

Annexure A

Answers to questions taken on notice

1. Emerging communities in NSW and domestic violence (p. 22 of transcript)

a) Anecdotal evidence of emerging communities

Anecdotal evidence from the Women's Domestic Violence Court Advocacy Services (WDVCASs) indicates a prevalence of domestic violence in newly emerging communities and locations, as follows:

- Sudanese communities in Coffs Harbour, Wagga Wagga, Queanbeyan, Orange, St Marys, Wollongong, Holroyd, Fairfield and Lismore
- Indian communities in Liverpool, Fairfield and Burwood Local Government Areas
- Chinese communities in the Central Coast area.¹

Key issues in addressing domestic violence in newly emerging communities appear to stem from the cultural approach of the community to domestic violence. Domestic violence is often regarded as a personal or family matter that should be dealt with on a private basis. There is a lack of understanding of the role of the State and that, under the law in NSW, domestic violence is a crime. As a result of this cultural difference and a lack of understanding of the dynamics of complex domestic violence, sponsoring agencies often promote families staying together when reports of domestic violence are made. The role of interpreters, which is vital in legal proceedings involving emerging communities, can be compromised where they come from the perpetrator and/or victims' community and, indeed, sometimes their extended family. In addition, when Apprehended Domestic Violence Orders (ADVOs) are made, a perpetrator's deeply held cultural approach to domestic violence can mean that they do not have a clear and comprehensive understanding of the effect of the order.

Compounding a cultural approach which differs from the legal status domestic violence is the limited number of translated educational materials for newly emerging communities, particularly for many African dialects, on legal and non-legal assistance available for victims and perpetrators. For some emerging community languages, there is also lack of interpreter services.

Against this background, anecdotal evidence suggests a general reluctance by members of newly emerging communities to report domestic violence. This appears to be due to a combination of factors. Apart from the language barriers, cultural differences and lack of understanding of the law's approach to domestic violence, these factors includes a lack of trust in police and, especially for victims from refugee communities, the fact that the domestic violence experienced may be less severe than the of the violence these individuals have suffered in their homelands.

WDVCASs work with women and children in newly emerging communities to promote an understanding of domestic violence and encourage women to report it. The Red Cross also plays a significant role in providing a range of services for people experiencing domestic violence in newly emerging refugee communities.

¹ The Women's Domestic Violence Court Advocacy Service Network Inc (the 'WDVCAS Network'), an incorporated peak association comprised of Coordinators from the 28 Women's Domestic Violence Court Advocacy Services (WDVCASs) in NSW, held a quarterly meeting on Wednesday 16 November 2011 in Sydney. At that meeting, members of the WDVCAS Network were asked to provide information on emerging communities in NSW and the prevalence of domestic violence in those communities.

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b) Women's Domestic Violence Court Advocacy Program (WDVCAP) Database statistics – services to clients from culturally and linguistically diverse backgrounds

Legal Aid NSW has prepared reports for the Committee on all clients who received a service from a WDVCA, including the client's first language, country of birth, the use of interpreters, and whether the client identifies as being from a culturally and linguistically diverse background for the reporting periods 2008-09, 2009-10 and 2010-11.

As these reports are large, they have been attached in an email to the Committee.

While these reports detail all clients who have been provided with a service by one of the 28 WDVCA operating in 108 NSW Local Courts, they do not accurately reflect the prevalence of domestic violence in each of the catchment areas.

2. Breaches of Apprehended Domestic Violence Orders (ADVOs) (p. 22 of transcript)

Legal Aid NSW has prepared reports for the Committee new matters commenced by the WDVCA in relation to a reported breach of an ADVO by a client for the reporting periods 2008-09, 2009-10 and 2010-11.

These reports have been attached an email to the Committee.

These reports do not capture the total number of breaches of ADVOs that occurred in NSW in these periods.

