

NSW Police Force

Legislative Inquiry into Trends & Issues in NSW Supplementary Questions

Priorities and challenges

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

(a) Definition of domestic violence and domestic relationship:

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.

The NSW Police Force (NSWPF) response to domestic violence is governed by the *Crimes (Domestic & Personal Violence) Act 2007* and the definitions that appear therein. The present definition of domestic relationship is broad and encompasses domestic disputes between flat mates and neighbours. These types of disputes would be better defined as 'personal violence'. Domestic violence is traditionally an abuse of power and control within an intimate partner relationship and the definition of domestic relationship should reflect this.

(b) Information sharing:

Information sharing between government and non government specialist domestic violence services should be made easier. If agencies had access to information about high risk families then early intervention and prevention would be more effective. The establishment of a shared database for government agencies, like the shared database for Child Wellbeing Units (CWU's), would allow the identification of frequent presenters to agencies and help identify those families at high risk of imminent serious harm or homicide.

There are significant benefits to cross agency case management of high risk families as evidenced by work done in the area of child protection. If information sharing was easier then case management would be easier for agencies to undertake and commit to. This could potentially reduce recidivism, domestic violence homicides and the impact on children living with domestic violence.

(c) Risk assessment:

There is a need for a two tiered risk assessment approach to domestic violence. The NSWPF requires an agency specific initial risk assessment that can be incorporated into the Computerised Operational Policing System (COPS) and meets the needs of an operational law enforcement

agency. Police are experienced in assessing and mitigating risk at the scene of a domestic violence incident and there is only one police force for victims to contact. Victims don't get to shop around for a different police service whereas they have a diversity of support services to seek assistance from.

For this reason it is the view of the NSWPF that health, human services and non government specialist domestic violence services require a common specialist risk assessment. These types of services have a different operating environment and mandate to the NSWPF. They are the services to whom police refer victims for follow up and support. They are also the services that victims may access multiple times, and victims may access multiple services. It is therefore critical that these services have a common risk assessment that determines the level of risk of imminent or future serious harm, and identifies frequent users of their services which in itself can be an indicator of risk.

(d) Delivery of services to marginalised groups:

Domestic violence does not discriminate in that it occurs across all socio-economic groups and cultures and is a gender based crime. However there are groups who are more vulnerable to domestic violence and are often marginalised in society. These include: young people, people with disabilities, Aboriginal women, older women, people reliant on government pensions, rural and remote communities, people from cultural, religious and linguistically diverse backgrounds, refugees, and people for whom English is not their first language.

(e) Early intervention:

NSWPF notes an increase in the number of young people at Children's Courts who are defendants in domestic violence matters. This indicates a need for early intervention with families, and particularly young people, to prevent those young people becoming serial offenders and entering the judicial system.

(f) Improved governance to ensure coordinated delivery of services across agencies:

NSWPF recognises that no one agency can respond to domestic violence in isolation. While agencies tend to work well together and have a strong sense of goodwill towards each other, there is a need for government to direct policy and deliver more coordinated cross agency services. Improvements in information sharing would assist.

2. From your perspective, what are the key challenges for police in preventing and responding to domestic violence?

(a) Under reporting:

Historically, research suggests that domestic violence is generally under reported to the police. This is thought to be because it predominantly occurs in a private context within a personal or intimate relationship and the victim may be dependent on the offender or afraid of them. Not all

domestic violence victims recognise themselves as victims of domestic violence, especially if they have grown up in a household where domestic violence was an accepted aspect of their family relationships. Many domestic violence victims are also embarrassed and shamed by their circumstances and depending on the coercive control tactics used by the offender, they may be fearful of reporting domestic violence for fear that their children will be removed from their care or they will become destitute and isolated from their families.

It is common for victims of domestic violence to seek out friends, family and even medical practitioners to talk about their experiences rather than the police. Police can only respond to the reports they receive, which is estimated, according to the last Australian Personal Safety Survey, 2005, to be approximately 20% of women who experience personal violence.

(b) Community attitudes:

Under reporting can also be a reflection of community attitudes. While attitudes have slowly changed over the last three decades, there are many people who still consider domestic violence to be a private matter to be dealt with behind closed doors and that the police should not be involved. This is more likely for victims of a culturally and linguistically diverse or Aboriginal background. There may also be other cultural issues that impact community attitudes as well as a general lack of understanding about what police can do if contacted.

(c) Courts:

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 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. NSW Government policy attempts to enforce the message that "Domestic Violence is a crime" yet the low charges and conviction rates are oppositional to this message and discouraging to victims, advocates and police officers.

In addition there is a lack of consistency by Magistrates across Local Courts regarding whether or not victims should attend court on first mention to give evidence. Some magistrates flatly refuse to have victims present at court which makes it difficult not only for Domestic Violence Liaison Officers (DVLO's) and Police Prosecutors to give and receive advice from victims; it also inhibits the capacity for court support agencies to provide effective support to victims and connect them with other services.

