



**Women's Domestic Violence**  
Court Advocacy Service Network Inc

***Response to questions on notice and  
supplementary questions from the  
NSW Legislative Council Standing  
Committee on Social Issues inquiry  
into domestic violence trends and  
issues in NSW***

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Julie Hourigan Ruse  
**Executive Officer**

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Women's Domestic Violence Court Advocacy Services Network Inc.  
PO Box 87, Leichhardt NSW 2040  
Tel: 02 9560 6626

## Questions on notice

1. **Do all of your referrals come from the police? Can you get me a breakdown of where your referrals come from?**

Not all referrals to a Women's Domestic Violence Court Advocacy Services (WDVCAS) come from NSW Police. In 2011, the number of new matters where Police made a referral was 8,311 of 18,723. For the same period, the remaining 10,412 of 18,723 referrals were made by other organisations.

2. **Do you see all your clients before the court case?**

No.

3. **You said that before 10 o'clock is a very chaotic time. What percentage of your clients are you seeing just before the court case as opposed to being able to liaise with them prior to the day?**

Legal Aid NSW administers a database for Women's Domestic Violence Court Advocacy Services in NSW. For privacy reasons, Legal Aid NSW maintains the data held on the database whilst individual WDVCASs input data by way of a service specific username and password. Legal Aid NSW has informed me that in 2011, 75,400 services were provided by WDVCASs to women and children experiencing domestic violence. 13,033 of these 75,400 services (17.29%) were provided before court (called "pre-court contact"). The remaining 62,367 services (82.71%) were provided at or after court. These statistics do not represent the actual number of clients who were provided with pre-court contact as some clients may have received more than one service prior to attending court.

The WDVCAS Network considers that if DVPASS or a similar pre-court contact model/program was available statewide than the pre-court contact would substantially increase to the benefit of women and children.

The term "DVPASS" is used according to its definition in the *NSW Police Code of Practice – Response to Domestic and Family Violence 2008*:

*"Domestic Violence Pro-Active Support Service (DVPASS)  
The DVPASS is a means towards forming a partnership between a Local Area Command and a local domestic violence support service with the intention of providing a referral pathway for consenting victims to be linked to appropriate support services. There are a number of these partnership programs operating at Local Area Commands across the state."*

## Supplementary questions

### Integration and coordination

1. **In the hearing you agreed that there is a need for a more coordinated and integrated approach to domestic violence across government and non-government agencies in NSW. How do you think this can be achieved?**

The WDV CAS Network believes that a more coordinated and integrated approach to domestic violence can be achieved by a single agency taking the lead in the State's domestic violence response.

Currently, there are a number of government agencies (including Community Services, Police, Legal Aid, Corrections and Housing) all working in the domestic violence space providing a range of programs and services targeted at specific but different client groups. This is coupled with a range of non-government organisations partnering with government to deliver these programs. The result is a waste of resources by duplicating the basic infrastructure necessary to establish and operate these programs at the expense of front line service delivery to victims of domestic violence.

2. **Some participants have referred to case management as very important in coordinating services for individual victims.**
  - a. **What are your views on this matter?**
  - b. **How available are case management services at the present time?**

In the WDV CAS Network's experience, case management is a very effective intervention and often more relevant than counselling in the early stages of a coordinated response to domestic violence.

However, the WDV CAS Network is concerned while case management is well intentioned, the result can be private information of the victim being shared inappropriately or out of context in interagency debriefing sessions.

It is difficult for the WDV CAS Network to comment on the availability of case management services other than to acknowledge that it varies across regions and is largely dependent on the capacity of the community organisations to deliver services within the scope of their funding agreements.

3. **Some stakeholders have commented that violence against older women by adolescent or adult children is occurring with increasing frequency. Can you comment on this?**

The WDV CAS Network is also witnessing this trend.

4. **In its submission the Children’s Court of NSW noted that there has been a 36 per cent increase in juvenile females being charged with domestic violence offences in the ten years to June 2009. Why do you think this is?**

The WDVCS Network does not have the expertise to comment on this.

5. **Your submission suggests that some breaches of ADVOs are caused by a lack of understanding of the conditions of the order and the consequences of a breach. What do you think should be done to remedy this?**

Our submission (page 4) acknowledges the work undertaken by Legal Aid in conducting information sessions at court for perpetrators on: the legal nature of an ADVO (that is, an ADVO is a civil not a criminal law matter); the different conditions that can be ordered, and the practical implication of those conditions; and that a breach of an ADVO is a criminal offence (unlike the original ADVO itself).

This is a critical step in the ADVO process as it 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.

