

# briefing paper



## NSW Parliamentary Research Service

### **Domestic and Family Violence**

**Briefing Paper No 5/2015**

by Christopher Angus

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# Domestic and Family Violence

**by**

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## CONTENTS

<b>1. INTRODUCTION</b> .....	<b>1</b>
<b>2. WHAT IS DOMESTIC AND FAMILY VIOLENCE?</b> .....	<b>2</b>
2.1 Domestic violence .....	2
2.2 Family violence .....	3
2.3 Moves toward a uniform definition.....	3
<b>3. PREVALENCE</b> .....	<b>5</b>
3.1 Who suffers domestic and family violence? .....	5
3.2 An inherently gendered crime .....	6
3.2.1 Female victims of domestic and family violence .....	7
3.2.2 Male victims of domestic and family violence .....	8
3.2.3 The need for both gendered and universal responses.....	9
<b>4. FACTORS AND IMPACTS</b> .....	<b>10</b>
4.1 Characteristics associated with domestic and family violence .....	10
4.2 Community attitudes .....	11
4.3 The impact of domestic and family violence.....	13
4.3.1 Health impacts.....	13
4.3.2 Homicide.....	13
4.3.3 Impact on children .....	14
4.3.4 Homelessness .....	14
4.3.5 Economic costs.....	14
<b>5. NSW LEGISLATION</b> .....	<b>15</b>
5.1 ADVOs in NSW .....	16
5.2 <i>Crimes (Domestic and Personal Violence) Act 2007</i> .....	17
5.2.1 Definitions and offences under the Act .....	18
5.2.2 Applying for an ADVO.....	19
5.2.3 ADVO conditions and penalties for breaches .....	19
5.2.4 A statutory definition of domestic and family violence for NSW? ..	20
<b>6. NSW DOMESTIC AND FAMILY VIOLENCE POLICIES</b> .....	<b>21</b>
6.1 Recent reviews into domestic and family violence policy .....	21
6.2 The NSW Domestic and Family Violence Framework.....	22
<b>7. CURRENT ISSUES IN NSW</b> .....	<b>25</b>
7.1 Breaches of ADVOs.....	25
7.1.1 Rising numbers of ADVO breaches.....	25

7.1.2 Attempts to reduce breaches .....	26
7.1.3 Are courts imposing overly lenient penalties for breaches? .....	27
7.2 Domestic violence shelter funding .....	29
7.3 Family Violence Courts .....	31
7.3.1 Definition .....	31
7.3.2 Existing FVCs in Australia .....	31
7.3.3 Expansion of FVCs .....	33
7.4 Perpetrator behaviour programs .....	34
7.4.1 Perpetrator programs in NSW and Australia .....	35
7.4.2 Other research on perpetrator programs .....	36
<b>8. COMMONWEALTH DEVELOPMENTS.....</b>	<b>37</b>
8.1 National Plan to Reduce Violence against Women and their Children	38
8.2 Senate Inquiry into domestic violence in Australia .....	41
<b>9. DEVELOPMENTS IN OTHER STATES .....</b>	<b>42</b>
9.1 Queensland Special Taskforce on Domestic and Family Violence .....	42
9.2 Victorian Royal Commission into Family Violence .....	44
<b>10. CONCLUSION .....</b>	<b>45</b>

## EXECUTIVE SUMMARY

Domestic and family violence is an all too common crime in NSW, as it is in Australia generally. Owing to lack of reporting by victims its true prevalence is unknown, but existing statistics show that a significant proportion of Australians, primarily but not exclusively women, suffer violence at the hands of a partner.

This briefing paper is an update to a 2007 NSW Parliamentary Research Service publication, [\*Domestic Violence in NSW\*](#).

### What is domestic and family violence?

“Domestic” and “family” violence are often treated as distinct yet related concepts: domestic violence is defined to mean violence against an intimate partner; family violence is defined to encompass broader relationships such as child or elder abuse. [2.1-2.2]

The NSW Government has adopted the term domestic and family violence which is defined to mean “any relationship in an intimate or family relationship, which is violent, threatening, coercive or controlling, causing a person to live in fear.” [2.3]

### The prevalence of domestic and family violence

**Who suffers from domestic and family violence?:** It is difficult to determine exactly how many Australians are affected by domestic and family violence, as studies have shown that as few as 14% of victims report incidents to police. Some individuals who do not report violence fear revenge or are embarrassed about their trauma, but a significant minority simply do not believe that the authorities will be able to understand their circumstances and provide support.

Official statistics show that nearly 1.93 million Australians over the age of 15 years have experienced violence at the hands of a current or previous partner. In NSW, the rate of domestic violence related assaults rose by 1.9% between 2009 and 2013. Although indicative of a stable trend, these statistics are in contrast to most other crimes, which declined in prevalence during this period. [3.1]

**A gendered crime:** Domestic and family violence is an inherently gendered crime, with men comprising the majority of offenders and women the majority of victims. Men are more likely to be victims of violence that is predominantly perpetrated by strangers. In contrast, women are more likely to have experienced violence by a person they know, such as intimate partners.

Evidence shows that, in 2010, 69.2% of domestic assault victims were female and 30.8% were male, while nearly half of all domestic assaults involved a female victim and a male offender in a partner relationship. A 2015 NSW Domestic Violence Death Review Team review of domestic violence related homicides in NSW found that between 2000 and 2010 76% of victims killed in domestic violence related incidents were women.

Nevertheless, women can be abusers and men victims: the NSW Auditor General has reported that 34% of broader domestic and family violence incidents had male victims, and 30% had female perpetrators. The definition of domestic and family violence adopted by the NSW Government is inclusive of men and women. [3.2]

### **Factor causing and impacts of domestic and family violence**

**Characteristics:** The majority of NSW domestic assaults occur on residential premises between 6-9pm on weekends, with alcohol and substance abuse by offenders a factor in many incidents. Regional NSW has a higher proportion of domestic assaults than metropolitan regions. While there are a number of population groups vulnerable to domestic violence, Indigenous Australians are overrepresented as both victims and perpetrators of domestic and family violence. [4.1]

**Community attitudes:** Although the majority of Australians have good knowledge of the existence of violence against women and do not endorse most attitudes supportive of this violence, there are a number of troubling misconceptions about this type of violence. More than a fifth of respondents to the 2013 National Community Attitudes Survey (NCAS) agreed that partner violence can be excused if the person is genuinely regretful afterward or temporarily lost control; men, younger people and people from non-English speaking countries had the poorest understanding of what constitutes violence against women.

Reluctance to report violence was a factor in all of the 12 intimate partner homicide cases that occurred in NSW in 2009-10, with many bystanders unwilling to become involved or uncertain about what to do to help the victim. Nevertheless, the NCAS found that most Australians are willing, at least in principle, to help victims in need. [4.2]

**Impacts:** Studies have shown that domestic and family violence contributes to death, ill health and disability amongst women aged under 45 more than any other factor.

Domestic and family violence is the leading cause of homicide in Australia, with 39% of all Australian homicide incidents between 2010-11 and 2011-12 occurring in domestic relationships. Additionally, of domestic homicides during this period, 58% were committed by an intimate partner.

Children are significantly affected by domestic and family violence, whether or not this violence is directed at them, and it is estimated that over a million Australian children are affected in some way by this violence. Homelessness is another consequence of domestic and family violence, with increasing numbers of women and their children seeking assistance after fleeing abuse.

All levels of Australian Governments are impacted by domestic and family violence in the form of economic loss. Without action, violence against women and children could cost the Australian economy an estimated \$15.6 billion by the end of the decade. For NSW, it was estimated that in 2011 the NSW economy lost \$4.5 billion as a result of domestic and family violence. [4.3]

## **NSW legislation**

The key legislation discussed in this paper is the *Crimes (Domestic and Personal Violence) Act 2007* (2007 Act), which regulates the use of apprehended domestic violence orders (ADVOs).

The 2007 Act lists offences that can trigger the making of an ADVO, as well as the offence of breaching an ADVO. While ADVOs are intended to be made by individuals fearing for their safety, police can also apply for ADVOs for the protection of victims. More serious offences, such as stalking, intimidation or a domestic violence offence, require the court to order an ADVO regardless of whether or not an application was previously made. [5]

## **NSW domestic and family violence policies**

A 2011 report by the NSW Auditor General, and the 2012 NSW Legislative Council Standing Committee on Social Issues *Inquiry into domestic violence trends*, both criticised existing policy relating to domestic and family violence. Both reports found that the existing policy framework “works in silos, is patchy, lacks leadership, and outcomes for victims are constrained by system requirements”. Recommended was improved coordination between agencies, a common and inclusive definition of domestic and family violence, and the use of evidence based approaches when responding to this violence. [6.1]

In 2014 the NSW Government released *It Stops Here: Standing together to end domestic and family violence in NSW*, which addressed many of the concerns raised by the NSW Auditor General and the 2012 Legislative Council Inquiry. It is intended to allow government agencies to work closely with a broad range of service providers, and to assist victims through an integrated, whole-of-community approach. [6.2]

## **Current issues in NSW**

There are a number of issues relating to domestic and family violence in NSW that continue to arouse public, political and media concern. These include: [7]

- Concern over number of breaches of ADVOs, the effectiveness of efforts to reduce breaches, and the alleged lenient treatment of offenders at sentencing;
- Changes to NSW Government funding for homelessness services, which, whilst aiming to better protect the most vulnerable members of the community, resulted in specialist domestic violence shelters losing funding;
- The implementation of family violence courts in NSW and other States and Territories; and
- Development and operation of NSW perpetrator behaviour programs, and uncertainty over their effectiveness.

## **Commonwealth developments**

The Commonwealth Government is currently implementing the second of four “Action Plans” that form the *National Plan to Reduce Violence against Women and their Children 2010-2022*. There has been criticism of the slow rate of progress, particularly amongst front line service providers. For its part, the Government has noted the long term nature of the National Plan and its expected positive outcomes. **[8.1]**

In March 2015 the Senate Finance and Public Administration References Committee released the interim report for its inquiry into domestic violence in Australia. It criticised the Commonwealth Government for funding cuts to services supporting victims of domestic violence. The Commonwealth Government has since committed funding to the National Partnership Agreement on Homelessness for an additional two years. **[8.2]**

## **State developments**

**Queensland:** In February 2015 Queensland’s Special Taskforce on Domestic and Family Violence released its report into the State’s domestic and family violence support systems. The Taskforce made 140 recommendations into how the system could be improved, and how future incidents of domestic violence could be prevented. The Queensland Government has since committed to considering all the recommendations made by the Taskforce. **[9.1]**

**Victoria:** As part of an election pledge by Premier Daniel Andrews, the Victorian Government established the Royal Commission into Family Violence in February 2015. The Commission has broad terms of reference and will investigate, amongst other things, strategies, frameworks, policies, programs and services across government and non-government organisations, and systematic responses to domestic and family violence. **[9.2]**

## 1. INTRODUCTION

Domestic and family violence is nothing less than a “profound betrayal of ... love and trust”;<sup>1</sup> it is aptly described as “intimate brutality”.<sup>2</sup>

Nowhere is free of this crime, no country, city or region. In Australia it is present “in every pocket of every neighbourhood”.<sup>3</sup> Tragically, according to Linda Burney, NSW Labor’s Deputy Leader, in the western region of this State the prevalence of domestic and family violence is “past a state of emergency”.<sup>4</sup>

Domestic and family violence is again at the forefront of public debate, not least as a result of the awarding of the 2015 Australian of the Year to Rosie Batty, herself a survivor of such violence.<sup>5</sup> The fact that her 11-year old son Luke was murdered by his father in February 2014,<sup>6</sup> less than a year earlier, makes her powerful and persuasive advocacy all the more remarkable.

Other developments in 2015 include: at the State level, the commencement or completion of key inquiries into domestic and family violence;<sup>7</sup> and, at the Commonwealth level, renewed efforts to create a coordinated national response to this crime, including a national domestic violence order scheme.<sup>8</sup> The convening of a national crisis summit on family violence is also on the agenda.<sup>9</sup>

This briefing paper starts by defining domestic and family violence. It then considers its prevalence and characteristics, afterwards outlining relevant NSW Government strategies. With regard to NSW legislation and policy, this paper highlights a number of issues that have been subject to recent discussion by politicians, academics and the broader community. It also provides a snapshot of recent developments federally and in Queensland and Victoria.

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<sup>1</sup> Legislative Council Standing Committee on Social Issues, *Domestic violence trends and issues in NSW*, Report 46, August 2012, p xvii.

<sup>2</sup> Serpil Senelmis, Elizabeth Kulas, *Intimate brutality: the epidemic of domestic violence*, ABC Radio National, March 2015.

<sup>3</sup> Rosie Batty, *Australian of the Year 2015 acceptance speech*, The Australian, January 2015.

<sup>4</sup> Monica Tan, *Domestic violence in western NSW 'past a state of emergency'*, Linda Burney says, The Guardian, 30 April 2015.

<sup>5</sup> Kaitlan Thals, *Rosie Batty named 2015 Australian of the Year*, The New Daily, 25 January 2015.

<sup>6</sup> Monique Ross, *Father who killed son, Luke Batty, at cricket ground had history of mental illness, says boy's anguished mother*, ABC News, 14 February 2015.

<sup>7</sup> Daniel Andrews, *'Nothing Off Limits in Family Violence Royal Commission'* (Media Release, 19 January 2015); Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*, Vol 1, 28 February 2015.

<sup>8</sup> Council of Australian Governments, *COAG Communiqué*, 39<sup>th</sup> Meeting, 17 April 2015.

<sup>9</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 4 March 2015, 47 (Bill Shorten; Tony Abbott, Prime Minister).

## 2. WHAT IS DOMESTIC AND FAMILY VIOLENCE?

Since coming to the fore of public debate in the 1970s, domestic and family violence has been defined in myriad ways. According to the 2007 NSW Parliamentary Research Service Paper, [Domestic Violence in NSW](#):

Definitions differ in terms of the breadth of the relationship of parties included and forms the violence may take. Some definitions are gender neutral whilst others note that domestic violence commonly involves a male perpetrator and female victim. 'Domestic violence' as opposed to 'family violence' is often used to refer more specifically to violence between adults who are or have been in an intimate relationship.<sup>10</sup>

"Domestic" and "family" violence are often treated as separate, but overlapping, concepts, which has resulted in confusion and other problems in the past. This issue is outlined in greater detail below.