3. NSW Police Force Domestic Violence Liaison Officer (DVLO) training (p. 24 of transcript)

From 2007 the WDVCA Unit has presented at training courses for Domestic Violence Liaison Officers (DVLOs) across NSW, and has worked with the NSW Police Force to strengthen the WDVCA presence at these courses with a view to increasing the cooperative working relationships between DVLOs and WDVCA.

In 2011 the WDVCA Unit provided training sessions in the two DVLO courses run by the NSW Police Force in February and December.

The WDVCA DVLO training module includes a history and overview of the purpose of the program; location of NSW Local Courts serviced by a WDVCA (with a map); priority clients; services offered by the WDVCA; services the WDVCA do not provide; and information about the Domestic Violence Practitioner Scheme. The training emphasises that it is critical for an AVO to be tailored to the client's needs, that clients should receive legal advice and representation if requested, and that referrals should be made to other services to address ongoing non-legal needs after the court process.

The training highlights the importance of the NSW Police Force and WDVCA working in partnership to ensure that clients receive the best possible outcomes, including working as a 'team' on AVO list days at court; communication and respect of each other's role, developing systems for working together, debriefing, and safety planning and assessment. This is followed by an open discussion about what works well in each DVLO's area and what they perceive to be the barriers to good working relationships.

Legal Aid NSW understands that attendance of new DVLOs at the DVLO course is often a matter of priorities, staff levels and budgets of the Local Area Commands (LACS).

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In particular, it can be difficult for DVLOs to attend the course if their LAC determines that it does not have the funds to pay for accommodation for the course. Although accommodation is provided when the DVLO course is run at the Police Academy, it is not provided when the course is run in the Sydney metropolitan area.

DVLOs who have participated in this training have commented that it has given them a better understanding of the role of the WDVCAS and the service it provides. Legal Aid NSW is of the view that mandatory training will result in a more consistent Police response to domestic violence. In addition, Legal Aid NSW would welcome extension of this training to general duties police officers.

4. Legal Aid NSW submission to the Statutory Review of the Crimes (Domestic and Personal Violence) Act 2007 (p. 28 of transcript)

A copy of the Legal Aid NSW submission to the Statutory Review of the *Crimes (Domestic and Personal Violence) Act 2007* is at Annexure C.

5. Sutherland Local Court – Local Area Commands and DVLOs (pp. 30 - 31 of transcript)

Three LACs feed into Sutherland Local Court – Sutherland, Hurstville and Miranda. Legal Aid NSW understands that there are two designated DVLO positions at each LAC, although one DVLO positions at Miranda may be currently vacant.

Generally, the two DVLOs from each LAC attend the AVO list day at Sutherland Local Court. However, only one DVLO from Miranda LAC attends when the number of ADVO applicants is relatively low.

6. Sutherland Local Court – resources, operation and services (p. 31 of transcript)

Sutherland Local Court is well-resourced Local Court and ADVO matters are given priority on AVO list days. The majority of AVO applications (approximately 95-98%) are police initiated.

All AVOs are dealt with in one courtroom. A new safe room provides a purpose built space that meets the needs not only of the clients but the WDVCAS workers and the police who work very much as a team on AVO list days. This partnership is crucial to the effective and efficient running of the day. It assists in ensuring that clients receive a high standard of service and obtain the best possible outcome in relation to their AVO application.

Legal Aid NSW considers Sutherland Local Court AVO list day as best practice. The process for the AVO list day is as follows:

1. Before the court date the WDVCAS contacts the client via the DVPASS/Yellow Card system. This enables the WDVCAS to do some preliminary work before the court date including providing information and making referrals, discussing the possible conditions of the AVO, undertaking a safety assessment and giving directions to the court/safe room.

It is the experience of Legal Aid NSW that clients are more likely to attend court and follow through with the ADVO applications if the WDVCAS makes contact before the court date. Legal Aid NSW is of the view that the police should give the WDVCAS client contact information at the earliest possible time after the domestic violence incident which is the subject of the ADVO application so that this contact can occur.

