

26 November 2020

Mr Adam Searle MLC
Chair
Select Committee into the High Level of First Nations People in Custody
and Oversight and Review of Deaths in Custody
Parliament House, Macquarie Street
Sydney NSW 2000

By email: First.Nations@parliament.nsw.gov.au

Dear Chair,

**Inquiry into the High Level of First Nations People in Custody
and Oversight and Review of Deaths in Custody
Question on Notice**

1. Women's Legal Service NSW (**WLS NSW**) thanks the Select Committee into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody (**the Committee**) for the opportunity to participate in the public hearings for the Inquiry into the high level of First Nations People in custody and oversight and review of Deaths in Custody (**the Inquiry**).
2. WLS NSW gave evidence during the public hearings held on 26 October 2020. We took a question on notice from the Honourable Penny Sharpe extracted below:

***The Hon. PENNY SHARPE:** I have one more question. In your submission you talk about this. The New South Wales Coroner has commented in relation to needing to see the broader context in which women are presenting or coming into contact with police, but I was particularly interested in the Domestic Violence Death Review Team, which has actually recommended specific action from the NSW Police Force around how it is capturing data on domestic violence and, again, looking for more holistic analysis and understanding before taking a woman into custody. Do you know the status of those recommendations? Where are they up to?*

3. The *NSW Domestic Violence Death Review Team Report 2015-2017* included a recommendation relating to holistic assessment of domestic and family violence by police:

***Recommendation 2.1** That the NSW Police Force reviews how it captures, records and displays data on domestic violence events with a view to making appropriate changes that would support operational police to view the incident holistically and in the context of the history of the parties and relationship. This will assist police to make informed decisions as to what action to take in the context of the incident they are dealing with.¹*

4. The *Government Response to the NSW Domestic Violence Death Review Team Report 2015-2017* for Recommendation 2.1 states:

¹ NSW Domestic Violence Death Review Team, *The NSW Domestic Violence Death Review Team Report 2015-2017*, 2017, accessed at: [https://www.coroners.nsw.gov.au/documents/reports/2015-2017_DVDRT_Report_October2017\(online\).pdf](https://www.coroners.nsw.gov.au/documents/reports/2015-2017_DVDRT_Report_October2017(online).pdf)



Supported.

The NSW Police Force continuously reviews the way domestic and family violence events are recorded in the Computerised Operational Policing System and has identified opportunities to make changes to the system to allow for operational police to view incidents holistically. The detail of these proposed changes and the timeframe for implementation is currently being developed.²

5. The NSW Domestic Violence Death Review Team Report 2017-2019 includes the following update:

In response to a recommendation made by the Team in its 2015/17 Report, the NSW Police Force Domestic and Family Violence Team has reviewed the capture, recording and display of data within COPS to support general duties police officers to view domestic violence episodes holistically and in the context of the history of the parties and relationship. These changes include the introduction of the DV Summary that displays if a Person of Interest has a domestic violence history, which assists Police to make informed decisions when responding to episodes of domestic violence.

While the Team welcomes these many changes, it also notes that for many victims of violence, negative or challenging engagement with police and other services shapes future help-seeking, as well as perpetrator accountability. This has been evident from the Team's cases in this, and previous reporting periods, where prior negative engagements with police have impacted victims' help-seeking going forward. The Team is of the perspective that continuing to improve police responses, as well as harnessing the expertise of police to inform other aspects of integrated domestic and family violence service delivery, remain urgent priorities in NSW.³

6. The NSW Domestic Violence Death Review Team Report 2017-2019 notes that Recommendation 2.1 from their 2015-2017 Report has been completed and provides the following details of implementation:

Since this recommendation, the NSW Police Force (NSWPF) Domestic & Family Violence Team reviewed the capture, recording and display of data within COPS. As a result, a number of changes within the existing COPS system have been implemented.

DV Summary: Police are now able to view a 'DV Summary' that displays if a person of interest has a domestic violence (DV) history, which assists Police to make informed decisions as to what action to take.

Pre-filled DV narrative: A large portion of the narrative is now pre-filled from the incident field/Computer Aided Dispatch message and the DV Safety Assessment Tool (DVSAT). This information is also included in the Apprehended Domestic Violence Order (ADVO) application to assist the magistrate.