### 2.1 Domestic violence

Domestic violence is generally used to refer to violent, abusive or intimidating behaviour within an intimate relationship; it includes physical, sexual, psychological, emotional, social, economic and verbal abuse, harassment and stalking.<sup>11</sup>

In its 2011 *National Plan to Reduce Violence Against Women and Their Children 2010-2022*, the Council of Australian Governments (COAG) commented that a key element of domestic violence is the perpetrator's desire for control of or domination over the victim:

Domestic violence refers to acts of violence that occur between people who have, or have had, an intimate relationship. While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening.<sup>12</sup>

COAG further outlined types of physical, sexual, emotional and psychological abuse that constitute domestic violence:

Physical violence can include slaps, shoves, hits, punches, pushes, being thrown down stairs or across the room, kicking, twisting of arms, choking, and being burnt or stabbed.

Sexual assault or sexual violence can include rape, sexual assault with implements, being forced to watch or engage in pornography, enforced prostitution, and being made to have sex with friends of the perpetrator.

Psychological and emotional abuse can include a range of controlling

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<sup>10</sup> Talina Drabsch, [Domestic Violence in NSW](#), Briefing Paper No 7/2007, Parliamentary Research Service, p 3.

<sup>11</sup> NSW Auditor General, [Responding to domestic and family violence](#), November 2011, p 8.

<sup>12</sup> Council of Australian Governments, [National Plan to Reduce Violence Against Women and Their Children 2010-2022](#), February 2011, p 2.

behaviours such as control of finances, isolation from family and friends, continual humiliation, threats against children or being threatened with injury or death.<sup>13</sup>

## 2.2 Family violence

Compared to domestic violence, family violence is defined as occurring across a broader range of relationships. It has been described by the Family Court of Australia as including a wide range of controlling and abusive behaviours occurring within a variety of close interpersonal relationships, including but not limited to:<sup>14</sup>

- Spouse or partner abuse;
- Child abuse or neglect;
- Parental abuse; and
- Sibling abuse.

Additionally, COAG has noted that family violence is a widely used term to describe abuse in Aboriginal and Torres Strait Islander (ATSI) communities, owing to the range of marital and kinship relationships in which violence can occur.<sup>15</sup>

## 2.3 Moves toward a uniform definition

The Australian and NSW Law Reform Commissions (2010 Joint Law Reform Commission Report) stated in their 2010 report, *Family Violence – A National Legal Response*, that there is no single nationally or internationally agreed definition of family violence.<sup>16</sup> For its part, the report included violence between intimate partners under the umbrella term “family violence”.<sup>17</sup>

In its 2012 *Inquiry into domestic violence trends and issues in NSW* (2012 Legislative Council Inquiry), the NSW Legislative Council Standing Committee on Social Issues took the opposite approach, using the term “domestic violence” to describe both intimate partner violence and violence between other family members.<sup>18</sup>

Further, to reflect the changing understanding of this crime, the legal definition of domestic and family violence has evolved over time, notably with the addition of abusive behaviours into legislation. For example, in 2012 the Commonwealth Government amended the *Family Law Act 1975* (Cth) to broaden the definition of violence to include stalking, repeated derogatory taunts, intentionally

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<sup>13</sup> Ibid.

<sup>14</sup> Family Court of Australia, [Family Violence Strategy](#), 2004-05, pp 3-4.

<sup>15</sup> COAG, note 12.

<sup>16</sup> Australian Law Reform Commission and NSW Law Reform Commission, [Family Violence – A National Legal Response](#), Final Report, Vol 1, October 2010, p 188.

<sup>17</sup> Ibid p 246.

<sup>18</sup> NSW Legislative Council, note 1, p 7.

destroying or damaging property, and preventing contact with family and friends.<sup>19</sup>

Evolving and interchangeable definitions of domestic and/or family violence can lead to confusion. The approach of lawyers, researchers and service providers may not always align with community understanding.<sup>20</sup> Professional approaches may also differ. For example, the Australian Bureau of Statistics (ABS) notes that support services often take a holistic approach to domestic and family violence, while legal definitions are more prescriptive and viewed in the context of criminal and civil offences.<sup>21</sup>

In February 2014 the NSW Government acknowledged in its Domestic and Family Violence Framework for Reform, *It Stops Here* (DFV Framework), that it was necessary to adopt a uniform definition that was comprehensive as well as clear and simple. Adopted in this paper is the Government’s revised definition of domestic and family violence as “any relationship in an intimate or family relationship, which is violent, threatening, coercive or controlling, causing a person to live in fear.”<sup>22</sup>

An “intimate relationship” includes any intimate partnership regardless of sexual relationship, while a “family relationship” is broadly extended to include relationships such as kinship ties in ATSI communities and people living together in residential care facilities. Table 1 lists a range of behaviours considered to constitute domestic and family violence under the NSW Government’s DFV Framework:

physical violence including physical assault or abuse	damage to property irrespective of whether the victim owns the property
sexual assault and other sexually abusive or coercive behaviour	emotional or psychological abuse including verbal abuse and threats of violence
economic abuse (for example, denying a person reasonable financial autonomy or financial support	causing injury or death to an animal irrespective of whether the victim owns the animal
stalking (for example, harassment, intimidation or coercion of the other person’s family in order to cause fear or ongoing harassment, including through the use of electronic communication or social media)	kidnapping or deprivation of liberty, as well as unreasonably preventing the other person from making or keeping connections with her or his family or kin, friends, faith or culture

<sup>19</sup> Ibid.

<sup>20</sup> Australian Law Reform Commission and NSW Law Reform Commission, note 16.

<sup>21</sup> Australian Bureau of Statistics, *Defining the Data Challenge for Family, Domestic and Sexual Violence*, 4529.0, February 2013.

<sup>22</sup> NSW Government, *It stops here: Standing together to end domestic and family violence in NSW*, February 2014, p 7.

<sup>23</sup> Ibid.

### 3. PREVALENCE

#### 3.1 Who suffers domestic and family violence?

Owing to underreporting, it is difficult to determine exactly how many Australians are affected by domestic and family violence. A 2007 study estimated that, Australia-wide, between 14% and 36% of victims reported their most recent incident to police.<sup>24</sup> Referring to ABS statistics, the Special Taskforce on Domestic and Family Violence in Queensland (the Queensland Taskforce) made the following comments regarding reporting partner violence:

An estimated 80% of women and 95% of men never contact the police about violence by their current partner. Of those who experienced violence from their current partner, 54% of men and 26% of women had never told anyone.<sup>25</sup>

In NSW, a 2013 survey by the NSW Bureau of Crime Statistics and Research (BOCSAR) of victims attending domestic violence services found that only 51.8% reported incidents to police.<sup>26</sup> As to why victims chose not to inform the police, 17.1% of respondents stated that the police lacked understanding or support; 13.9% feared revenge or further violence; and 11.8% were embarrassed or ashamed to report the violence.<sup>27</sup>

Nevertheless, reported data indicates that domestic and family violence is common across Australia.

The Australian Bureau of Statistics' (ABS) 2012 Personal Safety Survey collected information about the nature and extent of "violence" experienced by Australian men and women. "Violence" was defined as "any incident involving the occurrence, attempt or threat of either physical or sexual assault experienced by a person since the age of 15".<sup>28</sup>

According to the ABS, nearly 1.93 million Australians (11.2% of the population) over the age of 15 years have experienced violence at the hands of a current or previous partner.<sup>29</sup> The ABS further reported that 1.79 million Australians (10.4% of the population) experienced physical assault or threats, and 459,100 Australians (2.7%) experienced sexual violence, at the hands of a current or former partner.<sup>30</sup>

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<sup>24</sup> Anthony Morgan, Hannah Chadwick, *Key issues in domestic violence*, Research in Practice – Summary Paper No 7, Australian Institute of Criminology, 2009, p 2.

<sup>25</sup> Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*, Vol 1, 28 February 2015.

<sup>26</sup> Emma Birdsey, Lucy Snowball, *Reporting Violence to Police: A survey of victims attending domestic violence services*, Issue Paper No 91, NSW Bureau of Crime Statistics and Research (2013).

<sup>27</sup> Ibid.

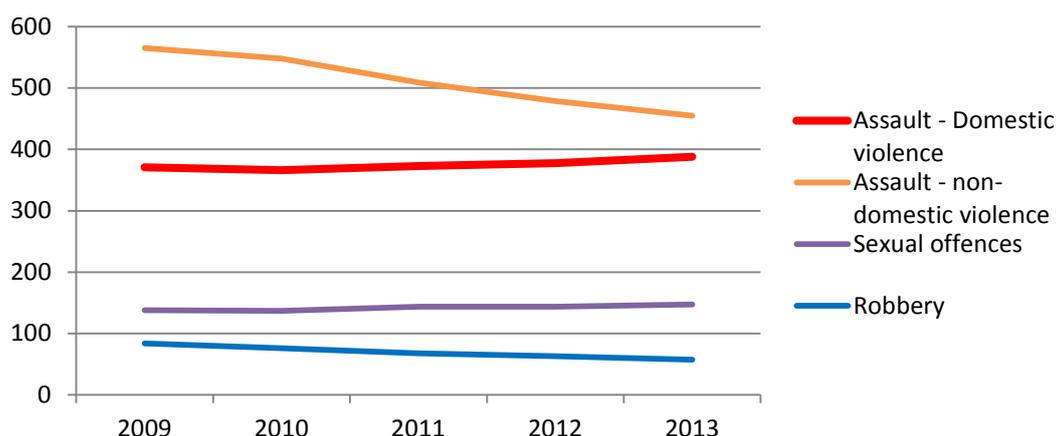
<sup>28</sup> Australian Bureau of Statistics, *Personal Safety, Australia*, 4906.0, December 2013.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

In NSW, the most recent data from BOCSAR shows that during 2014 there were 29,070 recorded incidents of domestic and family violence related assaults.<sup>31</sup> Although these figures indicate a stable trend since January 2013,<sup>32</sup> the rate of domestic violence related assaults rose by 2.7% between 2010 and 2014.<sup>33</sup> In contrast, most other crimes have declined in prevalence between 2009 and 2013, including non-domestic violence related assault (down 5.7%) and robbery with a firearm (down 9.3%). The rate of other crimes, such as sexual assault, remained stable during the reporting period.<sup>34</sup>

**Figure 1: Rate of selected offences per 100,000 population, 2009-2013<sup>35</sup>**



### 3.2 An inherently gendered crime

There is a near-unanimous consensus that domestic and family violence is an inherently gendered crime: men comprise the majority of offenders and women the majority of victims; typically, victims are in heterosexual relationships.<sup>36</sup> According to the National Council to Reduce Violence against Women and their Children, merely being female is the biggest risk factor for domestic and family violence crimes.<sup>37</sup>

The following section outlines the prevalence and severity of domestic and family violence perpetrated against women. It also acknowledges the male victims of domestic and family violence, and the need for a broad definition to allow all victims access to necessary and appropriate support services.

<sup>31</sup> Derek Goh, Jessie Holmes, *New South Wales Recorded Crime Statistics 2014*, NSW Bureau of Crime Statistics and Research, April 2015, p 16.

<sup>32</sup> Ibid p 15.

<sup>33</sup> Ibid p 14.

<sup>34</sup> Ibid.

<sup>35</sup> NSW Bureau of Crime Statistics and Research, *NSW Recorded Crime Statistics 2009-2013: Ranking dataset*, December 2013.

<sup>36</sup> NSW Legislative Council, note 1, p xxi.

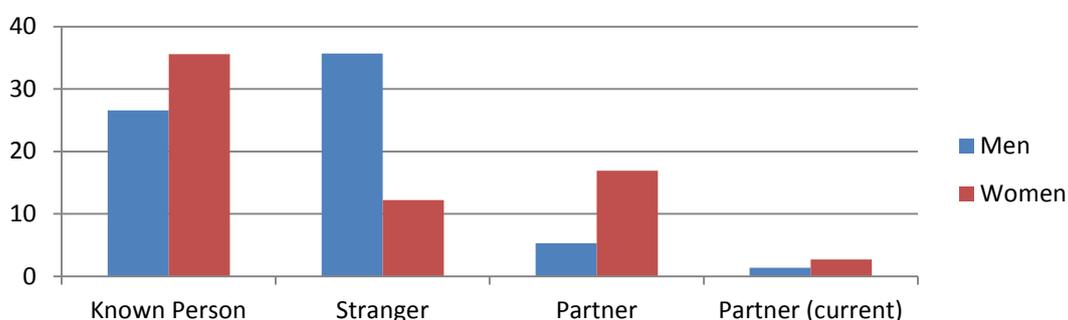
<sup>37</sup> The National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*, Commonwealth of Australia, 2009, p 25.

### 3.2.1 Female victims of domestic and family violence

According to the ABS 2012 Personal Safety Survey, men were more likely than women to have experienced violence since the age of 15 (49% of males versus 40.8% of females). However, this violence was predominantly perpetrated by strangers.<sup>38</sup>

In contrast, women were more likely to have experienced violence by a person they know than by a stranger, most notably by their partner. The ABS found that in 2012, 1.48 million Australian women (16.9% of the female population) had experienced violence from a current or previous partner compared to only 448,000 men (5.3%).<sup>39</sup> The ABS further reported that women in the 18 to 24 years and 25 to 34 years age groups were the most likely Australians to have experienced violence in the previous 12 months.

**Figure 2: Australians' experience of violence since age 15, relationship to perpetrator, 2012 (%)**<sup>40</sup>



In NSW, BOCSAR statistics on physical assaults show a similar pattern: out of all domestic assaults reported in 2010, 69.2% of victims were female and 30.8% were male.<sup>41</sup> The same study also found that 48.3% of domestic assaults involved male offenders assaulting their female partners. In contrast, only 8.7% of domestic assaults involved a male victim and female offender in a partner relationship, with even lower figures for same-sex relationships.<sup>42</sup>

Women do not just face disproportionate levels of domestic and family violence. Studies also indicate that, in general, the violence inflicted by men is more serious than that committed by women.<sup>43</sup> At the extreme end of this severity is homicide: sadly, women are overwhelmingly more likely to be victims of domestic and family violence-related homicide than men.

<sup>38</sup> Australian Bureau of Statistics, note 28.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Katrina Grech, Melissa Burgess, *Trends and patterns in domestic violence assaults: 2001 to 2010*, Issue paper No 61, NSW Bureau of Crime Statistics and Research, May 2011, p 6.

