

Petition No. P-1490-05 (United States)

Before the

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANISATION OF AMERICAN STATES**

JESSICA RUTH GONZALES

vs.

THE UNITED STATES OF AMERICA

AMICI CURIAE BRIEF IN SUPPORT OF PETITIONER

PRESENTED BY

THE NATIONAL CENTRE FOR DOMESTIC VIOLENCE

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1. INTRODUCTION

- 1.1 This Amicus Brief is filed in support of Petitioner, Ms. Jessica Lenahan (formerly, Jessica Gonzales).

Ms Gonzales' petition concerns alleged violations of her human rights by the United States of America and the State of Colorado as a result of their failure to:

- (a) adequately investigate Ms. Gonzales' estranged husband's unlawful and violent behaviour towards both Ms. Gonzales and her three children;
 - (b) protect Ms. Gonzales and her children; and
 - (c) provide Ms. Gonzales with an appropriate remedy for these violations.
- 1.2 This Brief examines innovative, comprehensive and holistic approaches employed to combat domestic violence in countries with legal systems, histories and cultures similar to those of the United States. The experiences of England and Wales, New Zealand, Canada and Australia makes clear that, in Ms. Gonzales' case, the United States failed to adopt all reasonable steps to address the problem of domestic violence. As this brief demonstrates, the United States government can do more to combat effectively domestic violence through innovative and holistic reforms similar to those adopted in the jurisdictions considered here.
- 1.3 Specifically, this Brief looks at the legal protections afforded to women subjected to domestic violence and the powers available to law enforcement agencies to protect them in England and Wales, New Zealand, Canada and Australia¹. It examines measures to ensure the consistent and meaningful enforcement of those legal protections. The Brief also seeks to highlight the importance of a holistic approach to the problem that addresses not only issues such as police powers and access to protective orders, but also focuses on attitudes to law enforcement, meaningful application of the law, and fostering partnerships between law enforcement and non-legal support agencies to respond in a coordinated manner to domestic violence as a systemic problem.
- 1.4 This Brief aims to provide the Commission with a detailed understanding of how police powers and state agencies can be tailored to maximise protection for victims of domestic violence. In this sense, it details some of the many options reasonably available to the United States' government to protect victims of domestic violence, provides the Commission with examples of how such programs operate in practice and thus assist the Commission in formulating its eventual recommendations to the United States government in its final decision on the merits of this case.

2. OVERVIEW

2.1 The United States government's response to domestic violence

As Petitioner's merits brief and other filings amply demonstrate, the United States government has failed to exercise due diligence in responding to what is a widespread and systemic domestic violence problem. Its legislative and other efforts to combat

¹ Both Canada and Australia have a Federal system. The United Kingdom is composed of three discrete jurisdictions: England and Wales, Scotland and Northern Ireland. This Brief addresses the approach to domestic violence in England and Wales only. In many cases the legislative and other government initiatives may apply to Scotland and Northern Ireland also. However, the differences between these jurisdictions are beyond the scope of this Brief. The position in these jurisdictions is accurate as at February 2007. In some of the jurisdictions there have been further initiatives and changes to legislation introduced since that date which are not specifically dealt with in this Brief, which have further developed the protections available to victims of domestic violence.

domestic violence are insufficient and fall short of the United States' legal obligation to adopt reasonable measures to respect, protect and ensure women and children's human rights to be free from domestic violence. As noted below, there are numerous options available to the United States government that would assist in combating this problem and fulfill its international obligation to women and children.

No comprehensive national plan has been implemented by the United States to address domestic violence. In particular, no federal domestic violence programme adequately addresses the need for prevention, enhanced legal mechanisms, effective enforcement and holistic response to victims' needs.

Federal legislation fails to address domestic violence in a comprehensive manner. For instance, as Petitioner and other amici note, the federal Violence Against Women Act (VAWA) does not mandate or guarantee an effective police response to domestic violence. More generally, the United States has failed to enact legislation that enshrines its international legal obligations to respect, protect and ensure human rights in this respect.

VAWA funds a broad array of programs that address domestic violence and includes many provisions addressing the needs of victims². For example, VAWA authorises federal grant money to state and local governments with pro-arrest domestic violence policies³. However, these grants and their conditions are optional for states; the legislation does not *require* state or local governments to adopt any particular policy or programme.

Most domestic violence provisions, including those relating to protective orders, are legislated at the state level. Thirty-nine states have specific domestic violence laws. All states allow judge-issued civil protective orders to domestic violence victims, and all states criminalise the violation of such orders. Some but not all states mandate arrest where there is probable cause that an individual has engaged in domestic violence.

Despite mandatory arrest laws and other domestic violence legislation, many police officers fail to effectively respond to incidents of domestic violence. Research shows that even in situations, such as Ms. Gonzales', where a restraining order is in place, law enforcement fails to respond in an adequate manner to effectively protect victims of domestic violence.

For example, law enforcement regularly fails to arrest perpetrators despite mandatory arrest laws or valid restraining orders. Moreover, restraining orders are often never served on the perpetrator and thus remain unenforceable. A large proportion of domestic violence calls to the police go unanswered. Calls that are answered are often treated as low priority, met with a slow response time, and police officers conduct little or no investigation into such calls or into domestic violence cases generally.

In many U.S. jurisdictions, police lack adequate training in the appropriate handling of domestic violence complaints. No nationally mandated training programme or curriculum exists in the United States and there are no national guidelines for law enforcement agencies on how to appropriately deal with domestic violence. The lack of adequate training of and official guidance to law enforcement on how to handle domestic violence leaves intact prevailing attitudes and beliefs that domestic violence is a private matter into which the government should not intrude.

² 42 U.S.C. § 3796hh (2005).

³ 42 U.S.C. § 3796hh (2005).

Although federal and much state domestic violence legislation is substantively lacking, legislation alone is, of course, insufficient to fulfil the United States' human rights obligations in this area. To combat domestic violence effectively, the United States government must take practical steps to implement that legislation.

The measures developed by the jurisdictions examined in this Brief offer instructive examples of such reforms. The following discussion of these reforms indicates that police and judicial responses to domestic violence are most effective as part of a holistic approach that goes beyond the introduction of legislative reform.

2.2 **Government responses to domestic violence in England and Wales, Australia, New Zealand and Canada: Overview**

In all four jurisdictions, as in the United States⁴, there has been a historical tendency for courts and police to treat domestic violence with insufficient seriousness, and as a matter outside the ambit of law enforcement⁵. In each jurisdiction, victims have commonly been reluctant to report incidents, opting to suffer in silence rather than to risk reprisals from their abusers⁶.

Over the past two decades, there has been a shift in attitude, however, in England and Wales, New Zealand, Canada and Australia. Each jurisdiction has implemented innovative mechanisms to address the problem of domestic violence. In many ways, these jurisdictions have adopted a holistic approach to domestic violence, acknowledging the need for creative mechanisms beyond the legal process alone, in the face of a pervasive and systemic problem of violence.

Many innovations in the jurisdictions examined stress the desirability of prevention, early identification of victims, and thorough response to victims' wide-ranging needs, both legal and non-legal. To accomplish this, the jurisdictions discussed here have employed a strategy of partnership with non-legal service providers and agencies in order to strengthen victims' access to a meaningful response from the police, prosecutors and the courts. Many jurisdictions have also incorporated mechanisms to minimise recidivism on the part of abusers, including mandated counselling and "perpetrator programmes".

This approach figures prominently in the Domestic Violence National Action Plan adopted by England and Wales. The Plan stresses prevention, reporting, a multi-agency government response and the holistic protection of victims.

Acknowledging the historic inadequacy of police responses to domestic violence, all jurisdictions considered here have adopted pro-arrest policies that encourage individual officers to respond meaningfully to reports of domestic violence. These governments have also issued written guidance and administered training to police regarding the handling of domestic violence complaints. Some have expanded police powers to hold, arrest or request protective orders against abusers. Governments have also introduced officers and units that specialise in domestic violence crimes, and in doing so have created an infrastructure of inter-agency cooperation in order to bring a wide range of support to victims from the moment they call the police. Enhanced documentation of

⁴ See generally Reva B. Siegal, *The Rule of Love: Wife Beating as Prerogative and Privacy*, 105 *Yale L.J.* 2117, 2118 (1996); Betsy Tsai, Note, *The Trend Toward Specialized Domestic Violence: Improvements on an Effective Innovation*, 68 *Fordham L. Rev.* 1285, 1289-90 (2000).

⁵ For example, in England and Wales, it was not uncommon in the past for a husband to beat his wife with legal impunity, and marital rape was only made an offence by the House of Lords in 1991. *R v R* [1992] 1 AC 599. In New Zealand, also, there has been a deeply-rooted view of domestic violence as being a "private matter" between spouses and/or partners. Marital rape was also legal in Canada until 1983.

⁶ Domestic Violence, sexual assault and stalking: Findings from the British Crime Survey. Home Office Research, Development and Statistics Directorate. March 2004; Jude McCulloch, "Domestic Violence Working Group"

domestic violence calls and increased monitoring of police conduct have also accompanied governmental domestic violence measures.

Specialised domestic violence courts are a particularly innovative feature of these jurisdictions' evolving approaches to the domestic violence problem. Perhaps the most exemplary court model is the Special Domestic Violence Court Programme in England and Wales. This model is discussed in some detail below, at paragraphs 6.1 - 6.11.

An integral component of innovative efforts to combat domestic violence is continuous assessment; the governments examined here recognise that without ongoing monitoring, the effectiveness of their methods remains unknown. These jurisdictions have built into their strategies some monitoring and reassessment mechanisms in order to evaluate the appropriateness and usefulness of adopted measures.

It is difficult to measure precisely the effectiveness of government responses to domestic violence, in part because the actual rates of domestic violence incidents are unknown. It is widely accepted that domestic violence is under-reported⁷. In part, this is due to the hidden nature of family and domestic violence. Obstacles to reporting domestic violence incidents are exacerbated for victims from indigenous and culturally diverse communities. Research has suggested that these victims are less likely to seek assistance or report abuse to police than those in the mainstream population. Because of under-reporting, varying definitions of domestic violence, and the difficulties of ascribing causation between statistical results and particular reforms, it is difficult to gauge the impact of any particular reform on the incidence of domestic violence.

However, as discussed below, there are some indications that innovative reforms have improved the domestic violence problem in the jurisdictions studied for this Brief. For example, England and Wales report a higher arrest rate in cases involving domestic violence. New Zealand and Australia have seen an increase in reporting of domestic violence incidents. Public awareness regarding domestic violence appears to have risen in Canada and Australia. Statistics in Canada and England and Wales reveal that specialist domestic violence courts are more effective than general courts in addressing domestic violence cases.

The following discussion examines selected domestic violence-related measures in these four jurisdictions in greater detail. These measures serve as examples for the international community of effective government responses to widespread domestic violence that comport with international legal obligations to respect, protect and ensure human rights.

3. GOVERNMENT INITIATIVES

This section of the Brief discusses various comprehensive government-led initiatives aimed at tackling domestic violence. Generally, the jurisdictions under discussion are concerned to develop a holistic, "partnership" approach. The following paragraphs focus on the particularly extensive initiatives undertaken by the governments of England and Wales and Australia, which integrate different governmental and private sector agencies

⁷ Walby S and Allen J (2004) *Domestic Violence, sexual assault and stalking: Findings from the British Crime Survey*. Home Office Research Study No. 276. Hester, M and Westmarland, N. (2005) *Tackling Domestic Violence: effective interventions*. Home Office Research Study No 290. Also, findings from the British Crime Survey indicate that only a minority of the worst cases of domestic violence were reported to the police (24% of women and 8% of men). Yearnshire, S (1997) *Analysis of cohort in Bewley, S, Friend, J and Mezey (eds) Violence against women*. London RCOG. Walby S and Allen J (2004) *Domestic Violence, sexual assault and stalking: Findings from the British Crime Survey*. See also, e.g., NSW Ombudsman, *Domestic violence: improving police practice*, December 2006, <http://www.ombo.nsw.gov.au/publication/PDF/specialreport/DV%20Improving%20police%20practice%20dec%202006.pdf>.

to provide assistance to victims of domestic violence. These initiatives go beyond the legislation-centric approach of the US government so as to provide more effective protection of a victim's human rights.

3.1 Domestic Violence National Action Plan

England and Wales

In England and Wales, the government has responded to domestic violence by developing a Domestic Violence National Action Plan (the Action Plan)⁸. The Action Plan sets out the following goals that the government, its respective agencies, local partnerships and the statutory and voluntary sectors should all be working towards:

- (a) reduce the prevalence of domestic violence;
- (b) increase the rate at which domestic violence is reported;
- (c) increase the number of domestic violence offences that are brought to justice;
- (d) ensure that victims of domestic violence are adequately protected and supported nationwide; and
- (e) reduce the number of domestic violence-related homicides.

