

Review of NSW Police Force responses to domestic and family violence incidents

June 2023

LECC

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Conduct Commission

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The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



14 June 2023

The Hon. Benjamin Cameron Franklin, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon. Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

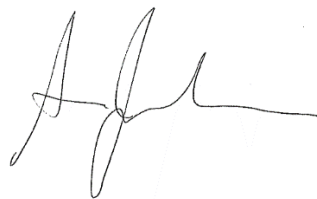
Under section 138 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its report *Review of NSW Police Force responses to domestic and family violence incidents*.

Under section 142(2) of the Act, we recommend that this report be made public immediately.

Yours sincerely



The Hon. Peter Johnson SC
Chief Commissioner



Anina Johnson
Commissioner

Foreword

Police officers are the first responders to the majority of domestic and family violence incidents that take place in New South Wales. They play a critical role in keeping victims safe, detaining, or arresting offenders and applying for protection orders. Police attend 180,000 incidents a year – or about 500 every day. This chilling number highlights how important it is for police to be well trained, well equipped and have appropriate systems in place to deal with this sadly all too common crime.

The NSW Police Force estimates that 40% of police work involves responding to domestic violence. The Law Enforcement Conduct Commission used data from complaints to look at the effectiveness of NSW Police Force processes and procedures in relation to domestic and family violence incidents.

We used data from complaint investigations linked to incidents involving a police officer responding to domestic and family violence incidents between 2017 and 2021.

We looked at matters in which police officers were involved in domestic and family violence incidents, as well as matters in which officers were investigated for conducting inadequate investigations into reports of domestic and family violence incidents.

We saw that police officers had been involved in domestic and family violence incidents, and at times were charged with domestic violence offences.

We saw issues such as poor record keeping practices and police with inadequate training in how to properly investigate domestic violence incidents.

The Commission has made 13 recommendations to assist the NSW Police Force to strengthen its procedures and the way it investigates complaints about domestic and family violence.

Police officers play a critical role as first responders to domestic and family violence incidents. However, addressing domestic violence issues cannot be solved by the NSW Police Force alone. Many agencies play a role in helping those who have experienced domestic and family violence.

The investigations police undertake, and the information they keep are important, not only to prosecuting offenders, but also to other agencies involved in helping victims of domestic and family violence.

The NSW Police Force has proposed significant changes to the way it manages and investigates domestic and family violence matters. We acknowledge the NSW Police Force commitment to improve and strengthen its systems and procedures. As we do our work, we will look at the impact these proposed changes have on the way police respond to these incidents and any complaints made about the way they have dealt with domestic and family violence.

The Commission would like to thank the NSW Police Force for its collaborative approach throughout this project and for its willingness to engage in ongoing and productive dialogue to strengthen the response to domestic and family violence in New South Wales.

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Recommendations

- Recommendation 1: Where a police officer is investigated for domestic or family violence offences, the NSW Police Force *Domestic and Family Violence Standard Operating Procedures* be amended to specify that the investigation should be transferred to another Command. 16
- Recommendation 2: If an investigation cannot be transferred to another Command for investigation, a Commander’s decision-making processes, including how conflicts of interest will be managed, should be documented and uploaded to the complaints information system. 17
- Recommendation 3: The NSW Police Force require all Risk Assessments to be maintained on a centralised database. 26
- Recommendation 4: The NSW Police Force Domestic and Family Violence Standard Operating Procedures be amended to include instructions that all Risk Assessments should include the following information:
- a) the date and time when the service firearms of officers involved in domestic and family violence incidents were secured
 - b) the name and rank of the officer who has secured the service firearms of officers involved in domestic and family violence incidents
 - c) the location of the secured service firearms of officers involved in domestic and family violence incidents. 26
- Recommendation 5: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* specify that where officers involved in domestic and family violence incidents are out of the workplace when the incident occurred, the Commander of the officer involved in domestic and family violence should complete a Risk Assessment. 26
- Recommendation 6: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* be amended to include instructions that the event report should mention that a Risk Assessment has been completed, including:
- a) the time and date when the Risk Assessment was completed
 - b) the name and the rank of the person who has completed the Risk Assessment
 - c) the outcome of the Risk Assessment..... 26
- Recommendation 7: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* specify that the event report should include the following information in relation to the seizure of personal firearm(s) and firearm licences:
- a) the number of personal firearm(s) seized
 - b) the date and time when the personal firearm(s) were seized
 - c) the date and time when the personal firearm(s) were returned to its owner
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 - e) the date and time when the personal firearm licence suspension was lifted..... 27
- Recommendation 8: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* specify that the event report should include the following information in relation to securing the NSW Police Force service firearm of an involved officer:

- a) the date and time when the service firearm(s) was secured and padlocked
- b) the location of the service firearms
- c) the name and rank of the officer who secured the firearm(s)
- d) the date and time when the service firearm was returned to the involved officer. 27

Recommendation 9: The NSW Police Force should review its systems and processes to ensure that a COPS event report is created for every domestic and family violence incident attended by police. 34

Recommendation 10: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* should require police officers to record in the event narrative that a) they have conducted ILS checks on the alleged domestic and family violence offender and b) the response to their enquiries about the presence or possession of firearms at the scene of any domestic or family violence incident. 41

Recommendation 11: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* be amended to say that officers “should” activate BWV at domestic and family violence incidents. 52

Recommendation 12: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* provide additional guidance to police officers to help them in correctly identifying the primary aggressor and the primary victim of domestic and family violence incidents..... 56

Recommendation 13: The Domestic Violence Fundamentals course should be mandatory training for all general duties police officers, and be repeated at regular intervals through a police officer’s career. 56

1. About this review

1.1 Background

Police officers are the first responders¹ to most domestic and family violence incidents.

In New South Wales a domestic violence offence is an offence committed by one person against another person with whom the perpetrator has (or had) a domestic relationship.² Domestic and family violence includes verbal abuse, physical abuse, sexual abuse, emotional abuse, financial abuse, psychological abuse, harassment, and stalking.³ Some of these forms of abuse amount to criminal conduct while others do not.

The police play a critical role in keeping victims safe; applying for protection orders; detaining or arresting the offender; and referring victims to appropriate support services.

The NSW Police Force attended 182,121 domestic violence related matters in 2022. This equates to nearly 500 incidents a day. The number of domestic violence incidents attended by the NSW Police Force continues to rise.⁴ The NSW Police Force estimates that domestic and family violence accounts for up to 40% of all police work in NSW.⁵

Domestic and family violence is clearly one of the most widespread criminal issues in the State. Many government and non-government agencies have prioritised work in this area.

1.2 Purpose of this review

To understand the way in which the NSW Police Force responds to domestic and family violence incidents better, the Commission reviewed certain complaint records that related to officers responding to a domestic and family violence incident.

Our review aimed to:

1. examine the NSW Police Force's compliance with its domestic and family violence policies and procedures
2. identify potential systemic issues in the way that the NSW Police Force responds to, manages, and investigates domestic and family violence incidents, and
3. make recommendations to the NSW Police Force to improve the effectiveness of its domestic and family violence procedures.

¹ The NSW Police Force estimates police are the first responders to over 95% of DV incidents. (Intersecting Pathways, *The NSW Police Force Domestic & Family Violence 'Working' Strategy*, p. 2.)

² Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 11(1)(a)(b).

³ NSW Government, Communities & Justice, Types of abuse in domestic and family violence. Accessed on 21/9/2021, <https://www.facs.nsw.gov.au/domestic-violence/about/types-of-abuse-in-dv>

⁴ Up from 134,603 in 2020 and 181,438 in 2021. Email from the NSW Police Force, Manager, Domestic and Family Violence Team to the Law enforcement Conduct Commission, Senior Project Officer, 29 November 2021 and Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Senior Project Officer, Law Enforcement Conduct Commission, 31 March 2023.

⁵ Memorandum from Assistant Commissioner (DV Sponsor) to Assistant Commissioner's and Police Commanders, Seizure of Firearms during DV investigations, 28 April 2021 (On NSW Police Force Intranet under 'DV and Firearms' (Corporate Sponsor's Memorandum)).

1.3 Other examinations of the NSW Police Force response to domestic and family violence

The Commission's work intersects with 2 other examinations of the NSW Police Force response to domestic and family violence:

- The Audit Office of NSW conducted a major review on the effectiveness of NSW Police Force systems, processes, resources, and capability in responding to domestic and family violence incidents in NSW. Its report entitled *Police responses to domestic and family violence* was published in April 2022.
- The NSW Police Force is currently working towards a major overhaul of the way in which it addresses domestic violence incidents. The changes will extend from offender management to victim support and include the way in which police interact with the other organisations involved in responding to domestic violence.

The Audit Office reviewed the effectiveness of NSW Police Force systems and the sufficiency of its resources to manage domestic and family violence demand.

One of the Auditor General's comments was that the NSW Police Force does not collate or analyse complaints data related to domestic and family violence incidents. This means that, to date, the NSW Police Force has been unable to aggregate complaints data to identify trends, gaps, and risks.⁶ Our report addresses that gap.

The Commission did not attempt to measure the effectiveness of NSW Police Force investigations into domestic and family violence incidents. This is a complex task and beyond the scope of this project. However, the Commission expects that the NSW Police Force's current reform project will include consideration of the effectiveness of its current processes.

The Commission's review focusses on compliance with NSW Police Force domestic and family violence policies and procedures.

1.4 The types of complaints we reviewed

This review looked at complaints that were created because of NSW Police Force responses to domestic and family violence incidents, regardless of whether the complaint records alleged a breach of NSW Police Force Domestic and Family Violence procedures. In this report we also refer to these as complaints that are linked to a domestic and family violence matter.

The Commission analysed 470 complaint records⁷ that the NSW Police Force registered between 1 July 2017 and 1 July 2021. The NSW Police Force declined 248 of the 470 (53%) matters at triage.

1.5 Our key findings

The Commission's review findings of complaint investigations fell into 2 distinct categories:

1. matters where officers themselves were involved in domestic and family violence incidents

⁶ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, p. 36.

⁷ In early 2021, the NSW Police Force introduced the Misconduct Management Framework that requires that delegated officers must register all 'complaints' on the Complaints Information System (IAPro) and manage those matters in line with the Section 14 Agreement and other NSW Police Force procedures attached to the Framework. As part of this new model the term 'complaint' has been replaced with the term 'misconduct matter'. However, existing NSW Police Force policies and procedures still refer to the term complaint and for ease of reference, the Commission will use the term 'complaint' throughout this report.

2. matters where officers were investigated for conducting inadequate investigations into reports of domestic and family violence incidents.

Matters where officers were involved in domestic and family violence incidents

- Seventy out of 222 complaint investigations (32%), comprising 60 officers, related to officers being involved in domestic and family violence incidents; the NSW Police Force charged 17 out of 60 officers (28%) with offences.
- The NSW Police Force had previously investigated 11 out of 60 officers (18%) involved in domestic and family violence — in some cases more than once.
- Most investigations into police officers involved in domestic and family violence incidents included no information about the removal of their firearms (service firearms and/or personal firearms).
- More than a quarter of officers involved in domestic and family violence incidents (17 out of 60 officers) had been diagnosed with mental health issues.
- In 54 out of 70 matters (77%), officers from the same command investigated officers accused of domestic and family violence.

Officers conducting inadequate investigations into reports of domestic and family violence

- 152 investigations we reviewed related to allegations that police failed to comply with requirements contained in the NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018* (DV SOPs). Of these, 102 (67%) resulted in sustained findings.
- 73 of 102 complaint investigations that resulted in sustained findings (72%) related to an inadequate investigation into a reported domestic and family violence incident. This appears to be a result of a lack of officer training in relation to domestic and family violence.
- There were poor record keeping practices in relation to recording domestic and family violence incidents and risk assessments.

The Commission hopes that this review will contribute to the NSW Police Force's overhaul of their domestic violence response, by identifying some of the potential gaps or obstacles in the current system.

2. How we did our review

The Commission's review drew from a range of public and NSW Police Force sources to assess how well the NSW Police Force responds to and investigates domestic and family violence matters, including:

- a) NSW Police Force policies and procedures
- b) NSW Police Force records
- c) consultation with the NSW Police Force.

2.1 NSW Police Force policies and procedures

The Commission considered all NSW Police Force written policies, procedures and guidelines pertaining to the management and investigation of domestic and family violence matters. The purpose was to assess if NSW Police Force officers complied with selected procedural requirements that manage risks associated with domestic and family violence investigations. Documents we reviewed included:

- NSW Police Force Domestic and Family Violence Policy (2018)⁸
- Domestic & Family Violence Action Plan 2020-21
- NSW Police Force Domestic Violence Evidence in Chief (DVEC) Practitioner's Guide (2017)
- NSW Police Force Apprehended Domestic Violence Order Compliance Check Standard Operating Procedures (2019)
- Code of Practice for the NSW Police Force Response to Domestic and Family Violence (2018)⁹
- NSW Police Force Police Issued ADVOs¹⁰ – A Guide for Supervisors, Domestic & Family Violence Team (2014)
- NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command (2016).¹¹

2.2 NSW Police Force records

The NSW Police Force gives the Commission a copy of notifiable misconduct matters it receives.¹² Notifiable misconduct matters are defined under guidelines and by an agreement between the NSW Police Force and the Commission.¹³ The NSW Police Force must also notify the Commission when

⁸ The DV SOPs list October 2021 as the review date.

⁹ The *Code of Practice for the NSWPF response to domestic and family violence* requires that when police receive reports of domestic and family violence that they act on any reports. The NSW Police Force acknowledges that a strong and effective criminal justice response can have a deterrent effect. Police will respond to domestic and family violence incidents reported to them, regardless of who made the report, or where, when why or how it was made. The action that police take is based on an assessment of the incident and whether a DV offence has been committed, regardless of whether the person in need of protection makes a verbal complaint, recorded or written statement.

¹⁰ Apprehended Domestic Violence Order.

¹¹ The Misconduct Management Framework replaced the Complaint Handling Guidelines in September 2020. The change in procedures had no impact on the findings of this report.

¹² This is done under s 130(2) of the *Police Act 1990* (NSW).

¹³ The Guidelines issued pursuant to the s 14 Agreement between the Law Enforcement Conduct Commission and the Commissioner of Police (the s 14 Guidelines) clarify the specific complaints that the NSW Police Force must notify to the Commission. The s 14 Guidelines came into existence in November 2017. Notifiable complaints are complaints which the Commission prioritises its functions and include criminal conduct, corrupt conduct, failure by a police officer or administrative employee to report police officer misconduct and conduct which might warrant removal from the NSW Police Force or other serious management action.

investigations about notifiable complaints are finalised.¹⁴ Between July 2017 and July 2021 the NSW Police Force notified the Commission of 470 finalised complaints that we assessed as being linked or related to domestic and family violence incidents. We assessed a matter as related if the complaint referred to any police response to a domestic and family violence incident. The NSW Police Force recorded these complaints on their complaints information system (IAPro).¹⁵

The Commission reviewed these complaints to identify any recurring or systemic issues in the way the NSW Police Force responds to, manages, and investigates domestic and family violence matters. We reviewed the initial complaint document, the triage form, and, where applicable, the outcome of the police investigation of the complaint (either the final evidence-based investigation report or the Mandatory Resolution Outcome Report). For some matters, the Commission also reviewed NSW Police Force Complaint Management Team minutes, situation reports, status reports and event reports to clarify outstanding queries, such as reasons for suspension of investigations or deficiencies in the way NSW Police Force officers recorded information in event reports. An overview about the way the NSW Police Force handles complaints is set out in Appendix A.

Complaints data provides a useful source of information about misconduct or inappropriate police practices from a preventive and analytical perspective. That said, complaints data has some limitations as an accurate indicator of police misconduct. Australian research has found that most domestic and family violence victims never report these incidents to police.¹⁶ Reasons for non-disclosure include:

- fear of further violence from the offender
- a wish to protect the offender
- embarrassment and shame
- a belief that the police won't believe the victims or won't take any action against the offender
- fear that other police officers will discriminate against them.¹⁷

Complaints data also provides information and data on the prevalence of police officers being involved in domestic and family violence. Research suggests that under-reporting of domestic and family violence experienced at the hands of a police officer may be prevalent within law enforcement agencies. This is because police officers may 'fear, even when anonymity is assured, that admitting their own or their colleagues' abusive behaviour may jeopardize careers and livelihoods and break up families.'¹⁸

Despite these limitations, reviewing complaints data remains an effective method of collecting and analysing data about police misconduct and provides opportunities for organisations and individuals to learn from them and to improve their performance.¹⁹

¹⁴ This is done under s 137(1)(b) of the *Police Act 1990* (NSW).

¹⁵ Section 129(1) of the *Police Act 1990* (NSW) requires that the NSW Police Force registers misconduct information on the complaints information system.

¹⁶ Voce, I. and Boxall H. (2018) Who reports domestic violence to police? A review of the evidence. Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice 559. Women's Safety NSW, Police Domestic and Family Violence Policy and Practice, 7 November 2020, p. 6.

¹⁷ Barrett BJ., Peirone A., Cheung CH and Habibov, N. (2017) Pathways to police contact for spousal violence survivors: The role of individual and neighbourhood factors in survivor's reporting behaviors. *Journal of Interpersonal Violence*. Birdsey, E., Snowball, L. (2013) Reporting violence to police: A survey of victims attending domestic violence services. New South Wales Bureau of Crime Statistics and research, Issues Paper no. 91, October 2013.

¹⁸ University of Maryland Francis King Carey School of Law, L. S., Goodmark (2015) *Hands Up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse*, Francis King Carey School of Law Faculty.

¹⁹ Ede, A., Homel, R. & Prenzler, T. (2002) 'Reducing Complaints Against Police and preventing Misconduct: A Diagnostic Study Using Hot Spot Analysis', *The Australian and New Zealand Journal of Criminology*, vol. 35, no. 1, pp. 27-29. Prenzler, T. & Ronken, C. (2003) 'A survey of innovations in the development and maintenance of ethical standards by Australian police departments', *Police Practice and Research*, vol. 4, no. 2, pp. 149-161. Her Majesty's Inspectorate of Constabulary (HMIC) (2006) *Raising the standard: A thematic inspection of professional standards*. Her Majesty's Inspectorate of Constabulary,

2.3 Consultation with the NSW Police Force

Consultation with the NSW Police Force formed an important part of the Commission's review.

In June 2021, the Commission contacted the NSW Police Force Corporate Sponsor for domestic and family violence and sought contact details of NSW Police Force domestic and family violence specialists. The Commission's purpose was to discuss NSW Police Force processes and systems relating to the management, investigation and record keeping practices of domestic and family violence matters.

In mid-December 2021, Commission staff met with members of the NSW Police Force Domestic & Family Violence Team²⁰ to discuss their procedures and seek further clarification and information in relation to their management and investigation of domestic and family violence matters.

In 2022, Commission staff met with the Corporate Sponsor for domestic and family violence to discuss how the work of the Commission can assist the NSW Police Force in strengthening its domestic and family violence procedures.

Throughout the duration of this project, the NSW Police Force Domestic and Family Violence Team provided the Commission with records and information in relation to how the NSW Police Force responds to, records, and investigates domestic and family violence matters.

In August 2022, Commission staff met with Assistant Commissioner Smith and members of the NSW Police Force to discuss proposed major changes to the way the NSW Police Force manages domestic and family violence incidents. The NSW Police Force anticipates that it will take at least 2 years until the new model regarding domestic and family violence investigations will be rolled out across the organisation.

June 2006. Police Integrity Commission (2009) *Project Manta – Report 1: Identification and Communication of Command Misconduct Risks*, November 2009.

²⁰ The Domestic and Family Violence Team consists of both sworn and unsworn staff. It provides advice and support to both the NSW Police Force Executive and the field on operational, legal, and corporate issues. The Domestic and Family Violence Team is instrumental in developing and implementing projects and strategies to improve NSW Police Force response in the investigation and management of domestic and family violence holistically. (NSW Police Force *Domestic and Family Violence Policy*, 1 January 2018, p. 27).

3. Our analysis of the complaints

The NSW Police Force notified the Commission of 470 complaints, of which:

- 248 complaints (53%) were declined at triage
- 222 complaints were referred for further investigation or resolution.²¹

The Commission agreed with the NSW Police Force's decision to decline each of the 248 complaints.²²

3.1 Complaints declined at triage

The NSW Police Force can decline a complaint under s 132 of the *Police Act 1990* (NSW) (the Police Act).

Commission findings

The NSW Police Force declined 248 complaints, comprising 469 separate issues, at triage. The Commission evaluated the way the NSW Police Force handled these complaints through our complaint assessment process. We considered the issues raised in these complaints, relevant police records, legislation, and procedures.

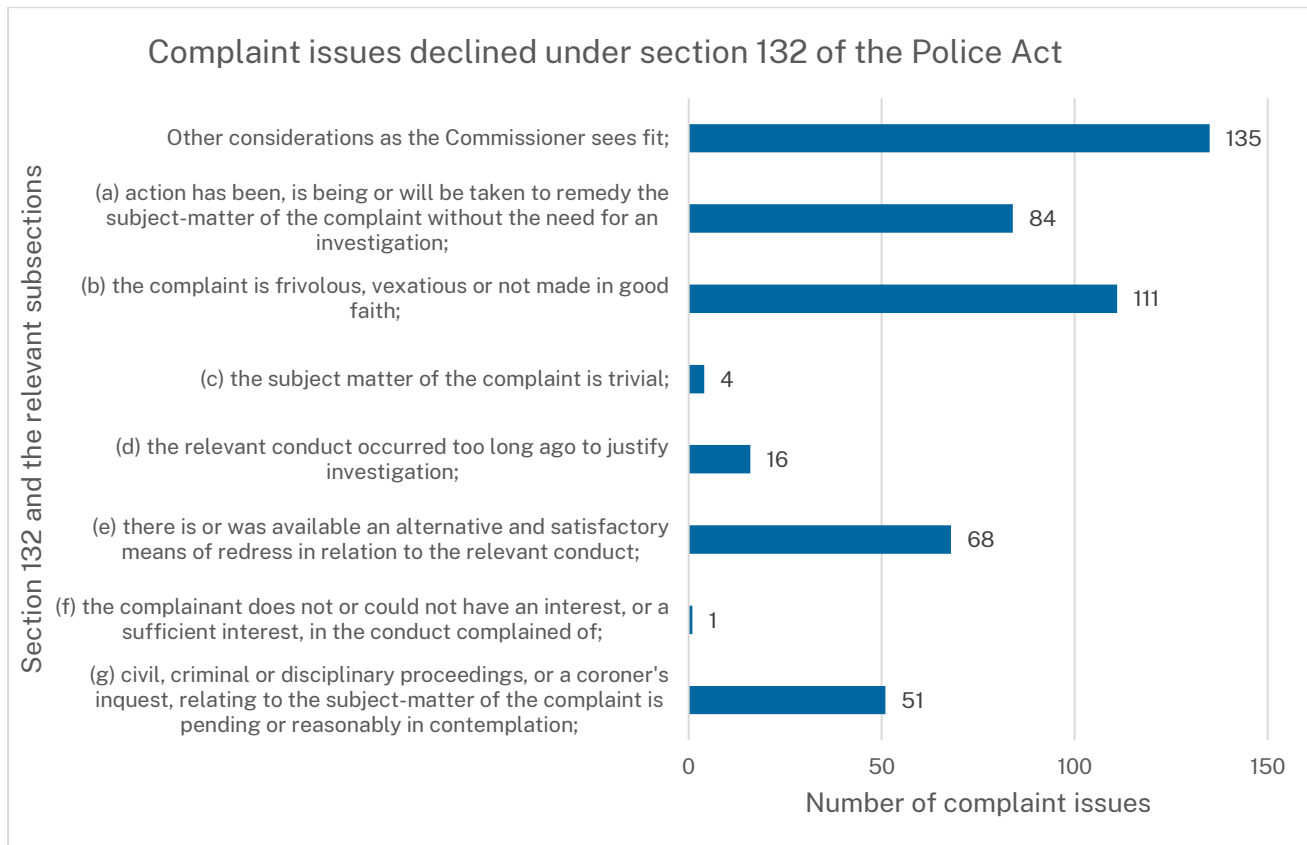
A complaint can include multiple officers and multiple issues. Within 1 complaint matter, the NSW Police Force can decline some issues yet investigate others.²³ Graph 1 shows the results of NSW Police Force triage decisions to decline complaint issues under section 132 of the Police Act in the period July 2017 to July 2021.

²¹ The Commission cannot guarantee that this figure accurately represents all notifiable complaints. Previous audits by the Commission have found that the NSW Police Force is not notifying a significant proportion of complaints that raise allegations of notifiable misconduct to the Commission. (Law Enforcement Conduct Commission, *Audit of the NSWPF implementation of the s 14 guidelines, Quarter 2 2018*, p. 1).

²² Pursuant to s 99(2)(a) of the Law Enforcement Conduct Commission Act 2016 (NSW).

²³ In circumstances where officers were investigated for other issues besides domestic and family violence matters, our review did not report on these issues.

Graph 1: NSW Police Force triage decisions to decline complaint issues under section 132 of the Police Act.



