REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND ISSUES IN NEW SOUTH WALES

UNCORRECTED

At Sydney on Monday 5 March 2012

The Committee met at 9.30 a.m.

PRESENT

The Hon. N. Blair (Chair)

The Hon. C. Cusack
The Hon. G. J. Donnelly
The Hon. C. Faehrmann
The Hon. H. M. Westwood (Deputy Chair)

CHAIR: Welcome to the fourth public hearing of the Standing Committee on Social Issues inquiry into domestic violence trends and issues in New South Wales. Today's hearing will focus on legal issues and the courts. We will hear evidence from the Wirringa Baiya Aboriginal Women's Legal Centre, Women's Domestic Violence Court Advocacy Network, Shopfront Youth Legal Centre, and the Inner City Legal Centre, as well as the Chief Magistrate of the Local Court and the President of the Children's Court. Upcoming hearings will focus on the victims' perspectives, specific population groups, prevention and early intervention and direct service provision. The Committee has recently conducted a site visit to Forbes and will soon undertake a site visit to Sutherland Local Court; details will be posted on the Committee's webpage as they are finalised.

The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of today's public proceedings. Copies of the Legislative Council *Guidelines for the Broadcast of Proceedings* are available from the table by the door. In accordance with those guidelines only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what it publishes or interpretation that is placed on anything that is said before the Committee. Any messages from attendees in the public gallery should be delivered through the support staff or the Committee clerks. I also advise under the standing orders of the Legislative Council any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person.

If you should consider at any stage during the giving of your evidence that certain evidence or documents you may wish to present should be heard or seen in private by the Committee, the Committee will consider your request. However, the Committee or the Legislative Council itself may subsequently publish evidence if they decide it is in the public interest to do so. I ask everybody to turn off all mobile phones for the duration of the hearing.

RACHEL ANNE MARTIN, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, and

THEA DEAKIN-GREENWOOD, Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, affirmed and examined:

CHAIR: Welcome to the inquiry. Would either of you like to make an opening statement before we proceed to questions? If you do, please try to keep it to no more than five minutes duration and you do not need to repeat anything from your submission.

Ms MARTIN: We are a small centre which has been providing a service to Aboriginal women and children for about 15 years. While we are very glad to contribute to this inquiry, and thank the Committee for the opportunity, we want to reiterate that there are many other services and workers out there who have been working with the Aboriginal community in relation to domestic violence for a very long time as well. We stress that it is important to get as much input as possible from those services and workers**.** Unfortunately, many of those Aboriginal services may not simply have the staff, time or confidence to make contributions to inquiries such as this.

We also want to say that it is widely acknowledged that domestic violence is a significant issue in Aboriginal communities and there is no magic answer to fix it. The solutions are complex and require a whole-of-government approach to address a broad range of social and economic issues. The solutions need to be long term and with long-term commitment in every sense. To quote the Human Rights Commission in its report into ending family violence and abuse in Aboriginal and Torres Islander Communities, "The solutions require bipartisan political will and leadership at the highest levels of government." The report makes it very clear that action must be based on genuine partnership with Aboriginal communities and with their full participation. Thank you.

The Hon. HELEN WESTWOOD: Does your service work with victims outside of Sydney and urban areas as well as those within more densely populated communities?

Ms MARTIN: We are a statewide service. We have a free call number and we get calls from across the State. As you would expect, most of our calls are from metropolitan Sydney—that is because the largest communities are found in Sydney. However, we certainly do have clients in other communities in rural areas. We also do casework; a large proportion of that is victims' compensation work. A lot of our clients have been victims of domestic violence and/or sexual assault, and we certainly have clients in rural areas as well.

The Hon. HELEN WESTWOOD: Last week the Committee visited Forbes and we received quite a bit of information from groups and victims themselves. Have you noticed amongst your client group a different experience in terms of resources and support for victims of domestic violence between those in urban and metropolitan areas and those in regional and particularly remote areas?

Ms MARTIN: Absolutely, that goes without saying. It is a well-known fact and that has not been identified by us but it has been identified by numerous reports over the years looking at domestic violence or family violence within Aboriginal communities but certainly in terms of trying to find services to refer our rural clients to, we struggle.

The Hon. HELEN WESTWOOD: That is all I was going to pick up. Do you see any strategies that we could recommend that would help address some of that real gap in service and support for victims in regional areas?

Ms MARTIN: Other than funding?

The Hon. HELEN WESTWOOD: Is it simply a question of funding? I wonder about services being able to do outreach, how practical that is or whether you think that needs to be based within those communities, those sorts of specifics. Do you have any views on that?

Ms MARTIN: I think it depends on the services you are referring clients to. Obviously some services are part of a government service so it is about whether that government service is actually in that community and does outreach to that community. Some services need to be very much at a local level to address local issues

and preferably they are Aboriginal controlled and Aboriginal managed. Aboriginal communities are not homogenous; they are very different across the State, across urban communities and across rural communities.

Certainly we stress and lots of other reports stress that we are looking for local solutions but having said that, multi-level solutions are needed, very high levels, at regional levels and at a very localised level. For us the bottom issue is the dollar and there needs to be investment in long-term programs not pilot programs because programs need a while to get themselves established; they need a while to get the trust of the community and so two- or three-year funding cycles are just not going to work. There needs to be long-term investment because for solutions in terms of intervention and prevention, we are talking many years.

Ms DEAKIN-GREENWOOD: Can I add something to that? Just in terms of speaking for Aboriginal people, which we certainly do not purport to do at all except in a very general sense about the experiences that our clients bring to us, some of these issues and questions obviously need to be put to the communities in which the solutions to the problems need to be addressed and what is appropriate for an urban Aboriginal community in Redfern is going to be very different to an Aboriginal community in Mount Druitt let alone Bourke or Dubbo or Kempsey. We really only have a snapshot of our clients' experiences. It is probably best to ask the people and the services on the ground in those areas to see what would be appropriate for their community, working on the strengths that are there and the services that are being provided and to add to what is already established in those places.

The Hon. HELEN WESTWOOD: One of the things we heard from both victims and support services last week was that they felt that the police were not responsive, often did not take their complaints—and this was at the time when the violence was actually occurring—seriously and that the response time was woefully inadequate and became longer with each incident. Have you heard similar stories from your clients?

Ms MARTIN: In rural areas?

The Hon. HELEN WESTWOOD: In either?

Ms MARTIN: Yes, we have. I must stress that there is no uniform police response and it really does vary from local area command to local area command and from police station to police station. With some police the response is very good and in other places it is not. I think it is as varied as that, but certainly we have had clients who have said that the response has been very slow.

The Hon. HELEN WESTWOOD: That is consistent with what we have heard so far; it does seem to be about leadership within the commands?

Ms MARTIN: Yes.

The Hon. HELEN WESTWOOD: That does seem to confirm what we have heard already. The other area that came up was the yellow card. New South Wales police are telling us that this is one of their key strategies for responding. Again the experience that we heard out in western New South Wales was that it is pretty much non-existent; people did not know about it. What have you found in terms of the use of the yellow card and its effectiveness with your clients?

Ms MARTIN: At the moment we are aware of it and I cannot really comment on how effective it is particularly with Aboriginal clients and I do not feel confident to say one way or the other that it is or is not working. I cannot make any further comment than that really.

The Hon. HELEN WESTWOOD: Ms Deakin-Greenwood, do you have anything to add?

Ms DEAKIN-GREENWOOD: No, sorry I cannot.

The Hon. GREG DONNELLY: Thank you for coming along today to provide us with an opportunity to ask you some questions in addition to your comprehensive submission. We have received in earlier evidence from the New South Wales Government both oral and written information that the New South Wales Government is developing a new framework or a refreshed framework, if I can use that phrase, for dealing with domestic violence in New South Wales. We have received evidence that the process of developing that framework is underway and progressing. In that evidence we were informed that part of that has involved and does involve liaising with and talking with those in our community who are involved in dealing with domestic

violence to get their input about this new framework. Have you been invited or asked to participate in the formation of the current State Government domestic violence framework?

Ms MARTIN: Not that I am aware of but I cannot speak for my coordinator. I could take that question on notice and ask her because all of us participate in various forums.

The Hon. GREG DONNELLY: If you could take that on notice, that would be fine because I am keen to find out whether or not this opportunity for people is penetrating down.

Ms MARTIN: How recent is this?

The Hon. GREG DONNELLY: It really commenced last year after the State election. The new Government came in and decided to take a look at the way in which this whole matter is dealt with from a policy area and framework area. It has been explained to us that a new framework is being developed as we speak and we have been told that people involved at the coalface are being invited to make contributions to the review. My next question goes to giving us some specific consideration to males in the indigenous community. The whole issue of domestic violence affects the whole community, indigenous and non-indigenous, and males and females are known to participate in it, but looking at the figures males are the key protagonists in terms of acts of domestic violence. In your experience inside indigenous communities is there anything, in your view, that has worked or appears to be working to influence young indigenous males not to participate in acts of domestic violence?

Ms MARTIN: By young, you mean what? Teenagers?

The Hon. GREG DONNELLY: For argument's sake, let us say 25 and younger. Let us use that number.

Ms MARTIN: We are probably not the right people to be speaking to about this, given our work mostly with Aboriginal women and children. We are aware of a number of programs at the very local level that do work with Aboriginal men, but I am not aware of—

The Hon. GREG DONNELLY: That is fine. I appreciate you are lawyers. I understand that, but I am trying to use every opportunity of witnesses who come before us to see whether or not anything is standing out as having some potential positive effect in influencing young minds.

Ms MARTIN: The issue is how do you measure success. There are programs, for example, in Lismore called Rekindling the Spirit. There are some programs on the South Coast whose names completely escape me.

The Hon. GREG DONNELLY: Perhaps I will move on. It would not make sense to ask you the same question about older males. It is not an area that you have some experience in.

Ms MARTIN: No, we cannot really comment.

The Hon. GREG DONNELLY: In your opening statement you made comment about the issue of different solutions for communities; in other words, there is not a one-size-fits-all solution to dealing with this matter and you distinguish between rural, regional, remote and urban populations. Having said that, though, is not this issue of domestic violence, particularly with respect to males conducting the violent acts, underpinned by a position that domestic violence full stop towards women is not acceptable? In other words, do we not need to have that as a fundamental cornerstone position that is told and retold and retold to males, irrespective of their community?

Ms MARTIN: Indeed, I agree with you. We submit that domestic violence is very much a gendered form of violence. It is essentially about male power being used against women and children so we accept that. And domestic violence is a universal problem so it cuts across all cultures, all communities, all class groups. I suppose why domestic violence is more prevalent in Aboriginal communities is complex and that has been identified by a number of reports when talking about why we are seeing a high incidence of domestic violence in Aboriginal communities. Some of those issues have been identified. We are talking about highly stressed communities and we are talking about a whole range of issues, including the trauma and grief of removal of Aboriginal children, substance abuse and alcohol abuse, significant social and economic disadvantage, inadequate housing, lack of appropriate services. All these factors create highly stressed communities which

lead to higher incidence of dysfunctional and violent behaviour, but we accept that domestic violence is a gendered form of violence absolutely.

The Hon. CATE FAEHRMANN: Thank you for coming today and for your comprehensive submission. I have a few questions on the court system. Your submission refers to the recommendation of the Australian Law Reform Commission that a specialist domestic violence court should be established. You suggest that such a court would need to be very sensitive obviously to the cultural needs of Aboriginal women and understand the complexities of domestic violence in Aboriginal communities. Can you perhaps tell the Committee a little about how you think a specialist domestic violence court could do this effectively?

Ms DEAKIN-GREENWOOD: I think in our submission—and I will just repeat it—we recommend greater training and cultural awareness training for all court staff. We would extend that obviously to the Police Force, the judiciary and many other services and at all different levels of government that are working with Aboriginal people. As a starting point we would make that recommendation. Employment of Aboriginal people in the court system, in the Police Force, as part of the services that are working with the courts and in a kind of integrated court model like they have overseas, which I understand is different to the Domestic Violence Intervention Court model that has been running in New South Wales.

The Hon. CATE FAEHRMANN: When you say overseas what jurisdictions are you referring to?

Ms DEAKIN-GREENWOOD: I have read a little bit about the domestic violence problem-solving courts in Canada and the United States. I have an article I am happy to hand up if that would be helpful. In those jurisdictions the courts have a much more problem-solving, open-minded approach to issues like domestic violence, and I would kind of suggest that the Drug Court in New South Wales is probably a good example of looking at solutions that are individual, tailored to the people involved in the process; and rather than dealing with the offence, we are looking at the offender. For women, for men and for families that are affected by domestic violence, looking at the circumstances and the factors, as Ms Martin mentioned before, that might be leading to levels of violence in that family. Overseas the victims play an important role in that court. They are not just there as a witnesses; they are part of the solution, and the offender, through case management and bringing the matter back to the court a number of times, has an opportunity to participate in the actual process, rather than an order being made on the day, sending the person away and not seeing that person again until a breach or another act of violence occurs.

It is a different way of approaching these types of issues. It means that we have to think outside the very structured court process that we have at the moment and it would take an investment of money. I think it is a problem worth investing in because the alternative is to continue with high rates of domestic violence and the very long consequences that that has for women, for children and for communities. And we can see through the way this affects other people's entry into the criminal justice system, not just offenders, women and children as well, that it is a problem that needs investment and creative solutions.

The Hon. CATE FAEHRMANN: That is interesting. Can you give the Committee perhaps an example of how the lack of cultural awareness within the court system can manifest? What are the problems for having magistrates and various players within the court system either not being trained in cultural awareness, undergoing training or just having a decent level of it when it comes to Aboriginal culture?

Ms DEAKIN-GREENWOOD: From a basic level, I would suggest low levels of reporting of domestic violence as a starting point: mistrust of the police and the complicated and historical reasons why that is a reality for many Aboriginal communities, an inherent fear of racism and suspicion that police will not take domestic violence seriously because it is occurring in an Aboriginal community, all the way through to stereotypes being made of victims and communities and families by the judiciary and exclusion from that court process. Anybody who gives evidence and anybody who has to go to court—as solicitors we get used to being in that environment but many other people, not just Aboriginal people, find that whole process to be extremely daunting, very confrontational and it is not a system that many people feel relaxed in ever. So for many groups in the community, particularly Aboriginal people, that process, by its very set up, is excluding many people from accessing it.

Ms MARTIN: To add to what Ms Deakin-Greenwood said, it is important to understand the complex pressures that are placed on Aboriginal women not to report violence. It is not just fear of the offender; it is a whole heap of community pressures. There are a myriad of reasons why an Aboriginal may not want to report or

may report it and then retract and not want to go ahead with that. I think it is important that everyone understands why that is the case.

The Hon. CATE FAEHRMANN: When you said "fear of racism", is that a reality as well in the court system? We did hear from one witness at least in Forbes who suggested that racism is very real, we still live in a racist society—I am paraphrasing, I am sure. Is that your experience within the court system?

Ms MARTIN: I suppose we want to stress that we do not spend a lot of time in the courts. Obviously we are not prosecutors. I was a duty solicitor at a number of court advocacy services a number of years ago but that service is no longer required because Legal Aid now funds that particular program. We all still do court support work. We support women at certain courts going through the court process but as court support workers not as legal advocates. We obviously also have a lot of clients who talk to us about their victims compensation work and their experiences in court. There are various types of racism. It can be very overt but it does not tend to be that overt; it is more ignorance and lack of understanding about what is going on for a particular Aboriginal woman. I cannot give you any specific examples of overt racism but I can certainly think of many times when there has been a lack of understanding about what a particular Aboriginal women is going through in terms of the pressures being put on her not to go ahead with something, and not understanding why she is fearful. Sometimes it is just a poor understanding of domestic violence per se not necessarily whether the woman is Aboriginal or not. It is poor understanding of domestic violence generally speaking.

The Hon. CATE FAEHRMANN: I want to explore the terminology around domestic violence. Your submission suggests that intimate partner violence should be distinguished from violence or abuse, as many other submissions have pointed out or suggested, that occurs in other family relationships or any Aboriginal community between members of the same kin. Would either of you care to elaborate on that and why you think it should be intimate partner violence?

Ms MARTIN: I am happy to do that. The dynamics of power in a relationship between intimate partners are very different. I think we all have intimate relationships and we know they are very different from a relationship with a family member. Primarily we would argue that an intimate partner relationship is male power being used against their female partner and their children to maintain control. It often involves a range of power over a number of years and it very much has a cyclical nature, hence the cycle of violence. The relationship is more complex psychologically. It often involves sexual intimacy, romantic love, a need to be wanted and loved, as well as insecurities and poor self-esteem, which are the flipside to that. It often involves a dependence on the dominant partner, particularly if there are children. I am talking about economic dependence or dependence with child rearing. Children often are used in that relationship to blackmail the partner to stay.

The abuse tends to be very secretive whereas violence between family members is far less complicated psychologically. There is often no dependence on the abuser and the one exception would be a parent-child relationship in the instance of elder abuse where there is dependence for the care of the elder. I would argue that in non-intimate partner relationships there tends to be less of a cycle. Often the violence is about a specific issue or a difference rather than a pattern of violence to maintain that control. In terms of the calls that we get, women are primarily ringing up about intimate partner relationship violence. They are not ringing up about being assaulted by their sister, their brother, their cousin or members of kin. They are ringing up about what has been going on in their intimate relationship.

The Hon. CATHERINE CUSACK: Thank you for your submission. Do you have a statistical profile of your clients, for example, where they live, whether they are employed, whether they have substance abuse issues themselves and whether they come from families with a history of violence?

Ms MARTIN: We have a database; we have to record the number of people we speak to for funding purposes. Unfortunately, as a statewide service it is complicated. The database does not allow us to neatly identify where people are calling from, say, suburb by suburb.

The Hon. CATHERINE CUSACK: Do you collect any data at all?

Ms MARTIN: We do, but we do not collect data about whether they have a substance abuse problem. As part of taking instructions from our client it would become apparent to us whether there was a history of violence but we do not report that on our database.

The Hon. CATHERINE CUSACK: Do you record whether they have children?

Ms MARTIN: We do.

The Hon. CATHERINE CUSACK: Can you give us an idea of what percentage of cases involve children?

Ms MARTIN: Off the top of my head I would say the overwhelming majority.

The Hon. CATHERINE CUSACK: That is another complicating factor, is it not?

Ms MARTIN: Indeed.

Ms DEAKIN-GREENWOOD: It may be a helpful snapshot to say that we have been running a program in women's correctional centres for the last couple of years, which is a kind of confined sample, and we are keeping more accurate statistics around those clients because the numbers are small and it is easier to gather.

The Hon. CATHERINE CUSACK: I totally support what you are saying about the need for more tailored services but having more statistical data would assist in that policy process of how we tailor the services. That is a matter for government obviously. I am just inquiring whether you have that information. Your submission talks about the limitations of sentencing, which I think is really interesting. Basically you are saying there are profound social issues involved. Would you agree that a legal response is limited in how it can solve a profound social issue such as the one we are talking about today?

Ms MARTIN: Yes.

The Hon. CATHERINE CUSACK: In relation to having more flexibility in the courts, it seems to me to be complicated by the fact that many of these matters might be in the Family Court as well as in the Magistrates Court.

Ms MARTIN: Indeed.

The Hon. CATHERINE CUSACK: There will be matters in the Children's Court; there will be other programs like circle sentencing on the South Coast, so we are talking about one offender being involved in multiple court systems and there might be appeals underway. In terms of training for the police and the complexity—there are very complex level responses which we have already agreed are limited to some extent—I am worried about setting up a separate domestic violence court, which just adds another overlay of complexity when what is probably required is a more holistic and flexible response.

Ms MARTIN: I understand what you are saying but we would argue that a domestic violence court would have a capacity to deal with those issues around parenting orders and care orders. It needs to be as flexible as that to deal with all of those issues. Domestic violence intersects, particularly when there are disputes around children and there are potentially issues of children being at risk. We would argue that one court that specialises in domestic violence and understands all of that could deal with all of that.

The Hon. CATHERINE CUSACK: Can you comment on the Family Court being a Federal jurisdiction versus these other courts we are talking about being a State jurisdiction? A very common problem will be that a magistrate is trying to deal with a matter which is before the Family Court, orders are made and the police do not seem to enforce the Family Court orders. How these orders relate to the Magistrates Court is confusing. It seems to me there is a massive amount of paperwork, court systems and cross-overs and the problem might be very simple and the woman and the kids might need an urgent intervention. The system itself is a maze.

Ms MARTIN: Obviously there is tension between the Family Law Act and parenting and local courts and apprehended violence orders but if you have a court that is able to deal with that at the very beginning in a very considered way, looking at all those issues, it may be that as part of that process parenting orders can be sorted out, if appropriate.

The Hon. CATHERINE CUSACK: Are you talking about the Family Law Act parenting orders?

Ms MARTIN: Yes, at a Local Court level. It could be there is a case. Jurisdiction could be given to the Local Court to do that.

The Hon. CATHERINE CUSACK: I am interested in that because children literally die because police will not enforce parenting orders.

Ms MARTIN: I do not profess to be a family law expert but if you have a parenting order in place that says X, Y and Z, and that a person cannot have contact with a particular child, the NSW Police will say, "I do not have the power to enforce that."

The Hon. CATHERINE CUSACK: Go to court, take out an order and the children have disappeared and everybody is looking for them.

Ms MARTIN: The answer is, yes, an apprehended violence order. I think at the very outset apprehended violence orders all need to be sorted out together at the same time.

The Hon. CATHERINE CUSACK: Yes, I agree.

CHAIR: I refer to the practicality of having a dedicated court that could cover the whole State and putting into context what we saw last week with people coming from Murrin Bridge, Lake Cargelligo and places like that. Other witnesses have proposed that we have an extension of the domestic violence court lists to be able to be held at Local Courts rather than a dedicated domestic violence court. Do you have any comments on how that could be used as a localised approach? I imagine it is a lot more cost effective than having a dedicated court, particularly in a regional community.

Ms MARTIN: I suppose as a second-best option, yes, that would be better but I still think you need specialisation. I still think you can list all your apprehended violence orders matters or your domestic violence matters on the same day, and a lot of Local Courts do that anyway, but you still need specialised staff in those roles; you still need prosecutors who specialise in dealing with domestic violence; you still need legal advocates who specialise in dealing with domestic violence; you still need members of the bench you have a good understanding of domestic violence; and you still need support services that involve part of that process that are willing to take referrals to help both victims and perpetrators deal with the merit of issues that may be coming up for those people.

CHAIR: Is that more the DVICM model to which you are referring?