Each of these objectives has generated a number of work streams that are performance managed by the Domestic Violence Virtual Group. This Group consists of officials from across government departments and reports on a quarterly basis to the Inter-Ministerial Group for Domestic Violence⁹.

The co-ordination of the Action Plan falls to the Home Office and sits within the Violent Crime Unit.

The British government recognises that addressing domestic violence effectively requires a multi-agency response, bringing together the services and expertise of a wide range of organisations and partnerships. In England and Wales this involves Primary Care Trusts/Local Health Boards, Local Criminal Justice Boards, Local Safeguarding Children Boards and other voluntary organisations. It also involves considering how the private sector can contribute, particularly with respect to awareness raising.

Multi Agency Risk Assessment Conferences (MARACs) involve key agencies, police, probation, education, health, housing and the voluntary sector, working together on individual victims' cases to share information. The various actors may thereby build a comprehensive picture of the abuse and agree on action to best support and protect a domestic violence victim and her family. MARACs are the latest development in the government's work to ensure that all agencies which a domestic violence victim encounters are coordinated in order to support and protect her from the moment she calls the police, through the court process and beyond. MARACs are discussed in more detail below, at paragraph 6.3.

⁸ First developed for 2005/2006 in Domestic Violence, A National Report, March 2005, Annex A. Domestic Violence Strategy 2006-2008: Domestic Violence Action Plan has since been published.

⁹ National Domestic Violence Delivery Plan Progress Report 2006/2007, March 2007

In 2005, the Corporate Alliance Against Domestic Violence (CAADV) was launched by the Home Secretary¹⁰. CAADV is a group of companies and organisations working together to address the impact of domestic violence in the workplace¹¹.

The government has also put its own house in order. In 2005, the Inter-Ministerial Group for Domestic Violence sent out letters to all the government departments asking them to implement robust domestic violence policies which would identify and protect staff and if necessary intervene with perpetrators. These policies are monitored quarterly by the Inter-Ministerial Group¹². In fact, in some cases, public organisations have had domestic violence policies for some time; for example, the Crown Prosecution Service has had such a policy since 2003.

In 2003, the government worked with the Public Carriage Office and the Transport and General Workers Union to make information and help available in London's black cabs for those fleeing domestic violence. Drivers were given a checklist of do's and don'ts, and domestic violence training has become part of the "finals talk" in which all new license holders must participate. Evaluation of this initiative has been positive; 96% of new license holders taking the course find it useful¹³.

3.2 National Public Awareness Campaign: 'Australia Says No'

Australia

A key component of recent Australian policy on domestic violence has been the national multimedia campaign, *Violence against women – Australia says no*. The campaign first ran in 2004 and re-ran in 2006-2007. The campaign aims to raise community awareness of domestic violence and sexual assault and advertises a 24-hour confidential helpline offering counselling for perpetrators and victims of violence¹⁴.

It is difficult to assess the effect of this initiative, although the federal government states that the success of the first campaign in 2004 prompted the campaign to be re-run¹⁵. A 2006 study on attitudes regarding domestic violence found that approximately three-quarters of those polled had recently seen, read or heard something in the media about violence against women. The 'Australia Says No' campaign was specifically referred to by 13% of respondents in the main sample¹⁶.

3.3 Funding for research on domestic violence

Australia

The Australian federal government also provides support for research on domestic violence through grants for specific research projects or to specific bodies like the

¹⁰ www.corporateallianceuk.com/home.asp

¹¹ The Department of Trade and Industry has reported that the costs of domestic violence with respect to lost economic output are around £2.7 billion per annum, mainly in the form of lost productivity and absenteeism. http://www.womenandequalityunit.gov.uk/domestic_violence/index.htm#costof_dv_rep. In April 2003, Business in the Community in conjunction with Women's Aid launched a CD-ROM entitled "Good Practice Guide for Employers on Domestic Violence and the Workplace".

¹² *National Domestic Violence Delivery Plan, Progress Report 2006/07*, March 2007

¹³ *Developing Domestic Violence Strategies - A Guide for Partnerships*, Home Office Violent Crime Unit, December 2004, page 19

¹⁴ Violence against women, Australia says no website, <http://www.australiasaysno.gov.au/>.

¹⁵ Australian Government Office for Women, Women's Safety Agenda—Elimination of Violence website http://ofw.facs.gov.au/womens_safety_agenda/index.htm.

¹⁶ The study found, however, that awareness of the campaign was lower amongst those surveyed from culturally diverse communities. Natalie Taylor and Jenny Mouzos, Community attitudes to violence against women survey: a full technical report, Australian Institute of Criminology, November 2006 at xii <http://www.aic.gov.au/publications/reports/2006-11-violenceAgainstWomen.pdf>.

Australian Institute of Criminology and Australian Institute for Family Studies. One important initiative has been the establishment and ongoing funding of the National Domestic and Family Violence Clearinghouse.

3.4 State government-led partnerships

(a) Strategy to Reduce Violence Against Women

New South Wales, Australia

The government of New South Wales (NSW) has developed its own Strategy to Reduce Violence Against Women, managed by the Violence Against Women Specialist Unit. The Unit is part of the NSW Department of Community Services¹⁷, and its work includes interagency co-ordination and the development of integrated responses to violence¹⁸. The Strategy created a State Management Group, which comprises senior representatives from various government departments and addresses inter-departmental issues¹⁹.

Additionally, the NSW Apprehended Violence Legal Issues Coordinating Committee ensures appropriate coordination of the criminal justice system service for people seeking apprehended violence orders and to examine and identify legal, policy and procedural barriers to the provision of adequate criminal justice system services²⁰. The Committee is an interagency group comprising non-government and government membership, including representatives from NSW Police, the Attorney General's Department, the Police Ministry, Local Courts, Office of the Director of Public Prosecutions and services such as the Domestic Violence Advocacy Service and the Women's Domestic Violence Court Assistance Schemes.

NSW Police have developed a Domestic Violence Proactive Support Service (DVPASS) Protocol and Resource manual to help achieve this. Under the DVPASS model, police officers refer consenting victims of domestic violence to local support agencies (such as women's counselling services)²¹. The Violence Against Women Specialist Unit has published *Domestic Violence Interagency Guidelines*, which is a guide for workers in the field of domestic violence²².

Some projects initiated in NSW, such as the Domestic Violence Intervention Response Team, have encouraged cooperation and partnership by co-locating support workers with police²³. Other projects feature coordination with other government agencies, such as the Department of Health and Department of Housing; this partnership arrangement streamlines the support process for victims²⁴. Child protection is a specific focus of other projects, and the co-location of police and Department of Community Service caseworkers has led to the creation of domestic violence response teams providing early intervention and intensive case management.²⁵

To meet the challenge of effective interagency cooperation, the *NSW Interagency Guidelines for Child Protection Intervention 2006* include a model for resolving

17 http://www.lawlink.nsw.gov.au/lawlink/vaw/ll_vaw.nsf/pages/vaw_aboutus
18 http://www.lawlink.nsw.gov.au/lawlink/vaw/ll_vaw.nsf/pages/vaw_aboutus
19 <http://www.women.nsw.gov.au/PDF/Archived/DV%20Interagency%20Guidelines.pdf> at 82 (dated April 2003 – a revised version of the Guidelines appears at <http://www.lawlink.nsw.gov.au/dvig>)
20 <http://www.women.nsw.gov.au/PDF/Archived/DV%20Interagency%20Guidelines.pdf> at 82 (dated April 2003 – a revised version of the Guidelines appears at <http://www.lawlink.nsw.gov.au/dvig>)
21 NSW Ombudsman Report, Domestic violence: improving police practice (December 2006) p 47
22 <http://www.women.nsw.gov.au/PDF/Archived/DV%20Interagency%20Guidelines.pdf> (dated April 2003 – a revised version of the Guidelines appears at <http://www.lawlink.nsw.gov.au/dvig>)
23 NSW Ombudsman Report, Domestic violence: improving police practice (December 2006) p 49
24 NSW Ombudsman Report, Domestic violence: improving police practice (December 2006) p 50
25 NSW Ombudsman Report, Domestic violence: improving police practice (December 2006) p 50

interagency differences²⁶. Integrated case management programs, involving contributions and cooperation from NSW Police, the Department of Community Services, the Department of Housing, NSW Health and the Department of Juvenile Justice, have had positive responses on domestic violence issues²⁷.

(b) **Women's Safety Strategy**

Victoria, Australia

The emphasis on developing an integrated response to domestic violence was underlined by the Victorian government's launch of a \$35.1 million spending plan as part of its Women's Safety Strategy. The plan acknowledged that:

"The Victorian Government's strong view is that family violence cannot be addressed by services acting alone. While much work has been undertaken by Victoria's family violence services in moving towards a more integrated system, leadership and coordination from Government working closely with sector agencies is needed to bring about real and lasting change²⁸."

In August 2002, the Office of Women's Policy in Victoria established the State-wide Steering Committee to Reduce Family Violence. This advisory committee seeks to improve the responses of police, courts, and all relevant service providers to family violence, through the development of an integrated response mechanism. The Steering Committee focuses in part on prevention, education and early intervention in relation to family violence. The Terms of Reference of the Committee recognise that family violence must be addressed through a whole-of-community whole-of-government approach, and in the context of the *Women's Safety Strategy*²⁹ and the *Victoria Police Violence Against Women Strategy: A Way Forward*.

The Steering Committee is co-chaired by the Office of Women's Policy and the Victoria Police. Its membership draws together representatives from government agencies, police, courts, community legal centres, the law reform commission, peak bodies and relevant service providers. In 2005 the committee launched its model for multi-agency coordination in responding to family violence³⁰.

The Steering Committee constructed a framework for integration involving the development of codes of practice, standardised procedures, memoranda of understanding between agencies, continuous assessment of service delivery, establishment of new roles dedicated to improving service integration, common planning/training and information sharing.

3.5 **Conclusion**

The National Action Plan adopted by England and Wales is national and comprehensive in scope. Agency-specific policies are monitored by the national government, as is agency performance under the Action Plan. The Action Plan also reaches beyond arrest

26 http://www.community.nsw.gov.au/documents/interagency_guidelines.pdf at Chapter 1, p 8

27 NSW Ombudsman Report, Domestic violence: improving police practice (December 2006) p 52

28 Office of Women's Policy (Vic), Changing Lives: A new approach to family violence in Victoria (November 2005)

29 [http://www.women.vic.gov.au/web12/rwpgslib.nsf/Graphic+Files/FamilyViolenceReport/\\$file/FamilyViolenceReport.pdf](http://www.women.vic.gov.au/web12/rwpgslib.nsf/Graphic+Files/FamilyViolenceReport/$file/FamilyViolenceReport.pdf)

30 Office of Women's Policy (Victoria), 'The Women's Safety Strategy'

<http://www.women.vic.gov.au/CA256EAE0012F311/Womens%20Policy/Womens+SafetyThe+Safety+Strategy>

30 Statewide Steering Committee to Reduce Family Violence (Vic), Reforming the Family Violence System in Victoria (2005)

[http://www.women.vic.gov.au/web12/rwpgslib.nsf/Graphic+Files/ReformingFamilyViolence/\\$file/ReformingFamilyViolence.pdf](http://www.women.vic.gov.au/web12/rwpgslib.nsf/Graphic+Files/ReformingFamilyViolence/$file/ReformingFamilyViolence.pdf)

policies alone to address prevention, reporting and the actual and consistent enforcement of legislation and policies related to domestic violence. The Action Plan integrates various aspects of the public and the private sector in responding to domestic violence and its consequences for victims, including the effects of violence on victims in the workplace.

The Australian public awareness campaign is also national in scope and targets community attitudes and apathy toward the domestic violence problem. Although the more comprehensive strategies in Australia are state-specific, they serve as a model for potential national programmes in Australia and in the United States. The Australian states have built up governmental infrastructure such that the government response to domestic violence is coordinated among various agencies and incorporates private sector support services.

The strategies to protect persons in their jurisdiction from domestic violence developed by England and Wales and Australia are holistic in nature and emphasise integrated responses from a combination of governmental and non-governmental actors. These strategies encompass far more than the legislation-centric approach adopted thus far by the United States government. Although they are extensive and innovative, these strategies are reasonable and necessary for the effective protection of human rights within a government's jurisdiction.

4. **LEGAL MECHANISMS FOR COMBATING DOMESTIC VIOLENCE**

Each of the jurisdictions has recently reviewed its approach to domestic violence and has in some form or another introduced legislation specifically geared towards tackling domestic violence, bolstering other available protections. The legal protections introduced include legislation which makes police and other public authorities more accountable and obliged to act to protect victims of domestic violence. Law enforcement agencies are also empowered with mechanisms (such as protective orders) by which they can take decisive action to protect victims of domestic violence on short notice, including, in some cases, pre-emptively. The legislative improvements in these jurisdictions are examples of measures that could equally be taken by the US government to improve protections for domestic violence victims throughout the US.

