

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

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

At Sydney on Monday 7 November 2011

The Committee met at 8.45 a.m.

PRESENT

The Hon. N. Blair (Chair)

The Hon. G. J. Donnelly
The Hon. N. Maclaren-Jones
The Hon. H. M. Westwood

CHAIR: Welcome to the second public hearing of the Standing Committee on Social Issues inquiry into Domestic Violence Trends and Issues in New South Wales. Today we will hear from a range of legal professionals with an expertise in domestic violence, including academics and practitioners. We will also receive evidence from the New South Wales Bureau of Crime Statistics and Research and from a victim of domestic violence, Ms Catherine Smith. Our focus today is on the issues concerned with policing and the courts identified by non-government stakeholders. At our next hearing in the New Year we will take up those issues with representatives of the police and the court system. Other hearings in the New Year will focus on the perspective of victims, specific population groups, prevention and early intervention and direct service provision. The Committee has resolved to hold a further six days of hearings, including two days of regional site visits. Details will be posted on the Committee's web page as they are finalised.

The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public hearings. Copies of the guidelines governing broadcast of the proceedings are available from the table by the door. In accordance with guidelines of the Legislative Council for the broadcast of proceedings members of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish and what interpretation is placed on anything that is said before the Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I also advise that under the standing orders of the Legislative Council any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any members of such committee or by any other person. If you should consider at any stage during your evidence that certain evidence or documents you may wish to present should be heard or seen in private by the Committee, the Committee will consider your request. However, the Committee or the Legislative Council itself may subsequently publish evidence if it is decided it is in the public interest to do so. I remind everyone to please turn off their mobile phones for the duration of the hearing.

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JULIE STUBBS, Professor in the Faculty of Law at the University of New South Wales, affirmed and examined:

CHAIR: Do you want to make an opening statement?

Professor STUBBS: I am happy to go straight to questions in the interests of time.

The Hon. GREG DONNELLY: In respect of this inquiry Committee members and I are particularly interested in trying to understand the cause of domestic violence that our society tragically experiences today. Is more domestic violence occurring or is it a greater reportage of the incidents? That begs the question about the causes and factors that contribute to domestic violence. My question is very general but with your experience and research what are your thoughts about the cause of domestic violence in our community today?

Professor STUBBS: A lot of utility can be taken from one of the leading models that is used to underpin work that is happening in contemporary times, and that is an ecological model which recognises that what happens between individuals and within relationships has a context. That context relates to attitudes and values in workplaces, organisations and the broader context, the wider community. Our interventions need to be cognizant that issues at each of those levels—the individual, the community and then the broader social setting—all have a role to play. We need to have some interventions that are shaped at bringing about individual behaviour change but recognise individuals also supported in their attitudes, their values and their behaviours by their peer groups, work organisations and the broader culture.

None of that excludes the possibility that financial stress, disadvantage and social structural features underpin violence but that does not take away responsibility for the individual for their own behaviours. That kind of model has been really very important in underpinning some work about which I am quite enthusiastic and which works within a public health framework and tries to target interventions at those different tiers, which means there is a role for criminal justice and also for a range of other institutions and interventions. I do not know whether that is sufficient in answer to your question but that is the kind of framework that I see as promising.

The Hon. GREG DONNELLY: What are your thoughts about policy settings and initiatives for the future in New South Wales? You obviously have an appreciation of what has been done in this area by the previous Government and commenced by the new Government. What should we focus on?

Professor STUBBS: I have worked in this domain for a long time, for more than 20 years. I think New South Wales at one point of time was leading in its notions about how best to respond and the current policies it was adopting. But that is no longer true. I think sadly our responses have become a little ad hoc. We do not have a longer-term vision. We do not have the recognition that we need to build an evidence base. We do not build a capacity as well as we might. We are not sufficiently committed to integration across the range of portfolio areas that have a role to play and neither between the government and the non-government sectors.

The Hon. GREG DONNELLY: I will interrupt you as you have mentioned a series of points. What is your view about what has brought about this movement from the top in the way in which the Government approached this matter and where we are now, given your comments? What has happened?

Professor STUBBS: I recognise the difficulties of a government facing budgetary challenges. I recognise the difficulties of a four-year parliamentary term that tends to focus thinking on the first and second years and perhaps the third year of those terms. It is really hard to build policy over the long term. You will note from my submission that I have been working as an adviser in Victoria now for some time with an organisation called VicHealth. It has nonetheless managed to have a long-term framework for domestic violence which I think is serving them much better.

The Hon. GREG DONNELLY: Is VicHealth the equivalent to the Department of Health in New South Wales?

Professor STUBBS: No, it is not. It is a separate organisation which has a focus on health promotion and the prevention of factors that impede on health. It is not the department.

The Hon. GREG DONNELLY: Does it fall within the umbrella of the department?

Professor STUBBS: No. I should know the answer to this but I think it is a quasi independent organisation. But it works in conjunction with the State Government initiative on what they call family violence in Victoria. Over a series of plans now they have managed to roll-out five-year and then a 10-year plan which, notwithstanding electoral cycles and budget constraints, has recognised the need to work across portfolio areas, to integrate well between government and non-government and to build an evidence base. In the early years of the plan a lot of work has been done to try to get together research and then evidence on which they can build, then building capacity based on the evidence, identifying gaps in services and then they have tried to fund what is promising into the future. That long-term vision—as I said, I recognise is a difficult thing for government to sustain—is a better model. I think we have often had short-term, well-intended interventions but have not recognised the potential and have not been sustainable over time.

The Hon. GREG DONNELLY: In relation to trying to inform, educate, mentor and develop young males to understand that domestic violence is completely unacceptable in our society and culture, do you believe that our society is doing enough for that? Are we doing enough to be overtly endeavouring to influence the development of young males at those formative years to appreciate that it is just not acceptable?

Professor STUBBS: There are some promising initiatives. Things like some of the school-based programs, not just for young men but for young men and young women, that focus on building respectful relationships. Some of that work has begun to be evaluated and is looking promising. There is work like the White Ribbon campaign which more broadly targets adult men to be partners in speaking against domestic violence. Again if I could speak to Victoria, some of the primary prevention work that has been happening there recognised that one of the things that predicts violence is attitudes that condone a lack of equality, for instance, and that some workplaces are particularly likely to be unequal and to promote attitudes that are undesirable.

One of the pieces of work VicHealth has done most recently is, together with Linfox—which is I think is Australia's largest trucking company which has been very welcoming of—an organisational change program, working with the company to think about domestic violence, to create opportunities for men in the organisation to speak with each other to get support within a workplace around things like leave policies for people who might be affected, among their men and women workers who might be victims, but also to create organisational change. The early evaluations of those sorts of forward-thinking programs are looking very promising. I think you are right, we can do much more.

The Hon. NATASHA MACLAREN-JONES: Is VicHealth one of the leading organisations addressing the issue of domestic violence in Victoria?

Professor STUBBS: The lead Minister is the Minister for Women's Affairs but she works together with four other Ministers who are all named together as Ministers in Partnership Against Family Violence. They are the Attorney-General, the Minister for Police and Emergency Services, the Minister for Housing and Aboriginal Affairs and the Minister for Community Services. Those Ministers all collectively have responsibility for family violence.

The State framework there also brings in a lead organisation. The Police Commissioner in Victoria—since the days of Christine Nixon and also Simon Overland, and we are yet to see how that plays out under the new administration—has played the lead role. VicHealth as a quasi-independent organisation works in close concert with the government framework. It sits on the major committees. Members of the ministerial team and the senior Executive sit on VicHealth committees. The strategies are integrated. VicHealth has identified areas in its own work with respect to health promotion but has done so in a way that makes sure it integrates and coordinates with the overriding State framework.

The Hon. NATASHA MACLAREN-JONES: Moving on to penalties, in your submission you note that research suggests that deterrents are more associated with the perceived likelihood of being detected rather than the size of the penalty. You then note a perception that the police do not reliably respond to breaches of apprehended domestic violence orders and you referred the Committee to the recommendations of the Australian Law Reform Commission and the Law Reform Commission of New South Wales. How do you see that the response to breaches by police and courts can be improved?

Professor STUBBS: We have long had concerns in New South Wales coming from practitioners, Ombudsman reports and other sources that response to breaches of apprehended domestic violence orders is quite variable. Some of the difficulty is around genuine evidentiary problems. An apprehended domestic

violence order often involves controls over behaviours that are not criminal—things like unwanted phone calls or breaching proximity requirements. There can be genuine problems for police in getting enough evidence to proceed with a breach. Nonetheless, it does seem that although police practices have improved remarkably over recent decades in this domain, they are still variable at best. It is also the case that what makes up the breach of an apprehended violence order can range from what looks on the face of it to be something quite minor to something that is quite major, right up to perhaps an attempted murder.

Sometimes police could charge in a way that is more consistent with the facts. Sometimes when breach orders of apprehended domestic violence orders are brought before the courts—unless the facts are clearly made out or unless a charge like attempted murder, if that is appropriate, or assault occasioning actual bodily harm is made that signals to the court that this breach is a serious matter—in our busy courts, and our magistrates courts are overwhelmed with work, the content of the breach is not clearly communicated. Sometimes it may be the choice of charge that the police bring; sometimes it may be the facts sheet that is prepared, the facts that the police prepare and then hand on to the police prosecutor to be put before the court. Some of it is poor practice. Nonetheless, I acknowledge that both police and courts are working under pressure and in a very difficult and challenging environment.

The Hon. NATASHA MACLAREN-JONES: Do you think that the training is adequate for police?

Professor STUBBS: I note that the Police Association in its own submission would welcome more training for police. In the past I have had some role in police training. I have not for some time and I am not fully across the current police training around domestic violence. If the Police Association itself is acknowledging the need for better training, then I would certainly encourage that.

The Hon. NATASHA MACLAREN-JONES: In relation to the use of apprehended domestic violence orders for young people, do you think there should be a different penalty or breach for adults and young people?

Professor STUBBS: I did look at the Legal Aid Commission's submission on the issue of young people. There are a couple of points that are raised there that are worth commenting on. They raised a concern about the fact an apprehended domestic violence order can have implications requiring a working with children check, which can have ongoing implications for employment and other things. It is quite a harsh reality for young people and it can have really longstanding implications for them. I certainly think that needs to be re-examined. Whether or not the penalties need to be different, I think we need our magistrates to have the discretion to deal appropriately with the breach behaviour. In many instances where young people are breaching an apprehended domestic violence order we have concerns about whether the conditions are appropriate ones and whether, in fact, young people can meet the conditions, whether they are being set up to fail. We need careful consideration of what the breach is.

I would not rule out the use of the Young Offenders Act and the diversionary options available under that Act, including things like youth conferencing, in appropriate cases of a young person and apprehended domestic violence orders. There will be cases where those sorts of diversionary options and face-to-face contact with the victim are inappropriate and might re-traumatise the victim. So we need some careful consideration of that. Young people deserve recognition of their immaturity. They should not be held necessarily to the same accountability as an adult. I do not have any problems with rethinking how best to deal with young people.

The Hon. NATASHA MACLAREN-JONES: Can you elaborate on your comment about young people being set up to fail or the possibility they are being set up to fail?

Professor STUBBS: My comment there is, in part, also informed by some work done around young people and bail. That is when young people have multiple conditions imposed upon them, often well intended, often intended to manage and control their behaviour. Sometimes those multiple conditions may be conflicting. If they are not conditions that are reasonable or are reasonably able for the young person to comply with, then if we set them up to fail the consequences are quite harsh. While an apprehended domestic violence order is not in itself a criminal matter, it becomes a criminal matter on breach. We can put a condition on a young person that they had to do something and if they fail to do that they become criminalised. We may not ever have intended that failure to perform that activity in any other context would be criminalising. We need to be very careful that the conditions that are imposed are realistic and reasonable ones because the consequences can be quite harsh, including a criminal record.

CHAIR: Following on from the breaches of apprehended domestic violence orders, you touched on an issue earlier about the charging protocols of police to be more prescriptive in the actual events leading up to the breach and subsequent charge. Does Victoria have a guideline or policing protocol that provides more detail or are they in the same boat as we are in New South Wales?

Professor STUBBS: To be perfectly honest, I do not know the detail in Victoria. I know they have respected protocol for police practice around family violence in Victoria but I do not have access to the detail.

CHAIR: Are you referring to the risk assessment or risk matrix system of police?

Professor STUBBS: That is a separate issue but it also looks to be a promising innovation in Victoria.

CHAIR: You are familiar with it?

Professor STUBBS: In general terms, yes,

CHAIR: In general terms it is something we lack in New South Wales. We tend to have more of a pro-arrest system in New South Wales for breaches.

Professor STUBBS: We have a pro-arrest model for policing. Victoria also does in a little way. The risk assessment tool is slightly separate, although somewhat related. If I could make a few comments about that, the risk assessment tool recognises that victims of domestic violence are likely to seek assistance in all sorts of different ways. They might come to the criminal justice system. They might go to other provider organisations, some of which will be specialists but they are very likely to go to mainstream organisations that have no specialised domestic violence expertise. The risk assessment tool makes it possible that a uniform set of assessments are made, no matter where the victim goes. The assessment of what they require is made by all those different agencies using the same sorts of criteria. Those agencies can make appropriate referrals and can respond.

The police, as do all of the Victorian government agencies, have access to and are intended to use a risk assessment tool. The risk assessment tool can help police at the early stage when they might be going to investigate and determine whether what they call a family violence order might be needed or whether an assault charge or some other charge might be laid and it may, in fact, inform their practice down the line when we are talking about breaches of orders. It is also about referral pathways. Not every case would require police intervention, for instance, but police may refer to some other source of support for a victim.

CHAIR: Are emergency departments in the health system in Victoria another agency that uses the same risk assessment tool?

Professor STUBBS: It should be used across government. All of the various agencies should be using the same sorts of tools.

CHAIR: From memory, some of the submissions in our previous hearings were that an assessment is not done in emergency wards in New South Wales. Are you familiar with that?

Professor STUBBS: I do not know fully the answer to that. I was aware that for some time the Department of Health had a screening tool that they were trialling at least in some of their emergency rooms. Whether that pilot has resulted in ongoing practice, I do not know the answer to that.

CHAIR: In relation to the pro-arrest system in our policing, we see in New South Wales and other jurisdictions around the world that as part of this policy the number of women arrested for domestic violence offences is increasing. Can you explain how this may be an unintended consequence of this sort of policy and what may be a better response?

Professor STUBBS: At the moment we do not have the evidence for that in the Australian context. I, Dr Jane Wangmann, Dr Lesley Lang and Betty Green have a submission currently before the Criminology Research Council trying to get funding to do such a study. In the absence of that, we can simply speculate and draw on some of the international research. In jurisdictions that have taken a very firm mandatory arrest approach—our policy in Australia is presumptive of arrest or pro-arrest but not such a harsh mandatory arrest approach as some other jurisdictions—there is some suggestion that police faced with the complexities of

domestic violence when they arrive on the scene, often without appropriate tools and training to sort out what is happening and having to work with competing and conflicting statements in evidence, may simply arrest both parties as the easiest course. Sometimes by the time the police arrive what they witness is retaliatory violence, the victim fighting back. That sometimes means it is the victim who is arrested because the police witness that retaliatory violence. That is speculation based on some of the international literature. Without some more effective research we cannot really go beyond that anecdotal evidence. I am aware that Dr Weatherburn is here with one of his colleagues. He may have some evidence to offer on that point.

CHAIR: You have referred to the Victorian health model as health promotion or a preventative health measure. In our first hearing the Department of Attorney General and Justice could not identify any jurisdiction here or around the world of an effective prevention model for domestic violence. Are you aware of any such program either here or across the world that we could get some ideas from or cherry pick?

Professor STUBBS: It depends on what you mean by prevention. If we go back to what I spoke about before as the ecological model, which recognises we need to make interventions at a whole range of different levels. Perhaps I could give again a couple of examples from recent projects that VicHealth funded and that have been evaluated as effective. I have already mentioned the Linfox example recognising that some male-dominated workplaces might be places to intervene and bring about some cultural change. There the idea is we are building for the long term. We may not see a reduction in domestic violence in any measurable way in the short term but the outcomes that they were looking for were things around cultural change within that workplace. Another program that they funded was looking at the period around the birth of the first child. That is a highly stressful time. It is also a time where parental roles are often very unequal. It is working around how best to support parents and support them in parenting. We also know that pregnancy and childbirth are correlated for some people with the onset of domestic violence.

Providing ways of working with new parents is advantageous in preventing the onset of domestic violence for some couples and it has added benefits for the wellbeing of children. That is another long-term early intervention initiative which may not see measurable outcomes in terms of the level of domestic violence straightaway but which has other measurable outcomes with regard to the wellbeing of those families that should translate down the track.

A third example was working with one of the local councils. Trying to get local councils to recognise domestic violence as core business would have benefits. This local council has a role with regard to homelessness policy—and homelessness is often associated with domestic violence—and the provision of early childhood and other support for families. It is about getting the council to take on domestic violence as a core issue and also in terms of its own workplace policies. These are the longer-term more visionary intervention projects which are likely to have payoffs down the track but which may not be measurable in the short term, for example, in three to five years, in reducing the number of domestic violence cases in, for instance, the Victorian legal system. Nonetheless, each of these strategies has been evaluated and found promising in the public health framework.

The Hon. HELEN WESTWOOD: Today's *Sydney Morning Herald* contains a timely article.

Professor STUBBS: I have not seen it.

The Hon. HELEN WESTWOOD: The article is about a domestic violence program involving perpetrators that is run by the Department of Corrective Services. Assistant Commissioner Luke Grant claims that it is successful because "other programs were often hijacked by a focus on victims and feminist approaches" and "it's another example why it's important to get beyond punishment ... [towards] a therapeutic program." Do you think that therapeutic and perpetrator programs have been hijacked by a focus on victims or by feminists?

Professor STUBBS: I am troubled by seeing victims and offenders and programs for them as somehow in opposition to each other. I think we can have an approach that takes seriously the need for behaviour change and therapeutic change. Clearly that is in the interests of everyone. Whatever we do within the criminal justice system, offenders who are convicted by a court may or may not go to jail and if they do they eventually come out and often much worse than they were when they went in. We all have an interest in behaviour change. I fully support coming up with evidence-based models. At the same time, making women and children and also male victims safe must be a priority and a concern. I do not think we need to see those things as working against each other.

I also do not think a gendered analysis necessarily detracts from recognising that some men and people in same-sex relationships are also victims. I saw the one-in-three submission and I could quibble with some of the emphasis given to some of the data, but there is not much point in doing that. Whether men are one in three, one in four or one in five, they are also victims and they are important. It still tells us that it is a gendered offence and that there are gender patterns in the offence, and that helps us to come up with evidence-based, targeted strategies. However, it does not have to make us blind to the needs of people who are not women and children.

Again, the Victorian models have done that well. The risk assessment tool is very clear about the fact that it uses gendered language because of the predominance of women among victims. However, it can be used where victims are men and people in same-sex relationships; it is across all of that. It can also be used in indigenous communities. I do not think it is helpful to make an argument that a feminist analysis undermines interventions for perpetrators. I do not see that; I think it is quite consistent. In fact, when I talk to most of the women victims, which I have, they primarily want men to stop being violent and often they want them to go into programs and to get counselling. But they want their children to be safe first.

The Hon. HELEN WESTWOOD: You said that that approach seems to be getting good results in Victoria. Are there other jurisdictions where you believe the approach is reducing those violence incidents between intimate partners?

Professor STUBBS: We have seen some very good interventions in a range of locations. The question is sometimes whether they are transferrable. For instance, the ACT has done some very good things working to ensure that all the various justice agencies and associated non-government organisations have a shared understanding, shared protocols and good referral paths so that when the police intervene victim services are informed and provide support to the parties. There are some very good things happening there. However, we must be very cautious about whether something that works well in the ACT can be easily transferred to a jurisdiction like New South Wales.

Some interesting and highly respected work is being done in Manitoba. Work undertaken in domestic violence courts in Winnipeg by Professor Jane Ursel has been quite promising. Once again, it is very much focused on the criminal justice end. If we talk about the public health framework, rather than primary or secondary we are talking about tertiary intervention after the domestic violence event. The hope is that really effective criminal justice interventions might deter or prevent future violence. Professor Ursel's work has been wonderful. However, we do not know whether that is transferrable to another jurisdiction. Again, we must be very careful about simply importing models from elsewhere. We need to think about how they might play out in a jurisdiction like ours, including outside the major cities. Of course, one of the enduring problems we have with criminal justice policy, as with everything else in our State, is our geography and demography. Finding things that work well beyond the metropolitan area is very problematic.

The Hon. HELEN WESTWOOD: Do other jurisdictions take a different approach to resourcing? I am referring to organisations that provide support to victims of domestic violence or prevention programs through grants to non-government organisations. Obviously the courts and the police do a lot of work, but the non-government organisations that provide support and counselling usually run the perpetrator programs. Are you familiar with other approaches to providing those resources in other jurisdictions?

Professor STUBBS: My familiarity with that is limited. I will again provide a Victorian example, although I do not mean to suggest that Victoria is beyond criticism. People working there are have their own frustrations and things sometimes do not work in an ideal way. One of the things that has emerged there is the notion that funding pilot programs should translate into ongoing funding for those that are evaluated as promising. The longer-term vision of the Victorian strategic plan is to translate programs from the pilot stage and to build capacity to make something sustainable. That is in full recognition of the fact that short-term funding may create a promising program and a lot of expectation in the community but the knowledge and expertise is lost and we create cynicism in the community when the program ceases at the end of the pilot.

The Hon. HELEN WESTWOOD: We often find that projects are funded on a trial basis and are successful but the funding disappears. I wonder whether there are other ways of approaching resourcing. Government programs tend to have more security, but those that are provided by way of grants to non-government organisations seem to have less certainty after one, two or three years, depending on the life of the program.

Professor STUBBS: I agree; that has been one of our problems.

The Hon. HELEN WESTWOOD: Is the Victorian approach similar? Does it provide funding on a cyclical basis?

Professor STUBBS: They have been wise in recognising the deficits in capacity and in investing in capacity so that a sustainable program emerges. They are building things like train the trainer programs so that the benefits are diffused in a positive way and not just held within one organisation.

The Hon. GREG DONNELLY: Some general comments have been made about the question of police training. Once again, this is a very broad and general question. How do you think we can improve those training processes within the New South Wales Police Force given the base from which we are working? Do you think there needs to be a strategy over a period of years and that we should move forward systematically with the changes that need to be made in the management of domestic violence by the Police Force?

Professor STUBBS: We certainly need a strategy and it must consider how the training at the academy is refreshed and reinforced within the force. The evidence suggests that some of what happens at the academy is at times undermined when people get out into the organisation. The complexities of domestic violence are very challenging.

The Hon. GREG DONNELLY: You do not need to be specific, but can you elaborate on the undermining?

Professor STUBBS: I was thinking about my colleague Professor Janet Chan's long empirical study about what happens to the young police officers who make the transition from the academy into the organisation and in the early years of their career. She has found that much of what the young police officers are taught at the academy is challenged by their senior officers and colleagues in the workplace. Some of that might be based on hard-won experience and it might be incredibly valid in terms of turning the green young recruits into operational officers. However, there is this tension, particularly in the middle order ranks, between respecting and reinforcing what the young recruits are taught and the message that that is not important and that real policing is something different.

We have good research evidence from studies like the one undertaken by Professor Chan. That tells us that the content of the early training at the academy is very important, but what happens subsequently and at different levels of the organisation is also important. The issue is how we reinforce the messages and ideas given to young officers. Given that the more junior officers often do the face-to-face work of dealing with domestic violence—senior officers are busy doing the things they do—their training in this area is very important. But how do we get senior officers on side and encourage them to reinforce the message? We need to think strategically about different training at different levels of the organisation but all aimed at reinforcing a uniform message across the organisation about the way forward.

The attitude at the top is important. To use the Victorian example again, Christine Nixon and Simon Overland were both very public in their support of the domestic violence framework in Victoria. They participated in many of the high-level meetings and they tried to translate that into practice within their organisation and gave it their own stamp. So, senior leadership is also important.

The Hon. HELEN WESTWOOD: Just going back to the police, one of the things that we have talked about with other witnesses is the position of domestic violence liaison officers in the New South Wales Police Force and how they do not seem to have a status that gives them any high regard in that command. Is the situation different in Victoria? Do they have domestic violence liaison officers, for example, and if so where is their status in terms of the command chain?

Professor STUBBS: I cannot give you a precise answer on that, but I think having officers who are trained and selected for the domestic violence liaison officer role is very, very important and having those officers recognised and supported in their work is important. It was a nice initiative in New South Wales; it was very, very promising when the domestic violence liaison officers were taken on, and, again, I think the practice has been quite variable. In some localities they are highly respected, they are very effective and it works very well, but other domestic violence liaison officers find themselves unsupported or the people recruited into the role are perhaps not the best people to have the role. I think we have dropped the ball a bit on that in New South Wales and there is some work that can be done.

CHAIR: Professor, thank you for squeezing us in this morning; I know that you have other commitments. We appreciate your time and your evidence. Because we have been restricted for time we may also provide some questions on notice to you.

(The witness withdrew)

DONALD JAMES WEATHERBURN, Director, NSW Bureau of Crime Statistics and Research, and

KATRINA GRECH, Senior Project Officer, NSW Bureau of Crime Statistics and Research, affirmed and examined:

CHAIR: Dr Weatherburn, I believe you are going to give us a presentation.

Dr WEATHERBURN: I will give you a quick run-through of some basic facts. It will not take too long but I think it is good to get some context to it and then you can ask either or both of us questions. It is just a bit of a road map for where we are going. It will be a long list: we are going to talk about domestic violence offences and trends in those offences; penalties; trends and patterns in apprehended violence orders; a little bit about the victim-offender relationship; then, because I understand the Committee is particularly interested in trends and patterns for female domestic violence assault we will look at that; court outcomes for domestic violence offences; some reoffending information; and we will finish off with a little bit about what works.

