

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

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# **NSW Police Force**

**Submission on behalf of the New South Wales Police Force to the NSW Legislative  
Council Standing Committee on Social Issues**

*Inquiry into domestic violence trends and issues in NSW*

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For further information or advice please contact Assistant Commissioner Mark Murdoch APM,  
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## **Terms of Reference**

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.

## Introduction

In 2011 the NSW Police Force (NSWPF) responded to in excess of 121, 000 domestic violence related incidents across the State. That is, on average in excess of 385 incidents a day.

Domestic violence is the largest volume crime type that the NSWPF deals with. In 2011, 35% of all homicides in NSW were domestic violence related, and in excess of 60% of attempted murders were domestic violence related.

In 2010, police in NSW applied for more than 40,000 Apprehended Domestic Violence Orders (ADVO's) of which 96% were granted. Eighty percent of those orders were applied for by police officers outside of court hours between 4pm and 9am.

The annual cost to NSW of the cumulative impact of domestic violence is in the billions of dollars.

The NSWPF is fully committed to the protection and support of victims of domestic violence and the arrest, charge and prosecution of offenders. NSW 2021 specifically references the Governments commitment to *'implement initiatives to significant reduce domestic and sexual violence against women and their children'*. NSWPF clearly play a lead role in working towards this outcome.

The NSWPF actively engages with other Government and Non Government Organisations (NGO's) in an effort to develop effective cross agency, collaborative responses to domestic and family violence.

We are represented on a number of cross agency committees including, but not limited to:

- the Domestic & Family Violence Senior Officers Group
- the Domestic Violence Death Review Team
- the Staying Home Leaving Violence Executive Committee
- the Cross Agency Risk Assessment and Management (CARAM) – DFV Framework Committee (as a financial partner)
- the Senior Executive Meeting for Domestic Violence & Sexual Violence Framework
- the Privacy and Domestic Violence Working Group
- the Domestic Violence Justice Framework Executive Committee

- the National Domestic Violence Order Working Group
- White Ribbon National Leaders Group
- the White Ribbon Workplace Program; and the
- Apprehended Violence Legal Issues Consultative Committee (AVLICC)

NSW 2021 and the National Plan to Reduce Violence Against Women outline State and Federal Government commitment respectively to reducing levels of domestic and family violence and provide a framework to assist in the response to domestic violence.

While the NSWPF has considerably improved its response to domestic violence we continue to refine that response in terms of our five key roles:

- investigate incidents of domestic and family violence
- provide safety and support to victims
- bring offenders before the court or apply the *Young Offenders Act* to young offenders where appropriate
- be proactive in preventing domestic and family violence
- work with local service providers to reduce incidents of domestic and family violence

The NSWPF welcomes the opportunity to provide a written submission to the Inquiry on the important, complex and challenging issue of domestic violence.

## **Key NSW Police Force initiatives**

Some of the organisational initiatives that contribute towards our capacity to respond to domestic and family violence include:

### **Specialist Roles and Responsibilities**

The role of police in domestic violence has changed over the years. There is now a greater emphasis on police not only responding to incidents of domestic and family violence, but working proactively with the community and support services to prevent domestic violence. To this end, NSWPF is committed to working with other service providers to improve practice and reduce the incidence of domestic violence.

To help achieve this, the NSWPF has identified specific roles and responsibilities within the organisation to coordinate its response to domestic and family violence. These roles and

responsibilities are both operational and corporate and aim to improve the strategic and operational response to domestic and family violence. They include:

### **Corporate Spokesperson for Domestic & Family Violence**

The Corporate Spokesperson for Domestic & Family Violence is Assistant Commissioner Mark Murdoch APM, whose responsibilities include:

- providing advice to the Commissioner and his Executive Team on matters relating to domestic and family violence
- participating in, and coordinating NSWPF involvement in relevant interagency activities that require NSWPF input
- overseeing and monitoring the development of NSWPF policy and practice regarding domestic and family violence
- speaking publicly on behalf of the Commissioner on matters concerning domestic and family violence
- overseeing internal NSWPF activities and priorities (including chairing committees) concerning domestic and family violence

### **Region Domestic Violence Sponsors (RDVS)**

Are Local Area Commanders selected from each of the six NSWPF geographic Regions. Their role is to promote awareness and understanding of contemporary policing in the investigation and management of domestic and family violence within their respective Regions. The RDVS provides a critical link between the actual operational response and corporate requirements. In addition, they maintain an awareness of interagency work and promote the benefits of coordinated responses to domestic and family violence across their respective Regions.

### **Region Domestic Violence Coordinators (RDVC)**

Region Domestic Violence Coordinator (RDVC) positions have been established within each of the six NSWPF Regions. The position answers directly to their respective Region Operations Managers and work very closely with the RDVS. The RDVC position is a vital link between NSWPF and other Government and NGO's to provide an integrated, coordinated response by all agencies across the respective Region to domestic and family violence.

### **Domestic and Family Violence Team**

The Team consists of both sworn and unsworn staff and provides advice and support to both the NSWPF Senior Executive and the field on operational, legal and corporate issues. The Team is also a strategic and active partner in many interagency forums with Government and

Non Government agencies. The Domestic and Family Violence Team is instrumental in developing and implementing projects and strategies to holistically improve NSWPF response to the investigation and management of domestic and family violence.

