recommendation 80

That the Department of Attorney General and Justice work with local courts to establish victim safe rooms in all NSW local courts.

Technology

- 13.86** In considering policing in Chapter 7, the Committee noted comments that the Computerised Operational Policing System (COPS) is outdated and laborious to use.¹³⁴⁹ Mr Gooley from the Police Association also advised the Committee that police computers did not interact effectively with the court system which detracts from streamlined communication between

¹³⁴⁶ Mr Thomas, Evidence, 18 June 2012, p 19; Judge Henson, Evidence, 5 March 2012, p 30; Ms Walker, Evidence, 28 February 2012, p 33.

¹³⁴⁷ Judge Henson, Evidence, 5 March 2012, p 30; Ms Peir, Evidence, 5 March 2012, p 16.

¹³⁴⁸ Ms Heather Blackley, Youth Services Coordinator, Western Plains Regional Development, Evidence, 28 February 2012, p 13.

¹³⁴⁹ Ms Burgun, Evidence, 20 February 2012, p 53.

courts and police.¹³⁵⁰ However, the NSW Police Force reported that updating the system may be cost prohibitive.¹³⁵¹

- 13.87** Judge Henson advised the Committee that NSW local courts recently provided iPads for every magistrate, enabling better coordination of court technology with that used by police prosecutors who have also recently been issued iPads. His Honour was hopeful for the better use of technology in courtrooms although also noted that this would require some investment:

So far there are encouraging signs of life in the Attorney General's Department. They might understand and be willing to apply funds to make it a reality and that would be groundbreaking. The reason why we are going down this path is the police prosecuting service is also in the process of being issued with iPads as well so it will then produce electronic evidence in a compatible form with every iPad in every Court House in New South Wales. It will overcome a whole host of problems. It will make a difference. It will be a revolution and certainly evolutionary in terms of the capacity of victims to give evidence at courts which currently do not have closed circuit television.¹³⁵²

- 13.88** During our site visit to Goulburn and Sutherland Local Courts, the Committee was struck by an apparent limited reliance on modern technologies by parties. Lawyers rely upon paper files and as each new matter arose a different set of papers was required.

Committee comment

- 13.89** The desirability of limiting the reliance on paper files in court is evident. In electronic form, files are instantaneously accessible and electronic evidence can be available for all parties, although we also accept that this reflects an ideal that may not be realistic to implement.
- 13.90** The Committee understands that present technological limitations are attributable to the resources available to courts. In this respect we are pleased to see a shift towards the use of iPad technology in the courtroom. It makes a good deal of sense that magistrates and prosecutors use compatible technologies.
- 13.91** We encourage DAGJ to maintain a watching brief on the implementation of appropriate improved technologies for New South Wales courts. Although the Committee has not received sufficient evidence to make a determination on this matter, we are of the view that the limited use of technology in local courts could be occurring at a cost to efficiency and contribute to delay.

Interplay of NSW local courts with the Family Court of Australia

- 13.92** Calls for more streamlined procedures between different jurisdictions were prevalent throughout the inquiry. Inquiry participants were especially concerned about the disconnection between family law and domestic violence proceedings, noting that the respective legal issues for local courts and the Family Court often arise from the same

¹³⁵⁰ Mr Gooley, Evidence, 20 February 2012, p 63.

¹³⁵¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 7, p 9.

¹³⁵² Judge Henson, Evidence, 18 June 2012, p 24.

incident. The source of the difficulty is that domestic violence offences are dealt with by State courts but family law falls within the Commonwealth jurisdiction.

- 13.93** Referring to a 2008 report of the Family Law Council, the Police Association described that outcomes for victims of domestic violence are made worse as a result of the complexities associated with traversing more than one legal system. Others held similar concerns.¹³⁵³ The Association contended that this means that the chance that inconsistent orders will be made is heightened, which risks further exacerbating already tense situations:

The Family Law Council's May 2008 report in regarding practical strategies available for improving the coordination between the family law and the State and Territory family violence systems had particular emphasis on court related services ... The report's findings state that the division of powers in the Constitution in relation to family law has resulted in a complex system of courts that provide various remedies for families experiencing family violence or abuse. As a result many families are involved in proceedings in more than one jurisdiction. This increases the possibility of inconsistent orders being made and of putting family members at risk of further violence and abuse and exacerbating an already strained situation.¹³⁵⁴

- 13.94** Stakeholders noted that, although inherently interrelated, family law and criminal or ADVO proceedings were often not adequately coordinated. The Police Association expressed the view that the jurisdictional divide between family and local courts has fostered a culture of separation between the two systems and as a result there is inadequate communication and coordination between courts:

The jurisdictional divide has also perpetuated a culture of separation between States and Territories as administrators of public aspects of family law and the Federal Family Court as adjudicators of public disputes. There is inadequate communication, coordination or information sharing between courts and authorities despite significant overlap.¹³⁵⁵

Parenting orders and apprehended domestic violence orders

- 13.95** The Committee has heard that in particular there is often a complex interplay between family law orders and ADVOS.¹³⁵⁶ A common problem that arises is that conditions are applied to ADVOs that substantively conflict with family law orders. Where ADVO conditions and a family law order clash, it is the family law order that prevails to the extent of the conflict. The ODPP explained the problem as follows:

Difficulties constantly arise because Family Law Orders override non contact orders specified in ADVOS. For instance, the person of interest who has breached the ADVO only needs to show that the contact was in relation to the children's welfare

¹³⁵³ Ms Schatz, Evidence, 28 February 2012, p 15; Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre, Evidence, 5 March 2012, p 44.

¹³⁵⁴ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 2, pp 2-3.

¹³⁵⁵ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 2, pp 2-3.

¹³⁵⁶ Submission 45, p 14.

and ODPP officers have to recommend there be no charges as there is no real prospect of conviction.¹³⁵⁷

13.96 To minimise this conflict, local courts have been vested with jurisdiction to vary, discharge or suspend a parenting order where it is also dealing with an application for an ADVO, although local courts cannot create a new parenting order where none already exists.¹³⁵⁸ The Committee heard that in practice this jurisdiction is rarely exercised by local courts.¹³⁵⁹

13.97 Ms Rachelle Johnston, Project Officer with the WDVCAS Program, Legal Aid, commented that local court magistrates can be reluctant to deal with family law issues. This can lead to a conflict with ADVO conditions and increases the likelihood that the conditions will be breached:

The experience of the Women's Domestic Violence Court Advocacy Program is there has been an increase in local courts with magistrates not wanting to deal with family law issues ... [W]here the Family Court says one thing and the apprehended domestic violence order has an entirely different provision—it is inevitable that the apprehended domestic violence order will be breached and that continues the cycle of violence.¹³⁶⁰

13.98 Legal Aid expressed the view that local courts are failing to exercise jurisdiction to amend parenting orders and that magistrates can be unwilling to discuss parenting orders on apprehended violence order (AVO) list days. It suggested that instead parties are negotiating parenting orders with the help of police but without legal advice and that this is inappropriate.¹³⁶¹

It is the experience of Legal Aid NSW that Local Courts are not using their power under s68R of the *Family Law Act 1975* to vary, revive, discharge or suspend a parenting order. Specifically, Magistrates are unwilling to engage in discussions on AVO list days regarding family law orders. Where applicants are seeking a condition on the ADVO relating to the children, Magistrates are often refusing to deal with an ADVO application until later in the day when the parties have agree to a parenting plan.

As a result, in some courts victims are negotiating parenting plans without legal advice, and often relying on advice from police, so that they can obtain a protection order that day. This is highly inappropriate.

Conversely, where bail conditions imposed by a Local Court require an offender to comply with an ADVO, Federal Magistrates have been unwilling to make parenting orders that may be inconsistent with those bail conditions.¹³⁶²

¹³⁵⁷ Submission 22, p 1.

¹³⁵⁸ *Family Law Act 1975* (Cth) s 68R.

¹³⁵⁹ Ms Rachelle Johnston, Project Officer, Women's Domestic Violence Court Advocacy Program, Legal Aid NSW, Evidence, 11 November 2011, p 25; Submission 54, Women's Refuge Movement, p 16; Ms Sanders, Evidence, 5 March 2012, p 44.

¹³⁶⁰ Ms Johnston, Evidence, 11 November 2011, p 25.

¹³⁶¹ Ms Johnston, Evidence, 11 November 2011, p 25.

¹³⁶² Submission 34, Legal Aid, p 23.

- 13.99** Women's Legal Services observed that the inability of local courts to draft new orders creates an inconsistency of process: people who do not have any parenting orders in place have to go to the Family Court to seek them, whereas others can have pre-existing parenting orders amended in the local court. At the same time, Women's Legal Services questioned whether it would be appropriate for local courts to make final parenting orders at this stage:

WLS sees clear benefits in a system that allows people in need of protection orders to resolve issues with parenting arrangements as a result of family violence in one court. We note that the provisions in section 68R Family Law Act are expressed widely enough that the local courts can entirely discharge the existing orders replacing them with wholly new orders if considered necessary (although this rarely happens in practice). This means that there is a clear inconsistency between people with current parenting orders who could have new orders made by the local court during the course of proceedings for protection orders, while people without existing orders must use the family law courts (unless both parties consent).

While we acknowledge that empowering state and territory courts to make parenting orders could speed up the process, WLS is concerned that making final orders at this acute point in separation, and in busy local courts that have limited work in the family law jurisdiction, may not be appropriate.¹³⁶³

- 13.100** These issues were considered by the Law Reform Commissions in their report on family violence. The report concluded that because state and territory courts are often the first point of contact with the legal system for separating families, it is desirable that they deal with as many related issues as possible. The Commissions recommended that the *Family Law Act 1975* (Cth) should be amended to permit state and territory courts, when making or varying a protection order, to also create new parenting orders, but that these should be interim orders until a further order is made.¹³⁶⁴

- 13.101** The Committee heard that this problem can be compounded for people in regional areas. Ms Cathie Schatz, an Outreach Worker with Forbes Women's Refuge, described situations where single mothers are required to travel to Sydney from regional areas to have family law matters heard or to meet with specialist children's solicitors who do not travel to country areas:

I would just like to bring to your attention the problems that we face with our family law courts here in remote areas. If allegations of abuse are made in a family law court straightaway it is sent to Sydney. We deal with women who do not have money, they do not have the time, they are single mothers. A lot of times, because of what they have been through with domestic violence, they do not have any family support, they do not have any friends and all of a sudden they have got to be in Sydney three or four times in a six-month period. It is just ridiculous. They cannot do it ... A woman I have just worked with, she has had to be in Sydney three times for court. She has had to go down with her children to meet an independent children's lawyer so that he can meet the children, they do not even dream of coming this way. She has had to then go down and meet a family case worker who decided that they did not want to work with her because it was not necessary but she still had to go down there. So that is five trips and we have not even set a date yet for hearing.¹³⁶⁵

¹³⁶³ Submission 45, p 15.

¹³⁶⁴ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, pp 711-712.

¹³⁶⁵ Ms Schatz, Evidence, 28 February 2012, p 15.

- 13.102** On the other hand, Judge Henson contended that magistrates working in regional areas make a significant contribution to family law and that it is in the major urban courts that family law matters are less likely to be dealt with by the local court:

Let us not lose sight of the fact that the Local Court in country areas still makes a significant contribution to family law proceedings. It is really only in the centre of Sydney and Parramatta that the Local Court has moved away from its involvement in family law applications.¹³⁶⁶

- 13.103** Some stakeholders advocated an approach whereby family law matters and criminal and ADVO matters are heard together in one court. They referred to a model undertaken in courts in New York where all legal matters related to family violence are dealt with at once.¹³⁶⁷ Specialist domestic violence courts are considered in Chapter 12 of this report.
- 13.104** The WDVCAS Network argued for greater coordination within courts, and to this end, suggested that all domestic violence matters should be listed together with amendments to parenting orders.¹³⁶⁸
- 13.105** Judge Henson observed that in some circumstances the hands of the local court are effectively tied. Where the custody of children is contested, individuals can force matters to be heard in the Family Court and the local court has no power to prevent that:

However, it is an area in which children are involved, and where custody is an issue people can force the court to the transfer the proceedings to the Family Court of Australia and the court has no choice in that.

Determining whether a family law order exists

- 13.106** Another issue is the difficulties that arise for courts and police in determining whether a family law order already exists. The form that police use to make an application for an ADVO on behalf of a person in need of protection asks for “details of any existing parenting order or pending parenting application under the *Family Law Act 1975*”. Mr Mulrone of the Children’s Court advised the Committee that this question is standard to ADVO applications:

Across New South Wales that is the standard document, as I understand it, and I have sat in the Local Court as well, but to the best of my recollection that is the standard form that they use across-the-board.¹³⁶⁹

- 13.107** Mr Brett Thomas, Member of the Criminal Law Committee of the Law Society, stated that the part of the ADVO form that asks whether there are family law orders in place is being ignored by police. In his view, courts will amend Family Court orders where necessary and doing so is taken quite seriously:

¹³⁶⁶ Judge Henson, Evidence, 5 March 2012, p 23.

¹³⁶⁷ Ms Sanders, Evidence, 5 March 2012, p 44; Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group, pp 7-8.

¹³⁶⁸ Answers to supplementary questions 5 March 2012, Women’s Domestic Violence Court Advocacy Service Network, Appendix 1, pp 2-3.

¹³⁶⁹ Mr Mulrone, Evidence, 5 March 2012, p 42.

There is provision on the application for the police to note whether there are orders and it is just being ignored. The first thing you do is go along to court with a copy of the family law orders. The court has got a power to suspend those Family Court orders in the appropriate circumstances, and that happens. It is not something that the court does lightly because it is an important thing to do and in a lot of cases it is not necessary. But sometimes it just creates that inconsistency and that creates a problem.¹³⁷⁰

- 13.108** Inquiry participants explained that police have no mechanism for determining the existence of an order other than relying on the parties to tell them.¹³⁷¹ It is commonly the case that if the police have not found out this information then the court too will not know whether a family law order exists:

They [police] rely on the parties. They are not going to go to the Family Court. There is no special database that they can rely on. They have to ask the parties and they have to even remember to ask the parties. It is one of the many questions they would need to ask ... [Q]uite often if the police do not know, no-one else is going to be told. We would occasionally hear that there is a Family Court order when the police do not fill that in, but I think most of the time we are not told that there is an order, which probably means that most of the time there is not but there are probably cases where we are not told but there is an order.¹³⁷²

- 13.109** Judge Henson added that finding out whether family law orders exist is made more difficult where a local court and the Family Court are dealing with matters arising from the same set of circumstances concurrently. His Honour observed that there are real challenges for each court to know what the other has ordered, notwithstanding that the courts have an obligation to do so:

The difficulty of moving this area of consideration into the Family Court is that more often than not domestic violence matters come with an accompanying State charge under State legislation ... At the moment proceedings can run concurrently in the Local Court for a criminal prosecution arising out of a domestic violence offence and in the Family Court as a result of the breakdown in the family relationship.

I am the first to acknowledge that there are difficulties in both courts knowing what the other court is doing in terms of restraints imposed upon defendants over a person in need of protection. However, the cross-vesting legislation requires each jurisdiction to take into account orders made in the other jurisdiction.¹³⁷³

- 13.110** The problem is minimised where parties have legal representation, which is usually the case in the Family Court and the Children's Court.¹³⁷⁴ Judge Henson explained the benefits:

Because the Family Court tends to be populated almost universally by lawyers acting on behalf of both sides, they generally pick up the pieces in terms of informing the

¹³⁷⁰ Mr Brett Thomas, Member, Criminal Law Committee, Law Society of New South Wales, Evidence, 7 November 2011, p 66.

¹³⁷¹ Mr Gooley, Evidence, 20 February 2012, p 63; Mr Mulroney, Evidence, 5 March 2012, p 42.

¹³⁷² Mr Mulroney, Evidence, 5 March 2012, p 42.

¹³⁷³ Judge Henson, Evidence, 5 March 2012, p 23.

¹³⁷⁴ Mr Mulroney, Evidence, 5 March 2012, pp 36-37.

Family Court or the Federal magistrates of the existence of orders in the Local Court in favour of one of the parties.¹³⁷⁵

- 13.111** In Judge Henson’s opinion, the most obvious solution is that the applicant, not the courts, should ensure that there are no co-existing family law orders that would conflict with the family law order. His Honour also acknowledged that courts are under an obligation to inquire as to the existence of family law orders, but suggested that courts are emotional places where people are not always at their best at understanding and responding to such questions:

The most obvious would be for the applicant for the order—and let us not forget that the person who needs protection is not the applicant all the time; most of the time it is the police or the applicant—should ensure that there are no co-existing orders made under the family law legislation. If there are, then a copy of them should be produced to the court. That is about the only suggestion I can make ... Courts are supposed to inquire as to whether there are any existing orders but, as you say, courts are emotional places and people are not always at their best in understanding the nature of the question in the first place and being able to respond in the second.¹³⁷⁶

- 13.112** An alternative solution put forward by other inquiry participants was for improved information sharing between federal and state courts as well as between courts and police.¹³⁷⁷ For example, the ODPP recommended that there needs to be a mechanism for police to obtain the orders and suggested this might be achievable electronically:

There is also difficulty with investigating police obtaining a copy of Family Court orders unless a party has a copy that is easily accessed. There needs to be a mechanism for police to have the orders available electronically if required.¹³⁷⁸

- 13.113** The Police Association was especially vocal about the need for improved communication between federal and state courts. Mr Gooley said that information sharing between the Family Court and the local court is ‘abysmal’ and that police computers are not adequately connected to those in the court system:

I have been a former prosecutor myself. I have sat there and had to rely on the word of a defendant as to what Family Court orders are in place, or are not in place, or are going to be in place. I notice that our computers do not talk to the court system computers very well either, but the ability to know what is in place, when the next hearing date is, and previous decisions of the Family Court in regards to that matter may very well influence how a matter is dealt with in the Local Court. That would be one area where we would like to see information shared immediately.¹³⁷⁹

¹³⁷⁵ Judge Henson, Evidence, 5 March 2012, p 23.

¹³⁷⁶ Judge Henson, Evidence, 5 March 2012, p 31.

¹³⁷⁷ Submission 63, Police Association of New South Wales, p 48; Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 6, p 4; Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 14, p 7.

¹³⁷⁸ Submission 22, p 1.

¹³⁷⁹ Mr Gooley, Evidence, 20 February 2012, p 63.

- 13.114** The Police Association informed the Committee that prosecutors would like to have direct access to real-time Federal Court records.¹³⁸⁰ Moreover, and in line with the recommendations made by the Law Reform Commissions, the Police Association argued for the establishment of inter-agency information sharing protocols:

Information-sharing protocols and [memorandums of understanding] between the courts and relevant agencies and organisations have a valuable role to play in facilitating communication and information exchange between parties in the family law, family violence and child protection systems. At present, there are few information-sharing protocols in the context of family violence. The Commissions recommend that federal family courts, state and territory magistrate's courts, police, and relevant government agencies should develop protocols for the exchange of information in relation to family violence matters. The development of information-sharing protocols in the context of family violence is consistent with the views expressed in *Time for Action*.¹³⁸¹

Admissibility of apprehended domestic violence order information in Family Court proceedings

- 13.115** Some stakeholders expressed disappointment at the limited extent to which an ADVO can be considered evidence of domestic violence having taken place for the purpose of family law proceedings. Although a transcript of a local court hearing is admissible as evidence to the Family Court, if the ADVO has not been contested or the defendant has pleaded guilty to a lesser charge, there will be no transcript of evidence for the Family Court to consider. WDVCS explained this as follows:

Local court transcripts of hearings are admissible in the Family Court. By pleading guilty to a lesser charge, the perpetrator can avoid a hearing, and therefore avoid having police and other evidence of the original domestic violence incident being introduced into the Family Court. This can have dire consequences in terms of formal orders put in place for access to the children of the relationship.¹³⁸²

- 13.116** Women's Legal Services reported that many protection orders are consented to because the evidence that the respondent has committed an offence is so compelling that challenging the order is unlikely to be fruitful. It therefore posited that the more serious domestic violence incidents are sometimes not being taken into account by Family Court judges:

Many protection orders are consented to because there is little chance the defendant would succeed if the application proceeded to hearing due to the police being able to obtain sufficient evidence of the violence. This means that many of the most serious cases of family violence would involve protection orders made by consent. Unfortunately, as a result of the defendant consenting to the protection order, the police may not investigate further so evidence from witnesses is not obtained. This means that the protection order itself will often be the main contemporaneous

¹³⁸⁰ Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 6, p 4.

¹³⁸¹ Submission 63, p 48.

¹³⁸² Submission 28, Women's Domestic Violence Court Advocacy Network, p 6.

evidence available to the judicial officer when determining subsequent parenting proceedings.¹³⁸³

- 13.117** Dr Laing of the University of Sydney noted that ADVOs issued with the consent of the respondent are at once a good outcome because the victim has not had to give evidence in a contested hearing, but also a negative outcome because the evidence then cannot be used in the Family Court:

The other problem that arises, which intersects with my other research on women's efforts to go to Family Law when they have had domestic violence they all talk about the overlap and there is nothing working together is that in the Family Law system AVOs are not regarded as evidence or good evidence of abuse. So we have a system where there are so many numbers, the best outcome people push for often is the man consents without admission. A woman, on the face of it, that is good, she does not give evidence. She gets to the Family Law Court and that is not evidence, you have just made it up. If we do not give a good form of justice in the AVO part of the process, it can just flow on and really have disastrous effects in terms of protecting children through the Family Court process.¹³⁸⁴

- 13.118** Ms Robyn Cotterell-Jones, Executive Director of VOCAL, was also concerned by the inability of the Family Court to consider the ADVO as evidence of domestic violence. She suggested that service providers should consider what the Family Court needs to validate the victim's experience and to avoid taking an approach that diminishes what that person has gone through.¹³⁸⁵

Committee comment

- 13.119** The interconnection between Commonwealth family law proceedings and domestic violence matters adds an element of further complexity to the State's approach to domestic violence. The Committee witnessed this first-hand during its courts visits. Although there are some mechanisms in place to ensure the cooperation between the Commonwealth and state jurisdictions, there is room for substantial improvement.
- 13.120** The Committee has heard that one of the most pervasive problems in the current ADVO system is that conditions are being applied to ADVOs that substantively conflict with family law orders.
- 13.121** Police and courts rely on the parties to inform them of any existing family law orders in order to avoid any conflicting conditions. However, the Committee has heard that this system is not working effectively and needs to be improved. A new approach is needed that permits information sharing between jurisdictions to ensure that ADVOs and Family Court orders do not conflict. This would not only reduce the frequency of 'technical' breaches of ADVOs but would also ensure that less court time is taken up with applications to amend ADVO conditions after the conflict is realised.

¹³⁸³ Submission 45, pp 14-15.

¹³⁸⁴ Dr Laing, Evidence, 17 October 2011, p 50.

¹³⁸⁵ Ms Robyn Cotterell-Jones, Executive Director, Victims of Crime Assistance League Inc NSW, Evidence, 18 June 2012, p 23.

- 13.122** The Committee considers that magistrates and judges in NSW courts should be given the technological and legal capacity to quickly determine in each case whether a party is subject to a current family law order and what the conditions of that order are. This will lead to renewed opportunity for magistrates and judges in NSW courts to amend, vary, discharge or suspend family law orders as appropriate and in this way ensure that family law orders and ADVOs are consistent. Complementing that recommendation, the Committee recommends that training for magistrates include information on determining family law orders, pursuant to the jurisdiction conferred on State courts by the *Family Law Act 1975* (Cth). Moreover, the exercise of this jurisdiction in appropriate circumstances should be encouraged.
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Recommendation 81

That the NSW Attorney General consult with the Commonwealth Attorney General to develop an effective method for information sharing between the Family Court of Australia and New South Wales Courts with a view to ensuring that magistrates and judges in New South Wales courts have the technological and legal capacity to quickly determine in each case whether a party is subject to a current family law order and what the conditions of that order are.

Recommendation 82

That the NSW Attorney General request that the Commonwealth Attorney General amend the *Family Law Act 1975* (Cth) to permit New South Wales courts to make interim parenting orders, as recommended in the report of the Australian and NSW Law Reform Commissions.

Recommendation 83

That the NSW Government request that the Judicial Commission of New South Wales incorporate into its training for magistrates, and its Local Court Bench Book, information on determining applications for family law orders pursuant to the *Family Law Act 1975* (Cth), and encourage the exercise of this jurisdiction in circumstances where family law orders are known to conflict with conditions to be applied to apprehended domestic violence orders.

Chapter 14 Sentencing

The Committee's terms of reference required it to consider whether existing penalties for domestic violence are adequate. To do this the Committee has considered both the statutory maximum penalties and their application. This chapter begins by outlining the sentences that are commonly imposed for domestic violence offences in New South Wales, before considering relevant legislation and aggravating and mitigating factors.

The Committee heard that although maximum penalties are adequate, there are concerns about how these sentences are applied in practice. These concerns include the extent to which sentences imposed uphold the principles and purposes of sentencing and take into account the broader dynamics of domestic violence. Sentencing for breach of an apprehended domestic violence order (ADVO) receives particular attention, with inquiry participants especially concerned that the courts are too lenient. This is balanced against the need for judicial discretion in sentencing. Methods to improve consistency are also considered.

The chapter concludes with consideration of stakeholder views about the range of penalties available, including whether there should be wider use of positive orders, mediation and rehabilitation. It then reflects on challenges to implementing a wider range of sentencing options.

Sentencing for domestic violence offences

- 14.1** On average, there are more than 54,000 charges for domestic violence offences brought before New South Wales local courts each year, a figure which has steadily increased from approximately 43,000 in 2001. Some charges have increased significantly since 2001, with malicious damage to property increasing by 4.3 per cent to 2010 and domestic violence related harassment, threatening behaviour and private nuisance increasing by 15.4 per cent over the same period.¹³⁸⁶
- 14.2** Several stakeholders drew from the 2010 NSW Bureau of Crime Statistics and Research (BOCSAR) publication *Factors which Influence the Sentencing of Domestic Violence Offenders*.¹³⁸⁷ The publication collated and analysed New South Wales statistics on sentencing for domestic violence offences. Those included in the study were common assault, breach of an ADVO, assault occasioning actual bodily harm, property damage, stalking, using a carriage service to menace, harass or offend, recklessly wound any other person, armed with intent to commit indictable offence, recklessly causing grievous bodily harm, behave in offensive manner, using offensive language, affray and entering enclosed land without lawful excuse.¹³⁸⁸

¹³⁸⁶ Attachment to email from Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, to Principal Council Officer, 25 July 2011.

¹³⁸⁷ Submission 43, Wirringa Baiya Aboriginal Women's Legal Centre, p 6; Submission 37, Benevolent Society, p 7; Submission 54, NSW Women's Refuge Movement, p 4; Submission 61, NSW Government, p 3.

¹³⁸⁸ Ringland C and Fitzgerald J, NSW Bureau of Crime Statistics and Research, *Factors which Influence the Sentencing of Domestic Violence Offenders*, July 2010, Issue Paper No 48, p 2.

14.3 The NSW Government advised the Committee that five specific offences comprise 97 per cent of all domestic violence related offences in New South Wales. In order of prevalence these are:

- common assault
- breach of an ADVO
- assault occasioning actual bodily harm
- property damage
- stalking/intimidation.¹³⁸⁹

14.4 The first three, common assault, breach of an ADVO and assault occasioning actual bodily harm, comprise 89 per cent of all domestic violence offences in New South Wales. Dr Don Weatherburn, Director of BOCSAR, elaborated that domestic violence occurs in a range of other offences as well:

There are three main domestic violence offences. There were 10,000 convicted of a domestic violence offence, but common assault, breach of apprehended violence order and serious assault resulting in injury are by far the most common—36 per cent, 33 per cent and 20 per cent respectively. It is worth having a look at some of the other offences. You do see domestic violence popping up in abduction and kidnapping or resisting or hindering police and property damage. It percolates through quite a range of different offences.¹³⁹⁰

14.5 Sentencing data for common assault, assault occasioning actual bodily harm and breach of an ADVO committed in a domestic violence context are considered in turn below. The Committee summarises other domestic violence trends and statistics Chapter 2.

Common assault and assault occasioning actual bodily harm

14.6 A *common assault* is an assault that does not result in actual bodily harm to the victim, the maximum penalty for which is two years' imprisonment.¹³⁹¹ BOCSAR data shows that between January 2008 and June 2009, the typical sentence for this offence was a good behaviour bond, with 64 per cent of all domestic violence common assaults receiving this sentence.

14.7 A bond can contain further conditions at the discretion of the magistrate or judge which may include the payment of a fine, community service, or attending an intervention program.¹³⁹² About half of the good behaviour bonds imposed for the domestic violence offence of common assault were imposed without additional supervision; about a quarter were bonds

¹³⁸⁹ Submission 61, pp 3-4.

¹³⁹⁰ Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 7 November 2011, p 10.

¹³⁹¹ If proceeded against by indictment: *Crimes Act 1900* s 61.

¹³⁹² *Crimes (Sentencing Procedure) Act 1999* ss 95 and 95A.

without supervision or conviction; and the remaining bonds included a supervision condition.¹³⁹³

- 14.8 Over the same period, domestic violence *assaults occasioning actual bodily harm* were punished with a bond in 41 per cent of cases. This is followed in frequency by a fine and a term of imprisonment, each of which were awarded in about 17 per cent of cases.

Breach of an apprehended domestic violence order

- 14.9 The Committee received more evidence on sentencing practices for breach of ADVO than any other offence.
- 14.10 In New South Wales the maximum penalty for breach of an ADVO is imprisonment for two years or 50 penalty units (\$5,500) or both. Redfern Legal Centre and the Sydney Women's Domestic Violence Court Advocacy Service (WDVCAS) advised the Committee that this penalty differs in other jurisdictions. For example, Tasmania takes a similar approach to New South Wales, whereas in the Australian Capital Territory (ACT) the maximum penalty is more severe.

The penalties for breach vary significantly across other state and territory jurisdictions, with the ACT maximum penalty being imprisonment for 5 years or 500 penalty units (\$50,000) or both, to Tasmania's two tiered penalties being imprisonment for one year or fine of 20 penalty units (\$2,400) for first offence, to imprisonment for five years for fourth or subsequent offence.¹³⁹⁴

- 14.11 Judge Graeme Henson, Chief Magistrate of New South Wales, provided the Committee with statistical data on sentences ordered for breach of ADVO.¹³⁹⁵ The Committee was advised that the data record penalties for only the principle offence charged. Thus if an offender is charged with breach of an ADVO and a second more serious charge, the breach offence will not be recorded. Nevertheless, the data remains an accurate reflection of sentencing patterns where breach of an ADVO is the most serious offence charged.¹³⁹⁶
- 14.12 In relation to the 9,044 recorded sentences for breach of an ADVO issued by NSW local courts between March 2008 and March 2011, the following sentences were applied:
- 3,166 offenders (35 per cent) were placed on a good behaviour bond
 - 2,451 offenders (27 per cent) received a sentence of imprisonment (89 per cent of these sentences were for a period of 12 months or less)
 - 1,618 offenders (18 per cent) received a fine

¹³⁹³ Ringland C and Fitzgerald J, NSW Bureau of Crime Statistics and Research, *Factors which Influence the Sentencing of Domestic Violence Offenders*, July 2010, Issue Paper No 48, p 2.

¹³⁹⁴ Submission 39, Redfern Legal Centre and Sydney Women's Domestic Violence Court Advocacy Service, p 14.

¹³⁹⁵ Submission 21, Chief Magistrate of New South Wales, Appendix 2.

¹³⁹⁶ Answers to questions taken on notice during evidence 17 October 2011, Mr Brendan Thomas, Assistant Director General, Department of Attorney General and Justice, Question 3, p 1.

- 1,405 offenders (16 per cent) were dealt with by dismissing the charges and conditionally discharging the offender or a conviction recorded with no other penalty.¹³⁹⁷

14.13 The District Court deals with more serious criminal offences than local courts but can also consider breach of an ADVO. The Department of Attorney General and Justice (DAGJ) advised the Committee that when District Court figures are also taken into account, the most common penalty for breach of an ADVO was a term of imprisonment, and the second most common was a good behaviour bond, although it was more common that the hearing resulted in no penalty because breach of ADVO was not found proven:

The most common penalty for a breach ADVO offence was a term of imprisonment (14.97% of matters), the second most common penalty was a s 9 good behaviour bond (13.29%), followed by a fine (12.28%). Just over 4% (4.36%) of offenders received a s 12 suspended sentence. 21.67% of 'breach ADVO' charges resulted in 'no penalty' outcomes, because the defendant was found not guilty of the charge.¹³⁹⁸

14.14 Some stakeholders advised the Committee that the data should be dealt with cautiously. The Law Society pointed out that the statistics for breach of an ADVO do not specify the type of breach for which the person is being sentenced and on this basis it warned against drawing any specific conclusions from the data:

It is important to note that the statistics on sentences for breach of an ADVO do not specify the type of breach. These statistics are therefore of limited assistance as breaches can range from a telephone call to a serious assault.¹³⁹⁹

14.15 Dr Weatherburn of BOCSAR emphasised that the likelihood of a person receiving a term of imprisonment is very much dependant on the nature of the offending and that where the offending is more serious, the evidence shows THAT the likelihood of a term of imprisonment increases.¹⁴⁰⁰ On this basis he also advocated a cautious approach to the data and observed that it is difficult to make generalisations based on it:

I think it's difficult to make generalisations ... For many of these offences the numbers are really small. In our presentation we showed that across all DV offences, the most common penalties for DV offences were Bonds and that ten percent of offenders were sentenced to imprisonment. For the more serious offence shown in Table D, 64 per cent of offenders were sentenced to imprisonment. Whether this is high or low, good or bad is difficult to say.¹⁴⁰¹

14.16 Referring to BOCSAR research, Wurringa Baiya Aboriginal Women's Legal Centre noted that Aboriginal people are more likely to receive a sentence of imprisonment than non-Aboriginal people. Other than this, Wurringa Baiya observed that there is a lack of research on sentencing

¹³⁹⁷ Submission 21, Appendix 2.

¹³⁹⁸ Answers to questions on notice taken during evidence 17 October 2011, Department of Attorney General and Justice, Question 3, p 1.

¹³⁹⁹ Submission 56, Law Society of New South Wales, p 2.

¹⁴⁰⁰ Dr Weatherburn, Evidence, 7 November 2011, pp 10-11.

¹⁴⁰¹ Answers to supplementary questions 7 November 2011, Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Question 9, p 2.

trends in domestic violence in New South Wales, and suggested more work needs to be done to fully understand the issue:

[T]he odds of an Indigenous person receiving a sentence of imprisonment for a domestic-violence related assault were 1.46 times the odds of a non-indigenous person and the odds of male receiving a custodial sentence were 2.85 times the odds of a female. We particularly highlight this finding in light of the fact that some Aboriginal women are concerned about reporting a domestic violence offence or breach of an ADVO for fear of her partner being incarcerated.

We have not been able to identify or locate any other analysis and research around the sentencing trends of domestic violence offences in New South Wales and we respectfully suggest that in order to gain a detailed picture of what sentences are being given by NSW courts and the efficacy of those sentences, that this issue be referred to the Sentencing Council or the NSW Bureau of Crime Statistics and Research for further extensive research and analysis.¹⁴⁰²

- 14.17** The Law Society further observed that where a person had breached an ADVO in the past two years, the chance of them being imprisoned increased by more than double.¹⁴⁰³

Legal framework for sentencing

- 14.18** Judges and magistrates carry out their sentencing function within a strict legal framework and must comply with the law of sentencing. The *Crimes (Sentencing Procedure) Act 1999* (the Sentencing Act) lists seven factors prescribing the purposes of sentencing in New South Wales. These are:

- to ensure the offender is adequately punished for the offence
- to prevent crime by deterring the offender and other persons from committing similar offences
- to protect the community from the offender
- to promote the rehabilitation of the offender
- to make the offender accountable for his or her actions
- to denounce the conduct of the offender
- to recognise the harm done to the victim of the crime and the community.¹⁴⁰⁴

- 14.19** The Sentencing Act also sets out a range of custodial and non-custodial sentences available to the courts. Section 5 of that Act provides that a sentence of imprisonment should be imposed only where ‘no penalty other than imprisonment is appropriate’. The range of sentences available include:

- imprisonment
- compulsory drug treatment detention (by the Drug Court only)

¹⁴⁰² Submission 43, pp 6-7.

¹⁴⁰³ Submission 56, p 2.

¹⁴⁰⁴ *Crimes (Sentencing Procedure) Act 1999* s 3A.

- home detention
- intensive correction orders
- community service orders
- good behaviour bonds
- dismissal of charges and discharge on the offender on the condition that they complete an intervention program or are of good behaviour for a set period of time (up to two years)
- conviction recorded with no other penalty
- deferral of sentencing until the perpetrator completes rehabilitation, or participates in an intervention program
- suspended sentences
- fines
- non-association and place restriction orders.¹⁴⁰⁵

14.20 In determining the sentence to be imposed, sentencing judges and magistrates are required to weigh the objective seriousness of the conduct against the legislated penalty. In explaining the approach to sentencing taken in local courts, Judge Henson explained that the factors a court will take into account vary and will accord with sentencing principles including deterrence and denunciation of the conduct:

When sentencing an offender for a domestic violence offence, various considerations are taken into account by the judicial officer in forming an assessment of the objective gravity of the offending conduct. Case law has consistently articulated the need for general deterrence and denunciation, particularly in circumstances where multiple offences have been committed over a period of time.¹⁴⁰⁶

14.21 In making sentencing decisions, judges and magistrates are guided by relevant legislation as well as the practice of courts. In addition, the Children's Court referred to the Sentencing Bench Book which provides concise guidance to magistrates and judges on the imposition of penalties in accordance with important sentencing decisions.¹⁴⁰⁷ The Sentencing Bench Book stipulates, among other things, that domestic violence should be treated with real seriousness and that the sentencing principles of deterrence and denunciation are especially important.¹⁴⁰⁸

14.22 Furthermore, section 21A of the *Crimes (Sentencing Procedure) Act* lists the criteria that can be applied as mitigating or aggravating factors in sentencing. An aggravating factor can increase the penalty a person will receive and a mitigating factor can reduce it. Although the court is

¹⁴⁰⁵ *Crimes (Sentencing Procedure) Act 1999* Pt 2.

¹⁴⁰⁶ Submission 21, p 5.

¹⁴⁰⁷ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 5, pp 4-5.