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2. On arriving at Court, the client goes through security scanning and the Court Information Officer directs them to the WDVCS room. A client already contacted by the WDVCS goes directly to the safe room.
3. The WDVCS Coordinator meets clients as they arrive at the safe room and keeps a running sheet of their names. The client is introduced to a WDVCS seconded worker who talks to them about their needs, goes through the AVO conditions, and provides information about other services they may require.
4. The WDVCS advises the DVLO of the conditions of the ADVO sought by the client. The DVLO then approaches the client and the defendant to discuss the application. The DVLO may return to further discuss the AVO conditions with the client, takes the client into the Court room and provides all relevant information to the other DVLO who is in the courtroom.
5. The DVLO in the courtroom sits with the Police Prosecutor during the day's proceedings and briefs the Prosecutor about each matter. The Prosecutor deals with each matter in turn, ensuring that each matter is dealt with promptly and clients and defendants do not have to wait.

Magistrates at Sutherland Local Court are very positive about this procedure. It avoids the need to call through the list and determine when matters will be dealt with, in a crowded courtroom with parties waiting for their matter to be heard.

6. After the court has dealt with the application, the client returns to the safe room and waits for a copy of the orders. When the orders are received, the WDVCS goes through the conditions on the order with the client.

The Legal Aid NSW Domestic Violence Practitioner Scheme (DVPS) also operates at Sutherland Local Court. These specialist legal practitioners provides another layer of service, appearing on behalf of private applicants on ADVO applications and offering clients an opportunity to obtain advice about family law and civil law matters including debt and victims compensation.

7. Breaches in Sutherland Local Government Area (p. 31 of transcript)

Anecdotal evidence from the 28 WDVCSs operating across NSW suggests that where victims receive appropriate advocacy services at NSW Local Courts, have orders tailored to suit their particular circumstances, and are better informed about the ADVO and court process, they are more likely to report breaches of ADVOs to Police. Where defendants are provided with legal advice and information in about the ADVO and the consequences of breach, breaches are less likely to occur and victims are more likely to obtain a final ADVO on the first mention of their matter.

It is the experience of Legal Aid NSW that women are reluctant to report breaches because of the inadequate police responses to, and investigation of, a previously reported breach of an ADVO. Where a breach occurs, a victim is required to report the breach to a general duties police officer who invariable has no knowledge of their matter. General duties police officers frequently indicate a reluctance to investigate, indicting to the victim that the breach is a 'family law matter, a technical breach, or difficult to prove', and the investigations are often inadequate.

WDVCSs can play an important role in supporting women to report breaches. However, women will not do so if they are not confident that the police will respond appropriately. Legal Aid NSW is of the view that NSW Police should establish clear protocols outlining how police must respond to breaches of ADVOs (including timeframes for investigation, communication with victims throughout the process, recording statements).

Annexure B

Answers to supplementary questions

1. Specialist domestic family violence services provided by Legal Aid NSW

Women's Domestic Violence Court Advocacy Program (WDVCAP)

Legal Aid NSW administers funding for 28 Women's Domestic Violence Court Advocacy Services (WDVCASs) operating in 108 Local Courts across NSW. The WDVCAP assists women and children who are experiencing or have experienced domestic violence to obtain effective legal protection from NSW Local Courts through applications for Apprehended Domestic Violence Orders (ADVOs).

The WDVCAP provides information to clients before, at and after court, and makes referrals to a range of services that can assist clients with their other legal and social/welfare needs. Through working partnerships, the WDVCASs also assist in building the capacity of local services to respond effectively to domestic violence.

Domestic Violence Practitioner Scheme (DVPS)

Since May 2010 Legal Aid NSW has administered the DVPS which operates in 32 Local Courts. Under the scheme specialist domestic violence legal practitioners work in partnership with the local WDVCASs providing legal advice and representation for women and children for ADVO application. These legal practitioners also provide legal assistance in resolving related family law and child protection issues and civil issues, such as victims' compensation.

