

30 October 2021

Ms Margaret Crawford  
Auditor-General of NSW  
Audit Office of NSW

Dear Auditor-General,

**Police responses to sexual, domestic and family violence and abuse**

Thank you for the opportunity to make a submission in response to the audit into NSW Police Force responses to sexual, domestic and family violence and abuse.

Please find our submission attached.

If you would like to discuss any aspect of this submission, please contact the signatories to this letter or Liz Snell, Law Reform and Policy Coordinator or Amy Power, Solicitor on 02 8745 6900.

Yours faithfully,

**Women's Legal Service NSW**

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## **Audit Office of New South Wales**

# **Review of Police responses to sexual, domestic and family violence and abuse**

**30 October 2021**

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### About Women's Legal Service NSW

Women's Legal Service NSW (**WLS NSW**) is a specialist accredited women-led community legal centre established over 35 years ago that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.

Since 1995 WLS NSW has provided a state-wide First Nations Women's Legal Program (**FNWLP**). This program delivers a culturally safe legal service to First Nations women, including regular engagement with communities across NSW. We provide a First Nations legal advice line, casework services including a specialised family law service to assist First Nations women access the family law courts, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for First Nations women.

An Aboriginal Women's Consultation Network supports and enhances the work of the FNWLP. It meets quarterly to ensure that we deliver a culturally safe service. The members include regional community representatives and the FNWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.

### Acknowledgments

We acknowledge the Traditional Owners of the lands on which we work across NSW and on which we live. We pay respect to Elders past, present and emerging. Is, was and always will be Aboriginal land.

We acknowledge the many women who have experienced sexual, domestic and family violence and abuse with whom we work and whose voices and experiences inform our advocacy in the hope for positive change.

### Use of language

#### *Sexual, domestic and family violence and abuse*

The NSW *Crimes (Domestic and Personal Violence) Act 2007* (**CDPV Act**) does not include a definition of "domestic and family violence" or "domestic and family abuse."

The use of the term "*domestic and family violence and abuse*" in this submission is intended to capture behaviour perpetrated by one person against another or others within a "*domestic relationship*" that coerces or controls or causes fear. The behaviour extends to harm or threats to harm animals.

Section 5 of the *CDPV Act* provides a person has a "*domestic relationship*" with another person if they are/were:

- married, in a de facto or intimate relationship whether or not it is of a sexual nature;
- living together in the same house;
- living together in a residential facility;
- relatives by birth, marriage or adoption;

- in the case of an Aboriginal or Torres Strait Islander, part of the same extended family or kinship group;
- in a relationship involving dependence on the ongoing paid or unpaid care of the other person;
- married to, or in a de facto or intimate relationship with the same person, eg. a woman's ex-partner and current partner are in a domestic relationship with each other even if they have never met.

“*Domestic violence*” is not a term that resonates well with the women with whom we work. Instead, women talk about the many different forms of abuse they experience.

To more accurately capture victim-survivors' experiences we use the term “*sexual, domestic and family violence and abuse*” (**SDFVA**) in this submission. We name sexual violence and abuse, which is so prevalent within a domestic and family violence and abuse context, to give it greater visibility and to help to normalise the discussion and disclosing of such violence and abuse.

We recommend adopting the language that victim-survivors use and with which they can identify in legislation, policy and practice.

### *Gendered language*

We acknowledge that anyone can experience sexual, domestic and family violence and abuse. However, research and our experience over more than thirty-five years clearly highlights that sexual, domestic and family violence and abuse is predominantly perpetrated by men against women and children. Our language in this submission is gendered to reflect this. We also acknowledge that LGBTQIA+ people experience such violence and abuse at disproportionately high rates.

### Introduction

1. Police play a vital role in responding to sexual, domestic and family violence and abuse (**SDFVA**). We warmly welcome attention on the issue of police responses to SDFVA.
2. SDFVA is primarily perpetrated by men against women and children. At the core of SDFVA is male privilege and entitlement, male power and control. Fundamentally, SDFVA occurs in circumstances where a male seeks to exert power, control and/or dominance over women and children and/or to cause them fear.
3. SDFVA can take many forms, including physical and sexual abuse as well as non-physical abuse, such as psychological abuse, economic abuse, spiritual and cultural abuse. It can include the gradual isolation of a woman from her family, friends and supports; degrading put downs, humiliation and threats; gaslighting; constant surveillance of the women; micromanaging every aspect of a woman's life; restrictions on liberty.
4. Our understanding has developed and continues to develop about intersections of inequality – sexism, racism, ableism, ageism, socio-economic status, heteronormativity and cisgenderism– and how these inequalities intersect with SDFVA. It is imperative to have an intersectional response to SDFVA.
5. Context is essential to understanding, identifying and responding to SDFVA.
6. The NSW Coroner has emphasised *“the importance of viewing domestic violence holistically, as episodes in a broader pattern of behaviour rather than as incidents in isolation of one another”*.<sup>1</sup>
7. Substantial cultural reform is needed to properly implement the Coroner's recommendation of focusing on context in SDFVA rather than incidents in isolation and to better understand, identify and respond to SDFVA. It requires a multidisciplinary response and cultural reform that must start with police who play a vital role in responding to SDFVA.
8. This review is focused on:
  - 8.1 The effectiveness of NSW Police Force capability planning for responding to SDFVA and supporting victim-survivors
  - 8.2 Whether the NSW Police Force has effectively resourced its approach to respond to SDFVA and support victim-survivors with the required capability; and
  - 8.3 If the effectiveness of police response to SDFVA and support to victim-survivors has improved over time.
9. In order to make an assessment about NSW Police Force (**NSWPF**) capability planning, much greater transparency and accountability of police practices is required.
10. A 2011 Inquiry into the command, management and functions of the senior structure of Victoria Police found Victoria Police strategic planning at that time was *“fragmented”* and failed to integrate *“objectives and milestones for the short, medium and long term timeframes”*.<sup>2</sup>

<sup>1</sup> NSW Government, *NSW Domestic Violence Death Review Team Report 2015-17*, Sydney, 2017, p v.

<sup>2</sup> State Government Victoria, *Inquiry into the command, management and functions of the senior structure of Victoria Police*, 2011, p 18 (38)

11. Victoria Police now have a 10-year Strategic Plan and a number of other strategies and rolling Action Plans to bring about cultural change, including a *Gender Equality Strategy 2020-30* (in response to the Royal Commission into Family Violence and VEOHRC Independent review into sex discrimination and sexual harassment, including predatory behaviour in Victoria police), *Koori Family Violence Police Protocols* and a greater focus on community policing.<sup>3</sup>
12. We acknowledge the role of the Royal Commission into Family Violence in Victoria and the Victorian Government's response that focused on a whole of government, holistic and integrated response seen in the 10 year plan to implement the 227 recommendations of the Royal Commission: *Ending Family Violence: Victoria's 10 year plan for change and supporting Action Plans*.<sup>4</sup>
13. We note in response to a Royal Commission into Family Violence recommendation, Victoria Police has reviewed their strategy - *Policing Harm, Upholding the Right: Victoria Police Strategy for Family Violence, Sexual Offences and Child Abuse 2018-2023*.<sup>5</sup> This document is publicly available.
14. The NSWPF has a statement of strategic intent and a range of strategies but does not appear to publish a document which outlines long-term strategic objectives and milestones, such as a 10-year Strategic Plan or a 10-year Gender Equality Strategy.<sup>6</sup>
15. To our knowledge there is no current publicly available NSWPF strategy with respect to SDFVA. The *NSW Domestic Violence Justice Strategy 2013-2017*<sup>7</sup> which includes indicators relating to police and other agencies in the justice cluster, was being reviewed in 2019-20 but the next strategy is yet to be published. We note reference to the NSWPF *Domestic and Family Violence Strategic Plan 2014-18* in the NSWPF *Strategy on Sexuality, Gender Diversity and Intersex 2019-2022*. The footnote states this is a NSWPF internal document available on the intranet.<sup>8</sup>
16. We further note the establishment of a Victoria Police Family Violence Command in 2015 as “a central point of accountability for family violence within Victoria Police”.<sup>9</sup> A Family Violence Command appears to provide a clear authorising framework and helps to achieve consistency within policing of SDFVA across Victoria.<sup>10</sup> It also sends a powerful message to police and to the wider community of the priority and importance Victoria Police place on responding to family violence.
17. We also acknowledge the establishment of the Victoria Police Family Violence Centre of Learning which is “supported by an external Academic Governance Group of key experts and researchers” – another Royal Commission recommendation.<sup>11</sup>

<sup>3</sup> Victoria Police, *Capability Plan 2016- 2026: Capability Framework*, p 27, 31

<sup>4</sup> Victoria Government, *Ending family violence - Victoria's 10-year plan for change*, 2016

<sup>5</sup> Victoria Police, *Policing Harm, Upholding the Right: Victoria Police Strategy for Family Violence, Sexual Offences and Child Abuse 2018-2023*

<sup>6</sup> Some, but not all of the NSWPF strategies include clear timeframes for achieving actions and measurements of outcomes. The NSWPF strategies range from a few years up to 8 years with the Alcohol Strategy seeming to be the longest from 2019-2026.

<sup>7</sup> NSW Government, *The NSW Domestic Violence Justice Strategy 2013-2017*

<sup>8</sup> NSW Police Force *Strategy on Sexuality, Gender Diversity and Intersex 2019-2022*, p37, footnote 35

<sup>9</sup> Victoria Police, *Submission in response to the Royal Commission into Family Violence*, p45

<sup>10</sup> Ibid.

<sup>11</sup> See Victoria Government, *Family violence recommendations - Victoria Police establish a Family Violence Centre of Learning*

18. The Queensland Police Service has also established a Domestic, Family Violence and Vulnerable Persons Command in March 2021 to “*help drive the Queensland Police Service state-wide DFV response strategy*”.<sup>12</sup>
19. In reflecting on the policing of SDFVA in NSW we acknowledge the work of many police in responding to SDFVA on a daily basis – it is demanding and stressful work. We acknowledge there are many police doing the best they can with the limited time and resources they have.
20. We acknowledge that the nature of our service means that women contact us when things go wrong and so these are the stories and experiences we hear, rather than those of stories of good policing responses. We regularly hear experiences of poor policing of SDFVA in NSW and this submission gives voice to these experiences in the hope of highlighting them and providing the opportunity to effect positive change. A key part of our work involves assisting women by way of advocacy with police on their particular matters. We also raise systemic issues with the NSWPF Corporate Sponsor - Domestic Violence and the NSWPF Domestic and Family Violence Team. We commend the leadership and willingness of the NSWPF Corporate Sponsor – Domestic Violence and NSWPF Domestic and Family Violence Team to meet regularly to discuss issues of concern. We acknowledge that there is significant work occurring internally within the NSWPF focused on accountability for policing of SDFVA. We applaud this work and wish to better understand this work. We believe this important work can and must be further strengthened through greater transparency of existing accountability mechanisms and through the introduction of further accountability mechanisms which will help build further confidence in the NSWPF response to SDFVA.
21. Reflecting on the experience in NSW and other Australian jurisdictions, in summary we recommend:
  - 21.1 Family Violence and Sexual Violence Command be established within the NSW Police Force.
  - 21.2 The publishing of Domestic Violence Standard Operating Procedures (**DVSOPs**) and Sexual Assault Standard Operating Procedures (**SASOPs**).
  - 21.3 Continuous improvement of DVSOPs, SASOPs and other police policies and procedures, including the *Code of Practice for the NSW Police Force Response to Domestic and Family Violence* (**NSWPF Code of Practice - DFV**).
  - 21.4 Improving guidance for police to accurately identify the primary/predominant aggressor and person most in need of protection.
  - 21.5 The NSW Police Force must have clear and transparent policies and procedures to ensure safe reporting of SDFVA alleged to be perpetrated by a police employee and those policies and procedures must address conflict of interest issues which must include independent oversight of such investigations.
  - 21.6 NSW Police Force introduce robust accountability frameworks to effectively respond to systemic issues, including systemic racism and sexism and other forms of discrimination.
  - 21.7 Strengthening mechanisms to ensure greater diversity within the NSW Police Force, including in leadership positions.