¹⁴⁰⁸ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 5, pp 4-5.

required to have regard to these factors in sentencing, it is not under an obligation to alter the sentence just because a mitigating or aggravating factor exists and is known to the court.¹⁴⁰⁹

Aggravating factors in sentencing

14.23 As outlined above, aggravating factors are criteria the court can take into account that can escalate the sentence a particular offender might receive. Binaal Billa Family Violence Prevention Legal Service recommended that greater weight should be given to aggravating circumstances in sentencing domestic violence offenders:

In order to adequately address differing levels of escalating violence greater weight should be given to the more aggravating circumstances such as; the use of weapons and stalk and intimidate, with less discretion at the lower end of the scale. Stronger penalties should be enforced for repeat offences and breaches of sentencing and protective orders.¹⁴¹⁰

Domestic violence as an aggravating factor in sentencing

14.24 Domestic violence is not specifically listed as an aggravating factor in the Sentencing Act.¹⁴¹¹ Section 21A sets out aggravating factors which include a number that are especially relevant to domestic violence offences.¹⁴¹² The list of aggravating factors is lengthy and includes that:

- the offence involved the actual or threatened use of violence
- the offender has a record of previous convictions (particularly if the offender is being sentenced for a serious personal violence offence and has a record of previous convictions for serious personal violence offences)
- the injury, emotional harm, loss or damage caused by the offence was substantial
- the offender abused a position of trust or authority in relation to the victim
- the victim was vulnerable, for example, because the victim was very young or very old or had a disability
- the offence was committed in the presence of a child under 18 years old
- the offence was committed in a person's home.¹⁴¹³

14.25 The Inner City Legal Centre considered a model whereby domestic violence could be a specific aggravating factor in its own right. It suggested that the addition of domestic violence as an aggravating factor would limit the extent to which an offender would be able to diminish the seriousness of the offence on the basis that they have a relationship with the victim.¹⁴¹⁴

¹⁴⁰⁹ *Crimes (Sentencing Procedure) Act 1999* s 21A(5).

¹⁴¹⁰ Submission 38, Binaal Billa Family Violence Prevention Legal Service, pp 2-3.

¹⁴¹¹ Submission 26, Inner City Legal Centre, p 3.

¹⁴¹² Submission 21, p 5.

¹⁴¹³ *Crimes (Sentencing Procedure) Act 1999* s 21A; Submission 21, p 5.

¹⁴¹⁴ Submission 26, p 3.

- 14.26** Representatives of the courts were of the view that the existing list of aggravating factors adequately includes dynamics relevant to domestic violence.¹⁴¹⁵ The Children's Court suggested that adding any further factors to an already extensive list might just further complicate the sentencing process:

There are a number of existing provisions in Section 21A which are relevant to domestic violence offences...

The risk of adding additional aggravating factors to Section 21A is that it further complicates the sentencing process as the court seeks to take account of overlapping aggravating factors.¹⁴¹⁶

- 14.27** In relation to the concern that offenders can diminish the seriousness of their offending because they are in a relationship with the victim, the Children's Court quoted from a section of the Sentencing Bench Book which specifically provides that a prior relationship between the offender and the victim does not operate to mitigate a violent offence.¹⁴¹⁷

- 14.28** In considering the Inner City Legal Centre's proposal, Judge Henson observed that legislative reforms added to the list of aggravating factors in 2007. His Honour observed that a clear legislative intention was expressed at the time for certain aggravating factors to apply with regard to domestic violence:

In late 2007, the NSW Parliament added several additional aggravating factors to the list set out in section 21A(2), which often specifically arise in relation to offences committed in a family context. These include:

- Particular consideration of an offender's criminal record if the offender is being sentenced for a serious personal violence offence and has a record of previous convictions for serious personal violence offences;
- The offence was committed in the presence of a child under 18 years of age; and
- The offence was committed in the home of the victim or any other person.

It should be noted that the second reading speech of the Attorney General, the Hon. John Hatzistergos MLC, in relation to the 2007 amendments to section 21A evinced a clear legislative intention for certain aggravating factors to address offences committed in a family context.¹⁴¹⁸

- 14.29** Judge Henson concluded that the existing list of aggravating factors in the Sentencing Act are both adequate and appropriate for dealing with offences carried out in a family context.¹⁴¹⁹

¹⁴¹⁵ Answers to supplementary questions 5 March 2012, Chief Magistrate of New South Wales, Judge Graeme Henson, Question 7, pp 4-6; Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 5, pp 4-5.

¹⁴¹⁶ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 5, pp 4-5.

¹⁴¹⁷ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 5, pp 4-5.

¹⁴¹⁸ Answers to supplementary questions 5 March 2012, Chief Magistrate of New South Wales, Judge Graeme Henson, Question 7, p 5.

¹⁴¹⁹ Answers to supplementary questions 5 March 2012, Chief Magistrate of New South Wales, Judge Graeme Henson, Question 7, pp 4-6.

- 14.30** This matter was considered by the Australian and NSW Law Reform Commissions (the Law Reform Commissions) in their report on family violence, which did not recommend that family violence should become an additional aggravating factor.¹⁴²⁰

Mitigating factors to be taken into account in sentencing

- 14.31** A mitigating factor is one that can be taken into account to reduce the sentence a person would otherwise receive. Mitigating factors applicable in criminal cases in New South Wales are listed in section 21A of the Sentencing Act and include among other things that:
- the injury, emotional harm, loss or damage caused by the offence was not substantial
 - the offence was not planned
 - the offender was of good character
 - the offender has good prospects of rehabilitation
 - the offender provided assistance to law enforcement authorities
 - the offender was provoked by the victim.

Provocation as a partial defence to homicide

- 14.32** A separate defence of provocation exists to the offence of murder. It is a partial defence, which means that if it is established, a murder charge will be reduced to a manslaughter charge. If a person is found guilty of murder they can be sentenced to imprisonment for the term of their natural life, whereas if a person is found guilty of manslaughter, the maximum sentence is 25 years imprisonment.¹⁴²¹
- 14.33** During the inquiry the Committee was alerted to a domestic violence case where a defendant who had admitted to killing his wife was granted this defence and accordingly received a reduced sentence. Media commentators suggested that the sentence was manifestly inadequate. Since that case, the Legislative Council has established the Select Committee on the Partial Defence of Provocation to conduct an inquiry on that defence. The terms of reference include consideration of whether the defence should be abolished or amended. The Committee's report is expected to be tabled in Parliament on 21 November 2012.

Whether existing penalties for domestic violence are adequate

- 14.34** Stakeholders were fairly united in the view that while penalties are adequate, they are not always applied consistently and are sometimes too leniently applied. This section outlines stakeholder concerns about the penalties available, and perceived leniency and inconsistency in the application of those penalties. Suggestions were put forward as to other penalties that should be available, along with methods to improve consistency.

¹⁴²⁰ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, Final Report, Vol.1, October 2010, pp 589 - 591.

¹⁴²¹ *Crimes Act 1900* ss 19A and 24.

Penalties available

- 14.35** The vast majority of stakeholders perceived that existing penalties for domestic violence offences are adequate.¹⁴²² A succinct example of the typical view was put by Public Defender's Office:

It seems to us that existing penalties for domestic violence are adequate. They range from the maximum penalty for the offence of common assault of imprisonment for two years, to the maximum penalty for the offence of murder of imprisonment for the term of one's natural life.¹⁴²³

- 14.36** A few inquiry participants were of the view that penalties needed to be harsher. For example the Kempsey Family Support Service contended that 'harsher penalties are required for breaches, existing penalties are not adequate to reflect the seriousness of the crime.'¹⁴²⁴ Similarly, the Fairfield Domestic Violence Committee argued that 'existing penalties are inadequate, leaving victims in unsafe conditions or a life in constant fear ... penalties are not high enough to prevent perpetrators from offending again.'¹⁴²⁵

- 14.37** The Benevolent Society suggested that the inadequacy of penalties for domestic violence offences contributes to a community perception that ADVOs are ineffective and fail to deter reoffending and that this in turn leads to the under-reporting of domestic violence:

[It is] the inconsistency and inadequacy of penalties for domestic and family violence offences, that contribute to prevailing community attitudes that AVOs are not effective, are not an adequate deterrent against re-offending, and that the police and courts do not take domestic and family violence seriously enough. Such attitudes contribute to the significant underreporting of domestic and family violence, as victims are reluctant to report domestic and family violence to police because of negative experiences, such as not being believed, when they have reported in the past.¹⁴²⁶

- 14.38** On the other hand, Professor Julie Stubbs of the Faculty of Law at the University of New South Wales, stated that she is aware of no evidence that compliance with ADVOs is connected with the available penalties for breach. Indeed, in her view, compliance is more closely connected to the likelihood of being caught:

¹⁴²² Submission 12, Public Defenders Office NSW, p 2; Submission 23, Mt Druitt Family Violence Response and Support Strategy Leadership Group, p 3; Submission 29, Outer West Domestic Violence Network, p 2; Submission 39, p 5; Submission 40, One in Three Campaign, p 11; Submission 51, Shopfront Youth Legal Centre, pp 5-6; Submission 56, p 2; Ms Cheryl Alexander, Chair, Women's Domestic Violence Court Advocacy Services Network, Evidence, 5 March 2012, p 11; Dr Rochelle Braaf, Senior Research Officer, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 40; Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 3, p 6; Answers to supplementary questions 7 November 2011, Women's Legal Services NSW, Question 5, pp 3-4; Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 11, p 7.

¹⁴²³ Submission 12, p 2.

¹⁴²⁴ Submission 79, Kempsey Family Support Service, p 2.

¹⁴²⁵ Submission 44, Fairfield Domestic Violence Committee, p 2.

¹⁴²⁶ Submission 37, p 10.

I am not aware of any evidence that suggests that compliance with ADVOs is associated with the severity of penalties on breach. Criminological research more broadly suggests that deterrence is more associated with the perceived likelihood of being detected rather than the size of the penalty.¹⁴²⁷

- 14.39** Taking a different view, the One in Three Campaign alluded to the possibility that current penalties might be too harsh:

The existing penalties for family violence are already harsh and sufficient. Magistrates appear to feel they are too harsh, as the full penalties aren't often applied. The main problem as we see it is that magistrates lack the appropriate perpetrator programs to refer defendants on to.¹⁴²⁸

- 14.40** The Redfern Legal Centre and Sydney WDVCS suggested that rather than increasing maximum penalties, attention should be paid to better resourcing and training of police:

Redfern Legal Centre and Sydney WDVCS recommend that rather than increase the penalties for domestic violence offences, a number of non-legislative measures be used to reduce breaches and improve compliance with ADVOs, including an increase in resource and training for police, the use of specialist police, and the requirement that police record their reasons for not prosecuting domestic violence offences.¹⁴²⁹

Penalties being imposed are too lenient, ineffective or inconsistent

- 14.41** There was widespread concern among inquiry participants that while the sentences available are adequate, they are applied inconsistently.¹⁴³⁰ Some stakeholders disagreed with this view. For example the Law Society observed:

The Committee is not aware of evidence that penalties are applied inconsistently. Any sentencing matter involves the court exercising its discretion.¹⁴³¹

- 14.42** Ms Cheryl Alexander, Chair of the WDVCS Network, in querying consistency made a comment typical of many:

¹⁴²⁷ Submission 60, Professor Julie Stubbs, p 3.

¹⁴²⁸ Submission 40, p 11.

¹⁴²⁹ Submission 39, p 6.

¹⁴³⁰ Submission 5, St Vincent de Paul Society, p 1; Submission 16, Nepean Blue Mountains Local Health District, p 1; Submission 23, p 4; Submission 28, Women's Domestic Violence Court Advocacy Service Network, p 5; Ms Penelope Musgrave, Director, Criminal Law Review, Department of Attorney General and Justice, Evidence, 17 October 2011, p 5; Dr Braaf, Evidence, 17 October 2011, p 40; Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, Evidence, 17 October 2011, p 41; Ms Melina Isgro-Rarp, Program Manager, Centre for Women's Health, MacArthur, Evidence, 17 October 2011, p 64; Ms Rachelle Johnston, Project Officer, Women's Domestic Violence Court Advocacy Program, Legal Aid NSW, Evidence, 7 November 2011, pp 27-28; Ms Susan Smith, Solicitor and Coordinator, Sydney Women's Domestic Violence Court Advocacy Service, Evidence, 7 November 2011, p 51, 53-54; Ms Alexander, Evidence, 5 March 2012, p 11; Eleonora Raffo, Coordinator, Liverpool and Fairfield Staying Home, Leaving Violence Project, South West Sydney Legal Centre, Evidence, 26 March 2012, p 57.

¹⁴³¹ Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 3, p 3.

Our concern is that magistrates are not sentencing perpetrators with the strong penalties available or are not applying penalties consistently. Domestic violence is a crime that should never be tolerated and the court is in the strongest position to send that message to the community.

Overall adequate penalties are available but anecdotal reports from local workers as well as client, indicate they are inconsistently applied. We would suggest that it is well known that interpretation of evidence and subsequent application of legislation by Magistrates is subjective, and therefore penalties applied in similar scenarios differ from court to court. This would bolster an argument for a DV Court that would facilitate more consistent, predictable and reliable approach to these matters.¹⁴³²

- 14.43** The Police Association agreed and expressed its members' frustration at perceived leniency.¹⁴³³ Another who commented on inadequacy of sentences was Mr Howard Brown, Vice-President of the Victims of Crime Assistance League (VOCAL), who described an incident where, in his view, the sentence was inadequate. The case involved a woman who had been violently attacked by her partner in front of a child:

I have a 32-year-old woman who, four and a half years ago, was stabbed 27 times by her partner. He did so in full view of the public and in front of his three-year-old daughter ... The person responsible for that crime, despite the fact it attracted a maximum penalty of 25 years, was sentenced to six years jail: four years to be served and two and a half to be served on parole. He has not done the violent offender therapy program. He has not done any substantial programs within the prison system. I advocated before the New South Wales State Parole Authority on behalf of the woman to try and ensure that this person would not be released. I was unsuccessful.¹⁴³⁴

- 14.44** Several stakeholders argued that the sentencing outcomes do not always reflect the seriousness of the relevant criminal behaviour, especially in relation to breaches of ADVOs.¹⁴³⁵ Specific consideration of concerns about sentences for breaches of ADVOs takes place in paragraphs 14.52 to 14.62 below.

Whether sentences are fulfilling their legislative purpose

- 14.45** A few inquiry participants held the view that existing penalties are not serving their intended purpose in line with sentencing principles.¹⁴³⁶
- 14.46** Wirringa Baiya Aboriginal Women's Legal Centre and Binaal Billa Family Violence Prevention Legal Service were both of the view that current sentencing practices do not always uphold

¹⁴³² Submission 23, p 3.

¹⁴³³ Submission 63, Police Association of New South Wales, p 17.

¹⁴³⁴ Mr Howard Brown, Vice-President, Victims of Crime Assistance League, Evidence, 26 March 2012, p 19.

¹⁴³⁵ Answers to supplementary questions 20 February 2012, Sydney Women's Domestic Violence Court Advocacy Service, Question 3, p 6; Answers to supplementary questions 20 February 2012, Department of Family and Community Services, Question 10, p 15.

¹⁴³⁶ Submission 58, Green Valley Liverpool Domestic Violence Service, p 3; Submission 44, p 2; Mr Patrick Gooley, Vice-President, Police Association of New South Wales, Evidence, 20 February 2012, p 55.

the principles in the Sentencing Act, in particular deterrence.¹⁴³⁷ Wurringa Baiya noted that in their experience sentencing rarely has a deterrent or rehabilitative effect:

Theoretically sentencing is ... meant to be a deterrence with offenders refraining from further criminal conduct if they can see that the consequences of their behaviour are sufficiently harsh. Our work with victims of ongoing domestic violence shows that sentencing rarely has a deterrent effect, or rehabilitative effect.¹⁴³⁸

- 14.47** The WDVCAS Network suggested that, for the purpose of general denunciation, penalties at the lower end of the scale should not be available for domestic violence offences:

The WDVCAS Network asserts that some of the lesser penalties should not be available in domestic violence matters if the perpetrator and community are to fully recognise that domestic violence is a crime that will not be tolerated.¹⁴³⁹

- 14.48** Sergeant Patrick Gooley, Vice-President of the Police Association, conceded that some police always want to see harsher penalties but also observed that penalties for domestic violence are not meeting the objectives of deterrence and rehabilitation:

It seems to our members that they are dealing with the same victims and same offenders repeatedly and there is no deterrent factor ... I admit some of our members want to see harsher penalties all the time but many of our members want to see the appropriate penalties imposed that meet the need of deterrence and rehabilitation; deterrence to that person and everybody else in the courtroom waiting to be sentenced as well. Many of our members feel that is not happening, particularly in the Local Court.¹⁴⁴⁰

- 14.49** A lack of adequate consideration of the dynamics of domestic violence was a further criticism of current sentencing practices. The Mt Druitt Family Violence Response and Support Strategy Leadership Group was concerned that the penalties imposed fail to take account of the characteristics of domestic violence which include a cumulative process of fear and control:

Penalties at times can appear to minimise the history of a perpetrator, discount the likelihood of recidivism and/or the escalation of violence that often occurs. This ignores the dynamics of violent relationships that are a cumulative process of intimidation, fear and control, which may culminate in a specific assault or incident. Such an assault or incident must be viewed in context for appropriate responses and penalties to be applied.¹⁴⁴¹

- 14.50** The NSW Police Force empathised with victims of domestic violence and took the view that penalties appear to show a lack of understanding about the impact of domestic violence more broadly:

For police and for many victims the penalties given out by the courts often seem to demonstrate a lack of understanding about the impact of domestic violence on

¹⁴³⁷ Submission 38, pp 2-3.

¹⁴³⁸ Submission 43, pp 7-8.

¹⁴³⁹ Submission 28, p 5.

¹⁴⁴⁰ Mr Gooley, Evidence, 20 February 2012, p 55.

¹⁴⁴¹ Submission 23, p 3.

individuals, families and the broader community. Police often feel let down when offenders are given a bond rather than a sentence, and the message this sends to both the victim and the offender is that domestic violence is not really a serious crime.¹⁴⁴²

- 14.51** The Benevolent Society expressed a similar concern and suggested that magistrates sometimes seem more concerned about the welfare of the defendant than that of the victims and children. It also commented on an apparent failure on the part of magistrates to impose the maximum penalty even where there has been brutal violence:

[O]ur staff have observed failure by the courts to impose adequate sentences on perpetrators, instead giving more weight to the potentially adverse effects of a conviction or prison sentence on a perpetrator (such as losing his job) than to the safety of the victim and children. Our services have observed that the maximum penalty is rarely applied and that violent perpetrators have escaped imprisonment even in instances where the violence was so brutal that the victim was hospitalised with extensive injuries.¹⁴⁴³

Sentencing for breach of an apprehended domestic violence order

- 14.52** The Committee received more comments on sentencing for breach of an ADVO than any other crimes. Most participants were critical of the perceived leniency in sentencing for this offence.¹⁴⁴⁴ Several stakeholders expressed concern that the penalty imposed does not always reflect the seriousness of the conduct which constitutes the breach.¹⁴⁴⁵ For example, Ms Catherine Smith, a victim of very serious domestic violence, suggested that penalties for breach of an ADVO are generally moderate:

It seems to me that they are very light, particularly with apprehended violence orders. Breaches of apprehended violence orders are never dealt with by what they say on the form that they can be dealt with.¹⁴⁴⁶

- 14.53** Specific provisions of the *Crimes (Domestic and Personal Violence) Act 2007* govern sentencing for breach of an ADVO. Section 14 of that Act provides that breach of an ADVO is punishable by a maximum of two years imprisonment or a fine of \$5,500. The section also requires that where the breach involved an act of violence, there is a presumption in favour of imprisonment. That is, a term of imprisonment must be served unless the Court orders otherwise and gives reasons for doing so.
- 14.54** The Committee heard that despite a legislative presumption in favour of imprisonment, it is rare for the maximum penalty to be imposed for breaches of ADVOs. Instead, offenders are usually punished with a bond.¹⁴⁴⁷ Several inquiry participants commented that imposing a

¹⁴⁴² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, p 3.

¹⁴⁴³ Submission 37, pp 9-10.

¹⁴⁴⁴ Answers to supplementary questions 7 November 2011, Women's Legal Services NSW, Question 5, pp 3-4; Submission 23, p 4.

¹⁴⁴⁵ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 10, p 7; Submission 79, p 1; Mr Gooley, Evidence, 20 February 2012, p 55; Submission 34, Legal Aid NSW, p 10.

¹⁴⁴⁶ Ms Catherine Smith, victim of domestic violence, Evidence, 7 November 2011, p 38.

¹⁴⁴⁷ Submission 39, pp 5-6.

bond for breach of an ADVO sends a message to the community that breaches of ADVOs are not taken seriously¹⁴⁴⁸ and is an inadequate sentence for this offence.¹⁴⁴⁹ The Benevolent Society referred to statistics illustrating a considerable gap between the maximum penalties available for a breach of an ADVO and those being imposed by judges and magistrates:

[T]here is a considerable gap between the maximum penalty allowable and its application by the judicial system. This gap is evidenced by the fact that, between January 2008 and June 2009, only 16.9% of breaches of AVOs in NSW were punishable by a sentence of imprisonment. Further, sentences of imprisonment for breaching AVOs were short, averaging less than five months of incarceration.¹⁴⁵⁰

- 14.55** Mr Gooley reported that the Police Association's members are dissatisfied with a perceived failure on the part of local courts to impose custodial sentences for breaches of ADVOs and frustrated that courts deal with multiple violations at once or as one breach:

[T]raditionally the breaches of domestic violence matters consist of a stand-alone offence and a breach of the apprehended domestic violence order. Our members become frustrated when they see numerous breaches dealt with at once or ongoing breaches dealt with as one at court.¹⁴⁵¹

- 14.56** The NSW Police Force expressed a similar view and observed that the imposition of a bond as a penalty for breach of an ADVO can make police feel like they have wasted their time in pursuing the case. It questioned whether all magistrates even know the presumption in favour of imprisonment exists:

Magistrates very rarely impose a custodial sentence and even rarer comment on the existence of this section in their sentencing. It would appear that many magistrates don't know that it exists.

There appears to be a high proportion of bonds given for offences of breach ADVO and other domestic violence offences, often without conviction. This is particularly disturbing to police who feel in many cases that they have wasted their time, particularly given that domestic violence is underreported and it often takes significant coaxing and support to get a victim to follow the process through. Many victims withdraw their support for prosecutions or refuse to assist at all.

Police often believe that bonds are nothing more than a slap on the wrist and significantly less penalty than what the defendant has put the victim through.¹⁴⁵²

- 14.57** On the other hand, Judge Henson reminded the Committee that every instance of breach of an ADVO is not the same and that the maximum penalty is reserved for the worst cases of breach. His Honour pointed out that necessarily, courts will take a different approach to worst case scenarios than to 'technical breaches' (see Chapter 10 paragraphs 10.6 to 10.14) which are at the other end of the scale:

¹⁴⁴⁸ Submission 79, p 1.

¹⁴⁴⁹ Submission 37, p 8; Answers to supplementary questions 20 February 2012, NSW Police Force, Question 21, p 21.

¹⁴⁵⁰ Submission 37, p 7.

¹⁴⁵¹ Mr Gooley, Evidence, 20 February 2012, p 55.

¹⁴⁵² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 21, p 21.

Not every crime is the same. The penalties that are established under the domestic and personal violence legislation provide a maximum penalty of two years imprisonment [for breach of an ADVO]. That penalty, as the common law informs, is reserved for the worst case of a breach... Commonsense will inform you that the court would take a very different approach where injury was occasioned in defiance of a domestic or personal violence order compared to what really is a technical breach at the bottom end of the range ... That in itself I hope is sufficient to explain why there is a variance in outcomes.

- 14.58** For some inquiry participants it was unacceptable that magistrates and judges are imposing sentences under section 10 or 10A of the Sentencing Act for breaches of ADVOs. These sections allow conditional dismissal of the charges and conviction with no other penalty. The Mt Druitt Family Violence Response and Support Strategy Leadership Group commented that imposing a conviction with no other penalty for a breach of an ADVO sends a message to offenders that they can keep getting away with domestic violence:

Minimum sentencing on [domestic violence] matters, such as Breach ADVOs, needs to be reviewed to ensure there is a strong and consistent message given to offenders. Penalties, such as section 10A dismissal for a contravention of an ADVO charge, after an offender has been told they will be in serious trouble if they breach their ADVO, are not appropriate. This just reinforces to an offender that they can keep getting away with it, with no consequences and can continue the violence with no fear of reprisal.¹⁴⁵³

- 14.59** The MetWest Violence Prevention Network said that the rationale for imposing a good behaviour bond under section 10 for domestic violence offences is unclear because it ignores that a key characteristic of domestic violence is repetition:

The most common outcome is a “section 10” a (time limited) good behaviour bond, with no criminal record (conviction not recorded). The rationale for providing a time limit to refraining from criminal behaviour is not obvious. The Court views this kind of violence perpetrated against a further but different victim as an unrelated matter. This perception ignores a disturbing but well known characteristic of this kind of behaviour – repetition. We think that penalties are available, but that they are seldom applied as appropriate.¹⁴⁵⁴

- 14.60** The NSW Police Force took this view further and suggested that recidivists should never receive a bond under section 10 as this penalty does not reflect the seriousness of the offence and may deter victims from reporting domestic violence again in the future:

An offender who already has a conviction for a domestic violence offence should under no circumstances be given a bond under section 10 of the Crimes (Sentencing Procedure) Act for a further domestic violence offence ... The granting of bonds in these circumstances does not reflect the seriousness with which repeat instances of domestic violence should be treated, and could act as disincentives for victims to report domestic violence in the future.¹⁴⁵⁵

¹⁴⁵³ Submission 23, p 4.

¹⁴⁵⁴ Submission 11, MetWest Violence Prevention Network, p 1.

¹⁴⁵⁵ Submission 74, NSW Police Force, p 17.

- 14.61** Some stakeholders commented that courts tend to focus on the conduct that constituted the breach in terms of separate criminal charges but not in terms of sentencing for the breach itself. Legal Aid observed that magistrates will often impose a more severe penalty for the criminal offence but not impose a commensurate penalty for the breach of ADVO that the criminal conduct constitutes:

The concern of Legal Aid NSW is that where commission of a criminal offence constitutes a breach of an ADVO, sentencing outcomes do not reflect the seriousness of the breach. Magistrates will often impose a more severe sentence for the criminal offence which constitutes the breach (for example, assault) rather than for the offence of breach ADVO. This is despite the fact that section 14(4) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) creates a presumption in favour of imprisonment if an act constituting a breach of an ADVO was an act of violence against a person.¹⁴⁵⁶

- 14.62** Looking at the issue slightly differently, the Shopfront Youth Legal Centre suggested that the perception that sentences for breach of an ADVO are moderate needs to be balanced against the fact that serious breaches of ADVOs, for example through the commission of a violent offence, will also involve additional criminal charges which can receive hefty sentences:

No doubt some would say that the maximum penalty does not reflect the seriousness of the conduct that may constitute a breach of an ADVO. However, it is important to remember that, where a breach of an AVO involves stalking, intimidation or actual violence, the offender will be guilty of an additional offence carrying a greater maximum penalty. There are a range of relevant indictable offences with maximum penalties ranging from five years' imprisonment (in the case of common assault or stalking/intimidation) to 25 years' imprisonment (in the case of wounding or inflicting grievous bodily harm with intent to inflict grievous bodily harm). These offences are all capable of being dealt with by the District Court should the prosecution make an election. Even in the Local Court, when multiple offences are involved the magistrate may impose cumulative sentences of up to five years' imprisonment.¹⁴⁵⁷

Judicial discretion

- 14.63** Contrary to the view that sentencing outcomes should be more consistent, several stakeholders pointed to an important differentiation between consistency of sentencing outcomes and consistency of decision makers' approach to sentencing. Ms Julie Stewart, Secretary of the NSW Domestic Violence Coalition and Coordinator of the Manly Warringah Women's Resource Centre, emphasised that sentencing is characterised by its complexity and requires that a magistrate take into account a multitude of considerations:

In relation to sentencing, we would just like to say that that is a very complex area. I think magistrates have got plenty of direction and have to take in a million different factors in determining sentence. I do not think that is widely understood in the community. People think that a bond or a fine is a slap on the wrist, it is not serious enough, but there are a whole lot of issues that inform a magistrate's decision around sentencing and I think certainly the maximum penalty is adequate.¹⁴⁵⁸

¹⁴⁵⁶ Submission 34, pp 9-10.

¹⁴⁵⁷ Submission 51, pp 5-6.

¹⁴⁵⁸ Ms Julie Stewart, Secretary, NSW Domestic Violence Coalition and Coordinator, Manly Warringah Women's Resource Centre, Evidence, 17 October 2011, p 30.

- 14.64** Judge Henson reminded the Committee that courts are made up of individuals who make decisions based on the objective seriousness of the particular conduct. His Honour argued that in applying the appropriate principles they are demonstrating consistency of approach but this does not mean that the same offence will always receive the same sentence:

One has to understand there is a difference between consistency of outcome and consistency of approach to outcome. All courts ... are made up of individuals who make decisions based upon their assessment of the objective seriousness of the offence and of the conduct within the commission of the offence. If they apply the appropriate principles in determining sentence then that is consistency of approach. What you are suggesting is, perhaps, you should get the same outcome for the same conduct. In ideal world, perhaps if courts were run by robots, that might be possible but wherever humanity intrudes onto the environment you will get variations on the theme. Parliament has long recognised that there is a capacity to control departures from the acceptable norm. The acceptable norm will be on both sides of the centre, as it were.¹⁴⁵⁹

- 14.65** Ms Betty Green, Convenor of the NSW Domestic Violence Coalition, noted that decisions are dependent on the quality of the brief of evidence and that judicial decision-making is part of a complex system:

Decisions can be made only on the quality of the brief that is presented. It is important to get that right. That goes back to what is collected in evidence when police first attend, what information is included and how that is passed up to the bench.

Again, it is not as simple as magistrates at this end are not applying appropriate penalties. It is part of a more complex system that probably needs a lot more work and thought put into it.¹⁴⁶⁰

- 14.66** Supporting judicial discretion, Ms Jane Sanders, Principal Solicitor with Shopfront Youth Legal Centre, said that while there are often calls for more streamlined sentencing outcomes, in her view it is important that judges exercise discretion in accordance with their individual experience. She reminded the Committee that should a sentence appear manifestly inadequate, the appeals process allows the decision to be reviewed:

In the criminal justice arena we often get calls for mandatory sentencing, grid sentencing guidelines, et cetera. I think it is really important that our judicial officers are all human, just like our parliamentarians, and you all bring different views to the table and, hopefully, a diversity of views makes for a better system. I think we have an appeals process, of course, where you have magistrates who are real outliers who make really outrageous decisions, or decisions by which somebody is really aggrieved. We do have an appeals system. I think part of it is just that those on the bench are human.¹⁴⁶¹

¹⁴⁵⁹ Judge Graeme Henson, Chief Magistrate of New South Wales, Evidence, 5 March 2012, p 21.

¹⁴⁶⁰ Ms Betty Green, Convenor, NSW Domestic Violence Coalition and Manager, Liverpool Women's Health Service, Evidence, 17 October 2011, p 30.

¹⁴⁶¹ Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre, Evidence, 5 March 2012, p 51.

- 14.67** Judge Henson also pointed to the appeals process as an avenue for redress. His Honour observed that of the approximately 270,000 matters local courts hear each year, less than 50 appeals are made on the basis of leniency of sentence:

A right of appeal exists on the part of the defendant if they believe that the penalty imposed is too severe and a right of appeal exists on the part of the prosecution if they believe that the penalty imposed is too lenient. The Local Court deals with, on average, about 270,000 criminal cases each year ... the number of appeals against leniency of sentence is less than 50 each year. That means that either the prosecution accepts that the penalty imposed by the magistrate is within the range of acceptability or the prosecution agencies, for their own reasons, are unwilling to take it on appeal.

¹⁴⁶²

- 14.68** His Honour further explained that mitigating and aggravating factors also play a part in determining any given sentence. For example where a defendant pleads guilty that could reduce the sentence imposed and conversely where a defendant has a long history of violence, that could increase the sentence imposed:

There is also a variance where the offender pleads guilty. The law in New South Wales, section 22 of the *Crimes (Sentencing Procedure) Act*, requires a court to take into account that plea of guilty because it has a utilitarian value in savings to the community of conducting a defended hearing. The guideline judgement of the Court of Criminal Appeal in *The Queen v. Thompson and Holton* guides magistrates and judges at every level in evaluating the discount to be applied to the sentence which would otherwise be appropriate because of the utilitarian value.

In addition, you might understand that someone who has a long history for a domestic violence type conduct is likely to receive a heavier sentence than someone who is a first offender. The law has always taken into account prior good character as an element to mitigate the penalty. Again, section 21A (3) of the *Crimes (Sentencing Procedure) Act* sets out a number of criteria that a court must apply, if appropriate, to mitigate the penalty. Section 21A (2) sets out the circumstances of aggravation that a court may take into account.¹⁴⁶³

- 14.69** Other relevant considerations that a judge or magistrate will weigh include the impact that the punishment will have on the victim or children and hardship it could cause. Judge Henson elaborated:

The punishment of the offender may have an adverse impact upon the victim or any children of a relationship, particularly in circumstances where there is an ongoing relationship. This might include financial hardship due to the imposition of a fine, emotion, relational and financial hardship due to the imposition of a custodial sentence, or more generally the risk of reprisal against a victim by an offender who regards the punishment as being the 'fault' of the victim.¹⁴⁶⁴

¹⁴⁶² Judge Henson, Evidence, 5 March 2012, pp 22.

¹⁴⁶³ Judge Henson, Evidence, 5 March 2012, p 21.

¹⁴⁶⁴ Submission 21, p 4.

Suggestions to enable a more consistent approach

- 14.70** Inquiry participants who shared the view that sentencing was inconsistent commonly felt that magistrates could benefit from further training to improve consistency of decisions.¹⁴⁶⁵ The NSW Police Force was one such stakeholder:

There are apparent inconsistencies in sentencing between Magistrates and inadequate sentences are imposed that do not reflect the seriousness of domestic violence. These issues could be addressed through training for Magistrates in domestic violence.¹⁴⁶⁶

- 14.71** The Judicial Officers' Survey 2010 captured various professional needs of the judiciary as perceived by judicial officers themselves. Among these, 58.1 per cent of magistrate respondents and 71.4 per cent of District Court judges surveyed regarded sentencing as a 'very useful' topic for further judicial education.¹⁴⁶⁷

- 14.72** Other inquiry participants suggested that sentence consistency might improve if there were examples included in legislation and further protocols or guidelines for magistrates.¹⁴⁶⁸ Referring to the recommendations contained in the Australian and NSW Law Reform Commissions' (the Law Reform Commissions) report *Family Violence – A National Legal Response*, Ms Rachelle Johnston, Project Officer, WDVCS Program made this suggestion:

I know it has been recommended in the family violence report—perhaps there could be included in the legislation examples and further guidelines to ensure consistency and provide some protocols as to how the judiciary and police could respond to domestic violence.¹⁴⁶⁹

- 14.73** The connection between victim safety and sentencing was also made by the Benevolent Society. It recommended that the measure for whether penalties are effective should be related to their effectiveness in ensuring that victims are safe:

The measure of adequacy of penalties for domestic and family violence [should] be whether they are effective in ensuring the safety, the feelings of safety, of victims and their children by protecting them from further violence.¹⁴⁷⁰

Australian and NSW Law Reform Commissions' view

- 14.74** As noted above, the issue of sentencing for domestic violence offences arose in the Law Reform Commissions' report. Ms Penelope Musgrave, Director of the Criminal Law Review, DAGJ, noted that the Law Reform Commissions had received similar evidence that penalties

¹⁴⁶⁵ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 11, p 7.

¹⁴⁶⁶ Submission 74, p 17.

¹⁴⁶⁷ Attachment to correspondence from Chief Magistrate Tom Bathurst, President, Judicial Commission of New South Wales, to the Chair, 16 May 2012: Judicial Commission of New South Wales, *In Brief: The Judicial Officers' Survey*, 2010, pp 19-20.

¹⁴⁶⁸ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 21, p 21; Ms Johnston, Evidence, 11 November 2011, p 28.

¹⁴⁶⁹ Ms Johnston, Evidence, 11 November 2011, p 28.

¹⁴⁷⁰ Submission 37, p 8.

are adequate but that there are issues in terms of how they are applied.¹⁴⁷¹ Several stakeholders to the present inquiry referred the Committee to the recommendations of the Law Reform Commissions in this regard.¹⁴⁷²

14.75 One of the key recommendations referred to by stakeholders was the development and implementation of a national bench book to facilitate greater consistency in sentencing decisions.¹⁴⁷³ The Police Association was among those supportive of the idea of a national bench book.¹⁴⁷⁴ Referring to the Law Reform Commissions' report, the Police Association advocated that factors magistrates should consider in sentencing and that should be contained in a bench book include:

- the achievement of compliance with protection orders or future orders to ensure the safety of the victim
- the potential impact of particular sentencing options on a victim of family violence, including the possible deleterious consequences of imposing fines
- the identification of sentencing factors relevant to the victim and those relevant to the offender
- factors relevant to determining the severity of the sentencing range and the appropriateness of particular sanctions for levels of severity of breach
- sentencing options that aim to change the behaviour of the offender.¹⁴⁷⁵

14.76 The Police Association also agreed with the Law Reform Commissions' view that 'the preservation of judicial discretion in sentencing is essential to enable individualised justice to be done on a case-by-case basis'.¹⁴⁷⁶

14.77 The Committee was advised that the suggestion of a national bench book on family violence and other recommendations of the Law Reform Commissions are being considered at a national level by the Standing Council of Law and Justice.¹⁴⁷⁷

Committee comment

14.78 The Committee considers that the available penalties for domestic violence offences, including breach of an ADVO appear to be adequate. We received very little evidence that maximum penalties needed to be increased although there was some concern about the application of those penalties.

¹⁴⁷¹ Ms Musgrave, Evidence, 17 October 2011, p 5; Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, p 555.

¹⁴⁷² Submission 43, p 6; Ms Musgrave, Evidence, 17 October 2012, p 5; Submission 63, Police Association of New South Wales, p 27.

¹⁴⁷³ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence - A National Legal Response*, October 2010, pp 557-558, Recommendation 12-8.

¹⁴⁷⁴ Submission 63, pp 26-27.

¹⁴⁷⁵ Submission 63, pp 26-27.

¹⁴⁷⁶ Submission 63, p 28.

¹⁴⁷⁷ Ms Musgrave, Evidence, 17 October 2011, p 5.

- 14.79** We recognise that judicial discretion in sentencing is one of the hallmarks of our system of justice. It enables judges and magistrates to ensure the penalty is tailored to the individual and the specific instance of offending, taking into account any mitigating or aggravating factors. Nevertheless, concerns regarding sentencing inconsistency were widespread among stakeholders and should not be ignored.
- 14.80** The Committee notes that technical breaches of ADVOs appear to be contributing to an apparent inconsistency in sentencing. In Chapters 9 and 10 we highlight the importance of ensuring that ADVO conditions are appropriate to individual circumstances to avoid technical breaches and improve compliance. In the Committee's view better tailoring of ADVOs to individual circumstances will have a consequential effect on the consistency of sentencing.
- 14.81** In Chapter 11, we recommend the adoption of a New South Wales specific domestic violence bench book to guide magistrates and judges in determining domestic violence matters. This bench book would provide judges and magistrates with guidance on the unique dynamics of domestic violence including as they might impact upon sentencing decisions.