Specialist community legal centres

Legal Aid NSW administers funding for specialist community legal centres including Women's Legal Services NSW and the Wirringa Baiya Aboriginal Women's Legal Service (Wirringa Baiya).

Women's Legal Services NSW provides women with a range of free community legal services, including legal advice, and information, education, training and resources across metropolitan and regional areas of NSW. It operates the Domestic Violence Legal Service, a specialised legal service established in 1986, which undertakes casework, legal advice, advocacy, policy development and law reform.

Wirringa Baiya is a community legal centre for Aboriginal women, children and youth living in NSW, which focuses on providing assistance to clients on issues relating to violence against Aboriginal women, children and youth, including domestic violence.

2. What do you see as the priority issues that should be addressed in domestic violence policy New South Wales?

Legal Aid NSW is of the view that the priority issues to be addressed in domestic violence policy in NSW are:

- lack of coordination for service delivery across the State, including service duplication
- lack of information sharing between Government agencies, including NSW Police, and non-Government agencies
- the need for consistent and high-quality domestic violence training across the justice sector

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3. GPS monitoring and compliance with ADVOs

Legal Aid NSW does not believe that introducing GPS tracking for domestic violence offenders would reduce breaches and improve compliance with ADVOs, or that electronic monitoring is worth considering as an alternative to GPS tracking for domestic violence offenders. Legal Aid NSW refers to our original submission.

ADVOs

4. Education for domestic violence offenders

This issue is dealt with at page 26 of the transcript.

5. Education and compliance issues

Better education for domestic violence offenders about the ADVO process and the serious nature of breaches could be achieved at courts with ADVO list days by providing a duty solicitor service to advise defendants and to assist them in negotiating the conditions of an ADVO. Legal Aid NSW is currently piloting a defendant duty solicitor service at Dubbo and Mount Druitt Local Court.

6. Police investigation of breaches

Legal Aid NSW suggests that Police Standard Operating Procedures should regulate Police response to breaches of ADVOs, including timeframes for investigation, and contact with victims in relation to the progress and outcomes of the investigation.

Reports of breaches of ADVOs to Police need to be investigated with the same veracity as other alleged criminal conduct. Investigation requires attending an incident immediately, obtaining evidence necessary for a prosecution, including full statements from victims and defendants and forensic evidence where available.

Legal Aid NSW is of the view that any breach of an ADVO should be treated seriously, and that assessing a breach to be a 'technical' breach as opposed to a 'substantive' breach of an ADVOs before any investigation can be a dangerous response.

Legal Aid NSW understands that NSW Police are in the process of finalising a training DVD titled 'Nanette's story' about the repercussions to victims where Police do not respond to a reported breach, and the need for Police to respond to every report of a breach. Legal Aid NSW is hopeful that this DVD will be publicly released.

7. Education for domestic violence offenders

This issue is dealt with at page 26 of the transcript.

8. Penalties for young people for domestic violence

It is the view of Legal Aid NSW that penalties for breach of ADVOs applicable to young people should be different to those available to adults, and should focus on the use of diversionary options including rehabilitation programs, community employment and drug treatment. Offences under the *Crimes (Domestic and Personal Violence) Act 2007* involving children and young people should be dealt with under the YOA, with the Children's Court retaining the discretion to exclude matters where for example, serious violence has occurred. Many breaches could be appropriately dealt with by a conference or caution.

9. Jurisdiction of the Children's Court

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.²

Penalties

10. Penalties for a breach of ADVO

The concern of Legal Aid NSW is that the penalty imposed for the breach of an ADVO does not reflect the seriousness of the breach rather than the relative penalty imposed for a criminal offence that constitutes the breach.

However, Legal Aid NSW would like to emphasise that a separate penalty should be imposed for the breach of an ADVO, and the penalty should reflect the seriousness of the breach.

