



Responses to Questions on Notice

1. Details of the evaluation of the Domestic Abuse Program

A summary of the major findings of the DAP are attached.

2. The discussion paper for the statutory review of the Crimes (Domestic and Personal Violence) Act 2007

The Discussion Paper can be accessed online through the Criminal Law Review Division's website:

[http://www.lawlink.nsw.gov.au/lawlink/clrd/ll_clrd.nsf/vwFiles/Stat_Review_DP_Issues.pdf/\\$file/Stat_Review_DP_Issues.pdf](http://www.lawlink.nsw.gov.au/lawlink/clrd/ll_clrd.nsf/vwFiles/Stat_Review_DP_Issues.pdf/$file/Stat_Review_DP_Issues.pdf)

3. Details from the Law Reform Commission report on ADVOs and penalties for domestic violence offences

The Commissions' Report considers issues in respect of penalties for breach of ADVOs in parts 12.126 to 12.190. A discussion of the Commissions' views on the issues commences at 12.176 and includes recommendations 12-8 (which was referred to by Ms Musgrave in the hearing, and relates to guidance on the sentencing of offenders for breach of protection orders in a national family violence benchbook) to 12-10.

Subsequent to giving evidence, LPCLR consulted with BOCSAR and the Judicial Commission in respect of data collected and analysed by both agencies. BOCSAR data and data recorded by the Judicial Commission on the Judicial Information Research System (JIRS) only record penalties for the principal offence charged. This means that where an offender is charged with a breach ADVO offence and a second more serious offence, the data only records the penalty for the most serious offence. Consequently, the penalties for 'breach ADVO' offences provided to the Committee are not necessarily representative of the penalties imposed for all breach ADVO offences.

BOCSAR has provided more comprehensive analysis of penalties imposed for 'breach ADVO', whether that offence be a principal or secondary offence. The data (from Higher, Local and Children's Courts in 2010) shows that the penalty outcomes for proven 'breach ADVO' offences range from having no conviction recorded to terms of imprisonment¹.

¹ The average sentence length being 4.50 months.

The most common penalty for a breach ADVO offence was a term of imprisonment (14.97% of matters), the second most common penalty was a s 9 good behaviour bond (13.29%), followed by a fine (12.28%). Just over 4% (4.36%) of offenders received a s 12 suspended sentence. 21.67% of 'breach ADVO' charges resulted in 'no penalty' outcomes, because the defendant was found not guilty of the charge. The BOCSAR data is attached.

4. *BOCSAR follow-up evaluation of the DVICM - Crime Prevention Division*

BOCSAR follow up evaluation of the DVICM has not yet been finalised or released. This document will be provided when it is available.

5. *Information on the DVICM strategic review -Crime Prevention Division*

The DVICM strategic review has not yet been finalised or released. This document will be provided when it is available.

6. *Information about the impact of age on the effectiveness of perpetrator programs*

These data are not yet available.

7. *Information on trial of GPS tracking for DV offenders in Spain - Corrective Services*

Please see attached paper: *Evaluation of Electronic Monitoring and Dissuasion of Domestic Violence in Spain*

8. *Adoption of the recommendations of the Law Reform Commissions report*

The draft allocation of the 187 recommendations is in its final stages. There are a number of recommendations already adopted in NSW (approximately 29), with 29 others being considered in the context of the statutory review of the *Crimes (Domestic and Personal Violence) Act 2007* (see p 20 of the Discussion Paper). Of the remaining 129, the Department's position is that some will require cross-agency collaboration, and others will require an initial response from particular agencies. Some are not relevant to NSW in that they apply only to the Commonwealth, for example recommendations relating to the *Family Law Act* (Cth).

Approximately 39 recommendations are proposed to be addressed through various national collaboration working groups established under the National Justice CEOs and the Standing Committee on Law and Justice. The allocation of recommendations to these working groups is in the process of being settled.

