

# INTERPERSONAL VIOLENCE : A NEW SOUTH WALES (AUSTRALIA) / ENGLAND AND WALES PERSPECTIVE

## *VIOLENCE INTER-INDIVIDUELLE : NOUVELLES PERSPECTIVES AUX GALLES DU SUD (AUSTRALIE), EN ANGLETERRE ET AU PAYS DE GALLES*

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### ABSTRACT

Domestic Violence is clearly a global problem with, in many cases, similar remedies sought by differing jurisdictions worldwide. This paper seeks to look at two of those jurisdictions: New South Wales, an eastern state within Australia, and England & Wales within Great Britain. It aims to look at the working definitions for domestic violence, the recorded incidents, and social and legal measures that have been used to address the issues.

Definite similarities in the approaches of government to the public health menace of domestic violence are present in both jurisdictions. Forensic practitioners could, and should, play a role in improving evidence gathering in the documentation and interpretation of injuries sustained by victims of interpersonal violence.

### KEYWORDS

Australia, England and Wales, Domestic violence, Forensic practitioners, Legal measures.

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### RÉSUMÉ

*La violence domestique est à l'évidence un problème global auquel, dans un bon nombre de cas, des solutions semblables sont proposées par des dispositions juridiques de différents pays dans le monde. Cet article s'intéresse plus particulièrement à deux systèmes juridiques : celle des Nouvelles Galles du Sud, état de l'Est de l'Australie et celle de l'Angleterre et du Pays de Galles, au sein de la Grande-Bretagne. Son but est de comparer les définitions de la violence domestique, les faits enregistrés, les mesures sociales et légales prises pour répondre aux situations.*

*Des similarités claires dans les approches gouvernementales et des politiques de santé publique face au problème de la violence domestique existent dans les deux systèmes juridiques. Les praticiens en médecine légale pourraient et devraient jouer un rôle dans l'amélioration du recueil des informations pour une meilleure documentation et interprétation des violences subies par les victimes de la violence dans le couple.*

### MOTS-CLÉS

*Australie, Angleterre et Pays de Galles, Violence domestique, Praticiens médico-légaux, Dispositions légales.*

## INTRODUCTION

Domestic Violence is clearly a global problem with, in many cases, similar remedies sought by differing jurisdictions worldwide. This paper seeks to look at two of those jurisdictions: New South Wales, an eastern state within Australia, and England & Wales. It aims to look at the working definitions for domestic violence, the recorded incidents, and social and legal measures that have been used to address the issues.

## NEW SOUTH WALES - DEFINITION & STATISTICS

NSW Health defines domestic and family violence as:

*“Any behaviour, in an intimate or family relationship, which is violent, threatening, coercive or controlling, causing a person to live in fear.”* [1]

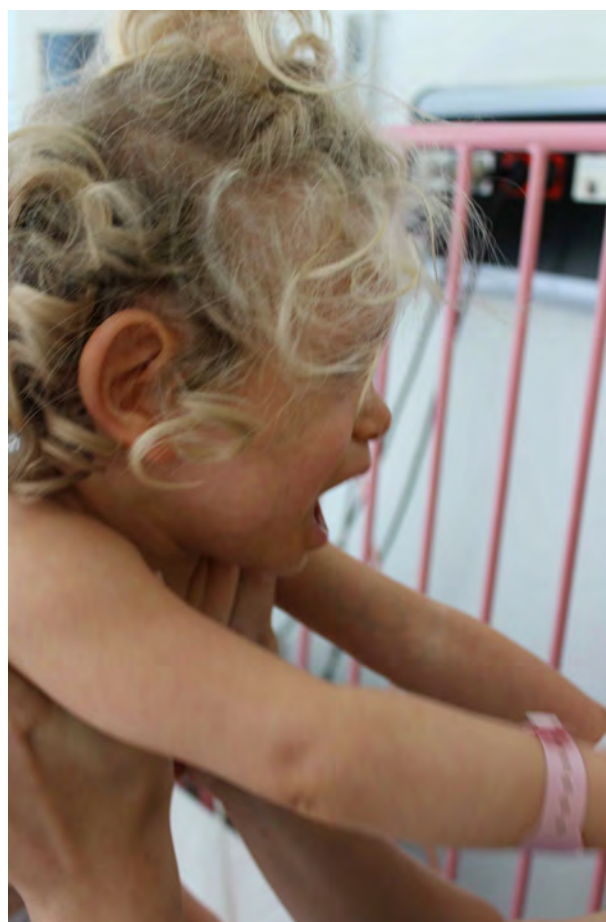
It is estimated that one in six Australian women and one in twenty Australian men have, since the age of 15, experienced physical or sexual violence from a partner they have lived with.<sup>1</sup> If you add violence from a non-cohabitating partner this increases to one in four Australian women. It rises to one in three if emotional abuse is also considered. [2] Emotional abuse can include isolating partners from family or friends, insults designed to make their partner feel ashamed or humiliated, monitoring their partner's whereabouts, controlling household money and threats of harm to themselves or others. For 62% of the women who had experienced physical assault by a male perpetrator, the most recent incident was in their home. [3]