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<sup>12</sup> Queensland Police Service website and *Driving a strategic response to DFV - Policing domestic and family violence, My Police*, 4 June 2021



- 21.8 Fully implementing the recommendations of the *Review into the NSW Police Force Promotions System including identification of Cultural Issues that Impact on Women's Promotion Opportunities and Career Progression*.
- 21.9 Annual compliance checks to ensure NSW Police implementation of sexual, domestic and family violence and abuse policies and procedures and public reporting of these results as well as outlining action to address any concerns.
- 21.10 The publishing of annual dip sampling of policing of SDFVA undertaken by specialist SDFVA police, including any Police Area Command variation and the measures that will be taken to resolve any concerns.
- 21.11 Establish a regular cycle of comprehensive and independent audits of NSW Police Force compliance with DVSOPs, SASOPs, *NSW Police Force Code of Practice – DFV* and other policies and strategies with the results to be published, including any Police Area Command variation and the measures that will be taken to resolve any concerns.
- 21.12 Strengthening complaints mechanisms so independent police complaint bodies are not referring complaints about policing of SDFVA back to police to investigate and there are robust accountability mechanisms.
- 21.13 Regular and ongoing SDFVA training that is developed and delivered with significant input from and co-facilitation with sexual, domestic and family violence and abuse experts, cultural safety experts, disability experts, non-binary, trans and gender diverse experts and specialist legal services with a greater focus on:
- the nature and dynamics of SDFVA, including gender and power dynamics and perpetrator tactics,
  - challenging victim-blaming attitudes,
  - trauma informed practice,
  - cultural safety
  - disability awareness
  - LGBTIQ+ awareness
  - conscious and unconscious bias
  - accurately identifying the primary/predominant aggressor and person most in need of protection
  - explicit focus on coercive controlling behaviours, violent resistance to ongoing abuse, and identifying these patterns, particularly within the context of non-violent forms of abuse, as recommended by DV NSW
  - supporting police to identify and act on compassion fatigue, burnout and vicarious trauma.

Training must be provided using a variety of modes and must include face-to-face training modules and include different levels of specialisation.

- 21.14 Funding a co-responder model with police and specialist SDFVA workers working side-by-side will also enhance the response to SDFVA.
- 21.15 Improving career pathways for police specialising in SDFVA.
- 21.16 Ensuring Domestic Violence Liaison Officers and detectives responding to SDFVA are not re-deployed for other police duties in times of emergency, including pandemics or natural disasters.

### **Does the NSW Police Force effectively conduct capability planning for responding to sexual, domestic and family violence and abuse and supporting victim-survivors?**

- 22. Given 40% of the work of police in NSW is focused on responding to SDFVA, all police must be adequately trained and supported to effectively and appropriately respond.
- 23. We acknowledge the work of the many NSW Police responding to SDFVA on a daily basis. The role of a first responder is critical. It is demanding and stressful work and comes with heavy responsibilities. It is work that can save lives.
- 24. However, the experiences of many of our clients suggest further work in capability planning is required.
- 25. As a starting point to consider the question of whether the NSWPF effectively conducts capability planning for responding to SDFVA, it is useful to reflect on the recommendations made in the Victoria Royal Commission into Family Violence.
- 26. It is our view that similar gaps and shortcomings of Victoria Police as identified through the Royal Commission recommendations outlined below are gaps that need to be addressed in the NSWPF response to SDFVA.

### ***Royal Commission into Family Violence***

- 27. In February 2015, the Victoria Royal Commission into Family Violence commenced. The Royal Commission made 227 recommendations relating to all aspects of family violence – prevention, response and recovery and across all legal and support systems and services.
- 28. Over 25 recommendations related directly to the policing of sexual, domestic and family violence and abuse. Some of these recommendations include:
  - 28.1 Victoria Police amend the Code of Practice to provide guidance for identifying the primary/predominant aggressor<sup>13</sup> and use of interpreters.<sup>14</sup>
  - 28.2 Victoria Police establish a Family Violence Centre of Learning.<sup>15</sup>

<sup>13</sup> Royal Commission into Family Violence, *Vol III: Report and Recommendations*, March 2016, Recommendation 41

<sup>14</sup> Recommendation 159

<sup>15</sup> Recommendation 42

- 28.3 Specialist family violence position holders regularly review police files and cases.<sup>16</sup>
- 28.4 The Victorian Government and Victoria Police establish a regular cycle of comprehensive and independent audits of Victoria Police's compliance with the Victoria Police Code of Practice for the Investigation of Family Violence with the results to be published, including any divisional variation and the measures that will be taken to resolve any concerns.<sup>17</sup>
- 28.5 Review Victoria Police policies and procedures relating to employees and family violence.<sup>18</sup>
- 28.6 Revise Victoria Police Violence against Women and Children Strategy to cover all forms of violence and improve governance.<sup>19</sup>
- 28.7 Victoria Police develop a new family violence performance management and reporting framework and publish annual reports.<sup>20</sup>
- 28.8 Victoria Police adopts its career structures to reflect family violence as core business.<sup>21</sup>
- 28.9 Develop a core set of functions to be delivered by all Victoria Police family violence teams.<sup>22</sup>
- 28.10 Victoria Police develop a model to strengthen the investigation of family violence offences and focus additional specialist investigative and intelligence resources on serious family violence offending.<sup>23</sup>
- 28.11 The Chief of Police to report annually on family violence.<sup>24</sup>
- 28.12 Victoria Police actively seek forensic medical examinations in family violence matters.<sup>25</sup>
- 28.13 Victoria Police determine a baseline model for family violence teams.<sup>26</sup>
- 28.14 Ensure Koori Family Violence Police Protocols are implemented in the remaining sites.<sup>27</sup>
29. In response to the Royal Commission, the Victorian Government provided substantial investment of additional funding to implement all the Royal Commission recommendations - \$3.5 billion to date.
30. The Victoria Government also released *Ending family violence - Victoria's Plan for Change* – a 10 year plan outlining “*how the Victorian Government would achieve its vision of a Victoria free from family violence by implementing all 227 Royal Commission Recommendations*”.<sup>28</sup> Importantly the Plan and related Rolling Action Plans outline interim and long-term actions and identify the entity responsible

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<sup>16</sup> Recommendation 43

<sup>17</sup> Recommendation 44

<sup>18</sup> Recommendation 45

<sup>19</sup> Recommendation 46

<sup>20</sup> Recommendation 47 and 48

<sup>21</sup> Recommendation 49

<sup>22</sup> Recommendation 50

<sup>23</sup> Recommendation 52

<sup>24</sup> Recommendation 53

<sup>25</sup> Recommendation 101

<sup>26</sup> Recommendation 125

<sup>27</sup> Recommendation 151

<sup>28</sup> Victoria Government, *Ending family violence - Victoria's Plan for Change*, 2016

for implementation.<sup>29</sup> There is also a significant focus on ongoing monitoring and evaluation of reforms with a focus on outcomes. The most recent Rolling Action Plan refers to the publishing of the first Family Violence Framework Report with yearly reporting thereafter.<sup>30</sup> There must be a greater public reporting of NSWPF performance measures relating to SDFVA.

31. The Victoria Government also established an independent statutory accountability mechanism to monitor and report on the implementation of Royal Commission recommendations, with an annual report to be tabled in Parliament each year from 2017 to 2020.<sup>31</sup> The role of the Family Violence Reforms Implementation Monitor in Victoria has been extended by 18 months until December 2022.
32. The Royal Commission, as well as other independent reviews of police, emphasise the vital importance of transparency and accountability in policing of SDFVA, including transparency of performance measures, including on a state, regional and divisional basis “*to build and maintain public confidence in the police response to family violence*”.<sup>32</sup> This level of transparency and accountability is required in NSW.
33. The Royal Commission also made comment on the Victoria Police Family Violence Command, which at the time of the Commission was recently established.

### **Victoria Police Family Violence Command**

34. In March 2015 Victoria Police established the first Family Violence Command in an Australian police jurisdiction and the first dedicated Family Violence Assistant Commissioner was appointed.
35. The Family Violence Command was established as “*a central point of accountability for family violence within Victoria Police*”.<sup>33</sup>
36. Its key priorities as explained to the Royal Commission into Family Violence include:
  - 36.1 *Acting on the recommendations arising from the Royal Commission into Family Violence;*
  - 36.2 *Evaluating, identifying and rolling out good practice;*
  - 36.3 *Developing a model for frontline service delivery for family violence;*
  - 36.4 *Clarifying the functions and responsibilities of specialist family violence roles;*
  - 36.5 *Enhancing training for family violence specialists and general duties police;*
  - 36.6 *Improving risk assessment and risk management processes within Victoria Police;*
  - 36.7 *Identifying service delivery gaps for policing family violence; and*
  - 36.8 *Increasing the intelligence and analytical capability for policing family violence.*<sup>34</sup>

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<sup>29</sup> Victoria Government, *Family Violence Reform Rolling Action Plan 2020-2023*

<sup>30</sup> Victoria Government, *Family Violence Reform Rolling Action Plan 2020-2023*, p29.

<sup>31</sup> *Family Violence Reform Implementation Monitor*

<sup>32</sup> Royal Commission into Family Violence, *Vol III: Report and Recommendations*, March 2016, p 92 (98)

<sup>33</sup> Victoria Police, *Submission in response to the Royal Commission into Family Violence*, p 45

<sup>34</sup> *Ibid.*

37. In reflecting on the Victoria Police response to family violence the Royal Commission noted:

*To be successful, the revised strategy will require the commitment of strategic management centrally and regionally, secured and maintained through strong governance arrangements. It will also require renewed leadership throughout the organisation, strong performance monitoring and a performance management framework to promote consistent service levels, and adequate resourcing.<sup>35</sup>*

38. The Royal Commission recommended the Family Violence Command be responsible for the development of the performance management framework. It also recommended Regional Assistant Commissioners should report to the Chief Commissioner of Police and Executive Command through the Family Violence Command against these performance measures.<sup>36</sup> It also provided detail of what should be included in the performance management framework.