<sup>42</sup> Ibid p 7.

<sup>43</sup> Department of Communities, Child Safety & Disability Services, *Domestic & Family Violence and its relationship to Child Protection Practice Paper*, Queensland Government, October 2012, p 11.

A 2015 NSW Domestic Violence Death Review Team study of domestic violence related homicides in NSW between 2000 and 2010 reached the alarming conclusion that 76% of those killed in the 238 domestic violence-related homicides during that decade were women, and almost all of these women (97%) had been the domestic violence victim in the relationship.<sup>44</sup> There was not a single case where a woman was a domestic violence abuser, and had killed a male domestic violence victim.<sup>45</sup>

The review further found that, of the 12 intimate partner homicide cases that occurred in NSW in 2009-10, nine victims were female and three were male. However, the nine female victims had been killed by abusive male partners, while the three males were the abusers, having been killed by their victims.<sup>46</sup>

They may be a number of reasons why men commit more serious acts of violence against women than vice-versa. Some studies suggest that it is because men are stronger and more aggressive than women.<sup>47</sup> Other studies, such as that by RMIT University's Centre for Innovative Justice, contend that the disproportionate use of violence by men against women is fuelled by a sense of entitlement and a desire for control, with the presence of these factors a strong indication of risk for future violence.<sup>48</sup>

Whatever the underlying causes, the predominant and violent abuse levelled by men against their female partners is a matter of grave concern.

### **3.2.2 Male victims of domestic and family violence**

Even if domestic and family violence is widely considered an inherently gendered crime, it is important to recognise that women can, and do, perpetrate domestic violence, and that men can be victims of domestic and family violence.

As mentioned previously, 8.7% of domestic and family violence assaults in NSW in 2010 were committed by female offenders against male victims. In a 2011 review, the NSW Auditor General cited 2010 NSW Police Force statistics of a wider range of domestic and family violence incidents, including assaults, verbal arguments, and other offences such as stalking and property damage. These statistics showed that, although victims were still predominantly female, 34% of victims of domestic and family violence incidents were male, and 30% of perpetrators were female.<sup>49</sup>

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<sup>44</sup> NSW Domestic Violence Death Review Team, *Annual Report 2012-13*, 2015, p vii.

<sup>45</sup> Although 6 men were victims of domestic violence during this period, all were killed by male intimate partners: Ibid p 4.

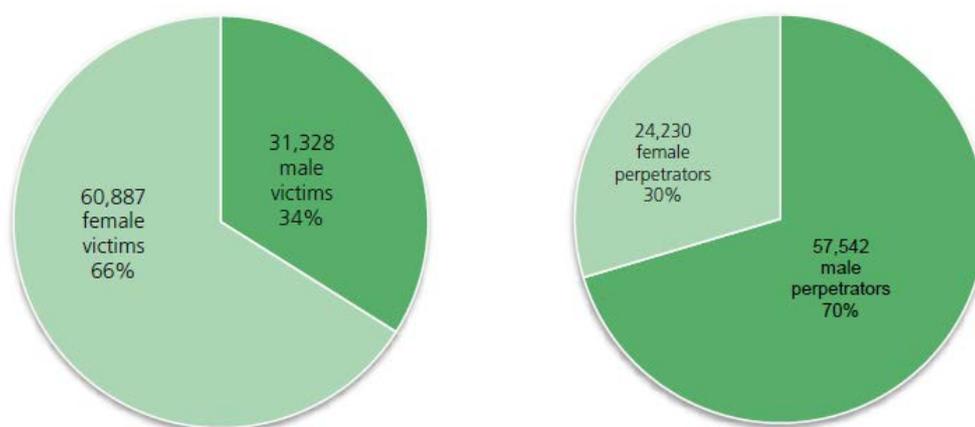
<sup>46</sup> Ibid p 11.

<sup>47</sup> Ibid.

<sup>48</sup> Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view*, March 2015, p 16.

<sup>49</sup> NSW Auditor General, note 11.

**Figure 3: Gender and domestic and family violence incidents recorded by Police in 2010<sup>50</sup>**



The 2012 Legislative Council Inquiry has also commented that “male victims have been much less visible and able to access support than should be the case.”<sup>51</sup>

### 3.2.3 The need for both gendered and universal responses

The reason for viewing domestic and family violence through a gendered lens is to tailor more appropriate support for victims. As noted by the Australian Domestic and Family Violence Clearinghouse:

If men’s and women’s perpetration and experience of violence are distinct, then targeted responses are required to address their different needs and experiences.<sup>52</sup>

The 2010 Joint Law Reform Commission Report suggested that, although any definition of domestic and family violence should remain gender neutral, it is appropriate to acknowledge that it is a predominantly male offence:

Definitions of family violence should be gender-neutral. As any person can be a victim of family violence or use family violence, family violence legislation must be capable of operating to protect all victims of violence—whether female or male—and to prevent further commission of violence by anyone—whether female or male. However ... it is appropriate and important for state and territory family violence legislation to contain a provision that explains the features and dynamics of family violence, including that while anyone can be a victim of family violence or use family violence it is predominantly committed by men.<sup>53</sup>

Acknowledging both the gendered nature of the crime and the need to assist

<sup>50</sup> Ibid p 8.

<sup>51</sup> NSW Legislative Council, note 1, p 31.

<sup>52</sup> Rochelle Braaf, Isobelle Meyering, *The gender debate in domestic violence: the role of data*, Issues Paper No 25, Australian Domestic and Family Violence Clearinghouse, May 2013, p 2.

<sup>53</sup> Australian Law Reform Commission and NSW Law Reform Commission, note 16, p 234.

male victims, the NSW Government has adopted a broad and inclusive definition of domestic and family violence which “acknowledges that women in intimate partner relationships are the group in overwhelming need, but that protection is essential for all victims.”<sup>54</sup>

## 4. FACTORS AND IMPACTS

### 4.1 Characteristics associated with domestic and family violence

In addition to its gendered nature, a number of factors are associated with domestic and family violence.

According to BOCSAR, the majority of NSW domestic assaults occur on residential premises between 6-9pm on weekends.<sup>55</sup> Alcohol and substance abuse by offenders is a factor in many of these incidents,<sup>56</sup> while other experts have identified a “toxic trio” of linked behaviours: domestic violence, alcohol and substance abuse, and mental health problems.<sup>57</sup>

Regional NSW has a higher proportion of domestic assaults than metropolitan regions; the rate of domestic assault in regional NSW is approximately 34% higher than in Sydney, with only a single metropolitan Local Government Area (Campbelltown) in the top 20 LGAs for levels of domestic assault.<sup>58</sup>

**Table 2: Rural communities and domestic violence**

Statistics show that rural and remote communities have higher levels of domestic and family violence than their metropolitan counterparts. Other studies contend that poor transport and telecommunications services make it difficult to escape or seek help for violence, while women in isolated areas may have fewer opportunities to be economically independent of their partners.<sup>59</sup>

Sadly, research also indicates that a “cloak of silence” is present in some rural and remote communities,<sup>60</sup> preventing action to reduce domestic and family violence. A recent anecdotal example of communities failing to respond to abuse occurred in the NSW town of Leeton, where a local rugby player accused of attacking his partner was “indefinitely” stood down from the club. However, the club—which receives a fee to promote anti-domestic violence messages—lifted the ban after only three weeks, despite his partner, who also plays for the club, having taken out an ADVO.<sup>61</sup>

<sup>54</sup> NSW Government, note 22, p 6.

<sup>55</sup> Grech & Burgess, note 41.

<sup>56</sup> Ibid; Rochelle Braaf, *Elephant in the room: responding to alcohol misuse and domestic violence*, Australian Domestic and Family Violence Clearinghouse, Issues Paper 24, July 2012.

<sup>57</sup> Jonathon Guy, Leon Feinstein, Ann Griffiths, *Early Intervention in Domestic Violence and Abuse. Full Report*, Early Intervention Foundation, 13 March 2014, p 81.

<sup>58</sup> Grech & Burgess, note 41.

<sup>59</sup> Lorana Bartels, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Research in Practice No 10, April 2010.

<sup>60</sup> Ibid.

<sup>61</sup> Phil Rothfield, *How one country rugby league club has added to the code's shame on*

Pregnancy is another domestic violence risk factor. According to the 2012 Legislative Council Inquiry, being pregnant is associated with a 230% increase in partner violence, and 20% of women who experience domestic and family violence reported that their pregnancy was the time of onset for this abuse.<sup>62</sup>

The Standing Committee on Social Issues identified several population groups especially vulnerable to domestic violence, including:<sup>63</sup>

- Older people;
- Young people;
- Gay, lesbian, bisexual, transgender and intersex (GLBTI) people;
- People from culturally and linguistically diverse (CALD) backgrounds; and
- People with a disability.

Indigenous Australians are the population group most overrepresented as both victims and offenders of domestic and family violence.<sup>64</sup> The NSW Auditor General reported that Aboriginal women are six times more likely to suffer domestic and family violence than non-Aboriginal women,<sup>65</sup> while the Productivity Commission reported that in 2008-09 Aboriginal women were 31 times more likely than other women to be hospitalised as a result of family violence.<sup>66</sup>

It is argued that different responses to address domestic and family violence are called for in ATSI communities on one side and in mainstream Australian communities on the other:

Family violence in ATSI communities is impacted by a range of complex factors, including intergenerational disadvantage; racism; dispossession and the forced removal of children. It therefore manifests in a broad range of ways, including through community abuse and lateral violence, and is not exclusively a gendered phenomenon. ATSI women emphasise the need for community-based responses which can acknowledge all of these different considerations, including by distinguishing between the factors that contribute to the risk of perpetrating violence and the risk of experiencing it.<sup>67</sup>

## 4.2 Community attitudes

Victims of domestic and family violence are not the only people who remain silent about abuse. Too often, family, friends or neighbours are aware of the

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[domestic violence](#), Daily Telegraph, 2 April 2015.

<sup>62</sup> NSW Legislative Council, note 1, p 17.

<sup>63</sup> Ibid p 31.

<sup>64</sup> Ibid.

<sup>65</sup> NSW Auditor General, note 11.

<sup>66</sup> Productivity Commission, [Overcoming Indigenous Disadvantage: Key Indicators 2011](#), Chapter 4.11.

<sup>67</sup> Centre for Innovative Justice, note 48, p 16.

violence experienced, yet do nothing to report it or stop it, or may even trivialise the issue.

The 2013 National Community Attitudes Survey (NCAS), which gauges community knowledge of and attitudes toward violence against women, found that the majority of Australians have good knowledge of violence against women, and do not endorse most attitudes supportive of this violence. However, it identified several areas of concern, including the following:

More than 1 in 5 agree that partner violence can be excused if the person is genuinely regretful afterward (21%) or if they temporarily lost control (22%), while 2 in 5 (43%) agree that rape occurs because men are unable to control their sexual urges.<sup>68</sup>

The NCAS also found that over half of respondents believed that women often fabricated cases of domestic violence in order to improve their prospects in family law cases; nearly 2 in 5 respondents believed that on many occasions, women who said they were raped had actually led the man on. Groups most likely to endorse attitudes supportive of violence, and with the poorest understanding of what constitutes violence against women, included:

- Men, especially young men and those experiencing multiple forms of disadvantage;
- Younger people (16-25); and
- People from countries in which the main language spoken is not English, especially those who have recently arrived in Australia.<sup>69</sup>

The 2015 Queensland Taskforce heard from stakeholders that men should be encouraged to challenge violence, and to actively develop and participate in programs to eliminate sexist attitudes. Without the involvement of men, efforts to reduce and prevent domestic violence would ultimately fail.<sup>70</sup>

Failure of these efforts to improve community attitudes towards domestic and family violence lead to tragic consequences.

The NSW Domestic Violence Death Review Team reported that, in every single one of the 12 intimate partner homicide cases that occurred in NSW in 2009-10, someone outside the relationship was aware of the violence being perpetrated by the domestic violence abuser.<sup>71</sup> The Review Team listed multiple reasons why bystanders did not take more proactive steps to support victims of violence, including:

- That friends and family did not know what to do to assist and support the

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<sup>68</sup> VicHealth, [Australians' attitudes to violence against women: Findings from the 2013 National Community Attitudes towards Violence Against Women Survey \(NCAS\)](#), September 2014, p 17.

<sup>69</sup> Ibid p 19.

<sup>70</sup> Special Taskforce on Domestic and Family Violence in Queensland, note 25, pp 176, 178.

<sup>71</sup> NSW Domestic Violence Death Review Team, note 44, p 9.

- domestic violence victim;
- That the seriousness of the abuser's conduct was underestimated;
- That abuse was normalized within the family and/or community;
- Family pressures for the domestic violence victim to 'sort it out' with the abuser; and
- Attitudes that domestic violence is 'a private matter'.<sup>72</sup>

Although tragically little or nothing was done in the instances above, evidence suggests that most Australians are willing to help victims. The NCAS reported that 98% of respondents said they would take action if they witnessed violence against a known person, while 92% would take action on behalf of a stranger.<sup>73</sup>

Whilst it seems that willingness to help rarely manifests into the provision of assistance, the NCAS noted that the considerable potential to enlist community support can be maximised by addressing barriers and strengthening facilitators for this course of action.<sup>74</sup>

### 4.3 The impact of domestic and family violence

#### 4.3.1 Health impacts

Health outcomes for victims of domestic and family violence are significantly worse than the rest of the community. The NSW Auditor General reported that domestic and family violence contributes to death, ill health and disability amongst women aged under 45 more than any other single factor, including smoking or obesity.<sup>75</sup> A 2004 VicHealth study made similar findings in Victoria: domestic and family violence contributed to 8% of the total disease burden of women aged 15 to 44 years, primarily depression and anxiety-related illnesses.<sup>76</sup>

#### 4.3.2 Homicide

Domestic and family violence is the leading cause of homicide in Australia. The Australian Institute of Criminology reported that, between July 2010 and June 2012, 187 of 479 homicide incidents (39%) in Australia involved the death of a family member or other person from a domestic relationship. Alarming, 58% of these domestic homicides were classified as intimate partner homicides.<sup>77</sup>

In NSW during the same period, 57 homicides (39% of all NSW homicides) were domestic in nature; more than homicides committed by acquaintances

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<sup>72</sup> Ibid.

<sup>73</sup> VicHealth, note 68, p 18.

<sup>74</sup> Ibid.