I should make a couple of points before we get under way. The first thing is how do we know whether an offence is domestic violence related? We rely pretty much on the domestic violence flag that appears in COPS, and it is important to note that that can be attached to any offence, not just assault. The second thing is that domestic violence relationships include much more than a husband and wife; there is a bit of a tendency to think of domestic violence solely through the lens of husband and wife or boyfriend and girlfriend, but of course it includes much more besides—siblings, other kin, ex-partners. The other thing worth noting is that domestic violence can be the principal offence in a set of charges or a secondary offence. We are going to talk only about those cases where it is the principal offence.

Offences in 2010: There are three main domestic violence offences. There were 10,000 convicted of a domestic violence offence, but common assault, breach of apprehended violence order and serious assault resulting in injury are by far the most common—36 per cent, 33 per cent and 20 per cent respectively. It is worth having a look at some of the other offences. You do see domestic violence popping up in abduction and kidnapping or resisting or hindering police and property damage. It percolates through quite a range of different offences.

It is also worth bearing in mind, and I am sure you are very well aware of this, that only about one in three domestic violence incidents are reported to police. You may be wondering how I know that. It comes from the last national personal safety survey conducted by the Australian Bureau of Statistics where a representative sample of Australian men and women were asked whether they had been victims of assault, the nature of the assault and, if so, whether they reported it to police. That figure has not changed very much over the years.

We are now looking at trends. You will see there is not too much change in these patterns over the 10-year period or the two-year period. Over the two-year period they are stable—meaning there is no significant increase or decrease; over the longer term there has been some increase. The 1.4 per cent increase in domestic violence related assault might seem inconsistent with information in one of our reports, but this is a result of adding another quarter to the time series that we are talking about, and one quarter can make slight changes up or down. I think it is probably best if you work on an assumption in relation to domestic violence assault that it is pretty stable. The next quarter may see a change in that pattern.

The other categories, though, have been increasing. There has been quite a substantial increase in harassment, threatening behaviour and private nuisance. Just to anticipate your question: it is not at all clear whether that is an increase in reporting or policing or the actual incidence of the offence, but I am sure we will come back to that issue. Looking at the penalties, the most common penalties are a bond without supervision or a bond without conviction or a fine and bond with supervision. Only 10 per cent of offenders go to prison, but it is important to understand that the likelihood of going to jail depends enormously on the seriousness of the offence. One of our early papers in this regard worth looking at if you want a more refined picture of the penalties is entitled "Factors which influence the sentencing of domestic violence offenders". It is on our website; it is Bureau Brief No. 48. If the offence involves injury, if the offender has been convicted before and especially if they have been in prison before, the likelihood of the offender going to prison is much, much higher.

Just looking at the percentage comparisons of bonds without supervision and percentage of imprisonment and other penalties for the different kinds of domestic violence offence, for common assault it is

28 per cent getting a bond without conviction compared with 4.4 per cent for imprisonment. But if you look at serious assault resulting in injury you will see that 29 per cent get a bond but the percentage going to jail is much higher. This indicates the point I was just making about it depending very heavily on the seriousness of the domestic violence offence. If you go to jail the average minimum term is five months.

You can see the trend in apprehended violence orders has been going up from 19,000 in 2001 to 24,000 in 2010. Notice that the personal violence orders have not gone up to anything like the same extent. Notice too that there is a particular increase just before 2006-07 and you will see it continues to rise thereafter. You are probably going to ask me later on why that has happened. One reason is that there were reforms to the domestic violence laws in 2007. Those laws require the issuing of an apprehended violence order automatically with a serious domestic violence offence. But there is a jump just before that and that may be an anticipated policing effect or police taking the issue more seriously than previously—it is impossible to be sure. But on average the number of apprehended violence orders has gone up by 2.8 per cent a year over that period.

Obviously there is quite marked variation across regions in the rate at which these orders are granted: they are much higher in the west and far west of the State than they are in some of the urban areas, but not all of them—Blacktown is an example. But, of course, this reflects the fact that domestic violence rates are so high in Aboriginal communities. It is not, of course, just Aboriginal people that have this problem of violence but it is certainly very high, and we will see a bit more evidence of that shortly.

Victims and offenders of domestic assault: Overwhelmingly, males are the offenders and females are the victims, which bears out what Julie Stubbs was saying earlier on. But there are incidences where there are male victims and there are incidences of course where there are female offenders. Female offenders, interestingly enough, are equally likely to have both male and female victims. The trends for female offenders and male offenders have both been going up—these are the number not the rate. The percentage of male offenders has decreased from 90 per cent to 82 per cent, but, again, it is not clear to us whether this reflects a real increase in the incidence of domestic assaults where women are the perpetrators or whether this is a change in police priorities towards women who are perpetrators or indeed whether it is the result of some other factor such as the increase in the number of young women turning up in the emergency departments of hospitals with acute alcohol intoxication. There is no decent evidence whatsoever to resolve that increase definitively one way or the other.

As in the general category, the rates of female domestic violence assault are highest in the west and far west, and also higher in south-western Sydney, Blacktown and inner Sydney. The northern beaches and lower North Sydney have the lowest rates. In the age profile, more than half of them come from the 20- to 39-year-old age group. You can see the difference in Indigenous and non-Indigenous rates of domestic assault: 996 per 100,000 of population for Indigenous compared with 83. Even allowing for differences in reporting, even if you are just focused on the homicide rates, you will see staggering differences between Indigenous and non-Indigenous rates of domestic violence.

The vast majority of offenders do go to court. Most of them plead guilty or end up found guilty, so the net conviction rate is quite high. The pattern of reoffending is that, as with every one of these kinds of offences, the more prior convictions they have the more likely they are to reoffend. With three-plus charges it is up around 25 per cent being reconvicted. The true reoffending rate may be higher than that, but there is certainly a typical pattern of more priors the more risk of reconviction. That would be far and away the best predictor of whether there is going to be any further offending judged on past studies of that sort of thing.

Evidence on what works: You are probably well aware of the fact that there has been considerable debate in the United States of America over more than 20 years about whether pro-arrest policies work. Lawrence Sherman did the original studies, claiming great success with pro-arrest policies but a bit of a reverse effect in the case of African Americans. The studies he did were subsequently reviewed in the United States by the Government Accounting Office and serious questions were raised about whether or not pro-arrest policies do produce that.

I think that that debate is still up in the air. There is no real consensus on whether pro-arrest policies reduce violence and, if they do, with whom they reduce violence. We did a study some years ago on apprehended violence orders. We followed a group of women who obtained those orders, and interviewed them just after they had obtained the orders and on two subsequent occasions, and we found that the majority of women reported a reduction in violence, intimidation and harassment. I think that still stands as fairly good evidence that apprehended violence orders offer a measure of protection. They are not a magic wand, they do

not protect you conclusively against the possibility of violence, but they do seem to show offenders that the person who is taking out the order is serious about stopping the violence. I think that is one measure of policy success. If it is effective, it is very important to have an effective response to the breach when the breach occurs.

There is not much good evidence on what is called second responder intervention. That is work based on the assumption that if a woman reports an assault she is at heightened risk of reporting another assault, so the idea is to come in at that point and offer, for example, safety plans, restraining orders, increased knowledge about legal rights and options, shelter, et cetera. There is not a lot of evidence that those are effective and I am drawing that conclusion from the research published on the Campbell reviews. This is the systematic reviews of available evidence on the Campbell Collaboration website. The evidence does not look good for that. Nor does the evidence look good on domestic violence offender programs. The best of the programs does not seem to produce much more than about a 5 per cent reduction in reoffending. As far as the international literature is concerned, at this stage the results for perpetrator programs seem fairly dismal, but that is no reason to give up. It may be that newer methods would produce an effect, but you would not want to be pouring millions of dollars into them at this stage without some evidence of effectiveness.

There are other possibilities. Restrictions on alcohol sales in Aboriginal communities have been enormously successful in reducing violence generally in those communities and it may be that those sorts of restrictions could be carried over. I think there is a lot more work to do before we have in hand a decent program, meaning one that reduces the risk of offending by, say, 20 per cent. We have a lot more to do before we reach that point, which to my mind means that we probably need to put most of our energy at the moment into looking for ways to protect women who become the victims of violence, making sure that if they need to escape a relationship they can escape, and also putting some money into research to try to find measures that are effective in reducing the risk of violence. Do you have anything you would like to add?

Dr GRECH: No.

Dr WEATHERBURN: I will stop there and answer your questions.

The Hon. HELEN WESTWOOD: I do not think we have many left.

Dr WEATHERBURN: I am sure you have. I am sure the next 10 minutes will prove that statement wrong.

CHAIR: Before we move to questions, could I ask you to formally table your presentation?

Dr WEATHERBURN: Yes, I would like to formally table the presentation for the benefit of the Committee.

Leave granted.

Presentation tabled.

The Hon. HELEN WESTWOOD: Dr Weatherburn, there was one question that came to my mind during your presentation, and please, Dr Grech, jump in—

Dr WEATHERBURN: That is right, I will be struggling if she does not.

The Hon. HELEN WESTWOOD: One of the things you said was that what is really needed is an effective response to the breach. Do we have any examples in New South Wales or in other jurisdictions where there has been that effective response which has resulted in less violence towards victims?

Dr WEATHERBURN: When I made that statement what I meant was that it is not that I am aware that police responses are inadequate. I take it on advice from others, such as Julie Stubbs, that the response is not always effective, but the simple point I was making is that if someone alleges that the order has been breached you cannot adopt a policy of ignoring that and expect to offer the victim the sort of protection they deserve. It is said by some, and Katrina may know more about this, that police are quite variable in their response to reports of a breach. Whether that is true or not, I do not have evidence either way. Do you have any—

Dr GRECH: No.

Dr WEATHERBURN: It has been a constant complaint raised right from the very earliest research we did on apprehended violence orders. Some police are very quick to respond; other police have an "Oh, not again" sort of response.

The Hon. HELEN WESTWOOD: That makes me think of the issues Professor Stubbs raised earlier about police training—you can get that variation from one command to another depending on the culture or approach of the leadership within that command.

Dr WEATHERBURN: Yes.

The Hon. HELEN WESTWOOD: Generally, and perhaps you gave your answer about what you see as the priority issues that we need to address, do you have anything further to add to what you said in your presentation?

Dr WEATHERBURN: The deficit to me is in our understanding of whether existing services are adequate to meet demand. This issue has come up repeatedly. We all know it is very important for people who are thinking of escaping a violent relationship that they have someone to contact. I simply do not know, and I do not know how many people do know—I suspect not many—how adequate the existing resources are. I think one priority for Government is to do a stocktake to assess whether there are gaps in the services available for victims, where those services are and what the nature of the gaps is. It is important to bear in mind that victims of domestic violence often suffer a wealth of adverse consequences—psychiatric illness, et cetera—so we are not just talking about a shelter to go to, we are also talking about treatment for people who have been scarred psychologically or physically by these events.

The Hon. HELEN WESTWOOD: One stark piece of evidence you gave in the presentation was the difference between domestic violence incidence in Aboriginal communities and non-Indigenous communities. Is that a pattern that is seen anywhere else, in other parts of the world, that you are aware of?

Dr WEATHERBURN: Sure, Canada, New Zealand, American Indians.

The Hon. HELEN WESTWOOD: Do any of those jurisdictions have an approach that has reduced the difference between Indigenous and non-Indigenous communities?

Dr WEATHERBURN: Not to my knowledge.

Dr GRECH: Not that I am aware of, but I am guessing it is the same sort of issues—and they are complicated.

The Hon. GREG DONNELLY: Thank you for providing additional evidence to your submission and for your presentation. You would be well aware of the debate or discussion on whether we are experiencing more domestic violence or seeing greater reportage of domestic violence. Reading the literature in Australia and overseas, there does not seem to be a clear resolution of this matter. Do you have any particular views about how we can discern what is going on? Are we seeing greater reportage through what is an enhanced confidence mainly, but not exclusively, by women to report domestic violence, or are we objectively seeing greater incidences of violence of one person towards another, whether male or female, in the domestic context?

Dr WEATHERBURN: If you are talking about assault specifically, first let me say that this is not so hard to solve. The reason we do not know the answer to this question is because the Australian Bureau of Statistics keeps changing the survey questions it uses to ask about violence. The Australian Bureau of Statistics runs regular surveys designed to find out what percentage of the Australian population in general in each State has experienced violence and asks questions about the victim-offender relationship. Had they not kept changing the question, we would be in a position to say whether or not domestic violence had increased or not. They have at last settled on a question, so within a couple of years we should know the answer.

The Hon. GREG DONNELLY: Sorry, could you repeat that?

Dr WEATHERBURN: They have finally settled on a question and they are going to keep that question, or at least that is what they say, and if they do keep that question we will be in a position to make a judgement about whether or not it is genuinely increasing or not increasing.

The Hon. GREG DONNELLY: That is information that I was unaware of, so they have settled on it and, as far as we know, they are going to be staying with it.

Dr WEATHERBURN: We know the prevalence of it now. We had one of the new series of surveys, so we know the prevalence. That is where the one in three came from. We have only got one survey so far. Next year we will be able to find out whether or not it differs from this year and the year after we will start getting a time series together. I would not want you to think that this is some sort of unknowable thing.

The Hon. GREG DONNELLY: No, that is why I am asking how close we are, or are we moving towards a scenario where we will be able to collect consistent and reliable data, which will mean longitudinally we can see what is happening?

Dr WEATHERBURN: The other thing to say is that the differences between areas in the rates of police recorded domestic violence are probably largely indicative of real differences in violence. Although we are not 100 per cent sure of what is going on with the trend, we can be reasonably confident that areas that have high rates of reported domestic violence actually have high rates of domestic violence. It is not that all the women in Bourke report it and none of the people in North Sydney, although there may be elements of that. The reason I say that with some confidence is that you only have to look at hospital admissions and it is blindingly obvious that there are high rates of domestic violence in Bourke, Brewarrina and Wilcannia, and so on. For policy purposes, it is probably not so important to know whether it is going up as to know where it is worst and how best to deal with it. There is no question it is a major problem.

The Hon. GREG DONNELLY: Pressing you further on the consistent definition we will be working with into the future, could you explain the efficacy and the way in which the data is collected? In other words, do the gathering and collection of information give a reasonably accurate reading of the domestic violence that occurs?

Dr WEATHERBURN: This is the Australian Bureau of Statistics?

The Hon. GREG DONNELLY: Yes.

Dr WEATHERBURN: There are standard ways of going about asking questions on domestic violence that involve, for example, making contact with people and making sure that potential offenders are not in the immediate vicinity when the question is asked. The pioneering study for this was one run in Canada, probably the first of these surveys, but broadly speaking the approach is that you draw a representative sample of the population. You make contact with them, arrange to do an interview with them and ask questions that are relevant to whether they have been victims of domestic violence, or victims of violence first and then who the perpetrator might have been, and then whether they reported it to the police, whether they were injured and whether they used services.

The Hon. GREG DONNELLY: Insofar as we are using the particular methodology that you just described, that is quite a robust way of doing it, in your view?

Dr WEATHERBURN: Yes.

The Hon. GREG DONNELLY: And it is at the moment about the best we could be using as a methodology for collecting this data?

Dr WEATHERBURN: I think it is. I also think that, although only one in three are reported, police data is an adequate basis for gauging where high domestic violence rates are. There is no real problem there.

The Hon. GREG DONNELLY: Do you think there is any scope to improve the police data?

Dr WEATHERBURN: That is a good question.

The Hon. GREG DONNELLY: You are familiar with the way it is being collected in New South Wales.

Dr WEATHERBURN: Yes.

The Hon. GREG DONNELLY: If you were starting with a blank sheet of paper, and being a devil's advocate, would there be suggestions that you would put forward to improve how it is done? You might want to take that on notice if you want to think about it.

Dr WEATHERBURN: I might ask my colleague; she works daily with this data.

Dr GRECH: I would say we are confident with the domestic violence flag that the police use. It is one of our associated factors that we are most confident with.

The Hon. GREG DONNELLY: So you are reasonably satisfied?

Dr GRECH: Yes.

The Hon. NATASHA MACLAREN-JONES: I am interested in programs. You commented that you think currently the programs are weak and you would like to see more research into programs that actually work. Could you elaborate on where you think the research should go, or if there are any other jurisdictions that have good programs in place that could be looked at in more detail?

Dr WEATHERBURN: I am not aware of other jurisdictions in Australia that have good programs for the simple reason that proper evaluations of domestic violence offender programs are as scarce as hen's teeth. There are plenty of programs out there, but the vast majority of them have not been evaluated. Even the one that was reported in today's paper I have not seen a report for, so I do not know if it has been through peer review. It is a crazy situation to be in where you have a serious problem of personal violence going on and all sorts of policy responses being thrown at it, but very few of them being adequately evaluated. There may be any number of programs around Australia, but I think you would be struggling to find any that have been rigorously evaluated. Can I just check that?

Dr GRECH: That is correct.

The Hon. NATASHA MACLAREN-JONES: Would you say it is the same for prevention programs—there is no evaluation? We have effectively been told there is no evidence to suggest that the program is working.

Dr WEATHERBURN: Just to clarify, I am not saying there is evidence that these programs do not work. I am saying that we do not know—

The Hon. NATASHA MACLAREN-JONES: I am sorry.

Dr WEATHERBURN: That is alright. I think the same applies to the mass public education campaigns. It is not that I think they do not work; it is just that I have no idea whether they do. For example, what would be required would be to run an education campaign in a local area and try to use mass media to change attitude and behaviour in that local area. Then we would compare the attitudes among the males in that area with an area where the campaign was not run to see whether or not there had been any change in attitude or behaviour. We need proper comparisons and proper baselines for doing these things. I am happy to be corrected, but I am not aware of us doing that sort of thing.

The Hon. NATASHA MACLAREN-JONES: Turning to the question of prevention of domestic violence amongst youth. I note the statistics for the 20 to 39 year group for women. Regardless of gender, is there any research to show if there has been an increase in domestic violence within siblings or in those under the age of 30 over the past 10 years?

Dr WEATHERBURN: I cannot remember the answer to that question. I do not think there has been any change to the age profile. Part of the problem is—and I am going to embarrass both Katrina and I when I say this—but there is one respect in which police recording of domestic violence could be improved, and which hampers us from entering your question—that is, the victim-offender relationship field in the Computerised Operational Policing System [COPS] is not well filled out.

Dr GRECH: That is correct.

Dr WEATHERBURN: From memory, we know whether it is domestic or not but when it gets to the detail of the nature of the victim-offender relationship within the family police are a little haphazard in their recording of that.

Dr GRECH: Obviously it is a difficult situation discovering who is the offender and who is the victim, there are children involved and often these cases are very complicated. If we could have a clearer idea as to who was the perpetrator and who was the victim—

Dr WEATHERBURN: Within the family context, yes.

CHAIR: So the data is a bit grey as to whether it is a sibling relationship or child assaulting parent et cetera?

Dr GRECH: In some cases we see that the victim is also the offender; they are getting both tags. Yes, we need some clarity around who is who.

CHAIR: Is it a costly exercise to undertake a comparison review of before and after programs with groups of the type you were referring to earlier? Is it a difficult exercise to undertake or is it something that could be achieved relatively simply?

Dr WEATHERBURN: Evaluating programs targeting specific offenders is not costly. The infrastructure is already present; we already have the reoffending database to do it. All that is really required is the cost of mounting the program—that is, the cost of taking offenders in and giving them cognitive behavioural therapy or pharmacotherapy or whatever therapy is deemed to be appropriate. That is not really expensive relative to the program. I cannot tell you how much the program would cost but for the evaluation you are probably looking at \$100,000 or \$90,000 over the course of a year. The evaluation of public education campaigns is a little more difficult because it is difficult to make sure that only the people in the target area hear the message rather than elsewhere. I would probably take that question on notice and come back to you with a response. The point to remember here is, if you think an evaluation is expensive try doing policy without it. Usually the evaluation is a fraction of the cost of the program itself and well worth the investment but you would expect me to say that.

Dr GRECH: Just to add to that, evaluating prevention and early intervention programs is more difficult only because they are usually a broader type of intervention. Domestic violence might be within a parenting-skills program so that can be a little more difficult.

CHAIR: I turn now to some of the areas and results that you show in your presentation. Obviously for those of us representing New South Wales it is quite alarming to see many of the areas we represent over represented in those statistics. Are we seeing the same sorts of results for alcohol-related offences in those areas as well? Is there a direct correlation between high instances of alcohol-related offences and domestic violence in those areas?

Dr WEATHERBURN: Yes.

CHAIR: I imagine the high Indigenous population within those areas is another direct correlation?

Dr WEATHERBURN: We have undertaken research specifically in relation to Aboriginal people using the National Aboriginal and Torres Strait Islander Social Survey, which is a wonderful survey that allows you to look at the risk factors for violence within the Aboriginal community. Alcohol is far and away the biggest predictor. Other factors are important such as being a member of the Stolen Generation, financial stress, unemployment and others, but alcohol is far above the rest of them as a predictor of violence victimisation.

Dr GRECH: In previous research we have looked at alcohol-related domestic violence. The far west has the highest rates and 62 per cent of domestic violence assaults were alcohol-related. In Sydney it was down to 35 per cent.

CHAIR: Looking at the table there is a big difference in social disadvantage in some of those areas—for example, from the lower North Shore to western Sydney. Is ethnic background another influencing factor in some of these statistics? Do you have any evidence to show that cultural background is over represented, not only by Indigenous communities, particularly in some of those western Sydney areas?

Dr WEATHERBURN: We do not collect information on country of birth or parents' country of birth.

CHAIR: It is not part of the COPS system to look at that background?

Dr GRECH: No.

Dr WEATHERBURN: They did have once—I do not know if they still have it, but you can advise me here—a field called "racial appearance" but we have never thought that was reliable enough. It always takes me back to a time when I was in Walgett when the magistrate thought that a particular person was an Aboriginal defendant when he was a Sri Lankan lawyer.

Dr GRECH: It usually is based on appearance rather than a question to the person.

CHAIR: We cannot look at different cultural issues, particularly around women in certain cultures and things like that, or even people from non-English speaking backgrounds being labelled with a domestic violence offence when perhaps it is not?

Dr WEATHERBURN: The closest you can get is with the national surveys where you find the risk of assault among people from non-English speaking backgrounds is lower. But those surveys do not break it out by country of birth and they do not specifically speak about domestic assaults—just assault in general. So it is conceivable that you could do research on that but I suspect the numbers would end up being too small to permit decent estimates of relative risk.

CHAIR: You mentioned earlier that the reported rates we are seeing will generally be the actual offence rates with the statistics coming through the COPS system. Looking at some of the isolation in regional areas to see those numbers being reported at that rate is probably even more alarming considering there is always a cry for more police and more support services out there. Do you have any further comment on that or am I just expressing what I am seeing from the numbers?

Dr WEATHERBURN: If you are looking for policy leaders to deal with that problem in north-western New South Wales, the first port of call has to be alcohol. The difficulty is that in the Northern Territory or Western Australia many Aboriginal communities are quite isolated and it is possible to find a policy that restricts the sale of alcohol to those communities, but most of the Aboriginal communities in New South Wales are quite close to major regional areas and it is not feasible to try and impose general restrictions. Some other method has to be found if you want to reduce alcohol consumption levels but I still think that is a very important first step in dealing with domestic violence in New South Wales; the trick is how to do it. For example, some years ago there were major problems with violence in Walgett and a trial was introduced to change beer glasses to plastic in order to try and deal with the cuts the kids were getting by the Barwon River. Other people who drank beer were up in arms about that suggestion. I do not have a simple answer to the question. I just think that is the logical place to start if you are trying to reduce violence in Aboriginal communities. Whether it is a possible option in dealing with violence in urban areas is another issue. I think we have not put enough effort into trying new programs and evaluating them.

The Hon. HELEN WESTWOOD: When programs are funded do you think it would be worthwhile to have a component of that funding to allow for that evaluation?

Dr WEATHERBURN: Of course but, perhaps more to the point, if you rollout programs statewide you deprive yourself of an opportunity to evaluate it. This has happened repeatedly, not just in the context of domestic violence. It is important to test them out in a particular location. Everyone's theory is that if you just test them out as a pilot that is all they will ever stay, but if the State got serious about this process of development, testing and then expanding those that are successful and if politics did not get in the way of unsuccessful pilot—to be fair to members of Parliament, I do not see too much criticism of unsuccessful pilots, so it is not a risky thing to do for a government—and I think we would all be better off. We would have this ongoing process of testing, developing, refining and expanding programs that work and taking off the plate the ones that do not. It is just that we do that automatically in public health and traffic but we do not do it automatically in criminal justice.

The Hon. HELEN WESTWOOD: I am interested in the differences within communities from different ethnic backgrounds. I have spent a lot of time in south-western Sydney and I am familiar with some of

the issues that come up there. Some in our most recently arrived communities are not as familiar with the laws here. It often has to be explained to them that some things that may not be a crime in their homelands are a crime here. I am interested that we do not collect data that would give us some indication of whether or not it is something we need to address further.

Dr WEATHERBURN: Can I make a comment on that?

The Hon. HELEN WESTWOOD: Yes.

Dr WEATHERBURN: Some years ago when a similar issue came up about whether or not rates of crime were higher in people from certain ethnic backgrounds, I approached the various ethnic affairs councils and discussed with them the possibility of collecting these figures. Some people were supportive but others were worried it would only further stigmatise them. The thing is you cannot collect this information without the consent of the communities. If they do not agree to it, it just will not happen. For a while we did try collecting information on country of birth; the compliance rate never got above 80 per cent. That left us uncertain as to whether the difference between two areas was a difference in reporting or not. The only reason we have information on Aboriginal offenders is because the Aboriginal communities agreed to it. The compliance rate is high and the figures are reliable. The starting point for better figures on that would be with the communities themselves.

The Hon. HELEN WESTWOOD: I am also interested to know if there is any reliable data on adults who were either victims of domestic violence as children or who lived or were raised within families where there was domestic violence. Do we have any data on whether or not those adults are more likely to either be victims or perpetrators themselves than those who did not have that childhood experience?

Dr GRECH: In terms of the data we collect from the police certainly not—it is really just a snapshot of the event or incident. But in terms of research—

Dr WEATHERBURN: We have done past research where we have used national surveys—in the original survey on violence against women we found that being a victim of violence as a child was a very big risk factor in being a victim of violence as an adult. Practically every survey that has been done has found the same thing. If you wanted documentation for that fact it is not hard to come by. I am happy to send you the relevant material.

