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Domestic Violence in NSW

by

Talina Drabsch

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by

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EXECUTIVE SUMMARY

Domestic violence is an issue that permeates all levels of society. It is difficult to accurately estimate the true incidence of domestic violence in society as most incidents are not reported to police and some victims may attempt to deny or hide its reality. Access Economics believes that approximately 1.6 million women in Australia have experienced domestic violence in some form since the age of 15. In the overwhelming majority of incidents, the violence is perpetrated by a man against a woman. However, the reverse situation is not unknown, nor are same sex relationships immune to domestic violence.

Section two (pp 3-5) of this paper notes the various ways in which ‘domestic violence’ and ‘family violence’ have been defined. Definitions vary in terms of the relationships they include and what is deemed violence. There is substantial overlap in a number of definitions of domestic violence and family violence, but generally family violence is seen as being broader in scope.

Various studies of the incidence and prevalence of domestic violence in Australia are examined in section three (pp 6-9). Common reasons for not reporting domestic violence are also identified.

Section four (pp 10-17) highlights some of the major strategies adopted by the Commonwealth and NSW governments to reduce the occurrence of domestic violence in Australia. The Women’s Safety Agenda was recently established at a federal level in place of the Partnerships Against Domestic Violence initiative. Numerous projects have been set up in NSW under the NSW Strategy to Reduce Violence Against Women.

The police have an important role in preventing and responding to domestic violence incidents. Section five (pp 18-20) includes an overview of the search, entry and seizure powers as expressed in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

The *Crimes Amendment (Apprehended Violence) Act 2006* (NSW) made a number of alterations to Part 15A of the *Crimes Act 1900* (NSW) which governs apprehended violence orders. The current version of Part 15A is discussed in section six (pp 21-29), particularly the application process and conditions that may be attached to various orders. The Women’s Domestic Violence Court Assistance Scheme and the Domestic Violence Solicitor Scheme are also briefly mentioned.

Section seven (pp 30-35) is concerned with the way in which family violence is taken into account in the operation of the *Family Law Act 1975* (Cth). Significant changes were made by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) which introduced a presumption of equal shared parental responsibility. Parties are also required to attend family dispute resolution before applying for a parenting order. However, these presumptions do not apply in situations involving family violence.

Domestic violence courts have been established in a number of jurisdictions both within Australia and overseas. An overview of some of the programs operating in Australian courts is provided in section eight (pp 36-44), with particular note made of the NSW

Domestic Violence Intervention Court Model. This section also identifies a number of the arguments for and against the establishment of such specialist domestic violence courts.

1 INTRODUCTION

Around 1.6 million women in Australia have experienced some form of domestic violence since the age of 15.¹ Whilst both men and women are victims of domestic violence, it is far more common for the victim to be a woman and the offender to be a man. Research has found that 71% of domestic assault incidents reported to the police involved a female victim, and that 80% of offenders are male.² However, by these figures, 29% of victims are male, not an insignificant proportion.

A number of common threads have been noted in recorded domestic assault incidents. According to Julie People: the peak time for incidents of domestic assault is between 6 pm and 9 pm, with most incidents occurring between 3 pm and midnight; more than one-third of the domestic assault incidents recorded in NSW in 2004 were flagged by the police as alcohol-related; most victims are between the ages of 20 and 39; and Indigenous Australians are approximately six times more likely to be victims of domestic assault and eight times more likely to be offenders than non-Indigenous Australians.³

NSW Parliament has recognised, in statutory form, a number of aspects of domestic violence and has made it clear that such behaviour will not be tolerated. Section 562E(3) of the *Crimes Act 1900* (NSW) states:

- a. that domestic violence, in all its forms, is unacceptable behaviour, and
- b. that domestic violence is predominantly perpetrated by men against women and children, and
- c. that domestic violence occurs in all sectors of the community, and
- d. that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and
- e. that domestic violence occurs in traditional and non-traditional settings, and
- f. the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and
- g. that domestic violence is best addressed through an integrated framework of prevention and support and, in certain cases, may be the subject of appropriate intervention by the court.

¹ Access Economics, *The Cost of Domestic Violence to the Australian Economy* (corrected), Access Economics, October 2004, p 16.

² People J, 'Trends and patterns in domestic violence assaults', *Crime and Justice Bulletin*, No 89, October 2005, p 6.

³ People, above n 2, pp 4-8.

Domestic violence is an issue that permeates all sections of the community. According to Access Economics, the annual cost of domestic violence in 2002/03 was \$8.1 billion. The following table lists the components of this calculation. More than three-quarters of the cost can be attributed to the categories of pain, suffering and premature mortality and consumption.

Category	Annual cost in 2002/03 (\$M)
Pain, suffering and premature mortality	3521
Health	388
Production (eg absenteeism, reduced productivity)	484
Consumption (eg property replacement, bad debts)	2575
Administration and other (eg legal/forensic services, perpetrator programs)	480
Second generational (eg child care, changing schools, counselling)	220
Economic cost of transfers (eg victim compensation, income support, lost taxes)	410
Total	8078
Total (excl pain, suffering)	4557

Source: Access Economics, *The Cost of Domestic Violence to the Australian Economy*, Access Economics, October 2004, p vii.

The table below indicates who bears the cost of domestic violence. It shows that the greatest burden falls on victims, with the community also shouldering a substantial amount. The total lifetime cost of domestic violence is estimated at \$224,470 per victim.⁴

Affected group	Annual cost in 2002/03 (\$M)
Victim	4048
Perpetrator	555
Children	769
Employers	175
Friends and family	7
Federal government	848
State/Territory government	487
Community	1190
Total	8078

Access Economics, *The Cost of Domestic Violence to the Australian Economy*, Access Economics, October 2004, p vii.

This paper considers the incidence and prevalence of domestic violence and some of the government strategies that have been introduced to combat it. It discusses the way domestic violence is policed, noting the search, entry and seizure powers of police and the availability of apprehended domestic violence orders. The recent changes to family law and the implications of the amendments for victims of domestic violence are discussed, as are the various models of specialist domestic violence courts in Australia.

⁴ Access Economics, above n 1, p viii.

2 DEFINITIONS

2.1 Defining domestic violence

‘Domestic violence’ has been variously defined. Definitions differ in terms of the breadth of the relationship of parties included and forms the violence may take. Some definitions are gender neutral whilst others note that domestic violence commonly involves a male perpetrator and female victim. ‘Domestic violence’ as opposed to ‘family violence’ is often used to refer more specifically to violence between adults who are or have been in an intimate relationship. However, a number of definitions for ‘domestic violence’ and ‘family violence’ overlap to a large extent and the terms are sometimes used interchangeably. A sample of definitions follows.

The **Partnerships Against Domestic Violence Statement of Principles** agreed by the Australian Heads of Government at the 1997 National Domestic Violence Summit included the following definition:

Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women both in relationship and after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation.⁵

Crawford and Neville define ‘domestic violence’ as:

behaviour, within a domestic relationship, that involves an abuse of power and is usually, though not exclusively, perpetrated by men against women and children. Domestic violence encompasses a range of behaviours including intimidation, coercion, emotional abuse, financial abuse, sexual abuse, physical abuse, isolation and psychological manipulation.⁶

An alternative definition is that of the **Australian Medical Association**:

Domestic Violence is an abuse of power. It is the domination, coercion, intimidation and victimisation of one person by another by physical, sexual or emotional means within intimate relationships. Such intimate relationships include adult to adult, parent to child, child to parent, and child to child.⁷

⁵ Violence Against Women Specialist Unit, *Domestic Violence Interagency Guidelines: Working with the legal system in responding to domestic violence*, NSW Attorney General’s Department, 2003, p 182.

⁶ Crawford V and Neville M, *Domestic Violence*, Hot Topics No 47, Legal Information Access Centre, 2004, p 2.

⁷ Australian Medical Association, *AMA Position Statement: Domestic Violence*, 1998. Available from www.ama.com.au Accessed 23/5/07.

In October 2004, **Access Economics** published the report, *The Cost of Domestic Violence to the Australian Economy*, which was prepared for the Office of the Status of Women (it was funded by the Australian Government under the Partnerships Against Domestic Violence strategy). The report used the following definition:

Domestic violence occurs when one partner attempts by physical or psychological means to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms of domestic violence are: physical and sexual violence; threats and intimidation; emotional and social abuse; and financial deprivation. Domestic violence can involve a continuum of controlling behaviour and violence, which can occur over a number of years, before and after separation.⁸

The above definition highlights how domestic violence may be characterised as a continuum of events and not limited to a single incident.

Whilst the overwhelming majority of domestic violence incidents involve violence by men against women, the reverse situation is not unknown and domestic violence may also feature in some same sex relationships. Consequently, discussion of the issues pertaining to domestic violence should be alert to the existence and needs of victims who fall outside the usual portrayal, and community understanding, of domestic violence.

2.2 Defining family violence

Use of the term ‘family violence’ is growing and is generally used to refer to violence within a broader group of relationships. The **Family Court of Australia** has adopted the following description of ‘family violence’:

Family violence covers a broad range of controlling behaviours, commonly of a physical, sexual, and/or psychological nature, which typically involve fear, harm, intimidation and emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between spouses, partners, parents and children, siblings, and in other relationships where significant others are not part of the physical household but are part of the family and/or are fulfilling the function of family.⁹

Common forms include: spouse/partner abuse; child abuse/neglect; parental abuse; and sibling abuse. The term ‘family violence’ is thought to be more relevant to discussions of violence within Indigenous Australian communities as it encompasses the broader kin relationships in which such violence may be situated.

⁸ Access Economics, above n 1, p 3.

⁹ Family Court of Australia, ‘What is family violence?’, www.familycourt.gov.au Accessed 18/5/07.

The **Human Rights and Equal Opportunity Commission** has defined ‘family violence’ in the context of Indigenous Australian communities as:

Family violence involves any use of force, be it physical or non-physical, which is aimed at controlling another family or community member and which undermines that person’s well-being. It can be directed towards an individual, family, community or particular group. Family violence is not limited to physical forms of abuse, and also includes cultural and spiritual abuse. There are interconnecting and trans-generational experiences of violence within Indigenous families and communities.¹⁰

According to a report by the Australian Institute of Health and Welfare, the proportion of Indigenous Australians who reported that family violence was a neighbourhood/community problem in non-remote regions in 2002 was 13.8%.¹¹ However, the proportion in remote regions was three times as great at 40.9%.