### **Legal Consultant – Domestic and Family Violence**

The legal consultant is a specialist domestic violence police prosecutor and an integral part of the Domestic and Family Violence Team. Many forms of legislation encompassing State, Commonwealth, criminal and civil are encountered by NSWPF members on a daily basis. The legal consultant provides support and advice to Local Area Commands (LAC's) predominantly through Domestic Violence Liaison Officers (DVLO's), supervisors and police prosecutors. The legal consultant also provides support and advice through the Corporate Spokesperson to the Senior Executive relating to police responses to domestic and family violence.

The legal consultant also prosecutes high profile and complex domestic and family violence matters, as well as assisting the Education and Training Command and LAC's in delivering specific training in domestic violence related legislation to frontline police and specialist officers. The legal consultant is one of the NSWPF representatives to AVLICC focusing on all legal issues relating to domestic and family violence within NSW.

### **Domestic Violence Liaison Officer**

DVLO's are members of LAC Crime Management Units (CMU's). This specialist role supports the LAC by providing vital linkages between community based issues, information and intelligence, while forming partnerships for victim support and follow-up. Responsibilities include but are not limited to:

- maintain liaison with local support agencies or services to ensure consistency and continuity of the victim follow-up process
- ensure a detailed list of appropriate services and their role within the Command is supplied to all police with the Command
- assist victims through the court process. This may include attending court on domestic violence list days, explaining the process to victims, obtaining detailed instructions from the victims and liaising with police prosecutors, ensuring the protection of the victim if the defendant is also in attendance and any other relevant tasks.
- liaise with court staff and prosecutors to ensure local procedures are complied with and that police within the Command are aware of these procedures



- keep police abreast of the latest legislative changes and research in domestic and family violence, and bring such changes to the attention of police within the Command
- conduct quality assurance of domestic and family violence related Events recorded on COPS and bring any deficiencies to the notice of the Team Leader and creating officer. Ensure such tasks relating to 'resubmitted' and 'in-complete' Events are conducted in a timely manner.
- monitor repeat victims and repeat offenders

Most LAC's have at least one allocated DVLO position. The role is undertaken by a sworn police officer, some of who are full time and others part time dependent on the resources and requirements of individual LAC's. In the majority of LAC's there is a 'back up' DVLO who can assist when the substantive DVLO is on leave or attending court. There are currently 97 authorised DVLO positions across all the State's 80 Local Area Commands.

### **Domestic Violence Operatives (DVO)**

The DVO proactively identifies, targets and monitors repeat and high risk offenders. The DVO provides advice and assistance to investigating police, coordinates compliance operations and works closely with both Government and NGO's targeting domestic violence offenders. The role is offender focused with the aim of reducing domestic violence recidivist offending.

DVO's are attached to those LAC's that experience a higher reported incidence of domestic violence. There are 35 authorised DVO positions across five of the six operational Regions allocated on the basis of highest need.

At all times, Local Area Commanders retain local operational flexibility to allocate police officers to different duties in order to tackle the most pressing local issues. This could mean a Local Area Commander may, from time to time, allocate additional officers specifically to target domestic violence, or alternatively temporarily allocate DVLO's to other operational duties. This flexibility allows the NSWPF to maintain the capability to respond to emergencies or potentially life threatening incidents.

### **Domestic and Family Violence Standard Operating Procedures (SOP's)**

Tackling domestic and family violence is a major priority for the NSW Government and the NSWPF, both of whom are committed to reducing domestic and family violence and improving the responses to victims of this complex crime.

The SOP's support the legislation under which the NSWPF responds to domestic and family violence, as well as the Domestic and Family Violence Policy which is available to the public from the NSWPF website.

The SOP's describe NSWPF methodology for responding to, investigating and managing incidents of domestic and family violence. It is a comprehensive document designed to assist in reducing domestic violence and improve protection and support for victims.

The exposure of NSWPF methodology could potentially risk the safety of police officers when responding to calls of domestic violence; compromise the ability of police to protect and support victims; assist offenders in avoiding arrest and prosecution; and hamper the ability of police to thoroughly investigate what are, in some instances, extremely serious offences. For these reasons the document is not publicly available.

### **NSWPF Code of Practice for the Investigation & Management of Domestic and Family Violence**

As the SOP's provide detailed methodology and; for the reasons discussed above are protected, the Code of Practice (published in 2009) provides information to the public about the response they can expect from police when they report a domestic and family violence incident.

This comprehensive document is available from the NSWPF internet page. It contains information on an extensive range of issues including an explanation of the different police roles, the steps police will take when they attend to a call for assistance, ADVO's, court proceedings, and contact details of other agencies. The Code of Practice does not contain any confidential operational methodology and is due for review this year.

### **Domestic Violence Clinics**

In early 2011, the WDVCLAS in the Blue Mountains began organising information sessions for female victims prior to their attendance at court to give evidence in a hearing. The sessions were facilitated by a Police Prosecutor and provided information to the victims about court processes and the roles of the prosecution, defence and the Magistrate. The forum also

provided the victims with the opportunity to ask questions. Each Clinic was scheduled to run for two hours and was attended by a number of victims.

Unfortunately these clinics were not formally evaluated, although the feedback received from WDVCAS indicated they were well received by victims who attended.

In an effort to fully evaluate the clinics a trial was conducted at Burwood Local Court that concluded in December 2011. Data from that trial is still being assessed.