The Hon. HELEN WESTWOOD: Thank you. I am also interested in funding for programs, or even preventative programs, and services for victims. Do we have any data on whether or not they parallel the rates of domestic violence in communities? For example, is the funding for Blacktown 4.5 times more than it would be on the lower North Shore? And is the funding for the far west 13.5 times higher than the domestic violence funding that goes into those areas?

Dr WEATHERBURN: Good question. I have no idea.

The Hon. HELEN WESTWOOD: Maybe that is something we can explore as a Committee. I referred earlier to Professor Stubbs' article, which I think you may have read. Do you have any view on Deputy Commissioner Grant's view that perpetrator programs or other programs have been hijacked by victims or feminists?

Dr GRECH: I think Julie said it well: there is a gender issue and we cannot get away from it. Of course, you need to include both in the solution.

Dr WEATHERBURN: I do not think so. I am totally with Julie. I have not seen any evidence that any government—in effect the allegation would be that government has been hijacked by feminists. I have not seen any evidence of that.

The Hon. HELEN WESTWOOD: I wish.

Dr WEATHERBURN: I have not seen too many occasions where government has been hijacked by any theory. I do not think in this case there is any necessity to choose between services for victims and programs for offenders.

CHAIR: Do you have any comment on the Grant study at all?

Dr WEATHERBURN: When governments claim to have a successful program I think it would be better if it had fully passed the peer review process before claims of success were launched.

The Hon. HELEN WESTWOOD: I am interested also in police training. I know that is not your area of expertise but do you know of any research that has looked at the response or intervention by police to see whether their training has any impact on the efficacy of that intervention? I know that is a very broad and vague question.

Dr WEATHERBURN: I am not aware of any evidence of that kind.

The Hon. HELEN WESTWOOD: Is anyone doing research in that area?

Dr WEATHERBURN: If anyone was it would be Julie or Janet Chan, but I do not know whether they are doing any at the moment.

CHAIR: We are aware that you have recently undertaken a review of the domestic violence court intervention model and I know that a report is soon to be released. Are you able to make any comments today about any of the findings in the review?

Dr WEATHERBURN: I would rather take that on notice than announce the results of a report that has not yet been publicly released, if you do not mind.

CHAIR: That is fine.

The Hon. HELEN WESTWOOD: Can you tell us what the research looked at, rather than the results, and what the methodology was?

Dr WEATHERBURN: Sure. The domestic violence court intervention model is a sort of organised systematic approach to domestic violence designed, among other things, to increase the reporting rate of domestic violence and the compliance rate with orders, improve the response to instances where, for example, women might feel reluctant to report, gather secondary evidentiary material that can be used in the prosecution, speed up the process so that victims are not left unprotected for too long, and expedite the matters in court. The first evaluation did not find any particular benefits except for a reduction in the time taken to finalise matters but we acknowledged at the end of the first evaluation that we had not had a very long follow-up period and that things might have improved after it. The second study, which is yet to be released, looks at the longer period afterwards to see whether there have been improvements in charge rates, conviction rates, and delay in dealing with matters and so on. Those results should be out fairly soon.

The Hon. HELEN WESTWOOD: Did you interview victims or were you just looking at the charges?

Dr WEATHERBURN: Mainly looking at the official data about the disposition of criminal cases but certainly speaking to stakeholders as well to round out the picture.

CHAIR: Earlier you mentioned the national survey and that only one in three victims report that they have been a victim. Has there been any further research or study on the other two-thirds?

Dr GRECH: As to why they report?

CHAIR: As to why they do not.

Dr GRECH: The victim surveys do ask why people did not report, if they did not report, and the most common answer in relation to violence with an intimate partner was that they did not think there was anything the police could do. That is a very common answer. We know that reporting increases if there is an injury, so that is an interesting way into the criminal justice system perhaps—going to see a doctor or going to hospital.

Dr WEATHERBURN: The three most common answers were, firstly, they did not think there was anything the police could or would do; secondly, the fear of retaliation; and thirdly—it is a pity that the

Australian Bureau of Statistics rolls it up in this one group—too trivial/personal matter, dealt with it myself. Just to make sure I have that absolutely right I will send you some information on that.

CHAIR: That would be really interesting. When we are looking at what we have captured through the gateway of people who have reported we need to encourage the other two-thirds as well and we need to understand the barriers to that so we can try to bring them down.

The Hon. NATASHA MACLAREN-JONES: Has any research been done into finding out whether victims are aware of their options?

Dr WEATHERBURN: That is a good question. I am not aware of any. It is a pity Julie is not here to answer that question. I will take that on notice.

The Hon. NATASHA MACLAREN-JONES: If not, where do they go to get that information? Do they talk to their doctors or friends, church groups—anywhere they might be looking for information?

Dr WEATHERBURN: There is research on what other places women go who are victims of domestic violence, whether to friends, doctors and so on. I can acquaint you with that. I am not sure what the answer is to the first part of your question about whether they know their options.

Dr GRECH: It has been suggested that is why injury leads to increased reporting; at that point options are presented.

CHAIR: Thank you for your evidence this morning and the excellent research and presentation. You have taken a number of questions on notice and the Committee has resolved that the answers to those be returned within 21 days. The secretariat will be in contact with you about that.

(The witnesses withdrew)

(Short adjournment)

ANNMARIE CLARE LUMSDEN, Executive Director, Strategic Policy Planning and Management Reporting, Legal Aid NSW,

ANGELA JONES, Senior Solicitor, Family and Domestic Violence, Legal Aid NSW, and

RACHELLE NADINE JOHNSTON, Project Officer, Women's Domestic Violence Court Advocacy Program, Legal Aid NSW, affirmed and examined:

CHAIR: Would you like to make an opening statement? There is no need to do so, but if you do so you need not repeat anything in the fantastic submission that you have already provided.

Ms LUMSDEN: Legal Aid thanks the standing committee for the opportunity to speak to this inquiry. We really welcome this opportunity because domestic violence has been a priority issue for Legal Aid NSW for many years. Although the primary response in New South Wales to domestic violence is the criminal justice response, we recognise that domestic violence often precipitates a cluster of legal and non-legal issues, with the legal issues including not only criminal issues but also civil and family law issues. We take the view that the most effective response to domestic violence is an early, holistic, client focused response. For a number of years Legal Aid NSW has had a high-level Family and Domestic Violence Committee within our organisation to drive the issues that arise as a result of domestic violence. That committee is chaired by our Chief Executive Officer and attended by members of the executive throughout the organisation as well as key personnel within the organisation responsible for the management of domestic violence.

Improving services for people in domestic and family violence situations was a specific priority in our corporate plan 2009-11. In order to provide a framework to inform the services that we provide, we developed a domestic and family violence policy, which provides guiding principles for the delivery of services to clients in domestic violence situations. We have used those principles to inform our Legal Aid NSW domestic and family violence strategy 2009-11. The goals of that strategy are to provide a coordinated response; to improve identification and safety of victims of domestic and family violence; to improve awareness of legal options and services for people in domestic violence situations; to improve legal assistance and advocacy; and to promote a fair and inclusive justice environment for people in domestic violence situations. These goals are achieved through a range of strategies including information advocacy, advice and representation, community legal education, guidelines and protocols, staff training, the mapping of services, and a comprehensive communications strategy.

CHAIR: Thank you. I now invite members to ask questions.

The Hon. HELEN WESTWOOD: Thank you for coming along today to help the Committee really understand this issue and perhaps to make some recommendations to government that may go some way to addressing the terrible crime of domestic violence. I am interested in the funding of services. I acknowledge that it is not up to you to determine who gets what funding, but I am interested because earlier we had a presentation from Dr Don Weatherburn about rates of domestic violence across New South Wales and the significant differences in regions and in some parts of Sydney. I am wondering whether it is your experience that the funding that is provided by the department actually reflects that. Are there more services in areas with higher rates of domestic violence, compared with in areas like the North Shore which have the lowest rates of domestic violence?

Ms JOHNSTON: I can certainly speak regarding Legal Aid's funded programs, and in particular the Women's Domestic Violence Court Advocacy Program, a program that is located in 108 Local Courts across New South Wales and has 28 separate services. In determining where those services were to be located—which was an assessment made by Legal Aid NSW—we did an extensive analysis of where there was a high prevalence of domestic violence across the State. We looked at Local Court statistics for a five-year period, to see how many applications were being made in metropolitan, regional and rural areas. From that data, we then looked at areas with the greatest need. But we also looked at whether or not services were already being provided in regional and rural areas, to work out how we could best provide funding to assist as many people as possible across New South Wales. So, certainly from a statistical point of view, Local Court statistics have been used to work out where there is an emerging need. Also, information is given to us by virtue of the Cooperative Legal Service Delivery Program, which is also funded by Legal Aid NSW. They have the ability across New South Wales to track various trends and issues that are emerging, particularly where there are newly emerging

populations or refugee communities in certain areas who might require legal advice and assistance, particularly around domestic violence issues.

The Hon. HELEN WESTWOOD: If I could pick up on that theme of people who recently arrived, particularly those who arrived as refugees. We heard from the Bureau of Crime Statistics and Research that it is not able to collect data on the ethnicity or cultural background of victims or perpetrators of domestic violence, and therefore was not able to assist the Committee to understand whether or not there are some issues around whether people have recently arrived, whether they are from a different legal system, and whether there are cultural differences in both perpetrators and victims. Do you have any experience of that which would help the Committee in its deliberations?

Ms JOHNSTON: The Women's Domestic Violence Court Advocacy Program has a database that captures that very information. It records whether someone identifies as being from a culturally and linguistically diverse background, and also the country from which they come to Australia and the language they speak. So we can certainly run reports from that database which would show emerging trends or whether there has been a statistical change over the past few years. And we can certainly get anecdotal evidence from the Cooperative Legal Service Delivery Program under which there are coordinated rural and regional meetings in particular areas, where legal service providers get together and are able to identify that there are a number of perpetrators who do not understand what apprehended violence orders are in New South Wales and why they are being breached on numerous occasions, and we can then develop community legal education in those targeted areas to address those issues. So we could provide some statistics and some anecdotal evidence from those meetings.

Ms JONES: It is also a question that we ask of clients using grants of legal aid to appear in matters, whether those be matters before the criminal courts or the family courts and may include experience in domestic violence. So we would also have our own database on statistics in relation to country of origin.

The Hon. HELEN WESTWOOD: Would you be able to provide that to the Committee? Could we have access to that data, which would provide us with some understanding of the demographics and whether there are differences?

Ms LUMSDEN: I am sure that we could run some reports. Perhaps we would have to collaborate a little more in relation to the parameters of those reports. Much of that information would be contained on the legal aid application form, because we ask whether an interpreter is required. Perhaps that would be a basis upon which we could draw data from our data banks.

The Hon. HELEN WESTWOOD: One of the other areas that Dr Weatherburn spoke about was breaches of apprehended violence orders, the need for intervention, and the consequences of those breaches. We have also heard evidence of that from a number of other witnesses. Do you also collect statistics on breaches, and whether they relate to particular population groups or particular geographic locations?

Ms JOHNSTON: Certainly from the Women's Domestic Violence Court Advocacy Program database, which is a database to which coordinators of our 28 services and their staff input data from having attended the 108 New South Wales Local Courts that they attend, we would be able to generate statistics on whether or not the Women's Domestic Violence Court Advocacy Program was providing assistance in relation to a breach, we would be able to get numbers on the total amount of assistance provided across the State regarding breach issues, and whether there has been an emerging trend regarding breaches or whether those statistics have remained steady over the past few years.

The Hon. HELEN WESTWOOD: I would appreciate it if the Committee could also have that data.

Ms JONES: That would be the same for clients represented by our in-house legal aid practice, because a breach is a criminal offence. That would certainly be captured by our system too. The data that we would be able to pull from that would be quite raw, but it is certainly information that we can look at providing to the Committee.

The Hon. HELEN WESTWOOD: It may be difficult because you are with a government agency, but do you see that there are gaps at the moment in laws that are meant to protect victims of domestic violence and that government has not acted on?

Ms JOHNSTON: Certainly we have identified that there are gaps in service provision, or inconsistencies in how the legislation is interpreted, and at a practical level how domestic violence is addressed, and there is perhaps a disjunct between the legislation and what it was intended to do and the people it was intended to protect, and how services are then delivered on the ground. In terms of the exact legislative provisions and gaps that we might have addressed, we are currently preparing some submissions in respect of the review of the Crimes (Domestic and Personal Violence) Act, and we will be putting forward submissions later this month. Some of the information that we are working on at the moment relates to the broad definition of domestic relationship, and some of the impacts on our clients at Legal Aid NSW, where we have seen an inappropriate response particularly in relation to paid carers where domestic violence being interpreted quite broadly has increased the ambit of what is a evidence offence, and that may or may not have had an impact in terms of the perception of domestic violence in New South Wales and how police respond to domestic violence. That is one issue that we have identified.

The Hon. HELEN WESTWOOD: Could you describe the type of relationship that you are talking about with paid carers?

Ms JOHNSTON: At the moment the definition of domestic relationship includes people who live together. There could be a situation whereby someone is being cared for by a family member. Domestic violence is a complex form of violence and involves a power dynamic that is not always easily identified by someone outside of that domestic relationship. In our experience where a carer relationship involves someone who is a family member and there is an obligation or cultural reason why someone is providing care, there could be violence occurring in that relationship that would be appropriately characterised as occurring in a domestic nexus. The situation is different where violence occurs in a relationship between flatmates—that is more personal in nature. Where a paid carer on a casual roster is caring for someone in a residential facility, or a carer is paid to live with someone who is elderly, or there are mental health issues or ongoing issues around someone's state of being, that may exacerbate a violence situation, and all those situations are being considered as a domestic relationship but the actual contact of the paid carer to the person being cared for is not really of a personal nature. We would like to see a distinction in relation to those types of relationships under the Act.

The Hon. HELEN WESTWOOD: Ms Jones, would you like to add anything?

Ms JONES: That particularly applies to children and young people in statutory out-of-home care situations where they are in a residential care facility and they are being cared for by people on rosters that are paid to be there in that context. Separating the context of that violence as opposed to intimate partner violence is important, particularly given the consequences for young people in their later lives from behavioural issues.

The Hon. HELEN WESTWOOD: It is an incident where a young person in care may act violently towards a paid carer?

Ms JONES: Yes. We are seeing an increase of that in the children's courts in relation to apprehended domestic violence order applications against children and young people in out-of-home care.

Ms LUMSDEN: The child may be exhibiting behaviour towards another child which would be completely acceptable in a family environment and dealt with in a completely different way. It would be dealt with by the parent as an issue that needed to be dealt with in the family context. For these children in care people are going out and calling the police, apprehended domestic violence orders are being made, whereas in other situations if the children were in a family home situation there would not be recourse to that remedy. I think we elaborate upon that in our submission.

The Hon. HELEN WESTWOOD: One of the other issues that we have been asked to consider is the increase in women as perpetrators of domestic violence and we have had evidence from other witnesses that would suggest that some of that is also about an interpretation by police at the time of the incident; for example, it may be a woman acting in self-defence who then causes harm to the original perpetrator. Do you have any experience of that situation? Is there an increase in women as perpetrators of domestic violence or is it about interpretation at the time of the incident?

Ms JOHNSTON: The experience that Legal Aid has through the women's domestic violence court advocacy program is that the direct increase of female defendants is a result of proactive policing policies at the moment and a direct response to what we believe could be a police training issue. General duties police are ordinarily the officers who attend a critical incident and take a statement from a victim. As we say in our

submission, at that time there is evidence that women in recounting the event do not accurately describe in detail the type of violence that they have been experiencing over a long course. Whereas perpetrators, particularly male perpetrators, are quick to provide an assessment of the violence that mitigates their responsibility and accountability for a particular incident.

It is our understanding that police, with the proactive policing policy at present, are required to investigate domestic violence incidents and arrest someone if there has been or is likely to be a domestic violence offence. In circumstances where a victim is in a lot of trauma and not providing a lot of information it may be that police are then arresting a female defendant who is actually the primary victim in the situation. Our experience shows that is about training police to properly identify the primary aggressor in a relationship, to know what kind of questions to ask, and to look at the history of violence over a period of time and not just the account of the critical incident that has just occurred.

Ms JONES: The domestic violence practitioner scheme that Legal Aid funds is seeing that on a day to day basis in the 32 courts they cover, and they are seeing an increase in female defendants as well. It is also a matter for judicial education to be able to forensically examine and come to the conclusion about primary aggressors and categorising the violence as well. It is often reactionary violence and to be able to categorise it that way and deal with it appropriately, whatever the outcome, is needed across the board in policing and with the judiciary.

The Hon. HELEN WESTWOOD: Have you or anyone in your team, provided input into the police training, the curriculum or attended the academy to talk to graduates?

Ms JOHNSTON: Yes. The women's domestic violence court advocacy program unit at Legal Aid New South Wales has a representative for the domestic violence liaison officer training that is provided by New South Wales police. There has been a significant increase over the last three years in our presence at that training. Our mentoring officer within the unit attends that training and provides information about what is the role of the women's domestic violence court advocacy service and explains why police, local courts and support services need to work together, particularly at local courts, to provide a holistic response to victims. We provide what I understand is a one- or two-hour workshop with domestic violence liaison officers. I can get more information for the Committee on that training and its frequency.

The Hon. HELEN WESTWOOD: It would be useful to have information about the police training and your input into it.

The Hon. NATASHA MACLAREN-JONES: I want to ask some questions in relation to young people and domestic violence and the penalties. In your submission you refer to the fact that there should be different penalties for young people and adults: Could you elaborate on that?

Ms JONES: The penalties for children and young people coming before the court in relation to domestic violence offences or apprehended violence orders are the same as adult offenders. The issue with young people is the judiciary and the legislation need to take into account the cognitive development of children, the fact that at their ages it is often a behavioural management issue, or the young person is experiencing trauma due to abuse or neglect in the home relationships. The response to that issue tends to be court intervention. Looking at something at an earlier stage or looking at something that is about diverting children and young people out of the criminal system to deal with those behavioural issues and the violence that occurs as a result of that certainly would be beneficial in our view. It is difficult because there are no longitudinal studies in relation to that but certainly the outcomes would be better as the children reach adulthood.

Ms LUMSDEN: In line with that, we would be looking at greater use of youth justice conferencing, forum of sentencing, vehicles that could adequately and appropriately address the cause of the behaviour in the first place.

Ms JONES: Those options are not currently available for domestic violence offences.

The Hon. NATASHA MACLAREN-JONES: Are you aware of any early intervention programs that work well not just for children but also for adults?

Ms JONES: The one that is growing that we have seen on the ground is a program called Love Bites and that has been taken into schools as an educational tool, modelling what a healthy relationship would look like and the consequences of violence. Children often do not understand the consequences of violence, particularly when they have experienced it in their own family context. That is the main program out there at the moment. There are ad hoc youth services in New South Wales that are attempting to deal with the issue but no coordinated response that I am aware of.

The Hon. NATASHA MACLAREN-JONES: Looking at your comments in relation to parenting plans and how parents have to rely on police to give advice so that the apprehended domestic violence orders can be issued on the day, can you elaborate on how you want to see that improved and what needs to be done to remedy it?

Ms JOHNSTON: The experience of the women's domestic violence court advocacy program is there has been an increase in local courts with magistrates not wanting to deal with family law issues. Prior to apprehended domestic violence interim or final orders being put in place at a local court often magistrates are directing domestic violence liaison officers, as officers of the court, to draft up a parenting plan on the apprehended violence order list day. That would require the domestic violence liaison officer discussing with the victim in the apprehended domestic violence order matter what kind of circumstances may arise in relation to contact with the children and developing provisions that would then correspond with what is on the apprehended domestic violence order. Our position is that it is inappropriate to conduct that discussion on an apprehended domestic violence order list day, and particularly without the woman getting legal advice.

Certainly the domestic violence practitioner scheme where they are present at New South Wales local courts or where our recently established early intervention unit is at a local court, we have seen we can coordinate a response to family law issues and domestic violence issues at an apprehended violence order list day but only where that advice is given on the day. The issues around that are that women are often quite stressed coming to court and having to give evidence or hear various issues regarding the apprehended domestic violence order. To be asked whether they want the family parenting plan in place and to come up with arrangements that might work on an apprehended domestic violence order list day is not practical. There is a need to ensure legal advice is provided to a woman before signing a parenting plan and a need to ensure that parenting plans are consistent with apprehended domestic violence orders, particularly regarding breaches. If there is an inconsistency with the parenting plan or parenting order—where the Family Court says one thing and the apprehended domestic violence order has an entirely different provision—it is inevitable that the apprehended domestic violence order will be breached and that continues the cycle of violence.

CHAIR: Could I follow on from that. We have heard one of the best ways to get compliance with an apprehended domestic violence order is the tailoring of a apprehended domestic violence order and the separate apprehended domestic violence orders for children and partners in a normal domestic relationship. How can we go about this in practice? With regard to the legal advice before a parenting plan is signed and the tailoring of apprehended domestic violence orders, we hear over and over that the courts are chock-a-block, the police have not investigated it properly at the start, there is a lack of information and it is almost a rubber stamp exercise. How can we start to improve the process, particularly about the apprehended domestic violence orders?

Ms JOHNSTON: We need to think about the situation prior to the apprehended domestic violence order list day and go back one step. As a provider of funding for the women's domestic violence court advocacy program we are ensuring there is appropriate communication and information sharing between the NSW Police Force, government agencies and non-government agencies. Certainly in our experience where a general duties police officer has attended a critical incident and consents to contact details being given to a women's domestic violence court advocacy service, the women's domestic violence court advocacy service worker is able to contact the victim immediately before the matter gets to court to discuss the circumstances in their case.

They can go through the various conditions on the apprehended domestic violence order and work out what the children's issues might be, work out if there are family law proceedings afoot, or whether there is a need to look at family law issues. At that stage they could get in contact with a solicitor: Either the domestic violence practitioner scheme solicitor, an in-house practitioner at Legal Aid, if they qualify, or another service, to ensure that the family law issues, the apprehended domestic violence order issues and any other periphery civil law issues, can be dealt with before the court process begins. It is about getting that early intervention legal advice to ensure consistency from the outset.

Whether or not a child should be listed as a protected person on the same apprehended domestic violence orders as a victim or separately, our experience suggests that having a separate order for the child is more appropriate. It clarifies the issues regarding children and defendant contact with the child and it keeps the children's issues separate from those of the victim. They are different issues and breaches will often result in relation to complex family law issues, not necessarily issues regarding the victim.

Ms JONES: We also have an early intervention unit, so Legal Aid New South Wales sees this as an issue needing to get legal responses and legal advice as soon as possible so that all parties are equipped as well as possible to deal with the matters before the court. I guess the issue is that we do need an increase in local services and Legal Aid has certainly made that commitment to domestic violence and attempted, through the Domestic Violence Practitioner Scheme, the Women's Domestic Violence Court Advocacy Scheme and the early intervention unit, to increase those services. There is still a way to go—it is a funding issue.

In relation to the children and parents being listed separately, that is a really important point to make. At a very base level, children then will not be used as a tactic to further the violence in the family and the two issues will be dealt with separately. That is important for the protection of women and also of children because they often face different issues from the perpetrator. So to do that separately would allow tailoring to individual needs.

Ms LUMSDEN: There is another aspect, and that is that I think it is generally acknowledged that court outcomes are better if defendants are provided with some sort of legal advice and legal representation at the time the order is made and particularly that interim orders can be made if the defendant has some early and appropriate advice in relation to the order itself and the consequences of breaching the order. If it is tailored to accommodate the needs of the defendant where possible and appropriate, it is much more likely that there is going to be compliance with that order and if defendants have some initial advice, there is less objection to the terms and conditions that are imposed. Being aware of this, Legal Aid has established two pilot projects providing advice and representation for defendants at Mount Druitt and Dubbo. We have also tried to provide community legal education sessions at various courts around New South Wales to defendants on apprehended domestic violence order list days.

CHAIR: I will come back to the first part of the answer about that one step before in a minute. But just on that, we have heard from numerous witnesses that a lot of the apprehended domestic violence orders are almost set up to allow the person to fail almost, due to their restrictions. Going back to the tailoring, you have now also touched on providing information to the perpetrator to assist them in not breaching the apprehended domestic violence order. What are the barriers at the moment to providing that information? Where can we look at providing that information to them in order to assist them to comply?

Ms LUMSDEN: There are two parts to that. Providing information can be very broad brush and we think it is more appropriate to provide specific advice to the defendant. Therefore we are providing representation in these two courts. It is a pilot in two courts because we do not have the funding to roll it out across the State.

CHAIR: Has there been any review of the outcomes from the pilot at this stage? Do we know that it is working?

Ms LUMSDEN: No, it is only in its genesis but we do intend to work with the Law and Justice Foundation to evaluate those pilots.

CHAIR: I return to the point earlier about that one step before the listing day. Is there a jurisdiction doing that and doing that well that we can look at to get some ideas?

Ms JOHNSTON: There are some locations in New South Wales where we have a best practice model. The issue comes down to whether or not victims give consent to their information being provided to a non-government agency by police. We have been struggling with that issue for many years and have raised it in numerous submissions, because we have seen that victims get more appropriate responses where they can get early support services. An example of one of our best practice models would be Sutherland Local Court. In that area the Domestic Violence Liaison Officers that are employed are very effective in working with victims to ascertain whether or not they need early responses and in getting consent to share information with the Women's Domestic Violence Court Advocacy Service. The issue concerns the apprehended violence order list day. It is a busy day with a lot of people to be facilitated through that process. Where women are able to get that

information and advice earlier, the Court Advocacy Service team can discuss with the domestic violence liaison officer what conditions are appropriate and look at the history of violence and what situation will result for the victim. Because housing issues may have changed in the two weeks before an incident occurs and the matter gets to court. On Ms Lumsden's point, if the defendant is given legal advice at that point as a duty service at court, the solicitor can explain the various conditions and the likely repercussions if a defendant breaches them and try to work out what might be appropriate in the circumstances for both parties.