The most common reason that the NSW Police Force declined complaint issues was due to ‘other considerations as the Commissioner of Police (CoP) sees fit’. The NSW Police Force declined 135 complaint issues (29%) under that provision. Examples included:

- police officers were no longer serving members of the NSW Police Force
- evidence showed that police officers had acted correctly given the circumstances of the matter
- police officers’ actions did not amount to misconduct, and it appeared that they had acted in good faith
- police officers had relied on information entered incorrectly in the police database or other agency databases
- Body Worn Video (BWV) footage disproved the complainant’s allegations
- the actions of police officers had been found to be lawful.

The NSW Police Force declined 111 issues (24%) under s 132(b) of the Police Act, on the basis that the complaints were either frivolous, vexatious or not made in good faith.

The NSW Police Force declined 84 issues (18%) under s 132(a) of the Police Act. In these matters, police officers took the following kinds of action:

- contacted the complainant and explained the actions taken by police officers
- explained to the complainant that police officers could not apply for an ADVO as they had not found enough evidence to prove that an offence had occurred
- reviewed all records concerning the complaint and had found no evidence

- provided officers with instructions and guidance in relation to domestic and family violence procedures.

The NSW Police Force declined 68 issues (14%) under s 132(e) of the Police Act. These included matters that were before the courts.

The NSW Police Force declined 51 issues under s 132(g) of the Police Act. The matters were either:

- before the court
- subject of a civil claim
- subject of a coronial investigation.

The NSW Police Force declined 16 issues under s 132(d) of the Police Act. The relevant conduct had occurred too long ago to justify an investigation. For example, one complaint related to the alleged failure by 2 unknown police officers to investigate domestic violence against the complainant between 13 and 17 years ago.

The NSW Police Force declined 4 issues under s 132 (c) of the Police Act. The triage officer determined that the subject matter of the complaint was trivial. The NSW Police Force declined one issue under s 132(f) of the Police Act. The triage officer determined that the complainant did not have sufficient interest in the complaint matter.

3.2 Complaints referred for investigation or resolution

When the NSW Police Force receives a complaint, the triage officer in the local Command dealing with the complaint must decide whether to refer it for investigation or resolution.²⁴

Commission findings

The Commission reviewed and analysed 222 complaint investigations that were linked to a domestic and family violence incident, involving 301 police officers. The NSW Police Force registered these complaints between 1 July 2017 and 1 July 2021. As seen in Table 1, the NSW Police Force referred more than half of all complaints, 122 out of 222 (55%), for evidence-based investigation.

Table 1: NSW Police Force triage decisions to refer complaints, registered between 1 July 2017 and 1 July 2021, for investigation or resolution.

Type of investigation	Numbers
Evidence-based investigation	122 ²⁵
Mandatory Resolution Outcome Report	85
Enhanced resolution	12
Issue report	1
Informal resolution	1
Not applicable ²⁶	1
TOTAL	222

The Commission’s review of complaint investigations fell into 2 distinct categories:

²⁴ NSW Police Force *Complaint Handling Guidelines*, February 2016, p. 11.

²⁵ When the NSW Police Force introduced the Misconduct Management model, evidence-based investigations became Rational Based Misconduct Investigations (RBMI). Forty-six (46) out of 122 investigations were RBMIs. The procedural requirements remain the same.

²⁶ The NSW Police Force referred this complaint for investigation. The court dismissed all charges against the involved officer on grounds of mental health issues.

- matters where officers were involved in domestic and family violence incidents
- matters where officers have been investigated for conducting inadequate or deficient investigations into reported domestic and family violence incidents.

Police officers who were either personally involved in domestic and family violence or who received sustained findings in relation to the way they investigated domestic and family violence matters are referred to as the ‘involved officer’ in this report.

3.2.1 Officers involved in domestic and family violence incidents

The NSW Police Force must consider several extra issues when they respond to an incident in which a police officer is either the defendant or the victim of domestic and family violence. These include:

- the investigating officer **‘MUST’** inform the Duty Officer as soon as possible of the situation;
- initiation of ADVO proceedings against a police officer constitutes a complaint under the Police Act and must be brought before the CMT [Complaint Management Team] of the involved officer; and
- the officer’s NSW Police Force firearm should be immediately secured to prevent the officer from accessing it.²⁷

Commission findings

Police officers were involved in domestic and family violence incidents in 32% of complaint investigations reviewed, comprising 70 complaint investigations and 60 involved officers. More specifically:

- **50** involved officers were the subject of one complaint investigation; and
- **10** involved officers were the subject of 2 complaint investigations.

Of the **60** officers involved in domestic and family violence incidents:

- most involved officers (55) were male
- their ranks included 39 senior constables, 12 sergeants, 4 constables, 4 probationary constables, and 1 chief inspector
- 38 involved officers (62%) were the subject of an Apprehended Domestic Violence Order (ADVO) application²⁸
- 14 involved officers had left the NSW Police Force
- 17 involved officers (28%) were charged with 90 offences including common assault; use carriage service to menace/harass/offend; stalk/intimidate; and breaches of ADVOs.

Of the 17 involved officers charged with one or more offences:

- 9 officers were convicted or found guilty of the following offences (noting some officers were convicted or found guilty of more than one offence):
 - assault occasioning bodily harm (3 involved officers)
 - stalk/intimidate (3 involved officers)
 - contravene prohibited/restriction in AVO (domestic) (2 involved officers)

²⁷ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 91.

²⁸ Twelve of these applications were later withdrawn or dismissed by the courts.

- common assault (4 involved officers)
- intentionally choke another person without consent (1 involved officer)
- use carriage service to menace/harass/offend (2 involved officers)
- 8 involved officers were either found not guilty in relation to the domestic violence offences for which they were charged, or had the domestic violence charges against them withdrawn or dismissed.²⁹

Sentences included:

- 12 to 24 months Community Correction Orders (4 involved officers)
- 15 to 24 months Conditional Release Orders (4 involved officers)
- 12 months Intensive Correction Order (1 involved officer).³⁰

There were 5 officers who were convicted of at least one offence. One of those officers remains in the NSW Police Force, but they are appealing their conviction. The other 4 no longer work for the NSW Police Force.

There were 4 further officers who were found guilty but had no conviction recorded. Three of those officers remain in the force, 1 of these is appealing their finding of guilt. The fourth officer found guilty no longer works for the NSW Police Force.

Observations

The Commission's research located very few studies that reported on the prevalence of police officers being involved in domestic and family violence in Australia. Equally, the Royal Commission into Family Violence reported that there was 'little published research or statistical information on family violence committed by police members in Australia'.³¹

Research suggests that acts of domestic and family violence by police officers against a current or former partner are likely to be 'at least as common as acts committed by the general population'.³² Some research, although limited, suggested even higher rates of domestic and family violence incidents among law enforcement professionals.³³

Some officers who were convicted of domestic violence offences, and many who were the subject of an ADVO, remained in the NSW Police Force. This raises concerns that an officer with this personal history may have an actual or apparent conflict of interest when dealing with domestic violence incidents. Yet, with 40% of police work involving domestic and family violence incidents, it is likely that some of these officers will continue to be required to respond to domestic violence.

NSW Police Force current policies and procedures do not set out arrangements for the close supervision of officers who remain in the NSW Police Force after having been convicted of domestic

²⁹ There are several reasons why charges against some of the involved officers were withdrawn, including insufficient evidence or victims withdrawing their complaints. Also, charges against 2 involved officers were dismissed under s 14(1)(a) of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW).

³⁰ A judge sentenced the involved officer to 12 months imprisonment. However, the judge suspended execution of that sentence of imprisonment on certain conditions. The conditions included: a) 'that the offender is to be of good behaviour for a period of 12 months to date from 23 July 2021' and 'that the offender...accept Community Corrections Service supervision for as long as considered necessary and obey all reasonable directions.'

³¹ State of Victoria, Royal Commission into Family Violence, Volume III: *Report and recommendations*, 2016, p. 39.

³² International Association of Chiefs of Police. (1999) *Police officer domestic violence: Concepts and Issues Paper*, April 1999, p. 1.

³³ International Association of Chiefs of Police. (1999) *Police officer domestic violence: Concepts and Issues Paper*, April 1999, p. 1. Janice Berry Edwards, 'Law Enforcement Officers Involved in Domestic Violence as Batterers: An Integrative Treatment Model' (2006) 5(1) *Journal of Couple and Relationship Therapy* 28-29.

violence offences or who are the subject of an ADVO. The Commission suggests that NSW Police Force policies should consider this issue.

3.2.2 Investigations conducted within the same Command

The NSW Police Force Complaint Allocation Risk Appraisal (CARA) Guidelines help complaint-handling managers to determine if complaints, based on a risk appraisal process, can be investigated locally, or should be transferred to another Command for investigation.³⁴

Appendix A to this report sets out how local Commands and investigators assess the level of risk in conducting the investigations.

Commission findings

The Commission's review of 70 the complaint investigations where police were involved in domestic violence found:

- 54 (77%) were investigated locally
- 10 were transferred to another local Command
- 6 were investigated by the Professional Standards Command (PSC).

The findings showed that local Commands investigated most investigations into officers involved in domestic and family violence.

Observations

The practice of police investigating other police has its critics and its supporters. The Royal Commission into the NSW Police Service (1994-1996) supported the NSW Police conducting internal investigations. However, it proposed a move to a managerial or remedial management of complaints rather than the punitive approach in place at the time. The Royal Commission recommended that local Commanders should be responsible for dealing with matters of internal management, customer service and lesser misconduct of officers under their Command. The then Police Integrity Commission (whose functions are now undertaken by the Law Enforcement Conduct Commission) or the then Office of Internal Affairs (now the Professional Standards Command) would manage complaints involving serious misconduct. That model maintained Command level responsibility for the behaviour of officers as a means of effecting cultural change in relation to misconduct matters, and reserving the capacity for independent investigation of more serious matters.³⁵

Critics, on the other hand, argue that one of the dangers of police investigating other police is that too often alleged abusers are not being held accountable, putting 'victims' safety on the line'.³⁶

Another criticism of the current system is that the NSW Police Force, like other Australian police forces, does not have a specific policy for dealing with officers who are involved in domestic and family violence. The Women's Legal Service NSW, a specialist legal service for women experiencing domestic and family violence in New South Wales, has publicly commented that many victims of domestic and family violence face 'significant' barriers to getting help:

³⁴ NSW Police Force *Complaint Allocation Risk Appraisal (CARA) Guidelines*, March 2007. The Misconduct Allocation Risk Appraisal (MARA) Guidelines replaced the CARA Guidelines in September 2021. The requirements for both the command and the officer nominated to conduct the investigation are similar.

³⁵ Royal Commission into the NSW Police Service, *Final Report, Volume II: Reform*, Justice Wood, J.R.T., May 1997, pp. 307, 321, 327.

³⁶ Gleeson, H., More NSW Police officers charged with domestic violence as victims face ongoing problems getting help, ABC News, 9 May 2021. <https://www.abc.net.au/news/2021-05-10/nsw-police-officers-charged-with-domestic-violence-2020-victims/100114114>.

Such barriers can include a fear of not being believed by police, confusion about where to report violence when they don't want to approach the area command where their perpetrator works, a fear of officers' access to firearms and insider information and a fear — too often realised — that appropriate action won't be taken.

Police from the same police station must not conduct the investigation. In some cases, nor should police from the same police area command. There must be oversight mechanisms, Ms Snell said. There need to be clear processes [for victims] to safely report domestic violence perpetrated by a police officer that address conflict of interest issues and these policies need to be published.³⁷

In an Australian first, Victoria Police launched a new unit in December 2021 that will investigate domestic and family violence within the force's own ranks. The aim of this new unit is to eliminate conflicts of interest between police officers accused of domestic and family violence and general duties investigators, particular in regional parts of Victoria.³⁸

No matter how impartial an investigator may be when investigating another officer who is known to them or works in close proximity to them, victims and others may perceive that such investigations will not be impartial. This perception can lead to a loss of community trust, especially in cases where complaints were declined at triage or investigations resulted in 'not sustained' findings. This lack of trust may stop some victims from coming forward and reporting domestic and family violence incidents to the NSW Police Force.

The Auditor-General also raised this issue in her report *Police responses to domestic and family violence*. She said:

Managing complaints of domestic and family violence at the current or former workplace of the complainant or respondent potentially raises a conflict of interest. This complaints process requires safeguards and has implications for the privacy and safety of the complainant or respondent.³⁹

The Auditor-General noted that the NSW Police Force is reviewing its DV SOPs, saying that the review will consider introducing procedures to address the issue of who should investigate allegations of officers involved in domestic and family violence incidents.⁴⁰ The Commission supports the view that where practicable, the NSW Police Force should manage domestic violence allegations against a serving police officer outside of the Command of the involved officer.

Recommendation 1: Where a police officer is investigated for domestic or family violence offences, the NSW Police Force *Domestic and Family Violence Standard Operating Procedures* be amended to specify that the investigation should be transferred to another Command.

NSW Police Force response

The NSW Police Force did not support this recommendation and advised that it is not always operationally practical for this to occur. It further advised:

NSWPF has already made changes regarding addressing conflicts of interest where the domestic and family violence incident involves a NSWPF member as either person of

³⁷ Gleeson, H., More NSW Police officers charged with domestic violence as victims face ongoing problems getting help, ABC News, 9 May 2021. <https://www.abc.net.au/news/2021-05-10/nsw-police-officers-charged-with-domestic-violence-2020-victims/100114114>

³⁸ The Sydney Morning Herald, Pearson E. and Estcourt D., Police launch unit to investigate domestic abusers within the force, 1 December 2021, <https://www.smh.com.au/national/victoria/police-launch-unit-to-investigate-domestic-abusers-within-the-force-20211130-p59dcf.html>. Victoria Police began designing the new unit following the 2016 Royal Commission into Family Violence which shone a light on domestic violence and investigations into allegations of abuse.

³⁹ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, p.36

⁴⁰ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, p. 36.

interest or person in need of protection. It is possible for a Commander to request another command, or the Professional Standards Command, to conduct the investigation should they determine any conflict cannot be appropriately managed otherwise.

The Commission acknowledges that it may not always be practical to transfer an investigation to another Command for several reasons, including:

- available resources
- the remoteness of the location
- the welfare of the victim.

However, the Commission recommends that in the interests of transparency, Commanders should document their decision to investigate complaints locally. This may assist to address community and victim perceptions of potential conflicts of interest. Such records would then be reviewable by the Commission if a complaint is made.

Recommendation 2: If an investigation cannot be transferred to another Command for investigation, a Commander's decision-making processes, including how conflicts of interest will be managed, should be documented, and uploaded to the complaints information system.

NSW Police Force response

The NSW Police Force said it agreed with this recommendation, in principle.

The NSW Police Force also said that in October 2022, it adopted the following procedure in response to Recommendation 8 of the Auditor-General's report:

1. Where attendance is required at a D&FV matter and it becomes apparent that the PINOP [person in need of protection] or POI [person of interest] is a current or former member of the NSWPF, the matter must be reported to the PAC/District Inspector. The PAC/District Inspector must attend (wherever operationally possible) and verify several matters regarding conflicts of interest. These are in addition to the matters a PAC/District Inspector must already consider.
2. A new form (PAC/District Inspector Report Form) has been developed, which captures the requirement for the PAC/District Inspector to consider the conflicts of interest of the attending officers, as well as their own.
3. A requirement for a SITREP [situation report] to be prepared and sent to the Commander, Region Commander, and Region PSM.
4. The PAC/District Inspector Report Form are to be up loaded to the relevant COPS Event.

3.2.3 Complaints history of officers involved in domestic and family violence

When considering a complaint, the triage officer must review the complaints history of the involved officer. This may identify a pattern of behaviour, or complaints of a similar type that could guide the Command in managing that officer. If a triage officer identifies a pattern of domestic and family

violence complaints, the NSW Police Force guidelines recommend placing the officer on an Interim Risk Management Plan (IRMP)⁴¹ for the duration of the investigation.⁴²

Commission findings

The Commission considered whether the 60 involved officers had been subject to an investigation by the NSW Police Force as an involved officer in a domestic and family violence incident prior to July 2017. This review included matters where findings against the officer were 'not sustained'. Our aim was to identify if there were previous potential indicators of domestic violence-based misconduct.⁴³

The Commission found that the NSW Police Force had previously investigated 11 out of the 60 involved officers (18%) for domestic and family violence complaints:

- Six involved officers had been investigated for **1** domestic and family violence complaint:
 - Investigations into 3 involved officers resulted in not sustained findings.
 - Investigations into 2 involved officers resulted in sustained findings.
 - The NSW Police Force discontinued the investigation into 1 involved officer after the victim retracted their complaint. Nevertheless, police applied for an ADVO for the victim's protection.
- The NSW Police Force investigated 1 involved officer for **2** domestic and family violence complaints. One investigation resulted in sustained findings and the second investigation resulted in not sustained findings.
- The NSW Police Force investigated 3 involved officers for **3** domestic and family violence complaints each.
- The first involved officer was listed as the defendant in an ADVO in the early 2000s; the second investigation resulted in sustained findings; and the third investigation resulted in not sustained findings.
- For the second involved officer 1 victim withdrew her complaint. Police declined to investigate the second complaint as the matter was before the courts and the third investigation resulted in not sustained findings, as there were no witnesses to the alleged domestic violence assault.
- All 3 investigations against the third involved officer resulted in not sustained findings.
- The NSW Police Force investigated 1 involved officer for **5** domestic and family violence complaints.

⁴¹ The aim of an IRMP is for Commands to act on a temporary basis to manage identified risks relating to an officer's impact on the workplace while the NSW Police Force investigates the officer. (*NSW Police Force Interim Risk Management Guidelines for Police*, Professional Standards Command, January 2018, p.5). The NSW Police Force Interim Risk Management Guidelines for Police were updated effective September 2021. The revised Guidelines state: Interim risk management action relates to action taken on a temporary basis to manage identified risk relating to an individual's impact on a workplace'. (*NSW Police Force Interim Risk Management Guidelines for Police*, Professional Standards Command, September 2021, p. 5).

⁴² NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 25. As mentioned, the Misconduct Management Framework replaced the Complaint Handling Guidelines in September 2020.

⁴³ The fact that complaints are not sustained is not grounds for not looking at them to determine the existence of misconduct risks. Complaints categorised as 'unsubstantiated' include many matters where it is possible that the police behaved improperly, but insufficient evidence was available to support a criminal or disciplinary charge. Criminal Justice Commission (1997) *Integrity in the Queensland Police Service: Implementation and Impact of the Fitzgerald Inquiry reforms*. Brisbane: Criminal Justice Commission, p. 111. Research has found that many complaints are not sustained because they are difficult to investigate or because of a lack of evidence. (Goldsmith, A.J. (1991) External review and self-regulation: *Police accountability and the dialectic of complaints procedures*. In Goldsmith, A.J. (ed.) *Complaints against the police: The trend to external review*. Oxford University Press, Melbourne. Prenzler, T. (2004) *Stakeholder perspectives on police complaints and discipline: Towards a civilian control model*. Australian and New Zealand Journal of Criminology 37:85-113.)

- The involved officer was the defendant in 1 ADVO. Two investigations resulted in sustained findings and 2 investigations resulted in not sustained findings. The earliest domestic and family violence complaints dated back to 2010.

Most of the complaint issues in these pre-2017 matters related to the use of force, including:

- common assaults and assaults occasioning actual bodily harm
- officers being the perpetrators of domestic violence offences
- officers conducting unlawful/unauthorised accesses on NSW Police Force information systems for personal gain or on people that officers had grievances (domestic and family violence related) against
- officers being subject of ADVOs
- officers breaching ADVO conditions
- officers stalking and/or intimidating their victims
- officers harassing their victims.

The following case study describes an involved officer who was investigated for 2 separate domestic and family violence complaints by the NSW Police Force.

Case study 1:

In 2020 a woman (victim 1) reported at a police station that her husband, a senior constable with the NSW Police Force (involved officer), had assaulted her the previous year. Victim 1 had left the involved officer after the assault. The involved officer made several threats to victim 1, including physical harm and false allegations against the new partner of victim 1. The NSW Police Force began an internal investigation. The NSW Police Force charged the involved officer with 5 separate charges, including:

- common assault
- use carriage service to menace/ harass/offend
- stalk/intimidate intend fear physical harm.

The involved officer entered a plea of not guilty to all charges. After negotiations between the Office of the Director of Public Prosecutions (ODPP) and consultation with victim 1 a plea of guilty to one count of common assault and use carriage service to menace was agreed on. The court sentenced the involved officer to a 12-month Intensive Correction Order that concluded in the middle of 2022.

In early 2021, a woman (victim 2) messaged a friend (complainant) that she was afraid of the involved officer with whom she was in a relationship. Victim 2 was pregnant to the involved officer. The complainant contacted the NSW Police Force and reported her fears for victim 2. Police officers went to the home of victim 2. Victim 2 told the police officers that she did not know why she messaged the complainant but started to cry when police officers showed her a copy of her messages. The NSW Police Force served the involved officer with a 2-year ADVO that would conclude in mid-2023.

In late 2021, the police arrested and charged the involved officer. At that time, the NSW Police Force had already suspended the involved officer from duty because of domestic violence related offences upon victim 2. The involved officer was bail refused and remains in custody to appear before court in early 2023.

Observations

The Commission's review found that the NSW Police Force had investigated 11 out of 60 involved officers for previous domestic and family violence incidents. It may be beneficial for the NSW Police Force to conduct further research to find out if the repeat behaviour could have been prevented by different or stronger management action. Such research may help the NSW Police Force to develop additional strategies to prevent officers committing further domestic and family violence offences.

The Commission has previously reported on the effectiveness of Conduct Management Plans, which are a framework, designed to support the implementation of management action in the workplace.⁴⁴ The Commission's *Review of the effectiveness of NSW Police Force Conduct Management Plans*, published in August 2021, found that some officers continued to engage in misconduct after having successfully completed 1, or several, Conduct Management Plans. The Commission suggested that it might be beneficial for the NSW Police Force to conduct a more detailed analysis of the characteristics of recidivist police to assist in identifying underlying contributors to repeat officer misconduct.⁴⁵

3.2.4 Dealing with the firearms of involved officers

When NSW Police Force officers respond to a domestic and family violence call for assistance, they are authorised by law⁴⁶ to inquire about the presence of any firearms in the dwelling. If the occupants of the premises tell police officers that firearms are present, police must search for, seize and detain the firearm(s). This authorisation applies irrespective of whether the parties involved in the domestic and family violence incident are police officers or members of the public.

The DV SOPs advise police officers that they must record any action they take in relation to the seizure of an involved officer's personal firearm(s) in the COPS event report.⁴⁷

Police must record information about the seizure of personal firearms and complete a section in the event report detailing 'Any Firearm(s) / Dangerous Weapon(s) seized'. If any of the parties involved in the domestic and family violence have a firearm licence and registered firearms, police should record this information in the event narrative. Police are required to create a 'seizure of firearms incident' within the event report.⁴⁸

3.2.5 Additional requirements relating to service firearms

In matters where one or both parties to a DV complaint/offence or an ADVO application is a NSW Police Force officer, the NSW Police Force must carry out 2 additional actions to deal with their service firearm(s):

- immediately secure the service firearm of the involved officer and double padlock it⁴⁹

⁴⁴ The main purpose of a Conduct Management Plan is to assist the NSW Police Force to modify the behaviour of officers who have engaged in misconduct and to provide a level of heightened supervision, reporting and feedback to ensure that officers uphold the appropriate standard of conduct. (NSW Police Force *Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 5).

⁴⁵ Law Enforcement Conduct Commission, *Review of the effectiveness of NSW Police Force Conduct Management Plans*, August 2021, p. 34.

⁴⁶ Sections 85 and 86 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (LEPRA).

⁴⁷ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 39.

⁴⁸ Email from NSW Police Force Domestic and Family Violence Team to Law Enforcement Conduct Commission, Senior Project Officer, 16 March 2022.

⁴⁹ This requirement also applies to officers who are victims of a domestic and family violence offence or who are listed as a protected person on an ADVO application. Our review located 1 matter where both parties to an ADVO application were police officers. We could not locate any records that indicated what actions police had taken to secure these officers service firearms. (NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 91.)

- inquire if the involved officer is the holder of a firearm licence. If they are, the NSW Police Force must suspend their firearm licence and must seize all firearms.⁵⁰

The DV SOPs advise police officers that they must record any action they take in relation to the securing of an involved officer's service firearm(s) in the following 2 documents:

- ADVO applications
- Risk Assessments.⁵¹

The DV SOPs specify:

... the application for the ADVO should contain information within the **grounds for the application** that articulates what police have done to secure the service firearm and appointments...

and

The subject officer's Commander is to conduct a full risk assessment for access to arms and appointments.⁵²

The DV SOPs state that the Commander should place the involved officer on duties that do not require them to wear appointments until the Commander has completed the Risk Assessment.⁵³ The DV SOPs provide no instructions about where to record completed Risk Assessments. The NSW Police Force told the Commission that Risk Assessments are stored electronically at local Commands.⁵⁴

Commission findings – ADVO applications

The Commission's review found that 39 out of 60 (65%) involved officers had been issued with either a provisional or a final ADVO.⁵⁵ Seven of the 39 ADVOs included condition 10, which prohibits involved officers from possessing any firearms or prohibited weapons.

