



# Sentencing for domestic violence in the Local Court

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## Introduction\*

Domestic violence involves the exercise of power by one person against the other and encompasses a wide range of behaviours, including behaviour that is violent, threatening, controlling or directed towards making a victim, usually a woman, feel scared and unsafe.<sup>1</sup> Offending in a domestic violence context is dealt with frequently by NSW courts and the role the criminal justice system plays in addressing it was eloquently described by Wilson J in *Yaman v R*,<sup>2</sup> when her Honour said:

Offences committed by (mostly) men who ... refuse to accept that a partner or former partner is entitled to a life of her own choosing, must be dealt with sternly by the courts, to mark society's strong disapprobation of such conduct, and to reinforce the right of women to live unmolested by a former partner. Offences involving domestic violence are frequently committed, and the criminal justice system must play a part in protecting those who have been or may be victims of it.

This *Sentencing Trends & Issues* discusses significant legislative developments related to domestic violence offending since publication of the Judicial Commission's 2016 *Sentencing Trends and Issues: Sentencing for domestic violence* No 45 (2016 *Trends*)<sup>3</sup> and analyses the sentences imposed in the Local Court for offences commonly committed in a domestic violence context.

**Part I** examines significant legislative reforms since 2016. There has been a tightening of some of the requirements associated with the making of apprehended violence orders (AVOs) and improvements in the protections and support for domestic violence complainants. New offences have been created and amendments to the definitions of "intimidation" and "stalking" have expanded the operation of other offences. Major sentencing changes were introduced in September 2018.

**Part II** considers the changes to sentencing laws and discusses some important sentencing principles. Changes to sentencing law have both increased the possibility of domestic violence offenders being sentenced to imprisonment and also made provision for the imposition of supervised orders with the ability to tailor conditions to address causes of offending. When the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill was introduced in October 2017, the Attorney General said the Bill would ensure that domestic violence offenders are "required to address their offending behaviour if they are given a community-based sentence, or go to prison."<sup>4</sup> A new s 4A was inserted into the *Crimes (Sentencing Procedure) Act 1999* (CSP Act) which provides that either full-time imprisonment or a supervised order must be imposed for a domestic violence offence unless a different sentencing option is more appropriate. While focus remained on the retributive purpose of sentencing for domestic violence offenders, equal attention was given to an offender's rehabilitation and the correlation of that with the protection of the victim and the community.

**Part III** contains an analysis of sentencing statistics for selected offences committed in a domestic violence context finalised in the Local Court for the two-year period following the commencement of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* on 24 September 2018. The aim is to assess the impact of this reform, particularly following the introduction of s 4A, on sentencing patterns. Examination of these particular sentencing statistics provides the opportunity for meaningful assessment, not only because the majority of all criminal matters in NSW are finalised in the Local Court, but also because the offences ultimately selected for closer examination amounted to the vast majority of domestic violence offences dealt with in the court. The potential impact on those sentencing statistics as a result of appeals to the District Court is also analysed as it is relevant to that assessment.

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1 Australian Government, "What is family and domestic violence", Services Australia, accessed 6/6/22.

2 [2020] NSWCCA 239 at [131].

3 A Gomburu, G Brignell and H Donnelly, "Sentencing for domestic violence", *Sentencing Trends & Issues*, No 45, Judicial Commission of NSW, 2016. The 2016 *Trends* contained a domestic violence focused discussion in relation to general sentencing principles, the most common offences, and legislative initiatives to combat the problem. Further commentary on sentencing for domestic violence offences can be found in the Judicial Commission of NSW, *Sentencing Bench Book* 2006– principally at [63-500].

4 Second Reading Speech, Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, NSW, Legislative Assembly, 11/10/17, p 276.

## Prevalence of domestic violence

Domestic violence continues to be a significant issue in Australia,<sup>5</sup> and NSW,<sup>6</sup> as is the under-reporting of domestic violence.<sup>7</sup>

An analysis of domestic and family violence in NSW recorded by NSW Police for the period between 2016 and 2020 conducted by the NSW Bureau of Crime Statistics and Research (BOCSAR) demonstrated an upward trend in relation to most types of domestic violence offending over that time (see the infographic below).<sup>8</sup> Although the trend remained stable for most domestic violence offending over the most recent two-year period (2019–2020), an upward trend was recorded during this period for the domestic violence offences of intimidation, stalking and harassment, and contravene apprehended domestic violence order (ADVO). This upward trend is further supported by BOCSAR's most recent analysis,<sup>9</sup> which found significant increases in reported incidents for offences of intimidation and stalking (110%),<sup>10</sup> associated police commenced proceedings<sup>11</sup> (163.8%) from 2012 to 2021; and finalised court proceedings<sup>12</sup> (63.8%) from 2014 to 2021.

BOCSAR also found that in 2020:

- 69.4% of adult victims of domestic violence assault were female
- intimate partner violence accounted for 56.4% of domestic violence assault, and
- males constituted 74% of alleged domestic violence assault offenders;<sup>13</sup>

and further:

- First Nations people accounted for 30% of domestic violence offenders from 2020 to 2021<sup>14</sup>
- of the significant increase in court proceedings for the offence of intimidation and stalking, First Nations people accounted for 28% of offenders from 2014 to 2021.<sup>15</sup>

BOCSAR estimates that over 41,000 people in NSW aged 15 and over experienced at least one physical domestic violence assault by either an intimate partner or a family member in a 12-month period (approximately 650 per 100,000 people).<sup>16</sup> BOCSAR's analysis also demonstrates that the trend for the reporting of physical domestic violence in NSW over the 15-year period from 2007 to 2021 remains stable and is not decreasing.<sup>17</sup> Problems with the under-reporting of such offences also persist.<sup>18</sup> A particular issue associated with under-reporting, acknowledged by BOCSAR, is that it is limited to victims of physical violence, when domestic violence is recognised to take many forms, including emotional abuse, financial abuse and social isolation.<sup>19</sup> Notwithstanding, reported criminal incidents of domestic violence-related assaults have increased by 3.2% over the five-year period to March 2022.<sup>20</sup>

5 See Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story*, 2019 — In brief, Cat no FDV 4, Canberra, accessed 8/6/22.

6 NSW Bureau of Crimes Statistics and Research (BOCSAR), *Domestic & Family Violence in NSW, 2016–2020*; K Freeman, *Has the rate of domestic and family violence changed in NSW?: Victim survey results from July 2008 to June 2000*, Bureau Brief, No 158, BOCSAR, April 2022.

7 E Birdsey and L Snowball, *Reporting violence to police: a survey of victims attending domestic violence services*, Bureau Brief, No 91, BOCSAR, October 2013; Australian Bureau of Statistics, *Personal safety survey results 2017*, accessed 8/6/22.

8 BOCSAR, *Domestic & Family Violence in NSW, 2016–2020*.

9 S Ramsey, M Kim and J Fitzgerald, *Trends in domestic violence related stalking and intimidation offences in the criminal justice system: 2012 to 2021*, Bureau Brief, No 159, BOCSAR, June 2022.

10 *ibid* at p 5.

11 This was either by way of criminal proceedings or by a court diversion such as a referral for a youth justice conference (see Pt 5 *Young Offenders Act* 1997) or by way of a caution under the *Young Offenders Act* (see Pt 4 of the Act). See above n 9, p 7.

12 Where stalking or intimidation was the most serious offence charged. See above n 9, p 11.

13 BOCSAR, above n 6.

14 BOCSAR, *NSW criminal courts statistics January 2017–December 2021*, (derived from tables 10 and 15).

15 Ramsey, Kim and Fitzgerald, above n 9.

16 Freeman, above n 6.

17 *ibid*.

18 *ibid*; see also Birdsey and Snowball, above n 7; ABS above n 7.

19 Freeman, above n 6, pp 8–9.

20 BOCSAR, *NSW recorded crime statistics quarterly update March 2022*, p 8.

Safer Pathway is a NSW Government program supporting victim-survivors of domestic and family violence across NSW. It does this by providing a coordinated and integrated response from government and non-government agencies to victims identified as at risk of future domestic violence.<sup>21</sup> Through this coordinated approach, a broader objective of the program is to reduce victims' future experiences of domestic violence, thereby reducing re-offending. This program was developed as part of the *National plan to reduce violence against women and their children 2010-2022*<sup>22</sup> and formed part of the Government's domestic violence reforms in 2014. Evaluations of the program by BOCSAR have found that to date, the program has only had a limited effect on the incidence of domestic violence in NSW which, given the complexity of the issues associated with domestic violence, is perhaps unsurprising.<sup>23</sup> The Government has since revised its key priority to lower domestic violence reoffending rates by 25% by 2021, extending it to 2023.<sup>24</sup>

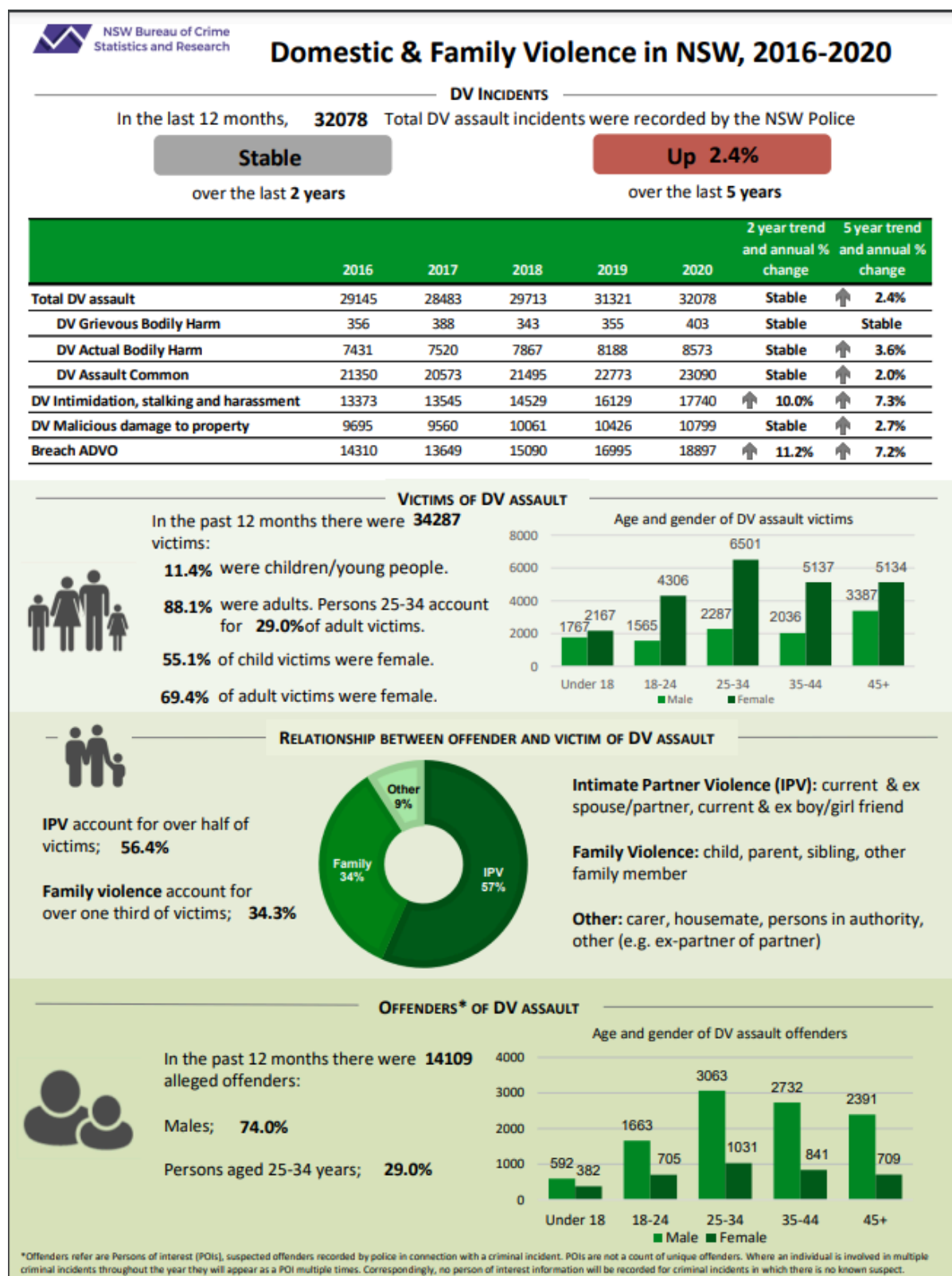
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21 W Wan et al, "Assessing the impact of NSW's Safer Pathway Program on recorded crime outcomes — an aggregate-level analysis", 2018, No 210, *Crime and Justice Bulletin*, p 2.

22 at <https://plan4womenssafety.dss.gov.au/the-national-plan/what-is-the-national-plan/>. See also Safer Pathway, Responsible government, NSW.

23 See above n 21. See also L Trimboli, "Outcome evaluation of NSW's Safer Pathway Program: victim's experience", 2017, No 202, *Crime and Justice Bulletin*.

24 L Visentin, "Premier abandons 2021 deadline for domestic violence reduction", *The Sydney Morning Herald*, 12 August 2019, accessed 8/6/22.

Domestic and family violence in NSW, 2016-2020<sup>25</sup>

25 From Domestic &amp; Family Violence in NSW, 2016-2020, accessed 20/6/22.

## Domestic violence definitions and legislative framework

Section 9 of the *Crimes (Domestic and Personal Violence) Act 2007* (CDPV Act) expressly states that Parliament recognises that all forms of domestic violence are unacceptable; it is predominantly perpetrated by men against women and children; occurs in all sectors of the community, including in traditional and non-traditional settings; extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years; and recognises the intersection between animal abuse and domestic violence. The particularly vulnerable position of children exposed to domestic violence is statutorily recognised, as is the impact such exposure can have on their current and future physical, psychological and emotional well-being.<sup>26</sup> So too is the impact of domestic violence on Aboriginal persons and Torres Strait Islanders, persons from culturally and linguistically diverse backgrounds, persons from gay, lesbian, bisexual, transgender and intersex communities, older persons and persons with disabilities.<sup>27</sup>

A “domestic violence offence” as defined in s 11(1) of the CDPV Act involves the commission of particular types of offences committed “by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship”. The relevant offences (which can also include offences against the Criminal Code (Cth))<sup>28</sup> are:

- (a) a personal violence offence (these are listed in s 4)
- (b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or
- (c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).

The definition of a “domestic relationship” is important because it characterises the environment of the particular offending. A “domestic relationship” is defined broadly in s 5(1) and encompasses relationships between people who:

- are or have been married to,<sup>29</sup> in a de facto relationship with,<sup>30</sup> or in an intimate personal relationship with, each other, whether or not in the case of an intimate relationship it involves or has involved a sexual relationship;<sup>31</sup>
- are or have been married to, in a de facto relationship with, or in an intimate personal relationship with, the same person;<sup>32</sup>
- are living or have lived in the same household,<sup>33</sup> or as long-term residents in the same residential facility, with each other, not including in a correctional centre or a detention centre;<sup>34</sup>
- have or have had a relationship involving their dependence on the ongoing paid or unpaid care of the other person, but only for the purposes of the protection of the dependant;<sup>35</sup>

26 See C Orr et al, “Investigating the mental health of children exposed to domestic and family violence through the use of linked police and health records”, *Research Report*, Issue 10, July 2022, ANROWS.

27 CDPV Act, s 9(3)(a)–(f2). The impact of domestic violence on First Nations peoples and others from various backgrounds and the intersection between animal abuse and domestic violence in ss 9(3)(f1) and 9(3)(f2) were added in 2016 and 2020 respectively. For the former in 2016 by the *Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016*, Sch 1[8] and for the latter in 2020 by the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*. See further “Domestic violence in First Nations communities”, at p 17. See also Judicial Commission of NSW, *Equality before the Law Bench Book 2006–*, Section 12, “Trauma-informed courts” for a discussion of the impact of domestic violence on victims.

28 CDPV Act, s 11(2).

29 s 5(1)(a).

30 s 5(1)(b). Section 21C(1) of the *Interpretation Act 1987* provides that a person is the “de facto partner” of another person if they are in a de facto relationship which, in turn, is defined in s 21C(2) as where two people have a relationship as a couple living together but who are not married to one another or related by family.

31 s 5(1)(c).

32 s 5(2).

33 s 5(1)(d).

34 s 5(1)(e). See ss 3(1), 225 and 225A of the *Crimes (Administration of Sentences) Act 1999* for the definition of a correctional centre and s 3(1) of the *Children (Detention Centres) Act 1987* for the definition of a detention centre.

35 ss 5(1)(f), 5A.



- are or have been relatives of each other;<sup>36</sup> and
- in the case of an Aboriginal person or Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.<sup>37</sup>

If a person pleads guilty to, or is found guilty of, an offence and the court is satisfied the offence is a domestic violence offence, s 12(2) of the CDPV Act requires the court to direct that the offence be recorded on the person's criminal record as a domestic violence offence.

When an offender is convicted of a domestic violence offence, a court must make an ADVO and, if the offender is sentenced to a term of full-time imprisonment, must specify that the order remains in force for the period of the term of imprisonment *and* an additional 2 years after that term ends.<sup>38</sup>

## Jurisdiction of the Local Court

The Local Court has jurisdiction to determine summary offences and indictable offences that may be dealt with summarily in accordance with Ch 5 of the *Criminal Procedure Act* 1986.<sup>39</sup> The maximum penalty which may be imposed for the latter is constrained to 2 years imprisonment by ss 267 and 268 of the Act. These prescribe the jurisdictional limit of the court.<sup>40</sup> In *Park v The Queen*,<sup>41</sup> the High Court reiterated that the maximum penalty is the starting point for determining the appropriate sentence and that a court must identify and synthesise all relevant factors in determining the appropriate sentence without regard to the jurisdictional limit. The jurisdictional limit is only applied after determining the appropriate sentence.<sup>42</sup> This principle applies to five of the seven most common domestic violence offences considered in Part III.

Determining the appropriate sentence for an indictable offence being dealt with summarily when the offence is serious and the sentence is constrained by the jurisdictional limit is not without its challenges. In *R v Rampling*,<sup>43</sup> the then Chief Magistrate, Henson DCJ observed that a prosecutorial decision that a matter should proceed summarily did not mean the objective seriousness of an offence was diminished, or that particular offending should be regarded as being at a lower level: the objective seriousness of an offence is determined by reference to the legislative provision not the jurisdictional limit.

## Part I: Legislative developments since 2016

The CDPV Act has been amended frequently to ensure the protections available for victims of domestic and personal violence remain appropriate. Since 2016, legislative reform with respect to both the Act, and in this area generally, has continued to increase the support and protections available. Further procedural changes have been introduced, new offences have been created, and in sentencing, the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act* 2017, which commenced in September 2018, made substantial changes to community-based sentencing options which have impacted the sentencing of DV offenders. **Appendix A** summarises the principal legislative changes since 2016.

### Expansion of apprehended domestic violence order scheme

Legislative reforms since 2016 continue to increase the support and protection available to domestic violence victims through the ADVO and AVO schemes. The mandatory conditions of an ADVO now include harming an animal belonging to the protected person, or to a person with whom they have

36 s 5(1)(g). A relative is defined broadly in s 6 of the Act and includes: fathers, mothers, grandparents, sons, daughters, grandchildren, nieces, nephews or cousins.

37 s 5(1)(h).

38 ss 39(2A)–39(2C). These were added to the Act by the *Stronger Communities Legislation Amendment (Domestic Violence) Act* 2020. See Appendix A at p 45.

39 ss 6, 7 and 260.

40 See *R v El Masri* [2005] NSWCCA 167 at [30]; *R v Doan* (2000) 50 NSWLR 115 at [35].

41 [2021] HCA 37.

42 *ibid* at [19]–[23].

43 [2018] NSWLC 7 at [2].



a domestic relationship.<sup>44</sup> On 28 March 2020, amendments made to the CDPV Act by the *Crimes Legislation Amendment Act 2018* related to the making and duration of ADVOs commenced.<sup>45</sup> As a result the default period of an ADVO was increased to 2 years for adult defendants and 12 months for a defendant who was under 18-years-old when the application for the order was made, although a court may specify that an order remain in force for a different period.<sup>46</sup> A court now also has the power to make an ADVO for an indefinite period if satisfied there is a significant and ongoing risk of death or serious physical or psychological harm to the person or their dependants which cannot be adequately mitigated by an order of limited duration.<sup>47</sup> Other recent amendments include the addition of s 28B to the CDPV Act which provides that when an AVO is in existence, any provisional order applied for, or made, which is inconsistent with the existing order and reduces the protection afforded to the protected person has no effect.<sup>48</sup>

### Special provisions for domestic violence victims while giving evidence

Amendments to the *Criminal Procedure Act 1986* which commenced in 2020 and 2021 provided domestic violence witnesses with the same protections as available for other vulnerable witnesses.<sup>49</sup> Sections 289T–289VA, inserted into the Act by the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*, were formulated by reference to a trauma-informed practice.<sup>50</sup> These enable a domestic violence complainant to give evidence in closed court, via AVL and using planned seating arrangements to restrict visual and other contact between the complainant and the accused. Where an offender is unrepresented, a Court Appointed Questioner asks the complainant questions on the offender's behalf. The offender cannot question the complainant themselves.<sup>51</sup>

### Expanding existing offences and creating new ones

Amendments to expand the definition of "intimidation" in s 7 of the CDPV Act to include cyberbullying<sup>52</sup> in s 7(1)(a) and harming an animal belonging to the complainant, or an animal belonging to a person in a domestic relationship with the complainant<sup>53</sup> in s 7(1)(c)(iv), have had a corresponding impact on the scope of offending that falls within s 13(1) of the Act. So too has expanding the definition of "stalking" in s 8 to include, in s 8(1)(c), contacting or otherwise approaching a person using the internet or any other technologically-assisted means.<sup>54</sup>

44 CDPV Act, s 36(c). This was amended by the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*, Sch 1[1] and commenced by proclamation on 27.3.21 (s 2, LW 5.3.21).

45 Sch 1[5], and commenced on 28.3.2020 (s 2, LW 17.1.2020).

46 CDPV Act, s 79A. Section 79A was inserted into the Act by the *Crimes Legislation Amendment Act 2018*, Sch 1[5], and commenced on 28.3.2020 (s 2, LW 17.1.2020). Subsequently amended by *Justice Legislation Amendment Act (No 2) 2019*, Sch 1.8], which received assent on 22/11/19.

47 CDPV Act, s 79B.

48 *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*, Sch 1[4] commenced on assent on 25/11/2020 (s 2, LW 23/11/2020). See s 81A for the effect of concurrent orders if there is an inconsistency between 2 or more concurrent orders.

49 See, for example, CPA, Ch 6, Pt 5, Div 1 which makes special provision for complainants in prescribed sexual offence proceedings, and Ch 6, Pt 6 which makes similar provision for vulnerable witnesses.

50 Second Reading Speech, *Stronger Communities Legislation Amendment (Domestic Violence) Bill 2020*, Legislative Assembly, 22/10/20, p 4990. For further information on trauma-informed practice, see *Equality before the Law Bench Book*, above n 27.

51 See further, Judicial Commission of NSW, *Local Courts Bench Book 1988*–, "Evidence by domestic violence complainants" at [8-000].

52 *Crimes (Domestic and Personal Violence) Amendment Act 2018* commenced on 1/12/2018 and modernised the definitions of intimidation and stalking and clarified that such offending captured conduct including bullying people by publishing or transmitting material on social media platforms including Facebook, Instagram and communication using mobile apps: Second Reading Speech, *Crimes (Domestic and Personal Violence) Amendment Bill 2018*, NSW, Legislative Assembly, 17/10/2018, pp 2, 4-5.

