

**INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND
ISSUES IN NSW**

Organisation: NSW Government

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Background Paper

Legislative Council on Social Issues

Inquiry into Domestic Violence Trends and

Issues in NSW

Introduction

The NSW Government is committed to addressing all forms of violence against women in NSW, including domestic and family violence. The Minister for Women, the Hon. Pru Goward MP, referred the issue of reducing recidivism for domestic violence related offences to the Legislative Council Standing Committee on Social Issues (the Committee). On 25 July 2011 the Committee adopted the following terms of reference to inquire into domestic violence trends and issues in NSW:

That the Standing Committee on Social Issues inquire into and report on domestic violence trends and issues in New South Wales, and in particular:

1. *Strategies to reduce breaches and improve compliance with Apprehended Domestic Violence Orders (ADVOs), including:*
 - a. *The use of GPS bracelets*
 - b. *Whether existing penalties for domestic violence are adequate*
2. *Early intervention strategies to prevent domestic violence,*
3. *The increase in women being proceeded against by police for domestic violence related assault, and*
4. *Any other relevant matter.*

This whole of government paper is provided by way of background to inform the Inquiry, and is structured in line with the terms of reference.

1. Strategies to reduce breaches and improve compliance with Apprehended Domestic Violence Orders (ADVOs)

1.1 The use of GPS bracelets

The Government has committed to reducing domestic violence rates in the NSW 2021 Plan. The Government is particularly focused on reducing rates of repeat offending. Domestic Violence Deterrent Systems (DVDS) utilise Global Positioning System (GPS) technology to track an offender's whereabouts. GPS tracking of domestic violence offenders is used in a number of jurisdictions, including several states in the United States and in a number of countries in Europe. GPS tracking of domestic violence offenders has not been tested in Australia.

Corrective Services NSW (CSNSW) utilises GPS tracking for serious sex offenders who are subject to an Extended Supervision Order (ESO) under the *Crimes (Serious Sex Offenders) Act 2006*. These offenders are sex offenders assessed as posing a high risk in relation to re-offending and community safety.

Other offenders, such as those on home detention, Intensive Correction Orders or parolees with monitoring as a condition, are tracked utilising radio frequency technology.

All offenders subject to monitoring through GPS tracking or radio frequency in NSW also receive intensive case management.

1.2 Whether existing penalties for domestic violence are adequate

Information on sentencing outcomes is sourced from the Judicial Commission Research System (JIRS) which provides statistical data on sentencing outcomes for various specific offences and from the Bureau of Crime Statistics and Research (BOCSAR) report *Factors which influence the sentencing of domestic violence offenders* (the BOCSAR Report). The BOCSAR Report examines penalties imposed for offences arising from domestic violence incidents, based on data collected by the NSW Police Force (NSWPF). The JIRS data relates to the period March 2008 to March 2011, while the BOCSAR data relates to the period January 2008 to June 2009.

Domestic violence offenders can be subject to a number of criminal charges. Common offences arising from domestic violence incidents include:

<i>Crimes (Domestic and Personal Violence) Act 2007</i>		
Section	Offence	Maximum Penalty
13(1)	Stalking or intimidation with intent to cause fear of physical or mental harm	Imprisonment for 5 years and/or 50 penalty units
13(5)	Attempt to stalk or intimidate with intent to cause fear of physical or mental harm	Imprisonment for 5 years and/or 50 penalty units
14	Offence of contravening apprehended violence order	Imprisonment for 2 years and/or 50 penalty units.
<i>Crimes Act 1900</i>		
61	Common assault	Imprisonment for 2 years
59(1)	Assault occasioning actual bodily harm	Imprisonment for 5 years
195(1)(a)	Destroy or damage property	Imprisonment for 5 years

The JIRS statistics refer only to the *Crimes (Domestic and Personal Violence) Act 2007* offences which are “domestic” related.¹ The BOCSAR data draws on NSWPF data and includes these offences and offences under the *Crimes Act 1900*. JIRS distinguishes between matters in local and higher courts.

The BOCSAR report indicates that five offences have significantly higher volume, comprising 97% of the total. These five offences are (in order by most prevalent):

¹ No definition of ‘domestic’ is provided by JIRS. DAGJ notes that the *Crimes (Domestic and Personal Violence) Act 2007* requires matters be recorded as ‘domestic violence offences’ where they involve a ‘personal violence offence’ and occur in a domestic relationship (s 11).