### **Domestic Violence Prosecutor Initiative**

Some months later, Police Prosecutions Command engaged the Domestic and Family Violence Team and together they developed the Domestic Violence Prosecutor Initiative in which prosecutors would conference victims, one week prior to hearings in both charge and non charge related domestic violence matters. Unlike the Clinics, these conferences were conducted with individual victims 'one on one' and scheduled to run for thirty minutes.

This initiative provided the opportunity to prepare the victims to give evidence at hearings, and was trialled at Campbelltown, Fairfield, Sutherland and Wollongong Local Courts.

At the end of the trial, an evaluation of the Initiative was conducted including feedback from victims (participation in the evaluation was voluntary). Eighty eight percent of respondents indicated they felt more confident to call police should they experience future incidents of domestic violence.

A trial incorporating both the clinics and conferencing initiative is currently being conducted at Manly Local Court and is due to conclude in May 2012. A formal evaluation will be undertaken at that time.

This model offers a group clinic to all victims prior to their attendance at court to give evidence in a hearing. If it appears during the clinic that a victim requires further consultation, they will be individually conferenced following the clinic. Repeat victims that have previously attended clinics however will be referred directly to the Prosecutor for an individual conference.

### **The Australasian Police Framework to Reduce and Prevent Family Violence**

The NSWPF is a contributing partner to this framework which supports the following principles:

- every adult and child has the right to a safe environment.
- zero tolerance to offenders of family violence.
- early intervention and prevention programs are critical to breaking the cycle of violence.
- strategic partnerships, collaboration and cooperation between policing jurisdictions, Government and Non Government agencies are central to achieving results.
- service delivery that is effective, responsive and best practice.
- flexible service delivery for diverse and emerging communities and people in rural and remote areas.
- use of technological development and other innovations to allow police to work faster and smarter.
- integrated and coordinated information gathered and intelligence shared locally, nationally and internationally.

### **Education and training of police officers and civilian employees**

The NSWPF through the Education and Training Command provides a range of structured developmental opportunities to police officers with the goal of ensuring those officers are equipped with the most up to date knowledge so they can effectively respond to domestic and family violence.

Education and Training Command provides domestic and family violence training to students as an integrated part of the Associate Degree in Policing. At the NSWPF Goulburn Academy students are provided with instruction on police powers, domestic violence related offences, ADVO procedures and police responsibilities. In addition, students have the opportunity to apply their newly acquired knowledge in simulated domestic violence scenarios which are assessed in examinations.

Initial training is supplemented by on the job training and guidance from more senior officers and a range of online resources accessible by all employees including Six Minute Intensive Training Scenarios (SMIT's).

The provision of specialist domestic and family violence education and training to operational police has now been integrated into a program suite. The workshops and courses have been modularised and integrated to develop expertise in this very important area of policing. These include:

- Investigation of Domestic Violence Workshop
- Domestic Violence Liaison Officers Course
- Domestic Violence Trainers Update
- Domestic and Family Violence training modules delivered within a range of other specialised courses

The Investigation of Domestic Violence Workshop is held over two days and provides sixteen hours of instruction. It is focused on operational police and their response to domestic violence, but is also attended by Aboriginal Community Liaison Officers (ACLO's), Multicultural Community Liaison Officers (MCLO's), and RDVC's. It is delivered by Education and Development Officers attached to LAC's and DVLO's.

The DVLO Course is held over five days and while targeted at new DVLO's, it is also open to RDVC's, ACLO's and MCLO's. This course is delivered twice a year and as required to meet demand.

The NSWPF is mindful of ensuring police understand other issues increasingly associated with or experienced concurrently with domestic violence. For example, elder abuse is an emerging issue for the community as children remain home well into their adulthood or older children return to live with their parents following the breakdown of their own domestic relationships. Anecdotally police report an increase in the number of adult children committing domestic violence offences against elderly parents. The DVLO course devotes an entire session to this issue and the two day workshop provides advice to police on relevant referral pathways when responding to potential elder abuse issues where there is insufficient evidence to proceed with a domestic violence related offence.

The DVLO course also includes sessions on mental health issues and substance abuse. Abuse of alcohol is strongly linked to incidents of domestic violence, and bail and ADVO conditions regularly include prohibitions in respect to offenders approaching the victim while under the influence of, or within so many hours of drinking alcohol.

The two day workshop recognises that a domestic incident often occurs in the context of a history of domestic violence. The workshop incorporates a discussion on how to identify the primary aggressor at an incident by encouraging police to investigate the history between the parties where possible, taking into consideration the circumstances prevailing at the scene.

The Principal Tutors for domestic and family violence manage the curriculum and maintain the academic accreditation of the entire domestic and family violence program. In addition to delivering courses, they also provide State wide quality assurance for both LAC and Region based domestic and family violence trainers.

Each RDVC conducts a one day Regional Forum at least once a year that brings together all DVLO's in that region. The purpose of the forum is to discuss local issues in the Region, share good practice and ensure DVLO's are up to date with all current legislation and procedural requirements.

Biannually the NSWPF holds a conference for all DVLO's across the State. This forum provides the opportunity to discuss issues at an organisation level and ensure policy, procedure and legislation are communicated.

### **Domestic Violence Prosecutors Course**

The NSWPF has recently developed a two day face to face program for Police Prosecutors to enhance their skills and knowledge in prosecuting domestic violence matters. The first course is scheduled to run in May 2012 with a cohort of twelve Police Prosecutors and will be delivered four times in total in the first year. Thereafter the course is scheduled to be held between two and four times a year depending on need with 12 to 16 attendees.

