

# 2. History of AVOs

- Legislative history
- Most recent changes
- Other laws affecting AVOs
- Previous reviews

2.1 This chapter sets out the background to and context of the Commission's review. It traces the legislative development of AVOs and discusses the changing policy emphasis over the last 20 years. It also looks at laws which impact on, and are affected by, AVO legislation, and the most recent reviews of Part 15A of the Crimes Act.

## LEGISLATIVE HISTORY

2.2 A consideration of the legislative history of AVOs helps to shed some light on the impetus for a scheme of protection orders, and the policy principles and objectives on which the scheme is based.

### The situation before AVOs

2.3 Prior to 1982, there was limited protection available for people who feared that they would become victims of violent activity in the immediate future. While the general criminal law prohibited personal violence offences, doubts emerged as to whether the criminal law alone was sufficient to deter violence in interpersonal relationships.<sup>1</sup> Domestic violence, in particular, has traditionally had a low prosecution rate. Many theories and studies abound as to the possible reasons for this, including low levels of reporting by victims of violence to authorities,<sup>2</sup> attitudes to domestic violence held by the community, the police and the

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1. See for example, Australian Law Reform Commission, *Domestic Violence* (Report 30, 1986) ("ALRC Report 30") at para 76-87. See also N Naffin, *Domestic Violence and the Law – A Study of s 99 of the Justices Act (South Australia)*, Women's Advisor's Office, Department of Premier and Cabinet (June 1985) ("Naffin Report") at 50-51.
  2. See para 1.17-1.20 for a brief discussion of the issues concerning the complex and insidious nature of domestic violence, and the resultant difficulties associated with assessing the effectiveness of measures designed to combat it.

criminal justice system which prevent it being taken seriously,<sup>3</sup> and difficult evidentiary and other issues associated with the hidden nature of domestic violence.<sup>4</sup>

2.4 Aside from these difficulties, the criminal law of course only applied after the violence had occurred and conviction could only be secured if the offence were proved beyond reasonable doubt. Consequently, this did little to deter future violence. The criminal law also could not operate to prevent conduct, such as harassment, which did not amount to a crime.

2.5 The main method, not involving a criminal element, by which potential victims of violence could seek protection prior to the introduction of AVOs was a recognisance to “keep the peace” under the Crimes Act.<sup>5</sup> Section 547<sup>6</sup> provided for a defendant to be brought before a Court of Petty Sessions, either by means of a summons or a warrant for arrest issued by a Magistrate, where a person, or a police officer, had accused the defendant of threatening behaviour. If the Magistrate were satisfied that the defendant had committed, threatened to commit, or was likely to

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3. While it is beyond the scope of this inquiry to analyse the broader issues of domestic violence, they have been well documented: see for example, Naffin Report; Australia, Public Policy Research Centre, *Community Attitudes Towards Domestic Violence in Australia* (Office of the Status of Women, Canberra, 1988); J Scutt, “Judicial Bias or Legal Bias? Battery, Women and the Law” in J Bessant, K Carrington, and S Cook (eds) *Cultures of Crime and Violence: The Australian Experience* (La Trobe University Press, 1995); H Katzen, “How do I prove I saw his shadow?” Responses to breaches of Apprehended Violence Orders, A consultation with women and police in the Richmond Local Area Command in NSW (Prepared for the Northern Rivers Community Legal Centre, 2000); R Alexander, *Domestic Violence in Australia: The Legal Response* (3rd ed, The Federation Press, Sydney, 2002).
  4. See N C Seddon, “Legal Responses to Domestic Violence – What is Appropriate?” (1986) 58 *The Australian Law Quarterly* 48.
  5. There was also the possibility of obtaining an injunction under s 114 of the FLA for the protection of a party to, or a child of, a marriage. See para 2.30.
  6. This has subsequently been repealed.