Ms MARTIN: I cannot speak for how specialised the prosecutors and magistrates were as part of that model. There was the additional support of a—I forget the exact name of the advocate for victims. There was additional support for victims as part of that process. That particular model only worked with the focus on people who had been charged with domestic violence offences. It was not covering where there was just simply a domestic violence order proceeding in place. I still think specialisation of all the key players is critical.

CHAIR: I refer to your example of the Canadian system. How does that differ to the DVICM or the dedicated court in this instance? Is it mainly talking about before being charged and the addressing of the AVOs?

Ms DEAKIN-GREENWOOD: I am happy to hand up an article. In relation to cost and efficiency, the Auditor-General of New South Wales made a report last year, I think it was, and estimated the cost of domestic violence to the State of $4.5 billion a year. In the analysis of costs and benefits, there is so much strain that is knocked on from domestic violence in health, helping and the courts—mental health and long-term things—that it is useful to keep that in perspective. Some of the features of domestic violence courts—the focus of them—is to be more proactive rather than reactive and to address problems before they become real problems. I think in terms of how people might access that type of court, you do not need violence for that to happen. If people have drug or alcohol issues there could be some type of early referral into programs or other services that were set up to deal with some of those things, such as unemployment, housing or the other kinds of strains and stresses that people are facing.

I referred also to longer case management of matters so they are not a solution that is devised by a magistrate on a day but an integrated model where different services participate in coming up with a treatment plan and a way in which the family can either stay together or separate, if those are the wishes of the family, and

have the issues that are causing the violence to be addressed. I am not saying that some of that might include a custodial sentence—of course, if that were appropriate then it could—but rather than just sending people off with an order that may or may not be effective, and may or may not be what she or he wants, particularly from the point of view of the victim. Many of our clients are often confused about what orders are in place anyway. Breaches occur because people do not understand the context of the components of an order. We hear from women and, looking at some of the evidence I think it is from men who are defendants as well, that they do not understand the contents of the orders.

The Hon. CATHERINE CUSACK: Do lawyers not explain that to them?

Ms DEAKIN-GREENWOOD: I think everybody is very pressed for time. I think Legal Aid solicitors probably do the best they can but in the stress of the court—

The Hon. CATHERINE CUSACK: I am sorry; is that not the job of solicitors to make sure their clients understand their orders?

Ms MARTIN: I think it depends on the situation. If someone is being charged with an offence and they would have legal representation, and an apprehended violence order is issued then certainly it should be the responsibility of their solicitor to explain those orders. Having said that, there are plenty of apprehended violence orders where there are no associated charges and therefore that person is not represented. The lament is that some offenders do not understand, particularly when they have not been legally represented, the orders that have been put in place. Once upon a time in Local Courts when an order was granted—I remember sitting at the court staff counter waiting for the apprehended violence order for my client—the court staff would go over the orders with the defendant and explain to them what the orders meant. That does not happen anymore. Due to resourcing issues apprehended violence orders are now generally sent out in the mail. Yes, when someone is in court the magistrate should go through the orders and explain to them what they mean. I think some magistrates are better at that than others.

CHAIR: That is consistent with the evidence that the Committee has taken right across the State. I note that you have taken on notice one question. The Committee has resolved that answers to that question and any other questions the Committee may put to you on notice must be returned within 21 days. The secretariat will contact you with any questions to facilitate the responses. If you have any other information you would like to present to the Committee please feel free to do that. I ask you to table that article.

Ms DEAKIN-GREENWOOD: Yes, I table it.

Document tabled.

(The witnesses withdrew)

CHERYL ALEXANDER, Chair, Women's Domestic Violence Court Advocacy Service Network, and

JULIE HOURIGAN RUSE, Executive Officer, Women's Domestic Violence Court Advocacy Service Network, sworn, and

SUSAN PEIR, Co-ordinator, Women's Domestic Violence Court Advocacy Service Network, affirmed and examined:

CHAIR: I welcome witnesses from the Women's Domestic Violence Court Advocacy Network. Would you like to make an opening statement?

Ms ALEXANDER: The Women's Domestic Violence Court Advocacy Service Network [WDVCAS] appreciates the opportunity to attend today to speak with the New South Wales Legislative Council Standing Committee on Social Issues on matters related to the inquiry into domestic violence trends and issues. The network was established in 1996 and is the peak body assisting women and children seeking legal protection from domestic violence. The network is an incorporated organisation comprising representatives from 28 individual women's domestic violence court advocacy service networks that operate in 108 local courts throughout metropolitan, regional and rural New South Wales. The network is funded by Legal Aid through the Women's Domestic Violence Court Advocacy Program. Each WDVCAS is auspiced and works locally in collaboration with government agencies, non-government organisations and the private sector to deliver an integrated service to clients. A major strength of the network is its local connection to a range of specialist services, including police, counsellors, caseworkers, health services, housing providers, child protection workers and lawyers.

In 2010-11, WDVCAS provided 73,765 services to 21,219 clients across New South Wales, of whom 1,407 were Aboriginal clients and 4,499 were clients from culturally and linguistically diverse backgrounds. We made a total 39,200 referrals to relevant agencies. The network's vision is to work together to achieve better outcomes for women and children by identifying and advocating on domestic violence issues within social, political and legal contexts. We are informed by a feminist analysis of power and recognise domestic violence and family violence as a crime and a violation of the human rights of women and children. Domestic violence is a gendered issue and the network works within that context. People have complex and complicated lives, and when you add domestic violence, mental illness, addiction, caring for children and the risk of homelessness into the mix it is no wonder that women find it incredibly difficult to navigate the system when they are in crisis. To help to address that, the WDVCAS takes particular care to engage with women in a way that will achieve interventions that are workable. Our experience tells us that enforcing a circumstance can increase the risk of a dire consequence.

WDVCAS does not necessarily have a stringent process of intake and file closure but, rather, recognises that if information about services is available to a woman she may engage slowly and progressively over many months until she is ready. Reports from the Bureau of Crime Statistics and Research show unequivocally that domestic violence is a gendered issue and the network is alarmed by claims made by some that men and women are equally victims. The network does not suggest that women are never defendants. However, women who are defendants in domestic violence matters often have a long history as victims of violence or trauma. In the network's experience a woman will suffer years of domestic violence in silence, but after a single moment of self-defence or retaliation against the perpetrator will find herself immersed in the criminal justice system having to defend an apprehended violence order and criminal charges. In the network's experience a woman defendant is more likely to be young, to be from a culturally and linguistically diverse background or to have a mental illness. These added vulnerabilities make their interaction with the criminal justice system even more difficult and unbalanced.

The network is extremely concerned that police are pursuing women as defendants in domestic violence matters without thoroughly investigating the circumstances leading up to the incident and the history of violence experienced by the women and children. A woman may not have had access to relevant support at all times, such as an interpreter attending the premises with police after the domestic violence incident. In the network's experience there is active negotiation with the defendant at court to explain the options associated with agreeing or disagreeing with an apprehended domestic violence order yet a lack of understanding by the perpetrator of the power of the order and the possible consequences of a breach can result in some perpetrators failing to comply with the conditions imposed by the court even if it was granted by consent.

The network considers that the existing penalties available for charges for domestic violence offences or breaches of apprehended domestic violence orders are adequate. Our concern is that magistrates are not sentencing perpetrators with the strong penalties available or are not applying penalties consistently. Domestic violence is a crime that should never be tolerated and the court is in the strongest position to send that message to the community. One very practical way of addressing this would be the development of specialist domestic violence court lists as a means of promoting consistent outcomes, improving the ongoing safety of victims, reducing reoffending and influencing the broader legal system and community perceptions of domestic violence. A specialist domestic violence court list would accord with the Australian Law Reform Commission's recommendations regarding the establishment or further development of specialised family violence courts within existing courts in all Australian jurisdictions.

These court lists would have certain minimum core features, including specialised judicial officers and prosecutors, regular training on family violence issues for judicial officers, prosecutors, lawyers and registrars, victim support, including legal and non-legal services, and arrangements for victim safety. The network believes that this model of specialisation is readily achievable because the key elements already exist across all courts, with only the need to provide specialist training to selected personnel, the need to further expand the provision of legal advice to both the persons in need of protection and to defendants and the need to include non-legal service providers in the integrated response. The network strongly asserts that some level of regular training on domestic violence from a gender perspective should be compulsory for all police officers, magistrates and prosecutors.

In the network's opinion a key priority of domestic violence policy that needs to be addressed is a review and refining of the integration and collaboration of domestic violence responses. The network recognises the excellent work of many government agencies and non-government organisations working with women and children who are living in domestic violence situations. However, the network believes that it may be possible to use the current available resources more effectively to ensure the safety of women and children and to promote effective referral pathways. Examples such as Staying Home Leaving Violence, the Domestic Violence Intervention Court Model and the yellow cards all target clients fitting a very specific eligibility criteria. Clients who are eligible for one may not be eligible for another. Each program has its own infrastructure, some of which operates in parallel across programs rather than focusing on integration and collaboration.

An integrated and collaborative approach that places the clients' needs in the centre would reduce competitiveness and duplication between programs. The financial economies that flowed from streamlining programs could be redirected into frontline service delivery. Across the network each WDVCAS is already working in collaboration with Staying Home Leaving Violence, yellow card projects, the police, housing providers and a range of other specialist services identified as being suited to our clients' personal needs. Building on that existing framework, which has proven positive outcomes, should be the goal. We thank you and welcome your questions.

The Hon. HELEN WESTWOOD: What would be the ultimate recommendation you would like to see come out of this inquiry?

Ms ALEXANDER: A beginning point for us is the integration and collaboration of the services. There is a lot of duplication in programs and while we are all involved in similar but slightly different components, I think a streamlined approach would be far more effective.

The Hon. CATHERINE CUSACK: Can you give an example?

Ms ALEXANDER: Yes, for instance I work in the Women's Health Centre. We have the Women's Domestic Violence Court Advocacy Services [WDVCAS] and the Staying Home Leaving Violence and Yellow Card projects. So we are fortunate in that everything comes into the one central point and we can share clients and information. If one service is going to court with a client on a list day, we will take that client rather than requiring the staying home person to attend—we can streamline the assistance that is given. As to the infrastructure that is required for each of those projects, we have a governing body within Legal Aid—the Women's Domestic Violence Court Assistance Program [WDVCAP]—that provides all our policies and regulations and I know Staying Home Leaving Violence also does and that the infrastructure behind Yellow Card projects will be similar. If some of these services were to work together with a coordinated approach, there is a lot of infrastructure funding that could be channelled onto the ground, which is where we are struggling because there are not enough services on the ground. Our other key point is the domestic violence court list.

The Hon. HELEN WESTWOOD: So you would advise one specialist domestic violence [DV] unit within government coordinating and providing funding resources?

Ms ALEXANDER: Yes, definitely.

Ms PEIR: And not just at the government level but there should be better coordination at the local level. We anticipate that in a lot of the specialist services such as DVCAS and Staying Home Leaving Violence that are not statewide, with better integration those services could be made statewide for women and children.

The Hon. HELEN WESTWOOD: The evidence we have received to date tells us that the responses of some communities and services are more effective for victims than others which seems to be really poor. One example has been the Yellow Card project. The Committee has heard that in some areas it is quite successful—the police are aware of it and it is utilised and appropriately processed—but in other areas there seems to be a complete lack of knowledge of its existence or a very poor implementation of it. Does the network have an experience of that? Have you seen in some communities that the responses to domestic violence units are more effective for victims?

Ms HOURIGAN-ROUSE: Yes, particularly with the Yellow Card project, some of the programs in some areas are funded and some are not. So the rollout of Yellow Card has been different across the State. There has not been a consistent approach to it. Where there has been funding attached to a Yellow Card program, clearly there are resources that go with it that allow it to have a far more effective service delivery. In other regions it has been adopted simply because people believe in it as a mechanism for linking clients with services. There is a philosophy that integration and not relying on the police to do everything is why it has been taken up in other services. There is a general acceptance by the police that they need the assistance of the non-government sector to produce the best outcomes for clients but it is being adopted without funding. At a fundamental level, if there is money attached to it the resources that flow from that make the implementation of the service much better.

Practically though, where the Yellow Card is working, it allows for a service like WDVCAS to make contact with a client quickly and ahead of the first court date. It allows early connection with the client by someone who is not a police officer and who can have a different conversation with the client, and it allows the making of an assessment about what other interventions could be useful for the client. It enables assistance to be given to the client in order to help them understand the court process of an apprehended domestic violence order [ADVO] but the system is complex. If everything is travelling well, you have no need to know what services are available to you and for a victim of domestic violence it is highly unlikely, in the first instance, that they have ever had a need to navigate the system—they do not know what they do not know. Having contact with a non-government organisation that is well integrated and connected at a local level, that organisation can identify for the woman where their local women's health service is, if there is a refuge and whether a refuge is necessary.

The organisation can ascertain whether the woman needs legal advice on issues other than domestic violence or whether there are financial matters that need to be addressed. It is important to make contact early, rather than in the flurry of a court process where trying to have those conversations is difficult because the environment is different. The other benefit of the Yellow Card is that you get the contact details of the woman and she can identify when is a safe time to call, so that you are not cold-calling and risking putting a woman at further danger because you do not know who else is in the space. So you know that if they say, "You can call me on a Wednesday at 10 o'clock", that is probably the safest time to call in order to begin the conversation, rather than taking a risk of cold-calling and not knowing where the woman is, who else is in the room, or who else might answer the phone.

Ms PEIR: I would like to add that the Yellow Card project is driven by the police, so there needs to be effective police leadership at local area command level in order to ensure that there are resources and compliance. There needs to be education and the domestic violence liaison officers [DVLOs] need to have the time to administer the service because it does add a significant amount of time to DVLOs. It works most effectively where there is a feedback link, so that if there is an immediate concern of risk, the community services that have the cards can have immediate feedback to the police area command.

CHAIR: What does the acronym DVPASS stand for?

Ms PEIR: DVPASS is the Domestic Violence Proactive Support Service, initiated by the police in order to allow early intervention. So it is a proactive response.

CHAIR: Is it the same as the Yellow Card?

Ms PEIR: Yes and that is often cause for confusion. So DVPASS is the proactive intervention from the police. When the police talk about DVPASS they have a number of initiatives which include their compliance checks, but one of those initiatives is the Yellow Card project. There are several initiatives from the police under DVPASS, one of which is the Yellow Card.

The Hon. GREG DONNELLY: In the first paragraph of your submission it says your organisation is the peak body for women and their children experiencing domestic violence who require legal protection from the courts. Around the State are there a number of organisations affiliated to your body or are there other bodies that basically compete to advocate on behalf of those subjected to domestic violence?

Ms ALEXANDER: Legal Aid fund 28 Women's Domestic Violence Court Advocacy Services [WDVCAS] around the State. The funding is provided to non-government organisations, so it could be women's health centres, refuges, mini legal centres; we are all in different types of organisations depending on what was available to auspice the service. So we are spread around the State. Our role is specifically around domestic violence matters prior to coming to court, working with the women during the court process and getting them through them that part. What we do is that we provide information about how court works and we go through the orders as to what might be required for the women because we find from the time that an ADVO is taken out to a couple of weeks later when we get to court changes need to be made. It is a bit of a settling process. Police may have put stringent conditions on the apprehended violence order or we may need to be adding some more conditions. So a lot of the work we do is going through that with the women; we will advocate to try to have some changes made. Then after that a lot of our work is referral.

The Hon. GREG DONNELLY: In light of the change of government in March last year and the report of the New South Wales Audit Office referred to in your submission, the Committee has been informed by the New South Wales Government that it is looking to develop a new or refreshed framework for dealing with domestic violence in New South Wales. It was put to us by a government witness that an important of part of that involves liaising with non-government organisations and other organisations involved in dealing with the matter of domestic violence in this State. Are you aware of this review that is currently underway looking at the framework for dealing with domestic violence in this State?

Ms HOURIGAN-ROUSE: The network has not been specifically invited to participate in any review of the framework of domestic violence.

The Hon. GREG DONNELLY: But you are the peak body; as you assert in your submission?

Ms HOURIGAN-ROUSE: Yes.

The Hon. GREG DONNELLY: So you are not aware of any contract that has been made to your organisation to participate in the review that is currently taking place?

Ms HOURIGAN-ROUSE: Correct.

The Hon. GREG DONNELLY: Would you find it surprising that an organisation of your standing and status is not being consulted in a process of reviewing the domestic violence framework in this State?

Ms HOURIGAN-ROUSE: Given that WDVCAS has been operating since 1996 and we see tens of thousands of clients every year, we would certainly be very well placed to be able to offer government a very on-the-ground perspective of what is going on. We would absolutely welcome any opportunity to participate in that type of review, because the knowledge we would be able to bring to the table would certainly be very worthwhile and probably would not be available to the discussion if we were excluded from that kind of review.

The Hon. GREG DONNELLY: In light of what you have just said and your long-term experience from working in this area, can you provide to the Committee today your thoughts and insights into emerging or current trends with respect to domestic violence in New South Wales? I appreciate that that is a very broad question but from your bird's-eye view I was wondering whether you would care to specifically comment on your observations about particular trends, manifestations or related matters?

Ms HOURIGAN-ROUSE: I am happy to start and then I am sure my colleagues will add to my comments. Definitely a zero-tolerance approach has been something that we are seeing. What I mean by that is when police attend an incident either everybody is charged or nobody is charged rather than having a look at a primary aggressor-type approach as to who instigated the violence. The network accepts that when police are attending an incident they are at the pointy end—it is when all of the tensions and emotions are high and they need to deal with what is front of them at that particular moment. But the concern to the network is that in the time that follows there may not be appropriate follow through or looking behind the incident—getting an understanding of the history of the circumstances—and not necessarily having to proceed against both parties. There is that circumstance where it may become apparent that there was more to the story than what they were able to ascertain on the night. So with the zero tolerance, whilst domestic violence should never be tolerated and we do not want there to be no response, the response needs to be very balanced.

Ms ALEXANDER: Added to that point as well, we are certainly seeing far more women charged who have retaliated or it has been in an act of self-defence. A woman may cause an injury, particularly with the long nails on young girls these days, by scratching whereas she may have bruising that may not be evident at the time but within a few days it comes out. So it is just looking at what is on the surface rather than investigating a little bit deeper into what is the story going on. Far more women are telling us that it happened in self-defence but because there are injuries she has got the charge. We are definitely seeing a lot of women with mental health going through the system with charges against them as well, so there is not that allowance. It will work its way out if we can get them representation and the appropriate action is taken for the cause of it in those early stages. It is an issue.

CHAIR: I make the comment that the Police Association preferred to use the term "pro-investigate" rather than "pro-arrest", which I think would be a good path to head down after what you are saying.

Ms HOURIGAN-ROUSE: Yes.

The Hon. CATE FAEHRMANN: At a recent hearing the NSW Police Force advocated that police officers at or above the rank of sergeant be given power to issue provisional ADVOs without having to apply to a court and to arrest and detain a person for the purposes of making such an order. Police evidence suggested that this would enable more immediate protection to a victim but we have had other witnesses suggest that may not be the best path to go down. What are your views on enabling police to have the power to issue immediate court orders?

Ms PEIR: Our network can see some merit in senior police being able to apply for provisional orders. Provisional orders are just that: Provisional. Then it is adjourned to the earliest court date, which can be from a few days to a week. The rationale is they say they have the defendant or the perpetrator with them so they can actually serve those orders on them immediately. The concern at the moment is either the time they ring for an on-call magistrate—yes, magistrates are on call but there is a time delay when a perpetrator may not be able to be retained or has left the scene, so the order is in place but because it has not been served on the defendant they are not being able to be acted upon. So we can see some merit in senior police being able to take out provisional orders that are in place until the first court date mention.

The Hon. CATE FAEHRMANN: The Committee also heard from some victims of domestic violence that police are not responding to breaches until possibly the third or fourth call. Is that also your experience in terms of the women you represent, and are there any recommendations that you would make to tighten up that process to ensure that breaches are acted upon?

Ms PEIR: This is certainly a very difficult area, as you would well know. Putting it into perspective, with AVOs it is on the balance of probabilities because it is a civil matter and very often a level of psychological and emotional abuse is evident whereas with a breach it is a criminal charge so it is a different level of evidence required. There is great difficulty in those investigations sometimes and discerning whether a criminal charge is available so, yes, it does happen that women are recording multiple times around breaches of the AVOs and we would certainly say that they needed to be investigated more thoroughly. At times it is impossible to charge and that is when service like ours come into play because we work with the police and look at other safety strategies to assist women when the breaches are around emotional abuse, which cannot easily be charged, but yes, around the reporting of breaches and investigation of those breaches is an area that could be improved.

Ms ALEXANDER: One of the things that we often are doing is coaching women to be able to go back to the police even though a breach will not be investigated but that they make a report, that they get the event

number and then they start building that history so that if the level of abuse or intimidation or whatever is happening starts to escalate enough to be able to get something before the court there is a pattern of behaviour that has already been established. That is the part where often the police are a bit reluctant. I think it is the initial response that the women get when they go to the police at the front counter, "I can't help you; there's not enough evidence there". A bit of it is about the response and how they are treated, and that they are more active in making at least a report.

Ms PEIR: And the nature of the criminal system and that it works effectively when there is physical evidence such as a physical assault. It can be very difficult around AVOs if it is around multiple phone calls where they hang up or cars driving up and down streets. It does take a level of investigation to ascertain that. It is very dependent on the nature of the breach and that is when our name around advocacy really comes to the fore that we can really assist those women with the partnership; we develop the AVDOs with the police; go with them and say, "This needs further backup" or, as Cheryl said, give women the words or the language to use and if there is an immediate crisis then breaches are responded to promptly but, as we have identified, domestic violence is complex and for women who are traumatised often there are not overt actions that lead to criminal charges that are causing great fear.

The Hon. CATE FAEHRMANN: Are there any changes that you would recommend around the issuing of AVOs or maybe around the way that both the victim and the perpetrator are informed about the AVO and the conditions of the AVOs themselves to assist with the whole process, maybe not just focus on the breaches themselves but around whether the AVOs are working in themselves?

Ms HOURIGAN-ROUSE: Certainly the best AVOs—if there is such a thing as the best AVO—is where there has been interaction between the woman and the perpetrator about what their circumstances are so that people are not being set up to fail. People's lives are inherently complex. You need to make arrangements to drop children off and pick children up. They may need to attend medical centres in a certain zone so just having a blanket condition that says no contact or you can't go within 500 metres of this location will not work for everybody and to just tick that box is setting people up to fail. That is where it is really important that people understand the range of options that are available and have the opportunity to have a more in-depth conversation around the circumstances and how people's lives work and where they need to go so that they are tailored to meet the needs of each individual because no ADVO is going to ever be one size fits all and whilst there are the mandatory orders, it is what follows under that that is what makes an ADVO workable or not for clients and an understanding of what that means.