<sup>75</sup> NSW Auditor General, note 11.

<sup>76</sup> VicHealth, *The Health Costs of Violence: Measuring the burden of disease caused by intimate partner violence*, January 2004.

<sup>77</sup> Willow Bryant, Tracy Cussen, *Homicide in Australia: 2010–11 to 2011–12: National Homicide Monitoring Program report*, Australian Institute of Criminology, February 2015.

(33%) or strangers (12%).<sup>78</sup>

The NSW Domestic Violence Death Review Team made similar findings: between 2000 and 2010, 238 of the 877 homicides in the State (27%) occurred in circumstances where there was an identifiable history of domestic violence. Of these 238 deaths, 60% were killed by their current or former intimate partner.<sup>79</sup>

#### 4.3.3 Impact on children

Children are significantly affected by domestic and family violence, whether or not this violence is directed at them. The NSW Auditor General reported that domestic and family violence is present in 50% of NSW households where children suffer from abuse,<sup>80</sup> while the 2015 Queensland Taskforce estimated that over a million Australian children are affected in some way by domestic and family violence.<sup>81</sup>

**Table 3: Impacts of domestic and family violence on children<sup>82</sup>**

Depression	Peer conflict	Anxiety
Trauma symptoms	Loneliness	Increased aggression
Lower social competence	Presence of pervasive fear	Temperament problems
Low self-esteem	School difficulties	Mood problems
Impaired cognitive functioning	Increased likelihood of substance abuse	

#### 4.3.4 Homelessness

Homelessness is another social issue exacerbated by domestic and family violence. The Australian Institute of Health and Welfare (AIHW) found that in 2013-14 an estimated 84,774 adults and children (33% of all clients) sought assistance as a result of family or domestic violence.<sup>83</sup> This constituted a 9% overall increase from the previous reporting year, and a 14% increase in the number of children suffering from domestic and family violence.

#### 4.3.5 Economic costs

All levels of Australian government are impacted by domestic and family violence in the form of significant economic losses. In 2009 the National Council to Reduce Violence against Women and their Children estimated that without appropriate action, violence against women and children would cost the

<sup>78</sup> Ibid.

<sup>79</sup> NSW Domestic Violence Death Review Team, note 44, p vi.

<sup>80</sup> NSW Auditor General, note 11.

<sup>81</sup> Special Taskforce on Domestic and Family Violence in Queensland, note 25.

<sup>82</sup> Kelly Richards, *Children's exposure to domestic violence in Australia*, Trends & issues in crime and criminal justice No 419, Australian Institute of Criminology, June 2011.

<sup>83</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services 2013-14*, 2014, p vii.

Australian economy an estimated \$15.6 billion by 2021-22.<sup>84</sup>

**Table 4: Estimated cost of domestic and non-domestic violence against women and their children, by category<sup>85</sup>**

Category of cost	Cost (\$m)	(%)
Pain, suffering and premature mortality	7,530	48
Health	863	5
Production-related	1,181	8
Consumption-related	3,542	23
Administrative and other	1,077	7
Second generation costs	280	2

A 2012 KPMG study estimated that the nationwide cost of violence against women and children was USD\$14.7 billion using 2012 exchange rates. This equated to approximately 1.1% of Australia's GDP.<sup>86</sup> In NSW, the Auditor General estimated in 2011 that domestic and family violence costs the NSW economy more than \$4.5 billion each year.<sup>87</sup>

Ultimately, the impact of domestic and family violence extends far beyond the immediate harm resulting from violent incidents. Wide ranging consequences affect victims, their families and the Australian community as a whole.

## 5. NSW LEGISLATION

In addition to the *Crimes Act 1900*, there are two key pieces of legislation in NSW pertaining to domestic and family violence: the *Law Enforcement (Powers and Responsibilities) Act 2002*, which regulates the search, entry and seizure powers of police with regard to domestic and family violence incidents; and the *Crimes (Domestic and Personal Violence) Act 2007*, which regulates the use of apprehended domestic violence orders (ADVOs). ADVOs are discussed in sections 5.1-5.2.

There are key differences in civil and criminal responses to domestic and family violence, as outlined in the table below. Differences notwithstanding, both approaches serve the common purposes of protecting victims and penalising offenders.<sup>88</sup>

<sup>84</sup> The National Council to Reduce Violence against Women and their Children, *The cost of violence against women and their children*, Commonwealth of Australia, 2009, p 7.

<sup>85</sup> Ibid.

<sup>86</sup> KPMG, *Cost of violence against women*, White Ribbon International Conference, Sydney, 13-15 May 2013, p 3.

<sup>87</sup> NSW Auditor General, note 11,

<sup>88</sup> Australian Law Reform Commission and NSW Law Reform Commission, note 16, p 358.

**Table 5: Differences in civil and criminal responses to domestic and family violence<sup>89</sup>**

	<b>Civil protection order</b>	<b>Criminal proceedings</b>
<i>Purpose</i>	Protect victim from future violence.	Punish offender for past criminal conduct; deterrence; rehabilitation; incapacitation; denunciation; and/or restoration.
<i>Standard of proof</i>	Balance of probabilities.	Beyond reasonable doubt.
<i>Who initiates</i>	Victim, authorised person, police, DPP. In certain cases and in some jurisdictions, courts can initiate protection orders.	Police lay charges and prosecute less serious offences. State/territory DPPs prosecute more serious offences.
<i>Outcome</i>	Conditions or restrictions placed on person subject to order.	On finding of guilt or conviction, the offender is sentenced.

### 5.1 ADVOs in NSW

ADVOs are at the frontline of the campaign to stop ongoing domestic and family violence. A civil law remedy, their purpose is to prevent future violence by placing restrictions on alleged perpetrators. As noted by Spiegelman CJ, the ADVO regime is distinct from criminal law:

The legislative scheme for apprehended violence orders serves a range of purposes which are quite distinct from the traditional criminal or quasi-criminal jurisdiction of the Local Court. The legislative scheme is directed to the protection of the community in a direct and immediate sense, rather than through mechanisms such as deterrence. Individuals can obtain protection against actual or threatened acts of personal violence, stalking intimidation and harassment. Apprehended Violence Orders constitute the primary means in this State of asserting the fundamental right to freedom from fear. The objects served by such orders are quite distinct from those that are served by civil adversarial proceedings or proceedings in which an arm of the State seeks to enforce the criminal law.<sup>90</sup>

ADVOs were first introduced into Part 15A of the *Crimes Act 1900* (NSW) in 1982, along with apprehended personal violence orders.<sup>91</sup> In a 2003 review, the NSW Law Reform Commission found that “taking out an ADVO was extremely effective and empowering” for victims.<sup>92</sup> However, the Commission recommended that the NSW Government create separate legislation for apprehended violence orders,<sup>93</sup> leading to the creation of the *Crimes (Domestic*

<sup>89</sup> Ibid p 352.

<sup>90</sup> *John Fairfax Publications Pty Ltd v Ryde Local Court* (2005) 62 NSWLR 512, [20] (referring to the now repealed Pt 15A *Crimes Act 1900* (Cth)).

<sup>91</sup> Drabsch, note 10, p 21.

<sup>92</sup> NSW Law Reform Commission, [Apprehended Violence Orders](#), Report No 103, October 2003, p 16.

<sup>93</sup> Ibid pp 36-7. The term “apprehended violence order” is used to describe both apprehended domestic violence orders and apprehended personal violence orders. See *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 3.

*and Personal Violence) Act 2007.*

According to the Second Reading Speech for the Bill, the *Crimes (Domestic and Personal Violence) Act 2007* was introduced in order to:

... offer greater protection to victims of domestic and personal violence; recognise the gravity of domestic violence and how it may differ from other violent crimes; minimise as much as possible the stress and trauma that is associated with apprehended violence orders; streamline the process of making an application and having that application heard; minimise the impact of AVO proceedings on the most vulnerable members of society, our children; and ensure that New South Wales has the most progressive and up-to-date laws possible with respect to this very important highly poignant area of concern.<sup>94</sup>

The NSW Government presented the Bill as adopting many of the recommendations of the NSW Law Reform Commission, examples of which included:<sup>95</sup>

- New, expanded definitions;
- A revised test for granting an apprehended domestic violence order;
- New, limited police powers to detain and arrest for the purpose of serving an order;
- The abolition of the complaints and summons process; and
- Revised restrictions and prohibitions that may be imposed upon a defendant for both interim orders and final orders.

## **5.2 *Crimes (Domestic and Personal Violence) Act 2007***

The *Crimes (Domestic and Personal Violence) Act 2007* is the current legislation regulating the use of apprehended violence orders, which aim to protect individuals from a range of domestic violence offences.<sup>96</sup> Following its introduction, the Act has seen a number of amendments made to strengthen the apprehended violence order regime. These include:

- The insertion of the offence of “stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm” into the Act;<sup>97</sup>
- Allowing senior police officers to issue interim ADVOs;<sup>98</sup> and
- Allowing personal information and health information of domestic violence victims to be shared for the purpose of providing support

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<sup>94</sup> Neville Newell MP, [Second Reading Speech](#), NSW Parliamentary Debates, 6 September 2006, p 1592.

<sup>95</sup> Drabsch, note 10, p 22-23.

<sup>96</sup> [Crimes \(Domestic and Personal Violence\) Act 2007](#) (NSW) s 9(2)(a).

<sup>97</sup> [Crimes \(Domestic and Personal Violence\) Amendment Act 2008](#) Sch 1.

<sup>98</sup> [Crimes \(Domestic and Personal Violence\) Amendment Act 2013](#) Sch 1.

services to them.<sup>99</sup>

The structure of the Act is outlined in Table 6:

<b>Table 6: Key parts of the <i>Crimes (Domestic and Personal Violence) Act 2007</i></b>	
<b>Part 1</b>	Provides definitions for key terms relating to domestic and family relationships and offences
<b>Part 2</b>	Outlines objects of the Act in relation to domestic and personal violence
<b>Part 3</b>	Lists offences defined under the Act as “domestic violence and personal violence offences”
<b>Part 4</b>	Outlines application process for apprehended domestic violence orders, matters to be considered by the court and grounds on which the court can grant an application
<b>Part 6</b>	Outlines procedures a court must follow when granting an interim apprehended violence order
<b>Part 7</b>	Outlines procedures the police must follow when applying for a provisional order
<b>Part 8</b>	Outlines the prohibitions or restrictions the court can impose on a defendant under an apprehended violence order
<b>Part 10, Division 2</b>	Lists who can make an apprehended violence order, and circumstances in which police must make an application for an order

### 5.2.1 Definitions and offences under the Act

Parts 1 and 3 of the Act define relevant terms for apprehended violence orders, including domestic violence offences and relationships:

<b>Table 7: Key definitions</b>	
Personal Violence Offence <sup>100</sup>	Examples include: murder, manslaughter, grievous bodily harm, assault, attempted strangulation, and using an intoxicating substance to commit an indictable offence.
Domestic Violence Offence <sup>101</sup>	A personal violence offence; also stalking or intimidation of a person with the intention of causing fear, physical or mental harm. Victim must be in or formerly be in a “domestic relationship”.
Stalking <sup>102</sup>	Following a person about, or watching/frequenting places that a victim frequents for work, social or leisure activities.
Intimidation <sup>103</sup>	Harassment or molestation, or approaches of any form made to

<sup>99</sup> [Crimes \(Domestic and Personal Violence\) Amendment \(Information Sharing\) Act 2014](#) Sch 1.

<sup>100</sup> [Crimes \(Domestic and Personal Violence\) Act 2007](#) (NSW) s 4.

<sup>101</sup> *Ibid* ss 11, 13.

<sup>102</sup> *Ibid* s 8.

	a victim that caused them to fear for their safety.
Domestic Relationship <sup>104</sup>	Examples include: persons who are/were married, de facto partnerships, intimate partner relationships, persons living in the same household, long term residents in the same residential facility, in a caregiving relationship, relatives, persons in an extended kinship relationship (in the case of Aboriginal persons).
Relative <sup>105</sup>	Parents, children, aunts/uncles, niece/ nephews, cousin, in-laws.

### 5.2.2 Applying for an ADVO

Under Part 4 of the Act, the Local Court or Children’s Court may grant an ADVO if, on the balance of probabilities, a person has reasonable grounds to fear a personal violence, stalking, or intimidation offence, committed by someone with whom they have or had a domestic relationship.<sup>106</sup>

Part 10, Division 2 outlines who can make an ADVO application: namely, individuals fearing for their safety, a guardian on an individual’s behalf, or a police officer.<sup>107</sup> Indeed, the NSW Police Force has a statutory obligation to apply for an ADVO if they suspect or believe that a domestic violence offence has recently been committed, is imminent, or is likely to be committed, against a person requiring protection.<sup>108</sup>

Additionally, if a perpetrator is found guilty of a stalking, intimidation or a domestic violence offence, the court, unless satisfied that it is not required, must order an ADVO regardless of whether or not an application was made.<sup>109</sup>

### 5.2.3 ADVO conditions and penalties for breaches

Part 8 of the Act stipulates the content and effect of apprehended violence orders. ADVOs can place a range of restrictions on the behaviour of the defendant, including the following:<sup>110</sup>

- Prohibiting or restricting approaches by the defendant to the protected person;
- Prohibiting or restricting access by the defendant to premises occupied by the protected person, the protected person’s workplace, or any specified premises or place frequented by the protected person;

<sup>103</sup> Ibid s 7.

<sup>104</sup> Ibid s 5

<sup>105</sup> Ibid s 6.

<sup>106</sup> Ibid s 16.

<sup>107</sup> Ibid s 48(2).

<sup>108</sup> Ibid ss 27, 49.

<sup>109</sup> Ibid s 39.

<sup>110</sup> Ibid s 35.

- Prohibiting or restricting the defendant from approaching the protected person within 12 hours of consuming drugs or alcohol;
- Prohibiting the defendant from possessing firearms; and
- Prohibiting the defendant from interfering with the protected person's property.

If a person breaches the conditions of their ADVO, this constitutes an offence under Part 4 of the Act. Knowingly contravening a prohibition or restriction of an ADVO attracts a maximum penalty of two years imprisonment or a fine of 50 penalty units.<sup>111</sup> If an offender breaches the ADVO by committing an act of violence, unless the court otherwise orders, a term of imprisonment must be imposed.<sup>112</sup>

Issues surrounding breaches of ADVOs and the sentences imposed on offenders are discussed further in section 8.1.