Whilst this paper generally focuses on domestic violence and associated issues, family violence will also be discussed where relevant.

¹⁰ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues*, Human Rights and Equal Opportunity Commission, June 2006, p 6.

¹¹ Al-Yaman F, Van Doeland M and Wallis M, *Family violence among Aboriginal and Torres Strait Islander peoples*, Australian Institute of Health and Welfare, Canberra, 2006, p 42.

3 HOW COMMON IS DOMESTIC VIOLENCE?

A number of studies have examined the incidence and prevalence of domestic violence in the community. This section discusses the results of some recent studies in Australia. It should be noted that statistics are likely to underestimate the level of domestic violence due to underreporting. Figures may also differ depending on how domestic violence is defined, especially in terms of relationships and forms of violence included.

3.1 ABS 2005 Personal Safety Survey

Approximately 11,900 women and 4,600 men participated in the 2005 Personal Safety Survey conducted by the Australian Bureau of Statistics. It found that around 5.8% of women (443,800) and 10.8% of men (808,300) experienced some form of physical and/or sexual violence in the previous 12 months.¹² Almost one-third of the women who were physically assaulted were assaulted by a current or previous partner (compared to less than 5% of men). The Survey found that 2.1% of women had experienced current partner violence since the age of 15 compared to 0.9% of men. Around 4.9% of men and 15% of women had experienced violence from a previous partner, of whom 32% of women and 40% of men said there was only one incident.

A particular concern is the exposure of children to domestic violence. The Personal Safety Survey found that around half of the men and women who experienced violence by a current partner had children in their care at some point in the relationship with more than one-quarter stating that children had witnessed the violence. 36% of women who had experienced violence from a previous partner, and who had been pregnant at some stage in that relationship, said that violence occurred during the pregnancy and 17% experienced violence for the first time whilst pregnant.

3.2 Access Economics

Access Economics estimates that in 2002/03 there were 408,100 victims of domestic violence¹³ in Australia (3% of the population), of whom 87% (355,600) were women.¹⁴ 87% of perpetrators were male.¹⁵ More than 1.6 million women have experienced some

¹² Australian Bureau of Statistics, *Personal Safety Survey, Australia, 2005* (Reissue), 4906.0, 2006.

¹³ Defined for the purposes of its report as: 'Domestic violence occurs when one partner attempts by physical or psychological means to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms of domestic violence are: physical and sexual violence; threats and intimidation; emotional and social abuse; and financial deprivation. Domestic violence can involve a continuum of controlling behaviour and violence, which can occur over a number of years, before and after separation'. It limited domestic violence to being between adult intimate partners for the purpose of its study.

¹⁴ Access Economics, above n 1, p 16.

¹⁵ Access Economics, above n 1, p 17 (corrected).

form of domestic violence since the age of 15, with domestic violence from intimate partners representing half of all male violence against women.¹⁶ In 2002/03, approximately 263,800 children were living with victims of domestic violence and 181,200 children witnessed it.¹⁷

3.3 Australian Component of the International Violence Against Women Survey

The International Violence Against Women Survey was conducted across Australia between December 2002 and June 2003. 6677 women participated in the survey which measured three types of violence against women: physical, sexual and psychological. It found that 34% of women who had a current/former intimate partner had experienced at least one form of violence during their lifetime from a partner.¹⁸ When restricted to the last five years, the proportion was 13%, and 4% if only the last 12 months were considered. The type of violence experienced was more likely to be of a physical rather than sexual nature. Between 9 and 11% of women in a current relationship reported that they had experienced violence at some point from their current partner.¹⁹ The proportion was much higher when previous relationships were considered: between 35 and 37% of women who had been in a past relationship reported having experienced violence from a previous partner.²⁰ According to Mouzos and Makkai, the strongest risk factors for intimate partner physical violence are associated with the behaviour of the male, most notably his drinking habits, general levels of aggression and his controlling behaviour.²¹

3.4 Domestic violence in NSW

25,761 domestic assault incidents were recorded in NSW in 2004.²² In 62% of these incidents, the offender was a current or former intimate partner of the victim. In 10% of cases, the offender was a parent/guardian.²³ Approximately 35 to 40% of all assault incidents reported to the NSW police each year are domestic assaults.²⁴ Research has found

¹⁶ Access Economics, above n 1, p 16.

¹⁷ Access Economics, above n 1, p 17.

¹⁸ Mouzos J and Makkai T, *Women's Experiences of Male Violence: Findings from the Australian Component of the International Violence Against Women Survey*, Australian Institute of Criminology, Canberra, 2004, p 44.

¹⁹ Mouzos and Makkai, above n 18, p 46.

²⁰ Mouzos and Makkai, above n 18, p 50.

²¹ Mouzos and Makkai, above n 18, p 61.

²² People, above n 3, p 6.

²³ People, above n 3, p 7.

²⁴ People, above n 3, p 3.

that it is highly unlikely that the incident that led to the police being called is the first time that the victim has experienced domestic violence.²⁵

The average rate of recorded incidents of domestic violence related assault in 2006 for NSW was 392.9 per 100,000 people.²⁶ The regions of NSW with the highest recorded rate were the Far West (1259.2 per 100,000), North Western (996.8 per 100,000) and Northern (622.0 per 100,000).²⁷ The average rate per 100,000 people in Sydney was the lowest of all regions in NSW at 336.4. Within the region of Sydney, the areas with the highest rates of recorded domestic violence related assaults were Blacktown (645.2 per 100,000), Outer South Western Sydney (610.2 per 100,000) and Inner Sydney (479.0 per 100,000). However, not all domestic violence incidents are reported to police and so these figures are likely to underestimate the true incidence of domestic violence in the community.

The NSW Ombudsman has noted that the prevalence of domestic violence in NSW is generally higher in areas with larger proportions of Indigenous Australian residents and sole parents aged under 25. Domestic violence tends to be more common in areas with higher rates of public housing, male unemployment and residential instability.²⁸

3.5 What are some reasons for not reporting domestic violence?

Most victims of domestic violence do not report it to police. Approximately 14% of women who experienced violence from an intimate partner reported the most recent incident to police.²⁹ The proportion of women who report domestic violence differs significantly according to whether the perpetrator is a current or previous partner. Whilst 24% of women victimised by a previous husband/partner reported the most recent incident to police, the proportion was only 8% for those victimised by a current husband/partner. The offender was charged in 19% of incidents of intimate partner violence reported to police, with charges leading to a conviction in 65% of the cases.³⁰

²⁵ NSW Ombudsman, *Domestic Violence: Improving Police Practice*, NSW Ombudsman, Sydney, 2006, p 7.

²⁶ The source for the statistics in this paragraph is: Goh D, Moffatt S and Jones C, *NSW Recorded Crime Statistics 2006*, NSW Bureau of Crime Statistics and Research, Sydney, 2007, p 42.

²⁷ There are 12 statistical divisions in NSW: Sydney, Hunter, Illawarra, Richmond-Tweed, Mid-North Coast, Northern, North Western, Central West, South Eastern, Murrumbidgee, Murray, and Far West. The region of Sydney consists of 14 areas: Inner Sydney, Eastern Suburbs, St George-Sutherland, Canterbury-Bankstown, Fairfield-Liverpool, Outer South Western Sydney, Inner Western Sydney, Central Western Sydney, Outer Western Sydney, Blacktown, Lower Northern Sydney, Central Northern Sydney, Northern Beaches, and Gosford-Wyong.

²⁸ NSW Ombudsman, above n 25, p 6.

²⁹ Mouzos and Makkai, above n 18, p 101.

³⁰ Mouzos and Makkai, above n 18, pp 103-104.

Some common reasons for not reporting a domestic violence incident include:³¹

- The victim does not consider it serious enough.
- The victim dealt with it him/herself.
- The victim wants to keep the matter private, is ashamed or embarrassed.
- The victim is afraid of the offender.
- The victim does not think the police could or would do anything about it.
- Community attitudes.
- The victim blames him/herself.
- The victim does not realise that help is available.
- The victim wants, or is under pressure, to keep the family together.
- The victim is financially dependent on his/her partner.
- Alcohol or other drug use.
- Police officers know, or are friends, with the perpetrator.
- Cultural differences are used to justify, hide or explain the abuse.
- The perpetrator may present as a victim or make a counter-claim.
- Health issues such as psychoses, depression, bipolar disorder etc for either or both the victim and perpetrator.

³¹ People, above n 3, p 2; Violence Against Women Specialist Unit, *Domestic Violence Interagency Guidelines: Working with the legal system in responding to domestic violence*, NSW Attorney General's Department, 2003, p 32.

4 GOVERNMENT STRATEGIES

Article 4 of the Declaration on the Elimination of Violence against Women (unanimously adopted by all member States in 1993 to strengthen and complement the *Convention on the Elimination of all Forms of Discrimination Against Women*)³² sets out a number of measures that States should adopt to reduce violence against women. It states that:

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- (a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
- (b) Refrain from engaging in violence against women;
- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- (d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- (e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- (g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- (h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;
- (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

³²

Victorian Law Reform Commission, *Review of Family Violence Laws: Report*, 2006, p 48.

- (j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority of superiority of either of the sexes and on stereotyped roles for men and women;
- (k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- (l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- (m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- (n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- (o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;
- (p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;
- (q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

This section highlights some of the strategies adopted by the Commonwealth and NSW governments.

4.1 Commonwealth

The Partnerships Against Domestic Violence (PADV) initiative³³ was launched at the National Domestic Violence Summit in 1997 to enable the Commonwealth, states and territories to work together on domestic violence. It was initially allocated \$25.3 million over 3.5 years before being given another \$25 million with the initiative eventually extended to 2005.

The PADV was replaced by the Women's Safety Agenda³⁴ in 2005 which is to receive \$75.7 million over four years. It addresses prevention, health, justice and services with the aim of decreasing the impact of domestic violence and sexual assault on the community. Measures under the Agenda include:

³³ Information on the initiative is available from: Australian Government, Office for Women, 'About the Partnerships Against Domestic Violence Initiative', www.ofw.facsia.gov.au

³⁴ Australian Government, Office for Women, 'Women's Safety Agenda', www.ofw.facsia.gov.au Accessed 23/5/07.