The Hon. CATE FAEHRMANN: I am sure you have a fair few views on early intervention models and domestic violence prevention. Would you give the Committee your views on that and what government could be doing around early intervention, what models are effective, where you see more funding needs to be invested, for example, and what government can do to ensure that hopefully the rates of domestic violence go down—a big question again?

Ms ALEXANDER: I think we have to go right back to targeting the children. There are really good programs available to be run in schools, like the Love Bites types of programs, and really addressing the bullying that is inherent in communities these days which escalates and turns into domestic violence. A lot of it is really basic communication and conflict skills. That, across the board, is something because people cannot work out their issues and how to deal with it; we hear that quite often from defendants; they do not know how to get what they need out of a relationship. A lot of it is as basic as that; lots more of that sort of thing, courses and things can be done.

The Hon. CATE FAEHRMANN: What is your view on the role of drugs and alcohol in domestic violence?

Ms ALEXANDER: It does not cause it. It certainly lets the guard down and opens the door a little bit more but it is not the cause of the violence.

The Hon. CATHERINE CUSACK: What is the cause?

The Hon. CATE FAEHRMANN: Can we get the response first?

Ms PEIR: I am going back to early intervention programs and also comment on ones targeted at people in relationships; the issue around people wanting to attend so that, even with the yellow cards, people

consent to getting a call from that card. There is an issue around privacy and what do we do with women and families who are not—and also potential perpetrators—engaging with services. How do we put in strategies to ensure their safety? That is something to flag around early intervention programs and it is around consent, so there is a level of those people wanting to change.

Often we can all name a number of families that, for want of a better term, go under the radar because they do not engage with services and that could be often where there is the most serious violence. Leading on about alcohol and drugs, as Cheryl said, intimate partner violence is not seen as the reason but certainly it increases the level of violence and when we normally discuss intimate partner violence it is about power and control, and someone trying to control someone else. Certainly it has to be acknowledged that in some relationships it is what would be called situational violence where it is around conflict in the relationship which can be heightened by the use of alcohol and drugs and, as Cheryl said, not having effective communication strategies or life strategies to deal with those circumstances.

The Hon. CATE FAEHRMANN: I was going to ask one final question about alcohol; you have said it is not the cause but I think you have answered it. You are suggesting that alcohol becomes perhaps a manifestation of the physical side of domestic violence where power and control are probably evident anyway. We have heard evidence that if we had tighter controls on alcohol then some domestic violence perhaps would not be happening or if we dealt with alcoholism in some perpetrators the physical violence perhaps would not be happening but you are suggesting that it is more than just the physical violence or the punch ups that happen after the perpetrators have a lot of drinks, is that right?

Ms PEIR: Yes.

CHAIR: Can I ask about the experience of the court day? We have heard some evidence around particularly safe rooms, child minding or actually women having to bring children with them, contact with the perpetrator. From your point of view what sort of facilities or resources are required to assist the victim on that court day experience and how does that marry in with your recommendation with the dedicated listing?

Ms PEIR: The overarching aim is safety so we are looking at a safe environment. Certainly, whilst it is not encouraged for children to be at court, it can certainly generate heightened behaviour if there is a dispute around those children. It is inevitable that some women do not have any other resource and their children will be at court. So it is important to have a designated, for want of a better word, safe area where women and children can wait. It is important that those areas are seen as a procedural part of court. If there is an AVO one party waits in this area and one party waits in another area purely to ensure that safety. If there are a specialist AVO list day it ensures that all the relevant people are there to deal with the AVOs in a timely and professional way.

CHAIR: When you say "relevant people" do you mean the DVLOs can be available, the service providers, the dedicated prosecutors?

Ms PEIR: I guess the dedicated prosecutor. The DVLOs are certainly rostered to attend on that day. Our service in terms of providing appropriate referrals and ensuring safety. It also enables a more timely process.

CHAIR: We saw an example last week of where one of the local magistrates lists all the ADVOs first rather than the personal AVOs and that assists again with not having children and families waiting around for the whole day so there was a clear benefit from that. Again, is that the sort of thing you are advocating for?

Ms PEIR: Yes. Certainly in practice when the Local Court staff, the prosecutors, some magistrates work in collaboration to provide an effective throughput of the applications it works very effectively and it does ensure safety. It diminishes the risk of unsafe behaviour at court.

Ms ALEXANDER: And I think it is important with the court lists because quite often if there are custody matters that obviously have to be processed in due course so that the necessary actions that might result from the outcome, you know, people have to be moved to other locations. So it is the competing demands that are happening at the moment. On the day we are dealing with a little bit of domestic violence and then we will jump into traffic and there might be a sentence matter, a couple of custody matters and so we are often seeing women with children waiting until the afternoon. Many women have to leave court because they have children to pick up from school so they cannot even stay to the end of their proceedings. So what is happening at the moment is quite ad hoc and it is different in different courts, depending on the magistrate and how they choose

to run their court. But that is where the dedicated list, a block of time is given that all the matters can be proceeded through, whether that is first thing in the morning or whether that is given a little bit of time.

What we do face is a lot of chaos trying to locate clients. We might have 20 or 30 clients to talk to, catch up and see if there are any changes or anything to be made. DVLOs have to speak to them, we have to speak to them, and all of this before 10 o'clock. So it is quite chaotic up until 10, so whether there are slightly different times, starting time for some of our matters so that we have time to work far more effectively because I think that is part of the problem. It is the rush. When the DVLOs speak to defendants or try to negotiate orders it is sometimes a little bit rushed. I think that can be some of the confusion about what an AVO is all about in actual terms.

CHAIR: What is the best procedure or the best way for the victim to be able to give evidence? Should that be in person? Should it be in camera? Should it be a recorded statement at the time of the incident through digital media? We have heard different variations of how these things could occur. We have heard about the stress and the trauma of actually giving evidence in person and seeing the perpetrator. From your point of view, what would be the best way, again keeping in mind one other thing we have heard is that there could be a change in the victim's statement between the incident and by the time they get to court? Do you have a recommendation around the best way for the victim to be able to present evidence?

Ms PEIR: To put it in perspective, too, in terms of the victim giving evidence, on the first mention day about what is required in that it is a legal process around how the defendant wants to proceed. Certainly, it is important to have what is called the victims instructions because, as Ms Hourigan-Rouse said, it is around tailoring the conditions of the AVO to ensure that they work. I agree entirely that what happens at the time of the incident, those circumstances and what people want then can be different. By the time it comes to court circumstances could certainly have changed. So there is some value in women being able to attend court, but certainly not compulsory. I guess that is the advantage of early intervention strategies such as being able to have pre-court contact with women, that if we have spoken to the woman the day before court and given her information about court and got her instructions and then liaised with the DVLOs, then it may not be necessary for that woman to attend court but we have fairly immediate instructions and information and she is available by phone. So one again it is about coordination on a local level between police and services to ensure that the victim is aware of what is going on at court and has given some instructions.

Ms HOURIGAN-ROUSE: By the time we are getting to the point of a woman needing to give evidence we have progressed so we are either dealing with where the defendant is disagreeing with the application and it needs to go to a hearing or where there are charges associated with the latter so there are possibly two different elements, whether you are in the civil stream or the criminal stream. Again, I do not think you will ever find a one-size-fits-all. Some women have more of a wherewithal to go through a cross-examination process and a giving evidence process in person, and again it comes back to that history of violence and intimidation and whether they are up to doing it. Also, a lot of men are self-represented, particularly in the ADVO process and almost see it as if it goes to a hearing it is a free kick because they get to cross-examine the woman. And again it comes back to that process of if the police have initiated the application strictly from a legal perspective it is between the police and the defendant so the woman can be almost invisible in that process. It is about making sure that she is supported and feels that she is part of the process and that it is not all just happening about her, not including her and for her, in that process.

Ms PEIR: We are talking about the mention process too. There is an instance of what is called contested interim orders when the police or the victim really want temporary orders put in place but the defendant is adamant they want no orders. Then there is what is called a short hearing. There is no consistency in how that short hearing operates on a mention day in preparation for it to go to a hearing. So there would be some benefit in having that organised. For instance, some magistrates may read the application and make a determination on that, some take further information from the defendant or the defendant's representative, and for others the prosecutor will put the victim on the stand. So there is a considerable variation.

CHAIR: So what is the best way then? What would be the recommended consistent—

Ms PEIR: I think it is important that there be some process. Certainly because the victim and police want interim orders and certainly they can give the reasons why that is needed for the safety, but there would be some consistency around that.

The Hon. CATE FAEHRMANN: And that was on a short hearing day.

Ms PEIR: At mention, when the matter is first to court, when there is a decision whether the defendant will agree to the order or go to hearing. If nothing can be reconciled about what conditions on the AVO go ahead then it goes to what is called a short hearing to determine if any interim orders are agreed to by the magistrate. That is to ensure there are orders in place until the hearing, which could be in about two months time.

Ms ALEXANDER: The general practice is that that is then put to the end of the list, so it will go over until after lunch and be dealt with then, which is sometimes an incentive for an agreement to an interim order. As Ms Hourigan-Rouse said, one size does not fit all. Going back to the yellow cards, if women are not coming to court or the idea is not to have women at court for those mentions, at the moment the only information we get with the yellow card referral is a name and a phone number and possibly a court date if we are lucky. It is really important that a little more information is provided, particularly the types of orders that are being asked for, because women do not know. It is a bit tricky to work through those conditions.

We need to know what the police are asking for so we can then determine what to do. In an ideal scenario we would also have a copy of the apprehended domestic violence order [ADVO] with a little of the narrative, which puts us in the picture. Some women are very keen and open but some women are very reluctant to offer too much information, so it is hard for us to work with those women in an effective way if they are still in denial and not wanting to go ahead with proceedings. They could be very serious matters and we do not have the information. I know there are privacy issues in dealing with that but that is why the woman being there on a court day, particularly the first mention day, is an ideal scenario unless we can get that information prior to that day.

The Hon. CATHERINE CUSACK: Do all your referrals come from the police?

Ms ALEXANDER: No, we get referrals from other agencies.

The Hon. CATHERINE CUSACK: Can you get me a breakdown of where your referrals come from?

Ms ALEXANDER: We will take that on notice and get you accurate information.

The Hon. CATHERINE CUSACK: Do you see all your clients before the court case?

Ms ALEXANDER: Not all of them. Again, we can give you statistics on that but we do record how many are pre-court contacts.

The Hon. CATHERINE CUSACK: You said that before 10 o'clock is a very chaotic time. What percentage of your clients are you seeing just before the court case as opposed to being able to liaise with them prior to the day?

Ms ALEXANDER: We need to get that from other coordinators as well because it is different in every area.

Ms PEIR: I can only speak from a local level but at the moment we have about 40 per cent pre-court contact, which is the advantage of the Domestic Violence Pro-Active Support Service [DVPASS]. Whilst we get referrals from social workers at hospitals and things like that, generally it is from DVPASS or from the police.

The Hon. CATHERINE CUSACK: The crux of what I am trying to establish is that women need to be seeking an outcome from the court process so how are they getting the information they need so that they know what outcomes are available to them and what would work best? Is it your role to make sure that they are informed and able to engage in that regard?

Ms PEIR: Yes.

The Hon. CATHERINE CUSACK: So how difficult would it be if you are trying to sort all of that out before 10 o'clock and if, as you suggested, the police liaison officer is only seeing them at that time as well?

Ms ALEXANDER: Ideally the domestic violence liaison officer also has had contact with that woman pre-court and has instructions. If we have knowledge at the Local Court about a specialised domestic violence

list the magistrate and prosecutor work in conjunction and the prosecutor will mention matters according to when they are ready, so instead of matters being called ad hoc we can say we have spoken to the woman the day before and she is first because she is ready to go. Our job as coordinators is to stagger the matters so every woman can be spoken to in a timely manner, but that can only occur if the court is able to accept that management of the court list and who is being seen first is in conjunction with our service.

Ms ALEXANDER: In effect it is the prosecutor who drives the court list and how it is presented.

The Hon. CATHERINE CUSACK: You are talking about matters being discussed outside the court on the day when all those people are available and the court almost becoming the endorser of those outcomes.

Ms PEIR: Yes. The ideal scenario at the moment is that the protected person and the defendant are both spoken to separately prior to the matter going into court so both know what they are requesting before it goes to court. Then the magistrate is the final arbitrator but the decision-making is being done around tailoring the AVO and getting any information before it goes into court.

The Hon. CATHERINE CUSACK: There has been comment in earlier submissions that police have been misdirecting people to the courts who redirect them back to the police and those people are told to wait until the liaison officer is available to talk to them. It raises this question in my mind: If we go down a specialised service route are we creating a too-hard box where everybody else can move matters and relieve themselves of responsibility so it is not their job anymore and one liaison officer needs to deal with all the matters?

Ms PEIR: In my experience the domestic violence liaison officer is not there to make those applications. Certainly when there has been a dispute, for want of a better word, and the police take action and it goes back to the Local Court we may be involved. We use the domestic violence liaison officer for advocacy to say that this matter needs attention. It is then their role to task the duties to proceed with the applications. They are also the conduit within a local area command about ensuring quality, but not to do the applications. Ideally they oversee that best practice occurs within the local area command.

The Hon. CATHERINE CUSACK: Would you agree there is a problem in that many police officers are just referring to the liaison officer and saying, "This is a mess. I don't want to deal with it. Why don't you wait until the domestic violence liaison officer comes back and deal with him or her?"

Ms PEIR: I suggest it is the job of the crime manager and the commander of that police local area command to ensure that the correct processes are carried out. That is not sustainable and it is not appropriate.

The Hon. CATHERINE CUSACK: I understand the value of the specialist resource, particularly in building expertise, but I question whether there is a danger that everybody will then just walk away from the problem and leave it to that specialist.

Ms PEIR: The specialist cannot manage the volume.

The Hon. CATHERINE CUSACK: I totally agree, but on one hand it is everybody's job and going a specialist route can be counter to the message that everybody is responsible.

Ms ALEXANDER: That is why we are saying the ongoing training of police about domestic violence is an absolute must. It needs to be from outside sources so that it is appropriate training that can address some of those issues.

CHAIR: Unfortunately we have run out of time. On behalf of the Committee I thank you for your submission and your time this morning. I note that you have taken some questions on notice. The Committee has resolved that the answers to those questions be returned within 21 days. The secretariat will contact you in relation to those questions to facilitate your response. There may be other questions on notice that the Committee will pose. If there was evidence that you wanted to present to us and you did not get the chance to do so, we encourage you to include that as a submission when you return the question on notice.

(The witnesses withdrew)

(Short adjournment)

GRAEME LESLIE HENSON, Judge of the District Court, Chief Magistrate of the Local Court of New South Wales, sworn and examined:

CHAIR: We thank you for your attendance and for facilitating the Committee's forthcoming visit to the Sutherland Local Court. We have heard a number of positive reviews about the way in which domestic violence matters are handled in that court and we look forward to seeing how it works in practice and to speaking with the people who work there. Would you like to make an opening statement to the Committee?

Mr HENSON: No, I think the submission made on my behalf by my Deputy Chief Magistrate will suffice.

The Hon. HELEN WESTWOOD: A lot of the evidence the Committee has received relates to court experiences of victims. The submission from the earlier group spoke about the inconsistencies in penalties applying to those found guilty of either breaches or acts of violence. Will you comment on that?

Mr HENSON: Yes, I can. Not every crime is the same. The penalties that are established under the domestic and personal violence legislation provide a maximum penalty of two years imprisonment. That penalty, as the common law informs, is reserved for the worst case of a breach. Breaches can go from maliciously and recklessly inflict grievous bodily harm down to a breach of an order not to approach the protected person within 24 hours of consuming alcohol. Commonsense will inform you that the court would take a very different approach where injury was occasioned in defiance of a domestic or personal violence order compared to what really is a technical breach at the bottom end of the range. Courts are required, in line with a High Court decision in *Makarian v. The Queen* and *Veen (No. 2) v. The Queen*, together with the Crime Sentencing Procedure Act 1999, to evaluate the objective seriousness of the conduct against the legislated facts of the penalty. That in itself I hope is sufficient to explain why there is a variance in outcomes.

There is also a variance where the offender pleads guilty. The law in New South Wales, section 22 of the Crimes (Sentencing Procedure) Act, requires a court to take into account that plea of guilty because it has a utilitarian value in savings to the community of conducting a defended hearing. The guideline judgement of the Court of Criminal Appeal in *The Queen v. Thompson and Holton* guides magistrates and judges at every level in evaluating the discount to be applied to the sentence which would otherwise be appropriate because of the utilitarian value. In addition, you might understand that someone who has a long history for a domestic violence type conduct is likely to receive a heavier sentence than someone who is a first offender. The law has always taken into account prior good character as an element to mitigate the penalty. Again, section 21A (3) of the Crimes (Sentencing Procedure) Act sets out a number of criteria that a court must apply, if appropriate, to mitigate the penalty. Section 21A (2) sets out the circumstances of aggravation that a court may take into account, if appropriate, to impose a heavier penalty than otherwise, and within section 21A (2) there are a number of circumstances of aggravation which are particularly relevant to domestic and personal violence offences.

The Hon. HELEN WESTWOOD: The submission of the New South Wales Domestic Violence Court Advocacy Network gave examples of cases. There was one case of a woman who wanted to plead guilty and another of a man who breached an apprehended violence order and caused a very serious injury to the victim but to a lay person the sentences appeared disproportionate. The female perpetrator received a much higher sentence than the male perpetrator. I assume there are other similar examples. Is there a way to monitor all cases to ensure that there is consistency in sentencing being applied? I take into account what you have just said about not all crimes being the same.

Mr HENSON: One has to understand there is a difference between consistency of outcome and consistency of approach to outcome. All courts at all levels—Supreme Court, District Court and Local Court—are made up of individuals who make decisions based upon their assessment of the objective seriousness of the offence and of the conduct within the commission of the offence. If they apply the appropriate principles in determining sentence then that is consistency of approach. What you are suggesting is, perhaps, you should get the same outcome for the same conduct. In ideal world, perhaps if courts were run by robots, that might be possible but wherever humanity intrudes onto the environment you will get variations on the theme. Parliament has long recognised that there is a capacity to control departures from the acceptable norm. The acceptable norm will be on both sides of the centre, as it were.

A right of appeal exists on the part of the defendant if they believe that the penalty imposed is too severe and a right of appeal exists on the part of the prosecution if they believe that the penalty imposed is too lenient. The Local Court deals with, on average, about 270,000 criminal cases each year. I do not have the statistics available to me now, but Dr Don Weatherburn from the Bureau of Crime Statistics and Research will tell you that the number of appeals against leniency of sentence is less than 50 each year. That means that either the prosecution accepts that the penalty imposed by the magistrate is within the range of acceptability or the prosecution agencies, for their own reasons, are unwilling to take it on appeal.

The Hon. HELEN WESTWOOD: A number of organisations, usually those advocating for or representing victims, have made submissions to this inquiry referring to the need for a specialist domestic violence court or a specialist domestic violence list within the courts. Do you think either of those models could operate within our system in New South Wales?

Mr HENSON: I will answer the second question first. Every court in New South Wales has a domestic and personal violence list. A particular day is allocated to hear and to determine domestic or personal violence orders. They tend to be more prevalent in the city because the body of matters there is manifestly greater. In the country they tend to be on general list days because the workload in the country is less than that in the city and managing it requires an amalgamation of different types of proceedings before the court.

In answer to the first question, it depends on what you mean by a "specialist domestic violence court". If you mean one edifice that deals with nothing but domestic violence located at a central spot somewhere in New South Wales then I am totally opposed to it for the obvious reason that access to justice is fundamental to any legal system. To concentrate all the resources in one location simply for the appeasement, for want of a better term, of interest groups within the community denies the wider community the opportunity to get such access to justice. That is particularly so in country areas. We have seen during my lifetime as a magistrate a gradual shrinkage in the number of courts that are populated throughout the State. We have also seen banks, post offices, police stations and schools disappear from country towns. My belief is that removing local access to justice would be a very detrimental step in the social equation. Is that what you mean by a "specialist domestic violence court", or do you mean specialist resources that are available to a local court to assist with domestic violence?

The Hon. HELEN WESTWOOD: The proposition is a specialist domestic violence court. The example used is the drug court. It has been suggested that we consider that model for dealing with domestic violence in this State.

Mr HENSON: You could, but you would produce the outcome that I have referred to. The drug court at Parramatta has a defined catchment, as has the drug court at Toronto. The drug court that is being established at the Downing Centre will also have a define catchment area. The rest of New South Wales is excluded from access to those courts. As a result, we have produced two-tiered access to justice whereby some people because of their postcode get the bells and whistles and other people have the common garden variety system. I am not convinced that there is such a difficulty with the way in which the Local Court discharges its obligations to the community in this area that it warrants the creation of a specialist court. However, ultimately that is not my decision.

The Hon. GREG DONNELLY: Thank you for appearing before the Committee today and for agreeing to answer our questions. As a consequence of the election result last year and the change of Government and the New South Wales Audit Office report on domestic violence a review is being undertaken by the State Government of the framework to be used or a refreshment of the existing framework for the handling of domestic violence. We have been informed by the Government through its submission and its witness that that will be done. We have also been told by the same witness that interested parties, agencies and non-government organisations have been canvassed seeking their input into this review. Have you been contacted about the review and invited to make a submission?

Mr HENSON: No.

The Hon. GREG DONNELLY: I refer to the question of domestic violence and family law. We have heard from witnesses last week and again today that in some circumstances it would be better if family law matters, which are in the Commonwealth jurisdiction in the Family Court of Australia, and domestic violence matters could be dealt with concurrently to the extent that on occasion the two interface. The people who have advocated that are conscious of the difficulty of the different jurisdictions. Do you have any thoughts about that?

Mr HENSON: I suppose I do now that you have asked.

The Hon. GREG DONNELLY: I invite you to share them. If you need more time to think about the question, you can take it on notice.

Mr HENSON: No, I can answer it now as best I can. Let us not lose sight of the fact that the Local Court in country areas still makes a significant contribution to family law proceedings. It is really only in the centre of Sydney and Parramatta that the Local Court has moved away from its involvement in family law applications. However, it is an area in which children are involved, and where custody is an issue people can force the court to the transfer the proceedings to the Family Court of Australia and the court has no choice in that.

The difficulty of moving this area of consideration into the Family Court is that more often than not domestic violence matters come with an accompanying State charge under State legislation. Unless there is some measure of cross-vesting of which I am not aware or a constitutional capacity to do so, the exercise of the criminal jurisdiction of this State is vested in the State judiciary not the Commonwealth judiciary. It may well be a minefield. At the moment proceedings can run concurrently in the Local Court for a criminal prosecution arising out of a domestic violence offence and in the Family Court as a result of the breakdown in the family relationship.