*The Commission suggests that Family Violence Command take as its starting point the list of possible performance measures developed by the Australian Institute of Criminology:*

- *a reduction in repeat victimisation*
- *a reduction in repeat attendances*
- *a reduction in repeat offending*
- *an accurate identification and recording of incidents*
- *an increased number of offenders charged and successfully prosecuted*
- *more arrests and charges for breach offences*
- *ensuring police are adequately informed about previous attendance and criminal histories before arriving at an incident*
- *improved willingness on the part of victims to call and/or cooperate with police and increased victim satisfaction with the police response.*

*Specific measures could also be included in relation to compliance with the Code of Practice and other material such as the Victoria Police Intelligence Doctrine and the Advancing Investigation Management Compliance package—for example, measures such as the number of investigations undertaken by investigative and response units, the level of intelligence support, and the number of family violence persons of interest being managed.*

[The Royal Commission noted the importance of using]

- *victim satisfaction surveys*
- *legal system victim impact statements as a mechanism for using feedback to promote improvement*
- *member surveys—for example, to provide a baseline and then monitor shifts in police attitudes to family violence—and self-reported understanding of the dynamics of family violence and proficiency in applying the Code of Practice*
- *a program of local and strategic compliance audits*

*Family Violence Command should manage performance monitoring and report to Executive Command on measures provided to it at regional, divisional and police service area levels. Furthermore, local-level reporting currently done by family violence liaison officers and family*

<sup>35</sup> Royal Commission into Family Violence, *Vol III: Report and Recommendations*, March 2016, page 90 (96)

<sup>36</sup> *Ibid*, Recommendation 48

*violence advisors should be standardised and the reports provided (in part or in full) to Family Violence Command, which could use this information to identify:*

- *emerging trends, problems or areas of concern*
- *high-performing areas, both for acknowledgment and to enable the dissemination of good practice*
- *areas where additional support or remedial action is required to lift standards.*

*In its annual report, Victoria Police should also report on satisfaction of performance measures included in the revised strategy. This should include performance on a statewide and regional or divisional basis. This is important for transparency and to build and maintain public confidence in the police response to family violence.<sup>37</sup>*

### 39. The Royal Commission noted.

*The establishment of Family Violence Command presents an important opportunity to re-invigorate and focus leadership on family violence in Victoria Police and set the foundation for improvements in the future. Family Violence Command's success depends on it having the authority to lead the organisational response to family violence and manage change within the organisation.*

*Victoria Police will need to ensure that Family Violence Command has sufficient staff with a diverse range of skills and capabilities—including for example, policing; research and evaluation; stakeholder engagement; project management; psychology, criminology, social work and other social sciences; and experience working in family violence services. Family Violence Command will also need to establish strong links with regional management and work units within Victoria Police, along with formal and informal consultative structures with the family violence sector, government partners, academia and other stakeholders. These will provide the base for closer working relationships throughout Victoria Police.*

*Additionally, Family Violence Command's authority will depend on its reputation in providing leadership on evidence-based approaches to policing family violence, along with expert advice to facilitate effective service delivery, which remains a regional responsibility. It is therefore important for Family Violence Command to be resourced to:*

- *perform or commission program evaluations of particular Victoria Police initiatives*
- *monitor national and international research and practice*
- *commission research or enter research partnerships with ANROWS (Australia's National Research Organisation for Women's Safety) and academic institutions.*

*This will position Family Violence Command to build an evidence base of actions that work in response to family violence which can then be used to prompt continual improvement throughout Victoria Police.<sup>38</sup>*

### **NSW Police Force – Corporate Sponsor - Domestic Violence**

#### 40. The NSW Police Force appoints an Assistant Commissioner to the role of Corporate Sponsor – Domestic Violence. We support someone senior such as an Assistant Commissioner in this role. However, we

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<sup>37</sup> Ibid, p91-92 (96-97)

<sup>38</sup> Ibid, p92 (98)

query whether both the structure and language reflect the significant priority with which the issue of SDFVA should be dealt. The language of “Corporate Sponsor” suggests an individual has this role. We recommend consideration be given to using the language and structure of “Command” instead. The language of “Command” suggests a central authorising framework from which to promote consistency across the state.

41. The NSW Police Force includes the following Commands as outlined on the NSW Police Force website:
  - 41.1 Counter Terrorism & Special Tactics Command
  - 41.2 Forensic Evidence and Technical Services Command
  - 41.3 Marine Area Command
  - 41.4 Communication and Security Command
  - 41.5 PoliceLink Command
  - 41.6 Police Prosecutors Command
  - 41.7 Professional Standards Command
  - 41.8 State Crime Command (which includes child abuse and sex crimes squad)
  - 41.9 Traffic & Highway Patrol Command<sup>39</sup>
42. We understand while not listed in the organisational plan on the NSW Police Force website, there is also a Crime Support Prevention Command which includes a Domestic and Family Violence Team. We acknowledge the work of this team, but question if a Command structure focused on sexual and domestic and family violence and abuse will help to further elevate the importance of this work and improve consistency and accountability in the policing of SDFVA.

### **Recommendation 1**

Family Violence and Sexual Violence Command be established within the NSW Police Force.

### ***Police reporting, accountability and transparency***

#### **Publishing DVSOPs and SASOPs**

43. To assess the effectiveness of the NSW Police Force capability planning, much greater transparency and accountability of police practice is required.
44. Firstly, Domestic Violence Standard Operating Procedures (**DVSOPs**) and Sexual Assault Standard Operating Procedures (**SASOPs**) must be publicly available. Complainants of SDFVA must know what to expect in reporting such violence and abuse to police, what action police are expected to take, including the timeframes for police response.

<sup>39</sup> NSW Police Force Organisational Structure See also Victoria Police Organisation Chart

45. We note that the Victoria Police have recently made the Victoria Police Manual publicly available. The Victoria Police Manual includes

*behavioural, operational and administrative standards for the organisation and is divided into Policy Rules, which provide mandatory accountabilities, and supporting Procedures and Guidelines.*<sup>40</sup>

### Recommendation 2

The NSW Police Force publish their Domestic Violence Standard Operating Procedures (**DVSOPs**) and Sexual Assault Standard Operating Procedures (**SASOPs**).

### Consultation and improving NSW Police Force policies and procedures

46. As DVSOPs and SASOPs are updated, police must consult with SDFVA experts, including specialist women's legal services and people with lived experience, about their policies and procedures. We have recently asked police for the opportunity to provide feedback on their DVSOPs and SASOPs and we are yet to be provided with an opportunity to do so.
47. We acknowledge the efforts made by the NSW Police Force in producing the *Code of Practice for the NSW Police Force Response to Domestic and Family Violence (NSWPF Code of Practice - DFV)*, last updated in 2018.<sup>41</sup> We welcomed the opportunity to previously comment on the 2018 version of the *NSWPF Code of Practice - DFV*. This document was due for review in 2021. We understand this document is currently being updated and look forward to the opportunity to provide comment again.
48. We outline below some areas where the *NSWPF Code of Practice - DFV* can be strengthened.

#### *Accurately identifying the person most in need of protection*

49. Over the past few decades we have worked with many women who have been misidentified as the predominant aggressor in circumstances where they are the person most in need of protection.
50. WLS NSW undertook an exploratory study of our work representing women who were defendants in Apprehended Domestic Violence Order (**ADVO**) proceedings in 2010. The study found:
- 50.1 *Two-thirds of our clients defending ADVOs reported they were victims of violence in their relationships.*
  - 50.2 *Fewer than 40% of these clients had a final ADVO made against them when the case came before the court and these ADVOs were almost all made by consent.*
  - 50.3 *Many of the women defending ADVOs reported that when police had been called after a violent incident, they felt that their version of events had not been viewed as credible compared with the other party, due to the circumstances of their heightened stress and anxiety.*

<sup>40</sup> For information on how to publicly access the Victoria Police Manual see <https://www.police.vic.gov.au/procedures-and-legislation>

<sup>41</sup> NSW Police Force, *The Code of Practice for the NSW Police Force response to Domestic and Family Violence*, 2018



- 50.4 *Other women reported that they believed the other party had deliberately initiated ADVO proceedings as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future.*
- 50.5 *In the majority of cases where women were defending ADVOs, the other party's complaint related to a single incident only. In several of these cases injuries to the other party could be indicative of self-defence, such as scratching or biting on the arm or hand.<sup>42</sup>*
51. Unfortunately, ten years on, this continues to be the experience in our practice. Recent research also recognises this trend.<sup>43</sup>
52. Further, the ANROWS research found that “*police sometimes err on the side of caution in making [protection order] applications, deferring to the magistrates to determine if an order is warranted. However, magistrates in turn may rely on the initial assessment made by police, as may prosecutors*”.<sup>44</sup> ANROWS recommends greater role clarity and accountability of police and the courts with safeguards to address misidentification.<sup>45</sup> ANROWS also recommends further training for police and judicial officers and exploring a co-responder model with police and SDFVA experts working together to enhance police response to SDFVA.<sup>46</sup> We support these recommendations.
53. Efforts to correctly identify the person most in need of protection of an apprehended violence order (**AVO**) can also be furthered by amending the AVO legislation to stipulate orders only be made for the person “*most in need of protection*” and this also being reflected in police SDFVA policies, Codes of Practice and prosecutorial guidelines.<sup>47</sup>
54. The Royal Commission recommended Victoria Police amend the *Victoria Police Code of Practice – FV* to provide guidance for identifying the primary/predominant aggressor<sup>48</sup> as well as procedures to make amendments “*when a service provider or a Support and Safety Hub subsequently informs Victoria Police that a person is not the primary aggressor*” as well as “*provision of details of specialist support available to assist in identifying the primary aggressor*”. The Royal Commission also recommended Victoria Police provide training at all appropriate levels on the amended requirements relating to identifying primary aggressors.<sup>49</sup> We support implementation of this recommendation in full by the NSWPF.

<sup>42</sup> Julia Mansour, *Women Defendants to AVOs: What is their experience of the justice system*, Women's Legal Service NSW, Sydney, 2014

<sup>43</sup> Hayley Boxall, Christopher Dowling and Anthony Morgan, “[Female perpetrated domestic violence: Prevalence of self-defensive and retaliatory behaviour](#)”, *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology No 584, Jan 2020; Jane Wangmann, Lesley Laing & Julie Stubbs, “[Exploring gender differences in domestic violence reported to the NSW Police Force](#)”, *Current Issues in Criminal Justice*, 2020; note also Heather Nancarrow, Kate Thomas, Valerie Ringland, & Tanya Modini, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020

<sup>44</sup> Australia's National Research Organisation for Women's Safety, *Accurately identifying the “person most in need of protection” in domestic and family violence law: Key findings and future directions* (Research to policy and practice, 23/2020) ANROWS, Sydney, 2020

<sup>45</sup> Ibid

<sup>46</sup> Heather Nancarrow, et al, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020

<sup>47</sup> Heather Nancarrow, Kate Thomas, Valerie Ringland, & Tanya Modini, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020; *Joint Protocol between Police Scotland and the Crown Office & Procurator Fiscal Service: In partnership challenging domestic abuse*, 5<sup>th</sup> ed, 2019, paragraphs 33-37

<sup>48</sup> Royal Commission into Family Violence, *Vol III: Report and Recommendations*, March 2016, Recommendation 41

<sup>49</sup> Ibid, Recommendation 41

55. The *Victoria Police Code of Practice for Investigation of Family Violence* (**Victoria Police Code of Practice - FV**) has a dedicated section to guide police on how to best identify the primary aggressor in a family violence setting.<sup>50</sup> The rationale is to uphold the police's duty to protect the most vulnerable people from ongoing abuse. The section includes key indicators to identify the primary aggressor, including

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

56. There is also a section on history of violence.<sup>51</sup>

57. The *Victoria Police Code of Practice - FV* also states:

*Only one primary aggressor should be identified. Do not make cross applications for intervention orders. If it is unclear who the primary aggressor is, the [affected family member] should be nominated on the basis of which party appears to be most fearful and in most need of protection.*<sup>52</sup>

58. There are some useful (non-exhaustive) trigger questions police can ask at the scene of a family violence scenario to help them correctly identify the primary aggressor. These include:

*Has anyone in the household:*

- *made you afraid?*
- *put you down, humiliated you, or tried to control you?*
- *pushed, hit, punched, kicked, hurt or threatened to hurt you?*
- *made you concerned for the safety of children, other family member or pets?*<sup>53</sup>

59. The *NSWPF Code of Practice - DFV* has limited guidance to help police accurately identify the primary aggressor.<sup>54</sup> The closest comparison can be found under the heading **Arresting the offender**.<sup>55</sup> In this section, police are “discouraged” from arresting and charging both parties when attending a SDFVA incident. Instead, there is an emphasis on placing an offender under arrest. Guidance about accurately identifying the person most in need of protection is limited to:

<sup>50</sup> Victoria Police, *Code of Practice for the Investigation of Family Violence*, Edition 3, v4, 2019, Section 3.1, p 23

<sup>51</sup> Ibid, Section 3.1.1

<sup>52</sup> Ibid, Section 3.1, p 23.

<sup>53</sup> Ibid.

<sup>54</sup> There may be more detailed information in the DVSOPs, but these are not published, and this information must be publicly available.

<sup>55</sup> NSW Police Force, *The Code of Practice for the NSW Police Force response to Domestic and Family Violence*, 2018, p 44

*whether there is any prior history of domestic violence or ADVOs, witness statements, the behaviour of the people involved, and whether there are any injuries, etc. If an officer is having difficulty determining the primary victim at the scene they are to consult their Supervisor or the DVLO for advice.<sup>56</sup>*

60. We support consideration of the guidance in the *Victoria Police Code of Practice – FV* for inclusion in the *NSWPF Code of Practice – DFV*.
61. NSW Police should also have access to specialist SDFVA support to assist in accurately identifying the primary/predominant aggressor and guidance on what to do if they have misidentified the primary/predominant aggressor. See further below for a discussion about a co-responder model.
62. The two case studies below highlight the detrimental impact on women who have been misidentified as the predominant aggressor.