11. Inconsistent penalties for domestic violence

Legal Aid NSW agrees that penalties for domestic violence are adequate but are applied inconsistently by Magistrates across NSW.

Specialist domestic violence training of judicial officers would assist in achieving consistency in sentencing as indicated on page 18 of our original submission.

12. Education for domestic violence offenders

This issue is dealt with at page 28 of the transcript.

The Court System

13. Education for domestic violence offenders

This issue is dealt with at page 27 of the transcript.

14. Domestic Violence Intervention Court Model

The Domestic Violence Intervention Court Model (DVICM) has indicated the value of a more coordinated response to domestic violence by criminal justice agencies and non-government organisations.

An element of the DVICM that Legal Aid NSW would support being expanded to other areas in NSW is the enhanced information sharing between police and non-government organisations. This which assists services working with victims to respond in a timely and effective way.

For example, if police were able to provide a victims contact details to a WDVCS without the need for explicit consent, that WDVCS could provide pre-court information to victims about the court process and available conditions of an ADVO that might be appropriate in their circumstances. These early intervention initiatives assist to streamline the AVO list day and support the victim in the process.

² *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.*

15. Specialist domestic violence court lists and expansion of DVPS

Legal Aid NSW supports the submissions calling for the extension of specialist domestic violence court lists within NSW Local courts, and expansion of the Domestic Violence Practitioner Scheme (DVPS) to facilitate representation in smaller communities.

Legal Aid NSW is of the view that domestic violence and family law issues can be dealt with holistically in our existing court system with AVO list days conducted by specialist Magistrates, police prosecutors and legal practitioners who have received specialist domestic violence training. There would be a need for clear protocols and guidelines about how the AVO list day should operate. As is the case in the United Kingdom specialist courts, legal and non-legal services, such as the WDVCS and the DVPS, could play a key role in linking victims with support services to.

Legal Aid NSW refers to its comments about specialist domestic violence courts at page 22 of our original submission.

16. Judicial education

There would be value in judicial education focusing on real case studies in the context of sentencing for domestic violence offences.

17. Effectiveness of police prosecutors

Although police prosecutors stand outside the Local Area Command structure, they work with the Domestic Violence Liaison Officers (DVLOs) who briefs them about each domestic violence matter, and they play a key role in advocating on behalf of victims in NSW Local Courts.

Legal Aid NSW understands that NSW Police has recently developed new police prosecutor domestic violence training that is very effective, and would support roll out of this training across NSW. Domestic violence training for police prosecutors should include input of key stakeholders and partners, including WDVCSs.

Legal Aid NSW refers to its comments at page 22 of our original submission.

18. Magistrate referrals to court facilitated processes

Legal Aid NSW supports submission of the Law Society of NSW that the authority of Magistrates should be extended to refer parties to court facilitated processes such as mediation and agrees that this would help address and prevent domestic violence.

Legal Aid NSW refers to page 9 of the Legal Aid NSW submission to the Statutory Review of the *Crimes (Domestic and Personal Violence) Act 2007* is at Annexure C.

For children and young people, this process should be available for a breach of an ADVO.

Policing

19. Determining the primary aggressor

Legal Aid NSW refers to its comments at page 17 of our original submission in relation to the issue that the criminal justice system does not operate in a manner that enables Police officers and Magistrates to easily identify who the primary aggressor is in a relationship. The limited nature of complaint narratives and the limited capacity of Magistrates to hear and reflect on information about domestic violence due to the constraints of their work environment mean that female

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defendants are often being charged for violent acts that are more appropriately characterised as self-defence.³

Given that Police are the first point of assistance for many victims of domestic violence, it is crucial that Police officers are appropriately trained to recognise who is the primary aggressor in a violent relationship and to be able to contextualise a victim's use of violence in self-defence. Training could directly relate to the identification of injuries and behaviour consistent with claims of self-defence.

