

Policing Domestic Violence

Own Initiative Investigation into
the Policing of Domestic
Violence in the ACT

Report released under section 41A of the
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POLICING DOMESTIC VIOLENCE

OWN INITIATIVE INVESTIGATION INTO THE POLICING OF DOMESTIC VIOLENCE IN THE ACT

Overview

1. Domestic violence is an issue of major community concern, affecting many hundreds of families across the ACT every year. The police have a vital role to play in protecting the victims of domestic violence and enforcing the law in relation to domestic violence offences.
2. Since July 1998, the Australian Federal Police (AFP) has been part of the ACT Government's "Family Violence Intervention Program" (FVIP). One aspect of this program is the development of a best practice model for policing domestic violence. This model has recently been piloted by the AFP's Woden Patrol.
3. The Acting Ombudsman wrote to the Commissioner of the AFP on 3 July 2000 to inform him that my own initiative investigation into the policing of domestic violence in the ACT would proceed 'in a manner which complements the activities and objectives of the Woden project'. The focus of the investigation has been on the efficacy of the AFP's guidelines and practices, particularly as they are being applied in the Woden Patrol pilot project.
4. Although my investigation has focused on the Woden Patrol pilot project – itself part of the ACT Government's criminal justice response to domestic violence – I have taken a 'whole-of-policing' approach. That is, I have examined the policing of domestic violence not only in terms of the law enforcement role of the AFP, but also in terms of the AFP's community policing role. My recommendations therefore are made to assist in the development of a best practice model for policing domestic violence in the ACT, not simply a model for policing the law enforcement elements of domestic violence.
5. The model being piloted by the Woden Patrol has seen a significant improvement in the responses to incidents of domestic violence by that Patrol. The very existence of the Woden Patrol pilot project is welcome evidence that the AFP is responsive to the importance government and the community attaches to the fair and effective policing of domestic violence.
6. However, in my opinion there are a number of areas where the practices and procedures of the Woden pilot project could be improved. They include:

- i. the need for clear guidelines and procedures;
 - ii. the need for training to encourage the use of the full range of investigative equipment; and
 - iii. the need for greater emphasis on police use of emergency protection orders.
7. The Woden Patrol's understanding and implementation of the "pro-arrest" policy also raised several issues of concern – most notably relating to the discretionary nature of the arrest power, the function of arrest in relation to victim safety, and the need for "positive action" when no offence was identified – that would benefit from greater clarification and guidance.
8. Despite much discussion and consideration, which was substantially included in an earlier discussion paper provided to the AFP, I have not been able to reach agreement with the AFP on these issues. Accordingly, in order to avoid further delaying my report's main recommendations, I propose to defer my final judgement on these matters until I have been able to see the new Domestic Violence Guidelines, which I understand the AFP are currently drafting.
9. As the inadequacies of past practice were ACT-wide, I believe the AFP should implement across the ACT the best practice model as piloted by the Woden Patrol (incorporating the recommendations of this report). In my opinion, also, the Watch House (responsible for bail), and some supporting functions – AFP Communications, record-keeping (PROMIS), Victim Liaison, and legal services – require additional attention and resources if the best practice model is to be fully effective.
10. I have made a number of recommendations, mostly relating to practices and procedures as expressed in AFP Guidelines and training. These recommendations relate to issues raised in relation to the Woden Patrol pilot project, to other necessary elements of the police response to domestic violence such as communications, recording and legal support, and to the overall suitability of the Woden pilot for application throughout the ACT. These recommendations are made in order to assist the AFP's effort to develop a truly best practice model for the policing of domestic violence in the ACT. The AFP responses follow the recommendations in *italics*, followed by any further comments by me.

POLICING DOMESTIC VIOLENCE

PART 1. INTRODUCTION

BACKGROUND

1.01 In July 1998, the Domestic Violence Coordinator (DVC) of the ACT Magistrate's Court approached my office to express her concerns about the policing of domestic violence in the ACT. I set in train a preliminary investigation to obtain information about the incidence of domestic violence in the ACT and other such general information. In late 1999, the DVC accompanied by the Victims of Crime Coordinator (VOCC) again approached my office and again raised their concerns about the policing of domestic violence in the ACT.

1.02 I assessed their concerns against the record of complaints received by my office in relation to the policing of domestic violence. Our own record of complaints and the concerns of the DVC and VOCC indicated the existence of some systemic issues in the Australian Federal Police's practices and procedures in relation to domestic violence. On 21 March 2000, as a result of these preliminary enquiries, I began an 'own initiative investigation' under section 21A of the *Complaints (Australian Federal Police) Act 1981* into the policing of domestic violence in the ACT.

SCOPE

1.03 During the course of my preliminary investigation, I ascertained that the ACT Government was reviewing police practices and procedures in relation to domestic violence as part of the Territory-wide "Family Violence Intervention Program" (FVIP). The first phase of the program (FVIP I) ran until mid-1999 and was followed by an evaluation report prepared by the consultants, Keys Young. The second phase (FVIP II) was initiated towards the end of 1999, and included a proposal for developing a 'Best Practice Model in Policing Family Violence'. The keystone of this was the Woden Patrol pilot project, launched in May 2000, a scheme whereby the Woden Patrol of the AFP implemented and evaluated over 12 months a 'best practice model'. I understand that phase three of the program is currently being considered.

1.04 On 3 July 2000, the Acting Ombudsman informed the Commissioner of the AFP that the 'own initiative investigation' would proceed 'in a manner which complements the activities and objectives of the Woden project'.

1.05 My investigation has focused on police procedures in the context of community policing, which includes the criminal justice response to domestic violence. It is widely accepted that police have a critical role to play in dealing with domestic violence even when no criminal offence has been identified. In my opinion, any police procedures which focused only on the criminal justice element would ignore the important role police ought to play when no specific offence presents itself; certainly such procedures could not be defined as best practice policing. My approach towards the Woden Patrol pilot project has been to assess the extent to which it provides a 'whole-of-policing' response to domestic violence, while acknowledging that it formed part of the ACT

Government's Family Violence Intervention Program, which has as its basis a criminal justice response to domestic violence.