4.1 **Legislation**

England and Wales

In England and Wales, the Human Rights Act 1998 gives effect to the European Convention on Human Rights and Fundamental Freedoms in domestic law. It includes positive obligations on the part of public bodies to safeguard an individual's right to life (Art. 2), an individual's right not to be subjected to torture or inhuman or degrading treatment (Art. 3) and the right to private and family life (Art. 8) free from violence and intimidation. The European Court of Human Rights has made it clear that the police and other agencies with special powers to protect individuals from violence can be held liable for failure to use those powers³¹. These obligations are clearly applicable in cases where police officers are alleged to have committed domestic violence-related criminal offences.

In addition, section 6 of the Human Rights Act makes it unlawful for public authorities to act in a way which is incompatible with a Convention right. For example, if an officer fails

31 See, e.g., *Osman v UK* [1998] and *Z and Others v UK* [2001]

to exercise his power to arrest properly and further harm is caused, the police may be liable for negligence or breach of statutory duty under the Human Rights Act³².

The Domestic Violence, Crime and Victims Act 2004 represents the biggest overhaul of England and Wales' domestic violence legislation in the last 30 years. It includes a range of measures that aim to increase the safety of domestic violence survivors and link some criminal and civil remedies. Key provisions include:

- (a) Significant new police powers to deal with domestic violence including making it an arrestable, criminal offence to breach a non-molestation order, punishable by up to five years in prison³³.
- (b) Extending the availability of non-molestation and occupation orders to couples who have never lived together or been married³⁴.
- (c) Stronger legal protection for victims of domestic violence by enabling courts to impose restraining orders when sentencing for any offence. Until now, such orders could only be imposed on offenders convicted of harassment or causing fear of violence under the Protection from Harassment Act 1997³⁵.
- (d) Enabling courts to impose restraining orders on acquittal for any offence (or if a conviction has been overturned on appeal) if they consider it necessary to protect the victim from harassment. This will deal with cases where the conviction has failed but it is still clear from the evidence that the victims need protecting³⁶.
- (e) Putting in place a system to review domestic violence homicide incidents, drawing in the key agencies, to find out what can be done to put the system right and prevent future deaths³⁷.
- (f) Providing a code of practice, binding on all criminal justice agencies, so that all victims receive the support, protection, information and advice they need³⁸.
- (g) Setting up an independent Commissioner for Victims to give victims a powerful voice at the heart of Government and to safeguard and promote the interests of victims and witnesses, encouraging the spread of good practice and reviewing the statutory code³⁹.
- (h) Closing a legal loophole by creating a new offence of causing or allowing the death of a child or vulnerable adult. The offence establishes a new criminal responsibility for members of a household where they know that a child or vulnerable adult is at significant risk of serious harm⁴⁰.

New Zealand

In New Zealand, the DV Act, which came into force in 1995, is viewed as a radical overhaul of the previous legislation, the Domestic Protection Act 1982. Whilst the 1982 Act was used extensively, it soon came to be seen as insufficient for the needs of New Zealand society. In 1993, the Department of Justice published a paper with a range of

32 ACPO Guidance on Investigating Domestic Violence, 2004
33 Domestic Violence, Crimes and Victims Act 2004, s 1. (which amended Part 4 Family Law Act 1996)
34 Ibid s 4.
35 Ibid s 12(1). To be appointed
36 Ibid s 12(5). To be appointed
37 Ibid s 9. To be appointed
38 Ibid Part 3, ss 32-34
39 Ibid s 47 and ss 48-53. Partially to be appointed
40 Ibid s 5

reform options⁴¹. Among other things, the Department of Justice recommended the following:

- (a) The categories of persons who can apply for a non-violence order should be extended. For example: the 1982 Act should be amended to permit all "family or household members" to apply for protection orders,⁴² or to extend the Act to all persons who have an "intimate" relationship with another person;⁴³
- (b) The police must have clear and workable guidelines within which to operate;⁴⁴
- (c) A police policy of mandatory arrest for breach of a non-violence order should be implemented⁴⁵.

4.2 Protective orders

The jurisdictions considered provide for a variety of court orders, both criminal and civil⁴⁶, aimed at protecting domestic violence victims, including what amount to "pre-emptive acts", i.e. where psychological or physical harm has not yet occurred but there is a fear that a domestic violence offence will occur.

(a) Criminal law

England and Wales

Currently in England and Wales, the Protection from Harassment Act 1997 (PHA) contemplates two criminal offences of criminal harassment⁴⁷ and an offence involving fear of violence⁴⁸. If charged or convicted of either of these offences, the court can also grant a restraining order against an abuser. The Domestic Violence, Crime and Victims Act 2004 will extend the court's ability to impose restraining orders with regard to all offences⁴⁹. Once an abuser has been arrested and charged, the file passes to the Crown Prosecution Service⁵⁰.

Canada

In Canada, within criminal law, a battered woman may seek a surety to keep the peace (also referred to as a recognizance or peace bond against her abuser). The recognizance is available to an individual who "fears on reasonable grounds" that another person will injure her, her children, her spouse or common law partner, or damage her property⁵¹. If a justice of the peace determines that the applicant's fears are reasonable, the defendant must enter into a recognizance to keep the peace and be of good behaviour for up to twelve months. If he is unwilling to enter into the recognizance, he can be committed to prison for up to twelve months. The order can include conditions such as a prohibited or restricted possession of weapons and ammunition. If the order imposes no such condition, reasons must be given. In 1993, criminal harassment provisions came into effect under section 264 of the Criminal Code. While broadly framed and potentially open

41 Department of Justice, 1993 The Domestic Protection Act 1982: A Discussion Paper, Wellington.

42 Ibid, p 16.

43 Ibid, p 19.

44 Ibid.

45 Ibid, p 23.

46 Domestic Violence, A National Report, March 2005, Annex B: measuring progress.

47 s. 2

48 s. 4

49 DCVC s 12

50 The Prosecution Service is the principal criminal prosecuting authority for England and Wales, and its role is to prosecute on behalf of the public.

51 s. 810 of the Criminal Code

to anyone fearing for their safety, the legislative intent behind the provisions was to protect women and children from domestic violence.

New Zealand

In New Zealand, the DV Act provides for one form of protection order to which conditions can be attached. As discussed above, the class of persons able to apply for a protection order was increased to include children, siblings, persons in same-gender relationships, persons in any close personal relationship with another, and police officers⁵². The Act also contains a provision relating to temporary protection orders.⁵³

(b) **Civil law**

England and Wales

In England and Wales, the Family Law Act 1996 (FLA) provides for two main civil orders: occupation orders and non-molestation orders. As the name suggests occupation orders regulate the occupation of the family home. The Act includes a provision for the transfer of tenancy between spouse and cohabitants⁵⁴. In 2007 around 16,000 non-molestation orders were made.

Non molestation orders are to be lodged at the victim's local police station and must be served on the respondent in order to be effective. Enforcement problems had arisen due to failure to update the police system. The National Centre for Domestic Violence and the Association of Chief Police Officers responded to this problem by launching a one-year pilot project with the Surrey police force in February 2007, granting the Surrey police control room direct access to the National Centre's process server information (transmitted through palm pilots immediately following every attempt at service, successful or otherwise). Now the police have access to up to date information on which orders have been served on respondents, and may therefore confidently arrest a respondent in breach of an order⁵⁵. There is also a positive obligation on legal representatives to serve the order as soon as possible.

Canada

In relation to civil protections in Canada, an increasing number of civil options are becoming available to battered women. Because they arise from provincial or territorial legislation, different orders are available across the country. In some Canadian provinces and territories, restraining orders are obtained through family law acts. In these jurisdictions, such as British Columbia and Ontario, restraining orders may be sought as part of other family law applications, or may be sought on their own. In Ontario, under the Family Law Act, a restraining order may be sought against a spouse or former spouse prohibiting him from molesting, annoying, or harassing the applicant and children in the applicant's custody⁵⁶. The first breach of a restraining order may result in a fine of \$5000 and a three-month prison term. Subsequent breaches may result in a fine of \$10 000 and a two-year prison term⁵⁷. If a police officer suspects "on reasonable and probable grounds" that a restraining order has been breached, he or she may arrest without warrant⁵⁸. Emergency Orders and longer term Assistance or Protection Orders are also available in most Canadian jurisdictions. Common features of the emergency order

52 Sections 7 and 12 of the DV Act

53 s 13 of the DV Act

54 FLA s 33

55 Lovells' Interview with Steve O'Connor of NCDV, 26 March 2007

56 s 46(1)

57 s 46(2)

58 s 46.3

include: granting the claimant and other family members exclusive occupation of the residence, regardless of ownership; removing the respondent from the residence, either immediately, or within a specified time; sending a peace officer to the residence with a specified person to collect personal belongings in order to protect the victim; and prohibiting the respondent from contacting the victim or other specified persons. Some jurisdictions include restrictions on weapons and ammunition similar to those found in section 810 of the Criminal Code. The victim assistance or protection order is somewhat broader; it generally encompasses all the provisions included in the emergency order, with additional provisions including compensation, use or disposal of property, recommending therapy, access, and seizure of weapons.

New Zealand

New Zealand's DV Act provides for protection orders to which non-violence and non-contact conditions may be attached⁵⁹. There are three elements to establish for a protection order to be granted:

- (a) a 'domestic relationship' between the applicant and the respondent;
- (b) the occurrence of domestic violence⁶⁰; and
- (c) an order is necessary for the protection of the applicant or a child of the applicant.

An applicant may also apply for an order granting the victim the sole right to occupy any home which either of the parties owns or in which they have a legal interest, including a tenancy agreement⁶¹. In addition to occupation orders, tenancy orders, property orders, and furniture orders are also available under the DV Act.

Australia

In the Australian jurisdictions a court may make an apprehended domestic violence order (ADVO) without being satisfied that the person in need of protection has reasonable grounds to fear, and in fact fears domestic violence, if that person has been subject to conduct amounting to a personal violence offence and the order is necessary to protect the person from further violence⁶². The Act also provides for telephone interim orders if an incident occurs and the police officer has good reason to believe an order needs to be made immediately to ensure the safety and protection of the person to be protected or to prevent substantial damage to property of that person.⁶³ The circumstances in which a police officer must request an order have been broadened to include circumstances where the police officer suspects or believes that:

- (a) a domestic violence offence or a child abuse offence has recently been or is being committed, is imminent or is likely to be committed against the person for whose protection an order would be made; or
- (b) proceedings have been commenced in relation to the above offence.

It is important to note that the vast majority of apprehended domestic violence order applications in NSW are brought by the police.⁶⁴ The situation arises in the following

59 s.29

60 The definition of domestic violence in s.2 is broad.

61 s 52 and s 56

62 Crimes Act 1900, s 562G(2)(c)

63 s 562P to 562X Crimes Act 1900.

64 Law Reform Commission Report on Apprehended Violence Orders 2003, <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/r103toc>

context: police in NSW must apply for an apprehended violence order on behalf of a person in need of protection if they suspect or believe that a domestic violence, stalking⁶⁵ or child abuse offence has been or is being committed, or is imminent, or is likely to be committed, against the person who whose protection an order would be made. This police power is important because of the many reasons why a victim of domestic violence may tell a court that the victim does not fear for her safety despite considerable risk. Some perpetrators are apologetic after violent episodes and promise to refrain from harming their partners again. In other situations, a perpetrator may threaten further violence and compel a frightened victim to lie about her fears. The expanded power of police exists to provide additional protection to victims in such situations.

(c) **Civil / criminal hybrid orders**

Australia

Among the Australian jurisdictions, the Victorian Crimes (Family Violence) Act 1987 introduced a civil/criminal hybrid system by providing for an "Intervention Order". A court may make an Intervention Order where there is an assault, harassment or threat of assault against family members⁶⁶. The Police, the aggrieved family member or the parent/guardian of the aggrieved may seek an Intervention Order.⁶⁷

The Victoria Law Reform Commission noted that one obstacle facing police in pursuing intervention order breaches is the risk of having a court award costs against the police in an unsuccessful prosecution. In Victoria, a magistrate has complete discretion in all criminal matters to decide whether costs should be made against an unsuccessful party including the police.⁶⁸ The VLRC recommends that the ability to award costs against police be limited.⁶⁹

4.3 **Conclusion**

England and Wales has adopted comprehensive national legislation that specifically enshrines the government's international legal obligations to protect those in its jurisdiction from violence. The government's specific domestic violence legislation expands police and court powers but also implements a code applicable to *all* law enforcement agencies regarding the treatment of domestic violence victims.

Although the Australian government has not enacted comprehensive federal legislation addressing domestic violence, it has adopted a model code intended to be instructive to the various Australian states.

