



Mark Speakman
Attorney General

A654074

The Hon James Wood AO QC
Chairperson
NSW Sentencing Council
GPO Box 5199
SYDNEY NSW 2001

sentencingcouncil@justice.nsw.gov.au

Dear Mr Wood

Sentencing Council report on sentencing for domestic violence offences

Thank you for the Sentencing Council's Report *Sentencing for domestic violence offences* (the Report). I also extend my thanks to the Sentencing Council for its hard work in preparing the Report.

I approve the public release of the Report.

I acknowledge the Report's finding that the data do not indicate a problem with the sentencing of domestic violence offenders. I also note that this view is supported by the Bureau of Crime Statistics and Research's (BOCSAR) study on sentencing outcomes for serious domestic violence and non-domestic violence assaults, which concluded that there was no evidence that the Local Court sentences serious domestic violence assault matters more leniently than serious non-domestic violence assault matters. The study was published in December 2015.

I note that the Report identified the need for monitoring or further action in response to certain issues. I am pleased to provide the following information about the ongoing work of the NSW Government in relation to the issues that were identified. The context for this work is the Government's commitment to addressing domestic and family violence. In September 2015, the former Premier Mike Baird announced the Premier's Priority to reduce the rate of domestic violence assault reoffending within 12 months by five percentage points by 2019 (the Premier's Priority). In August 2016, the Government launched the *NSW Domestic and Family Violence Blueprint for Reform 2016-2021* (the Blueprint) which replaced *It Stops Here: The NSW Government's Domestic and Family Violence Framework for Reform* as the whole-of-government policy framework to address family and domestic violence. The Premier's Priority is reflected in the Blueprint.

The Sentencing Council identified three areas for potential action by the NSW Government.

1) Development of guidelines for sentencing domestic violence offences, either in the form of guidance in bench books or through a guideline judgment, to help courts develop and apply relevant principles

The Judicial Commission of NSW (the Commission) has added to its sentencing bench book a section on sentencing domestic violence offences. This new section collects the leading cases on domestic violence and makes cross references to other sections of the bench book that deal with domestic violence in the context of other specific issues. In addition, the Commission has developed a web-based program to give magistrates access to more extensive sentencing information for domestic violence offences, with the objective of ensuring greater consistency in sentencing. This resource is also available to most legal practitioners. This enhancement will assist the courts to achieve greater consistency in sentencing in domestic violence cases.

The Commission offers a conference and seminar program for judicial officers in each court, ranging from induction courses for new appointees to specialist conferences. As part of this curriculum, the Commission has been providing special seminars on the topic of domestic and family violence both as stand-alone sessions and part of the conference programs. Presentation of conference papers covering domestic violence, sexual assault and sentencing in domestic violence matters has been a high priority for the education committees of each court. This training is focused on assisting judicial officers with keeping up to date with current developments in specific aspects of the law and legal procedure relating to domestic and family violence and also serves to maintain their awareness of continuing developments in dealing with domestic violence in court.

Throughout the past few years, efforts have been made to enhance training in the understanding of domestic and family violence, its impact on victims and children, and good practice in its management by the court, including judicial commentary. To this end, the Commission's education program also includes ongoing training and resources in addressing sentencing principles and guidelines. For example, a Sentencing Trends & Issues publication in July 2016 focused on sentencing for domestic violence. Case studies addressing domestic violence relationship dynamics will be developed and included in the Local Court of NSW Magistrates Orientation Program in November 2017.

In direct response to legislative changes arising from the statutory review of the *Crimes (Domestic and Family Violence) Act 2007* in 2016, the Commission provided two education sessions for magistrates of the Local Court. These were provided for both metropolitan and regional based magistrates. Magistrates have also been, and continue to be, provided with regular training and education in domestic violence through updates to bench books relating to legal developments on domestic violence.

2) Monitoring the effectiveness of initiatives designed to: address the relatively high withdrawal rate for domestic violence charges; encourage proactive policing; provide support and assistance to victims; and improve court processes.