1.06 I understand why the FVIP – and the Woden Patrol pilot project within it – has a focus on the criminal justice response; past police practice has been inadequate in this area and the need for improvement was great. But in my opinion it is an unnecessarily narrow focus when looking at developing police best practice. Indeed, the practice of the Woden Patrol during the pilot project has shown that it is effectively impossible to divorce the police's criminal justice response to domestic violence from their community policing response; although it might be possible to do so when evaluating the policing of domestic violence, it is not possible for police to do so in practice. The nature of domestic violence and of police intervention simply does not allow it.

1.07 My recommendations therefore are made to assist in the development of a best practice model for policing domestic violence in the ACT, not simply a model for policing the criminal justice elements of domestic violence.

METHODOLOGY

1.08 The investigation involved:

- examination of domestic violence complaints against police received by my office since 1998 to determine the types of issues being complained about;
- analysis of FVIP documentation, AFP guidelines and the materials and documentation for the best practice model being implemented by the Woden pilot project;
- examination of the Woden pilot project's records;
- discussions with the Chief Police Officer for the ACT, the managers of the Woden pilot project, some officers of the Woden Patrol, the manager of AFP Communications, the officer responsible for PROMIS upgrades; the Victims of Crime Coordinator; the DPP Family Violence Prosecutor and the DPP Witness Assistant; the managers of the DVCS; the Deputy Director of the ACT Legal Aid Office and some ACT Legal Aid solicitors; and
- consideration of the views supplied by the AFP in response to my discussion paper on this subject.

PART 2. THE ISSUES

THE WODEN PATROL PILOT PROJECT

2.01 The pilot was designed to specifically address those failings uncovered by the first phase of the FVIP. It aimed to:

- consistently apply and follow a pro-arrest, pro-charge, presumption against bail policy where prima facie evidence of a domestic violence offence exists;
- improve investigative practice, evidence gathering and briefs of evidence;
- utilise new technology in evidence gathering;
- enhance practices in recording family violence on PROMIS;
- improve victim follow-up and satisfaction with police handling of their matter and reduce reliance solely on victim statements;
- create a closer working relationship between the pilot Patrol and the DPP on briefs of evidence and training;
- improve police satisfaction in dealing with family violence matters; and
- explore, with the DPP, enhanced training.¹

2.02 The pilot began operation in May 2000 when all officers of the Woden Patrol undertook a two-day training program on the proposed best practice in policing domestic violence. The patrol took delivery of new digital imaging and recording equipment and began implementing best practice procedures in June 2000. Record-keeping for the pilot began from this date and was constantly monitored by the project officer. Training for Watch House officers and Communications sergeants took place in late July. The operational stage of the project ran until March 2001 and was followed by two months of evaluation and reporting.

Power to Enter and Investigate

2.03 Current AFP guidelines on domestic violence are silent on the issue of police powers to enter and investigate.

2.04 The Woden Patrol's Domestic Violence Training Program contains a detailed section on the various police powers in relation to entry and the circumstances in which officers would be entitled to use them.

Opinion

2.05 In my opinion, the new AFP Guidelines on Domestic Violence should contain a section on police powers of entry that reflects the training program used for the Woden Patrol.

Recommendation

- 1. That the AFP should include in new Domestic Violence Guidelines reference to police powers of entry based on the Woden Patrol**

1. See 'ACT Family Violence Intervention Program Phase II, 1999-2001: ACT Submission to National Partnerships Against Domestic Violence Initiative 1999-2001', p. 5.

training and offer adequate guidance to officers in those situations where they cannot otherwise remain to investigate an incident.

Agreed to by the AFP.

Investigation

2.06 Police failure to investigate domestic violence incidents adequately was one of the critical failings of past AFP practice. The majority of complaints against police received by my office from victims of domestic violence include the issue of poor police investigation.

2.07 The project officers of the Woden pilot project have expressed the view that an emphasis on proper investigation of domestic violence incidents, based on thorough training and the utilisation of new equipment, was one of the core differences between the pilot project and past practice. Their aim has been to create a set of best practice procedures, which will serve as the foundations of thorough investigation in practice.

2.08 The training program that all officers of the Woden Patrol undertook at the outset of the project contains a strong emphasis on investigation and investigative skills.

2.09 The central theme of the project's investigative training is choice and flexibility, particularly in relation to the use of the new equipment. Officers are encouraged to consider the different options available to them in the investigation of a domestic violence incident. As a rule, the training program does not set out any standard procedures in relation to the use of equipment in investigating a domestic violence incident. Instead, it discusses how the different equipment and techniques can be used in any number of different situations and encourages officers to exercise their own judgement on a case-by-case basis.

2.10 The centrepiece of the Woden pilot project's best practice in investigation is the Family Violence Investigator's Kit. The kit contains a video camera, digital camera, tape recorder and all the necessary accoutrements to keep these in operational order (chargers, batteries, tapes and discs).

2.11 An attachment to the FVIP II proposal for "Partnerships Against Domestic Violence" outlined 'how the equipment will be utilised':

- On arrival at a crime scene the Police would first ensure the safety of those present at the scene. The officers would then utilize the Dictaphone or video to record initial conversations with the complainant and alleged offender – essentially capturing their first hand version of events. Procedures will ensure that all parties are aware that conversations are being audio or video recorded. Normal procedures are to be used in relation to cautioning of suspects.
- The video camera will be utilized to record physical conditions at the scene. The recording of the scene may later be used in interviews with the suspect

and/or as corroborative evidence. The Polaroid [now digital] cameras will be used to record close detailed pictures of items, injury and/or other relevant "evidence".²

2.12 In training and in the submission to the "Partnerships Against Domestic Violence", video cameras were identified as being useful for gathering both a record of the crime scene and the initial victim statements: the victim can both walk and talk the investigating officers through the incident as they believe it happened.