We reviewed all 39 ADVO applications to find out if the NSW Police Force had secured the service firearms of the involved officers and to find information about the Risk Assessment. We found:

- 36 out of 39 ADVO applications (92%) included no information on what actions police had taken to secure the service firearms of involved officers
- 2 ADVO applications included inconclusive information: the first ADVO application stated: "Yes *internal procedures followed and carried out*" and the second stated: "Steps are currently underway"

⁵⁰ This includes firearms that an involved officer may have access to through their secondary employment. (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 91). The NSW Police Force advised the Commission that changes to COPS effective September 2022 will show (via the CNI of the POI) if the NSW Police Force member has a firearm licence, and the suspension will occur as part of this process automatically. In addition, there is also a requirement to ascertain if the involved officer has access to firearms via any secondary employment that does not require a firearm licence and take appropriate steps to restrict access (as per page 92 of the D&FV SOPs). (Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, TAB D, p. 4).

⁵¹ Information in relation to risk assessments is included in a document called the Police Officer-Defendant in Apprehended Domestic Violence orders – Risk Assessment for access to Arms and Appointments.

⁵² NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 92.

⁵³ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 93. The Commission's review found the NSW Police Force had placed 14 out of 37 involved officers on an IRMP; 12 of them mentioned that involved officers would not have access to their firearms while on the IRMP. However, our review found that IRMPs began between 1 day and 5 months after an involved officer had been served with an ADVO. In the absence of Risk Assessments and other records it was therefore not possible for us to determine the date and time when police had secured the firearms of involved officers, or how long they were in involved officers' possession after they had been served with an ADVO.

⁵⁴ Email from NSW Police Force, Domestic and Family Violence Team to Senior Project Officer, Law Enforcement Conduct Commission, 10 March 2022.

⁵⁵ Our review located records that indicated that 6 ADVOs were later withdrawn at court and a further 5 ADVOs were later dismissed at court. However, the requirements in relation to securing an officer's service firearm remain the same.

to have the firearm secured'. Neither application provided information if, and when, the service firearms of the involved officers were secured and where they were located

- 1 ADVO application simply stated 'Yes police issued firearm' without providing any further information as to the time and date when the service firearm of the involved officer was secured and where it was located
- none of the 39 ADVO applications stated that a full Risk Assessment would be completed by the Commander of the involved officer.

While most ADVO applications included no information about the service firearms, we found that police officers recorded this information in a number of other records, including Complaint Management Team (CMT) minutes, IRMPs, situation reports and emails.

Some records mentioned that:

- victims were in extreme fear of the involved officers
- involved officers were aggressive towards victims
- involved officers had mental health issues.

These are criteria, listed in the Domestic Violence Safety Assessment Tool (DVSAT)⁵⁶, which indicate that a victim may be at high risk of further violence from an offender.

Commission findings - Risk Assessments

The Commission's review of 39 complaint investigations found:

- 17 Risk Assessments (44%) were completed, however of those:
 - 8 Risk Assessments were completed after the Commission had requested the NSW Police Force to provide copies of Risk Assessments
 - 3 Risk Assessments were completed between 4 months and 1 year after ADVOs had been served
 - 1 Risk Assessment included no mandatory background information and provided very limited information in relation to treatment plans to manage the risks associated with the service firearm of the involved officer.
- 22 Risk Assessments (56%) were not completed:
 - for 17 Risk Assessments the NSW Police Force provided no reasons why they had not been completed
 - 4 Risk Assessments were not completed as 4 involved officers had been on long term sick leave when the domestic and family violence incident occurred. The NSW Police Force advised the Commission that as a result the involved officers had no access to their service firearms
 - the NSW Police Force advised the Commission that in 1 complaint investigation no ADVO had been applied for and therefore no Risk Assessment was required. This advice was incorrect as our review located NSW Police Force records that stated that the NSW Police Force had served the involved officer with an ADVO.

This shows that in more than half of the applicable matters (56%) Commanders did not complete a Risk Assessment.

⁵⁶ Appendix B includes a summary of the role and functions of the DVSAT.

In matters where Commanders had completed Risk Assessments, they completed nearly half of them after the Commission's request; and 3 Risk Assessments were completed between 4 months and 1 year after ADVOs had been served.

None of the completed Risk Assessments included details about the date and time when the NSW Police Force secured the service firearms; who secured them; and where they were stored.

In addition, the NSW Police Force advised the Commission that it did not complete Risk Assessments in circumstances where involved officers had been out of the workplace⁵⁷ at the time that the domestic and family violence incident occurred. However, the Commission considers that it would be appropriate for Commanders to complete Risk Assessments in these circumstances, as a means of accounting for potential risks of further domestic violence related behaviours of its officers.

3.2.6 Dealing with personal firearms

The Commission's review of 70 complaint investigations identified:

- 30 event reports that stated that no personal firearms had been seized
- 26 event reports that were not uploaded onto IAPro. The Commission was therefore not able to assess what, if any, actions investigating police officers had taken in relation to personal firearms or firearm licences of involved officers⁵⁸
- 7 event reports included no reference relating to personal firearms or dangerous weapons
- 1 event report mentioned that the involved officer was in possession of several firearms which were stored at his house. The event report included no further information⁵⁹
- 1 event report simply stated 'Internal procedures followed and carried out'⁶⁰
- 5 event reports included information that the firearms of involved officers had been seized:
 1. One event report stated that before attending the incident police conducted enquiries with the parties involved. They received information that the involved officer had several registered firearms that were stored at the officer's home. Police seized the involved officer's firearms and firearm licence and booked them as exhibits at the police station.
 2. One event report stated that police had conducted enquiries on NSW Police Force databases. Police determined that the involved officer had voluntarily handed all his firearms to a police station because of a previous incident involving his ex-partner
 3. One event report stated that the involved officer was in possession of several firearms that were stored at the involved officer's house. However, the event report provided no information if police had seized these firearms.
 4. One event report recorded 'yes' to the question '*Any Firearm(s) / Dangerous Weapon(s) seized*' and specified that the firearm had been double padlocked.

⁵⁷ For example, in instances where involved officers were on sick leave. The NSW Police Force agrees with the Commission that a Risk Assessment should be completed in each circumstance where an NSW Police Force officer is a POI in a D&FV ADVO. A reminder of this requirement was provided to all Assistant Commissioners and Directors in October 2022. (Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, TAB D, p. 5).

⁵⁸ We located 1 risk assessment that provided information that the involved officer did not hold a firearms licence or had any firearms registered to their name.

⁵⁹ We located CMT minutes that commented that the involved officer would need to surrender his firearms when the ADVO is served. However, there was no information on IAPro that an ADVO had been issued or served and no information whether police had seized the officer's firearms.

⁶⁰ In the absence of any further information, we were not able to assess whether that meant that police had checked the Integrated Licensing System and the officer had no firearm licence and no registered firearm(s) or if the officer did have a firearm licence and registered firearm(s) and police had seized them according to their internal procedures.

5. One event report stated that police officers had seized the police issued firearm.

The Commission's interpretation of the intent of the DV SOPs is that the event report section '*Any Firearm(s) / Dangerous Weapon(s) seized*' relates to personal firearms and not service firearms. However, event reports 4 and 5 above referred to service firearms.

Observations

The NSW Police Force told the Commission that there is no formal process for how local Commands record securing the service firearms of involved officers. Individual Commanders make their own decision about what processes to put in place.⁶¹

Most records included no information in relation to the service firearms of involved officers. The NSW Police Force allowed some involved officers to keep their service firearms at home. In instances where involved officers were charged and later released on conditional bail, there was no information available as to what happened to their service firearms.

The Commission's review identified 60 officers who were involved in domestic and family violence incidents.

The DV SOPs that were in force during the Commission's review stated that the NSW Police Force must record information relating to the service firearms of involved officers on the ADVO application and the Risk Assessment. The Risk Assessment should be a comprehensive record of how a local Command manages the risks associated with involved officers' access to their service firearms and appointments.

However, our review showed that Risk Assessments were either not completed at all or the NSW Police Force completed them many months after it had served an ADVO on the involved officers.

If the Risk Assessment is not documented, it is unclear whether that Assessment has been completed. More importantly, the risks associated with a NSW Police Force officer allegedly being involved in a domestic violence incident may not be considered or managed.

Police officers must record their actions regarding the seizure of personal firearms in the event report. However, the Commission's review found that event reports were either not uploaded to IAPro, were inconclusive, or contained insufficient information to assess what actions investigating police had taken for seizing any personal firearms of involved officers.

Failure to seize firearms at a domestic and family violence incident poses a significant risk to victims, the community and to the NSW Police Force. It is vital that the NSW Police Force has systems in place that allow for quick and easy access to records that provide detailed information regarding the location of involved officers firearms (both personal and service issued).

Case study 2 is an example of good police action in relation to the seizure of an involved officer's personal firearms.

Case study 2:

A woman (victim) contacted the NSW Police Force in 2021 and informed them of a verbal argument with her partner, the involved officer. Police recorded the incident in the event report as 'DV episode - no offence'.

The event narrative included the following information in relation to the seizure of the involved officer's personal firearms:

⁶¹ Email from NSW Police Force, Domestic & Family Violence Team, to Law Enforcement Conduct Commission, Senior Project Officer, 28 March 2022.

- before attending the incident location, police conducted checks on all parties involved and obtained information that the involved officer was in the lawful possession of 3 firearms
- the safe storage address was at the home address of the victim and the involved officer
- on arrival at the location police seized the involved officer's firearms and inspected the safe storage which did not meet the safe storage requirements
- on return to the police station the involved officer's firearms and firearm licence were booked as exhibits
- the safe storage inspection failed as the safe was not secured to floor or wall
- the type of firearms and their serial numbers
- the firearm licence number
- seizure of firearms was correctly categorised in the relevant section of the report.

The event report clearly outlined the actions that attending police took regarding the seizure of the involved officer's personal firearms.

By contrast, case study 3 illustrates the difficulties in determining when the NSW Police Force has removed the firearms of an involved officer.

Case study 3:

Background and investigation outcome

A NSW Police Force sergeant (involved officer) allegedly swore and intimidated a family member (victim) at her home in 2018. The victim left the home after this incident as she feared the involved officer. When the victim returned to her home later that day, she noticed some damage to the property. The victim reported the incident to police and told them that she believed the involved officer was responsible for the damage. Police investigated the involved officer for 'malicious damage to property' and 'Threaten/ Intimidation Stalking/ Intimidation with intent to cause fear of physical harm or mental harm'. The involved officer declined to participate in a criminal interview. Seven weeks into the investigation the officer in charge of the investigation (OIC) was still considering an ADVO application against the involved officer.

The investigation was finalised more than 4 months after the NSW Police Force had received the complaint. Because of insufficient evidence, the police investigation did not sustain any of the issues investigated. There were no records on IAPro about securing the involved officer's service firearm or seizing their personal firearms.

Information in relation to firearms

The event report stated: 'The involved officer currently owns and is in possession of 4 firearms which are stored at his house.'⁶² The event report includes no information about whether police had seized the 4 firearms as required by NSW Police Force procedures.

Two weeks after the complaint had been lodged the CMT noted that the involved officer and his son had several guns registered to their home address and stated: 'The guns will need to be surrendered when the ADVO has been served'. There are no records on IAPro that the NSW Police Force ever served an ADVO the involved officer.

⁶² NSW Police Force radio operations usually perform ILS checks as they broadcast the job for police who are en-route as a warning. There are no records on IAPro that the radio operators provided the 2 officers with this information.

In summary, the police investigation into a DV incident involving a senior officer of the NSW Police Force includes no information if investigating police have removed the involved officer's firearms.

Recommendation 3: The NSW Police Force require all Risk Assessments to be maintained on a centralised database.

Recommendation 4: The NSW Police Force Domestic and Family Violence Standard Operating Procedures be amended to include instructions that all Risk Assessments should include the following information:

- a) the date and time when the service firearms of officers involved in domestic and family violence incidents were secured
- b) the name and rank of the officer who has secured the service firearms of officers involved in domestic and family violence incidents
- c) the location of the secured service firearms of officers involved in domestic and family violence incidents.

Recommendation 5: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* specify that where officers involved in domestic and family violence incidents are out of the workplace when the incident occurred, the Commander of the officer involved in domestic and family violence should complete a Risk Assessment.

NSW Police Force response

The NSW Police Force advised it agreed with Recommendations 3, 4 and 5, in principle. It further advised:

The primary purpose of the Risk Assessment is to document the actions taken regarding a NSWPF Officer's Arms and Appointments. This is often also recorded in other documents (i.e., the SITREP or Event). Recording the actions taken in a centralised database is supported in principle; however, how this is operationalised, and whether this is in the risk assessment or not, will be reviewed by the D&FV project team and recommended to the Commissioner's Executive Team.

Recommendation 6: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* be amended to include instructions that the event report should mention that a Risk Assessment has been completed, including:

- a) the time and date when the Risk Assessment was completed
- b) the name and the rank of the person who has completed the Risk Assessment
- c) the outcome of the Risk Assessment.

NSW Police Force response

The NSW Police Force did not support this recommendation and said:

Incidents involving D&FV can be evolving situations. The relevant command is expected to assess new information at the point in time when changes occur. This may include updating a risk assessment. As per NSWPF response to recommendation 1 and 2, a process has been operationalised for the Inspector on Duty to complete documentation regarding conflicts management. This process includes confirming if the risk assessment has been completed and, if not, when it will be. All Superintendents are aware of the requirement for them to sign off on a Risk Assessment and this is an additional check in the process to ensure it has occurred.

Recommendation 7: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* specify that the event report should include the following information in relation to the seizure of personal firearm(s) and firearm licences:

- a) the number of personal firearm(s) seized
- b) the date and time when the personal firearm(s) were seized
- c) the date and time when the personal firearm(s) were returned to the owner
- d) the date and time when the firearm licence was suspended
- e) the date and time when the personal firearm licence suspension was lifted.

NSW Police Force response

The NSW Police Force advised that the requirements contained in this recommendation have been incorporated into a new Firearms Risk Assessment which is recorded in COPS from September 2022. It further advised:

The 8 questions are mandatory and, should any of them be answered yes, then a Firearms Licence Suspension incident is automatically added to the event. This is designed to mitigate the risk of a non-suspension of a firearms licence and/or non-seizure of firearms presenting a risk to public safety. In addition, the D&FV SOPS guidance on including the firearm seizure information on WebCOPS. The suspension is effective until a matter has been determined by the court – as such, the Firearm Registry records will reflect when a suspension is lifted (if it is lifted) based on an Interim ADVO expiring and not being replaced, or criminal charges being withdrawn/POI being found not guilty.

The Commission is pleased that the Firearms Risk Assessment is completed and recorded and considers that the DV SOPs should note that this assessment process must be completed.

Recommendation 8: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* specify that the event report should include the following information in relation to securing the NSW Police Force service firearm of an involved officer:

- a) the date and time when the service firearm(s) was secured and padlocked
- b) the location of the service firearms
- c) the name and rank of the officer who secured the firearm(s)
- d) the date and time when the service firearm was returned to the involved officer.

NSW Police Force response

The NSW Police Force advised it agreed with this recommendation, in part. It further advised:

The primary purpose of the Risk Assessment is to document the actions taken regarding a NSWPF Officer's Arms and Appointments. This is often also recorded in other documents (i.e., the SITREP or Event). Recording the actions taken in a centralised database is supported in principle; however, how this is operationalised, and whether this is in the risk assessment or not, will be reviewed by the D&FV project team and recommended to the Commissioner's Executive Team. It should also be noted that, as per the NSWPF handbook, once a NSWPF officer has been out of the workplace for an extended period of time, their firearm is returned to the armoury.

3.2.7 Mental health

One Australian study has shown a strong link between domestic and family violence and individuals (offenders and victims) who may have a mental illness. A data mining study published in 2020 examined 492,393 NSW Police Force recorded DV events from January 2005 to December 2016 and found that 12% of these matters mentioned that the perpetrator may have mental illness.⁶³

The NSW Police Force has a range of online resources, including the NSW Police Force *Mental Wellbeing Strategy 2020-2025* which provide information, advice and strategies to NSW Police Force

⁶³ The study included 492,393 NSW Police Force recorded DV events from January 2005 to December 2016. (Karystianis G, Simpson A, Adily A, Schofield P, Greenberg D, Wand H, Nenadic G, Butler T Prevalence of Mental Illnesses in Domestic Violence Police Records: Text Mining Study J Med Internet Res 2020;22(12):e23725)

employees and managers about how to recognise, support, prevent and assist officers who have been diagnosed with mental health issues, including Post Traumatic Stress Disorder (PTSD). One resource assists managers in supporting employees who disclose domestic and family violence.⁶⁴

The Tip Sheets for Managers emphasise that it is essential for them to participate in appropriate and regular training in relation to the management of mental health issues. However, the Commission's review was unable to locate information about whether this type of training is mandatory or optional.

Commission findings

The Commission accessed police documents that suggested that 17 out of 60 officers (28%) had a range of mental health issues.⁶⁵

Observations

Research has found that PTSD affects between 7% to 13% of police officers because of their exposure to intense traumatic events, assaults, car accidents, shootings, and other critical incidents.⁶⁶ Research has found an association between PTSD and domestic and family violence.⁶⁷ One study in the US detected a significant correlation between PTSD, alcohol use and domestic and family violence. Officers with diagnosed PTSD were 4 times more likely to report using physical violence. The figures were even higher for dependent drinkers who were 8 times more likely to report being physically violent with an intimate partner or family member. This research demonstrates a strong association between these factors in a sample of law enforcement officers.⁶⁸

3.3 Failure to investigate

This section of the report presents the results of the Commission's review findings in relation to some of the key procedural failures identified through complaints about domestic and family violence investigations.

The DV SOPs emphasise that dealing with domestic and family violence is a major priority for the NSW Police Force. Notably:

Thoroughly investigating domestic violence incidents (or suspected incidents) with a view to arresting and charging offenders' and ensuring that domestic and family violence victims are protected from further harm. Police are required to investigate

⁶⁴ NSW Police Force Tip Sheet, Understanding Psychotic Disorder. Accessed on 20/7/2022. https://intranet.police.nsw.gov.au/__data/assets/pdf_file/0010/761356/Staff_Member_Tip_Sheet_-_Psychotic_Disorders_NSWPF.pdf. NSW Police Force, Manager Tip Sheet, Creating a Safe and Health Workplace. Accessed on 20/7/2022, https://intranet.police.nsw.gov.au/data/assets/pdf_file/0006/761145/Creating_a_Safe_and_Healthy_Workplace.pdf. NSW Police Force Manager Tip Sheet, Duty of Care & Legal Requirements Checklist for Managers. Accessed on 22/7/2022, https://intranet.police.nsw.gov.au/__data/assets/pdf_file/0008/761156/Duty_of_Care_and_Legal_Requirements_Checklist.pdf. NSW Police Force Manager Tip Sheet, Supporting an Employee who discloses Family or Domestic Violence. Accessed on 21/7/2022.

⁶⁵ Documents we reviewed included event reports, CMT minutes, situation reports, internal emails, records from officers' injury management advisors, victim statements and court transcripts.

⁶⁶ Carlier IV, Lamberts RD, Gersons BP. Risk factors for posttraumatic stress symptomatology in police officers: a prospective analysis. *The Journal of Nervous & Mental Disease*, Issue: Volume 185(8), August 1997, pp. 498-506). Robinson HM, Sigman MR, Wilson JP. Duty-related stressors and PTSD symptoms in suburban police officers. *Psychological Reports*, 1997, 81, 835-845.

⁶⁷ Howard LM, Trevillion K, Khalifeh H, Woodall A, Agnew-Davies R, Feder G. Domestic violence and severe psychiatric disorders: prevalence and interventions. *Psychol. Med* 2009 Nov 06;40(6):881-893. Van Dorn R, Volavka J, Johnson N. Mental disorder and violence: is there a relationship beyond substance use? *Soc Psychiatry Psychiatr Epidemiol* 2012 Mar 26;47(3):487-503.

⁶⁸ Oehme, K., Donnelly, E., Martin, A. (2012) *Alcohol Abuse, PTSD, and Officer-Committed Domestic Violence*, Florida State University Libraries, pp. 3, 14.

domestic and family violence matters even in circumstances where a victim is reluctant to provide information.⁶⁹

Some of the key requirements for police officers investigating domestic and family violence matters include:

- recording relevant details of the domestic and family violence incident in their notebook as soon as practicable
- trying to obtain a signed statement, or a Domestic Violence Evidence in Chief statement⁷⁰ from the victim
- identifying witnesses and trying to obtain signed statements from all potential witnesses
- searching and seizing firearms
- checking on the presence and welfare of children
- identifying all physical evidence at the scene of the incident and taking photographs⁷¹
- creating event reports that accurately reflect the occurrences at the incident location before the completion of the submitting officer's shift
- providing support to victims and, if necessary, referring them to appropriate victim services
- achieving a successful prosecution.⁷²

Commission findings

As reported at the beginning of Chapter 3, the NSW Police Force referred 222 complaints matters for further investigation. Of these, 70 investigations related to officers being involved in domestic and family violence. The remaining 152 investigations related to allegations that involved officers failed to comply with requirements contained in the DV SOPs.

The Commission's review found that 102 out of 152 of complaint investigations (67%) resulted in sustained findings.⁷³ The findings in this section relate to the 102 complaint investigations that resulted in sustained findings.

Our review of 102 complaint investigations identified 125 involved officers who received sustained findings. The involved officers occupied the following ranks:

- 70 (56%) senior constables
- 27 (22%) constables
- 14 sergeants
- 9 leading senior constables
- 3 probationary constables
- 2 chief inspectors.

⁶⁹ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 61.

⁷⁰ A DVEC is a video or audio recorded statement, taken from a domestic violence complainant, in relation to a domestic violence offence, taken as soon as practicable after the commission of the offence and will be all or part of the complainant's evidence in chief at court. (NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 66).

⁷¹ Police must always obtain the consent of the victim before they can take photographs. (NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 61.)

⁷² NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, pp. 61-62.

⁷³ Forty-eight (48) complaint investigations resulted in 'not sustained' findings and 2 complaint investigations were ongoing. Investigations that resulted in 'not sustained' findings and where the Commission's review did not identify any potential systemic issues with NSW Police Force processes and procedures are not included in this section.

Seventy three out of 102 complaint investigations that resulted in sustained findings (72%) related to a failure by the involved officers to investigate domestic and family violence incidents adequately. In addition, most complaint investigations included several involved officers and multiple investigative breaches.

Table 2 provides a summary of the type of investigative failures and the number of sustained investigations. As some complaints contained multiple sustained complaint issues, the total is higher than 102. It reflects total sustained complaint issues rather than total complaints.

Table 2: Types of investigative failures

Failure to investigate	Number of sustained investigations
Event report was incomplete or included incorrect information	28
No event report of domestic and family violence incident was created	13
No victim statements or incomplete statements	18
No witness statements	17
Non-compliance with ADVO requirements	22
Inadequate supervision	15
No notebook entries	12
No victim support was provided	12
Failure to collect suitable evidence	9
Failed prosecutions	9
Firearms	8
Child at risk	8

Observations

The Commission’s review found that failure to investigate domestic and family violence incidents covered a broad range of investigative procedures. We discuss some of these investigative failures, which may indicate potential systemic issues, in the remainder of this section.

3.3.1 Recording domestic and family violence incidents

Police officers responding to a domestic and family violence incident must complete 2 key documents:

- police notebook
- COPS event report.

Police notebook

Police officers who respond to reports of domestic and family violence must record details of the incident in their official police notebook as soon as practicable. The DV SOPs provide comprehensive instructions on the use of police notebooks. Police officers are required to take statements from all parties and record this information in their notebooks.⁷⁴ Written victim statements in officers’ notebooks provide a contemporaneous account of what has happened in circumstances where victims will not attend a police station to provide a typed statement or decline to provide a DVEC statement.⁷⁵

⁷⁴ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 50.

⁷⁵ NSW Police Force Guidelines recommend that the preferred device for recording DVEC evidence is MobiPOL. (NSW Police Force DVEC Domestic Violence Evidence in Chief, Practitioner’s Guide, Domestic, and Family Violence Team, June 2020, p. 48. MobiPOL are shared smart phones and tablet devices that enable NSW Police Force officers to access police systems and databases away from the office.

Officers should also make notes of the victim's behaviour and any injuries they may have in their notebooks.⁷⁶ An officer can use the notebook entries as a guide when they create the event report.