A wider range of penalties

- 14.82** A number of inquiry participants advocated that courts need to have a wider range of orders available in respect of domestic violence offences, including referrals to support services or treatment programs.¹⁴⁷⁸

Mediation

- 14.83** Supported by Legal Aid,¹⁴⁷⁹ the Law Society put forward that one option to prevent domestic violence would be to permit magistrates to refer parties to court facilitated processes such as mediation:

One option [to prevent domestic violence] would be to extend the authority of Magistrates to refer parties to court facilitated processes such as mediation. The Local Court could also have ability to make an order requiring one or more parties to attend counselling, educational or rehabilitative programs in appropriate cases. It may be useful to draw upon the experience of the Family Court in this regard.¹⁴⁸⁰

- 14.84** Other stakeholders offered cautious support for this idea.¹⁴⁸¹ The Law Society clarified in its answers to supplementary questions that referral to processes such as mediation would not be appropriate in all circumstances:

¹⁴⁷⁸ Submission 3, Victims of Crime Assistance League, p 5; Mr Greg Elks, Member, Criminal Law Committee, Law Society of New South Wales, Evidence, 7 November 2011, p 64; Ms Matilda Julian, Solicitor, Evidence, 28 February 2012, p 24; Ms Rosslyn Mayne, Principal Solicitor, Inner City Legal Centre, Evidence, 5 March 2012, p 57; Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 18, p 8.

¹⁴⁷⁹ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 18, p 8.

¹⁴⁸⁰ Submission 56, p 2.

¹⁴⁸¹ Submission 3, p 5; Ms Julian, Evidence, 28 February 2012, p 24; Ms Mayne, Evidence, 5 March 2012, p 57; Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 18, p 8.

The [Law Society's Criminal Law] Committee wishes to stress that it is not suggesting that mediation would be appropriate in circumstances of serious or prolific domestic violence, but that it may be appropriate when an ADVO conflicts with a Family Court Order.¹⁴⁸²

- 14.85** In discussing her personal experience of domestic violence, Ms Robyn Cotterell-Jones, Executive Director of VOCAL, said that, in her case, the availability of mediation would have been positive:

[W]e had children. We had a business. We had a whole life tied up in this situation and in a mediated process where this stuff is known, rather than doing a bit in this court and then going off to Family Court, it could have been resolved in a way that would have made his life better in the future and our lives much better in the future. There are a number of other women in similar situations who would agree with what I am saying. It is not for everyone, not as a routine, but as an option. Obviously, it has to be like the forums: if you do not do what you are supposed to do or you commit further crimes, you end up back before the court. It is a sort of one bite at the cherry.¹⁴⁸³

- 14.86** For Aboriginal communities, Ms Donna Bliss, Chief Executive Officer of the Yoorana Gunya Family Healing Centre Aboriginal Corporation, argued that facilitated discussion between the parties could be helpful:

In our Aboriginal communities and out this way there are families that want to work together but none of that is done. There should be more family kinship and building in families so they can see what they are doing to each other. It is all about men's business and women's business. I know it is different up north because that is the way it is. But out this way we have women who say, "I love him. I just want the physical harm and the emotional abuse to stop." There needs to be some mediation and talk. There is none.¹⁴⁸⁴

- 14.87** VOCAL observed that the practice of mediation is traditionally shunned by the domestic violence sector due to concerns about the power imbalance between the victim and the offender. Indeed, Ms Anna Todd, Registrar Clinical Psychologist, Sexual Assault Services, Parkes Community Health, stated that 'mediation is really inappropriate in domestic violence cases.'¹⁴⁸⁵ Nevertheless VOCAL remained steadfast in the view that mediation conducted by a trained and experienced mediator could be effective for some people because it lessens their exposure to the court system:

The use of mediation or victim-offender conferencing has long been shunned by the [domestic violence] sector because of the imbalance of power between a victim and an offender. This becomes illogical when compared with the reality that if a case goes to

¹⁴⁸² Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 9, p 4.

¹⁴⁸³ Ms Robyn Cotterell-Jones, Executive Director, Victims of Crime Assistance League, Evidence, 26 March 2012, p 17.

¹⁴⁸⁴ Ms Donna Bliss, Chief Executive Officer, Yoorana Gunya Family Healing Centre Aboriginal Corporation, Evidence, 28 February 2012, p 11.

¹⁴⁸⁵ Ms Anna Todd, Registrar Clinical Psychologist, Sexual Assault Services, Parkes Community Health, Evidence, 28 February 2012, p 46.

court, the victim has no legal representative but the offender does, the entire process is predicated on the rights of the accused.

A properly trained mediator, thoroughly aware of [domestic violence], power and control, could operate somewhat similarly to Forum Sentencing with a whole lot more justice for victims than they get in a court of law, where the whole idea is to minimize, discredit, humiliate, terrorise and beat the victim. The use of mediation (court sanctioned and properly managed), could begin to address many of the blatant abuses of victims by the courts and the offender, and perhaps have some hope of resolving many 'family' issues.¹⁴⁸⁶

- 14.88** Ms Rosslyn Mayne, Principal Solicitor with the Inner City Legal Centre, suggested that making positive orders might even be useful as an adjunct to the ADVO system:

[T]here is no positive regime in the apprehended domestic violence order system and the apprehended violence order system generally. Our submission raised the idea that that might be a useful adjunct to the regime. The apprehended domestic violence order system is what we have—and it is important that we have it—but more positive things could be sought to be done, as opposed to simply restraining someone.¹⁴⁸⁷

- 14.89** The NSW Police Force expressed a similar view and observed that behaviour change programs are more effective if court mandated:

The true merit of court mandated programs is still unknown, however anecdotally more offenders attend behaviour change programs if mandated to by a court. If voluntary with no consequences for failing to attend, then the programs remain ineffectual.¹⁴⁸⁸

- 14.90** Judge Henson had some reservations with the suggestion. In His Honour's view, positive orders made where there are no criminal charges could diminish respondents' willingness to agree to the conditions of an ADVO and this could consequently increase the volume of defended hearings. Judge Henson also questioned the practicality of such a system including how it would be enforced, and whether people who are reluctant but forced to go to rehabilitation and counselling would really benefit.¹⁴⁸⁹

- 14.91** Although it did not support making attendance at a program a condition of an AVO, the Shopfront Youth Legal Centre suggested attendance at a program as a condition of a bond could be worthwhile:

We have reservations about making attendance at a program a condition of an AVO, particularly an AVO made without admissions. However, we wholeheartedly support voluntary referral in the context of AVO applications.

We also support attendance at programs being made a condition of a good behaviour bond or other community-based order in criminal proceedings.¹⁴⁹⁰

¹⁴⁸⁶ Submission 3, p 5.

¹⁴⁸⁷ Ms Mayne, Evidence, 5 March 2012, p 56.

¹⁴⁸⁸ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 4-5.

¹⁴⁸⁹ Answers to supplementary questions 5 March 2012, Chief Magistrate of New South Wales, Judge Graeme Henson, Question 6, p 3.

¹⁴⁹⁰ Answers to supplementary questions, 5 March 2012, Shopfront Youth Legal Centre, Appendix 1,

Rehabilitation

- 14.92** The Wirringa Baiya Aboriginal Women’s Legal Centre suggested that custodial sentences are not having a rehabilitative effect and advocated that judges should be able to order offenders to participate in rehabilitation programs, whether in custody or in the community:

Additionally, we note that in sentencing, the current system does not enable judges and magistrates to order offenders to complete rehabilitation programs in the community OR in prison. We note that availability of rehabilitation programs varies substantially from prison to prison and that programs are voluntary unless tied to parole conditions. There is no incentive for offenders to complete programs in prison and the experience of many of our clients is that their ex-partners emerge from prison angrier and more violent than they were before, rather than prison having any rehabilitative effect.¹⁴⁹¹

- 14.93** Ms Thea Deakin-Greenwood, Solicitor with Wirringa Baiya Aboriginal Women’s Legal Centre, suggested that the Drug Court is a good example of how sentencing options can be tailored to individuals.¹⁴⁹² Although the Committee received minimal evidence on the Drug Court, several stakeholders referred to Court Referral of Eligible Defendants into Treatment (CREDIT) as an example of an effective sentencing option for rehabilitation.

Court Referral of Eligible Defendants into Treatment

- 14.94** CREDIT was designed to reduce reoffending by providing targeted support to people with multiple and complex needs and to improve the quality of decision-making in NSW local courts by helping to ensure that information on those needs are put before the court.¹⁴⁹³ At the earliest possible opportunity, CREDIT staff undertake an assessment of each defendant. That assessment considers the individual’s mental health needs, drug and alcohol problems, cognitive disabilities, housing and employment needs. CREDIT staff then work with other government agencies to implement a plan to address those needs.¹⁴⁹⁴
- 14.95** The CREDIT program aims to reduce recidivism and is available to defendants who want to address the problems that relate to their offending. It can provide people with a broad range of supports to do this:

CREDIT is a ‘cross agency’ initiative, which aims to reduce re-offending rates. The program targets adult defendants at local courts who are motivated to address the issues that relate either directly or indirectly to their offending behaviour. Participants are offered facilitated access and support to a broad range of available services

p 9.

¹⁴⁹¹ Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Women’s Legal Centre, Question 19, p 19.

¹⁴⁹² Ms Thea Deakin-Greenwood, Solicitor, Wirringa Baiya Aboriginal Women’s Legal Centre, Evidence, 5 March 2012, p 5.

¹⁴⁹³ Lily Trimboli, NSW Bureau of Crime Statistics and Research, *NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation*, Crime and Justice Bulletin No 159, February 2012, p 3.

¹⁴⁹⁴ Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice, Evidence, 30 April 2012, p 27.

providing education or training, treatment, rehabilitation or other social welfare assistance.¹⁴⁹⁵

14.96 A two year trial of CREDIT commenced in Burwood and Tamworth Local Courts in 2009. The first review of the CREDIT program was completed by BOCSAR in February 2012. The study found that participants had learned to replace destructive behaviours with constructive activities, that they had improved physical and mental health, and that they were better informed about the types of support services they could turn to in the future.¹⁴⁹⁶

14.97 The review included a survey of CREDIT participants. Mr Brendan Thomas, Assistant Director General, Department of Attorney General and Justice, commented that ‘the levels of satisfaction from defendants’ points of view were the highest ... ever seen from any program we have run’ and advised that a subsequent evaluation on recidivism is forthcoming. Mr Thomas explained that from DAGJ’s perspective, the program should form the basis of future court models.¹⁴⁹⁷

14.98 A BOCSAR media release announcing the completion of the review observed that over 95 per cent of offenders involved in the program felt that their lives had improved as a result of it:

Most [participating offenders] (95.9%) reported that their life had changed for the better by being on the program. The changes mentioned included improved physical or mental health, a more positive outlook, improved relationships, increased confidence; recognising the consequences of their actions, becoming more responsible; managing problems or situations more constructively; and having new options opened as a result of being on the program.¹⁴⁹⁸

14.99 The trial of CREDIT is due to conclude in 2012 and a decision regarding its continuation and potential expansion will be made following the outcome of a second evaluation being undertaken by BOCSAR. This evaluation will examine the effect of CREDIT on the risk of reoffending.¹⁴⁹⁹

14.100 Judge Henson praised the CREDIT program as a consummate example of creative thinking about effective methods to deal with domestic violence:

One of the most effective ways of addressing some of the aspects that contribute to causation that I have seen in recent years is the CREDIT Program ... It is, I think, in my time in judicial office one of the most outstanding opportunities that might be

¹⁴⁹⁵ Answers to supplementary questions 17 October 2011, Department of Attorney General and Justice, Question 8 p 10.

¹⁴⁹⁶ Lily Trimboli, NSW Bureau of Crime Statistics and Research, *NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation*, Crime and Justice Bulletin No 159, February 2012, p 21.

¹⁴⁹⁷ Mr Thomas, Evidence, 30 April 2012, p 27.

¹⁴⁹⁸ Judge Henson, Evidence, 5 March 2012, pp 27-28; NSW Bureau of Crime Statistics and Research, ‘CREDIT Evaluation’, *Media Release*, 5 March 2012, <www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_mr_cjb159> at 18 July 2012.

¹⁴⁹⁹ NSW Bureau of Crime Statistics and Research, ‘CREDIT Evaluation’, *Media Release*, 5 March 2012, <www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_mr_cjb159> at 18 July 2012; Mr Thomas, Evidence, 30 April 2012, p 27.

available to think laterally about dealing with these matters. This is a non-judgemental type approach which directs people to get counselling, housing, health, wellbeing and the like in the hope, according to psychological methodology adopted from Canada, that it will reduce the evidence of recidivism. The success of it has been very good, according to the Bureau of Crime Statistics and Research, which is not often positive about much at all when it comes to that.¹⁵⁰⁰

- 14.101** Mr Thomas of DAGJ also commended the program and felt that its success lies in taking a more person-centred approach:

From our point of view, this type of approach of dealing with defendants in a more person-focussed way, that is, looking at the needs of an individual as early as we possibly can when they come to court and then trying to broker and wrap services around the needs of that defendant, is the sort of future model we are looking at for rolling out programs in courthouses for offenders generally, not just domestic violence offenders.¹⁵⁰¹

Similar Victorian models

- 14.102** When the CREDIT program was developed, lessons were drawn from problem solving courts in Victoria including the Neighbourhood Justice Centre (NJC) and the Court Intervention Services Program (CISP).¹⁵⁰² The Committee visited both of these during its visit to Melbourne in March 2012.
- 14.103** The Collingwood NJC in Melbourne provides a criminal justice response to offending behaviour through its court and also works towards the prevention of crime by addressing the underlying causes of criminal behaviour and social disadvantage. An evaluation of the NJC in 2010 found that offenders had lower rates of recidivism and greater compliance with community based orders than in other magistrates' courts in Victoria. The NJC also provides support services to victims including counselling and liaising with police, solicitors, housing agencies and medical professionals.¹⁵⁰³
- 14.104** The CISP is in place at three Victorian Courts, including Melbourne Magistrates Court, which the Committee visited. The CISP connects defendants with support services including in relation to drug and alcohol dependency, homelessness, mental health, disability, young offenders and Koori specific needs. To access CISP, the defendant must be charged with an offence but does not have to have been convicted. In addition, the person's history needs to show that they are likely to reoffend and the matter before the court must warrant intervention to reduce risk and assess their needs. Furthermore, the defendant must have physical or mental disabilities or illnesses, drug and alcohol dependency and misuse issues, or inadequate social, family and economic support that contribute to the frequency or severity of their offending.¹⁵⁰⁴

¹⁵⁰⁰ Judge Henson, Evidence, 5 March 2012, p 27.

¹⁵⁰¹ Mr Thomas, Evidence, 30 April 2012, p 28.

¹⁵⁰² Lily Trimboli, NSW Bureau of Crime Statistics and Research, *NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation*, Crime and Justice Bulletin No 159, February 2012, pp 1-2.

¹⁵⁰³ Collingwood Community Justice Centre, *Australia's Only Community Justice Centre*, 2011, p 1.

¹⁵⁰⁴ Fitzroy Legal Service, *Diversion Programs*, 2012, accessed 17 July 2012
<www.vicdrugguide.org.au/handbook/ch10s04s04.php#Ch282Se199674>.

Intensive correction orders

- 14.105** An existing sentencing option that some stakeholders considered might be more widely used in sentencing for domestic violence offences is intensive correction orders (ICOs). An ICO is an order of imprisonment for up to two years that the court determines can be served by way of intensive correction in the community. A June 2012 BOCSAR publication shows that at present ICO are primarily imposed for traffic offences.¹⁵⁰⁵
- 14.106** The Law Society endorsed ICOs as an appropriate sentencing method for domestic violence offences that ‘can involve participation in community work and programs, supervision and drug treatment.’¹⁵⁰⁶
- 14.107** The Sydney WDVCS also suggested that the availability of ICOs should be expanded so that their behaviour change and rehabilitation elements can be available to offenders who would not otherwise be subject to a sentence of imprisonment:

The current legislative provisions regarding ICOs only allow the court to make the order in circumstances where, among other things, the court has already determined that the offender would otherwise receive a sentence of imprisonment. As outlined in our submission, many domestic violence offenders do not receive a sentence of imprisonment or an ICO. We consider that an effective and appropriate response to domestic violence would make the behaviour change and rehabilitation aspects of ICOs available to offenders and AVO defendants in a wider variety of cases than currently occurs. In any case, the supervision and behaviour management offered by ICOs can only form part of a broader response to domestic violence, and cannot take the place of prevention and changing community standards.¹⁵⁰⁷

- 14.108** More cautious support came from the NSW Police Force because in their view ICOs offer little in terms of safety for the victim of domestic violence:

Intensive Correction Orders are the responsibility of Corrective Services and NSWPF have no role in holding offenders accountable if they are breached. The safety of a domestic violence victim is paramount to NSWPF and offenders that have home detention orders as their intensive correction order does not provide such assurance.¹⁵⁰⁸

- 14.109** The Committee was advised that the use of ICOs is scheduled to be reviewed by the NSW Sentencing Council shortly.¹⁵⁰⁹

¹⁵⁰⁵ Ringland C, NSW Bureau of Crime Statistics and Research, *Intensive Correction Orders vs Other Penalties: Offender Profiles*, Crime and Justice Bulletin No 163, June 2012, p 9.

¹⁵⁰⁶ Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 4, p 3.

¹⁵⁰⁷ Answers to supplementary questions 20 February 2012, Sydney Women’s Domestic Violence Court Advocacy Service, Question 7, p 9.

¹⁵⁰⁸ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 24, p 23.

¹⁵⁰⁹ Ms Musgrave, Evidence, 17 October 2011, p 18.

Challenges to implementing more community sentencing options

- 14.110** While describing as ‘laudable’ the aspiration that courts should have a wider range of sentencing options available in relation to domestic violence, Judge Henson questioned whether services would be available to meet the potential demand as many of the services available in urban centres do not exist in regional areas:

One of the long-term problems in our criminal justice system in New South Wales—and comments should be confined to that perspective—is availability of these options. The Newcastle-Sydney- Wollongong mentality has inhibited the capacity of the courts, particularly the Local Court, for many a year. Some of these options are simply not available in country towns and in smaller towns because of the cost of importing them into those particular environments. That is disappointing and it frustrates magistrates because it in effect creates a gap where you place people on bond after bond to the point where you reach nothing between bond and gaol, and off they go, whereas someone in Sydney, Newcastle or Wollongong and some of the larger country towns has access to programs that might actually affect rehabilitation.¹⁵¹⁰

- 14.111** In expressing DAGJ’s support for a wider range of sentencing options available to judges and magistrates in domestic violence matters, Mr Thomas agreed that the principal challenges to implementation are meeting the demand for services in Sydney and the availability for services in regional areas.

We also support it. There are a number of practical challenges in implementing these types of programs as His Honour has mentioned—access is one, particularly outside Sydney, but also demand in places like Sydney. Certainly we support having a proper examination of alternative sentencing options and the broad suite of options available to treat and support offenders.¹⁵¹¹

- 14.112** Concerns also arose about the capacity of service providers to offer these kinds of services even in urban areas. Judge Henson noted that Probation and Parole are already overwhelmed and struggle to assess whether people are participating in programs or not.¹⁵¹² In addition, the Lismore Men and Family Centre observed that like many agencies working in the area of domestic violence, it is not able to meet demand for its programs.¹⁵¹³

Committee comment

- 14.113** The Committee recognises that there are already a range of penalties available to magistrates and judges in domestic violence matters. Nevertheless, on the basis of the evidence the Committee has received, we see merit in a review of the range and use of sentencing options available for domestic violence offences. Regard should be had to the availability of and potential demand for relevant services necessary to administer alternative penalties such as mediation or rehabilitation.

¹⁵¹⁰ Judge Henson, Evidence, 18 June 2012, p 22.

¹⁵¹¹ Mr Thomas, Evidence, 18 June 2012, p 22.

¹⁵¹² Judge Henson, Evidence, 18 June 2012, p 22.

¹⁵¹³ Submission 80, Lismore Men and Family Centre, p 2.

- 14.114** We recommend that the NSW Law Reform Commission consider in its review of the *Crimes (Sentencing Procedure) Act 1999* the feasibility and desirability of alternative and additional sentencing options for domestic violence offences including referrals to mediation, support services, treatment programs, counselling, educational or rehabilitative programs.
- 14.115** The Committee agrees that any consideration of mediation in domestic violence matters would need to be approached with extreme caution and require thoughtful and detailed consideration. We are concerned that in some circumstances mediation could exacerbate conflict with potentially damaging consequences. However, we heed the remarks of some victims of domestic violence that in some situations mediation might be a useful alternative to the courtroom, and on that basis we have formed the view that further consideration of this option would be worthwhile. With appropriate checks, balances and protections in place, it is possible that mediation might be valuable for some families.

Recommendation 84

That the Attorney General request that the NSW Law Reform Commission consider in its review of the *Crimes (Sentencing Procedure) Act 1999* the feasibility and desirability of alternative and additional sentencing options for domestic violence offences including referrals to mediation, support services, treatment programs, counselling and educational or rehabilitative programs.

- 14.116** The Committee recognises that many of the social challenges faced by defendants are a contributing factor to their offending and we are heartened by the success of CREDIT to date in addressing these challenges and reducing recidivism. Indeed, the value of the CREDIT program lies especially in their success in reducing recidivism, which is one of the key goals of the NSW 2021 State Plan. In reducing recidivism, the program contributes to improving the safety of victims of domestic violence, a core principle recommended by the present inquiry.
- 14.117** The Committee is not sure that it is realistic for the CREDIT program to be rolled out across the entire State but we see obvious value in versions CREDIT and similar programs to be tailored and made more widely available. The NSW Government should draw lessons from the CREDIT program as well as interstate approaches that can be applied to local courts across New South Wales.

Chapter 15 Perpetrator programs

Over the course of the inquiry perpetrator programs were advocated as a key method to reduce recidivism and break the cycle of domestic violence. Stakeholders observed that support for victims is critically important, but it is also vital that corresponding work is carried out with perpetrators to facilitate the cessation of violence. Accordingly, the chapter commences with consideration of the perceived need for perpetrator programs in New South Wales, including gaps in the availability of existing programs and programs for Aboriginal people.

In recognising the value of effective programs, inquiry participants expressed concern about the lack of any comprehensive evaluations of what is already in place. Stakeholder views questioning whether perpetrator programs are effective are considered in this chapter. This is followed by stakeholder suggestions as to the key features that should be incorporated in future models including the adoption of a more dedicated approach, minimum standards and an emphasis on behaviour change.

The need for perpetrator programs

15.1 The need for effective perpetrator programs is underscored by the rate of recidivism in New South Wales. A NSW Bureau of Crime Statistics and Research (BOCSAR) study completed in February 2012 revealed that 57 per cent of adult offenders and 79 per cent of juvenile offenders are likely to be convicted again within 15 years.¹⁵¹⁴ Some stakeholders expressed the view that many offenders who serve a period of imprisonment come out of jail much worse.¹⁵¹⁵ Professor Julie Stubbs from the Faculty of Law at the University of New South Wales, observed that consequently, the entire community has an interest in behaviour change:

[O]ffenders who are convicted by a court may or may not go to jail and if they do they eventually come out and often much worse than they were when they went in. We all have an interest in behaviour change. I fully support coming up with evidence-based models.¹⁵¹⁶

15.2 Perpetrator programs were pointed to by some stakeholders a critical component of breaking the cycle of domestic violence.¹⁵¹⁷ Referring to domestic violence committed by men, the Benevolent Society suggested that addressing offending behaviour prevents future violence and holds offenders accountable for their actions:

Violent men must be held accountable for their violence and abuse against women and children, and take responsibility for adopting non-violent and respectful attitudes and behaviour in their intimate relationships. Perpetrator programs which assist

¹⁵¹⁴ Lily Trimboli, NSW Bureau of Crime Statistics and Research, *NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation*, Crime and Justice Bulletin No 159, February 2012, p 2.

¹⁵¹⁵ Professor Julie Stubbs, Faculty of Law, University of New South Wales, Evidence, 7 November 2011, p 6; Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Legal Centre, Question 19, p 19.

¹⁵¹⁶ Professor Stubbs, Evidence, 7 November 2011, p 6.

¹⁵¹⁷ Submission 37, Benevolent Society, p 23; Answers to supplementary questions 17 October 2011, Benevolent Society, Question 1, p 3; Answers to supplementary questions, 20 February 2012, NSW Police Force, Question 2, p 4.

violent men to face their past actions and their consequences, and to deal with the reasons behind their violence, may prevent future domestic and family violence.¹⁵¹⁸

- 15.3** The Shopfront Youth Legal Centre similarly refuted criticisms that perpetrator programs allow offenders to avoid taking responsibility for their actions. The Shopfront advocated for the wider availability of these programs and said that in reality, many defendants are themselves quite vulnerable.¹⁵¹⁹

Such programs have been criticised by some who suggest that they may enable perpetrators to avoid taking responsibility for their actions. We respectfully disagree with this approach ... The reality is that many defendants in [apprehended domestic violence order] applications, and in related criminal charges, are vulnerable people. Some are children and young people whose social, emotional and cognitive development is not complete. Many defendants suffer from a mental illness or cognitive impairment, and may also have grown up in an environment where violence is normalised. Most of these people (and ultimately victims and the community) could benefit from programs dealing with the underlying causes of the offending.¹⁵²⁰

Gaps in the accessibility and availability of programs

- 15.4** Several major gaps in the provision of perpetrator programs in New South Wales were identified by inquiry participants. These were that existing programs do not work for high risk offenders,¹⁵²¹ that there are inadequate services for female offenders and importantly, that such services are usually accessible only after a person has been convicted of a criminal offence. The Benevolent Society concluded that perpetrator programs should also work with perpetrators of domestic violence who have not been convicted of an offence:

There should be additional services for perpetrators beyond those mandated as a condition of probation and parole. Services should encourage perpetrators to acknowledge responsibility for their violence, and to understand that behaviour that is not technically a criminal offence - such as controlling and intimidating behaviour - still constitutes domestic violence.¹⁵²²

- 15.5** The One in Three Campaign emphasised that having perpetrator programs available for both male and female offenders was critical to preventing future violence.¹⁵²³ Mr Luke Grant, Assistant Commissioner, Offender Services and Programs, Corrective Services NSW acknowledged this gap and advised the Committee that his agency is currently working to develop such a program:

¹⁵¹⁸ Submission 37, p 23; Answers to supplementary questions 17 October 2011, Benevolent Society, Question 1, p 3.

¹⁵¹⁹ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 9.

¹⁵²⁰ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 9.

¹⁵²¹ Luke Grant, Assistant Commissioner, Offender Services and Programs, Corrective Services NSW, Evidence, 17 October 2011, p 4.

¹⁵²² Answers to supplementary questions, 17 October 2011, Benevolent Society, Question 1, p 3.

¹⁵²³ Submission 40, One in Three Campaign, p 10.

What we do not have in New South Wales at the moment is a program for women. However, with the numbers of women who may be convicted in relation to violence increasing, we are starting to move down that pathway now ... We have no information, we have no history for perpetrators who are women. That is an emerging area that we need to give some attention to.¹⁵²⁴

Programs for Aboriginal domestic violence offenders

- 15.6** The Committee heard that the Domestic Abuse Program (DAP) run by the Corrective Services NSW works effectively for Aboriginal and non-Aboriginal male offenders,¹⁵²⁵ but was found not to be effective for Aboriginal women.¹⁵²⁶ Mr Grant speculated that this could be due to the extent of the disadvantage that Aboriginal women face:

There is only one population that it has not worked for and that is for Aboriginal women. It may very well be that the issues around Aboriginal women and the levels of their disadvantage is so great that it actually does not discriminate particularly well amongst that group, because they have so many problems compounding each other. But otherwise, it is a very robust instrument.¹⁵²⁷

- 15.7** Other programs are specifically tailored to Aboriginal offenders. Ms Julie Webber, Acting Executive Director for Community Offender Management, Corrective Services advised that there are three programs she is aware of that have been specifically designed for Aboriginal perpetrators:
- Rekindling the Spirit, available in Lismore
 - Yindyama La Family Violence Project, available in Dubbo
 - Walking Together, available in Newtown, Sydney.¹⁵²⁸

- 15.8** The One in Three Campaign directed the Committee to the 'Ending Family Violence Program' as an 'excellent example' of the kind of program that should be adopted in New South Wales.¹⁵²⁹ Run by Queensland Corrective Services, the aim of the program is to divert male and female Aboriginal offenders away from violent offending through a culturally appropriate intervention program.¹⁵³⁰ The One in Three Campaign suggested it should be adopted and modified for use for all domestic violence offenders.¹⁵³¹

¹⁵²⁴ Mr Grant, Evidence, 17 October 2011, p 13.

¹⁵²⁵ Mr Grant, Evidence, 17 October 2011, p 3; Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice, Evidence, 31 October 2011, p 20.

¹⁵²⁶ Mr Grant, Evidence, 17 October 2011, p 11.

¹⁵²⁷ Mr Grant, Evidence, 17 October 2011, p 11.

¹⁵²⁸ Ms Julie Webber, Acting Executive Director for Community Offender Management, Corrective Services NSW, Evidence, 17 October 2011, p 20.

¹⁵²⁹ Answers to supplementary questions, 20 February 2012, One in Three Campaign, Question 5, p 10.

¹⁵³⁰ Annette Hennessy and Carol Willie, *Ending Family Violence Program, Woorabinda*, May 2006, p 1 tendered by One in Three Campaign, 20 February 2012.

¹⁵³¹ Answers to supplementary questions 20 February 2012, One in Three Campaign, Question 5, p 10.

- 15.9** Some inquiry participants observed a need for more Aboriginal-specific perpetrator programs.¹⁵³² Mr Ralph Smith, Aboriginal Men's Worker at CentaCare Wilcannia-Forbes, observed that the system is not doing enough for Aboriginal offenders when they are custody or under the supervision of the criminal justice system:

I also think we do not do enough work with the perpetrators when we have them, whether in the jail system or wherever. While they are in jail they are supposed to be drug free and alcohol free, and I find that that is the time to talk to them. In the middle of the night when they are tanked up and you are trying to do something with them—it is like trying to handle a lion. You will get bitten. We do not seem to be doing enough with them when we get them drug free and alcohol free. I would also like to see their bail conditions relate to access to alcohol. If they want access to their kids, they have to be drug and alcohol free to get that access.¹⁵³³

- 15.10** On the other hand, Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice acknowledged that there was debate in the community as to whether it was appropriate to provide services that specifically target Aboriginal people rather than ensuring all domestic violence programs effectively accommodate Aboriginal offenders.¹⁵³⁴

Do perpetrator programs work?

- 15.11** In Chapter 4 of this report the Committee canvassed stakeholder calls for an evidence based approach to be the foundation for the Government's response domestic violence. The need for such a shift has been further highlighted in this context where a historical lack of proper evaluation has cemented stakeholder doubts about the effectiveness of existing perpetrator programs. Inquiry participants pointed to a dearth of thorough research and evaluation of perpetrator programs.¹⁵³⁵ For example, Dr Don Weatherburn, Director of BOCSAR, described such research as very scarce and questioned the sense of having a number of ongoing programs which have never been evaluated:

[P]roper evaluations of domestic violence offender programs are as scarce as hen's teeth. There are plenty of programs out there, but the vast majority of them have not been evaluated ... It is a crazy situation to be in where you have a serious problem of personal violence going on and all sorts of policy responses being thrown at it, but very few of them being adequately evaluated. There may be any number of programs around Australia, but I think you would be struggling to find any that have been rigorously evaluated.¹⁵³⁶

- 15.12** The Committee heard that a small number of evaluations have been conducted and the findings of these have called into question the long-term effectiveness of existing perpetrator

¹⁵³² Submission 38, Binaal Billa Family Violence Prevention Legal Service, p 4.

¹⁵³³ Mr Ralph Smith, Aboriginal Men's Worker, CentaCare Wilcannia-Forbes, Evidence, 28 February 2012, p 9.

¹⁵³⁴ Mr Thomas, Evidence, 17 October 2011, p 20.

¹⁵³⁵ Submission 37, p 23; Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 9, p 5; Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, Evidence, 7 November 2011, p 15.

¹⁵³⁶ Dr Weatherburn, Evidence, 7 November 2011, p 15.

programs. For example, the Benevolent Society referred to a comprehensive review that took place in 1999 and found that the delivery of perpetrator programs was haphazard and their long-term effectiveness questionable:

The study found that while some programs had helped to reduce violence, there were considerable gaps in the evidence about their long term effectiveness, the most effective strategies when working with perpetrators, and whether the programs could successfully be transplanted to diverse groups within the Australian population. It also found that there is no consistency in the delivery of such programs across Australia, and called for a national body to focus on research, policy development, best practice and education as a matter of urgency.¹⁵³⁷

- 15.13** The Australian Domestic and Family Violence Clearinghouse also questioned the effectiveness of perpetrator programs in preventing recidivism over time and observed that evidence about the effectiveness of behaviour change programs is ‘extremely mixed’. It went on to note that there are a number of variables that might impact upon any one program’s effectiveness including, for example the program’s duration and whether or not it is mandatory. Some studies have shown little or no improvement in the behaviour of men who complete them, while others have shown some positive results in certain programs for some individuals:

International evidence is extremely mixed about the effectiveness of behaviour change programs. Key difficulties in evaluating effectiveness are the few long term evaluations conducted and that programs vary in terms of: their length ...; aims; theoretical basis; whether or not they are mandatory; where they are run from ...; their understanding of the causes of domestic violence; as well as the degree of coherence between stated aims and principles, and actual practice. Indeed, a range of evaluations and empirical studies have found limited or no improvement in the behaviour of men who complete programs ... Other studies have shown positive results for some men in programs but not all, and also an intractable group for whom such treatment does not work ... Yet, despite the lack of good evidence of their effectiveness, such programs continue to be funded and proliferate.¹⁵³⁸

- 15.14** More recent research has also questioned the effectiveness of perpetrator programs on a different basis. In a 2009 paper tendered to the Committee by Ms Gaby Marcus, Director of the Australian Domestic and Family Violence Clearinghouse, researchers found that rehabilitation programs for male perpetrators of domestic violence were less effective at reducing recidivism than for other offender groups.¹⁵³⁹
- 15.15** Notwithstanding an apparent lack of thorough research yielding positive outcomes, some stakeholders pointed to studies that have borne results showing that targeted programs might be more effective.¹⁵⁴⁰ For example, the Australian Domestic and Family Violence Clearinghouse observed:

¹⁵³⁷ Submission 37, p 23.

¹⁵³⁸ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 9, p 5.

¹⁵³⁹ Day A et al, *Programs for Men who Perpetrate Domestic Violence: An Examination of the Issues Underlying the Effectiveness of Intervention Programs* (January 2009) 203, p 203, tendered by Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, 17 October 2011.

¹⁵⁴⁰ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 9, p 5. See also Submission 66, Australian Council on Alcoholism and Drug Dependence.

Emerging research indicates that more targeted programs may be more effective; i.e. ones that address violence issues, alongside mental health, drug and alcohol, child abuse and other issues for abusive men.¹⁵⁴¹

- 15.16** Anecdotally, a program facilitated by the Mount Druitt Local Area Command appears to be having success through tailoring its delivery to the local Pacific Island community. Superintendent Wayne Cox, Local Area Commander, Mt Druitt, said that the program is especially effective at building ties between the police and the local community and helps the community to better understand domestic violence:

Out at Mount Druitt Local Area Command we actually run a perpetrators program for Pacific Islanders working with probation and parole. Most of those people in that system are usually on parole and have [apprehended domestic violence orders] in place. So Mr Johnson and his team of [domestic violence liaison officers] actually lecture to this group to give them the ins and outs of the judicial system and what it means to breach an [apprehended domestic violence order]. That is something we are working on in the background that is happening that way and that is certainly becoming effective because we are building those community ties with the Pacific Islander community out there on what the right and wrong expectations are with domestic violence.¹⁵⁴²

- 15.17** A widely held view was that it is important that future investment is directed into evidence based perpetrator programs that have been proven effective.¹⁵⁴³

Emerging evidence

- 15.18** The Committee received evidence that the perpetrator program run by Corrective Services has recently been evaluated and was found to be having a positive impact. The DAP commenced in August 2007. It is a rehabilitative group intervention program for offenders serving community-based orders or custodial sentences for domestic violence offences. To participate in the program an individual must have been convicted of a domestic violence offence but need not be in custody. Only people who have been identified as having a moderate to high risk of reoffending may participate.¹⁵⁴⁴ The DAP runs for 40 hours over 20 sessions and has an 80 per cent completion rate. It is conducted in a group setting of 10 to 12 people with one male and one female facilitator.¹⁵⁴⁵

¹⁵⁴¹ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 9, p 5.

¹⁵⁴² Superintendent Wayne Cox, Local Area Commander, Mt Druitt, Evidence, 20 February 2012, p 42.

¹⁵⁴³ Submission 34, Legal Aid NSW, p 10; Professor Stubbs, Evidence, 7 November 2011, pp 6-7; Dr Kerry Chant, Deputy Director for Population Health and Chief Health Officer, NSW Ministry of Health, Evidence, 18 June 2012, p 22; Ms Denele Crozier, Executive Officer, Women's Health NSW, Evidence, 18 June 2012, p 24; Mr Thomas, Evidence, 18 June 2012, p 20; Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 9, p 5.

¹⁵⁴⁴ Mr Grant, Evidence, 17 October 2011, p 8.

¹⁵⁴⁵ Mr Grant, Evidence, 17 October 2011, p 7.

- 15.19** Mr Grant informed the Committee that the DAP had recently been independently evaluated by the University of New South Wales and BOCSAR.¹⁵⁴⁶ The study considered the treatment of 1,125 offenders through the DAP program and compared these findings with a control group of offenders who had not been treated.¹⁵⁴⁷
- 15.20** Overall, the evaluation found that offenders who took part in DAP took longer to reoffend and reoffended less often and less seriously than the control group. Two years after they had completed the program, people in the treatment group showed a 21 per cent reduction in violent offending compared to the control group.¹⁵⁴⁸
- 15.21** Legal Aid welcomed these ‘extremely positive’ results.¹⁵⁴⁹ Ms Annmarie Lumsden, Executive Director, Strategic Policy Planning and Management Reporting with Legal Aid, recommended the expansion of the perpetrator programs run by Corrective Services NSW now that there was evidence of DAP’s success.¹⁵⁵⁰
- 15.22** Praise for the evaluation of the DAP program was not universal. Dr Weatherburn said that although he is aware that Corrective Services are pleased with the results, ‘the evaluation is not really convincing at this stage’.¹⁵⁵¹
- 15.23** Although not yet formally evaluated, the Committee was told that a perpetrator program being run jointly by the Lachlan Local Area Command and the Forbes Community Offenders Service is also showing positive results. Inspector Paul Jones, Crime Manager for the Lachlan Local Area Command, said that the program has proven a success for many of its participants and that even people who had a long history of offending have ceased their criminal conduct.¹⁵⁵²

With our offenders, we have found that some offenders have just stopped offending and not only DV, I am talking about breaking into houses, stealing from cars and driving stupidly. They are 40 years old, they have been criminals all their life and they have stopped.¹⁵⁵³

¹⁵⁴⁶ Mr Grant, Evidence, 17 October 2011, p 4.