- Rerunning the successful national Violence Against Women. Australia Says No campaign – the campaign was originally launched in June 2004 and included the raising of awareness through: television, cinema, magazine and washroom advertising; a 24 hour helpline; and curriculum resources for secondary schools.
- Domestic and Family Violence and Sexual Assault Initiative – organisations are provided with funding to deliver projects aimed at decreasing the impact of sexual assault and domestic violence by trialling and evaluating new preventative and response mechanisms and/or developing and promoting products to assist in best practice service delivery.
- Continued funding for the Australian Domestic and Family Violence Clearinghouse and the Australian Centre for the Study of Sexual Assault.
- Research projects on domestic violence and sexual assault.
- Training for nurses in regional and rural areas.
- Training for the criminal justice sector on sexual assault.
- Dedicated resource at the Australian Institute of Criminology.
- Mensline – providing counsellors with training and materials on domestic violence.

4.2 New South Wales

4.2.1 *Domestic Violence Interagency Guidelines*

The Domestic Violence Interagency Guidelines were developed in 2003 to provide domestic violence prevention workers with information on the policies and guidelines of key agencies. The guidelines include information on the legal system, the role of various agencies, and processes for responding to domestic violence, and recognise that ‘No single agency has all the knowledge, skills or authority to safeguard victims of domestic violence and prosecute alleged offenders’.³⁵ The NSW Domestic Violence Interagency Guidelines also acknowledge that domestic violence is a child protection issue and thus all interventions require a child protection perspective.³⁶ The guidelines are currently being reviewed.

4.2.2 *NSW Strategy to Reduce Violence Against Women*

The NSW Strategy to Reduce Violence Against Women³⁷ was established in 1997 and is a partnership of the NSW Department of Community Services, Attorney General’s

³⁵ Violence Against Women Specialist Unit, above n 5, p 21.

³⁶ Violence Against Women Specialist Unit, above n 5, p 34.

³⁷ The source for information on the NSW Strategy to Reduce Violence Against Women is: Violence Against Women Specialist Unit, ‘About Us’, www.lawlink.nsw.gov.au Accessed

Department, NSW Health, NSW Police, Office for Women, NSW Premiers Department, Department of Housing and Department of Education and Training. It aims to prevent and respond to violence against women through:

- raising awareness of, and understanding about, violence against women;
- developing and promoting effective prevention strategies;
- improving women's access to services;
- improving interagency coordination; and
- improving the criminal justice response to violence.

The approach of the Strategy is:

1. **A partnership response to violence against women** – partners may include government agencies, non-government agencies, and local community groups and networks and individual community members.
2. **A focus on prevention** – the causes of violence against women, providing an appropriate response when violence is reported, and education and raising awareness.
3. **Recognition of the many forms of violence** – stalking and intimidation; hate-related violence; sexual, verbal, emotional and other forms of harassment; physical violence; sexual assault; and domestic violence, including emotional, social and financial abuse as well as sexual and physical violence.
4. **Responses that recognise diverse needs** – women with disabilities, women living in rural and remote communities, Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse communities, lesbians, older women, and younger women.

It seeks to do this by:

- developing prevention programs to reduce violence against women;
- conducting community education and training;
- enhancing linkages within and between Government and non Government agencies;
- developing strategic policy responses; and

- supporting strategies and programs with partnership agencies aimed at preventing violence against women.

There are three elements to the Strategy: the Violence Against Women Specialist Unit; a Regional Violence Prevention Specialist program; and a State Management Group.

Details of statewide projects operating under the strategy are available from the Violence Against Women Specialist Unit www.lawlink.nsw.gov.au. The following table identifies the focus areas and current key initiatives in various regions in NSW for 2006-2009.

Region	Focus Areas 2006-2009	Current Key Initiatives
Central Coast	<ul style="list-style-type: none"> ▪ Young people and preventing sexual and domestic violence. ▪ To increase community understanding of all forms of violence against women and promote a culture that does not tolerate violence. ▪ Improve access to culturally appropriate service delivery for women from culturally and linguistically diverse backgrounds and Aboriginal women who are victims of domestic violence. 	<ul style="list-style-type: none"> ▪ Steps to Respect Project and Website. ▪ Domestic Violence Support Group for Young People ▪ Domestic Violence Support Group for Koori Young People ▪ Kinks and Bends – an educational program to prevent sexual violence in young people’s lives ▪ Action to Prevent Violence Against Lesbians ▪ Connexions Conference – Think about the links – Violence, Abuse and Neglect 2006 – Portraits of Life
Central Sydney	<ul style="list-style-type: none"> ▪ Working with Aboriginal communities to prevent family violence ▪ Training for youth workers and young people on healthy relationships ▪ Abuse of older women ▪ Impact of family law issues on victims of domestic violence 	<ul style="list-style-type: none"> ▪ Addressing Aboriginal women’s experiences of sexual assault ▪ Changes in Family Law and the Impact on Victims of Domestic Violence Forum 2005 ▪ Negotiating Consent
Hunter	<ul style="list-style-type: none"> ▪ The promotion of integrated responses to domestic violence ▪ The prevention of sexual assault including a focus on criminal justice issues and service provision ▪ The development and delivery of training on issues of violence against women ▪ Increasing awareness and capacity of workers to address issues of violence 	<ul style="list-style-type: none"> ▪ Hunter Domestic Violence Taskforce Project ▪ Women with an Intellectual Disability and Violence Project ▪ Abuse of Older People Research Project ▪ Training for detectives on drug and alcohol facilitated sexual assault ▪ Training for government agencies, community workers and students ▪ Developing protocols for licensees to better respond to reports of drink spiking
Illawarra	<ul style="list-style-type: none"> ▪ The development of awareness campaigns targeting young people and men ▪ The promotion of integrated 	<ul style="list-style-type: none"> ▪ Illawarra/Shoalhaven Regional Family Violence Conference ▪ Cringila Women’s Futures Project

	<ul style="list-style-type: none"> ▪ response to domestic violence ▪ Working with Aboriginal communities to prevent family violence 	<ul style="list-style-type: none"> ▪ Shellharbour Liquor Accord ▪ Safe Pets Project ▪ Spiked Drinks Campaign
Northern Sydney	<ul style="list-style-type: none"> ▪ The prevention of sexual assault including a focus on the experiences of women with a disability ▪ Abuse of older women ▪ The development of awareness campaigns targeting young people and men 	<ul style="list-style-type: none"> ▪ Abuse of Older women ▪ Sexual Assault Disability and Aged Care Project ▪ Depression, Post Natal Depression and Domestic Violence Forum ▪ Spiked Drinks – It’s Beyond a Joke Campaign
South Eastern Sydney	<ul style="list-style-type: none"> ▪ Working with Aboriginal communities to prevent family violence ▪ The development of awareness campaigns targeting young people and men ▪ Development and promotion of options for women to remain in the home after domestic violence has occurred ▪ The promotion of integrated responses to domestic violence 	<ul style="list-style-type: none"> ▪ 16 Actions Men Can Take to Prevent Violence Against Women ▪ Staying Home Leaving Violence ▪ Paper on Policy Implications of Exclusion Orders and Staying Home Leaving Violence ▪ Sutherland Miranda Anti-Domestic Violence Response Team
South Western Sydney	<ul style="list-style-type: none"> ▪ Improve service delivery and coordination to victims of domestic violence in the Macquarie Fields Housing Estates ▪ Improve service delivery and coordination to victims of domestic violence accessing Criminal Justice System ▪ Improve the overall responsiveness of police to the needs of women who are victims of domestic and family violence 	<ul style="list-style-type: none"> ▪ Safe Families Kit ▪ Black and Blue Campaign ▪ Domestic Violence Intervention Court Model ▪ Family Harmony Kit ▪ Bankstown Men Against Violence group ▪ Capacity Building with Macquarie Fields
Nepean	<ul style="list-style-type: none"> ▪ The prevention of sexual assault including a focus on criminal justices issues and service provision ▪ The development of awareness campaigns targeting young people ▪ Engagement with businesses to address domestic violence 	<ul style="list-style-type: none"> ▪ Family Violence and Pets ‘Safe Spot’ ▪ Sexual Assault in the Hawkesbury ▪ Corporate sponsorship for domestic violence victims ▪ Arm in Arm Peer Education Program
Western Sydney	<ul style="list-style-type: none"> ▪ Building capacity of migrant and refugee communities to address violence against women ▪ Promoting integrated responses to domestic violence and sexual assault ▪ Supporting vulnerable communities access support and justice for issues of violence 	<ul style="list-style-type: none"> ▪ Religion and family harmony ▪ Tamil Family Harmony Project ▪ Sudanese Safe Family Project ▪ Integrated Response to Domestic Violence ▪ Australian Palestinian Support Association Project
Upper Far West (Bourke)	<ul style="list-style-type: none"> ▪ Promoting Aboriginal youth leadership ▪ Developing capacity of communities, women, young people to address violence 	<ul style="list-style-type: none"> ▪ Yaamma Festival ▪ Making a Public Pledge in a Journey to Healing