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- common assault (s. 61 *Crimes Act 1900*),
 - breach apprehended domestic violence order (ADVO) (s. 14 *Crimes (Domestic and Personal Violence) Act 2007*),
 - assault occasioning actual bodily harm (s. 59(1) *Crimes Act 1900*),
 - property damage (s. 195(1)(a) *Crimes Act 1900*) and
 - stalking/intimidation (s. 13 *Crimes (Domestic and Personal Violence) Act 2007*).

The BOCSAR Report does not provide a breakdown of data between local and higher courts.

DV related common assault (Crimes Act 1900)

Penalties for common assault range from dismissals² to imprisonment. BOCSAR data indicates that just under 65% of those convicted of common assault received some form of bond provided by the *Crimes (Sentencing Procedure) Act 1999* (section 9 and 10 bonds). Section 9 unsupervised bonds were the most common penalty for this offence (almost 30%). 14% received a fine and just over 7% were sentenced to a period of imprisonment. The average duration of imprisonment was 4.64 months, with a maximum of 18 months.

Breach apprehended domestic violence order (Crimes (Domestic and Personal Violence) Act 2007)

Penalties for a breach of an ADVO ranged from dismissals to imprisonment. BOCSAR data indicates that the most common penalty imposed by Courts were section 9 unsupervised bonds (21%), with a further 14% receiving section 9 supervised bonds. In total, around 40% of offenders received a form of bond, and 18% received a fine only. These figures are consistent with JIRS data.

BOCSAR reported that almost 17% of offenders convicted of breaching an ADVO were sentenced to a period of imprisonment. JIRS data indicates that of those offenders who were imprisoned, 88% received sentences of 12 months or less and 1% received the maximum penalty that can be imposed under the legislation (2 years). This correlates with BOCSAR data, which reports that the average term of imprisonment was 4.71 months (median = 4 months).

DV related assault occasioning actual bodily harm (Crimes Act 1900)

Penalties ranged from section 10 (*Crimes (Sentencing Procedure) Act 1999*) dismissals to imprisonment. BOCSAR data indicates that approximately 55% of people convicted of assault occasioning actual bodily harm received a form of bond, with section 9 (unsupervised) bonds being the most prevalent penalty imposed (29.1%). 9% received a bond with no conviction recorded. 17.6% of those convicted of the offence were sentenced to a period of imprisonment, for an average of 7.35 months. The minimum and maximum sentences of imprisonment for this offence were 0.03 months and 3 years respectively.

² Under s. 10 of the *Crimes (Sentencing Procedure) Act 1999*

DV related destruction or damage of property (Crimes Act 1900)

Penalties ranged from section 10 (*Crimes (Sentencing Procedure) Act 1999*) dismissals to imprisonment. BOCSAR data indicates that just over 50% of people convicted of destroy or damage property in a domestic incident received a bond (under ss 9 or 10). However, the most common penalty for this offence was a fine (28.5%). 3.5% of people received a term of imprisonment, with the average term being 4.24 months and the maximum being 18 months.

Stalking or intimidation (Crimes (Domestic and Personal Violence) Act 2007)

Penalties ranged from section 10 (*Crimes (Sentencing Procedure) Act 1999*) dismissals to imprisonment. BOCSAR reports that 10% of offenders convicted of this offence received a fine. BOCSAR data indicates that the most common penalty imposed was a section 9 unsupervised bond, which was imposed in 30% of matters. In total about 60% of offenders received some type of bond.

JIRS statistics show that in the Local Court, 14% of matters resulted in imprisonment and just over a quarter of those (26%) received 12 months imprisonment. 9% of people imprisoned for this offence received an 18-month sentence, which was the highest in the Local Court.

In the District Court, JIRS indicates there were 8 convictions for this offence. Two offenders received suspended sentences, with the Court requiring supervision in one of those matters. Three matters resulted in section 9 bonds and the remaining 3 matters resulted in imprisonment terms of 24 months.

JIRS data indicates that there were three domestic related 'attempt to stalk / intimidate' offences in the period May 2009 to March 2011 in the Local Court. Two resulted in s. 9 bonds, and the other in a s. 9 supervised bond.

Factors that contribute to a greater likelihood of imprisonment.