9. Sentencing options for juvenile offenders

The Young Offenders Act 1997 (YOA) establishes a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of warnings, cautions and youth justice conferences. The YOA was developed in response to a number of reviews which questioned the 'appropriateness, effectiveness and efficiency' of bringing children accused of less serious offences into the criminal justice system through court.

The objects of YOA are:

- (a) to establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and
- (b) to establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and
- (c) to establish and use youth justice conferences to deal with alleged offenders in a way that:
 - (i) enables a community based negotiated response to offences involving all the affected parties, and
 - (ii) emphasizes restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and
 - (iii) meets the needs of victims and offenders, and
- (d) to address the over representation of Aboriginal and Torres Strait Islander children in the criminal justice system through the use of youth justice conferences, cautions and warnings.

Some offences are excluded from the YOA (s 8(2)) including offences in the Crimes (Domestic and Personal Violence) Act 2007 (CDPVA), most sexual offences, serious drug offences and any offence that is strictly indictable. The CDPVA offences (including stalking, intimidation, and breach of an AVO) are excluded from the YOA on the basis that they involve apprehended or actual violence, sometimes in a domestic context. The exclusion reflects their seriousness, and that conferencing is usually regarded as inappropriate for domestic violence offences.

There is a current statutory review of the YOA and the *Children (Criminal Proceedings) Act 1987*, which is considering what offences should be covered by the YOA. Information about the review, including a Discussion Paper which examines issues in respect of the exclusion of offences in the CDPVA, is available online through the Criminal Law Review Division's website:

http://www.lawlink.nsw.gov.au/lawlink/clrd/ll_clrd.nsf/pages/CLRD_reports

Responses to Supplementary Questions

1. The NSW Government currently uses GPS tracking for serious sex offenders who are subject to Extended Supervision Orders under the Crimes (Serious Sex Offenders) Act 2006.

a. Do you think introducing GPS tracking for domestic violence offenders would reduce breaches and improve compliance with ADVOs?

With regard to monitoring the compliance of individuals subject to an ADVO, Corrective Services NSW (CSNSW) has no involvement whatsoever in this process. Nevertheless, the intention of GPS monitoring of DV perpetrators is to deter the offender from breaching their ADVO order and to ensure that they do not physically approach their victim.

However, the introduction of GPS monitoring does not prevent offenders from contacting their victims through other means such as telephone, internet or through a third party.

Furthermore, the extra surveillance that GPS entails would result in a rise in the number of “technical breaches” which are contraventions of an order that are more procedural and do not involve the offender perpetrating a further offence (DV related or otherwise). In the monitoring of offenders subject to an Extended Supervision Order (ESO), CSNSW has witnessed a rise in the occurrence of technical breaches for various reasons. Some examples of technical breaches include (but are not limited to):

- In the instance where a curfew had been imposed, some offenders may arrive home after their curfew due to reasons that are outside their control (such as late running public transport or other transportation issues)
- Equipment malfunctioning not as a result of tampering.
- Situations where the offender and victim are inadvertently in the vicinity of one another.

At the instigation of the Office for Women’s Policy, CSNSW has been involved in discussions around GPS monitoring of Domestic Violence offenders who are subject to a parole order of 6 months or more, are assessed as having a medium to high risk of re-offence (as deemed by an actuarial risk assessment – LSI-R) and who have a convicted history of DV related assault or intimidating behaviour toward a victim or victims.

b. In what circumstances, if any, do you think such a system could be used?

The reliability of GPS monitoring in remote locations is yet to be tested however in a high-density metropolitan area, GPS signals are known to “drop out”. This is attributed to the height of some buildings and also the prevalence of tunnels and other areas where the sky (and therefore access to a satellite signal) is obscured.

GPS monitoring will not prevent further acts of violence and any response times would be variable and dependent upon location and time. Introduction of GPS monitoring may

promote the perception that the technology provides complete protection to a victim and the wider community. The reality being that no mechanism can provide an absolute safeguard.