#### 5.2.4 A statutory definition of domestic and family violence for NSW?

The *Crimes (Domestic and Personal Violence) Act 2007* contains no statutory definition of domestic and family violence, only defining specific offences (see section 5.2). The 2010 Joint Law Reform Commission Report noted that this is in contrast to other States and Territories:

... other state and territory definitions largely describe conduct that constitutes family violence without linking that conduct to specific criminal offences or, where that conduct could constitute an offence, without defining the conduct or attempting to align the definitions with those used in the criminal law.<sup>113</sup>

The Joint Law Reform Commissions were critical of the NSW approach, commenting that the Act may not capture conduct that, whilst not amounting to a criminal offence, may nevertheless justify victim protection.<sup>114</sup> It called for a definition of family violence to be enshrined in legislation, and made the following recommendation:

**Recommendation 5–1** State and territory family violence legislation should provide that family violence is violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

- (a) physical violence;
- (b) sexual assault and other sexually abusive behaviour;
- (c) economic abuse;
- (d) emotional or psychological abuse;
- (e) stalking;

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<sup>111</sup> Ibid s 14.

<sup>112</sup> Ibid s 14(4).

<sup>113</sup> Australian Law Reform Commission and NSW Law Reform Commission, note 16, p 193.

<sup>114</sup> Ibid p 236.

- (f) kidnapping or deprivation of liberty;
- (g) damage to property, irrespective of whether the victim owns the property;
- (h) causing injury or death to an animal irrespective of whether the victim owns the animal; and
- (i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.<sup>115</sup>

The 2012 Legislative Council Inquiry referred to the Joint Law Reform Commission Report, noting that there were shortcomings in the existing legislation.<sup>116</sup> However, it did not recommend a statutory definition of domestic and family violence. To date, the NSW Government has not pursued any relevant legislative change.

## 6. NSW DOMESTIC AND FAMILY VIOLENCE POLICIES

### 6.1 Recent reviews into domestic and family violence policy

From June 2010 to February 2014 the primary policy document relating to domestic and family violence was *Stop the Violence, End the Silence*, a whole-of-government document setting out strategic directions, priorities and action for relevant NSW agencies.<sup>117</sup>

In 2011 the NSW Auditor General released the *Responding to domestic and family violence* performance audit, which reviewed how well government and non-government organisations worked with one another in this area. The Auditor General reached the following conclusion:

In its current form the *NSW Domestic and Family Violence Action Plan* does not provide an adequate framework for coordination. There is no implementation plan, no performance indicators for monitoring progress and no comprehensive mapping of available services.<sup>118</sup>

The audit's key recommendation was the creation of a new Domestic and Family Violence Framework (DFV Framework) to:<sup>119</sup>

- Establish minimum standards for identifying domestic and family violence;
- Establish mechanisms to continuously address the barriers to victims reporting violence and seeking help;
- Provide for cross-sectoral training to staff responding to domestic and family violence services; and

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<sup>115</sup> Ibid p 246.

<sup>116</sup> Legislative Council Standing Committee on Social Issues, note 1, p 230.

<sup>117</sup> NSW Government, [\*Stop the Violence, End the Silence: NSW Domestic and Family Violence Action Plan\*](#), June 2010.

<sup>118</sup> NSW Auditor General, note 11, p 3.

<sup>119</sup> Ibid pp 3-4.

- Ensure that government agencies engage in joint planning with one other and with non-government organisations.

The 2012 Legislative Council Inquiry reached similar conclusions to those of the NSW Auditor General, noting that the existing domestic violence system “works in silos, is patchy, lacks leadership, and outcomes for victims are constrained by system requirements.”<sup>120</sup> The Inquiry further found that:<sup>121</sup>

- The existing system was overly focused on criminal justice interventions, hindering focus on victims and their needs;
- Multiple definitions of domestic violence operating in New South Wales impacted clarity of purpose and ease of access by service users; and
- Shortcomings existed in areas such as data collection and reporting.

The report’s key recommendations included:<sup>122</sup>

- Development of a common and inclusive definition of domestic and family violence in the new DFV Framework;
- Building an evidence based approach into the DFV Framework; and
- Using a cross government approach in respect of governance reform.

In its Response to the Inquiry’s findings, the NSW Government supported the broad intent of the recommendations relating to its DFV Framework, and made the following comment:

The Framework is being developed to articulate a common approach to responding to domestic and family violence in NSW. As recommended by the Committee, the new approach is being developed in a co-design approach with close consultation with the non-government sector and with close collaboration with partner agencies.<sup>123</sup>

## 6.2 The NSW Domestic and Family Violence Framework

In February 2014, informed by the above findings and a year-long consultation process, the NSW Government released its new DFV Framework, *It Stops Here: Standing together to end domestic and family violence in NSW*. The DFV Framework aims to deliver five outcomes in relation to domestic and family violence:<sup>124</sup>

1. Domestic and family violence is prevented;
2. Domestic and family violence is identified early;
3. Victims are safe and supported to recover;

<sup>120</sup> NSW Legislative Council, note 1, p 52.

<sup>121</sup> Ibid pp 57, 61, 65.

<sup>122</sup> Ibid pp 57, 66, 73.

<sup>123</sup> NSW Government, [Government response to the inquiry into domestic violence trends and issues in NSW](#), 27 February 2013, Attachment A.

<sup>124</sup> NSW Government, note 22, p 12.

4. Perpetrators stop using violence; and
5. A supported, professional and effective sector is developed.

The outcomes are to be achieved through five priority elements, which are detailed below.

**Table 8: DFV Framework priority elements and their application**<sup>125</sup>

Priority Elements	Actions
<b>Element 1:</b> <i>A strategic approach to prevention and early intervention.</i>	<ul style="list-style-type: none"> <li>• Commission of studies to examine current approaches to violence prevention in NSW;</li> <li>• Creation of social investment approach to prevention activities;</li> <li>• Increased focus on perpetrator accountability.</li> </ul>
<b>Element 2:</b> <i>Streamlined referral pathways to secure victims' safety and recovery.</i>	<ul style="list-style-type: none"> <li>• Development of <i>Safer Pathway</i> referral pathway to ensure consistent and effective response;</li> <li>• Improved information sharing;</li> <li>• Centralised electronic referral mechanism.</li> </ul>
<b>Element 3:</b> <i>Accessible, flexible, person-centred service responses that make the best use of resources.</i>	<ul style="list-style-type: none"> <li>• Expansion of <i>Staying Home Leaving Violence</i> program, helping women and children to remain safely in their homes;</li> <li>• New minimum practice standards.</li> </ul>
<b>Element 4:</b> <i>A strong, skilled and capable workforce.</i>	<ul style="list-style-type: none"> <li>• Use of <i>Domestic and Family Violence Skills Strategy</i> program to train workers, increase the capability of the broader human services workforce, and improve access to accredited education and training opportunities.</li> </ul>
<b>Element 5:</b> <i>A strengthened criminal justice system response.</i>	<ul style="list-style-type: none"> <li>• Use of <i>Domestic Violence Justice Strategy</i> to strengthen the criminal justice system response to domestic and family violence.</li> </ul>

The DFV Framework acknowledges the need for government agencies to work closely with a broad range of service providers, community groups, and agencies. It addresses many of the concerns raised by the NSW Auditor General and the 2012 Legislative Council Inquiry by:

1. providing a reform framework under which agencies can work together to respond to domestic and family violence
2. establishing a shared policy definition of domestic and family violence and guiding principles applicable to all agencies and services working in the domestic and family violence sector establishing minimum service standards
3. establishing minimum service standards applicable to all services responding to domestic and family violence
4. addressing the privacy issues relating to information sharing to ensure consistent responses to victims and to support early intervention and access

<sup>125</sup> Ibid.

to support services

5. investing in strategic approaches to prevention and early intervention through building the evidence base as well as developing and investing in exemplar projects and strategies
6. improving the integration and coordination of services through the establishment of a new referral pathways model
7. establishing Safety Action Meetings across NSW to better protect victims at high risk
8. actively consulting and building on partnerships with the non-government sector throughout the framework's development and implementation phases
9. adopting a cross government governance approach in respect of governance which involves improved coordination across agencies and key non-government organisations.<sup>126</sup>

The DFV Framework further recognises that victims are best assisted “through an integrated, whole-of-community approach to how we understand and respond to domestic and family violence.”<sup>127</sup> The reforms in the DFV Framework are to be monitored and evaluated over time, ensuring their effectiveness and relevance.<sup>128</sup>

The DFV Framework is to be implemented in three phases:

1. The *Domestic Violence Justice Strategy* and DFV prevention investment program;
2. The launch of new referral pathways; and
3. Service realignment and implementation of evidence-based partnership projects.

The first phase was developed parallel to and incorporated into the DFV Framework, and commenced in late 2012. In October 2012 a three year, \$9.8 million domestic and family violence grants program began.<sup>129</sup> There followed in December 2012 the release of the *Domestic Violence Justice Strategy*, an operational framework designed to improve the safety of and support for victims, while holding perpetrators to account and preventing further abusive behaviour.<sup>130</sup>

With regard to the second phase, in September 2014 the Department of Justice launched *Safer Pathway*, designed to create holistic and coordinated domestic and family violence services with tailored support for victims that meet both their immediate and long term safety, health and wellbeing needs.<sup>131</sup> Safer Pathway

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<sup>126</sup> Ibid pp 12-13.

<sup>127</sup> Ibid p 3.

<sup>128</sup> Ibid p 13.

<sup>129</sup> NSW Government, [‘New approach to domestic and family violence’](#) (Media Release, 12 October 2012).

<sup>130</sup> NSW Government, [The NSW Domestic Violence Justice Strategy: Improving the NSW Criminal Justice System’s Response to Domestic Violence](#), December 2012.

<sup>131</sup> NSW Government, [It Stops Here: Safer Pathway Overview](#), September 2014.

is currently operating on a trial basis in Orange and Waverley, and will be rolled out from 2015 across 28 NSW sites.

The third phase is currently underway, and involves improving service efficiencies to make the best possible use of existing resources, while working with non-government partners to collaboratively implement strategies that will help meet demand in key areas and support planning for future demand.<sup>132</sup>

## 7. CURRENT ISSUES IN NSW

Along with the implementation of the DFV Framework, there have been a number of developments in NSW aimed at improving the response to domestic and family violence.

Recent developments include the appointment of former NSW Minister for Women Pru Goward to the role of Minister for the Prevention of Domestic Violence and Sexual Assault, the first such Minister in Australia;<sup>133</sup> proposed is a disclosure scheme for perpetrators of domestic violence that would be available to individuals concerned that their partners may pose a risk to them.<sup>134</sup>

Nevertheless, there remain a number of issues relating to domestic and family violence in NSW that continue to arouse public, political, and media concern and discussion.

### 7.1 Breaches of ADVOs

#### 7.1.1 Rising numbers of ADVO breaches

The effectiveness of ADVOs has been disputed, with evidence showing a rise in the number of ADVOs breached in NSW.

In January 2015 BOCSAR reported that, between 2009 and 2013, there was an average of 11,121 breaches of ADVOs in NSW per annum. This represents a statistically significant upward trend in the number of incidents recorded by police.<sup>135</sup>

ADVO breaches represent one of the most common statutory offences sentenced in the NSW Local Court. The Judicial Commission of NSW reported that in 2010 there were 3,777 cases of knowingly contravening an ADVO: 3.7% of all NSW Local Court cases, and the eighth most common statutory offence

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<sup>132</sup> NSW Government, note 22, p 24.

<sup>133</sup> [NSW election 2015: Pru Goward sworn in as Minister for the Prevention of Domestic Violence](#), ABC News, 2 April 2015.

<sup>134</sup> Liz Foschia, [Abusive partners could be listed on proposed NSW domestic violence register](#), ABC News, 6 March 2015.

<sup>135</sup> Lily Trimboli, [Persons convicted of breaching Apprehended Domestic Violence Orders: their characteristics and penalties](#), Issues Paper No 102, NSW Bureau of Crime Statistics and Research, January 2015, p 2.

sentenced that year.<sup>136</sup>

BOCSAR also found that, in 2013, 5,023 people faced a court appearance regarding at least one proven breach of an ADVO, and 3,154 were found guilty of breaching an ADVO as their principal offence. Of those who appeared in court for a breach:

- 22.2% had no court appearances in the previous five years;
- 53.3% had at least one prior proven violent offence (mainly assault and stalking); and
- 28.7% had previously breached an ADVO at least once.<sup>137</sup>

84.6% of the 3,154 individuals found guilty of breaching an ADVO entered a guilty plea. The overwhelming majority of those found guilty were male (87.7%), with more than half aged between 30 and 49 years; 27.2% had an Indigenous background.<sup>138</sup>

### 7.1.2 Attempts to reduce breaches

The 2012 Legislative Council Inquiry concluded that the ADVO system as a whole required improvement, and supported changes to ensure ADVO conditions were both workable and realistic, as well as comprehensible to all concerned parties. It recommended that the Department of Attorney General and Justice ensure that information is made available about the consequences of breaches and what victims should do if they occur.<sup>139</sup> This was supported by the NSW Government,<sup>140</sup> and now forms part of the NSW *Domestic Violence Justice Strategy*.<sup>141</sup>

Other efforts to reduce the level of breaches through provision of legal advice to both applicants and defendants have had mixed results. RMIT University's Centre for Innovative Justice has recommended that the NSW Government offers specialist training to legal aid duty lawyers as a means of improving compliance with ADVOs:

Jurisdictions should therefore consider ways in which to harness the potential of duty lawyers to greater effect, offering fully developed, specialist training to legal aid duty lawyers which may support their ability to work effectively with respondents to protection order applications and, where an order is issued, to increase the likelihood that respondents will comply.<sup>142</sup>

<sup>136</sup> Georgia Brignell, Zeinab Baghizadeh, Patrizia Poletti, [Common offences in the NSW Local Court: 2010](#), Sentencing Trends and Issues No 40, May 2012, p 7.

<sup>137</sup> Trimboli, note 135, p 5.

<sup>138</sup> Ibid p 4.

<sup>139</sup> NSW Legislative Council, note 1, p 269.

<sup>140</sup> NSW Government, note 123.

<sup>141</sup> NSW Government, note 130, p 18.

<sup>142</sup> Centre for Innovative Justice, note 48, p 59.