The Australian model code, and particularly the human rights and domestic violence-related legislation in England and Wales, serve as illustrative examples of measures of reasonable measures appropriately taken by a common law government. The United States government has refrained from upholding comprehensive domestic violence legislation that would be binding on law enforcement throughout the country. Existing legislation does not go far enough to enshrine the U.S. government's obligations under international human rights instruments to which it is signatory and party. The U.S. government has therefore failed to exercise due diligence to respect, protect and ensure the human rights of women and children in its jurisdiction.

⁶⁵ See Crimes Act s 562A

⁶⁶ Crimes (Family Violence) Act 1987 s 4(i)

⁶⁷ Crimes (Family Violence) Act 1987 s 7(1).

⁶⁸ Magistrates Court Act 1989, s131; Victorian Law Reform Commission Review of Family Violence Laws, page 135

⁶⁹ Magistrates Court Act 1989, s131; Victorian Law Reform Commission Review of Family Violence Laws, page 136

5. POLICE RESPONSE

Access to criminal or civil remedies hinges as much on the existence of appropriate legislation as on the response of law enforcers and service providers. The police are a key 24-hour agency for victims of domestic violence, and the first port of call in emergency.

Pro-arrest policies operate in most of the jurisdictions examined here. In both England and Wales and New South Wales, Australia, police are under a duty to record in writing their decision not to arrest. Canada operates a mandatory charging policy, although this policy has not been entirely successful.⁷⁰

One statistic cited in 1987 revealed that one-third of murders in Victoria, Australia stem from domestic disputes, and nearly 50 per cent of police calls to homes were due to complaints of family violence⁷¹. In that context, the attitudes of members of the police have a direct bearing on the outcomes of domestic violence situations in each of these jurisdictions, as well as the US. Police attitudes occur in a context where the vast majority of domestic violence is perpetrated by men against women, and where a large proportion of matters related to police work stem from domestic disputes.

One of the main areas of concern is police attitudes towards non-physical domestic abuse (e.g. psychological abuse), or where the abuse occurs gradually, involving an incident-by-incident development of a pattern of domestic violence, as opposed to clear-cut incidences of serious violence.⁷²

Official guidance issued to the police and training play an important part in police attitudes and response to domestic violence. Each of the jurisdictions considered operates a specific domestic violence training programme for police. One of the difficulties in ensuring adequate police protection of domestic violence victims is that they may find it difficult to approach the police for help. Measures such as specialist domestic violence officers serve to encourage victims to approach the police. England and Wales, New South Wales and Victoria all have specialist domestic violence police officers.

Improved training, availability of specialist officers and increased public awareness that victims making a report to police will be taken seriously and dealt with sympathetically are all measures that could be taken in the US to improve the protection offered to victims at the point of first response. While robust legislation and a holistic approach throughout law enforcement and other public and private sector agencies and actors are also necessary, great improvements could be made for victims if they are confident in the police as a first point of contact.

70 A final decision may perhaps be premature, but indications suggest that mandatory charging has been a failure in Canada. There has been no change in the reporting of domestic violence since mandatory charging policies were adopted. Even worse, the perhaps unforeseen consequence of mandatory charging policies has been dual charging, where victims of domestic violence who retaliate have been charged with assault.

71 Alan Ray and James Cotta, *Domestic Violence, Legal Remedies and the Police* (1987)

72 Judith Somaratne, Interview Associate-Professor Julia Tolmie (University of Auckland), 22nd September 2006.

5.1 Police powers of arrest

England and Wales

In England and Wales, there has been a movement in arrest policy towards greater emphasis on ensuring victim safety. Although arrest power remains discretionary, England and Wales have adopted a pro-arrest policy⁷³.

There is no longer a list of offences for which a police officer may arrest without a warrant. Instead, the Serious Organised Crime and Police Act 2005 ("SOCPA") introduced a power of arrest into the Police and Criminal Evidence Act 1984 (PACE), s24, for all offences⁷⁴.

Positive arrest policy is reinforced by the inclusion in the Policing Performance Assessment Framework (the key framework against which police officer performance is measured, and force-by-force performance compared), of a measure focusing on the percentage of cases where police are making an arrest where they have the power to do so.

If an arrest is not made, the officer must record why an arrest was not necessary, explain this to the victim, consider potential actions which could be taken under the Protection from Harassment Act 1997, and gather the necessary evidence to build a case for prosecution. These steps are required in order to ensure that an officer thinks carefully about the potential consequences for the victim if s/he decides not to make an arrest⁷⁵.

Australia

Pursuant to the most recent round of amendments to the Crimes (Family Violence) Act in 2006, the Act gives members of the Australian police force wide-ranging holding powers where the police officer reasonably believes that exercise of the power is necessary to ensure the safety of the aggrieved family member or the safety of that person's property⁷⁶. The purpose of the holding powers is to give the police enough time to apply for an interim intervention order.

There are two main categories of holding power:

(a) Direction powers

Under this provision, a member of the police may direct a person, orally or in writing, to go to or to remain at a certain location, or to remain in the company of a police officer or other person, before the police officer has issued a complaint⁷⁷. This does not apply to a stalking intervention order; and

(b) Detention powers

Under this provision, police officer may detain and jail a person who fails to comply with a direction made under section 8AC, as described above⁷⁸.

Holding powers last for six hours unless an extension is granted⁷⁹. Orders made pursuant to these sections can last beyond the issuing of an Intervention Order⁸⁰.

73 As confirmed in Safety and Justice: The Government's Proposals on Domestic Violence June 2003

74 SOCPA 2005, s110

75 ACPO Guidance on Investigating Domestic Violence, 2004

76 Crimes (Family Violence) Act 1987, s 8AB(b)

77 Crimes (Family Violence) Act 1987, s 8AC(1)

78 Crimes (Family Violence) Act 1987, s 8AD(1)

79 Crimes (Family Violence) Act 1987, ss 8AF(1) and 8AG

5.2 Police training and guidelines

England and Wales

In England and Wales, the Home Office has issued various circulars since late 1980s advising the police to treat domestic violence as a real crime. In order to improve standards and understanding about domestic violence within police forces, several training programmes have also been introduced. The key programme is "Responses to Domestic Violence" provided by the Central Police Training and Development Authority and the Association of Chief Police Officers.

The programme's aim is to provide training for all police and Crown Prosecution Service personnel who have any professional connection with the subject of domestic violence. The training objectives are:

- (a) Familiarity with legislation associated with policing domestic violence including the Domestic Violence, Crime and Victims Act and the Human Rights Act;
- (b) Explanation of the principle requirements for delivering a quality police and prosecutorial service to all victims of domestic violence, including children; and
- (c) To enable trainees to understand and fulfill their role and responsibility in relation to policing domestic violence.

The government's "National Delivery Plan for Domestic Violence 2005/08" set a target for all police forces to be trained in domestic violence by 2008 and this to currently developing according to schedule.

5.3 The Association of Chief Police Officers Guidance

England and Wales

The Association of Chief Police Officers (ACPO) Guidance is a set of national guidelines on investigating domestic violence for police forces⁸¹. It was produced by the National Centre for Policing Excellence on behalf of the Association of Chief Police Officers. The Guidance is non-statutory and where possible, evidence-based. Police forces are expected to incorporate the Guidance into their policies and working practices.

The priorities of the police service in responding to domestic violence are as follows:

- (a) to protect the lives of both adults and children who are at risk as a result of domestic violence;
- (b) to investigate all reports of domestic violence;
- (c) to facilitate effective action against offenders so that they may be held accountable through the criminal justice system; and
- (d) to adopt a proactive multi-agency approach in preventing and reducing domestic violence.

⁸⁰ Crimes (Family Violence) Act 1987, s 8AF(3)

⁸¹ ACPO Guidance on Investigating Domestic Violence, 2004

To ensure that domestic violence victims are taken seriously by the police, the ACPO Guidance⁸² states that officers should, inter alia, seek the following information when taking an initial report of domestic violence:

- (a) whether any person present appears drunk or has taken drugs;
- (b) whether there is any history of domestic violence;
- (c) whether there are any special needs, for example, disability, language difficulties;
- (d) details regarding the demeanour of the victim, suspect and witnesses; and
- (e) a verbatim account of what the caller says has occurred.

Under the Guidance, officers should inform victims of the local availability of refuges, Victim Support, outreach services and places of safety. In areas where specialist services do not exist, police officers should seek information from the National Domestic Violence Freephone Helpline to establish the nearest specialist support service⁸³.

Police may invoke a cocoon watch for the victim. This requests the help and support of neighbours, family and relevant agencies in further protecting the victim by contacting the police immediately if further incidents occur. A cocoon watch is only implemented with the informed consent of the victim. In some cases, in consultation with the victim, it might be appropriate to make the suspect aware of the action.

Police may also invoke a Police Watch. This provides a visible police presence to both the victim and the suspect and involves regular police patrols within the vicinity of the incident following reported incidents.

5.4 **ACPO Guidance: Identifying, assessing and managing risk in the context of policing domestic violence**

The Association of Chief Police Officers has also issued guidance on identifying, assessing and managing risk in the context of policing domestic violence⁸⁴. The core aims of these guidelines are to:

- (a) reduce the likelihood of future harm, including the effects of further violence, serious injury and homicide on adult and child victims, future victims and the public; and
- (b) facilitate the use of police powers in protecting the public, investigating crime, targeting offenders, intelligence-led policing, reducing and preventing crime and in contributing to the criminal justice system function of holding offenders accountable.

Among the myriad principles identified, the policy states that all police personnel who have contact with victims and suspects of domestic violence should have appropriate training to ensure knowledge and understanding of a series of established risk factors. The established risk factors are found at appendix 1 to the policy. The list focuses on contextual and situational factors which may apply in a particular domestic violence case and which may assist in indicating the likelihood of future harm by a particular suspect to

⁸² ACPO Guidance on Investigating Domestic Violence, 2004

⁸³ ACPO *Guidance on Investigating Domestic Violence*, 2004

⁸⁴ APCO Guidance: Assessing and managing risk in the context of policing domestic violence, 25 February 2005 [http://www.acpo.police.uk/asp/policies/Data/250205DV%20Risk%20Assessment%20\(ACPO%20Draft%20Guidance15.3%20last\).doc](http://www.acpo.police.uk/asp/policies/Data/250205DV%20Risk%20Assessment%20(ACPO%20Draft%20Guidance15.3%20last).doc)

a particular victim or more generally. The factors are divided into two parts (a) behaviour and circumstances of the suspect; and (b) circumstances of the victim.

5.5 Tackling Violent Crime Programme

England and Wales

The Tackling Violent Crime Programme (TVC Programme) has been introduced in 32 of the 373 Crime and Disorder Reduction Partnerships in England and Wales since November 2004 in an effort to reduce the national levels of serious violent crime. The programme provides these Partnerships – all of which are in areas with high crime rates – with the support and resources required to implement local initiatives specifically aimed at reducing domestic and alcohol-related violence.

As part of the TVC Programme, the Police Standards Unit ran an eight week enforcement campaign to address domestic violence. A total of 46 basic command units participated. Funding in the amount of £1.25 million was made available to the campaign, which ran from 3 March to 31 March 2006.

The focus of the campaign was:

- (a) the use of an enforcement vehicle crewed by a crime scene investigation officer and a police officer dedicated to attending and investigating domestic violence incidents utilising a new domestic abuse investigation pack rolled out with the TVC Programme, and a direct link to victim support or advocacy service;
- (b) a commitment to better investigation of domestic violence within the police communications control room, using recently produced call taker prompt cards to update current IT command and control systems and additional training; and
- (c) to address the recidivism element of domestic violence, through targeting and profiles.

At the conclusion of the campaign, participating basic command units attended a “lessons learned” conference to share good practice and review the overall effect of the campaign. This learning was then implemented within a second campaign held from 9 June to 9 July 2006 to coincide with the FIFA World Cup 2006. This second campaign involved 59 basic command units that were part of the TVC or SDVC Programme. Up to £5000 was made available to the basic command units involved.

In September 2006, Jill Dando of the Institute of Crime Science reported on the campaigns⁸⁵. In October 2006, the Police and Crime Standards Directorate also reported on the campaigns⁸⁶. The findings in the reports back up other research⁸⁷ linking big football and rugby matches to an upswing in reports of domestic violence. In particular, basic command units in South Wales drew links between domestic violence and sporting events, mostly involving Wales playing in the rugby six nations tournament, other incidents occurring when local football teams were playing⁸⁸.

85 UCL Jill Dando Institute of Crime Science: Domestic Violence Enforcement Campaign Guidance on problem profiles, Rosie Erol, September 2006.

86 Lessons Learned from the Domestic Violence Enforcement Campaigns 2006, Police and Crime Standards Directorate, October 2006

87 Ibid, page 23

88 Ibid, page 24

Based on the findings, the government has invited football and sporting groups to join it and 70 corporations in addressing domestic abuse as part of the UK Corporate Alliance Against Domestic Violence.