There is also an issue regarding who is representing the defendant. The domestic violence liaison officer is representing the victim or liaising with the victim. If the defendant is represented, they can have that negotiation at the apprehended violence order list day and, if there are solicitors there as well, they can also discuss the family law issues that are in play. That will enable, at an interim stage of the proceedings, a final apprehended violence order to be granted and will also potentially address family law issues to prevent them going into family litigation. That practice is certainly happening at the Sutherland Local Court, where the liaison officers work very closely with the Women's Domestic Violence Court Advocacy Service who also work with the police prosecutor, to ensure that workable orders are put in place.

CHAIR: What about in other parts of the country? I think we have heard from previous witnesses that Victoria has a good model and from memory they have separate domestic violence courts. The Australian Capital Territory also has separate courts. Are they things that we should be considering from a legal point of view?

Ms JOHNSTON: Victoria has taken a proactive response to addressing domestic violence and has used some creative and innovative mechanisms to do that. Legal Aid New South Wales is in support of the integration of specialist services, family law and domestic violence services in New South Wales. We do not believe that in the current context specialist courts are necessary. There are certainly the skills and expertise in New South Wales to have specialist courts functioning in the current Local Court structure. For us, in our experience, the issue comes down to training about magistrate awareness, judicial education, about having effective police prosecutors who understand the complex nature of domestic violence, and who work closely with domestic violence liaison officers and with services like the Domestic Violence Court Advocacy Service to provide that specialisation. We think that can be done in New South Wales but it requires a commitment to specialist training and expertise. Specialist apprehended violence order list days could be held in New South Wales local courts to distinguish that this is a particular type of violence and requires specialist skills to get it right.

CHAIR: I am sure the Hon. Helen Westwood would want to ask you about the liaison officers at some stage, particularly with their experience at Sutherland because I know that is an area she is interested in. We are hearing a lot about training, the gathering of information, et cetera. Are you familiar with the Victorian model where the police or any agency that comes into contact with a victim goes through the risk assessment matrix model down there?

Ms JOHNSTON: I am not familiar with it.

CHAIR: You mentioned earlier that there was a gap between the intent of legislation and what is put into practice. Are you able to elaborate and provide specific examples for the Committee, so that we get a good understanding of where these issues may be?

Ms JOHNSTON: Certainly. I think the issue comes down to coordination. Legislation provides the ambit in which domestic violence is addressed in New South Wales and sets protocols and guidelines as to how domestic violence situations are to be responded to. The difficulty is in interpretation and in having a systemic response on the ground where there is coordination, where support services are aware of what is happening and there is integration between support services, police, legal practitioners and the judiciary.

CHAIR: Are there any specific examples that you wanted to give?

Ms JOHNSTON: In sentencing for breaches of domestic violence, it is quite clear that the legislation provides that, where there is a breach of an apprehended domestic violence order, if it is a serious offence, then a criminal conviction is recommended as a penalty in that situation. Our experience suggests that there is a lot of inconsistency in New South Wales, particularly in how breaches are addressed and there is inconsistency in sentencing from magistrates. I know it has been recommended in the family violence report—perhaps there

could be included in the legislation examples and further guidelines to ensure consistency and provide some protocols as to how the judiciary and police could respond to domestic violence.

CHAIR: In general, are you happy with the legislation that we have? Is it more that we need to focus on interpretation, implementation and education in relation to the legislation?

Ms JOHNSTON: I think the biggest issues in New South Wales are about the effect of the legislation, how, in practice, to respond to domestic violence. There are some gaps in the legislation that we are currently preparing submissions on—issues regarding apprehended violence orders for children and the working with children check, interim orders and their longevity and costs orders—so specific examples where there are problems. The bigger issue for us in what we have seen as an organisation, is in how to respond to domestic violence once there has been a domestic violence offence or someone is trying to seek protection through the court system.

CHAIR: Have you completed that submission?

Ms JOHNSTON: It is in the final stages and being facilitated through our executive.

CHAIR: Do you think you would be able to provide us with a copy of the submission once it is completed?

Ms LUMSDEN: We would be happy to do that.

CHAIR: Thank you. That would be beneficial to the Committee.

Ms LUMSDEN: In relation to the Act itself, in our submission we indicated that we think the penalties are sufficient, it is just that they are not being implemented appropriately. But there is also a big issue of the actual investigation of offences, particularly offences of breach of apprehended domestic violence orders. That is a training issue but we have recognised that when we go along to forums and we suggest that something should be done, we are often told: This is in the standard operating procedures of the police. The problem is that the standard operating procedures of the police are secret; it is not a public document. We do not know what is in those procedural documents of the police. I think it would be of use for our organisation, in particular the women's domestic violence advocacy workers, to be aware of what is contained within those standard operating procedures so that they could say to the relevant police officer or to the client: The police should be doing this.

CHAIR: I think that is an interesting point. One of the things that Dr Weatherburn mentioned earlier was that only one in three people who have experienced violence have reported it, particularly domestic violence. The main reason for the two out of three not reporting was that the police will not or cannot do anything. Is what you are saying that by having a better understanding of what the police will do victims and their supporters will be encouraged to report violence?

Ms LUMSDEN: Yes, that is right; and I think it is something that is recognised by the police themselves. I understand the commissioner has recently launched a video called *Nanette's Story*, is that correct?

Ms JOHNSTON: That is right. It is a DVD training initiative for police about breaches and how police need to respond to breaches so that it does not end in a crisis incident.

CHAIR: You have touched upon the penalties in sentencing. The Committee has been advised that around 50 domestic violence offenders are currently subject to an intensive correction order. In your view, do these intensive correction orders offer an effective and appropriate response to domestic violence?

Ms LUMSDEN: There has been no opportunity to evaluate intensive correction orders. I do not know whether the conditions imposed on those orders are evidence based. However, we would like to put in a plug for the Corrective Services perpetrator programs, which I understand have been highly successful and well evaluated. Basically, we consider that you need to address the behaviour of perpetrators of domestic violence using an evidence base. We have been trying to do it for years and have been highly unsuccessful. We now have found a program that has been very well evaluated; it has some highly successful outcomes. I would urge the Committee to consider recommending that resources be provided to further investigate the expansion of those programs.

The Hon. HELEN WESTWOOD: To follow on, I assume you are talking about the program mentioned in the article in today's *Sydney Morning Herald*?

Ms LUMSDEN: I did not read the article in this morning's newspaper, but I understand that Mr Grant gave evidence to the Committee about the program last month.

The Hon. HELEN WESTWOOD: Perhaps what he did not say to the Committee he said in the article. He claims that the reason this program has been successful is that, unlike other programs, it was not hijacked by focussing on victims and feminist approaches. I will ask the same question I have asked each witness: Do you think a focus on victims or a feminist approach leads to programs failing?

Ms LUMSDEN: I do not know the context in which Mr Grant said that, but we would not be of the view that successful programs would exclude consideration of the needs of victims at all.

Ms JONES: Focussing solely on victims I think will allow perpetrators to blame the victims or make their violence about the victims when in fact it is very much about the perpetrator. I am hoping that is what he was trying to say—I do not know. But real responsibility taken by the perpetrator is what is required, and education around the consequences of their behaviours—so less of a focus on the victim's behaviour or the context in which the victim lives and more on the responsibility of the perpetrator. I hope that is what he was saying, but that certainly would be more beneficial.

Ms JOHNSTON: There certainly is a need to always acknowledge that domestic violence is a gender form of violence and significantly committed against women and children. Certainly, a feminist and a human rights approach to addressing domestic violence is necessary.

The Hon. HELEN WESTWOOD: Is that program being peer reviewed? Dr Weatherburn told us this morning that he was not familiar with the program, but thought it was important that it be peer reviewed through evaluation of its efficacy. Do you know whether it has been peer reviewed? If so, could you point us in the direction?

Ms LUMSDEN: So far as I am aware, it has not been peer reviewed, but I understand that the results of the evaluation will be published shortly. It will be subject to peer review through that process.

The Hon. HELEN WESTWOOD: When you spoke about the best practice model at Sutherland, two things come to mind. The Bureau of Crime Statistics and Research statistics do not show Sutherland as an area with a significantly high incidence of domestic violence compared to, say, areas like the Far West or even south-western Sydney. Is that because it is within an area where perhaps domestic violence is not as prevalent and does not have as many complexities or demands upon resources as other areas? What is your opinion?

Ms JOHNSTON: Certainly, in our experience and looking at our statistics, three local area commands feed into the Sutherland Local Court apprehended violent order list day and it is our second-biggest Women's Domestic Violence Court Advocacy Service. That is based on the pure statistics of Local Court applications for domestic violence orders. Their list day is one of the biggest list days in New South Wales. But I absolutely agree that in a metropolitan area there are more resources to be able to provide one-on-one assistance. Certainly in our experience, particularly in rural and regional areas where there are no domestic violence liaison officers, that model is not going to be appropriate. There is absolutely a need to ensure that the resources, the people working in those positions, and also a priority amongst commanders in local area commands that domestic violence is serious and that there should be personnel directed to addressing domestic violence. If the personnel are in place and there are appropriate relationships and enhanced information sharing, we certainly think the model can operate in a metropolitan area, and regional and rural bases regardless of the size of the apprehended violence order list day and of the community being serviced.

The Hon. HELEN WESTWOOD: The components of the best practice model are what I am interested in. Perhaps it is a combination of these things or perhaps one is more important than the other, but are we talking about resources, attitude and approach, training or leadership—by leadership I mean within the police command and the criminal justice system? Could you elaborate on that?

Ms JOHNSTON: I think it starts with leadership because attitudes are a focus of our leadership and where a local area command prioritises domestic violence, domestic violence liaison officers will be made available to attend apprehended violence order list days. Certainly it is a top-down approach that needs to be

implemented as a first point of call. It also is about the relationships at court. Processes and procedures are fundamental, but it also is about how people communicate and work together to try to get the best possible outcome. The reason Sutherland is working effectively, as well as other Women's Domestic Violence Court Advocacy Service across New South Wales, is that the domestic violence liaison officers prioritise domestic violence matters in that court. The police prosecutor is a specialist trained in domestic violence and understands the complexity of those matters, and prioritises discussing the various issues on the ADVO with the domestic violence liaison officer. The domestic violence liaison officers work closely with the Women's Domestic Violence Court Advocacy Service. That facilitates up to the magistrate a very streamlined approach so that the orders are dealt with quite quickly and end up being effective and workable in the woman's circumstances. When we talk about court processes, there is a need to look beyond facilitating things through the court process to actually engaging with the victim. Having appropriate services at court enables us to go through what every condition on the order actually means, whether it will work for her and potential issues that could arise in the future so that those issues are dealt with first before the court process even begins.

Ms LUMSDEN: Touching on the leadership issue, I understand that the top position for a domestic violence liaison officer is a senior constable. We considered that for such an important issue it would be important to raise the status and seniority of people who are in those positions.

The Hon. HELEN WESTWOOD: Thank you. You have just answered my next question. My experience has been that domestic violence liaison officers often are at the bottom of the pecking order; it is not a position to which officers aspire and often you tend to get people where it works with their family circumstances. They have been dubbed as the domestic violence liaison officer, but not because they have a particular approach or training that makes them appropriate for that position. Other witnesses have concurred with that view. What is different at Sutherland? Do the domestic violence liaison officers have some satisfaction? Are they taken notice of by their colleagues?

Ms JOHNSTON: I think it comes down a lot of the time to the individuals working in those positions. We are very fortunate to have very dedicated domestic violence liaison officers at Sutherland Local Court and they are domestic violence liaison officers who have worked in domestic violence for a number of years. They are involved in the domestic violence liaison officer training and they have a commitment and passion in that area. We are very lucky in that regard. There also is support amongst those local area commands. The apprehended violence order list day is a dedicated day that they always attend, unlike in a lot of regional areas in our experience. Domestic violence liaison officers are not told, "Well, actually we're really busy. Can you get on the truck? You can't attend the AVO list day this week. It's just domestic violence, it'll be fine." That does not happen. There is a commitment that they are there at the apprehended violence order list day and that is non-negotiable.

Ms JONES: It also is run in a separate court. The list runs in its own court, which means that those matters are given priority. They are not shuffled in and out between other matters on the day. There also is a safe room that is quite large, which allows people to speak reasonably privately and confidentially without the defendant lurking around. There is a sense of safety as well, which also leads to more communication between the client, the domestic violence liaison officer, the Women's Domestic Violence Court Advocacy Service and we also have the DVPS, which is the Domestic Violence Practitioner Scheme funded by Legal Aid. That also runs on a duty day at Sutherland. So there is legal assistance as well as the Women's Domestic Violence Court Advocacy Service support. I think it is a combination of all of that.

CHAIR: You said three local area commands feed into Sutherland court. What are they?

Ms JOHNSTON: Sutherland, Miranda and Hurstville. We also have specialist culturally and linguistically diverse workers at Sutherland and Aboriginal specialist workers. Those workers were employed by services in that area as a result of a funding increase that the Women's Domestic Violence Court Advocacy Service received in 2009 to recognise that there is a lot of underreporting in those vulnerable communities and to encourage people to attend court and to get into those communities.

CHAIR: Does each local area command have a domestic violence liaison officer or are there numerous officers for each local area command?

Ms JOHNSTON: It varies across the State. Some have two and some have one.

CHAIR: I am sorry, I meant in the three local area commands you identified?

Ms JOHNSTON: I would have to check and get that information for you, how many domestic violence liaison officers attend from each of those local area commands.

CHAIR: Obviously, from your evidence, it works at Sutherland and you now are outlining a number of other support services that are available. It would be good for the Committee to get a good picture of the type and size of resources available at Sutherland, including things like the safe room et cetera that seem to have a positive influence on the outcomes, particularly for the individuals involved.

Ms JOHNSTON: We certainly can get that information for you.

The Hon. HELEN WESTWOOD: You spoke earlier about the police standard operating procedures. Some evidence suggests that there is not a standard and you will get a different response from different command areas. Have you witnessed that?

Ms JOHNSTON: Yes. Certainly there is a lot of inconsistency in practice. Within our program we have six-weekly meetings with members of New South Wales police from its domestic violence unit. We often address systemic or local issues that have arisen regarding police responses to domestic violence. We are told, "Well, that's part of the standard operating procedures." Our only response in that situation is to request that all domestic violence liaison officers be sent an email reminding them of their operating procedures to stop certain conduct occurring. We are not able to see those procedures or be shown the email that has gone out. It certainly would be effective if there were clear guidelines to which everyone had access so that if an incident occurs, say, at a local court, a Women's Domestic Violence Court Advocacy Service worker could provide the standard operating procedures to the domestic violence liaison officer and inquire as to why that process had not been followed.

Ms JONES: It would also allow better evaluation of whether police officers are meeting their standard operating procedures. We would know then and be able to hold them to account where they are not.

The Hon. HELEN WESTWOOD: Do you find that when you are talking about the best practice model that it is effective both in terms of apprehended violence orders and breaches? Is the response to breaches as consistent in the Sutherland unit area as it is for the taking out of apprehended violence orders in the initial response to a domestic violence incident? We have heard about breaches and about the fact that there is not a consistent response, it is not taken seriously in some commands and even the courts do not necessarily respond to them in the way that often victims and advocates think that they should.

Ms JOHNSTON: I can certainly get some further evidence in that regard from that particular area. One of the issues is when women report a breach they often do not speak with a domestic violence liaison officer, they speak with another officer who is not potentially experienced in domestic violence. Certainly evidence from our Women's Domestic Violence Court Advocacy Service is that police responses are often old or too hard to investigate or "You don't have any evidence so it will never get up" and then the matter is not addressed any further. We would like to see appropriate time frames put in place for the investigation of breaches, continual contact between police and victims where a breach has been reported and the gathering of that evidence immediately once a breach has been reported. I will certainly get more information regarding breaches in Sutherland.

Ms JONES: Part of the role of the Women's Domestic Violence Court Advocacy Service is to advocate on behalf of their clients to police for better investigations, more appropriate response times and any outcomes that the woman is seeking.

The Hon. NATASHA MACLAREN-JONES: At what stage of the process are you involved? Do you have to wait to be invited in, or when the case is going to court, or is there scope for you to be involved earlier to give advice to victims?

Ms JONES: There certainly is scope to be involved a lot earlier. Certainly our family law section will see women attempting to get family law orders who have not identified out loud that they are experiencing domestic violence. So Legal Aid is, in fact, involved from a very early stage right up until the end stage. It depends very much on which process the clients are going through. But certainly if we get a phone call for advice at an earlier stage we are available and generally have capacity to do that. We have got the early intervention unit as well which can be contacted prior to court, and indeed, prior to an application even if that

looks like the way that the matter will proceed. So there is scope for Legal Aid to provide advice or to provide clinics and then representation from there.

The Hon. NATASHA MACLAREN-JONES: How do victims obtain that information? Do you think it is adequate or are there are other ways that it can be better advertised to potential victims?

Ms JOHNSTON: Certainly Legal Aid services are on our advice sheet. People can come to Legal Aid and get a free advice appointment in relation to a civil, criminal or family law issue. There is a question now asking if someone is experiencing domestic violence or if they are identified as being in a domestic violent relationship. We have developed protocols and a strategy to address that immediately so that any solicitor working at Legal Aid can then provide appropriate referrals either to the Women's Domestic Violence Court Advocacy Service or to another solicitor to give them that advice.

Becoming involved in the court process for the Women's Domestic Violence Court Advocacy Service services is quite inconsistent as a result of privacy impediments in New South Wales. Our services give information to women before court, at court and after court. The before court advice and information that can be given is entirely based on whether police provide the contact details of a woman so a referral can be made. That is quite often only obtained when a victim gives consent. We would like to see enhanced information sharing in that area so that police provide automatic referrals to a Women's Domestic Violence Court Advocacy Service as soon as a domestic violence incident has occurred. We also have a number of publications and brochures that we give to clients that are located at community legal centres and other support services with the LawAccess NSW number. So anyone can call and get referred to their local Women's Domestic Violence Court Assistance Scheme if they are in a domestic violence relationship.

Ms LUMSDEN: Generally speaking, making people aware of the legal services that we offer is a problem with which we grapple in any case. People generally only seek out that information when they are faced with a legal issue. But it is something that we are continually working on. We work with non-legal-service providers, for example general practitioners, to make them aware of our services so that if somebody comes to them seeking some medical assistance, for example, they can then refer on to us. It is a continual challenge that we face.

CHAIR: We may forward more questions on notice to you. I note you have also taken some of our questions today on notice. The Committee has resolved that the answers to those questions be returned within 21 days. The secretariat will be in touch with you to facilitate those answers.

(The witnesses withdrew)

CATHERINE SMITH, sworn and examined:

CHAIR: Thank you for coming this morning to share with us your experiences and provide information to the Committee. Are you comfortable by yourself? Would you like someone to sit with you?

Ms C. SMITH: No, I am right.

CHAIR: Would you like to make an opening address?

Ms C. SMITH: I have a little one, if that is okay.

CHAIR: Yes, and then we will move on to questions.

Ms C. SMITH: My name is Catherine Smith, although I have a different name outside being involved with anything to do with Kevin Smith or the subject of domestic violence. I have had to go to extraordinary lengths to get a new name without leaving a paper trail for my abuser to follow. This is a very big problem for women and children escaping domestic violence. It is impossible for me to tell this Committee all the things I need to in the time allotted and within the terms of reference of this hearing. What I have had firsthand experience of would take an inquiry of its own. I will do my best to stay on track. It seems to me from all I have read and following this subject by news and current affair programs that domestic violence is a turn-off, misunderstood and an ignored subject, with most people dismissing it as a private family issue—which is learned behaviour starting with police culture and a failure to deal with the perpetrator whether they are male, female or adolescent.

It is my greatest hope that this inquiry will go some way to making a difference because, God knows, something has to. There have been so many victims out there and not a lot of help or resources, for the most extreme cases where victims often end up dead. I can say, and I want to say on record, that the authorities did nothing to keep my family safe. We did it on our own and for each other. Thank you for this opportunity to be heard. I hope that I can do the other victims that have not got a voice some justice.

CHAIR: Thank you. We will open the inquiry to Committee members to ask you questions.

The Hon. HELEN WESTWOOD: Thank you, Ms Smith, for being here today and being so willing to give evidence. I am sorry our system failed you and your family, as it so clearly did. Thank you for being willing to use your horrendous experiences to become an advocate for women and children victims of domestic violence. I hope we can do your evidence some justice in terms of the recommendations that we make to Government. In your submission you talked about authorities, particularly police, referring to domestic violence as "just a domestic". I know that you had to move around quite a bit to escape your abuser. Did you find an attitude that was different to that or more aware of the issue of domestic violence when you moved around or was it similar wherever you went?

Ms C. SMITH: I stopped having any involvement with police after 1990 until 2000. Between 1990 and 2000 I had no involvement with police at all. That was mainly because I did not trust them anymore. After 2000 my son was kidnapped, and his partner, and we ended up back in police involvement. No, to be frank with you, I have seen no difference and I still see no difference right to today. I have had a couple of glimmers of hope through that time with different officers but it always comes back to the same where I do not feel I am getting justice enough.

The Hon. HELEN WESTWOOD: Can you explain to us what you see as that failure on the part of police? What is it that needs to change? What is it they lack in their understanding of domestic violence that prevented them from taking the action necessary to make you and your children safe?

Ms C. SMITH: Well, in the first place back in 1977 it was just the culture of the country cop. I do not know what they were like in the city. I did not have that experience very much. But country police have a totally different attitude to domestic violence. They see it as a private issue and, you know, like "just kiss and make up, it is not really that bad". Then when they honed in on my situation, the perpetrator was faking depression, saying that is the reason for all this and denying any violence or saying they were defending themselves. The police looked for any excuse not to lay charges, I suppose because it is just too much work. It is easier just to hope you will get over it.

The Hon. HELEN WESTWOOD: Were the police aware that the perpetrator had weapons?

Ms C. SMITH: Yes, the police have been aware on quite a few occasions. On the first occasion in 1977 involving weapons they were confiscated, but within three days they were given back.

The Hon. HELEN WESTWOOD: By the same police?

Ms C. SMITH: Yes. In 2000, the police were made aware by an outside independent professional person that he had a weapon and that he was contemplating murdering a family member. An official statement was made to police but it was never acted on. My son was informed by a professional person that this was occurring and that his life was in danger and he went to the police. They decided to take a statement from him and they were supposed to issue an apprehended violence order [AVO]. They had knowledge that the perpetrator had illegal firearms and that he was contemplating murdering family members. But nothing happened; even the AVO was not served. Six months later they were kidnapped with that same gun that the police did not look for. They knew him, they knew his name, they knew his licence number, they knew how to find him and they knew his address, but they did not bother. I am sorry; I am getting upset.

The Hon. HELEN WESTWOOD: That is fine. Did the police ever explain why they did not act?

Ms C. SMITH: No, and they have not to this day.

The Hon. HELEN WESTWOOD: What do you think needs to change so that women—and particularly you and your children—are made safe? What would you like to see happen?

Ms C. SMITH: I would like people to be heard when they make a complaint and for the complaint to be investigated openly and honestly. If there is wrongdoing on the part of the professionals—the police, the Director of Public Prosecutions or whoever it may be—they should be made accountable. If the people involved in the investigation are found to be, for the want of a better word, lying or trying to stir up trouble, they should be charged. Anyone doing the wrong thing should be accountable. I have written so many letters to so many police stations and I have subpoenaed evidence but it has not been forthcoming. I have also lodged freedom of information applications and to this day I have not had any answers about why I have not been given the information or about my legal right to have it. There is so much documentation in this case that is very conveniently missing. I have quite a bit, but there should be a lot more.

The Hon. HELEN WESTWOOD: When the perpetrator first began to abuse you were you aware of your rights? Were you aware of any services in the area where you were living that could have protected you and your children?

Ms C. SMITH: No. I was about 27 or 28 years old and I had no idea of anything that was available. The police did absolutely nothing for me. My neighbour had to drive me to the hospital. Once they took him away, I thought he would be charged and we would be safe. I went to the police station and made a statement. When I got there I was wondering where he was because I was frightened to be near him. I was told he was at the hospital. I was absolutely terrified to think I had just come from there and he was there with no supervision and he was not under arrest. I did not know that at the time. I found out only a few years ago that the police had negotiated not to arrest him but to take him to the hospital for a peaceful settlement. He was threatening to massacre his children with the firearm they returned to him three days later. That is why I say what I do about the police dropping perpetrators off at hospitals. From speaking to some nurses, I know that that still happens today, especially on holidays and at Christmas time and if someone has a reason for being violent—for example, drinking, drug taking or suffering from a so-called mental condition. At the time my husband was diagnosed as having explosive personality disorder without a mental condition. He just has a bad personality and the police have been treating him as a mental patient ever since. That is where we were let down; that is the biggest thing that let us down.

The Hon. HELEN WESTWOOD: Over the years have you received any better support and advice about your rights or even support for you and your children to overcome the impact of the violence?

Ms C. SMITH: I was offered a lot of help by women's refuges, but I was not really in a great position to take it up because he always found us even if we used those services and even if they snuck us away quietly. We were on a bus moving from one refuge to another at Port Macquarie and within two hours he was there. To

this day I still do not know how he found out where we were. It got that way that I did not even go to refuges. When I left in 1997 I had help from the refuge movement to get to a secure location, but after that we have hidden on our own and taken steps ourselves to stay safe.

The Hon. GREG DONNELLY: Thank you for appearing before the Committee today. It is very important for inquiries to hear first-hand information from people who have had experience of what are very tragic and sad circumstances over a long time. We are very grateful to you for appearing today. Putting aside the police for the moment—I will come back to that issue shortly—can you explain to the Committee the type of support you received to deal with those experiences? You have mentioned women's refugees, which were obviously of great assistance.

Ms C. SMITH: Yes.

The Hon. GREG DONNELLY: Can you list the different types of support that you used? Do you believe that that type of support needs to be enhanced and improved or would other types of support have been more helpful? Take your time; I am asking for an opinion given what you have been through.

Ms C. SMITH: Because we tried not to leave paper trails and avoided anyone knowing where we were we stopped going to agencies.

The Hon. GREG DONNELLY: Do you mean government agencies?