The BOCSAR Report notes a range of factors that contribute to a greater likelihood of imprisonment, including the severity of the offence and the offender's criminal history. Certain demographic characteristics indicate that males were more likely than females to be imprisoned following a domestic assault (12% vs 3%) and that people in the age groups 22 to 29 years and 30 to 39 years were more likely than those younger (18 to 21 years) and older (over 40 years) to be imprisoned. Indigenous offenders were four times more likely than non-Indigenous offenders to receive a term of imprisonment (28% vs 7%).

Where offenders were convicted of concurrent offences, the likelihood of imprisonment increased (13% for those with one and 37% for those with two or more vs 4% for those with none). 37% of offenders who had a concurrent offence of breaching an ADVO were sentenced to imprisonment, compared with 8% of those who did not. Approximately a quarter of offenders with a prior conviction for a violent offence in the ten years prior, received a term of imprisonment, compared to 2% of those who did not have a prior conviction for a violent offence. Just under 50% of

offenders who had been convicted of breaching an ADVO in the 2 years prior were sentenced to imprisonment, compared with 9% who had not breached an ADVO.

2. Early Intervention and other Strategies to prevent and intervene in domestic violence

Most research indicates that early intervention and prevention in domestic violence requires an integrated approach delivered collaboratively between government and non-government organisations. There are many instances where these partnerships work very effectively.

Prevention and early intervention was a key focus of the 2010 *NSW Domestic and Family Violence Action Plan*. Research shows that early intervention strategies can be effective at reducing and preventing domestic violence.

Examples follow of where the NSW Government provides support for intervention strategies to prevent domestic violence and target recidivism:

- Primary Prevention with Young People
LOVE BiTES is a school-based program founded on evidence which shows that school-based strategies can lessen perpetration and victimisation of relationship violence. Schools are a positive site from which to run prevention education as they increase the accessibility of programs allowing the material to be integrated within the curriculum and the systems of the school. In conjunction with the National Association for the Prevention of Child Abuse and Neglect (NAPCAN), LOVE BiTES has been adapted and developed for implementation within juvenile justice facilities.
- Perpetrator Programs
After piloting the CSNSW Domestic Abuse Program (DAP), an evaluation has showed the program results in reduced recidivism rates for men enrolled in the DAP. The results showed that treatment was associated with a significant reduction in recidivism over time, both in terms of violent re-offending and re-offending in general. Over a two year follow up period, DAP participants' committed 21% fewer violent offences than the control group.

The NSW Government has recently developed Minimum Standards for Men's Domestic Violence Behaviour Change Programs in NSW to ensure that all programs reflect good practice and are safe and effective in changing the behaviour of perpetrators of domestic violence. While there is room for variation in the methods and approaches adopted by program providers, the minimum standards set benchmarks that will apply to all programs. The standards address minimum policy and procedure requirements, training and experience, supervision, program content, interagency practice and data collection. The standards are underpinned by the following principles:

- The safety of women and children must be given the highest priority

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- Victim safety and offender accountability are best achieved through an integrated, systemic response that ensures that all relevant agencies work together
 - Challenging domestic and family violence requires a sustained commitment to professional and evidence based practice
 - Perpetrators of domestic and family violence must be held accountable for their behaviour
 - Programs should respond to the diverse needs of the participants and partners.

These Standards have recently been circulated to the Domestic Violence sector and the Department of Attorney General and Justice will assist services with their implementation and compliance. Over the next 12 months a practice guide and guide to training will be published, seminars will be held throughout NSW, and providers will be required to assess their compliance with the standards. By December 2012 providers must have adapted their practice and be registered as compliant with the standards to receive funding or referrals from the NSW Government.

- Early Intervention

NSW Health's Domestic Violence Routine Screening program is a system wide early intervention strategy which:

- Identifies female clients in recent or current domestic violence situations providing information, support and referral.
- Targets women presenting to mental health and drug and alcohol services in recognition of the impact of domestic violence on the short and long term physical, mental and emotional health and wellbeing of victims, including children.
- Targets women presenting at antenatal and early childhood health services in recognition of the high prevalence of domestic violence in these clinical populations and the greater risk posed to women who are pregnant, and to infants and young children.
- Minimises ill health as a result of domestic violence.

A recent study found that the NSW Health Domestic Violence Routine Screening program is strongly established, with a sustained screening rate higher than found in similar programs internationally. The program increases workers' responsiveness to, and awareness of domestic violence as an issue.