¹⁵⁴⁷ Answers to questions taken on notice during evidence 17 October 2011, Mr Luke Grant, Assistant Commissioner, Offender Services and Programs, Corrective Services NSW, Question 1, attachment 1, p 1.

¹⁵⁴⁸ Answers to questions taken on notice during evidence 17 October 2011, Mr Grant, Question 1, attachment 1, pp 1-3.

¹⁵⁴⁹ Submission 34, p 10.

¹⁵⁵⁰ Ms Annmarie Lumsden, Executive Director Strategic Policy Planning and Management Reporting, Legal Aid NSW, Evidence, 7 November 2011, p 28.

¹⁵⁵¹ Dr Weatherburn, Evidence, 18 June 2012, p 9.

¹⁵⁵² Mr Kevin Read, Aboriginal Community Liaison Officer, NSW Police, Evidence, 28 February 2012, p 40; Inspector Paul Jones, Crime Manager, Lachlan Local Area Command, NSW Police, Evidence, 28 February, p 40.

¹⁵⁵³ Mr Jones, Evidence, 28 February 2012, p 40.

Suggested features of improved models

- 15.24** Inquiry participants went into some detail in suggesting new methods and approaches to perpetrator programs that might improve the effectiveness of such programs. Some stakeholders drew on international approaches while others listed key features that they would like to see adopted.
- 15.25** The One in Three Campaign recommended trialling evidence based perpetrator programs for both sexes and referred to a US program that had shown positive results with 90 domestic violence offenders showing recidivism of 16.7 per cent over a six year period. This program, the Campaign observed, ‘holds a person accountable for solutions rather than focusing on problems’ and had been shown to lead to improved relationship skills and self-esteem among offenders.¹⁵⁵⁴
- 15.26** Wirringa Baiya Aboriginal Women’s Legal Centre provided a list of key features that it advocated should be included in perpetrator programs in this State:
- education for offenders about domestic violence
 - exploration of domestic violence and the effect on women and children and communities
 - challenging behaviours and attitudes towards women
 - information and education about domestic violence as gendered
 - challenging core values and beliefs
 - exploration of underlying issues and personal issues
 - addressing and seeking resolution of internal issues and conflicts
 - combining group work and individual counselling.¹⁵⁵⁵
- 15.27** The One in Three Campaign also listed a series of features it would like to see included in any new model, and argued that new programs should be well matched to the offender and demonstrate program efficacy. Features it suggested were that the programs should:
- be open to both male and female perpetrators (either combined in the same program or in separate streams for men and women)
 - be offered initially as alternatives to prison
 - operate at multiple levels, addressing those contextual and personal factors that research consistently identifies as being implicated, for example drug and alcohol abuse, mental health issues and inadequate conflict management and affect regulation skills
 - offer couples counselling and family therapy where there is an expressed wish to maintain a relationship

¹⁵⁵⁴ Submission 40, p 10.

¹⁵⁵⁵ Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Women’s Legal Centre, Question 19, pp 19-20.

- focus on and emphasise solutions, competencies and strengths in offenders, but never equate this with a minimisation of the destructiveness of their violent behaviours.¹⁵⁵⁶

15.28 Inquiry participants also emphasised that in order to break the entire cycle of domestic violence it is important that perpetrator programs take place concurrently with support for victims.¹⁵⁵⁷ For example, the NSW Police Force expressed the view that there will be limited opportunity to end the cycle of violence if only one party receives support:

This is also why there needs to be early intervention and concurrent groups for offenders and victims. There will always be limited opportunity to break the cycle of domestic violence if only one party to the relationship is referred to support agencies for assistance. If only the victim receives counselling, support and advice, then nothing changes for the offender. Similarly, if only the offender receives counselling, support and advice, then change is limited for the victim.¹⁵⁵⁸

15.29 The Australian Domestic and Family Violence Clearinghouse agreed that such programs should be run simultaneously with services to support partners of participating perpetrators. Moreover, it argued that programs should provide individualised treatment dealing with a range of problems:

We advise that government funded programs be required to provide support services for partners of program attendees and that programs be requested to provide individualised treatment, attending to mental health, drug and alcohol, child abuse and other issues for attendees.¹⁵⁵⁹

15.30 Concurrent support to victims and offenders is an element of the program run by Lachlan Local Area Command and the Forbes Community Offenders Service. Mr Jones of the Lachlan Local Area Command advised the Committee that in that program victims learn about how to recognise violence and feel strengthened as a result:

We are also addressing victim behaviour, for want of a better word, where they engage with staff from the women's refuge who wrote their own program and had to get it approved. They deal with the victims of domestic violence, how to recognise what violence is, what the impact is of it. It gives them a bit of resilience, teaches them to recognise behaviour, take steps to avoid becoming a victim and all that sort of stuff.¹⁵⁶⁰

15.31 The Committee considers programs to support victims in more detail in Chapter 6.

A dedicated and systemic approach to developing effective programs

15.32 A systemic approach to piloting and evaluating new programs was suggested by several stakeholders who felt that a more innovative and dedicated effort is needed. For example, Dr

¹⁵⁵⁶ Answers to supplementary questions, 20 February 2012, One in Three Campaign, Question 5, p 10.

¹⁵⁵⁷ Mr Grant, Evidence, 17 October 2011, p 21.

¹⁵⁵⁸ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, p 4.

¹⁵⁵⁹ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 9, p 5.

¹⁵⁶⁰ Mr Jones, Evidence, 28 February 2012, p 40.

Weatherburn suggested that the NSW Government make a ‘determined effort to try and develop an effective intervention program.’¹⁵⁶¹ As outlined in Chapter 4 (paragraph 4.32), Dr Weatherburn supports an ‘ongoing process of testing, developing, refining and expanding programs that work and taking off the plate the ones that do not.’¹⁵⁶²

- 15.33** Ms Denele Crozier, Executive Officer with Women’s Health NSW, suggested that the NSW Government take a more innovative approach and establish a systemic method of piloting then evaluating services to ensure that they work:

Be a bit more innovative. We have not had any feedback yet about those programs or their success rates or how many are being trialled so there is not the cycle of where it is all up to. We think these services are needed but it is difficult to support a recommendation when we know that we have not had feedback about any programs that have been effective and suitable for the people using them. We would encourage the Committee to consider making a recommendation to keep pushing for a trial and evaluation of services so that we come up with something that does work.¹⁵⁶³

- 15.34** A concern about investing in programs not evaluated as effective was also expressed by the Australian Domestic and Family Violence Clearinghouse, which suggested that the Government should undertake long-term evaluations of programs to ensure that taxpayer monies are being well spent:

We also strongly recommend that NSW Government fund long term evaluation of programs, in particular programs providing a more targeted response to men, in order to provide information about their performance and the value of investment of public funds.¹⁵⁶⁴

- 15.35** Mr Grant also said that it would be valuable to invest in proper follow-up with perpetrators after they have completed the program to consolidate any behavioural gains.¹⁵⁶⁵

Minimum standards

- 15.36** Several stakeholders welcomed recent moves by the NSW Government to introduce minimum standards for perpetrator programs.¹⁵⁶⁶ The NSW Government advised the Committee that the standards address minimum policy and procedure requirements, training and experience of facilitators, supervision, program content, interagency practice and data collection, and are underpinned by the following principles:

- the safety of women and children must be given the highest priority
- victim safety and offender accountability are best achieved through an integrated, systemic response that ensures that all relevant agencies work together

¹⁵⁶¹ Dr Weatherburn, Evidence, 18 June 2012, p 9.

¹⁵⁶² Dr Weatherburn, Evidence, 7 November 2011, pp 15 and 17.

¹⁵⁶³ Ms Crozier, Evidence, 18 June 2012, p 24.

¹⁵⁶⁴ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 9, p 5.

¹⁵⁶⁵ Mr Grant, Evidence, 17 October 2011, p 4.

¹⁵⁶⁶ Submission 37, p 24; Submission 80, Lismore Men and Family Centre, p 1.

- challenging domestic and family violence requires a sustained commitment to professional and evidence based practice
- perpetrators of domestic and family violence must be held accountable for their behaviour
- programs should respond to the diverse needs of the participants and partners.¹⁵⁶⁷

15.37 The Lismore Men and Family Centre described this shift as ‘long overdue’.¹⁵⁶⁸ The Benevolent Society also praised the introduction of minimum standards and observed that these will improve integration of perpetrator programs into the criminal justice system and other domestic violence services:

The development of minimum standards which outline performance outcomes will enable greater integration with the criminal justice system and other domestic and family violence services.¹⁵⁶⁹

15.38 The NSW Police Force was of the view that longitudinal research will be required to determine the effectiveness of the standards long term:

While significant work has been done in the last 2 years to develop minimum standards for behaviour change programs to introduce some basic tenets to offender programs, the standards are still in the process of implementation. Longitudinal studies will be required to determine their success.¹⁵⁷⁰

15.39 The Australian Domestic and Family Violence Clearinghouse recommended that enforcement of the standards should partly be undertaken by imposing penalties for non-compliance such as the withdrawal of funding or accreditation where standards have not been met:

The Clearinghouse therefore advises the NSW Government to introduce mandatory minimum standards for behaviour change programs (based on the No To Violence standards), with penalties for non compliance (e.g. withdrawal of funding and withdrawal of accreditation) ... Standards can also provide consistency around safety measures, content, program length, protocols and performance measures, where there are penalties for non compliance.¹⁵⁷¹

Distinguishing anger management groups from behaviour change programs

15.40 In differentiating valuable perpetrator programs from those that are less valuable, inquiry participants were keen to distinguish between anger management and behaviour change. Anger management, it was argued, is an outdated response and fails to address the complex dynamics of domestic violence.

¹⁵⁶⁷ Submission 61, NSW Government, pp 6-7.

¹⁵⁶⁸ Submission 80, p 1.

¹⁵⁶⁹ Submission 37, p 24.

¹⁵⁷⁰ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, p 4.

¹⁵⁷¹ Answers to supplementary questions 17 October 2011, Australian Domestic and Family Violence Clearinghouse, Question 9, p 5.

- 15.41** The Lismore Men and Family Centre, for example, emphasised that abusive behaviour is not always an anger management issue. An anger management approach, they argued, fails to address domestic violence effectively, including causal factors:

Historically there has been insufficient consideration given to the difference between an ‘anger management’ program and a [men’s behaviour change program]. Abusive and/or violent behaviour may often be positioned by magistrates, police officers, and various government agencies as an ‘anger management’ issue. Unfortunately, abusive and violent behaviour towards others is not primarily a problem with anger. Anger may be the vector through which a whole range of violent behaviours are expressed, but the causes of violence are not ameliorated by learning to manage emotional volatility.¹⁵⁷²

- 15.42** Other stakeholders also observed that anger management programs do not adequately address the complexities and underlying causes of domestic violence, with the NSW Police Force adding that it is the beliefs and attitudes of offenders that need to be addressed to ensure longer term change:

Historically, programs for offenders have been established as ‘anger management’ groups which do not treat the underlying attitudes of offenders or address their behaviour. Domestic violence is much more complex and cannot be simplified as an ‘anger management’ issue. The beliefs, attitudes and behaviour of offenders need to be addressed by any offender programs if they are to effect long term change.¹⁵⁷³

- 15.43** Moreover, the Benevolent Society provided evidence to the Committee that anger management programs can be counter-productive if the cause of offending is attributed to the victim.¹⁵⁷⁴ However, anger management programs were not perceived to be valueless insofar as they may help perpetrators to empathise with victims:

Current approaches which focus only on anger management are unlikely to break the cycle of violence. Research highlights that anger management groups can be problematic if the perpetrator is encouraged to see his anger-related violence as being triggered by behaviour of the victim, thus inappropriately placing the blame on the victim rather than the perpetrator.

Nevertheless, there is evidence to suggest that anger management groups can be useful in helping perpetrators understand the impact their behaviour has on their partners. For example, a participant in an anger management group delivered by Relationships Australia reported having gained an insight into the fear experienced by his partner when he used violence.¹⁵⁷⁵

Committee comment

- 15.44** The Committee agrees with inquiry participants that effective perpetrator programs are vital in order to break the cycle of violence. Accordingly, we are pleased to note that the DAP program being operated by Corrective Services has shown some positive results in terms of

¹⁵⁷² Submission 80, p 1.

¹⁵⁷³ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 2, pp 4-5.

¹⁵⁷⁴ Submission 37, pp 23-24.

¹⁵⁷⁵ Submission 37, pp 23-24.

reducing the incidence of reoffending by domestic violence offenders. We also acknowledge anecdotal evidence that suggests that programs being operated Lachlan Local Area Command and the Forbes Community Offenders Service are also yielding positive outcomes, although these programs are yet to be formally evaluated.

- 15.45** The historical lack of evidence on the effectiveness of perpetrator programs should not lead to the conclusion that they are not worthwhile. Instead, we share the view of many stakeholders that more research needs to be done. Research should evaluate the extent to which existing perpetrator programs are working and determine more effective approaches. The Committee has heard some hopeful evidence about the success of programs that are tailored to suit local communities. We suggest that this may be a focus for further research.
- 15.46** The Committee is concerned that programs are not available to all perpetrators and only become available after a conviction. Important gaps include high risk offenders and female offenders, especially Aboriginal women. The Committee is firmly of the view that greater rigour and coordination of research, including the conduct of further trials and especially evaluations, are very much needed.
- 15.47** In line with our finding in Chapter 4 of this report, the Committee sees value in taking an explicitly evidence based approach to perpetrator programs to ensure that resources are appropriately and efficiently directed to those that work. The two essential stages of such an approach involve quality data collection and quality evaluation of programs. In accordance with Recommendations 7 in that chapter, we recommend that the NSW Government develop effective intervention programs for perpetrators of domestic violence in New South Wales, based on thorough research and systematic trial and evaluation. Particular attention should be paid to gaps in existing programs including for Aboriginal people, high risk offenders, women and perpetrators who may not yet have been convicted of an offence. However, we note that the funding of perpetrator programs should not come at the expense of victims' services or programs.

Recommendation 85

That the NSW Government develop an effective intervention program for perpetrators of domestic violence in New South Wales based on thorough research and systematic trial and evaluation. Particular attention should be paid to gaps in existing programs including for Aboriginal people, high risk offenders, women and perpetrators who may not yet have been convicted of an offence. Funding of perpetrator programs should not come at the expense of victims' services or programs.

Chapter 16 Young offenders

Chapter 2 of this report described stakeholder views that there has been a discernable increase in the number of young people being charged with domestic violence offences, including young women. It also outlined the different dynamics that inquiry participants reported as characteristic of domestic violence committed by young people as compared with that perpetrated by adults.

This chapter looks first at the specialist operation of the Children's Court of New South Wales and stakeholder views about the potential expansion of the Court's jurisdiction, and the availability of support services to facilitate diversion for young offenders. Next we examine the dynamics that characterise domestic violence committed by young people and then consider the apprehended domestic violence order (ADVO) system as it applies to young people.

The chapter concludes by considering sentencing options for young offenders, paying particular attention to youth justice conferencing and evidence questioning the ban on some diversionary options being imposed in relation to domestic violence offences.

The Children's Court of NSW

- 16.1** There are seven specialist Children's Courts in New South Wales, presided over by 13 specialist children's magistrates. There are five courts in the Sydney metropolitan area and one each in Newcastle and Wollongong. In regional areas the court sits in the nearest local court and is presided over either by the local court magistrate or a children's court magistrate who has travelled there.
- 16.2** The Committee was advised that in 2010 there were 1,693 charges for domestic violence offences brought against a child or young person in the Children's Court.¹⁵⁷⁶ Most domestic violence related matters the Children's Court deals with are for ADVOs without associated charges.¹⁵⁷⁷

A specialist approach

- 16.3** A number of inquiry participants agreed that children need to be treated differently from adults in the criminal justice system.¹⁵⁷⁸ Professor Julie Stubbs at the Faculty of Law,

¹⁵⁷⁶ Submission 32, Children's Court of New South Wales, p 1; see also Judge Mark Marien, President, Children's Court of New South Wales, Evidence, 5 March 2012, p 34; and Answers to questions on notice taken during evidence 5 March 2012, Children's Court of New South Wales, Attachment 2, pp 11-12.

¹⁵⁷⁷ Mr Paul Mulrone, Magistrate, Children's Court of New South Wales, Evidence, 5 March 2012, p 37.

¹⁵⁷⁸ Mr David Porter, Solicitor, Redfern Legal Centre, Evidence, 7 November 2011, p 54; Ms Angela Jones, Senior Solicitor, Family and Domestic Violence, Legal Aid NSW, Evidence, 11 November 2011, p 24; Answers to supplementary questions 5 March 2012, Women's Domestic Violence Court Advocacy Service Network, Question 14, p 7; Answers to supplementary questions 20 February 2012, Police Association of New South Wales, Question 5, p 4.

University of New South Wales stated that ‘young people deserve recognition of their immaturity. They should not be held necessarily to the same accountability as an adult.’¹⁵⁷⁹

16.4 The Children’s Court has implemented unique practices for dealing with children. Judge Mark Marien, the then President of the Children’s Court, said that the focus of the Children’s Court is to get families to reconcile through counselling and intervention so that they may work through their problems together. His Honour told the Committee that for the Children’s Court, the key words are ‘conciliation’ and ‘restoration’.¹⁵⁸⁰

16.5 Contrary to other court proceedings, Children’s Court cases are heard with as little formality and legal technicality as possible and are not conducted in the ordinary adversarial manner. The Court takes steps to ensure that the child or young person can have their say in proceedings, and to ensure that the young person understands the outcome and magistrates have been specially trained to this end.¹⁵⁸¹ The Shopfront Youth Legal Centre observed that Children’s Court magistrates are better able to take into account the needs of children and to deal with them in an appropriate way:

It is generally accepted that courts can be intimidating places, particularly for vulnerable people including children. Children’s Courts, particularly those staffed by specialist children’s magistrates, are better equipped to deal with the child appropriately. This includes taking into account the best interests of the child, dealing with children in a developmentally appropriate way and making them feel more at ease.¹⁵⁸²

16.6 The Committee understands that Judge Marien recently issued a practice note to deal with applications for ADVOs and apprehended personal violence orders (APVOs) in a way that promotes the rehabilitation of the young person within their family and the community. Several inquiry participants commented on elements of the practice note.

16.7 The practice note formalises an already common practice in the Children’s Court where it will issue an interim apprehended violence order (AVO) initially and, if there is no further offending, the Court will allow the interim order to lapse rather than make a final order.¹⁵⁸³ The practice note stipulates a series of steps that a Children’s Court magistrate should take when dealing with applications for AVOs, these include:

¹⁵⁷⁹ Professor Julie Stubbs, Faculty of Law, University of New South Wales, Evidence, 7 November 2011, p 4.

¹⁵⁸⁰ Judge Marien, Evidence, 5 March 2012, p 33.

¹⁵⁸¹ Department of Attorney General and Justice, ‘Care and Protection Matters’, accessed 7 August 2012, <www.lawlink.nsw.gov.au/lawlink/childrens_court/ll_cc.nsf/pages/CC_care_protection_law#role>.

¹⁵⁸² Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 9.

¹⁵⁸³ Submission 51, Shopfront Youth Legal Centre, p 11; Judge Graeme Henson, Chief Magistrate of New South Wales, Evidence, 5 March 2012, pp 24-25; Mr Brett Thomas, Member, Criminal Law Committee, Law Society of New South Wales, Evidence, 7 November 2011, p 65; Submission 32, p 2; Judge Marien, Evidence, 5 March 2012, p 36.

- when the application first comes to the court the magistrate will enquire whether the young person is willing to undergo counselling or other interventions such as mediation to address the issues that led to the application
- if the police prosecutor and young person consent, the court will make an interim order and adjourn proceedings for three months to allow the child to go to counselling or other intervention
- if counselling or other intervention services are not available, or the young person does not want to attend them, the court will issue an interim order and adjourn proceedings five months
- with the consent of police and the young person, if there are no breaches of the AVO in the adjournment period, the application may be withdrawn and dismissed by the court.¹⁵⁸⁴

16.8 The Committee was informed that police and the Children’s Court are working together and that where there have been no breaches of the interim order, the police will usually withdraw the application.¹⁵⁸⁵ Judge Marien noted that the approach provided for in the practice note will not be appropriate in every situation and that magistrates may exercise some discretion in this regard.¹⁵⁸⁶ Moreover, it does not apply to serious criminal charges, including sexual assault or indecent assault.¹⁵⁸⁷

Jurisdiction of the Children’s Court

16.9 The Children’s Court has two distinct but related jurisdictions. It exercises criminal jurisdiction in respect of offences alleged to have been committed by young people. It is under this jurisdiction that ADVOs are dealt with. The Court also possesses a ‘care and protection’ jurisdiction in relation to young people, in which it can make a range of orders providing for the care or supervision of children.¹⁵⁸⁸

16.10 Some inquiry participants argued that the jurisdiction of the Children’s Court should be expanded. Legal Aid, for example, suggested that the Court should be able to issue AVOs during care and protection proceedings:

Legal Aid NSW is of the view that there would be benefit in extending the jurisdiction of the Children’s Court to issue AVOs during care proceedings. Relevant amendments could mirror the cross-jurisdictional focus of recent reforms to the family law system, which will make it easier for state and territory child protection authorities to participate in family law proceedings.¹⁵⁸⁹

16.11 An observation made by the Children’s Court was that at present, it does not have the power to make parenting orders, although local courts do. This means that the Children’s Court must

¹⁵⁸⁴ Children’s Court of New South Wales, *Practice Note No 8*, May 2012.

¹⁵⁸⁵ Judge Marien, Evidence, 5 March 2012, pp 33-34.

¹⁵⁸⁶ Judge Marien, Evidence, 5 March 2012, pp 33-34.

¹⁵⁸⁷ Judge Marien, Evidence, 5 March 2012, p 36.

¹⁵⁸⁸ *Children’s Court Act 1987* s 12; *Children and Young Persons (Care and Protection) Act 1998* Ch 5.

¹⁵⁸⁹ Answers to supplementary questions 7 November 2011, Legal Aid NSW, Question 9, p 7.

refer these matters to the Family Court of Australia for resolution. The Children's Court advocated that it should be granted the same jurisdiction to make parenting orders under the *Family Law Act 1975* (Cth) as presently held by local courts. This was also a recommendation in the Australian and NSW Law Reform Commissions' report *Family Violence – A National Legal Response*. The Commissions came to the firm view that for children, 'persistent and multiple engagement with the court system are contrary to the child's best interests.'¹⁵⁹⁰

- 16.12** However, the Commissions cautioned that giving children's courts broad powers to make parenting orders could unduly burden them and divert resources from their core business of care and protection. Thus the Commissions suggested that the conferral of family law jurisdiction on children's courts in respect of parenting orders should be limited to only those circumstances where the children's court is already dealing with related matters.¹⁵⁹¹ Judge Marien agreed with this approach.¹⁵⁹²

Committee comment

- 16.13** The Committee agrees with the Law Reform Commissions' findings that the best interests of the children and those who care for them are better served by having all their matters dealt with in one court. To this end, we support the recommendation that the Children's Court of New South Wales be able to determine parenting orders in the same way as our local courts already do, that is, where a related matter is already being heard by the Court.¹⁵⁹³

Recommendation 86

That the NSW Attorney General consult with the Commonwealth Attorney General to seek an amendment to the *Family Law Act 1975* (Cth) that would give children's courts the same powers as magistrates courts under that Act in respect of parenting orders.

Facilitating interventions for child perpetrators: the availability of appropriate services

- 16.14** As outlined above, a recently issued Children's Court practice note formalises a process whereby ADVO applications are usually adjourned in the first instance and an interim AVO issued to permit counselling or other restorative services to be undertaken.¹⁵⁹⁴ If there is no breach of the interim ADVO during the adjournment the application may be withdrawn and dismissed by the court if the police prosecutor makes such an application.¹⁵⁹⁵

¹⁵⁹⁰ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, Final Report, Vol.2, October 2010 p 927; Judge Marien, Evidence, 5 March 2012, p 60.

¹⁵⁹¹ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p 927; Judge Marien, Evidence, 5 March 2012, p 150.

¹⁵⁹² Judge Marien, Evidence, 5 March 2012, p 37.

¹⁵⁹³ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p 927; Judge Marien, Evidence, 5 March 2012, p 37.

¹⁵⁹⁴ Judge Marien, Evidence, 5 March 2012, pp 33-34.

¹⁵⁹⁵ Submission 32, p 2.

- 16.15** The Committee heard that there is a shortage of support services for child perpetrators of domestic violence to be referred to in areas across New South Wales.¹⁵⁹⁶ The Committee was informed that the Salvation Army runs a successful program called ‘Reconnect’ in some areas, and that Relationships Australia also provides support, but similar services are not available state-wide and a number of courts have no program to which they can refer people.¹⁵⁹⁷ Mr Paul Mulroney, a Magistrate of the Children’s Court, explained:

The Salvation Army program is one that we at the Children’s Court at Parramatta specifically use. For a number of our courts, there will be no program. I understand the Children’s Court at Bidura, which covers the inner-west, eastern suburbs and lower northern beaches, has no program to which it can easily refer young people. It has support people at the court who can try to do something, but it is usually a bit of a mishmash of different agencies that they would use.¹⁵⁹⁸

- 16.16** Mr Mulroney observed that historically Health Department workers such as counsellors did not work with perpetrators. This meant that, particularly for young offenders from regional areas, Juvenile Justice was the only service from which they could obtain support. Over time, Mr Mulroney said he has observed more NGOs working with young offenders in regional areas:

I was in Walgett recently and the Youth Off The Streets program was bigger there, whereas it was non-existent when I first to Walgett in 2001. I am sure there are others, whether it is Mission Australia or a whole range of other programs, that are perhaps a little bit more prominent in the country than when I have been there. One of the great organisations, although they are limited in what they can do, is the Police and Community Youth Centres [PCYC]. If you have got a PCYC in a town they can be a useful group but they are not set up to provide counselling, they are not set up to provide that particular stuff. Even in the city there are very few programs.¹⁵⁹⁹

- 16.17** The Children’s Court stipulated that to facilitate family reconciliation it is crucial that services are available in a timely fashion. Its submission noted that some families need to attend mediation to negotiate ground rules to avoid future conflict but the availability of mediation is inconsistent:

Where there are ADVO proceedings against a young person for the protection of other family members the first aim should be to seek to restore the family relationship. In many cases that restoration process will be able to be achieved by a referral to family counselling provided by agencies such as Reconnect (an agency of the Salvation Army) or Relationships Australia. In other situations the need for counselling will not be so significant but the family will need assistance to negotiate some ground rules to avoid future conflict. At present there is inconsistent availability of mediation, usually through Community Justice Centres. (This is not a criticism of the CJs, which operate with limited resources). The better and faster availability of mediation would be useful in some circumstances.¹⁶⁰⁰

¹⁵⁹⁶ Judge Marien, Evidence, 5 March 2012, p 34; Submission 32, pp 1-2.

¹⁵⁹⁷ Mr Mulroney, Evidence, 5 March 2012, p 35.

¹⁵⁹⁸ Mr Mulroney, Evidence, 5 March 2012, p 35.

¹⁵⁹⁹ Mr Mulroney, Evidence, 5 March 2012, p 40.

¹⁶⁰⁰ Answers to supplementary questions 5 March 2012, Children’s Court of New South Wales, Question 1, p 1.

Committee comment

- 16.18** The Committee considers that it is important to address domestic violence as soon as it is first exhibited. A supportive family unit provides a fundamental basis for fostering healthy relationships and the Committee commends the approach that the Children's Court takes to adjourn appropriate cases to allow time for help to be sought. However, it is concerning that the services available are limited to a few geographical locations, such that many children and families miss out.

Recommendation 87

That as part of the NSW Domestic and Family Violence Framework the NSW Government expand the availability of support services for child perpetrators and their families across the State.

The dynamics of domestic violence perpetrated by children

- 16.19** The Children's Court emphasised that the dynamics of the relationships between children and their families are quite distinct from those between intimate partners. Parents have control of a child's finances and accommodation in a distinct way. Naturally, parents feel a sense of responsibility to protect and support their children, so parents and other family members can make very reluctant witnesses. The Children's Court suggested that, in this context, sometimes ADVOs can exacerbate family problems rather than address them.¹⁶⁰¹
- 16.20** Other inquiry participants also observed the unique characteristics of domestic violence committed by young people.¹⁶⁰² Legal Aid, for example, put forward that young perpetrators of domestic violence have often been subject to years of abuse themselves. Indeed, the Youth Action and Policy Association (YAPA) pointed out that where a young person has witnessed or experienced domestic violence in their family, they are twice as likely to become victims or perpetrators themselves.¹⁶⁰³ Legal Aid suggested that police need to be careful that they identify the primary aggressor in these circumstances:

It is the experience of Legal Aid NSW that often these children are not the primary aggressors in a relationship but are responding to years of violence inflicted against them and their mother by their father. When juveniles reach an age in which they can fight back, they often respond violently to the primary aggressor. Police need to be mindful of identifying the primary aggressor and exercise some discretion in applying pro-arrest policies.¹⁶⁰⁴

¹⁶⁰¹ Submission 32, p 1; Mr Mulroney, Evidence, 5 March 2012, p 37.

¹⁶⁰² Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Question 3, pp 2-3; Submission 34, Legal Aid NSW, p 21; Ms Jones, Evidence, 11 November 2011, p 24.

¹⁶⁰³ Submission 36, Youth Action and Policy Association NSW, p 2.

¹⁶⁰⁴ Submission 34, p 21.

- 16.21** Some inquiry participants expressed concern that the current criminal justice system is criminalising young people for behaviour that does not justify it.¹⁶⁰⁵ The Law Society was very concerned that the system is criminalising children’s problematic behaviour:

An example is when ADVOs are imposed for matters that involve conflict between siblings, or between children and their parents or carers. Children and young people often lack the capacity to understand the conditions of ADVOs and the consequences of a breach, which can lead to conviction and the possibility of incarceration. We are very concerned about the criminalisation of children’s problematic behaviour.¹⁶⁰⁶

- 16.22** Legal Aid argued that the legislation that governs domestic violence in adult relationships does not work well for young people and that the power imbalance in these relationships is different. In their view, ADVOs are being inappropriately granted, among other things, to discipline children:

It is the experience of Legal Aid NSW that the majority of protection order matters dealt with in the context of the Children’s Court in NSW are not the typical power imbalance situations that protection order legislation is trying to address. Rather, an increasing number of protection order matters involve conflict between siblings, and between young people and their parents. In particular, parents of young people with cognitive or mental health impairments are using ADVOs to discipline children who they cannot control and for whom there are no supported housing options or health services that can offer adequate assistance.¹⁶⁰⁷

- 16.23** The Shopfront Youth Legal Centre was especially vocal on this point, and expressed concern that ADVOs are being granted for what is essentially normal adolescent behaviour, or that to be expected as a result of mental illness or cognitive impairment:¹⁶⁰⁸

Over the years we have observed a number of problems with the way AVOs are used against young people, particularly for the “protection” of their parents. We are concerned about the criminalisation of young people for what is essentially normal adolescent behaviour, often in the context of a dysfunctional family relationship and sometimes in response to violence or mistreatment by their parents.¹⁶⁰⁹

In our view, much of the behaviour that is sought to be prevented by AVOs is “normal” adolescent behaviour, or predictably difficult behaviour arising from mental

¹⁶⁰⁵ Submission 51, p 11; Submission 34, p 21; Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 10, p 4. The issue of police identification of primary aggressors in domestic violence is discussed in detail in Chapter 8, in the context of the increase in the arrests of women for domestic violence offences.

¹⁶⁰⁶ Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 10, p 4.

¹⁶⁰⁷ Submission 34, p 20.

¹⁶⁰⁸ The Committee notes that in August 2012 the Law Reform Commission of New South Wales released a Question Paper to seek public views on ADVOs for *adults* with cognitive or mental health impairment: NSW Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System*, August 2012, p 1, accessed 8 August 2012, <[www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/vwFiles/cref120_qp1.pdf/\\$file/cref120_qp1.pdf](http://www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/vwFiles/cref120_qp1.pdf/$file/cref120_qp1.pdf)>.

¹⁶⁰⁹ Submission 51, p 2.

illness or cognitive impairment, that would be more appropriately dealt with in other ways.¹⁶¹⁰

- 16.24** The NSW Police Force took a different view, suggesting that a child can ‘hold their family to ransom’ through their behaviour:

The power dynamic noted by the Children’s Court ... may exist in many situations but is often the other way around when involving a child offender who holds their family to ransom by their violent and controlling nature.¹⁶¹¹

Manner of offending

- 16.25** Some inquiry participants observed that the manner and methods of juvenile offending are also unique. For example, stakeholders noted that the use of technology by young people to harass and intimidate is increasing.¹⁶¹² Sergeant Patrick Gooley, Vice-President of the Police Association, said that although young people who send threatening text messages will know they are doing something wrong, they do not always understand that it is also a criminal offence.

[T]hey know they are doing the wrong thing because they are doing it to injure the person but they do not realise the criminality of what they doing. We are trying to deal with these people in a very strict legislative framework. I think that it is time to start shifting towards that intervention and outcome model rather than just prescriptive legal matters.¹⁶¹³

- 16.26** Mr Gooley explained that a typical example is a threat to put a naked photo of an ex-boyfriend or ex-girlfriend on Facebook. When that is carried out the young person can be charged with publishing child pornography, a serious criminal offence:

The way they do it these days is not poking a finger in the chest and saying, “I’m going to kill you”, it is, “I’m going to publish that nude photo of you on Facebook”, and that sort of thing. Certainly, we have seen young people being charged with publishing child pornography for something that they do not even realise is illegal. They know it is wrong, as I said, because they intend to injure the person, but they are committing heinous offences without even knowing that they are crimes.¹⁶¹⁴

- 16.27** While agreeing with the observation that young people are increasingly making use of technology to intimidate or harass others, the Shopfront Youth Legal Centre argued that it is not the case that there is more crime being committed by young people, but rather that it is being carried out in a new way, using technology that makes some offences easier to prove:

¹⁶¹⁰ Submission 51, p 11.

¹⁶¹¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 18, p 18.

¹⁶¹² Answers to supplementary questions, 5 March 2012, Shopfront Youth Legal Centre, Question 1, p 1; Sergeant Patrick Gooley, Vice-President, Police Association of New South Wales, Evidence, 20 February 2012, p 61.

¹⁶¹³ Mr Gooley, Evidence, 20 February 2012, p 61.

¹⁶¹⁴ Mr Gooley, Evidence, 20 February 2012, p 61.

The use of technology, such as mobile phones and social media, certainly appears to be a growing medium for harassment and intimidation by young people towards others, particularly other young people. However, it is important not to overstate the problem.

We have seen an increase of the use of social media such as Facebook among our clients. Perhaps inevitably, these media are being used by some young people to carry on personal arguments, usually with peers and family members. In most cases this consists of little more than rude or intemperate language, but in some cases it does involve threats or harassment.

At least where our clients are concerned, we are not of the view that the use of social media has led to an overall increase in threats and harassment. Rather, electronic media such as email, social media and SMS (as opposed to more traditional verbal communication) leave an evidentiary trail that makes harassment type offences easier to prove.¹⁶¹⁵

- 16.28** Inquiry participants put forward that it is important that the law keeps up with these shifting dynamics.¹⁶¹⁶ An example raised by the Shopfront Youth Legal Centre was “sexting” (sending explicit photos or text messages to their friends, often consensually).¹⁶¹⁷ The Shopfront contended that teenagers engaged in this behaviour tend to receive disproportionately harsh sentences and observed that the relevant law was written before sexting became widespread:

The National Children’s and Youth Law Centre, in their submission to the Australian Government Cyber White Paper, argued that teenagers engaged in this behaviour tend to receive disproportionately harsh legal sanctions under anti-child pornography laws ... In a public comment, Dr Greg Lyon, SC, chair of the Criminal Bar Association, said the law was written before sexting became prevalent, resulting in unforeseen legal consequences in cases where police opt to lay charges rather than issue warnings.¹⁶¹⁸

Apprehended domestic violence orders

- 16.29** The Committee was informed that vast majority of applications made to the Children’s Court for ADVOs are by police and usually there are no associated criminal charges.¹⁶¹⁹ Mr Mulroneu explained that although there might be grounds for an associated charge, family member witnesses can be reluctant for charges to go ahead:

[S]ay, a child has assaulted a sibling; there may be an assault charge and an application for a domestic violence order. Sometimes the sibling will say, “I don’t want them to be charged” and mum will say “I don’t want them to be charged”, so sometimes there

¹⁶¹⁵ Answers to supplementary questions, 5 March 2012, Shopfront Youth Legal Centre, Question 1, p 1.

¹⁶¹⁶ Mr Gooley, Evidence, 20 February 2012, p 61; Ms Jones, Evidence, 11 November 2011, p 24.

¹⁶¹⁷ Answers to supplementary questions, 5 March 2012, Shopfront Youth Legal Centre, Question 1, p 1.

¹⁶¹⁸ Answers to supplementary questions, 5 March 2012, Shopfront Youth Legal Centre, Question 1, pp 1-2.

¹⁶¹⁹ Mr Mulroneu, Evidence, 5 March 2012, p 37.

will be clearly grounds for a criminal charge but there will only be an application for an order.¹⁶²⁰

- 16.30** Several stakeholders commented on the unique challenges associated with ensuring appropriate conditions in ADVOs for young people. Professor Stubbs, for example, observed that multiple conditions in an order, while no doubt well intended, can be contradictory and therefore difficult for young people to comply with. She said that this is important because if a person breaches the order it becomes a criminal matter and can have consequences that will affect the young person in the long term:

[W]hen young people have multiple conditions opposed upon them, often well intended, often intended to manage and control their behaviour. Sometimes those multiple conditions may be conflicting ... We need to be very careful that the conditions that are imposed are realistic and reasonable ones because the consequences can be quite harsh, including a criminal record.¹⁶²¹

- 16.31** The Shopfront commended the work of the Children's Court in exercising caution when dealing with ADVO applications against young people, but submitted that this is not always enough to stop inappropriate conditions being imposed:

To their credit, most Children's Court magistrates have adopted a careful approach when dealing with AVO applications involving young people ... However, even a cautious approach by the court does not always prevent inappropriate conditions from being imposed, as the Act does not impose a requirement that the conditions must be reasonable having regard to the defendant's ability to comprehend and/or comply with them.¹⁶²²

- 16.32** A further explanation for the application of inappropriate conditions proffered by Legal Aid was that the legislative framework to deal with domestic violence was designed to deal with adult relationships not young offenders:

Legislative provisions that have been put in place to assist with the management of adult relationships do not necessarily translate well when applied to juveniles. Inappropriate AVO conditions are regularly imposed on juveniles not to ensure the safety of the community, but rather to control a young person's behaviour.¹⁶²³

- 16.33** Ms Jane Sanders, Principal Solicitor with the Shopfront, said that inappropriate conditions can also be the result of matters being heard in the local court rather than the Children's Court. In the local court, she explained, the order will usually receive less scrutiny due to the court's workload and a lack of legal representation for the respondent.¹⁶²⁴ Legal representation for defendants in ADVO matters in local courts was part of a more general concern among stakeholders who commented on local court proceedings and is dealt with in Chapter 10, which considers methods to reduce breaches of ADVOs.