2.13 Moreover, the use of a video camera during an attendance at a domestic violence incident can provide a record of both the incident and the police's attendance at that incident.

2.14 In the five months operation of the pilot project to November 2000, officers of the Woden Patrol used the digital cameras at 40 (25%) of the 161 domestic violence incidents attended.³ Officers have used the digital cameras mostly in relation to further police action. Of the 77 attendances resulting in some type of further action, 33 (43%) involved the use of digital cameras. Of the 58 attendances resulting in possible court action, 33 (57%) involved the use of digital cameras. This contrasts greatly with the use of the video cameras. Of the 161 attendances, the video cameras were used at only two (1%), both of which resulted in arrests. I attribute this to the lack of guidance on how and why such equipment should best be used.

Opinion

2.15 In my view, there was after five months sufficient evidence to suggest that the Woden pilot project's trial of special investigative training and particularly the introduction of new investigative equipment had improved both the police's approach to investigating incidents of domestic violence and the quality of evidence collected.

2.16 I also believe that the AFP's use of photographic and recording equipment during a domestic violence investigation should be governed by clear procedural guidelines and training which outline a preferred usage in appropriate cases.

2.17 In my opinion, the AFP should adhere to its commitments under the FVIP II proposal for "Partnerships Against Domestic Violence" in relation to the use of video cameras. I believe the statement made in that submission (see 2.11 above) provides an excellent basis for procedural guidance for the gathering of evidence at the scene of a domestic violence incident.

2.18 Furthermore, I believe the AFP should consider the new equipment as an invaluable tool, not just for the collection of evidence, but also in the creation of a record of their investigations. In particular, the use of video should be considered as providing a valuable record of police attendance at

2. 'The ACT Family Violence Intervention Program, Phase II - 1999-2001: Project Proposal for Partnerships Against Domestic Violence', Attachment 2, p. 1.

3. The figures for digital camera use include one use of a Polaroid camera.

and investigation of domestic violence incidents, whether or not charges are laid. In my opinion, such video evidence could provide a useful source in response to any complaints about police action during the incident.

Recommendations

- 2. That the new AFP Guidelines and training should contain standard procedures on the use of equipment for investigating domestic violence along the lines proposed in the ACT submission to “Partnerships Against Domestic Violence”.**

Agreed to by the AFP.

The AFP advises that “guidelines will be concerned with the use of technology in evidence gathering. ACT Policing intends to develop guidelines that actively encourage the use of technology for investigating domestic violence wherever practicable. The guidelines will not be unnecessarily detailed or prescriptive and have regard to events, particularly those of safety, confronted by officers at a scene”.

“Pro-Arrest” Policy

2.19 In response to the historically low priority given by the AFP to domestic violence, the AFP has adopted, as part of their involvement in the FVIP, a “pro-arrest” policy. The Woden Patrol’s understanding and implementation of the “pro-arrest” policy raises several issues – most notably relating to the discretionary nature of the arrest power, the function of arrest in relation to victim safety, and the need for “positive action” when no offence was identified – that in my view would benefit from greater clarification and guidance.

2.20 Despite much discussion and consideration, I have not been able to reach agreement with the AFP on these issues. As such, I will defer my final judgement on these matters until I have been able to see the new Domestic Violence Guidelines, which I understand the AFP are currently drafting.

Application for Protection Orders

2.21 The current Guidelines set out the general procedures for police serving Protection Orders and police applying for Protection Orders.⁴ In the latter section the Guidelines indicate that police are expected to suggest that a victim apply for a Protection Order and that, if the victim declines and the police have a reasonable fear for the victim’s safety, the police should themselves apply for a Protection Order. The Guidelines have not been revised since the introduction of Emergency Protection Orders in 1998.

2.22 In past practice, officers tended to rely on the victims to apply for a Protection Order themselves. Our examination of the complaints to my office revealed that the victim’s agreement to do so has been one of the key factors

4. See “Protection Orders, Interim Protection Orders” and “Application for a Protection Order (PO)”, in *AFP Guidelines for Best Practice 11/97: Domestic Violence Incidents*.

in an officer's decision not to proceed. Similarly, our examination of the complaints to my office indicated that the AFP had ignored the requirements of section 19G of the *Domestic Violence Act 1986* (ACT).

2.23 During training for the pilot project, officers are taken through the relevant legislative provisions on Protection Orders. There is a systematic approach in relation to what will be required of an officer in the event of his or her applying for an order on behalf of a victim. The training program reminds officers of their obligation under section 19G of the *Domestic Violence Act 1986* (ACT). Officers are also informed that an Emergency Protection Order can be used as a proposed preventative measure in situations where the alleged offender is no longer at the scene. Similarly, the training suggests that, although Emergency Protection Orders are available only when the court is not sitting, officers can apply for an ordinary Restraining Order or Protection Order if they consider it necessary in a given case.

2.24 The pilot project also advises officers to encourage victims to make contact with the DVCS and apply for Protection Orders themselves; this is seen as empowering the victims. In most cases this is appropriate, given the demographic circumstances of the ACT and the effective assistance that the DVCS and other such support agencies are able to provide.

2.25 Current AFP Guidelines express an expectation that officers will apply for Protection Orders in those situations where they believe the victim is still at risk but will not (for example, because of fear) or cannot (for example, because of hospitalisation) themselves make application. I believe there is scope to further develop procedures within the model that would suggest instances where police might apply for an order on behalf of a victim (such as those noted above).

2.26 I also believe that police should consider application for Emergency Protection Orders more often, particularly as only the police can apply for this type of order. There is evidence that the Woden Patrol have been increasingly using Emergency Protection Orders, although I believe there may be scope for more extensive use of these police powers.