# **NSWPF response to the Inquiry's specific Terms of Reference**

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

### **(a) The use of GPS bracelets**

In 2011 the NSW Government proposed a trial of GPS bracelets to monitor and track high risk and/or repeat domestic violence offenders. This proposal was first raised at the Domestic and Family Violence Senior Officers Group in August last year where members were advised that any trial would occur within existing resources. The Standing Committee on Social Issues announced the Inquiry into Domestic Violence Trends and Issues in NSW not long after this.

GPS tracking of domestic violence offenders is employed in a number of jurisdictions internationally however has not been tested in Australia. Both the UK and New Zealand trialled the use of GPS technology however did not proceed with the technology as a result of the high costs associated with its use and other related factors.

While the NSWPF supports the investigation of initiatives aimed at reducing violence against women, support for this initiative would be conditional upon:

- electronic monitoring not becoming a substitute for a custodial sentence where given the circumstances, a prison term would have previously been the most appropriate option;
- the key objective of the proposal being to improve the level of protection and support Government agencies provide victims of domestic violence and their families;
- the role of the NSWPF remaining one of enforcement and prosecution of offenders; and
- the involvement of the NSWPF being managed within its existing budget using existing resources.

NSWPF understands that the rationale for using a system such as GPS bracelets is to track high risk and/or repeat domestic violence offenders, reinforce restrictions on their physical contact with victims and to provide victims with an increased level and sense of safety through the use of a tool that provides immediate warning of potential danger. However, it is of concern that for the use of this technology to be effective the victim is also required to wear a monitoring bracelet which raises a host of compliance requirements.

It is the absolute position of the NSWPF that the most effective application of any monitoring system for offenders must be one that is focussed upon managing the risk the offender continues to pose to the victim. As a consequence it is our view that monitoring should take place where required in the justice hierarchy, although the parole model is not the preferred option of the NSWPF.

Legislative amendments would be required to ensure the admissibility of evidence where breaches are detected through the use of monitoring technology. Further amendments would also ensure accidental or inadvertent breaches where the victim and offender are in close proximity in a non excluded public place would be rejected.

It is noted that Corrective Services NSW utilises electronic monitoring (GPS and radio frequency) in respect to prescribed categories of offenders including those subject to Extended Supervision Orders, Intensive Correction Orders or conditional parole.

The NSWPF would welcome participation in a pilot program by recommending appropriate LAC's as trial sites. A comprehensively evaluated pilot would allow more detailed consideration of resource implications including financial and operational costs. However, there are also broader considerations regarding the monitoring process, not the least of which is the absolute need for the immediate notification of breaches by the monitoring agency to police and the necessity, thereafter, to initiate action to locate and prosecute offenders.

The value in tracking repeat domestic violence offenders electronically, either pre or post conviction, particularly in terms of the psychological support provided to victims and the evidentiary benefit in prosecuting breaches of orders need to be considered before a trial of this technology occurs.

Notwithstanding the potential benefits, there are a number of issues that need to be resolved before commitment could be given to using electronic monitoring as a permanent and viable risk mitigation strategy in the context of domestic violence in NSW. These include, but are not limited to: human intervention; passive as opposed to active monitoring; costs; where electronic monitoring fits into the sentencing regime; the willingness of judicial officers to use electronic



monitoring as a sentencing option; the impact on victims from having to wear a monitoring device; and the question of individual civil liberties.

## **(b) Whether existing penalties for domestic violence are adequate**

Existing maximum penalties are considered adequate with examples highlighted in the tables below.

<b>Crimes (Domestic and Personal Violence) Act 2007</b>		
<b>Section</b>	<b>Offence</b>	<b>Maximum Penalty</b>
13(1)	Stalking or intimidation with intent to cause fear of physical or mental harm	Imprisonment for 5 years or 50 penalty units, or both
13(5)	Attempt to stalk or intimidate with intent to cause fear of physical or mental harm	Imprisonment for 5 years or 50 penalty units, or both
14(1)	Knowingly contravene apprehended violence order	Imprisonment for 2 years or 50 penalty units, or both
14(9)	Attempt to contravene apprehended violence order	Imprisonment for 2 years or 50 penalty units, or both

Section 14(4) goes further stating:

*Unless the court otherwise orders, a person who is convicted of an offence against subsection (1) must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against a person.*

Section 14(6) states:

*Where the court determines not to impose a sentence of imprisonment, it must give its reasons for not doing so.*

<b>Crimes Act 1900</b>		
<b>Section</b>	<b>Offence</b>	<b>Maximum Penalty</b>
61	Common assault	Imprisonment for 2 years
59(1)	Assault occasioning actual bodily harm	Imprisonment for 5 years
195(1)(a)	Intentionally or recklessly destroy or damage property	Imprisonment for 5 years

Whilst existing maximum penalties are considered adequate, the NSWPF does hold concerns in respect to some aspects of sentencing practice.

There are apparent inconsistencies in sentencing between Magistrates and inadequate sentences are imposed that do not reflect the seriousness of domestic violence. These issues could be addressed through training for Magistrates in domestic violence.

An offender who already has a conviction for a domestic violence offence should under no circumstances be given a bond under section 10 of the *Crimes (Sentencing Procedure) Act* for a further domestic violence offence.