NSW recorded crime statistics April 2012 to March 2017 documented over 144,000 reported incidents of domestic violence which had been reported to NSW police. That is an average of about 80 per day, every day, for the last five years. [4]

A University of Newcastle study tracked 3 generations of women, over 16,500 participants, for 16 years. Overwhelmingly, those that had been victims of domestic violence had experienced both poorer physical and poorer mental health outcomes. [5] Professor Loxton concluded, “Unfortunately, the reality for one in four Australian women is that the physical and mental health impacts of domestic violence could last a lifetime » [6]

Burden of disease studies measure both non-fatal burdens (impact of living with injury and illness) as well as fatal burden (dying prematurely). Attributable burden is the combination or, essentially, the amount of “burden” that could have been avoided if no Australian woman in 2011 had been exposed to interpersonal violence in their lifetime. It was estimated

(1) Australian Bureau of Statistics (2013) Personal Safety, Australia 2012 Cat. No. 4906.0



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**Photo 1 : Victime collatérale / Side victim.**

that 5.1% of the disease burden in women, aged between 18 and 44 years and over, was attributable to physical and/or sexual interpersonal violence when considering violence perpetrated by both co-habiting and non-cohabiting partners as well as emotional abuse. This increases to 10.9% of the disease burden in indigenous women. “This is more than any other risk factor” when looking at 200 diseases. [3]

## NSW SOCIAL MEASURES

NSW Government doubled its investment in specialist domestic violence services and initiatives to more than \$300 million over four years, up from \$148.5 million in the 2015-16 Budget. This is in addition to money already spent in mainstream services such as Health, Justice, Child Protection and Housing.

### Safer Pathways Programme

Key components of the programme include:

- ✓ A Domestic Violence Safety Assessment Tool (DVSAT) to better and more consistently identify risk to victims.

- ✓ A state-wide Central Referral Point where a person can be referred if there is an identified threat or serious threat. The victim will be contacted with a view to helping them increase their safety.
- ✓ A Safety Action meeting. People can be referred here if considered to be at serious threat of disability, injury or death. Members are government and non-government service providers who will share information needed to develop a plan to increase partner and children safety.
- ✓ Information sharing legislation allowing service providers to share information without victims having to repeat it multiple times.

In 2015 there were 6 sites involved. During 2016-2017 this will be extended to a further 21 sites and then rolled out state wide by 2018-2019.

### Domestic and Family Violence App

Aurora is a free smart phone app that contains emergency contacts, information on the sorts of behaviour considered to be domestic and family violence and vital information and links to support services in NSW. It also allows the user to message their friends and family members (up to 5 nominated) or call emergency services immediately. It has been designed so that it can be used discreetly without tipping off a perpetrator, thereby putting the user in further danger. It is available via iPhone App Store or Android Google Play. It was developed by NSW Government, NSW Police, Women NSW and NSW Women's Refuge Movement.

### Men's Telephone Counselling and Referral Service

A toll free NSW number open 24 hours 7 days per week is available for men who may be either violent or potentially violent. They can obtain referral to men's behaviour change programs should they wish or simply talk to a trained counsellor on the phone. There is also funding for a Men's Behaviour Change Network, an advisory body to find effective ways of working with men to reduce domestic and family violence.

### Staying Home Leaving Violence (SHLV)

This program aims to prevent homelessness as a result of intimate partner violence, by supporting a victim to remain in their home, as well as reducing post-separation abuse. Research indicates that the period following separation from an abusive relationship can put victims at higher risk of violence. SHLV will provide careful safety planning, implement safety modifications around the victim's home as well as an SOS

Duress alarm if appropriate and available. When a victim's safety at home cannot be guaranteed, SHLV will provide options about relocation.