There may be instances of the GPS bracelet experiencing signal drop out or a form of malfunction, which can provide a window of opportunity for the victim to become at risk of harassment or further acts of violence.

c. Could you foresee any negative consequences if GPS tracking for domestic violence offenders was introduced?

Victims of domestic violence often feel alone, afraid and disempowered. It is important that if the GPS bracelets are used, victims are consulted about how they work and are fully informed about their benefits and limitations, including being informed about how to get assistance if they have technical problems or if there is a risk to their security, before consenting to participate.

There is also a need to ensure that sufficient support is available for the victim when using this system. Training would be required to ensure that service providers understood GPS' so that they could adequately support the victim. Sufficient CSNSW and Police resources would need to be made available to ensure that if the warning signals went off, a prompt and adequate response would follow.

DAGJ note that there are several additional issues regarding any proposal to use GPS tracking for domestic violence offenders, some of which have been raised in the previous question. These include:

The efficacy of GPS tracking in improving victim safety

GPS tracking will not be an appropriate strategy for victims who are living with the offender, in families where the offender does not already know the victim's location (because the defendant cannot avoid a location if he is unaware of the victim's whereabouts), or where there are requirements for ongoing contact because of family law orders. The device will also not prevent a determined offender from approaching a victim or family member.

The likely cost and value-for-money relative to alternative compliance measures

DAGJ understands that the Office for Women's Policy have had preliminary discussions with a supplier, and the cost of 250 pairs of GPS units were estimated to be around \$1.5 million. These costs do not include additional supervision of offenders.

GPS tracking does not appear to represent value for money when compared with other strategies designed to reduce domestic violence reoffending such as safety planning with victims, interagency case tracking meetings in which information is exchanged about victim safety and defendants' behaviour, and proactive police home visiting of domestic violence offenders to monitor their compliance with orders. For example in 2010-11 the Wagga Wagga Domestic and Family Violence Intervention Service provided intensive case management services including safety planning to 240 victims, at a cost of \$386,000, or an average cost of \$1608 per person (as opposed to \$6,000 per pair of GPS units). Information exchange and proactive policing of ADVOs have also been tested in the DVICM at no or minimal cost.

Risks and costs associated with credible evaluation

DAGJ understands that a proposal is being developed by Office for Women's Policy (OWP) that would be tested in two sites. The proposed sites and evaluation methodologies make it unlikely that sufficient offenders would be referred to the program for an evaluation to take place.

If a trial were to proceed, a parole model would be preferable to a sentencing model. A parole model offers better targeting to offenders who have committed serious crimes, and who pose an ongoing risk to the victim. Through the State Parole Authority (SPA) there are mechanisms in place to assess offender's suitability and the SPA has legislated authority to order electronic monitoring.

Consideration should be given to the following risks, which may need to be addressed as a result of using GPS bracelets:

- The risks to children - does this model assume that children will be protected, as they would be in the presence of the protected person? Children may not be with the protected person. For example, they may be school aged or living with other relatives.
- There may be implications for Family Court parenting orders.
- The intrusiveness of the bracelet worn by the victim and possible stigmatisation as a result
- Ensuring that the victim is not seen as responsible or as an offender in the violence
- Ensuring that the victim is provided with adequate and responsive community support
- Ensuring that the victim is fully informed in order to consent freely

d. Are you aware of how far along the Government is in developing any plans?

DAJG is not developing the proposal. It is understood FACS are developing the proposal and this question should be answered by that Department.

2. One of the arguments in favour of GPS tracking devices is that they could provide evidence to support claims of an ADVO breach (see Fairfield Domestic Violence Committee, Submission 44, p 2). The Committee is advised that such evidence would not be admissible in court. Could you please clarify whether evidence gathered in this way would be lawful, adequate and admissible in criminal proceedings.

Expert evidence of the location of the GPS device at a given time would be subject to the ordinary rules of evidence determining admissibility. The evidence would however only be part of a circumstantial case and would not of itself be evidence of the seriousness or nature of the breach.