The NSW Police Force issues all police with an official police notebook that they must always carry with them while on duty. Supervisors are encouraged to check the notebooks of their officers at least monthly.⁷⁷

COPS event reports

Police officers must create an event report for every domestic and family violence incident they attend. This requirement also applies when a victim or person reporting is unwilling to provide further information to support an investigation or prosecution.⁷⁸ The DV SOPs further instruct:

An event must be recorded regardless of the fact that there may not be sufficient evidence to identify the offender; or where a suspected offender has been identified but there may not be sufficient evidence for a successful prosecution.⁷⁹

When police officers determine that domestic violence was a factor in the incident in line with the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* (the Act), they must record the incident as being 'domestic violence-related'. This includes intimate partner violence, family violence and other forms of domestic violence such as those between household members, ex-partners, or current partners. National rules require that the NSW Police Force must record that all domestic and family violence related incidents must have this associated factor so that all jurisdictions are able to identify offences that are domestic violence related on their crime recording systems.⁸⁰

When police officers create an event report it is important that they record the incident as originally reported, for example in the Computer Aided Dispatch message.⁸¹ This means that if a person initially reported a matter as an assault, police officers must record an incident of assault in the event report. If credible evidence is gathered by police at the event that might differ from the original report, police are required to record this in the event narrative, with reasons explaining their conclusions. This requirement acts as a safeguard to ensure that event reports do not include misleading information. The DV SOPs state:

The principle behind recording the incident as originally reported is to ensure that there is no means to deliberately circumvent the requirement to take any formal action.⁸²

Police officers who provide false or misleading information on COPS can face management action and even dismissal from the NSW Police Force.⁸³ The NSW Police Handbook states the following in relation to creating false records:

Officers are responsible for ensuring all records created are as accurate as possible. The making of false records is considered a failure to uphold the Code of Conduct and Ethics at the very least and in some cases may constitute a criminal offence.⁸⁴

⁷⁶ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 62. Officers must also make a written record of their reasons not to proceed with an ADVO application in their notebooks (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 99).

⁷⁷ NSW Police Force Handbook, Chapter N – Notebooks.

⁷⁸ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 69. The same instructions are included in the Police Service Handbook: Performance and Improvement and Planning Command: Crime Reporting Standard: An Event will be created in COPS with 1 or more incidents based on the information and evidence available at the time, and regardless of the victim's condition and/or willingness to support an investigation. COPS Events must be created as soon as practical after becoming known to police.

⁷⁹ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 69.

⁸⁰ NSW Police Force *Crime Recording Standard*, State Intelligence Command, 18/12/2015, pp. 32, 58.

⁸¹ Original sources include CAD messages (Computer Aided Dispatch) which is an online system used by police radio to prioritise police deployment in the field) or a canvass of neighbours or other witnesses.

⁸² NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 70.

⁸³ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 70.

⁸⁴ NSW Police Force Handbook Chapter R.

The officer submitting the event report must complete it before the end of their shift.⁸⁵

Supervisors are responsible for quality reviewing event reports including verifying that the information in the event report complies with the DV SOPs.⁸⁶

On a corporate level, recording all domestic and family violence incidents reported to police allows the NSW Police Force to:

- identify repeat offenders
- identify people who are at risk of harm
- monitor trends.

NSW Police Force records indicate that police officers create about 135,000 domestic violence related events every year,⁸⁷ approximately 85,000 of which are recorded as 'DV episode (no offence/verbal argument)'.⁸⁸

Commission findings

The Commission's review in relation to 102 sustained complaint investigations about the police handling of domestic and family violence matters identified:

- 12 complaint investigations where involved officers failed to create notebook entries
- 14 complaint investigations where involved officers failed to create event reports
- 27 complaint investigations where event reports were either incomplete or included misleading information.⁸⁹

Most breaches related to a failure by involved officers to record all relevant information in the event report accurately and truthfully. Twenty-seven out of 102 (26%) complaint investigations fell within this group. The breaches included:

- event report narratives differed from information included in victim statements
- event reports did not mention if witnesses were spoken to
- event reports did not mention if defendants had been arrested
- event reports did not record multiple incidents of DV offences
- event reports did not mention that children were at risk
- event reports did not mention that the victims were afraid of the defendants.

If officers incorrectly or falsely record information in relation to a domestic and family violence incident, it is difficult for police to take appropriate action if there are further episodes of violence against victims.

The following case study illustrates the risks to persons involved in domestic and family violence incidents in circumstances where involved officers do not accurately record all information conveyed to them in the event report.

⁸⁵ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 69.

⁸⁶ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 72.

⁸⁷ More specifically 134,329 in 2018, 134,326 in 2019 and 136,368 in 2020.

⁸⁸ Email from Manager- Domestic & Family Violence Team to Senior Project Officer, Law Enforcement Conduct Commission, 16 December 2021.

⁸⁹ Some event reports contained multiple deficiencies. The Commission has adjusted its findings accordingly.

Case study 4:

In 2019 2 senior constables responded to a reported domestic and family violence incident. The woman (victim) informed the officers of domestic violence offences involving her husband (defendant). Both police officers left the location without taking any further action. One of the officers (involved officer) created an event report on the same day. The event narrative failed to mention:

- any previous unreported physical violence raised by the victim
- fears held by the victim
- that the victim requested police to seize the defendant's firearms
- undiagnosed mental health issues of the defendant raised by the victim
- that their children were being kept home from school.

The involved officer took no further action despite advice from the second officer attending the incident (officer 2) to apply for a search warrant to seize the firearms at the home. The event report stated that police had seized no firearms.

The victim had further contact with other police officers about this incident several days later. However, at no stage did any police officer investigate the victim's allegations.

Several weeks later the defendant was located deceased with an apparent self-inflicted gunshot wound to the head. During a coronial investigation following the defendant's death, the victim alleged that she made requests to police to seize the firearms owned by the defendant, as she was fearful for her safety.

Officer 2 later told police investigators that the support person who was with the victim at the time of the incident told them that her client was 'incredibly scared' of the defendant. The involved officer did not record this information in the event report.

The internal police investigation sustained 2 out of 3 issues against the involved officer. One of the sustained issues related to recording misleading information in the event report. The involved officer received a Region Commander Warning Notice.

Nine complaint investigations related to involved officers incorrectly recording an event report as 'domestic violence - no offence' even though the victims had reported an assault. In one matter, the victim reported an assault to police and provided medical evidence identifying serious injuries that she had sustained, including fractures to her ribs and a partial puncture of the lung. Despite this information, the involved officer recorded the incident as 'domestic violence - no offence'. The involved officer did not apply for an ADVO. The internal police investigation resulted in sustained findings against the involved officer.

Five complaint investigations related to involved officers falsifying information recorded in event reports. One investigation found that the victim had reported a domestic assault to the involved officer. However, the event report stated that the victim had not disclosed any domestic violence offences. Furthermore, the event report stated that the victim's child appeared 'healthy and happy' even though the involved officer had never checked on the welfare of the child. In another matter, the involved officer recorded in the event report that a supervisor had attended the scene of the incident; this information was untrue. In 1 event report the involved officer recorded that police had attempted to locate and arrest a domestic and family violence offender for outstanding domestic and family violence offences. This information was fabricated.

Supervisors resubmitted event reports to involved officers in 2 complaint investigations. In 1 matter the involved officer did not comply with resubmit directions from several different supervisors and the matter later became statute barred. The involved officer received advice and guidance to improve his performance relating to events and to action cases in a prompt manner. In the second complaint

investigation, several supervisors resubmitted the event report for lack of action in charging the offender and applying for an ADVO. The involved officer was given instructions on how to apply for an ADVO on behalf of the victim. The involved officer ignored the instructions. The internal police investigation resulted in sustained findings.

In 1 complaint investigation, the involved officer incorrectly recorded a breach of an ADVO as an 'occurrence only' in the event report. The supervisor who had verified the event report failed to correct this error. The police investigation found that the event report contained enough information to outline a breach of ADVO and the supervisor should have identified this and started an investigation. Both the involved officer and the supervisor received advice and guidance in relation to their responsibilities when recording and verifying domestic and family violence matters.

Case study 5 describes a domestic and family violence incident in which an involved officer's failure to create an event report placed a small child at serious risk of harm and nearly led to a failure to arrest and charge an offender.

Case study 5:

A complainant reported an assault on a small child to a police station in 2018. The complainant had witnessed this incident at a public play centre. The involved officer left the counter area of the police station to conduct enquiries with the play centre. The involved officer returned shortly afterwards and informed the complainant that he had contacted the play centre. The involved officer said that the play centre told him that the CCTV footage was unclear, and it would be too difficult to identify that the reported incident had occurred. The involved officer told the complainant that there was no use in providing a statement. The involved officer failed to create an event report or any other records of the reported incident and failed to investigate a potential assault on a small child.

The complainant left the police station and later spoke to a friend about the incident. The friend told the complainant to contact the supervisor of the involved officer. This led to an internal police investigation. During that investigation, the CCTV footage was located. It clearly showed the incident. Because of the CCTV footage, police charged a person with several offences relating to the incident.

The police investigation also found that the involved officer had never contacted the play centre and had lied to the complainant when he said that the CCTV footage was unclear.

The investigation resulted in sustained findings in relation to the involved officer, for all the issues investigated. The Commander of the involved officer referred him to the NSW Police Force Internal Review Panel for consideration of removal from the NSW Police Force. The officer in charge concluded the investigation report with the following comment: 'the potential for further physical/emotional harm that could have resulted is immeasurable and an inexcusable failure of the subject officer's part. The subject officer did not create a record of the reported incident, nor did he complete a Child at Risk as per his obligations as a Mandatory Reporter under section 27 *Children and Young Persons (Care and Protection) Act 1998*.'

Recommendation 9: The NSW Police Force should review its systems and processes to ensure that a COPS event report is created for every domestic and family violence incident attended by police.

NSW Police Force response

The NSW Police Force advised it agreed with this recommendation, in principle. It further advised:

There is already a requirement to record on WEBCOPS every DV incident attended by NSWPFNSW Police Force officers as per D&FV SOPS. The D&FV project team has been

provided with the LECC's recommendations and will consider them as part of the project.

Observations

Notebook records are part of the investigative process and provide contemporaneous notes of an incident. They assist officers in completing event reports and, if applicable, police statements. Timely completion of notebook entries is an important part of ensuring that event reports and police statements are accurate.⁹⁰

Event reports are an essential part of managing and investigating domestic and family violence. They provide an overview and a history of conflict between people in a domestic relationship. Failure to create event reports, or event reports which record inaccurate or false information, can lead to a failure to identify the risks to victims of domestic and family violence correctly. This increases the likelihood of ongoing domestic violence and limits the opportunities to connect victims to appropriate supports.

While police officers may perceive that some reported domestic and family violence incidents are at the lower end of the risk spectrum, documenting all incidents is crucial. Each incident contributes to a holistic overview of the nature and dynamics of a domestic relationship and allows police to assess the potential risk of harm to victims. Event reports also help police to review the threat levels of defendants who may have moved to a different location. In these situations, local police knowledge in relation to victims and defendants may not be available.

3.3.2 Evidence collection

A key role of policing is to gather evidence to put before the courts. The DV SOPs state that 'police should identify all physical evidence at the scene and take photographs'.⁹¹ Collecting all available evidence during the investigative stage is vital as it helps police in deciding whether there is enough evidence to start criminal proceedings. Admissible evidence, both physical and electronic, includes:

- victim statements⁹²
- witness statements
- photographs
- statements from attending doctors relating to injuries
- CCTV footage
- SMS messages
- 000 tapes.

The NSW Police Force Brief Preparation Guide emphasises that statements are an essential part of good policing and are an essential component of a brief of evidence. The taking of accurate and truthful statements is 1 of the most basic and commonly used methods for police to obtain a written record of events that have occurred and to 'tell a version of that event'. It is important that police

⁹⁰ Research on how memory works found that 'rather than being an accurate video recording of a moment in your life, it is a fragile brain state from a bygone time that must be resurrected for you to remember'. Eagleman, D. (2015) *The brain: The story of you*. Great Britain: Canongate Books Ltd, p. 22.

⁹¹ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 62.

⁹² Victim statements can either be written statements in officers' notebooks, typed statements in circumstances where victims are able to go to a police station and where the victim refuses to provide a DVEC statement, and DVECs which are a video or audio statement taken from a domestic and family violence complainant as soon as practicable after the commission of an offence. Only domestic and family violence complainants can give evidence by DVEC and only in proceedings for domestic violence offences and related ADVO proceedings. (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 64.)

officers obtain statements from all persons who can provide information as to what has occurred, including victims and witnesses to the event.⁹³

The DV SOPs state that it is not enough for police to rely solely on evidence provided by the victim but to consider the availability of any other witnesses. This means speaking to neighbours and attempting to get a statement from them.⁹⁴ Statements from different people provide a more holistic account of an event.

Commission findings

The Commission reviewed 102 sustained complaint investigations. Our results showed:

- in 18 complaint investigations (18%) involved officers either failed to obtain victim statements (14); victim statements were incomplete (2);⁹⁵ the DVEC was not uploaded to the relevant event (1); and the DVEC was taken with a person under the age of 16⁹⁶ which rendered the DVEC inadmissible⁹⁷
- in 17 complaint investigations involved officers either failed to obtain witness statements or failed to canvass the area where the incident occurred to identify any possible witnesses
- in 9 complaint investigations involved officers did not take photographs at the incident scene (5) and did not obtain relevant CCTV footage (4).

It is critical that police officers collect all relevant evidence to include in a brief of evidence to prove that a domestic and family violence offence has been committed in matters where the accused pleads not guilty.⁹⁸

By way of example, in 1 matter we reviewed, a woman reported at a police station that her ex-partner had assaulted her. The woman had visible injuries to her face. The involved officer took no photos of the woman's injuries and told her that the NSW Police Force would not investigate the matter. At the later court hearing the Magistrate was scathing of the involved officer's failure to investigate this matter and failure to take photographs of the woman's injuries.

Observations

The Commission's review found that some victims withdrew their previous statements or refused to provide information that would allow the NSW Police Force to press charges. In these circumstances, it is crucial that the evidence collected by police during the investigative stage is sufficient to bring a prosecution.

Witness statements that include disclosures of domestic and family violence offences are vital as they assist police investigations in:

- proving that an offence has occurred
- strengthening briefs of evidence
- improving the likelihood that offenders will be charged and convicted.

This is particularly important in matters where complainants have no obvious physical injuries, and the courts have to decide between the versions of the incident provided by the complainant and the

⁹³ NSW Police Force Education & Training Command, *Brief Preparation Guide*, September 2017, p. 1.15.

⁹⁴ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, pp. 61-62.

⁹⁵ One victim did not sign the statement and the second victim statement did not cover all DVSA questions.

⁹⁶ When considering the use of DVEC police must ensure that the victim is aged 16 years or over. (NSW Police Force *Domestic Violence Evidence In Chief, Practitioner's Guide*, Domestic & Family Violence Team, Version 2 – 01/06/2020, p. 18.

⁹⁷ NSW Police Force *DV Insight, DVEC v Child Statements*, Domestic & Family Violence Team, Issue 16, 31 January 2019.

⁹⁸ NSW Police Force *Brief Preparation Guide*, September 2017, p. 19.

accused. Witness statements can prove or disprove any party's version of events. In addition, witness statements can change the outcome of investigations including the decision to apply for an ADVO.⁹⁹

The collection of all relevant and suitable evidence is the foundation of any police investigation. Failure to do so can lead to failed prosecutions that result in offenders avoiding convictions and victims facing further harm.

3.3.3 Non-compliance with ADVO requirements

Sections 27 and 49 of the Act require that police officers investigating domestic and family violence must apply for a provisional ADVO if they suspect that a domestic violence offence, stalking or intimidation, or a child abuse offence has recently been committed, is being committed or is imminent or likely to be committed. Breaches of ADVOs are a criminal offence and police must start criminal proceedings against a person who has breached an ADVO.¹⁰⁰

Commission findings

The Commission reviewed 102 sustained complaint investigations. Our results showed:

- in 22 complaints investigations (22%) involved officers did not comply with the DV SOPs in relation to ADVOs. Non-compliance included:
 - failure to apply for an ADVO
 - failure to investigate breaches of an ADVO
 - failure to serve an ADVO
 - failure to record ADVO breaches in the event report.

The following case study describes an assault of a woman by the ex-partner. The involved officer had failed to take out an ADVO.

Case study 6:

A woman (complainant) contacted police and informed them of a domestic and family violence incident involving her friend (victim), the victim's 1-year-old child and the victim's ex-partner. The complainant stated that the ex-partner was 'banging on the door' of the victim's house and that the victim was frightened and hiding inside the house. The complainant told police that there were previous unreported domestic and family violence incidents between the victim and her ex-partner and that the ex-partner had been 'physical' with the victim before. The information indicated that the victim might be at risk of assault by her ex-partner.

When police arrived at the location, the ex-partner was sitting calmly outside the front door of the house. The ex-partner told police that he was visiting the victim and his child. Police spoke to both the victim and the ex-partner on BWV and decided that no offence had been committed. Police did not apply for an ADVO.¹⁰¹

⁹⁹ Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 27.

¹⁰⁰ *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 14. Where a police officer decides not to initiate criminal proceedings or not to proceed with criminal proceedings against a person for an alleged contravention, they must make a written record of the reasons under section 14(8). There is a statute of limitations of 6 months from the date of the offence to begin a prosecution for a breach of an ADVO. (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 87)

¹⁰¹ Sections 27 & 49 *Crimes (Domestic & Personal Violence) Act 2007* (NSW) state that a police officer MUST apply for an AVO if they suspect or believe that a domestic violence offence is likely to be committed. A suspicion being more than a mere idle wondering and a positive feeling of actual apprehension. The *NSW Police Force DV Insight*, Issue 24 of April 2019, says the test for applying for an ADVO is low; it is NOT as high as reasonable suspicion or belief. This is the only legislation where a police officer has a positive obligation to act, that is, MUST make application for an ADVO in certain circumstances. The DV

The victim went to see her ex-partner several weeks later and he seriously assaulted her. The complainant stated that if police had followed the victim's request to take out an ADVO against the ex-partner this assault might have been avoided.

The NSW Police Force investigated the involved officers for 'deficient/inadequate investigation'. The investigation found that the BWV showed that the victim was afraid and some of her comments clearly indicated that she did not feel safe.

The investigation concluded that the NSW Police Force could not hold 3 of the 5 involved officers accountable. The 3 officers were probationary constables with little operational experience, and they were not involved in the decision-making process to apply for an ADVO.

In relation to the 2 senior officers (1 senior constable and 1 leading senior constable), the OICs found that while their actions were not reckless, they did not pick up on the victim's fears and failed to investigate the victim's allegations. The investigation resulted in sustained findings against both involved officers and included comments that the officers should have erred on the side of caution and applied for an ADVO to protect the victim.

Management action for 1 officer included advice and guidance. The second involved officer was already on a Conduct Management Plan for an inadequate investigation of another domestic violence incident. Management action included a Commander Warning Notice and another Conduct Management Plan.

Observations

The Bureau of Crime Statistics and Research has published a study that shows that obtaining an ADVO led to a significant decline or end of the abusive behaviour. Over 90% of persons who had applied for an ADVO stated that the ADVO gave them a heightened sense of security.¹⁰²

The purpose of an ADVO is to protect a victim of domestic and family violence from further harm and to hold the defendant accountable for their actions. If a defendant breaches an ADVO, they can face criminal charges under section 14 of the Act. When police apply for an interim or provisional order the defendant must surrender any firearms to the police and their firearms licence will be suspended. If a final ADVO is made the firearms licence of the defendant will be revoked and they are prevented from obtaining a new firearm licence for 10 years.¹⁰³ The removal of a defendant's firearm(s) is a key measure to protect a victim from significant harm.

Generally, police officers do apply for ADVO in domestic violence matters. The application and enforcement of ADVOs are the responsibility of the NSW Police Force and are critical in protecting victims. If police officers fail to apply for an ADVO or fail to investigate potential ADVO breaches a victim of domestic and family violence is at increased risk of further violence from a defendant.

3.3.4 Firearms and weapons

Police officers who investigate a domestic and family violence incident have a statutory responsibility to inquire about the presence of any firearms in the home. If a police officer establishes that there are

SOPS state, 'There is an expectation that you will conduct a thorough investigation in pursuit of sufficient evidence to reach the appropriate standard for an AVO application to be put before a court.' (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 98).

¹⁰² Trimboli, L. and Bonney R., *An Evaluation of the NSW Apprehended Violence Order Scheme*, New South Wales Bureau of Crime Statistics and Research, Sydney, 1997.

¹⁰³ Section 23 of the *Firearms Act 1996* (NSW) provides for the automatic suspension of a licence under that Act on the making of an interim apprehended violence order against the licence holder and section 24 of that Act provides for the automatic revocation of a licence on the making of a final apprehended violence order against the licence holder. Section 17 and 18 of the *Weapons Prohibition Act 1998* duplicate these provisions. Section 11(5)(c) of the *Firearms Act 1996* (NSW) provides that a person who is subject of a final ADVO is prohibited from holding a firearm licence within 10 years of the making of the final ADVO.

firearms in the home, they must search for, seize, and detain the firearm or firearms.¹⁰⁴ This power applies irrespective of whether an offence has been committed or not.¹⁰⁵ Police officers apply the Domestic Violence Safety Assessment Tool (DVSAT) to a victim to decide their level of risk. Within the DVSAT, police officers need to consider mandatory firearms questions. Police officers must apply for a search warrant if they believe on reasonable grounds that there are firearms in the dwelling.¹⁰⁶

In addition, if a licensee is charged with a domestic violence offence or has committed or has threatened to commit a domestic violence offence, police officers must suspend their firearms licence.¹⁰⁷ An ADVO may also prohibit or restrict possession of any or all specified firearms or prohibited weapons by the defendant.¹⁰⁸

Commission findings

The Commission's review of 102 sustained complaint investigations found:

- in 8 complaint investigations, involved officers did not comply with internal NSW Police Force procedures and legislative requirements to inquire, search, and seize firearms at domestic and family violence incidents.

Due to the significant risks that firearms pose to human life, a summary of 7 matters is included in Appendix E.

Case study 7 presents a chronology of events that led to the murder of Jack and Jennifer Edwards by their father. The outcome of a coronial inquest found that if the father had not been able to access a gun the death of the 2 children could have been prevented.¹⁰⁹

Case study 7:

On 29 December 2016, Olga Edwards reported a domestic violence assault by her estranged husband, John Edwards at a police station. Olga Edwards spoke to involved officer 1 who created an event report that included incorrect information:

- the incident was recorded as 'DV – no offence' although it should have been recorded as 'DV Common Assault'
- Olga Edward's 2 children (Jack and Jennifer Edwards) were not recorded as victims
- no victim statements were taken
- DVSAT questions were answered incorrectly
- no Child at Risk (CAR) incident was recorded even though Olga Edwards had reported that John Edwards had assaulted their 2 children the previous year.

The event report included the following sentence: 'Police do not hold fear of safety and are of the belief that this may be a premeditated attempt to influence some future family court and divorce proceedings'. The event report included no information whether involved officer 1 had made inquiries if John Edwards was in possession of firearms.

A supervisor (involved officer 2) verified the event report in less than 2 minutes. The event report was marked off as 'no offence detected, verified/accepted'.

¹⁰⁴ Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) s 85(2). This requirement is also included in the NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 32.

¹⁰⁵ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 33.

¹⁰⁶ Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) s 86(1).

¹⁰⁷ Firearms Act 1996 (NSW) s 22.

¹⁰⁸ *Firearms Act 1996* (NSW) s 35(2)(d).

¹⁰⁹ The Commission sourced this information from the Coronial Inquest findings and the police investigation.

The coronial investigation found that the event ‘was not created, recorded or verified in accordance with the relevant procedures and guidelines in place at the time.’¹¹⁰ Involved officer 2 told the Coroner that he had been quality reviewing event reports for approximately 10 years, however, when asked what training he had received in relation to verifying events before December 2016 involved officer 2 responded: ‘Absolutely none’.

Olga Edwards went to a police station in early February 2017 and reported to involved officer 3 that John Edwards had gone to her yoga class. The event report created by involved officer 3 contained several errors:

- John Edwards was only listed in the narrative and not recorded in the ‘Person named field’
- the incident was recorded as ‘occurrence only’ and there was no associated factor of domestic violence (the incident should have been recorded as ‘stalking/intimidation offence’)
- Olga Edwards was recorded as ‘Person Reporting, but not as a victim.

The Coroner found that if the NSW Police Force had appropriately created, recorded and verified the event report and if it had carried out reasonable enquiries:

... the additional information then obtained would have been sufficient for an AVO (although not a charge). As set out later in these findings, an AVO in place against an applicant for a firearms licence is a reason for a mandatory refusal.

Secondly, if the matter had been characterised correctly as “stalking/intimidation” and if John had been correctly identified as the "Person Named" in the incident field, the matter would have shown up in the CNI Report generated by the Firearms Registry, reviewed as part of the consideration of John’s licence application.

Olga Edwards filed an affidavit in the family law proceedings in late May 2017 stating that John Edwards had told her that he wanted to kill 1 of his former partners because of the family law proceedings that had occurred. He also blamed his former partner for the death of 1 of their children in 2002.

John Edwards lawfully bought 3 rifles and ammunition between 15 August and 23 October 2017.

The family law proceedings about parenting were resolved by consent on 14 February 2018. Olga Edwards had sole parental custody and there were no orders for the children to spend time with their father.

John Edwards lawfully bought a .357 Magnum Smith & Wesson revolver on 13 March 2018.

John Edwards lawfully bought a Glock 17A semiautomatic pistol and ammunition on 17 April 2018.