53 *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*, Sch 1[1] commenced on 27/3/2021. The Attorney General explained that this, and other amendments targeted at protecting animals at risk of harm in domestic contexts, recognised the use perpetrators make of animals to intimidate, retaliate against and manipulate victims during a relationship and, after separation, as punishment for leaving: Second Reading Speech, above n 50, p 4993.

54 Second Reading Speech, see above n 52, explains the rationale for expanding the definition in this way.

New offences, in ss 91P, 91Q and 91R of the *Crimes Act* 1900, related to the recording, distribution and threats to record or distribute intimate images without consent were inserted into the Act in August 2017.<sup>55</sup> The maximum penalty for these offences is 3 years imprisonment and/or 100 penalty units. They were added to the Act to address the non-consensual distribution of intimate or sexual images, described as "revenge porn", and after Parliamentary inquiries in both NSW and at the Commonwealth level which "highlighted the prevalence of this behaviour in the context of domestic violence and abuse and controlling relationships."<sup>56</sup>

The offence of intentionally choking, suffocating or strangling another person without their consent in s 37(1A) was added to the *Crimes Act* in 2018.<sup>57</sup> This Table 1 offence<sup>58</sup> carries a maximum penalty of 5 years imprisonment. It was introduced to facilitate the prosecution of more offences of choking, suffocation and strangulation, especially when such offending occurred in a domestic violence context. This followed a 2017 report by the NSW Domestic Violence Death Review Team which considered issues associated with proving an offence against s 37(1) when it was committed in a domestic violence context because the act of choking, suffocation or strangulation often occurred without the requisite intention of rendering the victim unconscious, insensible or incapable of resistance, or of committing another indictable offence (see s 37(1)(a)). This meant offenders who had committed acts of strangulation were charged with other offences, such as common assault. However, domestic strangulation was said to provide a "red flag" for future abuse and fatality which could not be acted on unless the conduct could be identified.<sup>59</sup> Section 37(1A) was specifically enacted to address this gap. During the Second Reading Speech, after reiterating the Government's commitment to strengthening criminal justice responses to domestic violence, the Attorney General said:

Domestic violence is a scourge of our society and we have to adopt a zero-tolerance approach if we are to make meaningful change. This important amendment will help hold perpetrators to account and keep victims safe.<sup>60</sup>

## Changes to sentencing law

As with the introduction of s 37(1A) of the *Crimes Act* 1900, making domestic violence offenders accountable, keeping victims safe and promoting the rehabilitation of offenders were important features of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act* 2017. The Attorney General summarised the aims of the Bill as introducing "new, tough and smart community sentencing options to promote community safety by holding offenders accountable and tackling the causes of offending."<sup>61</sup>

This Act abolished the then available penalties of home detention, community service orders, good behaviour bonds and suspended sentences. Community service orders and good behaviour bonds were replaced with community correction orders (CCOs) and conditional release orders (CROs). Changes were made to the structure of intensive correction orders (ICOs), principally by providing a sentencing court with greater flexibility to determine for itself the appropriate conditions for a particular offender. Home detention, rather than being a separate sentencing option, can now be an additional condition of an ICO.<sup>62</sup> Supervision is a mandatory standard condition of an ICO,<sup>63</sup> but a discretionary additional condition of a CCO or CRO.<sup>64</sup> The Act added s 66 to the CSP Act, which requires that a sentencing court give paramount consideration to community safety when deciding whether or not to make an ICO in relation to an offender.

<sup>55</sup> *Crimes Amendment (Intimate Images) Act* 2017 which commenced on proclamation on 25/8/17: s 2; LW 25/8/2017.

<sup>56</sup> Second Reading Speech, Crimes Amendment (Intimate Images) Bill 2017, NSW, Legislative Assembly, 24/5/17, p 15.

<sup>57</sup> *Crimes Legislation Amendment Act* 2018, Sch 3.1. This commenced on proclamation on 1/12/18: see s 2(3).

<sup>58</sup> CPA 1986, ss 259ff; Sch 1.

<sup>59</sup> NSW Domestic Violence Death Review Team, *Report 2015/2017*, pp 88–90, 165. See also Second Reading Speech, Crimes (Domestic and Personal Violence) Amendment Bill 2018, above n 52, p 2.

<sup>60</sup> Second Reading Speech, *ibid*.

<sup>61</sup> Second Reading Speech, Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, NSW, Legislative Assembly, 11/10/17, p 273.

<sup>62</sup> CSP Act, s 73A(2).

<sup>63</sup> s 73(2)(b).

<sup>64</sup> ss 89(2), 99(2).

In terms of sentencing for offences involving domestic violence, s 4A, which was inserted into the CSP Act and is discussed in more detail below, requires a sentencing court to impose a sentence of full-time imprisonment or a supervised order *unless* the circumstances of the particular case do not require such a sentence. Section 4B provides that an ICO cannot be made for a sentence of imprisonment (or an aggregate sentence that includes a domestic violence offence) unless the court is satisfied the victim of the domestic violence offence, and any other person with whom the offender is likely to reside, will be adequately protected. The potential relationship between ss 4B and 66 of the Act is also considered below.

Amendments to the CSP Act concerning the use of victim impact statements (see Pt 3, Div 2) commenced on 27 May 2019.<sup>65</sup> The use of such statements in the Local Court now extends to the victims of offences against ss 91P, 91Q and 91R of the *Crimes Act* 1900.<sup>66</sup> Victim impact statements can now canvass additional forms of harm resulting from an offence including emotional distress and harm to relationships.<sup>67</sup> As is the case when they give evidence, domestic violence victims are also entitled to have a support person present when they read their victim impact statement and may do so in closed court or by way of CCTV.<sup>68</sup>

## Part II: Sentencing law and principles

### The complexity of the sentencing task

Sentencing is recognised as a complex task. It is not a mathematical exercise and requires a court to reach a sentence for a particular offence by balancing many different and conflicting features.<sup>69</sup> The court must make findings as to the relevant facts, accept and apply the relevant principles of law and then exercise a discretion as to the sentence that should be imposed.<sup>70</sup> In *The Queen v Olbrich*,<sup>71</sup> the majority of the High Court referred to the significance of fact-finding at sentence stating:

Unless the legislature has limited the sentencing discretion, a judge passing sentence on an offender must decide not only what type of penalty will be exacted but also how large that penalty should be. Those decisions will be very much affected by the factual basis from which the judge proceeds. In particular, the judge's conclusions about what the offender did and about the history and other personal circumstances of the offender will be very important.

The evaluative process requires the sentencing court to identify all the relevant factors, discuss their significance and then make a value judgment as to the appropriate sentence given all the factors of that case — the method of sentencing described as “instinctive synthesis”, at the end of which the sentence is determined.<sup>72</sup> Facts should not be taken into account in a way that is adverse to the offender's interest unless those facts are proved beyond reasonable doubt.<sup>73</sup> There is no onus on an offender — the prosecution is obliged to prove the facts upon which it seeks to have an offender sentenced beyond reasonable doubt.<sup>74</sup> The onus is on an offender to prove matters submitted in their favour on the balance of probabilities.<sup>75</sup>

There is perhaps an added complexity to the sentencing process in the Local Court because the high volume of matters being dealt with in that court means the required assessments and findings must, of necessity, be made within a short period of time and a sentence imposed almost immediately.

65 *Crimes Legislation Amendment (Victims) Act* 2018, Sch 3[1].

66 s 27(4).

67 s 28.

68 ss 30H–30J.

69 *Markarian v The Queen* (2005) 228 CLR 357 at [27], [37]; *Barbaro v The Queen* (2014) 253 CLR 58 at [34].

70 See Judicial Commission of NSW, *Sentencing Bench Book*, 2006–, “Fact finding at sentence” at [1–400]ff.

71 (1999) 199 CLR 270 at [1].

72 *Markarian v The Queen* at [51].

73 *The Queen v Olbrich* at [27]–[28]; *Filippou v The Queen* (2015) 256 CLR 47 at [64].

74 *Strbak v The Queen* (2020) 267 CLR 494 at [32]–[33]; *The Queen v Olbrich* at [25].

75 *Filippou v The Queen* at [66]; *The Queen v Olbrich* at [27]–[28].

## Sentencing principles

The purposes of sentencing as stated in s 3A of the CSP Act include: to ensure the offender is adequately punished for the offence; to prevent crime by deterring the offender and other persons from committing similar offences; to protect the community from the offender; to promote the offender's rehabilitation; to make the offender accountable for their actions; to denounce the offender's conduct; and to recognise the harm done to the victim of the crime and the community.

Those parts of s 3A relating to the protection of the community and promotion of the offender's rehabilitation are now impacted by ss 4A and 4B of the CSP Act which make fundamental changes to certain traditional notions of sentencing when an offender is being sentenced for a domestic violence offence.

Section 4A(1) provides that a court sentencing a person for a domestic violence offence *must* impose either:

- (a) a sentence of full-time detention, or
- (b) a supervised order.

A "supervised order" is defined as an ICO, a CCO or a CRO that is subject to a supervision condition: s 4A(3). The court is not required to impose either of those sentencing options if satisfied a different sentencing option is more appropriate *in the circumstances* and gives reasons for reaching that view: s 4A(2).

The effect of s 4A(1) is to make full-time imprisonment or a supervised order sentences of *first* resort for domestic violence offences unless, by s 4A(2), the court is satisfied "in the circumstances" a different sentencing option is more appropriate. This is different to s 5(1) of the CSP Act, which provides that an offender *must not* be sentenced to imprisonment unless the sentencing court is satisfied no penalty other than imprisonment is appropriate. Section 5(1) reflects the common law principle that sentences of imprisonment are sentences of *last* resort.<sup>76</sup> When determining whether such a sentence should be imposed, a sentencing court must:

- decide whether there is an alternative to the imposition of a sentence of imprisonment
- having determined no penalty other than a sentence of imprisonment is appropriate, determine the length of the sentence, and
- once the sentence length has been determined, consider whether an alternative to full-time imprisonment is available and should be utilised.<sup>77</sup>

However, the question posed by s 4A is fundamentally different — rather than requiring a sentencing court to consider whether there is an alternative to imprisonment, s 4A(1) requires the court to consider whether in the circumstances of the particular case a sentence *other than* a term of imprisonment or a supervised order should be imposed. The sentencing judge in *R v McDowell* referred to ss 4A and 5 as "inconsistent guideposts".<sup>78</sup>

Some general support for the proposition that s 4A may have the suggested effect may be derived from *Ottoman v R*,<sup>79</sup> where Neilson DCJ dismissed a sentence appeal in respect of three community service orders of 150 hours for offences of common assault contrary to s 61 of the *Crimes Act* arising in a domestic violence context, observing that if the offences had been committed after 24 September 2018 (when s 4A commenced) the first instance court "would have had to consider imposing a sentence of full-time imprisonment" and that "[i]n light of our community's current concerns about domestic violence, the sentences imposed could be considered 'light'."

<sup>76</sup> *R v Way* (2004) 60 NSWLR 168 at [115].

<sup>77</sup> *R v Zamagias* [2002] NSWCCA 17 at [23], [25]–[26]; *Douar v R* [2005] NSWCCA 455 at [69]–[72]; *R v Hamieh* [2010] NSWCCA 189 at [82]–[84].

<sup>78</sup> [2019] NSWDC 441 at [15].

<sup>79</sup> [2018] NSWDC 374 at [59].

There are only a limited number of published cases available which refer to s 4A. Those available suggest that the approach, taken by practitioners and judicial officers alike, is to treat the requirements of s 4A as additional to the requirements of s 5.<sup>80</sup> In *Rossall v R*,<sup>81</sup> the appellant successfully appealed against an aggregate sentence of 2 years, 4 months with a non-parole period of 14 months for an offence of indecent assault contrary to s 61L of the *Crimes Act 1900* (rep) and one of intimidation with intent to cause fear of physical or mental harm contrary to s 13(1) of the CDPV Act. These offences were committed by the appellant against his estranged wife, in her home, where their child was present. Although the court (Garling J; Bathurst CJ and Rothman J agreeing) referred in passing to the requirements of ss 4A and 4B when re-sentencing the appellant, the following suggests the requirements of s 5(1) rather than those of s 4A were determinative of the sentence ultimately imposed:

This is a case in which it could be strongly argued that all of the features, when taken together, do not suggest that the relevant threshold in s 5 of the *Crimes (Sentencing Procedure) Act* has been passed. It is open to conclude that these offences could be finalised without the imposition of a term of imprisonment. However, having regard to the nature of the offences, and all the facts, matters and circumstances, the better view is that the threshold has been reached, and it is appropriate to impose a term of imprisonment.<sup>82</sup>

Section 4A is not the first provision of its kind in the domestic violence context which appears to override the presumption in s 5(1) of the CSP Act. Section 14(4) of the CDPV Act requires a court to impose a sentence of imprisonment for an offence against s 14(1) of contravening an AVO if it is constituted by an act of violence against a person. If a sentence of imprisonment is not imposed, the court must give reasons.<sup>83</sup> The authors of the 2016 *Trends* referred to the presumption of imprisonment in s 14(4), observing that courts of superior record were yet to consider its interaction with s 5(1) of the CSP Act.<sup>84</sup> That remains the case.

Section 4B directs separate consideration to the safety of the victim of a domestic violence offence, or a person with whom an offender is likely to reside, when the court is deciding whether to make an ICO (see s 4B(1)), or to the victim's safety if a CCO or a CRO is being considered (see s 4B(3)). An ICO must not be made in respect of either a sentence of imprisonment, or an aggregate sentence that includes one or more domestic violence offences, unless the court is satisfied the victim, *and* any person with whom the offender is likely to reside, will be adequately protected — either by the conditions of the order or for some other reason: s 4B(1). Nor can a home detention condition be imposed on an ICO if the court reasonably believes the offender will reside with the victim: s 4B(2).

In terms of whether an ICO should be made, s 4B(1) operates in addition to s 66 of the Act requiring a court to give paramount consideration to community safety when deciding whether to make an ICO. Community safety is a mandatory consideration, regardless of the weight it is ultimately given.<sup>85</sup>

In summary, s 66 provides that:

- Community safety must be the paramount consideration when a court is deciding whether to make an ICO in relation to an offender: s 66(1).
- When considering community safety, the court is to assess whether making the order or serving the sentence by way of full-time detention is more likely to address the offender's risk of reoffending: s 66(2).
- When deciding whether to make an ICO, the court *must* also consider s 3A, any relevant common law sentencing principles, and *may* consider any other matters the court thinks relevant: s 66(3).

80 See for example *R v Suleiman* [2018] NSWDC 542 at [45], [53]; *R v McDowell* at [15], although Nielsen DCJ referred to the requirements of s 5(1) and s 4A as providing “inconsistent guideposts”.

81 [2021] NSWCCA 200.

82 *ibid* at [106]–[107]. This approach has been taken by the District Court in sentence proceedings at first instance, although there are very few reported decisions upon which to base this assessment. See also *R v Brady* [2020] NSWDC 865 at [27], where a similar approach was taken, although in that case this was as a consequence of a concession by the defence.

83 s 14(6).

84 Gombru, Brignell and Donnelly, above n 3, p 12.

85 *Wany v DPP* (2020)103 NSWLR 620 at [56], [60]; *R v Fangaloka* [2019] NSWCCA 173 at [65].



Section 66(2) requires consideration of whether full-time imprisonment or an ICO is more likely to address the offender's risk of re-offending but it is not a determinative consideration when deciding to make an ICO and should not be elevated to override the more general community safety consideration required by s 66(1).<sup>86</sup> Further, community safety can operate in different ways in different circumstances. The purpose of s 66 is to ensure a court does not assume that full-time imprisonment is more likely than a supervised community-based program to address a risk of reoffending,<sup>87</sup> although there are cases, usually due to the objective seriousness of the offending, where no other sentence but full-time imprisonment is appropriate.

Section 4B(1) may operate to restrict the use of ICOs in cases where there is no evidence a victim, or person with whom an offender is likely to reside, will be adequately protected. In *R v Brady*,<sup>88</sup> the absence of any evidence on this issue compelled the sentencing judge to conclude that no sentence other than one of full-time imprisonment was appropriate.

### **Sentencing for domestic violence offences generally and the importance of general deterrence**

The Local Court applies the sentencing principles developed by appellate courts in relation to domestic violence offences. However, associated with the requirement to make the necessary assessments and factual findings in a short period of time, there is not the same detailed consideration of case law as may occur in the District Court. In any event, some of those principles are of less relevance and for that reason have not been discussed below. One area concerns the delay between offending and complaint because in the Local Court, for example, the median time between the offence date and the date of sentence for domestic violence offences was 3.1 months during the two-year study period.<sup>89</sup>

Deterrence, community protection and denunciation in s 3A of the CSP Act, are given significant weight when sentencing for offences of domestic violence.<sup>90</sup> In *Munda v Western Australia*, the plurality acknowledged that there was an argument general deterrence may have "little rational claim" when offences of violence are not premeditated and are committed in areas of significant social disadvantage but said that the role of the criminal law in this area:

... is not limited to the utilitarian value of general deterrence [and] is more than a mode of social engineering which operates by providing disincentives directed to reducing the unacceptably deviant behaviour within the community. To view the criminal law exclusively, or even principally, as a mechanism for the regulation of the risks of deviant behaviour is to fail to recognise the long-standing obligation of the state to vindicate the dignity of each victim of violence, to express the community's disapproval of that offending, and to afford such protection as can be afforded by the state to the vulnerable against repetition of violence.<sup>91</sup>

The court went on to emphasise the importance of denunciation and the need for sentences which vindicated the victims, stating that:

... A just sentence must accord due recognition to the human dignity of the victim of domestic violence and the legitimate interest of the general community in the denunciation and punishment of a brutal, alcohol-fuelled destruction of a woman by her partner. A failure on the part of the state to mete out a just punishment of violent offending may be seen as a failure by the state to vindicate the human dignity of the victim; and to impose a lesser punishment by reason of the identity of the victim is to create a group of second-class citizens, a state of affairs entirely at odds with the fundamental idea of equality before the law.<sup>92</sup>

86 *Mandranis v R* [2021] NSWCCA 97 at [49]; *Wany v DPP* at [62]; *Casella v R* [2019] NSWCCA 201 at [108]; cf *R v Fangaloka* at [63].

87 *R v Fangaloka* at [66].

88 [2020] NSWDC 865 at [38].

89 See also s 9(2)(b) CDPV Act which provides the CDPVs objects are achieved by, relevantly, ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice. Local Court Criminal Practice Note 1, Part C — Specific Proceedings provides at 10.2 in respect of summary proceedings for domestic violence offences that such matters will be listed for hearing within six months of charges being laid.

90 *Munda v Western Australia* (2013) 249 CLR 600 at [55]; *Cherry v R* [2017] NSWCCA 150 at [76]–[80]; *DPP v Darcy-Shillingsworth* [2017] NSWCCA 224 at [84]–[85], [107]–[108]; *R v Hamid* (2006) NSWCCA 302 at [86]; *R v JD* [2018] NSWCCA 233 at [80]–[81], [103].

91 *Munda v Western Australia* at [54].

92 *ibid* at [55].

What applying these principles means in a practical sense is that sentence patterns are likely to increase. The High Court in *The Queen v Kilic*<sup>93</sup> observed that sentence patterns for particular forms of offending could change over time to reflect changes in community attitudes and that:

... current sentencing practices for offences involving domestic violence [may] depart from past sentencing practices for this category of offence because of changes in societal attitudes to domestic relations.

The court found that the fact the respondent's offending in that case involved domestic violence was a distinguishing aggravating circumstance of significance, observing that it was "...the abuse of a relationship of trust which such an offence necessarily entails ... which ... must be deterred".<sup>94</sup> The abuse of a domestic relationship and the fact the particular power dynamic between an offender and a domestic violence victim requires that significant weight is given to general deterrence has been the subject of strong, and repeated, comments by the NSWCCA.<sup>95</sup> For example, in *Diaz v R*,<sup>96</sup> Garling J said:

The nature of these offences, being of domestic violence carried out by a physically dominant and controlling man against a woman who was in [a] vulnerable state, meant that the sentencing Judge had to give significant weight to the principle of general deterrence.

In *Patsan v R*,<sup>97</sup> Adamson J observed that when making an assessment of the objective seriousness of a particular offence, it was not inappropriate for a sentencing court to refer to gender and broader patterns of criminal behaviour.<sup>98</sup> Such an approach was not contrary to the requirement in *Muldrock v The Queen*<sup>99</sup> that the objective seriousness of an offence was to be assessed without reference to matters personal to a particular offender but was to be determined by reference wholly to the nature of the offending. Her Honour concluded that for domestic violence offending, the relative strengths of offenders and victims gave context to the particular offending.

In *Patsan v R*, the male offender punched his girlfriend in the face causing serious fractures and jaw displacement. The sentencing judge had said "to strike a defenceless woman in the face with a forceful punch is particularly reprehensible" and found the offender "chose to assault the victim ... because he was well aware she was incapable of any meaningful physical retaliation".<sup>100</sup>

The offender's sentence appeal was based on an asserted error by the judge emphasising the respective genders of the offender and the victim, using the offender as a scapegoat for domestic violence against women. This argument was rejected. The court concluded that the sentencing judge's approach accorded with High Court authorities involving sentencing for domestic violence offences.<sup>101</sup> Of the character of domestic violence offending, Adamson J said:

... individualised justice does not require sentencing judges to ignore patterns of behaviour which are repeated all too frequently before them. The experience of this Court and the statistics relied upon by the Crown indicate that domestic violence offences not infrequently conform to the following pattern, to which the applicant's conduct in the present case conformed: a male attacks (or kills) a woman with whom he is, or has been, in an intimate relationship when she expresses a wish to leave that relationship. Typically, the male is physically stronger than the female. The male is thus generally in a position to inflict considerable harm to the female and there is no real prospect of spontaneous physical retaliation because of the disparity between their respective strengths.<sup>102</sup>

93 (2016) 259 CLR 256 at [21].

94 *ibid* at [28].

95 For example: *Parker v R* [2021] NSWCCA 102; *Yaman v R* above n 2; *Quinn v R* [2018] NSWCCA 297 at [243]–[244]; *Patsan v R* [2018] NSWCCA 129; *Cherry v R* [2017] NSWCCA 150.

96 [2018] NSWCCA 33 at [5]; Payne JA and Hidden AJ agreeing at [1]; [62].

97 [2018] NSWCCA 129.

98 *ibid* at [34]–[36], [39].

99 (2011) 244 CLR 120 at [27].

100 above n 97 at [25]–[27].

101 *ibid* at [41]–[43].

102 *ibid* at [39].



Justice Wilson's statement in *Yaman v R*<sup>103</sup> emphasising the significance of general deterrence within the abuse of the power dynamic involved in domestic violence offending and its gendered character has already been quoted on page 3 of this *Trends*.

While the Local Court, and the District Court when dealing with offences on appeal from that court, are dealing with offences which by their nature or facts may be perceived as less serious than those dealt with on indictment, in the published cases there are equally strong statements concerning the importance of deterrence and the need to protect vulnerable victims of offending of this kind.<sup>104</sup>

In *Perrin v R*,<sup>105</sup> Haesler SC DCJ, when determining a sentence appeal, after referring to the appellant's disregard for the authority of the courts in making an AVO and the corresponding diminished capacity of the court to then protect vulnerable individuals, said:

... [c]hange for the victims of domestic violence can only occur when men take responsibility and become part of the solution. Women in particular should not be forced to bear an unfair burden. Victims of serious crimes should not be deprived of the protection which it is assumed punishment provides.