	<ul style="list-style-type: none"> ▪ Engaging with Aboriginal men to address violence against women and children 	
Riverina	<ul style="list-style-type: none"> ▪ Addressing Aboriginal family violence ▪ Promoting youth leadership ▪ Building self esteem and capacity of young women to have healthy relationships ▪ Promoting criminal justice responses to domestic, family and sexual violence ▪ Raising awareness of impact of violence on children, young people and communities 	<ul style="list-style-type: none"> ▪ Indigenous Domestic Violence Puppets ▪ Domestic Violence Intervention Court Model ▪ Sexual Assault Kit for Great Hume Shire ▪ Yinda Marra Mannan Incorporated Young Women's Group (Wagga) ▪ Black Sons Incorporated Young Men's Group ▪ Narrandra Leeton Domestic Violence Conference 2006
Macquarie (Dubbo)	<ul style="list-style-type: none"> ▪ Promoting healthy relationships for young people ▪ Addressing family violence in Aboriginal communities ▪ Developing and promoting integrated approaches to domestic violence 	<ul style="list-style-type: none"> ▪ Wellington Aboriginal Women's Advisory Group ▪ Moving Forward and Negotiating Consent ▪ Cobar Domestic/Family Violence Community Education Initiative ▪ Domestic Violence Forum 2007
Mid North Coast	<ul style="list-style-type: none"> ▪ Enhancing Interagency responses to domestic violence ▪ Working with Aboriginal communities to prevent family violence ▪ Promoting respectful relationships with young people 	<ul style="list-style-type: none"> ▪ Hastings Domestic Violence Support Project ▪ Love Bites Evaluation ▪ Domestic Violence Game ▪ Reclaim the Night initiative (Mixin' It On the Coast?) ▪ Regional Domestic Violence Manual ▪ GP Initiative
Central Western NSW	<ul style="list-style-type: none"> ▪ The prevention of sexual assault ▪ The development of awareness campaigns targeting young people and men ▪ Working with Aboriginal communities to prevent family violence 	<ul style="list-style-type: none"> ▪ Women's Art Project ▪ Bathurst Action Against Sexual Assault ▪ Expect Respect
New England	<ul style="list-style-type: none"> ▪ Supporting small and remote communities to address issues of violence ▪ Building capacity of Aboriginal women, young people and communities to respond to violence ▪ Promoting criminal justice and integrated responses to domestic and sexual violence 	<ul style="list-style-type: none"> ▪ Sista Girl Camps ▪ Gwabegar – community activities for a small community experiencing the closure of the timber mill ▪ Community Support Initiative ▪ Keeping Youth in Focus Conference (September 2006)
Northern Rivers	<ul style="list-style-type: none"> ▪ The prevention of sexual assault including a focus on criminal justice issues and service provision ▪ Working with Aboriginal communities to prevent family violence ▪ The development of awareness campaigns targeting young people 	<ul style="list-style-type: none"> ▪ Sexual Assault Education Campaign ▪ Expect Respect campaign by Kids Really Count Interagency

	<p>and men</p> <ul style="list-style-type: none"> ▪ The promotion of integrated responses to domestic violence 	
Southern NSW	<ul style="list-style-type: none"> ▪ Working with Aboriginal communities to prevent family violence ▪ The prevention of sexual assault including a focus on criminal justice issues and service provision 	<ul style="list-style-type: none"> ▪ Addressing Aboriginal Family Violence on the south coast – A Better Way ▪ Staying Home Leaving Violence Pilot (Bega)
Lower Far West (Broken Hill)	<ul style="list-style-type: none"> ▪ Establishing the Regional Reference Group or equivalent process ▪ Coordinating 16 Days activities ▪ Exploring the establishment of a safe house 	<ul style="list-style-type: none"> ▪ Menindee Women’s Health and Wellbeing Weekend ▪ Menindee Fun Day to promote awareness of violence against women and ways to strengthen families ▪ Menindee School Camps for Years 10 and 7 ▪ Wilcannia’s Big Day Out

5 THE POLICING OF DOMESTIC VIOLENCE

The police play an important role in preventing and responding to domestic violence. They may: be called to an incident; assist with obtaining an apprehended domestic violence order (ADVO); and prosecute offenders. The need for police officers to be equipped to respond appropriately to domestic violence incidents has been recognised. According to the NSW Ombudsman:

To instill confidence in victims, to communicate a strong message to offenders that their behaviour is unacceptable, and to facilitate access to justice and support, it is vitally important that police officers carry out their duties effectively when responding to domestic violence.³⁸

Each Local Area Commander within the NSW Police is responsible for providing their officers with the necessary training and support to ensure:³⁹

- domestic violence matters are dealt with promptly and efficiently;
- mechanisms are in place to respond strategically to domestic violence;
- victims of domestic violence are responded to in a non-judgmental manner and treated with dignity and respect; and
- all police officers provide victims of domestic violence with the highest level of professional intervention in a culturally sensitive manner.

Domestic Violence Liaison Officers (DVLOs)⁴⁰ are specialist police officers who link the Local Area Command to the local community, especially to services and organisations that provide victim support. The role of a DVLO is:⁴¹

- to provide advice to police and victims;
- assist in referral to appropriate support agencies;
- maintain close working relationships with all support agencies;
- review and oversight all family and domestic violence reports and cases;

³⁸ NSW Ombudsman, above n 25, p 7.

³⁹ NSW Ombudsman, above n 25, p 9.

⁴⁰ The source for information of Domestic Violence Liaison Officers is: NSW Ombudsman, above n 25, p 10.

⁴¹ NSW Police, 'Introduction and message from Assistant Commissioner Reg Mahoney', www.police.nsw.gov.au Accessed 28/5/07.

- assist victims through the court process for Apprehended Violence Orders; and
- monitor repeat victims and perpetrators.

DVLOs advise and train general duties officers and monitor the effectiveness of the response to domestic violence. They attend to victim support protection and follow-up, monitor the service of ADVOs and summons, in addition to instructing the police prosecutor at court.

5.1 Search, entry and seizure powers

The main police powers that determine the response of officers to incidents of domestic violence are their search, entry and seizure powers, in addition to applications for apprehended violence orders (AVOs).⁴² Part 6 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) sets out search, entry and seizure powers relating to domestic violence offences. A police officer may enter a dwelling and remain there for the purposes of investigating whether a domestic violence offence has been committed and/or to take action to prevent the commission of a domestic violence offence if he or she is invited by a resident to enter the dwelling and the police officer believes on reasonable grounds that a domestic violence offence is being or has been committed, is imminent or is likely to be committed.⁴³ A police officer may enter and remain even if one of the occupiers expressly refuses entry in circumstances where a person who appears to be a resident and a victim of domestic violence issues the invitation.

A police officer may obtain entry by warrant if entry is denied and the police officer suspects that:⁴⁴

- a domestic violence offence is being, or may have been recently, committed, or is imminent, or is likely to be committed in the dwelling, and
- it is necessary for a police officer to enter the dwelling immediately in order to investigate whether a domestic violence offence has been committed or to take action to prevent the commission or further commission of a domestic violence offence.

Once a police officer has entered a dwelling he or she must inquire as to the presence of any firearms and may only take action that is reasonably necessary to:⁴⁵

- a. investigate whether a domestic violence offence has been committed;

⁴² NSW Ombudsman, above n 25, p 7.

⁴³ Section 82 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)

⁴⁴ Section 83 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)

⁴⁵ Section 85 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)

- b. render aid to any person who appears to be injured;
- c. exercise any lawful power to arrest a person; and
- d. prevent the commission or further commission of a domestic violence offence.

Section 86 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) empowers police to enter and search the premises for firearms if he or she believes on reasonable grounds that they are present (despite statements to the contrary by an occupant) and a search warrant has been obtained. Section 87 enables a police officer who has entered a dwelling and believes on reasonable grounds that a dangerous article is present and is being, was or may be used to commit a domestic violence offence to search the dwelling for the article and seize and detain it.

6 APPREHENDED DOMESTIC VIOLENCE ORDERS

Apprehended violence orders (AVOs) were first provided for in legislation in NSW following the enactment of the *Crimes (Domestic Violence) Amendment Act 1982* (NSW). For a history of apprehended violence orders in NSW see: *Incidence and regulation of domestic violence in NSW* by Rachel Simpson, NSW Parliamentary Library Briefing Paper No 4/00, p 14ff.

Apprehended violence orders are governed by Part 15A of the *Crimes Act 1900* (NSW) and include both apprehended domestic violence orders (ADVOs) and apprehended personal violence orders (APVOs). The objects of providing for the making of apprehended violence orders are:⁴⁶

- a. to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and
- b. to reduce and prevent violence between persons who are in a domestic relationship with each other, and
- c. to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and
- d. to enact provisions that are consistent with the United Nations Convention on the Rights of the Child.

These objectives are to be achieved by ‘empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation, stalking and harassment, and ensuring that access to courts is speedy, inexpensive, safe and simple as is consistent with justice’.⁴⁷ AVOs are a civil matter and thus differ to the pressing of criminal charges. These differences are highlighted in the table below.

Apprehended Violence Order	Criminal Charge
Is not a criminal conviction.	The offender if charged and found guilty usually has a criminal conviction recorded.
Women can apply for the order themselves and in some circumstances the police will make the application.	Police usually lay the charges and prosecute the matter.
Purpose is to provide protection from future behaviour.	Purpose is to deal with offences which have already occurred.
Places conditions or restrictions on the offender.	Imposes a sentence on the offender.
Standard of proof: balance of probabilities.	Standard of proof: beyond reasonable doubt.
A breach of an AVO is a criminal offence.	

⁴⁶ Section 562E *Crimes Act 1900* (NSW)

⁴⁷ Section 562E(2) *Crimes Act 1900* (NSW)

Source: Violence Against Women Specialist Unit, *Domestic Violence Interagency Guidelines: Working with the legal system in responding to domestic violence*, NSW Attorney General's Department, 2003, p 42.

This section will examine the provisions relevant to the making of ADVOs as APVOs are concerned with protecting a person in situations where there is no relationship between the parties.

6.1 Crimes Amendment (Apprehended Violence) Act 2006 (NSW)

The *Crimes Amendment (Apprehended Violence) Act 2006* (NSW) made a number of changes to the operation of Part 15A of the *Crimes Act 1900*. The Crimes Amendment (Apprehended Violence) Bill was introduced in the Legislative Assembly on 6 September 2006 following the report of the NSW Law Reform Commission (NSWLRC) on Part 15A of the *Crimes Act*. The NSWLRC found that AVO legislation was generally considered to be adequate and effective, with the greatest impediment to its effectiveness being its implementation and interpretation by police, the legal profession and magistrates.⁴⁸ The purposes of the Bill were to:

offer greater protection to victims of domestic and personal violence; recognise the gravity of domestic violence and how it may differ from other violent crimes; minimise as much as possible the stress and trauma that is associated with apprehended violence orders; streamline the process of making an application and having that application heard; minimise the impact of AVO proceedings on the most vulnerable members of society, our children; and ensure that New South Wales has the most progressive and up-to-date laws possible with respect to this very important highly poignant area of concern.⁴⁹

The Government presented the Bill as adopting many of the recommendations of the NSW Law Reform Commission, with the following identified as reforms to be effected by the Bill:⁵⁰

- new, expanded definitions – for example, the definition of stalking was made more inclusive, and the definition of ‘domestic relationship’ was expanded to account for the Indigenous kinship system;
- a revised test for granting an apprehended domestic violence order and additional considerations;
- new provisions for referral to mediation for apprehended personal violence orders;

⁴⁸ NSW Law Reform Commission, *Apprehended Violence Orders*, Report 103, October 2003, pp 16 and 17.