I am the first to acknowledge that there are difficulties in both courts knowing what the other court is doing in terms of restraints imposed upon defendants over a person in need of protection. However, the cross-vesting legislation requires each jurisdiction to take into account orders made in the other jurisdiction. Because the Family Court tends to be populated almost universally by lawyers acting on behalf of both sides, they generally pick up the pieces in terms of informing the Family Court or the Federal magistrates of the existence of orders in the Local Court in favour of one of the parties.

The Hon. GREG DONNELLY: We will have the opportunity to undertake a firsthand examination of the way in which the Sutherland Local Court works specifically in respect of its dedicated domestic violence list. We have heard from witnesses who practice in that court and they have supported the way in which it operates. Do you have a view about the way the court deals with domestic violence matters? To the extent that you believe it has some virtues or features that are supportable, do you believe it could it be applied in other Local Courts?

Mr HENSON: It is applied elsewhere in other Local Courts. The practices and procedures at Sutherland are not a unique invention of the magistrates who are there. In my view what is unique about Sutherland is the quality of the people who have committed themselves—on the part of the police in particular—to this area of responsibility. Sergeant Walker, who is the prime mover at Sutherland, used to be the prime mover at the Downing Centre before she moved to the shire and I dare say that the practices that she put in place at Sutherland were not greatly different to the practices at the Downing Centre. At Burwood there are variations on the theme because of the cultural mix of people who appear before her.

Burwood court has a block booking of interpreters on their apprehended violence order day because they recognise that a large number of the people who appear before them are not conversant in English as their first language. What tends to happen is that there is an adjustment made based upon the quality, quantity and diversity of support services at particular courts against the capacity of the court to work efficiently. Those resources are not as readily available in country areas as they are in the city, for obvious reasons. Therein lies the disparity—not so much in the outcomes or in the supervening approach taken by the court, but in the feel-good factor. People who appear at court are more comfortable because they have people who talk to them as real people operating outside the realms of the court, as it were, to explain the process, to guide them and to act as a human face on the otherwise blank face of justice.

The Hon. GREG DONNELLY: That has clarified the issue for me. The practices and procedures that operate at the Sutherland Local Court are not substantially different to what applies elsewhere in the State but, rather, it is the state of mind and the effort and work of those involved in dealing with domestic violence matters at Sutherland that brings out these characteristics which are being put forward as being a template that could be used elsewhere.

Mr HENSON: I think it is. The difficulty with creating a template is, of course, that it is only as good as the people that you allocate to the environment. When those people move on to greener pastures you have got to start all over again.

The Hon. CATE FAEHRMANN: During a recent site visit that the Committee made to Forbes, participants argued—and this is from someone in the NSW Police Force—that applications for apprehended personal violence orders founded on trivial disagreements are taking up valuable court time and are particularly distracting from the ability of magistrates to deal with serious ADVOs. What are your views on this and do you have any suggestions about improving the situation in relation to the number of ADVOs that are being taken up by the courts?

Mr HENSON: I do not think it is a big problem. I acknowledge that it exists because I have presided in a number of matters, over a number of days, where the answer was obvious from the outset but you have to go through the process in order to arrive at justice. It is difficult to know what can be done about it. Registrars have the authority not to take the complaint and one might be more robust in educating staff in Local Courts to refuse complaints that they believe to be trivial. The applicant then has a right of review before a magistrate but one really does not know that it is trivial until the matter starts to unfold. People write all sorts of things in complaints that, until tested, it is hard for them to know or understand that what is important to them may not be important in the eyes of the law as to justify the need to make the order.

The Hon. CATE FAEHRMANN: Do you think that quite a number of these ADVOs are trivial? Do you think there is some truth in people's comments about the fact that trivial ADVOs are clogging up the court system?

Mr HENSON: I do not agree that they clog up the court system. The Local Court in New South Wales is the best performing summary trial court in the entire Commonwealth. So the proof is in the pudding in terms of its capacity to meet its time standards. I do agree that there are a number of matters that would perhaps be better dealt with through the media of community justice and the like—usually backyard disagreements and things like that. The ability under the legislation to direct parties into community justice mediation has provided a bit of a filter but ultimately a lot of people want their day in court and if they insist then that is what courts are for—to resolve the evidentiary and legal difficulties between the parties.

The Hon. CATE FAEHRMANN: Several inquiry participants have argued that the definition of "domestic violence offence" is too broad, especially in the context of the requirement that police must make an application for an ADVO, if the offence is so categorised. To what extent are you seeing applications for ADVOs that appear unnecessary or inappropriate as a result of this?

Mr HENSON: Miniscule is probably a fair answer. There is an area in which this broadness, as it were, could be increased, for instance, Commonwealth legislation. It is commonplace now to use the internet and mobile phones to harass and intimidate—that is a Commonwealth offence and it is not covered within the State legislation. Broadness is a question of degree, I suppose.

The Hon. CATE FAEHRMANN: We have heard a number of witnesses talk about the effectiveness of the Yellow Card program. We have also heard from a number of witnesses who have not known about the Yellow Card program because we acknowledge that it has not been extended to all areas. What are your views as to the effectiveness of the Yellow Card program?

Mr HENSON: I must be grateful to the Committee for informing me, because I did not know anything about it until last Thursday. I have made inquiries as to what it is and it seems to me to be a sensible approach to dealing with these types of issues before they get to court.

The Hon. CATE FAEHRMANN: The Women's Domestic Violence Court Advocacy Network has suggested that it is common for magistrates to extend the application of an interim ADVO, rather than making a final ADVO. In their view they are saying this should occur rarely, rather than routinely. Can you elaborate on the circumstances in which an interim ADVO might be extended, rather than a final ADVO being issued, in order to assist us in getting our heads around the reasons?

Mr HENSON: I can think of no reason why that should be so. Proceedings should be brought to finality as quickly as possible in the Local Court. That has always been the focus. I am aware that in the Children's Court there has been a practice developed to make interim orders only and then to adjourn the

proceedings for six months. If there is nothing untoward occurring during that time the matter is resolved without the need to make a final order. The basis upon which those approaches are taken within the children's jurisdiction, as I understand it, is that when a young person moves from being a juvenile to an adult and seeks to gain employment, the fact of an order under the domestic violence or personal violence legislation having been made, will come up on the work check and the view is taken that it operates detrimentally to the future prospects of young people before the court.

The Hon. CATE FAEHRMANN: Quite a number of submissions talked about the need for education and training of judicial officers around domestic violence and some have suggested or recommended a bench book for domestic violence. What are your views on these suggestions and could you also inform the Committee about the initial and ongoing training that magistrates receive in the complexities around domestic violence.

Mr HENSON: In August this year, at the annual conference of the Local Court of New South Wales, there will be a session on the psychology of domestic violence. Working back from there, I can provide the Committee with a list of the educational programs which contain a domestic and personal violence component within them, carried out within the Local Court over the past five years or longer than that—nearly 10 years. Every magistrate in the Local Court is provided with access to five days of judicial education every year, without exception. We do not grant leave during the annual conference. The whole Local Court of New South Wales closes and it convenes in conference during that three-day period where we address a whole host of issues, not the least of which is domestic violence.

The Local Court in New South Wales is unique in the way in which it approaches appointment to judicial office. Every person about to be appointed as a magistrate in New South Wales is required to undertake two days of pre-bench service—that is prior to their swearing in—at their own cost. Part of that contains workshops on domestic and personal violence: How to conduct the proceedings, how to manage difficult litigants, what the legislation entails and the like. In addition to the five days of judicial education in which we deal with a whole range of issues that are the bread and butter workload of the local court: Child sexual assault, assaults in general, evidence and the like, there is always a personal and domestic violence component in the case studies the participants are required to evaluate and respond to in order to pass their training.

Every magistrate appointed within 18 months of their appointment will be taken out of court for a week, along with the others who were appointed in that particular period—so around about 12 at a time—and put into a week-long residential program conducted by senior magistrates of the court, and within that orientation program domestic and personal violence are part and parcel of the component in terms of evidence, in terms of practice and procedure, in terms of sentencing and a whole host of other aspects that those who have been on the bench for a little bit of time at least understand better than they did at the beginning. So we constantly go back and refresh the understanding and education of the magistrates in this particular area, as we do in every other area. Knowledge fades, as we all know, unless we practise it on a day-to-day basis and the membership of the court turns over. For instance, since I became Chief Magistrate in 2006 we have lost 58 magistrates and I have sworn in 58 magistrates, so all that experience has gone out the door and has been replaced with inexperience at the bottom. We realise we have a strategic obligation to the court and to the community to continually re-educate and to further the education of magistrates.

The Judicial Commission of New South Wales is waiting on legislative amendments in respect of this area of the law to produce a DVD—to be available not just for magistrates but also for judges and the wider community—on domestic and personal violence. It is not something we have taken our eye off in terms of the ball. I will leave the Committee with the programs which we believe go directly to educating magistrates in domestic and personal violence. The Committee might think that some of them are a little bit odd. Forensic document examination one might think is not something that has anything to do with domestic violence, but let us not lose sight of the fact that this is a court, courts depend upon evidence, evidence has to be admissible according to law under the Evidence Act, so testing the aspects of admissibility of documents is as important as assessing the credibility and reliability of oral witnesses.

Document tabled.

The Hon. CATHERINE CUSACK: What legislative amendment are you waiting for?

Mr HENSON: I was told there was a review of domestic and personal violence legislation currently on foot. If I am wrong in that I would be very surprised.

The Hon. CATHERINE CUSACK: Was there a legislative amendment particularly in relation to training?

Mr HENSON: No, you cannot legislate for training. You can mandate it.

The Hon. CATHERINE CUSACK: Has there ever been any evaluation of the outcomes of that training for magistrates and its effectiveness or is there any feedback from magistrates themselves about the training that is currently available?

Mr HENSON: Training is conducted under the auspices of the Judicial Commission of New South Wales, of which I am a member along with every other head of jurisdiction. Every session is evaluated by professional educators employed by the Judicial Commission. The court has its own education committee, made up of a number of magistrates with an interest in the field of judicial education, and it is assisted by the professional education staff of the Judicial Commission. The effectiveness or otherwise of the desires of magistrates to be educated in particular areas is one of the primary foci of the committee itself.

The Hon. CATHERINE CUSACK: How do you measure that?

Mr HENSON: Each session is rated by the participants anonymously and then it is collated. The committee and I will evaluate the effectiveness or otherwise of it.

The Hon. CATHERINE CUSACK: Is there any opportunity for our Committee to gain access to the feedback you are getting about the training?

Mr HENSON: That is not an answer I can give; I am but one member of the Judicial Commission. If the Committee wanted to write to the Judicial Commission then it would consider it but I would be in the business of second guessing the Chief Justice—

The Hon. CATHERINE CUSACK: It is not published or generally available?

Mr HENSON: No, not at all. It is confidential within the role of the Judicial Commission and the local court education committee.

The Hon. CATHERINE CUSACK: Are you satisfied with the quality of the training?

Mr HENSON: Yes, I am.

The Hon. CATHERINE CUSACK: The Law Society suggested that the best way to ensure compliance with ADVOs would be to ensure that the parties are legally represented. Do you have a view on that?

Mr HENSON: They would say that, would they not? No, I do not have a view. The question of whether or not one has a lawyer is a matter for the individual. Quite often the expense of obtaining a lawyer is not justified. I do not hear of any injustices perpetrated as a consequence of not having a lawyer. In fact, courts bend over backwards where parties are unrepresented, whether they be persons in need of protection or the defendant, to explain the process and to guide them as best they can without entering the arena.

The Hon. CATHERINE CUSACK: The Committee heard evidence earlier this morning that a large number of unrepresented defendants do not understand the orders that are being made. Do you have any concerns about that?

Mr HENSON: I think that is probably so. We make an assumption when people come into a courtroom that they understand what we say, and sometimes the language that we use is difficult for some people. We understand that not everybody is educated to the same standard; that there are people who lack the capacity and sometimes the willingness to listen to what is being said to them. Later when things do not turn out as expected they seek to explain their lack of understanding on the basis that it was not properly dealt with before the court. It is really one of those areas that unless you are talking to particular individuals and trying to measure that against the rest of the unrepresented people you are really only guessing at the answer.

The Hon. CATHERINE CUSACK: I would imagine that court is a very stressful situation?

Mr HENSON: It is; there is no doubt about that. That is why we ensure that everybody who leaves, every defendant who leaves the court, if they are present, leaves with a copy of the orders, and that if they are not present when the orders are made that the orders are served on them.

The Hon. CATHERINE CUSACK: Is there anything we could do to make sure that these orders are being better understood? I ask this question on the basis that it is being repeatedly raised as a problem.

Mr HENSON: I think it is beyond my capacity to answer. We have 40,000 of these matters that go through the courts per year, on average. The time taken to conduct a question and answer with somebody who may have consented—you assume when somebody consents to an order that they understand what they are consenting to but that is a presumption, I accept—some people just want to consent so they can get out of their because they do not want to be there in the first place. I do not know how you resolve that to be quite honest. Sometimes saying, "I never understood what I was told" is a convenient excuse. People really did understand what the restrictions were but ignored them nonetheless.

The Hon. CATHERINE CUSACK: Even the women's groups are suggesting that the defendants do not understand. I accept you are saying that it can be a shield that people can hide behind, but the level of concern seems quite sincere and quite deeply rooted. In particular it was raised that where defendants are not legally represented too many of them are leaving not understanding what the orders are and when that happens the whole process is made completely redundant.

Mr HENSON: Not the whole process. I accept that for some it may cause problems. I do not know how to resolve that. It cannot be resolved from the bench, I do not think. Courts do not have the time with a busy list to explain and test whether that explanation is getting through or not.

The Hon. CATHERINE CUSACK: We also heard from groups, which I suppose you would describe as "interest" groups, where domestic violence was repeatedly described as a gendered offence. From a legal practitioner's point of view is this concept of a gendered offence difficult to implement as a matter of law?

Mr HENSON: I sort of understand what you mean. What, it is a male only offence?

The Hon. CATHERINE CUSACK: That is correct.

Mr HENSON: Given that 20 per cent of the orders are against females that would be a misnomer. I have never heard that description in my 24 years on the bench. I am not surprised that people stereotype these types of matters but it is news to me.

The Hon. CATHERINE CUSACK: It is one of the justifications for having all these women-only services. Are there options and services available where men are the victims of domestic violence and is that an issue?

Mr HENSON: Not that I am aware of. The only effective service that I am aware of is one conducted by Corrective Services for people in custody, the perpetrators program.

The Hon. CATHERINE CUSACK: Often in custody for a different offence?

Mr HENSON: No—well, maybe or there may be in the context of the commission of that offence a relationship with a domestic and personal violence. It is an interesting concept and you are quite right, it is better to go to the root cause of the contact than to simply deal with the fallout through the criminal justice system. One of them effective ways of addressing some of the aspects that contribute to causation that I have seen in recent years is the Credit Program, which operates at Burwood and at Tamworth. The evaluation of that program was released at 10.30 this morning by Don Weatherburn, the Director of the Bureau of Crime Statistics and Research. I will leave you with a copy of the press release.

It is, I think, in my time in judicial office one of the most outstanding opportunities that might be available to think laterally about dealing with these matters. This is a non-judgemental type approach which directs people to get counselling, housing, health, wellbeing and the like in the hope, according to psychological methodology adopted from Canada, that it will reduce the evidence of recidivism. The success of it has been very good, according to the Bureau of Crime Statistics and Research, which is not often positive about much at all when it comes to that. I will leave that with you as well. It states:

> … (95.9%) reported that their life had changed for the better by being on the program. The changes mentioned included improved physical or mental health, a more positive outlook, improved relationships, increased confidence; recognizing the consequences of their actions, becoming more responsible; managing problems or situations more constructively; and having new options opened as a result of being on the program.

I could not have scripted it better myself in dealing with this problem.

The Hon. CATHERINE CUSACK: Would you agree that many of the parties involved in these cases tend to have fairly chaotic lifestyles?

Mr HENSON: As a generalisation, I think that is a fair comment.

The Hon. CATHERINE CUSACK: That seems consistent with that program.

CHAIR: Judge Henson, I go back to meant you made earlier about the dedicated listing and that every Local Court has a domestic violence list. Could you explain that a little more? Does that mean that all domestic violence ADOs are heard together as a group? The reason I asked the question is that we have received a number of submissions asking for such a dedicated list so there is confusion in the service provider and the wider community that domestic violence matters are not heard together. Maybe they asking for these lists so that all the support groups, the DVLOs, et cetera, can be at the same court at the same time. I assume they are hoping that all the court officials, police prosecutors and support groups, all specialists in the field of domestic violence, will be present. Could you expand on that?

Mr HENSON: Except for urgent applications, which can arrive at any time of the day on any day of the week—and you can understand the reason why that would be so—those matters where there is no need for urgency are listed two to four weeks in advance. For instance, in the Downing Centre they are listed on Wednesdays because on Wednesdays the agencies to which you refer will be present at the Downing Centre because they know that domestic and personal violence matters are listed on a particular day of the week. It is Tuesday at Sutherland for the same reason.

We are cognisant of the fact these support agencies are pretty light on the ground and to require them to travel around the countryside and try and be in two places at once is not really fair to them nor is it fair to the people who appear before the court. Every court in Sydney has a dedicated domestic violence day. It is when matters that are not urgent are listed. I really do not understand what the concerns are. If it arises out of the Redfern domestic violence support team, then it may be an historical legacy of the closure of Redfern court house when proceedings which were once on a particular day at Redfern were transferred into the Downing Centre and amalgamated into the caseloads of the Downing Centre court. We tried to have a Redfern Day and a Downing Centre day so that the Redfern people were not disadvantaged but it just was not effective so they have been folded into the one day but I really do not think it is a widespread problem because every locality will know that day upon which these types of matters come before the court.

CHAIR: What about the situation with a regional town, for example, Forbes or Parkes, where we were last week. Does the magistrate decide at what part of the day the domestic violence matters are heard?

Mr HENSON: Yes, they will.

CHAIR: And it is up to them to make that decision, because we are hearing again some evidence suggesting that it is better that those to be heard in the morning—

Mr HENSON: Yes.

CHAIR: —so that families are not hanging around all day, particularly if there are children involved. This morning we also heard evidence saying they prefer them to be staggered throughout the day because it may be the first opportunity that the support services have had to meet the victim? Is the system flexible enough of the magistrates to work within local service providers to make those decisions?

Mr HENSON: Yes, but not to the extent where the local service providers tell the magistrate had to run his or her court.

CHAIR: Granted.

Mr HENSON: That is what they should be doing. I am surprised to hear you say that persons in need of protection and their children are hanging around courthouses. We do not require them to be present when the matter first comes before the court. They do not need to be present unless it is a defended hearing. I wrote to every magistrate individually about three years ago and refreshed that particular direction—not direction, advice, recently in a circular to every magistrate so that people were not inconvenienced because most of us understand that women in particular to take children to child-care, pick up kids from school, do the shopping or whatever and having them sitting around courthouses, as you say, is counter-productive to their capacity to manage their lives at a difficult time in their relationships.

I would be disappointed if individual magistrates were not taking that into account but it is one of those imponderables. If two or three people happen to be arrested and detained in custody, then the price of liberty outweighs the minor inconvenience and courts should deal with people in custody first to determine whether they should stay in custody or be released on bail. I think you are beginning to understand the complications that affect the management of court lists in the Local Court. It is not simple and straightforward but we should and I think we do the best we can to accommodate the needs of domestic violence groups.

CHAIR: Turning to some of these interim orders, particularly the ones that are urgent, et cetera, some of the information we have received from the police is their request for senior police officers to be able to sign off on interim orders rather than having to get the local magistrate on call to make that.

Mr HENSON: It is an authorised justice. You are talking about interim orders out of hours?

CHAIR: Yes?

Mr HENSON: It is an authorised justice is not a magistrate. It is somebody employed within the Attorney General's Department who is accessible 24 hours a day by telephone. Ultimately this is a decision for Parliament as to how much you want the police intruding into the private lives of citizens. You should understand that it is not unknown for serving police officers to be the subject of domestic violence complaints. One that interim order is made they are required to surrender their equipment and they go from being front-line police to police confined to barracks, as it were. In no circumstances you may be asking a sergeant within a particular country area that is short on staff to make a decision as to whether that front-line police officer is taken out of availability by the making of an order on the spot or not, and we can understand that the opportunity for people to criticise that particular sergeant when an order is not made is manifest.

CHAIR: Several participants have also argued that the definition of domestic violence offences is too broad, particularly in the context of the requirement that the police must make an application for an AVO if the offence is so categorised. Do you have any comments about the impact that definition is actually having on the compulsory applications for AVOs on the courts?

Mr HENSON: No, I do not. I can understand the criticism but I think that is nitpicking, to be quite honest. I think it works pretty well. That is what courts are ultimately there to sort out. It may be—I say this against the interests of being a member of the judiciary—wiser to err on the side of caution in making the application than not making the application and potentially suffering the consequences. It is better I think to have a more all-embracing approach to this particular problem than to one which is constrained by narrow definitions within the law itself.

CHAIR: Some of the other criticisms are that because of this broad category a lot of these really should be personal violence orders rather than domestic violence orders and some may appear unnecessary or inappropriate. Do you have a comment on that?

Mr HENSON: I think that is right. The definition where it is anybody in the household, as it were, who is embraced within the domestic relationship probably does create real problems. Maybe it needs to be narrowed in that particular context. There are other areas of course in relation to children and persons who are intellectually disadvantaged that need to be taken into account. It is really hard outside the context of a particular set of facts to give you an all-embracing answer on that, other than to say that by and large the system works and works fairly effectively. Let us not lose sight of the fact that since its inception the Local Court has dealt with probably close to 750,000 of these complaints. The criticisms that come from the sidelines, as it were, against a number such as that are fairly miniscule. That is not just to the credit of the court: That is to credit of everybody who is proactively involved in trying to make this important piece of legislation effective.

The Hon. CATE FAEHRMANN: You have suggested that you have not heard of the term "gendered violence". Then I think you indicated that in 20 per cent of domestic violence cases that come before the Local Court the male is the victim. That would make it gendered, would not it, since 80 per cent of victims are women?

Mr HENSON: I do not think there is any doubt that the majority of victims are women, I have just never heard the term before. I wonder why you need it, to be quite honest, given that the legislation already acknowledges that domestic violence is predominantly committed by men against women. It is in the legislation, so there is a public declaration by Parliament as to the nature of the conduct.