In *R v Woods*,<sup>106</sup> another decision of Haesler SC DCJ, his Honour recognised the significance of general deterrence observing that:

... community protection, supported by growing community perceptions, demand that men who assault women in their homes be punished severely ... by removing men from our community and placing them in gaol.<sup>107</sup>

However, his Honour also said that incarceration can have a crime-producing effect, observing that "putting a violent misogynist in gaol with other violent misogynists is a particularly ineffective way of addressing the underlying causes of the crimes that he committed."<sup>108</sup>

In *R v Rampling*,<sup>109</sup> when dealing with an offence of recklessly inflict grievous bodily harm committed in a domestic violence context, the then Chief Magistrate, Henson DCJ said:

The impact of the crime on the victim, and the community, is obvious... I ... note the concerns of society in relation to violence against women and the legacy of memory of becoming yet another victim of unjustifiable violence that the victim will carry with her through her life.

His Honour concluded that an ICO was not appropriate and sentenced the offender to 2 years imprisonment with a non-parole period of 18 months. Of the purposes of sentencing, his Honour said:

General and personal deterrence, denunciation and the impact of the crime on the victim and the community considered in the context of a significant number of appellate decisions of the approach to be taken in relation to serious violence inflicted on women, all point towards a sentence of full time custody.<sup>110</sup>

On appeal to the District Court, the head sentence was confirmed but the non-parole period was reduced to 13 months.<sup>111</sup>

103 above n 2 at [131].

104 *Barber v DPP (No 2)* [2021] NSWDC 8 at [31]. In that case the victim had thrown her keys and makeup bag towards the appellant while he was playing a video game and he responded by grabbing her, forcing her to the ground and choking her around the neck for about 5 seconds. His appeal was dismissed. See also *R v Shepherd* [2020] NSWDC 273 at [39].

105 [2021] NSWDC 408 at [111].

106 [2021] NSWDC 264.

107 at [46]–[47]. See also *R v Validakis* [2020] NSWDC 915 at [42]–[43] where Haesler SC DCJ made observations to similar effect.

108 *ibid*.

109 [2018] NSWLC 7 at [27].

110 *ibid* at [34].

111 *ibid*. See note following [36].

### General deterrence and sentencing offenders with a mental health condition

Where the state of an offender's mental health contributes to the commission of an offence, it is well recognised that the offender may not be an appropriate vehicle for general deterrence.<sup>112</sup> However, in recent years, this principle has been said to have less application in cases involving domestic violence offences.

In *R v Quinn (No 3)*,<sup>113</sup> the offender stabbed his partner in the neck and killed her after she told him she wanted to end their relationship. He then stabbed himself in the neck and chest causing quadriplegia. He suffered from obsessive compulsive disorder and borderline personality disorder which contributed to the offending. Although the sentencing judge accepted that the offender's moral culpability was reduced because of his mental condition, his Honour concluded that general deterrence remained a significant sentencing factor. On appeal, the NSWCCA concluded there was no error in this approach, re-iterating the significance of general deterrence when sentencing for domestic violence offences.<sup>114</sup> In *Quinn v R*,<sup>115</sup> Hoeben CJ at CL (who gave the judgment of the court) referred to the societal shift in attitudes to domestic violence potentially requiring a change to current sentencing practices recognised by the High Court in *The Queen v Kilic*. His Honour said *Kaderavek v R*<sup>116</sup> demonstrated part of the change in approach. In that case, Hamill J said that, in the circumstances of that case, where offences of violence were committed in a domestic relationship marred by repeated violence, the weight to be given to general deterrence remained substantial notwithstanding the applicant's mental health conditions.

### Domestic violence in First Nations communities

The impact of domestic violence in First Nations communities arises for consideration on sentence in two distinct ways — first as it relates to the need to deter similar offending in communities, and secondly as to the impact of exposure to domestic and family violence on an offender as a child.<sup>117</sup> As to the latter, there is increasing recognition that exposure to such violence can manifest in intergenerational cycles of trauma, violence and disadvantage<sup>118</sup> and that when First Nations children are exposed to such violence because of its compounded intergenerational effect, services which are both trauma-informed and trauma-specific are called for and can help achieve healing.<sup>119</sup>

In *DPP v Darcy-Shillingsworth*,<sup>120</sup> domestic violence offences were committed by a First Nations offender against a First Nations victim in a relatively small remote community. At first instance, for offences of recklessly causing grievous bodily harm, reckless wounding and assault occasioning actual bodily harm,<sup>121</sup> the respondent was sentenced to community service and suspended sentences of imprisonment (penalties available at the time). The sentencing judge noted the violence occurred in a remote First Nations community with few organised social activities or “outlets for the pressures of life other than alcohol and some sport”, and stated “it is difficult for me as a white urban Australian to understand the dynamics of a very small and remote, mainly Aboriginal community”.<sup>122</sup> In allowing the Crown appeal, Basten JA (Fagan J agreeing) said that not explaining how these factors were taken into account left open the possibility that the judge had engaged in impermissible assumptions to the effect that alcohol-fuelled violence in a remote Aboriginal community was to be treated more leniently than in other communities, and that First Nations victims of domestic violence were not to

112 *DPP (Cth) v De La Rosa* (2010) 79 NSWLR 1 at [177].

113 [2016] NSWSC 1699 at [48].

114 *Quinn v R*, above n 95 at [248].

115 *ibid* at [245]–[246].

116 [2018] NSWCCA 92 at [12].

117 C Orr et al, “Investigating the mental health of children exposed to domestic and family violence through the use of linked police and health records”, above n 26.

118 See the *Bugmy Bar Book: Childhood Exposure to Domestic & Family Violence* and the studies cited including Australian Institute of Family Studies, *Children's exposure to domestic and family violence: key issues and responses*, December 2015. See also Judicial Commission, *Equality before the Law Bench Book*, 2.3.8 *Sentencing, other decisions and judgment or decision writing*, 2.3.9 *The Fernando principles* and 2.3.10 *After Fernando* and specifically with respect to trauma, 12.3.3 *First Nations people*.

119 *ibid*. See also V Edwige and P Gray, “Significance of culture to wellbeing, healing and rehabilitation”, Report, Executive Summary, 2021.

120 [2017] NSWCCA 224

121 *Crimes Act 1900*, s 35(2), s 35(4), s 59(1) respectively.

122 *DPP v Darcy-Shillingsworth* at [66]–[67].

be accorded the same protection as were other victims.<sup>123</sup> However, Beech-Jones J (as his Honour then was) did not accept that such a construction was open, observing that the relevant passage could be understood as “simply referring to the difficulties that the sentencing judge experienced in determining how it was the respondent came to commit the offences that he did”.<sup>124</sup>

In *Bugmy v The Queen*,<sup>125</sup> the High Court held that the effects of profound deprivation do not diminish over time and should be given “full weight” in every sentencing decision.

The challenges inherent in sentencing a First Nations offender against a background of systemic deprivation and experienced by both offenders and victims were addressed by Haesler SC DCJ in *Perrin v R*.<sup>126</sup> That case involved numerous, serious offences of domestic violence. His Honour, after considering the relevant case law and other sources,<sup>127</sup> said:

The social exclusion and disempowerment of persons of Aboriginal descent seems to have made an environment of violence, alcohol and drugs more prevalent in the Aboriginal community than in the total population. The answer is no longer incarceration but lies in the treatment that neutralises or reverses the effect of social exclusion, disempowerment, discrimination and violent environment.<sup>128</sup>

His Honour then proceeded to address the considerations arising from *Bugmy v The Queen* in relation to the effect on an offender of profound deprivation, but also recognised there may be countervailing factors, such as the protection of the community, which might reduce or eliminate its effect.<sup>129</sup>

There is material which can be presented to a court sentencing a First Nation's offender for a domestic violence offence which can assist in addressing this dilemma. The report, *Significance of culture to wellbeing, healing and rehabilitation*,<sup>130</sup> which has been prepared to assist sentencing courts to apply the principles in *Bugmy v The Queen*, highlights the significance of culture to First Nations peoples and the importance of connecting such offenders to culturally-appropriate treatments to facilitate their prospects of rehabilitation. When such treatments are successful in a domestic violence context, the concomitant benefits are obvious.

### **Effect of domestic violence offending on the victim and the views of the victim**

Victim impact statements, when used or read out in sentence proceedings, give victims of particular domestic violence offences an opportunity to have the various impacts of the offending on them taken into account.<sup>131</sup> The Local Court can receive such statements on sentence.

However, the attitude of a victim of domestic violence to such offending or towards the offender cannot interfere with the proper exercise of the sentencing discretion as sentence proceedings are not a private matter between the victim and the offender.<sup>132</sup> Further, courts should be cautious when a victim of domestic violence expresses forgiveness for an offender and a desire to have their family reunited, because such victims may be actively pressured to forgive the offender or be compelled to do so for other reasons.<sup>133</sup>

For example, in *AC v R*,<sup>134</sup> Schmidt J (Bathurst CJ and Wilson J agreeing) concluded that a statement from the 12-year-old child victim expressing support for the offender who had sexually assaulted her did not satisfy the definition of a “victim impact statement,” namely, “a statement containing

<sup>123</sup> *ibid* at [68]; [105].

<sup>124</sup> *ibid* at [102].

<sup>125</sup> (2013) 249 CLR 571 at [42]–[44].

<sup>126</sup> [2021] NSWDC 408 at [109]–[110].

<sup>127</sup> *R v Hookey* [2018] NSWCCA 147 at [61]; *Kentwell v R (No 2)* [2015] NSWCCA 96 at [89]–[92]; *R v Lewis* [2014] NSWSC 1127 at [37]–[38]; *Royal Commission into Aboriginal Deaths in Custody, National Report Volume 1*, AGPS, 1991 at Chs 1.4–1.5; *Hoskins v R* [2021] NSWCCA 169.

<sup>128</sup> *Perrin v R* at [109].

<sup>129</sup> *ibid* at [110]. Also see *Veen v The Queen [No 2]* (1988) 164 CLR 465 at 476.

<sup>130</sup> *above* n 119.

<sup>131</sup> CSP Act, s 27. Also see discussion *above* at p 11.

<sup>132</sup> *R v Palu* [2002] NSWCCA 381 per Howie J at [37] (Levine and Hidden JJ agreeing). Also see *R v Burton* [2008] NSWCCA 128 per Johnson J at [102].

<sup>133</sup> *Shaw v R* [2008] NSWCCA 58 at [27]. Also see *R v Kershaw* [2005] NSWCCA 56 at [24].

<sup>134</sup> [2016] NSWCCA 107.

particulars of ... any personal harm suffered by the victim as a direct result of the offence,”<sup>135</sup> and therefore could not be taken into account on sentence.<sup>136</sup> Further, her Honour said the statement did not identify any personal harm suffered by the victim and that it could not be assumed there was no such harm, particularly when there *was* evidence of harm, which included an ectopic pregnancy and a miscarriage.<sup>137</sup> A submission that the applicant should fall into the category of an offender who receives the court’s compassion because of the attitude of the victim was rejected. Rather, the victim’s views revealed a lack of real understanding of the seriousness of the sexual and indecent assaults committed against her, and the potential ongoing consequences of that abuse on her future development. Compassion for the victim did not translate into a lesser sentence for the applicant.<sup>138</sup>

By contrast, in *Rossall v R*,<sup>139</sup> when resentencing the applicant for domestic violence offences, Garling J (Bathurst CJ and Rothman J agreeing), while paying particular attention to the safety of the victim, who was the applicant’s wife from whom the applicant was separated, noted the victim was supportive of the applicant not being sentenced to full-time imprisonment.<sup>140</sup> Although his Honour found that this was not decisive, in the particular circumstances of that case including evidence of the positive steps the applicant had taken towards rehabilitation and the finding that he was unlikely to reoffend, it was an indication that the victim, who did not make a victim impact statement, did not have fears for her personal safety.<sup>141</sup>

### The vulnerability of victims of domestic violence

Section 21A(2)(l) of the CSP Act states that it is an aggravating feature of an offence if the relevant victim was vulnerable because of their age or a disability, or because of their geographical isolation or their occupation. This section is concerned with the weakness of particular classes of victim and not with the threat posed by a particular class of offender.<sup>142</sup>

Whether or not particular victims should be recognised to come from a particular class was considered in the context of the First Nations community in *Drew v R*.<sup>143</sup> In that case, Fagan J (Gleeson JA agreeing) said that a finding a victim was vulnerable on the basis of generalisations about a culture of silence and ostracism within First Nations communities in relation to domestic violence did not permit a finding that an offence was aggravated pursuant to s 21A(2)(l). By contrast, N Adams J observed that the serious issue of domestic violence in First Nations communities and the under-reporting of such violence may provide context to particular offending, and be relevant to the need for general deterrence and community protection, but said that unless there was evidence capable of establishing the victim in such a case is a member of a particular class of vulnerable victim, a finding that an offence was aggravated pursuant to s 21A(2)(l) of the CSP Act could not be made for that reason.<sup>144</sup>

While the vulnerability of a victim of domestic violence is a relevant sentencing consideration, a court must exercise caution before making a specific finding of fact concerning the aggravating factor in s 21A(2).<sup>145</sup> However, this does not preclude the vulnerability of a victim being taken into account when assessing the objective seriousness of a particular offence. For example, in *Drew v R*,<sup>146</sup> Fagan J found it was an available inference from the facts that the victim was vulnerable in the general sense of being under an impaired ability to avoid physical conflict with the offender or to defend herself if conflict occurred. It was a circumstance of the offence, relevant to determining the appropriate sentence that because of her emotional and intimate attachment to the offender, she was less likely than any other potential victim to try to avoid him or put herself out of harm’s way.

135 CSP Act, s 26.

136 *ibid*, s 28.

137 at [44]–[45].

138 at [65]–[67].

139 [2021] NSWCCA 200.

140 *ibid* at [49], [104].

141 *ibid* at [104]. See further discussion regarding this decision and ss 4A and 4B of the CSP Act, above at p 13ff.

142 *R v Williams* [2005] NSWCCA 99 at [40]–[41]; *R v Tadrosse* (2005) 65 NSWLR 740 at [26]–[27]; *Drew v R* [2016] NSWCCA 310 at [75]–[78] where N Adams J discussed the relevant caselaw.

143 [2016] NSWCCA 310 at [3]–[4].

144 *ibid* at [90].

145 See Judicial Commission of NSW, *Sentencing Bench Book*, 2006–, “Section 21A(2)(l) – the victim was vulnerable” at [11–170].

146 above n 143 at [5]–[8].

## Part III: Statistical analysis

### Data source and methodology

This *Trends* examines Local Court first instance sentencing data and outcomes of appeals to the District Court for offences that are commonly committed in a domestic violence (DV) context. This context is determined by the meaning of domestic relationship in s 5 of the CDPV Act and is broader than intimate partner violence and includes, for example, offences committed between persons living in the same household or residential facility and relatives.<sup>147</sup> A preliminary analysis of the kinds of DV offences dealt with in the Local Court (outlined in Appendix B) identified the following seven offences for inclusion in the study (selected offences):

- contravene prohibition/restriction in AVO<sup>148</sup> — *Crimes (Domestic and Personal Violence) Act 2007*, s 14(1)
- common assault — *Crimes Act 1900*, s 61
- stalk or intimidate with intent to cause fear of physical or mental harm — *Crimes (Domestic and Personal Violence) Act 2007*, s 13(1)
- destroy or damage property — *Crimes Act 1900*, s 195(1)(a)
- assault occasioning actual bodily harm — *Crimes Act 1900*, s 59(1)
- intentionally choke, etc person without consent — *Crimes Act 1900*, s 37(1A)
- intentionally choke, etc person with recklessness — *Crimes Act 1900*, s 37(1).

The analysis includes only offenders sentenced in the Local Court for at least one of the selected offences in the two-year period from 24 September 2018 to 23 September 2020 (the study period).<sup>149</sup> All offences sentenced at the same finalised court appearance were also included (whether they were a selected offence or not).<sup>150</sup> The data for District Court appeals extends to 30 June 2021, allowing sufficient lag time to analyse outcomes.<sup>151</sup>

First instance sentencing data, including the conditions attached to ICOs, CCOs and CROs, and outcomes of appeals to the District Court are obtained from the JusticeLink System. BOCSAR processes and audits<sup>152</sup> the data and supplies it to the Commission.

Sentences imposed following breaches of sentencing orders (breach offences)<sup>153</sup> are excluded from the data. However, if an offender was dealt with for a breach offence at the same time, this has been recorded. The appeals data also excludes outcomes for appeals involving breach offences and where the only appeal was against an application relating to an AVO.

<sup>147</sup> See p 7 (definition in s 5(1)).

<sup>148</sup> This includes both "apprehended domestic violence orders" and "apprehended personal violence orders" under Pts 4 and 5 of the CDPV Act respectively.

<sup>149</sup> Where an offender was sentenced following a successful annulment application under s 4 of the *Crimes (Appeal and Review) Act 2001* or following a sentence correction under s 43 of the CSP Act (or s 19AHA of the *Crimes Act 1914* (Cth) for offences committed contrary to Commonwealth legislation), only the final sentence was included in the analysis.

<sup>150</sup> The data are appearance (or person) based, so that where an offender has been sentenced in more than one finalised court appearance during the reference period, the sentence imposed in each finalised court appearance is included.

<sup>151</sup> Based on time to appeal figures in the study, this 9 months and 7 days lag from 24 September 2020 is estimated to have captured 97.3% of appeals.

<sup>152</sup> BOCSAR conducts regular ongoing data validations (for consistency and completeness) to identify systemic issues and minimise error. The Judicial Commission relies on the BOCSAR data for the Local Court without conducting further auditing.

<sup>153</sup> For example, sentences imposed for breaches of ICOs, CCOs and CROs have been excluded on the basis that they arise under breach provisions that provide for a call-up procedure which may culminate in offenders being re-sentenced for the original offences. Hence, these are not regarded as offences in the strict sense.

Where the analysis is based on the principal offence, the principal offence is determined to be the offence which attracts the highest penalty in terms of the type and quantum of sentence.<sup>154</sup>

### Data collection and corrections

Domestic violence (DV) offences are identified using a DV specific law part code created by the Commission for use by NSW justice sector agencies, including the police. The law part code is normally recorded at the time of charging.

The reliability of law part codes to accurately capture all DV-related offences depends not only on the individual recording the offence selecting the correct law part code, but also correctly identifying that the relevant relationship is one caught by the definition of a domestic relationship in s 5 of the CDVP Act and that the offence is a DV offence. There is always a risk, where multiple law part codes are available for an offence, that coding errors may occur. It was therefore decided to check the accuracy of the coding of DV offences, at least for those cases where there was a mix of DV and non-DV offences.<sup>155</sup> This involved cross-checking against source documents, where available, from JusticeLink.<sup>156</sup>

A total of 7,604 offences (or 7.3% of all offences) were checked for accuracy. Of these, 68.8% were confirmed to be correctly coded as either a DV or non-DV offence, 13.8% were incorrectly coded<sup>157</sup> and it was not possible to confirm the status of 17.3% of the offences. The offences identified as incorrectly coded were corrected. During the correction process it was observed that, while not determinative, a sizeable proportion of domestic violence offences did not involve intimate partner relationships, although they were the majority.

A preliminary check of the conditions attached to ICOs, CCOs and CROs<sup>158</sup> was also undertaken.<sup>159</sup> Recording conditions such as requiring the offender to submit to supervision and additional conditions such as a period of home detention, electronic monitoring or community service work (CSW) for a specified number of hours was found to be reliable. However, there was inconsistency in the recording of other types of additional or further conditions. It was therefore decided to collect data for the conditions imposed in a sample of cases. Of the 12,300 offenders whose principal offence was a selected offence that included an additional or further condition imposed with a particular order, 837 were randomly selected.<sup>160</sup>

Extensive corrections were made to the appeals data as a result of inconsistencies in the data concerning the type of appeal and recording outcomes of appeals.

154 If two or more offences received identical penalties, the offence with the highest statutory maximum penalty is selected as the principal offence. If they have the same statutory maximum penalty, the offence with the highest Median Sentencing Ranking (MSR) is selected as the principal offence. If they have the same MSR, then the offence selected by BOCSAR is the principal offence. The MSR is a measure of offence seriousness in NSW, jointly developed by BOCSAR and the Commission. See I MacKinnell, P Poletti and M Holmes, "Measuring offence seriousness", *Crimes and Justice Bulletin* No 142, BOCSAR, 2010. BOCSAR has recompiled the MSR using more recent sentencing data. The revised MSR was adopted in the *Trends*. Where an aggregate sentence under s 53A of the CSP Act was imposed, the sentence for the principal offence is derived from the indicative sentence for that offence.

155 Only cases with a mix of DV and non-DV offences were selected for checking as it was assumed that for cases without a mix of offences the risk of coding errors was less than for those with mixed offences. It was impossible to check the accuracy of all offences given the sheer number of DV cases in the data.

156 Source documents include: court attendance notices (CANs), statements of facts and applications for AVOS. Where supporting documents were unavailable, a non-DV offence was corrected if the victim of the DV offence(s) was the same person as for the non-DV offence.

157 Most corrections were made for the offence of destroy or damage property (57.5%), followed by common assault (17.5%) and stalk or intimidate with intent to cause fear of physical or mental harm (12.3%). When an offence was corrected, in the majority of cases (92.9%) a non-DV offence was corrected to a DV offence.

158 See CSP Act, ss 72–73B (ICOs), 87–90 (CCOs), 97–99A (CROs).

159 Further corrections were made, when necessary, to the coding of DV offences if there was an additional condition requiring the offender to participate in treatment or rehabilitation in a DV related program.

160 The sample size was based on a 95% confidence level and 3% margin of error. No significant differences were observed between the sample and the population on a range of offence and offender characteristics.



## Comparing DV and non-DV offences

The focus of the analysis in this *Trends* is on DV offenders<sup>161</sup> and offences. Nevertheless, where there are sufficient cases, a comparison between DV and non-DV offences with regard to sentencing patterns and offender characteristics has been made if found to be significantly different.<sup>162</sup>

In order to make meaningful comparisons between DV and non-DV offences, the latter were disaggregated into non-DV offences committed in either a DV setting<sup>163</sup> or a non-DV setting. This analysis (outlined in Appendix C) revealed statistically significant differences in the sentencing patterns that were consistent across the range of selected offences. Therefore, non-DV offences committed in a DV setting were excluded from the analysis on penalties when comparing non-DV offences with DV offences.

## Conviction and sentence appeals

The analysis on appeals focuses on conviction and sentence appeals heard and determined in the District Court. Appeals that were withdrawn or not proceeded with (1,186 offences or 12.5%) and two cases where the appellant had died (3 offences) were excluded from the analysis, as were successful applications that resulted in a dismissal under the since repealed s 32 of the *Mental Health (Forensic Provisions) Act* 1990 (143 or 1.5% of offences).<sup>164</sup> In a small number of cases where more than one appeal against an offence was heard, the result for the final appeal was selected.

## Terminology

The term “median” refers to the sentence that lies in the middle of a range of values. “Mean” refers to the average value. The term “mode” indicates the most frequently occurring value or values. The percentages in parentheses following the mode indicate the proportion of offenders and/or offences given that value for the penalty.