2.27 Similarly, the Woden training program's emphasis on an officer's obligation under section 19G of the *Domestic Violence Act 1986* (ACT) is a welcome move towards a more pro-active police approach to Protection Orders.

Opinion

2.28 It is my opinion that police application for Protection Orders on behalf of victims in those few circumstances where a victim will not (for example, because of fear) or cannot (for example, because of hospitalisation) apply themselves should be considered as a reasonable objective within any Best Practice Model for policing domestic violence. As such, I believe that the AFP should encourage "the pursuit of applications for Protection Orders where appropriate" as an AFP objective for Phase III of the FVIP.

2.29 I believe that the current AFP Best Practice Guidelines 11/97 properly express the expectation that officers should apply for Protection Orders on behalf of victims where they are concerned for the victim's safety and where the victim has indicated that they will not apply for a Protection Order themselves (for example, in the situations outlined at 2.28 above). In my view, this expectation should be retained in any new Domestic Violence Guidelines. Similarly, it is my opinion that new Domestic Violence Guidelines should encourage officers to consider application for Emergency Protection Orders where appropriate.

2.30 In my opinion, the training for the Woden Patrol pilot project provides excellent guidance on the purpose and possible uses of Protection Orders and Emergency Protection Orders.

Recommendations

- 3. That the AFP should consider "the pursuit of applications for Protection Orders where appropriate" as an AFP objective for Phase III of the FVIP.**

Agreed to by the AFP with respect to emergency protection orders, but not in respect to protection orders generally.

- 4. That the AFP should continue to encourage officers to consider application for Protection Orders and Emergency Protection Orders as an important tool in policing domestic violence.**

Agreed to by the AFP.

- 5. That the AFP should retain in the new Domestic Violence Guidelines and training the expectation that officers should apply for Protection Orders on behalf of victims where they have a real concern for the victim's safety and where the victim has indicated that they will not (for example, because of fear) or cannot (for example, because of hospitalisation) apply for a Protection Order themselves.**

Agreed to by the AFP with respect to emergency protection orders, but not in respect to protection orders generally.

I note that the AFP has expressed reservations about my recommendations relating to Protection Orders (as distinct from Emergency Protection Orders). These concerns appear to stem from the experience of other jurisdictions that emphasize a policy of police applying for protection orders on behalf of victims, where the relatively low take-up rate for full orders by victims might be seen to reinforce negative police attitudes about the victims "*motivations, passivity and manipulation*" of the system".

However, I have not recommended a mandatory system of police applications for Protection Order, nor even a "pro-Protection Order"

policy, but simply that police be encouraged to apply for Protection Orders on behalf of victims in those situations where the victim is unable or unwilling (for the sort of reasons noted at 2.28 above) to apply themselves. I do not envisage that this would happen often, but I do believe that, as police have been given this power, they should, where the situation warrants, use it.

- 6. That the AFP should ensure that the new Domestic Violence Guidelines and training adopt the Woden Patrol pilot project training as providing clear guidance to officers on the circumstances where application for Protection Orders and Emergency Protection Orders would be appropriate.**

Agreed to by the AFP.

Victim Follow-Up

2.31 Current AFP Domestic Violence Guidelines 11/97 deal with victims predominantly in terms of moving away from victim-driven arrest. They contain only one small section dealing with the officers' obligation to 'facilitate the provision of counselling services and intervention by other agencies established to deal with domestic violence.' AFP Guidelines for Best Practice 29/97 deal specifically with police obligations to the Victims of Crime. They outline the governing principles of the *Victims of Crime Act 1994* (ACT) and explain how officers are expected to implement these principles. Past practice would suggest that these Guidelines were not being implemented.

2.32 There is a substantial section within the Woden training program dealing with the police's obligations under the *Victims of Crime Act 1994* (ACT). Officers are taken through the twelve governing principles of the legislation, with suggestions as to how they can effectively and efficiently meet their statutory obligations.

2.33 In practice, officers of the Woden Patrol, despite many demands on their time, have made the effort to keep in touch with the victims of domestic violence. Their follow-up has been by way of telephone calls or calling in whilst on patrol. Sometimes it is enough to leave a card, asking the victim to call if they have any concerns. Through case management meetings, officers have kept in touch with other agencies, most notably the DVCS and Family Services, which informs them of any new developments relevant to particular cases.

2.34 The implementation by the Woden Patrol of best practice in relation to victim follow-up would appear to be meeting with considerable success. Officers have reported a higher level of satisfaction in dealing with domestic violence incidents. Similarly, agencies dealing with victims – most notably the VOCC, the DVCS and the DPP – have noted an improvement in the way in which police follow-up is keeping victims involved in the criminal justice process, but also noted that victim follow-up by police has not yet reached

satisfactory levels. The VOCC has suggested to the AFP a number of areas where further improvements might be made.

Opinion

2.35 In my opinion, the Woden Patrol pilot project has improved police practice in the area of victim follow-up. I believe that the co-operation of the AFP in the FVIP should encourage further improvements to victim follow-up by police.

Recommendation

- 7. That the AFP should adopt the Woden Patrol pilot project's training on victim follow-up as part of new Domestic Violence Guidelines and related training.**

Agreed to by the AFP.

Management Review

2.36 In past practice, just as officers were failing to take appropriate action in their response to domestic violence, so too were team leaders failing to properly review and respond to that inaction.

2.37 It has been evident during my investigation that the managers of the Woden pilot project are approaching their tasks with a high level of professionalism and enthusiasm. In particular, I would point to the crucial role of the project officer. Over the course of the project, the project officers have developed a strong understanding and appreciation of domestic violence. Equally importantly, the presence of the project officer at Woden has been an invaluable resource for Woden Patrol officers, for both advice and guidance, as well as for encouragement and reassurance.