Technical evidence of electronic monitoring would be given by an expert witness. A monitor, ie a Corrective Services NSW officer who is trained to monitor the movements

of an offender via electronic monitoring is unlikely to be giving their evidence as an "expert" (*Police v Tillman* 21 October 2011 at Waverley Local Court). An expert witness for the purpose of electronic monitoring is usually a technician from the company that provides and maintains the electronic monitoring devices.

Monitoring must be undertaken lawfully to be admissible. The *Surveillance Devices Act* contains a general prohibition on the installation, use and maintenance of tracking devices (s 9(1)). The exceptions to this prohibition include the installation, use or maintenance of a tracking device for a lawful purpose (s 9(2)(c)). The Crimes (Serious Sex Offenders) Act 2007 and the Crimes (Administration of Sentences) Act 1999 currently allow conditions to be imposed requiring offenders to wear electronic monitoring devices.

3. *Please provide details of the feasibility study on electronic monitoring that Corrective Services is undertaking at the request of the Office for Women's Policy, including the aims, target group, elements, timeframe and cost of the study.*

CSNSW has been assisting the Office for Women's Policy in providing information relating to domestic violent offenders who would fit the criteria for GPS monitoring as outlined by the working group. Information relating to resources and infrastructure to enable GPS monitoring of offenders has also been provided. To date, the study has not formally commenced.

4. *How would electronic monitoring for domestic violence offenders address the concerns raised in submissions with regard to:*

- a. *participants' civil liberties including privacy***
- b. *the psychological impact of being monitored***
- c. *unfounded perceptions of safety on the part of the victim***
- d. *technical issues such as transmission failure.***

DAGJ is not leading this project so questions about how electronic monitoring will address concerns raised in submissions would be better directed to the Office for Women's Policy, Department of Family and Community Services.

5. *Could the information gathered through electronic monitoring be used as evidence in court?*

See response to question 2 above

6. *Please tell us more about your department's plans for expanding the Domestic Violence Intervention Court Model (DVICM), including the elements that are to be implemented in other areas and the intended outcomes.*

DAGJ is awaiting approval of the review of the DVICM. The report and details of future strategies will be provided following approval.

7. *The Benevolent Society (Submission 37, p 2) has called for specific prevention and early intervention strategies to be developed for a range of special needs groups including Aboriginal people, new and emerging migrant groups, people with disabilities, gay and lesbian people, etc. How is the Government working to ensure that services are responsive to these groups?*

The Department of Attorney General and Justice (DAGJ) is committed to ensuring that the needs of victims of crime from across the community are met. DAGJ is developing a number of strategies to ensure that people with special needs receive the best service possible:

- Utilising Interpreter and TTY services both for individual Approved Counselling and for any other service activity such as the Victims Access Line, assisting with compensation claims etc.
- Development of a wide range of publications, available both on-line and in printed formats, for example a suite of publications have been developed which address Aboriginal cultural issues. Multi language pamphlets about Victims Services and court processes have recently being finalised for publication. Pamphlets have been developed for people with intellectual disability.
- Offering ongoing training and support to people who provide services to victims of crime. In 2010, an Approved Counsellors/Authorised Report Writers Forum was held in Sydney, with over 100 attendees. Workshops were held which addressed culturally appropriate responses to Aboriginal people in counselling. Victims Services division, DAGJ will be providing a recruitment day and professional development day in partnership with the Aboriginal Family Violence Service in Forbes, this will include a professional development session for working with children who have witnessed domestic violence.
- Developing a response to the needs of the elderly in the community, particularly in response to the issue of older people who experience abuse.
 - **People from Aboriginal Communities**
- DAGJ manage and support 20 Aboriginal Community Justice Groups (ACJC) across NSW. The groups are made up of respected Aboriginal people that meet regularly to discuss local solutions to the high rate of Aboriginal contact with the criminal justice system. The ACJGs provide the Department with strong networks and links to the Aboriginal community and allow the Department's strategies to be inclusive, responsive and tailored to local Aboriginal communities.
- DAGJ employs 18 Aboriginal Client Service Specialists across the state who provide front line advocacy, advice and support to Aboriginal victims and offenders at court. Theses officers also play a vital role in linking victims and offenders to specialised support services in accordance with their individual circumstance.