New South Wales, Australia

The Domestic Violence Policy and Standard Operating Procedures in New South Wales provide procedural instructions and guidance to police officers for responding to domestic violence incidents. The issues which the Standard Operating Procedures address include, but are not limited to:

- (a) entry to premises;
- (b) court related procedures;
- (c) the roles and responsibilities of DV Liaison Officers;
- (d) the Charter of Victims Rights; and
- (e) information about referral and support services⁸⁹.

Victoria, Australia

In recent years, the Victoria Police has proactively reviewed its policies and procedures in relation to family violence. In late 2001, it conducted a review into all matters related to violence against women. The review team consulted widely with government and non-government specialist service providers and published their findings in *The Way Forward: Violence Against Women Strategy (August 2002)*⁹⁰.

The result of the report was the subsequent release of the Victoria Police Code of Practice for the Investigation of Family Violence on 31 August 2004 (the Code). The Code strives to ensure a consistent, equitable and accountable response by the Victoria Police to family violence⁹¹.

The Code provides a comprehensive outline of process and procedures to be adopted by Victorian Police in responding to family violence complaints. The Code enshrines a proactive, pro-arrest policy for responding to family violence. The Code also requires police officers at the scene of a family violence incident to make a referral to a family violence support agency. The mandatory referral requirement acknowledges that a holistic co-ordinated approach is required to adequately deal with family violence.

The Code requires police to implement one or more of the following options in responding to family violence:

- (a) criminal option – the Code requires that this be the primary response to family violence.⁹²

89 The Standard Operating Procedures are currently under review and it is foreshadowed that the new Procedures will significantly differ from the current document in order to provide a much more user-friendly resource. The information will likely be organised into six sections: reporting; investigation; protective interventions; recording; victim follow-up and appendices. NSW Ombudsman, "Domestic violence: improving police practice", A special report under s31 of the Ombudsman Act 1974 at page 63.

90 Victoria Police, Code of Practice, Executive Summary

91 Victoria Police, Code of Practice, Executive Summary

92 Victoria Police, Code of Practice for the Investigation of Family Violence (August 2004), 4.1.1. http://www.police.vic.gov.au/files/documents/464_FV_COP.pdf.

- (b) civil option – police may apply for an intervention order without requiring the consent of victim in appropriate circumstances. If police do not apply for an intervention order, they must record their reasons for not doing so.⁹³
- (c) referral option – police must on each occasion make a referral to an appropriate organisation. This is a mandatory element of police response to family violence.⁹⁴

Although a formal independent review of the Code has not yet been undertaken, anecdotal responses to the Code generally have been positive.⁹⁵

Since the launch of the Code, 10 Family Violence Advisors have been established at police stations within 5 police regions to facilitate the implementation of the Code. Further, all police are required to complete 4 hours of training over a 12 month period on the Code⁹⁶.

Following the implementation of the Code, the number of applications for intervention orders by police has significantly increased⁹⁷.

According to Dr Renata Alexander⁹⁸, prior to 2005 the number of intervention orders issued was between 18% to 20%. In 2006, this increased to about 36%, and in 2007 this increased to 42%.

The Magistrates Court of Victoria considers the increase to be due in substantial part to the introduction of the Code⁹⁹; primarily to the Code's requirement that police officers write incident reports specifying why intervention orders were not issued¹⁰⁰.

Victoria Police has also initiated an award process in recognition of excellence in performance of individual police in their approach and response to family violence.¹⁰¹ This serves as an incentive for police to adopt best practices in relation to family violence.

5.6 Specialised domestic violence units and officers

(a) DV Units and DV Champions

England and Wales

All forces in England and Wales now have policies on domestic violence, and the majority have specialised domestic violence units or domestic violence officers, or equivalent types of officers based within other types of specialist community focused teams, such as "community safety units".

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- 93 Victoria Police, Code of Practice for the Investigation of Family Violence (August 2004), 5.3.3. http://www.police.vic.gov.au/files/documents/464_FV_COP.pdf.
 - 94 Victoria Police, Code of Practice for the Investigation of Family Violence (August 2004). http://www.police.vic.gov.au/files/documents/464_FV_COP.pdf.
 - 95 See, for example, discussion of the Code in Victorian Law Reform Commission, Review of Family Violence Laws Report (March 2006) [http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/\\$file/Final_report.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/$file/Final_report.pdf) at Chapter 5, especially 5.3, 5.19 and 5.23.
 - 96 Victoria Police, Media Release: Victoria Police responds to domestic violence (2 August 2005) http://www.police.vic.gov.au/content.asp?Document_ID=813
 - 97 Victorian Law Reform Commission, Review of Family Violence Laws Report (March 2006) page 145 [http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/\\$file/Final_report.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/$file/Final_report.pdf)
 - 98 Interview with Freehills, 13 March 2007
 - 99 Magistrates Court of Victoria, Annual Report 2005-2006, p 31 [http://www.magistratescourt.vic.gov.au/CA256902000FE154/Lookup/Annual_Report/\\$file/Annual_Report_2005-06.pdf](http://www.magistratescourt.vic.gov.au/CA256902000FE154/Lookup/Annual_Report/$file/Annual_Report_2005-06.pdf).
 - 100 Interview with Freehills, 13 March 2007; Victoria Police Code 5.3.2.
 - 101 Victoria Police, Media Release: Police honoured for work combating family violence (28 October 2006) http://www.police.vic.gov.au/content.asp?Document_ID=8992

It is recognised that, with limited staff resources, DV officers cannot attend all domestic violence incidents as part of their core business. However, training Domestic Violence Champions for each shift has proved extremely successful. For example, Rhondda, Cynon and Taff Basic Command Units (of the South Wales Police) identified 32 officers (one per shift per section) to undertake specialist domestic violence training in order to be known as Domestic Violence Champions. These officers will also be trained in the use of body-worn cameras to further enhance their investigative ability at the scene of domestic violence crimes¹⁰².

Those areas of England and Wales that have a DV unit with an investigative capacity show a clear improvement in results. There is a noticeable difference in the percentage of offenders brought to justice if the investigation is conducted by specialist, trained staff when compared with patrol staff or other non-specialist officers¹⁰³.

(b) Domestic Violence Liaison Officers

New South Wales, Australia

In New South Wales, Domestic Violence Liaison Officers support the work of the Local Area Commands by providing vital links with community issues and concerns, information and intelligence, while also forming partnerships for victim support and follow-up¹⁰⁴. The DV Liaison Officer is a member of the Crime Management Unit and works closely with the Crime Manager, Crime Coordinator, Intelligence and other Liaison Officers to ensure that strategic as well as tactical responses to domestic violence are adopted by the Local Area Command. The role of the DV Liaison Officer is therefore one of support and coordination, as opposed to a first response function¹⁰⁵.

Police Prosecutors, in collaboration with DV Liaison Officers, work to ensure that domestic violence victims understand the circumstances in which an application for an apprehended violence order has been made, and any related problematic issues such as the potential for contesting an application, and the victim's options if the defendant requests a change to the order's conditions.

(c) The Witness Assistance Service

New South Wales, Australia

The Witness Assistance Service is a state-wide service within the Office of the Director of Public Prosecutions (ODPP) and is staffed by professionally qualified workers. There is a Witness Assistance Service worker in each of the ODPP offices¹⁰⁶.

The Witness Assistance Service provides a range of services aimed at minimising re-traumatisation for the victim while going through the criminal proceedings. The service is available to witnesses and victims of crime involved in cases being prosecuted by the ODPP. The Witness Assistance Service can accept referrals once the police have finished their investigation and charges have been laid against the alleged offender¹⁰⁷.

102 Police and Crime Standards Directorate, Lessons Learned from the Domestic Violence Enforcement Campaigns, October 2006
103 Police and Crime Standards Directorate, Lessons Learned from the Domestic Violence Enforcement Campaigns 2006, October 2006
104 Violence Against Women Specialist Unit, NSW Attorney General's Department, *Domestic Violence Interagency Guidelines* (February 2003)
105 NSW Police Rosehill Local Area Command, Role and Responsibilities of Domestic Violence Liaison Officer
106 Ibid, p56
107 Ibid

(d) **Family Violence Units**

Victoria, Australia

The Victoria Police has a Family Violence Unit which works with central departments, developing and implementing strategies aimed at enhancing police response to family violence. The Family Violence Unit provides training and co-ordinates the police regional Family Violence Advisers and Family Violence Liaison Officers. Its role is to oversee, develop, implement and evaluate police responses to family violence¹⁰⁸.

In October 2006, the police announced an additional 8-member Family Violence Unit to be implemented¹⁰⁹.

In addition to the Family Violence Unit, the following specialist positions exist with the Victoria Police¹¹⁰:

- (a) Family Violence Managers provide a regional contact point and manage and supports Family Violence Advisers and Family Violence Liaison Officers within their region; and
- (b) Family Violence Advisers who provide a focal point for the interface between operational police and Family Violence Liaison Officers and local agencies. There are 10 Family Violence Advisers within 5 regions.

Family Violence Liaison Officers are responsible for monitoring the stations' response to family violence. A Family Violence Liaison Officer is posted at every 24-hour police station in Victoria; each such officer is a sergeant charged with the consistent and coordinated approach to family violence.

5.7 **Monitoring police effectiveness**

England and Wales

The Police Performance Assessment Framework includes a statutory performance indicator (SPI), which covers police performance in response to acts of domestic violence. Since 1st January 2006, the SPI has been defined as the "[p]ercentage of domestic violence incidents where an arrest was made related to the incident".

The Police Performance Assessments for 2005/06¹¹¹ showed a 4.5 point increase in the domestic violence arrest rate nationally, from 23.2% in 2004/05 to 27.7% in 2005/06¹¹². This is a marked improvement, especially considering that the general power of arrest introduced by the Serious Organised Crime and Police Act 2005 only came into force on 1 January 2006.

Victoria, Australia

Another example of an interesting initiative to improve monitoring of domestic violence statistics is the establishment of the Victorian Family Violence Database.¹¹³ The

108 Victoria Police, Family Violence Unit http://www.police.vic.gov.au/content.asp?Document_ID=288; Police, Code of Practice: For the Investigation of Family Violence (2004), paragraph 6.1.2.

109 Victoria Police, Media Release: Team launched to combat family violence (2 October 2006) http://www.police.vic.gov.au/content.asp?Document_ID=8688

110 Victoria Police, Code of Practice: For the Investigation of Family Violence (2004), paragraphs 6.1.3, 6.1.4, 6.1.5.

111 Police Performance Assessments for 2006/07 have not yet been published.

112 Police Performance Assessments 2005/06

113 Victorian Community Council Against Violence, Five-Year Report on the Victorian Family Violence Database, 2005 http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/eba7704c58c08f4/Victorian_Family_Viole

database was established in 2000 by the Victorian Community Council Against Violence in collaboration with a number of government and non-government agencies, including Victoria Police, Department of Human Services and the Magistrates' Court of Victoria. The database stores a range of records including police reports of family violence incidents and data on finalised applications for intervention orders. An analysis of the data recorded in the first five years of operation was released in 2005.

Victoria Police collect and store statistical data on its Law Enforcement Assistance Programme. This is a case management and data storage system which was implemented in 1993. It is an online database that is updated continuously 24 hours a day¹¹⁴.

An increase in the number of police recorded domestic violence incidents is apparent in the Victorian data. The number of family violence incidents recorded by Victoria Police increased by 41% from 19,597 in 1999-2000, to 27,672 in 2003-2004. The increase in reporting of domestic violence incidents appears, however, not just related to an overall increase in incidents, as the number of finalised intervention order applications remained relatively constant during the same period. This divergence led the Victorian Family Violence Database's five year report to attribute the increase largely to Victoria Police's focus on the issue of family violence and the outcomes of the Victoria Police review of responses to family violence.¹¹⁵

5.8 Conclusion

The combination of pro-arrest policies, training, guidelines and special domestic violence officers has yielded observable positive results in England and Wales and in Australia. As described above, efforts in these jurisdictions have extended beyond pro-arrest or mandatory arrest measures alone. In addition to training, guidelines and specialist officers, police response to domestic violence has also focussed on increasingly holistic attention to victims' needs, through coordination with and referral to other governmental and non-governmental sources of support. These are measures which could be introduced in the US to improve the protection offered to victims of domestic violence at a first response level, and to support victims in a cross-agency and holistic manner.

6. THE LEGAL PROCESS: COURTS

To make meaningful the police's powers to respond to domestic violence incidents, women must also have access to and confidence in the court systems in which perpetrators will be prosecuted. Each of the jurisdictions considered has introduced mechanisms that support women, psychologically and otherwise, in accessing the legal process.