In respect of penalty durations and fine amounts, the percentage falling within the middle 50% range of values is shown. The lower limit of this range is set at the first quartile (or 25th percentile) and the upper limit is set at the third quartile (or 75th percentile). This range shows the spread of values near the centre. The percentages in parentheses following the middle 50% range indicate the proportion of offenders and/or offences given that range of values for the penalty.

With respect to full-time imprisonment and ICOs, where an aggregate sentence under s 53A of the CSP Act was imposed, the term of sentence refers to the indicative sentence. The “aggregate/effective term” refers to the overall sentence and the “aggregate/effective NPP” refers to the overall non-parole period (full-time imprisonment only).<sup>165</sup>

The term “supervised order” is an ICO, CCO or CRO that includes a supervision condition.<sup>166</sup>

The abbreviation “pu” refers to penalty units. For the selected offences, the value of one penalty unit is equivalent to \$110.<sup>167</sup>

161 Offenders are considered to be DV offenders if they were sentenced for at least one DV offence (whether or not it was the principal offence).

162 The analysis of the data is primarily descriptive. However, non-parametric tests of significance are used to ascertain whether any statistically significant bivariate associations were found between various factors and sentencing patterns. The statistical tests used include the chi-square test (for categorical data, such as gender and plea), the Mann-Whitney U test for two independent samples or the Kruskal-Wallis test for more than two independent samples (for interval and ordinal data, such as age and terms of sentence). A significance level of 0.05 is used.

163 A non-DV offence is considered to be committed in a DV setting if it was committed at the same time as a DV offence.

164 Section 32 permitted a magistrate to divert mentally-disordered defendants. The total number of s 32 applications is unknown.

165 Where a s 53A aggregate sentence has been imposed, the aggregate/effective sentence includes sentences imposed for breach offences.

166 CSP Act, s 4A(3).

167 *ibid*, s 17.



## Overview

### Local Court sentences

During the study period, 49,888 offenders were sentenced in the Local Court for 104,245 offences. Of these, 63,843 were DV offences (61.2%). While the majority of these were the selected offences (80.5%), there were 20,312 other offences (19.5%) finalised with a selected offence.

Just over 20% of the other offences (21.1%) were committed in a DV setting. Of these the most common was assault with intent to commit a serious indictable offence on certain officers<sup>168</sup> (14.6%), followed by possess prohibited drug<sup>169</sup> (13.3%) and use carriage service to menace, harass or offend<sup>170</sup> (12.9%). Other common offences were unlawful entry on inclosed lands<sup>171</sup> (6.1%), attempt to stalk or intimidate with intent to cause fear of physical or mental harm<sup>172</sup> (4.5%), resist, etc police officer in execution of duty<sup>173</sup> (4.1%) and assault police officer in execution of duty<sup>174</sup> (2.7%).

In total, the offences in this study accounted for only 18.0% of all offences, and 20.0% of all offenders, sentenced in the Local Court during the study period, but they encompass the overwhelming majority of DV offences.<sup>175</sup>

### District Court appeals

An appeal against a conviction and/or sentence was lodged in the District Court in 3,438 cases (6.9%) for 9,474 offences (9.1%). The rate of severity appeals lodged for DV offences (7.9%) was significantly higher than for non-DV offences (6.5%).<sup>176</sup> In all appeals that proceeded, a conviction and/or sentence appeal was heard and determined for 8,142 offences (7.8%). There were 791 conviction appeals (9.7% of appeals or 0.8% of all offences) and 7,705 sentence severity appeals (94.6% of appeals or 7.4% of all offences).

Just over one-third (35.4%) of conviction appeals against an offence were allowed and almost two-thirds (64.6%) of severity appeals were allowed. While the success rate of conviction appeals was higher for DV offences (38.6%) compared with non-DV offences (29.9%),<sup>177</sup> severity appeals for non-DV offences (66.2%) had a higher success rate than for DV offences (63.7%).<sup>178</sup>

There was only one Crown appeal against the inadequacy of the sentence imposed and it was dismissed.

Accordingly, of all sentences imposed in the Local Court during the study period for DV offences, successful conviction appeals constitute only 0.3% of the sentences imposed and successful severity appeals only 5.1%.

### Offender characteristics

**Gender:** DV offenders were predominantly male (80.3%). This compares with 78.8% of non-DV offenders.<sup>179</sup>

**Age:** The median age of DV offenders at the time of the offence was 34 years and the mean age was 35.4 years.<sup>180</sup> By comparison, the median and mean age of non-DV offenders was 33 years and 35.3 years respectively.<sup>181</sup>

168 *Crimes Act 1900*, s 58.

169 *Drug Misuse and Trafficking Act 1985*, s 10(1).

170 *Criminal Code Act 1995* (Cth), s 474.17(1).

171 *Inclosed Lands Protection Act 1901*, s 4(1).

172 *CDVP Act*, s 13(5).

173 *Crimes Act 1900*, s 546C.

174 *ibid*, s 60(1).

175 The selected offences in this study, before correction, accounted for 97.8% of all DV offences and only 6.0% of non-DV offences. See Appendix B.

176  $\chi^2(1, N=104,245) = 72.608, p = 0.000$ .

177  $\chi^2(1, N=791) = 6.072, p = 0.014$ .

178  $\chi^2(1, N=7,709) = 6.233, p = 0.013$ .

179  $\chi^2(1, N=49,888) = 12.832, p = 0.000$ .

180 Excludes 10 cases where the age of the offender was unknown.

181  $U(N_{DV} = 35,964, N_{non-DV} = 13,914) = 242379844.50, z = -5.425, p = 0.000$ .

**Indigenous status:** DV offenders identified as Aboriginal and Torres Strait Islander persons in 27.5% of cases.<sup>182</sup> This compares with 24.9% of non-DV offenders.<sup>183</sup>

**Court location:** Just over half of DV cases were finalised in Greater Sydney (51.2%); 38.1% were finalised in courts located in regional NSW;<sup>184</sup> and the remaining 10.7% were finalised in courts located in Newcastle (6.9%) or Wollongong (3.8%). Non-DV cases were less likely to be finalised in courts located in regional NSW (33.6%) and more likely to be finalised in Greater Sydney (56.4%).<sup>185</sup>

**Number of offences:** Around half of DV offenders (49.8%) were sentenced for multiple offences: 24.7% were sentenced for two offences; 10.9% for three offences; 5.7% for four offences; and 8.6% for five or more offences.<sup>186</sup> Non-DV offenders were less likely to be sentenced for multiple offences (41.3%).<sup>187</sup>

**Plea:** DV offenders pleaded guilty in 83.0% of cases.<sup>188</sup> This compares with 79.2% of non-DV offenders.<sup>189</sup>

**Prior record:** Almost three-quarters of DV offenders (73.7%) had a prior criminal record,<sup>190</sup> including 24.9% who had previously served a sentence of full-time imprisonment.<sup>191</sup> Non-DV offenders were less likely to have a prior record (70.2%).<sup>192</sup>

**Prior DV record:** Almost half of DV offenders (44.4%) had a prior record of DV offending: 13.2% had previously served a sentence of full-time imprisonment for a DV offence and 31.2% had not.<sup>193</sup> Unsurprisingly, non-DV offenders were less likely to have a prior record of DV offending (24.8%): 7.9% with imprisonment and 16.9% without.<sup>194</sup>

**Breach offences:** At the time of sentencing, 17.4% of DV offenders were re-sentenced for a breach offence, including 13.5% for a breach of a DV offence. Non-DV offenders were less likely to have a breach offence (11.4%), or a DV breach offence (6.5%).<sup>195</sup>

## Local Court sentences for selected offences

### Penalties

The penalties that may be imposed by the court are set out in Pt 2 of the CSP Act. Penalties imposed under the Act may be custodial or non-custodial. Custodial sentences include full-time imprisonment<sup>196</sup> and ICOs.<sup>197</sup> Non-custodial sentences include CCOs,<sup>198</sup> CROs with conviction<sup>199</sup> or without conviction,<sup>200</sup> dismissal of charges<sup>201</sup> and conditional discharges,<sup>202</sup> conviction with no other penalty<sup>203</sup> and fines.<sup>204</sup> While fines can be imposed in addition to another penalty higher in the sentencing hierarchy, the analysis concerns fines given as the primary penalty only.

182 Cases where the Indigenous status of offenders was unknown (2.6%) were included.

183  $\chi^2(1, N=48,599) = 12.664, p = 0.000$ . The test excludes cases where the Indigenous status was unknown.

184 The courts broken down by statistical division and in ascending order include: Mid North Coast (5.8%), Northern (5.2%), North Western (5.0%), Central West (3.9%), Hunter other than Newcastle (3.6%), Richmond-Tweed (3.5%), Murrumbidgee (3.4%), South Eastern (3.3%), Murray (2.0%), Illawarra other than Wollongong (1.8%) and Far West (0.8%). Note that these statistical divisions were grouped according to a pre-2016 version of the Australian Statistical Geography Standard.

185  $\chi^2(2, N=49,888) = 112.977, p = 0.000$ .

186 Due to rounding, the addition of values may not reflect the total value. This occurs throughout the analysis.

187  $\chi^2(1, N=49,888) = 295.222, p = 0.000$ .

188 Cases where plea information was unknown (0.1%) were excluded.

189  $\chi^2(1, N=49,821) = 99.07, p = 0.000$ .

190 Priors for regulatory offences are not included.

191 Two cases where prior record was unknown were excluded.

192  $\chi^2(1, N=49,886) = 60.941, p = 0.000$ .

193 Two cases where prior record of DV offending was unknown were excluded.

194  $\chi^2(2, N=49,886) = 1619.332, p = 0.000$ .

195  $\chi^2(2, N=49,888) = 507.721, p = 0.000$ .

196 CSP Act, ss 5, 44–46.

197 s 7.

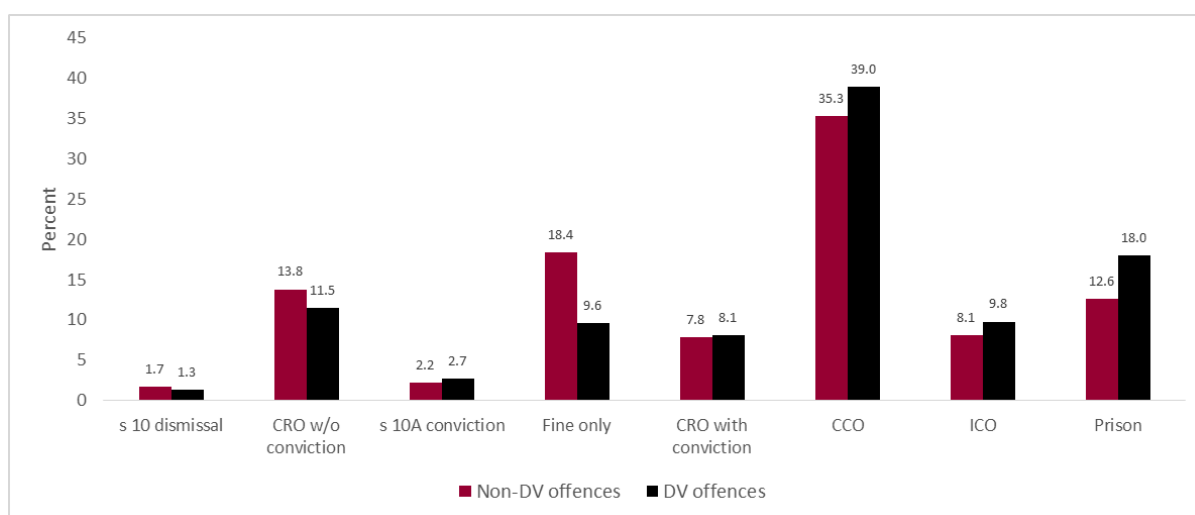
198 s 8.

199 s 9.

200 s 10(1)(b).

As indicated previously, when comparing sentencing patterns for DV and non-DV offences, non-DV offences committed in a DV setting have been excluded from the analysis. **Figure 1** shows the distribution of penalty types imposed for DV and non-DV offences (whether or not they were the principal offence).

**Figure 1. Distribution of penalty types for all selected offences by DV offence group finalised in the Local Court in the study period (N=83,053)**



**Figure 1** shows that DV offences attracted more severe penalties than non-DV offences,<sup>205</sup> receiving higher rates of full-time imprisonment (18.0% compared with 12.6%), ICOs (9.8% compared with 8.1%), CCOs (39.0% compared with 35.3%) and CROs with conviction (8.1% compared with 7.8%).

The differences in the sentences displayed in **Figure 1** do not take into account any offender characteristics, the offence type, the domestic relationship, the degree of harm caused to the victim, or other factors relevant to the offending. As such, other factors may have a greater influence on sentencing patterns than simply whether or not the particular offence is a DV offence.

**Community correction orders (CCOs)** were the most common penalty, imposed in 39.0% of DV offences. The median CCO duration was 12 months, as was the mode (44.7%). The majority of CCOs imposed (72.4%) were in the middle 50% range of 12 to 18 months duration. While the median, mode and middle 50% range were the same for non-DV offences, there was a significant difference in the distribution with 48.1% of DV offences receiving durations longer than 12 months compared with 44.8% of non-DV offences.<sup>206</sup> Supervision was a condition of almost three-quarters of CCOs (72.8%), significantly higher than for non-DV offences (59.2%).<sup>207</sup> Supervised CCOs were also for a longer duration (median 15 months) than those CCOs that were unsupervised (median 12 months).<sup>208</sup>

**Conditional release orders (CROs)** were imposed in 19.6% of DV offences: 8.1% with conviction and 11.5% without. The median and mode term of CROs was 12 months (54.9%) and the middle 50% range was 12 to 18 months (70.0%). Supervision was a condition of 21.3% of CROs, significantly higher than for non-DV offences (10.2%).<sup>209</sup> Supervised orders were more likely if the CRO was with conviction

201 s 10(1)(a).

202 s 10(1)(c).

203 s 10A.

204 s 15.

205  $U(N_{DV} = 63,309, N_{non-DV} = 19,744) = 545921589.00, z = -27.8, p = 0.000.$

206  $U(N_{DV} = 24,722, N_{non-DV} = 6,533) = 82418563.00, z = -6.027, p = 0.000.$

207  $\chi^2(1, N=31,700) = 477.528, p = 0.000.$

208  $U(N_{DV} = 22,141, N_{non-DV} = 9,559) = 79873717.00, z = -36.806, p = 0.000.$

209  $\chi^2(1, N=16,696) = 259.751, p = 0.000.$

(31.7%) than without conviction (14.1%).<sup>210</sup> A similar pattern was observed for non-DV offences (20.3% compared with 4.5% respectively).<sup>211</sup> The median duration of supervised and unsupervised CROs, with or without conviction, was 12 months.

**Full-time imprisonment** was imposed in 18.0% of DV offences. The median term of imprisonment was 7 months, compared with 6.5 months for non-DV offences.<sup>212</sup> The mode was 12 months (14.2%) and the middle 50% range was 3 to 12 months (73.0%). By comparison, for non-DV offences, the mode was 3 months (13.3%) and the middle 50% range was 3 to 11 months (61.5%). For DV offenders, the median aggregate/effective term of imprisonment was 12 months and the median aggregate/effective NPP was 6 months. By comparison, the median aggregate/effective term of imprisonment for non-DV offenders was 10 months<sup>213</sup> and the median aggregate/effective NPP was 6 months.<sup>214</sup>

**Intensive correction orders (ICOs)** were imposed in 9.8% of DV offences. The median duration of ICOs was 9 months, the mode was 12 months (22.3%) and the middle 50% range was 6 to 12 months (67.0%). The median aggregate/effective term of an ICO was 12 months.

**Fines** were imposed for 9.6% of DV offences. The median and mode fine amount was \$500 (21.5%) and the middle 50% range of fines was \$350 to \$750 (55.1%). Fine amounts for non-DV offences were higher (median \$550 and middle 50% range \$400 to \$800).<sup>215</sup>

**Convictions recorded with no other penalty (s 10A)** were imposed in 2.7% of DV offences.<sup>216</sup>

**Dismissals (s 10(1)(a))** were imposed in 1.7% of DV offences.

### Conditions imposed on DV offenders

While supervision is a standard condition of ICOs, it is an additional condition for CCOs and CROs. Supervised orders were imposed on 54.8% of DV offenders whose principal penalty was either an ICO (100%), CCO (68.9%) or CRO (18.7%). By comparison, non-DV offenders were less likely to have a supervision condition imposed (41.6%),<sup>217</sup> comprising 54.8% of CCOs<sup>218</sup> and 8.6% of CROs.<sup>219</sup>

Home detention and electronic monitoring are additional conditions available for ICOs only. For DV offenders whose principal penalty was an ICO, 1.7% had a home detention condition imposed and 4.5% had an electronic monitoring condition.

Community service work (CSW) is an additional condition only available for ICOs and CCOs. CSW was imposed on 14.9% of DV offenders whose principal penalty was either an ICO (37.7%) or a CCO (10.0%). A CSW condition was more likely to be imposed on non-DV offenders whose primary penalty was a CCO (13.7%).<sup>220</sup> Regardless of the type of penalty, the median CSW required to be performed was 100 hours. The mode was also 100 hours (33.8%) and the middle 50% range was 80 to 150 hours (60.7%). Although the median CSW hours was the same for DV and non-DV offenders, significantly fewer DV offenders (37.0%) than non-DV offenders (44.8%) were required to undertake more than 100

210  $\chi^2(1, N=12,421) = 559.741, p = 0.000$ .

211  $\chi^2(1, N=4,275) = 267.213, p = 0.000$ .

212  $U(N_{DV} = 11,384, N_{non-DV} = 2,497) = 13688084.00, z = -2.906, p = 0.004$ .

213  $U(N_{DV} = 4,165, N_{non-DV} = 1,381) = 2613909.50, z = -5.099, p = 0.000$ .

214  $U(N_{DV} = 4,165, N_{non-DV} = 1,381) = 2717342.00, z = -3.089, p = 0.002$ . Although the median aggregate/effective NPP was the same, the distribution was significantly different (mean: 6.87 months for DV offenders compared with 6.26 months for non-DV offenders, middle 50% range: 3.94 to 9 months for DV offenders compared with 3 to 8 months for non-DV offenders).

215  $U(N_{DV} = 6,108, N_{non-DV} = 3,626) = 9291512.00, z = -13.379, p = 0.000$ .

216 A very small number of offences (two DV and one non-DV) received a sentence to the rising of the court. These offences have been included with s 10A penalties.

217  $\chi^2(1, N=35,215) = 470.292, p = 0.000$ .

218  $\chi^2(1, N=18,613) = 306.921, p = 0.000$ .

219  $\chi^2(1, N=12,686) = 198.048, p = 0.000$ .

220  $\chi^2(1, N=18,613) = 46.521, p = 0.000$ .

hours CSW.<sup>221</sup> For DV offenders, while the median CSW hours was the same for ICOs and CCOs, the distribution was significantly different with 41.9% of CSW longer than 100 hours imposed for ICOs, compared with 33.1% for CCOs.<sup>222</sup>

Information concerning the following additional and further conditions was obtained from a random sample of cases,<sup>223</sup> and relates to those DV offenders whose primary penalty was an ICO, CCO or CRO.

A condition requiring the offender to participate in a rehabilitation program or to receive treatment was imposed on 32.0% of DV offenders. The most common programs and treatment were for mental health or medical issues (13.6%), substance abuse (12.6%), DV and relationship issues (8.9%) and anger management (6.3%). Other programs (1.1%) included those related to education, parenting, personal development/life skills, gambling addiction and driving. More than one program or treatment type could be ordered. The type was unspecified in 1.4% of cases.

A condition requiring abstinence from alcohol or drugs or both was imposed on 10.8% of DV offenders. A condition requiring abstinence from alcohol was ordered in 7.1% of cases, while a condition requiring abstinence from drugs was ordered in 7.6% of cases.

Other additional conditions imposed less frequently on DV offenders were a place-restriction condition prohibiting the frequenting of, or visits to, a particular place or area (1.1%), a non-association condition prohibiting association with particular persons (0.6%) and a curfew condition (0.5%).<sup>224</sup>

Further conditions were imposed on 11.8% of DV offenders. These included conditions to comply with an AVO (9.3%) and/or not to assault, intimidate or harass the victim (2.0%). In a small number of cases, other conditions (0.9%) included accommodation and housing arrangements and travel orders.

### Requirement for full-time imprisonment or supervision

The potential impact of s 4A of the CSP Act requiring that full-time imprisonment or a supervised order must be imposed for a DV offence, unless the court is satisfied a different sentencing option is more appropriate,<sup>225</sup> is reflected in **Figure 2**.

221  $U(N_{DV} = 2,519, N_{non-DV} = 980) = 1135573.00, z = -3.752, p = 0.000$ .

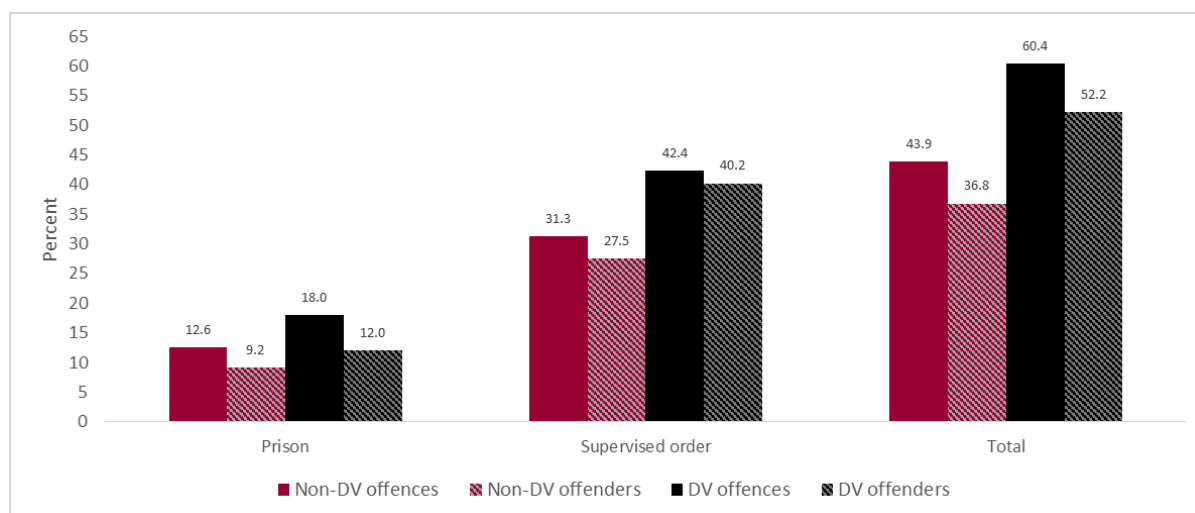
222  $U(N_{ICO} = 1,117, N_{CCO} = 1,402) = 654218.00, z = -7.262, p = 0.000$ .

223 Since the random sample only included cases where any additional or further conditions were imposed, the results have been adjusted to account for cases where conditions were not imposed. See Data collection and corrections under Data source and methodology, p 20.

224 DV offenders often have associated AVOs made against them that include these types of conditions, therefore it is not expected for them to be imposed on a community-based order.