commit, a violent act, the Magistrate could require the defendant to enter into a recognisance (or undertaking) to keep the peace or be of good behaviour. Unlike the current AVO scheme, a recognisance order could not be tailored to include specific conditions such as preventing the defendant from contacting the applicant. More significantly, breach of an undertaking did not constitute a criminal offence, and there was consequently no power to arrest a defendant who breached a recognisance.<sup>7</sup> As a result, that procedure was widely criticised at the time for being inflexible, unenforceable and ineffective.<sup>8</sup>

2.6 In response to the perceived failings of the existing law, and the emergence of domestic violence as a significant social issue in the 1980s,<sup>9</sup> a Task Force on Domestic Violence was established in 1981. That Task Force made 187 recommendations to the then Premier, the Hon Neville Wran QC MP, including suggestions for legislative reform. Those suggestions were incorporated into the resulting legislation: the *Crimes (Domestic Violence) Amendment Act 1982* (NSW) (“the 1982 amendments”), which among other things, clarified and enhanced police powers of entry into premises for the purpose of investigating domestic violence offences,<sup>10</sup> and initiated a scheme of protection orders, later to be known as AVOs.

## The Crimes (Domestic Violence) Amendment Act 1982

2.7 The 1982 amendments supplemented s 547 of the Crimes Act by inserting a new s 547AA, empowering a Magistrate to make orders which restricted or prohibited the behaviour of people whose

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7. A Magistrate could require the defendant to post a monetary bond, which could be forfeited if the recognisance were breached. It seemed, however, that very little action was ever taken in relation to breaches of s 547: see ALRC Report 30 at para 85.

8. See for example, Naffin Report at 1-2; ALRC Report 30 at para 85; J Stubbs and D Powell, *Domestic Violence: Impact of Legal Reform in NSW* (NSW Bureau of Crime Statistics and Research, 1989) (“BOCSAR Report 1989”).

9. BOCSAR Report 1989 at 1.

10. Crimes Act s 357F.

domestic violence was apprehended. Those orders could provide for certain conditions to be imposed on the defendant, including restricting or prohibiting the defendant from approaching the applicant or from accessing specified premises, depending on the circumstances. A procedure for making applications for orders based on a complaint by a private applicant or a police officer was established, with the complaint needing to be substantiated only by the civil (balance of probabilities) rather than the criminal standard of proof. The orders could last for up to six months, and failure to comply with the orders became a criminal offence (arrest being permitted without a warrant) carrying a maximum penalty of six months imprisonment.

2.8 The 1982 amendments applied only to physical violence between married and heterosexual de facto couples, with orders being known as Apprehended Domestic Violence Orders (“ADVOs”).<sup>11</sup> When introducing the legislation into Parliament, the then Premier, the Hon Neville Wran, QC MP, referred to the Government’s determination to eliminate the “scourge” of domestic violence,<sup>12</sup> the inadequacy of the existing law in leaving victims, particularly women, who fear violence “out on a limb”,<sup>13</sup> and the impact he hoped the new law would have:

For the tens of thousands of women from every social and economic spectrum in New South Wales who are subjected repeatedly to domestic violence the reforms which I am presenting to this Parliament today are undoubtedly among the most important reforms it will ever legislate.<sup>14</sup>

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11. Recognisance orders under the Crimes Act s 547 continued to operate for violence in other relationships.
  12. New South Wales, *Parliamentary Debates (Hansard)* Legislative Assembly, 9 November 1982 at 2366.
  13. New South Wales, *Parliamentary Debates (Hansard)* Legislative Assembly, 9 November 1982 at 2368.
  14. New South Wales, *Parliamentary Debates (Hansard)* Legislative Assembly, 9 November 1982 at 2368.