John Edwards fatally shot Jennifer and Jack Edwards with 1 of his legally bought firearms – a Glock 17A semiautomatic pistol in the home that they shared with their mother on 5 July 2018. Approximately 1 hour later John Edwards took his own life at his home with 1 of his legally bought firearms - a .357 Magnum Smith & Wesson revolver.

Tragically, 6 months later Olga Edwards took her own life.

The Coroner did not blame any individual agency but stated that each agency, including the NSW Police Force, plays a critical role in helping domestic and family violence victims and in investigating domestic and family violence offenders:

Evidence at the inquest highlighted that Olga, Jack and Jennifer disclosed their experiences of violence and abuse perpetrated by John to multiple agencies, entities,

¹¹⁰ Coroner’s Court of New South Wales, *Inquest into deaths of John, Jack and Jennifer Edwards*, 7 April 2021, para 249.

and professionals in the police and within the family law system. Sadly, none were able to effectively mobilise to protect Jack, Jennifer, or Olga. Similarly, the regulatory framework did not prevent John from obtaining firearms licences, lawfully purchasing firearms, or from meticulously planning, and carrying out, the killing of his children.

The Coroner concluded that it is common within jurisdictions to describe such deaths as a tragedy; however, evidence before the Coroner's Court had clearly shown that the deaths of Jack and Jennifer Edwards were preventable.

Observations

The Commission had difficulties assessing whether involved officers had complied with their legislative requirements in relation to the search and seizure of firearms. In most complaint investigations the Commission reviewed, the only information in relation to this requirement was included in the DVSAT questions and answers. These were not accessible to the Commission. We also located information in the event report next to the heading 'Any Firearm(s) / Dangerous Weapon(s) seized?' In most event reports the answer was 'N'. It was not clear to us if this meant that involved officers had complied with sections 85 and 86 of LEPR. It may be beneficial to include this information in the event narrative as it would remind police officers that the law requires them to ask about the presence of firearms. This information also provides a safeguard in circumstances where the actions of police officers might be examined at a later stage.

The Commission is concerned that involved officers,¹¹¹ most of them senior constables, either failed to inquire about the presence of firearms or failed to conduct Integrated Licensing System (ILS) checks with people involved in domestic and family violence incidents.¹¹²

The Commission's review also found that involved officers with as little as 6 months policing experience were dealing with domestic and family violence victims who were often traumatised and reluctant to pursue their complaints against current or former partners.

Recommendation 10: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* should require police officers to record in the event narrative that a) they have conducted ILS checks on the alleged domestic and family violence offender and b) the response to their enquiries about the presence or possession of firearms at the scene of any domestic or family violence incident.

NSW Police Force response

The NSW Police Force advised it agreed with this recommendation, in principle, and referred to its response to Recommendation 7.

3.3.5 Child at risk

Section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides that NSW Police Force officers are mandatory reporters. This means that if police officers, during the course of their work, have reasonable grounds to suspect that a child is at risk of significant harm, they are required to immediately make a report to the Department of Communities and Justice (DCJ). This

¹¹¹ At least 2 officers always attend domestic and family violence incidents.

¹¹² The NSW Police Force has changed processes regarding attendance at a domestic and family violence incident, with a mandatory ILS check linked to the Central Name Index (CNI) of the person of interest and the person in need of protection. (Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, TAB D, p. 7).

legislative requirement is included in the DV SOPs that still refer to making reports to the ‘Family & Community Services (FaCS) Child Protection Helpline’, although that line no longer exists.¹¹³

In addition, if police officers are satisfied that children are at immediate risk of harm, they have the power to remove children and young persons from the home.¹¹⁴

Police officers complete CAR incident in an event report on COPS by using the Mandatory Reporter Guidance (MRG) tool. As a result, the CAR incident will be automatically disseminated to either the DCJ, where appropriate, or to the NSW Police Force Child Wellbeing Unit (CWU).¹¹⁵

The DV SOPs instruct police officers in respect of responding to children exposed to domestic and family violence. They emphasise that the safety, protection and wellbeing of all children and young persons is of ‘paramount consideration’.¹¹⁶

Commission findings

The Commission’s review of 102 sustained complaint investigations found:

- in 8 complaint investigations the involved officers did not comply with the mandatory requirement under s 27 *Children and Young Persons (Care and Protection Act) 1998* (NSW) and the obligations under the DV SOPs. More specifically:
- in 6 complaint investigations the involved officers had not created a CAR incident.

For example, in 1 matter, described in case study 5, a woman reported an assault on a small child at a police station. CCTV cameras covered the area of the assault. The involved officer did not create a CAR incident and did not investigate this matter.¹¹⁷

In another matter a woman made a complaint to the involved officer that her ex-partner had assaulted her; had breached his ADVO orders; and had taken 1 of their children from the woman. The involved officer did not create an event report, which resulted in no CAR incident being created.

In another matter, as described in detail in case study 7, the involved officer failed to create a CAR notification. The Coroner found that if police had thoroughly investigated the complaint of assault upon the children or the matter of stalking it is likely that an ADVO would have been applied for and granted in these circumstances. This would have flagged John Edwards as a “hit” with the NSW Firearms Registry and prevented him from obtaining a permit.

- in 2 complaint investigations the involved officers did not check on the welfare of children.

In 1 matter the victim disclosed to the involved officer that her ex-partner had damaged the wall within her premises while watching their children. The involved officer completed an event report before the conclusion of his shift but omitted to record that the matter was a domestic and family violence incident. The involved officer also created a CAR notification

¹¹³ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 123. The DCJ has replaced the FaCS in March 2020.

¹¹⁴ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 43.

¹¹⁵ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 123. The CWU receives electronic reports from COPS. Assessment officers review these reports and conduct a further analysis of information obtained from the reporting officer or other agencies to determine what further action is required. Assessment officers at the CWU will use the MRG tool to reassess the information they have to see whether the threshold for significant harm is met. If the threshold is met, then a report will be made to the Child Protection Helpline. If the threshold is not met, then the CWU assessment officers will either make a referral to a Family Referral Services or retain the information locally. (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 125).

¹¹⁶ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 123.

¹¹⁷ The officer retired before any management action was taken.

without enquiring about the children and without physically checking on their welfare. If the DV Team had not reviewed this incident the following day the involved officer would have taken no further action. The involved officer had been a senior constable for over 12 years and had completed internal domestic and family violence training.

Case study 8 provides an example of the failure by an involved officer to investigate a reported domestic and family violence matter and falsifying information included in an event report in relation to the wellbeing of a child.

Case study 8:

A woman entered a police station in a distressed state, barefoot and wearing only pyjamas 1 evening in 2019. The woman told the involved officer that her husband had assaulted her while she was holding their young child in her arms. The woman described her husband as being very drunk and on medication. After leaving the police station, the woman told a friend that the involved officer had discouraged her from taking out an ADVO.

The involved officer made no record of the woman's complaint in his notebook. Later that evening the involved officer created an event report. The event report stated that the woman and her husband had had a verbal argument and that the woman did not disclose any domestic violence offences. The involved officer wrote in the CAR section of the event report that the child's physical and emotional state appeared 'healthy and happy'. The involved officer had never checked on the welfare of the child. Both the woman and her friend stated that the child was upset on the evening and was not 'healthy and happy'.

Police investigated the involved officer for failing to investigate this matter and falsifying official records. The NSW Police Force made sustained findings on both issues. The involved officer was served with a Commander's Warning Notice and placed on a 6-month Conduct Management Plan.

The investigation found that the behaviour of the involved officer was in 'complete contradiction to the edict of the NSW Police Force when managing domestic violence matters' and 'this edict being repeated to staff throughout the Command on a very regular basis.' The involved officer had deliberately downplayed the incident in the event report. In addition, he had failed to check on the welfare of the child, yet he recorded in the event report that the child was happy and healthy.

Observations

As mentioned, all NSW Police Force officers have a legal responsibility under section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to report children at risk of significant harm. If the risk is imminent and serious, police must remove the child(ren) from the place of risk. This information is also disseminated to the DCJ which results in a child protection caseworker assessing what action needs to be taken for the protection of the child(ren). In its assessment, DCJ must also consider the immediate safety, welfare and wellbeing of any other children or young people who live at the same home. If their assessment indicates that the child(ren) may be in immediate danger, they will move them to a safe place. To enable DCJ to conduct its risk assessments it is crucial that the NSW Police Force provides them with sufficient and accurate information.

The Commission's review has shown in 8 domestic and family violence matters, involved officers had either not created a CAR incident or had included incorrect information in relation to the wellbeing of children in the CAR incident. In these circumstances, children who are at risk of immediate harm are not protected.

3.3.6 Victim support/follow up

The DV SOPs provide detailed instructions to police officers about their responsibilities towards victims of domestic and family violence. The 2 main responsibilities are:

1. to refer victims to the appropriate support services; and
2. to conduct a victim follow up within 7 days of the incident being reported.¹¹⁸

The objectives of victim follow up are to:

- ensure the victims wellbeing and safety
- provide an Event number if not already provided
- solicit further information about the reported incident
- keep the victim informed about the ongoing status of the case
- provide information about the POI [Person of Interest] bail determination/review, charge notification, court date notification, etc.
- answer any questions the victim may have.¹¹⁹

Commission findings

The Commission's review identified 8 complaint investigations that had not complied with the DV SOPs. Involved officers failed to:

- conduct victim follow up
- get more information from 1 victim which led to a criminal offence being committed against the victim by her former partner
- maintain adequate contact with the victim
- subpoena victims to attend court
- provide regular updates about upcoming court appearances
- provide appropriate support to victims during the investigations.

The Commission's review identified records that showed that some involved officers had received extensive training in the application of the DV SOPs, including introduction to child protection and victim support.

Observations

The Commission is concerned that the level of service that victims of domestic and family violence receive from police is not always consistent with the requirements of the DV SOPs. Information provided by involved officers indicated that if victims did not appear to be in immediate danger, were reluctant to pursue their allegations or were difficult to reach after the initial complaint police officers viewed the incident as low risk. This led to a failure by some involved officers to investigate domestic and family violence incidents adequately.

¹¹⁸ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, pp 155-156. The NSW Police Force collects data on its actions to follow up with victims of crime 7 days after they attended a crime. This data relates to all victims of crime, and it is not possible for the NSW Police Force to assess domestic and family violence follow up rates. (Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, p. 32).

¹¹⁹ NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 156.

The Commission's findings are similar to the concerns raised by the Auditor General's assessment following her review.¹²⁰

3.3.7 Supervision

Supervisors are responsible for the quality of the domestic and family violence investigation. They play a key role in policing domestic and family violence by supporting and mentoring police officers who investigate domestic and family violence. Some of their other responsibilities include:

- the Team Leader/General Duties Shift Supervisor (Sgt) is responsible for the timely attendance at all domestic and family violence matters during their supervision shift
- ALL domestic and family violence events will be completed and placed onto the COPS system as early as practicable, and in every case, before the conclusion of a shift
- prior to the Team Leaders completing their duties, they must where practicable quality review and verify all domestic and family violence events that have occurred during their shift.¹²¹

Supervisors, during the quality review process, ensure that police officers record the domestic and family violence incidents as originally reported. This means that a supervisor must confirm that the event report and the initial Computer Aided Dispatch (CAD) are linked. The DV SOPs state that the supervisor is required to compare the initial CAD message with the content of the event report. This allows a supervisor to confirm that police officers have correctly recorded the original call for help, which may include reports of assault or physical force. The DV SOPs state:

The principle behind recording the incident as originally reported is to ensure that there is no means to deliberately circumvent the requirement to take any formal action. This ensures matters are properly flagged and addressed.¹²²

In short, when a police officer creates a COPS event report in relation to a domestic and family violence matter, a supervisor must verify the information included in the event report to ensure the account is accurate and truthful. The supervisor must also assess that the actions of the police officers were appropriate and complied with relevant internal domestic and family violence processes and procedures.

Commission findings

The Commission's review identified 15 complaint investigations that had not complied with the DV SOPs. The 2 main breaches were:

1. Supervisors failed to adequately oversee and monitor domestic and family violence investigations.

In several complaint investigations supervisors resubmitted event reports to officers to obtain additional information. Officers were asked to obtain witness statements, add important details to victim statements and obtain corroborative evidence. The failures to ensure that involved officers actioned their request in a prompt manner led to significant delays in progressing investigations.

2. Supervisors failed to review event reports adequately.

In some complaint investigations, supervisors signed off on event reports even though they lacked critical information, including:

¹²⁰ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, p. 33-34.

¹²¹ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 171.

¹²² NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 69.

- no welfare checks on children had been conducted
- no information in relation to the presence or possession of firearms
- no information as to whether the offender has assaulted the victim
- incorrect incident type.

Observations

Supervisors provide an additional layer of scrutiny and expertise to ensure that police officers conduct thorough investigations into domestic and family violence incidents.

In the NSW Police Force, the management of domestic and family violence is a tiered process with each supervisory level having different responsibilities. The OIC is required to investigate domestic and family violence matters in a thorough and competent manner.

The supervisor of the OIC is responsible for the quality of the investigation, which includes the quality review and verification of all domestic and family violence events that have occurred during their shift.¹²³

The investigations manager oversees and monitors all investigations, including investigations into DV matters, to ensure that police officers investigate them in an efficient and professional manner.¹²⁴

The aim of these supervisory requirements is to ensure that OICs conduct their investigations in line with the intent of NSW Police Force DV SOPs and policies.

The Commission acknowledges that supervisors face many challenges, especially on busy shifts and with limited supervisors available.

Our review identified 1 complaint investigation that indicated that only 1 supervisor was available to be rostered to cover 11 police stations in an area of roughly 13,000 square kilometres covering 3 Local Government Areas. According to NSW Police Force records, this was a common occurrence. In such circumstances, it is doubtful that supervisors can ensure that all police officers who report to them fulfil their investigative responsibilities in a professional, ethical, and timely manner.

A lack of robust supervision and systems-based controls to monitor and oversee investigations into domestic and family violence incidents can lead to flawed investigations and result in failed prosecutions. The risks associated with failed prosecutions are that there are no ramifications for domestic and family violence offenders and victims remain at risk of further harm.

3.3.8 Failed prosecutions

The NSW Police Force has comprehensive policies and procedures that provide detailed instructions to police officers investigating incidents (including domestic and family violence incidents) about how to collect admissible evidence to satisfy the courts that an offence has been committed.

The following statement clearly reflects the position in New South Wales:

It has never been the rule in this country ... that suspected criminal offences must automatically be the subject of prosecution. Indeed, the very first Regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute 'wherever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest'. That is still the dominant consideration: per Sir Hartley Shawcross QC, UK Attorney

¹²³ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 171.

¹²⁴ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 170.

General and former Nuremberg trial prosecutor, speaking in the House of Commons on 29 January 1951.¹²⁵

NSW Police Force procedures emphasise that the public interest is the key issue in deciding whether to prosecute a person for offences. Next, police officers must decide if the available admissible evidence can establish each element of the offence. It is therefore essential that police officers conduct thorough investigations into reported domestic and family violence incidents and collect all admissible evidence for the brief of evidence that goes before the court. Another consideration for police officers is to decide whether there is a reasonable prospect of conviction by a reasonable jury or other tribunal of fact.¹²⁶

A police prosecutor¹²⁷ has the authority to withdraw matters on the day of the hearing for several reasons, including:

- victims and witnesses have been issued with subpoenas but failed to attend court;
- victims and witnesses were not contactable on the day of the court hearing or have indicated that they will not be attending court; and
- there was no other admissible evidence to lead to a conviction.¹²⁸

Commission findings

The Commission's review of 102 complaint investigations identified 8 complaint investigations that resulted in failed prosecutions. Causes included:

- a lack of evidence to meet prima facie case
- no witness statements were obtained
- witnesses were not subpoenaed to attend court
- victims were not subpoenaed to attend court
- OICs failed to attend court
- incomplete or deficient briefs of evidence were submitted
- DVECs were not served on the defence as part of the brief of evidence
- briefs of evidence were not served on the defence.

In 1 matter, police charged the defendant with 3 domestic violence related offences against his partner. The involved officer completed a partial brief of evidence but failed to supply crucial evidence to the police prosecutor to support the offences. The police prosecutor reviewed all available evidence. The police prosecutor withdrew the matter because of a lack of evidence to help with the successful prosecution of these charges. The police investigation into the involved officer resulted in sustained findings.

- In another matter the involved officer failed to investigate a matter reported to him adequately and compiled an unsatisfactory brief of evidence for an ADVO. More specifically, the involved officer failed to:
 - obtain a version of the incident from the defendant at any time during the investigation

¹²⁵ NSW Police Force Police Prosecutions Command Standard Operating Procedures, February 2011, 3.1.

¹²⁶ NSW Police Force Police Prosecutions Command Standard Operating Procedures, February 2011, 3.1.

¹²⁷ Police prosecutors provide the vital link between police and courts for many victims of domestic and family violence. Police prosecutors must liaise with DVOs to ensure that on the day at court the domestic and family violence matter runs efficiently and the meet the needs of the victims.

¹²⁸ NSW Police Force *Police Prosecutions Command Standard Operating Procedures*, February 2011, 3.5. The Prosecutor must record these steps in the Failed Prosecution Form.

- attend the scene of the incident to collect potential evidence
- complete a police statement
- serve the brief of evidence on the defence.

The court later dismissed the matter and the Magistrate commented:

...It is reasonable to expect a police officer who was taking out an application for an apprehended violence order to firstly confirm whether the relationship met the definition of a domestic...'

and

...'the matter was not a domestic relationship and the application should not have been made as one'.¹²⁹

As a result, the courts awarded costs of \$6589.

Observations

Inadequate and flawed police investigations can lead to failed prosecutions that result in domestic and family violence offenders going unpunished and victims facing potential further harm. Research has found that offenders go free when police officers do not properly follow investigative leads or are untrained in correct interrogation practices of witnesses and suspects.¹³⁰

The Commission's review found that prosecutions failed because the involved officers did not follow basic investigative requirements, such as subpoenaing witnesses to attend court or officers themselves failing to attend court. Supervisors failed to identify these deficiencies during the quality review process. In the Commission's view, this raises questions about the effectiveness of the supervisory regime in relation to monitoring and overseeing police investigations.

NSW Police Force policies and procedures emphasise the need to investigate domestic and family violence incidents thoroughly to protect victims and to prosecute offenders successfully. To achieve this objective, it is essential that procedures are in place that guarantee that investigations are of the highest standard.

3.3.9 Consultation with complainant

Section 137 of the Police Act provides that the NSW Police Force must consult with the complainant after it has completed a misconduct investigation. Section 137 states:

- (1) As soon as practicable after the investigation of any misconduct matter by the Commissioner has been concluded and a report of the investigation finalised, the Commissioner must:
 - (a) If the investigation followed a complaint:
 - (i) if practicable, consult with the complainant before making a decision concerning any action to be taken as a result of the misconduct matter, and
 - (ii) provide the complainant with advice as to any action already taken, and as to the Commissioner's decision concerning any action to be taken, as a result of the complainant

Evidence-based investigation reports and Mandatory Resolution Outcome Reports include the following section that the Commander must sign:

¹²⁹ Transcript of Proceedings, *R v Kelly* (Port Macquarie Local Court, 2019/00376457, Magistrate Darcy, 29 February 2021) 1.

¹³⁰ Forst, *Managing Miscarriages of Justice from Victimization to Reintegration*, supra note 2, at 1217.

Complainant satisfaction with the action taken in relation to their complaint must be included in the report. The resolution report must include the outcome requested by the complainant, the outcomes offered by the resolution manager to the complainant and record whether the complainant is satisfied with the action taken or proposed to be taken.

Commission findings

The Commission analysed 222 complaint investigations.¹³¹ Our review found:

- 97 complaints originated from external complainants
- 89 complaints were made internally by police officers
- 9 complaints were identified by way of a Failed Prosecution Panel and as such there were no complainants to update in accordance with s 137(1)(a) of the Police Act
- 10 complaint investigations had not been finalised yet
- in 6 complaint investigations, Commanders recorded that there was no requirement to comply with s 137 of the Police Act
- 4 complaints originated from internal situation reports; Commanders recorded on investigation reports that there was no requirement to consult with the complainant
- 3 complaints derived from statements of claim and as such there were no complainants to update in accordance with s 137(1)(a) of the Police Act
- in 3 complaints Commanders recorded 'N/A' in the section relating to complainant satisfaction; in all 3 matters the complainants were police officers
- 1 complainant was anonymous, and it was therefore not possible to obtain their satisfaction.

We looked at police compliance with s 137(1)(a) of the Police Act in relation to complaints made by external complainants. Table 3 presents the results of the Commission's review.

Table 3: Summary of compliance with s 137(1)(a) of the Police Act

Compliance with s 137(1)(a) of the Police Act	External complainants
Complied with s 137(1)(a) of the Police Act	58
Did not comply with s 137(1)(a) of the Police Act	22
Insufficient information to determine compliance with s 137(1)(a) of the Police Act	17
Total Number	97

The Commission's review found that 58 out of 97 complaint investigations (60%) complied with the requirements of s 137(1)(a) of the Police Act and advised the complainant of the outcome of the investigation. The NSW Police Force advised complainants of the outcome predominantly by letter or email.

For 22 complaint investigations, the Commission was unable to locate any records on IAPro that indicated that the NSW Police Force had advised complainants of the outcome of the investigation.

¹³¹ The requirement to consult with the complainant relates to all complaint investigations, notwithstanding their outcome, i.e., sustained and not sustained.

Finally, for 17 out of 97 complaint investigations, the Commission was unable to locate sufficient information or records on IAPro to assess if the NSW Police Force had complied with the requirements of s 137(1)(a) of the Police Act. Our review located records that stated:

- PSDOs [Professional Standards Duty Officer] will speak to complainants and forward letters to them; the Commission was unable to locate any documents on IAPro to assess whether or not this action had occurred
- ‘to be completed by investigating officer’; the Commission was unable to locate any documents on IAPro to assess whether or not this action had occurred
- ‘YES’ or ‘Satisfied this has been undertaken’; the Commission was unable to locate any documents on IAPro to assess how these outcomes were achieved.

In summary, in 40% of applicable complaint investigations the Commission was unable to locate any documents on IAPro to assess if the NSW Police Force had complied with the requirements of s 137(1)(a) of the Police Act to advise complainants:

- of the outcome of the complaint investigation
- of the proposed action taken by police
- whether complainants were satisfied with the action that the NSW Police Force had taken in relation to their complaint.

Observations

The Commission’s findings indicate that the NSW Police Force’s compliance with s 137(1)(a) of the Police Act was low and inconsistent. Forty percent of complaint investigations did not comply with s 137(1)(a) of the Police Act.

The intent of s 137(1)(a) of the Police Act is to measure the efficacy of the NSW Police Force complaints system, receive responses from complainants and identify areas of improvements of NSW Police Force complaint handling procedures. Therefore, compliance with this legislative requirement is essential for the NSW Police Force to achieve this goal.

The findings of the Commission’s review mirror some of the findings made in the 2014 Ombudsman report, ‘*Report on systems established by the NSW Police Force to measure complainant satisfaction*’ which stated: ‘

Complainant satisfaction provides an important measure of public confidence in the police complaints system and provides feedback about the quality and effectiveness of NSWPF complaint handling.¹³²

The Commission also considers that evaluating complainant satisfaction will assist the NSW Police Force in improving and strengthening its complaint handling procedures. Similar conclusions were reached by the Auditor General in her report.¹³³

3.4 Other issues identified

The Commission’s review identified several issues in relation to police officers responding to domestic and family violence incidents that we discuss below.

¹³² NSW Ombudsman (October 2014), ‘Report on systems established by the NSW Police Force to measure complainant satisfaction’, p. 2.

¹³³ Audit Office of New South Wales, New South Wales Auditor-General’s Report to Parliament, *Police responses to domestic and family violence*, April 2022, pp. 35-36.

3.4.1 Body Worn Video

The DV SOPs do not mandate the use of Body Worn Video (BWV) at domestic and family violence incidents. However, they mention the benefits of using BWV at those incidents, such as:

- obtaining a brief version of the complaint from the victim
- capturing the scene of the incident
- recording any admissions or denials from the offender to the allegations that a domestic and family violence offence has been committed.¹³⁴

The NSW Police Force *Body-Worn Video Standard Operating Procedures*, April 2023, (BWV SOPs) include instructions in relation to the use of BWV. The BWV SOPs state: 'Police should use the BWV camera during their shift to record incidents they attend, evidence they see and conversations they have with members of the public'.¹³⁵ While the BWV SOPs state that it is mandatory, 'where practicable' for operational police officers to wear BWV, the activation of BWV is left to the police officer's own judgement.¹³⁶

Commission findings

The Commission's review identified 8 complaint investigations that included comments about the use of BWV.

Some investigation reports included comments that matters could have been resolved if the police officers had activated their BWV during their interactions with the parties involved in the domestic and family violence incident. In other matters, police officers deactivated their BWV too early and therefore did not fully capture the incidents.

This is particularly important in circumstances where victims, or offenders, or both, claim after the incident that police officers acted unlawfully, including using unreasonable use of force or unlawful arrests. In these circumstances, the existence of BWV footage would have been extremely useful in determining whether police had applied any use of force and whether arrests were reasonable and lawful.