## **Policing**

6. **Your submission is critical of NSW Police for failing to adequately respond to “technical” breaches of an ADVO. In this regard you recommend further training from a gendered perspective.**
- a. **We have heard from some stakeholders that a gendered approach to domestic violence can exclude some victims. What do you say to this?**

Reports from the NSW Bureau of Crime Statistics and Research (BOCSAR) show unequivocally that domestic violence is a gendered issue and the Network is alarmed by claims from some that men and women are equally victims.

Data from BOCSAR’s *NSW Recorded Crime Statistics from 2010* shows that:

- a woman is more likely to be killed in her home by her male partner than anywhere else or by anyone else<sup>1</sup>;
- 82% of alleged offenders (13,322 of 16,239) proceeded against by NSW Police for the criminal offence of domestic violence related assault were male<sup>2</sup>;
- 69% of victims (20,047 of 29,006) recorded by NSW Police in the criminal offence of domestic violence related assault were female<sup>3</sup>; and
- 86% of domestic violence related assault occurred in residential premises<sup>4</sup>.

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<sup>1</sup> NSW Bureau of Crime Statistics and Research, *NSW Recorded Crime Statistics 2010* (2011)

<sup>2</sup> Ibid, 3

<sup>3</sup> Ibid

<sup>4</sup> Ibid

- 7. The Committee understands that the yellow card system does not operate in every area and that individual police vary in their use of it. How do you suggest its implementation be expanded?**

Again, the WDV CAS Network is strongly of the opinion that a single (or common) point of distribution would result in major increases in the effectiveness of yellow card implementation. With adequate resources, a statewide service like the WDV CAS is ideally placed to be the lead agency receiving yellow cards for court related domestic violence matters. The WDV CAS already has a robust working relationship with local Police Domestic Violence Liaison Officers (DVLO) and this move would only increase and strengthen the partnerships already in place.

- 8. A number of participants report that the quality of police practices can vary from area to area, for example in relation to charges that are laid and whether victims are referred to other services. They pointed to the role of leadership in local area command in ensuring effective responses by officers, supporting DVLOs, making sure training takes place etc, and also suggested that additional training for police is warranted. What is your view on these suggestions?**

The WDV CAS Network agree that there needs to be top down support for local DVLOs to ensure that positive police practices become entrenched.

- 9. Have you any further comments or recommendations with regard to Domestic Violence Liaison Officers or police prosecutors?**

Please see the response to question 12 below.

## **Risk assessment**

- 10. The Audit Office and several inquiry participants have highlighted the potential value in a common risk assessment tool for government and non-government agencies to identify domestic violence, assess risk, prioritise need and refer accordingly, in order to improve responses on the part of police and other service providers, as well as coordination. What is your view on the potential value of a standard risk assessment tool?**

Generally speaking, the WDV CAS Network supports the development and use of any standard risk assessment tool as potentially being another positive resource available to guide the response to domestic violence. However, the WDV CAS Network would be very concerned if such a tool became a one-size-fits-all response, as no tool can or should replace an individual assessment of a victim based on personal interaction by people with appropriate and relevant expertise in the field.

If the Committee were to recommend a common risk assessment tool, the WDV CAS Network would strongly encourage the government to seek the early input and ongoing collaboration of community organisations like ours with expertise in domestic violence.

Inclusion of the non-government sector ensures that the perspective that only comes from direct service delivery to victims is not lost in a bureaucratic process. The WDV CAS Network (as the peak body in NSW for women and their children experiencing domestic violence who require legal protection from the courts) would welcome the opportunity to work with the NSW Government to develop and test a common risk assessment tool.

## **The court system**

- 11. Numerous submissions have argued that there is a need to improve education/training for judicial officers and other about domestic violence, in order to improve the consistency and quality of decisions. Some have also recommended a bench book for domestic violence proceedings. What are your views on these suggestions?**

Please see our response to question 12 below.

- 12. Some inquiry participants have noted the recommendation of the Australian Law Reform Commission that there should be established a specialised domestic violence court. Other inquiry participants have advocated the extension of domestic violence court lists within NSW local courts as a more cost effective and localised approach. Have you any views on these suggestions?**

The WDV CAS Network has adopted a policy position paper on a specialised domestic violence court list, which is attached for the Committee's reference.

- 13. What are your views on the Domestic Violence Court Intervention Model, and the plan to establish elements of it throughout the State?**

The WDV CAS Network agrees with the conclusion of BOCSAR that "the DVICM was successful in achieving some but not all of its aims"<sup>5</sup>. In the opinion of the WDV CAS Network, the DVICM is an expensive model that targets victims who meet very specific criteria.