- DAGJ also manages the Circle Sentencing program, which allows victims to participate in sentencing proceedings. Circle Sentencing provides a valuable opportunity for the offender to show remorse for their actions and the dialogue concentrates on identifying the underlying or contributing factors that lead to the offence. There is a strong focus on linking both victims and offenders to specialist support through this program and the Circle Sentencing Project Officer plays a valuable role in supporting both parties to utilise those services.
- DAGJ's Victims Services division is currently reviewing the 2008-2011 Aboriginal Strategic Plan and developing a new plan, which aims to make further enhancements in providing services to the Aboriginal community in NSW.

- **New and emerging migrant groups**

- DAGJ is working with African, Chinese and Pacific community leaders, service providers and community members to inform them of the implications of domestic violence. A DVD was developed for the African communities in 2010, which outlined the rights of victims of domestic violence and also explained the purpose of Apprehended Domestic Violence Orders (ADVO), how they work and how a perpetrator can avoid a criminal charge. DAGJ's Diversity Services division have also run workshops explaining women's rights, what constitutes domestic violence and that it is a criminal offence targeted at new and emerging migrant groups.

- **People with disabilities**

- DAGJ runs workshops for people with disabilities explaining women's rights, what constitutes domestic violence and emphasising that it is a criminal offence.

8. *Please tell us more about the range of programs run by your department which have a prevention or early intervention focus, both those specifically focused on domestic violence and those focused more broadly whose target group might include (potential) victims and perpetrators of domestic or family violence.*

Within DAGJ, the Crime Prevention and Community Partnerships Division's primary goal is to prevent and reduce crime in NSW. Within this context the Department develops and implements evidence based interventions and programs designed to reduce re-offending, provide support to victims and hold offenders accountable for their behaviour. Some programs that prevent reoffending may be accessed by defendants in domestic violence matters these include:

MERIT (Magistrates Early Referral into Treatment) is a local court based diversion program that targets adult defendants with illicit drug use problems who are motivated to undertake drug treatment. Defendants assessed as suitable for MERIT can undertake supervised drug treatment as part of their bail conditions. The primary goal of MERIT is to break the drug-crime cycle by involving defendants in treatment and rehabilitation programs. MERIT commenced in Lismore in 2000 as a pilot program and has since expanded to 65 local courts across NSW, covering 80% of the local court population.

MERIT has also expanded to provide treatment to defendants with alcohol problems. Currently, MERIT teams at Orange, Bathurst, Broken Hill, Wilcannia, Dubbo, Wellington, Coffs Harbour, Wollongong and Manly accept clients with alcohol issues.

CREDIT commenced operation as a two-year trial in August 2009 at Burwood and Tamworth Local Courts. The trial will continue during 2012 and a decision regarding continuation and further expansion will be made following the outcome of the BOCSAR evaluation, which is due mid 2012. CREDIT is a 'cross agency' initiative, which aims to reduce re-offending rates. The program targets adult defendants at local courts who are motivated to address the issues that relate either directly or indirectly to their offending behaviour. Participants are offered facilitated access and support to a broad range of available services providing education or training, treatment, rehabilitation or other social welfare assistance.

The Domestic Violence Intervention Court Model (DVICM) prevents reoffending through several integrated strategies: an emphasis on perpetrator accountability with proactive arrest, seamless service delivery to victims, sharing information about risks to victims, and offender behaviour change programs. The program also aims to prevent revictimisation by ensuring that victims have access to intensive case management support for the duration of the matter at court.

9. What recommendations would you like to see come out of this inquiry?

Please refer to the Government's submission.