In support of this view, the Centre for Innovative Justice cited a Victorian study which found that duty or community legal centre lawyers were stronger advocates for applicants, and made more referrals to services, than private practitioners on the duty lawyer roster.<sup>143</sup>

In contrast, a BOCSAR review of Legal Aid NSW's Apprehended Domestic Violence Order Defendant Pilot Program in November 2014 concluded that provision of legal advice did not result in fewer breaches.<sup>144</sup> Nevertheless, the Pilot Program did benefit court processes in the following manner:

Stakeholders noted that different agencies within the courthouse worked together constructively, initiating procedures to streamline court processes. Matters proceeded more smoothly in the courtroom, saving time and ultimately cost. The workload of several categories of stakeholders was eased with the operation of this legal service. Receiving legal advice at an early stage meant that defendants were able to make informed decisions about how to proceed at first mention, thus eliminating the need for adjournments and eliminating the need for both the defendant and the associated protected person to return to court; this, in turn, made the courthouse less crowded, the court process less stressful and more efficient for all parties, including the court.<sup>145</sup>

### 7.1.3 Are courts imposing overly lenient penalties for breaches?

With regard to sentencing, BOCSAR outlined the penalties imposed by the court on those found guilty of breaching their ADVOs in 2013:

Of 3,154 persons who were found guilty of breaching an ADVO as their principal offence, most were male (87.7%) and entered a guilty plea (84.6%). About one in five (22.5%) received a bond without supervision (average length=14 months) as their principal penalty; 17.8 per cent were fined (average amount=\$432); 15.7 per cent received a bond with supervision (average length=16 months) and 12.4 per cent were given a custodial sentence (average length=4 months).<sup>146</sup>

Similarly, the Judicial Commission of NSW found that, between October 2010 and September 2014, approximately 56% of the 13,608 ADVO breaches sentenced were subject to a bond or fine; 13.7% were subject to a term of imprisonment; and 7.9% attracted a suspended sentence.<sup>147</sup> These statistics are shown in Figure 4 on the following page.

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<sup>143</sup> Ibid p 58.

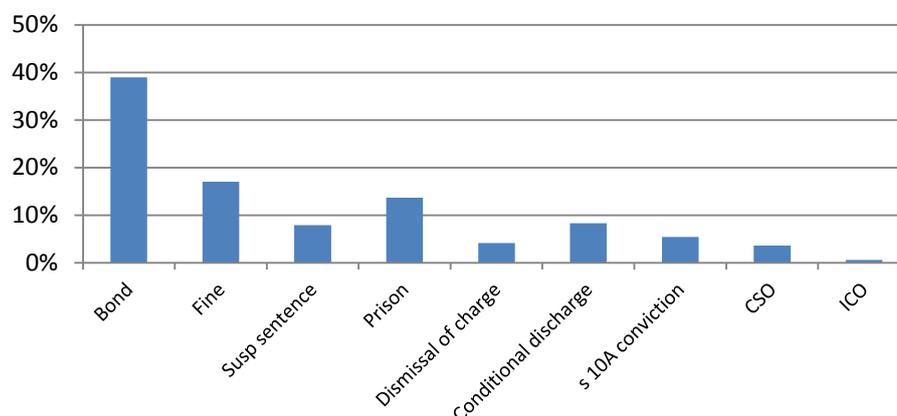
<sup>144</sup> Lily Trimboli, [Legal services for defendants in Apprehended Domestic Violence Order proceedings: An evaluation](#), Crime and Justice Bulletin No 179, NSW Bureau of Crime Statistics and Research, November 2014.

<sup>145</sup> Ibid p 16.

<sup>146</sup> Trimboli, note 135, p 1.

<sup>147</sup> Judicial Commission of NSW, *Crimes (Domestic and Personal Violence) Act 2007 (NSW): Offences finalised in the Local Court – 14(1) contravene prohibition/restriction in AVO*, January 2015.

**Figure 4: Penalty type for contravention of AVO, Oct 2010 to Sep 2014<sup>148</sup>**



Although custodial sentences are infrequently given for ADVO breaches, research suggests that NSW courts will impose these sentences for serious offences or repeat offenders.

A 2010 BOCSAR study reviewed domestic violence-related offences finalised in NSW Local and District Courts between January 2008 and June 2009. The study found that, while the likelihood of imprisonment for the median case involving a domestic violence-related assault was 0.6 per cent:

- A concurrent breach of an apprehended violence order increased the likelihood of imprisonment to 23.2%; and
- A conviction for breaching an apprehended violence order in the two years prior increased the likelihood of imprisonment to 54.9%.<sup>149</sup>

The study reached the following conclusion regarding the levels of imprisonment imposed on domestic violence offenders:

The most prevalent domestic violence-related offence in the courts is common assault and this offence is most likely to receive a bond with supervision (30% of offenders). The same is true of three other high volume domestic violence offences: breaching an AVO, assault occasioning actual bodily harm and stalking/intimidation (21%, 29% and 34% respectively of offenders in these groups received a bond without supervision). Among the more serious (but low volume) violent offences of recklessly wounding, recklessly cause grievous bodily harm and being armed with intent, the most common penalty is imprisonment (38%, 60% and 41% respectively). ... The general practice of more serious offences receiving more serious penalties is consistent with both expectations and the general principles of sentencing.<sup>150</sup>

<sup>148</sup> Ibid.

<sup>149</sup> Clare Ringland, Jacqueline Fitzgerald, *Factors which influence the sentencing of domestic violence offenders*, Issues Paper No 48, NSW Bureau of Crime Statistics and Research, July 2010, p 7.

<sup>150</sup> Ibid.

## 7.2 Domestic violence shelter funding

As part of broader reforms to reduce homelessness, including homelessness caused by domestic and family violence, the NSW Government launched its *Going Home Staying Home Reform Plan* in July 2012.

The Reform Plan was implemented in July 2014, and builds on the *NSW 2021* plan's goal to better protect the most vulnerable members of the community and break the cycle of disadvantage. Under *NSW 2021*, this goal is to be achieved through provision of housing assistance, including for women and children escaping domestic and family violence.<sup>151</sup>

The focus of the Reform Plan was Specialist Homelessness Services (SHS), which help individuals who are homeless or are at imminent risk of homelessness. The Reform Plan provides:<sup>152</sup>

- Crisis and medium-term accommodation;
- General support, including advice, advocacy, and living skills;
- Basic support, including meals, showers and transport;
- Personal/emotional support; and
- Financial and employment support and links to support services.

Prior to the Reform Plan, the SHS sector had operated for 30 years without major system reform.<sup>153</sup> This had led to system fragmentation, and accordingly the Reform Plan aimed to improve access to homelessness services, better balance early intervention, crisis and post-crisis support services, and allocate funding on the basis of demographic and population trends rather than historical agreements.<sup>154</sup>

Under the Reform Plan, system reform was undertaken through five reform strategies:

1. **Service delivery design:** ensuring the right service design;
2. **Streamlined access for clients:** helping clients access the services they need;
3. **Better planning and resource allocation:** locating services where they are needed most;
4. **Industry and workforce development:** enabling organisations and staff to deliver the reforms; and
5. **Quality, contracting and continuous improvement:** ensuring ongoing

<sup>151</sup> NSW Government, *NSW 2021: A plan to make NSW number one*, 2011, p 28.

<sup>152</sup> NSW Government, *Going Home Staying Home Reform Plan*, July 2012, p 5.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

improvement in quality and outcomes.<sup>155</sup>

At the time of the Plan's release, 336 SHS contracts were delivered by 206 organisations.<sup>156</sup> Under the fifth reform strategy, a new procurement process was developed to reduce red tape and multiple contracting.<sup>157</sup> This reduced the number of services under the new homelessness system to 157. According to NSW Family and Community Services, of these services:

... 26 are specifically for women only, with or without children. These services include multiple service responses and may have more than one service outlet, such as more than one women's refuge.

About a further 65 of the new services with a broader target client group include a discrete specialist response for women with or without children. This includes discrete specialist responses for women experiencing domestic and family violence and young women in the packages targeting young people.

Therefore, there are more than 90 services which have one or more discrete specialist responses for women.<sup>158</sup>

The Reform Plan has faced criticism for its new funding model. The SHS tendering process, which emphasised a greater proportion of early intervention services, resulted in a number of women's domestic violence shelters losing government funding.<sup>159</sup> This included specialised refuges such as those for migrant women escaping domestic violence.<sup>160</sup> Some welfare workers have claimed that refuges have reduced operating hours, let staff go or have ceased operations entirely as a result of the funding changes.<sup>161</sup>

During the 2015 NSW election, both NSW Labor and the Greens NSW made commitments to not cut any shelter's funding, and to restore funding to specialist services in the State.<sup>162</sup> In response, on 27 February 2015 the Baird Government restored \$8.6 million in funding to five long-running inner-city shelters. This funding is expected to last until June 2017.<sup>163</sup>

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<sup>155</sup> Ibid p 16.

<sup>156</sup> Ibid p 24.

<sup>157</sup> Ibid p 24.

<sup>158</sup> NSW Family and Community Services, *Going Home Staying Home Factsheet: Specialist Homelessness Services for Women*, February 2015, p 1.

<sup>159</sup> Rachel Olding, *NSW state election 2015: Domestic violence shattering lives in every community*, Sydney Morning Herald, 26 March 2015.

<sup>160</sup> Rachel Olding, Emma Partridge, *Housing shortage fear for battered migrant women following funding cuts*, Sydney Morning Herald, 1 April 2015.

<sup>161</sup> Nicole Hasham, *Advocates say refuge changes leaving women at risk: Reforms are a 'failed experiment'*, Sydney Morning Herald, 3 February 2015; Jacqueline Breen, *Staff quit Community Legal Centre amid funding uncertainty*, ABC News, 17 March 2015.

<sup>162</sup> Hasham, note 161; Luke Foley, *Fearful victims cower behind piece of paper*, Daily Telegraph, 21 January 2015.

<sup>163</sup> Olding, note 159; Gabrielle Upton, *'Funding boost for homeless services'* (Media Release, 27 February 2015).

## 7.3 Family Violence Courts

### 7.3.1 Definition

Family violence courts (FVCs) are a branch of specialist, or “problem solving”,<sup>164</sup> courts that have developed in several Australian States and Territories since the late 1990s. These courts recognise behavioural and environmental factors that contribute to offending, and seek to achieve outcomes such as increased offender prosecution, victim support services, and greater community awareness of domestic and family violence.<sup>165</sup>

According to the 2010 Joint Law Reform Commission Report, FVCs typically have the following characteristics:<sup>166</sup>

- **Specialised personnel:** chosen because of their specialised skills, or be given specialised training in family violence;
- **Specialised procedures:** examples include days in court dedicated to family violence matters, integrated case information systems, and specialised intake procedures;
- **Emphasis on specialised support services:** staff are available to support family violence victims in managing the court process, as well as referring victims to other services such as counselling;
- **Special arrangements for victim safety:** examples include specially designed rooms and entrances for victims, facilities allowing vulnerable witnesses to give evidence remotely; and
- **Offender programs:** courts are given the capacity to order or refer an offender to programs that aim to educate the offender and address personal issues to prevent re-offending, usually through counselling.

### 7.3.2 Existing FVCs in Australia

There are a wide range of FVCs in Australian States and Territories (see Table 9), with the Victorian Family Violence Court Division (FVCD) regarded as the closest example of a “one stop shop” model for victims of family violence in Australia.<sup>167</sup> Originally a pilot program at the Ballarat and Heidelberg Courts,<sup>168</sup> the FVCD is expressly established by legislation, and exercises jurisdiction over protection orders as well as a range of civil, family and criminal matters related to family violence.<sup>169</sup>

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<sup>164</sup> Jason Payne, *Specialty Courts: Current Issues and Future prospects*, Trends & issues in Crime and Criminal Justice No 317, Australian Institute of Criminology, June 2006, p 1.

<sup>165</sup> Edwina Schneller, *Family Violence Courts*, e-brief No 12/2012, NSW Parliamentary Research Service, p 4.

<sup>166</sup> Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, Final Report, Vol 2, October 2010, p 1489.

<sup>167</sup> Ibid p 1499.

<sup>168</sup> According to advice received from the Magistrates' Court of Victoria, 10 March 2015.

<sup>169</sup> Magistrates' Court of Victoria, *Family Violence Court Programs*, n.d.

**Table 9: Family Violence Courts in Australia<sup>170</sup>**

Year	State	Type of court
1998	ACT	Specialist list pilot in Magistrates Court
1999	SA	Family Violence Court
2000	WA	Specialist stream of Magistrates Court
2000	ACT	Specialist list in Magistrates Court
2005	NSW	DVICM pilot in Campbelltown and Wagga Wagga
2005	VIC	Family Violence Court Division; Specialist Family Violence Service
2006	QLD	Rockhampton Magistrates Court pilot
2011	ACT	Family Violence Court

In NSW the Domestic Violence Intervention Court Model (DVICM) operates at Wagga Wagga and Campbelltown Local Courts, providing victims with increased support services; and increased information sharing and coordination by key agencies.<sup>171</sup> According to the 2010 Joint Law Reform Commission Report, the DVICM operates as follows:

The DVICM program focused on improved evidence collection by the police, automated referrals to victim services, and increased information sharing and co-ordination from key agencies through Regional Reference Groups and Senior Officers Groups. The Local Courts implemented a Practice Note requiring early disclosure of evidence. Stakeholder agencies met weekly to update matters before the court. Magistrates could, if deemed appropriate as part of the sentence, place an offender on a perpetrator program run by the Probation and Parole Service in Wagga Wagga and Campbelltown.<sup>172</sup>

The DVICM was considered by the 2012 Legislative Council Inquiry to be a “first step towards a comprehensive integrated approach to domestic violence”.<sup>173</sup> However, reviews of the courts conducted by BOCSAR in 2008 and 2012 suggest mixed results.

The 2008 evaluation of the DVICM found that the most successful aspect of the courts was increased access to victim support; no significant impact on early pleas, prosecutions or penalties was found.<sup>174</sup> A 2012 follow-up study made similar mixed findings:

There is little evidence that the DVICM increased the proportion of domestic violence matters finalised on a plea of guilty; reduced the proportion of domestic violence matters that were dismissed; increased the proportion of penalties of a supervised bond; or increased the proportion of penalties of imprisonment. ... The most encouraging findings were those observed in relation to court delay. In Campbelltown and Wagga Wagga Local Courts, the court delay for all domestic violence matters was much reduced after the introduction of the

<sup>170</sup> Schneller, note 165, p 9.