¹⁶²⁰ Mr Mulroney, Evidence, 5 March 2012, p 39.

¹⁶²¹ Professor Stubbs, Evidence, 7 November 2011, p 4.

¹⁶²² Submission 51, p 11.

¹⁶²³ Submission 34, p 20.

¹⁶²⁴ Ms Jane Sanders, Principal Solicitor, Shopfront Youth Legal Centre, Evidence, 5 March 2012, p 44.

Exclusion conditions and young people: revoking an order

- 16.34** As discussed in Chapter 9, the Committee heard that it is common for families to reconcile before an ADVO has expired. This can cause problems where the reconciliation arrangements conflict with conditions. If the ADVO has not been revoked or amended, then a breach of the ADVO may have taken place.
- 16.35** The Shopfront Youth Legal Centre noted that exclusion conditions, which stipulate that a person cannot go to a particular place, can be particularly problematic for young people.¹⁶²⁵ It suggested that sometimes the conditions may at first be reasonable but become impractical over time, particularly if the young person moves back in to the family home. If the parents have not had the order varied or revoked, the young person will be subject to criminal prosecution for breach. This is an aspect of the ADVO system that the Shopfront explained is not always well understood by young people.¹⁶²⁶
- 16.36** The Children’s Court advised that if the conflict in the home arises again and police arrive to deal with it, they can immediately charge the young person for breach of an ADVO. Mr Mulroneu explained the problem as follows:
- Three months after the order is made things have settled down so mum says, “All right, come home” ... They have forgotten the fact that the order is in existence and then, as is the nature of these things, the problem has not been properly sorted out; it blows up again and the police are able to prosecute the kid without even relying on mum’s evidence because they have found the kid at the family home.¹⁶²⁷
- 16.37** The Committee was advised that a further complicating factor is that an ADVO against a child can be amended in the Children’s Court only on application from the NSW Police Force. The Court suggested that it should also be permitted to vary or revoke an ADVO either on its own motion or upon application by the protected person in order to avoid ‘technical breaches’ of ADVOs.¹⁶²⁸
- 16.38** An alternative suggested by Ms Sanders of the Shopfront is the availability of a limited defence of consent to breach of an ADVO in these circumstances. This defence is considered by the Committee in Chapter 10.¹⁶²⁹

Committee comment

- 16.39** The Committee sees some merit in the proposal made by the Children’s Court that it should be vested with the power to vary or revoke ADVOs on its own motion or upon application by the person in need of protection, to avoid ‘technical’ breaches of ADVOs against young people.

¹⁶²⁵ Submission 51, p 10.

¹⁶²⁶ Submission 51, pp 10-11.

¹⁶²⁷ Mr Mulroneu, Evidence, 5 March 2012, p 41.

¹⁶²⁸ Answers to questions on notice taken during evidence 5 March 2012, Mr Paul Mulroneu, Magistrate, Children’s Court of New South Wales, Question 1, attachment 1, p 2.

¹⁶²⁹ Ms Sanders, Evidence, 5 March 2012, p 47.

- 16.40** However, we are also concerned to ensure that the family unit is adequately protected. It is foreseeable that a family's emotional investment in its relationships could cloud individual judgment and result in applications to revoke orders that might still be needed. Thus removing the requirement that police make an application to revoke an ADVO could leave some families who need protection without it. The Committee has not received enough evidence on this issue to make a determinative recommendation, but considers that there would be value in it being further considered as part of the Department of Attorney General and Justice (DAGJ) review of the *Crimes (Domestic and Personal Violence) Act 2007*.

Recommendation 88

That as part of its review of the *Crimes (Domestic and Personal Violence) Act 2007* the NSW Department of Attorney General and Justice consider whether the Children's Court should be vested with jurisdiction to vary or revoke an apprehended violence order made against a child or young person on its own motion or upon application by the protected person.

Understanding an apprehended domestic violence order

- 16.41** We noted earlier that Children's Court magistrates are specially trained to explain court orders and processes in a way that children will understand.¹⁶³⁰ The Court observed that it is important to ensure that young people understand ADVO conditions, the consequences of breach, and how to deal with a change in circumstances such as moving back in with a parent protected by the ADVO.¹⁶³¹ Mr Mulrone y gave the Committee an example of what he might say to a young person to explain the consequences of a breach:

I would usually say to kids, "You will get the rules. Do you know what the rules are? The rules don't change unless a magistrate changes them. If you break the rules you commit a criminal offence. If you break the rules by an act of violence the first thing I have got to do is think about sending you through that door over there", which is the door down to the cells.¹⁶³²

- 16.42** The Committee heard that some of the challenges to ensuring a respondent's understanding of the ADVO are ameliorated in the Children's Court because the majority of respondents are legally represented.¹⁶³³ The Children's Court highlighted the value of the legal representation and court support workers to this end.¹⁶³⁴
- 16.43** The Shopfront Youth Legal Centre expressed concern that in the ADVO process, the court is not required to consider the reasons behind the alleged conduct or a young person's capacity to understand their ADVO:

¹⁶³⁰ Mr Mulrone y, Evidence, 5 March 2012, p 42.

¹⁶³¹ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 3, p 3

¹⁶³² Mr Mulrone y, Evidence, 5 March 2012, p 41.

¹⁶³³ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 11; Mr Mulrone y, Evidence, 5 March 2012, pp 36-37.

¹⁶³⁴ Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 3, p 3.

[T]he court is not required to consider the reasons behind the alleged conduct (eg a psychotic episode) or the characteristics of the respondent, including their capacity to understand and/or comply with the terms of an AVO.

The consequence is that children and vulnerable people, including those with intellectual disabilities who may face real problems understanding and complying with AVO conditions, often have AVOs made against them and are at significant risk of being charged with a breach.¹⁶³⁵

- 16.44** Others were also concerned about young people with cognitive and mental impairments having the capacity to understand the conditions of ADVOs and the consequences of breach.¹⁶³⁶ Legal Aid went so far as to question whether ADVOs were really the most appropriate solution for children:

In any case, young people in general, and in particular, young people with cognitive and mental impairments, often lack the capacity to understand the conditions of ADVOs and the consequences of breach. The making of protection orders in such situations is not always the most effective way to deal with conflict involving young people who have not matured and lack conflict resolution skills.¹⁶³⁷

- 16.45** Warringa Baiya Aboriginal Women's Legal Centre also questioned whether an AVO is the most appropriate mechanism to deal with young people:

It is our view that an AVO against a child or young person as a defendant is often not appropriate anyway, especially when there is no associated criminal offence. It is a very blunt and harsh legal tool to use to manage the behaviour of a child or adolescent with often complex problems and needs.¹⁶³⁸

- 16.46** The Shopfront suggested that legislation be amended to require the court to be satisfied that an AVO is justified in all the circumstances. In its view, relevant considerations should include age and any cognitive or mental health impairment of the respondent.¹⁶³⁹ The Shopfront added that there are situations where a person who cannot be found guilty of a criminal offence due to mental impairment could still have an AVO issued against them:

There currently exists an anomalous situation where a person cannot be found guilty of a criminal offence (eg. because of the *doli incapax* principle, or because they lack *mens rea* due to mental impairment) but can have an enforceable AVO against them. Although such people may have a good defence if charged with breaching the order, this will not always be the case. Also, the existence of a possible defence does not stop breach charges being laid, causing the defendant anxiety, inconvenience, and (sometimes) deprivation or restriction of liberty due to arrest and bail decisions.¹⁶⁴⁰

¹⁶³⁵ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 11.

¹⁶³⁶ Submission 34, p 2; Submission 63, Police Association of New South Wales, p 51.

¹⁶³⁷ Submission 34, p 20.

¹⁶³⁸ Answers to supplementary questions 5 March 2012, Warringa Baiya Aboriginal Women's Legal Centre, Question 22, pp 21-22.

¹⁶³⁹ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 11.

¹⁶⁴⁰ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1,

- 16.47** The Children’s Court suggested that additional methods to ensure that young people understand their orders include that clear written information be provided to them along with a copy of the order and a list of useful websites.¹⁶⁴¹

Committee comment

- 16.48** The Committee accepts that there are real concerns about the extent to which ADVO conditions and the implications of breaching an order are understood by young people. The problem is even more apparent where a young person has a cognitive impairment or mental illness. Indeed it is questionable whether an application for an ADVO is even an appropriate course of action in such circumstances.
- 16.49** Features of the Children’s Court such as the prevalence of legal representation there, and the training that magistrates undergo, ameliorate this concern but do not extinguish it. We have not received enough evidence to reach a conclusion on the matter. However, our preliminary view is that the approach suggested by the Shopfront Youth Legal Centre, that legislation require decision-makers to consider the age and cognitive capacity of the young offender to determine whether the AVO is justified in the circumstances, is a good starting point for appropriate reform.

Employment implications

- 16.50** The Commission for Children and Young People conducts background checks on all people applying for child-related employment. The ‘working with children check’ is an important means of making sure that children are safe. It prohibits from child-related employment anyone who has been convicted of serious sexual or child-related violent offences and warns employers about other people who may also pose a risk. As part of the check, the Commission will ascertain whether a person has had a final ADVO or APVO made against them.¹⁶⁴²
- 16.51** Unless revoked, a final AVO will remain forever on a person’s record for the purpose of the working with children check, no matter what age they were when it was issued, or how long ago it was issued, even if the order was by consent. The report of the 2011 statutory review of the *Commission for Children and Young People Act 1998* (the Review Report) referred to by some stakeholders observed that other Australian jurisdictions do not consider apprehended violence orders in their background checking for future employment.¹⁶⁴³

p 11.

¹⁶⁴¹ Answers to supplementary questions 5 March 2012, Children’s Court of New South Wales, Question 3, p 3.

¹⁶⁴² Section 33 of the Act: relevant apprehended violence order means (subject to subsection (6)) a final apprehended violence order made under the *Crimes (Domestic and Personal Violence) Act 2007*, or a final order made under Part 15A of the *Crimes Act 1900* before its repeal, being an order made on the application of a police officer or other public official for the protection of a child (or a child and others).

¹⁶⁴³ Submission 34, p 19; *Report on the Review of the NSW Commission for Children and Young People Act 1998*, 2011, p 17, accessed 14 May 2012, <http://kids.nsw.gov.au/uploads/documents/MiniterialReportReviewCCYP_Act.pdf>.

- 16.52** This aspect of the working with children check forms part of the current review of the *Crimes (Domestic and Personal Violence) Act 2007* being conducted by DAGJ. The Discussion Paper issued as part of that review notes that under the legislation convictions for children under 16 are not recorded and for those between 16 and 18 years are recorded at the discretion of the magistrate. Because there is no equivalent discretion for young people subject to ADVOs, an anomalous situation arises where a young person convicted of an offence will not be subject to a working with children assessment whereas a young person with no criminal offences but a final ADVO on their record will be.¹⁶⁴⁴
- 16.53** A number of inquiry participants expressed concern about the long term employment implications for young people of having a final ADVO on their criminal record.¹⁶⁴⁵ Several inquiry participants advocated that the provisions regarding background checks should not automatically apply to young people. Mr Brett Thomas, Member of the Criminal Law Committee of the Law Society, said that sometimes a final ADVO can be issued in relation to a ‘not so serious’ issue at home which ultimately compromises a young person’s future employment prospects:
- [T]he difficulty that sometimes arises in the future when a final apprehended violence order has been made against an adult involving a child and the Working With Children program. That is not a criticism of the Working With Children program and the reasons for that. However, it can sometimes be a not so serious situation in the family home and, dare I say it, an issue with bringing up children and the consequences that flow from that. That is in the background and people recognise it.¹⁶⁴⁶
- 16.54** In this context, Dr Stubbs observed that the long-term consequences for young people can be quite harsh.¹⁶⁴⁷ Similarly, in its submission, the Children’s Court was critical that there is no differentiation between adults and young people in the working with children check, and that no consideration is given to the circumstances of the violent conduct.¹⁶⁴⁸ The Court outlined that if a schoolyard fight between classmates leads to an AVO being sought and a final order is made, then it can be very prejudicial to their future employment prospects.¹⁶⁴⁹
- 16.55** The Shopfront Youth Legal Centre agreed and expressed strong concern for the injustice it perceives to be caused by the current working with children check system:

We have significant concerns about the impact of final AVOs on the Working With Children Check under the *Commission for Children and Young People Act*. The current scheme has the potential to cause significant injustice (without any corresponding child protection benefit) to young people who have had AVOs taken out for the protection of siblings or similar aged peers. Ordinary children engaged in family or

¹⁶⁴⁴ Department of Attorney General and Justice, *Statutory Review of the Crimes (Domestic and Personal Violence Act) 2007 Discussion Paper*, 2011, pp 10-11.

¹⁶⁴⁵ Answers to supplementary questions 5 March 2012, Women’s Domestic Violence Court Advocacy Service Network Inc, Question 14, p 7; Mr Thomas, Evidence, 7 November 2011, p 65; Submission 34, p 19.

¹⁶⁴⁶ Mr Thomas, Evidence, 7 November 2011, p 65.

¹⁶⁴⁷ Professor Stubbs, Evidence, 7 November 2011, p 4.

¹⁶⁴⁸ Submission 32, p 3.

¹⁶⁴⁹ Judge Marien, Evidence, 5 March 2012, p 34.

schoolyard fights are not child abusers and do not pose the sort of risk that the Working With Children Check seeks to manage.¹⁶⁵⁰

- 16.56** Legal Aid was of the view that the application of the working with children check provisions to child perpetrators is contrary to the intention of the legislation and argued that an ADVO against a young person is not indicative of their adult attitude towards children:

The inclusion of such orders in the [working with children check] is arguably contrary to the intention of the legislation, which was designed to protect children from adult perpetrators. It was not envisaged that it would apply in the situation where both the defendant and the protected person are children and certainly an ADVO in these circumstances is not a true indication of the young person's attitude towards children.¹⁶⁵¹

- 16.57** The 2011 Review Report proposed that legislation be clarified so that only serious AVOs, supported by well documented investigations, are notified to employers as part of the working with children check.¹⁶⁵² The report also recommends where a person is barred from child related employment due to juvenile offences, they will be subject to risk assessment rather than an automatic refusal of employment.¹⁶⁵³

- 16.58** The Children's Court also recommended that background checks not automatically apply to children or young people and instead, that children's magistrates be given discretion to notify the Commission where the conduct poses a risk to children. In the Court's view this approach would strike a balance between ensuring that young people are not unfairly prejudiced, while at the same time making certain that those young people who could pose a risk to children are identified:

It is the submission of the Children's Court that the provisions relating to background checks should not automatically apply to children or young persons but instead, that a Children's Magistrate should be given discretion to notify the Commission where the person's conduct indicates some potential risk to children. The Court is of the view that this approach would ensure that only young offenders who pose a real risk to the safety of children are caught by the provisions of the Act, while avoiding any prejudice to those children and young persons who do not generally pose such a risk to children.¹⁶⁵⁴

- 16.59** A mechanism available to respondents in AVO matters is to apply to have the AVO revoked. A problem identified by Legal Aid is that where a respondent to an AVO was a child at the time it was granted, it is common that the protected person is also a child. Where an AVO

¹⁶⁵⁰ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 6.

¹⁶⁵¹ Submission 34, p 19.

¹⁶⁵² *Report on the Review of the NSW Commission for Children and Young People Act 1998*, 2011, p 11, rec 3.8, accessed 14 May 2012, <http://kids.nsw.gov.au/uploads/documents/MiniterialReportReviewCCYP_Act.pdf>.

¹⁶⁵³ *Report on the Review of the NSW Commission for Children and Young People Act 1998*, 2011, p 11, rec 3.3, accessed 14 May 2012, <http://kids.nsw.gov.au/uploads/documents/MiniterialReportReviewCCYP_Act.pdf>.

¹⁶⁵⁴ Submission 32, p 3; Answers to supplementary questions 5 March 2012, Children's Court of New South Wales, Question 2, p 3.

protects a child it can be revoked only upon application by police and many young people are apprehensive about approaching police to ask them to apply to revoke the AVO. Accordingly, Legal Aid suggested legislation be amended to exclude from the definition of ‘relevant AVO’ final orders made against people who are under 18 at the time:

As a consequence, where the protected person was under the age of 16 years, defendants seeking the revocation of a final order must approach Police and request that they make an application on their behalf. Many defendants are reluctant to approach Police with such a request. For these reasons, Legal Aid NSW recommends that the [Commission for Children and Young People] Act be amended to exclude from the definition of ‘relevant AVO’ final orders made against defendants under 18 years of age.¹⁶⁵⁵

- 16.60** Legal Aid also recommended that the *Crimes (Domestic and Personal Violence) Act 2007* be amended to permit a defendant to apply for revocation of a final order where the protected person was a child, and to establish a higher test for courts to issue AVOs against juvenile respondents:

There is a real need for amendment of the *Commission for Young Children and Young People Act*. However, the *Crimes (Domestic and Personal Violence) Act* should also be amended in the following ways:

- To allow a defendant to apply for revocation of a final order where the protected person was or is a child (see our response to the previous question)
- To put in place a higher threshold or test before a court can make an AVO against a juvenile defendant, including a requirement for the court to be satisfied that the child is capable of understanding and complying with its terms.¹⁶⁵⁶

- 16.61** The Committee notes that the *Child Protection (Working with Children) Act 2012* passed through Parliament in June 2012. It aims to simplify the working with children check and implement the recommendations of the Review Report. The Committee has been informed that apprehended violence orders are not a trigger record under the new system. If, however, an assessment is triggered from criminal records, then AVOs will be considered during the assessment phase. The Act is not yet in force and as such this system is yet to be implemented. The Act will be subject to Ministerial review as soon as possible after five years from the date of assent.

Committee comment

- 16.62** The Committee accepts the evidence of inquiry participants that a final ADVO can have disastrous consequences for future employment prospects for young people, who are recognised under many aspects of the law as having diminished criminal responsibility in any case. We also accept that this consequence may not be realised by the young person at the time the order is consented to.
- 16.63** The Committee notes that the passage of the *Child Protection (Working with Children) Act 2012* through Parliament appears to address participants’ concerns such that an AVO alone will no

¹⁶⁵⁵ Submission 34, p 19.

¹⁶⁵⁶ Answers to supplementary questions 5 March 2012, Shopfront Youth Legal Centre, Appendix 1, p 6.

longer be enough to trigger an assessment. Although the Act is yet to enter into force and be tested in practice, we note that it is subject to Ministerial review which will provide an opportunity for future consideration. In addition, this issue is receiving more general attention as part of the DAGJ review of the *Crimes (Domestic and Personal Violence) Act 2007*.

Sentencing and young people

- 16.64** The Committee's terms of reference ask it to consider whether existing penalties are adequate for domestic violence offences. We have dealt with this in terms of adult offenders in Chapter 14 which, among other things, outlines the general legal principles that underpin sentencing in this State. In this section the Committee considers stakeholder views in terms of the adequacy and application of sentences for young people.
- 16.65** The *Young Offenders Act 1997* (YOA) provides an alternative to court proceedings for children who commit certain offences through the use of warnings, cautions and youth justice conferences.¹⁶⁵⁷ Youth justice conferences are considered in detail in the following section. In short, such conferences are based on the principles of restorative justice and seek to bring affected parties together to discuss the impact of the crime and negotiate an appropriate response.
- 16.66** DAGJ informed the Committee that 'the YOA was developed in response to a number of reviews which questioned the 'appropriateness, effectiveness and efficiency' of bringing children accused of less serious offences into the criminal justice system through court.'¹⁶⁵⁸ The objects of the YOA include, among other things:
- to establish a scheme that provides an alternative to court for children who commit certain offences, through the use of youth justice conferences, cautions and warnings
 - to establish and use youth justice conferences to deal with alleged offenders
 - to address the over representation of Aboriginal and Torres Strait Islander children in the criminal justice system through the use of youth justice conferences cautions and warnings.¹⁶⁵⁹
- 16.67** In relation to sentences for breach of an ADVO, the Judicial Commission of NSW published research which found that in 2010, the most common penalty for breach of an ADVO among young offenders was a bond, and that this offence had the highest representation of female young offenders.¹⁶⁶⁰ The NSW Police Force argued that magistrates should be guided by the gravity of the conduct, the impact of the crime on the victim, the potential rehabilitation of

¹⁶⁵⁷ The YOA and the *Children (Criminal Proceedings) Act 1987* is currently being reviewed by the DAGJ: Answers to questions taken on notice during evidence, DAGJ, 17 October 2011, Question 9, p 3; Ms Penelope Musgrave, Director, Criminal Law Review, Department of Attorney General and Justice, Evidence, 17 October 2011, p 18.

¹⁶⁵⁸ Answers to questions taken on notice during evidence, Department of Attorney General and Justice, 17 October 2011, Question 9, p 3.

¹⁶⁵⁹ *Young Offenders Act 1997* s 3(c).

¹⁶⁶⁰ Judicial Commission of NSW, *Sentencing for Common Offences in the NSW Children's Court 2010*, March 2012, accessed 7 August 2012 <www.judcom.nsw.gov.au/publications/research-monographs-1/research-monograph-36/Monograph34.pdf>.

the offender as well as the prevention of future violence. The NSW Police Force expressed support for youth justice conferencing, forum sentencing and home detention in appropriate circumstances:

Sentencing should also reflect options to rehabilitate or prevent future violence. The NSWPF is not averse to youth justice conferencing, forum sentencing and home detention provided that these options do not expose the victim/s of violence to additional trauma. For example, home detention may expose the victim to considerable risk of domestic violence and might not be appropriate in many situations.¹⁶⁶¹

- 16.68** Mr Gooley of the Police Association asserted that in terms of sentencing, the law and the judiciary are not keeping up with the changing dynamics of domestic violence, including the use of technology to intimidate and harass. He suggested that in this context, sentencing responses need to be tailored to the group requiring the most intervention which at the moment he and others suggested is juvenile, male domestic violence offenders:¹⁶⁶²

If [sentencing options] could be tailored specifically to domestic violence particularly with probably the group requiring the most intervention now who is the young male, the juvenile male domestic violence offender ... Domestic violence is changing and the law and the judiciary are not able to keep up with it in its current format.¹⁶⁶³

- 16.69** Also reflecting on breach of ADVO offences, Legal Aid suggested that for young people, the focus should be on diversionary options, rehabilitation programs, community employment and drug treatment.¹⁶⁶⁴ The Law Society also expressed the view that penalties for breach of an ADVO should be different for young people than for adults.¹⁶⁶⁵

- 16.70** The Shopfront Youth Legal Centre also argued that a wider range of sentencing options should be available for domestic violence committed by young people, including youth justice conferencing, which is considered in the next section. The Shopfront added forum sentencing, intensive correction orders, home detention and the Drug Court as additional avenues that should be available to young offenders. The Shopfront further observed that there is no one size fits all approach and that different solutions will be appropriate in different circumstances:

While the power dynamics of violent relationships may make some options inappropriate (eg conferences and forums) we emphasise that there is no “one size fits all” approach.

We have just been involved in a number of domestic violence cases where, in our view, a restorative justice or diversionary approach would have been of great benefit, not only to the offender but also to the victim and to the justice process generally.¹⁶⁶⁶

¹⁶⁶¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 18, p 18.

¹⁶⁶² Submission 79, Kempsey Family Support Service, p 3; Mr Gooley, Evidence, 20 February 2012, p 61.

¹⁶⁶³ Mr Gooley, Evidence, 20 February 2012, p 61.

¹⁶⁶⁴ Submission 34, p 21.

¹⁶⁶⁵ Answers to supplementary questions 7 November 2011, Law Society of New South Wales, Question 10, p 4.

¹⁶⁶⁶ Submission 51, pp 6-7.

Youth justice conferencing

- 16.71** A youth justice conference is a meeting between all the parties who have been affected by a crime and will typically include the victim, offender, family members, community members and the police. The participants discuss the effect the crime has had on them and the young person is then asked to put together a plan which stipulates specific steps they will take to repair the damage they have done, which must be approved by the victim. These plans might involve, among other things, community service, financial reparation, completion of appropriate programs or formal apologies.¹⁶⁶⁷
- 16.72** The YOA elaborates that the objects of youth justice conferencing include to deal with offenders in a way that:
- enables a community based negotiated response to offences involving all the affected parties
 - emphasises restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour
 - meets the needs of victims and offenders.¹⁶⁶⁸
- 16.73** A December 2011 NSW Bureau of Crime Statistics and Research (BOCSAR) study reported that most of the youth justice conferences in 2010 were ordered in relation to theft related offences and acts intended to cause injury, followed by property damage, environmental pollution and break and enter type offences.¹⁶⁶⁹
- 16.74** DAGJ advised the Committee that offences committed under the *Crimes (Domestic and Personal Violence) Act 2007* are excluded from arrangements under the YOA. This means that young domestic violence offenders will not have access to the alternatives to court outlined above and available under the YOA. DAGJ elaborated that the rationale for this approach was based on the seriousness of domestic violence and that youth justice conferencing is not appropriate for domestic violence offences:
- The [*Crimes (Domestic and Personal Violence) Act 2007*] offences (including stalking, intimidation, and breach of an AVO) are excluded from the YOA on the basis that they involve apprehended or actual violence, sometimes in a domestic context. The exclusion reflects their seriousness, and that conferencing is usually regarded as inappropriate for domestic violence offences.¹⁶⁷⁰
- 16.75** The vast majority of participants who commented on this issue felt that offences committed under the *Crimes (Domestic and Personal Violence) Act 2007* should not be excluded from arrangements under the YOA.¹⁶⁷¹ Judge Marien observed that the vast majority of children

¹⁶⁶⁷ Isabel Taussig, *Youth Justice Conferences: Participant Profile and Conference Characteristics*, NSW Bureau of Crime Statistics and Research, Issue Paper No 75, February 2012, p 1.

¹⁶⁶⁸ *Young Offenders Act 1997* s 3.

¹⁶⁶⁹ Elizabeth Moore, NSW Bureau of Crime Statistics and Research, *The Use of Police Cautions and Youth Justice Conferences in NSW in 2010*, Issue Paper No 73, December 2011, p 3, table 2.

¹⁶⁷⁰ Answers to questions taken on notice during evidence, Department of Attorney General and Justice, 17 October 2011, Question 9, p 3.

¹⁶⁷¹ Answers to supplementary questions 5 March 2012, Wirringa Baiya Aboriginal Women's Legal Centre Inc, Question 22, pp 21-22; Ms Annmarie Lumsden, Executive Director Strategic Policy

who appear before the Children's Court are not serious offenders and research has proven that the best way to deal with them is through intervention programs, not formal court processes. His Honour contended that such programs can help the whole family to deal with the issues that might have led to the offending behaviour.¹⁶⁷²

- 16.76** Both the NSW Police Force and Mr Mulroney pointed to anomalies that arise where children can have access to youth justice conferencing for offences not committed in a domestic violence context that may be more serious than a domestic violence offence, which is excluded.¹⁶⁷³ The NSW Police Force provided an example:

An interesting anomaly exists where a child can be dealt with under the YOA (caution or conference) for serious offences but cannot be for minor breaches of an ADVO. This situation provides police with no discretion but to charge the child or young person.¹⁶⁷⁴

- 16.77** Mr Mulroney provided a different example, that if a young person intimidates their next-door neighbour, they can go to youth justice conferencing but if they intimidate their mother they cannot.¹⁶⁷⁵ In his view, that these anomalies arise illustrates that the exclusion is an example of 'policy without consideration of practice':

In terms of the rationale in the legislation, I think it is a case of policy without consideration of practice. I think there is good policy about not seeking to diminish the seriousness of some aspects of domestic violence through saying that that violence can be mediated, but I think that that policy was not as well informed, with all due respect to the legislators, as the day-to-day practice of what happens with domestic violence in families with young people.¹⁶⁷⁶

- 16.78** Judge Marien argued strongly that youth justice conferencing is quite often appropriate in circumstances that involve domestic violence because the focus is on keeping the family together:

I think Magistrate Mulroney was extremely diplomatic in his criticism of the policy considerations behind the exclusion of these offences from the Young Offenders Act. Just the mere stating of a proposition indicates that these kinds of matters, which are family problems which need to be resolved in the family through interventions and counselling and trying to keep the family together, are obviously something that is ideal for youth justice conferencing or some form of that kind of intervention.¹⁶⁷⁷

- 16.79** Wirringa Baiya Aboriginal Women's Legal Centre commended youth justice conferencing as a means of alternative sentencing. It disputed recent critiques of this mechanism, referring to a BOCSAR report recommending more use of it. Wirringa Baiya also expressed the view that

Planning and Management Reporting, Legal Aid NSW, Evidence, 11 November 2011, p 24; Mr Mulroney, Evidence, 5 March 2012, p 38; Judge Marien, Evidence, 5 March 2012, pp 38-39.

¹⁶⁷² Judge Marien, Evidence, 5 March 2012, p 39.

¹⁶⁷³ Mr Mulroney, Evidence, 5 March 2012, p 38.

¹⁶⁷⁴ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 18, p 18.

¹⁶⁷⁵ Mr Mulroney, Evidence, 5 March 2012, p 38.

¹⁶⁷⁶ Mr Mulroney, Evidence, 5 March 2012, p 38.

¹⁶⁷⁷ Judge Marien, Evidence, 5 March 2012, pp 38-39.

youth justice conferences are valuable to reduce young people's contact with the criminal justice system:

In spite of the recent critique of the Youth Justice Conferencing (YJC), we note firstly the December 2011 BOCSAR report which recommends that more police use youth justice conferencing rather than proceeding to Children's Court. We note that YJC is a diversionary scheme and is effective in reducing young people's future contact with the criminal justice system. We note our comments about contact with the criminal justice system and any scheme which aims to divert young people from this, had sound objectives.

16.80 Mr Mulroneu further observed that an important element of youth justice conferencing is that the victim's voice is heard. For some victims this can be an empowering experience compared with how they might feel in court:

But youth justice conference does, in fact, hopefully empower the victim where a lot of the things that we do, such as placing somebody on a good behaviour bond, does not, because in the conferencing process the victim has a chance to have a say, to talk about their hurt, to talk about their fear and to talk about what they would like to have happen as an outcome that might stop this happening ever again, whereas victims are entitled to be present in our courts and often they will ask to say something, but they are really more on the sidelines rather than a key participant as they are in a youth justice conferencing process.¹⁶⁷⁸

16.81 Both Mr Mulroneu and Judge Marien recognised that youth justice conferences would not be appropriate for the minority of young offenders who have committed serious domestic violence crimes.¹⁶⁷⁹ For example, Mr Mulroneu said:

Clearly there are serious matters. We will see kids who use weapons and engage in serious domestic violence in the family—not appropriate. We will deal with people, usually boys, who will sexually assault their stepsister—clearly not appropriate to go to youth justice conferencing or be dealt with in some other way.¹⁶⁸⁰

16.82 The NSW Police Force felt that it was important to alert the Committee to the fact that the exclusion in the YOA means that police cannot use diversionary options such as a warning or caution for young offenders where the conduct is categorised as a domestic violence offence.¹⁶⁸¹ The police recommended that the provision excluding domestic violence offences from being dealt with under the YOA should be repealed. The NSW Police Force noted that if this occurs, police could then exercise discretion on a case by case basis as they already do in other circumstances:

There are suitable safeguards within the YOA as it stands to allow and support police decision making with regards to domestic violence offences. For example, if 8(2)(e) were removed police would still be able to decline to use alternate action (eg formal caution or conference) for a first offender based on the seriousness of the offence, harm to victim etc. Police already use these considerations with respect to criminal

¹⁶⁷⁸ Mr Mulroneu, Evidence, 5 March 2012, p 38.

¹⁶⁷⁹ Judge Marien, Evidence, 5 March 2012, p 39.

¹⁶⁸⁰ Mr Mulroneu, Evidence, 5 March 2012, p 38.

¹⁶⁸¹ Answers to supplementary questions 20 February 2012, NSW Police Force, Question 18, p 18.

charges under the Crimes Act 1900 for example including common assault, [assault occasioning actual bodily harm] etc.¹⁶⁸²

- 16.83** Other inquiry participants also suggested that the ban on domestic violence offences being dealt with under the *Young Offenders Act 1997* should be removed from legislation.¹⁶⁸³ Instead, it was argued, youth justice conferencing for domestic violence by young people should be a matter for judicial discretion. Professor Julie Stubbs expressed the view that:

I would not rule out the use of the Young Offenders Act and the diversionary options available under that Act, including things like youth conferencing, in appropriate cases of a young person and apprehended domestic violence orders.¹⁶⁸⁴

Committee comment

- 16.84** The Committee commends the philosophy of the Children's Court that it is desirable to limit the involvement of young people in the criminal justice system and to divert them from further offending as early as possible. We agree that a holistic approach, involving the whole family, is a laudable objective. To this end, it is vital that alternatives to court are available.
- 16.85** The Committee agrees with the Children's Court that the legislative provision prohibiting diversionary options for young domestic violence offenders is illustrative of policy based on good intentions that has not worked in practice. The blanket ban results in inconsistencies in application that do not always result in the best outcome for all of the parties involved. The determination of whether a matter is suitable for youth justice conferencing or other diversionary options is best made at the discretion of the courts. Accordingly, we recommend that the NSW Government seek to amend the *Young Offenders Act 1997* to permit the Children's Court to exercise its discretion as to whether to refer young people convicted of domestic violence offences to youth justice conferencing or other alternatives to court available under that Act.

Recommendation 89

That the NSW Government seek to amend the *Young Offenders Act 1997* to permit the Children's Court of New South Wales to exercise its discretion as to whether to refer young people convicted of domestic violence offences to youth justice conferencing or other alternatives to court available under that Act.

¹⁶⁸² Answers to supplementary questions 20 February 2012, NSW Police Force, Question 18, p 18.

¹⁶⁸³ Submission 51, p 6; Mr Mulroney, Evidence, 5 March 2012, p 38; Answers to supplementary questions 20 February 2012, NSW Police Force, Question 18, p 18; Professor Stubbs, Evidence, 7 November 2011, p 4.

¹⁶⁸⁴ Professor Stubbs, Evidence, 7 November 2011, p 4.