Observations

Police officers in New South Wales are required to comply with 2 different sets of procedures in relation to the use of BWV — the DV SOPs and the BWV SOPs.

The DV SOPs and the BWV SOPs cite the benefits of BWV recording as it provides, among other things, support to operational policing activities 'by connecting words and actions with context'.¹³⁷

The advice in both sets of SOPs allows police officers to use their own judgement as to when to activate their BWV.

The Commission accepts that BWV presents only 1 of several investigative strategies available to police officers investigating domestic and family violence matters. However, BWV plays a critical part as it:

- captures the demeanour of both parties and their initial version of events
- provides footage of injuries

¹³⁴ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 53.

¹³⁵ NSW Police Force *Body-Worn Video Standard Operating Procedures*, Technology Command, April 2023, p. 7.

¹³⁶ NSW Police Force *Body-Worn Video Standard Operating Procedures*, Technology Command, April 2023, pp. 4, 6.

¹³⁷ NSW Police Force *Body-Worn Video Standard Operating Procedures*, Technology Command, April 2023, p. 4.

- provides other evidentiary material which may resolve matters outside the complaints process.

The few studies that have examined the use of BWV suggest that its use increases the likelihood of prosecution and conviction.¹³⁸

For these reasons, the Commission suggests that the DV SOPs should be amended to say that officers “should” activate BWV when attending domestic violence incidents. This is consistent with the BWV SOPs.

This would make the use of BWV the standard approach when investigating a domestic and family violence incidence, but still allows officers to explain why BWV was not used in a particular instance.

Recommendation 11: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* be amended to say that officers “should” activate BWV at domestic and family violence incidents.

NSW Police Force response

The NSW Police Force did not support this recommendation. It further advised:

Given its ability to be used in court proceedings, DVEC is the preferred method of obtaining evidence from victims of domestic and family violence.¹³⁹ BWV is beneficial when recording the initial stages of D&FV incidents prior to and including the offender being secured; however, is not intended to replace DVEC. As per the BWV SOPs, it is important to ensure that the decision to use BWV, whilst strongly encouraged, remains with the NSWPF officer/s attending any incident.¹⁴⁰

The Commission is keen to ensure that officers are given very clear instructions about when to use BWV. The use of BWV is something the Commission is considering in several other current matters. We will continue to work with the NSW Police Force to ensure that police officers understand when BWV ought to be used, and that if it is not used when it should have been, this is appropriately addressed by the NSW Police Force.

3.4.2 Identifying the primary aggressor and the primary victim

The DV SOPs do not assist investigating police officers in identifying the primary aggressor and the primary victim of a domestic and family violence incident. The only discussion of how to identify the primary aggressor relates to situations in which both parties to a domestic and family violence incident start cross applications against each other. The DV SOPs include instructions to help police officers to assess if cross applications are justified.¹⁴¹

Similarly, the *Code of Practice for the NSW Police Force Response to Domestic and Family Violence* provides no specific guidance about identifying the primary aggressor. It simply states that officers should consult their supervisor or a Domestic Violence Liaison Officer (DVLO)¹⁴² if they have difficulties determining who the primary victim is.¹⁴³

¹³⁸ Australian Institute of Criminology, Research Report 13, *Policing domestic violence: A review of the evidence*. Christopher Dowling, Anthony Morgan, Chloe Boyd, Isabella Voce, 2018, p. xi.

¹³⁹ MobiPOL is the preferred device for recording DVEC evidence. (NSW Police Force *DVEC Domestic Violence Evidence in Chief, Practitioner’s Guide*, Domestic, and Family Violence Team, June 2020, p. 48). MobiPol are shared smart phones and tablet devices that enable NSW Police Force officers to access police systems and databases away from the office.

¹⁴⁰ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, TAB C, p. 4.

¹⁴¹ NSW Police Force *Domestic and Family Violence Standard Operating Procedures* 2018, pp. 101-102.

¹⁴² DVLOs are specialist police officers trained in domestic and family violence, child protection procedures, victim support, and court AVO processes. The role of the DVLO is to provide advice to police and victims; give referrals to appropriate support agencies; maintain close working relationships with all support agencies; review and oversee all domestic and family violence reports and cases; help victims through the court process for ADVOs; and monitor repeat victims and offenders.

¹⁴³ *Code of Practice for the NSW Police Force Response to Domestic and Family Violence*, 1 June 2018, p. 44.

By contrast, the Victorian *Code of Practice* includes indicators in relation to identifying the primary aggressor, including:

- Respective injuries
- Likelihood or capacity of each party to inflict future injury
- Whether either party has defensive injuries
- Which party is more fearful
- Patterns of coercion, intimidation and/or violence by either party.¹⁴⁴

Research has found that the misidentification of victims as the primary aggressor in domestic and family violence incidents remains an issue. Some of the reasons observed included:

- inadequate training of police officers on the complexities of domestic and family violence
- victims being too traumatised to provide police officers with an adequate statement at first contact
- police officers accepting the offender's version of events
- police officers failing to examine if there is a history of domestic and family violence between the parties
- cases where female victims had previously withdrawn ADVO proceedings.¹⁴⁵

The difficulties of identifying the primary aggressor and the importance of mandatory training on this point were also identified by the NSW Auditor General in her recent report.¹⁴⁶

Commission findings

In 16 domestic and family violence incidents, police officers had difficulties in identifying the primary aggressor, comprising 7 complaint investigations and 9 complaints that were declined at triage. The causes for misidentification included:

- both parties had injuries or injuries sustained were inconclusive
- both parties provided conflicting versions of events
- there was no physical or other evidence to support the allegations
- both parties had made numerous allegations and complaints against each other in the past
- no independent witnesses were available to corroborate 1 version over another.

Case study 9 provides an example in which police officers incorrectly identified a woman as the primary aggressor in a domestic and family violence incident. As a result, the woman went to prison for more than 2 months before she was released from custody.

¹⁴⁴ State of Victoria, Royal Commission into Family Violence (2016). *Royal Commission into Family Violence, Volume III: Report and recommendations*, p. 17.

¹⁴⁵ Women's Safety NSW, *Police Domestic and Family Violence Policy and Practice*, 7 November 2020, pp. 12, 65. Reeves, E. (2021) 'I'm Not at All Protected and I Think Other Women Should Know That, That They're Not Protected Either': Victim-Survivors' Experiences of 'Misidentification' in Victoria's Family Violence System', *International Journal for Crime, Justice and Social Democracy*, 10(4), pp. 39-51.

¹⁴⁶ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, pp. 25 – 26.

Case study 9:

A woman contacted police and reported that her ex-partner had just stabbed himself in late 2020. A short time later police attended the premises. Police located the ex-partner at a different location.

Police spoke with the ex-partner who claimed that the woman had caused his injuries by stabbing him. Police processed the crime scene. Police arrested the woman and charged her with 'wound person with intent to cause GBH' and 'destroy or damage property'. The woman was bail refused and remanded in custody for more than 2 months before the court released her on conditional bail. In that time, the ex-partner disclosed that he had lied to police about the woman being responsible for his injuries and that his wounds were, in fact, self-inflicted.

Police withdrew the charges against the woman and charged her ex-partner with 'make false accusations'; however, the matter was ultimately dismissed under s 32(3)(a) of the *Mental Health Act 2007* (NSW).

The woman lodged a complaint against the officers investigating this matter claiming that they had perverted the course of justice by lying and deliberately withholding evidence.

The NSW Police Force declined the woman's complaint at triage. The triage officer determined that the involved officers had acted in good faith at the time of the incident and accepted the ex-partner's version as being honest and truthful. As soon as police became aware that the ex-partner had lied, they charged him. The triage document further noted that 'There are no holdings of evidence of wrongdoing of any of the involved officers and I suggest that nothing would be achieved by investigating this matter further'.

Observations

Domestic and family violence is a multi-layered issue with women being predominantly the victims and men the most common perpetrators. Research has found that although women can be violent in relationships with men, it is more likely that they use self-defensive and retaliatory violence to protect themselves and others from abusive partners.¹⁴⁷ People who identify as lesbian, gay, bisexual, trans, intersex or queer (LGBTIQ) also experience domestic violence.¹⁴⁸

Due to the complex nature of domestic and family violence, it can be difficult for police officers to correctly identify the primary aggressor and the primary victim. While this does not constitute a breach of procedures, the consequences for victims can be dire including wrongful prosecutions and convictions. Current NSW Police Force training, procedures and guidelines provide insufficient instructions to police officers in relation to correctly identifying the primary aggressor and the primary victim of domestic and family violence incidents.¹⁴⁹

¹⁴⁷ Australian Institute of Criminology, Boxall, H., Dowling, C., and Morgan, A. (2020) Female perpetrated domestic violence: Prevalence of self-defensive and retaliatory violence, Trends & issues in crime and criminal justice, No. 584 January 2020, p. 2. Dasgupta S., D. (2002) A framework for understanding women's use of nonlethal violence in intimate heterosexual relationships. Violence Against Women 8(11): 1364–89. Women's Legal Service Victoria – July 2018, Policy Paper 1 "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria, Monash University. World Health Organization, Understanding and addressing violence against women, 2012, p. 1. Accessed on 8/8.2020, https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf.

¹⁴⁸ Australia's National Research Organisation for Women's Safety, Gray, R., Walker, T., Hamer, Jen and ors, *Developing LGBTQ programs for perpetrators and victims/survivors of domestic and family violence*, Issue 10, May 2020. Australian Government, Australian Institute of Family Studies, Campo, M. Tayton, S., *Intimate partner violence in lesbian, gay, bisexual, trans, intersex and queer communities*, December 2015.

¹⁴⁹ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022 pp. 25 - 26

Domestic and family violence is rarely a 1-off incident, and this type of violence can go on undetected for long periods. This requires police officers to understand the dynamics of domestic and family violence and to take their time to determine the facts and ask victims about the specific incident, the history of abuse, the increase in violence, and the risk to their children. It is critical that the NSW Police Force trains its police officers to recognise signs of domestic and family violence abuse and to understand why victims often do not conform to police officers view as to how a victim should behave. The Commission's review found that some victims withdrew their statements or were reluctant to proceed with charges against the offender. Such actions are common for victims of domestic and family violence.

Numerous inquiries and studies have raised the issue of police officers who have wrongly identified women as the primary aggressor in domestic and family violence incidents.

In 2022 the Commission of Inquiry into Queensland Police Service responses to domestic and family violence released a report that found:

Officers may also have a dismissive attitude towards victim-survivors of domestic and family violence, who are not seen as an 'ideal victim.' This can leave victim-survivors unprotected, or result in them being misidentified as the perpetrator in the relationship.¹⁵⁰

Research has found that Aboriginal women and women from migrant communities are particularly at risk of police officers that incorrectly identify them as the primary aggressor. The Queensland Government released a report in 2017 that identified several issues with police responses to domestic and family violence.

Of particular concern was that police officers named some of the primary victims (mostly women) as defendants on an ADVO. These wrongful police actions led to imprisonment for some women.

In addition, the misidentification of women as the primary aggressor can:

- severely affect a victim's motivation to seek help in the future
- expose victims to further harm
- influence criminal justice responses to victims.¹⁵¹

The Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody published a report in 2021 that found that police officers increasingly misidentify Aboriginal women as the primary aggressor in domestic and family violence incidents.¹⁵² This has led to an increase in their imprisonment rate.¹⁵³ The report further noted that Australia's National Research Organisation for Women's Safety indicated that:

...an increasing issue that contributes to women's imprisonment is the misidentification of the predominant aggressor. It said that 'treating victims of violence as perpetrators undermines their confidence in the legal system, denies the victim/survivor appropriate

¹⁵⁰ A Call for Change, Commission of Inquiry into Queensland Police Service responses to domestic and family violence, November 2022, p. 170.

¹⁵¹ Queensland Government, *Domestic and Family Violence, Death Review and Advisory Board, Annual Report 2016-17*, p. 99. *Royal Commission into Family Violence, Volume III Report and recommendations*, March 2016, pages 17-20.

¹⁵² The NSW Police Force noted that it does not currently record where victims of crime are Aboriginal, which is particularly problematic in terms of identifying Aboriginal victims of domestic violence. It stated that they are undertaking 'scoping work' to improve data on this matter, as it recognises that its data on Aboriginal victimisation is limited. NSW Parliament, Legislative Council, Select Committee on The high level of First Nations people in custody and oversight and review of deaths in custody, April 2021, p. 41. (Answers to questions on notice, NSW Police Force, 25 January 2021, p 12). The NSW Police Force advised the Commission that it has implemented the recording of Aboriginal and/or Torres Strait Islander status in COPS from June 2022. (Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, TAB D, p. 9).

¹⁵³ NSW Parliament, Legislative Council, Select Committee on The high level of First Nations people in custody and oversight and review of deaths in custody, April 2021, p. 37.

support, and can make them less likely to report violence enacted against them in the future.¹⁵⁴

Research has shown that law enforcement agencies that have primary aggressor policies and protocols significantly reduce the percentage of dual domestic violence arrests.¹⁵⁵ It may be beneficial for the NSW Police Force to conduct further research on the reasons why some police officers incorrectly identify the primary aggressor. This research can help the NSW Police Force to improve its police practices in this regard. Depending on the results of this research, the NSW Police Force may also decide that the development and implementation of a primary aggressor policy may help in reducing the risk of arresting the wrong person for domestic and family violence offences.

The NSW Police Force has a workshop for officers known as Domestic Violence Fundamentals.¹⁵⁶ This workshop includes training on identifying the primary aggressor in domestic and family violence situations. However, at present it is not a mandatory training program for police.

The Commission agrees with the Auditor General's recommendation that the Domestic Violence Fundamentals training should be a mandatory requirement for all general duties officers.¹⁵⁷

Recommendation 12: The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* provide additional guidance to police officers to help them in correctly identifying the primary aggressor and the primary victim of domestic and family violence incidents.

NSW Police Force response

The NSW Police Force advised it agreed with this recommendation in principle. It further advised:

The NSWPF is considering all aspects of its response to D&FV incidents as part of the broader D&FV project previously discussed with the LECC, including guidance and training.

Recommendation 13: The Domestic Violence Fundamentals course should be mandatory training for all general duties police officers and be repeated at regular intervals through a police officer's career.

NSW Police Force response

The NSW Police Force advised it agreed with this recommendation in principle. It further advised:

D&FV Fundamentals Course is now a mandatory component of the new Constable Development Program to be completed by all new Probationary Constables from Class 347 onward (2022). This online course is also open to any confirmed Constable who wishes to supplement their training at any time. The D&FV project team will consider what additional training can be provided to NSWPF officers, including frequency, as part of the project scope.

¹⁵⁴ NSW Parliament, Legislative Council, Select Committee on The high level of First Nations people in custody and oversight and review of deaths in custody, April 2021, p. 38. (Submission 43, Australia's National Research Organisation for Women's Safety, pp 5-6.

¹⁵⁵ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2009) Klein, A.R., Special Report, Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges, June 2009.

¹⁵⁶ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, pp. 25-26.

¹⁵⁷ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, p. 26.

4. Other suggestions for change

Domestic and family violence incidents represent a significant proportion of the workload of general duties police officers – the NSW Police Force estimates this to be about 40% of its work.

Despite a range of pro-active NSW Police Force strategies to reduce the level of domestic and family violence, NSW statistics show that the rate of domestic and family violence related assaults recorded by the NSW Police Force has remained stable in the period 2008 to 2020.¹⁵⁸

The NSW Police Force has recently proposed significant changes to the way it manages and investigates domestic and family violence. It anticipates that it will take 2 years to implement these changes across the organisation fully.

The Commission acknowledges the commitment by the NSW Police Force to improve and strengthen its systems and procedures in relation to domestic and family violence. We propose 3 changes that may help the NSW Police Force in achieving its goal to reduce domestic and family violence in NSW.

4.1 Regional Domestic and Family Violence Commands

The Commission's review identified that most sustained complaint matters (73 out of 102) related to a failure by involved officers to investigate domestic and family violence incidents effectively. These failures included basic investigative strategies, such as:

- the taking of statements
- proper record keeping practices
- the collection of suitable evidence
- enquiring about the presence of firearms at the location of a domestic and family violence incident.

While 30% of involved officers were relatively junior (probationary constables and constables) most officers occupied more senior ranks, including senior constables, sergeants and 2 chief inspectors. While some junior officers may have trouble with more complex domestic and family violence matters, the Commission expected that officers of the rank of senior constable or above have the required skills and experience to investigate domestic and family violence matters. The Commission's review findings indicate that this is not necessarily the case.

The NSW Police Force has almost doubled the number of specialist domestic and family violence personnel in the last 5 years; it employs approximately 280 domestic and family violence specialists across the state.¹⁵⁹ These specialist officers provide support and guidance to local Commands in their response to domestic and family violence and support victims of domestic and family violence. They also identify and target high-risk domestic and family violence offenders. However, the bulk of domestic and family violence incidents are dealt with by generalist police officers.

The NSW Police Force has also introduced Domestic Violence High Risk Offender Teams (DVHROT) that operate in each of the 6 Regions (refer to Appendix B for further details). The purpose of DVHROTs is:

¹⁵⁸ NSW Bureau of Crime Statistics and Research, *Has the rate of domestic and family violence changed in NSW?: Victim survey results from July 2008 to June 2020*, April 2022. Accessed on 29/8/2022.

https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB158-Summary-DFV-Victim-survey-trends.aspx

¹⁵⁹ Audit Office of New South Wales, *New South Wales Auditor-General's Report to Parliament, Police responses to domestic and family violence*, April 2022, p. 11.

- to target and investigate high-risk domestic and family violence offenders
- to assist local Commands within the Region to manage their recidivist offenders.

A NSW Police Force review of the effectiveness of DVHROTs found their work has had an ‘overwhelming positive’ effect on the policing of domestic and family violence in NSW.¹⁶⁰

Nevertheless, the Audit Office’s recent report on the effectiveness of the NSW Police Force in responding to domestic and family violence identified weaknesses in the current system. One of the key issues identified by the Audit Office related to the NSW Police Force’s lack of ability to monitor and assess if the current number of specialist domestic and family violence officers can manage the workload and demand in all local Commands. Another issue related to inconsistencies in the way local Commands check domestic violence event reports for quality and compliance with policy and procedure. While some local Commands check 100% of event reports, others complete less checks.¹⁶¹

Given the large amount of police work that relates to dealing with domestic and family violence the Commission suggests that the NSW Police Force considers alternative approaches to quality assurance and deployment of specialist knowledge to dealing with these matters. The Commission understands the NSW Police Force is considering some alternatives as part of its reform of domestic and family violence processes.

The Commission suggests the NSW Police Force consider establishing separate Commands, managed by a Superintendent, which focus on domestic and family violence in each of its 6 Regions.¹⁶² Victoria and Queensland have already established standalone Domestic and Family Violence Commands. However, given the size of and population of New South Wales, Commands situated within each Region may be warranted, with staffing levels proportionate to the volume of domestic and family violence related work in each Region. In addition, specific skills, including language skills, religious and cultural awareness skills, could match the demographics of each Region.

The role of the Domestic and Family Violence Commands could be to:

- manage and investigate complex and high-risk domestic and family violence matters by reviewing and triaging each domestic and family violence incident that was attended to by operational police in a given shift
- provide support, advice and feedback to first responders
- identify gaps in investigative knowledge relating to domestic and family violence
- arrange and provide targeted training to police officers within the Region; training could be delivered by internal experts and external consultants or stakeholders
- oversee and monitor high risk domestic and family violence offenders within the Region
- act as a resource to all staff within the Region on practices and procedures relating to domestic and family violence
- provide advice and help to first responders who may lack the comprehensive knowledge necessary to investigate complex domestic and family violence matters.

The Commission acknowledges the NSW Police Force is beginning a process of large-scale reform to the way it manages domestic and family violence incidents. The Commission will continue to collaborate with the NSW Police Force on their proposed improvements to quality assurance and

¹⁶⁰ NSW Police Force A review of the operation of the Domestic Violence High Risk Offender Teams, August 2019, p. 29.

¹⁶¹ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, p. 3.

¹⁶² The NSW Police Force consists of 6 regional Commands. Three regions cover metropolitan areas (Central, North West and South West) and 3 regions cover regional areas (Northern Region, Southern Region and Western Region).

deployment of specialist support in domestic and family violence investigations, particularly considering the outcomes of this review.

The creation of Region based Commands is 1 approach, and the Commission acknowledges there may be others already under consideration. Ultimately, the Commission welcomes enhancements that would improve staffing allocations proportionate to the volume of domestic violence incidents in each Region, increase access to specialist knowledge, simplify processes for generalist police and increase the quality of supervision and record keeping. Based on the outcomes of this review, these elements would assist in preventing misconduct and maladministration that may be associated with this area of policing.

NSW Police Force response

The NSW Police Force advised it partially agreed with this suggestion in principle. It further advised:

The NSWPF is currently considering a number of structural changes regarding D&FV response teams; however, it would be premature to make any comment on them at this point in time. The comments made by the LECC have been provided to the appropriate team for consideration, and the LECC will be informed of any proposed changes in the future, once they have received approval from the Commissioner's Executive Team.

4.2 Adequate and mandatory training in domestic and family violence procedures

Research has found that specifically targeted and regular training of police officers in domestic and family violence processes and procedures improved their investigations of domestic and family violence incidents considerably.

Responding to and investigating reports of domestic and family violence incidents is 1 of the key responsibilities of NSW Police Force officers and accounts for a large amount of their work. The NSW Police Force must provide its police officers with adequate and regular training to allow them to comply with the NSW Police Force's directive to investigate domestic violence incidents with a view to arresting and charging offenders.

Even though the NSW Police Force has a wide range of training material and internal procedures in relation to domestic and family violence on its website, none of this training is mandatory.

As the Commission's review has shown, some involved officers lacked the expertise and skills to carry out basic investigative requirements in relation to domestic and family violence incidents. Even though the NSW Police Force has implemented a supervisory regime that is responsible for overseeing and monitoring the quality of domestic and family violence investigations, our review has shown that this system still has flaws. By way of example, 1 supervisor stated that he had never received any training in relation to the verification of COPS event reports. This is 1 of the key responsibilities of a supervisor in relation to domestic and family violence investigations.

Throughout the Commission's review of complaint investigations, we have identified references in relation to inadequate training or a lack of training of police officers involved in investigating domestic and family violence incidents. The Auditor General's review corroborated this finding.¹⁶³ If the NSW Police Force were to consider the establishment of regional domestic and family violence Commands, these Commands could identify the training needs of its police officers and can organise training on a regional level; taking into consideration the discrete needs of each Region. The Auditor General has

¹⁶³ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, pp. 25-26.

noted that this has already occurred within some Commands.¹⁶⁴ In addition, each Region can involve external stakeholders, including health professionals and specialist services, in its training programs to police officers.

Training could focus, among other things, on:

- the application of the DV SOPs, including child protection; victim support; removal of firearms; and ADVO compliance requirements
- the complexities of domestic and family violence incidents
- the identification and management of mental health issues of persons involved in domestic and family violence incidents
- the identification of the primary aggressor and the primary victim
- the verification of COPS event reports pertaining to domestic and family violence incidents
- cross-cultural training which prepares police officers to respond to and understand the needs of different population groups including Aboriginal and Torres Strait Islander people.

NSW Police Force response

The NSW Police Force advised it agreed with this suggestion in principle. It further advised:

The D&FV project team will consider whether it believes mandatory training is required in its recommendations to the CET. Currently, the NSWPF has three training courses available:

1. Domestic and Family Violence Fundamentals course
2. Domestic Violence Officers course
3. DVEC (Domestic Violence Evidence in Chief)

4.3 Strengthening the supervisory regime

The Commission's review also identified some levels of deficiencies in the supervisory regime of the NSW Police Force in relation to domestic and family violence. Supervisors are required to oversee the quality of domestic and family violence investigations and to perform a quality assurance role of event reports.

The Commission's review identified 15 out of 102 complaint investigations (15%) included information that supervisors had failed in their responsibilities in relation to domestic and family violence matters.

A coronial inquest found that 1 supervisor verified an event report in well under 2 minutes and did not access the event at any other point. The supervisor accepted that he:

... should've done certain things that I didn't do.

and

The verification was "obviously rushed" and was "inadequate".¹⁶⁵

Effective supervisory mechanisms are essential as they ensure that police officers comply with domestic and family violence procedures and supervisors identify any potential deficiencies in the

¹⁶⁴ Audit Office of New South Wales, New South Wales Auditor-General's Report to Parliament, *Police responses to domestic and family violence*, April 2022, p. 26. The report notes that some inner-city local commands invite a local community service providers to deliver training on domestic and family violence in the context of LGBTQI+ relationships.

¹⁶⁵ Coroner's Court of New South Wales *Inquest into deaths of John, Jack and Jennifer Edwards*, 7 April 2021, para 246 and 247.

police investigations. As the Commission's review of complaint investigations has shown, several deficient investigations passed the supervisory quality review process. Thus, the risk exists that police officers will forward incomplete or inadequate briefs of evidence to police prosecutors. This can lead to failed prosecutions.

The Commission suggests that the NSW Police Force examines its supervisory processes to identify potential gaps in their effectiveness and possible solutions to modify them and strengthen supervisory processes relating to domestic and family violence incidents.