⁴⁹ Neville Newell MP, Second Reading Speech, *NSWPD*, 6/9/06, p 1592.

⁵⁰ Neville Newell MP, Second Reading Speech, *NSWPD*, 6/9/06, p 1592.

- new provisions concerning the granting of telephone interim orders;
- new, limited police powers to detain and arrest for the purpose of serving an order;
- the protection of children and victims of sexual assault in AVO proceedings;
- revised restrictions and prohibitions that may be imposed upon a defendant for both interim orders and final orders;
- new provisions for property recovery orders;
- the abolition of the complaints and summons process;
- revised police discretion not to make an application;
- extended duration for final orders; and
- revised variation and revocation provisions.

The NSW Law Reform Commission found via the submission and consultation process of its reference into apprehended violence orders that many women who had experienced domestic violence believed that:

taking out an ADVO was extremely effective and empowering. It acts as a statement that violence will no longer be tolerated, may serve as a mechanism to end an abusive relationship, and often assists victims to come into contact with support services they may otherwise not have been familiar with. The Commission was told that the knowledge that there was some legal recourse to stop the violence gave these women a feeling of peace, safety and control over their destinies, and the well-being of their children, that they had never before encountered.... Although there is always the reality that those who take action risk further violence, people have reported that, in their experience, legal responses to violence can and do work.⁵¹

6.2 Definitions: domestic violence offence and domestic relationship

A ‘domestic violence offence’ is defined in section 562A of the *Crimes Act 1900* (NSW) as ‘a personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship’. A personal violence offence includes, amongst other things: murder; manslaughter; malicious wounding; poisoning; failing to provide food; assault; sexual assault; indecent assault; kidnapping; and maliciously destroying or damaging property. Numerous types of relationships are recognised within the category of ‘domestic relationship’ including: marriage and de facto partnerships; intimate personal relationships; living or having lived

⁵¹ NSWLRC, above n 48, pp 16-17.

in the same household; long-term residents in the same residential facility; carers, relatives; and extended family or kin in the case of Indigenous Australians.⁵² It does not matter whether the relationship is past or current.

6.3 Who can make an application?

An ADVO can be issued to protect a person from another person with whom he or she has/had a domestic relationship.⁵³ An application for an order can be made by the person seeking protection or by a police officer, unless the person seeking protection is a child in which case a police officer is to make the application.⁵⁴

The court when deciding whether to make an order is to consider the safety and protection of the protected person and any child.⁵⁵ This is to guide considerations of residence, hardship and accommodation needs in relation to the affected parties. Whilst the impact on all parties is to be considered the court is to be particularly concerned with the effect on the protected person and any children.

Police officers may apply for an interim ADVO by telephone where there has been an incident and the officer has ‘good reason to believe an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person’.⁵⁶ A police officer is obliged to apply for an order where he or she has such a belief and: a domestic violence offence, stalking or intimidation has recently occurred, is being committed, is imminent or is likely to be committed; or if there are concerns of abuse of a child or young person; or if proceedings have been commenced in relation to any of these offences.⁵⁷ Should the police officer believe there is good reason to not make the application, his or her reasons must be recorded in writing. The section makes it clear that the reluctance of a person to make an application does not constitute a good reason for the police officer to not make an application where the officer reasonably believes that the person has been the victim of violence or there is a significant threat of it or the person has an intellectual disability and no guardian.

A police officer investigating a matter must apply for an AVO, unless an order is already in place, if he or she suspects or believes that:⁵⁸

⁵² Section 562B *Crimes Act 1900* (NSW)

⁵³ Section 562F *Crimes Act 1900* (NSW)

⁵⁴ Section 562ZQ *Crimes Act 1900* (NSW)

⁵⁵ Section 562H *Crimes Act 1900* (NSW)

⁵⁶ Section 562P *Crimes Act 1900* (NSW)

⁵⁷ Section 562Q *Crimes Act 1900* (NSW)

⁵⁸ Section 562ZR *Crimes Act 1900* (NSW)

- a domestic violence, stalking or intimidation offence has recently been or is being committed, is imminent or is likely to be committed;
- the abuse of a child or young person has recently been or is being committed, is imminent or is likely to be committed; or
- proceedings have been commenced against a person for such an offence as the above.

An exception is provided should the police officer believe that the person (aged 16 or over) in need of the protection order intends to make the application or there is good reason to not make the application. However, in this situation the reasons for not making the application must be recorded in writing. Like with telephone interim orders, a police officer cannot choose to not make an application simply because the person in need of protection is reluctant to make an application. However, this is only in circumstances where the person has been the victim of violence (or there is a significant threat of it) or the person has an intellectual disability and no guardian.

If a person pleads or is found guilty of a stalking, intimidation or domestic violence offence, the court must make an order for the protection of the person against whom the offence was committed unless satisfied that it is not required.⁵⁹ An application for an order in such circumstances may thus not be strictly necessary. An interim AVO is to be made by the court (unless it is satisfied that it is not required) where a person appears before a court charged with one of the above offences.⁶⁰

6.4 Standard of proof

A civil standard of proof applies to the making of an ADVO, that is, the court must be satisfied on the balance of probabilities that:

a person who has or has had a domestic relationship with another person has reasonable grounds to fear and in fact fears:

- a. the commission by the other person of a personal violence offence against the person, or
- b. the engagement of the other person in conduct in which the other person:
 - i. intimidates the person or a person with whom the person has a domestic relationship, or
 - ii. stalks the person,

⁵⁹ Section 562ZU *Crimes Act 1900* (NSW)

⁶⁰ Section 562ZV *Crimes Act 1900* (NSW)

being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.⁶¹

However, one of the major changes instituted by the 2006 Act was that the court no longer needs to be satisfied that the person to be protected actually fears an offence if he or she: is a child; is of appreciably below average intelligence; or has been subjected to conduct by the defendant that is a personal violence offence; and it is reasonably likely that the defendant may commit a personal violence offence and the order is thus necessary to protect the person.⁶² This amendment was designed to overcome the problem created when a victim is a reluctant participant in the application and thus tells the court that he or she is not in fear.⁶³ The Office of the Director of Public Prosecutions Protocol for Reviewing Domestic Violence Offences notes that it is not uncommon for victims of domestic violence to request that prosecution be discontinued. Some of the reasons suggested for this include:⁶⁴

- the relationship between the victim and the accused has resumed;
- the victim has forgiven the accused;
- the victim is financially dependent on the accused;
- the accused agrees to seek counselling;
- the accused has threatened, harassed or intimidated the victim; and/or
- disillusionment with the criminal justice system.

6.5 Interim orders

The types of restrictions that may be imposed by telephone interim orders on a defendant include prohibitions or restrictions on:⁶⁵

- approaching the protected person;
- accessing premises occupied by the protected person, his or her place of work, or specific premises frequented by the protected person;

⁶¹ Section 562G *Crimes Act 1900* (NSW)

⁶² Section 562G(2) *Crimes Act 1900* (NSW)

⁶³ Neville Newell MP, Second Reading Speech, *NSWPD*, 6/9/06, p 1593.

⁶⁴ Office of the Director of Public Prosecutions, *Prosecution Guidelines*, 2003, Appendix E. A copy of the guidelines may be downloaded from www.odpp.nsw.gov.au

⁶⁵ Section 562S *Crimes Act 1900* (NSW)

- approaching the protected person within 12 hours of consuming alcohol or illicit drugs;
- the possession of firearms;
- the destruction, damage or interference of property belonging to the protected person.

A telephone interim order may remain in force for 28 days.⁶⁶ The amendments made by the *Crimes Amendment (Apprehended Violence) Act 2006* (NSW) concerning telephone interim orders clarified that an application for such an order could be made at any time and are not an option that only applies outside of court sitting times.⁶⁷ This change was seen as facilitating the emergency protection of victims.

A court or registrar may also make interim apprehended violence orders. These remain in force until: revoked; they cease to have effect; or the application for a final order is withdrawn or dismissed.⁶⁸

6.6 Conditions of orders

A court is empowered when making an apprehended violence order to ‘impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court and, in particular, to ensure the safety and protection of the person in need of protection and any children from domestic or personal violence’.⁶⁹ The court must be informed of any relevant parenting order or a pending application for one.⁷⁰ Similar prohibitions or restrictions may be imposed on the defendant as apply to telephone interim orders but with the addition of prohibiting or restricting specified behaviour by the defendant which might affect the protected person. Section 562ZE also makes it clear that every order prohibits the defendant from:

- a. assaulting, molesting, harassing, threatening or otherwise interfering with the protected person or a person with whom the protected person has a domestic relationship,
- b. engaging in any other conduct that intimidates the protected person or a person with whom the protected person has a domestic relationship,

⁶⁶ Section 562W *Crimes Act 1900* (NSW)

⁶⁷ Neville Newell MP, Second Reading Speech, *NSWPD*, 6/9/06, p 1593.

⁶⁸ Section 562ZC *Crimes Act 1900* (NSW)

⁶⁹ Section 562ZD *Crimes Act 1900* (NSW)

⁷⁰ Section 562ZO *Crimes Act 1900* (NSW)

- c. stalking the protected person or a person with whom the protected person has a domestic relationship.

Final court orders may remain in force for 12 months or such period considered by the court to be necessary to ensure the safety and protection of the protected person.⁷¹ The court can extend an order to also protect persons with whom the protected person has a domestic relationship.⁷²

6.7 Consequences of contravention of an order

Whilst the making of an ADVO is a civil matter, contravention of a prohibition or restriction specified in an order is a criminal offence.⁷³ Unless otherwise ordered by the court, the person (if over the age of 18) must be sentenced to a term of imprisonment if the contravention involved an act of violence against the protected person. Reasons must be provided should the court decide to not impose a sentence of imprisonment. A police officer must also record the reasons in writing of any decision not to initiate or continue with criminal proceedings against a person who has allegedly contravened the terms of an order.