## Amendments since 1982

2.9 The AVO provisions have been amended a number of times since 1982, generally to expand their scope and availability.<sup>15</sup>

2.10 The *Crimes (Domestic Violence) Amendment Act 1983* (NSW) extended the application of the ADVO provisions in s 547AA of the Crimes Act to include separated heterosexual de facto and divorced spouses, who were seen as a “significant category of potential victims of domestic violence”.<sup>16</sup> Further, ADVOs were able to be made where there was an apprehension of sufficiently serious molestation or harassment which falls short of actual physical violence. Both of these amendments implemented recommendations made by the NSW Law Reform Commission.<sup>17</sup> The 1983 Act also enabled the court to impose a fine of up to \$2000 in addition to a term of imprisonment as a punishment for breach of the ADVO provisions, and clarified the application of the *Bail Act 1978* (NSW) in relation to ADVOs.

2.11 Another round of amendments was passed in 1987. The *Crimes (Personal and Family Violence) Amendment Act 1987* (NSW) created Part 15A of the Crimes Act, replacing s 547AA. The category of people eligible to apply for ADVOs was extended to include those who lived or had lived in the same house (apart from a tenant or boarder), and people in existing or former intimate personal relationships.<sup>18</sup> In addition, the six month time limit on the duration of ADVOs, imposed in the 1982 amendments, was removed, as it was considered that six months was not long enough in many domestic situations to remove the threat of violence.<sup>19</sup>

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15. For a further discussion of the legislative history of AVOs, see R Simpson, *Incidence and Regulation of Domestic Violence in NSW* (NSW Parliamentary Library, Briefing Paper 4/2000) at 12-14.

16. New South Wales, *Parliamentary Debates (Hansard)* Legislative Assembly, 19 October 1983 at 1879.

17. See NSWLRC, *De Facto Relationships* (Report 36, 1983) Recommendations 50-52.

18. Crimes Act s 562B. This provision has since been amended again.

19. New South Wales, *Parliamentary Debates (Hansard)* Legislative Assembly, 29 October 1987 at 15464. Instead, the ADVO could be made for as long as the court considered necessary: Crimes Act s 562E.

For the first time, the court was empowered to prohibit or restrict the possession of firearms by a defendant of an ADVO, and provision was made for ex parte interim orders to be issued.<sup>20</sup>

### **Expansion beyond domestic relationships**

2.12 In 1989, the *Crimes (Apprehended Violence) Amendment Act 1989* (NSW) expanded the ADVO scheme again to *all* people, not just those in domestic relationships, who feared physical violence, harassment or molestation towards themselves. So, for example, people could seek an order to protect themselves from threats against neighbours or colleagues. This reflected a concern that the s 547 recognisance order was inadequate to protect those who feared violence outside of domestic relationships. It was considered preferable to extend Part 15A rather than enact a new part of the Crimes Act dealing with apprehended violence in non-domestic relationships.<sup>21</sup> The orders became known simply as AVOs to reflect that change.

2.13 This amendment generated controversy at the time among those who were concerned that it would remove the emphasis on the particular problem of domestic violence, and that AVOs would be used in trivial or inappropriate ways.<sup>22</sup> Despite subsequent amendments to Part 15A, this controversy remains today.

2.14 The 1989 Act also clarified that harassment to or molestation of a person may occur even though there is no actual or threatened violence to the person, and there is only actual or threatened damage to that person's property. A new provision was also inserted enabling an AVO to be sought on behalf of a child or a

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20. Crimes Act s 562H.

21. New South Wales, *Parliamentary Debates (Hansard)* Legislative Assembly, 3 May 1989 at 7318.

22. See R Simpson, *Incidence and Regulation of Domestic Violence in NSW* (NSW Parliamentary Library, Briefing Paper 4/2000) at 13; NSW Criminal Law Review Division, *Apprehended Violence Orders: A Review of the Law*, (Discussion Paper, 1999) ("CLR Discussion Paper") at 11.

person with an intellectual disability where the protected person is unaware of the threat to his or her safety.<sup>23</sup>

## 1993 to 1996

2.15 Several amendments to Part 15A were made in 1993 and 1996. The *Crimes (Registration of Interstate Restraint Orders) Act 1993* (NSW) enabled protection orders made in other States and Territories to be enforced in NSW.<sup>24</sup> Also in 1993, the *Crimes (Domestic Violence) Amendment Act 1993* (NSW):

- enabled police to apply for telephone interim orders after hours in certain circumstances;
- enabled people over 16 to apply for their own AVO;
- created a separate offence of intimidation relating to domestic violence;
- introduced a new provision to prevent stalking; and
- increased the penalties for breach of an AVO from a fine of \$2000 to \$5000, and from six months to two years imprisonment.