### Start Safely

Start Safely is a government subsidy which provides short to medium term (up to 2 years) financial help for someone leaving domestic and family violence so that they can secure private rental accommodation.

## NSW LEGAL CHANGES

### NSW Domestic Violence Disclosure Scheme

This scheme helps people who may be at risk of domestic violence to find out if their current or former partner has a history of violent criminal offences. This is believed to be the first scheme of its kind in Australia. It is being piloted in four local area commands: Oxley (Tamworth region), Shoalhaven (Nowra region), Sutherland and St George (the latter being within Metropolitan Sydney). An application is made and police determine if the applicant may be



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**Photo 2 : Violences sur femme enceinte /  
Violence on pregnant woman.**



facing a serious threat to life, health or safety. A police check is done on the partner. If the applicant is thought to be at serious risk they will be notified within 48 hours. Application can also be made by a friend, relative or professional who has an ongoing relationship with the person who may be at risk.

#### Apprehended Domestic Violence Order Program (ADVO)

The *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* replaced Part 15A of the *Crimes Act 1900 (NSW)*. This allows the making of an ADVO if the court is satisfied, on the balance of probabilities, that the applicant has reasonable grounds to fear and does fear violence, intimidation or stalking by the other party. It prohibits the defendant from engaging in the following proscribed behaviours: assault, molestation, harassment, threats, stalking and intimidation (s 36). It prohibits intimidation by telephone, text messaging, emailing or any other technologically assisted means (s7(1)(b)). Additional protections can be added prohibiting the defendant from approaching the person, accessing any premises occupied by the person including where they work, approaching the

person within 12 hours of consuming intoxicating liquor or illicit drugs or from possessing firearms or prohibited weapons. (s35(2)). In 2013 in NSW Local Courts 24,605 ADVOs were granted and 8,891 breaches were recorded (as opposed to the number of people charged with breaching an ADVO). [7]

#### Police Direction and Detention Powers/ Determination of ADVO applications

Changes to the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* on 20<sup>th</sup> May 2014 enabled police to direct and detain offenders for the purpose of applying for and serving apprehended domestic violence orders (ADVOs). Police can choose to instruct the offender to remain where found by police or to accompany police to a police station and remain there while an application for an ADVO is made. A defendant can remain in police custody for 2 hours. A second change authorised senior police (of or above the rank of sergeant) to authorise the provisional application rather than having to refer the application to a Justice from the courts. It is thought that this will provide faster and immediate access to provisional ADVOs, saving time and resources for police and the court, ensuring immediate victim safety and increased deterrence to DV offenders.



**Photo 3 : Prises en force femme âgée /  
Violent handling of aged woman.**

#### Domestic Violence Evidence in Chief

On 1<sup>st</sup> June 2015 the *Criminal Procedure Amendment (Domestic Violence Complainants) Act 2014 NSW* came into force. The legislation allows for video or audio recorded statements taken from domestic violence complainants to be admitted as all or part of their evidence in chief during a defended hearing for charges and associated ADVO applications. The benefits to victims are thought to include a reduction in their trauma and reduction in difficulty experienced in remembering details at a later court date. It brings the demeanour and personal experience of the complainant into the court room. It renders useless any attempts at intimidating a complainant to change their statement.

This is an Australian and world first. The Daily Telegraph (Australian national newspaper) reported on April 22, 2016 that police are getting convictions in 9 out of 10 domestic violence prosecutions “as video statements from victims have an impact in our court rooms missing the closing quotes. [8] It was reported that these video statements were replacing written statements in up to 90% of cases. As at the time of the article, DVEC had been used in 3600 NSW cases.

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The Domestic Violence Suspect Management Plan is a police initiative which targets repeat DV offenders, using the same monitoring regime police use to target robbers. Police conduct overt checks and surveillance to ensure those on the management plan are not engaged in any illegal activity including breaching any domestic violence orders. In the five month period since its state wide roll out in February 2016 exactly half of the 642 domestic violence offenders put on the plans have been re-arrested, charged and put before the courts. 240 of them were refused bail. [9]

### FORENSIC APPROACH

Forensic services in NSW are artificially divided into sexual assault services, provided by NSW Health, and “everything else” provided by NSW police. Victims of domestic violence, however, could not access specialised forensic services for the purpose of recording their injuries relying instead on Emergency Doctors and General Practitioners.

