

**Submission
No 56**

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

Organisation: Law Society of NSW

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THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: rbg573021
Direct Line:

15 September 2011

The Hon. Niall Blair, MLC
Chair
Standing Committee on Social Issues
Parliament House
Macquarie St
Sydney NSW 2000

Dear Mr Blair,

Inquiry into domestic violence trends and issues in NSW

The Law Society's Criminal Law Committee and Juvenile Justice Committee (Committees) welcome the opportunity to contribute to the inquiry into domestic violence trends and issues.

The Committees have reviewed the Terms of Reference and make the following comments for your consideration.

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

a. the use of GPS bracelets.

The Committees do not support the use of GPS bracelets as a strategy to reduce breaches and improve compliance with ADVOs.

An ADVO is a civil order, and restricting a person's liberty in this way is extreme. The resources available for the use of this technology are already extremely limited. It would be more appropriate to use the resources for the supervision of offenders on Intensive Corrections Orders and home detention. These people have been found guilty of a criminal offence worthy of a custodial offence.

The Committees understand that a pilot using GPS bracelets to monitor people subject to an ADVO was conducted in England and New Zealand. Following the evaluation of the trial the system was not introduced.

A more useful strategy would be to ensure that the parties to the order are legally represented when conditions are negotiated in the first place. Defendants in ADVOS proceedings are often unrepresented and the conditions imposed are not

appropriate. Empowering the parties to proceedings when the order is made and imposing appropriate conditions may assist in improving compliance with ADVOs. In the Committees' view this would be a more effective way to decrease breaches than using GPS bracelets or creating higher penalties.

b. whether existing penalties for domestic violence are adequate.

The Committees submit that the existing penalties for domestic violence are adequate.

A person who knowingly contravenes a prohibition or restriction specified in an ADVO is guilty of a criminal offence punishable by imprisonment for up to two years (section 14(1) *Crimes (Domestic and Person Violence) Act 2007*). The legislation creates a presumption in favour of imprisonment if the act constituting the breach was an act of violence against a person (section 14(4) *Crimes (Domestic and Person Violence) Act 2007*).

It is important to note that the statistics on sentences for breach of an ADVO do not specify the type of breach. These statistics are therefore of limited assistance as breaches can range from a telephone call to a serious assault.

In '*Factors which influence the sentencing of domestic violence offenders*', Issues Paper No. 48, BOCSAR, July 2010, the report concluded that:

"[d]omestic violence appears before the courts in many forms, from the most serious assaults to property damage and offensive language. The penalties received for these offences are equally diverse. The factors which influence whether a domestic violence-related assault offender will be sentenced to prison generally reflect the severity of the offence and the criminal history of the offender."

The Committees note that a person convicted of a domestic violence related assault who had breached an ADVO in the past two years increased the odds of imprisonment by a factor of 2.30¹.

2. Early intervention strategies to prevent domestic violence

The Committees support any form of early intervention strategies that are effective at preventing domestic violence.

One option would be to extend the authority of Magistrates to refer parties to court facilitated processes such as mediation. The Local Court could also have the ability to make an order requiring one or more parties to attend counselling, educational or rehabilitative programs in appropriate cases. It may be useful to draw upon the experience of the Family Court in this regard.

¹ *Factors which influence the sentencing of domestic violence offenders*, Issues Paper No. 48, BOCSAR, July 2010, p6.

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

Research by BOCSAR shows that there has been an increase in the number of women being proceeded against by police for domestic violence related offences (*'Female offending: has there been an increase?'* Issues Paper No 46, BOCSAR, April 2010). However, according to the Director of the Bureau, this is likely to reflect increased public willingness to call police and/or tougher law enforcement than an increase in domestic violence².

4. Any other matter.

The report *'Trends and patterns in domestic violence assaults: 2001 to 2010'*, Issues Paper No. 61, BOCSAR, May 2011, found that 48.3% of domestic assaults involved a female victim and a male offender in a partnership relationship. Therefore over half of the cases involving domestic violence assaults do not fall within the category of female victim and a male offender in a partnership relationship. The next most common scenario consisted of male victims being assaulted by male non-partners (14.8%)³. The *Crimes (Domestic and Person Violence) Act 2007* may need to be reviewed in light of the diverse nature of the characteristics of victims and offenders involved in domestic assault.

The Committees note that the Attorney General's Department is conducting a statutory review of the *Crimes (Domestic and Person Violence) Act 2007* and has released a detailed consultation paper. Submissions to the review are due on 18 November 2011. The findings of the statutory review may be of assistance to the Standing Committee.

The Committee Members would welcome the opportunity to appear at the Standing Committee's public hearing if at all possible.

Yours sincerely,

Stuart Westgarth
President

² *'Female Offending: has there been an increase?'*, BOCSAR Media release, 3 June 2010.

³ *Trends and patterns in domestic violence assaults: 2001 to 2010*, Issues Paper No. 61, BOCSAR, May 2011, p7.