2.16 The *Crimes Amendment (Apprehended Violence Orders) Act 1996* (NSW) altered the AVO provisions by limiting the court's discretion in the following respects. An authorised justice *must*:

- issue either a summons or a warrant for the appearance of a defendant against whom an AVO is sought;
- explain to the applicant and the defendant the rights of each party and the consequences of breaching an AVO;
- issue an AVO where a person is convicted of a stalking, intimidation or domestic violence offence;
- issue an interim AVO where a person is charged with a stalking, intimidation or domestic violence offence.

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23. Crimes Act s 562CA.

24. This was extended in 1999 to include the recognition of New Zealand orders made under the *Domestic Violence Act 1995* (NZ).

2.17 The 1996 amending Act also enabled a child under 16 to be included on an adult's AVO, and enabled AVO proceedings involving a child under 16 to be held in the absence of the general, or a specified member of, the public.

## **MOST RECENT CHANGES**

### **Crimes Amendment (Apprehended Violence) Act 1999 (NSW)**

2.18 The latest amendments to Part 15A were made in 1999 following a number of reviews of the legislation in the late 1990s.<sup>25</sup> The *Crimes Amendment (Apprehended Violence) Act 1999* (NSW) ("the 1999 amendments") created two categories of AVOs within Part 15A: ADVOs<sup>26</sup> and APVOs.<sup>27</sup> In his Second Reading Speech, the then Attorney General, the Hon J W Shaw, QC MLC, noted that the Government had been "most conscious of concern regarding the conflation of domestic violence matters with non-domestic or 'personal' violence matters under the AVO scheme" which had arguably "done a disservice to people experiencing domestic violence".<sup>28</sup> Mr Shaw stated that separating AVOs into two categories not only recognised the "difference in the nature and level of violence in domestic and non-domestic matters" but also established "significant legislative distinctions" in the ways in which ADVOs and APVOs are treated.<sup>29</sup>

2.19 The first such distinction is that authorised justices have a discretion to refuse to issue an APVO (except upon application by a police officer) which they consider is based on a complaint that is "frivolous, without substance or has no reasonable prospects of

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25. See para 2.31-2.41.

26. Crimes Act, Division 1A.

27. Crimes Act, Division 1B.

28. New South Wales, *Parliamentary Debates (Hansard)* Legislative Council, 25 November 1999 at 3674.

29. New South Wales, *Parliamentary Debates (Hansard)* Legislative Council, 25 November 1999 at 3674.

success”.<sup>30</sup> There is no such discretion in relation to an ADVO. Secondly, the court has a greater discretion to award costs against complainants in APVO matters.<sup>31</sup> For ADVOs, the test for awarding costs against private applicants remains based on a “frivolous or vexatious” complaint,<sup>32</sup> whereas for APVOs, costs may be awarded where it seems “just and reasonable” to do so.<sup>33</sup> The third distinction between ADVOs and APVOs is that, in ADVO proceedings, there is a restriction on disclosure of the protected person’s address or the complaint on which an order is based.<sup>34</sup>

2.20 The final distinction between ADVOs and APVOs is the inclusion of an objects statement in Division 1A of Part 15A relating to ADVOs. Those objects are essentially to prevent and protect against domestic violence.<sup>35</sup> The provision states that the objects are to be achieved by empowering the courts to make ADVOs and ensuring speedy, inexpensive, safe and simple access to justice.<sup>36</sup> Recognition is also given to domestic violence being unacceptable, perpetrated mainly by men against women and children, and occurring in all sectors of the community.<sup>37</sup>