6.8 Women's Domestic Violence Court Assistance Scheme

It has been recognised that some victims could benefit from support and other assistance throughout the ADVO process. A party to a proceeding for an ADVO who is required to give evidence may accordingly choose a support person to have with him or her whilst giving evidence.⁷⁴ The Women's Domestic Violence Court Assistance Scheme has also been established and operates 33 schemes supporting women at 55 local courts throughout NSW.⁷⁵ Women can access this scheme for assistance with obtaining an ADVO. Support workers that are part of the Scheme can: explain about ADVOs and how to stop domestic violence; explain the court process; provide support in court; provide information on other relevant agencies; and assist with obtaining legal representation.⁷⁶ The objectives of the Women's Domestic Violence Court Assistance Program are:⁷⁷

1. To improve the accessibility of the Local Court system for women seeking apprehended violence orders;

⁷¹ Section 562ZY *Crimes Act 1900* (NSW)

⁷² Section 562ZX *Crimes Act 1900* (NSW)

⁷³ Section 562ZG *Crimes Act 1900* (NSW)

⁷⁴ Section 562ZN *Crimes Act 1900* (NSW)

⁷⁵ Legal Aid NSW, 'Women's Domestic Violence Court Assistance Program', www.legalaid.nsw.gov.au Accessed 17/5/07.

⁷⁶ Women's Domestic Violence Court Assistance Program Brochure www.legalaid.nsw.gov.au

⁷⁷ Violence Against Women Specialist Unit, above n 5, p 64.

2. To familiarise women and their children with the Court process, layout and personnel, in order to increase their knowledge of the criminal justice system and its operations;
3. To arrange legal representation from appropriately trained, sympathetic legal practitioners/police prosecutors for women and their children seeking Apprehended Violence Orders;
4. To advocate on behalf of women and their children around or in connection with Local Court proceedings. To be available to follow up on the order and make appropriate referrals on other legal matters;
5. To assist women and their children seeking assistance with domestic violence matters to identify their needs and then advocate on their behalf in relation to those needs;
6. To provide referral and advocacy to other appropriate services in the area of income support, housing, order enforcement, counselling and other needs as required;
7. To provide court assistance services in a manner that ensures access and equity principles are applied to meet the particular requirements of special need groups within local communities; and
8. To assist in ensuring that the personal safety of women and children is of the highest priority at all times whilst in the precinct of the Court and its surrounds.

Assistance was provided in 33,618 ADVO appearances in 2003/04, with one-third of the women assisted residing in rural/remote areas of NSW. 14% of the women aided were Indigenous Australians.⁷⁸

6.9 Domestic Violence Solicitor Scheme

The Domestic Violence Solicitor Scheme is funded by Legal Aid NSW and operates in 12 Sydney and Central Coast courts (Burwood, Bankstown, Blacktown, Campbelltown, Gosford, Kogarah, Liverpool, Penrith, Sutherland, Waverley, Woy Woy and Wyong).⁷⁹ Rostered solicitors may provide legal representation and advice to victims of domestic violence in ADVO matters.

⁷⁸ NSW Ombudsman, above n 25, p 36.

⁷⁹ Gaudin J, 'Legal assistance for people experiencing domestic violence – the Women's Domestic Violence Court Assistance Schemes and the Domestic Violence Solicitor Scheme', *Directlink: NSW District and Local Courts Practice Newsletter*, 7(8) April 2007, p 8.

7 FAMILY LAW

In accordance with the Constitution, the Australian Parliament has power to make laws with respect to ‘marriage’ and ‘divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants’.⁸⁰ In addition, NSW has referred its power to legislate regarding issues of residence and contact in relation to ex-nuptial children to the federal parliament. The *Family Law Act 1975* (Cth) is the main statute guiding issues of divorce, spousal maintenance and arrangements after separation regarding children. The Family Court of Australia was established to interpret and apply the *Family Law Act*. Section 43 sets out the principles to be applied, of which one is the need to protect people from violence:

The Family Court shall, in the exercise of its jurisdiction under this Act, and any other court exercising jurisdiction under this Act shall, in the exercise of that jurisdiction, have regard to:

- a. the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
- b. the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
- c. the need to protect the rights of children and to promote their welfare;
- ca. *the need to ensure safety from violence*; and
- d. the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to their children.

[emphasis added]

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) was passed by the Australian Parliament in 2006 and effected the most significant changes to the *Family Law Act 1975* (Cth) since its inception.⁸¹ The intention of the amendments were made clear by the Hon Philip Ruddock MP in his Second Reading speech:

The government wants to ensure that children have a right to know both their parents and, where possible, to encourage parents to continue to take shared

⁸⁰ Section 51(xxi) and (xxii) *Commonwealth of Australia Constitution Act 1900* (Cth)

⁸¹ Hon Philip Ruddock MP, Second Reading Speech, *CPD(HR)*, 8/12/05, p 9.

responsibility for their children after they separate. Importantly, the bill also has an increased focus on protecting children from family violence and child abuse.⁸²

One of the major changes made by the Act was the introduction of a presumption of equal shared parental responsibility. In addition, the Act introduced a requirement that parties attend family dispute resolution before applying for a parenting order. Whilst these requirements do not apply to cases where there has been family violence, numerous commentators have expressed concern about the potential repercussions of these amendments on victims of family violence. Laing has highlighted that the period following separation poses the greatest risk of death or serious injury to women yet this is when they are required to negotiate issues of contact and residence in relation to their children. Laing warns that this may result in the abusive partner utilising these issues as a means of continuing control.⁸³ An analysis of judgments in children's matters between January and June 2003 found that allegations of family violence had been made against a member of the child's immediate or extended family in 68 out of 91 judicially determined matters.⁸⁴ Accordingly, family violence is a major consideration in family law.

The Family Court of Australia launched its Family Violence Strategy in March 2004 as part of its commitment to addressing family violence.⁸⁵ The guiding principles underpinning the Strategy include:

1. Primacy of safety.
2. Recognition of the impact of family violence.
3. Recognition of the impact of violence on children.
4. Recognition of the diversity of court clients.
5. Risk assessment approach.
6. Importance of information provision.
7. Community partnership approach.
8. Importance of development programs.

Section 4 of the *Family Law Act 1975* (Cth) defines 'family violence' as:

⁸² Hon Philip Ruddock MP, Second Reading Speech, *CPD(HR)*, 8/12/05, p 11.

⁸³ Laing L, *Children, young people and domestic violence*, Australian Domestic and Family Violence Clearinghouse Issues Paper No 2, 2000, p 19.

⁸⁴ Family Court of Australia, *Family Violence Strategy 2004-2005*, p 3.

⁸⁵ Information on the Family Violence Strategy can be found on the website for the Family Court of Australia www.familycourt.gov.au

conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

The definition is followed by a note that 'A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety'.

7.1 Best interests of children

Part VII of the *Family Law Act* is concerned with children. Section 60B(1) establishes that the objects of Part VII are to ensure that the best interests of children are met by:

- a. ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
- b. *protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and*
- c. ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
- d. ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

[emphasis added]

Accordingly, the need to protect children from violence is an inherent part of determining what is in their best interests. The Court is to have regard to the best interests of the child as its paramount consideration when making a parenting order.⁸⁶ There are two primary considerations in determining what is in the best interests of the child:⁸⁷

- i. the benefit to the child of having a meaningful relationship with both parents; and
- ii. the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

In addition, the court is to consider, amongst other things, any family violence involving the child or a member of his or her family and any family violence order (either a final

⁸⁶ Section 60CA *Family Law Act 1975* (Cth)

⁸⁷ Section 60CC *Family Law Act 1975* (Cth)

order or one that was contested) applicable to the child or a member of his or her family. The Court when making parenting orders is to presume that equal shared parental responsibility is in the best interests of the child.⁸⁸ However, this presumption does not apply if there are reasonable grounds to believe that a parent of the child or a person who lives with a parent has engaged in family violence.

The Court must be informed of any relevant family violence order.⁸⁹ A ‘family violence order’ is defined in section 4 to mean an order made under State or Territory law to protect a person from family violence. An ADVO made in NSW is thus an applicable consideration. The Court when determining what order is to be made must ensure that it is consistent with any family violence order and that it does not expose a person to an unacceptable risk of family violence.⁹⁰

7.2 Family dispute resolution

All persons who wish to apply for a Part VII order must first make a genuine effort to resolve the matter by family dispute resolution.⁹¹ However, an exception will apply if the court accepts there are reasonable grounds that there has been, or there is a risk of, family violence by one of the parties to the proceedings. One of the concerns with this process is whether all situations involving family violence will be identified. In its enquiry into the impact of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), the Legislative Council Standing Committee on Law and Justice received a number of submissions that highlighted the difficulty of identifying the presence of family violence issues as many women either do not disclose or minimise the extent of violence.⁹²

The Court is required to take prompt action in relation to allegations of child abuse or family violence if an application has been made for a Part VII order.⁹³ It must consider and make what interim or procedural orders are necessary to enable appropriate evidence about the allegation to be obtained as expeditiously as possible and to protect the child or any of the parties to the proceedings. This must occur as soon as practicable after the document alleging family violence or child abuse is filed and, if appropriate, within eight weeks.

⁸⁸ Section 61DA *Family Law Act 1975* (Cth)

⁸⁹ Section 60CF *Family Law Act 1975* (Cth)

⁹⁰ Section 60CG *Family Law Act 1975* (Cth)

⁹¹ Section 60I *Family Law Act 1975* (Cth). See also section 65F which specifies the general requirement that the parties to proceedings must attend family counselling before a parenting order is to be made. However, an exception applies if some special circumstance such as family violence makes it appropriate for a parenting order to be made even though the parties have not attended family counselling.

⁹² NSW Parliament, Legislative Council Standing Committee on Law and Justice, *Impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), Report 33 (Chair: Christine Robertson MLC), November 2006, p 20.

⁹³ Section 60K *Family Law Act 1975* (Cth)

7.3 Injunctions

Another option available is obtaining an injunction. Section 68B empowers the court to grant an injunction should it consider it appropriate for the welfare of the child. This may include an injunction for the personal protection of the child or the personal protection of his or her parent, a person with whom he or she resides/communicates, or a person with parental responsibility for the child. An injunction may also be granted to restrain a person entering or remaining in a place of residence, employment or education of the child/relevant person.