### **Case study**

*Jane\* is an Aboriginal woman and was the defendant in an ADVO matter. The PINOP, John\*, is Jane's partner.*

*Police applied for an ADVO for John's protection after they were called to Jane and John's residence following a dispute. John's arm was injured. At the time of the incident, Jane had a police-initiated ADVO against John for her protection.*

*Jane told police John injured himself after she locked him outside and he threw a brick through the window, cutting himself.*

*John told police he was injured by Jane when she pushed him through a window.*

*Police applied for an ADVO for John's protection against Jane. Police noted in their application for the ADVO that John was very vague and refused to provide further details and a statement. Police sighted damage to the window and noted the pattern of damage was not consistent with John's version.*

*Despite this, police applied for an ADVO against Jane for John's protection and did not charge John with breaching the ADVO against him for Jane's protection.*

*Jane was misidentified by police as the primary aggressor in this instance, even though the police narrative in the AVO statement was that the pattern of damage was not consistent with the John's version of events and despite a history known to police of violence perpetrated by John against Jane.*

*Following the above incident, Jane was conveyed to the police station and held in a cell. She requested a phone call to a solicitor to get legal advice, which was not provided to her by police.*

*\* This case study has been de-identified, including by not using their real names.*

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<sup>56</sup> Ibid.

**Case study**

*Sarah\* is an Aboriginal woman with a number of vulnerabilities including that she is homeless and has a cognitive impairment. She was the defendant in an AVO matter. The PINOP was Sarah's ex-partner, Bob\*.*

*Police applied for an ADVO for Bob's protection from Sarah after a dispute between them in which Sarah was injured. Sarah was fearful of Bob so she went to the police station to report what happened. Sarah had previously reported her fears with respect to Bob to the police, but Police failed to take any action.*

*Sarah told police that on this occasion, she and Bob had an argument and Bob pushed her face into a wall. Police noted in their application for the ADVO that Sarah stated she had fears but that she was very scattered and had trouble recalling the assault without being prompted by police.*

*Police interviewed Bob. Bob said Sarah became aggressive and pushed Bob.*

*Bob did not tell police he had fears of Sarah.*

*Police preferred Bob's version to Sarah's and applied for an ADVO for Bob's protection against Sarah.*

*Sarah was misidentified by police as the primary aggressor, even though she was the one who reported to police, she was the only one with injuries and the only one who told police she had fears.*

*Despite previous police inaction in response to Sarah's reports of Bob's violence, Sarah was noted in the system as being the victim of Bob's violence.*

*With the assistance of a community worker, Sarah attended the police station on 3 occasions on the same day, each time requesting to make a statement about what had happened and for police to investigate. Each time, police refused to take a statement.*

*\* This case study has been de-identified, including by not using their real names.*

63. Queensland has introduced legislation to ban police officers from issuing a police protection notice where another police protection notice is in force naming the respondent and aggrieved as the opposite party.<sup>57</sup>

64. The Queensland Police Service Operational Procedures Manual under the heading "Cross Orders" states:

*Officers investigating reports of domestic violence should not submit cross applications for a protection order but are to identify the person in most need of protection (see s. 4(2)(e): 'Principles for administering Act' of the DFVPA) and take appropriate action to protect the aggrieved from further domestic violence....*

*A DVO 'cross application' may be made where it is identified it is necessary or desirable to protect the aggrieved named in the police application, who is also named as the respondent in any other application.<sup>58</sup>*

<sup>57</sup> Section 103 of the *Domestic and Family Violence Protection Act 2012 (Qld)*

<sup>58</sup> [Queensland Police Service Operational Procedures Manual](#), Issue 84.1 - Effective 12 October 2021

65. Where cross-applications are before the same court in Queensland there is a rebuttable presumption that they be heard together<sup>59</sup> and where they are before different courts and a court hearing the application is aware of both applications the court must consider whether to and may hear the applications together.<sup>60</sup>
66. Similar legislation should be considered in NSW.
67. We note the Family Violence Reforms Implementation Monitor in Victoria will be publishing a thematic report in December 2021 about the accurate identification of the predominant aggressor.<sup>61</sup> We encourage the Audit Office of NSW to consider this report as part of this review.

*Using interpreters at the earliest opportunity and at every stage of providing assistance*

68. The Royal Commission recommended Victoria Police amend the *Victoria Police Code of Practice – FV* to provide guidance on the use of interpreters.<sup>62</sup>
69. The *Victoria Police Code of Practice - FV* appropriately acknowledges that police responses to culturally and linguistically diverse communities need to be sensitive to their diverse needs. It provides that when servicing these diverse communities, police need to consider using interpreters “*at the earliest opportunity and at every stage of providing assistance*”.<sup>63</sup> Of critical importance is that there is an emphasis on “*the earliest opportunity and at every stage of providing assistance*”. This is crucial as often first responder police to SDFVA will be speaking with the parties involved and obtaining a version of events in highly distressing circumstances, made more challenging for individuals who are unable to understand and unable to communicate effectively in English. The necessity of obtaining accurate information at first instance is emphasised in the case study below. In addition, interpreters can assist the victim-survivor or perpetrator of SDFVA to understand:
- any potential crisis intervention;
  - evidence gathering;
  - statement taking; and
  - explaining the conditions of any ADVO (particularly for a provisional order that may be applied for at the time of a SDFVA incident).
70. Whilst the *NSWPF Code of Practice – DFV* states that all NSW Police Force “*must*” use professionally accredited interpreters to communicate with people who are not able to speak or understand English or who are deaf and hard of hearing,<sup>64</sup> it does not explicitly state at “*the earliest opportunity and at every stage of providing assistance*”. Police failure to provide an interpreter during their first encounter with someone experiencing SDFVA who cannot communicate properly in English can have serious and devastating consequences.

<sup>59</sup> Section 41C(2)(a) of the *Domestic and Family Violence Protection Act 2012 (Qld)*

<sup>60</sup> Section 41D(2)(a) of the *Domestic and Family Violence Protection Act 2012 (Qld)*

<sup>61</sup> Family Violence Reforms Implementation Monitor, [Monitoring Plan 2021-22](#)

<sup>62</sup> Royal Commission into Family Violence, *Vol III: Report and Recommendations*, March 2016, Recommendation 159

<sup>63</sup> Victoria Police, *Code of Practice for the Investigation of Family Violence*, 2019, Edition 3 v4, Section 2.5.2, p18

<sup>64</sup> NSW Police Force, *The Code of Practice for the NSW Police Force response to Domestic and Family Violence*, 2018, p 84

71. We note the NSWPF *Multicultural Policies and Services Program - Implementation Report 2016-19* acknowledges the need to look at improving NSWPF data collection on the use of interpreters by police<sup>65</sup> and developing “*additional resources for staff such as an online module on working with Interpreters and visual messaging in public areas of police stations reassuring community members that they can request an interpreter are priorities for Year 3 of the Plan.*”<sup>66</sup> It would be useful to know what is the progress on the implementation of these recommendations?
72. It is also imperative that accredited interpreters are adequately trained in SDFVA informed and trauma informed practice.

### **Case study**

*Frieda\* came to Australia a few years ago from overseas to live with her new partner, Michael\*. Frieda has limited English and needs an interpreter to communicate in English.*

*Almost immediately after moving in with Michael, he became incredibly controlling of Frieda as well as physically, emotionally and financially abusive. Michael would not let Frieda outside without his permission, refused to let her have any of her own money and regularly used and threatened her with physical violence. Frieda was totally isolated.*

*On one occasion Michael became angry at Frieda because she turned the television on after he told her not to. Michael strangled, hit and kicked Frieda. Frieda threatened to call the police, but Michael told Frieda that if she tried to call police, they would not believe her and he would call them first and tell them she was mentally unwell. After calls from both Frieda and Michael, police arrived at their home. Police spoke to Michael first. When they spoke to Frieda, they did not get an interpreter. Despite Frieda having visible physical injuries, the police preferred Michael's version of events as they assessed Frieda as appearing “hysterical”. Police then took out an ADVO for Michael's protection.*

*Leading up to the ADVO Court date, Michael told Frieda she must agree to the ADVO and say “yes” to everything she was asked by the Court. Michael took Frieda to Court and sat next to her when the Magistrate asked Frieda questions. Frieda was not offered an interpreter and unknowingly agreed to a final ADVO being put in place for Michael's protection. It was obvious from Frieda's responses to the Magistrate she did not understand what was happening. A caseworker at the Court raised concerns that Frieda did not understand and needed an interpreter. An interpreter was not provided.*

*After the final ADVO was made, the violence intensified and Frieda became fearful Michael might kill her. Frieda began documenting the violence because she was afraid the police would not believe her again. Eventually, after a particularly severe episode of physical violence, Frieda took all her photos to a different police station. The officer arranged an interpreter so Frieda could communicate effectively. As a result of Frieda's report, an ADVO was taken out for her protection and Michael was charged with criminal offences. The criminal charges included a charge for the incident where Michael harmed Frieda following her turning on the TV (police previously used Michael's version as grounds to take out the ADVO against Frieda).*

*WLS NSW assisted Frieda to appeal the ADVO in place for Michael's protection. The ADVO was set aside.*

*In inappropriately misidentifying Frieda as the predominant aggressor, police put Frieda in greater danger by reinforcing Michael's message that she would not be believed.*

<sup>65</sup> NSW Police Force *Multicultural Policies and Services Program - Implementation Report 2016-19*, p7

<sup>66</sup> *Ibid*, p27.

*The initial assessment by police of Frieda as hysterical, informed partly by Michael's input, was inappropriate and indicates a need for greater understanding of responses to trauma. The failure to use interpreters by both the police and the Court resulted in a miscarriage of justice for Freida and gave Michael even more power as he could use the ADVO and threats of falsely reporting Frieda for breaching the ADVO to further control her.*

*\* This case study has been de-identified, including by not using their real names.*

*Assisting victim-survivors to gather important documents, such as residential status papers, temporary protection visas and passports*

73. SDFVA can impact on many facets of a victim-survivor's life. This means that controlling and having access to important documents when leaving SDFVA is hugely important to victim-survivors. They may require further assistance and/or legal advice in relation to a multitude of issues, including access to Centrelink, Medicare, health and housing services, immigration and family law. Assistance from police to gather these necessary documents to enable the victim-survivor to access and/or get further assistance from services or relevant, appropriate and targeted legal advice is imperative in providing effective and appropriate responses to SDFVA and ensuring women and children's on-going safety. The *Victoria Police Code of Practice – FV* provides that Victoria Police are responsible for “*assisting victim survivors to gather important documents, such as residential status papers, temporary protection visas and/or passports*”.<sup>67</sup>
74. The *NSWPF Code of Practice - DFV* does not sufficiently guide police or direct their attention to helping victim-survivors to gather these important documents at SDFVA scenes. Instead, the *NSWPF Code of Practice – DFV* states “*police should assist with the safe removal of persons from the premises, ensuring there are no breaches of the peace and that those leaving the premises, for their safety, have sufficient clothing and personal items*”.<sup>68</sup> More specificity in the *NSWPF Code of Practice - DFV* would alleviate ambiguity and could ensure police officers turn their minds to assisting victim-survivor to gather documentation that assists in securing their safety and access to other services, supports and legal advice.

### **Recommendation 3**

Continuous improvement of DVSOPs, SASOPs and other police policies and procedures, including the *Code of Practice for the NSW Police Force Response to Domestic and Family Violence (NSW Police Force Code of Practice - DFV)*.

### **Recommendation 4**

Improve guidance for police to accurately identify the primary/predominant aggressor and person most in need of protection, including access to specialist SDFVA support to assist in identifying the primary/predominant aggressor and guidance on what to do if they have misidentified the primary/predominant aggressor.