Appendix 1 Submissions

No	Author
1	Mr Craig Cannock
2	NSW Law Reform Commission
3	Victims of Crime Assistance League Inc NSW
3a	Victims of Crime Assistance League Inc NSW
4	Barnardos Australia
5	St Vincent de Paul Society NSW
6	Women Everywhere Advocating Violence Elimination Inc. Australia
7	FamilyVoice Australia
8	Carrie's Place Women's and Children's Services Inc
9	Australian Institute of Criminology
10	Nepean Community & Neighbourhood Services
11	MetWest Violence Prevention Network
12	Public Defenders Office NSW
13	Homelessness Australia
14	Deaf Society of New South Wales
15	Illawarra Shoalhaven Local Health District
16	Nepean Blue Mountains Local Health District
17	Network of Community Activities
18	Jenny's Place Women and Children's Refuge Inc
19	NSW Consumer Advisory Group - Mental Health Inc
20	Metro Migrant Resource Centre Inc
21	NSW Chief Magistrate
22	Office of the Director of Public Prosecutions NSW
23	Mt Druitt Family Violence Response and Support Strategy Leadership Group
24	Council on the Ageing NSW
25	Relationships Australia NSW
26	Inner City Legal Centre
27	Gay and Lesbian Rights Lobby NSW Inc
28	Women's Domestic Violence Court Advocacy Network Inc
29	Outer West Domestic Violence Network
30	Western Sydney Local Health District
31	Information and Privacy Commission

No	Author
32	Children's Court of NSW
33	Domestic Violence Death Review Team
34	Legal Aid NSW
35	Sydney Local Health District
36	Youth Action and Policy Association NSW Inc
37	The Benevolent Society
38	Binaal Billa Family Violence Prevention Legal Service
39	Redfern Legal Centre and Sydney Women's Domestic Violence Court Advocacy Service
40	One in Three Campaign
40a	One in Three Campaign
41	BoysTown
42	Penrith City Council
43	Wirringa Baiya Aboriginal Women's Legal Centre
44	Community First Step
45	Women's Legal Services NSW
45a	Women's Legal Services NSW
46	ACON
47	Dr Jane Wangmann
48	Name suppressed
49	White Ribbon Foundation
50	People with Disability Australia Incorporated
51	Shopfront Youth Legal Centre
52	Hon Sophie Cotsis MLC
53	NSW Ombudsman
54	NSW Women's Refuge Movement Inc
55	Australian Communications Consumer Action Network
56	Law Society of NSW
57	South Western Sydney Local Health District
58	Green Valley Liverpool Domestic Violence Service
59	NSW Public Guardian
60	Professor Julie Stubbs
61	NSW Government
62	UnitingCare Children, Young People and Families

No	Author
63	Police Association of NSW
64	Northern Sydney Local Health District
65	Mr Trevor Farrell
66	Australian Council on Alcoholism and Drug Dependence
67	Central Coast Local Health District
68	Immigrant Women's Speakout Association of NSW
69	Ms Catherine Smith
70	Hon Jan Barham MLC
71	Hawkesbury Nepean Community Legal Centre Inc
72	Older Women's Network NSW Inc
73	Campbelltown City Council
74	NSW Police Force
75	NAPCAN
76	Confidential
77	Western Plains Regional Development Inc
78	JayGrey
79	Kempsey Family Support Service Inc.
80	Lismore Men and Family Centre

Appendix 2 Witnesses in public hearings/participants in forums

Date	Name	Position and Organisation
Monday 17 October 2011 Waratah Room, Parliament House	Ms Penelope Musgrave	Director, Criminal Law Review, Attorney General and Justice
	Mr Brendan Thomas	Assistant Director-General, Crime Prevention and Community Programs, Attorney General and Justice
	Mr Luke Grant	Assistant Commissioner, Offender Services and Programs, Corrective Services
	Ms Julie Webber	A/Executive Director, Community Offender Management, Corrective Services
	Ms Betty Green	Convenor, NSW Domestic Violence Coalition and Manager, Liverpool Women's Health Service
	Ms Julie Stewart	Secretary, NSW Domestic Violence Coalition and Coordinator, Manly Warringah Women's Resource Centre
	Ms Gaby Marcus	Director, Australian Domestic and Family Violence Clearinghouse
	Dr Rochelle Braaf	Senior Research Officer, Australian Domestic and Family Violence Clearinghouse
	Dr Lesley Laing	Senior Lecturer, Faculty of Education and Social Work, University of Sydney
	Ms Annette Michaux	General Manager, Policy and Research, The Benevolent Society
	Ms Jenni Hutchins	Senior Manager, South West and Western Sydney, The Benevolent Society
	Ms Melina Isgro-Rarp	Program Manager, Centre for Women's Health, Macarthur, Benevolent Society
	Monday 7 November 2011 Macquarie Room, Parliament House	Professor Julie Stubbs
Dr Don Weatherburn		Director, NSW Bureau of Crime Statistics and Research
Dr Katrina Grech		Senior Project Officer, NSW Bureau of Crime Statistics and Research

Date	Name	Position and Organisation
	Ms Annmarie Lumsden	Executive Director, Strategic Planning and Policy and Business Reporting, Legal Aid NSW
	Ms Angela Jones	Senior Solicitor, Family and Domestic Violence, Legal Aid NSW
	Ms Rachelle Johnston	Project Officer, Women's Domestic Violence Court Advocacy Program, Legal Aid NSW
	Ms Catherine Smith	
	Ms Helen Campbell	Executive Officer, Women's Legal Services NSW
	Ms Edwina MacDonald	Law Reform and Policy Coordinator, Women's Legal Services NSW
	Ms Rebecca Hitchcock	Solicitor, Women's Legal Services NSW
	Ms Joanna Shulman	Chief Executive Officer, Redfern Legal Centre
	Mr David Porter	Solicitor, Redfern Legal Centre
	Ms Susan Smith	Solicitor and Coordinator, Sydney Women's Domestic Violence Court Advocacy Service
	Mr Brett Thomas	Member, Criminal Law Committee, Law Society of NSW
	Mr Greg Elks	Member, Criminal Law Committee, Law Society of NSW
Monday 20 February 2012 Macquarie Room, Parliament House	Ms Maura Boland	Deputy Director, Strategy and Policy, Department of Family and Community Services
	Ms Helen Freeland	Deputy Chief Executive Operations, Community Services
	Ms Michelle Jeuken	Acting Executive Director, Office for Women's Policy
	Ms Vivian Hanich	Director of Service Development Strategy, Housing NSW
	Ms Janet Schorer	Acting Divisional Director, Communities and Early Years
	Mr Greg Andresen	Senior Researcher, One in Three Campaign
	Mr Andrew Humphreys	Member, One in Three Campaign
	Dr Jane Wangmann	Lecturer, Faculty of Law, University of Technology, Sydney
	Assistant Commissioner Mark	Corporate Spokesperson for Domestic and Family Violence,

Date	Name	Position and Organisation
	Murdoch	NSW Police Force
	Superintendent Wayne Cox	Local Area Commander Mt Druitt
	Senior Constable Brian Johnson	Domestic Violence Liaison Officer, Mt Druitt Area Command
	Sergeant Allison Guthrie	Principal Tutor, Domestic and Family Violence Education and Training Command
	Sergeant Sharon Walker	Police Prosecutor (Domestic Violence) Sutherland Local Court
	Mr Pat Gooley	Vice President, NSW Police Association
	Ms Prue Burgun	Vice President, NSW Police Association
	Ms Vicki Sokias	Research Officer, NSW Police Association
Tuesday 28 February 2012	Ms Kerrie Radford	Family Support & Sexual Assault Worker, Binaal Billa Family Violence Prevention Legal Service
Jemalong Regional Education Centre, Forbes	Grant Neilsen	Branch Manager, CentaCare Wilcannia/Forbes
	Ralph Smith	Aboriginal Men's Worker, CentaCare Wilcannia/Forbes
	Beryl Powell	Family Support Worker, Condobolin Family Support
	Heather Blackley	Youth Services Manager, Western Plains Regional Development
	Bev Maher	Family Support Worker, Lake Cargelligo Family Support
	Donna Bliss	CEO, Yoorana Gunya Family Healing Centre Aboriginal Corporation
	Dee Anderson	Aboriginal Family Support Worker, Yoorana Gunya Family Healing Centre Aboriginal Corporation
	Julie Webb	Coordinator, Aboriginal Community Support Services CareWest
	Peter Harris	Outreach Worker, Weigelli Centre Aboriginal Corporation
	Cathie Schatz	Outreach Worker, Forbes Women's Refuge
	Rebecca Smith	Outreach Worker , Forbes Women's Refuge
	Leanne Walsh	Community Development Coordinator, Cowra Neighbourhood Centre

Date	Name	Position and Organisation
	Debra Calliss	Family Support Worker, Condobolin Family Support
	Patrick Latham	A/Solicitor-in-charge, Legal Aid NSW
	Mary Dempsey	Principal Solicitor, Binnal Billa Family Violence Prevention Legal Service
	Chris Helby	Callachor & Helby Solicitors
	Stephen Lawrence	Solicitor Advocate Western Zone, Aboriginal Legal Service
	Matilda Julian	Criminal Law Solicitor, Legal Aid NSW
	Kristy Kennedy	Graduate Lawyer, Legal Aid NSW
	Beverley Walker	Registrar, Parkes Local Court
	Superintendent Robert Ryan	Commander, Lachlan Local Area Command, NSW Police Force
	Superintendent Marty Fileman	Lachlan Local Area Command, NSW Police Force
	Inspector Paul Jones	Crime Manager, Lachlan Local Area Command, NSW Police Force
	Jeff Fox	Registrar, Forbes Local Court
	Kevin Read	Aboriginal Community/Court Liaison Officer, NSW Police
	Rebecca Camilleri	Domestic Violence Coordinator, Western Region, NSW Police Force
	Judy Dinnington	Forbes District Office, Community Offenders Service
	Anthony Towney	Forbes District Office, Community Offenders Service
	Jane Beach	Coordinator Women's Health/Domestic Violence, Western NSW Local Health Network
	Patrick Rosser	Social Worker, Forbes Community Health Service
	Anna Todd	Registrar, Sexual Assault Service, Parkes Community Health
	Andrea Butler	Social Worker, Parkes Community Health
	Margaret Burns	Drug & Alcohol Specialist Worker, Forbes Community Health Service
	Cherie Crothers	Central Division of General Practice
Monday 5 March 2012 Macquarie Room, Parliament	Ms Rachel Martin	Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre

Date House	Name	Position and Organisation
	Ms Thea Deakin-Greenwood	Solicitor, Warringa Baiya Aboriginal Women's Legal Centre
	Ms Cheryl Alexander	Chair, Women's Domestic Violence Court Advocacy Network
	Ms Julie Hourigan-Rouse	Executive Officer, Women's Domestic Violence Court Advocacy Network
	Ms Susan Peir	Coordinator, Women's Domestic Violence Court Advocacy Network
	His Honour Judge Graeme Henson	Chief Magistrate, Local Court of NSW
	His Honour Judge Mark Marien	President, Children's Court of NSW
	Magistrate Paul Mulroney	Children's Court of NSW
	Ms Jane Sanders	Principal Solicitor, Shopfront Youth Legal Centre
	Ms Rosslyn Mayne	Principal Solicitor, Inner City Legal Centre
	Ms Kate Duffy	Solicitor, Inner City Legal Centre
19 March 2012	Mr David Fanning	Magistrate, Neighbourhood Justice Centre
Site visit to Neighbourhood Justice Centre, Collingwood	Ms Maree Foelz	Project Officer, Neighbourhood Justice Centre
	Mr Cameron Wallace	Mental Health Clinician, Client Services, St Vincent's Mental Health Service
19 March 2012	Magistrate Sue Wakeling	Heidelberg Magistrates' Court
Site visit to Heidelberg Magistrates' Court	Magistrate Michael Wighton	Heidelberg Magistrates' Court
	Ms Mereana White	Manager, Family Violence Unit
	Ms Megan Andison	Family Violence Division Coordinator
	Ms Helen McQueen	Respondent Support Worker
	Senior Constable Lea Bowen	Family Violence Liaison Officer
	Senior Constable Michelle Collier	Trainee Family Violence Liaison Officer
	Sergeant Eugene Kontas	Police Prosecutor
20 March 2012	Ms Lyn Walker	Executive Manager, Participation and Equity for Health
Site visit to VicHealth	Ms Renee Imbesi	Program Manager, Preventing Violence Against Women
	Ms Kiri Bear	Senior Project Officer, Preventing

Date	Name	Position and Organisation
20 March 2012 Site visit to Melbourne Magistrates' Court	Magistrate Kate Hawkins	Violence Against Women Lead Magistrate, Family Violence
	Mr Jason Morks	Manager, Family Law and Violence Registry
	Ms Polly Walker-Dorris	Intern, Magistrate Hawkins' office
	Ms Kate Walker	Koori Women's Family Violence Support Worker
	Ms Bez Robertson	Family Violence Support Worker
	Mr Ash Hart	Specialist Family Violence Registrar
	Hon Mary Wooldridge	Minister for Women's Affairs, Minister for Community Services
20 March 2012 Meeting at Minister Mary Wooldridge's Office, Melbourne	Mr Matt Bark	Advisor, Minister Wooldridge
	Ms Paris Room	Advisor, Minister Wooldridge
	Ms Jill McCabe	Director, Industry and Workplace Reform, Department of Human Services
	Ms Michelle Jones	Manager of Funding Program for Women's Domestic Violence Court Advocacy Services, Legal Aid
21 March 2012 Site visit to Sutherland Local Court	Ms Bev Lazarou	Mentor for Funding Program for Women's Domestic Violence Court Advocacy Services, Legal Aid
	Ms Susan Peir	Coordinator, Women's Domestic Violence Court Advocacy Services
	Ms Kimberly Hood	Assistant Coordinator, Women's Domestic Violence Court Advocacy Services
	Mr Greg Elks	Solicitor, Law Society of New South Wales
	Mr Brett Thomas	Solicitor, Law Society of New South Wales
	Magistrate Jacqueline Trad	Magistrate, Sutherland Local Court
	Mr Lance Templeton	Registrar, Sutherland Local Court
	Ms Kay Porter	Court Officer, Sutherland Local Court
	Sergeant Sharon Walker	Police Prosecutor, Sutherland Local Court
	Senior Constable Janelle Charlesworth	Domestic Violence Liaison Officer, Miranda Local Area Command
	Senior Constable Elizabeth Munce	Domestic Violence Liaison Officer, Hurstville Local Area Command
	Senior Constable Mel Radburn	Domestic Violence Liaison Officer, Sutherland Local Area Command
Senior Constable Vanessa Curmi	Domestic Violence Liaison Officer,	

Date	Name	Position and Organisation
Monday 26 March 2012 Jubilee Room, Parliament House	Ms Libby Davies	Sutherland Local Area Command Chief Executive Officer, White Ribbon Foundation
	Ms Kate Alexander	National Marketing and Communications Manager
	Ms Robyn Cotterell-Jones	Executive Director, Victims of Crime Assistance League Inc NSW (VOCAL)
	Mr Howard Brown OAM	Vice President, Victims of Crime Assistance League Inc NSW (VOCAL)
	Ms Catherine Gander	Executive Officer, NSW Women's Refuge Movement
	Ms Angela Walsh	National Manager, Growing Respect/Research and Evaluation, NAPCAN, Love Bites
	Ms Bonnie Souter	Manager, Community Partnerships Growing Respect, NAPCAN, Love Bites
	Ms Eleonora Raffo	Coordinator, Fairfield/Liverpool Staying Home Leaving Violence Project, South West Sydney Legal Centre
	Ms Claudia Guajaredo	Crime Prevention Officer, Fairfield City Council
	Ms Ranna Peera	Child, Youth and Family Worker, Community First Step
Monday 30 April 2012 Macquarie Room, Parliament House	Dr Kerry Chant	Deputy Director General for Population Health and Chief Health Officer, NSW Ministry of Health
	Ms Meredith Claremont	Director, Maternity, Children and Young People's Health, NSW Ministry of Health
	Ms Mailin Suchting	Acting Associate Director, Children, Young People and Family Health and Wellbeing Unit, NSW Ministry of Health
	Superintendent Rod Jouning	Head of Victoria Police Sexual and Family Violence Division
	Detective Inspector Kerry Hynam	Officer in Charge, Violence Against Women and Children Strategy Group, Victoria Police
	Ms Claire Waterman	Senior Project Coordinator, Violence Against Women and

Date	Name	Position and Organisation
	Mr Brendan Thomas	Children Strategy Group, Victoria Police Assistant Director General, Crime Prevention and Community Programs, Department of Attorney General and Justice
	Ms Carolyn Thompson	Manager, Domestic Violence, Department of Attorney General and Justice
	Ms Jane Brock	Executive Officer, Immigrant Women's Speakout Association
	Ms Tara Dias	Senor Policy Officer, NSW Consumer Advisory Group – Mental Health Inc
	Ms Ngila Bevan	Advocacy Projects Manager, People with Disability Australia
	Mr Senthoran Raj	Senior Policy Advisor, Gay and Lesbian Rights Lobby
	Mr Ian Day	Chief Executive Officer, Council on the Ageing NSW
Monday 18 June 2012 Macquarie Room Parliament House	Ms Heather Blackley	Youth Services Manager, Western Plains Regional Development Incorporated
	Ms Maura Boland	Deputy Director, Strategy and Policy, Department of Family and Community Services
	Dr Kerry Chant	Deputy Director General, Population Health and Chief Health Officer, NSW Ministry of Health
	Ms Robyn Cotterell-Jones	Executive Director, Victims of Crime Assistance League Inc New South Wales
	Ms Denele Crozier	Executive Officer, Women's Health New South Wales
	Ms Alison Frame	Acting Executive Director, Office for Women's Policy, Department of Family and Community Services
	Ms Catherine Gander	Executive Officer, New South Wales Women's Refuge Movement
	Ms Betty Green	Chair, New South Wales Domestic Violence Coalition
	His Honour Judge Graeme Henson	Chief Magistrate of New South Wales
	Ms Beverly Lazarou	Project Officer: Mentoring, Women's Domestic Violence Court

Date	Name	Position and Organisation
	Ms Janet Loughman	Advocacy Program Principal Solicitor, Women's Legal Service New South Wales
	Ms Annmarie Lumsden	Executive Director Strategic Planning and Policy and Business Reporting, Legal Aid New South Wales
	Ms Gaby Marcus	Director, Australian Domestic and Family Violence Clearinghouse
	Ms Rachael Martin	Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre
	Mr Mark Murdoch	Assistant Commissioner New South Wales Police
	Mr Brendan Thomas	Assistant Director-General, Crime Prevention and Community Programs, Department of Attorney General and Justice
	Ms Lyn Walker	Executive Manager, Participation and Equity for Health, Vichealth
	Dr Jane Wangmann	Lecturer, Faculty of Law, University of Technology Sydney
	Dr Don Weatherburn	Director, New South Wales Bureau of Crime Statistics and Research

Appendix 3 Tabled Documents

Monday 17 October 2011,

Public Hearing, Waratah Room, Parliament House

- 1 Ms Gaby Marcus, Director, Australian Domestic and Family Violence Clearinghouse, tendered the following documents:
 - ‘Background paper: use of GPS tracking devices to monitor DV offenders’
 - ‘Programs for men who perpetrate domestic violence: an examination of the issues underlying the effectiveness of intervention programs’, *Journal of Family Violence*, Vol 24, 2009, pp 203-212
 - ‘Arresting practices: exploring issues of dual arrest for domestic violence’, Australian Domestic and Family Violence Clearinghouse, Stakeholder Paper 3, December 2007,
 - ‘Responding to men who perpetrate domestic violence: controversies, interventions and challenges’, Australian Domestic and Family Violence Clearinghouse, Issues Paper 7, 2002
 - Australian Domestic and Family Violence Clearinghouse, Newsletter 43, Summer 2011,
 - ‘Better policing, better outcomes: changing police culture to prevent domestic violence and homicide’, Australian Domestic and Family Violence Clearinghouse, Issues Paper 18, April 2009
 - Australian Domestic and Family Violence Clearinghouse, Understanding Domestic Violence and Integration in the NSW Context: A Literature Review for NSW Department of Community Services, Report prepared on behalf of UNSW Global Pty Ltd, 19 October 2010 and links to New York City Mayor’s Office to Combat Domestic Violence, and
 - ‘Family Justice Centre’ and Centre for Court Innovation, New York, ‘Domestic Violence: Overview’.
- 2 Ms Annette Michaux, General Manager, Policy and Research, Benevolent Society, tendered the following documents:
 - ‘Moving forward: Women’s journeys after leaving an abusive relationship’, Benevolent Society, June 2009
 - ‘No way to live: Women’s experiences of negotiating the family law system in the context of domestic violence’, Benevolent Society, June 2010
 - ‘Moving forward: Women’s journeys after leaving an abusive relationship’, Benevolent Society, Research Snapshot, June 2009
 - ‘No way to live: Women’s experiences of negotiating the family law system in the context of domestic violence’, Benevolent Society, Research Snapshot, June 2010, and
 - ‘Strengths Based Practice in Children’s Services Project, September 2006 – June 2008: Evaluation Report’, Benevolent Society, September 2008.

Monday 7 November 2011**Public Hearing, Macquarie Room, Parliament House**

- 3 Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research tendered a PowerPoint presentation entitled 'Domestic violence: key facts and findings'
- 4 Ms Susan Smith, Solicitor and Coordinator, Sydney Women's Domestic Violence Court Advocacy Service tendered a Paper recommending the development of specialised domestic violence court lists within all local courts in NSW.

Monday 20 February 2012**Public Hearing, Macquarie Room, Parliament House**

- 5 Ms Maura Boland, Deputy Director, Strategy and Policy, Family and Community services tendered a document entitled 'FACS' role in reducing domestic violence'
- 6 Mr Greg Andresen, Senior Researcher, One in Three campaign, tendered the following documents:
 - Executive summary 'Intimate Partner Abuse of Men', by Emily Tilbrook, Alfred Allan and Greg Dear, Men's Advisory Network (MAN), Perth, 2010
 - Annette Hennessy and Carol Willie, 'Ending Family Violence Program, Woorabinda', CDFVR Indigenous Family Violence Prevention Forum, Mackay, 2 May 2006,
 - Nicola Graham-Kevan, 'Domestic Violence: Research and Implications for Batterer Programmes in Europe', European Journal of Criminal Policy Research, 2007, Vol 13, pp 213-225, and
 - Stephen Fisher, 'From Violence to Coercive Control: Renaming Men's Abuse of Women', White Ribbon Policy Research Series No. 3.

Tuesday 28 February 2012**Private briefings, Jemalong Regional Education Centre, Forbes**

- 7 Ms Cherie Crothers, Central Division of General Practice, tendered a document 'The effects on children who witness domestic violence'.

Monday 5 March 2012**Public Hearing, Macquarie Room, Parliament House**

- 8 Ms Thea Deakin-Greenwood, Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre tendered the following documents:
 - Executive summary of the NSW Auditor-General's report, *Responding to Domestic and Family Violence*, November 2011
 - Flatters NA, 'Problem-solving courts, domestic violence and the Yukon Domestic Violence Treatment Option Court: A brief working overview', paper presented to the 8th Biennial Conference of the International Association of Women Judges, 3-7 May 2006
 - Moore E, 'Youth Justice Conferences versus Children's Court: A comparison of time to finalisation', NSW Bureau of Crime Statistics and Research, Issue Paper No 74, December 2011
 - Luke G and Lind B, 'Reducing juvenile crime: Conferencing versus court', NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin No 69, April 2002

- Wingard B, 'Conversation with lateral violence', *International Journal of Narrative Therapy and Community Work*, No 1, 2010 and
 - Ringland C and Fitzgerald J, 'Factors which influence the sentencing of domestic violence offenders', NSW Bureau of Crime Statistics and Research, Issue Paper No 48, July 2010.
- 9 His Honour Judge Graeme Henson, Chief Magistrate of the Local Court of New South Wales tendered a list of educational programs for Magistrates of the Local Court of NSW containing a domestic and personal violence component and NSW Bureau of Crime Statistics and Research, 'CREDIT Evaluation', *Media Release*, 5 March 2012.

Monday 26 March 2012

Public Hearing, Jubilee Room, Parliament House

- 10 Ms Robyn Cotterell-Jones, Executive Director, Victims of Crime Assistance League Inc NSW tendered two leaflets explaining the services provided by VOCAL
- 11 Ms Catherine Gander, Executive Officer, NSW Women's Refuge Movement, tendered the following documents:
- Leslie Laing, *They should have this in every court: Evaluation of NSW Women's Refuge Movement Women's Family Law Support Service*, University of Sydney, 2011,
 - Australian Institute of Health and Welfare, *Needs of clients in the Supported Accommodation Assistance Program (New South Wales: Report on the SAAP 'High and complex needs census' 2008*, AIHW, Canberra, November 2009,
 - NSW Women's Refuge Movement submission to the Australian Law Reform Commission Family Violence Inquiry, June 2010, NSW Women Refuge Movement and UWS Urban Research Centre, *The impact of housing on the lives of women and children: post domestic violence crisis accommodation*, February 2009, and
 - NSW Women's Refuge Movement Domestic Violence Specialist Services, *Annual Report 2010/2011*.
- 12 Ms Bonnie Souter, Manager, Community Partnerships Growing Respect, NAPCAN, Love Bites, tendered the following documents:
- Trudi Peer and Angela Walsh, 'NAPCAN's Growing Respect: Whole of school approach to violence prevention and respectful relationships',
 - Manjula Waniganayake and Karen Roberts, *Evaluation of the implementation of the "All Children Being Safe" (ACBS) Program in Three Preschools in NSW*, Institute of Early Childhood, Macquarie university and Access Macquarie Ltd, December 2011 and *Love Bites Respectful Relationships Program: Facilitator Training Manual*, NAPCAN.

Monday 30 April 2012

Public Hearing, Macquarie Room, Parliament House

- 13 Dr Kerry Chant, Deputy Director General for Population Health and Chief Health Officer, tendered the following documents:
- NSW Health Screening for Domestic Violence form, and
 - 'Z card' providing information on domestic violence and relevant services, Education Centre Against Violence and NSW Health, December 2008.

14 *Superintendent Rod Jouning, Head of Victoria Police Sexual and Family Violence Division, tendered the following documents:*

- *Victoria Police, Code of Practice for the Investigation of Family Violence,*
- *Victoria Police, Living Free from Violence - Upholding the Right: Victoria Police Strategy to Reduce Violence against Women and Children 2009-2014, and*
- *Victoria Police, Family Violence Risk Assessment and Risk Management Report ('L17 Form'), current version and proposed new version.*

Appendix 4 Answers to questions on notice

The Committee received answers to questions on notice and/or supplementary questions from:

- Australian Domestic and Family Violence Clearing House
- Benevolent Society
- Catherine Smith
- Children's Court of New South Wales
- Council on the Ageing New South Wales
- Department of Attorney General and Justice
- Department of Family and Community Services
- Dr Jane Wangmann
- Fairfield Domestic Violence Committee
- Inner City Legal Service
- Judge Graeme Henson, The Chief Magistrate of the Local Court NSW
- Law Society of New South Wales
- Legal Aid NSW
- NSW Bureau of Crime Statistics and Research
- NSW Consumer Advisory Group – Mental Health Inc
- NSW Ministry of Health
- NSW Police Association
- NSW Police Force
- NSW Women's Refuge Movement
- One in Three Campaign
- Redfern Legal Centre – Sydney Women's Domestic Violence Court Advocacy Service
- Shopfront Youth Legal Centre
- White Ribbon Foundation
- Victims Of Crime Assistance League
- Victoria Police
- Women's Domestic Violence Court Advocacy Service Network Inc
- Women's Legal Services NSW
- Wirringa Baiya Women's Legal Centre

Appendix 5 Minutes

Minutes No. 4

Monday 25 July 2011

Room 1153, Parliament House, Sydney, 1.00 pm

1. Members present

Mr Blair (*Chair*)

Mr Donnelly

Ms Maclaren-Jones (from 1.25 pm)

Ms Cusack (*via teleconference*)

Ms Westwood (*via teleconference*)

2. Apologies

Ms Faehrmann

3. Electronic participation

Ms Cusack and Ms Westwood advised the Secretariat that they will be participating via electronic participation according to clause 12 of the resolution of the House appointing the Committee.

4. Confirmation of previous Minutes

Resolved, on the motion of Mr Donnelly: That Draft Minutes No. 3 be confirmed.

5. Correspondence

The following correspondence was noted:

Received

- 15 July 2011 – From the Hon Pru Goward MP, Minister for Family and Community Services and Minister for Women, to the Chair, referring proposed terms of reference for an inquiry into domestic violence trends and issues in NSW to the Committee
- ***
- 21 July 2011 – From the Hon Cate Faehrmann MLC, Member, Standing Committee on Social Issues, to the Chair, sending apologies to the meeting of 25 July 2011 and expressing support for the proposed inquiry into domestic violence trends and issues in NSW.

Sent:

- 24 June 2011 – From the Chair to the Hon Pru Goward MP, Minister for Family and Community Services and Minister for Women seeking consideration of potential areas for inquiry
- ***.

6. Consideration of Ministerial terms of reference

Resolved, on the motion of Ms Westwood: That the Committee adopt the terms of reference from the Minister for Family and Community Services and Minister for Women to undertake an inquiry into domestic violence trends and issues in NSW.

Resolved, on the motion of Ms Westwood: That under clause 5(2) of the resolution of the House establishing the Standing Committees dated 9 May 2011, the Chair inform the House of the receipt of terms of reference for an inquiry into domestic violence trends and issues in NSW.

7. Inquiry into the domestic violence trends and issues in NSW

Advertising and call for submissions

Resolved, on the motion of Mr Donnelly: That the inquiry and call for submissions be advertised in major metropolitan newspapers in the week commencing 1 August 2011.

Resolved, on the motion of Mr Donnelly: That the closing date for submissions be Friday 16 September 2011.

Resolved, on the motion of Mr Donnelly: That the Chair issue a media release announcing the establishment of the inquiry.

Invitations to stakeholders to make a submission

Resolved, on the motion of Mr Donnelly: That the Committee write to the attached list of stakeholders, informing them of the inquiry and inviting them to make a submission.

Resolved, on the motion of Mr Donnelly: That members notify the Secretariat of any additional stakeholders they wish to be invited by COB 29 July 2012.

Resolved, on the motion of Mr Donnelly: That the Committee write to Dr Don Weatherburn, Director, NSW Bureau of Crimes Statistics and Research, to request up-to-date information on trends in domestic violence in NSW.

Possible hearing dates

Resolved, on the motion of Mr Donnelly: That the Committee hold public hearings as part of the inquiry into domestic violence trends and issues in NSW at Parliament House on 21 October 2011 and 5 December 2011, and that further hearings be held in February 2012.

Advice from Clerk Assistant - Committees

Mr Steven Reynolds, Clerk Assistant – Committees, provided advice to the Committee on the handling of potentially sensitive issues in respect of submissions and evidence.

8. ***

9. Adjournment

The Committee adjourned at 1.45 pm *sine die*.

Rachel Simpson
Committee Clerk

Minutes No. 5

Wednesday 24 August 2011

Member's Lounge, Parliament House, Sydney, 1.00 pm

1. Members present

Mr Blair (*Chair*)
Mr Donnelly
Ms Cusack
Ms Faehrmann
Ms Maclaren-Jones (from 1.10 pm)
Ms Westwood

2. Previous minutes

Resolved, on the motion of Ms Cusack: That Draft Minutes No. 4 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 28 July 2011 – Email exchange between Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research and Ms Merrin Thompson, Principal Council Officer, attaching a copy of report on domestic assault.
- 5 August 2011 – Letter from Mr Laurie Glanfield, Director-General, Attorney-General and Justice, advising departmental representatives will contact Principal Council Officer regarding the inquiry into domestic violence trends and issues.
- 11 August 2011 – Letter from the Hon Justice R.O. Blanch, Chief Judge, District Court of NSW, advising that the agency will not be making a submission to the inquiry into domestic violence trends and issues.
- 15 August 2011 – Email from Ms Katrina Clark, Association for Children with Disability NSW, referring the Committee to ‘Through the Maze’ booklet.

4. ***

5. Adjournment

Rachel Simpson
Committee Clerk

Minutes No. 6

Monday 12 September 2011

Waratah Room, Parliament House, 9.45 am

1. Members present

Mr Blair (*Chair*)
Ms Westwood (*Deputy Chair*)
Mr Donnelly
Ms Faehrmann
Mrs Maclaren-Jones

2. Apollgies

Ms Cusack

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 5 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 5 September 2011 – Email from Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research to Ms Merrin Thompson, Principal Council Officer, attaching data regarding domestic assault (Inquiry into domestic violence trends and issues).

5. ***

6. ***

7. ***

8. ***

9. ***

10. Adjournment

The Committee adjourned at 5.40 pm until 9.45 am on Monday 10 October 2011.

Teresa McMichael
Committee Clerk

Minutes No. 7

Monday 10 October 2011

Waratah Room, Parliament House, 9.35 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones

2. Apologies

Ms Cusack

3. Previous minutes

Resolved, on the motion of Ms Faehrmann: That draft Minutes No. 6 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received:

- 14 September 2011 – From Mr Roman Quaedvlieg, Chief Police Officer for the Australian Capital Territory, to the Chair, indicating that he will not be making a submission to the inquiry into domestic violence trends and issues in NSW.
- 23 September 2011 – From Ms Phillipa Davis, Principal Solicitor, Hawkesbury Nepean Community Legal Centre Inc, to the Director, indicating that her organisation will not be making a submission to the inquiry into domestic violence trends and issues in NSW, and endorsing the submission of Women's Legal Services NSW.

5. Other business

Resolved, on the motion of Ms Westwood: That:

- the Committee appoint a sub-committee for the purposes of conducting meetings. and hearings site visits as part of the inquiry into transition support for students with additional or complex needs and their families and the inquiry into domestic violence trends and issues in NSW
- Mr Blair, Ms Westwood, Mr Donnelly, Ms Faehrmann and Mrs Maclaren-Jones be members of the sub-committee
- The sub-committee only meet when the committee is unable to meet due to lack of quorum requirements under paragraph 9 of the resolution appointing the committee.

6. Inquiry into domestic violence trends and issues in NSW

6.1. Submissions

The Committee noted that a total of 67 submissions had been received to date.

Resolved, on the motion of Ms Westwood: That the Committee authorise publication of Submission Nos 2-47 and 49-67.

Resolved, on the motion of Ms Westwood: That the Committee authorise publication of Submission No. 1 with the exception of the attachment which is to remain confidential.

Resolved, on the motion of Ms Westwood: That the Committee authorise the publication of Submission No. 48 with the exception of the name and other identifying details of the author, which are to remain confidential.

Resolved, on the motion of Ms Westwood: That the Committee authorise the publication of all future submissions to the inquiry into domestic violence trends and issues in NSW, subject to the Committee Clerk checking for confidentiality, adverse mention and other issues. Submissions identified as containing confidentiality, adverse mention or other issues will then be considered by the Committee.

6.2. Hearings

Resolved, on the motion of Ms Faehrmann: That the Committee adopt the proposed schedule of hearings prepared by the Secretariat in consultation with the Chair.

Resolved, on the motion of Ms Faehrmann: That the Committee hold six additional hearings, including a one day site visit to Western Sydney and a one day site visit to western New South Wales, with the details to be determined by the Chair in consultation with the Committee.

7. ***

8. Adjournment

The Committee adjourned at 5.19 pm until 9.20 am on Monday 17 October 2011 (*public hearing, inquiry into domestic violence trends and issues in NSW*).

Teresa McMichael
Committee Clerk

Minutes No. 8

Monday 17 October 2011
Waratah Room, Parliament House, 9.31 am

1. Members present

Mr Blair (*Chair*)
Ms Westwood (*Deputy Chair*)
Ms Faehrmann
Mrs Maclaren-Jones

2. Apologies

Ms Cusack
Mr Donnelly

3. Previous minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft Minutes No. 7 be confirmed.

4. Inquiry into domestic violence trends and issues in NSW

4.1. Filming by students

Resolved, on the motion of Ms Faehrmann: That the Committee authorise students from the University of Technology to film the hearing.

4.2. Supplementary questions

Resolved, on the motion of Ms Faehrmann: That for the duration of the inquiry into domestic violence trends and issues in NSW, supplementary questions may be lodged with the secretariat up to two days following the receipt of the hearing transcript.

4.3. Return of answers to questions on notice

Resolved, on the motion of Ms Faehrmann: That for the duration of the inquiry into domestic violence trends and issues in NSW, witnesses be requested to return answers to questions on notice and supplementary questions within 21 days of the date on which questions are forwarded to the witness.

5. Other business

The Committee noted that the witnesses from the Department of Family and Community Services scheduled to appear at the hearing on 17 October 2011 were now unable to attend.

Resolved, on the motion of Ms Westwood: That the witnesses from the Department of Family and Community Services be rescheduled to appear at a hearing in February 2012.

6. Adjournment

The Committee adjourned at 9.50 am and resumed at 10.46 am.

7. Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from the Department of Attorney General and Justice were sworn and examined:

- Ms Penelope Musgrave, Director, Criminal Law Review
- Mr Brendan Thomas, Assistant Director-General, Crime Prevention and Community Programs
- Mr Luke Grant, Assistant Commissioner, Offender Services and Programs, Corrective Services
- Ms Julie Webber, A/Executive Director, Community Offender Management, Corrective Services.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Betty Green, Convenor, NSW Domestic Violence Committee Coalition and Manager, Liverpool Women's Health Service
- Ms Julie Stewart, Secretary, NSW Domestic Violence Committee Coalition and Coordinator, Manly Warringah Women's Resource Centre.

The evidence concluded and the witnesses withdrew.

The following witnesses from Australian Domestic and Family Violence Clearinghouse were sworn and examined:

- Ms Gaby Marcus, Director
- Dr Rochelle Braaf, Senior Research Officer.

Ms Marcus tendered the following documents:

- Unauthored document titled 'Background paper: use of GPS tracking devices to monitor DV offenders'

- Andrew Day, Donna Chung, Patrick O’Leary and Ed Carson, ‘Programs for men who perpetrate domestic violence: an examination of the issues underlying the effectiveness of intervention programs’, *Journal of Family Violence*, Vol 24, 2009, pp 203-212
- Rochelle Braaf and Clare Sneddon, ‘Arresting practices: exploring issues of dual arrest for domestic violence’, *Australian Domestic and Family Violence Clearinghouse*, Stakeholder Paper 3, December 2007
- Lesley Laing, ‘Responding to men who perpetrate domestic violence: controversies, interventions and challenges’, *Australian Domestic and Family Violence Clearinghouse*, Issues Paper 7, 2002
- Australian Domestic and Family Violence Clearinghouse, Newsletter 43, Summer 2011
- Gaby Marcus, ‘Better policing, better outcomes: changing police culture to prevent domestic violence and homicide’, *Australian Domestic and Family Violence Clearinghouse*, Issues Paper 18, April 2009
- Australian Domestic and Family Violence Clearinghouse, *Understanding Domestic Violence and Integration in the NSW Context: A Literature Review for NSW Department of Community Services*, Report prepared on behalf of UNSW Global Pty Ltd, 19 October 2010
- New York City Mayor’s Office to Combat Domestic Violence, ‘Family Justice Centre’, <http://www.nyc.gov/html/ocdv/html/fjc/fjc.shtml>
- Centre for Court Innovation, New York, ‘Domestic Violence: Overview’, <http://www.courtinnovation.org/topic/domestic-violence>.

The evidence concluded and the witnesses withdrew.

The following witness from the University of Sydney was sworn and examined:

- Dr Lesley Laing, Senior Lecturer, Faculty of Education and Social Work.

The evidence concluded and the witness withdrew.

The following witnesses from Benevolent Society were sworn and examined:

- Ms Annette Michaux, General Manager, Policy and Research
- Ms Jenni Hutchins, Senior Manager, South West and Western Sydney
- Ms Melina Isgro-Rarp, Program Manager, Centre for Women’s Health, Macarthur.

Ms Michaux tendered the following documents:

- Benevolent Society Policy and Research Team, ‘Moving forward: Women’s journeys after leaving an abusive relationship’, Benevolent Society, June 2009
- Lesley Laing, ‘No way to live: Women’s experiences of negotiating the family law system in the context of domestic violence’, Benevolent Society, June 2010
- ‘Moving forward: Women’s journeys after leaving an abusive relationship’, Benevolent Society, Research Snapshot, June 2009
- ‘No way to live: Women’s experiences of negotiating the family law system in the context of domestic violence’, Benevolent Society, Research Snapshot, June 2010
- ‘Strengths Based Practice in Children’s Services Project, September 2006 – June 2008: Evaluation Report’, Benevolent Society, September 2008.

The evidence concluded and the witnesses withdrew.

The public hearing concluded and the public and media withdrew.

8. Acceptance of documents tendered during the public hearing

Resolved, on the motion of Ms Faehrmann: That the Committee accept the following documents tendered during the public hearing:

- Unauthored document titled ‘Background paper: use of GPS tracking devices to monitor DV offenders’
- Andrew Day, Donna Chung, Patrick O’Leary and Ed Carson, ‘Programs for men who perpetrate domestic violence: an examination of the issues underlying the effectiveness of intervention programs’, *Journal of Family Violence*, Vol 24, 2009, pp 203-212

- Rochelle Braaf and Clare Sneddon, 'Arresting practices: exploring issues of dual arrest for domestic violence', Australian Domestic and Family Violence Clearinghouse, Stakeholder Paper 3, December 2007
- Lesley Laing, 'Responding to men who perpetrate domestic violence: controversies, interventions and challenges', Australian Domestic and Family Violence Clearinghouse, Issues Paper 7, 2002
- Australian Domestic and Family Violence Clearinghouse, Newsletter 43, Summer 2011
- Gaby Marcus, 'Better policing, better outcomes: changing police culture to prevent domestic violence and homicide', Australian Domestic and Family Violence Clearinghouse, Issues Paper 18, April 2009
- Australian Domestic and Family Violence Clearinghouse, Understanding Domestic Violence and Integration in the NSW Context: A Literature Review for NSW Department of Community Services, Report prepared on behalf of UNSW Global Pty Ltd, 19 October 2010
- New York City Mayor's Office to Combat Domestic Violence, 'Family Justice Centre', <http://www.nyc.gov/html/ocdv/html/fjc/fjc.shtml>
- Centre for Court Innovation, New York, 'Domestic Violence: Overview', <http://www.courtinnovation.org/topic/domestic-violence>
- Benevolent Society Policy and Research Team, 'Moving forward: Women's journeys after leaving an abusive relationship', Benevolent Society, June 2009
- Lesley Laing, 'No way to live: Women's experiences of negotiating the family law system in the context of domestic violence', Benevolent Society, June 2010
- 'Moving forward: Women's journeys after leaving an abusive relationship', Benevolent Society, Research Snapshot, June 2009
- 'No way to live: Women's experiences of negotiating the family law system in the context of domestic violence', Benevolent Society, Research Snapshot, June 2010
- 'Strengths Based Practice in Children's Services Project, September 2006 – June 2008: Evaluation Report', Benevolent Society, September 2008.