An offender who has already been placed on a good behaviour bond under section 9 of the *Crimes (Sentencing Procedure) Act* for a domestic violence offence should not receive a further section 9 bond for subsequent offences. The granting of bonds in these circumstances does not reflect the seriousness with which repeat instances of domestic violence should be treated, and could act as disincentives for victims to report domestic violence in the future.

It still remains a concern for NSWPF that some Magistrates grant undertakings rather than ADVO's. Undertakings can leave the victim unprotected and amount to no more than an agreement between the parties made without the benefit of mediation or other support. Undertakings do not recognise the complexity and inherent inequality in domestic relationships. They place the victim at further risk of serious harm or injury. Police cannot take action for a breach of an undertaking and the courts cannot impose any penalty.

## **2. Early intervention strategies to prevent domestic violence**

Both the 'Stop the Silence End the Violence - NSW Domestic and Family Violence Action Plan' and the 'National Plan to Reduce Violence Against Women' outline a number of early intervention strategies to prevent domestic violence. The National plan in particular outlines a clear plan of action at all levels.

The NSWPF believes that successful early intervention strategies aimed at preventing domestic violence require a collaborative multi-agency response.

This integrated approach should encompass the delivery of a broad range of programs and involve both Government agencies and NGOs, particularly specialist domestic violence services. Programs could include respectful relationships, parenting, youth, drug and alcohol and early childhood approaches. The program 'Love Bites', which NSWPF is a partner to at the local level, is one example of a successful educational resource to teach high school students about respectful relationships and to develop an understanding of domestic and sexual violence.

One aspect of early intervention that requires greater focus across the sector is the opportunity to intervene with children who are experiencing domestic violence. The current approach to child protection is focused on traditional concepts such as neglect and physical abuse however this approach overlooks the importance of the psychological wellbeing of the child.

The extent to which children are a product of their environment may not be easily calculated, however it is evident that increasing numbers of children are appearing before Children's Courts as defendants in domestic violence related matters.

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

The NSWPF is aware there are some concerns held in respect to an increase in the number of women being charged with domestic violence offences, including assault. It has been suggested that the factors contributing to this may include the failure of police to properly identify the primary aggressor, the proactive arrest policy applied by police and the operational practices of the NSWPF generally. The NSWPF Domestic and Family Violence Policy supports the legislation governing the police response to domestic violence (*Crimes (Domestic & Personal Violence) Act 2007*). This legislation requires police officers to take a proactive response to investigating incidents of domestic violence and; where sufficient evidence exists, to apply for ADVO's.

The NSW Ombudsman's report: *'Audit of NSWPF handling of domestic and family violence complaints'* published in May 2011 found no evidence to support that police were unable to identify the primary aggressor at the scene.

The NSWPF has previously attempted to investigate this issue by conducting an audit of COPS Events, but unfortunately the approach taken was unsuccessful in gaining an insight into the matter, other than identifying that in the majority of cases of mutual violence alcohol or drugs is a contributing factor.

In a continuing commitment to examine the issue, the NSWPF has entered into a partnership with the University of NSW to undertake research to determine whether there is a systemic problem identifying the primary victim and aggressor, and whether subsequently there is a need for a change in practice or legislation. The academic work will be undertaken by a researcher from the University of NSW working from Police Headquarters to examine 12 months of COPS data. The study is being lead by Professor Julie Stubbs.

There has previously been no research of this kind, or on this scale, anywhere in Australia. Research that has been done internationally has not been on a similar scale and its application to Australia and in particular to NSW is unclear. However, what is clear is that the issue of women being charged with domestic violence related assault needs further detailed analysis.

In the absence of sound research into this particular aspect of domestic violence caution should be exercised prior to assigning contributing factors.

As indicated earlier in this submission, NSWPF officers receive education and training in investigating domestic violence and identifying the offender and victim at an incident. Further guidance is provided by the SOPs, including consideration of whether there is a history of domestic violence between the parties, the relative degree of injury inflicted on each person, and the extent to which each person present appears to fear any party.

#### **4. Any other relevant matter**

##### **Risk Assessment**

In 2010 the NSWPF, together with the Departments of Health, Attorney General and Justice and Family and Community Services, participated in the CARAM – Framework trial. The evaluation of that trial indicated that further work was required to establish an effective common risk assessment tool across agencies. The trial also revealed that for 95% of victims of domestic violence, police were the initial point of contact.

The operational environment of NSWPF differs significantly to that of the other three agencies. The NSWPF is a law enforcement organisation that responds to calls for assistance 24 hours a day, 7 days a week. The immediate focus of police officers upon attending any call is the protection of all persons, de-escalation of the incident and the carrying out of all legislative obligations. Police are often confronted by angry, frightened, intoxicated, drug affected and injured individuals who present as offenders, victims and witnesses.

The indicators that flag risk to police officers and guide their subsequent actions regarding the victim are predominantly the use or presence of firearms or other weapons, the safety of the victim, any threats made by the offender, and the presence of children who may have witnessed the incident. Police are not concerned about the softer or historical risks such as whether the offender has been unemployed for some time, misuses alcohol, or was cruel to animals as a child. The role of police is to mitigate the immediate risk to the victim and take action to provide the victim with immediate protection. This therefore means that police first and foremost require a risk assessment designed for the needs of operational police.