The DV injury documentation project was commenced at Nepean Hospital in December 2008 in conjunction with staff from the Forensic Medical Unit (who, until that time, were providing services to victims of sexual assault) and local police. This was a NSW first. Complainants of domestic violence, aged 16 years or above, who had obvious injuries as a result of an assault by a partner or ex-partner were eligible to visit the hospital and have their injuries documented. This was extended to those who had been assaulted by a family member with whom they reside. A forensic history was taken, concentrating on the mechanism of assault. Injuries were documented both on a diagram and with photographs. An Expert Certificate for court was produced and was sent to local police along with any images taken. An examiner from the Forensic Medical Unit was available to appear in court as an Expert witness.

Two comparison groups were looked at, 3 years later, comprised of 56 DV complainants each who had documentable or obvious injuries as a result of their assault. One group had attended the FMU and the other group had attended either their General Practitioner or an Emergency Department. In 48% of the cases in which documentation had been performed by either a forensic nurse or doctor and where the defendant had initially pled not guilty, the defendant was later convicted at court. Conversely, there was a 30% conviction rate for those cases where documentation had been done by a non-forensically trained examiner. While forensic assessment cannot guarantee a positive outcome in court, for a DV complainant, it can assist with ensuring the



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**Photo 4 : Lésion ecchymotique en forme /  
Ecchymotic shaped lesion.**

best quality documentation of the injuries sustained. [10]

### ENGLAND & WALES - DEFINITION AND STATISTICS

In England & Wales there has been a cross government definition of domestic violence and abuse since 2013:

*“Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality.”*[11]

The abuse may be psychological, physical, sexual, financial, and emotional. Controlling behaviour was defined as a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape, and regulating their everyday behaviour. Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

For the year ending March 2016 the Crime Survey for England and Wales (CSEW) [12] estimates that 2 million adults aged 16 to 59 experienced domestic abuse in the last year, equating to a prevalence rate of 6 in 100 adults. Women were more likely to say they have experienced domestic abuse than men, with an estimated 1.3 million female victims compared to 716,000 male victims, according to the survey (7.7% compared with 4.4%). Overall, 26% of women and 14% of men had experienced domestic abuse since the age of 16, equivalent to an estimated 4.3 million female victims and 2.2 million male victims.

## THE ROLE OF POLICE

Her Majesty's Inspectorate of Constabulary & Fire and Rescue Services (HMICFRS Previously HMIC) conducted an inspection on the police response to domestic abuse in 2014<sup>[13]</sup> and concluded that:

*'The overall police response to victims of domestic abuse is not good enough. Unacceptable failings in core policing activities, investigating crime, preventing crime, bringing offenders to justice and keeping victims safe are the principal reasons for this.'*

The HMIC made a number of recommendations for the police service and followed this up with a progress report in December 2015. They found that there had been improvements in the overall police response to victims of domestic violence. [14] In particular the police had started recording whether offences are domestic abuse related.

In the 12 months to March 2015, the police service in England and Wales received an average of over 100 calls an hour with domestic abuse related crime equating to 10% of all recorded crime and 33% of all recorded assault with injury crimes. [14]

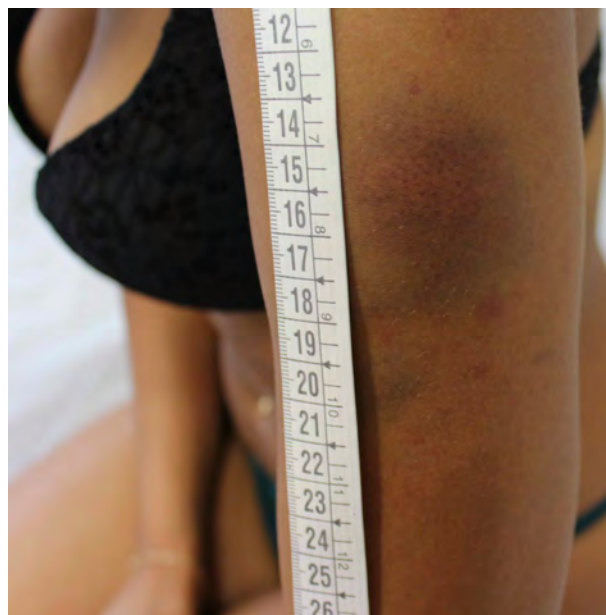
There was increasing usage of the THRIVE decision model (Threat, Harm, Risk, Investigation, Vulnerability and Engagement), which provides a structured assessment of calls to the police control room.