9. Publication of data provided by the NSW Bureau of Crime Statistics and Research

Resolved, on the motion of Ms Westwood: That the Committee publish the three tables of data recently provided by the NSW Bureau of Crime Statistics and Research, titled:

- 'NSW Recorded Crime Statistics 2001 to 2010: Number of incidents, trend and average yearly per cent change of selected offences recorded by the NSW Police Force as DV related'
- 'NSW Recorded Crime Statistics 2001 to 2010: Number of AVOs granted, trend and average yearly per cent change'
- 'NSW Recorded Crime Statistics 2001 to 2010: Number of persons of interest (POIs) proceeded against by the NSW Police Force for domestic assault plus the trend and average yearly per cent change'.

10. Adjournment

The Committee adjourned at 5.15 pm until 8.45 am on Monday 7 November 2011.

Merrin Thompson
Committee Clerk

Minutes No. 9

Monday 7 November 2011

Macquarie Room, Parliament House, 8.37 am

1. Members present

Mr Blair (*Chair*)
Ms Westwood (*Deputy Chair*) (at 9.03 am)
Mr Donnelly
Mrs Maclaren-Jones

2. Apologies

Ms Cusack
Ms Faehrmann

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 8 be confirmed.

4. Correspondence***Received:***

- 19 October 2011 – Email from Ms Betty Green, Manager, Liverpool Women’s Health Service and Convenor, NSW Domestic Violence Coalition, to the Principal Council Officer, regarding proposed court visits for the inquiry into domestic violence trends and issues in NSW
- 21 October 2011 – Email from Ms Katrina Grech, NSW Bureau of Crime Statistics and Research, to the Principal Council Officer, attaching data on penalties for domestic violence related offences.

5. Public hearing – inquiry into domestic violence trends and issues in NSW

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness from the Faculty of Law, University of New South Wales was sworn and examined:

- Professor Julie Stubbs.

The evidence concluded and the witness withdrew.

The following witnesses from the NSW Bureau of Crime Statistics and Research were sworn and examined:

- Dr Don Weatherburn, Director
- Dr Katrina Grech, Senior Project Officer.

Dr Weatherburn tendered a PowerPoint presentation entitled “Domestic violence: key facts and findings.

The evidence concluded and the witnesses withdrew.

The following witnesses from Legal Aid NSW were sworn and examined:

- Ms Annmarie Lumsden, Executive Director, Strategic Planning and Policy and Business Reporting
- Ms Angela Jones, Senior Solicitor, Family and Domestic Violence
- Ms Rachelle Johnston, Project Officer, Women’s Domestic Violence Court Advocacy Program.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Catherine Smith.

The evidence concluded and the witness withdrew.

The following witnesses from Women’s Legal Services NSW were sworn and examined:

- Ms Helen Campbell, Executive Officer
- Ms Edwina MacDonald, Law Reform and Policy Coordinator
- Ms Rebecca Hitchcock, Solicitor.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Joanna Shulman, Chief Executive Officer, Redfern Legal Centre

- Mr David Porter, Solicitor, Redfern Legal Centre
- Ms Susan Smith, Solicitor and Coordinator, Sydney Women's Domestic Violence Court Advocacy Service.

Ms Smith tabled a document by Redfern Legal Centre and Sydney Women's Domestic Violence Court Advocacy Service recommending the development of specialised domestic violence court lists within all local courts in NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Law Society of NSW were sworn and examined:

- Mr Brett Thomas, Member, Criminal Law Committee
- Mr Greg Elks, Member, Criminal Law Committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded and the public and media withdrew.

6. Acceptance of documents tendered during the public hearing

Resolved, on the motion of Mrs McLaren-Jones: That the Committee accept and publish the following documents tendered during the public hearing:

- PowerPoint presentation entitled "Domestic violence: key facts and findings", tendered by Dr Don Weatherburn
- Paper recommending the development of specialised domestic violence court lists within all local courts in NSW, tendered by Ms Susan Smith.

7. Other business

The Committee noted that Dr Jane Wangmann, Faculty of Law, University of Technology, Sydney, was unable to attend and will be rescheduled.

The Committee agreed to meet again in the last sitting week in November to discuss proposed site visits.

8. Adjournment

The Committee adjourned at 5.18 pm.

Merrin Thompson
Committee Clerk

Minutes No. 10

22 November 2011

Room 1153, Parliament House, 1.05 pm

Meeting as a Sub-committee

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*) (at 1.20 pm)

Ms Faehrmann

Mr Donnelly

2. Apologies

Ms Cusack

Mrs McLaren-Jones

3. Meeting as a sub-committee

The Committee met as a subcommittee according to the Committee's resolution of 10 October 2011.

4. Briefing from Mr Peter Achterstraat, Auditor-General, on the recent Audit Office report, Responding to Domestic and Family Violence

Resolved, on the motion of Ms Faehrmann: That, in accordance with Standing Order 218(2), the Committee invite Mr Peter Achterstraat and committee members' staff to attend the Sub-committee meeting on Tuesday 22 November at 1.00 pm.

Mr Peter Achterstraat, Auditor General, and Mr Michael Johnston, Performance Audit Leader, Audit Office of NSW, provided a briefing on the findings and recommendations of the recent Audit Office report, Responding to Domestic and Family Violence.

5. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 9 be confirmed.

6. *****7. Inquiry into domestic violence trends and issues in NSW****7.1. Submissions**

The Sub-committee noted that Submission No. 70 was published by the Committee Clerk under the authorisation of an earlier resolution.

7.2. Answers to questions on notice and supplementary questions

The Sub-committee noted that answers to questions on notice and supplementary questions were received from the following witnesses and published under the authorisation of a previous resolution:

- Department of Attorney General and Justice
- Australian Domestic and Family Violence Clearinghouse
- NSW Bureau of Crime Statistics
- Benevolent Society.

7.3. Proposed schedule of hearings and site visits

Resolved, on the motion of Ms Westwood: That the Sub-committee adopt the updated proposed schedule of hearings and site visits prepared by the Secretariat in consultation with the Chair.

Resolved, on the motion of Ms Faehrmann: That a further five days of hearings in Sydney (plus one reserve day), a one and a half day regional site visit to Forbes, a two day site visit to Victoria, a half day site visit to Sutherland Court, and a half day forum in Western Sydney, be held.

Resolved, on the motion of Mr Donnelly: That the Committee Chair seek the approval of the President to undertake the two day site visit to Victoria, at an approximate cost of \$7,263.

8. Next meeting

Monday 5 December at 9.00 am (site visit to Dubbo – inquiry into transition support for students with additional or complex needs and their families).

9. Adjournment

The Committee adjourned at 2.00 pm.

Merrin Thompson
Committee Clerk

Minutes No. 11

5 December 2011

Orana Height Public School, Dubbo, at 9.00 am

Meeting Room, Mission Australia Building, Dubbo, at 11.00 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Ms Faehrmann

Mr Donnelly

Mrs Maclaren-Jones

2. Apologies

Ms Cusack

3. ***

4. Next meeting

Monday 13 December at 9.15 am, Macquarie Room, Parliament House.

5. Adjournment

The Committee adjourned at 3.30 pm.

Teresa McMichael

Committee Clerk

Minutes No. 12

13 December 2011

Macquarie Room, Parliament House at 9.15 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones (from 11.30 am)

2. Apologies

Ms Cusack

Mrs Maclaren-Jones (until 11.30 am)

3. Meeting as a sub-committee

The Committee met as a sub-committee according to the Committee's resolution of 10 October 2011 until 11.30 am.

4. Previous minutes

Resolved, on the motion of Ms Westwood: That draft Minutes Nos. 10 and 11 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence:

Received:

- 21 November 2011 – Email from Ms Kate Kennedy, Parent Council Deaf Education (PCDE), to Secretariat, advising that the PCDE does not have any answers to their supplementary questions
- 21 November 2011 – Email from Ms Carol White to Committee regarding Transition to Work funding
- 24 November 2011 – Confidential email from (Name suppressed) regarding Submission No. 66.

Sent:

- 1 December 2011 – Judge Graeme Henson, Chief Magistrate, Local Court Magistrates of NSW seeking representatives of the Court to appear at a hearing in Sydney on 5 March 2012 and permission to visit Sutherland Local Court on 21 March 2012
- 1 December 2011 – Mr Ian Gray, Chief Magistrate, Melbourne Magistrate's Court, seeking permission to visit Family Violence Court in Heidelberg, Specialist Family Violence Service at the Melbourne Magistrate's Court and the Neighbourhood Justice Centre in Collingwood on 19 and 20 March 2012
- 1 December 2011 - The Hon Mary Wooldridge MP, Minister for Community Services, Minister for Women's Affairs and Lead Minister, Ministers in Partnership Against Family Violence seeking a meeting with the Ministers in Partnership Against Family Violence in Melbourne on 19 March 2012
- 6 December 2011 – Letter to Ms Sue Stanford, Relieving Principal, Orana Heights Public School thanking her for hospitality received during the Transitions inquiry site visit to Orana Heights Public School on 5 December 2011
- 6 December 2011 – Letter to Ms Ann Winterton, Operations Manager, Mission Australia thanking her for hospitality received during the roundtable hearing held at Mission Australia in Dubbo on 5 December 2011
- 8 December 2011 – Letter to Mr Jim Moore, Chief Executive, Dept of Ageing, Disability and Home Care, from Chair, requesting clarification on Transition to Work issue raised in email from Ms Carol White.

6. Inquiry into domestic violence trends and issues in NSW**6.1. Submissions**

The Committee noted that Submission No. 71 was published by the Committee Clerk under the authorisation of an earlier resolution.

6.2. Answers to questions on notice and supplementary questions

The Committee noted that answers to questions on notice and answers to supplementary questions had been received from the following witnesses and published under the authorisation of a previous resolution:

- Catherine Smith
- Law Society of New South Wales
- Women's Legal Service NSW
- Redfern Legal Centre.

7. ***

Mrs Maclaren-Jones joined the meeting at 11.30am.

A quorum having been formed, members ceased to meet as a sub-committee and continued to meet as a committee.

8. *****9. Adjournment**

The Committee adjourned at 4.40 pm.

10. Next meeting

Monday 13 February at 9.30 am, at Parliament House, Room 1153.

Teresa McMichael
Committee Clerk

Minutes No. 13

15 February 2012

Standing Committee on Social Issues

Members' Lounge, Parliament House, 1.00 pm

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Ms Cusack

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones

2. Consideration of draft correspondence from Superintendent Mark Murdoch, Assistant Commissioner, Corporate Spokesperson on Domestic Violence, NSW Police Force

Resolved, on the motion of Ms Cusack: That the Committee Chair write to Superintendent Murdoch requesting that the Standard Operating Procedures be provided on the basis that they be considered confidential privileged documents, with a single copy kept in a safe in the office of the Clerk/Committee Director, which only members and staff of the Committee may view.

Resolved, on the motion of Ms Cusack: That the Committee hold an in camera session focusing on the Standard Operating Procedures during its hearing with representatives of the NSW Police Force on 20 February 2012.

3. Broadcasting and still photography of proceedings during the hearing on 20 February 2012

Resolved, on the motion of Mrs Maclaren-Jones: That visual broadcasting and still photography not be permitted during the hearing with representatives of the One in Three Campaign on 20 February 2012.

4. Adjournment

The Committee adjourned at 1.15 pm until 8.45 am on Monday 20 February 2012.

Merrin Thompson
Clerk to the Committee

Minutes No. 14

20 February 2012

Macquarie Room, Parliament House at 8.45 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Ms Cusack

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes Nos. 11, 12 and 13 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received:

- 8 December 2011 – Letter from Victorian Chief Magistrate to Chair granting permission to visit Melbourne Courts and providing contact details
- 20 December 2011 – Letter from Mr Jim Moore, Chief Executive, Ageing, Disability and Home Care and Director General, Family and Community Services, to Chair in response to Ms Carol White's query regarding evidence presented by Mr Patrick Maher, National Chief Operating Officer, National Disability Services, at the Transitions Inquiry hearing on 10 October 2011
- 21 December 2011 – Email from Ms Elizabeth Rowe, Team Leader, Student Services, Catholic Education, Diocese of Parramatta, submitting a revised Submission No. 21
- 17 January 2012 – Letter from the Chief Magistrate of the Local Court NSW granting approval for Committee to visit Sutherland Local Court on 21 March 2012
- 31 January 2012 – Email from Ms Theresa Parkinson, Executive Assistant to Chief Magistrate of the Local Court NSW advising that Magistrate Lucas will be sitting in Orange on 28 February 2012 and is therefore unable to attend the Committee's site visit to Forbes
- 6 February 2012 – Email from Ms Wendy English, AP Outreach, Orana Public School, Department of Education and Communities forwarding draft evaluation form for the transition to school process for students with a disability.

Sent:

- 20 December 2011 – Email from Ms Teresa McMichael to Ms Carol White forwarding ADHC's response to her query regarding evidence presented on 10 October 2011
- 22 December 2011 – Letter from Ms Merrin Thompson, Principal Council Officer, to Mr Terry Lucas, Magistrate, inviting him to attend the Committee's site visit to Forbes on 28 February 2012
- 22 December 2011 – Email from Ms Merrin Thompson, Principal Council Officer, to Superintendent Robert Ryan, Commander, Lachlan Local Area Command, NSW Police Force, inviting him and other police from Parkes and surrounding areas to attend the Committee's site visit to Forbes on 28 February 2012
- 15 February 2012 – Letter from Chair to Minister for Family and Community Services advising the Family and Community Services representatives appearing at the hearing on 20 February 2012
- 15 February 2012 – Letter from Chair to Minister for Police advising the NSW Police Force representatives appearing at the hearing on 20 February and site visit on 28 February 2012
- 15 February 2012 – Letter from Chair to Superintendent Mark Murdoch, Assistant Commissioner and Corporate Spokesperson, Domestic and Family Violence, NSW Police Force regarding the confidentiality of the NSW Police Force Domestic and Family Violence Standard Operating Procedures 2011.

4. Inquiry into domestic violence trends and issues in NSW

4.1. Submissions

The Committee noted that Submission Nos. 72, 73 and 74 were published by the Committee Clerk under the authorisation of an earlier resolution.

4.2. Answers to questions on notice and supplementary questions

The Committee noted that answers to questions on notice and answers to supplementary questions had been received from the following witnesses and published under the authorisation of a previous resolution:

- Legal Aid NSW
- Redfern Legal Centre/Sydney Women's Domestic Violence Court Advocacy Service
- Department of Attorney General and Justice – Final Report of the Strategic Review of the Domestic Violence Intervention Court Model.

4.3. Site visit to Forbes, Tuesday 28 February 2012

Resolved, on the motion of Mr Donnelly: That the Committee charter a plane to enable travel from Sydney to Forbes for the regional site visit on 28 February 2012, at an approximate cost of \$9073.

4.4. Site visit activities

Resolved, on the motion of Ms Westwood: That the Committee's consultations in Forbes on 28 February 2012 be held in camera.

Resolved, on the motion of Ms Westwood: That Ms Mary Dempsey, Solicitor, Binaal Billa Family Violence Prevention Legal Service, be invited to attend the in camera sessions.

Ms McLaren Jones joined the meeting.

5. ***

6. Public hearing – inquiry into domestic violence trends and issues in NSW

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from Department of Family and Community Services were sworn and examined:

- Ms Maura Boland, Deputy Director, Strategy and Policy
- Ms Helen Freeland, Deputy Chief Executive Operations, Community Services
- Ms Michelle Jeuken, Acting Executive Director, Office for Women's Policy
- Ms Vivian Hanich, Director of Service Development Strategy, Housing NSW
- Ms Janet Schorer, Acting Divisional Director Communities and Early Years.

Ms Boland tendered the following document:

- 'FACS' role in reducing domestic violence'.

The evidence concluded and the witnesses withdrew.

The following witnesses from the One in Three Campaign were sworn and examined:

- Mr Greg Andresen, Senior Researcher
- Mr Andrew Humphreys, Member.

Visual broadcasting ceased and still photography was not permitted, under the authorisation of a previous resolution.

Mr Andresen tendered the following documents:

- Executive summary 'Intimate Partner Abuse of Men', by Emily Tilbrook, Alfred Allan and Greg Dear, Men's Advisory Network (MAN), Perth, 2010
- Annette Hennessy and Carol Willie, 'Ending Family Violence Program, Woorabinda', CDFVR Indigenous Family Violence Prevention Forum, Mackay, 2 May 2006
- Nicola Graham-Kevan, 'Domestic Violence: Research and Implications for Batterer Programmes in Europe', European Journal of Criminal Policy Research, 2007, Vol 13, pp 213-225
- Stephen Fisher, 'From Violence to Coercive Control: Renaming Men's Abuse of Women', White Ribbon Policy Research Series No. 3.

The evidence concluded and the witnesses withdrew.

Visual broadcasting and authority for still photography recommenced.

The following witness was sworn and examined:

- Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, Sydney.

The evidence concluded and the witness withdrew.

Ms Cusack left the meeting.

The following witnesses from the NSW Police Force were sworn and examined:

- Assistant Commissioner Mark Murdoch, Corporate Spokesperson for Domestic and Family Violence
- Superintendent Wayne Cox, Local Area Commander Mt Druitt
- Senior Constable Brian Johnson, Domestic Violence Liaison Officer, Mt Druitt Area Command
- Sergeant Allison Guthrie, Principal Tutor, Domestic and Family Violence Education and Training Command
- Sergeant Sharon Walker, Police Prosecutor (Domestic Violence) Sutherland Local Court.

Mr Donnelly left the meeting.

Resolved, on the motion of Ms Westwood: That the Committee proceed to take evidence in camera.

The public and the media withdrew.

The Committee proceeded to take in camera evidence.

Persons present other than the Committee: Rachel Simpson, Merrin Thompson, Kate Mihaljek, Miriam Cullen, Lisa Scheikowski, Chief Inspector Zoran Dzevlan, Inspector Julie Boon, Inspector Belinda Briggs, Ms Robyn Auld, Senior Sergeant Wayne Thurlow, Acting Sergeant Amanda Williams, Senior Constable Michelle Glasson and Hansard reporters.

Resolved, on the motion of Ms Westwood: That the Committee cease to take in camera evidence.

The public and the media were readmitted.

The evidence continued in public.

The evidence concluded and the witnesses withdrew.

The following witnesses from the NSW Police Association were sworn and examined:

- Mr Pat Gooley, Vice President
- Ms Prue Burgun, Treasurer
- Ms Vicki Sokias, Research Officer.

The evidence concluded and the witnesses withdrew.

7. Acceptance and publication of documents tendered during the public hearing

Resolved, on the motion of Ms Faehrmann: That the Committee:

- accept and publish the document tendered by Ms Maura Boland entitled 'FACS' role in reducing domestic violence'
- accept the documents tendered by Mr Greg Andresen.

8. Adjournment

The Committee adjourned at 5.00 pm, until Monday 27 February 2012 at 9.30 am.

Merrin Thompson
Committee Clerk

Minutes No. 15

Monday 27 February 2012

Room 1153, Parliament House at 9.05 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Ms Cusack

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones

2. Previous minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft Minutes No 14 be confirmed.

3. Inquiry into domestic violence trends and issues in NSW

3.1. Correspondence

The Committee noted the following item of correspondence:

Received:

- From Mr Andrew Humphreys, Member, One in Three Campaign, requesting that the transcript of evidence for the 20 February 2012 public hearing be redacted to prevent the identification of certain individuals.

Resolved, on the motion of Ms Faehrmann That the transcript of evidence for the public hearing on 20 February 2012 be redacted as follows:

Mr HUMPHREYS: [Information suppressed by order of the Committee] [There was] a case where a man had been denied access to a safe room at court and issues like that. That was a client of mine. And it was not patriarchy that caused the assaults on that man but an acquired brain injury that his partner had suffered. There was no support I could get for him in the community, apart from petrol vouchers [Information suppressed by order of the Committee] and access to me.

4. ***

5. Adjournment

The Committee adjourned at 9.50 am, until Tuesday 28 February 2012, at 7.00 am at Bankstown Airport (Domestic violence inquiry visit to Forbes).

Teresa McMichael
Committee Clerk

Minutes No. 16

Tuesday 28 February 2012

Jemalong Regional Education Centre, Forbes, at 9.30 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones

2. Apologies

Ms Cusack

3. Site visit - inquiry into domestic violence trends and issues in NSW

The Committee attended the Jemalong Regional Education Centre in Forbes.

The Chair made an opening statement acknowledging country, thanking Binaal Billa Family Violence Prevention Legal Service and its auspicing organisation, Yoorana Gunya Family Violence Healing Centre Aboriginal Corporation, for hosting the site visit, and welcoming participants.

Resolved, on the motion of Ms Westwood: That the briefing proceed in camera.

The Committee proceeded to hold an in camera briefing with victims of domestic violence from surrounding Aboriginal communities.

Persons present other than the Committee: Ms Rachel Simpson, Ms Merrin Thompson, Ms Miriam Cullen, Ms Lisa Scheikowski and Hansard reporters.

Resolved, on the motion of Ms Westwood, that the briefings proceed in private.

The following participants appeared at a series of private briefings:

- Kerrie Radford, Binaal Billa Family Violence Prevention Legal Service
- Grant Neilsen, CentaCare Wilcannia/Forbes
- Ralph Smith, CentaCare Wilcannia/Forbes
- Beryl Powell, Condobolin Family Support
- Heather Blackley, Western Plains Regional Development
- Bev Maher, Lake Cargelligo Family Support
- Nicole Hatley, Lake Cargelligo Family Support
- Donna Bliss, Yoorana Gunya Family Healing Centre Aboriginal Corporation
- Dee Anderson, Yoorana Gunya Family Healing Centre Aboriginal Corporation
- Julie Webb, Aboriginal Community Support Services CareWest
- Peter Harris, Weigelli Centre Aboriginal Corporation
- Cathie Schatz, Forbes Women's Refuge
- Rebecca Smith, Forbes Women's Refuge
- Leanne Walsh, Cowra Neighbourhood Centre
- Debbie Callis
- Patrick Latham, Legal Aid NSW
- Mary Dempsey, Binaal Billa Family Violence Prevention Legal Service
- Chris Helby, Callachor & Helby Solicitors
- Stephen Lawrence, Aboriginal Legal Service
- Nadine Miles, Principal Solicitor, Aboriginal Legal Service
- Matilda Julian, Legal Aid NSW
- Kristy Kennedy, Legal Aid NSW
- Beverley Walker, Parkes Local Court
- Superintendent Robert Ryan, Lachlan Local Area Command, NSW Police Force
- Superintendent Marty Fileman, Lachlan Local Area Command, NSW Police Force
- Inspector Paul Jones, Lachlan Local Area Command, NSW Police Force
- Jeff Fox, Forbes Local Court
- Kevin Read, NSW Police
- Rebecca Camilleri, Western Region, NSW Police Force
- Mike Marshall, Forbes District Office, Community Offenders Service
- Judy Dinnington, Forbes District Office, Community Offenders Service
- Anthony Towney, Forbes District Office, Community Offenders Service

- Jane Beach, Western NSW Local Health Network
- Patrick Rosser, Forbes Community Health Service
- Anna Todd, Sexual Assault Service, Parkes Community Health
- Andrea Butler, Parkes Community Health
- Margaret Burns, Forbes Community Health Service
- Cherie Crothers, Central Division of General Practice.

Ms Crothers tendered the following document:

- The effects on children who witness domestic violence.

Resolved, on the motion of Ms Faehrmann: That the transcript of the in camera briefing with victims be published, subject to the removal of any identifying information.

Resolved, on the motion of Ms Faehrmann: That the transcript of evidence for the private briefings with service providers, legal practitioners, police and court representatives and health service providers be published, subject to the removal of any sensitive information identified by participants.

4. Next meeting

Monday 5 March 2012 at 9.30 am, Macquarie Room, Parliament House (hearing – inquiry into domestic violence trends and issues in NSW).

5. Adjournment

The Committee adjourned at 4.20 pm.

Merrin Thompson
Committee Clerk

Minutes No. 17

Monday 5 March 2012

Macquarie Room, Parliament House at 9.32 am

1. Members present

Mr Blair (*Chair*)
Ms Westwood (*Deputy Chair*)
Ms Cusack
Mr Donnelly
Ms Faehrmann

2. Apologies

Mrs Maclaren-Jones

3. Public hearing – inquiry into domestic violence trends and issues in NSW

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from Wirringa Baiya Aboriginal Women's Legal Centre were sworn and examined:

- Ms Rachael Martin, Principal Solicitor
- Ms Thea Deakin-Greenwood, Solicitor.

Ms Deakin-Greenwood tendered the following documents:

- Executive summary of the NSW Auditor-General's report, Responding to Domestic and Family Violence, November 2011

- Flatters NA, 'Problem-solving courts, domestic violence and the Yukon Domestic Violence Treatment Option Court: A brief working overview', paper presented to the 8th Biennial Conference of the International Association of Women Judges, 3-7 May 2006
- Moore E, 'Youth Justice Conferences versus Children's Court: A comparison of time to finalisation', NSW Bureau of Crime Statistics and Research, Issue Paper No 74, December 2011
- Luke G and Lind B, 'Reducing juvenile crime: Conferencing versus court', NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin No 69, April 2002
- Wingard B, 'Conversation with lateral violence', International Journal of Narrative Therapy and Community Work, No 1, 2010
- Ringland C and Fitzgerald J, 'Factors which influence the sentencing of domestic violence offenders', NSW Bureau of Crime Statistics and Research, Issue Paper No 48, July 2010.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Women's Domestic Violence Court Advocacy Network were sworn and examined:

- Ms Cheryl Alexander, Chair
- Ms Julie Hourigan-Rouse, Executive Officer
- Ms Susan Pier, Coordinator.

The evidence concluded and the witnesses withdrew.

The following witness from the Local Court of NSW was sworn and examined:

- His Honour Judge Graeme Henson, Chief Magistrate.

The Chief Magistrate tendered the following documents:

- List of educational programs for Magistrates of the Local Court of NSW containing a domestic and personal violence component
- NSW Bureau of Crime Statistics and Research, 'CREDIT Evaluation', Media Release, 5 March 2012.

The evidence concluded and the witness withdrew.

The following witnesses from the Children's Court of NSW were sworn and examined:

- His Honour Judge Mark Marien, President
- Magistrate Paul Mulroney.

The evidence concluded and the witnesses withdrew.

The following witness from the Shopfront Youth Legal Centre was sworn and examined:

- Ms Jane Sanders.

The evidence concluded and the witness withdrew.

The following witnesses from the Inner City Legal Centre were sworn and examined:

- Ms Rosslyn Mayne, Principal Solicitor
- Ms Kate Duffy, Solicitor.

The evidence concluded and the witnesses withdrew.

4. Previous minutes

Resolved, on the motion of Ms Westwood: That draft Minutes Nos. 15 and 16 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence

Received:

- Email from Chief Inspector Zoran Dzevlan, NSW Police Force, to the Principal Council Officer, indicating the agreement of Assistant Commissioner Mark Murdoch to the publication of the transcript of the in camera hearing on 20 February 2012, subject to the removal of certain information identified by the Secretariat
- Email from Lance Watson, Associate to his Honour Judge Mark Marien, President, Children's Court of NSW, to the Senior Council Officer, attaching police fact sheets (with identifying material redacted) as examples of typical domestic violence matters heard in that jurisdiction.

Resolved, on the motion of Ms Faehrmann: That the Committee authorises the publication of the transcript of in camera evidence given on 20 February 2012 with the exception of certain information identified by the Secretariat.

6. Site visits to Melbourne, 19 and 20 March 2012 and to Sutherland Local Court, 21 March 2012

The Secretariat provided a brief overview of the activities planned for the site visits.

7. Acceptance and publication of documents tendered during the public hearing

Resolved, on the motion of Mr Donnelly: That the Committee accept and publish the following document tendered during the public hearing:

- List of educational programs for Magistrates of the Local Court of NSW containing a domestic and personal violence component, tendered by the Chief Magistrate.

Resolved, on the motion of Mr Donnelly: That the Committee:

- accept the documents tendered by Ms Deakin-Greenwood
- accept the media release tendered by the Chief Magistrate.

8. Publication of case information provided by the Children's Court of NSW

Resolved, on the motion of Ms Faehrmann: That the Committee authorises the publication of the police fact sheets provided by the Children's Court of NSW with the exception of identifying information.

9. Redactions to transcript of the public hearing on 5 March 2012

Resolved, on the motion of Ms Westwood: That the transcript of evidence for the public hearing of 5 March 2012 be redacted to remove:

- reference to a certain date by Magistrate Paul Mulrone
- certain offensive words by Ms Sanders.

10. Additional witness for the public hearing on 26 March 2012

Resolved, on the motion of Ms Cusack: That the Committee invite Ms Jacqui Yoxall, Lecturer, School of Health and Human Services, Southern Cross University, to give evidence at the public hearing on 26 March 2012.

11. Adjournment

The Committee adjourned at 4.55 pm.

12. Next meeting

Monday 19 March 2012 at 6.45 am, Sydney Airport for site visit to Melbourne.

Merrin Thompson
Committee Clerk

Minutes No. 18

Monday 19 March 2012

Neighbourhood Justice Centre, Collingwood, 10.44 am

Heidelberg Magistrates' Court, Heidelberg, 2.30 pm

1. Members present

Mr Blair (*Chair*)
 Ms Westwood (*Deputy Chair*)
 Ms Cusack
 Mr Donnelly
 Mrs Maclaren-Jones

2. Apologies

Ms Faehrmann

3. Inquiry into domestic violence trends and issues in NSW – site visit

The Committee attended the Neighbourhood Justice Centre, Collingwood, Victoria.

The following individuals participated in the site visit:

- Mr David Fanning, Magistrate, Neighbourhood Justice Centre
- Ms Maree Foelz, Project Officer, Neighbourhood Justice Centre
- Mr Cameron Wallace, Mental Health Clinician, Client Services, St Vincent's Mental Health Service.

The Committee attended the Heidelberg Magistrates' Court, Heidelberg, Victoria.

The following individuals participated in the site visit:

- Magistrate Sue Wakeling
- Magistrate Michael Wighton
- Ms Mereana White, Manager, Family Violence Unit
- Ms Megan Andison, Family Violence Division Coordinator
- Ms Helen McQueen, Respondent Support Worker
- Ms Vicki Heal, Applicant Support Worker
- Senior Constable Lea Bowen, Family Violence Liaison Officer
- Senior Constable Michelle Collier, Trainee Family Violence Liaison Officer
- Sergeant Eugene Kontas, Police Prosecutor

Ms White tendered the following documents:

- Heidelberg Magistrates' Court Family Violence Court Division
- Family Violence Court Division – Overview and Framework.

4. Adjournment

The Committee adjourned at 4.15 pm.

5. Next meeting

Tuesday 20 March 2012 at 11.00am (site visit to VicHealth, Carlton, Victoria).

Rachel Simpson

Committee Clerk

Minutes No. 19

Tuesday 20 March 2012

VicHealth, Carlton, Victoria, 11.05 am

Melbourne Magistrates' Court, Melbourne, Victoria, 1.00 pm

Minister Mary Wooldridge's Office, Melbourne, Victoria, 3.30 pm

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)
Mr Donnelly
Mrs Maclaren-Jones

2. Apologies

Ms Cusack
Ms Faehrmann

3. Inquiry into domestic violence trends and issues in NSW – site visit

VicHealth, Carlton, Victoria.

The following individuals participated in the site visit:

- Ms Lyn Walker, Executive Manager, Participation and Equity for Health
- Ms Renee Imbesi, Program Manager, Preventing Violence Against Women
- Ms Kiri Bear, Senior Project Officer, Preventing Violence Against Women.

Ms Imbesi tendered the following documents:

- Preventing violence against women in Australia, Research summary
- Preventing violence against women: A framework for action
- Preventing violence before it occurs, A framework and background paper to guide the primary prevention of violence against women in Victoria
- VicHealth strategy and business plan 2009-2013
- The story of VicHealth, A world first in health promotion.

The Committee attended the Melbourne Magistrates' Court, Melbourne, Victoria.

The following individuals participated in the site visit:

- Magistrate Kate Hawkins, Lead Magistrate, Family Violence
- Mr Jason Morks, Manager, Family Law and Violence Registry
- Ms Polly Walker-Dorris, Intern, magistrate Hawkins' office
- Ms Kate Walker, Koori Women's Family Violence Support Worker
- Ms Bez Robertson, Family Violence Support Worker
- Mr Ash Hart, Specialist Family Violence Registrar.

Mr Morks tendered the following documents:

- Koori Family Violence Court Support Program
- Information For Application For An Intervention Order
- What if the intervention order is breached?
- Specialist Family Violence Service
- Men's Referral Service
- Safe at home, How to get a family violence intervention order
- How to respond to a family violence intervention order
- Personal Safety Intervention Orders

The Committee attended Minister Mary Wooldridge's Office, Melbourne, Victoria.

The following individuals participated in the site visit:

- Hon Mary Wooldridge, Minister for Women's Affairs, Minister for Community Services
- Mr Matt Bark, Advisor, Minister Wooldridge
- Ms Paris Room, Advisor, Minister McIntosh, Minister for Crime Prevention
- Ms Jill McCabe, Director, Industry and Workplace Reform, Department of Human Services.

Minister Wooldridge tendered the following document:

- Addressing Violence against Women and their Children Action Plan Consultation Framework.

Resolved, on the motion of Ms Maclaren-Jones: That the Committee hold a roundtable discussion on Monday 30 April 2012.

4. Adjournment

The Committee adjourned at 4.40 pm.

5. Next meeting

Wednesday 21 March 2012 at 9.45 am (site visit, Sutherland Local Court).

Rachel Simpson
Committee Clerk

Minutes No. 20

Wednesday 21 March 2012
 Sutherland Local Court, Sutherland, 9.45 am

1. Members present

Mr Blair (*Chair*)
 Ms Westwood (*Deputy Chair*)
 Mr Donnelly
 Mrs Maclaren-Jones (via teleconference)

2. Apologies

Ms Cusack
 Ms Faehrmann

3. Appointment of sub-committee

Resolved, on the motion of Ms Westwood: That:

- the Committee appoint a sub-committee to conduct a site visit to Sutherland Local Court
- the Committee appoint Mr Blair, Mr Donnelly and Ms Westwood as members of the sub-committee
- that the Committee appoint Mr Blair as chair of the sub-committee.

4. Adjournment

The Committee adjourned at 9.46 am until Monday 26 March 2012 (public hearing, Jubilee Room, Parliament House)

Rachel Simpson
Committee Clerk

Minutes No. 21

Wednesday 21 March 2012
 Sutherland Local Court, Sutherland, 9.46 am
 Meeting as a sub-committee

1. Members present

Mr Blair (*Chair*)
 Ms Westwood (*Deputy Chair*)
 Mr Donnelly

2. Inquiry into domestic violence trends and issues in NSW – Sutherland Local Court site visit

The following individuals participated in the site visit:

- Ms Michelle Jones, Manager of Funding Program for Women's Domestic Violence Court Advocacy Services, Legal Aid
- Ms Bev Lazarou, Mentor for Funding Program for Women's Domestic Violence Court Advocacy Services, Legal Aid
- Ms Susan Peir, Coordinator, Women's Domestic Violence Court Advocacy Services
- Ms Kimberly Hood, Assistant Coordinator, Women's Domestic Violence Court Advocacy Services
- Mr Greg Elks, Solicitor, Law Society of NSW
- Mr Brett Thomas, Law Society of NSW
- Magistrate Jacqueline Trad, Magistrate, Sutherland Local Court
- Mr Lance Templeton, Registrar, Sutherland Local Court
- Ms Kay Porter, Court Officer, Sutherland Local Court
- Sergeant Sharon Walker, Police Prosecutor, Sutherland Local Court
- Senior Constable Janelle Charlesworth, Domestic Violence Liaison Officer, Miranda Local Area Command
- Senior Constable Elizabeth Munce, Domestic Violence Liaison Officer, Hurstville Local Area Command
- Senior Constable Mel Radburn, Domestic Violence Liaison Officer, Sutherland Local Area Command
- Senior Constable Vanessa Curmi, Domestic Violence Liaison Officer, Sutherland Local Area Command.

3. Adjournment

The sub-committee adjourned at 1.45 pm *sine die*.

Rachel Simpson
Committee Clerk

Minutes No. 22

Monday 26 March 2012

Jubilee Room, Parliament House at 8.50 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*) (from 9.00am)

Ms Cusack

Mr Donnelly

Mrs Maclaren-Jones

2. Apologies

Ms Faehrmann

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes Nos. 17, 18, 19, 20 and 21 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence

Received:

- 1 March 2012 - Email from Jane Beach, Coordinator, Women's Health/Domestic Violence, Western NSW Local Health Network to Principal Council Officer, providing links to Review of Counselling Services Report and Research on the implementation of Domestic Violence Routing Screening undertaken in key Health Programs since 2005 (emailed to members)
- 8 March 2012 - Email from the Office of the Minister for Sport and Recreation acknowledging Chair's correspondence regarding the Change Your Ways DVD

- 12 March 2012 - Email from Donna Bliss, Chief Executive Officer, Jemalong Regional Health Centre to Principal Council Officer, regarding funding for Aboriginal organisations
- 14 March 2012 - Letter from President to Chair regarding noise disturbance during hearing in the Macquarie Room on 5 March 2012.

Sent:

- 7 March 2012 – Letter from Chair to President reporting noise interference to Macquarie Room hearing on 5 March 2012.

5. Public hearing – inquiry into domestic violence trends and issues in NSW

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from White Ribbon Foundation were sworn and examined:

- Ms Libby Davies, Chief Executive Officer
- Ms Kate Alexander, National Marketing and Communications Manager.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Victims of Crime Assistance League Inc NSW (VOCAL) were sworn and examined:

- Ms Robyn Cotterell-Jones, Executive Director
- Mr Howard Brown OAM, Vice President.

Ms Cotterell-Jones tendered the following documents:

- Supplementary submission by VOCAL
- Two leaflets explaining the services provided by VOCAL.

The evidence concluded and the witnesses withdrew.

The following witness from the NSW Women's Refuge Movement was sworn and examined:

- Ms Catherine Gander, Executive Officer.

Ms Gander tendered the following documents:

- Leslie Laing, They should have this in every court: Evaluation of NSW Women's Refuge Movement Women's Family Law Support Service, University of Sydney, 2011
- Australian Institute of Health and Welfare, Needs of clients in the Supported Accommodation Assistance Program (New South Wales: Report on the SAAP 'High and complex needs census' 2008, AIHW, Canberra, November 2009
- NSW Women's Refuge Movement submission to the Australian Law Reform Commission Family Violence Inquiry, June 2010
- NSW Women Refuge Movement and UWS Urban Research Centre, The impact of housing on the lives of women and children: post domestic violence crisis accommodation, February 2009
- NSW Women's Refuge Movement Domestic Violence Specialist Services, Annual Report 2010/2011.

The evidence concluded and the witness withdrew.