Ms C. SMITH: Yes, anywhere that creates a paper trail and where things are put on a computer and kept on a database. I am talking about things as simple as changing my name; I could not do that. My name is still Catherine Smith on my drivers licence. If I get pulled up, I have a drivers licence in an old name showing a fictitious address. I still cannot change a driver's licence because I am not allowed to get a new tax file number, for instance, which was a monumental effort. I had to give an undertaking that I would not link my old name to my new name. The police will not accept that I have a new name on a driver's licence without having an alias attached to an old name on their records. Where do you go? I cannot get car insurance.

There are just so many things I still cannot do. I would like to get on a plane for instance; I have got to always use this name. I am trying to get a passport at the moment and I have been to the office three times. I have to keep getting more and more and more information to prove why I changed my name. It goes on and on and on, and it is the same for everyone in this position. Even a young person escaping domestic violence of any kind it must be a horrendous thing if they have not got support from grown-ups or from agencies or whatever. I do not know how on earth they do it. No wonder there are so many kids on the street.

The Hon. GREG DONNELLY: If it is not too personal to ask this question—

Ms C. SMITH: Nothing is too personal.

The Hon. GREG DONNELLY: If it is please say so immediately. With your situation where are things up to at the moment? Are you at the point where you are able to—if I could use the phrase—live a reasonably normal life? Has the perpetrator's contact with you separated now and you are able to continue on?

Ms C. SMITH: The perpetrator has just been sentenced to 17 years prison for the crimes against me that should have been dealt with years ago.

The Hon. GREG DONNELLY: To that extent—

Ms C. SMITH: I feel safer now than I have ever felt in my adult life.

The Hon. GREG DONNELLY: The effect of having been through all of this, despite what is going to happen to the perpetrator—is he serving time yet or is that about to happen?

Ms C. SMITH: He is there now.

The Hon. GREG DONNELLY: With respect to how this has affected you—I know this might sound like an odd question to ask—having been through all of this over such a long period of time, how has it affected you?

Ms C. SMITH: I have a very deep mistrust of government departments, namely mainly police. I am still very angry for what my family has been through and for what it cost us socially, financially and as a family the amount we have missed out on and can never be regained. I have only just learnt where one of my grandchildren lives after six years. It turns out she was just down the road from her auntie and they did not even know. It just goes on; it affects every aspect of your life. I cannot understand how police can do a risk assessment for police—and this is before I left, this is before I escaped, this is before I got away—there was a risk assessment done on Kevin Smith for their benefit where there had to be four police present, it had to be in daylight hours before they would answer a call for help from me and yet they left us there.

There was a time when four of my children were there on their own with him. They were supposed to be at boarding school and he refused to let them go; I had escaped. The police asked the kids in front of the perpetrator about leaving them there and saying that he promised to take them to school, and they were trying to signal to these policemen about how scared they were to stay there and "please don't leave us here", and they were totally ignored and left there with a psychopath.

The Hon. GREG DONNELLY: Part of what this Committee is going to do after we have deliberated over all the evidence and looked at all the material is produce a report and to make recommendations back to the Government for consideration of matters that it might take up in terms of perhaps changing the laws or regulations or whatever the case may be. As a person who has been through something so difficult what recommendation or recommendations do you think would be worthwhile coming out of a committee like this going back to the Government for consideration in dealing with the issue of domestic violence in New South Wales?

Ms C. SMITH: I have been thinking this for quite a few years: I think to change public attitude is the most important thing to do and I think because it is so entrenched in our society—even with all I have been through, there are times on reports that I still even think that we still treat it as a family issue, as a private issue, as a secret thing that we do not want to know about. I think the way to get around that public perception is to concentrate on the children—as well as the children that are being physically abused—the children that are witnessing this stuff their whole life. If we can concentrate on that, people being people and being human naturally gravitate towards protecting children.

The Hon. GREG DONNELLY: It is raising the community's awareness—

Ms C. SMITH: We have got to raise the awareness in a way that they will listen, in a way that they will care, and if that happens, if we work on raising the awareness for the children's sake maybe they will listen to the rest.

The Hon. NATASHA MACLAREN-JONES: Thank you very much for coming and also for your courage. I want to elaborate a little bit more on your comments about children, particularly your view of and also your experience of the support or lack of support that your children received over the years and where you see changes being made to improve that.

Ms C. SMITH: I could be totally honest with you and tell you my children have never received any support from anyone other than a couple of times when we were in refuges when it would just be the nurturing care and the sympathy and that sort of thing that helped the kids. Honestly, there has never been an agency to help any of my children, even to this day.

The Hon. NATASHA MACLAREN-JONES: What would you like to see available for children?

Ms C. SMITH: Even as young adults my children went to the police and contacted the police on many occasions. We went to the DPP in Wollongong in 2000 when Duncan and his partner were kidnapped, looking for help there and we got none and they did not want to know about it. I said that in my submission. I just cannot comment on that because my children never received any help from anywhere.

The Hon. NATASHA MACLAREN-JONES: Looking at it from a schooling perspective, and I understand that you needed to relocate, do you feel that you can speak to schools or that there is support within the schooling environment for children of the victims?

Ms C. SMITH: One of my now grown-up daughters told me that when she was in high school she twice went to teachers and was not listened to or it was more she was frightened of the repercussions if her father found out she had spoken to anyone. So that was it; that was the end of it. That never got talked about; it never got brought up. I did not even know that until just recently, during the court case. But, in saying that, I would never have approached anybody. I was terrified to ever go near the Department of Community Services [DOCS]. I knew of the department back then, but I was terrified to go there thinking that they might take my children off me because of his behaviour, so I never ever did that. We did not really seek any outside help that I can think of back then when the children were involved—we did have a little bit through some counselling, but I do not think it ever went anywhere in particular.

CHAIR: Could I go back to an issue you are experiencing today with the system being so difficult to even allow your name to be changed? I have followed your case for a while—it is one of the most public cases we have seen in this country in relation to domestic violence—and you are still going through issues with things like name change, driver's licence, et cetera. What is the reason? Is it because you have a lack of documentation to be able to go through the process? Can you please give us a bit more information? If the system allowed you to safely and securely change your name, would that have had a big impact on your ability to keep away from the perpetrator, and even now to move on to the next phase of your life?

Ms C. SMITH: It would have made life a lot easier. It would have made our life a lot safer. There is just nothing in place for people in our position to change their name properly. I got told by a person on one of the help lines on the phone that most women go back to their maiden name because that is easiest, because you have a birth certificate and what not, but 70 per cent of them get found, so that put me right off doing that, but I never intended to do that. My perpetrator had private detectives searching for me. I was told that it was illegal for a private detective to search for fleeing wives in New South Wales, but I cannot get anyone to verify that in any law anywhere. I asked the police and I asked the Director of Public Prosecutions [DPP] and none of them were interested, none of them wanted to find out for me, so I do not know what the situation is.

CHAIR: Moving to this phase of your life, what are you being told you need to be able to change those documents that you need to live day to day in a safe and secure way? Where are the hurdles at the moment?

Ms C. SMITH: They cannot be changed because the computers will not accept it. When I got my new tax file number, for instance, it took nine months for Centrelink to be able to program the computer—I do not understand how it works. It took them nearly nine months to sever my two names and I do not know if they eventually did. I think maybe they might have said they did and they did not, because the tax office would not give me a new tax file number while the names were linked, and I have a letter to prove that. But I know if I go into Centrelink now and I look at the monitor, because I try to look at it as much as I can, there is information on there that is not supposed to be on there. Medibank actually changed their practice at the counter and they have turned all their computers away from the counter because we told them of an incident where my ex had got information on my driver's licence—

CHAIR: From a monitor?

Ms C. SMITH: Yes, and I have a silent phone number and I have an alert password on my account, and three times now that has been dropped without my knowledge. Every now and again, every few years or so, I think to check it and three times I have found it to be lacking where they have not asked for my password and they have given me information that anyone with just a basic knowledge of me would be able to get. There is no safe way of staying safe.

CHAIR: You mentioned earlier what you felt was the failure of the old school country cop. Leaving that to one side, in what other ways do you think living in a regional area impacted upon your situation in a domestic violence relationship?

Ms C. SMITH: You are isolated. You cannot depend on a neighbour hearing you scream for help. You have to have an opportunity to be able to get to a phone without them knowing you have done that. Many times we have been at great risk by phoning police and having to wait half an hour or whatever it is for the police to come. The police get there to a locked gate and by the time they walk from the gate to the house there is another 10 minutes that the perpetrator has to do whatever he is going to do. Some of the main things I know about country police is the fact that they live in that community and they find it difficult to act against perpetrators when they go to the pub with them or they play footy with them or their families are friends. That is a really big problem in country areas because they are there on their own most of the time, there is usually only one per

town. The other thing that is happening these days more than ever is that the country policeman in that little town is hardly ever there and is usually called to the more regional centre to do his day's work, so there is no one there and by the time anyone gets there there is a long time gone.

CHAIR: You have mentioned that the perpetrator has been sentenced. Do you have any comments on the available penalties for perpetrators of these crimes in New South Wales?

Ms C. SMITH: It seems to me that they are very light, particularly with apprehended violence orders. Breaches of apprehended violence orders are never dealt with by what they say on the form that they can be dealt with. In my instance, in the first place, getting an apprehended violence order was a monumental thing in a country area. Most of the time they tell you that you had better go and see the chamber magistrate about that, and when you try to go and see the chamber magistrate you cannot get in for three weeks, and by that time it is too late. In the country, apprehended violence orders are not supervised enough and by the time it gets to court, if it does go to court, magistrates really do not understand domestic violence. I used to always say—and I do not still believe this, but I used to—I thought that the police and magistrates and things like that must be perpetrators because they stick up for them so much. I do not believe that now, but by God I did back then. I could not work out how people could allow someone to behave the way he obviously behaved.

I have a note here about the lack of action by the Director of Public Prosecutions, which I have not mentioned, because I begged them. I was there for three whole days in 2000. I showed them evidence; I even gave them a homemade gun he had made. They just did nothing with any of that. They were not interested. I have written to the Director of Public Prosecutions, I have written to every police person from the ones investigating, or supposed to be investigating, right up to the Commissioner of Police—I wrote to everybody. I have a pile of letters so thick and I reckon, out of the whole lot of those letters, I have had two insignificant answers and the rest have been totally ignored. And I have been so courteous, I have always allowed them to—I could show you copies of them.

There is no reason why they should ever have ignored me. They had the facts. They knew what was going on. As far as I can see there has been a cover up of police inaction. From 1977 was the start of the catalyst and from then on the police have constantly had to—they were frightened of it going to court, and the Director of Public Prosecutions was involved in that too. I took out a private prosecution—I do not know if you are aware of that—I cannot remember if I said that in my submission. The Director of Public Prosecutions took that off me. I am really pleased with the outcome of this court but there is still a lot unanswered and, yeah, I do not know where you go.

CHAIR: Time has beaten us.

Ms C. SMITH: I am sorry.

CHAIR: Not at all. I am sure there may be other questions that Committee members may wish to ask. Are you happy for us to submit those to you in writing?

Ms C. SMITH: Certainly.

CHAIR: You will have three weeks to get a formal response back to those questions.

Ms C. SMITH: Yes.

CHAIR: On behalf of the Committee I would like to thank you for coming along today.

Ms C. SMITH: There is so much more to say.

CHAIR: The Hon. Natasha Maclaren-Jones mentioned the word "courage". Your presence here today and the ongoing telling of your story will hopefully help to make some change for the better in New South Wales. I also thank you for your submission. The Committee hopes to deliver some good outcomes as a result of this process.

Ms C. SMITH: Thank you. I just do not want you to think of all this as historic stuff. There is so much still going on now. It is not different.

(The witness withdrew)

(Luncheon adjournment)

HELEN CAMPBELL, Executive Officer, Women's Legal Services NSW,

REBECCA HITCHCOCK, Solicitor, Women's Legal Services NSW, and

EDWINA MacDONALD, Law Reform and Policy Coordinator, Women's Legal Services NSW, affirmed and examined:

CHAIR: Welcome to the hearing. Would you like to make an opening statement?

Ms CAMPBELL: I thought I would start by giving the Committee a brief overview of who we are at Women's Legal Services NSW and what we do. We are funded chiefly by a combination of Commonwealth and State funding through the Community Legal Services program. We are an independent, non-profit, community-based organisation that provides legal services to women throughout New South Wales. We focus mainly on issues concerning domestic violence, sexual assault, family breakdown, and discrimination. We target our services to women who are experiencing those kinds of things and who are at greatest disadvantage. We run specialist services for Aboriginal women, we have outreach programs for women from culturally and linguistically diverse backgrounds and we work intensely with women in regional and remote areas. I will talk more about that in the course of our evidence this afternoon.

We do not get very much money—a little over \$2 million a year in core funding and a little extra from time to time for specific projects and pilots that we are taking on. We have to spread ourselves pretty thinly. There are about 14 full-time equivalent positions on the staff, most of whom are legal practitioners. We provide services by way of three telephone advice lines: a specialist domestic violence legal advice phone service, a general women's advice service and a specialist service provided for and by Aboriginal women. We provide outreach services to women in women's health centres, particularly in disadvantaged areas of western Sydney, so we regularly work collaboratively with other providers of services to women. If women are attending a health centre for counselling, family support or for follow-up with a health issue we send a solicitor to sit with them in the health centre so they can get legal advice about their circumstance at the same time in a private environment. If they have concerns about the perpetrator it is a subtle way of getting access to legal advice without signalling that that is what they are going to get when they go there.

We also work through various projects with women in disadvantaged areas. At the moment we are working with Aboriginal women in Bourke and Brewarrina and other parts of western and north-western New South Wales. Our Indigenous women's team could not be with us today because they are delivering a domestic violence awareness program in Moree and they are going to Toomelah later in the week to talk to the community there. That has been done by special request because the rest of the project has been so successful that word has spread and communities that they have not managed to get to are calling on them specially to go there.

We are also working with recently arrived migrant women and refugee women, chiefly around the south-western Riverina area of New South Wales where those communities are likely to go on first arrival because there is fruit picking work. They are otherwise quite isolated and new to the concepts of Australian family law, child welfare law and domestic violence law, which are very different from those in the societies they came from. There is also the fact that they have been in refugee camps for a long time and have not had any kind of civil infrastructure that might be able to deal with those issues. It is a whole new world and Rebecca in particular will be able to give you some more information about that.

As I said, we are a legal practice so we are practitioners who regularly appear in courts and tribunals throughout New South Wales. We have a regular list day appearance at some of the local courts in Sydney dealing with domestic violence where there are the highest volumes of greatest disadvantage. We are at Blacktown, Mount Druitt and Penrith on a regular basis and in other courts when the need arises. We do particular work protecting women who are victims of sexual assault and who are concerned that the perpetrator will, through the court process, get access to their confidential counselling records from when they have spoken to their councillor. You can imagine that that exposure in front of the perpetrator in a public tribunal is a totally humiliating and daunting prospect for a prospective victim witness in a sexual assault matter. We have a wide range of particular expertise as legal practitioners in matters of interest to the Committee. I really appreciate the Committee's interest in hearing from the practitioners who are doing the work on a daily basis.

CHAIR: Do you provide any services to perpetrators, or are all your services for the victims?

Ms CAMPBELL: We provide services to women, and that includes women who are defendants in domestic violence matters. You will see in our written submission that we are concerned that quite often those defendants are themselves victims. It is also true that from time to time we represent women in child welfare proceedings where the Department of Community Services has taken a view about what is best for the family, and those women as mothers have a right to be represented in those processes. I do not know whether you would necessarily characterise those as perpetrators, but in the two examples I gave we would be assisting women who are defendants or termed defendants.

CHAIR: I now invite questions from members.

The Hon. HELEN WESTWOOD: Thank all of you for being here today. I have been familiar with your work for some time, and I know what a difference you have made in individual women's organisations as well as being aware of your contribution to public policy around women's issues in New South Wales. So thank you for that. In your opening remarks you said you work with Indigenous communities, recently arrived migrants and culturally and linguistically diverse communities. I think you were here this morning when Dr Weatherburn gave evidence and made his presentation. There is evidence of levels of abuse or domestic violence in Indigenous communities and citizens in New South Wales. The Bureau of Crime Statistics and Research does not have the same evidence of domestic violence within either a cultural context or even for recently arrived migrants. Do you have any view about whether there are different issues there? Is domestic violence more prevalent? Does the Bureau of Crime Statistics and Research's not having data on that impact on your being able to acquire funding where you believe it is needed, particularly in culturally and linguistically diverse communities or with recently arrived migrants?

Ms CAMPBELL: If we lived in a rational funding world where links to data turned into dollars I would be a very happy executive officer. Lack of access to data in itself I do not see as a barrier to obtaining funding. We ourselves do collect about the countries of origin and languages spoken at home by our clients, but I would not suggest that that gives a full picture because that is really only telling us about those among communities that have managed to find us, and I think that is probably a very small portion of those communities. In terms of whether they have particular needs, I might ask my colleague Rebecca Hitchcock, who has been running that particular project, to comment.

Ms HITCHCOCK: As part of the Safe in our Places project—which I might refer to as the SIOP project, which is a project that we have been doing for 12 months—I and the other co-coordinator, both solicitors, have been going to about six or seven different areas in the Sydney metropolitan area, including Blacktown, Bankstown, Fairfield, Cabramatta and Gympie, where I think we are getting more and more requests, and to Orange, Griffith, Albury and Wagga Wagga. Those workshops were targeted towards those who work with newly arrived migrants and refugees around domestic violence, but we also had separate workshops that women in the community could attend because we had to run those differently. Also, I go to Blacktown court nearly every week, and have done so for the last five years as a duty solicitor on the domestic violence list day, and there are a lot of newly arrived migrants, especially from African communities and Sudanese migrants, in the Blacktown area.

I find in the Blacktown area that they just are not getting to court; they are not calling the police and they are not engaging with the services. There is a big mistrust of authorities, which I think stems from the situations they have been in, such as refugee camps and in their home countries. Also, there is misunderstanding about what apprehended violence orders mean and their consequences for the family. In particular, they think it means you must separate or you must divorce. They also have concerns that there will be implications for their visa status and things like that, which are obviously significant. So there tends to be a feeling within some communities that it is best dealt with by community leaders or religious leaders. That also, I think, is a system that they are more used to, rather than engaging directly with police.

So when we have gone and done all of the community legal education directly with the women and also with migrant support officers, who also are not completely aware of the ins and outs of domestic violence protections, on a side note we felt that it was important to train those workers as opposed to domestic violence workers, who get a lot of training, because they are the trusted links with their communities; they are migrants, access workers and settlement grants workers. I have done a lot of training with them, and because the people in their community come to them and ask them, "What do we do about this?" they have been learning

where they can go, and that they can call us because we are solicitors and what they say will be confidential. We heard from Catherine Smith earlier today that the issue for many victims is a significant mistrust of where this information goes, and they are learning that a solicitor is probably the only place where you can say, "This goes nowhere. This literally stays with us." I specialise in domestic violence legal services within the Women's Legal Service, and the first thing they will say is, "I don't want to give my details," or, "I'm really afraid." It is a matter of talking to them and saying that, "This is a special relationship, a solicitor-client relationship, where it doesn't go anywhere but stays with us."

Then slowly the disclosures will come out, usually after a significant amount of time. I think that differentiates us from other services, such as Law Access and Legal Aid, which are a little bit more pushed for time. Sometimes, whereas you might get a 20-minute appointment with Legal Aid we can spend up to an hour or an hour and a half on the phone, and often it is in the last 5 or 10 minutes where a sexual assault or something quite significant might be disclosed to you, because these people have finally built up a trust and rapport through being heard. A lot of people who are seeking someone to listen to them think the legal system often asks very direct questions—all these procedures that we want to put in place about checklists and things like that: Have you been hit, have you been slapped, or something like that? That is just not the way that victims usually disclose. I hope that answers your question.

Ms CAMPBELL: I might ask Edwina MacDonald to comment further on the question of the collection of data.

Ms MacDONALD: I just wanted to add that I think it would be helpful to collect more data—not just disaggregated data, but data disaggregated along the lines of country of birth, background and that sort of thing, and also on disability as well. I guess that should be beyond just victim or offender status but also around access to services, accessing courts and that sort of thing. I think the Bureau of Crime Statistics and Research mentioned this morning that it is very important to identify where the gaps in the services are, and that without that evidence and without that data it is really difficult to do that. The other thing that I would like to add, which reinforces something that the Bureau of Crime Statistics and Research said, is the importance of working with the communities in doing any work and in making policy and collecting data. I note that Immigrant Women Speakout put a submission to this inquiry on this issue have emphasised culturally appropriate education programs, culturally appropriate emergency accommodation and culturally competent training for staff. I think those are all recommendations that we would also support.

The Hon. HELEN WESTWOOD: Are there things that you think we should make a priority in terms of supporting women who are victims who have recently arrived as migrants or refugees that we are not currently doing?

Ms HITCHCOCK: There does need to be some more education for both men and women on what the laws in Australia are, because there is a lot of confusion about that, especially around harassment and intimidation. Some of those behaviours are definitely not seen as illegal in other areas; they might be seen as pursuing someone and being affectionate. I think education would assist those people to understand what our concept of domestic violence involves. But definitely it would help to have some more training for police around how to investigate domestic violence in culturally appropriate ways and how to deal with people using interpreters. We get a lot of calls from women who say, "It was okay, but I couldn't quite express myself because an interpreter wasn't used." Therefore, the police have not got the full picture—especially if the partner has lived in Australia for a long time or Australian and can explain or justify the situation clearly and coherently.

Ms CAMPBELL: On the question of interpreters it is an aspect of how we can improve our collaborative approaches generally. We find often the police have not arranged for an interpreter to attend the court on the first return date of court. The matter then has to be put over to another day while the court orders an interpreter. We were given as an explanation for this if the police book the interpreter it came off the police budget, if the court booked the interpreter it came off the court budget—so there was some budget shifting there. We have recently clarified that is not in fact the case. The police can book an interpreter without it having any impact on their budget. The police perhaps do not know that or it is something that could be put in their standard operating procedures. We would like to know what is or is not in their standard operating procedures. We were disappointed at our limited opportunity to contribute to that.

Part of the general pressure on the system of inadequate time and resources being put into preparing for these courts matters is that there are women who need an interpreter to assist with writing a statement and then

checking the statement to confirm it is accurate. You can do some things while using a telephone interpreter service but when you are dealing with paperwork that could be difficult. We could do a great deal more with providing appropriate interpreter resources and that often means gender appropriate interpreters and in some cases also to do with sub-community appropriate interpreters.

The Hon. HELEN WESTWOOD: I have a question regarding a different type of interpretation: We have heard from other witnesses and in your submission you talk about women now being identified as perpetrators and some evidence we have received suggests that some of that has to do with the interpretation of the incident by the attending police. Do you have a view on that you could share with the Committee?

Ms HITCHCOCK: My experience over the last five years shows the number of female defendants to apprehended violence orders, whether they are police or private apprehended violence orders taken out against women, has risen in the last five years. I think we have to address that by looking at a primary aggressor policy. Too many women we see at court—I will give you a few examples—have apprehended violence orders [AVO] taken out against them. One of the women I have seen at court had an AVO taken out against her and what had happened was that she was being choked, he had his arm around her neck, and she bit his arm to get him to release her so she could breathe. He went down to the police station and showed them the bite mark. The police have to act as something has been told to them so they take out the apprehended violence order against her. In another case a woman was kicked until she was underneath the table. She then used one of the cords to hit him to stop him kicking her in the face and chest area. He showed his leg to the police and there was an apprehended violence order taken out against her.

Obviously if there was a primary aggressor policy the police would have to look into what was happening, ask questions, take the time, look at the context, and look at the history. If they did that in the majority of situations they would find that they were talking to the victim. Fear has to be proven to get an apprehended violence order. In all of the cases where we represent the women who are defendants the perpetrator, who is the protected person in those cases, does not have genuine fears of her and does not seek the protection because of genuine fears. It is a big waste of resources because we turn up, we are on the domestic violence practitioner scheme—the women's domestic violence court advocacy service Legal Aid were talking about—whereas the solicitor turns up on the apprehended violence order list days. We get the story and find out they are the victim and need representation. You then have solicitors being paid for through Legal Aid. They are then eligible for a grant of aid from Legal Aid to defend them. You have police wasting their time prosecuting the victim, the court is wasting its time, and all because the police do not have the discretion in the first place to say something has happened but let us look at the context, let us look at who is the aggressor in this situation.

I have lots and lots of stories I could tell you about that. Another example is where I had a client at the end of Christmas last year and she had been physically assaulted in front of children, all the Christmas presents were taken, and a multitude of ways were used to exert power and control over this woman in front of the children. In one instance the six year old child was standing in front of her whilst he held a knife against her throat, yet she was charged with damaging his property. She ripped his clothes. It was the act of a powerless woman because she did not threaten him and she did not touch him. She was exhausted from being physically assaulted in front of the children, having serious threats made and then all the property in the house being taken out of the house right before Christmas. He was not charged with any of the offences that had occurred in the three weeks prior. What I did was sit down and write a table of dates, times, what occurred, and witnesses. It was a two page table that I handed to the police and said: Can you investigate all of those things? That was the result of the police not having a primary aggressor policy. Instead of him coming to the police and saying: Look what has happened to my clothes—now I recall he had ripped all of her clothes as well—that situation could have been so different and that woman and children's experience could have been so different depending on the policy of the police.

Ms CAMPBELL: What we could do to address this is to adopt a primary aggressor policy and we would support the submission made by Redfern legal centre on that point—get access to the standing operating procedures so we have a mechanism for checking whether the police are doing what they are supposed to be doing or not. We could ask the police to record the reasons for their decision each time they make a decision not to take action or to take action against one party rather than the other, so we have an accountability mechanism. If we did that we would then start to establish an evidence base on whether the increase in women coming before the courts as defendants is a mistake or is correct identification of more women becoming the perpetrators. At the moment we do not know.

The Hon. HELEN WESTWOOD: Have you had any discussions with the police about this? Does the Police Force talk with you about your experiences or your knowledge either in terms of their training or in terms of their approach to domestic violence incidents?