Again, as the only statewide domestic violence court service operating in NSW, the WDV CAS would be perfectly positioned to adopt and incorporate successful elements of the DVICM, like case management, if resourced to do so. Such a course of action would build on a widely respected service and facilitates the coordinated and integrated response that this Committee asked of in question 1 above.

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<sup>5</sup> Emma M. Birdsey and Nadine Smith, "The Domestic Violence Intervention Court Model: A follow-up study", (2012) 155, *NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin*

## Sentencing

- 14. Your submission suggests that in domestic violence matters “lesser penalties” should not be available. Other inquiry participants have called for a different approach for young offenders. For example, the Shopfront Youth Legal Services suggested a number of alternative sentencing options for young people such as youth justice conferencing and forum sentencing and home detention. Similarly, Legal Aid recommended that penalties for ADVO breaches by young people should focus on diversionary options. What are your thoughts on these ideas?**

Our submission specifically referred to the imposition of fines as a penalty against adult men and the consequences and retribution that can result against women and children (page 5).

The WDVCAS Network did not intend to suggest that young offenders should not have additional or alternative sentencing options available to them, nor should they be treated as adults and have their penalties measured in the same way. It is well recognised that a criminal conviction against a young offender can have dire impacts on employment opportunities and can perpetuate a cycle of reoffending and more serious offending as an adult.

- 15. Your submission is critical of plea-bargaining in domestic violence matters because of the effect this can have on later Family Court proceedings.**
- a. Can you elaborate on this?**
  - b. What do you suggest should be done in this respect?**

The WDVCAS Network is extremely concerned about plea-bargaining in criminal domestic violence matters because, in our opinion, it downplays the violent incident that brought the perpetrator before the court, and sends the wrong message to both victims and perpetrators about the community’s acceptance, tolerance and response to domestic violence.

In addition, there is also a very specific negative interaction between plea-bargaining in criminal domestic matters and Family Court proceedings.

Beyond the local court, pleading guilty and being sentenced for lesser charges are intrinsic to Family Court proceedings, particularly where children are involved. 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 a transcript being produced in the local court.

If the criminal domestic violence incident had gone to hearing before a Magistrate, evidence from police, photos, medical reports, witness statements, and any other relevant admissible evidence would be adduced and accurately recorded in the transcript of proceedings.

In any subsequent Family Court proceedings, the transcript from the hearing in the local court proceedings is admissible. In the WDVCAS Network’s opinion, it is reasonable that the Family Court know the details of the domestic violence incident so it can make an informed decision before making formal orders, particularly

regarding parenting orders specifying who a child will live with or who a child will spend time with.

Plea-bargaining a criminal domestic violence offence down to a lesser offence, has the practical effect of placing the Family Court in the dark about the seriousness of a perpetrator's behaviour. This can have dire consequences for women and children, which is of the utmost concern to the WDV CAS Network.

While the WDV CAS Network is not suggesting that normal judicial processes should be completely abandoned in all criminal domestic violence matters, we question that the legal efficiencies gained are worth the real risk of a serious violent outcome in some circumstances. The WDV CAS Network contends that if a specialist domestic violence court list was implemented, guidance could be provided to Magistrates in a bench book or other resource.

**16. Various participants have argued that penalties for domestic violence are adequate but applied inconsistently. What are your comments on this view?**

Our submission expressed this view on pages 4-5.

## **GPS monitoring**

**17. Your submission recommends a cautious approach to the use of GPS bracelets to monitor a person's compliance with an ADVO, noting both potential risks and benefits. If the Committee were to recommend a trial of their use, what safeguards do you suggest should be incorporated into the trial?**

The WDV CAS Network does not profess to have particular expertise in trials of this type, and does not suggest that there is an ideal methodology that should be applied. Our primary concern is ensuring the safety of women and children and the potential risks associated with a flawed trial. The WDV CAS Network strongly asserts that any trial use of GPS bracelets to monitor a person's compliance with an ADVO must be seen as one part of the whole response to combatting domestic violence – it may be part of the solution, not a panacea.

The WDV CAS Network would recommend the cautious selection of participants in a trial of GPS bracelets including at least the consideration of:

- the nature and seriousness of the domestic violence incident;
- the history of domestic violence between the perpetrator and this victim;
- the history of domestic violence in need of protection;
- the age of the participants;
- any possible cultural or language barriers of the participants;
- ensuring that participants are fully aware, informed and understand the nature of the trial;
- the geographical location of the participants;
- ensuring that the victim is not encouraged (even unintentionally) to discard other safety measures, including the continuation of an ADVO or accessing other support services; and
- ensuring that the victim is still encouraged to report any breach of the ADVO to Police.