There is a clear distinction between the purpose of initial and specialist risk assessment and the role of police in relation to risk assessment is in conducting initial assessments for victims for whom police are the first responders. As it is not core business for police to conduct specialist risk assessments police officers are not trained or equipped to do so.

During the CARAM Trial, in excess of 95% of all victims who notified a DV incident to police received an initial risk assessment conducted by police. Any risk assessment used by police at the scene of an incident therefore needs to be succinct, directly relevant, meaningful and integrated as part of our existing reporting regime (COPS). It must not restrict police in their ability to provide protection to victims.

It was evident from the CARAM trial that there is benefit in having a common specialist risk assessment so that the specialist DV services who take up the victim referrals have agreement on high and low risk indicators and can apply consistent practice to victim follow up.

While the process of risk assessment is supported it is important to acknowledge the purpose of conducting risk assessments. For example, if police respond to a DV incident after hours,

particularly in the pre dawn hours, there is limited benefit in police conducting an initial risk assessment if there is no service available after hours for police to refer the victim to.

The NSWPF supports the concept of a formal risk assessment tool however the preference is for an agency specific resource that enables police to carry out their duties more effectively.

## **Privacy**

Existing privacy legislation is restricting the effectiveness of integrated domestic violence initiatives by constraining the sharing of relevant information between partner agencies. While there are some legislated exemptions that allow the exchange of relevant information there is continued uncertainty in relation to how the information can be used or further shared by the receiving agency. There is also inconsistency across the State regarding whether consent is required before a victim's personal information can be shared.

This inability to effectively exchange information requires victims to constantly repeat their story to different agencies which only serves to exacerbate the overall trauma they experience. Effective exchange would also expedite the delivery of services to victims and their families.

The NSWPF proposes the amendment of the *Privacy and Personal Information Protection Act 1998* and the *Crimes (Domestic and Personal Violence) Act 2007* to facilitate the lawful exchange of information to ensure the safety and well being of victims of domestic violence.

The child protection legislation sets a precedent in this regard as it provides for the exchange of information between agencies (in the form of Child Wellbeing Units) for the purpose of protecting children, many of whom are from the same families experiencing domestic violence that police are called to assist.

## **Police Issued ADVOs**

The NSWPF understands that NSW is the only jurisdiction in Australia that does not allow police to issue orders to protect victims. The legislation currently requires a police officer to apply to an authorised justice for a provisional ADVO outside of court hours. Approximately 80% of all applications by police for ADVO's are made outside of court hours between 4pm and 9am.

Police can direct a person to remain at the location of a domestic violence incident while the police return to the police station to apply for a provisional order and then return to the scene to serve the order on that person.

If the person refuses to remain the police may arrest and detain the person for the purpose of making and serving the order, however, many individuals do not remain at the scene despite assurances to do so. Police then spend time trying to locate the person to effect service of the provisional order which delays court proceedings if the person cannot be located. In these circumstances the victim is without the protection of an enforceable order.

The NSWPF is seeking amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to allow police officers at the rank of Sergeant or above to issue provisional ADVO's instead of applying to an authorised officer. Allowing police to issue an ADVO in specified circumstances was a recommendation of the NSW Law Reform Commission in 2003.

Further amendments are sought to allow police to arrest and detain a person for the purpose of making and serving a provisional order. The proposal would deliver to victims and their families the immediate support and protection of an enforceable order. It also provides a lawful and very effective means of removing the offender from the site of the domestic incident, which has the immediate effect of de-escalating the violence and creating a sense of safety for the victim. Furthermore, it would also reduce the time and resources currently expended in trying to locate offenders to effect service.

The provisions that relate to the powers of police officers to arrest and detain defendants are found in Part 11 of the *Crimes (Domestic and Personal Violence) Act 2007*.

### **Evidence in Chief to be given by way of pre-recorded audio visual recording**

The *Criminal Procedure Act 1986* provides the legislative basis for evidence in chief to be given by pre-recorded statement. However, evidence can only be given this way by 'vulnerable persons' who are defined under the Act as children under the age of 16 years or individuals who are cognitively impaired.

The NSWPF is seeking amendments to the *Criminal Procedure Act* to allow victims of domestic violence to give their evidence in chief by the use of a pre-recorded statement. This would

negate the need for victims to continually recount their version of events and relive the trauma of the incident.

Police already have access to 'Domestic Violence Evidence Kits' which allow them to take video and audio recordings of the victim and their version when police attend. Photographs of the crime scene can also be taken at the time. Current legislation renders this highly valuable evidence inadmissible.

### **Legislated entitlement for victims of domestic violence to give evidence by way of audio visual link**

The *Evidence (Audio and Audio Visual Links) Act 1998* and Rule 2.8 of the Local Court Rules 2009 provide for persons (and this can include victims of domestic violence and persons in need of protection) to give their evidence in court by audio visual link.

However, the provisions also provide restrictions on when evidence cannot be directed to be given in this manner, for example if the court is satisfied "that the evidence or submission can more conveniently be given or made in the courtroom or other place in which the court is sitting" (section 5B(2)).

Section 294B (3) of the *Criminal Procedure Act 1986* contains specific provisions that entitle victims of prescribed sexual offences to give their evidence by way of audio visual link (or other methods that restrict visual contact including screens) unless they choose not to do so. The benefit to victims of this strongly worded entitlement is obvious.