The Domestic Abuse, Stalking and Honour Based Violence (DASH 2009) Risk Identification, Assessment and Management Model was implemented across all police services in the UK from March 2009 (<http://www.dashriskchecklist.co.uk/>). This checklist is used by other agencies for identifying, managing and assessing risk.

The multi-agency risk assessment conference (MARAC) process is often led by the police. This is a local multiagency victim focused meeting where information is shared on the highest risk cases of domestic abuse between different agencies such as police, victim support agencies, probation, social services, housing and health services.



**Photo 5 : Suffusion conjonctivale / Hiperhemial conjunctivitis.**



**Photo 6 : Recueil de preuves lors de l'examen / Witnessing proof juring examination.**

## LEGAL CHANGES

A new offence of coercive or controlling behaviour against an intimate partner or family member came into force in 2015 under Section 76 of the *Serious Crime Act 2015*. Under civil legislation the *Family Law Act 1996* (as amended by Part 1 of the *Domestic Violence Crime and Victims Act 2004*) has two important orders – an occupation order which can be used to temporarily exclude an abuser from the home and surrounding area and a non-molestation order which prohibits an abuser from molesting another person they are associated with. The *Protection from Harassment Act* (as amended) include non-harassment and restraining orders. This Act was also amended in 2013 to introduce two explicit offences of stalking.

Domestic violence protection orders (DVPOs) were introduced in England and Wales in 2014 because of a perceived gap in providing protection to victims. Police often did not have the evidence immediately to charge the suspect and impose bail conditions and the granting of civil injunctions took time.

The Domestic Violence Protection Notice (DVPN) is an emergency non-molestation and eviction notice issued by the police with immediate effect. Within 48 hours of the DVPN being served on the perpetrator, an application for a DVPO may then be made by the police to the magistrates' court. A DVPO can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. A recent review [15] of the DVPO was positive as it provides victims with the immediate protection from a violent and/or abusive situation.





**Photo 7 : Strangulation homicide VFF.**

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The domestic violence disclosure scheme (DVDS) introduced in March 2014, gives individuals the “right to ask” the police to check whether a new or existing partner has a violent past. If the police find out that the individual may be at risk of domestic violence from their partner then they can disclose the information “right to know”. This is often referred to as “Clare’s law”, named after Clare Wood who was murdered in February 2009 by a man she had met on an internet dating site who had a history of violence.

## FORENSIC APPROACH

One of the original HMIC (2014) criticisms was the lack of collection of evidence by officers at the scene of domestic abuse incidents. There was an improvement noted in evidence gathering in the HMIC report in 2015 but there was also a lack of photographs if there were visible physical injuries. In the College of Policing Authorised Professional Practice, the official source of professional practice on policing, officers are advised to take photographs of victims’ and suspects’ injuries as soon as possible and book an appointment for professional forensic photographs. [16] Photographs by police or by health care practitioners can provide compelling evidence in court. [17] However there is no mention of the documenta-

tion and interpretation of injuries by a trained and experienced forensic practitioner to provide the best possible evidence. [18] Minor injuries not requiring hospital treatment are often significant. Forensically trained clinicians should be able to evaluate whether the injuries were accidental or intentional and whether the injuries match the victim’s statements. [19]

Forensic health care in the UK is now often provided by multidisciplinary teams of doctors, nurses, and paramedics, with the overall focus on healthcare in custody. Forensic aspects will be covered, such as the assessment of fitness to interview, forensic sampling, and documentation of injuries, but with varying degrees of skill dependent on the competency of the individual practitioner. Victims of sexual assault are taken to Sexual Assault Referral Centres (SARC) for a full assessment. Victims with physical injuries are not always able to access appropriately trained forensic practitioners.

## THE FUTURE

In recent years the Government have announced a number of positive steps for victims of domestic violence. [20] These have included increased funding for charities in 2015, in particular an early intervention

project “Sooner the Better”. The ratification of the Convention on preventing and combating violence against women and domestic violence, the “Istanbul Convention”, has received Royal Assent through the *Preventing and Combating Violence Against Women and Domestic Violence Act 2017*. Plans have also been announced to end direct cross examination of domestic violence victims by alleged perpetrators in the family courts in a forthcoming Courts Bill mentioned in the Queens’ Speech 2017.

For forensic practitioners, the publication of guidelines on photography with the intention of raising standards of HCPs in all fields who document injuries as part of their daily repertoire, along with approved training in photo documentation, is an excellent initiative to improve the evidence gathering in cases of IPV.