(d) Complexity of domestic violence:

Because of the complexities of domestic violence and the coercive control used by offenders to restrict the behaviour of victims, it is not uncommon for a victim to try and encourage police to withdraw an application for an Apprehended Domestic Violence Order (ADVO) or recant their statement.

While legislative amendments have occurred over the last decade to prevent police from being reliant on a victim's statement, it is still very frustrating for police when a victim who is expected to attend court does not show, or becomes a hostile witness.

In addition, despite the best efforts of police to protect the victim through taking out an ADVO or laying charges against the offender, because domestic violence involves people in intimate relationships who may attempt to reconcile, it often becomes a 'revolving door' scenario with police returning to the same house repeatedly. This is one of the reasons that law enforcement agencies worldwide have adopted more proactive policing strategies and are trying to better manage repeat offenders and repeat victims.

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.

(e) Lack of appropriate programs for offenders:

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.

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.

It is also important that domestic violence be viewed holistically for the couples/families involved. For every offender program there needs to be a corresponding program for victims, including separately for children, and these programs need to run concurrently. There is no point in enforcing an offender to participate in a behaviour change program if the victim is not attending a similar program to address the underlying issues that compel them to return to an abusive relationship, or consider themselves unworthy of a healthier, more positive relationship.

Similarly, children who live with domestic violence are not merely silent bystanders to abuse between their parents/caregivers. The impact of domestic violence on children is paramount and long lasting; therefore 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.

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.

Integration and coordination

3. The recent NSW Audit Office report highlighted the need for a more coordinated and integrated approach to domestic violence across government and non-government agencies in NSW.

a. Have you any comments on the findings and recommendations of the Audit Office aimed at improving coordination at the central and local levels?

The NSWPF agree that improved coordination at central and local levels would have a positive impact on services provided to victims of domestic and family violence. The Domestic Violence Integrated Court Model (DVICM) initiative provides a model that demonstrates how coordinated case management can work however effective case management requires significant coordination and funding and is simply not feasible within existing resources.

b. What progress has been made to date in addressing the recommendations to date?

Recommendation 1:

NSWPF have been seeking legislative amendment to effectively remedy the ongoing problem related to privacy. A precedent has been set with legislative amendments taking place to overcome information sharing issues in regards to child protection and applying a similar principle to domestic and family violence would allow for the appropriate exchange of information between agencies to provide increased safety and support for victims.

Recommendation 2:

Refer to part (a) of this question.

Recommendation 3:

The Region Domestic Violence Coordinators (RDVC's) conducted a mapping exercise of domestic violence services during 2011. NSWPF view an integrated online directory of specialist and mainstream services as being very difficult to maintain given the high turnover of domestic violence services particularly in the non government sector. An effective integrated online directory would require ongoing maintenance in order to remain relevant, accurate and contemporary.

Recommendation 4:

Determining the impact and cost of domestic and family violence on NSWPF serves little purpose as police have a legislative responsibility to respond to incidents of domestic and family violence and take action where warranted. Determining costs for the NSWPF response would also be extremely difficult with the differing pay scales of the officers who attend incidents, the rank, type and number of officers attending, the location of the incident, the duration of the investigation, actions taken, court proceedings etc.

There are also ancillary roles that would need to be measured including DVLO's, Domestic Violence Operatives (DVO's), ancillary staff, prosecutors, training, brief handlers, domestic violence sponsors, spokesperson etc. Any estimated cost would be highly subjective and inconsistent from year to year and would provide little benefit as police will continue to respond to all reported incidents of domestic violence.

Recommendation 5:

Assistant Commissioner Mark Murdoch is participating in the strategic committee for develop a new framework.

Recommendation 6:

When an effective and achievable framework for responding to domestic and family violence is established, NSWPF would comply with this framework and be a part of relevant committees.

Recommendation 7:

NSWPF recommend that all strategies including output or outcome measures should comprise part of the overall framework and be measured and published accordingly.

Local innovations

4. Please tell us about some of the innovations in prevention and responses to domestic violence that are occurring in local area commands.

Responses to domestic violence by NSWPF are primarily reactive. Police receive a report of a domestic violence incident and respond to it. Domestic violence incidents are responded to by general duties officers in all Local Area Commands (LAC's) in NSW. That being said there are also several ways to focus on domestic violence in a proactive way.

Across NSW the innovations in prevention of domestic violence, and especially repeat domestic violence vary from LAC to LAC. These innovations are dependent on the resources each LAC has focussing on domestic violence. Certain LAC's have dedicated teams at their disposal working solely and specifically in the area of domestic and family violence some examples of this are:

Brisbane Water LAC – 'DVIRT':

A 'Domestic Violence Intervention and Response Team' (DVIRT) is currently attached to this Command. DVIRT works closely with victims of domestic violence which includes conducting home visits and counselling to repeat victims.

Tuggerah Lakes LAC – 'DV ADVICE':

This team works similarly to the Brisbane Water initiative. Given the high volume of work generated in responding to domestic violence within the LAC, the LAC has an allocated Sergeant in charge of the Team. The allocating of a Sergeant to domestic violence is something that has been implemented at only a handful of LAC's.