Statistics from Canada and England and Wales suggest that specialist courts improve the success rate of prosecutions. Violence Intervention Programmes have been developed in

nce_Database-FiveYearReport_part1.pdf;
http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/eba7714c58c0b2a/Victorian_Family_Violence_Database-FiveYearReport_part2.pdf;
and
http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/eba7724c58c0d1c/Victorian_Family_Violence_Database-Five_Year_Report_Appendix.pdf.

114 Victoria Police Website: Statistics; http://www.police.vic.gov.au/content.asp?Document_ID=781

115 Victorian Community Council Against Violence, Five-Year Report on the Victorian Family Violence Database, 2005 at p 1
http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/eba7704c58c08f4/Victorian_Family_Violence_Database-FiveYearReport_part1.pdf.

many of the Australian jurisdictions¹¹⁶ and aim to implement measures within the criminal justice system such as specialist domestic violence magistrates and prosecutors.

Specialist Domestic Violence Courts have existed in Canada since the 1990s. New South Wales is developing specialist domestic violence courts as a part of its pilot Domestic Violence Intervention Model. This model aims to enhance a co-ordinated and integrated response to domestic violence that goes beyond the court process to involve other agencies. Specialist courts are also being piloted in Victoria. Similar courts exist in the state of South Australia in the form of the Family Violence Court.

The specialist court in England and Wales is perhaps the most innovative and extensive model among the jurisdictions examined here. For this reason, a detailed discussion of its components and processes follows. The US could learn from the experiences of England and Wales, Australia and Canada and introduce systems to provide greater access to courts for victims of domestic violence and so improve protection holistically.

6.1 Specialist Domestic Violence Court (SDVC) programme

England and Wales

Since 2005, in England and Wales, there has been a wide-scale roll-out of a Specialist Domestic Violence Court (SDVC) programme, which extends beyond the court process alone to provide a model for all agencies that respond to domestic violence. In doing such, the SDVC programme is a particularly and holistic approach to domestic violence within a court system.

The SDVC system is not precisely a separate court building or separate jurisdiction. Rather, it is a specialised procedure for domestic violence cases within the magistrates' courts. Two types of SDVCs currently operate:

- (a) Clustering – all cases are grouped into one court session to deal with pre-trial hearings: bail variations, pleas, pre-trial reviews, pre-sentence reports and sentencing. Some cluster courts also hear trials in a specific domestic violence session; and
- (b) Fast-tracking – specific pre-trial review sessions are allocated for domestic violence cases; 1 of 4 court slots is allocated to domestic violence for all further hearings/trials.

Some courts also have separate entrances and waiting areas so that victims do not encounter their attackers. Separate facilities are being implemented in the majority of Crown and Magistrates' courts where possible. The government aims for all Crown courts and 90% of Magistrates' courts to have separate facilities by 2008.

Empirical data suggest that SDVCs have had an impact on the level of prosecutions in domestic violence cases. For example, successful prosecutions in domestic violence cases have increased from 46% in December 2003 to 65% in December 2006, with specialist court prosecutions rising to 71%¹¹⁷.

There are now more than 60 specialist domestic violence courts across England and Wales. There are four roll-out areas where, in addition to SDVCs, a number of ordinary

116 Northern Violence Intervention Programme in Adelaide. Central Violence Intervention Programme in Elizabeth. The Family Violence Intervention Programme in Australian Capital Territory.

117 Crown Prosecution Service Report 2006

courts incorporate specific measures to address domestic violence cases. There will now therefore be at least one SDVC in every region in England and Wales.

There is more to the SDVC programme than specific domestic violence courts. Although it has court processes at heart, the government intends for those areas with SDVCs to adopt a holistic approach involving not just the criminal justice system, but other partners, including health and social services. The government has identified 11 core components that each SDVC system should consider:

- (a) multi-agency partnerships with protocols; for example, local areas should develop (i) a roles and responsibilities protocol listed by each agency; and (ii) an information sharing protocol;
- (b) multi-Agency Risk Assessment Conferences (MARACs)¹¹⁸ and Multi-Agency Public Protection Arrangements¹¹⁹;
- (c) early identification of cases of domestic violence;
- (d) specialist domestic violence support services, including Independent Domestic Violence Advisors, Victim Support, Witness Care Units¹²⁰, refuge services, etc.;
- (e) trained and dedicated criminal justice staff;
- (f) court listing considerations, for example, cluster cases, fast-track cases or other listing considerations such as morning trials to accommodate child care needs and the school run, and applications to vary bail only considered after all the parties have been informed;
- (g) equality and diversity issues;
- (h) data collecting and monitoring;
- (i) court facilities;
- (j) children's services, including special measures under the Youth Justice and Criminal Evidence Act; and
- (k) community-based perpetrator programmes.

6.2 Integrated Domestic Violence Court

England and Wales

The government has recognised the fact that a spouse or partner who wishes to make applications arising from domestic violence allegations may have to attend two different courts in two separate jurisdictions, criminal and civil, to present similar or the same facts. This is widely seen as unsatisfactory, inconvenient and a waste of court time.

118 MARACs are a recent development in services offered to victims of domestic violence. MARACs are discussed below at section 6.3 of this Brief. In 2006/2007, all SDVC areas were trained in operating a MARAC.

119 MAPPA address the risk management issues of those offenders posing the highest risk of serious harm.

120 Witness Care Units ("WCUs") deal with support for victims and witnesses. Witness care officers co-ordinate the support and services provided to the witness and keep them informed throughout the case. A needs assessment is carried out for all witnesses who are being called to court to identify any problems which would prevent the witness giving evidence or attending court. These problems might include child care or transport problems, language difficulties, disabilities or particular concerns such as intimidation. Specialist witness care units improved witness attendance at court by nearly 20 percent in five criminal justice areas according to an independent evaluation. Specific procedures for WCUs have been set up with No Witness No Justice (the National Victim and Witness Care Programme) to deal with domestic violence cases. http://www.cjsonline.gov.uk/the_cjs/whats_new/news-3102.html

The government has proposed¹²¹ to support the development of an Integrated Domestic Violence Court (IDVC). The IDVC would hear both the criminal and civil aspects of the same case. Cases would be heard sequentially, with the criminal case, where possible, heard first. An IDVC would provide an improved service to families in crisis, by coordinating criminal and civil proceedings where the underlying issue is domestic violence.

A National Implementation Project Board for IDVC was set up in July 2004 to develop a model for the IDVC. The pilot of the first IDVC was carried out in September 2006. Croydon, London was earmarked by the CPS as a pilot site for both the SDVC and IDVC¹²².

6.3 Multi-Agency Risk Conferences

England and Wales

One of the key components of the SDVC Programme is a Multi-Agency Risk Conference (MARAC). MARACs ensure that all agencies across government and beyond which interact with domestic violence victims adopt a co-ordinated approach.

Typical permanent attendees at MARACs include:

- (a) the police;
- (b) social services;
- (c) Independent Domestic Violence Advisors¹²³;
- (d) victim support services;
- (e) health representatives;
- (f) housing representatives; and
- (g) probation service.

Other ad-hoc attendees may include representatives of:

- (a) community-based and voluntary perpetrator programmes;
- (b) mental health services;
- (c) local drug and alcohol services;
- (d) homelessness services; and
- (e) children's support organisations.

121 Domestic Violence- A National Report, March 2005.

<http://www.crimereduction.gov.uk/domesticviolence/domesticviolence51.pdf>

122 Unfortunately, the IDVC was postponed at the request of the Department for Constitutional Affairs, pending national input, and was not ultimately included in the pilot scheme. Evaluation of Domestic Violence Pilot Sites at Caerphilly (Gwent) & Croydon 2004/05. Final Report

123 Independent Domestic Violence Advisors (IDVAs) have been introduced in England and Wales, to support the victim and to complement the SDVC programme. IDVAs are involved in the court process and beyond. A similar function exists in New South Wales in the form of the Women's Domestic Violence Court Assistance Programme. These Advisors are discussed in more detail in paragraphs 6.4 below.

The victim does not attend the MARAC, nor does the perpetrator or the Crown Prosecution Service. The victim will normally be informed that her case will be discussed by the MARAC, unless doing so would jeopardise the victim's safety. The MARAC will ordinarily be chaired by an officer from either the police or the probation services. This is usually someone with the rank of Detective Inspector or equivalent.

MARACs are recommended to be held fortnightly. It is also recommended that meetings be held insofar as possible, mid-week to enable prompt action to be taken before the weekend.

All cases that are reviewed by MARACs should be target-hardened (this involves upgrading the security for the victims, e.g. lock-changing), offered police watch and have an occurrence marker placed on the police computer.

If victims and their children are at high risk of being severely hurt or killed, agencies must agree to prioritise the actions assigned and deliver them on the day of the MARAC or as soon as possible thereafter.

The Home Office has worked together with the organisation Co-ordinated Action Against Domestic Abuse to develop a comprehensive support package for areas seeking to establish or develop the MARAC process.

6.4 **Independent Domestic Violence Advisors**

England and Wales

Alongside the SDVCs, the government is also funding IDVAs. The role of IDVAs is to provide professional support to victims throughout the process of their case and ensure their safety is coordinated across the criminal justice system. As IDVAs are independent from, for example, the police, they can continue to work with the victim through the court process and after.

It is recommended that each SDVC should have at least one accredited IDVA¹²⁴.

While IDVAs will accept all referrals, their focus is on providing a service to victims at medium to high risk of harm. IDVAs tend to come in at the point of crisis for a victim, i.e. just after a police call out or Accident and Emergency attendance.

IDVA involvement with victims has been shown to decrease repeat victimisation, increase notification of children at risk, and reduce the number of victims unwilling to support a prosecution. In the evaluation report on the SDVC pilots in Caerphilly and Croydon it was found that victims were more likely to participate in the criminal justice system if they were assisted by IDVAs¹²⁵.

A study has also highlighted that an IDVA can co-ordinate the protection of the criminal and civil courts to avoid a victim being left with no protection; for example, an IDVA can ensure that a solicitor has been briefed so that a civil order can be sought immediately after bail conditions are dropped¹²⁶.

124 SDVC Programme Resource Manual, March 2006

125 The Second Evaluation of the Cardiff Women's Safety Unit and the Evaluation of Specialist Domestic Violence Court/Fast Track System.
http://www.caada.org.uk/library_resources/WSU7.pdf

126 www.caada.org.uk/library/index.html

6.5 Training for judges and prosecutors

England and Wales

The government has also developed improved training for judges and magistrates and issued best practice guidance for the courts and other professionals, including prosecutors and the national probation service on how to deal with child contact cases and domestic violence. For example, all SDVC areas have received a Central Police Training and Development Authority training package and “Domestic Violence – An Ordinary Crime?” package issued by the Judicial Studies Board.

Once an abuser has been arrested and charged, the file passes to the Crown Prosecution Service (CPS). The CPS produces various publications on domestic violence, including a leaflet entitled 'Domestic violence: How prosecution decisions are reached', and a more substantial document, 'Domestic Violence: Policy for prosecuting cases of domestic violence'. CPS also has a policy for prosecuting cases of rape and sexual assault.

A Domestic Violence National Implementation Team was set up in July 2005 to oversee the domestic violence work across CPS. The Team reports to a Domestic Violence Board, consisting of the Directors of Equality & Diversity, Policy and the Business Development Directorate. The CPS has also introduced a network of Domestic Violence Co-ordinators.

Since April 2005, all CPS Domestic Violence Co-ordinators have been trained using the Central Police Training and Development Authority /CPS “Responses to Domestic Violence” training programme. By February 2007, 2400 CPS staff members were trained¹²⁷.

6.6 New South Wales pilot programme

Australia

The New South Wales Local Court has introduced a pilot Domestic Violence Intervention Court Model at two of its locations. The pilot was developed in response to recommendations arising out of the 2003 NSW Summit on Alcohol Abuse.¹²⁸ The programme commenced in September 2005 at Wagga Wagga Local Court and at Campbelltown Local Court in December 2005. The pilot programme is expected to run for two years.¹²⁹

Although it is still premature for a full evaluation of the pilot program, early responses to the programme are positive. The NSW Ombudsman has reported the programme is:

*"promoting a productive and cooperative relationship between police and the courts and that the focus on early production and quality of briefs is resulting in more early guilty pleas and reduced court time."*¹³⁰

The NSW Women's Domestic Violence Court Assistance Programme (WDVCAP) is a NSW government funded project established in 1996 which is managed by the Legal Aid Commission.

127 National Domestic Violence Delivery Plan. Progress Report 2006/07, March 2007

128 Communique from NSW Summit on Alcohol Abuse, 29 August 2003 at 9.34
http://www.alcoholinfo.nsw.gov.au/alcohol_summit_03/home/Communique.pdf.

