



Preliminary Submission to the NSW
Review of sentencing for the offences of murder and
manslaughter, including penalties imposed for domestic
and family violence homicides and the standard non-
parole periods for murder

Prepared by
Domestic Violence NSW

About Domestic Violence NSW

Domestic Violence NSW Inc (DVNSW) is the peak body for specialist domestic and family violence services in NSW. DVNSW provides a representative and advocacy function for specialist services and the women, families and communities they support.

DVNSW's mission is to eliminate domestic and family violence through leadership in policy, advocacy, partnerships and the promotion of best practice. We work with our members, state and federal government and communities to create a safer NSW for all.

DVNSW member services represent the diversity of specialist services working in NSW to support women, families and communities impacted by domestic and family violence including:

- Crisis and refuge services
- Transitional accommodation and community housing providers
- Family support services
- Neighbourhood centres and drop in centres
- Specialist homelessness service providers
- Men's behaviour change programs and networks
- Community organisations working with high risk communities
- Specialist women's legal support services
- Women and children's support services
- Safe at Home programs

DVNSW members are all non-government organisations, some entirely government funded, others supported through philanthropic donations or partnerships with industry or the corporate sector. Many of our members have multiple government and non-government funding streams.

DVNSW advocates for best practice, continuous system improvements and innovative policy responses to domestic and family violence including building workforce capacity and representation at all levels of government. We provide policy advice to multiple departments in the NSW Government on prevention and response. We work with communities and the media to increase awareness and represent the sector on a number of state and federal advisory bodies. We co-convene and provide a secretariat function for the NSW Women's Alliance with Rape and Domestic Violence Services Australia.

We acknowledge the work and practice wisdom of specialist women's services and domestic and family violence practitioners in the sector that underpin the recommendations in this submission. DVNSW thanks the specialist services that have developed best practice over decades of working with women and children and shared their expertise with us. We also pay tribute to those who have experienced domestic or family violence and to our advocates, colleagues and partners in government and non-government agencies.

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Endorsement of submissions

DVNSW endorses the preliminary submissions of **Rape and Domestic Violence Services Australia (R&DVSA)**, and **Women's Legal Service NSW (WLS NSW)**.

Domestic Violence NSW submission approach

The Sentencing Council is to review the sentencing for the offences of murder and manslaughter under sections 19A, 19B and 24 of the Crimes Act 1900 (NSW), in particular:

- the standard non-parole periods for murder and whether they should be increased; and
- the sentences imposed for domestic and family violence related homicides.

In undertaking this review, the Sentencing Council should consider:

- Sentences imposed for homicides and how these sentencing decisions compare with sentencing decisions in other Australian states and territories;
- The impact of sentencing decisions on the family members of homicide victims;
- The devastating impact of domestic and family violence on our community;
- The application of section 61 of the Crimes (Sentencing Procedure) Act 1999 in the context of life sentences imposed for murder;
- The principles that courts apply when sentencing for these offences, including the sentencing principles applied in cases involving domestic and family violence; and
- Any other matter the Council considers relevant.

AS DVNSW's area of expertise is in sexual, family and domestic violence, this submission will particularly focus on the sentences imposed for domestic and family violence related homicides, the impact of domestic and family violence on our communities, and the principles that courts apply when sentencing for these offences, including the sentencing principles applied in cases involving domestic and family violence.

Recommendations

- **That the Sentencing Council consider the circumstances in which domestic and family violence homicides occur, especially when the victim and survivor kill the primary perpetrator, and particularly the context for Aboriginal and Torres Strait Islander people, culturally and linguistically diverse groups, people with a disability and LGBTIQ people.**
- **That the Sentencing Council ensure views on gender and social framework evidence in homicide matters involving domestic and family violence are examined, with a focus on judicial education.**

Domestic and family violence is one of the most serious social issues in NSW, and women and children are the most affected. The NSW Domestic Violence Death Review Team found that between July 2000 and June 2014, 79% of intimate partner homicide victims in the context of domestic violence were women.¹ They also found that 89% of the men killed by a female intimate partner had been the primary domestic violence abuser in the relationship.² Of the 78 intimate partner homicides perpetrated between 2015 and 2017, 10 (13%) involved homicides where a male primary domestic violence abuser was killed by a female primary domestic violence victim.³ Of the 204 intimate partner homicides perpetrated between 2000 and 2014, 31 (15%) involved homicides where a male primary domestic violence abuser was killed by a primary domestic violence victim.⁴

This data demonstrates that in most circumstances where a women kills her partner there has been a history of domestic violence and therefore this must be a primary consideration when reviewing the sentencing for murder and manslaughter. DVNSW recommends that judicial education could assist in ensuring sentencing practice includes the domestic and family violence context and gendered nature in which they occur.

In relation to this, DVNSW supports the recommendation from **R&DVSA** that the Sentencing Council should further consult with Aboriginal and Torres Strait Islander organisations and communities to understand their perspectives and formulate responses that are informed by their experiences. Aboriginal and Torres Strait Islander women and children and men are disproportionately represented in the criminal justice system, and Aboriginal and Torres Strait Islander women and children are disproportionately affected by domestic and

¹ NSW Domestic Violence Death Review Team, *Annual Report 2015-2017* (2017) NSW Attorney General and Justice, XI.

² *Ibid*, XII.