The following witnesses from LOVE BITEs were sworn and examined:

- Ms Angela Walsh, National Manager, Growing Respect/Research and Evaluation, NAPCAN
- Ms Bonnie Souter, Manager, Community Partnerships Growing Respect, NAPCAN

Ms Souter tendered the following documents:

- Trudi Peer and Angela Walsh, 'NAPCAN's Growing Respect: Whole of school approach to violence prevention and respectful relationships'
- Manjula Waniganayake and Karen Roberts, Evaluation of the implementation of the "All Children Being Safe" (ACBS) Program in Three Preschools in NSW, Institute of Early Childhood, Macquarie university and Access Macquarie Ltd, December 2011
- Love Bites Respectful Relationships Program: Facilitator Training Manual, NAPCAN.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Fairfield Domestic Violence Committee were sworn and examined:

- Ms Eleonora Raffo, Coordinator, Fairfield/Liverpool Staying Home Leaving Violence Project, South West Sydney Legal Centre
- Ms Claudia Guajaredo, Crime Prevention Officer, Fairfield City Council
- Ms Ranna Peera, Child, Youth and Family Worker, Community First Step.

The evidence concluded and the witnesses withdrew.

6. Acceptance and publication of documents tendered during the public hearing

Resolved, on the motion of Ms Westwood: That the Committee authorise the publication of the supplementary submission of VOCAL with the exception of certain potentially identifying information which is to remain confidential.

Resolved, on the motion of Ms Westwood: That the Committee accept the following documents tendered during the public hearing:

- the leaflets tendered by Ms Cotterell-Jones
- Leslie Laing, They should have this in every court: Evaluation of NSW Women's Refuge Movement Women's Family Law Support Service, University of Sydney, 201, tendered by Ms Gander
- Australian Institute of Health and Welfare, Needs of clients in the Supported Accommodation Assistance Program (New South Wales: Report on the SAAP 'High and complex needs census' 2008, AIHW, Canberra, November 2009, tendered by Ms Gander
- NSW Women Refuge Movement and UWS Urban Research Centre, The impact of housing on the lives of women and children: post domestic violence crisis accommodation, February 2009, tendered by Ms Gander
- NSW Women's Refuge Movement Domestic Violence Specialist Services, Annual Report 2010/2011, tendered by Ms Gander.

Resolved, on the motion of Ms Westwood: That the Committee accept and publish the following documents tendered during the public hearing::

- NSW Women's Refuge Movement submission to the Australian Law Reform Commission Family Violence Inquiry, June 2010, tendered by Ms Gander
- Trudi Peer and Angela Walsh, 'NAPCAN's Growing Respect: Whole of school approach to violence prevention and respectful relationships', tendered by Ms Souter
- Manjula Waniganayake and Karen Roberts, Evaluation of the implementation of the "All Children Being Safe" (ACBS) Program in Three Preschools in NSW, Institute of Early Childhood, Macquarie university and Access Macquarie Ltd, December 2011, tendered by Ms Souter.

Resolved, on the motion of Ms Westwood: That the Committee accept the following document tendered during the public hearing by Ms Souter and that the document remain confidential:

- Love Bites Respectful Relationships Program: Facilitator Training Manual, NAPCAN.

7. Other business

Resolved, on the motion of Mr Donnelly: that the Committee undertake further site visits to a metropolitan and regional court.

Resolved, on the motion of Mr Donnelly: That the Chair write to the Minister for Education and Communities to seek information on existing policies and programs in respect of domestic violence.

8. **Adjournment**

The Committee adjourned at 3.45 pm.

9. **Next meeting**

Monday 30 April 2012 at 9.30 in the Macquarie Room, Parliament House (public hearing).

Merrin Thompson
Committee Clerk

Minutes No. 23

Monday 30 April 2012

Macquarie Room, Parliament House at 9.30 am

1. **Members present**

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Ms Cusack

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones (from 12.14 pm)

2. **Previous minutes**

Resolved, on the motion of Ms Westwood: That draft Minutes No. 22 be confirmed.

3. **Correspondence**

The Committee noted the following items of correspondence:

Received:

- 29 March 2012 – Letter from the Hon Graham Annesley MP, Minister for Sport and Recreation, to Chair supplying further information regarding the Change Your Ways, Australian Men Speak About Domestic Violence DVD and attaching the 2011 Evaluation Report on Tracking Violence undertaken by Jumbunna Indigenous House of Learning, University of Technology, Sydney
- 3 April 2012 – Letter from Judge Graeme Henson, Chief Magistrate, to Chair granting permission for the Committee to observe Goulburn Local Court on Wednesday 16 May 2012 and Windsor Local Court on Wednesday 18 July 2012
- 4 April 2012 – Letter from the Hon Adrian Piccoli MP, Minister for Education, to Chair thanking the Committee for the report on transition support for students with additional or complex needs and their families.

Sent:

- 27 March 2012 – Letter from Chair to Dr Michele Bruniges, Director-General, NSW Department of Education and Communities seeking information regarding domestic violence programs in schools
- 29 March 2012 – Letter from Chair to Magistrate David Fanning, Neighbourhood Justice Centre, Collingwood, thanking him for the Committee's visit
- 29 March 2012 – Letter from Chair to Magistrate Sue Wakeling, Heidelberg Magistrates' Court thanking her for the Committee's visit
- 29 March 2012 – Letter from Chair to Ms Lyn Walker, Executive Manager, Participation and Equity for Health, VicHealth thanking her for the Committee's visit
- 29 March 2012 – Letter from Chair to Magistrate Kate Hawkins, Melbourne Magistrates' Court thanking her and the Melbourne Magistrates' Court staff for the Committee's visit and "In Her Shoes" tour

- 29 March 2012 – Letter from Chair to the Hon Mary Wooldridge MP, Victorian Minister for Community Services and Women’s Affairs thanking her for meeting with the Committee about Victoria’s approach to addressing family violence
- 29 March 2012 – Letter from Chair to Magistrate Jacqueline Trad, Sutherland Magistrates’ Court thanking her for meeting with the Committee after the Committee had observed domestic violence list day at the Court
- 29 March 2012 – Letter from Chair to Judge Graeme Henson, Chief Magistrate of New South Wales seeking permission for the Committee to visit and observe Goulburn Local Court on 16 May 2012 and Windsor Local Court on 18 July 2012.

4. Inquiry into domestic violence trends and issues in NSW

4.1. Roundtable hearing

Resolved, on the motion of Ms Westwood: That the roundtable hearing previously scheduled for 21 May 2012 be moved to 18 June 2012.

4.2. Submissions

Resolved, on the motion of Ms Faehrmann: That submission No. 76 remain confidential.

The Committee noted that Submission Nos. 77 and 78 were published by the Committee Clerk under the authorisation of an earlier resolution.

4.3. Answers to questions on notice

The Committee noted that answers to questions on notice and answers to supplementary questions had been received from the following witnesses and published under the authorisation of a previous resolution:

- Chief Magistrate of the Local Court
- NSW Police Force (from Sydney hearing)
- Department of Family and Community Services
- Wirringa Baiya Aboriginal Women’s Legal Centre Inc
- Inner City Legal Service
- Women’s Domestic Violence Court Advocacy Service Network
- Children’s Court of New South Wales
- Shopfront Youth Legal Centre
- Fairfield Domestic Violence Committee
- White Ribbon Foundation
- Victims Of Crime Assistance League
- NSW Police Force, Lachlan Local Area Command
- NSW Women’s Refuge Movement.

Resolved, on the motion of Ms Faehrmann: That the following attachments to answers to questions on notice remain confidential:

- Fairfield Domestic Violence Committee – (attachment 1)
- White Ribbon Foundation – (appendix 3).

5. Public hearing – inquiry into domestic violence trends and issues in NSW

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from NSW Ministry of Health were sworn and examined:

- Dr Kerry Chant, Deputy Director General, Population Health and Chief Health Officer
- Ms Meredith Claremont, Director, Maternity, Children and Young People’s Health
- Ms Mailin Suchting, Acting Associate Director, Children, Young People and Family Health and Wellbeing Unit.

Dr Chant tendered the following documents:

- NSW Health Screening for Domestic Violence form
- ‘Z card’ providing information on domestic violence and relevant services, Education Centre Against Violence and NSW Health, December 2008
- Jo Spangaro and Anthony Zwi, *After the Questions: Impact of Routine Screening for Domestic Violence in NSW Health Services*, School of Public Health and Community Medicine, University of New South Wales, August 2010.

The evidence concluded and the witnesses withdrew.

The following witnesses from Victoria Police appeared via teleconference:

- Superintendent Rod Jouning, Head, Sexual and Family Violence Division
- Detective Inspector Kerry Hynam, Officer in Charge, Violence Against Women and Children Strategy Group
- Ms Claire Waterman, Senior Project Coordinator, Violence Against Woman and Children Strategy Group.

Superintendent Jouning tendered the following documents:

- Victoria Police, Code of Practice for the Investigation of Family Violence
- Victoria Police, *Living Free from Violence - Upholding the Right: Victoria Police Strategy to Reduce Violence against Women and Children 2009-2014*
- Victoria Police, Family Violence Risk Assessment and Risk Management Report (‘L17 Form’), current version.

Superintendent Jouning tendered the following document, requesting that it remain confidential to the Committee:

- Victoria Police, Family Violence Risk Assessment and Risk Management Report, (‘L17 Form’) proposed new version.

The evidence concluded and the witnesses withdrew.

The following witness from the Department of Attorney General and Justice was examined on his former oath:

- Mr Brendan Thomas, Assistant Director General, Crime Prevention and Community Programs.

The following witness from the Department of Attorney General and Justice was sworn and examined:

- Ms Carolyn Thompson, Manager, Domestic Violence.

Mrs Maclaren-Jones joined the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses from special interest groups were sworn and examined:

- Ms Ngila Bevan, Advocacy Projects Manager, People with Disability Australia
- Ms Jane Brock, Executive Officer, Immigrant Women’s Speakout Association
- Ms Tara Dias, Senior Policy Officer, NSW Consumer Advisory Group – Mental Health Inc
- Mr Ian Day, Chief Executive Officer, Council on the Ageing NSW
- Mr Senthoran Raj, Senior Policy Advisor, Gay and Lesbian Rights Lobby.

Resolved, on the motion of Mr Donnelly: That the written opening statements of Ms Bevan and Mr Day be incorporated by Hansard into the transcript of proceedings.

6. Acceptance of documents tendered during the public hearing

Resolved, on the motion of Ms Westwood: That the Committee accept the following documents tendered during the public hearing:

- NSW Health Screening for Domestic Violence form, tendered by Dr Chant
- 'Z card' providing information on domestic violence and relevant services, Education Centre Against Violence and NSW Health, December 2008, tendered by Dr Chant
- Jo Spangaro and Anthony Zwi, After the Questions: Impact of Routine Screening for Domestic Violence in NSW Health Services, School of Public Health and Community Medicine, University of New South Wales, August 2010, tendered by Dr Chant
- Victoria Police, Code of Practice for the Investigation of Family Violence, tendered by Superintendent Jouning
- Victoria Police, Living Free from Violence - Upholding the Right: Victoria Police Strategy to Reduce Violence against Women and Children 2009-2014, tendered by Superintendent Jouning
- Victoria Police, Family Violence Risk Assessment and Risk Management Report ('L17 Form'), current version, tendered by Superintendent Jouning.

Resolved, on the motion of Ms Westwood: That the Committee accept the following document tendered during the public hearing by Superintendent Jouning, and that the document remain confidential:

- Victoria Police, Family Violence Risk Assessment and Risk Management Report ('L17 Form'), proposed new version.

7. Adjournment

The Committee adjourned at 3.50 pm.

8. Next meeting

Wednesday 16 May at 9.20 am at Goulburn Local Court (site visit, inquiry into domestic violence trends and issues in NSW), assembling at 6.45 am at the Hospital Road entrance to Parliament House.

Merrin Thompson
Committee Clerk

Minutes No. 24

Wednesday 16 May 2012

Goulburn Local Court, Goulburn at 9.45 am

1. Apologies

Ms Cusack

2. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Mr Donnelly (from 9.55 am)

Ms Faehrmann

Mrs Maclaren-Jones

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 23 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received:

- 30 April 2012 – Letter from Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, to Committee seeking to correct the record of her evidence given at the inquiry hearing on 20 February 2012.
- 30 April 2012 - Letter from Gregory Prior, Deputy Director-General, Schools, NSW Department of Education and Communities, to Chair providing information regarding domestic violence programs in schools.

Sent:

- 8 May 2012 – Letter from Chair to The Hon. Chief Justice Bathurst, President of the Judicial Commission of New South Wales seeking information regarding a project to develop professional education resources about domestic violence for magistrates and other legal professionals
- 8 May 2012 – Letter from Chair to Ms Maura Boland, Deputy Director, Strategy and Policy Department of Family and Community Services seeking information regarding the KPMG NSW Domestic, Family and Sexual Violence Framework
- 8 May 2012 – Letters from Chair to 16 stakeholders inviting their attendance at roundtable discussion on 18 June 2012 (sample letter and list of participants attached).

5. Inquiry into domestic violence trends and issues in NSW

Redactions to hearing transcript from 30 April

Resolved, on the motion of Ms Faehrmann: That the hearing transcript from 30 April 2012 be redacted to remove material that could identify an individual victim of domestic violence.

5.1. Answers to questions on notice

The Committee noted that answers to questions on notice and answers to supplementary questions had been received from:

- The Council on the Ageing (forwarding Françoise Busby, 'A Nation-Wide Elder and Handicapped Abuse Help-Line Network'—Call Us and Stamp out Abuse Now' (2010) 35 Ageing International p 228).

The answers have been published by the Committee Clerk under the authorisation of an earlier resolution:

5.2. Site visit – Goulburn Local Court

The following individuals participated in the site visit:

- Ms Kelly Anable, Acting Registrar, Goulburn Local Court.
- Ms Chris Jordan, Support Worker, Womens Domestic Violence Court Advocacy Service.

6. Adjournment

The Committee adjourned at 1.15 pm.

7. Next meeting

Friday 1 June 2012, 9.00 am, room 1136 – deliberative on proposed recommendations.

Miriam Cullen

Committee Clerk

Minutes No. 25

Wednesday 1 June 2012

Room 1136, Parliament House at 9.32 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Ms Cusack

Mr Donnelly
Ms Faehrmann

2. Previous minutes

Resolved, on the motion of Ms Cusack: That draft Minutes No. 24 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received:

- 17 April 2012 – Letter from Allan Young, Chief Executive Officer, Elouera Association (Inc), to Chair seeking support to address funding imbalances for students with autism in the country compared to those in the city and for students to receive funding after they turn 18 if they are still at school.
- 28 May 2012 – Letter from Maura Boland, Deputy Director General, Policy and Strategy, Family & Community Services to Chair providing information regarding the Domestic and Family Violence Senior Executive Steering Committee and the Domestic and Family Violence Senior Officers Group.
- 16 May 2012 – Letter from His Honour Chief Justice Tom Bathurst, President, Judicial Commission of New South Wales providing details of continuing judicial education on domestic violence given by the Judicial Commission (attachments not provided – requested by secretariat but they have not yet arrived).

Sent:

- 22 May 2012 – Letter from Chair to Magistrate Geraldine Beattie, Goulburn Magistrates' Court, thanking her for the Committee's visit.
- 28 May 2012 – Letter from Chair to Ms Rachael Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre inviting her participation in the roundtable discussion to be held on 18 June 2012.

4. Publication of letter from Dr Jane Wangmann

Resolved on the motion of Ms Faehrmann. That the letter from Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology dated 30 April 2012 be published and a hyperlink to the letter be created within the hearing transcript published on the internet.

5. Inquiry into domestic violence trends and issues in NSW

5.1. Submissions

The Committee noted that Submission No. 79 had been published by the Committee Clerk under the authorisation of an earlier resolution.

5.2. Answers to questions on notice

The Committee noted that answers to questions on notice and answers to supplementary questions had been received from:

- Department of Attorney General and Justice
- Victoria Police
- NSW Consumer Advisory Group – Mental Health Inc.

The Committee noted that the answers have been published by the Committee Clerk under an earlier resolution, with the exception of the two attachments from Victoria Police.

Resolved, on the motion of Mr Donnelly: That the two attachments from Victoria Police entitled 'Membership of the Victorian Family Violence Statewide Advisory Committee' and 'Family Violence Training Delivered across the Police Force' remain confidential at the request of Victoria Police.

5.3. Consideration of the Chair's draft discussion paper on domestic violence trends and issues in New South Wales

Resolved on the motion of Mr Donnelly: That the Chair's amendments to the draft discussion paper circulated by the secretariat on 31 May 2012 be incorporated as part of the draft discussion paper.

Resolved on the motion of Ms Cusack: That the Minister be informed by letter of the existence of the discussion paper which is to be circulated to specific stakeholders prior to the roundtable discussion on 18 June 2012.

Resolved on the motion of Mr Donnelly: That the amendments to the draft discussion paper circulated in the meeting papers be incorporated as part of the draft paper.

The Committee considered the draft discussion paper.

Resolved on the motion of Ms Westwood: That the discussion paper as amended be published according to standing order 226(4) and distributed to the stakeholders who are scheduled to appear as participants in the roundtable discussion to be held on Monday 18 June 2012.

Resolved on the motion of Mr Donnelly: That the roundtable discussion be held in private, but that additional representatives of participant organisations be permitted to attend and observe proceedings.

Resolved on the motion of Ms Westwood: That Denele Crozier be invited to participate in the roundtable discussions on 18 June 2012.

6. Adjournment

The Committee adjourned at 10.42am until Monday 18 June 2012 at 9.15 am.

Rachel Simpson
Committee Clerk

Minutes No. 26

Monday 18 June 2012

Macquarie Room, Parliament House at 9.34 am

1. Apologies

Ms Cusack

2. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones

3. Roundtable discussion

Participants were admitted.

The Chair made an opening statement regarding the conduct of proceedings and other matters.

The following participants were sworn:

- Ms Denele Valli Crozier, Executive Officer, Women's Health New South Wales
- Ms Alison Frame, Acting Executive Director, Office for Women's Policy, Department of Family and Community Services

- Ms Heather Blackley, Youth Services Manager, Western Plains Regional Development Inc
- Ms Beverly Lazarou, Project Officer: Mentoring, Women's Domestic Violence Court Advocacy Program
- Ms Janet Loughman, Principal Solicitor, Women's Legal Services New South Wales.

The following participants appeared on their former oath:

- Ms Maura Boland, Deputy Director, Strategy and Policy, Department of Family and Community Services
- Dr Kerry Chant, Deputy Director General Population Health and Chief Health Officer, NSW Ministry of Health
- Ms Robyn Cotterell-Jones, Executive Director, Victims of Crime Assistance League Inc New South Wales
- Ms Catherine Gander, Executive Officer, NSW Women's Refuge Movement
- Ms Betty Green, Chair, NSW Domestic Violence Coalition
- His Honour Judge Graeme Henson, Chief Magistrate of New South Wales
- Ms Annmarie Lumsden, Executive Director Strategic Planning and Policy and Business Reporting, Legal Aid NSW
- Ms Gaby Marcus, Director, Domestic and Family Violence Clearinghouse
- Ms Rachel Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre
- Ms Mark Murdoch, Assistant Commissioner, NSW Police
- Mr Brendan Thomas, Deputy Director General, Crime Prevention and Community Programs, Department of Attorney-General and Justice
- Ms Lyn Walker, Executive Manager, Participation and Equity for Health, VicHealth
- Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology Sydney
- Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research.

The roundtable concluded and the participants withdrew.

4. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 25 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence:

Sent:

- 4 June 2012 – Letter from Chair to 19 roundtable participants (as per attached list) enclosing discussion paper
- 4 June 2012 – Letter from Chair to The Hon Pru Goward MP, Minister for Family and Community Services and Minister for Women, providing a copy of the roundtable discussion paper together with a list of roundtable participants
- 13 June 2012 – Letter from Chair to Ms Cate McKenzie, Chair, Implementation Panel, National Plan to Reduce Violence Against Women forwarding material which came before the Committee concerning services for women on spousal visas settling in rural areas
- 13 June 2012 – Letter from Chair to The Hon Chris Bowen MP, Federal Minister for Immigration and Citizenship forwarding material which came before the Committee concerning services for women on spousal visas settling in rural areas
- 13 June 2012 – Letter from Chair to The Hon Julie Collins MP, Federal Minister for Community Services, Minister for Indigenous Employment and Economic Development and Minister for the Status of Women forwarding material which came before the Committee concerning services for women on spousal visas settling in rural areas.

Received:

- 8 June 2012 – Email from Deputy Chair, The Hon Helen Westwood, to Committee proposing that the Committee receive a briefing from the NSW Department of Attorney General and Justice on the partial defence of provocation as part of its inquiry into domestic violence trends and issues in NSW.

6. Inquiry into domestic violence trends and issues in NSW**6.1. Submission**

The Committee noted that Submission No. 80 had been published by the Committee Clerk under the authorisation of an earlier resolution.

6.2. Answers to questions on notice

The Committee noted that answers to questions on notice and answers to supplementary questions received from Ministry of Health had been published by the Committee Clerk under the authorisation of an earlier resolution.

7. Consideration of the partial defence of provocation

The Committee considered an email from the Deputy Chair to Committee members.

Resolved, on the motion of Ms Westwood: That the secretariat prepare a briefing for the Committee on the partial defence of provocation in domestic violence matters.

8. Discussion of the defence of provocation

As per email from Deputy Chair to Committee members.

9. Other business

The Committee noted that the Committee Director has been invited to be a member of the C me Hepatitis C advisory group.

Resolved, on the motion of Greg Donnelly: That the Committee cancel its visit to Windsor Local Court scheduled for Wednesday 18 July and that the Chair write to the Chief Magistrate to advise of the Committee's decision.

10. Adjournment

The Committee adjourned at 2.13 pm until 9.00 am Monday 20 August 2012, room 1153, Parliament House.

Miriam Cullen

Committee Clerk

Draft Minutes No. 27

Monday 20 August 2012

Standing Committee on Social Issues

Room 1153, Parliament House at 10.10 am

1. Members present

Mr Blair (*Chair*)

Ms Westwood (*Deputy Chair*)

Ms Cusack

Mr Donnelly

Ms Faehrmann

Mrs Maclaren-Jones

2. Draft minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft Minutes No. 26 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received:

- 28 June 2012 – Email from Mr Andrew Humphreys, One in Three Campaign to Secretariat seeking details of the roundtable discussion held on 18 June 2012 and requesting a copy of draft recommendations
- 2 July 2012 – Email from Assistant Commissioner Mark Murdoch, NSW Police Force to Secretariat attaching suggested rewording of recommendations Police specific recommendations
- 3 August 2012 – Letter from Dr Kerry Chant, Chief Health Officer and Deputy Director-General, Population & Public Health, NSW Ministry of Health to Secretariat, providing information about screening in Emergency Rooms
- 20 August 2012 – Letter from the Hon Chris Bowen MP, Minister for Immigration and Citizenship, Commonwealth Parliament, providing information in relation to family violence provision under migration law.

Sent:

- 20 June 2012 – Letter from Chair to His Honour Judge Graeme Henson, Chief Magistrate NSW Local Court cancelling Committee's visit to Windsor Local Court
- 28 June 2012 – Email from Secretariat to Andrew Humphreys, One in Three Campaign responding to One in Three Campaign's questions concerning the roundtable discussion and discussion paper.

4. Submissions

The Committee noted that submission nos. 40a and 45a had been published by the Committee Clerk under the authorisation of the Committee's resolution of 10 October 2011.

5. Consideration of Chair's proposed amendment to the previously circulated draft report on domestic violence trends and issues in New South Wales

The Chair tabled an amendment to:

- amend paragraph 9.112 by inserting the words 'in relation to the person in need of protection' after the words 'and not already the subject of an existing ADVO'; and
- amend Recommendation 50 by inserting the words 'in relation to the person in need of protection' after 'that the respondent is not already the subject of an apprehended domestic violence order'.

Resolved, on the motion of Ms Faehrmann: That the Chair's amendments be accepted.

6. Consideration of draft report – inquiry into domestic violence trends and issues in NSW

The Chair tabled his draft report entitled Domestic violence trends and issues in NSW, which having been previously circulated, was taken as being read.

Chapter 1 read.

Resolved, on the motion of Ms Faehrmann: That paragraph 1.15 be amended by inserting a footnote listing the number, names and roles of roundtable participants.

Resolved, on the motion of Ms Faehrmann: That Chapter 1, as amended, be adopted.

Chapter 2 read.

Resolved, on the motion of Mr Donnelly: That the third sentence of the first paragraph of the introduction section be amended by inserting a footnote after the words '\$4.5 billion'.

Resolved, on the motion of Ms Westwood: That the fourth sentence of the first paragraph of the introduction section be amended by inserting a footnote referring to the United Nations Declaration on the Elimination of Violence Against Women.

Resolved, on the motion of Mr Donnelly: That the second sentence of the second paragraph of the introduction section be amended by omitting the word 'vulnerable' after the words 'among different' and inserting instead 'population'.

Resolved, on the motion of Ms Cusack: That the second paragraph of the introduction section be amended by inserting the word 'men' after the words 'young people'.

Resolved, on the motion of Ms Westwood: That the footnote at the end of paragraph 2.5 be amended to read:

'The changes broadened the definition of violence in the *Family Law Act 1975* (Cth) beyond physical abuse to also include stalking, repeated derogatory taunts, intentionally destroying or damaging property and preventing someone from having contact with family and friends. Further changes included that the Family Court will now be required to ask parents if there was abuse or a threat of abuse in the relationship. In addition, the Court would be required to ask whether children were exposed to abuse from a parent, and this would be taken into consideration when determining custody arrangements. 'Net widens on family abuse', *Sydney Morning Herald*, 5 June 2012, accessed 21 August 2012, <<http://www.smh.com.au/opinion/political-news/net-widens-on-family-violence-20120602-1zoku.html>>. See also Hon N Roxon MP, Attorney General, 'New family violence changes take effect', *Media Release*, 7 June 2012.'

Resolved on the motion of Ms Cusack: That paragraph 2.19 be amended by inserting the words 'In addition to male victims of domestic violence as discussed later' at the beginning of the first sentence.

Resolved on the motion of Ms Faehrmann: That a new paragraph be inserted after Figure 7 to read: 'Pregnancy is known to be a time of high risk for domestic violence. For 20 per cent of women who experience domestic violence, pregnancy is the time of onset, while having been pregnant is associated with a 230 per cent increase in partner violence.'

Resolved, on the motion of Ms Westwood: That a new paragraph be inserted following Table 13 to read:

'As noted above, victims of domestic violence are markedly more likely to be female, and offenders are markedly more likely to be male. Of victims of domestic assault in 2010, 69.2 per cent were female, while 30.8 per cent were male. Of persons proceeded against for domestic assault in 2012, 82 per cent were male, and 18 per cent female (up from 10 per cent in 2001).'

Resolved on the motion of Ms Westwood: That the section entitled 'Trends in domestic violence in NSW' be moved to follow paragraph 2.7.

Resolved on the motion of Ms Cusack: That an introductory paragraph be inserted at the beginning of the section entitled 'Gender and Domestic Violence' noting statistics regarding the gender of domestic violence victims.

Resolved, on the motion of Ms Cusack: That a new subheading and section entitled 'Men' be inserted within the subsection entitled 'Specific population groups' and contain information on male victims of domestic violence.

Resolved, on the motion of Ms Westwood: That Chapter 2, as amended, be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Donnelly: That paragraph 3.28 be amended by omitting the word 'far' after the words 'had fallen'.

Resolved, on the motion of Ms Westwood: That Recommendation 3 be amended by inserting the words 'adequate resources are allocated to ensure that' before the words 'the timeframes are met'.

Resolved, on the motion of Mr Donnelly: That a new Recommendation be inserted at the end of Chapter 3 to read:

‘That the NSW Government refer an inquiry to the Standing Committee on Social Issues to inquire into and report on the progress of the Domestic and Family Violence Framework in two years time’

and that an additional paragraph be inserted into the Committee comment to reflect the new recommendation.

Resolved, on the motion of Mr Donnelly: That Chapter 3, as amended, be adopted.

Chapter 4 read.

Resolved, on the motion of Ms Faehrmann: That paragraph 4.10 be amended by omitting the words ‘be the target group of’ and inserting instead ‘of intimate partner violence be addressed in’ and by inserting the words ‘and domestic violence specific population groups’ at the end of the paragraph.

Resolved, on the motion of Mr Donnelly: That Recommendation 5 be amended by:

- omitting the word ‘twin’ and inserting instead the word ‘three’
- inserting the words ‘domestic violence in all its forms is completely unacceptable and as a society, an ongoing effort must be made to eradicate its occurrence’ as the first bullet point.

Resolved, on the motion of Mr Donnelly: That a new Recommendation be inserted after Recommendation 6 to read:

‘That the NSW Government provide the NSW Bureau of Crime Statistics and Research with the necessary additional resources to coordinate across government agencies the collection and analysis of data and information associated with domestic violence, and that NSW Bureau of Crime Statistics and Research publish on an annual basis a detailed report on domestic violence trends in New South Wales.’

Resolved, on the motion of Mrs Maclaren-Jones: That Recommendation 8 be amended by omitting the words ‘specific elements of the Victorian’ and inserting instead ‘a cross-government’.

Resolved, on the motion of Ms Faehrmann: That Recommendation 8 be amended by omitting the words ‘a formal group, comprising the Minister for Women and for Family and Community Services, the Attorney General and Minister for Justice, the Minister for the Police, the Minister for Health, and Minister for Housing’ and inserting instead ‘a Premier’s Ministerial Council comprising the Premier and the Ministers responsible for the portfolio areas of Women, Family and Community Services, Attorney General, Justice, Police, Health, Housing and Education’.

Resolved, on the motion of Ms Cusack: That Recommendation 8 be amended by omitting the second dot point that reads: ‘a clearly and publicly identified lead minister’.

Resolved, on the motion of Ms Westwood: That additional paragraphs be inserted after paragraph 4.64 to read:

‘The Committee is very concerned that if leadership and responsibility for domestic violence policy remains with the Women’s portfolio, it will not be given the prominence it requires within the broader context of the NSW Government. We believe that one of the reasons why we have fallen behind other states in this policy area is the portfolio of Women has not historically been a senior Cabinet role. Consequently it has lacked the leadership and imprimatur to coordinate and improve the actions of other government agencies, such that domestic violence has remained marginalised. While Women NSW in its various iterations has been very committed to this issue, it has lacked the resources, status and operational accountability to lead other government agencies effectively.’

Domestic violence is a very widespread and profoundly destructive problem, for individuals, families and the broader community of New South Wales. It is a crime that consumes many government resources across numerous government agencies. Substantial reform is required within each of those agencies, and within the system as a whole, in order to better prevent and address it. For these reasons, we strongly believe that leadership in this policy area must rest with an agency and minister with the

authority to bring about the change that is so necessary. This policy area deserves no less than the leadership of the Premier.

We thus recommend that governance of the NSW DFV Framework be led by a Premier's Ministerial Council comprised of each of the ministers responsible for the following portfolios: Women, Family and community Services, Attorney General, Justice, Police, Health, Housing and Education. In addition, we call on the Premier, once a year, to report to Parliament on the progress being made to address domestic violence in New South Wales.

The Premier's Ministerial Council would be an oversight committee that ensures that all of the agencies with a role in the Framework act in a coordinated way to fulfil their respective responsibilities'

Resolved, on the motion of Mr Donnelly: That a new recommendation be inserted after Recommendation 8 to read:

'That the Premier, once a year, report to Parliament on the progress being made to address domestic violence in New South Wales.'

Resolved, on the motion of Ms Faehrmann: That Recommendation 15 be amended by omitting the word 'enhance' and inserting instead the word 'expand'.

Resolved, on the motion of Mrs Maclaren-Jones: That Chapter 4, as amended, be adopted.

Chapter 5 read.

Resolved, on the motion of Ms Westwood: That a new Recommendation be inserted after paragraph 5.29 to read:

'That the NSW Government acknowledge the link between alcohol and domestic violence and fund research to examine the role alcohol plays in the frequency, severity and effects of domestic violence.'

Resolved, on the motion of Ms Faehrmann: That a new Recommendation be inserted after paragraph 5.29 to read:

'That as part of the forthcoming NSW Domestic and Family Violence Framework the NSW Government implement evidence-based initiatives to prevent alcohol-related domestic violence.'

Resolved, on the motion of Mr Donnelly: That paragraph 5.54 be amended by omitting the words 'for those and other relevant groups' and that older people, people with disability, young people, culturally and linguistically diverse people and Aboriginal people are added to the list of victims of domestic violence in that paragraph.

Resolved, on the motion of Mr Donnelly: That Chapter 5, as amended, be adopted.

Chapter 6 read.

Resolved, on the motion of Ms Westwood: That a new paragraph be inserted after Recommendation 29 to read:

'On a different but related matter, the Committee was advised of a situation where a woman who had left a domestic violence situation was in jeopardy of losing her jointly owned home because she could not afford the mortgage payments. The Committee considers that there may be some women in some circumstances who would benefit from further mechanisms to enable them to remain in their home.'

Resolved, on the motion Ms Faehrmann: That Recommendation 32 be omitted and the Secretariat make consequential changes to paragraphs 6.82 and 6.83 as a result of the omission of Recommendation 32.

Resolved, on the motion of Mrs Maclaren-Jones: That Chapter 6, as amended, be adopted.

Chapter 7 read.

Resolved, on the motion of Mr Donnelly: That paragraph 7.25 be amended by inserting the word 'some' after the words 'quality of'.

Resolved, on the motion of Ms Faehrmann: That Recommendation 37 be amended by inserting a new sentence at the end of the Recommendation to read: 'Completion of this course should be required for progression to promotional ranks.' after the words 'domestic violence matters.'

Ms Westwood moved: That the NSW Police Force ensure that the salary and status of domestic violence liaison officers is commensurate with the responsibilities and significance of the role in each command.

Question put.

The Committee divided.

Ayes: Ms Faehrmann, Mr Donnelly, Ms Westwood.

Noes: Mr Blair, Ms Cusack, Mrs Maclaren-Jones.

Question resolved in the negative on the casting vote of the Chair.

Ms Westwood moved: That the NSW Police Commissioner provide an annual report to the Minister for Police on the positions of domestic violence liaison officer in each local area command in terms of:

- the number of domestic violence liaison officer positions across the NSW Police Force
- the ratio of domestic violence liaison officers per capita of each command
- the number and location of vacant domestic violence liaison officer positions across the NSW Police Force and
- the turnover of officers in the domestic violence liaison officer role in each local area command.

Question put.

The Committee divided.

Ayes: Mr Donnelly, Ms Westwood.

Noes: Mr Blair, Ms Cusack, Ms Faehrmann, Mrs Maclaren-Jones.

Question resolved in the negative.

Ms Cusack moved: That Recommendation 38 be amended by: omitting the word 'additional' after the words 'NSW Government fund' and the words 'a formal review of the most appropriate resourcing of Domestic Violence Liaison Officers in each local area command' and inserting instead the words 'a policy developed and published by the Minister for Police detailing the formula for allocating Domestic Violence Liaison Officers and allocating resources across each local area command', and by omitting the words 'a new allocation model' and inserting instead the words 'in the policy'.

Question put.

The Committee divided.

Ayes: Mr Blair, Ms Cusack, Mrs Maclaren-Jones.

Noes: Mr Donnelly, Ms Faehrmann, Ms Westwood.

Question resolved in the affirmative on the casting vote of the Chair.

Ms Cusack left the meeting.

Resolved, on the motion of Ms Faehrmann: That Recommendation 41 be amended by omitting the words 'single page' before the word 'electronic' and inserting instead the word 'simple'.

Ms Faehrmann moved: That a new Recommendation be inserted after paragraph 7.165 to read: 'That the NSW Police Force investigate the establishment of specialised domestic violence units within those Local Area Commands with the highest need.'

The Committee divided.

Ayes: Ms Faehrmann

Noes: Mr Blair, Mr Donnelly, Mrs Maclaren-Jones, Ms Westwood.

Question resolved in the negative.

Resolved, on the motion of Ms Westwood: That Chapter 7, as amended, be adopted.

Chapter 8 read.

Resolved, on the motion of Ms Westwood: That Chapter 8 be adopted.

Chapter 9 read.

Resolved, on the motion of Ms Faehrmann: That Recommendation 52 be amended by inserting the words 'both in time and circumstance' after the words 'limited power'.

Resolved, on the motion of Ms Faehrmann: That Recommendation 55 be amended by omitting the word 'considers' and inserting instead 'develop'.

Resolved, on the motion of Mrs Maclaren-Jones: That Chapter 9, as amended, be adopted.

Chapter 10 read.

Resolved, on the motion of Mrs Maclaren-Jones: That Chapter 10 be adopted.

Chapter 11 read.

Resolved, on the motion of Mr Donnelly: That Chapter 11 be adopted.

Chapter 12 read.

Resolved, on the motion of Ms Westwood: That Recommendation 67 be amended by inserting the words 'at this time' after the words 'domestic violence courts'.

Resolved, on the motion of Ms Westwood: That a new Recommendation be inserted to read:

'That the Department of Attorney General and Justice monitor the outcomes of domestic violence matters in NSW local courts to ensure that the objectives of the Domestic and Family Violence Framework are being met.'

Resolved, on the motion of Mr Donnelly: That Chapter 12, as amended, be adopted.

Chapter 13 read.

Resolved, on the motion of Mr Donnelly: That paragraph 13.39 be amended by omitting the final sentence which reads: 'Indeed, perhaps all victims of violent crime who are genuinely fearful of the perpetrator should be able to choose to give evidence remotely.'

Resolved, on the motion of Mr Donnelly: That paragraph 13.122 be amended by omitting the words 'simply is not working' after the words 'this system' and inserting instead the words 'is not working effectively and needs to be improved.'

Resolved, on the motion of Ms Westwood: That Chapter 13, as amended, be adopted.

Chapter 14 read.

Resolved, on the motion of Mrs Maclaren-Jones: That Chapter 14 be adopted.

Chapter 15 read.

Resolved, on the motion of Ms Westwood: That Recommendation 80 be amended by inserting a new sentence at the end of the Recommendation to read: 'Funding of perpetrator programs should not come at the expense of victims' services or programs.'

Resolved, on the motion of Ms Westwood: That Chapter 15, as amended, be adopted.

Chapter 16 read.

Resolved, on the motion of Mr Donnelly: That Chapter 16 be adopted.

Resolved, on the motion of Ms Westwood: That the secretariat make consequential changes to Committee comments to reflect amendments made to the recommendations and additional recommendations.

Resolved, on the motion of Ms Westwood: That the draft report, as amended, be the report of the Committee.

Resolved, on the motion of Mrs Maclaren-Jones: That the Committee report be presented to the House, together with transcripts of evidence, submissions, tabled documents, minutes of proceedings, answers to questions on notice and correspondence relating to the inquiry, except for documents kept confidential by resolution of the Committee.

The Chair thanked Committee members and the Secretariat for their effort and cooperation in producing the report.

7. Adjournment

The Committee adjourned at 3.15 pm, *sine die*.

Rachel Simpson
Committee Clerk