Through the *Domestic Violence Justice Strategy 2013-2017* (DVJS), the Department of Justice (the Department) has implemented significant reform to improve the response of the criminal justice system to domestic and family violence. This includes the introduction of strategies to improve police practices such as: legal action targets so that police take action wherever there is sufficient evidence of a crime to ensure victim safety; proactively investigating alleged breaches of ADVOs; and monitoring repeat offenders to reduce reoffending. Local Court Practice Notes have been introduced to improve court efficiency by setting time frames for proceedings in criminal matters and for ADVOs.

There are also 28 Women's Domestic Violence Court Advocacy Services (WDCVAS) across NSW providing a number of services to victims including support at court mentions and hearings.

One of the key reforms delivered through the DVJS is the introduction on 1 June 2015 of Domestic Violence Evidence in Chief (DVEC). DVEC allows a video-recorded statement taken by police from a domestic violence complainant to be admissible as the complainant's evidence in chief in domestic violence offence proceedings. The objectives of DVEC are to improve victim participation in and experience of the criminal justice process, reduce the time it takes courts to hear domestic violence matters and increase conviction rates.

The Department established a monitoring group to drive the implementation of DVEC, review the reforms and report back to Government by September 2016. The review of DVEC's first 12 months of operation found that the DVEC reforms were on track to meet their objectives by improving domestic violence complainants' participation in the justice process and the quality of evidence available in domestic violence matters. The review found that stakeholders were generally very supportive of DVEC and that there had been no adverse effects on court outcomes. The review also indicated that more time was needed to assess the full impact of the reforms. Follow-up analysis is being undertaken by BOCSAR.

Building on and monitoring the impact of domestic and family violence initiatives now falls within the Department's program of work to support the Premier's Priority and the *NSW Domestic and Family Violence Blueprint for Reform 2016-2021*. For example, expanding the use of DVEC is a key intervention to increase conviction rates as part of the Premier's Priority program of work. Ongoing monitoring of DVEC will assess both its usage and effectiveness in this context.

3) Monitoring the availability and effectiveness of domestic violence programs in prison and in the community (both for parole and non-custodial sentences)

Based on analysis of domestic violence reoffending and the interaction of reoffenders with the criminal justice system, the Department has designed and implemented a significant program of work to support the Premier's Priority to Reduce Domestic Violence Reoffending.

The Premier's Priority program of work includes more than 20 interventions focused on intervening earlier with perpetrators, improving the rate of convictions and changing offender behaviour. Within this, there are a range of interventions for offenders in custody and under community supervision. For example, Corrective Services NSW is significantly expanding access to the EQUIPS behaviour change programs including the Domestic Abuse Program for offenders under community supervision. In October 2016, a four-trial site pilot also commenced for the early intervention for defendants on remand, aimed at providing greater flexibility to target exactly what each offender needs. Other interventions include the creation of high-intensity program units to deliver rehabilitation programs to offenders serving short term sentences (six months or less), and enhancement of the case management model to become a person centred model, based on the evidence based principles of risk, need and responsivity.

The Department is examining the effectiveness of all of the Premier's Priority interventions in the context of monitoring domestic violence reoffending rates. This is in order to report back to Government on progress made towards meeting the Premier's Priority target.

I note that the Sentencing Council also identified three potential areas for further investigation:

- a) The Sentencing Council found that there is a need to investigate the general trends identified in the case of the less serious offences of common assault and destroy or damage property, to account for variables that are known to impact on sentencing and to investigate the effectiveness of the various good behaviour bonds imposed.
- b) The Sentencing Council suggested further investigation into the relatively high reoffending rates of offenders who have contravened ADVOs with a view to developing appropriate responses or sentences that will deal with the causes of offending behaviour and the criminogenic needs of offenders.
- c) The Sentencing Council suggested investigating the impact of escalated penalties where offenders contravene apprehended violence orders on second and subsequent occasions.

The Government is considering how these issues relating to sentencing can be addressed.

If you have any questions, please contact Carolyn Thompson, Director, Domestic and Family Violence on [REDACTED] or by email: [REDACTED].

Yours sincerely

[REDACTED]

Mark Speakman