2.38 However, despite the training and special focus of the Woden pilot project, officers are still routinely failing to properly identify and record domestic violence incidents (in almost one third of all domestic violence incidents attended). In reviewing *all* incidents attended by the Woden Patrol, the project officer has been able to identify when a domestic violence matter has been missed, and to point out to officers where and how they should have been applying the Domestic Violence guidelines. Similarly, by using further tasking and "chasers", the project officer has been able to ensure that domestic violence matters are being dealt with in a prompt and appropriate fashion. This vetting process has been far more focused and effective than would have been the case with the average team leader.

2.39 However, I believe there is one area where management has not been fully effective. During the course of my investigation, and in particular following the audit of Woden PROMIS records, it became clear that a very small number of officers have not responded positively to the new approach to domestic violence being piloted at Woden. I accept that projects of this nature will always face some internal opposition, and that 'old habits die hard'. However, it is unacceptable that the inaction of a very small number of officers

may have compromised some investigations. I understand that the philosophy behind AFP policing is that officers are individually responsible for their actions. However, the chain of command and discipline exists to ensure that officers are held to those responsibilities.

Opinion

2.40 In my opinion, the existence of the position of project officer, with strong support from the project supervisor, has played a crucial role in the success of the Woden pilot project to date. Furthermore, I believe some type of specialised operational supervision should be considered an essential part of any best practice model of policing domestic violence.

2.41 Supervisors, team leaders and managers have a responsibility to ensure that an officer's failure to act does not compromise an investigation. In my opinion, it is appropriate for team leaders to task officers once in relation to any failure to act or properly follow domestic violence guidelines. If the matter requires further police investigation or action and the officer fails to fulfil his or her additional tasks without adequate reason, the investigation should be given over to another officer. In my opinion, an officer who fails to adequately respond to additional tasking, or an officer who routinely or systematically fails to act in relation to domestic violence, should be disciplined.

Recommendation

- 8. That the AFP should incorporate the supervisory role of domestic violence officer or officers into any best practice model of policing domestic violence.**

Agreed to by the AFP.

The AFP advise that "monitoring and educative role of the Domestic Violence Project Officer is strongly supported by AFP Management and is considered integral to the future success of the project. It is important however, to consider that when the Woden Pilot is expanded to cover the whole of the ACT, there will be practical issues associated with relying on the project officer to keep track of all related incidents. Quality control will clearly need to be shared by patrol sergeants who will have responsibility for monitoring case write-off entries within PROMIS".

The VOCC has suggested that Patrol Coordinators should receive quarterly compliance reports against the proposed new Regional Guidelines. ACT Policing advises that it concurs with this view.

- 9. That the AFP should through training remind officers that they face disciplinary action if they fail to respond to orders and additional tasking without good reason.**

Agreed to by the AFP.

10. That the AFP should discipline officers who routinely or systematically fail to act in relation to domestic violence.

Agreed to by the AFP.

The AFP advises that “usual standards of professional integrity would apply in such circumstances”.

BEST PRACTICE BEYOND WODEN

2.42 The following section is concerned with those areas of policing domestic violence which the AFP have themselves acknowledged as falling outside of the Woden pilot project's remit, namely Communications, record-keeping (PROMIS), the source of legal support for officers' applications for Protection Orders, police bail, and the role of Victim Liaison Officers. It also provides some general discussion of current police practice beyond the Woden Patrol and the applicability of the Woden best practice guidelines and training outside of Woden.

Communications

2.43 Much of the current AFP Guideline 11/97 outlines the role and procedures of AFP Communications, and the relationship between the AFP and the DVCS (addressed in a Memorandum of Understanding). There is a brief section on what information AFP Communications should attempt to gain about the incident.⁵ Communications officers are then instructed to conduct searches of the police databases for information relating to addresses, firearms and so on.

2.44 The rest of that section and most of the MOU is concerned with the role of AFP Communications in facilitating DVCS access to domestic violence incidents. Communications between attending police and AFP Communications, and between AFP Communications and the DVCS, have not always been good. In past practice, the level of information available to the responding police has generally been minimal.

2.45 Complaints received by this office indicate that the attending police have not always conveyed any further information back to AFP Communications making it impossible for AFP Communications to inform DVCS of the existence of a domestic violence incident. The most common response of attending police is to give the victim a DVCS card and allow the victim to make contact in his or her own time.

2.46 AFP Communications training should reflect and incorporate standard procedures drawn up specifically for AFP Communications and incorporated in any new AFP Guidelines. The existing Guidelines offer much guidance on the procedures that AFP Communications officers should follow in relaying information between attending officers and the DVCS. There is by

5. See “Role of ROCC” in *AFP Guidelines for Best Practice 11/97: Domestic Violence Incidents*. The Guidelines date from when ROCC managed AFP communications.

comparison very little guidance on what enquiries AFP Communications should make of a complainant so as to determine how best the attending officers should respond to the reported domestic violence incident.

2.47 I would suggest that the AFP should consider the current New South Wales standard operating procedures when drafting any new Guidelines.⁶ More detailed guidance on the sorts of questions AFP Communications officers should consider will allow them to better inform the attending officers and so place the attending officers in a far better position on arrival at an incident than is currently the case.

Opinion

2.48 In my opinion, the current Best Practice Guidelines 11/97 do not provide sufficient guidance for AFP Communications officers to collect adequate information to inform officers attending a domestic violence incident of all that they require to know. I believe that the checklist and procedures for AFP Communications officers as set out in the New South Wales 'Standard Operating Procedures: Investigating and Management of Domestic Violence' provide an excellent guide as to best practice and should be adapted for incorporation into any new AFP Domestic Violence Guidelines and training.

2.49 In my view, such training should be provided as a matter of priority, given the crucial role AFP Communications plays in keeping both the attending police and DVCS informed of developments during the incident and of any new information.