Alignment of ADVO conditions and bail conditions: Changes have been made to align the ADVO and bail conditions, which allows for accurate and complementary conditions to be imposed on DV offenders for the protection of victims.

² The Government Response to the Domestic Violence Death Review Team Report 2015-17, 29 June 2018, accessed at: [https://www.coroners.nsw.gov.au/documents/reports/DVDRT%20Report%202015-17%20-%20Government%20response_received%2029June2018\(for%20web\).pdf](https://www.coroners.nsw.gov.au/documents/reports/DVDRT%20Report%202015-17%20-%20Government%20response_received%2029June2018(for%20web).pdf)

³ NSW Domestic Violence Death Review Team, The NSW Domestic Violence Death Review Team Report 2017-2019, 2020, p132 accessed at: https://www.coroners.nsw.gov.au/documents/reports/2017-2019_DVDRT_Report.pdf

Allow for DV Events where there is no charge or ADVO resulting to be completed in the field on tablet ('Mobipol') devices: Police record over 80,000 DV 'No- Offence detected' events per year. Enhancements commenced in June 2019 to allow police to complete a large number of DV events, including the DVSA, while at the scene and to provide the victim with the reference number straight away.

Opportunities, challenges and/or consequences:

NSWPF has made these changes to support frontline police to make informed decisions by increasing the information available to them and reducing the time spent on the input of data.⁴

7. It is too early to comment on the effectiveness of this response.
8. In our practice experience we consistently see women misidentified by police as the primary/predominant aggressor when they are in fact the person most in need of protection. We agree that the NSW Police Force needs to undertake further work, particularly in improving responses to policing of domestic violence and sexual violence as negative first engagements impact on whether a victim-survivor engages with the police again.
9. We also believe the NSW Police Force needs to continue to strengthen their policies and procedures around identification of the person most in need of protection and provide continuous training recognising the nature, dynamics and impacts of domestic violence and misidentification of the person most in need of protection, recognising unconscious bias, working with people who have experienced trauma, cultural competency and disability awareness.
10. We note WLS NSW undertook an exploratory study of its 2010 experience of representing women who were defendants to Apprehended Domestic Violence Order (**AVO**) proceedings in order to better understand what appeared to WLS NSW to be a growing phenomenon of misidentification of the person most in need of protection.
11. The 2014 report: *Women Defendants to AVOs: What is their experience of the justice system* found:

that over two-thirds of our women clients defending AVOs reported that they were the victims of violence in their relationships. Fewer than 40% of these clients had a final AVO made against them when the case came before the court.

Many of the women defending AVOs reported that when police had been called after a violent incident, they felt that their version of events had not been viewed as credible compared with the other party, due to the circumstances of their heightened stress and anxiety.

Other women reported that they believed the other party had deliberately initiated AVO proceedings as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future.

In the majority of cases where women were defending AVOs, the other party's complaint related to a single incident only. In several of these cases injuries to the other party could be indicative of self-defence, such as scratching or biting on the arm or hand.⁵

⁴ Ibid, p161-162.

⁵ Julia Mansour, *Women Defendants to AVOs: What is their experience of the justice system?*, Women's Legal Service NSW, 18 March 2014, p4.

12. Report recommendations include:

- 12.1 The NSW Police continue to strengthen their policies and procedures around identification of the primary victim in domestic violence incidents (the person most in need of protection), and provide continuous training about the nature and dynamics of domestic violence; and
- 12.2 The NSW Bureau of Crimes Statistics and Research (BoCSaR) undertake a comprehensive study into the experience of women defendants to AVOs in the justice system in order to build a qualitative picture of the nature and extent of the issue, and to examine whether the issue is particularly prevalent in different areas of NSW.

If you require further information, please contact Carolyn Jones, Senior Solicitor or Gail Thorne and Yasmine Khan, First Nations Women's Legal Program Community Access Workers on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW

Gail Thorne and Yasmine Khan
First Nations Women's Legal Program
Community Access Workers

Philippa Davis
Principal Solicitor