129 NSW Local Court Annual Review 2005 at p 9
[http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/Local_Court_Annual_Review_Web.PDF/\\$file/Local_Court_Annual_Review_Web.PDF](http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/Local_Court_Annual_Review_Web.PDF/$file/Local_Court_Annual_Review_Web.PDF).

130 NSW Ombudsman, Domestic violence: improving police practice, December 2006 at 6.5.1
<http://www.ombo.nsw.gov.au/publication/PDF/specialreport/DV%20Improving%20police%20practice%20dec%202006.pdf>.

WDVCAP comprises 33 court assistance schemes (Women's Domestic Violence Court Assistance Schemes) which service 55 courts across the state, together with a training and resource unit.¹³¹ Through the assistance schemes, women and their children are provided with support, advocacy, referral and information and access to legal representation.¹³² The court assistance schemes also undertake law reform work on domestic violence issues and undertake community development and educational activities.¹³³ The schemes are managed by community based, not-for-profit organisations, including community legal centres.¹³⁴

Court assistance schemes also offer a range of other services, including explaining the process of obtaining apprehended domestic violence orders, attending court with victims and providing referrals.¹³⁵

6.7 Central Violence Intervention Program

Australia

The Central Violence Intervention Program, which operates out of metropolitan Adelaide, South Australia, began in 1999. It aims to provide an innovative approach to policy, practice and service delivery, to promote the safety of women and children by focussing on perpetrator accountability. Programme participants are the Adelaide Magistrates' Court, the Department for Correctional Services, the Department for Families and Communities, the Salvation Army and the South Australia Police¹³⁶.

Some distinct features of the programme include:

- (a) a specialist magistrate presiding on a weekly basis over a Family Violence Court which deals with criminal matters and restraining orders;
- (b) the programme provides the Family Violence Court with information, such as reports of the defendant's progress and pre-sentencing reports; and
- (c) men may attend treatment programs before any court contact.¹³⁷

6.8 Northern Violence Intervention Programme

Australia

The Northern Violence Intervention Programme, located in Elizabeth, South Australia, operates under the auspices of the Northern Metropolitan Community Health Service¹³⁸.

Some of the programme's unique features are:

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- 131 <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/90980001142555828703.pdf> at p 2
- 132 http://www.lawlink.nsw.gov.au/lc/dvlink.nsf/pages/pol_cap_prog
- 133 <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/90980001142555828703.pdf> at p 3
- 134 <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/90980001142555828703.pdf> at p 10
- 135 <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/90980001142555828703.pdf> at Appendix 14
- 136 B Duigan and J Felus, 'The Central Violence Intervention Programme – "A Model of Collaboration"' (2002) Issue No 5 Australian Domestic and Family Violence Clearinghouse Newsletter, http://www.salvationarmy.org.au/salvwr/_assets/main/documents/cvip/cvip_model.pdf
- 137 J Stewart, 'Specialist Domestic/Family Violence Courts within the Australian Context' (2005) Issues Paper 10 from the Australian Domestic and Family Violence Clearinghouse at 28, http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issuespaper_10.pdf
- 138 J Stewart, 'Specialist Domestic/Family Violence Courts within the Australian Context' (2005) Issues Paper 10 from the Australian Domestic and Family Violence Clearinghouse at 27, http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issuespaper_10.pdf

- (a) a Family Violence Court operating out of Elizabeth Magistrates' Court, similar to the Family Violence Court in Adelaide;
- (b) court grants of permission for abusers to enter perpetrator programs; and
- (c) women's groups, children's groups and family counselling¹³⁹.

6.9 Australian Capital Territory (ACT) Programme

Australia

The Family Violence Intervention Programme commenced in the ACT in 1998. The Programme aims to implement domestic violence measures in the criminal justice system that maximise safety and protection of family violence victims and provide opportunities for offender accountability and rehabilitation¹⁴⁰. The Programme addresses domestic violence, child abuse and elder abuse.

ACT Policing, the Domestic Violence Crisis Centre, the ACT Office of the Director of Public Prosecutions, ACT Corrective Services, Relationships Australia, the Victims of Crime Coordinator and ACT Legal Aid Office all cooperate to implement and participate in the Program.

The Programme's innovative characteristics include:

- (a) the appointment of specialist Family Violence Prosecutors in the ACT Director of Public Prosecutions;
- (b) the establishment of a 24-hour, seven day a week Domestic Violence Crisis Service which provides advocacy and support for victims;
- (c) the creation of a Chief Magistrate's Practice Direction on Family Violence in 2000 and a dedicated Family Violence Magistrate, who hears family violence criminal matters only;
- (d) a three-day training programme for all police and prosecutors and the appointment of a Family Violence Project Sergeant and other staff in the ACT Police; and
- (e) new court procedures and roles such as fast-tracking procedures and a Witness Assistant with the Director of Public Prosecutions, who assists the prosecutor with information relating to victim safety, bail applications and witnesses.¹⁴¹

6.10 Domestic Violence Courts

Canada

In Canada, beginning in the 1990s, several Domestic Violence Courts were established to address domestic violence in a systematic way. The first court of this kind was the Winnipeg Family Violence Court, which was based on the following elements:

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- 139 Government of South Australia, 'The Justice Portfolio – The Violence Intervention Program', http://www.justice.sa.gov.au/project_vip.htm ; J Stewart, 'Specialist Domestic/Family Violence Courts within the Australian Context' (2005) Issues Paper 10 from the Australian Domestic and Family Violence Clearinghouse at 28, http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issuespaper_10.pdf
 - 140 Domestic Violence Crisis Centre, ACT Family Violence Intervention Programme (FVIP), www.dvcs.org.au/Resources/FVIP%20info%20for%20WEBSITE.doc
 - 141 J Stewart, 'Specialist Domestic/Family Violence Courts within the Australian Context' (2005) Issues Paper 10 from the Australian Domestic and Family Violence Clearinghouse at 8-9, 14 and 26, http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issuespaper_10.pdf

- (a) a “zero-tolerance” pro-arrest policy;
- (b) a women’s advocacy and child victim/witness programme for victims of family violence;
- (c) a specialized prosecutorial unit of 11 Crown Prosecutors;
- (d) specially designed courtrooms and dockets for intake, screening court and trials; and
- (e) a special probation unit to deliver court/mandated treatment programs¹⁴².

The goals of this court are to expedite processing, increase victim involvement, and to use sentencing approaches that focus on the safety of the victim, including requiring treatment and supervision of abusers¹⁴³. Two of these goals seem to have been met: despite an increase in case volume, processing time has averaged three months. Sentencing changed dramatically with a tripling of probation supervision, a doubling of jail terms, a reduction in the number of fines, and court-mandated treatment a condition imposed on 25% of those convicted¹⁴⁴.

In Ontario, a province-wide Domestic Violence Justice Strategy has been implemented in several specialised courts. The strategy’s aim is early intervention, victim support, effective prosecution, and abuser accountability¹⁴⁵. There are two streams, depending on the nature of the abuse: an early intervention stream focusing on treatment for first offenders that did not use weapons and did not cause significant harm to the victims, and a coordinated prosecution stream for cases where the goal is to gather solid evidence to secure conviction¹⁴⁶. An evaluation of this project showed more vigorous policing in the coordinated prosecution stream, decreased processing time, and increased guilty pleas in the early intervention stream¹⁴⁷.

6.11 Conclusion

The SDVC programme in England and Wales is an exemplary response to historical problems of low rates of victim involvement in the judicial system and low rates of successful domestic violence prosecutions. It is both national and comprehensive. The system addresses the legal handling of individual cases by judges and prosecutors, victim comfort and safety inside and outside the courtroom, and the intensive case management needs by a wide variety of actors from within and without the government.

The programmes in Australian and Canadian jurisdictions, while not national in scope, echo elements of the SDVC programme by prioritising specialisation and multi-actor partnerships to promote victim participation and access to services.

Specialised courts have been shown to improve judicial handling of domestic violence cases. Such courts clearly impact the domestic violence problem positively by enhancing victim access and safety, as well as through increased success in prosecutions. Their existence and continued evolution in various common law jurisdictions make specialised domestic violence courts a particularly commendable measure for the improvement of the

142 Department of Justice Canada, Report of the Ad-Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Violence Legislation and Policies, 2003 [Working Group].

143 Jane Ursel, “The Winnipeg Family Violence Court” in M. Valverde, L. MacLeod and K. Johnson eds., *Wife Assault and the Canadian Criminal Justice System: Issues and Policies* (Toronto: University of Toronto, 1995).

144 Working Group, *supra* note 43 at 41.

145 *Ibid.*

146 *Ibid.* at 42.

147 Ontario Ministry of the Attorney General, “The Evaluation of the Domestic Violence Courts: Their Functioning and Effects in the First Eighteen Months of Operation, 1998-1999” by Sharon Moyer et al. (2000).

United States' efforts to respect, protect and ensure women and children's freedom from domestic violence.

7. **ADDITIONAL SYSTEMIC RESPONSES TO DOMESTIC VIOLENCE**

A modern approach to dealing with domestic violence in society recognises that more is required than just legislation, and the mere arrest or issuance of protective orders against perpetrators, and that fundamental changes are needed in the way in which violent occurrences and their perpetrators are handled. The jurisdictions considered approach the problem of domestic violence holistically, spending time and resource on continuously learning and improving systems by analysing cases, creating programmes for educating perpetrators to try to prevent repeat offences, and providing support and compensation to victims to encourage them to participate in the criminal justice system and benefit from the assistance that is available.

The US could learn from the experiences of the jurisdictions considered here and introduce holistic systems through which domestic violence can be dealt with and, where possible, reduced, to offer greater protection to US citizens.

7.1 **Research and investigation**

England and Wales

In England and Wales, domestic homicide reviews are conducted in order to identify the lessons to be learnt from the deaths of victims of domestic violence. The reviews are not inquiries into how the victim died or who is culpable: that remains a matter for coroners and criminal courts. There is a presumption that a domestic homicide review will be carried out in every case¹⁴⁸.

Australia

New South Wales is considering introducing similar domestic homicide review procedures. In Victoria, the Victorian Law Reform Commission recommended in its 2006 report that, in consultation with the State Coroner, the committee should investigate and make recommendations to the government regarding the creation of a family violence death review committee in Victoria¹⁴⁹.

7.2 **Beyond restraining and detaining: special programmes**

England and Wales

England and Wales has undergone a nation-wide roll-out of accredited perpetrator programmes – in fact, the government claims that such a roll-out has never been attempted anywhere in the world¹⁵⁰. In England and Wales, the general view is that couples work or other restorative justice measures are inappropriate for domestic violence cases. Restorative justice programmes are also viewed with caution in Canada.

148 Guidance for domestic homicide reviews under the Domestic Violence, Crime and Victims Act 2004, Home Office 2006, section 2.5

149 Victorian Law Reform Commission, Final Report (2006) on the Crimes (Family Violence) Act 1987 p 419

150 One criticism is that the programme focuses on male perpetrators only and also does not deal with same-sex perpetrators.

New Zealand

New Zealand's DV Act specifically provides for educational programmes for both the perpetrator and the victims (including children). Sanctions are available should the perpetrator fail to attend the programme.

In Victoria, courts have the power to make attendance at a perpetrator programme a condition of an intervention order – although this power is rarely invoked. In addition, magistrates' courts in Victoria can mandate a perpetrator to attend counselling.

7.3 Compensation, Victim Support and Rehabilitation

Each of the jurisdictions considered employs a compensation scheme of some sort which is applicable to victims of domestic violence, although the amounts recoverable vary.

New Zealand

Of all the schemes, New Zealand would appear to be unique in that it is based on "no fault" compensation aimed at decreasing law suits by ensuring that state compensation is available for all victims of crime. It also covers counselling by approved professionals – which is arguably also available under the scheme in England and Wales.

England and Wales

England and Wales appears to provide the most generous scheme, though it is subject to some criticisms with respect to delay and the amounts paid out.

The Criminal Injuries Compensation Scheme (CICS) was set up in 1996 as a method of providing financial compensation for people who have been injured as a result of a violent crime. A victim is always entitled to sue in court a person who has criminally injured him or her, but will not get very far if the person has no money or assets. The main advantage of CICS is that it is funded from money set aside by the government, so that compensation will be available if a claim meets certain requirements. Additionally, claims can still be considered even if the victim does not know the name of the person who injured him or her. It is not necessary for a person to have been convicted of the crime for a claim to be met, however a prosecution must have been brought against the assailant for an award to be made¹⁵¹ and as previously discussed, in many circumstances, instances of domestic violence are not prosecuted.

The Criminal Injuries Compensation Act 1995, as amended by the Domestic Violence, Crime and Victims Act 2004, provides that, as from a day to be appointed, the Secretary of State, by regulations made by statutory instrument, may provide for the recovery from an appropriate person of an amount equal to all or part of the compensation paid in respect of a criminal injury¹⁵². An appropriate person is a person who has been convicted of an offence in respect of the criminal injury¹⁵³.