The Hon. CATE FAEHRMANN: I am interested in your experience of the difference between male victims and female victims of domestic violence. We have heard that sometimes male victims of domestic violence may be a victim in a situation which is very immediate rather than the ongoing years of control and power.

Mr HENSON: I think that is a fair comment.

The Hon. CATE FAEHRMANN: Do you see that?

Mr HENSON: Yes, I do. I think that is quite true. "I have had enough," boom. Yes.

The Hon. HELEN WESTWOOD: You may not know the answer to this and maybe we need to put it on notice or direct it to the commission, but does the content of the training for judicial officers include a presentation from victims or non-government organisations that are working with victims?

Mr HENSON: Yes, it has in the past. I can remember one year we brought along a lot of victims of domestic violence to speak to magistrates about their particular experiences. And it is very moving. There is no doubt about that.

The Hon. GREG DONNELLY: We have heard from some witnesses that at the Local Court it is helpful to have some dedicated or specific accommodation whereby those who are attending the court that particular day have a place to congregate prior to the matter being called. Are there specific efforts being made to provide that type of accommodation at a Local Court level? And do you have a view about whether it is something that is worthwhile pursuing? In other words, this Committee will make recommendations coming out of its inquiry. Do you think this idea of providing a safe space for people to congregate before the proceedings is worthwhile looking at?

Mr HENSON: Absolutely. And there are a number of courthouses that do have those facilities. I cannot speak on behalf of the director general of the Attorney General's department, he is one who controls the purse strings. Sometimes it is very difficult to alter a building that was built in the 1800s because of its heritage and condition. But there are a number of locations—Waverly is about to re-open and part of the renovations to Waverly include a safe room for women predominantly in domestic violence. In fact, it will only be for women.

If I might just add that sometimes it is not just a question of accommodation within a court building. The audio visual legislation allows evidence to be given by audio visual link and that is not uncommon within the Local Court. In fact, the usage is increasing. Similarly a lot of courthouses have closed-circuit television [CCTV] facilities for vulnerable witnesses, predominantly children, but also anybody who feels that they are vulnerable can give their evidence from outside the courtroom by closed-circuit television into the courtroom now. It depends of course as to whether that court has CCTV facilities but the combination of audio visual link [AVL] and CCTV does provide an alternative to simply having to build accommodation in courthouses or try to fit it into existing courthouses.

The Hon. CATHERINE CUSACK: Do you have statistics on the availability of CCTV throughout the court system?

Mr HENSON: The answer is yes but not with me.

The Hon. CATHERINE CUSACK: Is it possible to get that on notice and a list of the courts that do and do not have it available?

Mr HENSON: I will give you both the AVL and the CCTV.

The Hon. CATHERINE CUSACK: Thank you.

Mr HENSON: I mean the AVL program in the Local Court, if I may digress, has been one of the most successful programs in recent times. In 2006 when I became chief magistrate—this is not to do with domestic violence predominantly—about 7,000 or 8,000 prisoners appeared by AVL on the screens in courthouses. The program that was rolled out to hub courts in country New South Wales and in bigger courts in the city has now raised the number of AVL appearances to close to 80,000 a year. So the ability of the court to work with technology to make things more efficient is already there. Using it to assist in this regard is simply another step along the path to progress. We take evidence from police officers under the legislation who can stay in their police station, if they have those sorts of facilities, and be beamed in from Broken Hill to the Downing Centre to give their evidence, so the need to fly them backwards and forwards is reduced.

CHAIR: While you are gathering that information, if possible could you see how many domestic violence matters have actually utilised the CCTV and the AVL?

Mr HENSON: I do not think we keep those sorts of statistics. We have the prisoner statistics because corrective services keep them. We do not drill down that far.

The Hon. CATHERINE CUSACK: Is it possible to get those?

Mr HENSON: The Corrective Services ones? Yes, of course.

The Hon. HELEN WESTWOOD: I just want to tease out a little further a question that Ms Cusack asked you earlier about the conditions of orders and some evidence that people say they were not aware what they agreed to. As well as that we have received evidence from a number of both legal practitioners and support services that say they are set up for failure because they just cannot be adhered to by some of the defendants. That is things like they cannot approach within 500 metres and yet there is a family law order that says they are to collect the children from the family home. Then there is an argument, the police are called and there is actually a breach. Can you suggest anything to us that we could recommend that might overcome those sorts of problems arising?

Mr HENSON: The most obvious would be for the applicant for the order—and let us not forget that the person who needs protection is not the applicant all the time; most of the time it is the police or the applicant—should ensure that there are no co-existing orders made under the family law legislation. If there are, then a copy of them should be produced to the court. That is about the only suggestion I can make. I make that suggestion as a proactive step because otherwise if somebody puts their hand up and says, "Look, I have some orders under the Family Law Act that conflict with the orders being sought on behalf of the person who needs protection", you may have to then put the proceedings over to another day. You make an interim order which conflicts with the family law order or abundant caution and simply pours petrol on the fire of the emotions, as it were. That is about the only way that you can really address it. Courts are supposed to inquire as to whether there are any existing orders but, as you say, courts are emotional places and people are not always at their best in understanding the nature of the question in the first place and being able to respond in the second.

CHAIR: In that case do the police have access to the existing orders to be able to see what the requirements are?

Mr HENSON: Only if the person who needed protection produces them to them.

CHAIR: There is no way through the COPS system or any other database—

Mr HENSON: No, they are orders made under the Family Law Act.

CHAIR: So where are they stored or lodged?

Mr HENSON: The Family Court or the Federal Magistrate's Court; or if you are in the country they may well be located at a courthouse or within the lawyer's offices themselves. And they are not always formal

orders. Most of them are. Some of them are informal arrangements made between the parties. You can understand the confusion.

The Hon. CATHERINE CUSACK: These matters are often connected but in split jurisdictions. It is also a problem for the police. Are there any solutions to this?

Mr HENSON: We could have a New Zealand model of one country and no States. I do not think so, not under the current laws.

The Hon. CATHERINE CUSACK: So cross-vesting is not an option?

Mr HENSON: No. Whilst ever you have Commonwealth and State legislation covering not the same field but overlapping, there is no practical one-size-fits-all solution.

The Hon. CATE FAEHRMANN: So the application for an AVO does not have on there "Are there any other", it does not have a question, for example, like a tick box, a check box?

Mr HENSON: That is a sensible suggestion.

The Hon. CATE FAEHRMANN: So it does not.

Mr HENSON: I cannot answer that question. I do not look at them that closely. I look at the body of the complaint rather than the formal bit at the front.

CHAIR: Thank you for your time today and your evidence, along with the submission that was made on your behalf. I note that at least one question was taken on notice, so the Committee has resolved that that information be returned within 21 days. The secretariat will liaise with you to facilitate that response. I am sure that members of the Committee may also pose some questions on notice to you.

Mr HENSON: That is fine. I am happy to help.

CHAIR: On behalf of the Committee, thank you.

(The witness withdrew)

(Luncheon adjournment)

PAUL MULRONEY, Magistrate, Children's Court of New South Wales, affirmed, and

MARK CURTIS MARIEN, Judge, President, Children's Court of New South Wales, sworn and examined:

CHAIR: Magistrate Mulroney and Judge Marien, the Committee would like to express its thanks to you for taking the time to attend the hearing today. In particular, thank you for providing to the Committee in advance of today's hearing several case studies of domestic violence matters commonly heard in the Children's Court. Before the Committee moves to questions would you like to make an opening statement?

Mr MARIEN: Just very briefly I would like to say this by way of an opening statement: The issue of domestic violence is something that in the Children's Court we see not only in our criminal jurisdiction but our care and protection jurisdiction. From day to day magistrates have experience across the board and across different jurisdictions. We see young people in the care and protection jurisdiction who have been victims of domestic violence and who may be subject to orders removing them from their homes, placing parental responsibility in the Minister and placing them in foster care. Unfortunately later we do see these same young people in our criminal jurisdiction as perpetrators of violence and sometimes domestic violence.

We take the view, firstly, that children must be treated very differently to adults in the juvenile justice system. I appreciate that apprehended domestic violence orders [ADVOs] are technically not part of the juvenile justice system and they are not criminal proceedings unless it is a breach offence. We have to recognise that children have to be dealt with differently. It is often said in relation to domestic violence that the power imbalances are quite different to what we see in the adult situation with domestic partners. In the adult situation often a woman is the victim of domestic violence and she may be in a less powerful position in that household financially and in other ways. Whereas children or young people who are the perpetrators of domestic violence the balance of power between themselves and the victim of their domestic violence, who may be a parent or sibling, is very different. The parents have more power in the household and supposedly say what children can and cannot do. Parents also have financial power over the children.

That complicates the relationship for parents when they are the subject of or victim of domestic violence from young people and children because there are lots of conflicts of interest in that relationship: Do they want to involve the police; feelings of guilt and shame; and feelings of not wanting their children to become involved in the court system. The dynamics that we have to look at with young people are different. The dynamic between the victim of domestic violence and the perpetrators, being the young person, is different. The other thing we must recognise is that issues of domestic violence must be addressed as soon as possible in the life of that child. It is too late to wait for them to become an adult. If they have a background of exposure to domestic violence, which many of the young people we see have had, they have left that background and come to the notice of the Children's Court through the care and protection jurisdiction of the court. One can almost understand that is the way they deal with conflict if that is the way they have seen conflict dealt with growing up. Dad might leave the family home.

I said to Magistrate Mulroney as we drove in today that one of the magistrates was telling me recently of a case where the young person was before the court for a breach of an apprehended domestic violence order and the mother said to the magistrate that she could not believe this had happened, that he physically assaulted her, because that is what his father used to do to her. When the father left home she thought he was going to be the man of the house and protect her, but the moment conflict started that was the way he had learnt to deal with conflict. We must address these problems as soon as we can. In the Children's Court we are putting an enormous amount of effort when apprehended domestic violence orders first come before the court—rather than have it go through the formal court process—to get the matters off to family counselling and intervention. The Children's Court is trying to encourage people to work through the problems in the family and restore the family. Magistrate Mulroney and I were discussing the key words in this issue and they are "conciliation" and "restoration"—conciliate the problem and try to restore the kids back into the relationship.

With adult apprehended domestic violence order proceedings usually the emphasis is to keep the victim and perpetrator apart. With young people the aim has to be to conciliate and get the family back together again. The police and the police prosecutors have been very cooperative in assisting the court to achieve these early interventions for the kids. In the submission to the Committee I set out the arrangements we have where normally a matter will be adjourned and an interim apprehended domestic violence order will be made. If the young person wants to get some intervention there is an excellent intervention program called the Reconnect

Project through the Salvation Army family counselling service. Ideally the whole family will become involved in that counselling.

The court will adjourn the interim order for three months and the police are approaching matters from the perspective that if there have been no breaches of the interim order in that three-month period the application will be withdrawn and hopefully we will not see them again. If the kids are not prepared to get involved in counselling, or if they are in rural and regional areas where there are no services, we will adjourn the matter for five months. They will be subject to an interim order for a longer period and, again, we come back at the end of five months. If there have been no breaches, the police withdraw the application. Of course, that does not happen in every case. The case may involve serious and repeated threats and violence. It simply may not be a case that is appropriate to be dealt with in that way and we have to get on and go through the formal court process and issue a final apprehended violence order.

Another matter of great concern that we have raised in our submission is the ramifications for young people of final apprehended violence orders being made under the Commission for Children and Young People Act because of the requirement to notify employers that such an order has been made against them. Often it relates to the dynamic between young people. Technically, if a fight breaks out in the schoolyard between two young people and an apprehended violence is sought, the protected person is a child and therefore falls under these reporting requirements. If a final order is made it can be prejudicial to their later employment prospects. Again, Magistrate Mulroney said to me today that even someone who wants to work as a groundsman at Homebush would have to have an employment check under the Act because so many young people come into the grounds. Their potential to secure such a job could well be prejudiced if a final apprehended violence order has been issued as a result of a schoolyard fight. We must recognise that the ramifications for young people of the current legislation can be disproportionate in terms of what is being sought to be protected.

CHAIR: Would the order resulting from the schoolyard fight be a personal violence order or a domestic violence order?

Mr MARIEN: That would be a personal violence order.

The Hon. HELEN WESTWOOD: Thank you for joining us today. You have given me a lot of food for thought. We received evidence from Commissioner Murdoch of the NSW Police Force that the fastest growing group of defendants in domestic violence matters is young people. Do you share that observation? If so, do you have any thoughts about why that trend is emerging?

Mr MULRONEY: We do not keep statistics, but anecdotally we would certainly agree. We think that part of it is that parents are more willing to notify police about matters they believe they cannot deal with. We believe that part of it is parents seeking to use the police as a means of domestic discipline rather than having the skills themselves. It could simply be that there is a greater willingness in the community to resolve domestic issues through violence. We have noted also that girls seem to be more willing to engage in violence than was the case 20 or 30 years ago. They all seem to be factors. There are probably a few other things that parents have not had to negotiate in the past, such the use of computers and social media, which are often a source of dispute. Other things could have happened in the past that caused the same dissension, but they are the key factors that we have observed are creating this difference.

The Hon. HELEN WESTWOOD: That covers my first three questions. That also relates to the issue that Judge Marien raised in his opening statement; that is, incidents of violence between young people. Do you see that as related to cyber bullying? Is that coming up as one of the triggers for violence that then leads to orders being taken out?

Mr MULRONEY: We rarely see cyber bullying in the domestic context, even between partners or ex-partners. We do see it, but it tends to be between girls about an ex-boyfriend. That is the archetypal scenario. It is much more a peer-related issue. It is certainly on the rise, but we rarely see it in domestic matters where young people are the victims. One related area in which we see it is in our care and protection jurisdiction. Family members will sometimes get involved in a form of cyber bullying and blaming because a child has gone into care and negative stuff will be published on social media sites about Community Services or a parent, or someone might be seeking to deal with some of the issues using that media rather than in the forum of the court.

Mr MARIEN: It is not only girls who are increasingly involved in violence; it is also true of boys. We must accept that that is partly a result of their constant exposure to violence in the media, on television and in

films. It is hard to pinpoint the cause of rising violence. Judge Andrew Becroft, the Principal Youth Court Judge in New Zealand, has told me that that country is also seeing an increase in juvenile violence. He thinks it is because of that increased exposure and the way that violence permeates the life of children in so many ways. We must also recognise that drugs such as ice are well known to increase violence.

The Hon. HELEN WESTWOOD: Do you have any observations about the demographics of that cohort? Are we seeing an increase in violence among kids from affluent backgrounds who attend private schools in the same way that it is among kids from western Sydney, where I am from, or among kids from recently arrived families?

Mr MULRONEY: We are not criminologists so our response is anecdotal. In general the answer is yes, but the violence will still be committed disproportionately by young people from socially and economically disadvantaged backgrounds. All of the statistics indicate that whether it be as a result of health issues, education, parental problems, drugs or alcohol. It seems to me that young people have greater access to alcohol, which is the number one trigger for violence. To some extent more affluent young people have greater access to it, but it seems that anyone who wants it can get it.

The Hon. HELEN WESTWOOD: You referred to a Salvation Army program. Do you have other programs to which you are also able to refer young people?

Mr MULRONEY: The Salvation Army program is one that we at the Children's Court at Parramatta specifically use. For a number of our courts, there will be no program. I understand the Children's Court at Bidura, which covers the inner-west, eastern suburbs and lower northern beaches, has no program to which it can easily refer young people. It has support people at the court who can try to do something, but it is usually a bit of a mishmash of different agencies that they would use. There is another program, based I think at St Marys, called RAPS. But in most areas there are very few programs. I did a quick search. The only research on it that I found was in the *Australian Domestic Violence Clearinghouse*, which was a 2004 publication. So, although there are starting to be more perpetrator-specific programs, it seems they assume that adult males are their targets, rather than young people.

The Hon. GREG DONNELLY: In light of the change of government in March last year and the report that came out late last year on domestic violence in New South Wales of the New South Wales Audit Office, the Committee received evidence from a witness a couple of weeks ago that what is going on in New South Wales at the moment is a review/refresh of the domestic violence strategy of the New South Wales Government in terms of looking to the future. I wonder whether either of you is aware of that review, and whether you, as a significant party dealing with the issue of domestic violence in New South Wales, have been invited to participate in that process.

Mr MULRONEY: There is a Federal Law Reform Commission inquiry that we have been asked to participate in, and there seemed to be some overlaps with the New South Wales Law Reform Commission review. I am not aware of a specific review that has recently originated from government. New South Wales and the Commonwealth were doing reviews. I am not sure whether that is the review that you are talking to.

The Hon. GREG DONNELLY: This was a quite specific review of the way in which government deals with domestic violence in New South Wales.

Mr MULRONEY: No.

The Hon. GREG DONNELLY: At page 30 of your submission, in the second paragraph, you refer to a practice note. I wonder whether you could explain to the Committee, first, why you suggest a practice note would be useful or helpful and, secondly, what would be the content and nature of that practice note?

Mr MARIEN: The first thing I have to say is that in my letter to the Committee in September I said I was about to issue the practice note. I regret to say it has not been issued. But that is not to say that effectively what is contained in it has not been in operation. The delay has come about as a result of the usual stakeholder consultation process. But we have now concluded that, and I am just about to issue the practice note. I have the draft here, and I can indicate that this is what will be issued very shortly. I set out in the practice note the objects of the Crimes (Domestic and Personal Violence) Act and state that those objects include ensuring the safety and protection of all persons, including children, who experience or witness domestic or personal violence, and

empowering the courts to make apprehended personal violence orders in appropriate circumstances to protect people from violence, intimidation and stalking.

The practice note relates to court procedures in the Children's Court in cases where apprehended domestic or personal violence order proceedings are taken out and commenced against a young person, and the procedures are intended to promote the rehabilitation of the young person within his or her family and the community, whilst acknowledging the objects of the Act and the importance of the need to protect victims of domestic and personal violence. The practice note does not apply to domestic and personal violence applications against a young person involving allegations of sexual assault, or indecent assault, applications which are related to criminal charges of a serious nature, and cases where such applications have been repeatedly sought in the past. However, in such a case the practice note may be applied with the consent of the prosecutor and the young person.

Effectively, as I said in my opening statement to you, the practice note seeks to achieve, rather than the obtaining of a final order against the young person, that the court will—usually by consent—make an interim order and the matter will be adjourned, for either three months or five months. And in three months, if the young person agrees to get the intervention—and, as Magistrate Mulroney was saying, the main service that we are using is reconnected Salvation Army—the young person by himself or herself, or ideally the whole family, will come back and, if there have been no breaches of the apprehended violence order, and there is a satisfactory report back as to what has been happening in the counselling, the prosecutor will ask for the matter to be withdrawn, in the usual case. There will always be discretion for the prosecutor in a particular case that might be so serious, or where something else might have happened and there may not have been a formal breach of the apprehended violence order but something else may have happened, to seek a further interim order.

The other important element of the practice note is that the court will be indicating to the young person right from the beginning, "It is really important that you get involved in this intervention, because if you do and you come back in three months time and there have been no breaches, the police will be withdrawing this application." So there is a lot of judicial intervention involved to get the young people into these proposals, so that they understand exactly what is happening and that if they come back in the circumstances I have outlined the matter will be withdrawn. Also, as I was saying earlier, the ramifications of a final apprehended violence order against young people in many cases is quite disproportionate to what it was that we were seeking to address with the apprehended violence order in the first place. I should say that what I have just said has effectively been happening for some months now, with the cooperation of the police, and the practice note will simply formalise the process.

CHAIR: For the information of members and witnesses, we have been informed that rewiring works are being undertaken for the Legislative Council. Unfortunately, those works cannot be avoided. If the noise levels get to a point where the Hansard reporters cannot hear what is happening, we may have to pause or restate what we are saying. As there is nothing we can do about the noise, I ask everyone to bear with us.

The Hon. GREG DONNELLY: In terms of matters involving young people who may end up appearing before the Children's Court, there is potential overlap or interface with matters that could be proceeding in the Family Court of Australia. We appreciate these are different jurisdictions, and that they operate separately, but given that that interface takes place from time to time, is there anything we should be considering that might assist or affect the way in which matters are being dealt at the Children's Court which might be facilitative in terms of assisting, smoothing the way, or whatever the case may be?

Mr MULRONEY: It is rare that concurrent proceedings are drawn to our attention as far as an apprehended violence order [AVO] application is concerned. Certainly in our care and protection jurisdiction we become aware of domestic violence issues that have been raised in the Family Court and it is fairly straightforward because once we get involved, our jurisdiction ousts the Family Court jurisdiction. So once there is a care and protection application the Family Court no longer has jurisdiction. It is not quite that simple but that basically is it.

In terms of applications to the court, sometimes we are aware of them because it will have been, say, dad and son getting into conflict with mum and daughter or something of that ilk. It may well be that there are Family Court proceedings and I am not aware of it. Sometimes we are aware and we have to be quite careful about making sure that we make orders that do not interfere with the Family Court process. The big advantage that we have over most other Local Courts is that virtually all the young people who appear in front of us are legally represented. At the specialist Children's Courts we are even more fortunate because they have full-time

children's law practitioners. Those practitioners will be aware of asking questions such as, "Are there Family Court proceedings? What is the arrangement between you and mum or you and dad? How do these sorts of things happen?" It is a long answer to a short question and I cannot immediately think of anything that will further assist.

Mr MARIEN: Can I add to that? I think this was one of the terms of reference of the joint Australian and NSW Law Reform Commission papers on family violence, as opposed to domestic violence. One of the issues raised in that discussion paper was the problem of families having to go to different courts. If the family is in the Family Court for parenting orders but there is an issue of concern with domestic violence—the young person being the perpetrator—that problem would have to be dealt with by the State court. It may all be part of the one dynamic which the Family Court or the Federal Magistrates Court should be considering under the Family Law Act. I agree with a proposal that was put forward by the joint commission. The Local Court has power to make consent parenting orders under the Family Law Act but the Children's Court does not have that power. The proposal is that the Children's Court should be given those powers to use in particular cases. I would not want to see the Children's Court swamped with applications for parenting orders but it would only be when it is dealing with some other proceeding that the Children's Court would also be able to make orders under the Family Law Act. The proposal saves the problem of the family being dealt with in two different jurisdictions. The problem may be able to be resolved without the apprehended violence order proceedings going ahead if they could be sorted out through parenting orders. That was the proposal put forward by the joint Australian and NSW Law Reform Commission and I support that proposal.

The Hon. GREG DONNELLY: Taken on notice, could you provide the Committee with that formal reference?

Mr MULRONEY: In fact, I can provide the Committee with our submission to the inquiry.