NSW Police Force response

The NSW Police Force advised it agreed with this suggestion in principle. It further advised:

The NSW Police Force is considering all aspects of its response to D&FV incidents as part of the broader D&FV project previously discussed with the LECC.

5. Conclusion

Responding to domestic and family violence takes up significant police resources. Even though domestic and family violence is often hidden from the public eye, it has a huge societal impact, including a devastating effect on the lives of victims and survivors.

The NSW Police Force has declared domestic and family violence to be 1 of its major priorities and has developed several proactive strategies to reduce and prevent reoffending by offenders and strengthening protection and support to victims. A range of policies and procedures that communicate to police officers how to respond to and investigate reports of domestic and family violence reinforces these strategies.

Research has found that some of these proactive strategies, including the Domestic Violence Suspect Target Management Plan (DV-STMP) and DVHORTs, have had a positive effect in the reduction of domestic and family violence. Research into the effectiveness of the DVSAT has found that its accuracy could be improved by narrowing down the set of indicators to a smaller number. The effectiveness of ADVO compliance checks cannot be assessed as the NSW Police Force does not record instances when breaches of ADVOS are detected.¹⁶⁶

Several issues emerged during the Commission's review including:

- the way in which police officers being involved in domestic and family violence incidents are dealt with
- deficiencies in investigating domestic and family violence matters
- no formal process in terms of how local Commands recorded securing the service firearms of involved officers
- inadequate or insufficient training in domestic and family violence processes and procedures
- poor record keeping practices.

The Commission's review found that over a quarter of all complaint investigations related to police officers being involved in domestic and family violence incidents; some of them more than once.

We have suggested that the NSW Police Force considers its approaches for dealing with recidivist police officers. Another important issue for the NSW Police Force to grapple with in this context is the way it manages conflicts of interest, including perceived conflicts of interests. This is critical to upholding trust in police to investigate domestic and family violence matters in a professional and impartial manner including those which allege that police officers are responsible for that violence.

In addition, in more than a third of complaint investigations the Commission reviewed, police failed to investigate reports of domestic and family violence to the expected standard set by the NSW Police Force. This finding is disappointing as NSW Police Force policies and procedures clearly outline the requirements and expectations concerning domestic and family violence investigations. Poor investigations carry several risks to victims, including:

- offenders going unpunished
- failed prosecutions
- risk levels to victims not being properly assessed
- further harm to victims

¹⁶⁶ Appendix B provides more detail in relation to these strategies.

- victims being reluctant to report further incidents of domestic and family violence.

One of the most significant risks we noted was deficiencies in record keeping in relation to the removal of firearms.

We identified this issue both in matters where officers were the alleged perpetrator and in matters where other people are alleged to have perpetrated the domestic violence incidents.

Improving the record keeping around firearms checks and whether weapons are secured would enhance the safeguards for victims and the community. On its face, improvements to the record keeping requirements appear relatively straightforward.

We also identified that deficiencies in record keeping were a feature in several of the complaint investigations we reviewed. Some key records, including event reports, Risk Assessments, child at risk incidents, and notebook entries were either not created, or included incomplete or incorrect information.

Accurate records provide proof that the NSW Police Force has acted in accordance with its internal procedures and taken appropriate action in relation to investigating domestic and family violence incidents. In their absence NSW Police Force quality assurance processes cannot be effective. Good record keeping can also act to protect police officers if there are later complaints regarding their actions during the initial police investigation. Good record keeping practices help the NSW Police Force to collect information about high-risk offenders and high-risk victims, and effectively monitor them to prevent future offences.

The Commission has made a number of recommendations to improve domestic and family violence training within the NSW Police Force given the volume of such matters that officers deal with and given the complexities of properly identifying and responding to violence in domestic and family relationships.

The NSW Police Force cannot solve domestic and family violence on its own. However, in most cases its officers are the first responders to domestic and family violence incidents. It is therefore essential that the NSW Police Force trains and supports its officers to ensure they are proficient in investigating domestic and family violence incidents properly and efficiently. NSW Police Force strategies that focus on identifying and managing high-risk offenders and high-risk victims rely on solid and admissible evidence gathered and collected during the initial police investigations into domestic and family violence incidents.

The Commission hopes that the findings and recommendations in this report will assist the NSW Police Force as it embarks on a project of significant reform to the management and investigation of domestic and family violence incidents.

List of case studies

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Appendix A – Corporate guidance in managing complaints in the NSW Police Force

The stated purpose of the 2016 Guidelines was to ‘provide an up to date guide for complaint handling managers to help them manage complaints in a timely and effective manner’.¹⁶⁷

Complaints undergo several stages including:

- does the complaint document constitute a Part 8A complaint
- the triage process
- will the complaint be investigated, referred for resolution or declined.

Part 8A complaint

The complaint-handling manager assesses if the complaint document meets the criteria set out in Part 8A of the Police Act. Complaints about police officers must be made in writing¹⁶⁸ to an investigative authority (NSW Police Force or Law Enforcement Conduct Commission).¹⁶⁹ The complaint must be about the conduct of a police officer or administrative employee that could involve misconduct or maladministration.¹⁷⁰

Triage process

When a complaint is reported, the relevant police area Command (PAC) or police district (PD), (referred to as ‘local Command’ in this report), triages each complaint to determine the most appropriate way to manage it.¹⁷¹ The triage officer (usually the Professional Standards Duty Officer (PSDO) or Professional Standards Manager, makes 1 of the following 3 recommendations to the Commander or manager:

- refer the complaint for resolution
- refer the complaint to the Complaint Management Team (CMT) for consideration – complaints that require an evidence-based investigation must be managed by the CMT
- decline to investigate.¹⁷²

The triage officer must, among other things, identify all issues raised within the complaint document and rank them in order of seriousness for each officer who was the subject of the complaint; and identify lines of inquiry.¹⁷³

¹⁶⁷ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 8. At the time the Commission began this review, the NSW Police Force Complaint Handling Guidelines, dated 2016, were in operation. These guidelines, referred to in this report as the ‘2016 Guidelines’, remained in force until the Misconduct Management Framework replaced them in early 2021.

¹⁶⁸ Section 125(1) of the *Police Act 1990* (NSW).

¹⁶⁹ Section 124(1) of the *Police Act 1990* (NSW).

¹⁷⁰ Section 124(1) of the *Police Act 1990* (NSW).

¹⁷¹ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 21.

¹⁷² NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 21.

¹⁷³ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 22.

Conflicts of interest

The NSW Police Force guidelines state that police officers must manage all complaints fairly and without bias. This means that the triage officer will need to consider if they have any conflicts of interest that may affect their ability to triage the complaint impartially. If a triage officer discloses any conflicts of interest, their Commander may decide to reassign the complaint to another officer to triage.¹⁷⁴ The NSW Police Force has developed the Complaint Allocation Risk Appraisal (CARA) Guidelines¹⁷⁵ to assist in assessing potential conflicts of interests.

There are 2 discrete assessment tools that form part of the CARA process. These are known as CARA Part A and CARA Part B. The completion of CARA Part A and CARA Part B is mandatory for all complaint investigations.

Part A assists local Commands in determining whether the risks associated with investigating the complaint can be managed locally or whether the complaint should be referred to another Command for investigation.

Part B is entitled 'Disclosure of conflict by Investigator'. It poses a series of questions to determine whether there exists an actual or perceived conflict of interest in the officer selected to investigate the complaint.¹⁷⁶ If the investigator identifies a conflict the complaint is referred to another investigator who also must complete a conflict-of-interest declaration.

Resolution

The triage officer refers complaints for resolution if they decide the issues complained about do not require the resources of the CMT or the use of evidence-based techniques such as records of interviews, sworn statements and directive memorandums.

The officer in charge (OIC) of the resolution process is required to make a recommended finding of either sustained or not sustained. The OIC must record a sustained finding if, on the balance of probabilities they are satisfied that the complaint issue(s) occurred and a not sustained finding if, on the balance of probabilities, they are not satisfied that the complaint issue(s) occurred.¹⁷⁷

Resolutions must be finalised within 45 days.¹⁷⁸

Evidence-based investigation (CMT managed investigation)

The triage officer refers a complaint for evidence-based investigations when there is a need to obtain evidence that will be admissible in criminal court proceedings, or where reviewable action is likely to be taken against a NSW police officer and this may be examined in other tribunals.¹⁷⁹ Admissible evidence gathered in the course of the investigation includes sworn statements, records of interviews, closed-circuit television (CCTV) footage, and photographs.

¹⁷⁴ NSW Police Force *Misconduct Matter Allocation Risk Appraisal (MARA) Guidelines*, Professional Standards Command, September 2021, p. 6.

¹⁷⁵ NSW Police Force *Complaint Allocation Risk Appraisal Guidelines*, March 2007, p. 1. The Misconduct Allocation Risk Appraisal (MARA) Guidelines replaced the CARA Guidelines in September 2021. The NSW Police Force advised the Commission that the MARA process has been developed to assist professional standards practitioners in identifying and managing conflicts of interest and risks that may affect the investigation of misconduct. As part of the misconduct management practices adopted by the NSW Police Force the MARA process formalises the identification of risks or conflicts of interest and provides scope for professional standards practitioners to manage any identified risks or conflicts while conducting inquiries into the conduct of officers within their command. (Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, TAB E, p. 7).

¹⁷⁶ NSW Police Force *Complaint Allocation Risk Appraisal Guidelines*, March 2007, p. 7.

¹⁷⁷ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 42.

¹⁷⁸ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 25.

¹⁷⁹ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 11.

Evidence-based investigation must be finalised within 90 days from the date the NSW Police Force received the complaint. However, they may take longer if criminal court proceedings have not been finalised within the 90 days specified in NSW Police Force guidelines.¹⁸⁰

The CMT manages all Part 8A evidence-based investigations to ensure investigators comply with relevant legal and policy requirements.¹⁸¹ The OIC of the investigation must make a recommended finding of either sustained or not sustained. Each finding must satisfy the civil standard of proof. That means that the OIC must be 'reasonably satisfied' that, based on the evidence collected, something is more likely than not to have happened.¹⁸²

¹⁸⁰ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 71.

¹⁸¹ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 47.

¹⁸² NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 69.

Appendix B – NSW Police Force domestic and family violence strategies and procedures

In September 2015 the then NSW Premier announced the ‘Premier’s Priority’ to reduce the proportion of domestic and family violence offenders re-offending by 25% by 2021.¹⁸³ In response, the NSW Police Force implemented a range of proactive policing strategies to reduce the levels of domestic and family violence in the community, and to improve its response to victims.¹⁸⁴

Table B1 presents 6 NSW Police Force strategies and procedures that aim to reduce and prevent domestic and family violence and to proactively target and investigate domestic and family violence offenders.

Table B1: NSW Police Force proactive policing strategies to reduce domestic and family violence incidents.

NSW POLICE FORCE PROACTIVE STRATEGIES	PURPOSE OF STRATEGIES
Police issued provisional Apprehended Domestic Violence Orders (ADVO)	The Act grants senior police officers the authority to issue provisional ADVOs.
ADVO compliance checks	Police conduct targeted checks on defendants rated as ‘high risk’ of reoffending to ensure they comply with the conditions of the ADVO.
Domestic Violence Evidence in Chief (DVEC)	Police can video and audio record the evidence of domestic and family violence complainants soon after the commission of a domestic and family violence offence.
Domestic Violence Safety Assessment Tool (DVSAT)	Police use DVSAT to identify the threat level of future harm to domestic and family violence victims.
Domestic Violence Suspect Target Management Plan (DV-STMP)	Police identify and target recidivist domestic and family violence offenders.
Domestic Violence High Risk Offender Team (DVHROT)	DVHROTs target and investigate domestic and family violence high-risk offenders within the Region.

The NSW Police Force also has a range of detailed policy and procedure documents that provide instruction to police officers about how to deal with domestic and family violence incidents. These are listed in section 2.1 of this report. For the most part these are detailed and quite comprehensive, although as detailed in this report, there are parts of the procedures which the Commission considers could be made clearer. Additionally, while comprehensive, the DV SOPs are very long. Given the volume of instructional documents and the variety of strategies available to police officers, the

¹⁸³ NSW Police Force *Domestic and Family Violence Policy*, February 2018, p. 14. A report published in 2022 states: ‘On currently available information, the target to reduced domestic violence reoffending, is unlikely to be met.’ (Audit Office of New South Wales, New South Wales Auditor-General’s Report to Parliament, *Police responses to domestic and family violence*, April 2022, p. 9).

¹⁸⁴ NSW Police Force *Domestic and Family Violence Policy*, February 2018, p. 3.

Commission asks the NSW Police Force to consider how to make these instructional documents easier to navigate for officers in the field and the supervisors that need to check on their compliance.¹⁸⁵

Police issued provisional ADVOs

The *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (the Act) is the principal -specific offences, in New South Wales.

There are circumstances in which police are obliged to apply for a provisional ADVO to protect a person until the court has had the opportunity to hear the application.¹⁸⁶ The Act grants senior police officers of the rank of sergeant¹⁸⁷ or above the authority to issue provisional ADVOs.¹⁸⁸

Sections 27 and 49 of the Act¹⁸⁹ provide that police officers investigating an incident **must** apply for a provisional ADVO if they have good reason to believe or suspects that:

- a domestic violence offence
- an offence of stalking or intimidation
- or a child abuse offence

has recently been, or is being committed, or is imminent or likely to be committed or proceedings have begun for any such offence.

Provisional ADVOs ensure the protection of the victim and prevent substantial damage to any property of the victim. A provisional ADVO can contain the same conditions as the final ADVO.

Where a police officer makes or is about to make an application for a provisional ADVO, the officer may direct the defendant to remain at the scene of the incident in question or, where the defendant has left the scene, at another place where the officer locates the defendant.¹⁹⁰ The Act also gives police enhanced powers to direct and ultimately detain defendants at a police station or other locations to make an application and service of provisional orders.¹⁹¹

Section 31 of the Act provides that a police officer personally serves a provisional ADVO on the defendant and on the protected person as soon as practicable after it is made.

¹⁸⁵ The NSW Police Force advised the Commission that all documentation regarding domestic and family violence, including but not limited to the D&FV SOPs, is currently under review by the NSW Police Force D&FV Project. (Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, TAB D, p.1.

¹⁸⁶ In circumstances where the defendant or PROTECTED PERSON is a serving police officer the authority to issue a provisional ADVO rests with the Central Justice Panel. (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 112).

¹⁸⁷ Section 3 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) defines a senior police officer as a police officer of or above the rank of sergeant.

¹⁸⁸ Until May 2014, the Act only allowed courts to make orders protecting people from domestic and family violence. This was of concern to the NSW Police Force as it had long recognised the need for police to be able to authorise the issuing of ADVOs in certain situations, for example, where a person required immediate protection but due to the location or other unforeseeable circumstances a provisional order could not be obtained from authorised justices quickly or easily. After extensive lobbying by NSW Police Force for changes to the Act, amendments to the Act, effective from 23 May 2014 were made allowing police to issue provisional ADVOs. (NSW Police Force *Issued ADVOs – A Guide for Supervisors*, Domestic & Family Violence Team, January 2014, pp. 7-8). However, when a NSW Police Force member is the person of interest in a domestic and family violence incident, authority to issue a provisional ADVO rests with the Central Justice Panel. (Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, TAB E, p. 6).

¹⁸⁹ Both sections are almost identical the difference being whether the circumstances require an urgent application (section 27 – provisional order) or non-urgent application (section 49). (NSWPF *Police Issued ADVOs – A Guide for Supervisors*, Domestic & Family Violence Team, January 2014, p. 16). NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, pp. 97-98.

¹⁹⁰ *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 89.

¹⁹¹ NSW Police https://intranet.police.nsw.gov.au/infohub/domestic_violence/operational/dv_hearings_Force *Police Issued ADVOs – A Guide for Supervisors*, Domestic & Family Violence Team, January 2014, p. 7.

A provisional ADVO remains in force until:

- it is revoked
- an interim or final ADVO is made in the same matter
- the application for a final ADVO is withdrawn or dismissed.¹⁹²

Provisional ADVOs, like all ADVOs, are only enforceable when an application has been served on the defendant.¹⁹³ The benefits of police issued provisional ADVOs include:

- quick and instant service of ADVOs for victims in need of protection
- greater enforceability of ADVOs
- time and resource savings for police and courts
- improved deterrence to domestic and family violence offenders.¹⁹⁴

ADVOs play a key role in protecting victims from further domestic and family violence offences and reducing the likelihood of further reoffending by defendants. Table B2 provides a summary of the number of NSW Police Force provisional ADVO applications and success rates for calendar years 2016 to 2021.¹⁹⁵

Table B2: Provisional ADVO applications and success rates by calendar year

Calendar year	2016	2017	2018	2019	2020	2021
Provisional ADVO application	34,138	33,874	35,659	37,359	39,678	40,662
Final ADVOs	28,825	29,415	31,353	33,261	33,698	34,187
Success rate	85%	87%	88%	89%	85%	84%

Police issued provisional ADVOs have increased by 19 % in the 5 years from 2016 to 2021.

In the 5-year period, the success rate for police issued provisional ADVOs ranged from 85 % to 89 %. Reasons for failure rates included:

- victims saying that they held no fears and did not want to proceed with the ADVO applications
- victims failing to attend court to give evidence or pursue ADVO applications
- courts not being satisfied that the relevant standard of proof had been met.¹⁹⁶

ADVO compliance checks

The objective of an ADVO is to discourage the reoffending by a defendant and to provide protection to a victim of domestic and family violence. An ADVO contains certain conditions restraining a defendant

¹⁹² Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 32.

¹⁹³ NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 87.

¹⁹⁴ NSW Police Force Police Issued ADVOs – A Guide for Supervisors, Domestic & Family Violence Team, 2014, p. 10. NSW Police Force Domestic and Family Violence Standard Operating Procedures 2018, p. 105.

¹⁹⁵ Email from Manager- Domestic & Family Violence Team to Senior Project Officer, Law Enforcement Conduct Commission, 22 December 2021.

¹⁹⁶ Email from Manager- Domestic & Family Violence Team to Senior Project Officer, Law Enforcement Conduct Commission, 17 January 2022.

from committing domestic and family violence offences.¹⁹⁷ A defendant must comply with the conditions of an ADVO. Breaches of any of the conditions of the ADVO by a defendant are offences and police can investigate and charge a defendant.¹⁹⁸

The NSW Police Force rolled out ADVO compliance checks statewide in May 2017. Their purpose, like that of bail compliance checks, is to conduct targeted checks on defendants to ensure they comply with the conditions of the ADVO. Research has shown that ADVO breaches are more likely to occur within the first 6 months of enforcement, thereby focussing the monitoring of defendants to the first 6 months of the duration of their ADVOS when their re-offending is most likely to occur.¹⁹⁹ ADVO compliance checks can also include checking on the victim.

The court specifies the period in force for an ADVO. The period specified is to be as long as necessary, in the opinion of the court, to ensure the safety and protection of victims.²⁰⁰

The NSW Police Force uses ADVO compliance checks to reduce the rate of domestic and family violence and to improve the level of protection and support police can provide to victims of domestic and family violence. Because of the large number of ADVOS that are in existence, the NSW Police Force does not have the resources to monitor every defendant for compliance with the orders. A DVLO assesses each new ADVO for its suitability to be included in ADVO compliance checks.²⁰¹ Only those defendants that the NSW Police Force rates as at 'high risk' of reoffending are targeted under this strategy.

As soon as the court grants an ADVO, a police officer must contact both the defendant and the victim to reinforce:

- that an ADVO exists
- the conditions of the order
- that local police are aware of it and will be monitoring the defendant's compliance with the ADVO.²⁰²

Table B3 provides an overview of ADVO compliance checks conducted by the NSW Police Force between 2018 and 2020.²⁰³

Table B3: NSW Police Force ADVO compliance checks conducted between 2018 and 2020

Calendar year	Number of ADVO compliance checks
2018	32,934
2019	51,793
2020	80,701

¹⁹⁷ The person in need of protection is referred to as the 'protected person' or 'victim' on an AVO, the person against whom the order is made is referred to as 'the defendant'. In NSW, the principal legislation relating to ADVOS in the domestic and family violence context, and to domestic violence-specific offences are set out in the Act. An ADVO can only be made where the victim has or had a domestic relationship with the defendant.

¹⁹⁸ Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 14.

¹⁹⁹ NSW Police Force A review of the operation of the Domestic Violence High Risk Offender Teams, August 2019, p. 8.

²⁰⁰ If the court fails to specify a period, the ADVO remains in force for a period of 12 months after the date that the order is made. (*Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 79).

²⁰¹ Factors that are considered include the criminal history of the defendant or victim, mental state of defendant or victim, alcohol or drug involvement, remote locality of victim, cultural background, children involved, weapons involved. (NSW Police Force *Apprehended Domestic Violence Order Compliance Check Standard Operating Procedures*, June 2019). This requirement came into force on 1 July 2018.

²⁰² Code of Practice for the NSW Police Force Response to Domestic and Family Violence, June 2018, p. 18.

²⁰³ Email from Manager- Domestic & Family Violence Team to Senior Project Officer, Law Enforcement Conduct Commission, 29 November 2021.

The number of ADVO compliance checks increased by 145 % in the 3 years from 2018 to 2021. Police must fully investigate all breaches of ADVO conditions.²⁰⁴ Police must immediately arrest and charge defendants, with a strong consideration to be bail refused.²⁰⁵ The maximum penalty is imprisonment for 2 years or 50 penalty units, or both.²⁰⁶ The NSW Police Force does not record breaches of ADVOs. The reasons are the time constraints on police and limitations of existing reporting systems.²⁰⁷ Therefore, the NSW Police Force does not have the ability to assess the effectiveness of ADVO compliance checks in reducing reoffending by high-risk defendants.²⁰⁸

Domestic Violence Evidence in Chief (DVEC)

Legislation that allows police to video and audio record the evidence of domestic and family violence complainants soon after the commission of a domestic and family violence offence came into force on 1 June 2015.²⁰⁹ Only complainants of domestic and family violence offences can give evidence by DVEC.²¹⁰ This evidence is admissible as all or part of the victim's evidence in chief. The legislation also allows DVECs to be used in associated applications for ADVOs.²¹¹

The ability of the NSW Police Force to place a DVEC before a court is an Australian first.²¹² However, the NSW Police Force must comply with several legal and practical considerations to ensure that DVEC recordings are admissible in court.²¹³

The key document governing the use of DVECs, the NSW Police Force *DVEC Domestic Violence Evidence in Chief Practitioner's Guide* (DVEC Guide), provides detailed instructions that investigating police need to be aware of before considering the use of DVEC. The DVEC Guide specifies that MobiPol is the preferred device for recording DVEC evidence.²¹⁴

²⁰⁴ *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 14. An AVO is a civil order of the court. It is not a criminal charge and will not be listed on a defendant's criminal record, however; a defendant can be charged with a criminal offence for contravening an AVO (commonly referred to as breach AVO) if they continue to engage in the prohibited behaviour.

²⁰⁵ NSW Police Force *Apprehended Domestic Violence Order Compliance Check Standard Operating Procedures 2019*, p. 14. If a defendant breaches an ADVO, he cannot assert that the person in need of protection helped him. Section 14(7) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), as referenced in the NSW Police Force Domestic Violence SOPs sets out that a person IS NOT GUILTY of an offence of aiding, abetting, counselling or procuring the commission of an offence against a person who knowingly contravenes a prohibition or restriction specified in an order made against that person, if the person is a protected person under the order concerned.

²⁰⁶ There is a statute of limitations of 6 months from the date of the offence to begin a prosecution for a breach of an ADVO. (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 87).

²⁰⁷ Email from Manager- Domestic & Family Violence Team to Senior Project Officer, Law Enforcement Conduct Commission, 17 January 2022.

²⁰⁸ In October 2020, Women's Safety NSW conducted a survey of 59 victim-survivors who had an ADVO in place; 80 % stated that their ADVO was breached by the abusers 'at some time' and in 56 % of cases victim-survivors specified that police did not charge offenders for breaching ADVO conditions. (Women's Safety NSW *Police Domestic and Family Violence Policy and Practice*, 7 November 2020, pp. 8, 21, 41.)

²⁰⁹ Criminal Procedure Amendment (Domestic Violence Complainants) Act 2014 (NSW), Part 4B. NSW Police Force *Apprehended Domestic Violence Order Compliance Check Standard Operating Procedures 2019*, p. 52.

²¹⁰ NSW Police Force *Apprehended Domestic Violence Order Compliance Check Standard Operating Procedures 2019*, p. 52.

²¹¹ NSW Police Force *DVEC Domestic Violence Evidence in Chief Practitioner's Guide*, Domestic & Family Violence Team, 2017, p. 8.

²¹² NSW Police Force *DVEC Domestic Violence Evidence in Chief Practitioner's Guide*, Domestic & Family Violence Team, 13/7/2017, p. 7.

²¹³ The legal conditions that must be fulfilled to ensure a DVEC recording is valid are: the offence must be a domestic violence offence; the complainant must be a victim of that offence; the recording must be as soon as practicable after the commission of the offence; the complainant must give informed consent for their statement to be recorded by way of DVEC; the complainant must state in the recording their name, age, that they will tell the truth and that they understand that if they don't tell the truth they commit an offence.