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30. Crimes Act s 562AK(3). There is a presumption against exercising that discretion if the complaint discloses allegations of a personal violence offence, a stalking or intimidation offence or harassment in the nature of racial, religious, homosexual, transgender or HIV-AIDS vilification: Crimes Act s 562AK(4).
  31. Crimes Act s 562N. Note where a police officer lays the complaint, costs may not be awarded unless the officer knew that the complaint contained false and misleading information: Crimes Act s 562N(3).
  32. Crimes Act s 562N(2).
  33. Crimes Act s 562N(1)(b).
  34. Crimes Act s 562AG. This restriction does not apply where the applicant (if over 16 years of age) consents to the disclosure, the defendant already knows the address, or if it is necessary to state the address in order to achieve compliance with the order.
  35. The objects are contained in s 562AC(1) of the Crimes Act, and are discussed in Chapter 3.
  36. Crimes Act s 562AC(2).
  37. Crimes Act s 562AC(3).

2.21 Whether the court issues an ADVO or an APVO depends on whether or not the applicant and the defendant are, or have been, in a domestic relationship. Consequently, the definition of “domestic relationship” is highly significant. The 1999 amendments extended that definition to include people living in the same household or residential facility, and people in a relationship of ongoing, dependant care.<sup>38</sup> This amendment is intended to reflect the “domestic contexts in which people live”,<sup>39</sup> and, as a result, makes those people eligible to apply for ADVOs rather than APVOs. The definition of “de facto relationship”, a sub-category of domestic relationship, was also changed to accord with the definition in the *Property Relationships Act 1984* (NSW) (“the PRA”).<sup>40</sup>

2.22 The 1999 amendments also made a series of procedural and technical amendments which will be discussed later in this Paper.

## OTHER LAWS AFFECTING AVOS

2.23 There are a number of other laws that impact on, and are affected by, Part 15A of the Crimes Act.

### Bail

2.24 Part 15A provides that the *Bail Act 1978* (NSW) applies to a defendant in AVO proceedings in the same way as it does to people charged with an offence.<sup>41</sup> Under the *Bail Act 1978* (NSW), there is a general presumption that bail be granted for particular non-

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38. Crimes Act s 562A(3).

39. New South Wales, *Parliamentary Debates (Hansard)* Legislative Council, 25 November 1999 at 3675.

40. A de facto relationship is one between two people who live together as a couple and are not married to each other or related by family, and so includes same sex couples: *Property Relationships Act 1984* (NSW) s 4. The amendment was made to the definition of de facto relationships in the Crimes Act by the *Property Relationships (Amendment) Act 1999* (NSW) Sch 1.

41. Crimes Act s 562L.

violent offences.<sup>42</sup> However, that presumption does not apply in relation to domestic violence offences or breach of an ADVO<sup>43</sup> where the defendant has:

- a history of violence;
- been violent to the applicant in the past (whether or not the defendant was convicted of a violent offence); or
- failed to comply with a bail condition that was applied by the court for the protection and welfare of the applicant.<sup>44</sup>

2.25 An accused person is presumed to have a “history of violence” if he or she has been found guilty, within the last 10 years, of a domestic violence offence or of contravening an AVO by an act of violence.<sup>45</sup> Removing the presumption in favour of granting bail does not mean that bail will automatically be refused, but requires the defendant to prove to the court why bail should be granted.<sup>46</sup> In deciding whether or not to grant bail, the court must take into account certain criteria, one of which is the protection of the alleged victim.<sup>47</sup>

## Firearms

2.26 When making an AVO (either an ADVO or an APVO) the court may make an order restricting or prohibiting the possession of all or any specified firearms by the defendant.<sup>48</sup> If such an order is made, the court may, by the order, require the defendant to dispose of any firearms in his or her possession and to surrender to the Commissioner of Police any licence permit or authority to

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42. *Bail Act 1978* (NSW) s 9.