Ms CAMPBELL: We are on a number of advisory and collaborative committees. For example, we sit on the Women's Domestic Violence Court Advisory Committee which the police also attend; we sit on the Apprehended Violence Legal Issues Coordinating Committee; and the New South Wales legal assistance forum has a domestic violence committee which we chair. We are speaking to the other players in this field on a regular basis. Women's Legal Services were hoping to be more extensively consulted by the police in their recent review of their standard operating procedures. We did get asked to update our phone number information but that was the extent of it. The Women's Legal Services are disappointed that we are not considered trusted partners to be able to have access to that information. It does make it more difficult for us to manage expectations, to understand why there would be the sorts of matters that Ms Hitchcock has been talking about today coming before the courts and what we can do to best address it. We do think getting that information out into the open would be a good start.

Ms HITCHCOCK: There are two other points I wish to add. From a practice perspective over the last year at court the police prosecutors have found that they have less discretion—and they have told this to me—in withdrawing matters where there has been allegations of a physical nature. I think police prosecutors had more discretion a few years ago where if they could see what was happening, they would listen to both sides and make the decision as to whether to continue with the prosecution or apprehended violence order application.

But now they have to fill out a form. It is very regimented. Basically, I feel like the professional discretion of the prosecutor has been taken away from them. It means that matters get to a hearing day and there is preparation from both sides and all this time and expense and the prosecutor on the hearing day can then negotiate or withdraw it on the morning, which often happens, especially if the woman is represented by Legal Aid or a solicitor on behalf of Legal Aid because she is actually the defendant.

The second point was that we actually do training with the domestic violence liaison officers and the Police Force. We have been invited a couple of times and, in fact, in the next couple of weeks are going to Goulburn to do a section of the training of the domestic violence liaison officers. My understanding is that the training required is around about five days for the domestic violence liaison officers, and then there is training at the start when police officers are at the academy in Goulburn. There is a small segment of that nine months and my understanding is that a couple of days could be on domestic violence. Then on a yearly basis every station has to do some training on domestic violence, which is a few hours. I was invited a couple of years ago by the Blacktown police station to do that training because I work so closely with them—we have developed relationships of trust and respect. But basically they can do that training with their general duties officers on anything to do with domestic violence and it might just be how to fill out the sheet properly. It will be very different at every station what the general duties officers get on a yearly basis in domestic violence training.

The Hon. GREG DONNELLY: Thank you for attending to provide additional evidence to your very good submission. In respect to domestic violence trends in Australia vis-a-vis other domestic western-style countries, where are we pegged? Are we trending along with others or are we better or worse?

Ms CAMPBELL: We would not pretend to have any expertise in this field. We are not resourced to do that kind of research. Over the 20 years or so that I have been in this area my observation is that the thing that has changed the most in Australia over this time is the willingness of the police to get involved. When I started it was very much considered a family matter and women were expected to take themselves off down to the courthouse and effectively commence a private application through the Chamber Magistrate. The willingness of police to attend and take action is something that has significantly changed over this time. I think it is to be absolutely welcomed. Following that up with properly resourced domestic violence liaison officers is really putting resources where our commitment is.

The Hon. GREG DONNELLY: Can I interrupt you to put this into context. Have you observed this over the past five, 10 or 20 years? Have we seen this improvement more specifically over the past 20 years?

Ms CAMPBELL: Can we nominate some key events that made a difference? Was it the advertisements on the sides of buses in 1987? No. Was it the first State Plan? I do not know. I do not have a sense that there was any particular key event that we could say worked so let us do it again. I think we will probably find, like all of these things, that it is a combination of things.

Ms HITCHCOCK: I think also from working with colleagues who have been in the DV sector for the past 20 years that it probably has been around about 10 or 15 years because in the past five years when I have been practising I have always had the impression that police at the higher levels are completely on board. They understand the dynamics of the issues. There are no problems with the high-level police. It is just as it filters down into the general duties and newer officers that there are a few issues.

The Hon. GREG DONNELLY: Are macro cultural or societal factors influencing the propensity of males to act violently towards women and contributing to the domestic violence we observe in Australia?

Ms CAMPBELL: I think we are in the context of western civilisation and the answer would be quite lengthy. Yes, I do think there are long-term cultural settings that relate to attitudes and the way in which power is exercised and family formations. Those things can be changed and in many ways those things do get changed. If you wanted to be more specific to the task we are sharing today, I would go back to some basic criminology principles and say, yes, you can change attitudes but probably the more important focus is to change behaviour. If you wish to change behaviour we know that certainty of a consequence is much more effective than the severity of the threat. There are things that we have achieved. People wear seatbelts in their cars. They did not want to, but they do now. People drink and drive much less than they used to. Certainty of getting caught has been a really significant aspect of driving those changes. To the more specific problems that we are dealing with to which we have addressed our submission and what do we do about breaches, it is really important that we get a guaranteed outcome that this behaviour will have an adverse consequence—not just a threat, a piece of paper or a section 10 order; there will be a consequence for a breach. Practising that much more consistently over time will drive the attitude changes that go with the behaviour change.

The Hon. GREG DONNELLY: I gather that you only have a general understanding of the police standard operating procedures for dealing with domestic violence? From your comment I gather that you did not have much of a chance to be made aware of it when it was being developed. Could you explain to the Committee your understanding of that practice?

Ms CAMPBELL: We know that it has been reviewed recently. We know that we did not get to see a draft.

The Hon. GREG DONNELLY: Recently as in the past 12 months or six months?

Ms MacDONALD: My understanding is that it is in the final stages of being updated.

Ms CAMPBELL: Updating the standard operating procedures has been underway in the past 12 months. We would have liked an opportunity to be consulted in that process and we would like to see the outcome. I do not have anymore of an understanding than that. Are you asking do I unofficially know what is in it? No.

The Hon. GREG DONNELLY: No. I was unaware that it was subject to review that was almost complete.

Ms CAMPBELL: It is an example of a number of ways where we could do better at being collaborative and sharing information. For example, orders made in one jurisdiction should be enforceable across State and Territory orders and as between family and local courts. With the marvellous technology we have, we still cannot get a court on one side of a State border talking effectively to a court on the other side of the State border. I am sure we can do better at that and I am sure that there is actually a fairly minimal cost to do that.

The Hon. GREG DONNELLY: Has the issue of domestic violence been on the Council of Australian Governments [COAG] agenda and examined through its process, which obviously deals with interstate and interterritorial issues?

Ms MacDONALD: The National Plan to Reduce Violence Against Women and their Children has been on the COAG agenda, so that was rolled out through all State and Territory Ministers. My understanding is that that continues to be on the COAG agenda. At the moment I think the national register of protected violence orders is on the COAG agenda. I am not sure whether that answers your question.

The Hon. GREG DONNELLY: It would have surprised me if COAG was not considering it. Given that this Committee will make some recommendations to Government on completion of its deliberations, what would be worthwhile recommendations given where we started and what improvements we have made to the present time, notwithstanding the shortcomings identified by your submission and your comments today? Looking ahead, what recommendations are worthy of putting to Government?

Ms CAMPBELL: I think we can do some things about breach. As I said, I think that driving behavioural change through certainty of a consequence for disobeying an apprehended violence order is a really important way to go forward. We know that we are putting inadequate resources into responding to reports of breach and into preparing evidence for getting convictions and penalties as a result of those convictions. One of the things we have done at Women's Legal Services NSW is to produce what we call a breach diary. It is a simple thing to put in your handbag that enables you to quickly contemporaneously record details of breaches of apprehended violence orders that can then be used as memory aides for preparing statements and so on.

We can just put a bit more effort into that enforceability and giving women the assurance that they will be listened when they say that orders have been breached. We have too many experiences of women being told, "It can't be proved" and not getting past the front counter of the police station. As I said, I think every time there is a decision made not to respond to a breach report they should be held to at least record a reason for that lack of response. The other thing is giving more information to both parties to the apprehended violence order about the effect and consequences of a breach. Through the NSW Legal Assistance Forum, that is all parties—courts, police, Legal Aid and Law Society—have agreed on a form of wording that we would like to see printed on the reverse of the apprehended violence order document that sets out a breach will have negative consequences. This is where to go to get advice if it has happened to you. That has all been agreed and it has gone as a recommendation to—

Ms MacDONALD: It went to the Attorney General's Department in March 2010. Its actual wording has been signed off by the Chief Magistrates Office. As I understand it is still going through processes of making its way to the back of the order.

Ms CAMPBELL: We do not know why it has not gone anywhere.

CHAIR: Will you supply the committee with that wording?

Ms MacDONALD: Yes, I can send that to you.

Ms CAMPBELL: That would be a very immediate practical thing to get happening. So when a person gets an order from the court it says on the back "This is the consequence of breach and we back that up with the diary to record the evidence and a bit of support from the police. I think police in many ways are our staunchest of supporters in protecting women from domestic violence and they need to be encouraged, supported and properly resourced to do that, particularly Domestic Violence Liaison Officers. I know we are not the first witnesses to tell you this but it is a low status job.

It is actually a pay cut because they do not get their different shift penalties so they are on the day jobs. It is often taken up by those who are returning from parenting leave or are on light duties for some reason rather than being seen as a high status, encouraged, congratulated career move, with additional professional qualification. There are so many ways we could actually really value what they are doing and give them the backing from the community that means they have got a bit of clout in the police stations in which they are working to actually provide that leadership so we get a much more comprehensive response.

Ms MacDONALD: I want to add a couple more things to our wish list. A specialist court list which Redfern Legal Centre will talk to you more about but I will just let you know that that is something that we also support. Also I want to reinforce having the standard operating procedures of the police available but also having in there the primary policy and also more guidelines around what happens when breaches are reported. So requirements to record that somebody has come forward and reported a breach because a lot of our clients say they report a breach and the police have said "that does not count" or "it is not significant enough" so actually recording when breaches are reported, and recording the decision made as to whether to lay a charge and the reasons for those decisions as well would be something we want to see in the standard operating procedures.

Ms HITCHCOCK: I also want to add the need for extra training not only of police but also of magistrates. I have had more than one comment from magistrates saying "I don't want to hear about the history, just tell me about what happened on that day". People that understand domestic violence realise that it is a pattern of abuse and behaviour and so it has to be put into context to describe why someone acted the way they did on that particular day. I have also had magistrates warn me if I mention that there has been sexual assault in the relationship that has not been disclosed, there have not been statements taken, as though it is this attitude "Why didn't she disclose that", "I am warning you that if she is lying, you are in trouble". I cannot believe the amount of times magistrates have pulled me up when I am just trying to say, "These are my instructions. This is what has happened" just to put everything in context as to why this person fears certain consequences and wants the AVO in place. I think that a combination of training would be good.

The Hon. NATASHA MACLAREN-JONES: Will you provide a brief overview of your relationship with Legal Aid, particularly the services that the two organisations provide?

Ms CAMPBELL: Legal Aid is a statutory authority and its primary purpose is the provision of legal representation for persons who are charged with criminal offences and it also provides some services to people in Family Law matters and to a lesser extent in some Civil Law matters. It is a creature of a statute and its staff are public servants. Community Legal Centres like Women's Legal Services NSW and Redfern Legal Centre from whom you will hear, and some others that have made submissions like the Wirringa Baiya Aboriginal Women's Legal Centre, are independent of government. We are community organisations so we are separately incorporated either as incorporated associations or as company limited by guarantee. We have a voluntary board of directors. We have a lot of volunteers who come along and help us and we get funded through something called the Community Legal Services Program which is a joint Commonwealth-State funding program.

The confusion is that Legal Aid holds that purse and in that case has a staff member called our State Program Manager who is managing the Community Legal Services Program. It looks like we get our money from Legal Aid but we do not. We get our money through Legal Aid. It is a separate budget expropriation. Of course we have very scarce resources in relation to the need out there so we are very tightly targeted as to where we can do the most good, where we can stretch each dollar as far as possible so we do go to a lot of effort to ensure that we are not duplicating work that Legal Aid is doing. We have very productive collaborative working relationships with Legal Aid in a lot of our activities.

One of the things is a distinctive feature of Community Legal Centres is we are able to do quite a wide range of community education activities and law reform activities which are not the core business of a statutory authority such as Legal Aid. Being independent we have got more freedom to be critical of the government and its various policies and so on. We have also got a lot more flexibility because we are based in our communities, either our geographic communities or our communities of interest and we are directed by our voluntary management committees. We are able to hear particular issues as they arise and to respond very promptly and effectively to them.

For example, we have heard that women who do not go to lawyers will often ask their general practitioner or may present with injuries arising from domestic violence. So we are responding to that by developing resources for general practitioners that can be distributed in their waiting rooms and so on. We have only got a tiny little grant that is just going to cover the printing costs for that but we have got volunteers coming forward who are doing that work with us to produce that. We think that is an innovative we can do for a very small amount of money that you could not get out of mainstream agencies like a government department.

The Hon. NATASHA MACLAREN-JONES: A witness referred to the evaluation of programs. You mentioned you have some pilots. What is your process for evaluating the success of a program or whether a pilot should continue?

Ms CAMPBELL: Don Weatherburn's evidence this morning was very encouraging from our point of view. We get very little proper funding to conduct evaluations. We are strongly committed to work that has got an evidence base. We just do not have the luxury of doing things that do not work. When we get grants for projects they tend to be very small grants. We are also required to do an evaluation but because we are insufficiently funded and, frankly, do not have that kind of expertise they tend to be fairly superficial evaluations.

What we would like to do is be able to engage more thoroughly doing some more longer-term studies. We do a double-blind where you need to measure: We gave this information to this group; here is a comparable

group that did not get the information. Can we see whether there is a difference? There are regional chapters of general practitioners, for example. If we got funded to do a training program with one chapter and not with the next one, we could come back six months later and see whether those doctors who had got the training were increasing their referrals to domestic violence services for their patients. That would give us more objective data about measuring what works.

Ms MacDONALD: With a lot of the grants we get—that one was about a \$5,000 grant—in terms of the portion of the money that might go towards evaluation, it is going to be very small. Often in a budget where government grants might require us to do an evaluation it might be about \$500, which is going to get a very low level of evaluation, probably participant surveys, that sort of thing. The sorts of evaluations that Don Weatherburn was referring to this morning are on a much bigger scale. They are expensive compared to that sort of grant because they involve control groups and follow-up and they are longitudinal. If you compare the total cost of programs, it is important for us to know what is working and what is not working. They are also done by expert evaluators. There needs to be a balance between requiring evaluations of very small individual programs and evaluating broader approaches. We would say rather than evaluating with this \$5,000 grant, let us evaluate the broader approach and evaluate the bigger, more expensive pilot programs.

Ms CAMPBELL: I note the submission from Wurringa Baiya, the Aboriginal women's legal service, recommended that the police do some follow-up a period of time after an apprehended violence order is made. We would support that recommendation. Again, instituting a plan like that might enable us to get some more meaningful evaluation data that we could use for planning future service delivery.

The Hon. NATASHA MACLAREN-JONES: You mentioned in your submission the unequal distribution of legal aid services between men and women. Could you elaborate on that?

Ms MacDONALD: We have done an analysis of previous annual reports and you can see that there is an unequal distribution of legal aid. That probably corresponds to the emphasis on criminal law and criminal defendants, in particular. That means that the impact of the legal aid policy is that women are receiving less legal aid than men. What does this mean and where do we go with that? What it highlights is the importance of the legal aid system to also provide a strong victim focus as well as a criminal defendant focus. We need to be paying attention to the services that we are providing to victims and supporting victims. I have had this debate several times with people in various forums. People will say that criminal law is different; it is a different circumstance. That circumstance is that the State is locking people up and limiting somebody's liberty and that is why it is different and justifiable. Our perspective is when you are talking about domestic violence the State has a due diligence obligation to protect women, children and people from domestic violence. We are talking life and death. It has serious consequences. For us, the argument that criminal law is about whether or not someone gets locked up and therefore is more worthy of legal aid does not cut it. We also need to protect people from violence as well.

CHAIR: I will come back to that issue but I want to ask you about a comment you made earlier in relation to police operating procedures. It was along the lines that "We thought we were a trusted partner to understand that". What reasons have you been given as to why the operating procedures are confidential and the review did not allow further input other than the updating of the phone number?

Ms CAMPBELL: The answer we have been given is that they have a policy as well as a procedure. The policy is the public face and the policy is available. The policy does not tell us the riding instructions, if you like. I have not had more of an explanation than that. I would have to say that the colleagues we sit with at the table we have, I think if it was up to them they would have no problem sharing it. I do not believe it is at that level. I could not speculate as to why that decision was made.

CHAIR: When you talk about a primary aggressor policy, should that sit within the policy or the operating procedures?

Ms CAMPBELL: We would want to see it in the operating procedures. The point is that the operating procedures provide an accountability mechanism in a way that a policy does not. I could say the same about the State Plan. We have a plan; we have a national plan; we have a State Plan. We have documents that have wonderful words in them about domestic violence and how we all want to work together to overcome it. But none of them has specific, measurable, resourced, outcomes-based promises about the things that we are actually going to do. In themselves they do not provide solutions. I welcome the focus of this Committee on the doable, the achievable, the practical, the things we can actually do to make a difference. I understand we are in a

world of constrained resources. I am not suggesting things that could be done if money was no object. We are really trying to focus on those things that are very practical. Here is a document and we need to get access to it. Then we can start developing accountability mechanisms and we can get better police responses to breaches, and that is doable.

CHAIR: The evidence from Don Weatherburn this morning was that we have statistics to back up people's comments that they do not report offences because they are not sure what will be done and the processes the police will go through. It seems simple to me that if people understood what would happen, how things would be dealt with and how police would go about the process that would remove one of those barriers and provide a mechanism for accountability, as you have mentioned. In relation to the primary aggressor policy, are there other jurisdictions that have a good policy along those lines in place? Victoria seems to be a model that keeps popping up.

Ms MacDONALD: There are jurisdictions that have a policy in place and I understand there are positive results. Our colleagues at Redfern Legal Centre might be able to provide you with more detail. We can also take it on notice if you want to follow it up.

CHAIR: Yes. Some of the stakeholders have suggested that, on balance, the domestic violence policy has been to focus on the role of the police and the courts in New South Wales at the expense of victims, women, and children and families. Do you have any response or comment on that?

Ms CAMPBELL: We should feel proud of the response of the police and the courts in New South Wales compared to what has been in the past. Given that we are talking about matters that are not only crimes but undermine people's most fundamental right to feel safe in their own homes, I would see any move towards diverting away from that focus as being a backward step.

CHAIR: I was looking more towards prevention and support strategies that focus on the actual family. Are you aware of any other prevention mechanisms or strategies in place?

Ms MacDONALD: We are certainly aware of some of the ones that have been mentioned before. As Helen said, our perspective is that we would not want to see any backing away or removal of services at the legal and responsive end. But we also think it is important to be addressing domestic violence at all stages and that includes having adequate funding for police and legal advice in courts. It also includes education, counselling services, housing services and short-term and long-term accommodation services. Also, and this goes back to an earlier question, it includes the broader context of gender and equality and sits within the broader policy of addressing inequality.

Ms CAMPBELL: When we provide community legal education and awareness-raising we hope to build the capacity of women and men in our community to understand that this behaviour is unacceptable and that women will not put up with it. Every time we assist a woman to get out of an unsafe situation and into a safe situation and then raise her children in a safe household, that is a long-term investment in the prevention of the next generation's household violence.

CHAIR: I thank all of you for your time this afternoon and the submission you made to the Committee. I am sure the Committee will post further questions to you and you have taken a couple of questions on notice. The Committee secretariat will liaise with you about the time for responding to those questions. The Committee has resolved a timeframe of 21 days for the return of answers. Once again, on behalf of the Committee I thank you for your time and submission.

(The witnesses withdrew)

JOANNA SHULMAN, Chief Executive Officer, Redfern Legal Centre;

DAVID PORTER, Solicitor, Redfern Legal Centre; and

SUSAN SMITH, Solicitor and Coordinator, Sydney Women's Domestic Violence Court Advocacy Service, Redfern Legal Centre, affirmed and examined:

CHAIR: Welcome to this hearing and thank you for appearing. Do you wish to make an opening statement?

Ms S. SMITH: Thank you for inviting us to be part of this inquiry. Sydney Women's Domestic Violence Court Advocacy Service is auspiced by Redfern Legal Centre and funded by Legal Aid through the Women's Domestic Violence Court Advocacy Program, representatives of which appeared before the Committee this morning. We provide services to women and children affected by domestic violence to assist them to obtain the legal protection that will work for them and to resource them with information and advice. To do this we work closely with police, court staff, legal practitioners and other domestic violence service providers.

Ms SHULMAN: The Redfern Legal Centre is a generalist community legal centre. Members have heard about what legal centres do. As our name suggests, we are located in the Redfern area. We have six core speciality areas, including domestic violence. We provide the Women's Domestic Violence Court Advocacy Service in the central Sydney area. We also deal with domestic violence through our police powers and administrative law practices, which David Porter represents. We also have a very busy tenancy practice, which deals with many of the consequences of domestic violence, and credit and debt and discrimination practices.

Ms S. SMITH: The most important point we want to make relates to the provision of consistent and integrated responses to domestic violence offending across New South Wales. We say this can be done in a cost-effective and geographically inclusive way with the development of specialist domestic violence court lists in all existing courts in New South Wales. We believe the development of specialist court lists would reduce reoffending, promote consistency of outcomes, improve the ongoing safety of victims and carry specialist knowledge into the general community. It would also accord with the Australian Law Reform Commission's recommendations regarding the establishment or further development of specialised family violence courts within existing courts in all Australian jurisdictions. These courts would have certain minimum core features, including specialised judicial officers and prosecutors, regular training on family violence issues for judicial officers, prosecutors, lawyers and registrars; victim support, including legal and non-legal services; and arrangements for victim safety.

We say that this model of specialisation is readily achievable because the key elements already exist across all courts with only the need to provide specialist training to selected personnel, to further expand the provision of legal advice to persons in need of protection and defendants and to include non-legal service providers in the integrated response. This proposal would also be in keeping with the proposed expansion of the domestic violence intervention court model that Brendan Thomas, the Assistant Director General, Crime Prevention, Aboriginal and Community Programs mentioned at this inquiry on 17 October. Mr Thomas stated:

Elements of what has worked for the DVIC are being progressively expanded State-wide, from policing practices to evidence collection to court processes. This review is looking at how we can move this program to a more strategic level, so how we can take the benefits of what are shown to be effective criminal justice responses to domestic violence and apply them more broadly across the State.

We say we cannot hope to replicate the Domestic Violence Intervention Court Model across State because it would be cost prohibitive. However, it would be in keeping with our recommendation to take elements of that model and incorporate them into every local court. We would also like to see the New South Wales Police Force adopt a comprehensive assessment tool to assist in the identification of the primary aggressor or primary victim in domestic assaults. We would like to see further funding and more widespread use of the police yellow card early referral pathway.

The Hon. HELEN WESTWOOD: Thank you for appearing and for the great work you do. I know of your record over many years because I was involved in the Campbelltown centre and the Redfern centre was one of the original supporters of that service. I am interested to know whether you believe there are gaps in the

current legislation covering the crime of domestic violence. If there are no gaps, is it then about interpretation and implementation of those laws?

Ms S. SMITH: I would not say there are gaps in the current legislation; we have plenty of legislation dealing with domestic violence. The issue is the inconsistent ways in which it is often applied. We go to four different courts—the Downing Centre and the Waverley, Balmain and Newtown courts—and one can readily see that the application of the legislation is often inconsistent. I would like to see a separation of personal violence legislation and domestic violence legislation. That would recognise the different dynamics involved in domestic violence and it would allow us to focus on domestic violence matters. There are many myths around domestic violence and some of them may spring up because people do not understand the difference between domestic violence and personal violence issues. The answer to that is I do not think there are any gaps in the legislation.

The Hon. HELEN WESTWOOD: We have heard from a number of witnesses already and in the submissions you provided that suggests that it is often initial training with the police or even magistrates that can affect the outcome of a matter that may protect a woman and her children. Do you have any observation about the differences in approaches by police? Is it just lack of training? Is it their lack of experience? Do you notice there is a difference when police first go to the academy or is it about leadership within a command or even resources within a command? Do you have an opinion on that?

Ms S. SMITH: I think we would say that it is about leadership within a command. We have had different commanders; we work with I think 11 different commands across the courts that we go to and when they have a commander that is very focused on domestic violence and making sure that his troops do the right thing when a domestic violence incident has occurred it makes a lot of difference. For example, Redfern has two domestic violence liaison officers and Maroubra has two domestic violence liaison officers. The other commands will have one. In those two commands they take domestic violence very seriously. I am not saying that the other commands do not but I am saying that in those two commands they take domestic violence very seriously and you see the difference in the number of applications that come through the court from those commands. So I think leadership is a big issue and I think if you have good leadership or a good commander they will make sure that that training is provided and they will make sure that the domestic violence liaison officers have plenty of support. Kings Cross is one command where the domestic violence liaison officer there is also the youth liaison officer or perhaps sometimes even out on the truck, for example. So there is a difference in the way different commands would see the importance of domestic violence.

Mr PORTER: I can also speak to that from a somewhat different perspective given that the police complaints work I do is statewide and I get to deal with complaints and inquiries from other service providers in different areas of the State. Leadership is very important. I think there is also an element of life experience, which is something that touches on what you said in relation to fresh recruits—it is not necessarily fresh out of the academy but having such little life experience and in some ways being not much older than minors is a factor. Again, certainly in the role of leadership in terms of setting the tone or the way that the local area command wants to do good police work it has an effect throughout the investigative process—even before the investigative process—simply the way that they interact with members of the community and the degree to which things like elements of the Charter of Victims' Rights, which is something that the police should adhere to in the way they deal with members of the public with any matter, a lot of those things would be interpreted by many people as common courtesy and yet you do not always see them followed through, and the consequence that that has in terms of applications for apprehended violence orders and also in terms of breach of proceedings is that there is not an exchange of respect between the victim and the police.

If they do not perceive that they are being listened to or respected by the police officer involved, whether that is because the police officer involved has an enormous caseload and is run off their feet and is just trying to keep their head above water or whether it is because there is a different perception about the importance of domestic violence related offences, that will discourage complainants from coming forward the next time it happens or it may mean that a witness does not attend. It can have the sorts of repercussions that mean that domestic violence offences are perceived as something that an offender might be able to get away with, that it will not go to court, that the hearing will not run to a conclusion—those sorts of elements. So there is a very important role for the general perception of domestic violence within the Police Force and within a specific local area command.