The Hon. CATE FAEHRMANN: The Committee visited Forbes for a hearing just last week. During that visit participants argued that the courts are dealing with many trivial applications associated with apprehended violence orders but particularly the apprehended personal violence orders. Is this an issue with the Children's Court as well?

Mr MULRONEY: Thankfully, no. The vast majority of the applications made to the Children's Court are made by the police. I cannot think of the last time I saw a domestic violence application not made by police and the applications made by private individuals in personal violence matters are few and far between. It usually ends up being some neighbourhood kids upsetting other people in the neighbourhood but they are extremely rare.

The Hon. CATE FAEHRMANN: On page 1 your submission refers to the potential exacerbation of domestic violence situations involving young people and family members due to the adversarial court process and the inflexible consequences of some apprehended domestic violence orders [ADVOs]. Can you expand further on this statement and suggest ways that can be improved?

Mr MULRONEY: If there is going to be a fight about it and if the young person chooses to resist the making of an order then it requires the calling of evidence. A parent, usually a mum, is going to be in a real situation of conflict about giving evidence against their child and often they are extremely reluctant to do so. They will often say, "It is going to make things worse if I have got to tell everybody about what happened." So just the very nature of having to give evidence and there being a conflict, it highlights the conflict. The young person will be giving evidence saying, "No, that did not happen" and the parent will be saying, "Yes, it did"—"No it did not" and, "Yes, it did." So that is the key form of exacerbation that occurs. Because the orders are primarily made to prevent people from doing something, they are about keeping people apart rather than the reconciliation, restoration and upskilling that we think would be beneficial for young people. As you would understand, young people often resent being told they cannot do something, particularly when often the orders, of necessity, are matters of principle rather than practicality. For example, "You cannot harass mum." What does that mean? Does that mean I cannot ask her for pocket money, or does it mean I cannot call her a "f…ing cow", or something like that? That is part of the issue.

Remember, it can also be a sibling thing. So it is not just child-parent; often it will be siblings, stepsiblings or something like that involving their sense of entitlement and that sort of thing. Often it is a turf war over the television, or a blended family getting together and experiencing problems with the dynamics. If it becomes very formal—if one person is the person who is being blamed and the other person is named as the

victim when quite often it is more subtle than that—then without a person trying to help the family work their way through it, it will be like throwing a bit of sandpaper into the mix.

The Hon. CATE FAEHRMANN: I know you have already talked about diversionary options for young people but we had a number of submissions that suggested there could be more of a focus on diversionary options rather than on sentencing. I suppose we are talking here about serious domestic violence offences. What are your views on that? Do you think there is a reason for the legal services and advocates for young people saying that?

Mr MARIEN: Absolutely.

Mr MULRONEY: There are two areas of diversion. One is at the point of an application for an order and we have talked about diversion to family counselling. Sometimes there might need to be some sort of individual counselling involved; sometimes it might be a matter of education. Our magistrate at Campbelltown, Magistrate Carney, has managed to get some people involved. There is a National Association for Prevention of Child Abuse and Neglect [NAPCAN] program called Love Bites. It is a good educational program for 14- to 18-year-olds. There is some funding in one of the agencies that gets some of the young people involved in an education process—another way of them being upskilled.

Once we get to the point of offences, one of the important diversionary options we have is youth justice conferencing and offences that have a domestic violence character to them are specifically excluded from referral to youth justice conferencing. There is a review being conducted by the Department of Attorney General and Justice at present of the Young Offenders Act and the Children (Criminal Proceedings) Act and it was part of the submission of the Children's Court that that absolute ban becomes a matter for the discretion of the court rather than a legislative ban.

The Hon. CATE FAEHRMANN: If there are multiple offences does that mean that young offenders can go to youth justice conferencing but if it is just a domestic violence matter they cannot at this stage? I am also interested in the reasons why.

Mr MULRONEY: It is unclear. If a young person has graffitied next door's fence they can go to youth justice conferencing but if they have punched a hole in the wall of their housing department accommodation at home there is an argument that they cannot. That is actually a grey area. But certainly if they have intimidated mum then they cannot. If they have intimidated their next-door neighbour they can; if they have intimidated mum they cannot, and it is per offence. It is not like we can say these things are capable of going to conferencing so then everything can go, but nor is it the case where we say this particular offence cannot be referred to conferencing so we will not consider referring any of the others. It is a charge-by-charge offence-by-offence basis in terms of the referrals.

In terms of the rationale in the legislation, I think it is a case of policy without consideration of practice. I think there is good policy about not seeking to diminish the seriousness of some aspects of domestic violence through saying that that violence can be mediated, but I think that that policy was not as well informed, with all due respect to the legislators, as the day-to-day practice of what happens with domestic violence in families with young people. So we will often see that there is a thread through lots of bits of legislation that excludes domestic violence from programs or from various forms of alternative ways of being dealt with and I suspect that this is just one of those where people did not think, "What will this mean for most of the sorts of matters we deal with?"

Clearly there are serious matters. We will see kids who use weapons and engage in serious domestic violence in the family—not appropriate. We will deal with people, usually boys, who will sexually assault their stepsister—clearly not appropriate to go to youth justice conferencing or be dealt with in some other way. But youth justice conference does, in fact, hopefully empower the victim where a lot of the things that we do, such as placing somebody on a good behaviour bond, does not, because in the conferencing process the victim has a chance to have a say, to talk about their hurt, to talk about their fear and to talk about what they would like to have happen as an outcome that might stop this happening ever again, whereas victims are entitled to be present in our courts and often they will ask to say something, but they are really more on the sidelines rather than a key participant as they are in a youth justice conferencing process.

Mr MARIEN: I think Magistrate Mulroney was extremely diplomatic in his criticism of the policy considerations behind the exclusion of these offences from the Young Offenders Act. Just the mere stating of a

proposition indicates that these kinds of matters, which are family problems which need to be resolved in the family through interventions and counselling and trying to keep the family together, are obviously something that is ideal for youth justice conferencing or some form of that kind of intervention. I should just say that the very serious offence matters which Magistrate Mulroney was referring to—we are talking about the use of weapons and sexual assault offences—we would not even be thinking of AVOS; obviously they would be charged with serious criminal offences.

So we are not talking in that area of serious criminal offending and there is no doubt that with the vast majority of young people that come before the Children's Court in the criminal jurisdiction the best way to deal with them—and all the research around the world shows this—is through intervention programs, not through formal court processes but trying to divert them from formal court processes. The court may have to come back to be involved at the end of the diversion for final orders and to resolve the matter, because it may be a serious criminal matter that has got to be dealt with by the court ultimately, but the intervention should be, in most cases, intervention outside the formal court processes, trying to address the problems which have brought this child and usually their family before the court—it is the whole family—and, to use the expression of Magistrate Mulroney, and upskilling the whole family in how to deal with these kinds of issues, which many of them, very sadly, have no skills whatsoever in dealing with those issues and those matters of conflict and how you deal with conflict.

CHAIR: We had a comment last week from one of our witnesses who said once you are in you are in. They were talking about once these people end up in the justice system they are subjected to a lifecycle of staying in that system.

The Hon. CATHERINE CUSACK: In your submission you indicate that 1,693 charges were brought against young people for domestic violence last year. Do you have a more specific breakdown by gender? I can see the percentages in relation to females but I am wondering if there is an actual breakdown by gender and if it would be possible to get more detail of those figures that you have accumulated over that decade. Could it be done by gender and is there a change in the age of the young people coming before you? Perhaps you could take that on notice. The profile is obviously interesting.

Mr MULRONEY: Yes, certainly.

The Hon. CATHERINE CUSACK: I understand in most of these cases the police are laying charges. Are the orders that you are making conditions of bail? Is that the form that it takes?

Mr MULRONEY: Most of the matters we deal with where a domestic violence order is made there is no charge, it is an application by the police, and the only thing that is being sought is a domestic violence order. I think we need to be a bit clear about the different processes. That is the first one and I suspect, off the top of my head, that it may be that there were 1,693 domestic violence order applications—I know we have said charges, and I am happy to be corrected about that; BOCSAR will be much more across that than we will be. There are other cases where if, say, a child has assaulted a sibling; there may be an assault charge and an application for a domestic violence order. Sometimes the sibling will say, "I don't want them to be charged" and mum will say "I don't want them to be charged", so sometimes there will be clearly grounds for a criminal charge but there will only be an application for an order. Even if there is no application for an order we have the power to make an ancillary domestic violence order as part of the sentencing process.

The Hon. CATHERINE CUSACK: What are you sentencing them for?

Mr MULRONEY: If they have been found guilty of an assault then we can make a domestic violence order.

The Hon. CATHERINE CUSACK: I guess the point is that it does require an accompanying criminal charge to make the orders?

Mr MULRONEY: So if there is just an application we can make apprehended violence type orders. If there is no application but there is a criminal charge to which they have been found guilty, then we can also make an apprehended violence order as well as imposing a criminal penalty on them.

The Hon. CATHERINE CUSACK: That is the process where you can make interim orders and they are highly motivated to cooperate with those interim orders?

Mr MULRONEY: No, usually with the interim orders they are motivated to cooperate where it is merely an application. There will also be matters where there will be a charge and an application where they might want to go off and do that, but the police do not withdraw charges as opposed to applications. So if there is an application for an order that might be withdrawn after the three-month period. If there is a criminal charge that the young person has assaulted their sister, then that only gets finalised either by them being found guilty or not guilty and then, if found guilty, a sentencing process.

The Hon. CATHERINE CUSACK: In relation to those matters—and I think you have mentioned this—it is highly likely that the young person themselves will have been subjected to violence. I assume as part of the defence in these matters disclosures are made of offences having been committed against the young person that could be taken as mitigating circumstances. It seems to me that since 1987 when we separated the welfare and justice systems for young people—I know there was good reason for that and that there have been a lot of positives in that—that young person turns into a perpetrator and the Department of Community Services will have nothing to do them and none of those Department of Community Services programs will be available to them. What options do you have in terms of counselling programs, particularly across the whole of New South Wales? I am a country member. I see health authorities trying to provide some services because the Department of Community Services will not touch these people and, in fact, may even be seeking to remove them.

Mr MULRONEY: I am a city boy myself but I have sat in the country. I had a circuit between Narromine and Cobar at one stage and the resources are extremely limited. The policy of the Health department servicing that area when I was doing it in 2002-03 was that the Health department counsellors—it used to be either drug and alcohol or mental health and that was it—would not work with perpetrators. That was, as I understand it, partly an occupational health and safety consideration. The only people who were able to provide them with assistance were either Juvenile Justice—and often Juvenile Justice was there only two or three times a month, if that—or a non-government agency and usually they are few and far between. But I think there have been some changes.

I was in Walgett recently and the Youth Off The Streets program was bigger there, whereas it was non-existent when I first to Walgett in 2001. I am sure there are others, whether it is Mission Australia or a whole range of other programs, that are perhaps a little bit more prominent in the country than when I have been there. One of the great organisations, although they are limited in what they can do, is the Police and Community Youth Centres [PCYC]. If you have got a PCYC in a town they can be a useful group but they are not set up to provide counselling, they are not set up to provide that particular stuff. Even in the city there are very few programs.

The Hon. CATHERINE CUSACK: It is almost a line that the young person has crossed over and they are actually a victim. For the purposes of trying to solve the problem families might want early intervention to assist the young person and they are told there is nothing available unless they get charged with an offence. They get charged with an offence and then they are at risk of the other children being removed from the house or the person not being able to be there. When you talk about the power of adults over children it is accommodation, is it not? They cannot make alternative arrangements. These matters are very complicated for families in terms of reporting it. On the one hand they do not want to risk going through that process. We have families literally living on split sides because of the problem: They want to support one juvenile who has been offending against the sibling yet they cannot live together. They have gone to the system to try and get help and the next thing you know he or she has been charged, and there is no counselling available any way. The Department of Community Services has this black line: If you a perpetrator you are not for us. Yet they have been victims as well as perpetrators; it is more complex.

Mr MULRONEY: I think that is true. Particularly in the less serious matters the Department of Community Services will side off; it is now Juvenile Justice's problem. I think the other part of the reality is that teenagers being teenagers they are not going to do something quite often unless they are compelled. Even if their family wants them to participate in some sort of restorative counselling process, the young person as part of the whole dynamic is not going to want to participate. So the element of compulsion ultimately has to be used but, again, there are just not the programs. One program I forget to mention earlier on, which is only available for young people who have been sentenced or who have been dealt with by Juvenile Justice, they have a program called the Juvenile Intensive Supervision Program [JISP]. But that program, with all due respect, like lots of government programs is a pilot and it is only happening in a limited area.

This intensive supervision program is aimed not just at kids who commit domestic violence offences but it is aimed at the parents. It does not ignore the child but its primary focus is enabling parent or parents to deal better with their kids so that issues like peer association, alcohol consumption, staying up to all hours of the morning and refusing to go to school, the parents can have more skills at getting the kid to do some of the ordinary things that might mean they are less likely to commit criminal offences. We know if kids go to school and stay at school they are much less likely to commit criminal offences across the board. So this intensive supervision program is about—to use that word again—"upskilling" the parents.

The Hon. CATHERINE CUSACK: Whereabouts is that in operation?

Mr MULRONEY: It is operating in western Sydney. Certainly some of the kids we deal with at Parramatta and also at Campbelltown are within the province of it. I am not sure how many kids they can take on at present. If I said 50, I think that might be the upper limit but do not quote me on that.

The Hon. CATHERINE CUSACK: That is a Juvenile Justice program?

Mr MULRONEY: Yes, a Juvenile Justice program. They have one Aboriginal worker as part of it and she is absolutely run off her feet. From what we can see it is a program that is quite effective.

CHAIR: Some of the evidence received by the Committee so far suggests that consent should be an available defence to the breach of an apprehended domestic violence order. Do you have any comments about a comment such as that?

Mr MULRONEY: Look, I think I know where that was coming from. We have situations where a child—and it usually has to be a bit serious—might be banned from the family home and there might be say a six-month order or something like that. Three months after the order is made things have settled down so mum says, "All right, come home". There will be ongoing contact so mum says, "Come home, everything is settled". They have forgotten the fact that the order is in existence and then, as is the nature of these things, the problem has not been properly sorted out; it blows up again and the police are able to prosecute the kid without even relying on mum's evidence because they have found the kid at the family home, so as I understand it the suggestion there is: well, the fact that mum, the person supposed to be protected, has consented to the breach of the order, should be an offence. I can see the logic; as a general proposition I would strongly resist it. How can a victim's consent be seen as being a way of excusing a particular behaviour but I can see in that sort of situation where a parent has said to a young person, "Look, it is all right", then I can understand why the young person should be able to plead, "Look, mum said it was all right so why am I now in strife when the number one authority figure in my life, my mum, says it is all right?"

I can see there is an issue there but I think it is dangerous ground and better dealt with by ordinary sentencing principles so that they actually get found guilty of the offence but we say, "Well, we are not going to impose a penalty or whatever penalty we impose would be at the very low end of the scale", rather than the fact that it is not a breach. It depends on where you draw the line but young people need to understand that court orders that are made for a real purpose are serious, they have to be abided by; they cannot just be forgotten about, and we do try to make an effort.

I would usually say to kids, "You will get the rules. Do you know what the rules are? The rules don't change unless a magistrate changes them. If you break the rules you commit a criminal offence. If you break the rules by an act of violence the first thing I have got to do is think about sending you through that door over there", which is the door down to the cells.

CHAIR: So you are explaining that to them at the time—

Mr MULRONEY: I am saying that to them as I make the order in court. One of my colleagues this morning said that we were virtually word for word in what we said. I am sure most of my other colleagues who are specialist children's magistrates at least will make a real effort in court on the day when the order is made to reinforce the seriousness of the order and the consequences of breach.

CHAIR: We are not hearing the same level of explanation coming through the other courts because of a range of reasons, but that is positive.

Mr MULRONEY: Yes.

Mr MARIEN: Because that is coming from specialist children's magistrates.

CHAIR: That is right. In the samples of applications that you have provided to us I note there is a section at the bottom of one of them that talks about Family Court orders and a section to say "Details of any existing parenting order or pending parenting application under the Family Law Act 1975". Is that a standard section that appears on the application?

Mr MULRONEY: Yes, and that is for both adults and kids. That is a standard part of the form that the police fill out in their application to the court.

CHAIR: Where do police get that information from?

Mr MULRONEY: They rely on the parties. They are not going to go to the Family Court. There is no special database that they can rely on. They have to ask the parties and they have to even remember to ask the parties. It is one of the many questions they would need to ask.

CHAIR: How often would you see one of these, where there is an existing order, where that section has not been completed and you do not find out until the hearing of the application?

Mr MULRONEY: There is a bit of a Donald Rumsfeld answer to that question because it depends on whether I know that there is a Family Court order as well, so quite often if the police do not know, no-one else is going to be told. We would occasionally hear that there is a Family Court order when the police do not fill that in, but I think most of the time we are not told that there is an order, which probably means that most of the time there is not but there are probably cases where we are not told but there is an order.

CHAIR: You may not be able to answer this but is that pro forma used in all the other courts? Is that a standard pro forma across all applications?

Mr MULRONEY: Across New South Wales that is the standard document, as I understand it, and I have sat in the Local Court as well, but to the best of my recollection that is the standard form that they use across-the-board.

CHAIR: We are out of time but I wanted very quickly to get a comment around the definition of domestic violence. We have received evidence suggesting that the definition should be narrowed to be intimate partner violence and all other matters could be dealt with in the area of personal violence. Do you have any thoughts about the implications of narrowing such a definition on the Children's Court? Would that remove all domestic violence matters from your court and they would all then become personal matters?

Mr MULRONEY: It would not remove them all because we do have intimate partner violence issues as well. My gut reaction is that that might be unfortunate because the family nature of the violence still pertains even though it may be sibling-sibling or parent-child. I suspect that legislation and policy just has to be a bit more subtle and give the courts the capacity to deal with a whole range of things rather than just having a single paradigm of what domestic violence involves.

Another area that I do not think has come up is carer-child violence and there is a real issue as to if a person is a carer in supported accommodation perhaps funded by Community Services is that domestic violence? The carer does not live there. My view, without it having been hugely considered or argued in court, is that it is not domestic violence but there would be some places where the carer will be a live-in person; it is their job to be there rather than the fact that they are part of a family or some other sort of domestic relationship and there is a different power dynamic there as well. I think because humanity has got a whole rich tapestry to it we need to have the opportunity to deal with different circumstances on an individual basis rather than seeing them as just a particular label.

CHAIR: Time has beaten us. On behalf of the Committee I thank you for giving us your time today and providing us with this information. I note that questions have been taken on notice. The Committee has resolved that the answers to questions taken on notice be returned within 21 days. The secretariat will liaise with you on that. There may also be questions that members would like to pose on notice to you as well. Also, if you feel there is other information that we would benefit from, please feel free to send that in. I know the names have been removed from the case studies that you gave to us. I was wondering whether we can publish those

with all identifying features removed from the actual applications. We feel that would be beneficial to the inquiry.

Mr MULRONEY: I do not think there is any impediment to that because they have been anonymised. They were just matters that were in the domestic violence list at Parramatta Children's Court [on a certain date] [Information suppressed by order of the Committee]. We just went through and pulled out all bar one, which was such a bizarre one that was so untypical that we did not record it, but they were all of the domestic violence applications before the court last Friday. We did not filter them or select them in a particular way.

CHAIR: That is great. Thank you very much.

(The witnesses withdrew)

(Short adjournment)

JANE SANDERS, Principal Solicitor, Shopfront Youth Legal Centre, affirmed and examined:

CHAIR: Would you like to make an opening statement before we proceed to questions?

Ms SANDERS: Just briefly, if I can keep it brief. If I cannot keep it brief please cut me off.

CHAIR: Please keep it brief. You do not need to repeat anything in your submission.

Ms SANDERS: I guess just to highlight some of the main issues coming out of the submission and on the tail end of what we just heard from the Children's Court. Our experience accords with some of what Magistrate Mulroney was talking about. I would have to say also though that we work with a large number of young adults who chronologically may be adults but in every other sense they are adolescents. They are sometimes still living with their parents or they are in a situation where they have been involved with a very dysfunctional family for many years. The Local Court, as I think you have already acknowledged, is not such a protective jurisdiction as the Children's Court and often apprehended violence orders [AVOs] get made with very little scrutiny. That is partly because the magistrates are incredibly busy and have a bigger list, it is partly because it is a less protective focus and it is partly because people do not generally get legal representation from Legal Aid when they are respondents to AVO applications unless there is a related criminal charge. So we see young adults who really do end up at the receiving end of some quite inappropriate AVOs, or it may be appropriate for an order to be taken out but the conditions are inappropriate and unworkable.

In relation to consent possibly being a defence I would like to talk a bit about that. It might be something we come back to in questions, but I do think there is room to explore perhaps a limited defence of consent. We see all the time the example that Magistrate Mulroney gave of the family that reconciles, mum invites the kid back, neither of them seem to realise that that puts the kid in breach. I think there were also some questions or comments about the care jurisdiction now that the Children's Court criminal and care jurisdictions have been separated and the perhaps lack of a care and protection response for young people who are in dysfunctional situations and perhaps acting out as a result of what is happening to them at home. I do not think that is a situation that is easily resolved but I think the older a child gets, the less that community services want to do with them or the less that they can do in a practical sense. That is a difficult issue.

CHAIR: Thank you. We will explore some of those issues by opening up to members to ask questions.

The Hon. HELEN WESTWOOD: Thanks for being with us this afternoon, Ms Sanders. I will go straight to that first point that you raised. It was one that I noted to ask you some questions about. That is, the realistic and appropriate conditions of orders. That has been raised with us by other witnesses and also for those who would be considered well beyond young people. Could you go into a little more detail about particularly the way in which we could overcome that? One issue that has been raised about inappropriate conditions is where there is already family law orders or family court orders that then may really clash with conditions on the AVO. If you can please talk about strategies that you think we could recommend that would overcome that problem.

The Hon. CATE FAEHRMANN: It would also be useful in your answer to provide some examples of how it is unworkable. Not literal examples, but it would be useful to get a sense of how it is unworkable as part of your answer.

Ms SANDERS: I guess in answer to the first question about where there are family law orders, I do not know in what proportion of cases there are family law proceedings or orders but there often are, or there is some existing family law dispute or informal arrangement or whatever for contact with children, et cetera. I guess the fragmentation of our family law system and our Local Courts is a problem—one being Commonwealth, one being State—and although Local Courts are cross-vested with jurisdiction they rarely exercise it.