Quite often in LAC's regular Bail and ADVO compliance operations are conducted focussing on repeat offenders and particular offenders at high risk of breaching their ADVO. These operations are usually coordinated through the LAC Crime Management Unit, by either the DVO or the DVLO.

The creation of DVO positions across 22 LAC's within NSW has allowed for a targeted focus on repeat and high risk offenders within those areas. This has allowed for the DVLO's to focus primarily on the victims and working collaboratively with support services.

Further to specific compliance operations, it is commonplace within high volume domestic violence LAC's that repeat and high risk offenders are subject of 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 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.

Pro-arrest policy

5. The Committee understands that the NSWPF has a 'pro-arrest' policy in relation to domestic violence. Could you explain what this policy is and how it influences the approach police take to domestic violence?

The NSWPF Domestic and Family Violence Policy (the policy) has been written to support the key legislation governing the NSWPF response to domestic violence, the *Crimes (Domestic & Personal Violence) Act 2007*. The policy encourages proactive policing responses to domestic violence and is available from the NSWPF website.

The policy is proactive in that it encourages all police to conduct thorough investigations to support a proactive prosecution response to the investigation and management of domestic violence. Charges will be laid against offenders where evidence exists to support criminal charges. The policy also encourages applying for ADVO's in keeping with the legislation. This aims to enforce a proactive victim support response to keep victims safe and prevent further violence against them.

The policy also recognises that no one agency can respond in isolation to domestic violence and that the NSWPF supports, encourages and will continue to work in partnership with other agencies to deliver coordinated services to victims, offenders and their families.

6. Dr Don Weatherburn advised the Committee (Transcript, 7 November, p11) that research is not clear as to whether pro-arrest policies reduce violence, and if they do, with whom they reduce violence. Have you any comments on this debate and its implications for policy?

The majority of research to date on the effectiveness of 'pro-arrest' policies has come from the USA. While the basic tenets and complexities of domestic violence are common worldwide, the experience in the USA differs to the Australian experience. There is a much higher gun ownership in the USA and a greater divide between socio-economic groups.

Many jurisdictions in the USA also have a 'mandatory arrest' component to their 'pro-arrest' policies, whereas in NSW police are not mandated to arrest someone at a domestic violence incident. Police officers in NSW are required to conduct thorough investigations, consider the evidence at hand and if there is enough evidence to support a charge, then to proceed with laying charges against the offender at the incident.

Some of the research in the USA draws a correlation between 'pro-arrest' policies and a corresponding increase in the number of incidents reported to police and an increase in arrests made by police. However, with respect to the NSW experience, NSWPF data analysed in August 2011 to identify any trends for the five year period 2006 – 2010, reveals that the

number of events reported to, or recorded by NSWPF, for domestic violence has remained steady. In 2010 106,058 events were reported to NSWPF compared to 106,055 events in 2006.

While there has been a noticeable increase in the number of domestic violence incidents recorded by police over the same five year period, this increase has been largely due to an increase in 'person searches and move on powers', which do not correlate to proactive policing strategies. In 2010 126,325 domestic violence incidents were recorded compared to 124,503 in 2006.

Similarly, the gender distribution of victims has remained the same during the period with the majority of the victims being female at 65.9% with male victims 33.9%.

Requirements of police

7. According to the NSW Police Association (Submission 63, p 10), police find the administrative and legislative requirements associated with responding to domestic violence onerous. Do you share this view? What improvements do you consider could be made to enable police to work more efficiently and effectively?

(a) Administrative:

The COPS is an old DOS based computer system. There is much duplication in the input of information for domestic violence events. It would be much easier if information was inputted once and automatically populated identical fields in other screens. The amendments required to solve this issue are cost prohibitive given the great expense involved even in minor changes.

The NSWPF ADVO computer system does not interact well with COPS. This requires the COPS entry to be complete before the ADVO can be applied for. In order to create, apply for and serve a Provisional ADVO police have to access three (3) different computer systems. Streamlining the process and allowing for ADVO's being created on the COPS system would alleviate this process.

The application for an ADVO can take several hours (from initial attendance to service of a Provisional Order) and could be alleviated by police being able to serve 'on the spot' ADVO's. Whilst in most cases there is a quick turn around of 30-60 minutes this could be streamlined by allowing a Sergeant or above to approve an application. Sergeants are core supervisors and are available 24 hours per day at police stations across the State. If local Sergeants are busy or unavailable a supervisor from another station could consider the application.

Police have a 96% success rate in applications. Sergeants already have a range of powers and responsibility in relation to bail, custody, forensic

procedures etc. With training supervisors could provide consistent review and determination of applications. Most already possess that ability.

Many Commands have field supervising Sergeants who are urged to attend 100% of domestic violence incidents, if possible. 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. The challenge however with this proposition is that rural and remote areas do not have suitable satellite coverage to allow for mobile data terminals to operate effectively.

This capacity at the scene, when adopted could significantly streamline the process removing the requirement to convey the defendant to a police station, time spent in the custody process and time waiting for an ADVO.