The NSWPF is seeking similar legislation to support victims of domestic violence who are required to give evidence at court. Such an amendment would provide certainty to victims that they would not have to face the defendant in court, greatly reducing their fear and anxiety. It would also reduce the likelihood of prosecutions being withdrawn due to the non attendance of fearful victims. It is not uncommon for defendants in ADVO hearings to defend themselves and cross examine the victim. The mental anguish suffered by victims attending court and giving evidence while face to face with the perpetrator can be significant.



## **Compliance with bail and conditions of ADVOs**

NSWPF is proposing amendments to a range of acts to provide police with the power to visually sight persons subject to certain bail conditions or an ADVO.

Conditions commonly imposed through bail or ADVO's include curfews and a prohibition on approaching the victim when affected by alcohol or other drugs. This amendment would apply to a person subject to such conditions. For example, an accused person or juvenile would be required to present themselves at the front door of the premises they are bound to reside at in line with a corresponding curfew condition.

Once a breach of bail conditions or breach of the conditions of an ADVO is detected, police would continue to exercise the relevant powers of arrest as provided by existing legislation. However in order for the amendment to be effective, an offence creating provision would need to be included to cover those instances when a person fails to comply with the direction of police.

This amendment would provide police with greater powers to protect victims and opportunities to gather evidence supporting a breach of bail or the conditions of an ADVO. The imposition of conditions in respect to bail and ADVO's that can be effectively enforced, is an important mechanism for reducing the level of crime, anti-social behaviour and re-offending by persons subject to conditions. Legislative reform to facilitate effective law enforcement including the protection of victims is vital.

The recent decision of *Lawson v Dunlevy* [2012] NSWSC 48 reinforces the challenges confronted by police officers when imposing and enforcing conditions that could help protect victims.

Legislative changes would also provide further valuable opportunities for victim follow-up in terms of checking on the welfare of the victim and the appropriateness of conditions that may have been imposed on the offender in terms of their impact on the victim.

## **The requirement for victims to attend Court**

Some Local Court Magistrates insist on victims appearing on each occasion their matter is mentioned at court, while others do not. This can be onerous for victims causing hardship in

circumstances where they have been forced to relocate because of violence, have carer's responsibilities, or transport difficulties. It can also serve as a disincentive to the victim seeking the assistance of police on subsequent occasions.

Other Magistrates will summarily dismiss applications if victims do not appear. Magistrates can make an interim order in the absence of the victim by admitting written statements of attending police or the victims themselves that were made at the time police applied for the provisional order. Defendants are often excused if represented. Victims are represented by the Police Prosecutor who is assisted by the DVLO. The DVLO has usually spoken to the victim prior to court and is in a good position to provide information to the Prosecutor and Magistrate.

Many courts do not issue warrants or allow adjournments for victims of domestic violence who fail to attend court. In these circumstances the possibility of coercion by offenders accused of domestic violence is a very real concern.

There is clearly inconsistency across the State in terms of how Local Court Magistrates respond when victims do not attend court. This in turn makes it difficult for the NSWPF to assist victims and manage our response. The issue highlights the value of victims being able to give their evidence in pre-recorded form.

The requirement for victims to attend court remains a challenging issue as there are a range of competing interests.

Victims face ongoing trauma when attending court by having to continually confront the perpetrator. This can often be exacerbated by having to organise childcare, time off work and transport to and from the court as previously described.

The Chief Magistrate for Local Courts has written to all Magistrates indicating it is his position that victims are not required to attend court on the first mention date if they are suitably represented by the Police Prosecutor.

However victim support services such as the WDVCS want victims to attend court, particularly on the first occasion their matter is for mention to enable them to connect victims with

necessary support services. In some circumstances the victim's appearance at court may be the only way these services are able to communicate with the victim.

The NSWPF is mindful of the needs of the Courts, but also aware of the trauma that court can further cause victims, and the need for victims to have access to appropriate support services. We are also mindful of the limited resources available to rural courts where many courts are located in older buildings and do not have facilities such as victim rooms.

There is clearly more negotiation to be undertaken between the NSWPF, Courts and victim support groups to find a solution that ensures the protection and wellbeing of victims of domestic violence.

### **Reform of the definition of 'domestic relationship' in the *Crimes (Domestic and Personal Violence) Act 2007***

The current definition contained in section 5 of the Act is considered too broad. Narrowing the definition to focus on intimate partners and familial violence would allow police, government agencies and NGOs to focus effort and resources. Not all of the relationships currently described in section 5 of the Act share the significant emotional investment and the inherent inequality that create the complexity of this crime.

Violence and fear in the context of relationships other than those between intimate partners and families will be more appropriately captured under the definition of 'personal violence'.

### **5 Meaning of "domestic relationship"**

*For the purposes of this Act, a person has a **domestic relationship** with another person if the person:*

- (a) is or has been married to the other person, or*
- (b) is or has been a de facto partner of that other person, or*
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or*
- (d) is living or has lived in the same household as the other person, or*

(e) *is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the Crimes (Administration of Sentences) Act 1999 or a detention centre within the meaning of the Children (Detention Centres) Act 1987), or*

(f) *has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or*

(g) *is or has been a relative of the other person, or*

(h) *in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.*

### **Reform of the legislation relating to costs in domestic violence proceedings**

Amendments are sought to the costs provisions in section 99 of the *Crimes (Domestic and Personal Violence) Act 2007* and/or Division 4 of the *Criminal Procedure Act 1986*. The amendments are sought to remedy the uncertainty in interpreting how the two acts work together in respect to the awarding of costs in domestic violence proceedings, and to remove the ability to award costs against police for anything other than making a false or misleading application.