43. By an act involving violence or that would contravene the stalking provisions in s 562AB of the Crimes Act: *Bail Act 1978* (NSW) s 9A(1).

44. *Bail Act 1978* (NSW) s 9A(1) and s 9A(1A).

45. *Bail Act 1978* (NSW) s 9A(2).

46. R Simpson, *Incidence and Regulation of Domestic Violence in NSW* (NSW Parliamentary Library, Briefing Paper 4/2000) at 19.

47. *Bail Act 1978* (NSW) s 32.

48. Crimes Act s 562D(1)(c).

possess the firearms in question.<sup>49</sup> Further, a licence or a permit to possess a firearm must not be issued to a person who is, or who has, at any time within 10 years before the licence or permit application was made, been subject to an AVO.<sup>50</sup> A licence or a permit is also automatically suspended when an interim AVO is taken out against the licence or permit holder,<sup>51</sup> and automatically revoked if the interim AVO becomes final.<sup>52</sup> The *Firearms Act 1996* (NSW) also prohibits a person who is subject to an AVO from being a firearms dealer.<sup>53</sup>

## Family law<sup>54</sup>

2.27 Where couples separate or divorce, orders may be made under the *Family Law Act 1975* (Cth) (“the FLA”) detailing the contact arrangements between any children of the relationship and the non-residential parent. In situations where there is an AVO in addition to contact orders, the terms of the AVO and the contact order may conflict with each other. For example, B may have taken out an AVO against A, specifying that A not approach the home of, or telephone, B. Yet, under a contact order, A needs to pick up his or her children from B’s home, or telephone B regarding the children. The conflict is heightened if the children are included in the AVO.

2.28 When making an order under the FLA, the Family Court must have the best interests of the child as its paramount

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49. Crimes Act s 562D (3).

50. Unless that AVO has been revoked: *Firearms Act 1996* (NSW) s 11(5)(c) and s 29(3)(b) and *Weapons Prohibition Act 1998* (NSW) s 10(3)(b).

51. The suspension remains until the interim AVO is confirmed or revoked: *Firearms Act 1996* (NSW) s 23(2) and *Weapons Prohibition Act 1998* (NSW) s 17(2).

52. *Firearms Act 1996* (NSW) s 23 and s 24 and *Weapons Prohibition Act 1998* (NSW) s 17 and s 18.

53. *Firearms Act 1996* (NSW) s 44A.

54. A more detailed discussion of the issues involved in AVOs and family law proceedings is at para 5.2-5.20.

concern.<sup>55</sup> Within that context, the court must ensure that any orders it makes are consistent with any family violence order and do not expose any person to an unacceptable risk of family violence.<sup>56</sup> Division 11 of the FLA deals with the situation where there are contact orders and an AVO in place. The Family Court has the power to make contact orders that are inconsistent with family violence orders, in which case the contact order will prevail to the extent of the inconsistency with the family violence order.<sup>57</sup> However, a State court, when making or varying a family violence order, has the power to make, revive, vary, discharge,<sup>58</sup> or suspend a Division 11 contact order if the court considers that a person has been, or is likely to be, exposed to family violence as a result of the operation of the contact order.<sup>59</sup>

2.29 Part 15A also has provisions regarding contact orders made under the FLA. An applicant for an AVO, or an applicant to vary an AVO, must inform the court of any relevant contact order, or of proceedings pending in relation to contact orders.<sup>60</sup> The court must have regard to the existence of a contact order when deciding whether or not to grant an AVO.<sup>61</sup> The standard AVO orders<sup>62</sup> provide that the defendant must not approach, contact or telephone the protected person(s) except as agreed in writing or for any purpose permitted under the FLA in relation to counselling,

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55. The FLA sets out the factors that the court must take into account when determining what is in a child's best interests. They include the need to protect the child from physical or psychological harm, the incidence of family violence and the existence of a family violence order: FLA s 68F(2)(g), s 68F(2)(i) and s 68F(2)(j).