(b) Legal:

(i) ADVO process:

The *Crimes (Domestic and Personal Violence) Act 2007* compels police to apply for ADVO's if they suspect or believe a domestic violence offence, stalking or intimidation (including personal violence related), or child abuse offence has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or proceedings have been commenced against a person for such an offence. (Sections 27 and 49)

Application proceedings (including ADVO's) are determined to the civil standard (on the balance of probabilities). There can be quite a gap between this standard and the suspicion requiring the making of an application. This means that although police are required to apply for an ADVO they do not have sufficient evidence to prove it to the civil standard.

Sections 27 and 49 both provide that police need not make application if an ADVO is already in force against the defendant for the protection of the person concerned. Both sections also provide that an application need not be made if the person for whose protection an order would be made is at least 16 years of age at the time of the incident and the investigating officer believes that the person intends to make an application for an ADVO or there is good reason not to make an ADVO.

The first option is impractical as the Local Court will always refer domestic violence applications back to the police. Secondly because 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.

(ii) Costs against police:

A recent court decision in the NSW Supreme Court has expanded the ground upon which costs can be awarded against police in ADVO proceedings (*Constable Redman v Wilcocks* [2010] NSWSC 1268). As a result there has been a recent increase in the amount of cases where costs have been awarded against police.

Unlike criminal matters, the Attorney General does not cover costs awarded against police in ADVO proceedings. The costs are directly borne by the informant's commander. These costs are not budgeted for so come out of operational budgets therefore affecting policing resources and operations.

(iii) Detaining offenders for the service of ADVO's:

Sections 89 and 90 of the *Crimes (Domestic and Personal Violence) Act 2007* provide additional powers for detention but do not go far enough often resulting in an unworkable situation.

Section 89 provides that a police officer who makes or is about to make an application for a provisional order may direct the defendant to remain at the scene of the incident or such other place that the police locate the person. If the person refuses to remain, the police officer may arrest the person and detain them at that location or take the person to a police station and there detain them until the provisional order is made and served.

If the person agrees to remain at the location police cannot use this power to detain or convey the person to a police station.

Where the person agrees to remain at the scene and police have no other justification for arrest police have two options. The first is to leave a police presence with the defendant whilst the informant returns to the police station to complete the required entries into COPS and the ADVO system or to leave the defendant at the scene while they return to complete the required entries.

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.

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.

Police should have a power to detain the defendant and convey him/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.

Section 90 provides a similar power allowing police to detain a person reasonably suspected of being a defendant in an ADVO. This power only allows police to keep them at the scene until a copy of the order can be served. This would require another vehicle to print the order and bring it to the scene for service. Once again this is impractical. The exception is where the defendant refuses to remain at the scene in which case the suspect can be arrested and held at the scene or conveyed to the police station.

This section requires similar amendment to that proposed for section 89.

(iv) Domestic Violence Evidence Kits:

In 2007, Treasury funded the provision of Domestic Violence Evidence Kits (DVEK's) consisting of video and still cameras for collection of evidence in domestic violence matters. A request for legislative change at the time was ignored. Legislative change is subsequently required to permit and promote the tendering of evidence gathered through the use of a DVEK as evidence in chief as, at present, video evidence cannot be tendered this way.

Police are expected to take photographs and use the video to record the taking of a notebook or typed statement. These items are under utilised, particularly the video camera because police cannot see the point in gathering this evidence when it is not being admitted into evidence.

Transcription is an expensive proposition and one that LAC's do not have a budget for. Funding would be required if courts require transcripts of video statements. Alternatively courts could make it a requirement that only electronic copies of the video be required for court purposes.

If copies of videos are provided to the defendant there is a risk that electronic copies could be duplicated or posted on social networking sites to further intimidate the protected person. It should be an offence to unlawfully duplicate and disseminate such material.

Consistency and quality in police practice

8. What quality control mechanisms exist within a LAC to identify poor practices and address them?

The quality control and checking mechanisms begin at the supervisory level, whereby a supervising officer will often attend incidents of domestic violence to ensure the correct procedures are being followed. Each incident entered on the police computer systems must be verified by a supervisor. DVLO's will review these incidents for both information gathering purposes and quality assurance. Incidents are regularly dip sampled by Duty Officers to ensure compliance with operating procedures. When poor practices are identified, the events will be resubmitted to the officer with instruction on how to correct any errors identified. Further follow up may occur with the education officer or team leader where systemic problems are identified.

9. If an officer in a LAC were identified as not handling domestic violence incidents appropriately, what instructions or training would they be given?

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.

10. What mechanism is in place for victims and their advocates to provide feedback to the NSWPF on their experiences, for it to be funnelled into training or reviews of the Standard Operating Procedures?

There are a number of mechanisms, formal and informal, in place for victims and advocates to provide feedback to the NSWPF. If a member of the general public thinks they have been unfairly treated by a NSW government agency, including the NSWPF, then they can complain to the NSW Ombudsman. Compliments and complaints can be made directly to the Customer Assistance Unit on 1800 622 571.