7.4 Family violence

Division 11 of Part VII of the *Family Law Act* is concerned with family violence. Child abuse and domestic violence are believed to coexist in somewhere between 30 and 60% of cases.⁹⁴ Laing warns that a concern for children can result in the mother being questioned as to why she does not leave rather than focusing on why the man uses violence, tapping into an ‘ideology of motherhood’ and ‘the belief that mothers are primarily responsible for the welfare of children and family, and for any family difficulties which arise. This is a social context in which the role and responsibility of the perpetrator of violence can become invisible’.⁹⁵ Laing concludes:

A delicate balancing act is required, one which both acknowledges the trauma and terror which many children and young people have faced, yet which does not stigmatise and pathologise those who have been victimised. Intervention, prevention and systemic response to children and young people who have experienced domestic violence must be developed in a framework in which the responsibility of the perpetrator of violence remains central and visible.⁹⁶

One of the intentions of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) was to clarify the relationship between parenting orders and family violence orders.⁹⁷ The purposes of the Division as expressed in section 68N are:

- a. to resolve inconsistencies between:
 - i. family violence orders; and
 - ii. certain orders, injunctions and arrangements made under this Act that provide for a child to spend time with a person or require or authorise a person to spend time with a child; and

⁹⁴ Laing, above n 83, p 16. The NSW Ombudsman, above n 28, p 7 has also noted the strong correlation between child abuse and domestic violence.

⁹⁵ Laing, above n 83, p 22.

⁹⁶ Laing, above n 83, p 22.

⁹⁷ Hon Philip Ruddock MP, Second Reading Speech, *CPD(HR)*, 8/12/05, p 12.

bb. to ensure that orders, injunctions and arrangements of the kind referred to in subparagraph (a)(ii) do not expose people to family violence; and

b. to achieve the objects and principles in section 60B.

If the Court makes an order or grants an injunction that is inconsistent with an existing family violence order, it must give a detailed explanation of how the contact between the child and the relevant person is to take place, including the provision of an explanation to the applicant and respondent, the protected person, and the person against whom the family violence order is directed.⁹⁸ The family violence order is invalid to the extent of the inconsistency.⁹⁹

Section 69ZN sets out the principles that are to apply to the conduct of child-related proceedings. The third principle specifies that the proceedings are to be conducted in such a way that will safeguard:

- a. the child concerned against family violence, child abuse and child neglect; and
- b. the parties to the proceedings against family violence.

Section 69ZW empowers the court to make an order requiring a State or Territory agency to provide the court with documents or information specifying any notifications to the agency of suspected child abuse or of suspected family violence affecting the child and any assessments, findings or reports regarding such notifications.

⁹⁸ Section 68P *Family Law Act 1975* (Cth)

⁹⁹ Section 68Q *Family Law Act 1975* (Cth)

8 SPECIALIST DOMESTIC VIOLENCE COURTS

8.1 What are they?

A trend has emerged of increasing specialisation in the courts to deal with particular issues and/or defendants. For example, children's courts and drug courts. Domestic violence courts have been established in a number of jurisdictions in recent years and are particularly widespread in the United States of America. Julie Stewart has described domestic violence courts as:

courts specially convened or courts scheduling a specially allocated list day – to remove domestic violence cases from the mainstream of day-to-day court processes by identifying them and tagging them for streaming for improved legal processes and expedition. Their objectives or ideals are to ameliorate victims' experiences of the legal system and, more often than not, so it seems, to use the court's power to direct offenders into treatment. Overall, the specialist domestic violence court, due to its specialist expertise, operates with the intention of providing better outcomes for victims and perpetrators, while operating within the precincts of magistrates' courts (or their equivalent).¹⁰⁰

The following table summarises what Stewart has identified as the principles, aims and anticipated outcomes of specialist domestic violence courts.

Principles	<ul style="list-style-type: none"> ▪ Victims' interests are to be at the heart of the process. ▪ Emphasis on criminalisation of domestic violence. ▪ Empowerment for victims. ▪ Responsibility and accountability of offenders. ▪ Respect.
Aims	<ul style="list-style-type: none"> ▪ Best practice in policing and prosecuting domestic violence offences. ▪ Expedition of cases. ▪ Information, support, advocacy and services for victims of domestic violence and their children. ▪ Safety for victims of domestic violence and their children as the primary outcome. ▪ Safety for victims at court. ▪ Validation and empowerment of victims of domestic violence and their children. ▪ Responsibility and accountability for domestic violence to be accepted by offenders. ▪ Reduction and prevention of domestic violence.
Anticipated outcomes	<ul style="list-style-type: none"> ▪ Increased level of awareness of domestic violence within the community and the agencies which respond to it. ▪ Raised awareness of offenders and victims that action will be taken if a domestic violence offence is reported to police. ▪ Increased rate of reporting of domestic violence offences. ▪ Increased victim participation, a lessened rate of victims' withdrawal from

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Stewart J, *Specialist domestic/family violence courts within the Australian context*, Australian Domestic and Family Violence Clearinghouse Issues Paper 10, 2005, p 4.

	<p>proceedings.</p> <ul style="list-style-type: none"> ▪ Proactive policing and improved investigation methods in domestic violence offences. ▪ Increased rate of guilty pleas and convictions for domestic violence offences, due in part to better evidence and brief preparation. ▪ Increased rate of prosecution of domestic violence offences. ▪ Decreased rate of withdrawal of charges. ▪ Higher level of safety of victims of domestic violence and their children. ▪ More appropriate protection orders, tailored to victims' circumstances. ▪ Increased quality of service delivery. ▪ Increased interagency cooperation. ▪ Consistency of approach to domestic violence. ▪ Coordination of services. ▪ Accountability of courts and its personnel to the community and service providers. ▪ Reduction and prevention of further domestic violence. ▪ Victim satisfaction with the process.
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Source: Stewart J, *Specialist domestic/family violence courts within the Australian context*, Australian Domestic and Family Violence Clearinghouse Issues Paper 10, 2005, pp 7-8.

The distinct nature of domestic violence was recognised by the NSW Law Reform Commission which made the following recommendation in its report on AVOs:

The Commission recognises that domestic violence raises different issues from violence in other relationships, and requires a specialised legal response. Accordingly, the Commission recommends that a panel of Magistrates with specialist training in domestic violence issues be established as a pilot project in a Local Court with a high turnover of domestic violence matters. That panel should deal with all aspects of violence, intimidation, harassment and stalking in domestic relationships, including ADVOs.¹⁰¹

The remainder of this section provides an overview of some of the domestic violence court programs operating in Australia.

8.2 NSW Domestic Violence Intervention Court Model

In NSW, the Wagga Wagga and Campbelltown Domestic Violence Intervention Court Model (DVICM) commenced in 2005 in response to a recommendation from the 2003 NSW Alcohol Summit. It is:

an integrated criminal justice and community social/welfare response to domestic violence which involves proactive responses from police and courts, improved evidence collection, and better support for victims where an advocate is appointed to provide information and support to victims, and perpetrators are referred to perpetrator programs.¹⁰²

¹⁰¹ NSWLRC, above n 48, recommendation 2.

¹⁰² Violence Against Women Specialist Unit, 'Current state wide initiatives', www.lawlink.nsw.gov.au Accessed 21/5/07.

The partners in the DVICM include: the NSW Attorney General's Department, NSW Police, Department of Corrective Services, NSW Legal Aid Commission and the NSW Department of Community Services. Then Premier Carr described the Domestic Violence Intervention Court Model Trial as:

intervening and assisting at the point of the report of the violent incident itself through to the sentencing and management of the offender. The model adopts international and national best practice to improve the policing and prosecution of domestic violence. It will increase collaboration between legal and welfare agencies. It means a presumption in favour of arresting and charging perpetrators – that is important – rather than treating domestic violence as something private that does not need a police response. We will provide quicker and more seamless help for victims from the first report through to the end of the court case. We will improve our response to children affected by domestic violence, especially by ensuring that more women and children can remain in the family home, allowing children to stay in familiar neighbourhoods and schools and instead finding alternative accommodation for perpetrators rather than the victims.

At the same time, there will be an increased use of exclusion orders to keep offenders away from victims. Victims will also benefit from the streamlining of the criminal justice process. We will speed up domestic violence cases by giving magistrates clear directives on how to run domestic violence cases, and bring better investigative techniques to bear, ensuring greater success for domestic violence cases in court. The Department of Corrective Services will provide mandatory perpetrator education, teaching violent spouses to understand the causes of their anger, and how to overcome it, we hope, cutting the rate of reoffending and protecting partners in the future. This is an unashamedly interventionist approach, tougher on offenders and fairer to victims.¹⁰³

The Domestic Violence Intervention Court Model aims to 'improve safety for victims of domestic violence offences in contact with the criminal justice system and ensure perpetrators of domestic violence offences are held to account for their actions' by.¹⁰⁴

- providing efficient and seamless support to victims of domestic violence, through the entire prosecution process;
- improving the quality of the prosecution process to get better criminal justice system outcomes;
- finding the balance between individual victim concerns and criminal justice system responsibilities to uphold law; and

¹⁰³ Hon Bob Carr MP, *NSWPD*, 26/10/04, p 11949.

¹⁰⁴ Crime Prevention Division, 'Domestic Violence Court Intervention Model', www.lawlink.nsw.gov.au Accessed 21/5/07.

- providing integrated offender victim and children's programs aimed at enhancing victim's safety and reducing repeat offending.

If a domestic violence incident is reported to police and there is sufficient evidence the DVICM will:¹⁰⁵

- improve collection of evidence and actively pursue charges;
- arrest an alleged offender, lay charges and issue a summons;
- apply for an Apprehended Domestic Violence Order;
- issue an offender with strict bail conditions;
- support the victim/s throughout the criminal process;
- ensure all files are tracked and monitored throughout the process; and
- improve brief preparations for court.

The victim only needs to attend court on the first mention (by agreement with magistrates) and police are encouraged to submit high quality briefs as early as possible.¹⁰⁶ A victims' advocate is employed as part of the scheme. The victim's details are forwarded, with permission, by the police to the advocate following their attendance at a domestic violence incident that resulted in charges for a domestic violence offence.¹⁰⁷ The advocate conducts a risk assessment and provides the victim with information, support and/or case management.

The Violence Against Women Strategy is involved in the development, implementation and evaluation of the scheme. There are reports that the scheme has resulted in better evidence collection, more early guilty pleas, and reduced court waiting times.¹⁰⁸ The NSW Government recently committed another \$1.4 million over a two year period to the model.¹⁰⁹

¹⁰⁵ Crime Prevention Division, 'Domestic Violence Court Intervention Model', www.lawlink.nsw.gov.au Accessed 21/5/07.