225 See the discussion on p 12.

**Figure 2. Full-time imprisonment or supervised orders (s 4A) imposed for selected offences (N=83,053) and offenders (N=49,370) by DV offence and offender groups finalised in the Local Court in the study period**



**Figure 2** shows that just over half of DV offenders (52.2%), accounting for three in five DV offences (60.4%), were sentenced to full-time imprisonment (12.0% and 18.0% respectively) or a supervised order (40.2% and 42.4% respectively). This was significantly higher than for non-DV offenders (36.8%) and offences (43.9%).<sup>226</sup>

### Protection and safety of victims

Section 4B of the CSP Act provides that an ICO must not be imposed for a DV offence unless the victim and any person with whom the offender is likely to reside are adequately protected. It further provides that a home detention condition cannot be imposed if the court believes the offender will be residing with the victim and, in relation to the imposition of a CCO or CRO, the court must also consider the victim's safety.<sup>227</sup> As stated previously, just under one in 10 DV offences (9.8%) received an ICO and only 2.0% of these (or 0.2% overall) included a home detention condition. In respect of DV offenders, 8.3% received an ICO, of which 1.7% (or 0.1% overall) included a home detention condition.

### Selected offences

**Table 1**, below, shows the types of penalties imposed for the selected offences committed in a DV context based on whether the offence was the principal, or a secondary, offence and whether one, or multiples, of the particular offence were involved.

Presenting sentencing information this way demonstrates the impact of other sentencing considerations on an individual sentence when a court is required to sentence an offender for more than one offence. However, it should be noted that the following analysis is offence based and the same offender may appear in several of the selected offences. Further, the relationship between the number of offences and the number of offenders has the potential to bias results where few offenders are responsible for many offences. For these reasons, the following penalty information does not differentiate between offender characteristics at this level.

<sup>226</sup>  $\chi^2(1, N=49,370) = 946.224, p = 0.000$  and  $\chi^2(1, N=83,053) = 1667.345, p = 0.000$  respectively.

<sup>227</sup> See the discussion above at p 14ff.

**Table 1. Distribution of penalty types for selected DV offences by principal offence group and number of offences finalised in the Local Court in the study period**

Offence description						Penalty type (%)				
	No DV offenders* offences	No DV offences	s 10 dismiss	CRO w/o conv	s 10A conv	Fine	CRO with conv	CCO	ICO	Prison
<b>Contravene prohibition/restriction in AVO</b>										
<b>Principal offence</b>										
One offence only	5,356	5,356	3.4	10.3	9.0	20.7	10.3	34.1	4.8	7.6
Multiple offences — one of this offence	1,187	1,187	0.3	2.5	1.9	11.3	7.2	44.0	12.8	20.0
Multiple offences — multiples of this offence	1,551	4,277	0.6	4.1	4.9	9.3	5.8	38.2	11.6	25.5
<b>Not principal offence</b>										
Multiple offences — one of this offence	4,562	4,562	0.7	4.7	3.3	6.5	6.3	41.7	13.3	23.4
Multiple offences — multiples of this offence	1,689	4,861	0.1	1.1	4.7	4.6	3.0	34.2	13.9	38.4
<b>Total all offences</b>	<b>14,345</b>	<b>20,243</b>	<b>1.2</b>	<b>5.0</b>	<b>5.4</b>	<b>10.7</b>	<b>6.5</b>	<b>37.3</b>	<b>10.8</b>	<b>23.1</b>
<b>Common assault</b>										
<b>Principal offence</b>										
One offence only	6,005	6,005	3.8	37.5	0.6	11.6	13.5	29.3	2.1	1.5
Multiple offences — one of this offence	2,363	2,363	0.2	6.1	0.3	7.0	8.4	46.0	13.5	18.5
Multiple offences — multiples of this offence	1,029	2,131	1.2	16.4	0.8	6.2	9.9	39.1	12.4	13.8
<b>Not principal offence</b>										
Multiple offences — one of this offence	3,941	3,941	1.0	12.6	1.2	5.8	8.9	46.2	9.6	14.8
Multiple offences — multiples of this offence	801	1,726	0.3	4.9	1.2	4.1	6.0	42.9	12.9	27.7
<b>Total all offences</b>	<b>14,139</b>	<b>16,166</b>	<b>1.9</b>	<b>20.6</b>	<b>0.8</b>	<b>8.0</b>	<b>10.4</b>	<b>38.6</b>	<b>8.1</b>	<b>11.7</b>
<b>Stalk or intimidate with intent to cause fear or physical or mental harm</b>										
<b>Principal offence</b>										
One offence only	2,063	2,063	1.3	23.3	0.9	11.4	13.0	41.4	3.9	4.8
Multiple offences — one of this offence	4,833	4,833	0.2	7.9	0.3	4.1	8.6	52.0	10.7	16.1
Multiple offences — multiples of this offence	1,124	2,459	0.2	7.4	0.6	3.9	6.5	44.1	12.1	25.2
<b>Not principal offence</b>										
Multiple offences — one of this offence	1,058	1,058	0.9	1.9	3.7	9.1	4.6	33.1	14.7	32.1
Multiple offences — multiples of this offence	215	481	0.0	1.5	0.8	3.1	1.7	26.4	13.5	53.0
<b>Total all offences</b>	<b>9,293</b>	<b>10,894</b>	<b>0.5</b>	<b>9.9</b>	<b>0.8</b>	<b>5.9</b>	<b>8.3</b>	<b>45.2</b>	<b>10.2</b>	<b>19.2</b>
<b>Destroy or damage property</b>										
<b>Principal offence</b>										
One offence only	2,376	2,376	4.8	28.7	3.1	27.2	11.0	22.7	0.8	1.6
Multiple offences — one of this offence	1,729	1,729	1.2	16.5	0.9	9.7	11.9	45.7	6.6	7.5
Multiple offences — multiples of this offence	398	786	0.1	13.9	2.2	11.1	7.8	45.5	8.5	10.9
<b>Not principal offence</b>										
Multiple offences — one of this offence	3,207	3,207	1.0	7.3	5.6	21.6	6.6	36.3	6.6	15.0
Multiple offences — multiples of this offence	579	1,203	1.2	3.2	5.7	13.3	5.2	35.6	12.0	23.9



Offence description	Penalty type (%)									
	No DV offenders* offences	No DV offenders* offences	s 10 dism	CRO w/o conv	s 10A conv	Fine	CRO with conv	CCO	ICO	Prison
<b>Total all offences</b>	<b>8,289</b>	<b>9,301</b>	<b>1.9</b>	<b>14.5</b>	<b>3.8</b>	<b>18.8</b>	<b>8.6</b>	<b>35.3</b>	<b>6.0</b>	<b>11.0</b>
<b>Assault occasioning actual bodily harm</b>										
<b>Principal offence</b>										
One offence only	2,189	2,189	0.7	16.8	0.1	6.8	11.3	48.2	9.0	7.1
Multiple offences — one of this offence	2,353	2,353	0.1	4.3	0.0	3.0	4.5	39.4	18.4	30.2
Multiple offences — multiples of this offence	326	672	0.0	2.8	0.3	3.1	2.8	34.2	15.3	41.4
<b>Not principal offence</b>										
Multiple offences — one of this offence	746	746	0.1	3.4	0.5	1.9	4.3	42.0	16.2	31.6
Multiple offences — multiples of this offence	78	164	0.0	3.0	0.6	0.0	5.5	21.3	24.4	45.1
<b>Total all offences</b>	<b>5,692</b>	<b>6,124</b>	<b>0.3</b>	<b>8.5</b>	<b>0.2</b>	<b>4.2</b>	<b>6.8</b>	<b>41.8</b>	<b>14.6</b>	<b>23.7</b>
<b>Intentionally choke, etc person without consent</b>										
<b>Principal offence</b>										
One offence only	37	37	0.0	2.7	0.0	5.4	8.1	67.6	10.8	5.4
Multiple offences — one of this offence	292	292	0.0	1.4	0.0	1.7	0.0	32.2	24.3	40.4
Multiple offences — multiples of this offence	21	43	0.0	0.0	0.0	0.0	0.0	2.3	14.0	83.7
<b>Not principal offence</b>										
Multiple offences — one of this offence	69	69	0.0	1.4	0.0	0.0	2.9	27.5	18.8	49.3
Multiple offences — multiples of this offence	3	6	0.0	0.0	0.0	0.0	0.0	0.0	33.3	66.7
<b>Total all offences</b>	<b>422</b>	<b>447</b>	<b>0.0</b>	<b>1.3</b>	<b>0.0</b>	<b>1.6</b>	<b>1.1</b>	<b>31.1</b>	<b>21.5</b>	<b>43.4</b>
<b>Intentionally choke, etc person with recklessness</b>										
<b>Principal offence</b>										
One offence only	17	17	0.0	5.9	0.0	0.0	0.0	23.5	35.3	35.3
Multiple offences — one of this offence	100	100	0.0	0.0	0.0	0.0	0.0	20.0	34.0	46.0
Multiple offences — multiples of this offence	6	12	0.0	0.0	0.0	0.0	0.0	25.0	8.3	66.7
<b>Not principal offence</b>										
Multiple offences — one of this offence	5	5	0.0	0.0	0.0	0.0	0.0	20.0	0.0	80.0
Multiple offences — multiples of this offence	0	0								
<b>Total all offences</b>	<b>128</b>	<b>134</b>	<b>0.0</b>	<b>0.7</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>20.9</b>	<b>30.6</b>	<b>47.8</b>

\* The same offender may be counted in more than one selected offence.

**Table 1** reveals a general trend of increased rates of more severe penalties, such as custodial sentences, when multiple offences are involved. Offenders who were sentenced for multiple counts of a particular offence, where it was not the principal offence, recorded higher rates of full-time imprisonment than other offender groups.

A similar pattern of sentencing was observed for non-DV offences and offenders. However, non-DV offenders were more likely than DV offenders to be sentenced for only one offence. This trend was consistent across each selected offence.

When sentencing offenders, a number of other factors relating to the offender and the offence must be taken into account, including their prior record and the plea. The following penalty information does not differentiate between those factors. However the table in **Appendix D** shows the bivariate relationship between offender characteristics and selected offences.

### **Contravene prohibition/restriction in AVO — Crimes (Domestic and Personal Violence) Act 2007, s 14(1)**

*Maximum penalty: 2 yrs and/or 50 pu.*

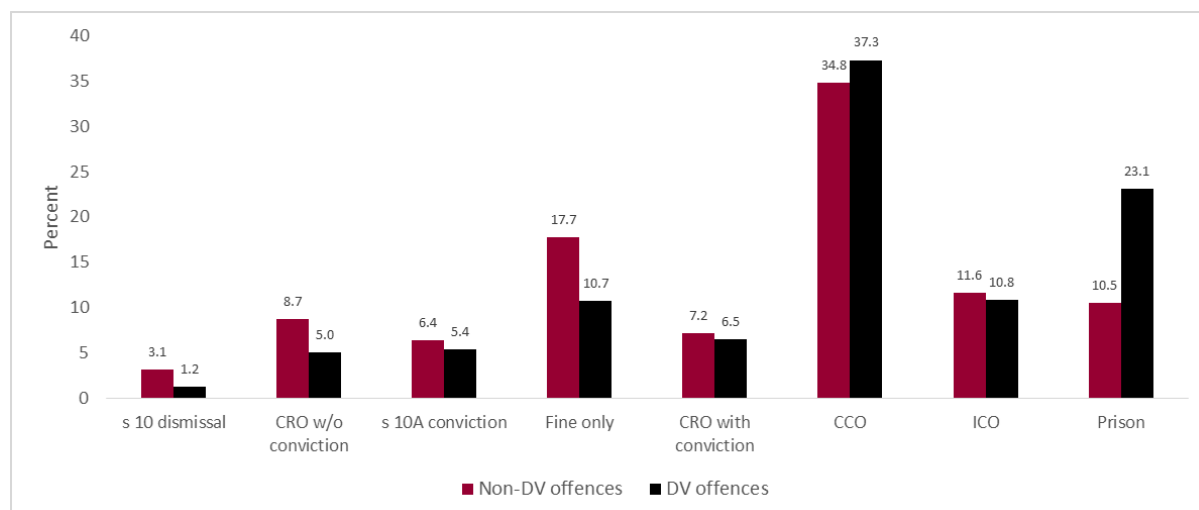
When an AVO is contravened, the person intended to be protected is left without protection, the authority of the court is undermined and the rule of law is compromised.<sup>228</sup>

This offence recorded the highest rate of offences that were DV offences (96.8%). It was also the most common DV offence accounting for 31.7% of all DV offences.

In respect of all offenders, this offence recorded the highest rate of offenders who were sentenced for multiple counts of this offence (22.4%), had another offence that was the principal offence (43.2%), had a prior record (90.1%) and had a breach offence (31.6%). For DV offenders, this offence also had the highest rate of offenders who were Indigenous offenders (35.1%), had pleaded guilty (87.2%), had a prior record of DV offending (70.0%), a breach of a DV offence (27.3%), and had previously been imprisoned (36.3%).

**Figure 3** shows the types of penalties imposed for DV and non-DV offences of contravene prohibition/restriction in AVO.

**Figure 3. Distribution of penalty types for contravene prohibition/restriction in AVO by DV offence group finalised in the Local Court in the study period (N=20,898)**



The most common penalty imposed for DV offences of this kind was a CCO (37.3%), followed by full-time imprisonment (23.1%). The median CCO duration was 12 months and the median term of imprisonment was 6 months.

ICOs (10.8%) and fines (10.7%) were the next most common penalties imposed for DV offences. The median duration of ICOs was 7 months and the median fine amount was \$500.

CROs were imposed on 11.6% of DV offences: 6.5% with conviction and 5.0% without conviction. The median CRO duration was 12 months. Other penalties included s 10A convictions (5.4%) and s 10 dismissals (1.2%).

228 *R v Archer* [2015] NSWSC 1487 at [114].

The distribution of penalties was significantly less severe for non-DV offences.<sup>229</sup> Although a CCO was the most common penalty (34.8%), full-time imprisonment was much less likely to be imposed (10.5%) while other penalty types, particularly fines (17.7%), were more likely.

Conditions were imposed on those DV offenders who were sentenced to an ICO, CCO or CRO as their primary penalty. Of these, supervision was a condition of the order in 58.8% of cases, significantly higher than for non-DV offenders (46.0%).<sup>230</sup> The largest difference was in relation to CCOs where 68.8% of DV offenders were ordered to submit to supervision compared with 58.5% of non-DV offenders.<sup>231</sup>

Home detention (2.5% of ICOs) and electronic monitoring (5.8% of ICOs) were not commonly imposed. Nevertheless, compared to the other selected offences, this offence had the highest rate of electronic monitoring.

CSW was a condition of the order for 13.3% of the DV offenders whose principal penalty was either an ICO (31.5%) or a CCO (9.7%). Regardless of the penalty type, the median CSW required to be performed was 100 hours.

#### Section 4A requirement

Around 3 in 5 DV offences (64.7%) and DV offenders (60.7%) had a sentence of full-time imprisonment (23.1% and 18.5% respectively) or a supervised order (41.6% and 42.2% respectively) imposed, significantly higher than for non-DV offences (46.9%) and offenders (40.7%).<sup>232</sup>

### Common assault — Crimes Act 1900, s 61

*Maximum penalty: 2 yrs and/or 50 pu.*

Seven out of 10 (69.7%) of the offences of common assault were DV offences. This was the second most common DV offence accounting for 25.3% of all DV offences.

In respect of all offenders, this offence recorded the highest rate of offenders sentenced for only one offence (45.6%), with no prior record (35.3%) and who had not been previously imprisoned (81.0%).

**Figure 4** shows the types of penalties imposed for DV and non-DV offences of this kind.

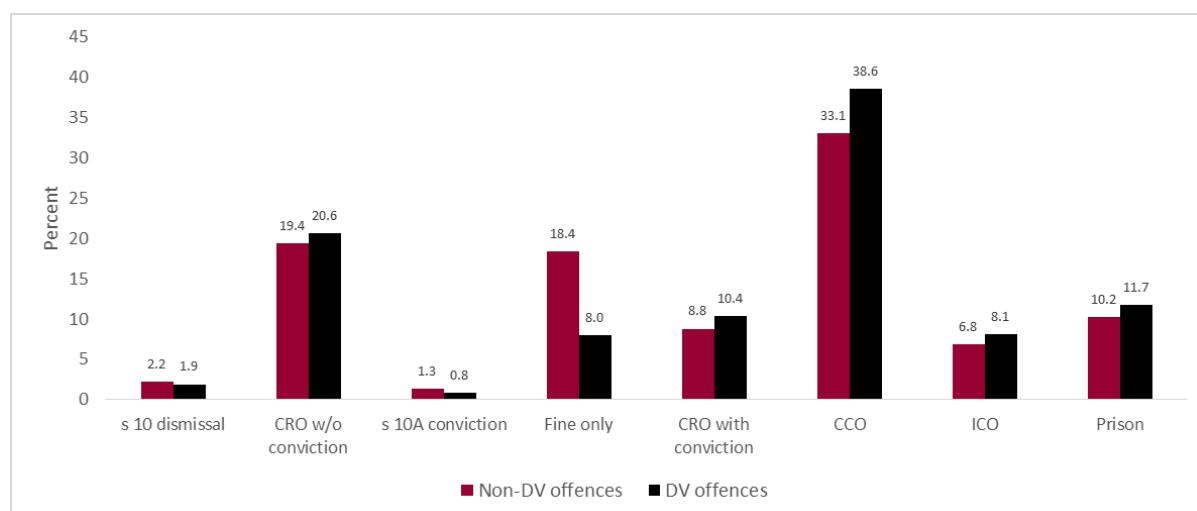
229  $U(N_{DV}=20,243, N_{non-DV}=655) = 5291853.00, z = -9.110, p = 0.000$ .

230  $\chi^2(1, N=5,206) = 12.297, p = 0.000$  and  $\chi^2(1, N=8,430) = 14.810, p = 0.000$  respectively.

231  $\chi^2(1, N=3,111) = 4.513, p = 0.034$ .

232  $\chi^2(1, N=20,898) = 88.005, p = 0.000$  and  $\chi^2(1, N=14,849) = 81.466, p = 0.000$  respectively.

**Figure 4. Distribution of penalty types for common assault by DV offence group finalised in the Local Court in the study period (N=22,983)**



The most common penalty imposed for DV offences was a CCO (38.6%) with a median CCO duration of 12 months. A CRO was the next most common penalty, imposed for 30.9% of DV offences: 10.4% with conviction and 20.6% without conviction. Compared to the other selected offences, this offence recorded the highest rate of CROs with and without conviction. The median CRO duration was 12 months.

Compared to other selected offences, this offence had the second lowest rate of custodial sentences. Full-time imprisonment was imposed for 11.7% of DV offences and the median term of imprisonment was 8 months. ICOs were imposed for 8.1% of DV offences with a median duration of 9 months.

Fines accounted for 8.0% of the penalties imposed for DV offences and the median fine amount was \$550. Other penalties included s 10 dismissals (1.9%) and s 10A convictions (0.8%).

The distribution of penalties was significantly less severe for non-DV offences.<sup>233</sup> The most marked difference was in the much higher use of fines for the non-DV offences (18.4%), with fine amounts higher than for DV offences (median \$600).<sup>234</sup> If sentenced to full-time imprisonment, non-DV offences received shorter terms of imprisonment (median 6 months).<sup>235</sup>

Conditions were imposed on DV offenders who were sentenced to an ICO, CCO or CRO as their primary penalty. Of these, supervision was a condition in 44.2% of cases, significantly higher than for non-DV offenders (32.8%).<sup>236</sup> In relation to CCOs, 64.9% of DV offenders were required to submit to supervision compared with 50.7% of non-DV offenders.<sup>237</sup> In relation to CROs, 16.7% of DV offenders were required to submit to supervision compared with 6.7% of non-DV offenders.<sup>238</sup>

Home detention (1.2% of ICOs) and electronic monitoring (3.5% of ICOs) were not commonly imposed.

CSW was a condition of the order for 13.1% of the DV offenders whose principal penalty was either an ICO (35.9%) or a CCO (8.9%). Regardless of the penalty type, the median CSW required to be performed was 100 hours.

233  $U(N_{DV}=16,166, N_{non-DV}=6,817)=51048416.50, z=-9.114, p=, p=0.000.$

234  $U(N_{DV}=1,294, N_{non-DV}=1,253)=741270.00, z=-3.765, p=0.000.$

235  $U(N_{DV}=1,885, N_{non-DV}=694)=532954.50, z=-7.258, p=0.000.$

236  $\chi^2(1, N=10,698)=70.225, p=0.000$  and  $\chi^2(1, N=14,073)=246.579, p=0.000$ , respectively.

237  $\chi^2(1, N=4,627)=81.743, p=0.000.$

238  $\chi^2(1, N=5,235)=93.692, p=0.000.$

### Section 4A requirement

Just over half of DV offences (52.9%) and DV offenders (50.8%) had a sentence of full-time imprisonment (11.7% and 10.4% respectively) or a supervised order (41.2% and 40.3% respectively) imposed, significantly higher than for non-DV offences (37.4%) and offenders (34.8%).<sup>239</sup>

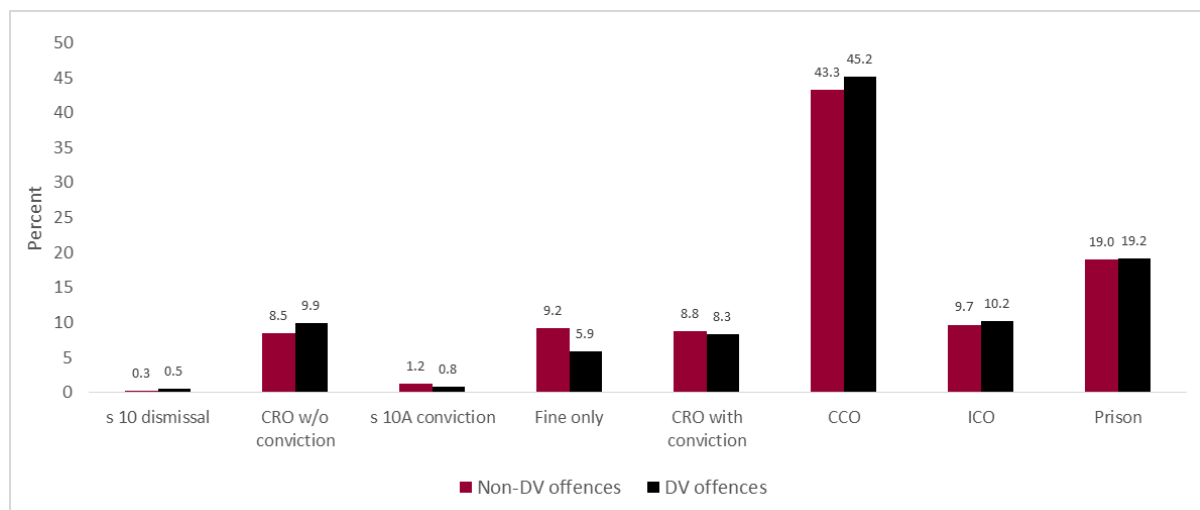
### Stalk or intimidate with intent to cause fear of physical or mental harm — Crimes (Domestic and Personal Violence) Act 2007, s 13(1)

*Maximum penalty: 5 yrs and/or 50 pu. Jurisdictional maximum in Local Court: 2 yrs and/or 50 pu.*

Almost three-quarters (74.7%) of stalk or intimidate with intent to cause fear of physical or mental harm offences were DV offences. This was the third most common DV offence accounting for 17.1% of all DV offences.

**Figure 5** shows the types of penalties imposed for DV and non-DV offences of this kind.

**Figure 5. Distribution of penalty types for stalk or intimidate with intent to cause fear of physical or mental harm by DV offence group finalised in the Local Court in the study period (N=14,390)**



The most common penalty imposed for DV offences was a CCO (45.2%), the highest rate of any of the selected offences, with a median duration of 14 months.