<sup>67</sup> Victoria Police, *Code of Practice for the Investigation of Family Violence*, 2019, Edition 3 v4, Section 2.5.2, p19

<sup>68</sup> NSW Police Force, *The Code of Practice for the NSW Police Force response to Domestic and Family Violence*, 2018, p 75

### *Policy about SDFVA and police employees*

75. There has been media coverage over the past few years across Australia about the low rates of prosecution of police employees for domestic violence offences and lack of information about numbers of domestic violence protection orders taken out against police employees.<sup>69</sup>
76. There are many barriers to victim-survivors reporting SDFVA perpetrated by police employees. These barriers include a fear of not being believed by police, confusion about where to report SDFVA when they do not want to approach the area command where the perpetrator works, a fear of the police officer's access to firearms and insider information and a fear that appropriate action will not be taken.
77. The NSWPF must have clear and transparent policies and procedures to safely report domestic violence alleged to be perpetrated by a police officer and those policies and procedures must address conflict of interest issues which must include independent oversight of such investigations.
78. We have raised this issue with the NSWPF Corporate Sponsor-Domestic Violence and the NSWPF Domestic and Family Violence Team and appreciate the ongoing constructive conversations on this important issue. We hope to be provided with a written policy on which we can provide comment.
79. The issue of SDFVA and police employees was raised during the Royal Commission into Family Violence. The Royal Commission recommended:

*Victoria Police's Professional Standards Command review Victoria Police policies and procedures relating to police employees and family violence [within 12 months]. The review should consider:*

- *the adequacy of and any necessary improvements to current policies and procedures*
- *best-practice approaches and model policies developed in other Australian jurisdictions and internationally*
- *potential synergies with Victoria Police's response to the Victorian Equal Opportunity and Human Rights Commission's independent review of sex discrimination and sexual harassment in Victoria Police.*<sup>70</sup>

80. We commend the work undertaken by Victoria Police. Assistant Commissioner for Family Violence Command, Lauren Callaway has commented:

*Both myself and the Assistant Commissioner of Professional Standards Command Tess Walsh have recognised that this is a long-standing problem that our organisation needs to fix.*<sup>71</sup>

81. The media reports:

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<sup>69</sup> Hayley Gleeson, 'Abusers In the ranks', *ABC News*, 10 October 2020; Hayley Gleeson, 'Victoria's 'staggering' record: 82 cops charged with family violence in five years, but only one found guilty', *ABC News*, 21 October 2020, Hayley Gleeson, 'More NSW Police officers charged with domestic violence as victims face ongoing problems getting help', *ABC News*, 21 May 2021; Hayley Gleeson, 'Catherine's ex was one of few police officers charged with domestic violence, but she'll never get justice', *ABC News*, 6 September 2021

<sup>70</sup> Royal Commission into Family Violence, *Vol III: Report and Recommendations*, March 2016, Recommendation 45

<sup>71</sup> Hayley Gleeson, 'Victoria's 'staggering' record: 82 cops charged with family violence in five years, but only one found guilty', *ABC News*, 21 October 2020



*Victoria Police is currently developing a standalone policy to address gaps and confusion in its current advice and encourage victims to come forward without fear of adverse consequences. Ms Callaway said the aim was to complete it by mid-2021.<sup>72</sup>*

82. The media reports this issue was discussed at a meeting with senior police from all states and territories in July 2020.<sup>73</sup>
83. It would be helpful if Victoria Police publishes their work on best practice approaches to this issue as well as their standalone policy when it is finalised.
84. We encourage the Audit Office of NSW to contact Victoria Police about this work.

### **Recommendation 5**

The NSW Police Force must have clear and transparent policies and procedures to ensure safe reporting of SDFVA alleged to be perpetrated by a police employee and those policies and procedures must address conflict of interest issues which must include independent oversight of such investigations.

### ***Robust accountability frameworks to effectively respond to systemic issues***

#### **Systemic racism**

85. We are concerned by the ongoing impacts of institutionalised and systemic racism, including in police, particularly on First Nations communities, as well as on minority, refugee and migrant communities.
86. First Nations women and refugee and migrant women reflect on their experiences of systemic racism. Many First Nations women comment on the delays in police responding, feeling they are not believed or taken seriously, judged and their experiences being minimised.

#### ***An unwillingness to report to police***

*A worker's reflections:*

*"It's the judgment and attitudes that makes it difficult for so many women to report to police. And that police often don't believe you when you tell them what you've experienced. When a woman uses force in response to being abused; or has a drug addiction because that's the way she's found to numb the pain for a short while due to all the trauma she's experienced; or police are continually called out to respond to SDFVA perpetrated by the same abuser against the same woman and the woman may present from the police's perspective as hostile and unco-operative it seems she's written off by police, as not deserving of assistance. Some clients report being told by police to "sit down and shut up while we try to work out what has happened"*

*Police behaving in this way emboldens perpetrators.*

*Similarly, police belittling of victim-survivors, minimising abuse and victim-blaming emboldens perpetrators.*

<sup>72</sup> Ibid.

<sup>73</sup> Hayley Gleeson, 'Abusers In the ranks', ABC News, 10 October 2020

*Police need to be better supported to be trauma informed and responsive. To understand that women who have experienced trauma after trauma may not make good historians. They are generally unable to recall events in a coherent, logical manner because of the trauma.*

*The research shows that where women do not behave in ways some expect victim-survivors to behave, that is, they don't present as quiet and compliant and do what police tell them to do – they are treated by police with suspicion and scepticism. This is concerning given the impacts of trauma mean people react in a variety of ways and there is no “typical” response.*

*Some women, especially those with lived experience of the criminal justice system or distrust of police related to intergenerational systemic racism, may also interpret the police attitude as an indication that they are not believed and that they may be arrested. This can be a catalyst for words and actions directed at police by the victim-survivor that may then form the basis for a charge.*

*What can be done to challenge this?*

### *Silencing of women*

87. Further, in our decades long experience in working with criminalised women we find over and over again that women's criminalisation often stems from being misidentified as the predominant aggressor. These women have been silenced, firstly by the perpetrator and then by the systems which are meant to protect her.
88. This systems abuse includes police who often do not take appropriate action because the woman does not present as police might expect a victim-survivor to present. She may be seen as unwilling to “co-operate” with police, with police failing to recognise and acknowledge the role that trauma, fear, family and/or community pressures and/or past negative experiences and a lack of trust in police and the system play in a victim-survivor's life and response to abuse and police intervention. She may respond to the extensive abuse perpetrated by her male partner with violence, fighting back, not with the intent to coerce, control or cause fear, but as a survival response. She may remain with the person perpetrating the abuse for many complex reasons – because she loves him, because she fears that separation will mean the children may have to spend time alone with their father at significant risk so staying is seen as the safer and more protective option for her children, because she is not financially independent to support herself and her children, because there is nowhere else to go.<sup>74</sup>
89. Victim-blaming and minimising men's abuse against women and children is widespread and has a devastating impact on women. It removes accountability from where it should lie – with the predominant perpetrator - and it results in the people women turn to for safety and protection unwittingly colluding with the perpetrator.

### **Experiences of systemic racism**

*One of our First Nations workers describes supporting one Aboriginal woman:*

*Police would not take a statement until we accompanied our client to the police station. Even then our client had a poor experience with police. She felt judged. She felt she was not believed. She felt small and*

<sup>74</sup> This experience is also echoed in ANROWS research: Heather Nancarrow, et al, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020

*treated as less important because she was an Aboriginal woman. She left the police station feeling worse than when she entered. This was a woman who experienced serious physical abuse and other forms of ongoing controlling abuse by her non-Aboriginal partner, including him threatening to kill her on several occasions if she left him. She used force to try and stop her partner from continuing to hit her, but she was the one who needed protection and the police were very slow to act. This is all too common for our women.*

90. The silencing continues when women talk about the shame they feel for the abuse perpetrated against them and they frequently report to us that they do not know how to tell their criminal lawyers about the abuse when they are charged with an offence. Often criminal lawyers do not ask about SDFVA.

*Women in custody have instructed us that they have not told the police or their legal representatives or the court about the violence they have experienced. This includes violence that is materially relevant to their charges and to their defence. Most commonly this is because they are not comfortable to make disclosures about sexual violence to male professionals.*

*One older Aboriginal woman told us that she was simply frozen and filled with shame at the thought of telling a young male solicitor about being raped immediately prior to her offending behaviour. The client requested that we provide this information to her lawyer, which we did, but we remained concerned that she may not be able to provide further relevant instructions.*

91. The silencing further continues with the criminal justice outcome – once a woman becomes an offender, her extensive history of SDFVA becomes invisible. Further, the woman's negative experience impacts on her willingness to further engage with police and legal systems which police and legal systems may categorise as obstructionist or a failure to act protectively and may lead to the matter escalating. This could all have been avoided if the first response was one that was trauma informed, SDFVA informed and culturally safe.

### *Wiyi Yani U Thangani (Women's Voices) Report*

92. We further note the national recommendations relating to policing in the *Wiyi Yani U Thangani (Women's Voices)* report.
93. This report was developed following extensive consultation led by June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner, with Aboriginal and Torres Strait Islander women and girls across Australia.
94. Recommendations relating to police included:
- 94.1 *Recruiting and retaining Aboriginal and Torres Strait Islander women in leadership roles in the police;*
  - 94.2 *Ensuring Aboriginal and Torres Strait Islander women Police Liaison Officers are available to all police forces across Australia; and*

94.3 *trauma-informed and culturally responsive training, and family violence response training be embedded across all Australian police departments which include accountability frameworks to address systematic racism.*<sup>75</sup>

95. WLS NSW supports the full implementation of these recommendations.

96. Greater self-reflection within police is critical, as are steps taken to address barriers to reporting SDFVA to police arising from bias and prejudice.

### Sex discrimination

*Independent Review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police (Independent Review of Victoria Police)*

97. In order for there to be confidence in police response to SDFVA it is important that police behave in an exemplary way with their colleagues, their family and within the wider community.

98. In 2014 Victoria Police engaged the Victorian Equal Opportunity and Human Rights Commission to undertake an independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police. This was in response to the high rates of sex discrimination and sexual harassment within Victoria Police.<sup>76</sup>

99. In commissioning this review the Chief Commissioner of Police acknowledged:

*There have been numerous attempts to deal with this issue in the past, but they did not achieve the change that was needed. It was clear the time had come for us to bring in an independent umpire to conduct a robust review.*<sup>77</sup>

100. Then Victorian Equal Opportunity and Human Rights Commissioner Kate Jenkins stated:

*In commissioning this Review, Victoria Police asked the Victorian Equal Opportunity and Human Rights Commission to examine the prevalence, drivers and impacts of sex discrimination and sexual harassment.*

*Victoria Police also asked us to develop recommendations and a comprehensive action plan for change, and to hold them to account, assessing their progress over three years.*

*And they requested that we do this work under the spotlight of public scrutiny. This is not a response to scandal. This is a commitment from the Chief Commissioner and his leadership team to change the organisation for the better.*

*This work is about systemic change.*<sup>78</sup>

<sup>75</sup> Australian Human Rights Commission, *Wiji Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, 2020, p 103 (105)

<sup>76</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review of Victoria Police*

<sup>77</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review: into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police, Phase One Report*, 2015, p3 (5)

<sup>78</sup> *Ibid*, p2 (4)

101. Then Commissioner Jenkins emphasised the importance of this work in building rather than undermining confidence in Victoria Police. Victoria Police owned the problem and committed to addressing it.<sup>79</sup>

102. In the second report, Commissioner Hilton commented:

*To critically reflect, to listen to different and confronting viewpoints, and to allow yourself to be vulnerable are impressive leadership traits and essential in this kind of transformational change.*<sup>80</sup>

103. Commissioner Hilton also acknowledged the drivers for sex discrimination and sexual harassment are the same drivers for SDFVA:

*unequal power between men and women and rigid adherence to gender stereotypes – that are supported by structural and attitudinal barriers to gender equality.*<sup>81</sup>

104. In the third report, Commissioner Hilton commented:

*While Victoria Police is daily in the public eye, in many ways it is often a closed organisation. My view is that the progress that Victoria Police has made has been because they have done this work in the open....*

*Victoria Police has shown us what can be achieved when an organisation takes their positive duty to eliminate sex discrimination, sexual harassment and victimisation seriously. It has been a painful reckoning and the stories we have reported are testament to this....*

*This deep and transformative change that Victoria Police is working towards takes years and requires constant effort, reflection and analysis. In recognition of the ongoing commitment required, this report provides an additional 16 recommendations for Victoria Police and a method for monitoring progress to achieve gender equality by 2030.*<sup>82</sup>

105. Victorian Chief Commissioner of Police, Graham Ashton AM, in a message included in the Third Phase Audit and Review Report states:

*In 2015, we were confronted with strong evidence from the Victorian Equal Opportunity and Human Rights Commission about the poor treatment of women in our organisation. We responded by making a commitment to significant practice and cultural reform in order to create safe, inclusive and respectful workplaces. A large program of work has since been delivered across the organisation to achieve this change....*

*Despite some of the improvements we have made, the Commission shows us that we need to make a longer-term commitment to deliver lasting change. This final review provides us a roadmap to achieve gender equality by 2030. It recognises that the changes we have made so far need to be embedded within our systems and structures and that we still have much work to do to shift behaviours and attitudes that lead to workplace harm....*

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<sup>79</sup> Ibid.