The NSW domestic violence sector and the NSWPF have a very positive and open relationship. The NSWPF are represented on a number of cross agency committees and Assistant Commissioner Mark Murdoch, Corporate Spokesperson for Domestic and Family Violence is well known throughout the sector. If a peak body representing a specialist domestic violence service identifies some issues with police practice then it is not

uncommon for them to request a meeting with Assistant Commissioner Murdoch in an effort to have their concerns addressed.

In addition, since 2007, the NSWPF has hosted an annual Domestic Violence Stakeholder Forum where key government and non government agencies come together with the key NSWPF domestic violence officers including the Corporate Spokesperson for Domestic & Family Violence, the Region Domestic Violence Sponsors, RDVC's and representatives from the Domestic & Family Violence Team. These forums provide an opportunity for the NSWPF to update the sector on key projects and initiatives and obtain feedback regarding these. The forums also provide an opportunity for all agencies to share information or discuss contemporary issues, such as the proposal to trial GPS monitoring of offenders or research on the issue of 'primary aggressor'.

In the past these forums have also been used to advise the sector when corporate documents are being revised or developed, including the Code of Practice for the Investigation and Management of Domestic Violence, and the Standard Operating Procedures (SOP's). With respect to the latter, email communication is also used to obtain feedback from agencies regarding certain aspects of the SOP's.

With respect to training there are a number of specialist domestic violence services who present on the DVLO's course and the two day Investigation and Management of Domestic Violence Workshop. Last year a new domestic violence training DVD was made with the assistance of a survivor of serious domestic violence. This DVD has been distributed to all LAC's to be used in local training and is the most contemporary training resource currently available to the NSWPF. This DVD, "Nanette's Story" was played to sector representatives at the 15 August 2011 DV Stakeholder meeting and was very well received.

DVLO's

- 11. The Committee has also heard that the DVLO Program is very valuable, but that some DVLO's are more effective and respected than others, depending on the people recruited to the role and the support that they receive within their local area command (Professor Julie Stubbs, 7 November 2011, p.8). How do you think the effectiveness of DVLO's can be broadened?**

The DVLO role is an important one to LAC's however certain DVLO's are always going to be more effective and respected than others whether this is due to individual personalities, experiences, work practices, supervision, leadership or local culture. In order to broaden the effectiveness of DVLO's, each LAC within the NSWPF must take domestic and family violence matters seriously. Leadership starts at the top. It is not a matter of paying DVLO's a higher salary or making them a higher rank; it is recruiting the right people to this role and ensuring that they receive

ongoing training and support. In the vast majority of instances, general duties police are the first responders to domestic violence incidents and make decisions about what action should be taken. The DVLO plays a greater role in quality assurance and victim support.

12. Which LAC's do not currently have a DVLO filling that role? For what reason(s).

Records show that each of the 80 LAC's in NSW has an officer performing the role of DVLO, whether this position is an allocated DVLO position or another officer (generally GD's or DVO) redeployed to DVLO duties.

The LAC's without a specifically allocated position for DVLO are City Central, The Rocks, Castlereagh, Darling River, Lachlan, Mudgee, New England and Oxley.

13. The Committee has received information from Women's Domestic Violence Court Advocacy Service Coordinators across the state showing that DVLO positions are very often only part time, and noting concerns including that some DVLO's have to spend otherwise valuable time 'on the trucks' or other duties, and can be unavailable to attend court. What is your response to this information?

Policing is an unpredictable environment and where it is certainly not ideal that officers in support roles such as DVLO's should be redeployed from their core role to first response duties this may occasionally occur due to emergencies, staffing issues or other exigent circumstances particularly in rural locations. Approximately 8 LAC's (10%) have part-time officers in the DVLO role with many of these officers working a minimum of 3 days/week. It should be noted that the DVLO role is staffed part-time in locations where there is less volume of domestic and family violence.

14. How does the rate of domestic violence in an area influence resourcing, for example in relation to the number of DVLO's in a local area command?

DVLO positions have been in existence since the position was created in the late 1980's. The current LAC/Region structure was adopted in July 1997 and DVLO's were allocated to specific LAC's based on their needs at the time. In 2007, the position of DVO was created and 35 positions were strategically placed across the state.

It is a Commander's discretion as to whether more than the allocated numbers of DVLO's at a LAC perform DVLO duties. For example, Tuggerah Lakes LAC have two allocated DVLO positions, however a team of four police work in DVLO roles.

Yellow card program

- 15. Witnesses from Redfern Legal Centre (Evidence, 7 November 2011, pp 54-55) praised the Police 'yellow card' early referral pathway as a means of court 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 called for the program to be implemented more widely, and funded accordingly. Where is the program currently running, and what is your view of this recommendation?**

The Domestic Violence Proactive Support Service (DVPASS) is known locally as the 'yellow card' due to the colour of the card that is used to refer consenting victims to specialist domestic violence services for follow up. The DVPASS was introduced in 2003 as an option for LAC's to take up to formalise referrals of domestic violence victims to support agencies. The 'yellow card' is now used at 69 LAC's. Five of these Commands work with local services that have received specific DVPASS funding from the previous government under the *NSW Domestic and Family Violence Action Plan*. The remaining LAC's have implemented the card through goodwill and positive relationships with local services.