The study can be found at

http://www.health.nsw.gov.au/resources/nswkids/dvrs_doh_report_after_the_pdf.asp

- Risk Assessment

The Cross Agency Risk Assessment and Management–Domestic and Family Violence (CARAM-DFV) identifies and assesses the risk of domestic and family violence to individuals and families and aims to better coordinate interventions to manage or reduce this risk through an integrated and consistent service response and facilitate cross-agency communication on individual cases of domestic and family violence.

The Framework was informed by a comprehensive review of research which identified the efficacy of risk assessment based on standardised risk factors. The Framework has five elements: shared understanding; consistent risk assessment; consistent risk management; sharing information to increase safety; and competent cross-agency workforce.

- Intervention strategies

The Domestic Violence Pro-Active Support Services (DVPASS), operating in 11 locations across the State, provides coordinated, integrated responses and support to assist victims of domestic violence with a range of housing, criminal justice, child care, health and financial issues. The DVPASS has a unique role in program delivery in its proactive approach which involves bringing services to a person rather than having them seek those services out.

The Staying Home Leaving Violence program, operating in 18 locations across the State, helps to prevent homelessness by removing the perpetrator from the family home, so that victims, typically women and children, can remain safely where they are. The program places accountability with the offender and ensures women and children are not made homeless, or displaced from families, friends and schools. The program also provides a range of other support for victims, including improving the home's security and changing the locks, through to helping women through the complicated legal system.

- Indigenous specific strategies

The NSW Aboriginal Family Health Strategy (AFHS) commenced in 1998. Through this strategy, NSW Health funds sixteen Aboriginal Community Controlled Health Services; two non-Government organisations; two Local Health Districts; and Justice Health to employ a total of 25 Aboriginal Family Health Workers (AFHWs) to deliver domestic and family violence prevention related services. These are predominantly located in regional and rural areas of NSW.

In addition, the Partnership Community Program (PCP) commenced in 2008 with the objective of improving community wellbeing. The PCP provides a basis for Aboriginal communities and government to work together to improve outcomes for Aboriginal people through partnership, mutual accountability and strengthened local decision making.

The PCP's goals aim to enhance the governance, leadership and service capacity of Aboriginal communities and organisations. As an initial step, progress has been made in formally establishing representative community engagement bodies in the 40 Partnership Communities. At June 2011, 21 Partnership Communities have recognised local governance bodies for their community. These communities are now broadly looking forward to the stage of developing a Community Action Plan to identify the priorities for that community. This Program is based on the premise that long term solutions to Aboriginal family violence are to be found in initiatives designed to build on community strengths, increase community wellbeing and enhance social inclusion within Aboriginal communities.

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- Supporting non-government partners in preventing domestic violence
In addition to the specific programs outlined above, the Office for Women's Policy (OWFP) within the Department of Family and Community Services has managed an annual \$2.9 million Domestic and Family Violence Grants Program to fund non-government organisations to develop innovative projects that prevent domestic and family violence.

The Department of Family and Community Services is currently commencing a review of domestic and family violence grants to ensure the most effective use of these programs in responding to domestic and family violence.

3. The increase in women being proceeded against by police for domestic violence related assault

Concern has been raised in the community sector about the increase in the numbers of women being proceeded against for domestic related offences, and whether police are correctly identifying the 'primary aggressor' in a domestic violence incident. CSNSW data indicates that the number of female offenders sentenced to custody for domestic violence offences since 2008 has remained relatively stable, however there has been a small increase in female domestic violence offenders managed in the community (from 365 in 2008/09 to 527 in 2010/11).

CSNSW notes however, that this is in line with the overall increases in rates of offending across all categories of offences. Similarly, police data does not suggest that police are failing to identify the primary aggressor in domestic violence incidents. A recent report by the Ombudsman, *Audit of NSW Police Force Handling of domestic and family violence complaints, May 2011*, confirmed that there was no evidence to support that the primary aggressor was not being correctly identified.

Nonetheless, the NSWPF are currently participating in a joint Australian Research Council (ARC) proposal to examine this issue in detail. The NSWPF have also included guidance in their Standard Operating Procedures (SOP's) for indentifying victims and aggressors.

It is suggested that any examination of the increase in women as perpetrators of domestic violence should include an evaluation of:

- whether it is accompanied by a cross application for an ADVO by a male perpetrator; and
- what the severity of female inflicted violence is compared to that inflicted by men (for instance, Bagshaw et al (2010) in their research on family violence and family law noted that, while a few men reported the same forms of violence as women, the majority reported being victims of women's emotional, psychological and verbal abuse. Men interpreted their partners' failure to function in a stereotypic family role as being abusive to them in a way that women did not. Men also perceived responses from services as being abusive whereas women did not³).