<sup>80</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review: into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police, Phase 2 Audit 2017*, p3 (5)

<sup>81</sup> Ibid p 10 (12)

<sup>82</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review: into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police, Phase 3 Audit and Review 2019*, page v (7)

*I am confident that this is work we are capable of leading, both for the benefit of our employees and the community. We have learnt much over the last five years and we will bring these learnings into our next phase of work. We will ensure that our approach is outcome-driven and proactive so that we can prevent harm and empower employees to drive change in their own workplaces. We will build on past successes and innovate new approaches. We will maintain an explicit focus on gender equality as this will give us the best chance of addressing the drivers of sexual harassment, sex discrimination and predatory behaviour. Within this approach, we will ensure we are intersectional so that we capture the multiple experiences of our employees. We will take a leadership role in the community by demonstrating that our efforts to create gender equality in the organisation ensure we are fit to serve the women and children who seek our help for family violence and sexual offences.<sup>83</sup>*

106. Victoria Police, in response to the VEOHRC *Independent Review of Victoria Police and Victoria Government Gender Equality Strategy*, developed a *Victoria Police Gender Equality Strategy 2020-2030* and accompanying Action Plans to embed gender equality into its work and structure.<sup>84</sup>

107. In January 2020, Victoria Police established a Gender Equality and Inclusion Command. It is described as:

*work[ing] to build on the lessons learnt and progress made as a result of the VEOHRC review and support Victoria Police to achieve gender equality in culture and practice.<sup>85</sup>*

108. It has four areas of focus:

108.1 Capability and leadership development

108.2 Cultural change and strategic engagement

108.3 Oversight and monitoring

108.4 Workforce diversity and inclusion

109. As with Family Violence, it is significant that Gender Equality and Inclusion is within a Command structure. As mentioned above in relation to the Family Violence Command, a Command structure provides an authorising framework, aims to achieve consistency within Police across the state and sends a powerful message to Police and the wider community of the importance of achieving gender equality and inclusion.

110. We further note the *Equality is not the same Report* released by Victoria Police in December 2013. This report included a three-year Action Plan to “*improve police’s responsiveness to diverse communities, strengthening community trust and confidence*”. This work was undertaken after Victoria Police “*sett[ed] an Australian Federal Court allegation of racial profiling*”.<sup>86</sup> We encourage the Audit Office of NSW to look closely at this work, including any evaluation that may exist as to the effectiveness of the response and ongoing work.

*Inquiry into Sexual Harassment and Sex Discrimination in the NSW Police Force*

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<sup>83</sup> Ibid, page vi-vii (8-9)

<sup>84</sup> Victoria Police, *Equal, Safe and Strong: Victoria Police Gender Equality Strategy 2020-2030*

<sup>85</sup> [Victoria Police website](#)

<sup>86</sup> Victoria Police, *Equality is not the same*

111. In 2006, Chris Ronalds SC was commissioned to undertake an Inquiry into Sexual Harassment and Sex Discrimination in the NSW Police Force. Ms Ronalds found 47.5% of police officers she interviewed had experienced sexual harassment.<sup>87</sup>

*LECC Review – Operation Shorewood: Review of how the NSW Police Force Manages and Investigates Workplace Equity Issues (2020)*

112. The Law Enforcement Conduct Commission (**LECC**) undertook a review of NSWPF workplace equity matters investigated between 2017-2018. The review considered 124 workplace equity matters of which 33% related to bullying, 27% related to sexual harassment, 20% related to failure to comply with Respectful Workplace Behaviour Guidelines and 12% related to harassment.<sup>88</sup>

113. The Professional Standards Command provided LECC with a report that included data on the total number of allegations of harassment, bullying, discrimination and sexual harassment between 1 January 2003 to 30 July 2018. There was “a rise in number of sexual harassment allegations per year over the reported year groups and the high rate of sustained findings”.<sup>89</sup>

114. The LECC review concluded the NSW Police Force have policies and procedures expressing

*its responsibility and commitment to provide a work environment that is ‘safe, ethical, inclusive and productive’ and which is free of bullying, discrimination, harassment, vilification and victimisation....*

*However, these policies and procedures will carry little weight if the NSWPF response to their violation is perceived as weak, inconsistent or inadequate.<sup>90</sup>*

115. The LECC Review found that one third of subject officers had previously been investigated for workplace equity issues.

*This finding seems to indicate that previous NSWPF management action and/or intervention strategies had little or no impact on the behaviour of these officers.<sup>91</sup>*

116. The LECC Review also

*identified a number of [internal police complainants] who were reluctant to report officers who had engaged in this type of misconduct because they either had no confidence in the NSWPF complaints process, feared reprisals, or believed that there were few or no consequences for the perpetrators.<sup>92</sup>*

*Review into the NSW Police Force Promotions System (2019)*

117. In 2018, former Sex Discrimination Commissioner Elizabeth Broderick was commissioned to undertake a review into the NSW Police Force Promotions System including identification of Cultural Issues that Impact on Women's Promotion Opportunities and Career Progression.

<sup>87</sup> Cited in Elizabeth Broderick and Co, *Review into the NSW Police Force Promotions System*, 2019, p10

<sup>88</sup> Law Enforcement Conduct Commission, *Operation Shorewood: Review of how the NSW Police Force manages and investigates workplace equity matters*, July 2020, p 5 (9)

<sup>89</sup> Ibid, p 27 (31)

<sup>90</sup> Ibid, p38 (42)

<sup>91</sup> Ibid.

<sup>92</sup> Ibid p 39 (43)

118. Amongst the barriers to women's access to leadership positions in police was sexism and sexual harassment. While noting improvements since Ms Ronalds' inquiry, Ms Broderick noted through an online survey and comments from police officers 1 in 3 women and 13% of men reported experiencing sexual harassment in the course of their duties with the NSW Police Force or at a work-related event from a colleague in the last 5 years, with 20% of women and 8% of men reporting sexual harassment occurring in the last 12 months.<sup>93</sup>
119. Ms Broderick's recommendations centre around 5 principles:
- 119.1 *Principle 1 – A rigorous and fair promotions system is one that appropriately tests for capabilities, including leadership capability, work performance, achievement and potential, and its outcomes are delivered in a timely and transparent way.*
  - 119.2 *Principle 2 – A good talent promotions system is one that challenges the biases and assumptions underpinning an uninterrogated view of merit and ensures that both women and men have equal access to opportunities to advance their careers.*
  - 119.3 *Principle 3 – Flexible work practices are a key capability driver and, as far as practicable, should not be an obstacle to promotion.*
  - 119.4 *Principle 4 – Sexual misconduct reduces promotional opportunities for individuals, diminishes team performance and impacts on organisational capability.*
  - 119.5 *Principle 5 – Courageous leadership will help drive successful and sustainable reform.*<sup>94</sup>
120. Ms Broderick also noted the importance of “ensuring the change process is accountable and measured” and the need for systemic interventions such as “introducing temporary special measures, expanding the availability of flexible work arrangements, targeted development and sponsorship for women and effectively addressing sex-based discrimination and harassment”.<sup>95</sup>
121. One of the recommendations included establishing a Diversity and Inclusion Advisory Group to be sponsored by the Commissioner and chaired by a Deputy Commissioner.<sup>96</sup>
122. We note the recent development of *NSW Police Force Inclusion and Diversity Strategy 2020-23 Growing our diversity: connecting in our uniqueness*.<sup>97</sup>
123. This Strategy refers to the establishment of a Diversity and Inclusion Advisory Group, the Commissioner of Police sponsoring this group and to the Inclusion & Diversity Centre of Excellence which is responsible for implementing and reporting on the strategy.
124. The development of this strategy is a positive step. However, a more detailed Action Plan is required. The Strategy refers to “detailed and specific action plans for each aspect of the strategy”. It is not clear if this refers to the material included in the strategy or to a separate document. We note Victoria Police have developed inclusion strategies with greater specificity. For example, in relation to CALD employees, the Victoria Police framework recognises that the entry requirements into the police force have been difficult to meet for some members of CALD communities because of “differences in

<sup>93</sup> Elizabeth Broderick and Co, *Review into the NSW Police Force Promotions System*, 2019, p11

<sup>94</sup> Ibid, p12-15

<sup>95</sup> Ibid, p80

<sup>96</sup> Ibid, Recommendation 29

<sup>97</sup> *NSW Police Force Inclusion and Diversity Strategy 2020-23 Growing our diversity: connecting in our uniqueness*



*education, upbringing and early life opportunities*".<sup>98</sup> To address this, the Victoria Police has developed CALD focused "School Base Traineeship Programs, Cadetships, and Youth Employment Schemes" as well as exploring providing funding assistance to prospective police candidates of CALD heritage, including for preparatory programs.<sup>99</sup>

125. The Strategy document also states "Annual progress reports will be made available on the intranet".<sup>100</sup> It is vital there is transparency and accountability to ensure reforms are fully implemented, as emphasised by the Royal Commission and Independent Reviews of Victoria Police and the NSW Police Force. Transparency and accountability require the publishing of annual progress reports. It is not enough these only be available as an internal document as publishing on the intranet suggests.
126. We also recommend the NSWPF, similar to Victoria Police with respect to their Gender Equality Strategy, institute a longer-term strategy complete with rolling Action Plans. Further, the Action Plans should expressly state an intention to support a gender equality strategy and acknowledge the drivers for sex discrimination and sexual harassment as being the same drivers for SDFVA as is the case in the Victoria Police Third Action Plan 2027-2030.<sup>101</sup>

### **Recommendation 6**

The NSW Police Force introduces robust accountability frameworks to effectively respond to systemic issues, including systemic racism and sexism and other forms of discrimination.

### **Recommendation 7**

Strengthening mechanisms to ensure greater diversity within the NSW Police Force, including in leadership positions.

### **Recommendation 8**

Fully implement the recommendations of the *Review into the NSW Police Force Promotions System including identification of Cultural Issues that Impact on Women's Promotion Opportunities and Career Progression*.

### **Implementation of existing legislation and NSW Police Force SDFVA policies and procedures**

127. While law and NSW Police Force policies currently recognise SDFVA as a pattern of behaviour and taking different forms – physical and non-physical abuse - there remain significant issues with implementation.
128. Systemic issues of implementation have been highlighted in recent high profile coronial inquests, such as the Edwards coronial inquest,<sup>102</sup> as well as through the NSW Domestic Violence Death Review Team (DVRT) reports. These reports most often highlight that rather than there being a gap in existing

<sup>98</sup> Victoria Police Force, *CALD Inclusion Strategy and Action Plan 2018 – 2021*, p7 (9)

<sup>99</sup> Ibid, p13 (15)

<sup>100</sup> Ibid.