Recommendations

11. That the AFP should ensure that new Domestic Violence Guidelines provide detailed guidance to AFP Communications officers on their role and responsibility in relation to handling domestic violence calls, including a detailed checklist of information that officers should attempt to obtain from any complainant. In drafting new Domestic Violence Guidelines, the AFP should be guided by the New South Wales Police Service 'Standard Operating Procedures: Investigating and Management of Domestic Violence'.

Agreed to by the AFP.

The AFP advises that "obligations with respect to notification of Domestic Violence Crisis Service will also be included".

The AFP state that "the Domestic Violence Guidelines should not be so prescriptive or detailed as to render them inaccessible to staff. Therefore the suggested checklist would be best incorporated in an attachment to the Guidelines".

6. See New South Wales Police Service, 'Standard Operating Procedures: Investigating and Management of Domestic Violence'.

The AFP further advises that “a PowerPoint training package for Communications staff has been completed and is on the CD Rom relating to family violence training. Communications Sergeants were briefed on the FVIP Phase II at Woden. Since the commencement of Phase II there has been a staggered process of civilianisation of the Communications Centre and new staff will be trained in preparation for Phase III of the project”.

12. That the AFP should ensure that domestic violence training for AFP Communications officers reflect new Domestic Violence Guidelines and that such training should take place as soon as possible in order to provide essential support for Patrol officers.

Agreed to by the AFP.

Recording

2.50 Both the Keys Young report on FVIP I and my own investigation have identified significant inadequacies in relation to recording domestic violence information on the AFP’s PROMIS database.

2.51 PROMIS does have a “Family Violence Involved” check-box, but it is not as yet a mandatory field and has been used to date on an ad hoc basis only. Even officers of the Woden pilot project are still routinely failing to mark this check-box.⁷ The system is currently being altered to make the check-box mandatory.

2.52 The current Best Practice Guidelines 11/97 are substantially outdated in relation to recording practices, referring to the now phased-out system, COPS. The Guidelines insist that officers maintain accurate electronic records of domestic violence incidents. The Guidelines also clearly state:

Domestic violence incidents are not to be recorded as a disturbance or request to see police or other code. All Domestic Violence incidents attended are to be recorded under COPS incident code 705. This code is to be used irrespective of whether police proceed against the offender.

PROMIS did not carry over COPS code 705, creating instead the “Family Violence Involved” check-box. The 11/97 Guidelines also recommend that, when referring to an incident, officers directly ‘use the term “Domestic Violence” rather than euphemisms such as “dispute”, “disturbance” or “domestic”.’

2.53 PROMIS also has a facility for recording the existence and conditions of Protection Orders. However, the AFP has acknowledged that problems exist in accessing this part of the system.

7. This oversight is being identified during the vetting process, with the project officer tasking officers to mark the “Family Violence Involved” check-box.

2.54 In their submission to the national “Partnerships Against Domestic Violence” initiative, the managers of the FVIP II included as one of their objectives for the Woden pilot project ‘[to] enhance practices in recording family violence on PROMIS’.⁸

2.55 My investigators have received assurances from the managers of the PROMIS system that many of the inadequacies of the past are being dealt with in the upgrade to the new system. The “Family Violence” check-box is being made mandatory; the system is being simplified; there is also now sufficient scope for adding digital images and victim information.

2.56 However, in response to the problem of Protection Orders on the system, the AFP have noted that ‘the problem has been broached a number of times with stakeholders and is dependent upon government funding. A planned meeting to discuss the matter with information technology scheduled for April [2000] ... was cancelled due to a lack of funds’.⁹

2.57 Moreover, the problems are not only technological. Failure to mark the “Family Violence Involved” check-box has been one of the most common errors amongst officers of the Woden Patrol during the course of the pilot. Clearly, a mandatory check-box will go some way to addressing the question of language, although I believe it is still useful for officers to think in terms of “domestic violence incident” rather than “disturbance”. If a code for “domestic violence incident” exists, I would suggest that it would be preferable to use this code above “disturbance”, “routine check on welfare/premises” and especially above “no appropriate code”, particularly if the officer has elsewhere identified the incident as one with domestic violence content.

2.58 The project officer of the Woden pilot project has also indicated the difficulties he had in relation to searching for Domestic Violence cases. At present, the “Family Violence Involved” check-box is searchable, but only by officers responsible for PROMIS and AFP statistics. It would seem that if the AFP is to establish positions directly responsible for the monitoring and management of the policing of domestic violence (see Recommendation 8), it would be logical to extend to those officers the ability to search PROMIS using the “Family Violence Involved” check-box.

Opinion

2.59 In my opinion, the AFP should consider PROMIS improvements relating to domestic violence as having the same priority which the AFP is now giving the policing of domestic violence more generally. Clearly, this would also involve increased allocation of resources.

2.60 The system of recording and accessing Protection Orders requires special attention. The existence of a Protection Order is a vital piece of information for officers attending a domestic violence incident. AFP Communications officers must be able to quickly and easily determine

8. See ‘ACT Family Violence Intervention Program Phase II, 1999-2001: ACT Submission to National Partnerships Against Domestic Violence Initiative 1999-2001’, p. 5.

9. Minute from F/A Karen Beck to Senior Assistant Ombudsman, 10 July 2000.

whether an order exists and, if so, what its conditions are. In my opinion, all Protection Orders should be scanned into the PROMIS system and attached to the relevant persons (the respondent and the applicant) and any relevant addresses.

2.61 I accept that a mandatory Family Violence check-box replaces the need for a mandatory use of code 705. However, if the incident does involve domestic violence, in my opinion the use of a code 705-equivalent ('Domestic Violence Incident') is preferable to the use of 'Disturbance', 'Routine check on welfare/premises' or 'No Appropriate Code'. Officers should be properly trained in the use of these codes in relation to domestic violence incidents.