Ms SHULMAN: Just to add to that—not to give you a simple answer to your question around what is the major reason—I think it is also a lack of training. Police officers who are specialised in domestic violence

and have received comprehensive and regular training around domestic violence deal with it much better than police officers who are not.

The Hon. HELEN WESTWOOD: The policy of primary aggressor that you spoke about in your submission and we have also heard from other witnesses, you referred to the United States of America having adopted that approach. Are there jurisdictions within Australia that have adopted that approach or are there other jurisdictions you think we could look to for a model?

Ms S. SMITH: I do not know of other jurisdictions in Australia that have adopted that model. I have called it an assessment tool rather than a policy and I thought it was something that could also, like our colleagues from the Women's Legal Services thought, go into the standard operating procedures. I think it should be something that is quite simple. We have definitely had a rise in female defendants where women who are either known to us as victims of domestic violence or they have called triple-0, the police have come but the other party has been the person that has intercepted the police. That person may be quite cohesive when police arrive; the woman may not be looking cooperative because she has possibly just been assaulted. So I have said there are a number of things that we could do—I think they are quite simple things. I have said we could look at just the prior history of violence within the relationship, as indicated by police COPS events; the type and seriousness of the injuries inflicted and whether the injuries indicate that one party may have been acting in self-defence; maybe the relative size and weight of the parties; and any details provided to the police in the tape of the initial court. I think they are quite simple things that could be done as they are going to a domestic violence incident.

Sometimes, say we get a female defendant and it is already in the court system, by the time we see that person there might be quite a simple explanation about what happened on the night, but by the time it has come to court it is a matter of letters of representation or perhaps waiting for a magistrate to decide what happened on the night after he has heard the stories, and that can sometimes be many months later. I think there are a number of things police could do about investigating when they are really not sure or arrive at the scene and find one distressed party and one perhaps able to give their version of the events.

Mr PORTER: To give an indication of some incidences I am aware of where the degree to which that primary aggressor policy would be of assistance and the degree to which some current officers have, in my view, mismanaged investigative procedures, I have dealt with a number of matters where charges have been laid without interviewing both parties and in situations where sometimes the reason why the party has not been interviewed is because they have been hospitalised.

The Hon. HELEN WESTWOOD: That is almost beyond belief. That has left me speechless. I cannot believe that police training would not lead an officer to carry out further investigation in that case. I am really shocked by that. Just on the issue of domestic violence liaison officers that we have heard from other witnesses about the lack of status within the Police Force generally and within particular commands, do you ever feel that? Because Redfern Legal Centre has been operating for so long, on the surface you have probably seen different types of leadership—literally the commanders change every couple of years. I am sure you have seen that. Have you seen a commander change and then the approach to domestic violence change within a command?

Ms S. SMITH: I have seen instances where commanders have come in and the change they have made has been for the good of policing of domestic violence. For example, a few years ago, Catherine Burn, who is now one of the assistant commissioners, was our commander at Redfern and, in her time there, I think it was Catherine who decided that we would have two domestic violence liaison officers [domestic violence liaison officers]. To give the more recent commanders their due, they have kept those domestic violence liaison officers in their roles, but I think that is an instance where we had not been doing that so well before Catherine came into the command. Since then the policing of domestic violence in Redfern has improved greatly.

The Hon. GREG DONNELLY: With respect to recommendation 1 in your submission on page 5, you are quite unequivocal with respect to GPS bracelets and your position in that regard. Does the idea of a trial of such bracelets have no appeal either? You state your arguments and concerns about the use of those bracelets. I am wanting to pick your brains about the idea of trialling them and seeing what comes from that. Does that have any appeal at all, or are your views quite firm?

Mr PORTER: My view is quite firm, simply from the perspective that, while it is an option that is available and it may provide some level of improvement, there are clear alternatives, even existing strategies, which would benefit more efficiently from the funding that would be applied towards even a trial. As you have

noted, in our submission, one of my primary concerns is that GPS devices would not be capable of providing evidence. They provide a bare minimum of evidence in terms of a breach. They do not go to the substantive matters that really characterise the offence committed, particularly if the breach is one of violence or intimidation.

The Hon. GREG DONNELLY: Pressing you on this—not that I am trying to badger you—in terms of overseas experience in other jurisdictions with GPS bracelets, are you familiar with what the trials or introduction of these bracelets have achieved or not achieved? In terms of getting behind what has brought you to such a very conclusive view, have you seen what has happened overseas and has that influenced your thinking?

Mr PORTER: I have not read up on all of the overseas experiences. In a number of the examples that we looked at it was a different offender type that was being monitored by the use of electronic monitoring devices or GPS devices. It was a different offender profile, a different level of criminality, a different type of offence being looked at in those circumstances, often with a different psychological profile. I am particularly there referring to serious sex offenders, which is the most common scenario in which I am aware of GPS monitoring. Really, the thing that has formulated my view in relation to how it would be applied in a New South Wales context in situations of final apprehended violence orders, particularly with relevance to deterring a breach, is that it is a significant curtailment of an individual's liberty. It is a significant surveillance by the State.

My expectation of the judicial perspective is that it would be for offenders or defendants in apprehended violence order matters where the court formed the view that an apprehended violence order imposing a higher number of conditions needed to be made. In terms of dealing with a smaller number of offenders, I think that this is one of those situations. The type of offenders or defendants that we are looking at here are probably the type of people who could be more effectively policed if we had an engaged, well trained and well educated police force integrated into support services in the community, a police force that domestic violence victims felt comfortable contacting about what might be termed technical breaches, and GPS devices in some ways are aimed at technical breaches.

The Hon. GREG DONNELLY: That is a very good explanation; I understand what you are saying.

Ms SHULMAN: Just to add to that, there are limited resources available and limited amounts of money available for different programs. We know that some things work. We know that advocacy and representation of victims of domestic violence work. We know that support services for victims of domestic violence work. We know that adequately trained police officers and magistrates, in relation to having awareness and understanding of domestic violence, work. We do not think that any of those programs are adequately funded at the moment or that enough resources go into them.

Ms S. SMITH: Could I say something more about GPS tracking?

The Hon. GREG DONNELLY: Yes.

Ms S. SMITH: I think we would also be a bit worried that it would not provide for victims' safety. On the first day of the hearing, Ms Julie Webber from Corrective Services pointed out the potential problems for GPS monitoring, including the fact that the signal can drop out in areas where there are high-rise buildings or tunnels and in certain weather conditions the signal drops out, and this could lead to the protected person being vulnerable. She said that the way that Corrective Services currently use the monitoring is, if there is a breach, the surveillance operator calls the person who is supervising the offender and that person makes contact with the offender to clarify whether there has actually been a breach. If victim safety were part of it, I do not think that GPS monitoring would make victims safe.

The Hon. GREG DONNELLY: Ms Smith, my next question relates to comments you made earlier about the application of the law. I think you used four examples of courts where you observed that the law was inconsistently applied. Do you mean the application of the statute or the way in which the magistrates interpreted the law, or is it court practice? Could you elaborate on the point you made?

Ms S. SMITH: Yes, I think it is about the magistrates interpreting the law. You have to remember that in Sydney our magistrates are fairly well versed in domestic violence, but across those four courts were four reasonably regular magistrates on this day applying the law slightly differently. For example, at one court a woman might come in with a provisional order protecting her that was made on Saturday night and this is

Wednesday or Thursday during the week. We would expect that provisional order to be made into an interim order. There might be one magistrate who will not make that into an interim order until a hearing date, for example, whereas perhaps the other magistrates would. That is just one example of the inconsistent application of the law and I think we should be able to say to victims in domestic violence matters that, "You have a provisional order. When you come to court, we are pretty certain that is going to be made into an interim order." It is in relation to those sorts of inconsistencies that we would like to see a bench book—I know that is one of the suggestions that has been made—or judicial training around the dynamics of domestic violence, understanding that it usually happens in a context of power and control. I think that is something where judicial training, a bench book or perhaps a comprehensive practice note would make a difference to the application of the law.

The Hon. GREG DONNELLY: Forgive my ignorance but the examples you have just given do not exist at the moment?

Ms S. SMITH: No, they do not exist at the moment. I know that the Chief Magistrate is considering a more comprehensive practice note. I think they are waiting for the legislative review to be finished at the end of this year.

Ms SHULMAN: The other thing you will note from our submission is that we are advocating for specialist court lists, which will also assist with that.

The Hon. GREG DONNELLY: At 7.4 under the heading "Early intervention strategies to prevent domestic violence", which you do not elaborate on because of the nature of the terms of reference, and I understand why you have done that, you say there is great value in such programs for children and young people—that is footnoted at the bottom of the page. Are there any programs in New South Wales, interstate or overseas, which go to the issue of shaping or forming the views and attitudes of young people to saying no to domestic violence, that you consider have worked successfully? You might have heard me earlier addressing questions to other witnesses about the societal nature of domestic violence: if there are any drivers that people can identify in a person with a propensity to act in that way. I am interested in how young minds can be informed and influenced about domestic violence.

Ms S. SMITH: The Committee has received submissions about the Love Bites program. That is the only program that I know of in New South Wales. We do not take a role with young people. We do community legal education but we have not taken a role with young people. Other than the Love Bites program I do not know of any other earlier intervention programs.

The Hon. NATASHA MACLAREN-JONES: What is your view as to penalties for young people and adults?

Mr PORTER: I might consider that briefly in terms of not just the penalties but the court process as it is applied to young people. Whilst, again, it is not an area that we routinely deal with, I think if there were a clear and separate approach taken in relation to young people and their involvement with the court system and domestic violence and diversionary options that would achieve improved consistency in the way that young people are treated with regards to other criminal offences. We would generally be supportive of that proposition.

Ms SHULMAN: I think the same would also apply to others that we consider to be vulnerable groups, such as people with disability.

The Hon. NATASHA MACLAREN-JONES: In your opening statement you referred to police yellow cards. What are they?

Ms S. SMITH: I do not know if the Committee has heard of them from anyone else but all the police in New South Wales have the ability to offer the victim a yellow card when they are called to a critical incident. They can fill out that yellow card with their telephone number and they can give their consent to being contacted by a service. We get these yellow cards from the police in all the commands that we deal with but we get them in different ways. I think there would be lots of commands that do not use them at all. For us and for victims of domestic violence it means we are able to give them a call before the court date to find out if they need anything. Sometimes they need to get out of the house or they need to go to a refuge perhaps. But a lot of the time they want to know procedurally what is going to happen. The police have not told them very much. This engages the victim in the process. They get to have a say. They get to tell us about the kind of orders they want.

The Committee has heard about getting orders tailored to meet the requirements of victims but sometimes there are requirements of defendants. There might be a lot of victims who are going to continue living in the same household as their partner. They might want to have a mandatory order that says their partner cannot be around them within 12 hours of consuming liquor. That might be quite a commonsense order to be made but police might have already decided that they want to exclude the defendant from the house. So they might have already made an order that says a defendant is not to go to a house. A lot of the work we do is around advocating for women with the police and making sure that the orders are exactly what the family might need. I know the Committee heard this morning—and we would agree with this—about having only one person on each order. It does not work having a number of protected persons on the one order. Even when it involves children, I think mum needs an order and the children need a separate order because their needs will be different. That is what the yellow card is all about.

There are different programs. At our legal centre we have a project worker funded for 2.5 days per week at the moment, which is not sufficient time for her to make the calls she needs to make. If we are talking earlier referrals—and I did not include it in the submission that we made—that is something that we think all the services could be doing. We could all be collecting those yellow cards because I know the Committee has also heard about the problems we have in getting permission to speak to a victim before we have seen them face-to-face.

Ms SHULMAN: Just to add to that. The yellow card program really looks at the domestic violence situation a little bit more holistically rather than just what happens at court. Our yellow card worker—who we have made a decision is an Aboriginal woman—is able to look at the housing needs that Susan talked about but also a lot of the other consequences of domestic violence such as the effects on employment and she puts them in touch with our employment service, or issues to do with money that flow from domestic violence. It is about getting in touch with a woman early and trying to assist her with all of those issues more holistically before they escalate and spiral. It is a wonderful program and we would like to see it receive more funding.

CHAIR: The yellow card system is a police initiative?

Ms S. SMITH: That is correct.

CHAIR: It sounds as if there is no standard operating procedure for the issuing of these yellow cards or that it is not consistently applied across all area commands?

Ms S. SMITH: I do not believe so. We accept the yellow cards. The police will give us the yellow cards with the details on them but there would be a lot of places that would not take them. Wherever there is a yellow card worker, as in our service, and in the small funded projects across Sydney anyway where they do have a project worker to take the yellow cards, but it is something we have the ability to spread across the State.

Ms SHULMAN: Like responses to domestic violence, it also depends on the individual will, training and education of the police officers at the scene. It is a relatively new initiative. Some police officers are more familiar, more willing and better resourced in issuing a yellow card and in taking down details than others.

CHAIR: You mentioned that you work with 11 local area commands and that there is a different ratio or number of domestic violence liaison officers in each of those area commands?

Ms S. SMITH: Most of those 11 local area commands have one domestic violence liaison officer—two of them have two domestic violence liaison officers. In some of the commands where there is one domestic violence liaison officer they may also be the youth liaison officer as well. In some commands there might be a larger residential area.

CHAIR: This morning we had a presentation from Dr Don Weatherburn who talked about statistics, and we heard about those courts and areas with the higher lists. Yet there does not seem to be a consistent approach to the assessment of, for example, domestic violence liaison officers in line with high-need areas. It seems to be more of a leadership issue in some of the area commands rather than a ratio or a numbers-based exercise for their appointment—we can explore that later with police. Mr Porter, you mentioned earlier about only one of the parties in a dispute being interviewed because one of the witnesses was in hospital. What sort of quality control or accountability measures are there at present once a case like that is identified? Surely

something like that would need to be flagged and reviewed. What measures are in place to ensure we do not allow that to happen?

Mr PORTER: Finding out the full extent of those measures is part of my ongoing role, not just in police complaints but also freedom of information, which is another of the hats I wear. There is capacity for complaints management issues and performance issues to be raised not just by members of the public but by other police officers and by officers of the Director of Public Prosecutions. The remaining issue is that even where a complaint is made under the Police Act and substantiated and findings are made, the disciplinary steps in relation to that are a matter for the commissioner and they are not subject to review by the victim. They may be subject to review by the police officer who is disciplined. Indeed, sometimes those cases are ventilated through industrial relations measures. However, in the event of an inadequate response the Ombudsman can become involved. Again it is a matter where the final decision rests with the Commissioner of Police.

CHAIR: That leads me to my next question. We have heard from previous witnesses about the operating procedures being kept confidential within the police force, which then limits the ability for accountability to be measured. Do you have any comment on that?

Mr PORTER: It certainly limits the accountability of the officers involved. Part of the work that I do involves taking as many publicly available police procedural documents as I can when assisting a person making a complaint. I should point out that we call the work I do victim and defendant work. On the victim side it is often classified as a failure to investigate. For defendants, that is a situation in the domestic violence context that involves women who either have been incorrectly identified as the primary aggressor or have been charged and the charges were not appropriate. To assist people when the formal complaint is made I point to as many specific aspects of procedure as possible, whether they come from the Police Handbook or the NSW Police Force Response to Domestic and Family Violence, to indicate that these things are not part of the organisational outlook and that they should be addressed. Again, it is a question of whether they are addressed solely by retraining, by having a quiet word to the officer or by some other measure. It is not something that we have much ground to agitate about.

Ms SHULMAN: The broader issue is the structure of the police complaints system in New South Wales. There are very few other government agencies where the usual end result of the complaint is an internal investigation and decision by the very body that has been complained about. Perhaps the problem in relation to policies and accountability is a broader one relating to complaints more generally.

CHAIR: I do not want this to sound like a police bashing or police hunting exercise; far from it. We have already heard that they do a fantastic job in the large majority of cases. We are trying to see what tools or measures we can recommend to assist the police to get consistency in training and in the response by officers when they are on the job. Ms Smith, you mentioned the risk assessment model in looking at the primary victim-type approach and gave specific examples of what the risk assessment would entail—everything down to the physical side of the victim and the potential offender. Are you aware whether any aspects of that are currently included in the curriculum at the police academy or any of the other police training programs?

Ms S. SMITH: It is my understanding that they are talking more about investigation of an incident and looking more critically at who did what to whom when it is a domestic violence incident. We are not involved. I heard Legal Aid tell you this morning that they are involved in some of that training. It has been on our agenda for a while so I imagine that would be part of what they have been saying. In 2006, when the number of female defendants we were seeing rose quite dramatically, we did our own small investigation and put some case studies up to the police and to the Ombudsman as well. The Ombudsman coincidentally had just put out a document on policing of domestic violence and talked about a primary aggressor policy to identify a primary aggressor or primary victim. Since then our statistics have shown there has been a minor improvement in our service. I believe there is something in their training and some mention of it in their standard operating procedures, but I have not seen the documents so I do not know exactly what it is.

CHAIR: A number of witnesses have said that Victoria has some aspects that we should be looking at, one of which is that their police officers do a risk assessment when they attend. Are you aware whether it has the elements you are talking about?

Ms S. SMITH: I am not sure that that is the case. I know that New South Wales has been looking at a risk assessment tool for the Department of Health and the police but no decision has been made as to what that

risk assessment tool should look like. It is not to identify the primary aggressor but I think that would be part of the investigation and would become part of what they are considering.

The Hon. GREG DONNELLY: On page 13 of your submission where you talk about domestic violence liaison officers you start the sentence by saying "Most New South Wales local area commands..." Do I take it from that that you have some knowledge that there are or could be local area commands that do not have at least one domestic violence liaison officer?

Ms S. SMITH: I will have to take that on notice but it is my understanding that there may be commands that do not always have a domestic violence liaison officer. That may have more to do with the fact that the command is in the Central West or the Western area and they have not been able to attract a person who wants to go into that role.

The Hon. GREG DONNELLY: Will you take that on notice because that might provide useful information for later questions to the police?

Ms S. SMITH: Yes.

Mr PORTER: I can add one element to that as a general observation. In specialist roles you will often find a police officer is on leave for an extended time for some reason or there are issues to do with getting a replacement at a given time. Even if the local area command technically has a domestic violence liaison officer they may not be operating in that capacity. They may have been seconded to another role for a period. It raises the same general issues of continuity and consistency of service.

The Hon. GREG DONNELLY: That brings me to my final question. One of our earlier witnesses expressed an opinion that police who take on the role of domestic violence liaison officers would, by the nature of the work they then do, earn less than the average salary of other police officers in New South Wales, whatever that dollar figure may be, because domestic violence liaison officers would not have the benefit of penalties and shift allowances that other police probably get. The effect is that domestic violence liaison officers are paid less than an ordinary police officer. Do you have a view that designating a police officer a domestic violence liaison officer and that officer being paid a lesser salary might have the effect that they are perceived to have a lower standard within the hierarchy of the Police Force, and that that might make the position less attractive and not one that people would aspire to or, worse still, almost a disincentive to those who might want to move into and specialise in this area of domestic violence?

Mr PORTER: This returns us to the critical nature of local area command leadership in relation to such positions, not just domestic violence liaison officer positions but youth liaison officer positions. I recognise that there will be budgetary considerations regarding any reclassification of a role at a separate pay grade. However, if the local area commander sends a clear message that doing a good job in that role is a positive career step, I think that would do a lot to ameliorate the temporary financial setback.

Ms S. SMITH: We have not talked about police prosecutors, who are in a position that is a little similar to domestic violence liaison officers. I know that police are now trying to attract more police to the police prosecutor role, but police prosecutors are generally overworked and do not get to spend a lot of time with victims on a hearing day, for example. In my opinion, that means they do not have enough time to prosecute in the way that they should.

Ms SHULMAN: I think there is a feeling that domestic violence matters are a training ground for police prosecutors before they graduate to the "more serious" offences and matters, so one tends to have quite junior police prosecutors who are inexperienced and perhaps not as well trained and therefore do not have a good understanding of domestic violence issues. That goes again to our point around the need for increased resources for training and education, and it also goes to our point about specialist courts lists and along with them specialist police prosecutors.

Ms S. SMITH: At the four courts that we attend on an apprehended violence order list day it is not a police prosecutor that runs the list; it is run by what I think they call a training clerk. That could be something of a disadvantage at times.

The Hon. HELEN WESTWOOD: Earlier today we heard from Catherine Smith about her experience. Do you think there is something we could learn from the examination of the failures in her case,

certainly in terms of health care provision? Given your experience, do you think we should analyse her case and where the system failed her in the hope of preventing that happening to another victim?

Ms S. SMITH: I think there is a lot that we could learn from Catherine's case. It has certainly been the catalyst for me to think about why we would want to spread some of the expertise that we are lucky enough to have in the city to country areas. Some of what she told the Committee today about police being part of the community and perhaps therefore a friend or associate of the offender or defendant in these matters in country towns is worrying. Catherine was in a couple of very small country towns when she tried to report the violence to police. Perhaps her husband knew those police officers; I do not know why they did not take her complaints seriously. But I do have concerns for women in country towns. Even now, I wonder where they would go and what they would do when they want to report violence and then get some support, especially if they are living on rural properties and the other party owns guns, as Catherine's husband did, or they have children. I know that much of what Catherine told us about was quite historical, as she escaped in 1997, but I have concerns that these things are still happening in rural communities. So I think there is a lot that we could learn from Catherine's experience. I think our suggestion of the specialist list is one of the things that we could have in Wilcannia as readily as we could have it in Waverley.

Mr PORTER: In terms of the currency of the domestic violence issues that Susan Smith referred to in rural and regional areas, the New South Wales Ombudsman this year produced a report regarding the Police Force response to domestic violence complaints. Several of the case studies used in that report are from rural and regional areas where police failed to act in accordance with procedure. One particular example that occurs to me at this time is where two probationary constables were sent to attend a domestic violence incident. I think that underscores the degree to which domestic violence can be perceived as a training ground.

The Hon. HELEN WESTWOOD: Do you receive many referrals from healthcare providers? The Committee has heard evidence from other witnesses that particularly where a victim may not be aware of what services are available or of her rights the first person she may go to is the local doctor or emergency service for treatment of injury. Do you have any view on that and whether or not healthcare providers are adequately trained to deal with domestic violence in an appropriate way?

Ms S. SMITH: We get very few referrals from healthcare providers. Royal Prince Alfred sometimes makes referrals to us. That is probably the only healthcare provider from which we get referrals, and I think that is because there is a social worker there who, in the screening of women, would screen them for domestic violence. But the number of referrals we get from healthcare providers is not very many at all. I believe we should be getting more referrals. There has been a suggestion that, in the same way that police have a yellow card, healthcare providers could have a card and say, "Can I make a referral for you to another service?" That could be helpful. But we do not have a lot to do with healthcare providers unfortunately.

The Hon. HELEN WESTWOOD: When you speak to victims and are supporting them through their cases, do they disclose that they have actually been in touch with a general practitioner or healthcare provider?

Ms S. SMITH: They will often have been seeking counselling or a counselling service that is attached to a healthcare provider, or it might be that they have been to their general practitioner with injuries, or it might be that their general practitioner has told them about our service or told them in general about getting an apprehended violence order.

Ms SHULMAN: There is a useful report by the Law and Justice Foundation of New South Wales which talks about where people go for assistance when they do not go to a lawyer. That report sets out that often they end up at a health provider. We are very aware of that. I think legal centres and the legal assistance community generally is aware of it. We would love to have the resources to do more training and education and make those links.

CHAIR: You mentioned specialised domestic violence court lists across all courts in New South Wales as one of your recommendations. Could you outline the advantages they have over the existing system we have in New South Wales?

Ms S. SMITH: I would say at the moment to bring specialisation to those court lists. At the moment some courts and magistrates will not make a final apprehended violence order because they prefer to make a six month interim order in the hope that things will be resolved. There are other courts where magistrates will not make an order because there are children involved. They say it is for the family court and not the magistrate's

court. There are places where, as we have discussed, police are not encouraged by the community to do their job. We could do with better training for prosecutors. We already have all of those things, we just need extra training or resources: for example, providing legal advice to all defendants and victims.

The Sydney Women's Domestic Violence Court Advocacy Service is able to do that at our four courts and we can do it through the domestic violence program at 32 courts across the State but not at all courts. The Sydney Women's Domestic Violence Court Advocacy Service would also like to see what we do at our courts perhaps spread across the State. We have a list of 50 agencies that work as seconded workers on apprehended violence order list day at our courts. Those agencies are from counselling services, victim's services or refuges, and they will come to court on the day and they help us with interviewing clients, finding out what that client needs and carrying it forward for the client. That is another thing that could be part of the specialist list. I have written up a handout on specialist lists, could I table that?

CHAIR: Yes. Another important point made by other witnesses was a specialised list and to make sure the domestic violence liaison officers are available on apprehended violence order list day when they know they are coming up, rather than sent off to other duties.

Ms S. SMITH: That does happen in country towns when it is apprehended violence order list day and the domestic violence liaison officer should be at court taking instructions from the client and giving them to the prosecutor but they are not always at courts on the day.

Mr PORTER: The other thing that a specialist court would do is send a clear signal to defendants that it is a prioritised matter on the part of the courts which I think would be an efficient way of escalating the prominence of domestic violence responses by the court system.

CHAIR: Thank you for your submission and your evidence here today. I note there have been a couple of questions taken on notice. The Committee has resolved that the answers to those questions must be returned within 21 days and the secretariat will liaise with you to facilitate that response. There are some other questions we may provide to you on notice. An hour is not long enough to get through all the questions we have particularly when we have other things like yellow cards pop up. Thank you for your time and your submission.

(The witnesses withdrew)

[Short adjournment]

GREGORY ELKS, Member, Criminal Law Committee, Law Society of New South Wales, and

BRETT THOMAS, Member, Criminal Law Committee, Law Society of New South Wales, sworn and examined:

CHAIR: I welcome our witnesses from the Law Society of New South Wales. Thank you for attending this inquiry. Do either of you wish to make an opening statement?