## CONCLUSIONS

There are definite similarities in the approaches of government to the public health menace of domestic violence in both jurisdictions. Forensic practitioners could, and should, play a role in improving evidence gathering in the documentation and interpretation of injuries sustained by victims of interpersonal violence. ■

## REFERENCES

- [1] NSW Ministry of Health - Domestic and Family Violence Blueprint for Reform 2016-2021 - August 2016.
- [2] Australian Bureau of Statistics (2013) Personal Safety, Australia 2012 Cat. No. 4906.0.
- [3] Webster, K. (2016) A preventable burden: Measuring and Addressing the prevalence and health impacts of intimate partner violence in Australian women: Key findings and future directions. (ANROWS (Australia’s National Research Organisation for Women’s Safety) Compass) – Research to policy and practice Issue 07 November 2016 <http://media.aomx.com/anrows.org.au/s3fs-public/28%2010%2016%20BOD%20Compass.pdf>
- [4] Australia’s National research Organisation for Women’s Safety (2015) Violence against women: Additional Analysis of the Australian bureau of Statistics’ Personal Safety Survey 2012. Horizons Research Report, October 2015.
- [5] NSW Bureau of Crime Statistics and Research Ref: kr17-15176.
- [6] Health Times Published 14/06/2017 [https://healthtimes.com.au/hub/public-health/50/news/aap/longterm-impact-of-domestic-violence-on-womens-health/2639/?utm\\_source=HealthTimes+Allied+Health&utm\\_campaign=ad47b65655-EMAIL\\_CAMPAIGN\\_2017\\_06\\_20&utm\\_medium=email&utm\\_term=0\\_639f677229-ad47b65655-201785905](https://healthtimes.com.au/hub/public-health/50/news/aap/longterm-impact-of-domestic-violence-on-womens-health/2639/?utm_source=HealthTimes+Allied+Health&utm_campaign=ad47b65655-EMAIL_CAMPAIGN_2017_06_20&utm_medium=email&utm_term=0_639f677229-ad47b65655-201785905)
- [7] Trimboli, L. Legal service for defendants in Apprehended Domestic Violence Order (ADVO) proceedings: An evaluation. *Crime and Justice Bulletin* Number 174 November 2014.
- [8] Fife-Yeomans, Janet The Daily Telegraph April 22, 2016 <http://www.dailytelegraph.com.au/news/nsw/domestic-violence-victim-video-statements-having-a-positive-impact-on-conviction-rates/news-story/99a7165d95151b0652831c821e98aa6f>
- [9] <https://www.nsw.gov.au/news-and-events/news/repeat-domestic-violence-perpetrators-targeted/>
- [10] Nittis, Maria; Hughes, Rod; Gray, Cecile; Ashton, Mandy Domestic violence documentation project 2012 *Journal of Forensic and Legal Medicine* 2013; 20: 683-689
- [11] [www.gov.uk/guidance/domestic-violence-and-abuse](http://www.gov.uk/guidance/domestic-violence-and-abuse)
- [12] <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2016>
- [13] HMIC. (2014) Everyone’s business: Improving the police response to domestic abuse. <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf> Accessed 25/08/2017.
- [14] HMIC. (2015) increasingly everyone’s business: A progress report on the police response to domestic abuse. <http://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/increasingly-everyones-business-domestic-abuse-progress-report.pdf> Accessed 25/08/2017
- [15] Home Office. (2016) Domestic Violence Protection Orders (DVPO) One year on – Home Office assessment of national roll-out.
- [16] <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/first-response/#injury-photos> Accessed 22/08/2017
- [17] FFLM. (2017) PICS Working Group. Guidelines on photography. <https://fflm.ac.uk/wp-content/uploads/2017/06/PICS-Working-Group-Guidelines-on-Photography-Dr-Will-Anderson-May-2017.pdf> Accessed 22/08/2017
- [18] Stark MM. Rogers DJ. Howitt J. Domestic violence: do forensic physicians have a role? *Journal of Clinical Forensic Medicine* 1997; 4: 59-63.
- [19] Reijnders ULJ, Ceelen M. 7208 Victims of domestic and public violence: an exploratory study based on the reports of assaulted individuals reporting to the police. *Journal of Forensic and Legal Medicine* 2014; 24: 18-23.
- [20] Strickland P & Allen G. (2017) Domestic Violence in England and Wales. House of Commons Library Briefing Paper Number 6337 21 June 2017 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06337> Accessed 25/08/2017