Recommendations

- 13. That the AFP should provide the necessary priority and resources to upgrading domestic violence recording on PROMIS, in keeping with the AFP's commitments under the FVIP II.**

Agreed to by the AFP.

- 14. That the system for recording Protection Orders on PROMIS should be made easily accessible and that officers should be adequately trained in inputting and retrieving information about Protection Orders. As part of this, the AFP should consider maintaining a digital database of scanned Protection Orders attached to persons and addresses.**

Agreed to by the AFP, subject to resource implications and IT programming priorities.

- 15. That the "Family Violence Involved" Check-box be both mandatory and searchable by officers responsible for monitoring and managing the policing of domestic violence.**

Agreed to by the AFP.

- 16. That the AFP should provide training to ensure that officers understand the use of appropriate codes in relation to domestic violence incidents.**

Agreed to by the AFP.

Application for Protection Orders

2.62 There are inherent difficulties involved in a police officer applying for a civil protection order on behalf of a victim. This is particularly so if the application is contested. Put simply, the civil court is not the police officer's natural habitat.¹⁰

10. Note that these concerns do not arise in relation to applications for emergency protection orders, which are by their very nature more of a police tool than a civil measure.

2.63 AFP Legal has indicated that they can arrange for the ACT Government Solicitor to provide officer-applicants with legal support and advice if requested. However, it would appear that officers are not aware that AFP Legal can provide this service.

Opinion

2.64 In my opinion, officers applying for Protection Orders should be provided with adequate legal support, particularly in the event of the application being contested. The AFP should ensure that officers are aware that legal support for applications for Protection Orders is available through AFP Legal.

Recommendations

17. That the AFP should ensure adequate legal support for officers applying for Protection Orders on behalf of victims.

Agreed to by the AFP.

18. That the AFP should ensure that officers are aware of the mechanism for seeking legal support for any applications for Protection Orders on behalf of victims.

Agreed to by the AFP.

Police Bail

2.65 As with the pro-arrest policy, Keys Young identified the appropriate exercise of police bail powers – and the presumption against bail in particular – as an area requiring further attention from the AFP. Accordingly, the more active application of the presumption against bail was built into the AFP's program for FVIP II.¹¹

2.66 Current AFP Domestic Violence Guidelines (11/97) note that 'The presumption against bail is to be considered in all circumstances'. They further instruct arresting officers 'to ensure the Officer in Charge of the Watch House is provided with a comprehensive briefing of the facts surrounding that person's arrest and any reasons why bail should be opposed.' The guidelines direct Watch House sergeants to consider this information when applying the presumption against bail.

2.67 During discussions with some of the Watch House sergeants, it was made clear that the presumption against bail was easy to apply: essentially, if the Watch House sergeants have any reason to suspect that the victim's safety may be at risk, they will refuse bail. This is in keeping with the aims of the legislation. Moreover, the Watch House sergeants appear to be acting

11. See 'ACT Family Violence Intervention Program Phase II, 1999-2001: ACT Submission to National Partnerships Against Domestic Violence Initiative 1999-2001', p. 5.

consistently in their application of the presumption against bail in relation to domestic violence offences.

2.68 In those few cases where bail was granted, the conditions of the bail have been such as to specifically provide the victim with some measure of security. However, it would appear that Watch House sergeants, when granting bail, are not providing a clear statement of reasons, as required by section 8A(3) of the *Bail Act 1992* (ACT), as to why in their opinion the accused posed no danger to the victim. Failure to provide this statement of reasons is in direct breach of the law.

2.69 The Office of the DPP and some of the magistrates have also criticised the Watch House for failing to properly identify and flag all “F/V” (domestic violence) cases that are going to court. This has meant that not all domestic violence cases are being managed through the special fast-tracking procedures of the Magistrate’s Court.

2.70 The presumption against bail was introduced as part of that package of four bills that the ACT Attorney-General described as having ‘as a common theme the provision of greater protection to victims of domestic violence’.¹² However, the effect of section 8A of the *Bail Act* is to provide that greater protection only to the victims of domestic violence offences.

2.71 It should be noted that the provisions governing the granting of ordinary bail (sections 22 and 23 of the *Bail Act*) require bail officers to consider issues such as victim safety when making their decision.

Opinion

2.72 In my opinion, AFP Guidelines for both domestic violence and the Watch House should direct officers to meet their legal obligations to provide a statement of reasons for granting bail for domestic violence charges.

2.73 I also believe that the Watch House should be reminded of the importance of accurately recording domestic violence cases with the “F/V” flag when the offence involved is a domestic violence offence.

2.74 As the basis of the presumption against bail is the greater protection of the victims of domestic violence, I believe that Watch House sergeants should be considering the safety of any victim of domestic violence when deciding whether or not to grant bail in those cases where the accused has not been charged with a domestic violence offence but where the incident has involved domestic violence. In my opinion, section 22(1)(c) of the *Bail Act 1992* (ACT) provides adequate scope for police bail officers to deny bail if they believe that the victim’s safety is at risk.

Recommendations

19. That the AFP should ensure that Watch House officers are aware of the need to provide a clear statement of reasons when granting

12. Humphries, 1997 *Week 3 Hansard* (10 April), p. 840.

bail for domestic violence offences. This should be reflected in both the new Domestic Violence Guidelines, the Watch House Guidelines (30/97) and in training.

Agreed to by the AFP.

The AFP advises that the “Watch House sergeants have attended a one-day training package conducted at the office of the DPP. Continual monitoring and contact has occurred between Watch House Sergeants and either the Project Officer or DPP Prosecutor as required. Further to this, the Project Officer and DPP family violence prosecutor spoke with all Prosecution Support staff in December 2000 and provided a further PowerPoint presentation on this issue. All staff were issued with a hard copy of the contents of the presentation. The training package included scenarios and reminders on what does and does not constitute family violence and how to record such incidents on PROMIS”.

The Chief Police Officer for the ACT states that he is “confident that all Watch House Sergeants are giving victim safety issues their full attention in consideration of the granting of bail”.