Custodial sentences were the next most common penalty. Full-time imprisonment was imposed for 19.2% of DV offences and the median term of imprisonment was 8 months. ICOs were imposed for 10.2% of DV offences and the median duration of ICOs was 9 months.

A CRO was imposed in 18.1% of DV offences: 8.3% with conviction and 9.9% without conviction. The median CRO duration was 12 months.

Fines accounted for 5.9% of penalties imposed for DV offences and the median fine amount was \$500. Other penalties included s 10A convictions (0.8%) and s 10 dismissals (0.5%).

The distribution of penalties was not significantly different for non-DV offences. However, if sentenced to full-time imprisonment or a CCO, non-DV offences received shorter terms of imprisonment (median 7 months)<sup>240</sup> and CCOs of shorter duration (median 12 months).<sup>241</sup>

239  $\chi^2(1, N=22,983) = 456.350, p = 0.000$  and  $\chi^2(1, N=20,048) = 426.707, p = 0.000$  respectively.

240  $U(N_{DV} = 2,092, N_{non-DV} = 663) = 651364.50, z = -2.373, p = 0.018$ .

241  $U(N_{DV} = 4,929, N_{non-DV} = 1,515) = 3579606.50, z = -2.572, p = 0.010$ .

Conditions were imposed on the DV offenders who were sentenced to an ICO, CCO or CRO as their primary penalty. Of these, supervision was ordered in 61.5% of cases, significantly higher than for non-DV offenders (48.4%).<sup>242</sup> In relation to CCOs, 71.0% of DV offenders had a supervision condition imposed compared with 58.9% of non-DV offenders.<sup>243</sup> In relation to CROs, 22.5% of DV offenders had a supervision condition imposed compared with 10.6% of non-DV offenders.<sup>244</sup>

Home detention (1.7% of ICOs) and electronic monitoring (4.7% of ICOs) were not commonly imposed.

CSW was a condition of the order for 13.4% of DV offenders whose principal penalty was either an ICO (36.0%) or a CCO (9.0%). Regardless of the penalty type, the median CSW required to be performed was 100 hours.

#### Section 4A requirement

Around two-thirds of DV offences (66.5%) and DV offenders (64.9%) had a sentence of full-time imprisonment (19.2% and 17.2% respectively) or a supervised order (47.3% and 47.7% respectively) imposed, significantly higher than for non-DV offences (58.0%) and offenders (54.8%).<sup>245</sup>

#### Destroy or damage property — Crimes Act 1900, s 195(1)(a)

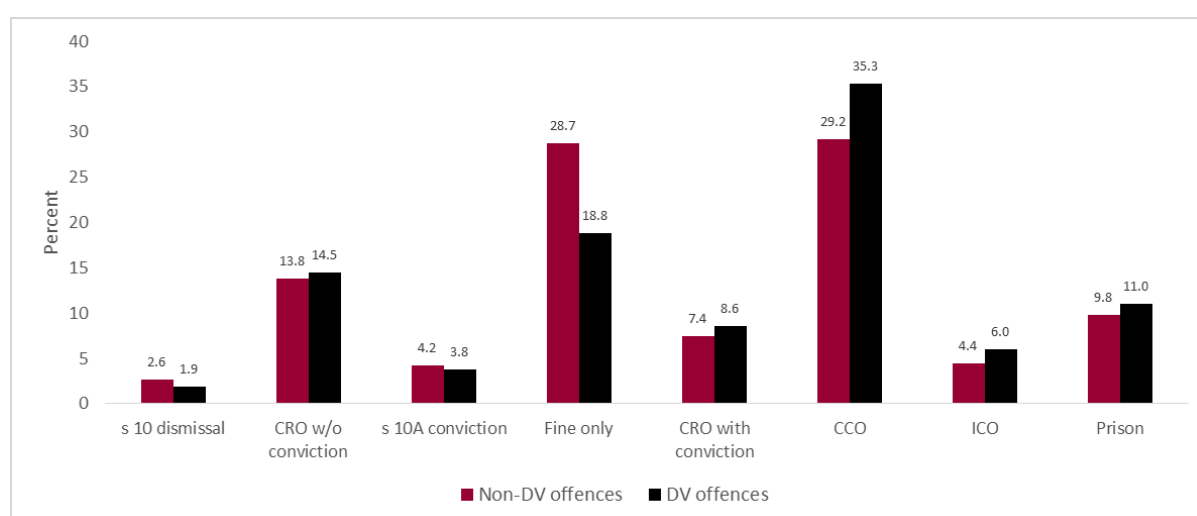
*Maximum penalty: 5 yrs. Jurisdictional maximum in Local Court: 2 yrs and/or 20 pu (property value does not exceed \$2,000); 2 yrs and/or 50 pu (property value does not exceed \$5,000); 2 yrs or 100 pu (property value exceeds \$5,000).*

Destroy or damage property offences were the least likely to be DV offences (59.5%). This offence accounted for 14.6% of DV offences.

In respect of DV offenders, this offence was not the principal offence for 45.7% of offenders, the highest rate for any of the selected offences.

**Figure 6** shows the types of penalties imposed for DV and non-DV offences of this kind.

**Figure 6. Distribution of penalty types for destroy or damage property by DV offence group finalised in the Local Court in the study period (N=15,271)**



242  $\chi^2(1, N=8,200) = 70.225, p = 0.000$  and  $\chi^2(1, N=10,580) = 99.068, p = 0.000$ , respectively.

243  $\chi^2(1, N=5,017) = 58.056, p = 0.000$ .

244  $\chi^2(1, N=2,205) = 34.581, p = 0.000$ .

245  $\chi^2(1, N=14,390) = 84.658, p = 0.000$  and  $\chi^2(1, N=12,120) = 95.558, p = 0.000$  respectively.

The most common penalty imposed for DV offences was a CCO (35.3%) with a median duration of 12 months.

A fine was the next most common penalty accounting for 18.8% of penalties imposed for DV offences, the highest rate of any of the selected offences. The median fine amount was \$500.

A CRO was imposed on 23.2% of DV offences: 8.6% with conviction and 14.5% without conviction. The median CRO duration was 12 months.

Compared to other selected offences, this offence had the lowest rate of custodial sentences with the shortest durations. Full-time imprisonment was imposed for 11.0% of DV offences and the median term of imprisonment was 4 months. ICOs were imposed for 6.0% of DV offences and the median duration of ICOs was 6 months.

Although not frequently imposed, this offence recorded the highest rates of s 10A convictions (3.8%) and s 10 dismissals (1.9%).

The distribution of penalties was significantly less severe for the non-DV offences,<sup>246</sup> with the most striking difference being in the much higher use of fines (28.7%) and in amounts that were significantly higher (41.5% incurred fine amounts above \$500 compared with 28.7% of DV offenders).<sup>247</sup> Where sentences of full-time imprisonment were imposed, the terms of imprisonment were shorter for non-DV offences (median 3 months).<sup>248</sup>

Conditions were imposed on those DV offenders who were sentenced to an ICO, CCO or CRO as their primary penalty. Of these, supervision was ordered in 47.5% of cases, significantly higher than for non-DV offenders (36.3%).<sup>249</sup> In relation to CCOs, supervision was a condition of the order for 71.7% of DV offenders compared with 58.5% of non-DV offenders.<sup>250</sup> In relation to CROs, 17.0% of DV offenders were required to submit to supervision compared with 9.7% of non-DV offenders.<sup>251</sup>

Home detention (1.1% of ICOs) and electronic monitoring (2.2% of ICOs) were not frequently imposed.

CSW was a condition of the order for 10.2% of the DV offenders whose principal penalty was either an ICO (34.8%) or CCO (7.3%). Regardless of the penalty type, the median CSW required to be performed was 100 hours.

#### Section 4A requirement

Compared to other selected offences, this offence recorded the lowest rate of DV offences (48.1%) and DV offenders (46.5%) where a sentence of full-time imprisonment (11.0% and 10.1% respectively) or a supervised order (37.1% and 36.4% respectively) was imposed, but sentences of this kind were still significantly higher than for non-DV offences (35.7%) and offenders (31.3%).<sup>252</sup>

### Assault occasioning actual bodily harm — Crimes Act 1900, s 59(1)

*Maximum penalty: 5 yrs.*

*Jurisdictional maximum in Local Court: 2 yrs and/or 50 pu.*

Just over two-thirds (68.1%) of all assault occasioning actual bodily harm offences were DV offences. This offence accounted for 9.6% of the DV offences.

246  $U(N_{DV} = 9,301, N_{non-DV} = 5,970) = 25496482.50, z = -8.759, p = 0.000.$

247  $U(N_{DV} = 1,753, N_{non-DV} = 1,714) = 1263703.00, z = -8.159, p = 0.000.$

248  $U(N_{DV} = 1,023, N_{non-DV} = 587) = 261849.50, z = -4.316, p = 0.000.$

249  $\chi^2(1, N=5,321) = 64.007, p = 0.000$  and  $\chi^2(1, N=8,428) = 215.063, p = 0.000$ , respectively.

250  $\chi^2(1, N=2,500) = 46.151, p = 0.000.$

251  $\chi^2(1, N=2,551) = 27.188, p = 0.000.$

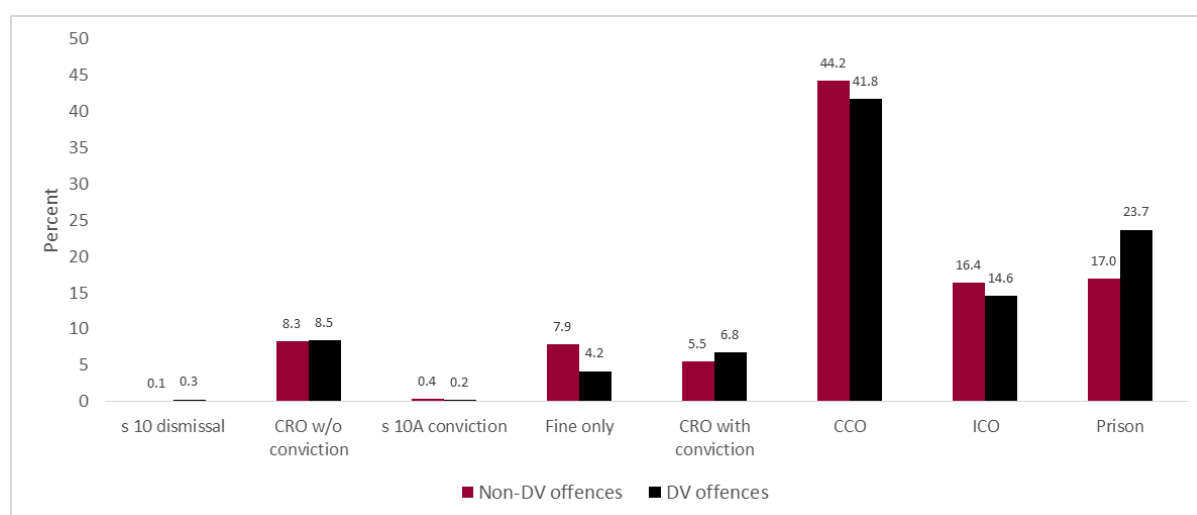
252  $\chi^2(1, N=15,271) = 227.339, p = 0.000$  and  $\chi^2(1, N=13,314) = 299.819, p = 0.000$  respectively.



In respect of all offenders, this offence recorded the second highest rate of offenders who were sentenced for only one offence (44.3%), not far behind common assault (45.6%).

**Figure 7** shows the types of penalties imposed for DV and non-DV offences of this kind.

**Figure 7. Distribution of penalty types for assault occasioning actual bodily harm by DV offence group finalised in the Local Court in the study period (N=8,904)**



The most common penalty imposed for DV offences was a CCO (41.8%). The median CCO duration was 18 months.

Custodial sentences were the next most common penalties. Full-time imprisonment was imposed for 23.7% of DV offences and the median term of imprisonment was 12 months. ICOs were imposed for 14.6% of DV offences and the median duration of the ICOs was 12 months.

A CRO was imposed for 15.3% of DV offences: 6.8% with conviction and 8.5% without conviction. CROs without conviction were longer than CROs with conviction. The median duration of the former was 18 months compared with a median of 12 months for the latter.<sup>253</sup>

Although fines accounted for only 4.2% of penalties imposed for DV offences, the fine amounts were the highest of any of the selected offences. The median fine amount was \$800.

A very small percentage of DV offences received s 10 dismissals (0.3%) or s 10A convictions (0.2%).

The distribution of penalties was significantly less severe for non-DV offences.<sup>254</sup> In particular, full-time imprisonment was less likely to be imposed (17.0%) while other penalty types such as CCOs (44.2%), ICOs (16.4%) and fines (7.9%) were more likely. The fine amount was also higher for non-DV offences (median \$1000).<sup>255</sup>

Conditions were imposed on the DV offenders who were sentenced to an ICO, CCO or CRO as their primary penalty. Of these, supervision was ordered in 63.6% of cases, significantly higher than for non-DV offenders (53.2%).<sup>256</sup> In relation to CCOs, 68.1% of DV offenders required supervision compared with 51.8% of non-DV offenders.<sup>257</sup> In relation to CROs, 21.9% of DV offenders required supervision compared with 9.4% of non-DV offenders.<sup>258</sup>

253  $U(N_{\text{CRO w/ conviction}} = 567, N_{\text{CRO w/o conviction}} = 751) = 153030.50, z = -9.279, p = 0.000.$

254  $U(N_{\text{DV}} = 6,124, N_{\text{non-DV}} = 2,780) = 7923256.00, z = -5.499, p = 0.000.$

255  $U(N_{\text{DV}} = 255, N_{\text{non-DV}} = 221) = 22269.00, z = -3.974, p = 0.000.$

256  $\chi^2(1, N=5,505) = 55.350, p = 0.000$  and  $\chi^2(1, N=7,364) = 27.125, p = 0.000$ , respectively.

257  $\chi^2(1, N=3,205) = 82.908, p = 0.000.$

258  $\chi^2(1, N=1,214) = 27.179, p = 0.000.$

Home detention (1.6% of ICOs) and electronic monitoring (4.5% of ICOs) were not frequently imposed.

CSW was a condition of the order for 22.7% of DV offenders whose principal penalty was either an ICO (44.9%) or a CCO (15.2%). Regardless of the penalty type, the median CSW required to be performed was 100 hours.

#### Section 4A requirement

Around 7 in 10 DV offences (70.8%) and DV offenders (69.7%) had a sentence of full-time imprisonment (23.7% and 22.4% respectively) or a supervised order (47.1% and 47.3% respectively) imposed, significantly higher than for non-DV offences (58.5%) and offenders (57.1%).<sup>259</sup>

### Intentionally choke, etc person without consent — Crimes Act 1900, s 37(1A)

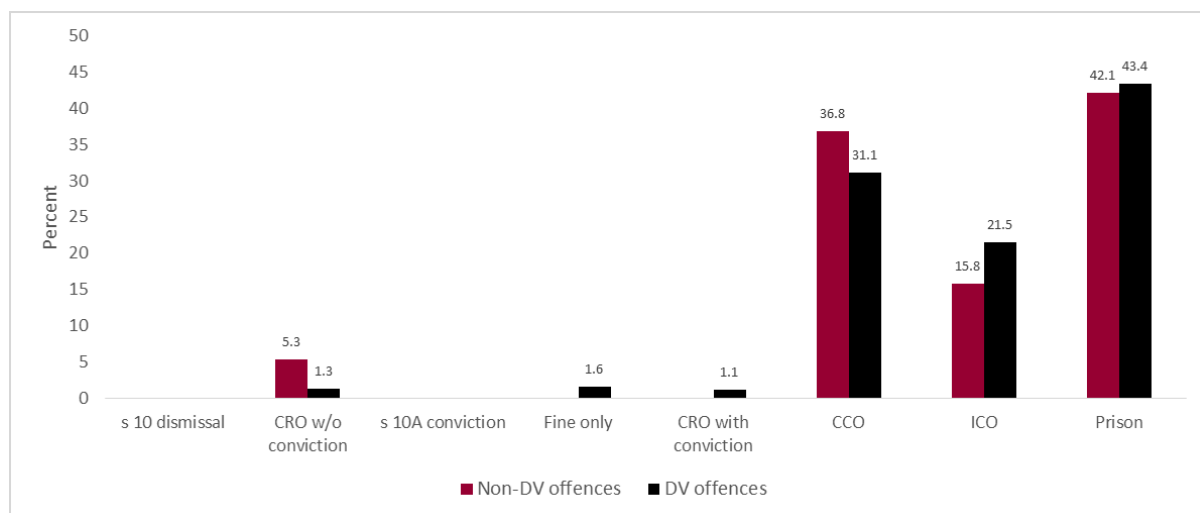
*Maximum penalty: 5 yrs. Jurisdictional maximum in Local Court: 2 yrs and/or 100 pu.*

Most offences of intentionally choke, etc person without consent were DV offences (95.5%), however they comprised only 0.7% of all DV offences.

In respect of DV offenders, this offence recorded the highest rate of offenders who were sentenced for multiple offences (91.2%) and the second highest rate of male offenders (96.0%).

**Figure 8** shows the types of penalties imposed for DV and non-DV offences of this kind.

**Figure 8. Distribution of penalty types for intentionally choke, etc person without consent by DV offence group finalised in the Local Court in the study period (N=466)**



Custodial sentences were the most common penalty for DV offences, particularly full-time imprisonment (43.4%), the second highest rate of all the selected offences. The median term of imprisonment was 12 months. ICOs were imposed for 21.5% of DV offences, also the second highest rate. The median duration of ICOs was 12 months.

Almost a third of DV offences received a CCO (31.1%). The median CCO duration was 18 months.

The remaining DV offences received CROs (1.1% with conviction and 1.3% without conviction) and fines (1.6%). The median CRO duration was 18 months and the median fine amount was \$800.

<sup>259</sup>  $\chi^2(1, N=8,904) = 130.679, p = 0.000$  and  $\chi^2(1, N=8,311) = 126.260, p = 0.000$  respectively.

Conditions were imposed on the DV offenders who were sentenced to an ICO, CCO or CRO as their primary penalty. Of these, supervision was ordered in 85.9% of cases, the second highest rate of all the selected offences. In relation to CCOs, 85.8% of DV offenders required supervision. In relation to CROs, 25.0% of DV offenders required supervision.

Home detention (1.3% of ICOs) and electronic monitoring (2.6% of ICOs) were not commonly imposed.

CSW was a condition of the order for 35.4% of the DV offenders whose principal penalty was either an ICO (51.3%) or a CCO (25.0%), the second highest rate of all selected offences. CSW hours for ICOs were longer than for CCOs: median 150 hours compared with median 100 hours.

#### Section 4A requirement

Most DV offences (90.6%) and DV offenders (90.0%) had a sentence of full-time imprisonment (43.4% and 41.0% respectively) or a supervised order (47.2% and 49.1% respectively) imposed, the second highest rate of all the selected offences.

### Intentionally choke, etc person with recklessness — Crimes Act 1900, s 37(1)

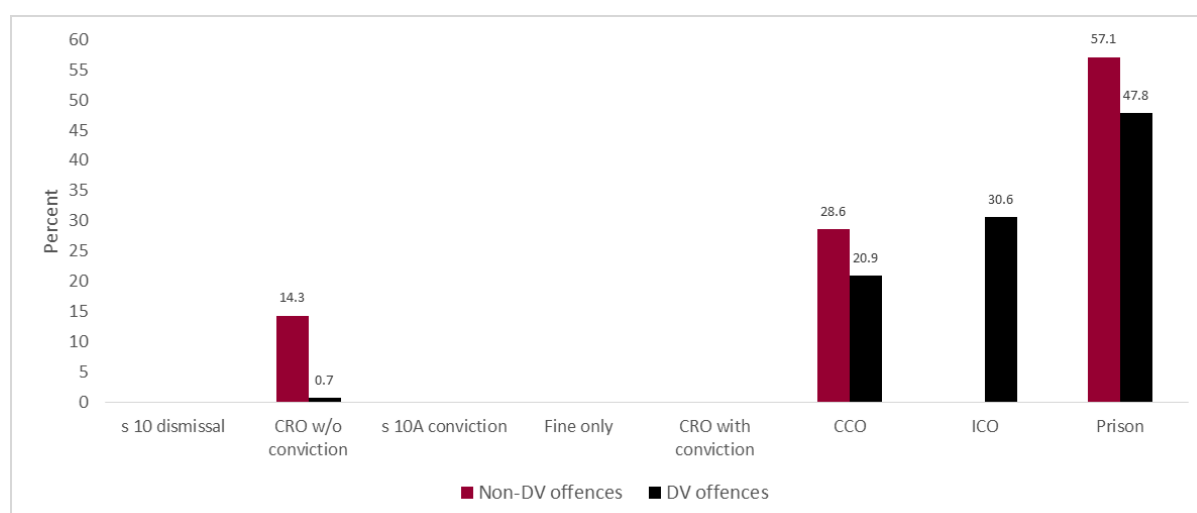
*Maximum penalty: 10 yrs. Jurisdictional maximum in Local Court: 2 yrs and/or 100 pu.*

Most offences of intentionally choke, etc person with recklessness were DV offences (95.0%), however they comprised only 0.2% of all DV offences.

In respect of all offenders, this offence was the principal offence for 96.1% of DV offenders and 100% of non-DV offences, the highest rates of any of the selected offences. This is unsurprising given this offence has the highest statutory maximum penalty. It also had the highest rate of male offenders (96.3%). In respect of DV offenders, this offence also recorded the highest rate of a not guilty plea (30.2%), and the second highest rate of offenders who were sentenced for multiple offences (86.7%).

**Figure 9** shows the types of penalties imposed for DV and non-DV offences of this kind.

**Figure 9. Distribution of penalty types for intentionally choke, etc person with recklessness by DV offence group finalised in the Local Court in the study period (N=141)**



Custodial sentences were the most common penalty for DV offences, particularly full-time imprisonment (47.8%), which was the highest rate of all of the selected offences. The median term of imprisonment was 17.5 months, which was also the longest. This offence also had the highest rate of ICOs which were imposed for 30.6% of DV offences. The median duration of ICOs was 12 months.

Around one in five DV offences received a CCO (20.9%) and the median CCO duration was 22.5 months.

One DV offence received a CRO without conviction (0.7%) for 6 months.<sup>260</sup>

Conditions were imposed on DV offenders who received an ICO, CCO or CRO as their primary penalty. Of these, supervision was ordered in 94.0% of cases, the highest rate of all the selected offences. In relation to CCOs, 88.0% of DV offenders required supervision.

Home detention (4.9% of ICOs) and electronic monitoring (4.9% of ICOs) were not commonly imposed. Nevertheless, compared to other selected offences, this was the highest rate of home detention.

CSW was a condition of the order for 42.4% of the DV offenders whose principal penalty was either an ICO (51.2%) or a CCO (28.0%), the highest rate of all selected offences. CSW hours for ICOs were longer than for CCOs: median 120 hours compared with median 100 hours.

#### **Section 4A requirement**

Compared to other selected offences, this offence recorded the highest rate of DV offences (96.3%) and DV offenders (96.1%) where a sentence of full-time imprisonment (47.8% and 46.9% respectively) or a supervised order (48.5% and 49.2% respectively) was imposed.