The NSWPF has been advocating for the last 3 years for funding to conduct a formal evaluation of the DVPASS with a view to identifying best practice for victim referrals and subsequently implementing a best practice model state-wide for all LAC's. The Office for Women's Policy had informally agreed to support and fund such an evaluation but to date has not provided the required funding. As the NSWPF is keen to progress the evaluation Operational Programs has recently identified some funds for this project and it is expected that a tender process will commence this financial year to progress this piece of work.

Arrests of women

16. Women's Legal Services NSW (7 November 2011, p 44) suggested that police prosecutors feel that they have less discretion than in the past about whether, having listened to both sides, they will continue with a prosecution or ADVO application. What is your view here?

The discretion of police prosecutors is contained within the NSWPF Withdrawal of Proceedings SOPs. This document covers both criminal charges and applications for ADVO's.

The charge SOP's have been consistent for quite some time, though the public interest in preventing and prosecuting domestic violence would generally limit the exercise of this discretion.

The SOP's were amended in 2011 to include withdrawal of ADVO's. The new criterion reduces the prosecutor's discretion to withdraw ADVO's only to situations:

- where the person in need of protection (PINOP) is not a child or appreciably below average general intelligence function; and
- where the victim does not fear future stalking, personal violence or intimidation from the defendant; and
- there is no information suggesting that the PINOP has been subjected at any time to conduct amounting to a personal violence offence; and
- there is no information suggesting that there is a reasonable likelihood that the defendant may in the future commit a personal violence offence against the PINOP; and
- the applicant officer or DVLO does not oppose the discontinuance.

If any of the above are answered in the affirmative the decision is escalated to the informant's Crime Manager and the area prosecutions coordinator. This is the same requirement for the withdrawal of criminal matters.

17. Have you any further views on the potential reasons why arrests of women are increasing, and what action might be taken in respect of those reasons?

There appear to be a number of reasons 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 (eg whilst incapacitated, drunk or asleep)
- female victim may threaten to call the police so male offender gets in first and claims to be the victim.

Young people

18. In their submission, Legal Aid NSW (p 20) document a number of concerns about the increasing use of ADVO's to control the behaviour of young people, and argue that penalties for young people for breach of ADVO's should be different to those for adults, focusing on diversionary options. Also, the Shopfront Youth Legal Service (Submission 51, p 6) advocated alternative sentencing options such as youth justice conferencing, forum sentencing and home detention. What are your views here?

The Legal Aid perception is incorrect. Police do not use ADVO's to control youth behaviour. Legislation and police policies do not generally differentiate between adult and child offenders. Sections 27 and 49 of the *Crimes (Domestic and Personal Violence) Act 2007* provide a strong requirement for police to act.

Police are excluded by section 8(2) (e) of the Young Offenders Act 1997 (YOA) from using the diversionary options for offences created by the *Crimes (Domestic and Personal Violence) Act 2007* including breach ADVO, stalking and intimidation.

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.

The removal of section 8(2)(e) would address this issue. 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 charges under the *Crimes Act 1900* for example including common assault, AOABH etc.

There are appropriate safeguards within the YOA to allow police to recognise the seriousness of domestic and family violence, the power exercised by offenders and the common fact that domestic violence is often well seeded by the time the first offence is reported to police. There is merit in altering the YOA further to provide guidance to the court in exercising its discretion in relation to domestic violence. Perhaps some consideration could be given by the Parliament in that regard in the construct of the second reading speech.

It is important to have noted that domestic and family violence is a special circumstance that by its very nature limits the opportunity for the use of the YOA beyond other types of crime. The power dynamic noted by the Children's Court in the second point 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. This imbalance may make it impractical to bring the parties together in a conferencing environment.

Penalties for young people for breach ADVO's should reflect a combination of factors including the gravity and nature of the crime, the impact on the victim and preventing further violence.

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.

Magistrates are reluctant to make final ADVO's for children and young persons because of the impact of doing so on their future including impacts on the child at risk register. Instead they tend to make lengthy (6 to 12 month) interim orders. The solution is to amend the legislation to overcome this.

Police prosecutors

- 19. The Redfern Legal Centre suggested (Evidence, 7 November 2011, p 57) that domestic violence matters sometimes seem to be viewed as a 'training ground' for police prosecutors before they graduate to 'more serious' matters, so those dealing with domestic violence tend to be less experienced and knowledgeable. What is your view here?**

This perception is probably more a reflection of the amount of domestic violence hearings that occur rather than the reality. It is not uncommon for every court to have domestic violence hearings almost every day of the week, unless they have a specific 'DV list day'.

Traffic hearings are the training ground for trainee prosecutors who as they gain experience graduate to more complex matters including domestic violence. Trainee prosecutors require constant supervision and are not supposed to be left unsupervised. All prosecutors are generalists prosecuting a range of crimes including domestic violence related. Their knowledge base is extremely wide well beyond domestic violence.

Once a trainee prosecutor is confirmed as a prosecutor there is an expectation that he/she is able to do almost any type of matter. Domestic violence law is complicated and only one aspect of the knowledge base of prosecutors.