Section 49 of the *Crimes (Domestic and Personal Violence) Act 2007* compels a police officer to make an application for an ADVO in certain circumstances. Following the application being made by police it is not uncommon for persons in need of protection to refuse to attend court or to refuse to give evidence in support of the application. There may be a range of reasons for this including intimidation of the person in need of protection by the person they fear not to give evidence.

Broad powers to award costs against police in these matters could discourage police from taking ADVO proceedings which would in turn impact on the protection offered to victims. This directly undermines the purpose, and indeed the spirit of the *Crimes (Domestic and Personal Violence) Act 2007* which is to provide the best possible protection for victims in these matters.

Paying a respondent's costs or engaging in costly, time consuming legal argument in respect to cost applications also diverts already stretched resources away from core policing responsibilities, including the response to incidents of domestic violence.

Clarifying the interpretation of the cost provisions has been supported in two recent decisions. In the decision of *Redman v Wilcocks* [2010] NSWSC 1268, His Honour Justice Davies made the following comments at [41]:

In my opinion, it would be useful if the Parliament were to give some consideration to s 99 as it relates to Division 4 so that its intention with regard to costs in these sorts of applications is made clear.

In the case of *Garde v Dowd* [2011] NSWCA 115 at [30] His Honour made the following remarks:

[T]he difficulty encountered in resolving this case is very much a consequence of inappropriate drafting technique, giving rise to complexity and confusion in an area in which members of the public have, as the 2007 Act recognises in its objects, a powerful interest in there being simplicity, transparency and certainty. Nor is this the sole difficulty in construing s 99 and interacting provisions. A different, though related, problem confronted Davies J in *Redman*. As his Honour noted at [19]: "The incorporation of parts of the Criminal Procedure Act into s 99 results in the provisions of s 99 and the provisions of Division 4 sitting very uneasily together."

### **Development of a national register for ADVO's**

Currently an ADVO or equivalent order granted in one state or territory cannot be enforced in another jurisdiction until it is formally registered in that second jurisdiction. This requires the victim or someone on their behalf to ascertain how to register the order and to then take the necessary steps to properly register the order in the second jurisdiction. Legislation and policy may differ in different ways between jurisdictions.

Victims may not be aware of this legal requirement or may be unable to meet it. This can leave victims unprotected if they relocate interstate to escape violence.

Further issues surrounding interstate registration are also apparent in border areas where the parties to an order may live in relatively close proximity although reside in different jurisdictions. For example, NSW orders served in Victoria must be registered prior to Victoria Police being

able to search and seize or require the forfeiture of any firearms. This subsequent delay exposes the victim to unacceptable risk.

In NSW the provisions that require the registration of protection orders from other States are found in Part 13 of the *Crimes (Domestic and Personal Violence) Act 2007*.

The Australian Government has committed to the development of a national register for protection orders relating to domestic violence and this has been supported by the Coalition of Australian Governments and agreed to by Standing Committee of Attorneys-General.

The NSWPF supports the development of a national register however the greatest obstacle remains the requirement for each jurisdiction to amend their respective legislation. The concern is that this process will take some time.

## **Emerging Issues**

### **Growing demand for DVLOs in Children's Courts.**

In the Sydney metropolitan area there are three main Children's Courts: Parramatta, Bidura and Campbelltown.

Parramatta has a dedicated ADVO list each week, during which approximately 40 applications are listed, however in the past two years this number has reached 70 applications.

Bidura does not have a dedicated ADVO list and usually hears between 8 and 10 applications each week.

Campbelltown has a dedicated ADVO list each week and hears between 10 and 20 applications.

In May 2010, President of the Children's Court, Judge Mark Marien, requested that NSWPF consider deploying DVLO's to Parramatta Children's Court.

From July 2010 DVLO's were assigned to Parramatta and Campbelltown Children's Courts on ADVO list days. These are not extra positions created by the NSWPF but are DVLOs who have been tasked in addition to their responsibilities to their own Local Courts.

The deployment of DVLO's to Children's Courts is in direct response to the increasing numbers of young persons who are appearing as defendants in domestic violence related matters.

The issues faced in the Children's Courts are very different to those in Local Courts as young persons, as defendants are often accompanied by their parents who are both the victim and the carer of the young person.

If the expectation of Children's Courts Magistrates is to expand the attendance of DVLO's to all Children's Courts in the state, then our ability to meet the demand without additional resources being supplied will severely compromise our service delivery.

### **Use of technology to commit domestic violence related offences**

Domestic violence related offences, particularly those alleging stalking, intimidation and harassment are increasingly committed through the use of technology. This may involve reliance on SMS, email and social networking tools.

It is increasingly expensive to investigate offences committed with the use of technology as NSWPF must rely on telecommunications companies to provide information for an escalating number of investigations.

The prosecution of these offences also presents challenges as technology crosses State and international borders and laws can vary significantly between jurisdictions.

The ubiquitous nature of technology is also making it progressively more difficult to protect victims as technology facilitates the commission of offences remotely and in far greater numbers.

It is vitally important that legislators, policy makers, support services and Government agencies keep abreast of the changes in technology and the challenges that technological advancements create. Government agencies must be appropriately resourced and their personnel trained in order to effectively tackle this issue.