¹⁰⁶ NSW Ombudsman, above n 25, p 37.

¹⁰⁷ NSW Ombudsman, above n 25, p 55.

¹⁰⁸ NSW Ombudsman, above n 25, p 37.

¹⁰⁹ Hon John Hatzistergos MLC, *NSWPD (Proof)*, 30/5/07, p 21.

8.3 South Australia Central Violence Intervention Program

The Central Violence Intervention Program¹¹⁰ is an inter-agency initiative that commenced in 1999 and aims to reduce domestic violence. It operates from the Adelaide Magistrates Court where a magistrate presides over a Family Violence Court which deals with all matters relating to applications for restraining orders and domestic violence-related offending. A women's worker provides support and information to women applying for a domestic violence restraining order.

There are four principles that underpin intervention:

- i. The safety of women and children is paramount at all times.
- ii. Men who abuse are responsible and will be held fully accountable for their actions.
- iii. Intervention will be respectful.
- iv. The program is accountable to the experience of those who have been abused.

Men are assessed for suitability to the Program on the basis of the following criteria: acknowledgement of past violence and abuse; acknowledgement that the violence and abuse is problematic to himself and others; and an indication that he wishes to take steps to cease his violence and abuse. If the defendant has been charged with a criminal offence, bail is extended to enable him to participate in a 'Stopping Violence Group' for 12 weeks. Involvement in the program is seen as a suspension of proceedings rather than conditional on the outcome of criminal proceedings. Women may contribute a victim's perspective to the intervention outcomes report to the Family Violence Court, noting any evidence of a change in the man's behaviour.

8.4 Victoria Family Violence Court Division

The Family Violence Court Division¹¹¹ commenced at the Magistrates' Court of Victoria at Ballarat and Heidelberg in June 2005 and is to operate as a pilot program until June 2007. It aims to:

- make access to the court easier;
- promote the safety of persons affected by violence;

¹¹⁰ Information is available from: Courts Administration Authority – South Australia, 'Magistrates Court Violence Intervention Program', www.courts.sa.gov.au and the Salvation Army, 'Central Violence Intervention Program', www.salvationarmy.org.au

¹¹¹ The source for information in this section is: The Magistrates Court of Victoria, 'Family Violence Court Division', www.magistratescourt.vic.gov.au

- increase accountability of persons who have used violence against family members and encourage them to change their behaviour; and
- increase the protection of children exposed to family violence.

Some of the features of the Family Violence Court Division include:

- There are special support services located at the court to help people with their case, including advocacy, referral, increased legal services and links from the court to key family violence community organisations.
- There are specially assigned magistrates, trained applicant support workers, family violence outreach workers, additional legal services from Victoria Legal Aid and Community Legal Centres, dedicated prosecutors and additional security officers. These services are coordinated by a Family Violence Court Registrar.
- The magistrates, family violence registrars, police prosecutors, applicant support workers, defendant support workers, outreach workers and lawyers have special training and knowledge in family violence matters.
- There is an increased focus on recognising and responding to the needs of applicants from culturally and linguistically diverse communities, Indigenous applicants and applicants with a disability, as well as children affected by family violence.
- The Magistrate can hear other matters at the same time as hearing intervention order cases including bail applications, and pleas in criminal cases, family law contact and residency matters and compensation applications that are related to family violence.
- In some cases, the Magistrate can order men who use violence against their partners or former partners to attend a special counselling program to change their violent and abusive behaviour.

8.5 Western Australian Joondalup Family Violence Court

The Family Violence Court¹¹² was established at Joondalup in 1999 for the purpose of dealing exclusively with matters of family violence. It deals with criminal cases one day each week but a dedicated magistrate is available each day for applications for restraining orders. A Family Violence Support Service is available to assist victims with family violence and court matters, with members from the Department of the Attorney General, Western Australian Police, Relationships Australia, Victim Support Service and the Department for Community Development. The Court was established for the purpose of:¹¹³

¹¹² The source for information in this section is: Western Australia, Department of the Attorney General, 'Family Violence Court', www.justice.wa.gov.au Accessed 24/5/07.

¹¹³ Court Services Division – Department of Justice and Crime Prevention and Community Support Division – West Australian Police Service, Joondalup Family Violence Court Final

- improving the criminal justice response to family violence;
- making perpetrators accountable for their behaviour;
- supporting victims in the criminal justice system and to ensure their safety; and
- reducing the incidence of family violence in the Joondalup district.

8.6 ACT Family Violence Intervention Program

The ACT Family Violence Intervention Program was established in 1998 to deal with domestic violence, child abuse and elder abuse. It adopts a cooperative interagency approach between the following key partners: ACT Magistrates Court, the Australian Federal Police, the Domestic Violence Crisis Service, ACT Corrective Services, the Director of Public Prosecutions, the ACT Legal Aid Office and the Department of Justice and Community Safety.¹¹⁴ Stewart has identified some of the key elements of the Program:¹¹⁵

- Creation of a position of Family Violence Magistrate – oversees and manages the specialised hearing process. Matters identified as family violence are adjourned to the dedicated family violence mentions list. If a plea of not guilty is indicated the matter is adjourned to a Family Violence Case Management Hearing.¹¹⁶
- Dedicated Family Violence Prosecutors are appointed for the prosecution of summary and indictable matters. They also provide specialist forensic and policy advice and training.
- The Domestic Violence Crisis Service provides advocacy and support 24 hours a day seven days a week to those affected by family violence.
- There is contact with the victim throughout the prosecution process as well as during probation and parole periods.
- All police and prosecutors undergo a three day training program to improve the quality of investigations, preparation of evidence and liaison with victims.

Report, February 2002, p ix. A copy may be downloaded from www.justice.wa.gov.au

¹¹⁴ ACT Government, 'Extra \$482,000 for vulnerable women and families', *Media Release*, 3/5/05.

¹¹⁵ Stewart, above n 100, p 26.

¹¹⁶ ACT Magistrates Court and Tribunals, *Practice Direction (Amended) No 2 of 2005 – Family Violence List*. Available from www.courts.act.gov.au

- A Witness Assistant within the Office of the DPP assists the prosecutor with information regarding the safety of the victim and circumstances relevant to bail determinations. He or she also provides information to witnesses.
- New procedures have been introduced into the courts to identify, tag and fast-track matters.
- Specialised assessment and programs are provided to offenders convicted of a family violence offence.

The Family Violence Intervention Program has been deemed a success and received an additional \$482,000 over four years in the 2005/06 ACT Budget.¹¹⁷

8.7 Arguments for and against domestic violence courts

The introduction of domestic violence courts has not been without controversy. Some fear that they will lead to domestic violence being treated less seriously, with a greater focus on the perpetrator at the expense of the victim. Others note that increased specialisation can improve efficiency and sponsor a better understanding of the needs and experiences of victims amongst court staff. Stewart has accordingly warned that ‘Caution needs to be taken in the development and implementation of specialist domestic violence courts in Australia so that there can be no perception of a softening of the legal response to perpetrators of domestic violence’.¹¹⁸

The following table outlines some of the main arguments for and against domestic violence courts.¹¹⁹

For	Against
<ul style="list-style-type: none"> ▪ Domestic violence is of a unique nature and needs to be treated differently to other violent crimes. ▪ Improved judicial decision-making as a result of judicial expertise and streamlined judicial decision-making. 	<ul style="list-style-type: none"> ▪ It took a long time for domestic violence to be recognised as a crime. Many domestic violence courts divert the offender from punishment to treatment which may result in a de facto decriminalisation of domestic violence.

¹¹⁷ ACT Government, ‘Extra \$482,000 for vulnerable women and families’, *Media Release*, 3/5/05.

¹¹⁸ Stewart, above n 100, p 35.

¹¹⁹ The sources for these arguments are: Freiberg A, ‘Problem-oriented courts: innovative solutions to intractable problems’, *Journal of Judicial Administration*, 11(1) August 2001, pp 12 and 18; Stubbs J, *Restorative Justice, Domestic Violence and Family Violence*, Australian Domestic and Family Violence Clearinghouse Issues Paper 9, 2004, p 4; Stewart, above n 100, p 17; NSW Ombudsman, above n 25, p 37; and NSWLRC, above n 48, pp 37-39.

<ul style="list-style-type: none">▪ Legal professionals are familiar with the subject matter, especially the issues and power imbalances that characterise domestic violence.▪ Reduced backlog in generalist courts.▪ Domestic violence courts recognise that many victims want to maintain the family unit and therefore may be more successful.▪ The supportive court process may encourage victims to report crimes.▪ Can encourage early guilty pleas due to better evidence collection.▪ Court waiting time can be reduced as a result of a more efficient process.	<ul style="list-style-type: none">▪ The ideology of therapeutic jurisprudence needs to be avoided as the violent behaviour is not a health problem or disease but the cause of a major public health problem for which the offender needs to take responsibility.▪ Applicants and defendants may be reluctant to attend a specialist court because of the associated stigma.▪ It is uncertain whether specialist courts are cost-effective.▪ Results of perpetrator treatment are inconclusive.▪ Defendants may be coerced into pleading guilty allowing the potential corruption of due process.▪ The court can become too narrow and isolated from the mainstream.▪ Can be seen as less prestigious.▪ Can lack variety for judicial officers.
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9 CONCLUSION

The incidence of domestic violence throughout NSW and Australia remains a concern and has been the impetus for a number of government strategies designed to both prevent such violence as well as facilitate a better response to it. These strategies have ranged from education campaigns to legislative amendments designed to better account for the dynamic of domestic violence. 2006 saw the passage of the *Crimes Amendment (Apprehended Violence) Act 2006* (NSW) through the NSW Parliament. This Act sought to offer greater protection to victims of domestic violence, particularly by improving the process of applying for an apprehended domestic violence order. In that same year the Commonwealth Parliament passed the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth). Whilst the main changes made by the Commonwealth Act focused on the introduction of a presumption of equal shared parenting responsibility and placed greater emphasis on the need for families to first participate in family dispute resolution before having their matter heard by the court, the Act also recognised the need to better protect children from family violence. In another initiative, Premier Iemma announced in his policy speech for the 2007 Election that a new domestic violence offence is to be introduced, with offenders ‘named and shamed’, and that a special domestic violence unit would be set up in the Police Force.

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