Certainly, there are some people who would support integrated domestic violence court models, which would deal with family law issues as well as family violence issues. I have seen one of these courts in operation overseas in the United States, and from my vast experience of observing it for a day I found that that had something potentially to offer. At least you had the parties in the same room dealing with their issues in a holistic way, rather than being shunted back and forth to different courts. That is not something that we can easily achieve here with a snap of a finger but it is something that might be worth exploring.

In terms of unrealistic and unworkable conditions generally, as you would know, an AVO application has on it a whole shopping list which police—it is usually police or the chamber registrar who helps a person or private applicant take one out—just basically tick the boxes of what conditions they want and it is quite easy perhaps to tick too many boxes. When we are involved, when we go along to court to legally represent our clients we will generally talk to the applicant or the police prosecutor, as it normally is, and say, "Look, okay, we'll consent to an order"—usually without admissions—"but this is unworkable. Not to go within 100 metres of the protected person's residence means that my client can't go to her aunty's place or she can't walk to school or get off the train at Erskineville station, for example." It is usually something that no-one has really thought about.

We often see it with bail conditions being imposed on young people, which is a completely different issue. But it is kind of picking things from a shopping list without thinking carefully. Often the police, in making an application, do not know that information at the time. Conditions can be negotiated at court, but if you are an unrepresented defendant and if it is a police prosecutor—a person who is trained, experienced and in a relative position of power—I think most of the time you are not even going to know that there is some ability to negotiate the conditions. If you have a magistrate who has a lot of time, who is patient, who is fair, who has the time to scrutinise each individual condition and say, "Well, prosecutor, can you tell me if this condition is necessary?" or "Respondent, can you tell me, is there going to be a problem with that condition? Is there anywhere you need to go", et cetera. That in practice just does not happen very often because of the pressures that are operating on the courts.

I am a lawyer and it would be easy for me to say that legal representation is the answer to everything. It is not, but I think that it would definitely be part of the solution because it would enable people who may not feel assertive enough to stand up in court and say, "This condition is quite unworkable" or "I know that you want me to abide by a condition that I don't contact this person, but she rings me up all the time. What do I do about that? I'm not allowed to contact her but she's constantly contacting me." So I think some legal representation or some high-quality court support to assist people to come to a resolution about what conditions are workable would have great benefit.

The Hon. HELEN WESTWOOD: At the court at that time do you think there is enough time in the morning or on the day when the matter is going to court to negotiate those sorts of conditions?

Ms SANDERS: There can be. Sometimes it might have to be adjourned for a week or two so that the police prosecutor can perhaps get instructions from their local DVLO, although normally the DVLO who is responsible for taking out the application is at court on the day. Sometimes if the protected person is not at court it might need to be adjourned but normally in my experience going to court representing clients normally I am able to have a word with the prosecutor or the DVLO or if it is a private applicant with them or their solicitor before we go into court and can often work stuff out. It is done quite often in local courts in criminal lists where you have people perhaps applying to vary bail conditions or certain discussions that need to happen between the prosecution and defence. While there is limited time available, it can be done. I know that Legal Aid, as you probably heard from Legal Aid via its submission—and I am not sure if they have given evidence yet—has started up this domestic violence early intervention program where they are piloting providing representation to respondents to AVOs in local courts in the hope that it will overcome some of these problems.

The Hon. GREG DONNELLY: In light of the change of government last year and the report from the New South Wales Audit Office into domestic violence in New South Wales, we have been informed by a government witness that there is an examination going on now or a review into the appropriate framework for New South Wales looking to the future to deal with domestic violence. We have been told by that witness that the intention is to involve parties and stakeholders who deal with domestic violence in that review. Have you heard about this review that is taking place?

Ms SANDERS: I am not sure what you are referring to, but there is a statutory review of the Crimes (Domestic and Personal Violence) Act, which is taking place at the moment. That is being done by the Criminal Law Review Division at the Department of Justice and Attorney General, although I think that that was just a review that was built into the Act. So on top of that statutory review, I am not aware, and I do not know whether the statutory review will be used to inform it.

The Hon. GREG DONNELLY: No. This is really a bird's eye review of the framework we have in New South Wales and potential changes or finessing or finetuning of it that we should be looking at for the future. You have not heard of that specifically?

Ms SANDERS: Not of that specifically, but that would not surprise me. I mean, we are not a specialist domestic violence service. We would not necessarily be automatically considered a stakeholder in those sorts of issues.

The Hon. GREG DONNELLY: That is fine. I invite you to comment on the difference between dealing with young people involved with domestic violence who come from an Indigenous background versus a non-Indigenous background. We were out in western New South Wales last week and we took some evidence where there were some comments about the difference. To the extent there is a difference, I am wondering in terms of your own experience and Shopfront's work with young people, whether one can discern the difference between dealing with young people in those two categories?

Ms SANDERS: Yes, I think so. Maybe it is just different points along the spectrum, but one thing that really springs to mind with Indigenous people is, of course, that extended family relationships are much wider, deeper and stronger perhaps. If you are an Indigenous person you are a lot more likely to be considered to be in a domestic relationship with a lot of people. We have spoken about and I know the Committee has been considering the definition of "domestic relationship": Is it too broad? I think if you are an Aboriginal person and you have a blue with your cousin or exchange a few words with somebody down the road, it is more likely that that is going to be considered a domestic violence matter than simply a personal violence matter.

I will give you an example of a young Aboriginal woman in metropolitan Sydney, not in western New South Wales. She was at the shops. She and a cousin of hers, with whom she had never lived and did not have much of a relationship but they were cousins, they had a bit of a falling out. The cousin approached her, they exchanged words, et cetera, and our client ended up being charged with—I cannot recall, but I think it might have been intimidation. The charge was ultimately withdrawn, but because she was charged with intimidation, which is a personal violence offence, and because the relationship was deemed to be a domestic one, because they were cousins, there are certain provisions of the Act that kick in. For example, police are mandated to make an application for an apprehended violence order [AVO], even though there was no suggestion that it was anything other than a one-off verbal argument. Police are mandated to take out an apprehended violence order.

Once you get to court, if you have a person charged with a personal violence offence in a domestic context, the court is mandated to make an interim apprehended violence order unless it is satisfied that the order is not needed. So you have sort of got a reverse onus there. There are other provisions as well. For example, this is not in legislation but it is police policy that police have a zero discretion policy, which it can perhaps sometimes be described as, or a zero tolerance policy for domestic violence which, in your classic intimate partner violence situation—characterised by a disempowered victim and a powerful offender who uses violence as a tool of control—makes very good sense. But when you are applying that to situations between cousins or where there is the less powerful person in the relationship, like a child who lashes out against a parent for example, you have a situation in which police say, "Okay, we have laid this charge. It is a domestic violence charge. Therefore we have no discretion. We will not consider withdrawing it, even if the victim does not want to proceed. We take a hard line."

So if it was just an exchange of words between mates—you know, two young women who were not related—and if it did not have that domestic context, I think that had the alleged victims said to the police, "Look, I don't want her charged. All she did was yell at me and I yelled at her first. Let's just get over it.", that is probably what would have happened. But because it had this domestic label on it, it was a lot more difficult for our client to get through the court process and come out the other end. I guess that is a consequence of a very broad definition of "domestic", and that is particularly applicable to Indigenous people. I think just generally of Indigenous people being more disadvantaged on average than the general community, with perhaps higher rates of different types of health problems, problems with literacy, problems of housing, often living in remote areas, and you do have a lot of Aboriginal people of course who drift between different relatives' houses.

Sometimes that is due to lack of options, but sometimes that is just a very legitimate housing arrangement. We often see indigenous kids fall foul of bail conditions when they move between aunties, mums and nans and whatever. So I think if you have apprehended violence orders and you have got quite inflexible conditions, like you are not allowed to go to a certain place or you are not allowed to contact a certain person, an Indigenous person's ability to stay away from other people in their community is probably less. I think it is harder for them.

The Hon. GREG DONNELLY: Bearing in mind the extent of your involvement in this area over a period of time, I am wondering, in terms of programs that you have observed, that helped to prevent or mitigate recidivism with respect to domestic violence matters involving young people, would you care to comment about what you have seen? I know this is a very general and broad question, but any information about things that you have observed that seemed to work well or not work well would assist. Do you have any comments?

Ms SANDERS: Unfortunately, I probably cannot really comment because, sadly, there has not really been much. I think it has taken quite a few years in this State for us—when I say "us" I mean the courts or the Legislature or whatever—to embrace perpetrator programs. I know that on that fort of traditional domestic violence model, where you have the perpetrator who uses violence as a tool, et cetera, or as an instrument of control—perpetrator programs are sometimes thought to be inappropriate because this person knows very well what he is doing wrong, and he does not need a program to tell him that or to tell him to mend his ways. But I think increasingly the research shows that there are many different types of domestic violence, even within an intimate partner setting, and a lot of violence is situational.

The willingness to embrace perpetrator programs has been of relatively recent origin. I know that there is a pilot perpetrator program being run for adults within Corrective Services and that the results of that have been quite encouraging. With young people, I am aware of some programs that have been run in schools. I have read stuff about programs being run in schools in Victoria. To be honest, I am not really aware of what is being done in New South Wales. I know that I have worked with, I guess, quite a few young people in the context of a criminal charge where they have been charged or pleaded guilty to some sort of personal violence offence. They often go off to anger management courses.

If those courses are well run—mostly they are based on a cognitive behaviour therapy model—and if they are properly attended, I think they can be of some benefit. There are anger management and managing emotions types of courses. I think the emphasis now seems to be on trying to teach people at an early stage and while they are at school about respectful relationships. I think there are a few of those sorts of courses that are starting to be run. I know there is a Commonwealth Government website called The Line, which is about drawing the line between what is appropriate and inappropriate in a relationship. I guess with our young people that we see at the Shopfront, sadly, because we focus on the homeless young people, by the time they come to us they are often very much disengaged from school and often of course disengaged from the family as well. For intervention at that point, I do not really know of many particular programs.

The Hon. GREG DONNELLY: Thank you for your comments.

Ms SANDERS: That is okay. I am sorry it was not useful.

The Hon. GREG DONNELLY: No, I appreciate that.

The Hon. CATE FAEHRMANN: You said in your opening statement about potential for a limited defence of consent. We might get to that in questions. Do you want to expand on how you think that would work in a limited way that you have mentioned?

Ms SANDERS: I acknowledge that if somebody is alleged to have breached what we call the statutory orders and the mandatory orders not to assault, molest, harass and intimidate, I do not think you can consent to being intimidated but consent can be a defence to an assault in limited circumstances. I do not think a defence of consent would really work if the breach was alleged to be of one of those orders. If it was breach of a non-approach or non-contact condition I strongly believe there is room for a defence of consent in one of those cases, the classic situation being the example that has already been given. This is really common; it is surprisingly common.

The Hon. CATHERINE CUSACK: Just to clarify, that is when mum invites the kid home again.

Ms SANDERS: When mum invites the kid back. We are often dealing with people who are socially and economically disadvantaged. They are not always sophisticated users of the court system. They may have been to court before but it does not necessarily mean they know how to make an application to revoke the order. They do not necessarily understand what needs to be done. As a matter of logic and common sense, most people in the community would think, "If this apprehended violence order was taken out for the protection of my mum or dad because she called the police on me once and she is now saying it is fine for me to come home, what is stopping me?" I think a lot of people—not just kids but parents as well—have real trouble getting their head

around the idea that it is not okay, that you have to go back to court and get the orders revoked. It is not always easy. For example, the legislation says that if any one of the protected persons is a child under 16 only a police officer can make the application to revoke.

So even if the primary applicant is an adult—say, for example, a young woman, Melissa, has a few problems at home and goes off at her parents, dad calls the police and says, "You're not welcome at home anymore", and an AVO is taken out that says she is not to come to the family home. Melissa has two younger siblings aged 14 and 15. A few months later Melissa and dad start talking to each other and things cool down. Melissa has never had a problem with her siblings; she has never assaulted them but they have been included in the order. If dad wants Melissa home he cannot go to the court and apply to have the order revoked. A police officer has to make the application because there are two younger siblings on the order. Hopefully in that situation dad would be able to ring the local domestic violence liaison officer [DVLO] at the police station who will say, "Sure, we'll remove it for you." But the DVLO could be busy or maybe they do not like Melissa because she told the police to get f***ed out on the street a few weeks beforehand. I can see the logic behind relying on the police to be the gatekeepers and that perhaps a child under 16 should not be able to apply to have an AVO revoked when they are the protected person. There are all sorts of difficulties. I have answered your question in a long-winded way but, coming back to the point, there is a very real problem where people consent to—and more than that are inviting—a breach.

The Hon. CATE FAEHRMANN: How long can it take to get the AVO revoked if that is the wish of the family or the victim?

Ms SANDERS: It ought not to take very long. I think you could go to the court and get the application listed within a couple of weeks. But say you have a young person who has been excluded from the family home and has been staying somewhere temporarily and then finds themselves homeless. Mum or dad says, "It's alright, you can come home again." As far as I know they cannot go and make an emergency application to get the AVO varied or revoked. It is not that quick and it is not that easy.

I had a perhaps more unusual situation where one of my clients was subject to an interstate order—a Victorian intervention order—which had been registered in New South Wales. That said basically that he was not allowed to contact his girlfriend even though his girlfriend did not want the order and did not apply for it. She was constantly putting herself in his path. She was 16 and he was a bit older. He was trying to stay away until he had managed to get the AVO sorted out. It ended up taking months to get this order varied or revoked. That was partly because the magistrate at that particular court was a real stickler for procedure and it was difficult for us to serve the girlfriend because she was nowhere to be found in terms of an address for service. It can be enormously difficult, and this was with legal representation.

The Hon. CATHERINE CUSACK: Did that have to be varied in Victoria?

Ms SANDERS: No, if it is made in Victoria and registered in New South Wales you can apply to the New South Wales court that registered it either to revoke the registration or vary the extent to which it applies in New South Wales.

The Hon. CATHERINE CUSACK: Does that impact on the Victorian order?

Ms SANDERS: No, the Victorian order is still valid in Victoria but the New South Wales court can either revoke the registration in New South Wales or modify the extent to which it applies.

The Hon. CATHERINE CUSACK: They can be together and have dinner together in New South Wales but not in Victoria.

Ms SANDERS: Not in Victoria, which also is a stupid situation. That seems a bit crazy and anomalous and there probably is a need for a more integrated national system as there is with family law. The point I was trying to illustrate is that it is not always a quick and easy process to have orders revoked or varied.

The Hon. CATE FAEHRMANN: In your submission you express concern that apprehended domestic violence orders are being used in a way that criminalises young people for what is essentially normal adolescent behaviour. Can you expand on that?

Ms SANDERS: Either normal adolescent behaviour or behaviour that would be better dealt with in other ways. There are a number of examples. We had one come in the other day, a new instruction from a young person who is 17 and living in what seems to be a dysfunctional household where dad is quite violent towards him and controlling. Dad was at him about how much time he was spending on the computer and a whole range of things. I think the boy went off at his father and told him to get f***ed—sorry, I have already used the word and I do not know whether you remove that from the transcript but it is the language that young people use, regrettably. Dad called the police. I do not think dad was physically injured and it does not seem that he really felt threatened in any way, but he called the police and the police have taken out an AVO application against the young person. Given that he is under 18 and that he is going to the Children's Court, hopefully common sense will prevail and something will be worked out.

That would seem to me to be normal adolescent behaviour if your dad challenges you about the time you are spending on the computer and you have a few strong words with him. In what household does that not happen? If my Mum had called the police every time I had a tantrum we would have been there a lot. I think that is normal adolescent acting out. Also, when kids are lashing out against violent or abusive behaviour from their parents—we see that a lot—it is the parents who very much have the power in the relationship. We hear of situations where there is a mother and an adolescent boy who is suddenly eating his way through the entire contents of the fridge every day and who is six foot four and built like a front row forward and who really does intimidate his mum. I think there are some situations like that. Very often we see kids who are not in that situation, who are not intimidating their parents and are just lashing out against violence, and parents who often have been advised to take out AVOs against their kids as a behaviour management tool. Certainly, in out-of-home care in those group homes where you have kids who are in the care of Community Services and are placed in a group home run by one of those agencies like Life Without Barriers, some of those agencies seem to be really struggling with appropriate behaviour management policies.

So you have young people, often who have intellectual disabilities or who come from very dysfunctional violent family backgrounds and may have emerging mental health issues. It is predictable that their behaviour is going to be difficult. We have heard of instances—I think Legal Aid probably has a number of case studies of this through its children's legal services—where a kid may get really upset and perhaps punch the wardrobe. The wardrobe does not belong to them; obviously it belongs to the organisation that provides the accommodation. Maybe they punch a hole in that wardrobe or they pick up a cup and they break it or they throw a pillow at another young person. In many of these cases the workers are on the phone to the police. That is where you kind of have this blurry line between OH and S and proper behaviour management policies. I think that needs to be better negotiated.

The Hon. CATHERINE CUSACK: In cases where the violence is more serious, the children's system allows more latitude for rehabilitation in order to save the young person and their family from a lifetime of violent behaviour. That opportunity is really important and is the whole basis for having that system in place. However, it sounds like there really are no appropriate programs or studies simply because, as you touched on earlier, perpetrators are not popular people in the system.

Ms SANDERS: Juvenile Justice has a violent offender program, as it does a sex offender program. For the really serious violent offenders it has these programs that involve intensive counselling over quite a long period, usually as a condition of a probation order or parole or something like that.

The Hon. CATHERINE CUSACK: Can I suggest to you that they need to be convicted to be admitted into those programs?

Ms SANDERS: Yes, correct.

The Hon. CATHERINE CUSACK: I guess I am talking about early intervention?

Ms SANDERS: Yes. Not that I am aware of. I guess you have to be careful not to be criminalising and bringing in kids who are just having teenage tantrums. You also have to be careful to try to unravel or understand the family dynamics. If it is a kid who simply is just defending themselves against violence from the parents—

The Hon. CATHERINE CUSACK: I completely agree. The sense we are getting is that some of these orders are just not working appropriately for juveniles. Where we have people with problems, and the problems usually are identified not by their parents because they might be living with their grandparents—often

I see kids in court with a grandparent accompanying them—it seems as though they approach people for help but nothing is available unless charges are laid and they are convicted. Then the resources flow freely. Surely, what we are trying to do is nip the problem in the bud before it gets to that serious stage. There just does not seem to be an intervention.

Ms SANDERS: I guess there probably are interventions.

The Hon. CATHERINE CUSACK: There are not.

Ms SANDERS: There probably are not. I was trying to think. For some young people who have experienced mental health issues, for example, there are perhaps programs to address mental health issues. There are programs to address substance abuse issues, but the really intensive programs and those that perhaps are the best funded and the easiest to get into probably are the ones attached to criminal justice. It is a real problem. In the 18 years that I have been working in this job I have always felt that, ironically, a young person is much better off having a Juvenile Justice officer than a caseworker from Department of Community Services because it seems that Juvenile Justice actually has and uses resources to help adolescents in a way that Community Services does not seem able to do, which is totally the wrong way round.

The Hon. CATHERINE CUSACK: Because they require a court order?

Ms SANDERS: Yes.

CHAIR: In the example you gave earlier with Melissa and her father, what support services are available to facilitate that reconciliation or counselling between families or anyone?

Ms SANDERS: The Reconnect Project is a really good program.

CHAIR: We heard about that today.

Ms SANDERS: The Reconnect Project is available.

CHAIR: But it is only in Parramatta and the area serviced by the Parramatta Children's Court.

Ms SANDERS: There is an inner city Reconnect Project. It is run by Mission Australia. It is based in Roslyn Street, Kings Cross. There are Reconnect Projects all over the place. I think they are Commonwealth funded and run by different agencies, depending on which agency happens to get the contract for a particular area. There are a number of Reconnect programs. In terms of helping young people, firstly, to try to stop family breakdown, they do really great work but they work also with young people who are disengaged from their families to try to bring about reconciliation. They do great work and, of course, that is not conditional on any kind of court proceedings, orders et cetera. They are completely voluntary services and they are quite effective. But that is in a situation where the violence or the alleged violence is coming from family dysfunction, which lends itself perhaps to mediation. If you have a young person who is exhibiting really serious violent behaviours, which cannot simply be explained away by family dynamics, then there is probably not an awful lot unless the person gets into the system. We talk about this all the time when it comes to young people, crime and early intervention. There is always that real dilemma: to what extent can we impose coercive sanctions on young people who actually have not offended? It is a hard one.

The Hon. CATHERINE CUSACK: Your examples refer to young women. Is your service seeing a large number of young women?

Ms SANDERS: Yes, quite a lot.

The Hon. CATHERINE CUSACK: The evidence we are receiving and the feeling we are getting is that violence is increasing amongst young women.

Ms SANDERS: Yes. I do not know whether the actual violence is increasing or whether perhaps there is more of an increased propensity for police to charge young women because now, particularly when it comes to domestic violence, there is a zero discretion policy. Most of the young women we work with I would be hard pressed to think of one who has not been a victim of sexual assault and that impacts them in so many ways, including leading to substance abuse.

The Hon. CATHERINE CUSACK: I apologise for interrupting, but that takes me back to where I was before in that when they were a victim there was an opportunity to support and clearly if they have turned into perpetrators that opportunity has been missed?

Ms SANDERS: I do not know. I guess recovery from something as traumatic as child sexual assault is probably a lifelong thing. But I agree. Most of our clients are victims of far more serious crimes than they ever end up perpetrating. While there are support services for victims of crime when it comes to reporting crime to the police and giving evidence at court, there is the victims compensation scheme and there is counselling for victims of crime, but that is not necessarily always geared towards young children.

The Hon. CATHERINE CUSACK: In your experience is there consistency in the approach taken by magistrates and do you think their training is adequate?

Ms SANDERS: I would not speak so much for the training. I do not think there is real consistency. We have already heard about the differences in approach between the Children's Court and the local courts. To some extent that is warranted. The Children's Court should be very protective. But there is more of a role for magistrates in the local court to provide better scrutiny over the orders they are making and whether they are really workable and really warranted. Just as with everything, you have magistrates with differing views. Some might think, "Oh, come on, get over it. This is just stupid. You're two people who just need to grow up a bit" and other magistrates might think, "No, this behaviour is not acceptable. You shouldn't be talking to your girlfriend" or your mother or whatever "like that." Views of magistrates differ as to what kind of behaviour warrants taking out an apprehended violence order. I think some magistrates are more aware—this is a matter perhaps of their backgrounds and their exposure—and are more cognisant of how difficult people's lives really are and that it is not an easy matter to just go and get an order changed; that people do not necessarily understand everything that is explained to them and they might not necessarily have control over their lives.

The Hon. CATHERINE CUSACK: Are the differences an issue or is it just part and parcel of having a system as long as the magistrate does a reasonable job?