Trainee prosecutors receive one complete day of training with the Domestic Violence Legal Consultant during week 2 of the Prosecutor Education Program.

Police Prosecutions have recognised the specialist role of DV prosecutor. They have a list of regular domestic violence list prosecutors across the State to maintain consistency.

Police Prosecutions have recognised a small number of specialist domestic violence prosecutors as best of profession. Those prosecutors are assisting the Legal Consultant, Domestic and Family Violence to write a specialist Domestic Violence Prosecutor's Course. The first two courses are scheduled for May 2012 and one course every quarter thereafter until the end of 2013.

The Domestic Violence Prosecutor's Course is being registered with the NSWPF Academic Board and meets their demanding standards. The course is designed to hone the skill of police prosecutors with an interest in prosecuting domestic violence. There has been significant interest from prosecutors to attend the course.

20. We have also heard that in many courts police prosecutors lack the time to prepare a case well, for example by talking with DVLO's about individual matters (Law Society, 7 November 2011, p 62). How big an issue to you perceive this to be, and what might be done to address it?

Police prosecutors in many courts have an incredible workload. Courts list more hearing time than is available in a day to guard against matters that drop out. Most hearings relate to police matters so it is not uncommon that the prosecutor has to read multiple briefs of evidence on the morning prior to court and speak to informants and others.

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.

Prosecutors with practice become very adept at this practice but it is less than ideal given that the defence advocate has had significantly more time to review the brief of evidence, conference witnesses and distil the issues. It is testament to prosecutors that the successful prosecution level is as high as it is.

More complex matters are allocated as special fixtures and the prosecutor is allotted time to prepare for the matter including reading of materials and conferencing of informants and witnesses. These are generally matters that are listed for one day or more. As the prosecutor has one matter he or she can follow it to the relevant court room. Unfortunately, there are not sufficient prosecutors for the allocation of a single matter and preparation time.

Police Prosecutions and Operational Programs have been working together on several domestic violence prosecutor initiatives around Sydney. These clinics have taken various forms including general awareness style sessions where victims are given an understanding of the court process and the opportunity for general questioning. In some cases there are also one on one sessions between a prosecutor (not necessarily the one who will run the hearing) and victims.

Penalties and the court system

- 21. The Police Association's submission (p 5) states its members are frustrated by leniency in penalties, especially in relation to breaches, and the refusal of courts to impose available penalties. It concludes (p 6) that the penalties for domestic violence offences are ineffective and should be reviewed in light of research. How do you consider the penalty system should be improved, both in its design and application?**

Most police officers are members of the PANSW. These concerns are regularly raised to members of the Domestic and Family Violence Team.

Section 14(4) of the *Crimes (Domestic and Personal Violence) Act 2007* provides that unless the court otherwise orders, a person who is convicted of a breach ADVO must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against a person. This does not apply if the person convicted was under 18 years of age at the time of the alleged offence.

Magistrates very rarely impose a custodial sentence and even rarer comment of 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.

Sentencing guidelines or formulas for magistrates could provide significant benefit and consistency in sentencing. They could also provide reference for parties considering whether a sentencing appeal is viable or not.

22. The ALRC/VLRC report makes recommendations with respect to a specialised family violence court, education of judicial officers (and others), and the development of a national bench book. What are your views on these recommendations to improve the court system and judicial practice?

There is merit in specialised family violence courts with resourcing and skilled staff and advocates. Specialised courts can provide consistent sentencing to offenders and provide consistent services for victims of domestic violence.

The domestic violence legislation is complex and many advocates and judicial officers have only limited knowledge of the Act. This is demonstrated by the rare reference by courts and advocates to key provisions of the Act.

23. Various inquiry participants such as the Redfern Legal Centre, Law Society and Legal Aid have advocated the extension of domestic violence court lists within NSW local courts, as a means of building expertise across the State among those working at courts, and fostering more collaborative and effective systems. What are your views here?

NSWPF agrees that where courts have specialist domestic violence court lists they work effectively as DVLO's in collaboration with Police Prosecutors and WDVCS 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.

When discussing this in terms of the expansion of the one existing specialist domestic violence court, i.e. DVICM, practices that have been identified to be best practice and meet the aims and objectives of the specialist court are being developed into a framework to be incorporated across the State. As NSWPF are a key stakeholder and agency within this Model, this will also be applicable to our practices.

In keeping in line with building expertise across the State's courts for domestic violence, the NSWPF DVLO's have core duties relating to the facilitation of court process, consultation with Police Prosecutor, and support for victims.

24. What is your view on whether intensive correction orders offer an effective and appropriate response to 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.

The NSWPF supports the application of ADVO and bail conditions for domestic violence offenders. Offenders that breach these orders are held accountable by police and the criminal justice system. Additionally, NSWPF have the ability to conduct compliance checks on such orders while also ensuring the victim safety.

The NSWPF provide specialised training into the investigation of domestic violence, including the investigation of breaches. Successful prosecution of breaches are dependant on the credibility of the evidence and the support of the 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.