The amount recoverable from the offender must be determined only by reference to the extent to which the criminal injury is directly attributable to an offence of which he has been convicted¹⁵⁴.

The aim of this amendment is to give the Criminal Injuries Compensation Authority (CICA) a power to recover from offenders the money it has paid in compensation to their victims

¹⁵¹ Criminal Injuries Compensation Scheme 2001, para. 17
¹⁵² s7A(1) Criminal Injuries Compensation Act 1995
¹⁵³ s7A(2) Criminal Injuries Compensation Act 1995
¹⁵⁴ s7A(3) Criminal Injuries Compensation Act 1995

under CICS. In practice, where CICA has paid compensation to a victim of violent crime, it will be able to pursue the offender for some or all of that compensation through the civil courts¹⁵⁵. In its response to the government's consultation paper regarding this amendment, Victim Support expressed concern that, where the perpetrator and victim are known to each other, a perpetrator may seek revenge against a victim if he is sued for recovery of the compensation award¹⁵⁶. The NCDV agrees with Victim's Support's assessment and has also commented that, where children are involved, there is a need to maintain a working relationship between the victim and his or her abuser, and an ongoing compensation claim by CICA against the abuser will strain what is already a very difficult relationship¹⁵⁷.

7.4 Code of Practice for Victims of Crime

England and Wales

The Code of Practice for Victims of Crime was launched in April 2006. The Code sets out the standards of service that victims can expect from the criminal justice agencies, including:

- (a) A right to information about the crime within specified time scales, including the right to be notified of any arrests and court cases.
- (b) A dedicated family liaison police officer to be assigned to bereaved relatives.
- (c) Clear information from the Criminal Injuries Compensation Authority (CICA) on eligibility for compensation under the Scheme.
- (d) All victims to be told about Victim Support and either referred on to them or offered their service.
- (e) An enhanced service in the cases of vulnerable or intimidated victims.
- (f) Flexibility with regard to opting in or out of receiving services to ensure victims receive the level of service they want.

Victims have the right to appeal should they feel that any of the service providers have not delivered their obligations under the Victims' Code. If dissatisfied with the response to their complaint, victims will be able to take their case to the Parliamentary Ombudsman via their Member of Parliament¹⁵⁸.

7.5 Conclusion

A meaningful government response to a problem as widespread and institutionalised as domestic violence must incorporate continued research and investigation, along the lines of the reviews conducted in England and Wales.

The United States government must recognise, as have the governments examined here, that protective orders and/or arrest alone fall far short of the due diligence standard required for the protection of women and children from domestic violence. Creative, systemic and holistic responses to domestic violence incidents must be a priority. Many of the jurisdictions examined here have incorporated counselling and other rehabilitative

155 Parliamentary Under-Secretary of State for the Home Department, Debate of the Domestic Violence, Crime and Victims Bill. Hansard Report 23 June 2004, Column 1345.

156 Compensation and Support for Victims of Crime, Victim Support's Response.

157 Lovells' Interview with Steve O'Connor of NCDV, 26 March 2007

158 http://www.cjsonline.gov.uk/the_cjs/whats_new/news-3232.html

programmes for perpetrators of domestic violence. The objective of these services is to prevent further violence and thereby protect potential future victims of domestic violence.

The jurisdictions discussed above have also implemented victim compensation schemes in order to provide greater support to victims, both materially and psychologically. All such measures must be undertaken, however, with the utmost care for the protection of the victim from reprisals or other future harm.

8. CONCLUSIONS: HOW EFFECTIVE ARE THE MEASURES AIMED AT DOMESTIC VIOLENCE?

Although, as discussed above, it is difficult to measure the effectiveness of specific policies on the domestic violence problem, many of the methods employed by the jurisdictions considered here have demonstrated observable success.

8.1 Effectiveness of measures to improve police response

England and Wales

In England and Wales, Police Performance Assessments for 2006-07 indicated a national increase by 2 points in the domestic violence arrest rate, rising from 29.2% in 2005-06 to 31.3% in 2006-07¹⁵⁹.

Specifically, areas of England and Wales with specialised domestic violence investigation units have yielded demonstrable results. The increase in the number of offenders brought to justice where the investigation is conducted by specialist, trained staff is marked when compared to non-specialist police staff¹⁶⁰.

New Zealand

Recorded family violence occurrences and arrests in New Zealand have more than doubled in the past ten years¹⁶¹, due at least in part to better police education and increased identification through community support of domestic violence victims.

Australia

In Victoria, Australia, the adoption of the Victoria Police Code of Practice for the Investigation of Family Violence appears also to have improved police response to domestic violence complaints. Although no formal review has taken place since the adoption of the code in 2004, anecdotal responses to the Code have been predominantly positive¹⁶².

The Victoria Police records reveal an increase in the number of police recorded domestic violence incidents. The number of recorded family violence incidents increased by 41% from 1999-2000 to 2003-2004. The total number of finalised intervention order applications remained relatively constant during the same period. This indicates that the

159 Police Performance Assessments 2006/07 at 104

160 Police and Crime Standards Directorate, Lessons Learned from the Domestic Violence Enforcement Campaigns 2006, October 2006

161 NZ Police statistics <http://www.nzfvc.org.nz/NewsItem.aspx?id=67> (as at 24th September 2006)

162 See, for example, discussion of the Code in Victorian Law Reform Commission, Review of Family Violence Laws Report (March 2006) [http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/\\$file/Final_report.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Family_violence/$file/Final_report.pdf) at Chapter 5, especially 5.3, 5.19 and 5.23.

increase in domestic violence reporting is due to positive changes in the Victoria police officers' awareness of and responses to domestic violence¹⁶³.

8.2 Effectiveness of changes to court handling of domestic violence cases

England and Wales

The Special Domestic Violence Court (SDVC) programme in England and Wales represents the most exhaustive and innovative of the judicial schemes examined for this Brief. The SDVC programme reportedly has yielded a significant increase in successful prosecutions in domestic violence cases. Successful prosecutions in such cases increased from 46% in December 2003 to 65% in December 2006; specialist court prosecutions rose in the same period to 71%¹⁶⁴.

Independent Domestic Violence Advisors are a component of the SDVC programme, and their involvement with victims has been demonstrated to effect many positive results. Advisor involvement has resulted in decreased repeat victimisation, increased notification of children at risk, and a decreased number of victims unwilling to pursue prosecution. Specifically, an evaluation of the SDVC programme in Caerphilly and Croydon revealed that victims were more likely to participate in the criminal justice system if they were assisted by Advisors¹⁶⁵.

Australia

With regard to the special domestic violence courts in New South Wales, Australia, early responses are positive. The NSW Ombudsman reports that the programme's focus on early production and quality of briefs has resulted in an increased number of early guilty pleas and reduced time spent in court¹⁶⁶.

Canada

The special domestic violence courts in Canada have both decreased case processing time and increased case volume. Sentencing of domestic violence perpetrators has also increased but has also been accompanied by court-mandated treatment in 25% of convictions¹⁶⁷.

A Domestic Violence Justice Strategy implemented in several of Ontario's specialised courts has resulted in increasingly vigorous policing, decreased processing time, and increased guilty pleas¹⁶⁸.

8.3 Conclusions

While it is difficult to measure the success of specific measures targeting domestic violence, the above findings reflect positively on methods such as pro-arrest policies

163 Victorian Community Council Against Violence, Five-Year Report on the Victorian Family Violence Database, 2005 at p 1
http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/eba7704c58c08f4/Victorian_Family_Violence_Database-FiveYearReport_part1.pdf.

164 Crown Prosecution Service Report 2006

165 The Second Evaluation of the Cardiff Women's Safety Unit and the Evaluation of Specialist Domestic Violence Court/Fast Track System.
http://www.caada.org.uk/library_resources/WSU7.pdf

166 NSW Ombudsman, Domestic violence: improving police practice, December 2006 at 6.5.1
<http://www.ombo.nsw.gov.au/publication/PDF/specialreport/DV%20Improving%20police%20practice%20dec%202006.pdf>.

167 Working Group, *supra* note 43 at 41.

168 Ontario Ministry of the Attorney General, "The Evaluation of the Domestic Violence Courts: Their Functioning and Effects in the First Eighteen Months of Operation, 1998-1999" by Sharon Moyer et al. (2000).

accompanied by comprehensive police guidelines, police training, and the implementation of police units and courts that specialise in domestic violence matters. These data may also reflect the importance of incorporating holistic, multi-agency responses to victims' needs.

The difficulty of documenting and measuring effectiveness also points to the importance of detailed and thorough monitoring of police and judicial responses to domestic violence. Improved monitoring of police and court practices constitutes one aspect of the U.S. government's legal duty to exercise due diligence to respect, protect and ensure that women and children in its jurisdiction are free from domestic violence.

Additionally, the various methods of government response to domestic violence discussed in this Brief are examples of the type of systemic, integrated and holistic measures the U.S. government must undertake in order to meet its international legal obligations.

Federal domestic violence legislation in the United States fails to bind law enforcement agencies to any minimum standard of compliance with international human rights law in the context of domestic violence. As a result, many police officers throughout the United States do not effectively respond to domestic violence incidents, even where a restraining order is in effect. Despite the existence of some local mandatory arrest laws or pro-arrest policies, actual enforcement of these laws by police officers is significantly lacking.

There is no comprehensive domestic violence legislation, police guidance, consistent enforcement, or comprehensive federal monitoring of enforcement. The U.S. government's efforts also fail to integrate the response of law enforcement to domestic violence with other governmental and non-governmental agencies and sources of support.

In view of the many careful mechanisms developed by other governments, and in view of the U.S. government's obligations under international human rights law, the minimal nature of measures undertaken by the U.S. government make clear that it has not exercised proper diligence in its efforts to respect, protect and ensure the human rights of women and children in its jurisdiction.

In order to combat domestic violence most effectively, the United States government must adopt comprehensive reforms that are directed at changing traditional law enforcement practice. These reforms must also seek to transform community apathy toward domestic violence over time. Legislative reform mandating or encouraging arrest will be ineffective on its own and will be insufficient to satisfy the U.S. government's human rights obligations under international law.

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Protection from Harassment Act 1997

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Appendix 2: Terminology

This section lists the acronyms used throughout this Brief.

England and Wales

ACPO	Association of Chief Police Officers
BCU	Basic Command Unit
CAADA	Co-ordinated Action Against Domestic Abuse (charity)
CAADV	Corporate Alliance Against Domestic Violence
CAFCASS	Children and Family Court Advisory and Support Service
CENTREX	Central Police Training and Development Authority
CICA	Criminal Injuries Compensation Authority
CICS	Criminal Injuries Compensation Scheme
CPS	Crown Prosecution Service
DVCA	The Domestic Violence, Crime and Victims Act 2004
DVLO	Domestic Violence Liaison Officer
DVO	Domestic Violence Officer
DVU	Domestic Violence Units
ECHR	European Convention on Human Rights and Fundamental Freedoms
FLA	The Family Law Act 1996
HMICA	Her Majesty's Inspectorate of Court Administration
HMCS	Her Majesty's Court Service
HRA	Human Rights Act 1998
IDAP	Integrated Domestic Abuse Programme
IDVA	Independent Domestic Violence Advisor
IDVC	Integrated Domestic Violence Court
MARAC	Multi-Agency Risk Assessment Conferences
MAPPA	Multi-Agency Public Protection Arrangements
NCDV	National Centre for Domestic Violence
PHA	Protection from Harassment Act 1997
PPAF	Police Performance Assessment Framework

SDVC	Specialist Domestic Violence Court
SOCPA	Serious Organised Crime & Police Act 2005
SPI	Statutory Performance Indicator
TVCP	Tackling Violent Crime Programme
WCU	Witness Case Units
<u>Australia</u>	
ABS	Australian Bureau of Statistics
Act	legislation passed by Federal or State Parliament
ACT	The Australian Capital Territory
ADVO	Apprehended Domestic Violence Order
ALRC	The Australian Law Reform Commission
AVO	Apprehended Violence Order
CFVA	Crimes (Family Violence) Act (VIC)
DOCS	Department of Community Services (NSW)
DPP	Director of Public Prosecutions
DVLO	Domestic Violence Liaison Officers (NSW)
DVSOP	Domestic Violence Policy and Standing Operating Procedures – This documents the operational requirements for police officers when responding to domestic violence matters (NSW)
FVU	Family Violence Unit (VIC)
IO	Intervention Order (VIC)
LAC	Local Area Command of the New South Wales Police
NSW	The State of New South Wales
NSWLRC	The New South Wales Law Reform Commission
VLRC	The Victorian Law Reform Commission
WDVCAs	Women's Domestic Violence Court Assistance Schemes (NSW)
WDVCAP	Women's Domestic Violence Court Assistance Programme (NSW)