## **District Court appeal results for selected offences**

### **Appeal outcomes for DV offences**

A conviction and/or sentence appeal was heard and determined in the District Court for 5,307 selected DV offences (8.4%). The vast majority (5,024 or 94.7%) of these were appeals against the severity of the sentence and 499 or 9.4% were appeals against conviction. This equates to a severity appeal rate of 7.9% and a conviction appeal rate of 0.8%. There was only one Crown appeal against the inadequacy of the sentence.<sup>261</sup> The rate of severity appeals for DV offences was significantly higher than for non-DV offences (5.8%).<sup>262</sup> Over one-third of the conviction appeals (194 or 38.9%) and almost two-thirds of the severity appeals (3,198 or 63.7%) were allowed. Successful conviction appeals constitute 0.3% and successful severity appeals constitute 5.0% of sentences imposed in the Local Court for the selected offences. The Crown appeal was dismissed.

The most commonly appealed DV offence, with over one-third of the appeals, was contravene prohibition/restriction in AVO (35.8%), followed by common assault (20.7%), stalk and intimidate (18.8%) and assault occasioning actual bodily harm (13.5%). However, regardless of whether the appeal was against conviction or sentence, the offences with the highest rates of appeal were intentionally choke, etc person with recklessness (4.5% and 18.7% respectively) and intentionally choke, etc person without consent (2.9% and 19.5% respectively). The offence with the lowest rates of appeal was destroy or damage property (0.2% and 4.9% respectively).

Stalk and intimidate had the highest success rate of severity appeals, with two-thirds (66.7%) allowed for this offence. For the offences of destroy and damage property and common assault, DV offences had a lower success rate of severity appeals than did non-DV offences (61.1% compared with 74.4% and 63.5% compared with 70.8%, respectively).<sup>263</sup>

<sup>260</sup> This matter involved a 19-year-old female offender with no prior record of offending, sentenced for only this offence, to which she pleaded guilty.

<sup>261</sup> Percentages do not total 100% because 217 appeals were against both conviction and sentence severity.

<sup>262</sup>  $\chi^2(1, N=83,053) = 95.083, p = 0.000$ .

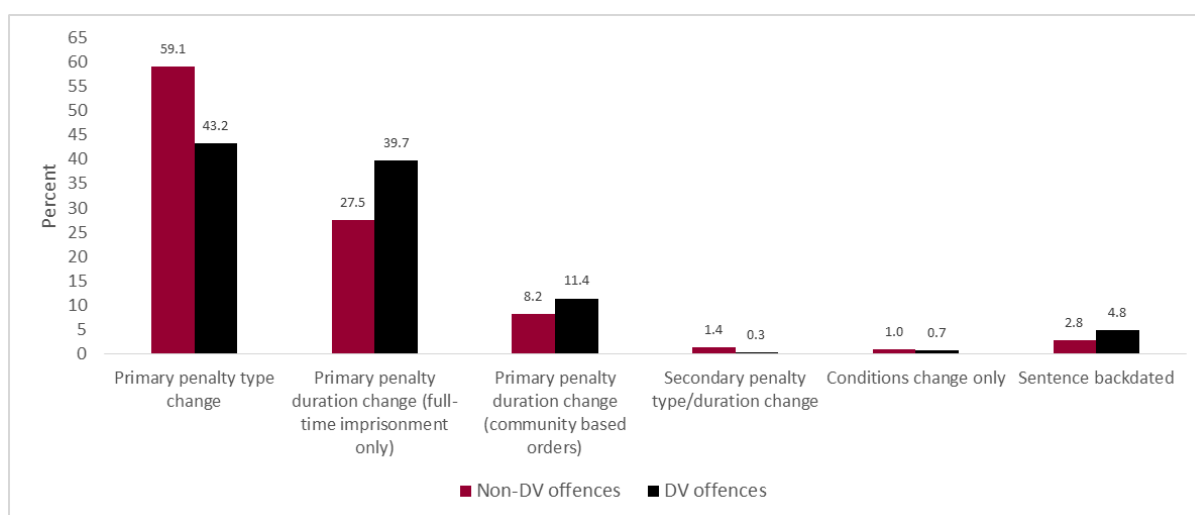
<sup>263</sup>  $\chi^2(1, N=687) = 15.945, p = 0.000$  and  $\chi^2(1, N=1,392) = 6.431, p = 0.011$ .

Almost three-quarters of the severity appeals for DV offences related to a sentence of full-time imprisonment (72.3%). The next most common penalties appealed were CCOs (12.5%) and CROs with conviction (5.3%). In terms of severity appeal rates, just over one-third of prison sentences (35.2%) were appealed, by far the highest rate of any penalty type appealed, followed by CROs with conviction (3.7%). Appeals with the highest success rates related to fines (74.3%) and CROs with conviction (72.5%). Fines, however, had a relatively low rate of appeal (1.8%).

When a severity appeal is allowed, several aspects of a sentence may be varied and are not limited to a variation in penalty type or length.<sup>264</sup> However, the majority of successful severity appeals resulted in a change to at least either the primary penalty type (43.2%) or the penalty duration for full-time imprisonment (39.7%).<sup>265</sup> While non-DV offences (59.1%) had significantly higher rates of change in primary penalty type than DV offences, DV offences had higher rates of changes to penalty duration, regardless of whether the penalty was full-time imprisonment (39.7%) or a community-based order (11.4%).<sup>266</sup> Backdating sentences was the next most common way a sentence was varied (4.8%). This pattern was consistent across all the selected offences.

**Figure 10** shows the distribution of appeal outcomes for selected offences.

**Figure 10. Successful severity appeal outcomes for selected offences by DV offence group finalised in the Local Court in the study period (N = 4,012)**



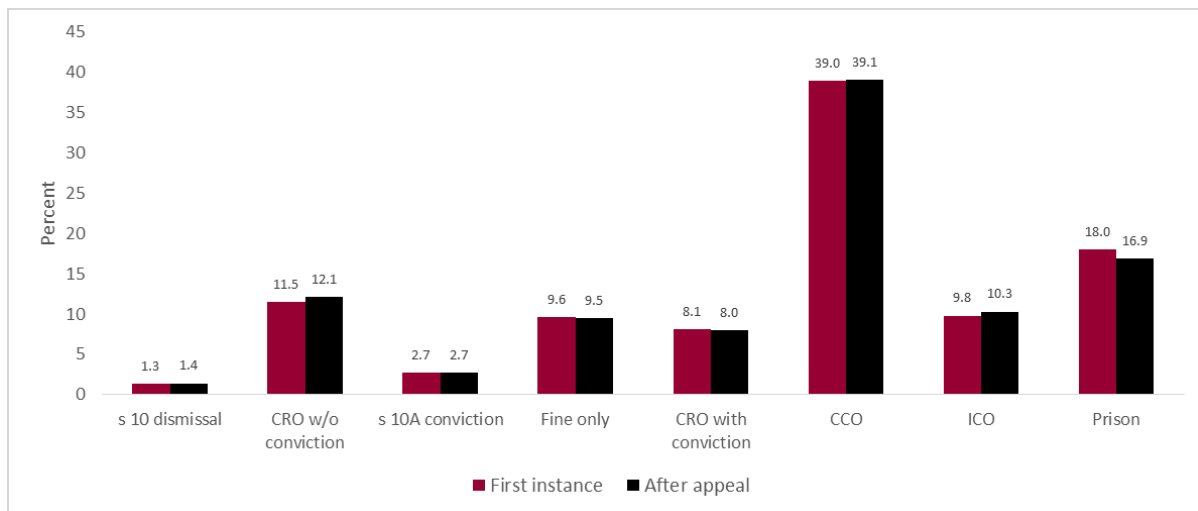
**Figure 11** shows the distribution of penalty types at first instance compared to the distribution after correcting for appeals. Regardless of the offence, the effect of conviction and severity appeals on sentences, including in relation to the application of s 4A, was minimal. While the use of full-time imprisonment decreased from 18.0% at first instance to 16.9% after correcting for appeals, the use of ICOs increased by half a percentage point from 9.8% to 10.3%. The use of CROs with conviction as a penalty option decreased 0.1 percentage points, however the use of CROs without conviction increased by 0.7 percentage points. The shift in the sentencing patterns resulted in a slight reduction of 0.3 percentage points in the imposition of full-time imprisonment or a supervised order in accordance with s 4A.

<sup>264</sup> When several aspects of the sentence are changed on appeal, if the secondary penalty and/or conditions have changed in addition to the primary penalty, only the primary penalty change is recorded in the appeal outcomes.

<sup>265</sup> Includes changes to aggregate head and NPP durations.

<sup>266</sup>  $\chi^2(5, N=4,102) = 88.234, p = 0.000$ .

**Figure 11. Effect of successful appeals on the distribution of penalties for selected offences finalised in the Local Court in the study period before (N=63,309) and after (N=63,115\*) correcting for appeal outcomes**



\*Excludes 194 successful conviction appeals where the first instance sentence was quashed.

## Conclusion

Since 2016, various legislative and policy initiatives have continued to expand the measures available for the protection of victims of domestic violence and to deter domestic violence offending. In the context of this study, those changes that impact on the offences, on sentencing and on the rehabilitation of offenders are of greatest interest.

Given the analysis was descriptive, only limited conclusions can be drawn about what is revealed by the sentences imposed for particular offenders and the selected offences. Despite the challenges associated with inaccurate reporting of domestic violence offences and the lack of access to the facts surrounding the offence, the subjective information relevant to an individual offender, and the conditions imposed with community-based orders, the statistical analysis provides some interesting insights into the offending considered in this study. In summary, over the two-year study period of 24 September 2018 to 23 September 2020, the statistical analysis shows that:

- DV offenders are overwhelmingly male (80.3%), reflecting other research findings, and statements made by the courts about the power dynamics associated with domestic violence offending
- over a quarter of DV offenders identified as being of Aboriginal or Torres Strait Islander descent (27.5%), reflecting the ongoing over-representation of First Nations people in the criminal justice system
- almost three-quarters of all DV offenders had a prior record (73.7%)
- almost half of all DV offenders had a prior record of DV offending (44.4%)
- DV offences attracted more severe penalties than did non-DV offences with higher rates of full-time imprisonment, ICOs, CCOs and CROs with conviction, reflecting in part the importance of general deterrence when sentencing for DV offences
- higher rates of supervised orders were imposed for DV offenders compared with non-DV offenders
- over half of DV offenders (52.2%) were sentenced to full-time imprisonment (12.2%) or a supervised order (40.2%) which may reflect the impact of s 4A, although the case law discussed suggests otherwise
- where an ICO was imposed, few domestic violence offenders had a home detention condition
- higher rates of supervised orders were imposed for DV offenders compared with non-DV offenders



- additional conditions, including conditions requiring that an offender participate in a rehabilitation program, receive treatment, abstain from alcohol or drugs (or both) were not uncommon for DV offenders whose primary penalty was an ICO, CCO or CRO
- the offence of intentionally choking, suffocating or strangling another person without their consent in s 37(1A), only added to the *Crimes Act* with effect from 1 December 2018, had one of the highest proportions of DV offenders, which tends to support the basis for its introduction, that is, to facilitate the prosecution of such offending when it occurs in a domestic violence context
- the small proportion of successful severity appeals suggests that sentences accord with the intent of the legislation and have little effect on the distribution of penalties imposed at first instance.

The statistical analysis summarised above suggests that in the Local Court, the sentences imposed, featuring as they do high levels of sentences of full-time imprisonment and supervised orders, reflect the new requirements of the CSP Act, in particular s 4A. The application of the relevant sentencing principles, notwithstanding it is likely they are not referred to in the Local Court with the same level of detail as they might be in the higher courts, are reflected in the analysis as well.

The figures above, associated with a domestic violence offender's history of offending, including for repeated domestic violence offending, demonstrate the need for programs and processes which actively promote an offender's prospects of rehabilitation, seen in the imposition of conditions directed towards addressing causes of offending. The long-term impacts of the benefits of this would be an area of further study. Programs for victims of domestic violence, such as the Safer Pathway program, have the capacity to contribute to a reduction in re-offending, although the evaluations of that program to date demonstrate only a limited impact.

In terms of reducing the rate of offending by First Nations people in this area, the availability of evidence as to the significance of culture for First Nations people in the promotion of healing and rehabilitation through use of the report, *Significance of culture to wellbeing, healing and rehabilitation*,<sup>267</sup> is an important and positive step. Supervised orders could include conditions which reflect culturally appropriate treatment and care, and which provide a connection to culture, family and community. Such treatment is recognised as having the capacity to reduce recidivism.

There are clearly further opportunities for research in this area including more detailed investigation of the effect of important sentencing factors, such as the relationship between the offender and the victim and the level of harm to the victim, and other factual matters. Future research could also consider a broader range of domestic violence offences, such as the newer offences of recording and distributing intimate images, reckless wounding and sexual offences which are committed in a domestic violence context. Notwithstanding the efforts of the legislature to reduce the incidence of domestic violence, such offending remains prevalent. Future research over the longer term may provide more insight into the effects of those legislative reforms which encourage the imposition of sentences, most notably supervised orders, with the capacity to influence an offender's future conduct.

It is already apparent that the legislative measures and other steps taken since 2016 to address the incidence of domestic violence discussed in this *Trends* are not the end of legislative reform in this area. In mid-2021, the Joint Select Committee on Coercive Control report, *Coercive control in domestic relationships*,<sup>268</sup> which makes numerous recommendations primarily relating to the criminal justice system, was tabled. One recommendation is to add an aggravating factor to those already listed in s 21A(2) of the CSP Act if the offender was in an intimate personal relationship with the victim and had previously engaged in coercive and controlling behaviour towards them.<sup>269</sup>

<sup>267</sup> above n 119.

<sup>268</sup> Joint Select Committee on Coercive Control, *Coercive control in domestic relationships*, Report 1/57, June 2021, Parliament of NSW, accessed 7/6/22.

<sup>269</sup> *ibid*, Recommendation 5, pp 37-39.

The NSW Government has also committed to outlawing coercive control in current and former intimate partner relationships by way of a stand-alone offence.<sup>270</sup>

In the meantime, the Local Court will continue to impose sentences which are guided by the relevant legislative scheme and sentencing principles appropriately balancing the competing purposes of sentencing.

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<sup>270</sup> NSW Department of Communities and Justice, Media Release, "Government to criminalise coercive control", 18 December 2021, accessed 7/6/22. See further Exposure Draft Bill, Crimes Legislation Amendment (Coercive Control) Bill 2022, which opened for consultation on 22/7/2022.

## Appendix A: Table of legislative changes

**Table A.1. Table of NSW legislation relating to victims/complainants of domestic violence offences since 2016.**

Date provisions commenced	Legislation and effect (to CDPV Act unless otherwise stated)
25 August 2017	<p><i>Crimes Amendment (Intimate Images) Act 2017</i></p> <ul style="list-style-type: none"> <li>Created new "personal violence offences" in ss 91P, 91Q and 91R of the <i>Crimes Act 1900</i> relating to the recording, distribution, or threatening to record or distribute, intimate images without consent.</li> </ul>
25 September 2017	<p><i>Justice Legislation Amendment Act (No 2) 2017</i></p> <ul style="list-style-type: none"> <li>Permitted a court to vary an AVO in s 75 to provide greater protection for the protected person upon plea/finding of guilt to a "serious offence", as opposed to only after a defendant pleads guilty to or is found guilty of a stalking or intimidation under s 13.</li> </ul>
25 November 2017	<p><i>Crimes (Domestic and Personal Violence) Amendment (National Domestic Violence Orders Recognition) Act 2016</i></p> <ul style="list-style-type: none"> <li>Created national scheme in Pt 13B for the recognition of AVOs made in other jurisdictions interstate and overseas.</li> </ul>
25 November 2017	<p><i>Justice Legislation Amendment Act (No 2) 2017</i></p> <ul style="list-style-type: none"> <li>Strengthened the national scheme in Pt 13B recognising AVOs in other jurisdictions.</li> </ul>
21 June 2018	<p><i>Justice Legislation Amendment Act (No 2) 2018</i></p> <ul style="list-style-type: none"> <li>Amended s 279 <i>Criminal Procedure Act</i> to include parent or child of accused person as a person who is compellable to give evidence in domestic violence and child assault offences.</li> </ul>
24 September 2018	<p><i>Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017</i></p> <ul style="list-style-type: none"> <li>Inserted s 4A into the <i>Crimes (Sentencing Procedure) Act 1999</i> (CSP Act) which required a domestic violence offender be sentenced to full-time imprisonment or a supervised order unless another sentencing option is more appropriate.</li> <li>Inserted s 4B(1) into the CSP Act which required that an ICO not be imposed on a domestic violence offender unless those residing with them (including the victim) are adequately protected.</li> <li>Inserted s 4B(2) into the CSP Act which required that a domestic violence offender not be sentenced to an ICO with a home detention condition if the offender will be residing with the victim.</li> <li>Inserted s 4B(3) into the CSP Act which required the court to consider the victim's safety before imposing a CCO or CRO on a domestic violence offender.</li> <li>Inserted s 66(1) into the CSP Act which provided community safety must be the paramount consideration when determining whether to impose an ICO against any offender.</li> </ul>
1 December 2018	<p><i>Crimes Legislation Amendment Act 2018</i></p> <ul style="list-style-type: none"> <li>Created new "personal violence offence" in s 37(1A) of the <i>Crimes Act</i> of intentionally choking, suffocating or strangling another person without consent.</li> </ul>
1 December 2018	<p><i>Crimes Legislation Amendment (Victims) Act 2018</i></p> <ul style="list-style-type: none"> <li>Inserted ss 41AA, 58(1) to provide all AVO proceedings involving a young person (including a defendant under 18) are to be in closed court.</li> <li>Extended entitlement to have support person when giving evidence in s 306ZQ of the <i>Criminal Procedure Act</i> to domestic violence complainants in all domestic violence offence proceedings.</li> <li>Inserted s 306ZK(3A) into the <i>Criminal Procedure Act</i> to provide the accused cannot object to the suitability of the support person, and court cannot disallow choice unless likely to prejudice accused's right to fair hearing.</li> <li>Expanded definition of "special witnesses" in s 306A of the <i>Criminal Procedure Act</i> for those not required to give evidence in re-trials/subsequent trials and where their original evidence can be relied upon to include sexual offence witnesses.</li> <li>Inserted s 84(1A), (1B) of <i>Criminal Procedure Act</i> to expand protections to vulnerable witnesses and sexual offence witnesses in committal proceedings.</li> </ul>
1 December 2018	<p><i>Crimes (Domestic and Personal Violence) Amendment Act 2018</i></p> <ul style="list-style-type: none"> <li>Amended s 7(1)(a) to include cyberbullying in the definition of intimidation, together with a note providing an example of cyberbullying.</li> <li>Replaced the definition of stalking in s 8(1) so as to include conduct involving contact using the internet or other technologically assisted means.</li> </ul>
27 May 2019	<p><i>Crimes Legislation Amendment (Victims) Act 2018</i></p> <ul style="list-style-type: none"> <li>Replaced Pt 3, Div 2 of the CSP Act to extended the availability and use of victim impact statements in sentence proceedings.</li> </ul>

Date provisions commenced	Legislation and effect (to CDPV Act unless otherwise stated)
25 March 2020	<p><i>COVID-19 Legislation Amendment (Emergency Measures) Act 2020</i></p> <ul style="list-style-type: none"> <li>Inserted s 29 which extended the time for an AVO to be listed from the making of the provisional order from 28 days to 6 months during the prescribed Covid-affected period ending 6 months after 25 March 2020 (or a later day not more than 12 months after).</li> </ul>
28 March 2020	<p><i>Crimes Legislation Amendment Act 2018</i>, as further amended by <i>Justice Legislation Amendment Act (No 2) 2019</i></p> <ul style="list-style-type: none"> <li>Inserted s 79A providing that the designated default period for an ADVO is 2 years for adult defendants although the court may specify a different period to ensure the protected person's protection.</li> <li>Inserted s 79B allowing for indefinite ADVOs in certain circumstances.</li> </ul>
25 November 2020	<p><i>Stronger Communities Legislation Amendment (Domestic Violence) Act 2020</i></p> <ul style="list-style-type: none"> <li>Inserted s 27(3A) to clarify that a provisional order may be made even if an AVO is already in force.</li> <li>Inserted s 28B to ensure police do not make provisional order that lessens protection in existing AVO, and if police do, it is of no effect.</li> <li>Inserted s 79B(5) to provide a defendant can only apply to vary or revoke an indefinite order with the court's leave.</li> <li>Inserted s 81A to clarify if more than one AVO is in force against a defendant for the protection of a person, if there is inconsistency between them, the most recent order applies (subject to s 28B).</li> </ul> <p><i>Criminal Procedure Act:</i></p> <ul style="list-style-type: none"> <li>Inserted s 289U to ensure a domestic violence complainant's evidence is held in camera unless there are special reasons or the complainant consents.</li> <li>Inserted s 289UA to provide that other evidence relating to a domestic violence offence may also be held in camera, and the court may allow a support person for a complainant.</li> <li>Inserted s 289V to provide a domestic violence complainant may give evidence by AVL or other two-way technology, or using screens and planned seating to restrict visual/other contact between them and the defendant or other persons, unless special reasons not to do so.</li> <li>Inserted s 306ZR which provides a judge must give a warning to the jury that evidence suggesting absence or delay in a complaint of domestic violence does not necessarily indicate the allegation is false and there may be good reasons for hesitation or lack of complaint, but a judge must not warn the jury that the absence or delay in complaint is relevant to the complainant's credibility unless it is sufficiently justified.</li> </ul>
27 March 2021	<p><i>Stronger Communities Legislation Amendment (Domestic Violence) Act 2020</i></p> <ul style="list-style-type: none"> <li>Amended the definition of intimidation in s 7(1)(c) to include harm to a complainant's animal, or the animal of a person in a domestic relationship with the complainant.</li> <li>Amended s 36(c) to provide that every ADVO includes a prohibition against harming a complainant's animal, or the animal of a person in a domestic relationship with the complainant.</li> <li>Amended s 39(1) to provide those who plead guilty or are found guilty of a serious offence must have a final AVO made against them.</li> <li>Inserted ss 39(2A)–(2D) to provide that, for an ADVO imposed upon an adult who is sentenced to full-time imprisonment, the ADVO's duration is for the period of imprisonment and an additional two years, unless there is good reason to order a different period.</li> </ul>
1 September 2021	<p><i>Stronger Communities Legislation Amendment (Domestic Violence) Act 2020</i></p> <ul style="list-style-type: none"> <li>Inserted s 289VA into the <i>Criminal Procedure Act</i> to provide that a domestic violence complainant cannot be questioned directly by the accused, but must be questioned through a court appointed person or through the use of technology.</li> </ul>

## Appendix B: Selection of particular domestic violence offences

In the period 24 September 2018 to 23 September 2020, the Local Court imposed sentences for 73,958 DV offences, which comprised 12.7% of all offences. A DV offence was the principal offence in 35,795 cases, or 14.3% of all cases (or offenders). **Table B.1** shows the number of cases and the proportion that were DV offences for the 15 most common DV offences.