Mr THOMAS: Very briefly I will say one thing in relation to our submission. The Committee would have received our submission, which, in a fairly succinct way, seeks to deal with the three main terms of reference. What I wanted to highlight was this: As indicated in the second-last paragraph, the Criminal Law Review Division of the Attorney General's Department presently is doing a statutory review of the legislation that governs domestic violence matters. A subcommittee of our Criminal Law Committee prepared a submission. From what I read, those submissions are due to the Attorney General's Department on 18 November. We took the view in relation to our submission to this Committee that we were not necessarily going to reinvent the wheel.

A discussion paper was issued by the Criminal Law Review Division, which, from a lawyer's point of view, was a very good vehicle to raise a lot of the legislative issues as far as domestic violence was concerned. I appreciate that the terms of reference of this Committee are a little different. That is the reason we were keen to make sure that the Committee did not think we were just paying lip-service to what it was looking at and that we were intending and have prepared a substantial submission in relation to those more specific issues that go to the legislation itself. Other than that, I do not have any other introductory comments.

The Hon. HELEN WESTWOOD: Has that submission been submitted to the Attorney General's Department?

Mr THOMAS: We were just talking about that. It may not have been signed off by the president. It may not be until this week. It is not due until next week.

The Hon. HELEN WESTWOOD: Would we be able to have a copy of that submission after it has been submitted?

Mr THOMAS: Yes, certainly.

The Hon. HELEN WESTWOOD: Much of the evidence we have received so far has been about the way in which the criminal justice system has dealt with victims and perpetrators. Do you get feedback from your membership about issues within their practice that affect perpetrators or victims?

Mr THOMAS: It is fair to say that the Criminal Law Committee draws its membership from across the profession, including defence lawyers, prosecutors, government members, non-government members—a whole range. It is probably fair to say that primarily it comes from defence lawyers, but the way the system works at the moment because New South Wales has in place a fairly extensive scheme is that the court assistance scheme provides legal representation for female applicants when the police are not making an application on their behalf—in which case they are entitled to legal aid and they seek the assistance obviously of a lawyer—or a female defendant in an application made either by a male or the police on their behalf. So that court assistance scheme is now in place.

It is not in all New South Wales towns, but it is fairly extensive. As recent as last year the Legal Aid Commission established a panel for lawyers to do that sort of work. The lawyers on that panel, which usually are members of the Law Society, are doing work from the point of view of representing defendants, which, of course can be male and female—there is a reference to that in terms of the increased numbers of females—and in which they are, to use the right expression, prosecuting matters. So they are doing both: prosecuting and defending.

The Hon. HELEN WESTWOOD: Most of the evidence we have received about the increased number of female defendants has not been about increased reporting, as your submission suggests, but the way the violent incident has been interpreted by the police at the time. It has been suggested that often a man might

be injured when a woman in the act of self-defence is trying to defend herself after the man was the primary aggressor. Do you have any evidence of that or have you heard reports of that?

Mr ELKS: Certainly anecdotally from what we see daily in court that situation occurs. Brett and I were having a philosophical discussion about whether more women were now being proceeded against because with the freeing of times men are not feeling quite as embarrassed about reporting incidents of domestic violence or it is a situation that some, as you have indicated, are not sorted out from being the primary aggressor. In some respects that comes back to the investigation conducted by the police at the time. There is not a lot of discretion. When the police receive a complaint they cannot sort out at the time they just take the position, "We'll throw them both in and we'll let the court sort it out later on." They just do not have that discretion at a local area command level. That would indicate why we are seeing a rise in numbers. Of course, what is being caught in that net—it is like a net-widening situation—are women where they are not necessarily the primary aggressor.

Mr THOMAS: Obviously, I cannot speak for all police, but I cannot envisage police at the coalface, the two constables from the local command called to the house and there with everyone standing and discussing amongst themselves deciding whether this was self-defence. I cannot envisage that happening. I am not saying that it should not happen. It is a bit of a double-edged sword with its advantages and disadvantages, but it would be extremely difficult. I would even suggest that in the vast majority of cases it is not even necessarily something that the police in that situation turn their minds to. They simply say, "Well, this is what we're looking at. If they want to run a self-defence argument, that's not for us to decide. That can be sorted out when it goes to court" if it ends up going that far, of course. That is the difficulty.

That goes back to what Mr Elks said about that apparent lack of discretion. The other thing I would add to that is that sometimes you also see in practice—this applies both ways, but also in relation to proceedings against women—you might not have a situation where police turn up and, for whatever reason, there might not be an allegation of assault but there has been violence. So there are no injuries to observe or photographs to take or matters of that kind. The police might say "In those circumstances we do not have to necessarily arrest and charge but it is still possible for us to make an application for an order." They can make an application for a provisional order or an out-of-hours justice of the peace can make an order and then it goes to court from there.

I think sometimes in that domestic violence scenario the police use that as a bit of a fallback. They say "Okay, we are not arresting him because we don't think there has been an assault—we are not arresting her—but in the circumstances we will do something". Dare I say it will be seen to be doing something, that is, "We will make an application." In some cases that will result in an application against the male, and in some cases it will result in an application against a female. In the past two weeks I have had two applications come across my desk, both police applications and not surprisingly they maybe from the same local area command at Kogarah. They are applications by police on behalf of husbands against wives. This is only anecdotally but in one of those that went to court on the first occasion my now client—I was not there, she was there—and the domestic violence liaison officer who is there to assist the police, the court and the victim, which in this case was the husband, gave this woman the advice, "You should not be agreeing to this". It was not an application they had taken out. I do not think they had even been consulted about it. "You should not be agreeing to this." And you only have to read the application to see its lack of merit.

This was an application taken out by a police officer, so he will now be represented by the police prosecutor. She came to me and instructed me on a private basis. We now have to plead not guilty or show cause. We will have to have a hearing. We will have to go through that whole process to demonstrate that there is no need for an order. Whether that is a lack of discretion or a police officer deciding that he thought that was appropriate in the circumstances, ultimately the court will decide. It is just interesting that we see that through the system. I do not think what we see in our area is altogether different to what is seen across Sydney.

The Hon. HELEN WESTWOOD: That scenario is consistent with the advice we have received from practitioners right across the State.

Mr THOMAS: It is a real difficulty and a real cause for concern.

The Hon. HELEN WESTWOOD: You said that when police arrive at an incident, and frankly they do not have the capacity to investigate at that time, is it feasible that they could investigate at a later date before they lay charges?

Mr ELKS: It depends very much on the circumstances. It may very well be, as Mr Thomas said before, that you just do not have any physical evidence. That is never going to change. So all you are ever going to be able to do is come back and take statements or ask questions, or obtain statements off kids or anyone else who might have been there. So, yes, in the cold hard light of day you could always come back and revisit it but it is that real lack of physical evidence that is corroborative at the outset that causes a problem in those instances. I think they try as best they can to do their investigation on the night so they do not have to revisit. The general duties police are obviously very busy and have other things to do. I think they do the best they can with what they have got.

Mr THOMAS: The only thing I would add to that, the only variation of that, I think, is sometimes those police officers attending initially may, for whatever reason, decide not to do anything initially. I have seen this occasionally in our area. They might leave it for the domestic violence liaison officer to look at later on, after the weekend. They are at the coalface as well but in a different way because they are dealing with it in a liaison. They are dealing with what happens in court as well. Sometimes they are in a better position to make that more objective assessment of what the real situation is. It is not always the case but that goes a little bit towards what you were perhaps asking about.

The Hon. HELEN WESTWOOD: You might take this question on notice. The Committee received evidence from one of the domestic violence services that suggests that other matters need to be looked at in those situations. For instance, whether there has been a history of violence and they should not just take a view on that one incident. The argument is that that is quite a waste of resources in both services preparing cases, or law practitioners as well as the courts. Redfern Legal Centre provided the Committee with a good submission and made a couple of suggestions about that so it would be good to know your view on that.

Mr THOMAS: Sure.

The Hon. HELEN WESTWOOD: The services have also said that prosecutors and lawyers do not have time to sit with clients when a matter is coming to court. Have your members expressed concerns about not knowing the case long enough, not being able to prepare well enough before a matter comes to court?

Mr ELKS: It is difficult on a very busy list day. Mr Thomas and I are lucky that the court at which we generally practice has a very good model for running the domestic violence list. We are lucky that we have the regular prosecutor and the domestic violence liaison officers are pretty well known to us.

CHAIR: Which court is that?

Mr ELKS: Sutherland Local Court. I think it is really a bit of a model for how domestic violence lists should be run. We do not experience that problem a great deal because we have a sensible prosecutor—when I say "sensible", someone that we know who makes the time to speak to the domestic violence liaison officers beforehand. I can image at some other locations—perhaps Mount Druitt, off the top of my head—it might be a tad different. But generally the senior prosecutors make the time to speak to people. I know, having read some of the submissions, there was a criticism of the fact that the police prosecutors are not within the local area command and have a completely different command structure. I think it is very important that they remain in or out of the local area command structure because they have a different position in the court to that of just everyday police officers.

They have a duty to the court to fairly present their case, whether or not it favours them. They need to be objective and if you have them attached to the local area command they get too close, they lose that objectivity and it is important that that remain. However, would they spend more time talking to victims? Yes. Time is a luxury that many of us would like to have more of but they try to do the best they can with what they have got. I find that we can discuss things with the domestic violence liaison officers quite easily because we get to know them as well. I have never had any problems that I have gone to once I have got the hang of it. I think that some of the criticism of prosecutors is perhaps a little bit unfair in that respect. I just do not think that the police and sometimes people that are associated with assisting victims in this situation are aware of the responsibilities that a prosecutor has and that they must remain somewhat detached.

Mr THOMAS: I endorse Mr Elks' comments about the system we have at Sutherland. It is a good system that works well and, as we understand it, it is something that they are keen to try to make sure works elsewhere. I am aware that our prosecutor at Sutherland has worked with the prosecutors and Domestic violence

liaison officers at Bankstown to make sure that they have a similar system. As recently as this month I was told that one of the Sutherland prosecutors has gone to Wollongong to try to establish the same regime.

It was described last month by our local magistrate who just retired after 20-odd years on the bench as the best domestic violence list that he has had the opportunity to work with, and he has worked in most suburban courts. Perhaps not in the country where it is a little bit different but in Sydney suburban courts where I suppose you have the luxury, if you could call it that, of being able to have it as a separate list, which I think is important, as opposed to the country where it is probably a bit more of a mix of work, so that is different. The other thing that is important on that issue from the point of view of the Law Society is educating our members about the way the court expects domestic violence matters to be dealt with. It is clear that the Chief Magistrate has a practice direction that makes it clear the time frames in which they are meant to work, the material that is meant to be provided and that sort of thing. It is incumbent through our committee and the society generally to make sure practitioners, defence lawyers, are aware of the fact that when it is a domestic violence matter they do not have the luxury of expecting two or three months to consider a full brief of evidence and then another two or three months before they come back to court.

That is how it might have been years ago. The system has changed and the expectation of the court is that these matters will be afforded some priority and be dealt with quicker. It is important that practitioners understand that. The way that is done, not only has the Law Society a role in doing that but in terms of having the sort of system that we have at Sutherland and also having the magistrates to make sure it is enforced. They will do that. I have seen it in practice. You will get a lawyer who comes along and thinks, "I am going to have the standard six weeks to consider the brief of evidence." They get told, "No, sorry, you get your mini brief now. Come back and tell us if you are pleading guilty or not guilty in a week's time. If you are pleading not guilty we will give you a hearing date within three months." We do not have a criticism of that. It is like anything, so long as the lawyers know that is how the system works they adapt accordingly and it should not be a problem.

The Hon. GREG DONNELLY: Thank you, gentlemen, for coming this afternoon to provide us the opportunity to ask you further questions. In relation to GPS monitoring, on page one of your submission you state that in principle you do not support the use of bracelets as a strategy to reduce breaches and improve compliance with apprehended domestic violence orders. Could you elaborate on that? In particular, do you see any value in trialling the use of these bracelets or some other electronic monitoring device attached to people?

Mr ELKS: The Committee is aware of studies that were done in England and Wales. They have been referred to in a number of different submissions that I have read. One of the biggest problems is that not all apprehended violence orders have a distance attachment to them. Of course, monitoring in those situations would be of little utility. There are also a lot of problems with the GPS monitoring systems. Is it worth trialling? I would suggest not and that seems to be the import of our members. The GPS systems are not totally dissimilar to what you have in your motor car. No doubt members of the Committee have driven through Sydney and noticed that it keeps coming up with no satellite contact which is caused by buildings, shadow, line of sight. I will not go into wave technology. It is basically that sort of situation. You have other black spots around the areas. You have problems with battery life. The types of devices that are being used are anklets and battery packs. Even if they are not taken off they are easily circumvented by placing various items over them to mask them. I just do not think at the end of the day the GPS is a particularly good tool.

We have to remember, and I know the point is made in our submission, that an apprehended violence order is not a criminal sanction. Yet we are talking about perhaps shackling the complainants with a device that will stand out. Perhaps as a fashion accessory on men—don't care. But on women, I know how they appear is very important and they have this black bracelet on. Quite frankly, it will not take long for people to wake up to that fact that it is a form of tracking device. Kids then start to ask about it and they are picked on at schools. There is that stigma that can flow from it. Having said all that, of course there are instances at the moment where electronic monitoring takes place in relation to very high-risk parolees and the like.

If you were perhaps looking at a situation where you are talking about a very serious breach of an apprehended domestic violence order, and I am talking about a serious violent offence, or there is a history of ongoing breaches of a violent-type nature, then perhaps you would look at something like that. Taking that a step further, by the time you are getting to that phase you are also probably looking at more serious penalties that would flow as well, which may well be an intensive corrections order which brings in itself a form of monitoring. In essence, it may end up with the situation that you are being monitored in any event. It would be in those very rare situations where you are talking about a very high-risk offender that it might be worth having a look at.

The Hon. GREG DONNELLY: Thank you for that thorough answer. In relation to penalties, a number of submissions have spoken in terms of the existing penalty regime to domestic violence as being adequate. Your submission, as I understand, says that as well. But you make the point that the statistics do not differentiate between the types of breaches. In other words, the collection of statistics with respect to domestic violence is done in such a way that there is no differentiation about the types of breaches. Can you expand on that? Are you essentially arguing that there should be a refinement?

Mr ELKS: In essence that is exactly what we are saying. Your breaches go from very basic, non-violent breaches such as a breach in a non-contact situation, a non-approach situation, through to harassment, assault, that type of thing, and then you move into what are regarded as violent-type breaches. They can stem all the way from an assault, assault occasioning actual bodily harm, grievous bodily harm and malicious wounding to murder. So you have this sliding scale and, therefore, the statistics are not capturing the type of breach. So they are not that useful to us in that respect. Brett and I were discussing earlier how you could capture those statistics. There are a number of different ways you could approach it. Whether you then have categories for each of the breaches such as a breach of a non-contact order, the second one being a breach of the non-approach order—you can see they are getting more serious as we go up—a breach of a harassment, assault or molest order, a component of the order, and then violent orders themselves. Then you have that sliding scale again of seriousness.

It is possible you could bump it into a table 2 offence or something like that and adjust the penalties that are available to them: serious breaches, six months—we are talking imprisonment at this point—and so on up the ladder. At this stage they are summary offences but by putting them into table 2 you add the ability to make them an indictable offence and take them up to the District Court with perhaps a more serious judge. You have to remember, where you start to move into the more violent-type offences there is generally an associated charge with it—assault, assault occasioning actual bodily harm, malicious damage, whatever. Generally that charge will address the more serious aspect of the breach. However, we are still not seeing in the statistics just how serious those breaches are. If this is an associated charge, again, that is not being captured in the statistics. I think we would agree with that.

The Hon. GREG DONNELLY: A witness said earlier today that she had observed a difference in the application of domestic violence law across four courts. The question of a bench book and practice notes came up in the discussion and the impression I got was that there is no bench book or any practice notes for domestic violence. What is available to magistrates and judges when they are dealing with domestic violence? Can you outline what they have at their disposal?

Mr THOMAS: You are right. Part of the Local Court bench book deals with domestic violence, but not in any detailed way. There is a general document on the Judicial Commission website—I forget the title—relating to the administration of the Local Court. It is meant to be for the benefit of magistrates. It contains a chapter dealing with domestic violence lists covering about two pages. I can provide the exact title of that document.

The Hon. GREG DONNELLY: That would be appreciated.

Mr THOMAS: That is meant to be a guide. As I understand it—but I do not know to what extent—they deal with it in the judicial education program. It is given some priority, but it is not afforded any greater priority than some of the other important issues they deal with. That leads on to the suggestion that some people have raised about the idea of a specialist court of some sort. I do not think it is a case of having a specialist court. It goes back to what we were saying about the system we have at Sutherland that works so well. It is about having a specialist list or a specialist way of doing things. You then have to ensure through judicial education that that is implemented by the bench in the same way across the board, otherwise it defeats the purpose of having a specialist list. We have had that problem at Sutherland.

We have the regular magistrates who do not have a problem with it, but if a particular magistrate or a visiting magistrate has a different way of doing things it does not work. If they have a different way of approaching their domestic violence list, it does not matter how good the prosecutor, the domestic violence liaison officers or the system are, it will not work as well. Some magistrates will be guided and others will not. They will say, "No, this is the way I am doing it." It usually takes twice as long and everyone gets incredibly frustrated. That goes back to specialist lists. You are not dictating to them; you are simply saying, "This is the generally accepted specialised way of dealing with these types of issues. It will save you time, you will get

through the work and everyone will know was happening in a proper way and that is how the system is supposed to work." That is the advantage of it. The specialist list is the way to go, together with judicial education.

The Hon. GREG DONNELLY: Are there any practice notes?

Mr THOMAS: Yes, there is definitely a practice note about domestic violence matters indicating how they should be dealt with in terms of timeframes and that sort of thing. However, the running of the list comes from what they learn in judicial education and what is in this other paper.

The Hon. NATASHA MACLAREN-JONES: What is your opinion of the way in which courts deal with children both as victims and as offenders? Can that be improved?

Mr THOMAS: It can be. I note that the President of the Children's Court made a submission in which he indicated that he is in the process of preparing a practice note about domestic violence matters in the Children's Court. What he proposes is not hugely different from what happens in practice now. He is simply bringing it together to ensure that it is standard across the board. That is good because all sorts of issues arise from conflict within families and as a result of parents seeking AVOs against their children, in particular. There are arguments both ways in terms of the advantages and disadvantages. With some children it is very much required because there are real difficulties and they must be dealt with in the way that adult matters are dealt with. However, there is and should be a recognition of the fact that you are dealing with children. The scenarios are different when you are dealing with younger people. Mind you, in some cases you are dealing with extreme forms of behaviour.

The practice note that the President envisages talks about providing all the parties—both the parents and the kids—with an opportunity to see how things sort out. In other words, they should not make any quick, rash decisions at the beginning of the process when people first come to court. Rather, they should allow the process to run for a while, usually by issuing an interim order for a short period—that is, three to six months. I think the President raises the issue that we have also dealt with in our submission to the Department of Attorney General and Justice's review; that is, the difficulty that sometimes arises in the future when a final apprehended violence order has been made against an adult involving a child and the Working With Children program. That is not a criticism of the Working With Children program and the reasons for that. However, it can sometimes be a not so serious situation in the family home and, dare I say it, an issue with bringing up children and the consequences that flow from that. That is in the background and people recognise it.

Jane Sanders made a submission on behalf of the Shopfront Youth Legal Centre, which does a lot of work in the Children's Court and with children. The submission deals with children as defendants where parents have taken action and actions between siblings and ex-boyfriends and ex-girlfriends. They deal with the whole range and there has indefinitely been an increase. That is why it has got to the point that the President is bringing it all together in the form of a practice note. I spoke the other day to our duty Legal Aid Children's Court lawyer at Sutherland and she strongly supports the idea. What is in the practice note is what happens across the board. She spent many years at Campbelltown, where they try to do the same thing. This is important in terms of trying to resolve the difficulties in the family. You make an interim order and let it run for three months or six months, but the point she makes is that with some families you need an outside agency to assist in the process. She told me the other day about an organisation called Reconnect, which is involved in that situation of family dynamics. With some families you would need that outside involvement as well and that is important. In many cases time fixes the problem.

The Hon. NATASHA MACLAREN-JONES: You recommended that the Crimes Act be reviewed. Can you elaborate on what you would like to see changed?

Mr THOMAS: Are you talking about the section that creates the breach?

The Hon. NATASHA MACLAREN-JONES: Yes, and the statement that the assaults do not fall within the category of female victim and male offender.

CHAIR: That is on page 3 of your submission.

The Hon. NATASHA MACLAREN-JONES: I am happy for you to take that question on notice.

Mr THOMAS: I will have to check, but I am sure that that is one of the issues we raised in our submission to the Department of Attorney General and Justice. Hopefully that will be covered in that submission.

CHAIR: Just looking at the apprehended domestic violence orders, in your submission you state that defendants in apprehended domestic violence order proceedings are often unrepresented. What we are trying to find out is some of the examples of inappropriate conditions that may increase the chances of a breach of an apprehended domestic violence order. Could you provide some information around that? One thing we have heard is that a lot of these apprehended domestic violence orders are set up for failure.

Mr THOMAS: Yes, that is always a possibility. I think it depends a lot on what is happening in the background. A lot of the time it is the whole dynamics of what is happening in a family. In a lot of cases it is part and parcel of the whole breakdown of the marriage scenario, so there are a lot of family law issues that come in and that are there in the background. Whilst Greg and I both practice in the area of domestic violence we are not like a lot of our colleagues, we do not necessarily practice in family law, whereas there are a lot of solicitors who practice in the family law side of things and as to how the Family Law Court approaches all of those. As far as inappropriate conditions or the difficult conditions as far as enforcement is concerned that create the difficulties is the idea of having an order which sounds good in theory, such as there is to be no contact whatsoever. Dare I say it, at 10.30 on a list day where the victim is there talking to the domestic violence liaison officer and the defendant is there with their lawyer and they are trying to agree on what final order or interim order is going to be made, that all sounds good in theory but in practice as to how that works can be hugely difficult.

CHAIR: The issue then of representation, does that reduce these inappropriate conditions that may be set within the order because there is counsel there to be able to provide advice not to accept those conditions?

Mr THOMAS: Either to not accept or to speak with the liaison officer about whether or not that is necessary, whether that is going to work. Even if it is just a simple discussion about what the family law scenario is or if there are family law orders. I have seen applications made by police where there are family law court orders in place regarding contact with children. There is provision on the application for the police to note whether there are orders and it is just being ignored. The first thing you do is go along to court with a copy of the family law orders. The court has got a power to suspend those Family Court orders in the appropriate circumstances, and that happens. It is not something that the court does lightly because it is an important thing to do and in a lot of cases it is not necessary. But sometimes it just creates that inconsistency and that creates a problem.

Mr ELKS: Can I throw my two bob's worth in there? I know that Legal Aid are about to commence a pilot scheme. I had nine years working for the Legal Aid Commission before I went out on my own and the Committee is probably aware at the moment that legal aid is not available to respondents unless there is an associated criminal charge. Brett and I earlier today were trying to work out a percentage, and that was very difficult to do, but there are a lot of people that appear unrepresented in these matters because they are at the lower end of the economic scale and normally they would be entitled to legal aid but they do not get it. A pilot scheme that they are suggesting would assist greatly in that we would get that situation that Brett has just described where negotiation would take place and appropriate orders are made. Not only that, it would also, as I understand their pilot scheme, bring in a bit more of a holistic approach. As I understand it, they are going to be looking at providing the ability to get crisis housing, the knock-on effects of family law and that sort of stuff. That is what I think really needs to happen and that is why I believe it is an advantage to have these people represented at that early stage. I think it would save the community a great deal of money and court time and also police investigations. It is certainly worth looking at the results of that pilot scheme once it starts.

Mr THOMAS: Could I just add the other two things in relation to that under the heading of inappropriate conditions: you can sometimes have real difficulties where you have orders talking about not going within certain metres of places. There is the not reside condition, there is the not enter condition and then there is the not go within a certain number of metres. The not reside one is less of a problem, even though you can always have an argument about what constitutes "reside" and what does not, and that is a big area. "Not entering" is helpful even when there are family law orders because it makes it clear that in the picking up and the collecting of children there is no need for one party to go inside the house. The coming within a certain number of metres is more difficult and that causes more of a problem.

The other thing that can be a problem, and it is not always asked for but some of the times it is—sometimes the police do not obtain it initially if somebody is charged on a weekend and they get a provisional order, then it is not made but it is sought later when it comes to court, and that is the whole question of excluding somebody from their house. I am not suggesting to the Committee that that is never appropriate; there are cases where that is more than appropriate and it is usually obvious as to whether that is the case. Where it sometimes becomes more inappropriate and more of a difficulty to deal with is when it is seen as part of what ultimately is going to be a bit of a family law argument about property. The reason for that is I think sometimes parties think that if they are not in their house therefore they lose their interest in the house when it comes to having an argument, and that is not the case: they do not have to be in the house to lose their interest. But that causes a lot of angst as well. As I said, it is not always inappropriate; in some cases it is more than appropriate, and those cases would usually be obvious. Where it is more inappropriate is where there are usually no charges; there has been an issue of some sort, the parties are still living in the same house—dare I say it, probably separated under the one roof, which is a concept that has been recognised in the Family Law Act—and then there is that toing and froing about what do we then do and is there the need for that to occur? It is difficult.

CHAIR: Unfortunately, time has beaten us. I wanted to delve into intensive correction orders and also look at the expanding of the authority for magistrates. They are questions that I think we will put to you on notice. I note that there were some questions that you took on notice. The Committee has resolved that the answers to those questions be returned within 21 days, and the secretariat will be in touch with you to facilitate those. On behalf of the Committee I thank you for your submission and also for coming along here today. Your evidence this afternoon and your experience, particularly at the Sutherland Court, has solidified some of the evidence that we received earlier in the day. We appreciate your time.

Mr THOMAS: You are welcome to visit Sutherland if you want to come and see how it works.

CHAIR: We will be doing some site visits so that is something that we will consider. We appreciate that invitation.

(The witnesses withdrew)

(The Committee adjourned at 5.19 p.m.)