56. FLA s 68K(1). Parties to proceedings who are aware of the existence of a family violence order must inform the court about the order: FLA s 68J(1). Non-parties may make such a disclosure to the court, subject to the appropriate Rules of Court: FLA s 68J(2).

57. FLA s 68R.

58. A State court cannot discharge a Division 11 contact order when making an interim family violence order, or an order varying a family violence order: FLA s 68T(2)(d).

59. FLA s 68T.

60. Crimes Act s 562FA.

61. Crimes Act s 562FA(2).

62. See Appendix A.

conciliation or mediation, or for the purpose of arranging or exercising access to children.<sup>63</sup>

2.30 Furthermore, the FLA and the PRA both contain provisions which allow for the making of injunctions for the personal protection of a party to a marriage or de facto relationship.<sup>64</sup> The injunctions can be used instead of an AVO, and may relate to the occupancy or use of the home, restrain the other party from entering or remaining in the home, or from entering a specified area surrounding the home, or entering the workplace of the applicant.

## PREVIOUS REVIEWS

2.31 The subject of violence, and domestic violence in particular, has generated numerous studies into its causes, methods of prevention and appropriate legal responses. More specifically, the AVO scheme in NSW has been the subject of several recent reviews and evaluations. The most relevant reviews for the Commission's purposes are discussed below.

### Bureau of Crime Statistics and Research evaluation

2.32 The Bureau of Crime Statistics and Research ("BOCSAR") conducted an evaluation in 1997 of the AVO scheme in NSW to determine whether or not AVOs were effective in providing protection from violence, abuse and harassment.<sup>65</sup> In his preface to the report, BOCSAR's Director, Dr Don Weatherburn, noted that much of the commentary on AVOs until that point, had centred around issues of process, such as the ease of obtaining an AVO and their potential for abuse in family law proceedings.

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63. Orders 5 and 6, respectively.

64. FLA s 114 and PRA s 53. Note that the PRA provision extends to the protection of a child ordinarily residing in the same household as the parties to the relationship: s 53(a).

65. L Trimboli and R Bonney, *An Evaluation of the NSW Apprehended Violence Order Scheme* (NSW Bureau of Crime Statistics and Research, Sydney, 1997) ("BOCSAR Report 1997").

Dr Weatherburn considered this to be “unfortunate”, since “questions about the administration of the [AVO] scheme are secondary to the question of whether the scheme itself is effective”.<sup>66</sup>

2.33 The BOCSAR Report surveyed a sample of people (men and women) who had been granted AVOs concerning their experiences after the AVO was issued and their general level of satisfaction with the AVO process. Over 90% of survey respondents perceived that the AVO had resulted in benefits such as increased peace of mind and a greater feeling of safety.<sup>67</sup> This Report is discussed in more detail in Chapter 4.<sup>68</sup>

### Survey of Magistrates

2.34 In 1999, the Judicial Commission of NSW released a *Survey of Magistrates*.<sup>69</sup> The Survey detailed the responses of Magistrates to a questionnaire asking about their attitude to their roles, and to the issues involved, in AVOs. All respondents to this survey considered that ADVOs were effective in addressing domestic violence. This is compared with 71% of Magistrates who considered APVOs to be an ineffective way of dealing with personal violence or harassment. One of the major reasons given for the difference in perceived levels of effectiveness between ADVOs and APVOs was the belief that APVOs were increasingly being used unmeritoriously in response to “trivial” matters. Following from this, 52% of Magistrates surveyed considered that APVOs would be better dealt with in a forum other than Local Courts, such as Community Justice Centres or counselling services, compared with 68% who believed the Local Court was the most appropriate forum for dealing with ADVOs.<sup>70</sup>

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66. BOCSAR Report 1997 at iii.

67. BOCSAR Report 1997 at para 3.6.1.

68. See para 4.13-4.14 and 4.16.

69. J Hickey and S Cumines, *Apprehended Violence Orders: a Survey of Magistrates* (Judicial Commission of NSW, Monograph Series 20, 1999) (“Magistrates Survey”).