<sup>171</sup> Australian Law Reform Commission and NSW Law Reform Commission, note 166, p 1497.

<sup>172</sup> Ibid p 1497

<sup>173</sup> NSW Legislative Council, note 1, p xli.

<sup>174</sup> Laura Rodwell, Nadine Smith, *An evaluation of the NSW Domestic Violence Intervention Court Model*, NSW Bureau of Crime Statistics and Research, 2008.

DVICM in late 2005.<sup>175</sup>

The 2012 study concluded that its findings highlighted the challenges associated with reaching positive outcomes for victims of domestic and family violence.

### 7.3.3 Expansion of FVCs

The 2010 Joint Law Reform Commission Report expressed the view that specialised family violence courts (FVCs) should be more widely established in Australia, and recommended that State and Territory governments establish or further develop FVCs within their existing courts.<sup>176</sup> These courts should have minimum core features to enhance their efficacy and effectiveness, including:<sup>177</sup>

- Judicial officers with specialist knowledge and skills;
- Specialised prosecutors to achieve consistent and quality outcomes for victims;
- Provision of specialised, free and timely legal advice and representation;
- Specialised and ongoing training on family violence issues;
- Availability of victim support workers; and
- Special arrangements for victim safety at court, such as separate waiting rooms for victims, separate entrances and exits.

The Joint Law Reform Commission Report cautioned that resourcing and training issues would need to be addressed in order for new FVCs to operate effectively.<sup>178</sup>

Despite the recommendations of the Joint Law Reform Commissions, no new developments have occurred in NSW over recent years.

Nothing came of the Keneally Government's 2010 announcement that it would examine the implementation of FVCs in NSW.<sup>179</sup> The 2012 Legislative Council Inquiry recommended that the NSW Government not establish standalone domestic violence courts, citing arguments that FVCs could limit access to justice and dilute the seriousness of domestic violence as a crime.<sup>180</sup> Instead, it recommended that the NSW Government integrate the most successful elements of the DVICM into all NSW Local Courts.<sup>181</sup>

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<sup>175</sup> Emma Birdsey, Nadine Smith, *The Domestic Violence Intervention Court Model: A follow-up study*, Contemporary Issues in Crime and Justice No 155, NSW Bureau of Crime Statistics and Research, 2012, pp 12-13.

<sup>176</sup> Australian Law Reform Commission and NSW Law Reform Commission, note 166, p 1505.

<sup>177</sup> Ibid pp 1509-10.

<sup>178</sup> Ibid p 1511

<sup>179</sup> Schneller, note 165, p 1.

<sup>180</sup> NSW Legislative Council, note 1, p 317.

<sup>181</sup> Ibid p 326.

During the 2015 NSW State election the Labor Opposition called for the introduction of FVCs, with a view to streamlining and expediting ADVO applications, reducing the opportunity for breaches and providing additional support to domestic and family violence victims.<sup>182</sup> For its part, the Baird Government has not indicated whether it supports expansion of FVCs.

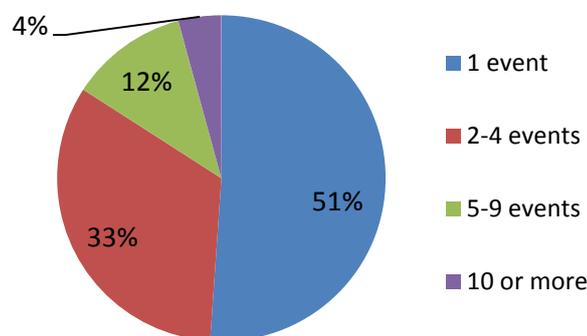
With regard to interstate developments, the 2015 Queensland Taskforce's report on domestic and family violence recommended that specialist domestic violence courts be established.<sup>183</sup> Queensland Premier Anastacia Palaszczuk has expressed initial support for this recommendation.<sup>184</sup>

In Western Australia, on the other hand, there has been a move away from the use of FVCs. In November 2014 the WA Department of the Attorney General conducted a cost-benefit analysis of two State FVCs, which found that the FVCs were ineffective at reducing reoffending rates, and that the courts were more expensive to run than mainstream courts.<sup>185</sup> Following the review, the WA Government announced that the courts will cease operations on 1 July 2015. This has led to criticism from WA Labor, which is concerned that victims will have inadequate support from the mainstream legal system.<sup>186</sup>

#### 7.4 Perpetrator behaviour programs

A focus of debate in recent years has been on programs designed to change the behaviour of perpetrators of domestic and family violence. The need for such programs is demonstrated by NSW Police figures, which show that nearly half the 81,772 domestic and family violence cases reported to police in 2010 were repeat offences.

**Figure 5: Reoffending among people reported to police, 2010<sup>187</sup>**



<sup>182</sup> NSW Labor, [‘A Fresh Approach to Domestic Violence’](#) (Media Release, 2014).

<sup>183</sup> Special Taskforce on Domestic and Family Violence in Queensland, note 25, p 6.

<sup>184</sup> Daryl Passmore, [Call for specialist courts to deal with ‘scourge’ of domestic violence](#), Courier-Mail, 28 February 2015.

<sup>185</sup> Department of the Attorney General, [Evaluation of the Metropolitan Family Violence Court and Evaluation of the Barndimalqu Court](#), Government of Western Australia, November 2014.

<sup>186</sup> [WA opposition raises fears over closure of domestic violence courts](#), The Guardian, 26 January 2015.

<sup>187</sup> NSW Auditor General, note 11, p 27.

### 7.4.1 Perpetrator programs in NSW and Australia

Australia's perpetrator programs have developed on an ad hoc basis and are primarily community based, rather than attached to specialist court services or in partnership with corrections services.<sup>188</sup>

NSW government-funded programs include the Men's Telephone Counselling and Referral Service—managed by not-for-profit organisation No To Violence—and the NSW Legal Aid-operated Apprehended Domestic Violence Order Pilot Program.<sup>189</sup> The NSW Government has set minimum standards for these programs, outlining policy and procedure requirements, training and experience of facilitators, supervision, program content, interagency practice and data collection.<sup>190</sup>

The Domestic Abuse Program is a perpetrator program provided by Corrective Services NSW. The Program's operation is outlined in the *Domestic Violence Justice Strategy* as follows:

To ensure offenders change their behaviour and reduce their re-offending, all offenders receiving a custodial sentence or community based order under Corrective Services NSW are assessed for their eligibility and suitability to attend a Domestic Abuse Program. All suitable high to medium risk offenders will have access to the program. Offenders not completing a program as ordered or breaching the conditions of an order are referred back to the Court. Offenders not eligible for the Domestic Abuse Program will be referred to services in the community, for example one-on-one or group counselling.<sup>191</sup>

The Domestic Abuse Program can claim some success. The 2012 Legislative Council Inquiry heard evidence that the Domestic Abuse Program worked effectively for both Aboriginal and non-Aboriginal male offenders, with a BOCSAR evaluation finding that offenders who took part in the Program took longer to reoffend, and reoffended less often and less seriously than the control group.<sup>192</sup>

At the national level, best practice national outcome standards for perpetrator interventions are being developed for Commonwealth, State and Territory governments.<sup>193</sup> These standards are expected to be completed in the first half of 2015.<sup>194</sup>

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<sup>188</sup> Centre for Innovative Justice, note 48, p 36.

<sup>189</sup> Women NSW, [Perpetrators stop using violence](#), n.d.

<sup>190</sup> NSW Legislative Council, note 1, pp 406-7.

<sup>191</sup> NSW Government, note 130, p 27.

<sup>192</sup> NSW Legislative Council, note 1, pp 399, 403.

<sup>193</sup> Council of Australian Governments, [Second Action Plan 2013-2016: Moving Ahead](#), November 2014, p 44

<sup>194</sup> Centre for Innovative Justice, note 48, p 11.

### 7.4.2 Other research on perpetrator programs

The Centre for Innovative Justice noted that long term, qualitative studies have found that perpetrator programs have had a positive impact. For example:

- A long term Australian study has indicated that men do experience participation in [Men's Behaviour Change Programs] as a significant and meaningful consequence.
- A substantial project in the UK entitled Project Mirabel has recently released findings that a considerable number of men do reduce or cease their use of violence and coercion as a result of participation in these programs.
- Equally, it is vital to recognise the considerable experience of many practitioners, who report the significant difference that perpetrator programs can make.<sup>195</sup>

A key difficulty in assessing perpetrator programs has been the inability to conduct comprehensive experimental studies. According to the Centre for Innovative Justice:

Given that it is not generally considered appropriate to conduct a fully experimental study in which some perpetrators are offered intervention while others are offered none at all, many studies are also 'quasi-experimental' at best – criticised for lack of a 'gold standard' evidence base that, arguably, it is not ethical to achieve.<sup>196</sup>

Australian research is limited in scope. Existing research into male perpetrator intervention programs has focused primarily on issues of policy and procedural or organisational analysis, with limited data on the effects of interventions on domestic and family violence perpetrators.<sup>197</sup>

Mixed findings emerge from international research.<sup>198</sup> For example, a 2009 US study found that rehabilitation programs for male perpetrators of domestic violence appeared to be less effective at reducing recidivism than programs for other offender groups.<sup>199</sup> Other studies that reviewed the standard model intervention in the US (primarily male-only, group treatment programs) found little or no positive effect on violent behaviour.<sup>200</sup>

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<sup>195</sup> Ibid p 37.

<sup>196</sup> Centre for Innovative Justice, note 48, p 36.

<sup>197</sup> Andrew Day, Donna Chung, Patrick O'Leary, Donna Justo, Susan Moore, Ed Carson, Adam Gerace, *Integrated responses to domestic violence: Legally mandated intervention programs for male perpetrators*, Trends & issues in crime and criminal justice No 404, Australian Institute of Criminology, December 2010.

<sup>198</sup> Ibid.

<sup>199</sup> Andrew Day, Donna Chung, Patrick O'Leary, Ed Carson, 'Programs for men who perpetrate domestic violence: an examination of the issues underlying the effectiveness of intervention programs' (2009) 24 *Journal of family violence* 203.

<sup>200</sup> Kenneth Corvo, Donald Dutton, Wan-Yi Chen, 'Toward Evidence Based Practice with Domestic Violence Perpetrators' (2008) 16 *Journal of aggression, maltreatment & trauma* 111, p 112.

More positively, other evidence indicates that US programs attached to rapid and certain criminal justice responses for non-compliance are effective, particularly when the same judge monitors an individual's compliance.<sup>201</sup>

Despite the uncertainty over the effectiveness of perpetrator programs, the 2012 Legislative Council Inquiry maintained that such programs may yet be worthwhile.<sup>202</sup> The Committee made the following recommendation, which was supported by the NSW Government:<sup>203</sup>

That the NSW Government develop an effective intervention program for perpetrators of domestic violence in New South Wales based on thorough research and systematic trial and evaluation. Particular attention should be paid to gaps in existing programs including for Aboriginal people, high risk offenders, women and perpetrators who may not yet have been convicted of an offence. Funding of perpetrator programs should not come at the expense of victims' services or programs.<sup>204</sup>

The Centre for Innovative Justice cautions against underestimating the value of perpetrator programs in helping to reduce domestic and family violence. It comments that, without proper support, funding, and sector-wide standards, perpetrator programs risk "becoming yet another 'piece of paper' which perpetrators can ignore."<sup>205</sup>

## 8. COMMONWEALTH DEVELOPMENTS

There have been several developments at the Commonwealth level relating to domestic and family violence.

On 17 April 2015 COAG released a communique agreeing to a national, cooperative effort to reduce domestic and family violence. COAG agreed to take urgent action to reduce violence against women by implementing the following by the end of 2015:

- a national domestic violence order (DVO) scheme will be agreed, where DVOs will be automatically recognised and enforceable in any state or territory of Australia;
- progress will be reported on a national information system that will enable courts and police in different states and territories to share information on active DVOs – New South Wales, Queensland and Tasmania will trial the system;
- COAG will consider national standards to ensure perpetrators of violence against women are held to account at the same standard across Australia, for implementation in 2016; and
- COAG will consider strategies to tackle the increased use of technology to

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<sup>201</sup> Centre for Innovative Justice, note 48, p 38.

<sup>202</sup> NSW Legislative Council, note 1, p 409.

<sup>203</sup> NSW Government, note 123.

<sup>204</sup> NSW Legislative Council, note 1, p 409.

<sup>205</sup> Centre for Innovative Justice, note 48, p 44.

facilitate abuse against women, and to ensure women have adequate legal protections against this form of abuse.<sup>206</sup>

Additionally, COAG agreed to jointly contribute \$30 million for a national campaign to reduce violence against women and their children, and potential funding for additional women's support services.<sup>207</sup>

On a less positive note, a week after the release of the COAG communique, Commonwealth funding was axed for a domestic violence education program and support service for NSW schoolchildren.<sup>208</sup> This follows criticism by State Governments in early 2015 of funding cuts to homelessness services and a possible move away from federal social housing support.<sup>209</sup> Both of these decisions were seen to have negative consequences for domestic and family violence victim shelters. Additionally, the Prime Minister has refused to support calls for a Commonwealth royal commission into domestic violence.<sup>210</sup>

The focus here is on two developments at the Commonwealth level: the ongoing implementation of the *National Plan to Reduce Violence against Women and their Children 2010-2022*, and the interim findings of the Senate Finance and Public Administration References Committee's *Inquiry into domestic violence*.

### **8.1 National Plan to Reduce Violence against Women and their Children**

In May 2008 the Commonwealth Government established the National Council to Reduce Violence against Women and their Children. Following the National Council's recommendation, the Commonwealth Government referred the matter to COAG, which in 2011 released the *National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Plan).<sup>211</sup>

The National Plan targets domestic and family violence and sexual assault, aiming to change social attitudes about violence against women and their children in order to reduce domestic and family violence in the long term. According to the National Plan's Foreword:

It is the first plan to coordinate action across jurisdictions. It is the first to focus strongly on prevention. It is the first to look to the long term, building respectful relationships and working to increase gender equality to prevent violence from occurring in the first place. It is the first to focus on holding perpetrators accountable and encourage behaviour change.<sup>212</sup>

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<sup>206</sup> COAG, note 8.

<sup>207</sup> Ibid.