Prevention and early intervention

25. What do you see as the role of the Police Force in prevention and early intervention in respect of domestic violence, and how do you think prevention and early intervention can be improved in NSW?

The role of the NSWPF in the prevention of domestic violence is to apply for ADVO's to protect victims from further abuse, conduct thorough investigations, obtain evidence, charge offenders if evidence exists to support charges, refer the victim to appropriate support agencies (and the offender if the service sees offenders) and if required, refer children to the CWU, the Helpline or remove them from the home if necessary.

As noted earlier in this response, prevention could also be improved if there are changes in community attitudes, but more importantly, if there are changes at the judicial level with more serious sentencing options being granted.

Early intervention is not really the role of police as police are often the last resort for victims and may only be contacted at a point where the violence is escalating, but may already be long standing. Early intervention is more the role of human and health services, as well as education.

There are a number of innovative programs being run in schools which target young people to consider what a healthy relationship is and to educate them about domestic and sexual violence. Such programs include Love Bites and Respectful Relationships. While these programs have significant merit there is benefit in starting these programs with younger children and incorporating them with other programs such as Protective Behaviours. Children and young people need to learn about who are safe adults in their lives so that they can identify a safety network for themselves of adults to speak to if they are fearful of violence or abuse at home. They also need to learn that you don't have to be an adult to phone the police for assistance.

Other improvements in early intervention and prevention can be gained from agencies conducting case management meetings to identify high risk families who may be frequent presenters to a number of agencies. Similar models work well for child protection matters and could equally apply to high risk domestic violence families, many of whom are the same families.

NSW Health conduct routine domestic violence screening at emergency rooms in hospitals but don't provide any information to NSWPF about people who they identify through this process as being at risk of domestic violence. This means that victims may attend hospital for treatment of serious injuries but unless the police have been involved there has been no action taken against the offender for the assault, and no protection order applied for to prevent the victim from further harm. Consideration needs to be given to NSW Health informing NSWPF when they have identified through their routine domestic violence screening that a victim has required medical attention at a hospital for injuries sustained from a domestic assault.

As noted in the NSWPF submission to the Parliamentary Inquiry and commented on at the Parliamentary Hearing, improving the sharing of information between agencies by overcoming existing privacy restrictions would also greatly improve both the early intervention and prevention responses from agencies. This would allow for greater sharing of information and open the way for case management strategies to be implemented.

GPS monitoring

26. In the hearing Assistant Commissioner Murdoch addressed the issue of GPS tracking. Do you have any specific comments about the use of electronic monitoring in relation to domestic violence?

The use of electronic monitoring of domestic violence offenders clearly has potential, providing that the police response is limited to locating, arresting and prosecuting the offender. It is not the role of police to monitor GPS

devices. Concerns have also been raised as to who would qualify for use of the trackers. There are questions that need to be considered as to whether these devices should be used prior to court, with offenders on remand or post-sentencing. There are also issues with the operation of the equipment in country vs city locations. Please refer to the NSWPF submission to the Parliamentary Inquiry for further comment on this issue.

Trends

27. Dr Weatherburn advised the Committee that while rates of domestic violence assault have been fairly stable, they have increased for the domestic violence-related offences of harassment, threatening behaviour and private nuisance. He also said it wasn't clear whether this represents an increase in police reporting or in the actual incidence of these offences. Can you shed any light here?

NSWPF is seeing a rise in the rate of intimidation, stalking, bullying and harassment type offences through social media and mobile telephone technology. This would reflect the increase that Dr Weatherburn advised the Committee. As the technology becomes more sophisticated, so does the criminal activity, however legislative amendments are slow to keep up with technological advances.

Awareness campaigns surrounding bullying, harassment, intimidation and stalking have been implemented by government and non government agencies alike. These in turn result with reports being made to Police.

Other

28. The Police Association submission highlights the vicarious trauma that domestic violence can cause for police officers. How does the Police Force promote self-care practices among officers to protect their well-being?

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. DVLO's 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. WellCheck is a preventative strategy – not therapy. If more intense counselling is required it is provided via other programs such as general EAP counselling.

29. Some submissions suggest that domestic violence has been constructed as a 'women's issue' such that men experiencing domestic violence and women in same-sex relationships find it difficult to seek out and identify support (for example One in Three campaign, Submission 40 and Inner City Legal Centre, Submission 26, p 4). What are your views on this?

From a policing perspective, male and female victims are treated equally and all victims of domestic violence are encouraged to report any violence to police. Reporting of violence within same-sex relationships is encouraged both through NSWPF DVLO and Gay & Lesbian Liaison Officer (GLLO) networks and NSWPF have specially targeted marketing material to encourage the reporting of violence within same-sex relationships. Both GLLO's and DVLO's complete modules in same-sex domestic violence as part of their training.

It is acknowledged that there are more support services available to female victims of domestic violence primarily due to funding arrangements for services already in place (eg. WDVCS). With the overwhelming majority of victims of domestic violence being women, this is quite appropriate, however NSWPF acknowledge there is a need for further support services to be created for men and women from same-sex relationships.

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