20. That the AFP should ensure that Watch House officers are reminded to accurately identify and flag domestic violence cases for the court lists. This should be reflected in both the new Domestic Violence Guidelines, the Watch House Guidelines (30/97) and in training.

Agreed to by the AFP.

21. That the AFP should ensure that Watch House officers give full consideration to the safety of the victim when making bail decisions in cases with a domestic violence element. This should be reflected in both the new Domestic Violence Guidelines, the Watch House Guidelines (30/97) and in training.

Agreed to by the AFP.

Victim Liaison Officers

2.75 The AFP has two Victim Liaison Officers (VLOs), one based at the City Station with responsibilities for the north of the ACT and one based at Woden Station with responsibility for the south. The two AFP VLOs have the task of ensuring that the AFP meets its obligations under the *Victims of Crime Act 1994* (ACT). The responsibility for meeting those obligations rest with the individual case officers, of whom it is expected that they will keep the victims of crimes they have investigated informed of the outcome of those investigations.

2.76 It is clear that since the advent of the *Victims of Crime* legislation, the AFP has taken some measures to meet their responsibilities under the Act. However, it is also clear that the task before them is a massive one, with over fifty thousand reported offences last financial year¹³ – most with at least one potential victim – and only some seven hundred officers and two VLOs to deal with these.

2.77 In relation to domestic violence and the ACT Government's Family Violence Intervention Program, there has been a significant increase in expectations about how police will respond, including in the area of victim support and the role of the VLOs. It would also appear, from the Keys Young evaluation of the FVIP I, that the police VLOs have effectively met these rising expectations. As I noted earlier (2.31-2.35), the Woden pilot project has also had some success in the area of victim follow-up by patrol officers. Both of these are a result of AFP management's commitment of extra resources, and especially time, for effective victim support. Without these additional resources and continued management support it is questionable as to whether this success can be sustained.

Opinion

2.78 In my opinion, the VLOs perform a necessary function within ACT policing, including their important role in relation to the victims of domestic violence. I believe that the AFP should ensure that this important aspect of community policing continue to receive the necessary management support and resources to effectively carry out this role.

Recommendation

22. That the AFP should ensure that the Victim Liaison Officers continue to receive the necessary management support and resources to effectively carry out their role.

Agreed to by the AFP.

The AFP advises that "AFP Management will continue to monitor and review the resource commitment to the VLO program".

POLICING DOMESTIC VIOLENCE BEYOND WODEN

2.79 As was indicated to the AFP Commissioner in our letter of 3 July 2000, the aim of this investigation has been to complement the Woden Patrol pilot project. As such, much of the focus of the investigation has been on the operations and effectiveness of that pilot in addressing what the FVIP I identified as the serious inadequacies of past practice and in assessing the pilot project as a best practice model for the policing of domestic violence.

2.80 However, the overall purpose of my investigation has been to determine the effectiveness of the policing of domestic violence throughout

13. *ACT Policing – Annual Report 1999-2000*, 2000, Appendix 2, pp. 84-87.

the ACT in light of the Woden experience. The focus on the pilot project has simply been to assess the adequacy of the pilot as a model to be applied across the ACT.

2.81 In almost every aspect of the AFP's past policing of domestic violence – from investigation through further action to arrest, victim follow-up and review – I have noted serious inadequacies and failures throughout the ACT Region. In many cases these were identified by Keys Young's evaluation of the FVIP I and have been acknowledged by the AFP.

2.82 As the AFP have not set in place any measures to specifically address these inadequacies – save for the pilot project, which is limited to the Woden Patrol – I believe it is reasonable to suggest that these inadequacies can still be found in police practice beyond Woden. Both the Woden pilot project officer and the DPP Liaison Officer have suggested that, to some extent, the Woden pilot has encouraged a spirit of competition amongst the various ACT Patrols and that, as a result, practice outside of Woden has improved slightly. However, past practice was so poor that a slight improvement would still leave considerable scope for further improvement.

Opinion

2.83 In my opinion, there has been no significant improvement in the policing of domestic violence outside of the Woden Patrol. This would suggest that the past inadequacies and failings of the police response to domestic violence continue in those AFP patrols beyond Woden.

2.84 In my view, the Woden Patrol pilot project has shown a significant improvement on past practice of the policing of domestic violence; they have certainly produced a better practice model than that which previously existed. Although I believe there is still scope for improvement, in my opinion, the proposed recommendations noted in this report would go some way to improving upon the Woden Patrol's trial of a best practice model.

Recommendation

23. That the AFP should move to apply across the ACT as soon as practicable the best practice model piloted by the Woden Patrol, including the proposed recommendations of this report.

Agreed to in principle by the AFP.

The AFP advises that "it is envisaged that FVIP Phase III will see the current pilot project with respect to Woden being implemented across the region. It should be acknowledged that the best practice model presently being piloted by the Woden Patrol, including proposed recommendations as agreed, could only be effective if interagency cooperation, liaison and support between all agencies presently part of FVIP continues".

PART 3. CONCLUSION

3.01 As I stated at the outset, my investigation has been concerned to examine police procedures in the context of community policing. Although my focus has been on the Woden Patrol pilot project – a pilot designed as part of the ACT Government’s criminal justice response to domestic violence – I am satisfied that the pilot goes a considerable way to providing a ‘whole-of-policing’ response to domestic violence.

3.02 The recommendations I have made in relation to the pilot project are to encourage further endeavours in developing a best practice model for policing all aspects of domestic violence. As such, I have also made recommendations that relate to those aspects of policing domestic violence that have not been the focus of the Woden project, such as Communications and the capabilities of PROMIS for the recording of domestic violence incidents. Finally, I have indicated that it is important that such best practice procedures be implemented across the ACT as soon as practicable.

R N McLeod
Commonwealth Ombudsman