<sup>208</sup> Eamonn Duff, [Federal government axes funding for domestic violence education in northern NSW schools](#), Sydney Morning Herald, 26 April 2015.

<sup>209</sup> Oliver Milman, [Fears family violence royal commission and cuts will spark homelessness crisis](#), The Guardian, 21 January 2015.

<sup>210</sup> Judith Ireland, [Epidemic yes, but calls for commission rebuffed](#), Sydney Morning Herald, 28 January 2015.

<sup>211</sup> COAG, note 12.

<sup>212</sup> Ibid Foreword.

The National Plan sets out six National Outcomes for all governments to deliver during its 12-year operation:

1. Communities are safe and free from violence;
2. Relationships are respectful;
3. Indigenous communities are strengthened;
4. Services meet the needs of women and their children experiencing violence;
5. Justice responses are effective; and
6. Perpetrators stop their violence and are held to account.<sup>213</sup>

The National Plan is to be implemented through a series of four 3-year Action Plans that aim to bring about “a significant and sustained reduction in violence against women and their children”.<sup>214</sup>

Table 10: Overview of the Action Plans <sup>215</sup>	
<b>First Action Plan:</b> Building a Strong Foundation	Establishes groundwork for National Plan; frameworks and approaches necessary to stop violence against women.
<b>Second Action Plan:</b> Moving Ahead	Consolidates evidence base; strengthen existing strategies and develop new approaches if necessary.
<b>Third Action Plan:</b> Promising Results	Delivers solid and continuing progress in best practice policies, using collected data.
<b>Fourth Action Plan:</b> Turning the Corner	Expected delivery of tangible results in terms of reduced violence.

According to the 2014 Progress Review, the First Action Plan recorded a number of achievements, including building an evidence base and primary prevention capacity, and implementing targeted actions to enhance service delivery and strengthen justice responses.<sup>216</sup>

Table 11: Selected achievements of the First Action Plan <sup>217</sup>	
<b>Building the evidence base</b>	<ul style="list-style-type: none"> <li>• Establishing Australia's National Research Organisation for Women's Safety and National Services (ANROWS).</li> <li>• Commencing development of a National Data Collection and Reporting Framework.</li> </ul>
<b>Building primary prevention</b>	<ul style="list-style-type: none"> <li>• Creation of the Foundation to Prevent</li> </ul>

<sup>213</sup> Ibid.

<sup>214</sup> Ibid p 10.

<sup>215</sup> Ibid pp 12-13.

<sup>216</sup> Department of Social Services, *Progress Review of the First Action Plan*, Government of Australia, June 2014, p 14.

<sup>217</sup> Ibid.

<b>capacity</b>	<p>Violence against Women and their Children.</p> <ul style="list-style-type: none"> <li>• Funding for respectful relationships projects.</li> </ul>
<b>Enhancing service delivery</b>	<ul style="list-style-type: none"> <li>• Foundation of first national domestic and family violence and sexual assault counselling service.</li> <li>• Establishment of a Cross Border Family Violence Information and Intelligence Unit</li> </ul>
<b>Strengthening justice responses</b>	<ul style="list-style-type: none"> <li>• Development of national outcome standards for perpetrator interventions.</li> <li>• Development of and implementation of a national ADVO scheme.</li> </ul>

Although there has been criticism of the slow rate of progress, particularly amongst front line service providers, it has been contended that the long term planning and efforts needed to implement the National Plan means that changes will take time to become visible.<sup>218</sup> This is in line with the goal of the First Action Plan: namely, to lay foundations for change, with subsequent Action Plans using the First Action Plan as a base from which to reduce violence against women and their children.

In November 2014 the Second Action Plan was launched. It contains five national priorities and 26 practical actions that State, Territories and the Commonwealth will implement between 2013 and 2016 in order to improve women's safety.<sup>219</sup>

**Table 12: Second Action Plan National Priorities<sup>220</sup>**

<b>National Priorities</b>	<b>Selected actions for each National Priority</b>
<b>National Priority 1:</b> Driving whole of community action to prevent violence	<ul style="list-style-type: none"> <li>• Support communities to prevent, respond to and speak out against violence</li> <li>• Promote gender equality across a range of spheres</li> <li>• Incorporate respectful relationships education into the national curriculum.</li> </ul>
<b>National Priority 2:</b> Understanding diverse experiences of violence	<ul style="list-style-type: none"> <li>• Improve outcomes for Indigenous Australians through building community safety</li> <li>• Deliver awareness raising, training and prevention activities and responses to violence that are tailored to meet the needs of women with disability.</li> </ul>
<b>National Priority 3:</b> Supporting innovative services	<ul style="list-style-type: none"> <li>• Continue building first stop support for women and their children experiencing violence, based on 'what works', and develop national standards for telephone and online</li> </ul>

<sup>218</sup> Senate Finance and Public Administration References Committee, *Inquiry into domestic violence in Australia*, Parliament of Australia, June 2014, p 4.

<sup>219</sup> COAG, note 193, p 11.

<sup>220</sup> Ibid.

and integrated systems	<p>counselling services</p> <ul style="list-style-type: none"> <li>• Improve information sharing across court processes.</li> </ul>
<b>National Priority 4:</b> Improving perpetrator interventions	<ul style="list-style-type: none"> <li>• Improve the evidence base on perpetrator interventions</li> <li>• Finalise and set national outcome standards for best practice perpetrator interventions</li> </ul>
<b>National Priority 5:</b> Continuing to build the evidence base	<ul style="list-style-type: none"> <li>• Expand the quality and quantity of national research on violence against women and their children</li> <li>• Build the National Data Collection and Reporting Framework.</li> </ul>

## 8.2 Senate Inquiry into domestic violence in Australia

In March 2015 the Senate Finance and Public Administration References Committee released the interim report for its inquiry into domestic violence in Australia. The inquiry's terms of reference are reproduced below:

**Table 13: Inquiry into domestic violence in Australia terms of reference<sup>221</sup>**

On 26 June 2014, the following matter was referred to the Finance and Public Administration References Committee for inquiry and report by the 27 October 2014:

- a. the prevalence and impact of domestic violence in Australia as it affects all Australians and, in particular, as it affects:
  - i. women living with a disability, and
  - ii. women from Aboriginal and Torres Strait Islander backgrounds.
- b. the factors contributing to the present levels of domestic violence;
- c. the adequacy of policy and community responses to domestic violence;
- d. the effects of policy decisions regarding housing, legal services, and women's economic independence on the ability of women to escape domestic violence;
- e. how the Federal Government can best support, contribute to and drive the social, cultural and behavioural shifts required to eliminate violence against women and their children; and
- f. any other related matters.

The Committee's Interim Report raised concerns about Commonwealth Government funding cuts to services essential to supporting victims of domestic violence, including:<sup>222</sup>

- Cuts to legal services;
- Cuts to new shelters and emergency accommodation;
- Cuts to housing and homelessness peak bodies;
- The abolition of the National Rental Affordability Scheme; and

<sup>221</sup> Senate Finance and Public Administration References Committee, note 218, p 1.

<sup>222</sup> Ibid p 3.

- The abolition of the National Housing Supply Council.

The Committee also criticised the Commonwealth Government's failure to guarantee funding under the National Partnership Agreement on Homelessness beyond 30 June 2015, and noted that a \$240 million funding cut to the Department of Social Services grants program had affected funding certainty for frontline domestic violence organisations that delivered crisis services and men's behaviour change programs.<sup>223</sup>

With regard to these issues, the Committee made nine recommendations, most notably:<sup>224</sup>

- Restore funding cuts to legal services, housing and homelessness services and the Department of Social Services grants program, and guarantee National Partnership Agreement on Homelessness funding;
- All Australian Governments to work with stakeholders to increase the capacity of services in the areas of prevention, early intervention and crisis support;
- Increase coordination and communication between legal systems across jurisdictions;
- Harmonise intervention across jurisdictions; and
- Increase the availability of behavioural change programs for perpetrators and ensure programs are evidence based.

The Commonwealth Government has not formally responded to the recommendations of the Committee. However, in March 2015 it committed an additional \$230 million in funding to the National Partnership Agreement on Homelessness over two years.<sup>225</sup> This is equivalent to the \$115 million in Commonwealth funding provided in 2014-15, but is \$44 million less than the extension provided by the Gillard/Rudd Government during the previous financial year.<sup>226</sup>

## 9. DEVELOPMENTS IN OTHER STATES

### 9.1 Queensland Special Taskforce on Domestic and Family Violence

In September 2014 the Queensland Government established the Special Taskforce on Domestic and Family Violence (the Taskforce), headed by former Governor-General Dame Quentin Bryce. The Taskforce examined the State's domestic and family violence support systems in order to determine how the system could be improved, and how future incidents of domestic violence could

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<sup>223</sup> Ibid.

<sup>224</sup> Ibid p vii.

<sup>225</sup> Scott Morrison, '[Coalition reverses Labor's funding cuts on homelessness with \\$230 million commitment prioritising victims of domestic violence](#)' (Media Release, 23 March 2015).

<sup>226</sup> Patricia Karvelas, '[Kevin Andrews extends homeless funding after crisis warning](#)', The Australian, 30 March 2015; Department of Social Services.

be prevented.

The Taskforce's report, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*, was released on 28 February 2015. The report found that in 2013-14 there were 66,016 occurrences of domestic and family violence reported in Queensland—an average of 180 incidents each day across the State—while some Aboriginal and Torres Strait Islander communities faced such extensive abuse that it had become normalised.<sup>227</sup>

The Taskforce made 140 recommendations, grouped under the following categories:<sup>228</sup>

<b>A domestic violence strategy for Queensland: The Taskforce's framework for change</b>	<ul style="list-style-type: none"> <li>• Creation of a comprehensive Domestic and Family Violence Prevention Strategy (DFVP Strategy);</li> <li>• Creation of an independent audit and advocacy oversight body to oversee the development of the DFVP Strategy.</li> </ul>
<b>Laying the foundations: Building a framework to protecting at-risk Queenslanders</b>	<ul style="list-style-type: none"> <li>• Develop a place-based, culturally appropriate integrated response to domestic and family violence in Indigenous communities;</li> <li>• Raise awareness of domestic and family violence in the LGBTI community.</li> </ul>
<b>Taking action together: building a community free from violence</b>	<ul style="list-style-type: none"> <li>• Form a long term, future-focused communication strategy to educate and engage the community about domestic and family violence;</li> <li>• Facilitate school and workplace programs to educate the community about domestic violence issues;</li> <li>• Amend the Industrial Relations Act to create a new category of leave for the public sector for victims of abuse.</li> </ul>
<b>Getting help: Building an integrated service response</b>	<ul style="list-style-type: none"> <li>• Commence an audit of existing services to inform a long term investment model;</li> <li>• Establish integrated response model pilots in collaboration with the domestic and family violence service sector.</li> </ul>
<b>Delivering fairness and accountability: An enhanced law and justice framework for</b>	<ul style="list-style-type: none"> <li>• Continue the review of the Victims of Crime Assistance Act to ensure appropriate compensation levels;</li> </ul>

<sup>227</sup> Special Taskforce on Domestic and Family Violence in Queensland, note 25, p 6.

<sup>228</sup> Ibid pp 18-43.

<sup>229</sup> Ibid pp 12-13.

<b>domestic and family violence</b>	<ul style="list-style-type: none"> <li>• Establish specialist domestic violence courts in legislation.</li> <li>• Compulsory training for court and registry staff.</li> </ul>
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Following the release of the Taskforce report, the Palaszczuk Government committed to considering all the recommendations made by the Taskforce.<sup>230</sup> Additionally, Queensland's Women's Minister announced that the Government would fund two new domestic violence shelters in Brisbane and Townsville.<sup>231</sup> As noted in section 7.3.3, initial support was also expressed by the Premier for family violence courts in Queensland.

## 9.2 Victorian Royal Commission into Family Violence

In May 2014 the then Victorian Opposition Leader Daniel Andrews pledged to establish Australia's first Royal Commission into Family Violence.<sup>232</sup> After being elected to government, Premier Andrews announced the establishment of the Royal Commission into Family Violence, chaired by former Victorian Supreme Court Justice Marcia Neave.<sup>233</sup> The Royal Commission has broad terms of reference, directing it to:<sup>234</sup>

- Perform an examination and evaluation of strategies, frameworks, policies, programs and services across government and local government, media, business and community organisations;
- Conduct an investigation of systematic responses to domestic and family violence, particularly in the legal system and by police, corrections, child protection, legal and family violence support services, including reducing re-offending and changing violence and controlling behaviours;
- Make a determination of how government agencies and community organisations can better integrate and co-ordinate their efforts; and
- Form recommendations on how to best evaluate and measure the success of strategies, frameworks, policies, programs and services aimed to stop domestic and family violence.

The Royal Commission is due to provide its report and recommendations to the Andrews Government by 29 February 2016.<sup>235</sup>

<sup>230</sup> Anastacia Palaszczuk, '[Domestic and family violence taskforce delivers recommendations](#)' (Media Statement, 28 February 2015).

<sup>231</sup> [Two new domestic violence shelters to be funded in Queensland, Minister for Women Shannon Fentiman says](#), ABC News, 9 March 2015.

<sup>232</sup> Daniel Andrews, '[Speech to the Victorian ALP State Conference](#)' (Speech delivered at the Victorian ALP State Conference, 17 May 2014).

<sup>233</sup> Tracey Matters, '[Royal Commission into Family Violence begins](#)' (Media Release, 23 February 2015).

<sup>234</sup> Royal Commission into Family Violence, [Terms of Reference](#), Government of Victoria, 22 February 2015; Kate Fitz-Gibbon, [Explainer: Victoria's Royal Commission into Family Violence](#), The Conversation, 27 February 2015.

<sup>235</sup> Royal Commission into Family Violence, note 234.

## **10. CONCLUSION**

As shown by recent policy reform in NSW, and the completion or commencement of several inquiries into the issue, domestic and family violence is firmly on the agenda of policy formulation and public debate in Australia. Furthermore, the April 2015 COAG agreement to urgently reduce domestic and family violence appears to signal a more concerted, national approach to a form of violence that disproportionately impacts women and their children.

As in any public policy debate, a key issue relates to the question of resources. Good intentions and legal or administrative reforms are one thing. Will they be backed by sufficient resources for women's refuges, legal and referral services for victims, and educational programs for perpetrators?

For victims of domestic and family violence there is an urgent need to act on the practical issues at stake.