**Table B.1. Most common DV offences finalised in the Local Court between 24 September 2018 and 23 September 2020**

Rank	Act	Section	Offence description	DV	Non-DV	% DV offences	% DV related
1	<i>Crimes (Domestic and Personal Violence) Act 2007</i>	14(1)	contravene prohibition/restriction in AVO	23905	833	32.3	96.6
2	<i>Crimes Act 1900</i>	61	common assault	17987	9409	24.3	65.7
3	<i>Crimes (Domestic and Personal Violence) Act 2007</i>	13(1)	stalk or intimidate w/ito cause fear of physical or mental harm	12552	4815	17.0	72.3
4	<i>Crimes Act 1900</i>	195(1)(a)	destroy/damage property	10426	11410	14.1	47.7
5	<i>Crimes Act 1900</i>	59(1)	assault occasioning ABH	6810	3721	9.2	64.7
6	<i>Crimes Act 1900</i>	37(1A)	intentionally choke, etc person without consent	509	28	0.7	94.8
7	<i>Crimes (Domestic and Personal Violence) Act 2007</i>	13(5)	attempt to stalk or intimidate w/i to cause fear of physical or mental harm	316	244	0.4	56.4
8	<i>Crimes Act 1900</i>	58	assault w/i to commit a serious indictable offence on certain officers	297	7662	0.4	3.7
9	<i>Crimes Act 1900</i>	91Q(1)	intentionally distribute intimate image without consent, etc	153	59	0.2	72.2
10	<i>Crimes Act 1900</i>	35(4)	recklessly wound	140	224	0.2	38.5
11	<i>Crimes Act 1900</i>	61M(2)*	aggravated indecent assault — child < 16	139	184	0.2	43.0
12	<i>Crimes Act 1900</i>	37(1)	intentionally choke, etc person with recklessness	136	16	0.2	89.5
13	<i>Crimes Act 1900</i>	91R(2)	threaten to distribute intimate image without consent, etc	104	37	0.1	73.8
14	<i>Crimes (Domestic and Personal Violence) Act 2007</i>	14(9)	attempt to contravene prohibition/restriction in AVO	70	1	0.1	98.6
15	<i>Crimes Act 1900</i>	195(1)(b)	destroy/damage property by fire/explosives	55	187	0.1	22.7
			<b>Top 15</b>	<b>73599</b>	<b>38830</b>	<b>99.5</b>	<b>65.5</b>
			<b>All other offences</b>	<b>359</b>	<b>467639</b>	<b>0.5</b>	<b>0.1</b>
			<b>All offences</b>	<b>73958</b>	<b>506469</b>	<b>100.0</b>	<b>12.7</b>

\*Includes offences of sexual touching under ss 66DA and 66DB.

The five most common DV offences accounted for 96.9% of all DV offences. They were, in order:

1. Contravene prohibition/restriction in AVO: s 14(1) of the *Crimes (Domestic and Personal Violence) Act 2007* (32.3% of all DV offences and 22.6% of principal DV offences).
2. Common assault: s 61 of the *Crimes Act 1900* (24.3% of all DV offences and 26.0% of principal DV offences).
3. Stalk or intimidate with intent to cause fear of physical or mental harm: s 13(1) of the *Crimes (Domestic and Personal Violence) Act 2007* (17.0% of all DV offences and 22.1% of principal DV offences).

4. Destroy or damage property: s 195(1)(a) of the *Crimes Act 1900* (14.1% of all DV offences and 12.1% of principal DV offences).
5. Assault occasioning actual bodily harm: s 59(1) of the *Crimes Act 1900* (9.2% of all DV offences and 13.4% of principal DV offences).

There were four offences where at least 75% were DV related. They were, in order:

1. Attempt to contravene prohibition/restriction in AVO: s 14(9) of the *Crimes (Domestic and Personal Violence) Act 2007* (98.6% were DV offences)
2. Contravene prohibition/restriction in AVO: s 14(1) of the *Crimes (Domestic and Personal Violence) Act 2007* (96.6% were DV offences)
3. Intentionally choke, etc person without consent: s 37(1A) of the *Crimes Act 1900* (94.8% were DV offences)
4. Intentionally choke, etc person with recklessness: s 37(1) of the *Crimes Act 1900* (89.5% were DV offences).

From these lists, it was decided to exclude the offence of attempt to contravene prohibition/restriction in AVO. Although this offence had the highest rate of DV offences, they comprised only 0.1% of all DV offences and the number of non-DV offences was too small (n=1) for comparison purposes.

Thus, seven offences were selected for the study. These offences accounted for 97.8% of all DV offences and 97.6% of principal DV offences. These offences were selected before any corrections were made to the data which may have changed the number and proportion of DV offences, particularly for offences of destroy or damage property.<sup>271</sup>

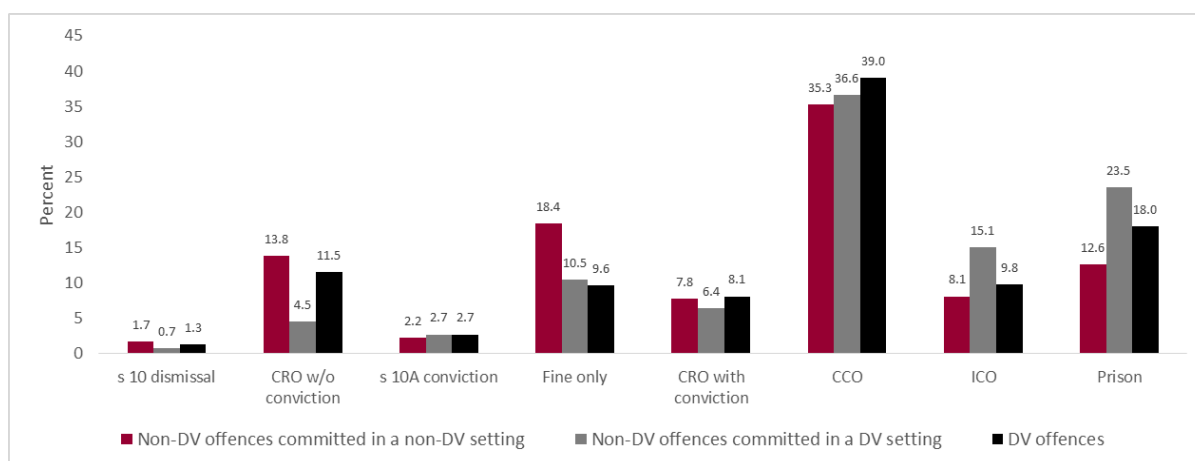
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271 See Data collection and corrections under Data source and methodology.

## Appendix C: Comparing sentencing patterns for DV and non-DV offences

In order to make meaningful comparisons between DV and non-DV offences, the latter was disaggregated into non-DV offences committed in a DV setting or a non-DV setting. The purpose was to determine whether non-DV offences committed in a DV setting attracted significantly different penalties to non-DV offences that were not committed in a DV setting. If no differences were observed then it would be unproblematic to aggregate these as non-DV offences. **Figure C.1** shows the types of penalties imposed for the selected offences for the two groups of non-DV offences and also for DV offences (whether or not they were the principal offence).

**Figure C.1. Distribution of penalty types for selected offences by DV setting finalised in the Local Court in the study period (N=83,933)**



The analysis revealed statistically significant differences in sentencing patterns.<sup>272</sup> The highest rates of full-time imprisonment (23.5%) and ICO (18.1%) were imposed on non-DV offences committed in a DV setting. This group also had comparable rates of CCO (36.6%). Similar patterns were observed when the analysis was broken down by specific offences.

The harsher sentencing pattern for non-DV offences committed in a DV setting may partly be explained by offender characteristics. The bivariate analysis found that offenders who committed non-DV offences in a DV setting were more likely to have:

- multiple offences (median = 3 compared with 1 for the other groups)<sup>273</sup>
- a prior record (82.8% compared with 70.8% for the other non-DV group and 73.5% for the DV group)<sup>274</sup>
- a prior record of DV offending (49.1% compared with 25.8% for the other non-DV group and 44.1% for the DV group)<sup>275</sup>
- a breach of a DV offence (21.1% compared with 6.9% for the other non-DV group and 13.4% for the DV group).<sup>276</sup>

They were also more likely to be:

- male (82.8% compared with 78.9% for the other non-DV group and 80.2% for the DV group)<sup>277</sup>
- younger (median = 31 years compared with 33 years for the other non-DV group and 34 years for the DV group)<sup>278</sup>

<sup>272</sup>  $H(2) = 2479.035$ ,  $p = 0.000$ .

<sup>273</sup>  $H(2) = 3041.040$ ,  $p = 0.000$ . This is unsurprising given that, by definition, this group of offenders would have multiple offences.

<sup>274</sup>  $\chi^2(2, N=49,886) = 48.801$ ,  $p = 0.000$ .

<sup>275</sup>  $\chi^2(2, N=49,886) = 1453.480$ ,  $p = 0.000$ .

<sup>276</sup>  $\chi^2(2, N=49,888) = 432.743$ ,  $p = 0.000$ .

<sup>277</sup>  $\chi^2(2, N=49,888) = 12.891$ ,  $p = 0.002$ .

<sup>278</sup>  $H(2) = 166.875$ ,  $p = 0.000$ .



- Indigenous (43.1% compared with 25.3% for the other non-DV group and 27.2% for the DV group)<sup>279</sup>
- from regional NSW (47.0% compared with 33.9% for the other non-DV group and 38.0% for the DV group).<sup>280</sup>

Due to the significant differences between sentencing patterns and offender characteristics, to include non-DV offences committed in a DV setting with other non-DV offences in the analysis would be misleading and unhelpful when comparing sentencing patterns for DV and non-DV offences.

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<sup>279</sup>  $\chi^2(1, N=48,599) = 33.891, p = 0.000$ . The test excludes cases where the Indigenous status was unknown.

<sup>280</sup>  $\chi^2(4, N=49,888) = 102.738, p = 0.000$ .

## Appendix D: Offender characteristics for selected offences

Table D.1. Offender\* characteristics for selected offences by DV offender group finalised in the Local Court in the study period

Offender characteristics	Offence description																																																							
	Contravene prohibition/restriction in AVO				Common assault				Stalk or intimidate with intent to cause fear of physical or mental harm				Destroy or damage property				Assault occasioning actual bodily harm				Intentionally choke, etc person without consent				Intentionally choke, etc person with recklessness																															
	DV		Non-DV		DV		Non-DV		DV		Non-DV		DV		Non-DV		DV		Non-DV		DV		Non-DV		DV		Non-DV																													
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%																												
Gender																																																								
Male	12185	84.9	344	68.3	10965	77.6	4470	75.6	8120	87.4	2332	82.5	6620	79.9	4128	82.1	4441	78.0	2092	79.9	405	96.0	13	72.2	124	96.9	6	85.7																												
Female	2160	15.1	160	31.7	3174	22.4	1439	24.4	1173	12.6	495	17.5	1669	20.1	897	17.9	1251	22.0	527	20.1	17	4.0	5	27.8	4	3.1	1	14.3																												
	$\chi^2 = 102.863^{***}$				$\chi^2 = 8.529^{***}$				$\chi^2 = 43.625^{***}$				$\chi^2 = 10.493^{***}$				$\chi^2 = 3.674$				$\chi^2 = 20.499^{***}$				$\chi^2 = 2.318$																															
Indigenous status																																																								
Aboriginal	5019	35.1	140	28.3	3243	23.4	1331	23.9	2653	28.9	903	32.7	2387	29.2	1373	28.7	1558	27.8	693	27.9	102	24.4	4	25.0	28	22.4	1	14.3																												
Non-Aboriginal	9267	64.9	355	71.7	10601	76.6	4232	76.1	6540	71.1	1857	67.3	5793	70.8	3415	71.3	4039	72.2	1794	72.1	316	75.6	12	75.0	97	77.6	6	85.7																												
	$\chi^2 = 9.879^{***}$				$\chi^2 = 0.552$				$\chi^2 = 15.121^{***}$				$\chi^2 = 0.374$				$\chi^2 = 0.001$				$\chi^2 = 0.003$				$\chi^2 = 0.255$																															
Court location																																																								
Sydney	6570	45.8	212	42.1	7873	55.7	3680	62.3	4387	47.2	1397	49.4	4056	48.9	2653	52.8	2968	52.1	1395	53.3	233	55.0	11	61.1	65	50.8	4	57.1																												
Newcastle and Wollongong	1738	12.1	65	12.9	1324	9.4	499	8.4	1098	11.8	340	12.0	922	11.1	574	11.4	544	9.6	274	10.5	28	6.6	0	0.0	7	5.5	1	14.3																												
Regional NSW	6037	42.1	227	45.0	4942	35.0	1730	29.3	3808	41.0	1090	38.6	3311	39.9	1798	35.8	2180	38.3	950	36.3	162	38.4	7	38.9	56	43.8	2	28.6																												
	$\chi^2 = 2.741$				$\chi^2 = 75.664^{***}$				$\chi^2 = 5.440$				$\chi^2 = 23.650^{***}$				$\chi^2 = 3.876$				$\chi^2 = 1.313$				$\chi^2 = 1.279$																															
Number of offences																																																								
One	5356	37.3	248	49.2	6005	42.5	3146	53.2	2063	22.2	852	30.1	2376	28.7	2428	48.3	2189	38.5	1494	57.0	37	8.8	5	27.8	17	13.3	1	14.3																												
Multiple	8989	62.7	256	50.8	8134	57.5	2763	46.8	7230	77.8	1975	69.9	5913	71.3	2597	51.7	3503	61.5	1125	43.0	385	91.2	13	72.2	111	86.7	7	85.7																												
	$\chi^2 = 29.193^{***}$				$\chi^2 = 194.819^{***}$				$\chi^2 = 74.781^{***}$				$\chi^2 = 52.397^{***}$				$\chi^2 = 251.123^{***}$				$\chi^2 = 7.226^{***}$				$\chi^2 = 0.006$																															
Number of this offence																																																								
One - only offence	5356	37.3	248	49.2	6005	42.5	3146	53.2	2063	22.2	852	30.1	2376	28.7	2428	48.3	2189	38.5	1494	57.0	37	8.8	5	27.8	17	13.3	1	14.3																												
One - but has other offence(s)	5749	40.1	176	34.9	6304	44.6	2089	35.4	5891	63.4	1539	54.4	4936	59.5	2093	41.7	3099	54.4	1000	38.2	361	85.5	12	66.7	105	82.0	6	85.7																												
Multiple	3240	22.6	80	15.9	1830	12.9	674	11.4	1339	14.4	436	15.4	977	11.8	504	10.0	404	7.1	125	4.8	24	5.7	1	5.6	4	4.7	0	0.0																												
	$\chi^2 = 31.234^{***}$				$\chi^2 = 198.631^{***}$				$\chi^2 = 86.656^{***}$				$\chi^2 = 53.340^{***}$				$\chi^2 = 251.250^{***}$				$\chi^2 = 7.262^{**}$				$\chi^2 = 0.344$																															
Is most serious offence																																																								
Yes (is principal offence)	8094	56.4	336	66.7	9397	66.5	4688	79.3	8020	86.3	2587	91.5	4503	54.3	3937	78.3	4868	85.5	2503	95.6	350	82.9	15	83.3	123	96.1	7	100.0																												
No (is not principal offence)	6251	43.6	168	33.3	4742	33.5	1221	20.7	1273	13.7	240	8.5	3786	45.7	1088	21.7	824	14.5	116	4.4	72	17.1	3	16.7	5	3.9	0	0.0																												
	$\chi^2 = 20.815^{***}$				$\chi^2 = 330.582^{***}$				$\chi^2 = 53.833^{***}$				$\chi^2 = 77.805^{***}$				$\chi^2 = 180.508^{***}$				$\chi^2 = 0.017$				$\chi^2 = 0.284$																															
Plea																																																								
Guilty	12500	87.2	373	74.2	11481	81.3	4745	80.5	7448	80.2	2145	76.0	7157	86.4	4021	80.1	4522	79.6	2107	80.5	332	79.0	14	77.8	88	69.8	6	85.7																												
Not guilty/no plea	1818	12.8	130	25.8	2637	18.7	1152	19.5	1833	19.8	677	24.0	1124	13.6	999	19.9	1159	20.4	509	19.5	88	21.0	4	22.2	38	30.2	1	14.3																												
	$\chi^2 = 72.626^{***}$				$\chi^2 = 1.991$				$\chi^2 = 23.668^{***}$				$\chi^2 = 93.277^{***}$				$\chi^2 = 0.994$				$\chi^2 = 0.022$				$\chi^2 = 0.806$																															
Prior record																																																								
No	1397	9.7	68	13.5	5131	36.3	1948	33.0	1981	21.3	498	17.6	2253	27.2	1352	26.9	1708	30.0	784	29.9	119	28.2	6	33.3	29	22.7	2	28.6																												
Yes	12948	90.3	436	86.5	9007	63.7	3960	67.0	7311	78.7	2329	82.4	6036	72.8	3673	73.1	3984	70.0	1835	70.1	303	71.8	12	66.7	99	77.3	5	71.4																												
	$\chi^2 = 7.714^{***}$				$\chi^2 = 20.106^{***}$				$\chi^2 = 18.272^{***}$				$\chi^2 = 0.120$				$\chi^2 = 0.004$				$\chi^2 = 0.224$				$\chi^2 = 0.131$																															
Previously imprisoned																																																								
No	9142	63.7	353	70.0	11587	82.0	4650	78.7	6739	72.5	1839	65.1	6487	78.3	3663	72.9	4318	75.9	1997	76.3	315	74.6	13	72.2	94	73.4	5	71.4																												
Yes	5203	36.3	151	30.0	2551	18.0	1258	21.3	2553	27.5	988	34.9	1802	21.7	1362	27.1	1374	24.1	622	23.7	107	25.4	5	27.8	34	26.6	2	28.6																												
	$\chi^2 = 8.409^{***}$				$\chi^2 = 28.589^{***}$				$\chi^2 = 58.537^{***}$				$\chi^2 = 49.700^{***}$				$\chi^2 = 0.149$				$\chi^2 = 0.053$				$\chi^2 = 0.014$																															
Prior DV record																																																								
No	4309	30.0	334	66.3	9533	67.4	4600	77.9	5168	55.6	1812	64.1	5000	60.3	3600	71.6	3512	61.7	1972	75.3	250	59.2	12	66.7	73	57.0	4	57.1																												
Yes - without imprisonment	6847	47.7	129	25.6	3398	24.0	911	15.4	2854	30.7	664	23.5	2428	29.3	923	18.4	1462	25.7	438	16.7	118	28.0	1	5.6	40	31.3	2	28.6																												
Yes - with imprisonment	3189	22.2	41	8.1	1207	8.5	397	6.7	1270	13.7	351	12.4	861	10.4	502	10.0	718	12.6	209	8.0	54	12.8	5	27.8	15	11.7	1	14.3																												
	$\chi^2 = 299.668^{***}$				$\chi^2 = 225.384^{***}$				$\chi^2 = 68.589^{***}$				$\chi^2 = 210.875^{***}$				$\chi^2 = 147.783^{***}$				$\chi^2 = 6.254^{***}$				$\chi^2 = 0.052$																															
Breach offence at sentencing																																																								
No	9768	68.1	390	77.4	12417	87.8	5249	88.8	7722	83.1	2366	83.7	7044	85.0	4330	86.2	4877	85.7	2313	88.3	348	82.5	16	88.9	105	82.0	7	100.0																												
Yes - non-DV breach offence	667	4.6	22	4.4	472	3.3	286	4.8	428	4.6	196	6.9	370	4.5	312	6.2	277	4.9	122	4.7	24	5.7	0	0.0	8	6.3	0	0.0																												
Yes - DV breach offence	3910	27.3	92	18.3	1250	8.8	374	6.3	1143	12.3	265	9.4	875	10.6	383	7.6	538	9.5	184	7.0	50	11.8	2	11.1	15	11.7	0	0.0																												
	$\chi^2 = 20.867^{***}$				$\chi^2 = 57.790^{***}$				$\chi^2 = 38.872^{***}$				$\chi^2 = 47.627^{***}$				$\chi^2 = 13.756^{***}$				$\chi^2 = 1.118$				$\chi^2 = 1.516$																															
Age (Years)	(N=14344)				(N=504)				(N=14138)				(N=5906)				(N=9292)				(N=2827)				(N=8289)				(N=5024)				(N=5691)				(N=2617)				(N=422)				(N=18)				(N=128)				(N=7)			
Median [min, max]	35.0 [18, 86]				45.0 [18, 87]				34.0 [18, 90]				34.0 [16, 91]				34.0 [18, 90]				36.0 [18, 90]				30 [18, 87]				31 [18, 90]				34 [18, 89]				30 [18, 84]				32 [18, 72]				33 [18.5, 1]				34.0 [18, 66]				36.0 [27, 47]			
Mean [Standard Deviation]	35.5 [10.82]				43.9 [13.83]				35.6 [11.97]				35.9 [13.21]				35.1 [11.31]				37.4 [12.60]				32.3 [10.36]				33.6 [12.27]				35.1 [11.34]				33.0 [11.81]				33.7 [10.77]				33.7 [10.09]				34.4 [10.39]				37.7 [7.02]			
	$Z = -13.962^{***}$								$Z = -0.753$								$Z = -8.429^{***}$								$Z = -3.675^{***}$								$Z = -9.293^{***}$								$Z = -0.164$								$Z = -1.122$							

# Sentencing Trends & Issues

The Commission's *Sentencing Trends & Issues* are short studies of sentencing practice. Each issue analyses a particular aspect of New South Wales sentencing practice and related issues.

- 1 The Children's Court, March 1991
- 2 The Impact of Truth in Sentencing: Part 1 — The Higher Courts, March 1992
- 3 The Impact of Truth in Sentencing: Part 2 — The Local Courts, June 1992
- 4 Sentencing in the Court of Criminal Appeal, February 1993
- 5 Common Offences in the Local Court, March 1994
- 6 Common Offences in the Higher Courts, July 1994
- 7 Sentencing Homicide: The effect of Legislative Changes on the Penalty for Murder, June 1994
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- 10 Sentencing Drink-Driving Offenders, June 1995
- 11 "Sentenced to the Rising of the Court", January 1996
- 12 The Use of Recognizances, May 1996
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- 14 Sentencing Deception Offenders: Part 2 — Higher Courts, October 1996
- 15 Driving Causing Death: Section 52A of the *Crimes Act* 1900, May 1997
- 16 An Overview of Sentence and Conviction Appeals in the NSW Court of Criminal Appeal
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- 29 Suspended Sentences in New South Wales, November 2003
- 30 Common Offences and the Use of Imprisonment in the District and Supreme Courts in 2002, March 2004
- 31 The Use and Limitations of Sentencing Statistics, December 2004 (Withdrawn)
- 32 Pre-sentence Custody and Other Constraints on Liberty, May 2005
- 33 Successful Completion Rates for Supervised Sentence Options, June 2005
- 34 Trends in the use of s 12 suspended sentences, June 2005
- 35 Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW, September 2005
- 36 Trends in the use of full-time imprisonment 2006–2007, November 2007
- 37 Common offences in the NSW Local Court: 2007, November 2008
- 38 Sentencing in complicity cases — Part 1: Joint criminal enterprise, June 2009
- 39 Sentencing in complicity cases — Part 2: Abettors, accessories and other secondary participants, February 2010
- 40 Common offences in the NSW Local Court: 2010, May 2012
- 41 Common offences in the NSW higher courts: 2010, December 2012
- 42 Special circumstances under s 44 of the Crimes (Sentencing Procedure) Act 1999, June 2013
- 43 Environmental planning and protection offences prosecuted in the NSW Local Court, November 2014
- 44 Sentencing for the offence of sexual intercourse with a child under 10, July 2015
- 45 Sentencing for domestic violence, June 2016
- 46 Common offences in the NSW Local Court: 2015, May 2017
- 47 Navigating the Bail Act 2013, June 2020

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- on JIRS, and the
- Judicial Commission's website at [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au)