³ Bagshaw, D., Brown, T., Wendt, S., Campbell, A., McInnes, E., Tinning, B., Batagol, B., Sifris, A., Tyson, D., Baker, J. & Fernandez Arias, P. (2010), Family violence and family law: The experiences and views of children and adults from families who separated post-1995 and post-2006, Volume 1, April 2010

4. Any other relevant matter

Review of the NSW Domestic and Family Violence Action Plan

The Minister for Women, the Hon Pru Goward MP, has initiated an independent review of the NSW Domestic and Family Violence Action Plan. This review will consider whether the Action Plan remains current and effective, and ensure that it aligns with the work being undertaken at a national level.

NSW Audit Office Performance Review

The Audit Office of NSW is currently conducting a performance audit to assess how well NSW Government agencies work with each other, and with non-government services, to respond to domestic and family violence. The audit is expected to be completed in the second quarter of 2011-12.

Domestic Violence Intervention Court Model

The Department of Attorney General and Justice (DAGJ) is completing a strategic review of the Domestic Violence Intervention Court Model (DVICM). This review has included detailed analysis of the key challenges faced by the criminal justice system in the management of domestic violence matters. The Department has also examined the outcomes of the DVICM to identify strategies to address victims and offender's needs and ensure that the system runs efficiently. Following is an outline of the DVICM.

The DVICM is an integrated criminal justice and social welfare response to domestic and family violence. The program is led by the Attorney General's Division of DAGJ, and involves CSNSW, (also within DAGJ), Legal Aid NSW, NSWPF and the Department of Family and Community Services (including Housing NSW and Community Services).

The DVICM involves several initiatives and interventions that come together to form an integrated criminal justice response, to improve outcomes for victims, offenders and the community. In an integrated response there are formal protocols to ensure that each agency fulfils its own function of policing, prosecution, child protection, legal advocacy, justice administration, offender management or victim support. It also requires that each agency collaborate with others to make sure that victims and offenders receive effective support and intervention and the system functions efficiently.

The DVICM involves the following strategies:

- **Consistent police responses to domestic violence:** Police adopt a policy of charging offenders wherever there is evidence of a crime, and there is less reliance on victims to consent to the person being charged. There is immediate action to improve victim safety, and it is less likely that victims will be pressured to withdraw.
- **Consistent evidence collection:** Police have domestic violence evidence kits, and use them to systematically collect digital evidence from domestic violence scenes, including photographs or video of visible injuries and

property damage. This increases the proportion of incidents resulting in a charge, and the success of prosecutions.

- **Victims' services:** All victims are referred to a support service and provided with support throughout the court process, and their safety issues and other needs addressed. The aim is to ensure that victims are safe and supported, that they participate in the court process, have confidence in the justice system, and will report any further incidents.
- **Minimising adjournments:** Police are required to prepare a mini-brief of evidence and provide this to the defendant at the first mention at court. This increases the rate of early guilty pleas, and minimises adjournments for legal advice.
- **Reducing court delay:** A Local Court Practice Note has been implemented to improve court efficiency. The object of the Practice Note is to ensure that pleas of guilty are entered at the first available opportunity, and otherwise that a hearing occurs as promptly as possible. The Practice Note includes a time standard requiring that domestic violence matters be listed for hearing within 3 months of the charges being laid.
- **Domestic abuse programs to change behaviour and reduce reoffending:** Perpetrators sentenced with supervised bonds and those in custody are assessed to attend a behaviour change program. A specialist domestic violence behaviour change program has been introduced by Corrective Services. The objective of the program is to reduce reoffending.
- **Weekly meetings about families to manage and respond to risks to victims and their children:** Police, Corrective Services, Community Services and victims' services meet to track cases through the court process, and monitor and manage risks to victims' and children's safety. This is to ensure that all agencies are aware of risks and take action to improve victims' and children's safety, and monitor offenders' behaviour. There are Privacy Codes of Practice to allow information to be exchanged.
- **Regular meetings to ensure agencies work together and solve problems as they arise:** There are regular meetings of local managers to ensure that the system is working well and local issues are addressed. These groups also develop and implement strategies to meet local communities' specific needs