70. Magistrates Survey at 21.

2.35 Other themes emerging from the Survey included the need for an expanded role for Chamber Magistrates, better court resources, and a better system for screening out frivolous cases, such as the introduction of a filing fee.

### **Model Domestic Violence Laws**

2.36 In September 1996, the Federal Government convened the National Domestic Violence Forum to address appropriate and effective responses to domestic violence. Arising out of that forum, suggestions for reforming the laws dealing with the prevention and punishment of domestic violence were made, including the need for greater national consistency. The Domestic Violence Legislation Working Group, comprising representatives from the Commonwealth and each State and Territory, was formed to review the existing domestic violence laws and propose a uniform or model law. The Working Group released a Discussion Paper in November 1997, and a Report, entitled *Model Domestic Violence Laws*, in April 1999.<sup>71</sup> The Report recommended model legislation for all States and Territories with a view to achieving a comprehensive and co-operative national approach to domestic violence legislation.<sup>72</sup>

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71. Domestic Violence Legislation Working Group, *Model Domestic Violence Laws* (Report, April 1999).

72. The outcomes of the Working Group have been criticised for having limited vision in primarily addressing the inconsistencies between existing laws, rather than adopting a broader, more co-ordinated approach to combating domestic violence, and for failing to recommend a preamble to the Model Laws: R Hunter and J Stubbs, "Model Laws or Missed Opportunity?" (1999) 24(1) *Alternative Law Journal* 3. A preamble setting out the guiding principles regarding ADVOs was incorporated into Part 15A by the *Crimes Amendment (Apprehended Violence) Amendment Act 1999* (NSW): see para 2.20 above.

## **Criminal Law Review Division Review**

2.37 In 1999, the Attorney General requested the Criminal Law Review Division (“CLRD”) of the Attorney General’s Department to conduct a review of Part 15A. The brief given to CLRD was quite specific, requiring a review of:

- (1) The delineation between ADVOs and APVOs.
- (2) An alternative regime for dealing with personal violence matters.
- (3) The definition of “domestic relationship” for the purpose of determining the scope of the Apprehended Violence provisions.
- (4) Whether an authorised justice should have a discretion to refuse to issue process and if so, for what categories of complaint and in what circumstances.
- (5) Whether the costs provisions contained in Part 15A are appropriate.
- (6) The status of a complaint for an Apprehended Violence Order when an order is made by consent and without admission.
- (7) Whether Part 15A should include a preamble stating the objectives of the legislation to guide and inform interpretation.
- (8) The further development of technical and other features of the legislation to enhance protection and facilitate the legal process in AVO applications.
- (9) Any related matter/s.<sup>73</sup>

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73. CLRD Discussion Paper at iii.

**2.38** The CLRD review examined procedural issues, in addition to broader questions such as whether or not AVOs were being abused or inappropriately sought, whether AVOs sought in relation to domestic violence offences should receive different legislative treatment from other AVO applications, and if so, how should that difference be reflected.

**2.39** Around 50 submissions from interested groups and individuals were received in response to CLRD's Discussion Paper. Overall, most respondents supported the AVO provisions, considering them to be appropriate and functional. However, a few issues were mentioned in a number of submissions which were viewed as being contrary to the objectives of the legislation.

**2.40** A recurrent theme in submissions was the inappropriate use of AVOs. While there was overwhelming recognition of the need for some readily available mechanism to protect people in genuine fear of danger, concern was expressed that the ease of obtaining an AVO resulted in trivial and vexatious applications. The major area in which abuse of AVO procedures was identified was in family law disputes. This issue is discussed later this Paper.

**2.41** Other issues raised included the desirability of distinguishing between AVOs for domestic violence and those for personal violence due to the need to provide special protection for domestic violence victims. Concern was also expressed that "domestic relationship" should be defined more broadly and flexibly to encompass carers, guardians and "cultural" relatives, so as to make the concept more applicable to Aboriginal people.