²¹⁴ NSW Police Force *DVEC Domestic Violence Evidence in Chief, Practitioner's Guide*, Domestic, and Family Violence Team, June 2020, p. 48.

Domestic Violence Safety Assessment Tool (DVSAT)

The NSW Police Force uses the DVSAT risk assessment tool to identify the threat level of future harm to domestic and family violence victims and, if necessary, refer them to specialist support services.²¹⁵ Its objective is to achieve consistent identification of threat levels to victims.²¹⁶

When police record a domestic and family violence event report in the Computerised Operational Policing System (COPS),²¹⁷ they must complete 6 mandatory DVSAT pre-questions before completing the DVSAT. The DVSAT pre-questions relate to firearms, DVEC and children/young persons. Police answer these questions based on their investigation and information received at the domestic and family violence incident. If children or young persons²¹⁸ are present, or occasionally live in a household where domestic and family violence occurs, or had occurred, then police should select 'Y' for yes in this section. This response automatically creates a child at risk (CAR) incident for completion.²¹⁹

The DVSAT consists of 2 parts: Part A and Part B.

Part A is only applicable to domestic and family violence incidents that involve an intimate partner. Part A comprises 25 questions that are based on research that has identified specific behaviours commonly found in intimate partner homicide.²²⁰

Part B is applicable to all domestic and family violence incidents (intimate and non-intimate). Its purpose is to assess the level of fear held by the victim and the reasons why they hold those fears. Police use Part B in situations where a victim refuses to answer questions in Part A of the DVSAT. The DVSAT SOPs allow officers to use their professional judgement. Professional judgement covers a range of factors, including disability, substance abuse, cultural isolation of the victim or offender, mental health issues and social media stalking.²²¹

In operational terms, when police attend a domestic and family violence incident or when they take a report at a police station they are required to ask the victim a number of questions to identify the immediate threat level to that victim. Police assess victims as 'at threat' or as 'at serious threat' based on:

- 1) 12 or more 'yes' answers in Part A of the DVSAT or
- 2) the professional judgement of the officer in charge, or both.²²²

If the NSW Police Force assesses a victim 'at serious threat',²²³ the victim is automatically referred to a multiagency Safety Action Meeting (SAM). The NSW Police Force and key government and non-government service providers working with domestic and family violence victims and offenders in the

²¹⁵ As of 1 July, 1 2015 all Local Area Commands have implemented the DVSAT tool as part of NSW Police Force domestic violence risk identification procedures. All NSW Police Force Employees in the Police Area Commands/Police Districts where the Safer Pathways Reforms have been rolled out are required to comply with the procedures outlined in the DVSAT SOPs. (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 46).

²¹⁶ DVSAT is a resource developed as part of the integrated domestic and family violence response in NSW. (NSW Government, *Domestic Violence Safety Assessment Tool (DVSAT) Guide*, available at www.domesticviolence.nsw.gov.au).

²¹⁷ Electronic NSW Police Force database to record all incidents reported, including domestic and family violence incidents and ADVOs.

²¹⁸ A young person is someone under the age of 18.

²¹⁹ NSW Police Force Domestic Violence Safety Assessment Tool (DVSAT), Standard Operating Procedures, July 2019, p. 48.

²²⁰ NSW Police Force Domestic Violence Safety Assessment Tool (DVSAT), Standard Operating Procedures, July 2019, p. 7.

²²¹ NSW Police Force Domestic Violence Safety Assessment Tool (DVSAT), Standard Operating Procedures, July 2019, pp. 7-8.

²²² The SOPs state that if the investigating officer believes there are other factors that may affect the level of safety to a victim and that these factors may place them at serious threat, they can apply their professional judgement. (NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018*, p. 47).

²²³ If the NSW Police Force applies the DVSAT on 3 separate occasions in a 6-month period a victim is automatically identified 'at serious threat'. (NSW Government *Domestic Violence Information Sharing Protocol, 2019*, p. 24.)

local area attend these meetings.²²⁴ Neither victims nor offenders attend these meetings. SAM members share information about domestic and family violence victims and offenders and develop an individual Safety Action Plan for the victim. The aim of this plan is to prevent or reduce serious threats to the life or wellbeing of domestic and family violence victims and their children.

If the NSW Police Force assesses a victim 'at threat' the NSW Police Force will contact the victim to receive their consent to refer them to a local specialist domestic violence service for follow up.²²⁵

The DVASAT must consider mandatory firearm questions. Police officers who go to a domestic and family violence incident record the victim's answers to DVSAT questions in their notebook. When police officers create a domestic violence event the questions and answers are populated on the DVSAT screen and allow police to consider the questions in Part B.

The NSW Bureau of Crime Statistics and Research (BOCSAR) examined the ability of the DVSAT in determining the risk of repeat victimisation in 2018. The paper concluded:

Responding 'yes' to 12 or more items was associated with repeat victimisation but was a poor indicator in terms of discriminating those who experienced repeat victimisation from those who did not. The classification of 'at serious threat' was a better indicator of repeat victimisation than was responding 'yes' to 12 or more items, however, predictive accuracy was still poor. While some individual DVSAT items were predictors of repeat victimisation, many were weak predictors, and some, intended as indicators of increased risk of repeat victimisation, actually signalled a lower risk of this outcome.²²⁶

In a more recent study, BOCSAR identified that a small set of indicators most strongly predicted repeat victimisation in the 12 months after a domestic and family violence incident had occurred.²²⁷ The indicators were:

- two measures of previous history of family and domestic violence;
- pregnancy and new birth;
- the victim's self-perception of risk of future violence; and
- misuse of drugs or excessive alcohol consumption.²²⁸

Research supports the findings of BOCSAR that the accuracy of Family Violence Risk Assessment Tools can be improved by narrowing down the set of indicators to a small number of important items, including:

- the severity of the most recent domestic and family violence incident
- history of violence
- pregnancy or recent birth
- money problems

²²⁴ Other agencies, apart from NSW Police Force, include Housing NSW, Community Services, Corrective Services NSW, Department of Education & Communities, NSW Health (including drug and alcohol services and mental health services) and specialist domestic violence non-government organisations.

²²⁵ NSW Police Force *Domestic Violence Safety Assessment Tool (DVSAT)*, Standard Operating Procedures, July 2019, p. 9.

²²⁶ NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin*, Contemporary Issues in Crime and Justice, Number 213, Claire Ringland, *The Domestic Violence Safety Assessment Tool (DVSAT) and intimate partner repeat victimisation*, April 2018.

²²⁷ The sample comprised 234,454 incidents between intimate partners recorded from January 2016 to December 2018 in the Central Referral Point (CRP) database, provided by Victim Services NSW.

²²⁸ NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin*, Number 2044, Felix Leung and Lily Trimboli, *Improving police risk assessment of intimate partner violence*, February 2022, p. 19.

- recent separation.²²⁹

Reviewing the effectiveness of DVSATs in predicting repeat victimisation did not form part of the Commission’s review. However, the Commission considers that it may be beneficial for the NSW Police Force to evaluate the effectiveness of DVSAT in predicting further risks to victims of domestic and family violence.

Domestic Violence Suspect Target Management Plan (DV-STMP)

The STMP is a proactive NSW Police Force policing strategy aimed at reducing crime among high-risk offenders. There are 2 types of STMPs:

1. DV-STMP — which focusses on reducing domestic and family violence related offences
2. STMP-II — which focusses on reducing general offending.²³⁰

Under the DV-STMP once recidivist offenders are identified, DVLOs and their intelligence unit develop detailed strategies and task a general duties team to target the offender. However, before this occurs the DVLO meets with the DV-STMP target and informs them that they have been identified as a repeat domestic and family violence offender and will be monitored by the NSW Police Force. The DV-STMP target is told that any offence will be thoroughly investigated with a zero-tolerance approach. The DV-STMP target is informed that this is a police initiative and not a request by the victim. The DVLO will also contact the victim to inform them that police will monitor the offender and offer support to the victim.²³¹

The introduction of the DV-STMP has had positive effects on the reduction of domestic and family violence as reflected in recent research that has found that the implementation of DV-STMP is associated with ‘large, practically and statistically reductions in DV crime’.²³²

Domestic Violence High-Risk Offender Team (DVHROT)

Between August 2016 and November 2018, the NSW Police Force has implemented 6 DVHROT in each of the 6 policing regions.²³³ The purpose of DVHROT is to ‘target recidivist offenders and investigate domestic and family violence matters’.²³⁴ Each DVHROT team includes a number of police officers and 1 intelligence analyst.²³⁵ One of the operating methodologies of DVHROT includes the use of the DV-STMP to target high-risk, recidivist offenders and helping local Police Area Commands (PAC) and Police Districts (PD) with managing their repeat offenders.²³⁶

²²⁹ Australian Institute of Criminology, Dowling, C., and Morgan, (2019) Predicting repeat domestic violence: *Improving police risk assessment, Trends & issues in crime and criminal justice*, No 581, October 2019, pp. 9, 12.

²³⁰ The DV-STMP began in October 2015; the STMP-II began in May 2005.

²³¹ Code of Practice for the NSW Police Force Response to Domestic and Family Violence, June 2018, p. 18.

²³² NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin, *An Evaluation of the Suspect Target Management Plan*, Steve Yeong, Number 233 (Revised), February 2021, p. 1.

²³³ By way of example in the 2019-20 reporting period the North West Metropolitan Region DVHROT conducted over 360 events and laid 98 charges for more than 70 offenders through surveillance and apprehended domestic violence order compliance checks. (NSW Police Force 2019-2020 Annual Report, p. 9). Should a review highlight a risk in terms of victim safety and/or re-offending, the defendant may be nominated for further assessment and consideration of an escalation of his/her status to a DV STMP II target. (NSW Police Force *Apprehended Domestic Violence Order Compliance Check Standard Operating Procedures*, June 2019 (ADVO SOPs) p. 16)

²³⁴ NSW Government, 14 October 2015, *Police Teams to Target Domestic Violence Offenders*, Media Release- Department of Justice. Retrieved from <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2015/Police-teams-to-target-.aspx>

²³⁵ Australian Government, National Plan to Reduce Violence against Women and their Children, Proactive policing to hold perpetrators accountable and support victim-survivors, Last updated 22 September 2021. <https://plan4womenssafety.dss.gov.au/initiative/proactive-policing-to-hold-perpetrators-accountable-and-support-victim-survivors/>

²³⁶ NSW Police Force A review of the operation of the Domestic Violence High Risk Offender Teams, August 2019, p. 7.

The NSW Police Force started a review of the effectiveness of DVHROTs in 2019, focussing on:

- their efficacy in dealing with recidivist domestic violence offenders
- whether their structures worked well
- developing recommendations to ensure their effectiveness for future operations.²³⁷

The review found that while overall the work of DVHROTs has had an ‘overwhelmingly positive’ effect on the policing of domestic violence in NSW several challenges and areas for further development remained.²³⁸

The NSW Police Force announced that it would add 15 new officers to the DVHROTs over the financial year 2022-2023.²³⁹

²³⁷ NSW Police Force *A review of the operation of the Domestic Violence High Risk Offender Teams*, August 2019, p. 5.

²³⁸ NSW Police Force *A review of the operation of the Domestic Violence High Risk Offender Teams*, August 2019, p. 29. Areas for further development include locations and staffing levels; capability and recognition of skills and work conditions; and standard development program regarding courses for all DVHROT officers and career pathways. (NSW Police Force *A review of the operation of the Domestic Violence High Risk Offender Teams*, August 2019, pp. 28-29).

²³⁹ The Sydney Morning Herald, *NSW Police boost specialist squads with roll-out of 550 new officers across the state*, Jenny Noyes, 18 July 2022.

Appendix C – Definitions of domestic and family violence

Domestic and family violence

The terms ‘domestic violence’ and ‘family violence’ are often used interchangeably. They both generally refer to violence between 2 or more people who are or were in a domestic relationship.

Domestic violence

In NSW many forms of domestic violence are criminal and punishable by law. The principal legislation relating to domestic violence specific offences is contained within the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (the Act). Under that Act, a domestic violence offence is an offence as committed by a person against another person with whom the offender has (or has had) a domestic relationship,²⁴⁰ including:

- (a) a personal violence offence, or
- (b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or
- (c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).

There are 57 ‘personal violence offences’ listed in the Act which become domestic violence offences when committed by persons in domestic relationships. These offences include murder, manslaughter, wounding or grievous bodily harm with intent, common assault, sexual assault, incest, kidnapping, choking, suffocation and strangulation, child abduction, discharging firearms with intent and destroying or damaging property. In summary a domestic violence offence occurs when someone commits a personal violence offence, or offences which coerce or control with the intention of intimidating or causing fear, against another person with whom they have or have had a domestic relationship.

The NSW Police Force recognises that domestic and family violence can encompass behaviours that do not currently fall within the definitions criminal offences and yet can be just as destructive to victims and their families.²⁴¹ For example controlling behaviours which cause victims to experience social isolation or financial dependency or suffer psychological and emotional torment.²⁴²

Family violence

The principal legislation relating to family violence is contained within the *Family Law Act 1975* (Cth). The Family Law Act states that family violence means violent, threatening or other behaviour by a

²⁴⁰ A domestic relationship is defined under s 5 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) as relationships where the person, is or has been married to the other person; is or has been a de facto partner of that other person; has or has had an intimate personal relationship with the other person; is living or has lived in the same household as the other person; is living or has lived as a long-term resident in the same residential facility as the other person at the same time (excluding correctional centres and detention centres); has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person; is or has been a relative of the other person; in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person’s culture.

²⁴¹ In July 2022, the Attorney General and the Minister for Women released an Exposure Draft Bill which, if passed, would criminalise aspects of coercive control - *Crimes Legislation Amendment (Coercive Control) Bill 2022* see <https://www.nsw.gov.au/media-releases/criminalising-coercive-control-one-step-closer>

²⁴² Code of Practice for the NSW Police Force response to Domestic and Family Violence, NSW Government, NSW Police Force, 1 June 2018, p. 14.

person that coerces or controls a member of the person’s family (the family member) or causes the family member to be fearful. Examples of behaviour that may constitute family violence include, but are not limited to, an assault, a sexual assault, stalking, repeated derogatory taunts and preventing the family member from making or keeping connections with his or her family, friends or culture.²⁴³

The term ‘family violence’ reflects an understanding of family violence beyond that between intimate partners. It conceptualises violence against women within extended families and the wider community.²⁴⁴

Personal Violence Offences – Section 4 Crimes (Domestic and Personal Violence) Act 2007 (NSW)

Section 4(A):

Section in Crimes Act 1900	Offence
19A	Murder
24	Manslaughter
26	Conspiring to commit murder
27	Acts done to the person with intent to murder
28	Act done to property with intent to murder
29	Certain other attempts to murder
30	Attempts to murder by other means
31	Documents containing threats
33	Wounding or grievous bodily harm with intent
33A	Discharging firearms with intent
35	Reckless grievous bodily harm or wounding
35A	Causing dog to inflict grievous bodily harm or actual bodily harm
37	Choking, suffocation and strangulation
38	Using intoxicating substance to commit an indictable offence
39	Using poison etc to endanger life or inflict grievous bodily harm
41	Using poison etc to injure or to cause distress or pain
43	Abandoning or exposing a child under 7 years
43A	Failure of persons with parental responsibility to care for child
44	Failure of persons to provide necessities of life
45	Prohibition of female genital mutilation
45A	Removing person from State for female genital mutilation
46	Causing bodily injury by gunpowder etc
47	Using etc explosive substance or corrosive fluid etc
48	Causing explosives to be placed in or near building, conveyance or public place
49	Setting trap etc
58	Assault with intent to commit a serious indictable offence on certain officers
59	Assault occasioning actual bodily harm
61	Common assault prosecuted by indictment
61I	Sexual assault
61J	Aggravated sexual assault
61JA	Aggravated sexual assault in company
61K	Assault with intent to have sexual intercourse
61L	Indecent assault – repealed
61M	Aggravated indecent assault - repealed
61N	Act of indecency - repealed
61O	Aggravated act of indecency - repealed
66A	Sexual intercourse – child under 10

²⁴³ Family Law Act 1975 (Cth), Part 4AB(1)(2).

²⁴⁴ A Practitioner’s Guide to Domestic Violence Law in NSW, Women’s Legal Service NSW, August 2018, p. 7.

66B	Attempting or assaulting with intent, to have sexual intercourse with child under 10
66C	Sexual intercourse – child between 10 and 16
66D	Assault with intent to have sexual intercourse – child between 10 and 16
66EA	Persistent sexual abuse of a child
73	Sexual intercourse - young person between 16 and 18 under special care
78A	Incest
80A	Sexual assault by forced self-manipulation
80D	Causing sexual servitude
86	Kidnapping
87	Child abduction
93G	Causing danger with firearm or spear gun
93GA	Firing at dwelling-houses or buildings
110	Breaking, entering and assaulting with intent to murder etc
195	Destroying or damaging property
196	Destroying or damaging property with intent to injure a person
198	Destroying or damaging property with intention of endangering life
199	Threatening to destroy or damage property
200	Possession etc of explosive or other article with intent to destroy or damage property

Section 4(B):

Section in Crimes (Domestic and Personal Violence) Act 2700	Offence
19A	Murder
24	Manslaughter

Appendix D – Overview of 7 complaint investigations relating to seizure of firearms

This Appendix provides a summary of 7 complaint investigations where involved officers failed to adhere to legislative and policy requirements in relation to the inquiry and seizure of firearms.

1. In 2020 a woman reported a domestic violence incident by her ex-partner, a registered firearms licence holder in NSW, to the NSW Police Force.²⁴⁵ The involved officer failed to create an event report and did not brief other police officers of this incident. Contrary to the requirements of NSW Police Force procedures, the involved officer made no inquiries on NSW Police Force systems to find out if the ex-partner was a registered firearm holder and failed to complete an ILS check.

If those checks had been completed the involved officer would have established that the ex-partner was a registered firearms holder and would have been required to apply for a search warrant to seize those firearms. As a result, police never seized the ex-partner's firearms.

Several days later the ex-partner attended the woman's home. While the woman managed to escape, her ex-partner shot and killed another person at the woman's home before killing himself with his firearm.

Police criminally charged the involved officer for the offence of 'Police officer neglect/refuse/not carry out any lawful order'.

2. In 2019 2 police officers spoke with a woman about a possible domestic and family violence incident involving the woman and her husband. After speaking to the woman both officers returned to the police station and 1 officer (involved officer) created an event report.

Even though the woman told police that her husband had access to firearms, the involved officer took no further action. The involved officer also ignored the advice of the second officer to apply for a search warrant to seize the firearms at the couple's home. The woman had further contact with other police officers about this matter. However, police never investigated this incident.

Several weeks later the husband was found dead with an apparent self-inflicted gunshot wound to the head, believed to be from 1 of his registered firearms.

The police investigation into the involved officer resulted in sustained findings.

3. Police officers went to a domestic and family violence incident in early 2020, involving a husband and his wife. At arrival police observed that both parties were intoxicated and fighting. The CAD message included information that several children, including a baby, were at the location; the husband may have access to firearms; and that he may suffer from mental health issues.

The involved officer did not attempt to identify if children were present at the location or check on their welfare. The involved officer made no inquiries as to the presence of firearms despite CAD information that the husband may have access to firearms.

The police investigation made a sustained finding on the issue of 'deficient/inadequate investigation'.

²⁴⁵ Section 22 of the *Firearms Act 1996* (NSW) compels police to suspend a person's firearms licence when involved in a DV offence.

4. In the second half of 2018 a woman, in the company of a social worker, went to a police station and reported a serious domestic and family violence incident to the involved officer.

The woman told the involved officer that she was afraid of the offender. The involved officer typed the woman's statement directly into the computer. The involved officer also created an event report for the incident.²⁴⁶ The involved officer selected 'Yes' to the Pre- DVSAT question: *Did you inquire about the presence of firearms in the dwelling of another location?* and 'No' to the DVSAT question: *Does your partner have access to firearms or prohibited weapons?*

When police interviewed the social worker, she said that she could not recall if the involved officer had asked her any questions about firearms. The involved officer created no records that he attempted to arrest the offender or to serve an ADVO.

5. Three police officers attended a domestic and family violence incident in 2019. A woman alleged that her husband had assaulted her. Police charged the husband, and he was convicted of assaulting the woman. Because of the incident, police seized 4 firearms from the home and issued a notice of suspension to the husband.

The woman alleged that 1 of the involved officers coerced her into reporting the matter as a verbal argument even though the woman showed them bleeding injuries to her arms.

The police investigation determined the involved officers had failed to investigate this incident properly. If there had not been a later intervention by another agency that led to the police investigation, the husband would have been entitled to the return of his firearms, after a cooling off period, based on 1 of the involved officer's event report.

6. A woman contacted police and informed them that her husband had assaulted her in late 2020. Two police officers (involved officer 1 and involved officer 2) attended the woman's residence, arrested, and charged the husband. At the time of the arrest, police did not seize any firearms from the husband.

A DVLO reviewed the event report a few days later and discovered that the husband was the holder of a Firearms Licence and that he was in possession of firearms. The same day police officers seized the firearms. Involved officer 1 provided the following response to police investigators 'I did not take enough time to carefully read each question [referring to the COPS event DVSAT questions] and as a result I answered 'No' to the access to firearms question. I answered the questions too quickly and did not give this section the attention it required. I acknowledge this is a significant error". The involved officer further stated, "I take full responsibility and accountability for the lack of investigation."

7. A woman reported a domestic and family violence incident involving her ex-partner at a police station in 2021. The incident involved multiple telecommunication offences. The woman advised the involved officer that she was afraid of her ex-partner, as he had sent her more than 150 messages, some of which contained serious threats, including death threats. The involved officer told the woman that he was not willing to take a statement from her as his shift was ending. The involved officer told the woman that he would advise another police officer who had previously assisted the woman that she had come to the police station. The involved failed to:
 - create an event report of the incident
 - take a DVEC statement from victim
 - advise a supervisor of the victim's report
 - make notebook entries of the report

²⁴⁶ When an officer creates an event report on COPS the officer must fill out several fields relating to the DVSAT and risk assessment processes.

- initiate an investigation into the incident
- identify any potential witnesses
- enquire about the presence of firearms
- complete initial DVSAT questions which included questions in relation to firearms
- make an application for a provisional ADVO for stalking and intimidation offences.

The NSW Police Force investigation returned sustained findings against the involved officer for neglect of duty and lying during inquiries.

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Glossary

GLOSSARY	DESCRIPTION
Act	<i>Crimes (Domestic and Personal Violence) Act 2007 (NSW)</i>
ADVO	Apprehended Domestic Violence Order
ADVO Risk Assessment procedures	NSW Police Force <i>Police Officer- Defendant in Apprehended Domestic Violence orders – Risk Assessment for access to Arms and Appointments procedures</i>
BOCSAR	NSW Bureau of Crime Statistics and Research
BWV	Body worn video
BWV SOPs	NSW Police Force <i>Body-Worn Video Standard Operating Procedures</i>
CARA	NSW Police Force <i>Complaint Allocation Risk Appraisal Guidelines, March 2007</i>
CAD	Computer Aided Dispatch
CAR	Child at risk
CCTV	Closed-circuit television
CMT	Complaint Management Team
CNI	Central Names Index – A CNI is a unique number used to identify a person or organisation within COPS
Commission	Law Enforcement Conduct Commission
CoP	Commissioner of Police
COPS	Computerised Operational Policing System – electronic NSW Police Force database to record all incidents reported, including domestic and family violence incidents and ADVOs.
CWU	Child Wellbeing Unit
DCJ	Department of Communities and Justice
Defendant	A person who has been charged with a criminal offence
DVEC	Domestic Violence Evidence in Chief
DVHROT	Domestic Violence High Risk Offender Team
DVSAT	Domestic Violence Safety Assessment Tool
DVLO	Domestic Violence Liaison Officer
DV SOPs	NSW Police Force <i>Domestic and Family Violence Standard Operating Procedures 2018</i>
DV-STMP	Domestic Violence Suspect Target Management Plan
FaCS	Family & Community Services
IAPro	NSW Police Force complaints information systems
ILS	Integrated Licencing System - All information on NSW firearms licence holders, permit holders and registered firearms is stored on the ILS
IRMP	Interim Risk Management Plan

LECC Act	Law Enforcement Conduct Commission Act 2016 (NSW)
LEPRA	Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)
MARA Guidelines	NSW Police Force Misconduct Matter Allocation Risk Appraisal Guidelines, September 2021
MobiPol	MobiPOL are shared smart phones and tablet devices that enable NSW Police Force officers to access police systems and databases away from the office.
MRG	Mandatory Reporter Guidance
NSWPF	NSW Police Force
OIC	Officer in charge of the investigation
ODPP	The Office of the Director of Public Prosecutions
PAC	Police Area Command
PD	Police District
Protocol	NSW Government Domestic Violence Information Sharing Protocol
PSC	Professional Standards Command
PSDO	Professional Standards Duty Officer
PTSD	Post-Traumatic Stress Disorder
RBMI	Rational Based Misconduct Investigations
SAM	Safety Action Meeting

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