Ms SANDERS: I think it is part and parcel of that. In the criminal justice arena we often get calls for mandatory sentencing, grid sentencing guidelines, et cetera. I think it is really important that our judicial officers are all human, just like our parliamentarians, and you all bring different views to the table and, hopefully, a diversity of views makes for a better system. I think we have an appeals process, of course, where you have magistrates who are real outlaws who make really outrageous decisions, or decisions by which somebody is really aggrieved. We do have an appeals system. I think part of it is just that those on the bench are human. I do think training is important. In relation to mental health and intellectual disability over the past 10 years we have seen a vast improvement in training and in the knowledge and understanding of Local Court magistrates. I have really noticed it. It has improved out of all sight. However, we still have our differences. You have some who are willing to deal with people quite readily under the Mental Health (Forensic Provisions) Act and you have others who would do that rarely and who still do not quite accept the extent to which a person's mental illness affects their behaviour. I think, yes, judicial education can achieve quite a lot but I do not think it is the answer to it.

CHAIR: If the Committee has further questions on notice the secretariat will liaise with you to facilitate responses to those questions within 21 days. If you think the Committee might benefit from anything else please feel free to submit that as a supplementary submission.

Ms SANDERS: I will. We made a submission to the Statutory Review Committee after this submission and I will forward a copy of that. It contains a few case studies.

(The witnesses withdrew)

ROSSLYN MAYNE, Principal Solicitor, Inner City Legal Centre, and

KATE DUFFY, Solicitor, Inner City Legal Centre, affirmed and examined:

CHAIR: Would you like to make an opening statement?

Ms MAYNE: Yes. I propose to give a brief statement about the Inner City Legal Centre and what we do and Ms Duffy will give a brief statement about the Safe Relationships Project which apparently is one of the things that the Committee sought input on in the questions that were sent to us. The Inner City Legal Centre is a community legal centre which is in Kings Cross. It services disadvantaged people of all types from the Kings Cross and inner city area, plus we service also the northern area of the city. We run a number of services, particularly we run advice services which include advice in most areas of law, but particularly relevant to this Committee, family law and domestic violence issues, and victims compensation issues arising out of domestic violence. That is an advice service and we service about 1,500 advices a year.

We also have a casework service where we currently run about 120 cases at any one time where we choose people most disadvantaged and who are most in need. We tend to prioritise domestic violence, mental illness and extreme social disadvantage. Because we are in Kings Cross we have always had quite a connection with sex workers and we do outreach to sex workers so we get quite a lot of input into domestic violence relating to sex workers. That is an overview of the service. We also obviously provide policy and community legal education in the areas in which we provide assistance.

In addition, we run specifically an advice and casework service for gay, lesbian, bisexual, transgender and intersex [GLBTI] individuals for the whole State and included within that is the Safe Relationships Project which focuses on same sex. Ms Duffy specifically runs that project which is funded by the Law and Justice Foundation Public Purpose Fund.

Ms DUFFY: The Safe Relationships Project is primarily a court assisted scheme for people in same sex relationships or transgender and intersex and living in New South Wales. The aim of the Safe Relationships Project is to assist clients in accessing legal representation and applying for apprehended violence orders as well as providing support, advocacy, referrals and information. The Safe Relationships Project was officially launched on 1 July 2009 and is currently funded until 30 June 2014 by the Public Purpose Fund.

The Hon. HELEN WESTWOOD: I refer to the Safe Relationships Project, an outline of which you have provided. Are people from outside the inner city able to access that project? In my experience there tends to be a community perception that gays and lesbians live only in the inner city. There are so few services particularly out west and in the regions. Do people outside the inner city access your service?

Ms DUFFY: The Inner City Legal Centre does provide a New South Wales statewide service. The Safe Relations Project [SRP] aims to be a statewide legal service. I obviously help people in the inner city of Sydney. I do a lot of work in western Sydney. I have assisted clients as far as Gosford and down in Wollongong. I have done phone advice for clients in Queanbeyan. That is as far north and south as we have got. The SRP is there to assist people who live in Broken Hill and Bourke if they contact the SRP prior to a court date and want help escaping domestic violence. We are here to assist those people and we have that capacity. That capacity is limited for face-to-face support. We do provide telephone support for all people living across New South Wales. Are people actually coming to the service? Not many—it is mostly people from the inner city, but that has to do with the referrals.

The Hon. HELEN WESTWOOD: Did you have anything to add, Ms Mayne?

Ms MAYNE: I would simply say it is a feature of rural and regional Australia that most services are more limited in rural and regional Australia. I think we would say we probably suffer from that. It is not that we have not attempted to do so. We have made contact with people in those areas to get assistance to them and we will provide it if we can.

The Hon. HELEN WESTWOOD: Another area I was interested in is the nature of the relationship for your clients. Is it predominantly for people in intimate relationships or are young people coming out to their families and they are being assaulted, stalked and tracked down as well? Do you have much experience of that?

Ms MAYNE: The answer is both. I run the criminal practice. I can tell you I have defended a child—a young adult just recently a child—who turned 18 who was charged with assault in relation to family members. It arose out of conflict within the family about his sexuality—his coming out as gay. We specifically get circumstances like that where the family dynamic has resulted in violence. In that instance that man was not convicted of anything. Certainly the police were called to a domestic dispute and ended up charging him with an offence. We deal with it in both contexts. I can speak to those contexts because I run the criminal practice at the centre. Ms Duffy can speak to others.

Ms DUFFY: I have had clients where it has been family violence—a gay man with his family obviously having some issues because of his sexuality and there has been violence. There was a transgender man coming out, realising his own gender and having issues with his family because of that. We do assist all types of relationships but primarily the Safe Relationships Project has dealt with violence between partners.

The Hon. HELEN WESTWOOD: Are you finding, for example, service providers—and I am thinking particularly of domestic violence liaison officers [DVLO]—have an understanding of the issues facing young people or people in same-sex relationships where there is violence?

Ms DUFFY: It is a big question. There are 15,000 police officers and of those police officers it is just the general duties officers that are at domestic violence incidents. So they are the first ones on call who are dealing with the dynamic. The domestic violence liaison officers are the ones with whom I interact and go to interagency meetings with. I know who they are. They are good police officers and they have an understanding. I can count on one hand the number of domestic violence liaison officers who I would say have great understanding. There are hundreds in the State who I do not know so I cannot say.

Ms MAYNE: From my practise I think I can say—and this would be a general services experience—consistency of policy and application of policy in the police are often wanting. Police obviously have to have a level of individual officer discretion because that is what they are doing. They are policing and they have to be armed with that and they have to exercise it. They obviously have to have the overriding and overarching policy to which they have to perform. Often we would say that there is not always consistency in that. Obviously there are 15,000 police officers and I would not say it is for want of putting the policies in place. Our submission and our attitude would be that the policies themselves are not lacking but often the individual application can be. We can give you some case examples of that where a woman who was a client of ours rang up the police as a victim of same-sex domestic violence. The police arrested the partner, which is what they were meant to do I suppose. She has mental health issues so she went completely berserk when they arrested the partner. They then focused on her and charged her.

The Hon. CATHERINE CUSACK: The complainant went berserk?

Ms MAYNE: Yes. The complainant ended up in court charged with assault police and resist arrest. We ended up defending her. The original domestic violence issue went by the by. That situation is very difficult for police and I would not necessarily say that they could turn a blind eye to her behaviour, but it shows the complexity of the domestic violence dynamic. For this woman that relationship, even though it had aspects of domestic violence, was probably one of the only things she could rely on in a way. That is the nature of domestic violence. It becomes part of a cycle and to some extent there is an addictive quality to it for some people. People find it very difficult to move out of that dynamic. We would say, and Ms Duffy can give you some other examples, but the application can be varied between individual police.

CHAIR: With time in mind we might get other examples at a later stage.

Ms MAYNE: Yes.

The Hon. GREG DONNELLY: The Committee has been informed through evidence from another hearing that from the State Government point of view, in light of the election result last year and the New South Wales Audit Office report, there is an examination underway, or a review, into the framework in which domestic violence should be handled in New South Wales. We have been equally informed by the same person, representing the Government, that stakeholders in the community who deal with domestic violence are being broadly consulted to express their views and thoughts on the management of domestic violence in New South Wales. Have you heard about this review of government policy and the framework for handling domestic violence in New South Wales?

Ms MAYNE: We submitted to the apprehended domestic violence order inquiry. Are you talking about a broader inquiry than that?

The Hon. GREG DONNELLY: Yes, a broader examination of the issue.

Ms MAYNE: That is not one to which we have been invited.

Ms DUFFY: We could have been. There are so many that we lose track, to be honest.

The Hon. GREG DONNELLY: Perhaps you could take that question on notice?

Ms DUFFY: Yes.

Ms MAYNE: We have done a submission in relation to the apprehended domestic violence orders.

Ms DUFFY: As well as the Australian Law Reform Commission inquiry.

The Hon. GREG DONNELLY: Those are two inquiries that are going on but this inquiry is different again. Do you have a view as to whether there is anything that distinguishes the incidence of domestic violence between same-sex couples as compared to heterosexual couples? If there is such a thing as a typical example—and I know it is a stretch to refer to a typical example—I am not talking about old people or young people in same-sex or heterosexual relationships; I am talking broadly about the comparison between heterosexual and same-sex domestic violence. Are there any distinguishing features in the domestic violence that occurs between each of those two groups? Are they fundamentally the same or do they perhaps overlap?

Ms DUFFY: They overlap. Victims of same-sex domestic violence experience physical and sexual assaults, emotional abuse, financial control and social isolation similar to that experienced in heterosexual relationships. There are forms of abuse that are unique to the gay, lesbian, bisexual, transgender, intersex community such as being outed to family and friends, employers and community groups, using homophobia as a weapon of control, using derogatory language and telling the partner that he or she will not be able to get any help because the police will not believe them because they are gay or because they are freaks et cetera. They are forms of unique abuse that the gay, lesbian, bisexual, transgender, intersex communities can face.

Ms MAYNE: We tend to look at domestic violence as a gendered issue with the majority of perpetrators being male as against female. I call that a stereotype for want of a better word. Of course, that breaks down with same-sex relationships. There is not necessarily any obvious perpetrator according any template that might be used. That changes the dynamic of service providers because unless they are attuned to it they will often look for the more male of a same-sex partnership, be it a butch woman or the more macho gay man and the more feminine partner, be it the effeminate man or the feminine woman. Again, when you are talking about transgender people in the same dynamic it also tends to break down. We have had instances where police have described in a factsheet a transgendered woman being stronger than her partner by virtue of her transgendered status. Effectively, a template that breaks down often creates some level of difficulty for the service providers.

The Hon. CATE FAEHRMANN: I would like to expand on the difficulties encountered in working out who are the victims and who are the aggressors in same-sex relationships. We have heard from some witnesses about the potential benefit of a primary aggressor tool being used by police. Have you heard of primary aggressor tools being used in some jurisdictions and do you think that would benefit or be a hindrance to same-sex violence situations?

Ms DUFFY: I have heard of it, but I do not know it. I will take that question on notice and do some research.

Ms MAYNE: The police have to respond to whatever situation they are called to. We should aim to give them the best training available for them to respond appropriately to that situation. It is obviously difficult in that situation if you are the police person turning up to weigh too much on a knife edge in determining a perpetrator. The policies need to be focused, but they cannot weigh too much on a knife edge. To be effective they will need to deal with a particular circumstance. To some extent if the police find it difficult to ascertain a perpetrator they will do nothing. We need to guard against that as a means of allowing the police not to act.

The Hon. CATE FAEHRMANN: You said, "weigh too much on a knife edge". Do you mean being too prescriptive in terms of the tool?

Ms MAYNE: If it becomes too difficult for police to analyse the situation they will not deal with it and it will be shelved. In the reality of the call to the patrol car on Tuesday night, it will be shelved if it is too complex and too detailed.

The Hon. CATE FAEHRMANN: I refer to police officer training. You have mentioned domestic violence liaison officers, which you said are good in same-sex domestic violence situations. What is the situation with police officers more broadly when encountering domestic violence scenes? How do you think the training of police officers generally on domestic violence stacks up where you work in the inner city? What do you know about the training in terms of same-sex relationship domestic violence for general duty police officers? Is it adequate or do you know whether it occurs?

Ms DUFFY: General duties trainees at Goulburn receive 15 minutes of training in dealing with domestic violence during a four-day training package. They get a lot of information over those four days, so whether it is sinking in is another thing. I have done a domestic violence liaison officer training program on behalf of the Inner City Legal Centre. Again, it was a 15-minute presentation during a two-day course. The participants were receiving a great deal of information and I do not know whether it was sinking in.

Ms MAYNE: In a general context I would say that in our experience it is inconsistent. We have a sense that some commands are much better than others generally in how they will respond and how seriously they will take things. It depends on the culture of the individual command. I cannot speak for the police; I can only speak from our point of view acting for people who come into contact with the police. Obviously we have the most to do with people from the inner city in this context. They have policies in place. When a domestic violence offence is identified, they must deal with it, they must lay charges and they must take out an apprehended violence order in support of that. However, if they do not identify a perpetrator, they do not have to do any of that. They simply say they cannot identify a perpetrator and they go back on patrol. There is an intrinsic problem because police officers must lay those charges.

The Hon. CATE FAEHRMANN: And sometimes both people are arrested because of that difficulty.

Ms MAYNE: Not often. The police are not meant to take out two apprehended violence orders, but we have had occasions when they have. They do not often arrest. The culture of the police is largely partisan in that they are the police, they have a perpetrator and they have an offender. That is the culture. They do not see themselves as a mediating force and that is not their role. That does not happen often in our experience.

CHAIR: Ms Duffy, did you mention that it was the Inner City Legal Centre that actually provides that 15 minutes of training at Goulburn?

Ms DUFFY: Legal Aid and the women's domestic violence court assistance schemes have been done there, but whether they invited the police to do that 15-minute course I am not sure. It is usually tagged along with women's domestic violence courses that they are doing there.

The Hon. HELEN WESTWOOD: If I could pick up on the training issue. Have you ever been asked to provide, or have you received funding to provide training for non-inner city services? I assume that many people in western Sydney and the regions are going to come not to you but to their local legal service or domestic violence support service. Have you ever been asked to provide training for those groups?

Ms DUFFY: In 2010 and 2011 we received funding from the Office for Women for safe relationships awareness projects, and part of that funding was to do forums outside Sydney, as well as to speak at smaller interagency meetings doing presentations. So, as part of that, we did a one-day forum in Newcastle on same-sex domestic violence as well as transgender domestic violence. We also did that in Penrith for one day, as well as in Newcastle. I went to Dubbo, Bathurst and Albury. So with that funding I did go out and speak to service providers, mostly about same-sex domestic violence and the safe relationships projects. All the feedback was: This is great, we want more.

The Hon. HELEN WESTWOOD: Was that one-off funding?

Ms DUFFY: It was one-off funding.

The Hon. HELEN WESTWOOD: Is there any opportunity to receive that funding again?

Ms DUFFY: We would have to apply for it and think up some new ideas.

Ms MAYNE: The nature of funding tends to be that you can get funding much easier for one discrete thing than you can for anything ongoing. That is the nature of being a funded non-government organisation. We are often seeking new funding.

The Hon. HELEN WESTWOOD: One issue brought up by witnesses is that alcohol and drugs is a factor in domestic violence incidents. In your experience is that also a significant factor in violence in the same-sex and transgender communities?

Ms DUFFY: Yes. I have definitely had clients in circumstances where drug and alcohol have been a factor in domestic violence. But I would say that is probably similar in instances of domestic violence in heterosexual relationships.

Ms MAYNE: There are often intersections that tend to get overlooked. Drug use is often connected with some mental illnesses. Mental illness can include a whole range of things, other than someone who is completely psychotic and hears voices. The woman I talked about earlier had significant mental illness, but not in a psychotic sense; she had a personality disorder. You find that all of these features tend to roll up into one big event. The departments tend to find each other. The dynamic in reality can often be unravelling a bowl of spaghetti. It is often not just domestic violence.

The Hon. GREG DONNELLY: On the question of apprehended domestic violence orders, in your submission are you asserting a specific set of changes or considerations to the tool of apprehended domestic violence orders? Do you have a particular view that we have them as they are at the moment, but you think they could be crafted in a different way, and this is what it should be?

Ms MAYNE: The point we make in the submission is that at the moment the apprehended domestic violence order system, and the apprehended violence order system generically, is a constraining system; the magistrate cannot order a specific program, or a specific conciliation, or a specific mediation program. There is power in the Act to put off something for mediation. It can be suggested, but there is no positive regime in the apprehended domestic violence order system and the apprehended violence order system generally. Our submission raised the idea that that might be a useful adjunct to the regime. The apprehended domestic violence order system is what we have—and it is important that we have it—but more positive things could be sought to be done, as opposed to simply restraining someone.

The Hon. GREG DONNELLY: Do you have examples in mind?

Ms MAYNE: As far as I am aware, only one program exists for perpetrators or offenders. That is a program run by Probation and Parole, called the Domestic Abuse Program. It is available both in custody and out of custody. They identify in their paper that of about 12,000 or 13,000 probationers, either in or out of custody, about 20 per cent have domestic violence issues in relation to their casework, and through that program in a year they service about 708 in the community and about 45 in custody. But that is the only program that is available. The point of our suggestion is that, like other social issues, the process regarding drug use, particularly in the Drug Court under the Magistrates Early Referral into Treatment program, is simply a criminalising process, and that is not the whole answer. One needs to look at a whole range of options, and that is one that we thought was available.

CHAIR: Are you thinking of things like anger management, or financial counselling, or assistance with substance abuse, all those things, as part of the order?

Ms MAYNE: That is right. At the moment, magistrates have no power to place anyone on a bond that requires them to do something like that. The social service providers have issues with people having these orders forced on them, because that is contrary to their model. It is an appropriate response from their point of view; they want to have someone who is going to be seeking assistance, rather than ordered into assistance. But the process can be managed, and is managed, in other areas, like drug use, where the process of assessment by the service provider is the trigger; they decide whether someone is assessed as appropriate for the program or not.

CHAIR: Is this suitable if charges are yet to be laid, where someone may be subject to an order for exclusion?

Ms MAYNE: Yes, if the capacity to provide orders was attached to apprehended domestic violence orders or apprehended violence orders. The apprehended violence order system is not a criminal system as such; it is quasi-criminal, but not strictly criminal. Breach of an apprehended violence order is a criminal charge, but an apprehended violence order is not. Obviously, with bonds attached to criminal charges, magistrates have the capacity to do whatever they need to do.

The Hon. CATHERINE CUSACK: In your submission I was getting the opposite impression, that you were suggesting that there need to be more criminal prosecutions associated with ADVOs. You state:

> In our practice we have seen instances of clients who have been granted an ADVO for their protection but criminal prosecution for the crime that triggered the ADVO has not been progressed. In our view, it is important that there are clear policies in place ...

Basically, you want to see policies in place that compel the police to take those criminal proceedings.

Ms MAYNE: It is obviously important that domestic violence be characterised as a crime. That is an important political and social approbation and part of our submission is that that needs to be reinforced. Most of what we deal with in the criminal justice system has social aspects as well as the criminal aspect and the criminal justice system fails if it does not address all those aspects. It leads to recidivism and we are saying that the system needs to address all those aspects. I am saying that a simple criminal response is one response but it is not a whole response.

The Hon. CATE FAEHRMANN: I know that at least one of our witnesses, and perhaps several, said that when it comes to domestic violence mediation is not acceptable. Maybe that is once it goes to the court and it may be in more serious instances of domestic violence. These were some of the more feminist organisations, as you can imagine. What are your views on that? Why do you suggest they would be saying that? I am assuming it is the power relationship and if it was court-imposed mediation—

Ms MAYNE: We were not specifically indicating mediation as such; our submission was more in terms of offender programs or that a useful adjunct would be programs which are developed in order to address behaviours. Obviously, mediation is one program that is available but you would need to have the appropriate case where it is of value or could be of value. In essence, you cannot say there is only one response; that is what I am saying.

The Hon. CATE FAEHRMANN: Could I have Ms Duffy's response to the same question?

Ms DUFFY: I think when it comes to mediation I would agree with those other services that it is deemed inappropriate to have mediation where there has been violence and abuse in a relationship. So when there is definitely clear domestic violence I would say it would definitely be inappropriate to have mediation but other things, such as drug and alcohol counselling, may be appropriate.

The Hon. CATHERINE CUSACK: I put it to you that there is a tension in your submission that once the matter has gone to the police there should be softer options available or the criminal option should be taken. I am saying this only because I think there is this tension in the community that people are of two minds. On the one hand people are saying it is a crime and it needs to be prosecuted as a crime—which is what the submission appears to state—but on the other hand there is the reality that most of these people will end up with the abuser, back in the same house again. Maybe this is an opportunity to try to make their lives bearable which would require a different approach. In reality there are many instances of violence before people split up and leave. Most of your clients would be going back home again, one way or another, until they have reached a particular point.

Ms DUFFY: The reality is that violence from a stranger on the street is still taken more seriously or acted upon more vigorously than violence in the home from an interim partner. I think that is just the dynamics of domestic violence. There are emotions involved. Maybe the hard and soft approach is that we have police who may or may not be taking a hard approach, but we have clients in our office who are saying, "I love him."

The Hon. CATHERINE CUSACK: The victim's needs are more complicated in a domestic situation.

Ms DUFFY: Indeed, and they are the ones who may be saying, "If he or she went to anger management counselling, maybe it will work." And as a service provider we cannot tell the client what they should do; we just have to support them through their decisions and hope they realise how to make their way—whether that is out of their relationship—to a safe place.

The Hon. CATHERINE CUSACK: The problem is we seem to be developing mandated responses for the police and if that is the policy the police will implement it. We seem to be developing mandated responses in the courts as to the way they manage these things because we are saying it is a crime and it has to be treated as a crime. Yet now we are hearing about all the perverse outcomes for people, in particular, juveniles because the responses are mandated.

Ms MAYNE: You could not mandate a response for a court in a sense because the court has to make that judicial judgement. That is what they are there for.

The Hon. CATHERINE CUSACK: The evidence is that the order will be made unless proven otherwise.

Ms MAYNE: From my point of view, ultimately these things end up with the court and the court has to make the decision. That is the system we have in the criminal justice system. And the court needs to have the law to guide it and it needs to have options in its arsenal to make those decisions and to provide the best outcome for the community. That is the way we normally view the court process. Arguments about mandatory sentencing aside, the system of governance we have tends to leave that decision to the judicial arm of government. That is a principle that I do not think should be given away.

(The witnesses withdrew)

(The Committee adjourned at 4.46 p.m.)