³ *Ibid*, 193.

⁴ *Ibid*. We note this statistic does not include a breakdown of the gender of perpetrators.

family violence. Analysis from the Australian Domestic and Family Violence Death Review Network found that of the 28 female intimate partner violence homicide offenders between 2010 and 2014, almost half were Aboriginal, and almost half of those were identifiable as being the primary victim of domestic violence.⁵

DVNSW also recommends that the experiences of culturally and linguistically diverse women be considered by the Sentencing Council when undertaking this review as whilst there is not much data or research for women in these communities, they face significant barriers in accessing support for domestic and family violence. In a recent snapshot report which collected national data on women on temporary visas impacted by violence and accessing services, the research found that many were unable to access the services they needed - most importantly housing and legal services. The report recommended that the Australian Government and State and Territory governments ensure that all government workers, including Centrelink, Medicare, housing workers, and non-government workers are trained on the nature and dynamics of sexual, domestic and family violence, human trafficking and slavery indicators, and received training on how to respond and make referrals in a culturally safe and trauma-informed way with people on temporary visas experiencing violence.⁶ DVNSW recommends that judicial education should include consideration of this group, and more detail is provided below.

DVNSW also recommends that the needs of women with a disability be considered in sentencing, as they experience discrimination on multiple levels and significant barriers to accessing support for domestic and family violence.⁷

The perspectives and needs of LGBTIQ and non-binary people and communities should be incorporated as even from the limited data available they experience violence at the same levels as non-LGBTIQ people and are often under-represented or invisible in mainstream policy and practice. LGBTIQ people are less likely to seek support due to a lack of appropriate mainstream or specialist services, perceived or real discrimination and a fear of discrimination and may be disconnected from family, friends, community or supportive networks.⁸ This results in significant vulnerability where an abusive relationship occurs.

⁵ Domestic Violence Death Review Team (2018) *Australian Domestic and Family Violence Death Review Network Data Report*, 22.

⁶ National Advocacy Group on Women on Temporary Visas Experiencing Violence (2018) *Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children*, 7. Also see Marie Segrave (2017) *Temporary migration and family violence: An analysis of victimisation, vulnerability and support*, Monash University in collaboration with InTouch Multicultural Centre Against Family Violence.

⁷ People with Disability Australia and Domestic Violence NSW (2015) *Women With Disability and Domestic and Family Violence: A Guide For Policy and Practice*, 2.

⁸ Monica Campo and Sarah Tayton (2015) *Intimate partner violence in lesbian, gay, bisexual, trans, intersex and queer communities: key issues*, Australian Institute of Family Studies, 1.

There are a number of commonly held misunderstandings and myths that may influence some judges in relation to sentencing particularly in relation to sexual assault and intimate partner violence. Not taking into account the impacts of trauma, an understanding of the dynamics of violence and the complex social factors that may lead a victim survivor to kill their abusive partner can be extremely detrimental.⁹ As recommended by **WLS NSW** the use of social framework evidence is key in ensuring the history and context of the violent relationship is understood, and not just the isolated incident of homicide. The Australian Law Reform and NSW Law Reform Commission also recommended that defences of homicide should “accommodate the experiences of family violence victims who kill.”¹⁰

DVNSW recommends that ongoing, evidence-based judicial education in relation to domestic and family violence is essential. An analysis of sentencing remarks from judges in domestic violence matters found that domestic violence was still characterised as a loss of control, and that a perpetrator may have been overcome with jealousy or anger when killing the victim.¹¹ Attributing responsibility for violence was also often minimised, when judges used language such as “turbulent” or “violent” relationship, instead of assigning blame to a violent male perpetrator.¹² Sentencing remarks contained outdated gender stereotypes that favoured the perpetrator’s behaviour and blamed the victim, including judgemental comments on women who stay in violent relationships.¹³ Another consideration is the negative stereotyping by judges of non-physical abuse¹⁴. If we focus purely on recognising physical violence and fail to consider the dynamics of coercive control then there are likely to be impacts on the sentences handed down in relation to domestic and family violence related homicides.

DVNSW recommends consideration of the *National Framework to Improve Accessibility to Australian Courts for Aboriginal and Torres Strait Islander women and Migrant and Refugee Women* to be incorporated as a core part of judicial education as it provides best practice guidance for ensuring the court system can support access to justice for these women from these communities. In particular the recommendation introducing ongoing cultural competency training for all judicial officers, and ongoing core family violence training that is developed according to a gendered and cross-cultural framework should be a minimum requirement for future improvements of the system.¹⁵

⁹ Julie Stubbs and Julie Tolmie, ‘Battered Women Charged With Homicide: Advancing the Interests of Indigenous Women’ (2008) 41(1) *The Australian and New Zealand Journal of Criminology* 151.

¹⁰ Australian Law Reform and NSW Law Reform Commissions’ Family Violence – A National Legal Response, 2010, p61.

¹¹ Emma Buxton-Namisnyk and Anna Butler, ‘What’s language got to do with it? Learning from discourse, language and stereotyping in domestic violence homicide cases’ (2017) 29(6) *Judicial Officers’ Bulletin* 51.

¹² *Ibid.*, 52.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Judicial Council on Cultural Diversity (2017), *National framework to improve accessibility to Australian Courts for Aboriginal and Torres Strait Islander women and migrant and refugee women*, 11.