<sup>101</sup> Victoria Police, *Equal, Safe and Strong: Victoria Police Gender Equality Strategy 2020-30*

<sup>102</sup> Women's Legal Service NSW, Community Legal Centres NSW and Domestic Violence NSW, Media Release: "Coronial inquest highlights police failings in responding to DV – an urgent inquiry into police response to DV is required", 16 September 2020

law/s, there is instead a failure to implement existing law, policies and procedures and/or a failure to provide an integrated response.

129. The *NSWPF Code of Practice - DFV* outlines expectations of police in responding to SDFVA. Police must also be aware of their obligations and responsibilities imposed on them by legislation, NSWPF policies and operating procedures, and other corporate documents such as the Code of Conduct and Ethics.<sup>103</sup> Proper implementation of these intersecting obligations, policies and police standards is necessary.
130. It is important to better understand the barriers to police implementing existing laws, policies and practices and how these barriers can be addressed.
131. Police need an in-depth understanding of SDFVA that recognises the overarching strategy or context of SDFVA as one of coercion, control, power, domination and/or causing fear. It needs to be understood that SDFVA can include physical and/or non-physical abuse and that it is predominantly perpetrated by men against women and children.
132. We support the inclusion of a definition of SDFVA in the *Crimes (Domestic and Personal Violence) Act*. We further support the inclusion of a non-exhaustive list of examples, noting the importance of examples of emotional and psychological abuse or intimidation and harassment being developed in consultation with marginalised groups. These were recommendations made by the NSW Law Reform Commission and Australian Law Reform Commission.<sup>104</sup> This is important to help build a common understanding and shared language of SDFVA and is required prior to any further criminalising of coercive control violence and abuse in NSW.

#### Listing children on apprehended violence orders (AVOs)

133. Women regularly express concerns to us that an apprehended violence order taken out for their protection, fails to list the children on the protection order. This is despite the legislation requiring children to be listed.

Section 38 of the *Crimes (Domestic and Personal Violence) Act 2007* states:

(2) If the court makes an apprehended domestic violence order, or the court or issuing officer makes an interim apprehended domestic violence order, for the protection of a person of or above 18 years of age, the court or issuing officer must include as a protected person under the order any child with whom the person of or above 18 years of age has a domestic relationship.

(3) A court or issuing officer is not required to comply with subsection (2) if satisfied that there are good reasons for not doing so. However, in that case the court or issuing officer is to give the reasons for not doing so.

134. It is important that police list children on AVOs consistent with the legislative requirements and where they believe there is good reason not to, they provide their reasons.

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<sup>103</sup> NSW Police Force, *The Code of Practice for the NSW Police Force response to Domestic and Family Violence*, 2018, p 2 accessed at:

<sup>104</sup> Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, 2010, Recommendation 5.1, Recommendation 5.2 and paragraph 5.187

### Police response to technology facilitated stalking and abuse

135. Women often express concern to us that when they report technology facilitated stalking and abuse, police often say they are constrained in responding to such abuse. Technology facilitated stalking and abuse needs to be taken more seriously and police need to be adequately resourced to respond.

#### ***Police failing to take action***

*Many women tell us about experiencing verbal and psychological abuse most often by a controlling male partner which is often accompanied by relentless unwanted text messages. There may also be threats made to the woman or members of her family, particularly children, including on occasions threats to kill. These women are fearful. Police often respond to women's reports of such abuse by saying they are unable to take action, including taking out an AVO for the woman's protection, because they are unable to prove the text messages originated from their partner/ex-partner's phone or "he hasn't physically assaulted you".*

### Insufficient Police response to breaches of AVOs

136. We acknowledge that one of the measurements police have been working on is increasing successful prosecution of breaches of AVOs.

137. However, women continue to regularly contact us about breaches of AVOs and police taking insufficient action to sanction breaches.

138. Further work is required to ensure all reported breaches of AVOs are recorded in COPS and police appropriately respond to allegations of breaches of AVOs.

### ***Previous review of policing of SDFVA in NSW and need for regular auditing of policing of SDFVA***

139. In 1999 the NSW Ombudsman made a special report to the NSW Parliament in response to continuing community concerns about policing of domestic violence: *Policing Domestic Violence in NSW*. A key finding included that police "needed to better monitor its response to domestic violence to ensure consistency and quality across the state".<sup>105</sup>

140. In 2006, a further review was undertaken to consider the extent to which recommendations had been implemented and the policing of SDFVA had improved.

141. Police and victim-survivor advocates both continued to report negative police attitudes towards victim-survivors, particularly where a victim-survivor was seen as not "co-operating" with police.<sup>106</sup> Other recurring issues included poor customer response when SDFVA victim-survivors present at the police station; delays in police response to SDFVA, particularly in rural and remote areas;<sup>107</sup> a need for more female Aboriginal Community Liaison Officers (**ACLOs**) and Aboriginal Family Violence Officers;<sup>108</sup> a continued need to increase the status, number, training and support for Domestic Violence Liaison

<sup>105</sup> NSW Ombudsman, *Domestic violence: improving police practices*, 2006, p1 (25)

<sup>106</sup> *Ibid*, p13 (37)

<sup>107</sup> *Ibid* p15 (39)

<sup>108</sup> *Ibid*, Recommendation 25

Officers (**DVLOs**);<sup>109</sup> a need to review police training strategy relating to SDFVA and to involve external agencies in the development and delivery of training.<sup>110</sup>

142. In 2011, the NSW Ombudsman published *Audit of NSW Police Force handling of domestic and family violence complaints*. This report builds on the NSW Ombudsman's 2006 report and provides the NSW Ombudsman's findings arising from its 2008 audit of the NSW Police Force handling of domestic violence complaints.
143. The NSW Ombudsman recommended the NSW Police Force conduct annual audits of complaints relating to SDFVA, including the number of complaints; what was done to remedy complaints, including training for individuals or commands; progress on implementation of Aboriginal Strategic Direction; evidence of positive relationship between police and domestic violence services.<sup>111</sup>
144. If these audits have been undertaken, to our knowledge the results have not been published.
145. In our response to the Tink Review of Police Oversight in 2015, we recommended a lower threshold of seriousness of complaint for a police complaint to be reviewed by an independent body if relating to SDFVA and recommended a specialist domestic and sexual abuse unit to assess the complaint.<sup>112</sup> In the context of police responding to SDFVA, what may be considered less serious, for example, complaints relating to customer service such as rudeness or delay in responding, may have lethal consequences if, for example, a victim-survivor of SDFVA no longer reports the abuse to police nor otherwise seeks police assistance after a negative experience.<sup>113</sup>
146. Ultimately the body that was created – the Law Enforcement Conduct Commission – is limited on what it can independently investigate. LECC's Complaint Assessment Policy states:

*It follows that most complaints that are made to the LECC about misconduct or maladministration will be referred to the NSWPF and/or the NSWCC to deal with, although LECC will oversee the investigations of complaints about serious misconduct to ensure they are not unsatisfactory and, in some cases of particular interest, actively monitor the investigation as it proceeds.*<sup>114</sup>

147. This is a shortcoming of this oversight body.

### Jack and Jennifer Edwards Coronial Inquest recommendations

148. The Coroner in the inquests into the deaths of Jack and Jennifer Edwards noted:

*This was the central deficiency in the police response to Olga; namely, that she interacted with two inexperienced officers who failed to recognise or investigate the domestic violence and staking allegations made by her. This was then compounded by supervisory failures which did not detect and correct those errors.*<sup>115</sup>

<sup>109</sup> Ibid, Recommendations 5-15

<sup>110</sup> Ibid, Recommendations 27-30

<sup>111</sup> NSW Ombudsman, *Audit of NSW Police Force handling of domestic and family violence complaints*, May 2011, Recommendation 1

<sup>112</sup> Women's Legal Services NSW, *Submission to Review of Police Oversight in NSW*, 25 June 2015

<sup>113</sup> Ibid.

<sup>114</sup> NSW Law Enforcement Conduct Commission, *Assessments – 17.1 Complaint Assessment Policy*, paragraph 3.2

<sup>115</sup> Coroner's Court of NSW, *Inquest into the deaths of John, Jack and Jennifer Edwards*, 7 April 2021, paragraph 338

149. The Coroner also noted that evidence at the inquest did not suggest it was a lack of appropriate training in dealing with a walk-in complaint of domestic violence but rather

*it exposed a lack of familiarity with the specific contents of the DVSOPs, and highlighted the need for greater knowledge and more regular, rigorous training in this area.*<sup>116</sup>

150. Counsel assisting advocated that in order to understand the extent of compliance with the DVSOPs the Coroner make a recommendation to establish an independent auditing process with the results to be published.<sup>117</sup>

151. The NSW Police Commissioner submitted the evidence at the inquest did not suggest the deficiencies with compliance with the DVSOPs were systemic across police area commands and that

*independent audits are likely to be burdensome to facilitate, and that the NSWPF “already has internal teams with the capacity to execute audits when necessary”.*<sup>118</sup>

152. The Coroner considered:

*Given that the current dip sampling is only used to identify trends and patterns within a particular Police Area Command, and in light of the importance of continuous improvement in the handling of reports of domestic violence, I am of the view that there is merit in that processes being enhanced.*<sup>119</sup>

153. The NSW Coroner recommended:

*That the NSW Police Force give consideration to implementing an annual, comprehensive audit process of officer compliance with the DVSOPs, which includes the results of ‘dip sampling’ conducted by Domestic Violence Officers in each Police Area Command. The results of the audit should be published and should include information as to any material variations or trends between Police Area Commands, and measures that will be taken to resolve any concerns.*<sup>120</sup>

154. We support this recommendation, noting the importance of publishing these results to help promote continuous improvement and build further public confidence in policing of SDFVA.

155. It is important to have both internal and independent audits of policing of SDFVA cases. Independent auditing should occur at least every 2 years. These mechanisms do not just rely on those who are willing to make a complaint and can highlight gaps in police responses and identify steps which can be taken to improve policing and ultimately, the safety of victim-survivors of such abuse. Audits would increase trust in police because they signal that police take seriously their responsibilities and are interested to reflect and continuously improve practices where it is required. These reflections and actioning the findings of such audits are an important consideration in capability planning.

### NSW Government's response to Jack and Jennifer Edwards Coronial Inquest Recommendations

156. We note the NSWPF is considering

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<sup>116</sup> Ibid, paragraph 308.

<sup>117</sup> Ibid, paragraph 324

<sup>118</sup> Ibid, paragraph 325

<sup>119</sup> Ibid, paragraph 326

<sup>120</sup> Ibid, Recommendation 3

*a three-tiered approach for an annual comprehensive audit of compliance with the DVSOPs. The three tiers involve the use of DVLOs and Duty Officers at a Command/District level and Regional Domestic Violence Coordinators at the Region level conducting dip samples and using the Command Management Framework (CMF) system to manage and record these inquiries.*<sup>121</sup>

157. The NSWPF notes the Command Management Framework in the past has “*mainly measured outcomes*” and consideration is being given to using the Command Management Framework “*to measure compliance with the DVSOPs*”.

158. In response to the recommendation to publish the results of annual audits, the NSWPF states:

*How to use audit results, including potentially publishing them or providing comparison between commands, will be considered subsequent to the implementation process.*<sup>122</sup>

159. We welcome consideration of a three-tiered approach for annual comprehensive audit of compliance with the DVSOPs. We reiterate the importance of publishing these results including

*information as to any material variations or trends between Police Area Commands, and measures that will be taken to resolve any concerns.*<sup>123</sup>

#### **Recommendation 9**

Annual compliance checks to ensure police implementation of sexual, domestic and family violence and abuse policies and procedures and public reporting of these compliance checks and action to address any concerns.