Legal Aid NSW supports the recommendation of Redfern Legal Centre and the Sydney WDVCS that a comprehensive assessment tool be developed to assist police in identifying the primary aggressor. This tool would need to include an assessment of the history of the violence in the relationship.

20. Police risk assessment protocol

Legal Aid NSW supports the suggestion made by Dr Lesley Laing for a police risk assessment protocol.

In combination with comprehensive domestic violence training, a risk assessment protocol would lead to more appropriate and consistent police responses to domestic violence. This would particularly assist the work of general duties police.

21. Enhanced police responses to domestic violence

As stated at page 30 of the transcript of evidence of Legal Aid NSW representatives before the Committee, the role of the DVLO should be given more status and graded as a Sergeant rather than a Senior Constable. The role of the DVLO is complex, demanding and requires specialist skill.

Other

22. Response to domestic violence in NSW

NSW requires a coordinated state-wide response to domestic violence that encompasses both the role of Police and Courts, and services for victims and children. The two are not mutually exclusive and neither can operate effectively without the other.

There should be a lead agency with responsibility for coordination of domestic violence services and policy development.

23. Service duplication

Service duplication exists in relation to non-legal services for victims of domestic violence in a number of areas of NSW, while in other areas there are few or no services for victims.

There is also a general lack of awareness across the sector of what services exist and what they offer and, as a result, it can be difficult to provide appropriate referrals to victims.

There is a need to 'map' the sector to see what domestic violence services exist, where they are located, who they support and how. A comprehensive mapping exercise and enhanced coordination across the sector would lead to rationalisation of services and provide a reference point for appropriate referrals.

³ *ibid*, 58.

24. Service access in regional and rural services

Domestic violence services should be accessible and available to all people in NSW, regardless of where they live.

LawAccess NSW provides telephone information, advice and referrals to people experiencing domestic violence in regional and rural NSW. Legal Aid NSW provides many outreach services and coordinates the Cooperative Legal Service Delivery program, which covers significant areas of regional and rural NSW and links legal and non-legal services.

However, there are still significant areas of NSW where appropriate legal and non-legal services are either thin on the ground or do not exist.

Strategies that would ensure better access in regional and rural areas include:

- tapping into existing services to determine where there are domestic violence service gaps
- better partnerships between services including more creative ways to respond to domestic violence, such as legal clinics, coordinated community legal education, protocols for the sharing of client information and service brokerage arrangements
- recording domestic violence services on both a state-wide data base and other relevant referral databases such as the Family Law Court National Enquiry Centre referral database. Clients seeking family law advice often require domestic violence services as well.

25. Coordination and integration of services

Legal Aid NSW agrees that there is a need for better coordination and integration across the whole system for responding to domestic violence.

Coordination should be overseen by one central agency.

26. Early intervention and prevention mechanisms

As stated at page 12 of the Legal Aid NSW submission, domestic violence does not operate in isolation of other legal and social welfare issues, and is often the result of a multitude of factors impacting upon a person's relationship, including financial stress, health issues, housing concerns and mental illness. It is the view of Legal Aid NSW that domestic violence is less likely to re-occur where victims and defendants are provided with appropriate, holistic legal advice and timely referrals to support services.

Legal Aid NSW refers to pages 12 to 14 of our submission which details a number of recently introduced early intervention strategies to prevent domestic violence including ADVO pilot project, which provides minor assistance and duty representation services to ADVO defendants at two NSW Local Courts, the DVPS and the Family Law Early Intervention Units.

Pages 14 to 15 of the Legal Aid NSW submission details two additional early intervention strategies namely, school education programs and community referral pathways.

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27. Recommendations

Legal Aid NSW would like to see the inquiry making recommendations which address the need for:

1. State-wide coordination of domestic violence services
2. Enhanced information sharing between the NSW Police Force and non-Government agencies;
3. Targeted domestic violence training for all stakeholders in the justice sector including police and prosecutors, community workers and legal practitioners, and Magistrates.