#### **Recommendation 10**

The publishing of annual dip sampling of policing of SDFVA undertaken by specialist SDFVA police, including any Police Area Command variation and the measures that will be taken to resolve any concerns.

#### **Recommendation 11**

Establish a regular cycle of comprehensive and independent audits of NSW Police Force compliance with DVSOPs, SASOPs, *NSW Police Force Code of Practice – DFV* and other SDFVA policies and strategies with the results to be published, including any Police Area Command variation and the measures that will be taken to resolve any concerns.

#### **Recommendation 12**

Strengthening complaints mechanisms so independent police complaint bodies are not referring complaints about policing of SDFVA back to police to investigate and there are robust accountability mechanisms.

<sup>121</sup> NSW Government, [Coroners' Recommendations and Government Responses 2021](#), p 15-16

<sup>122</sup> *Ibid*, p16.

<sup>123</sup> Coroner's Court of NSW, [Inquest into the deaths of John, Jack and Jennifer Edwards](#), 7 April 2021, Recommendation 3

### Has the NSW Police Force effectively resourced its approach to respond to domestic and family violence and support victim-survivors with the required capability?

160. The Personal Safety Survey highlights that 82% of women who have experienced violence by a current partner since the age of 15 have never contacted the police. 65% of women who have experienced violence by a former partner since the age of 15 have never contacted the police.<sup>124</sup> Police acknowledge that SDFVA is significantly underreported to them.
161. In order to ensure higher reporting of SDFVA, there must be urgent and transformative cultural reform in policing and policing responses.
162. If victim-survivors do not receive a consistent, positive response from police (particularly officers that work at the front counter) during their first interaction, it can result in the following adverse outcomes:
- Information or complaints being documented inaccurately, or in some instances, not documented at all;
  - Police providing misinformation and/or erroneous advice to victim-survivors;
  - Lead to victim-survivors ceasing or abstaining from reporting instances of SDFVA in the future.<sup>125</sup>
163. The *NSW Domestic Violence Death Review Team Report 2017-19* found that these service issues are “reflective of the workload and environment of the police station”. Front counter police have numerous competing demands, including administrative tasks, responding to public enquiries, answering phone calls (including reports of crimes) and processing people reporting on bail.<sup>126</sup> This is due in part, to inadequate resourcing.
164. There needs to be greater resourcing of the NSWPF SDFVA specialist roles, including DVLOs so survivors can report directly to specialist workers. We also provide comments below on adequately funding a co-responder role with police and specialist SDFVA services.

### *NSW Police training and cultural reform*

165. This submission has provided case studies highlighting the importance of police better understanding the nature and dynamics of SDFVA and the importance of a gendered violence informed, trauma informed, culturally safe response to SDFVA.
166. For many decades, inquiry after inquiry about SDFVA has recommended increased training and education about SDFVA, including for police, legal practitioners and judicial officers.
167. While training is important, of itself, it will not change attitudes and culture. It must be part of a broader strategy for cultural reform which requires strong leadership and proper resourcing.
168. We acknowledge that cultural reform is not the responsibility of just one agency or profession. We all have a role to play in promoting and supporting cultural reform and reflecting upon our own practices and biases. However, given the central and important role of police in responding to SDFVA, we believe cultural reform needs to start with police.

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<sup>124</sup> Australia's National Research Organisation for Women's Safety, *Violence against women: Accurate use of key statistics* (ANROWS Insights 05/2018) ANROWS, Sydney, NSW

<sup>125</sup> NSW Government, *NSW Domestic Violence Death Review Team Report 2017-19* (2020), p132

<sup>126</sup> *Ibid*, p133

169. While training has an important role to play in cultural reform, close attention needs to be paid to what training is provided, to whom, by whom, how often, in what form, how is it informed by the lived experience of victim-survivors, how it addresses victim-blaming attitudes and conscious and unconscious bias, how it encourages participants to reflect on their own practice and whether the training is independently evaluated to measure changes in attitudes and changes in practice as a result of the training.
170. It is not currently clear what training NSW police receive in relation to SDFVA. There should be greater transparency about what training is provided at the Police Academy, what training is received by DVLOs, constables, officers in charge and others within the NSW Police Force, how regularly this training is provided and there should be regular evaluation of the training and its effectiveness. We understand there is a biannual independent review of NSWPF curriculum in relation to SDFVA by Charles Sturt University. However, the evaluation reports are not published. Police should provide details and information to the public about the training they receive and the evaluation of its effectiveness.
171. Police training about SDFVA needs to be developed and delivered with significant input from and co-facilitation with SDFVA experts, cultural safety experts, disability experts, non-binary, trans and gender diverse experts and specialist legal services.
172. Given a substantial amount of police work involves responding to SDFVA, the training in these areas needs to be commensurate with this. It is also important that training is not limited to or primarily focused on those in SDFVA specialist roles and teams. It must target all first responders – those who take the calls about SDFVA, those who attend the call outs relating to SDFVA, those at the front desk when victim-survivors come to a police station to report SDFVA. A positive first response will determine whether or not victim-survivors report again to police.
173. We note during the Royal Commission Victoria Police referred to the need for a Victoria Police Family Violence Centre of Learning, which the Royal Commission recommended be established.<sup>127</sup> We recommend a similar Police Family Violence Centre of Learning be established in NSW.

### *Co-responder model*

174. A co-responder approach to SDFVA involves different disciplines working together to support the victim-survivor and hold the men using abuse accountable.

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<sup>127</sup> The Royal Commission recommended the Family Violence Centre of Learning be responsible for

- *conducting a family violence education and training needs assessment of Victoria Police—including benchmarking against best practice*
- *developing a Victoria Police Family Violence Education and Training Strategy setting out how these needs will be met, through a mix of classroom-based, flexible and on-the-job methodologies*
- *developing content, supporting materials and delivery mechanisms for implementing the strategy*
- *working closely with the family violence sector in performing these tasks—using co-design approaches where appropriate*
- *coordinating with partner agencies and whole-of-government governance mechanisms so that Victoria Police education and training reinforces common understandings and approaches essential for responding to family violence system*
- *coordinating with developments at the national level, including with the Australia New Zealand Policing Advisory Agency. See: Royal Commission into Family Violence, Vol III: Report and Recommendations, March 2016, p39 (45)*



175. We support a model of co-locating police with specialist SDFVA community-based workers so they can provide a holistic response. The benefit of co-location and a co-response is that specialist SDFVA workers can provide police with ongoing professional development in identifying and responding to SDFVA. Similarly, police can help the SDFVA workers to better understand police powers, procedures and practices.
176. A co-responder model was recommended in the 2017-19 *NSW Domestic Violence Death Review Team Report*.<sup>128</sup> It is also a recommendation in ANROWS research focused on accurately identifying the person most in need of protection.<sup>129</sup>
177. We note the success of a co-responder model with police and specialist mental health workers responding to people in a mental health crisis in NSW. Following a successful pilot of the Police, Ambulance and Clinical Early Response program, 36 specialist mental health clinicians were employed across 10 police area commands and districts in Sydney.<sup>130</sup> It is also important that such support is available in regional, rural and remote areas.
178. A co-responder model must be adequately funded.

### Recommendation 13

Regular and ongoing SDFVA training for police that is developed and delivered with significant input from and co-facilitation with SDFVA experts, cultural safety experts, disability experts, non-binary, trans and gender diverse experts and specialist legal services with a greater focus on:

- \* the nature and dynamics of SDFVA, including gender and power dynamics and perpetrator tactics
- \* challenging victim-blaming attitudes
- \* trauma informed practice,
- \* cultural safety
- \* disability awareness
- \* LGBTIQ+ awareness
- \* conscious and unconscious bias
- \* identifying the primary/predominant aggressor and person most in need of protection
- \* explicit focus on coercive controlling behaviours, violent resistance to ongoing abuse, and identifying these patterns, particularly within the context of non-violent forms of abuse, as recommended by DV NSW
- \* supports police to identify and act on compassion fatigue, burnout and vicarious trauma

<sup>128</sup> NSW Government, *NSW Domestic Violence Death Review Team Report 2017-19* (2020)

Recommendation 27.1

<sup>129</sup> Heather Nancarrow, Kate Thomas, Valerie Ringland, & Tanya Modini, *Accurately identifying the "person most in need of protection" in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020, p96

<sup>130</sup> Alexandra Smith, "[Mental health nurses to be based at police stations](#)", *SMH*, 10 June 2020

Training must be provided using a variety of modes and must include face-to-face training modules and include different levels of specialisation.

### **Recommendation 14**

The funding of a co-responder model with police and specialist SDFVA workers working side-by-side to enhance the response to SDFVA.

### *Improving career pathways for police specialising in sexual, domestic and family violence and abuse*

179. The Victorian Royal Commission into Family Violence noted that the Victorian Police's organisational structure failed to reflect the prominence of family violence as a public problem, or its importance as a contributing factor for strain on police services.<sup>131</sup> For police officers interested in a SDFVA career path, opportunities were restricted to the limited gazetted positions available and there was an absence of promotional prospects. To combat this, a well-developed organisation structure with plausible opportunities for career progression would "*encourage the best and brightest in Victoria Police to serve in this area and will also attract people with diverse, non-traditional skills and experience to pursue a career with Victoria Police*".<sup>132</sup>

180. The Royal Commission recommended a command structure that had a *balance of ongoing and fixed-term positions, with a gazetted officer in charge and a core of other staff, along with a number of rotational positions. Such an approach will achieve a number of things:*

- *provide a secure pathway for police members and employees who wish to pursue a career in family violence policing*
- *ensure that there is a critical mass of ongoing staff who have highly specialised knowledge and can develop strong networks with local service systems*
- *provide continuity and stability to partner organisations*
- *enable general duties members to increase their skills and capabilities in family violence policing through a placement in a family violence team*
- *provide incentives for police members to gain experience in family violence policing—for example by favouring those who have taken a placement in a family violence team*<sup>133</sup>

181. Shifting the culture within police, including the emphasis and the importance attributed to officers that undertake work in responding to SDFVA could engender change in police attitudes towards the demanding and nuanced work required to meet community needs when responding to SDFVA. Bestowing importance and seniority on officers undertaking the challenging and demanding work could attract officers into those roles with the requisite skills, motivation and capabilities to provide effective responses.

182. It is important that the role of Domestic Violence Liaison Officer (**DVLO**) within the NSW Police Force is suitably recognised as an important role. There must be clear, supported and acknowledged career

<sup>131</sup> Royal Commission into Family Violence: *Summary and Recommendations*, March 2016, p 93

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*, p 97

pathways for police interested in specialising in SDFVA and any barriers which might impede DVLOs remaining in these roles should be addressed.

183. Further, a focus on how investigative and intelligence units could be resourced to have a stronger focus on SDFVA should be investigated.

### **Recommendation 15**

Improve career pathways for police specialising in SDFVA.

### *Redeployment of police in times of emergency*

184. We express concern about the re-deployment of DVLOs and detectives responding to SDFVA during COVID. We have raised this issue directly with NSW Police.

185. It is important there is a policy that DVLOs and detectives responding to SDFVA are not re-deployed during times of emergency, including during natural disasters and pandemics.

### **Recommendation 16**

Ensure Domestic Violence Liaison Officers and detectives responding to SDFVA are not re-deployed for other police duties in times of emergency, including pandemics or natural disasters.

### **Is the effectiveness of domestic and family violence policing and NSW Police Force support to victim-survivors improving over time?**

186. WLS NSW acknowledges that the policing of SDFVA in NSW has significantly improved over time and the efforts of police in some areas to build trust with their local communities.

187. However, as this submission highlights, much more work needs to be done – with a particular focus on improving police responses to SDFVA and community policing and engagement, particularly with First Nations communities and refugee and migrant communities.

188. What is required is strong leadership, commitment to transformative cultural change, extensive education and training that is evidence-based, in depth, on-going and developed and delivered by experts, and an integrated response with better monitoring, assessment and accountability mechanisms that are independent and transparent.