

3. Policy objectives

- Objectives of AVOs
- Should the objects be extended?

3.1 The first part of the Commission's brief is to assess whether the policy objectives of the AVO provisions, contained in Part 15A of the *Crimes Act 1900* (NSW), remain valid. This chapter attempts to identify the objectives of AVOs and the legislation that underpins them. It considers the impact of the legislative provisions on people who may be more vulnerable than others, either because circumstance makes them potentially more susceptible to violence or abuse, or because they are less likely to be in a position to benefit from obtaining an AVO.

OBJECTIVES OF AVOS

3.2 The primary objective of all protection order schemes is to prevent and protect against violence. This is also the objective of much of the criminal law. However, as can be seen from the discussion in the previous chapter concerning the development of AVO legislation, the criminal law is not always the most effective or appropriate way of preventing violence, intimidation or harassment *before* it occurs. AVOs are designed to be a flexible and accessible supplement to the criminal law. In some cases, they may act as a specific warning not to commit a criminal offence. In other instances, an AVO may also place restrictions on the behaviour or activities of the defendant to limit the likelihood of a violent offence being committed.

3.3 When introducing the AVO legislation into Parliament, the then Premier, the Hon Neville Wran, QC MP, stated the intention of the AVO provisions:

I believe that this law reform will provide effective and immediate relief for those women who spend their lives worrying when the next battering will be.¹

3.4 Originally designed to protect against physical violence in domestic relationships, Part 15A currently provides for Apprehended Domestic Violence Orders ("ADVOs") and

1. New South Wales, *Parliamentary Debates (Hansard)* Legislative Assembly, 9 November 1982 at 2368.

Apprehended Personal Violence Orders (“APVOs”) to be granted where the applicant fears that he or she will be the victim of some form of physical, psychological or emotional abuse.² The gradual expansion of Part 15A to cover relationships beyond domestic ones created concerns that the focus of the AVO provisions would shift from domestic violence, and could result in domestic violence being viewed as less significant. In an attempt to allay these concerns, a section setting out the objects of the ADVO provisions was included in Part 15A in 1999. There is no equivalent statement of objectives in relation to APVOs³ or the provisions containing the offences of stalking and intimidation.⁴

3.5 The stated objects of the ADVO provisions are:

- to ensure the safety and protection of all persons who experience domestic violence; and
- to reduce and prevent violence between persons who are in a domestic relationship with each other; and
- to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women.⁵

3.6 These objects are to be achieved by empowering the courts to make ADVOs to protect people from domestic violence and ensuring that access to the courts is as speedy, inexpensive, safe and simple as is consistent with justice.⁶ Section 562AC also states that, in enacting the ADVO provisions, Parliament recognises that domestic violence is unacceptable, perpetrated mainly by men against women and children, and occurs in all sectors of the community.⁷

2. See para 2.2-2.22 for a discussion of the development of AVO legislation.

3. Division 1B.

4. Section 562AB.

5. Crimes Act s 562AC(1).

6. Crimes Act s 562AC(2).

7. Crimes Act s 562AC(3).

3.7 These objects reflect calls over a number of years for guiding principles to be included in legislation dealing with domestic violence. For example, Rosemary Hunter and Julie Stubbs were critical of the Domestic Violence Legislation Working Group for failing to include a preamble or set of principles in the Model Domestic Violence Laws Report,⁸ claiming that many debates and controversies concerning domestic violence laws could be resolved by the inclusion of appropriate principles in the legislation. They suggested that the overriding principle should be to protect those who experience domestic violence, and that legislation should also note the prevalence of domestic violence in all sections of the Australian community, the fact that the majority of domestic violence is perpetrated by men against women and children⁹ and the need for perpetrators to take responsibility for their actions and for stopping the violence.¹⁰

3.8 A similar objects statement exists in the *Domestic Violence Act 1995* (NZ) (“the NZ Act”). The object of the NZ Act is to reduce and prevent violence in domestic relationships by recognising that violence, in all its forms, is unacceptable behaviour, and ensuring that there is effective legal protection for victims of domestic violence.¹¹ Like Division 1A of Part 15A, the NZ Act aims to achieve its objectives by empowering the court to make orders to protect victims of domestic violence and ensuring that access to the court is as speedy, inexpensive and simple as is consistent with justice. However, the NZ Act has a more comprehensive,

8. See para 2.36 for details of the Model Laws project.

9. In 2000-2001, 67.7% of applicants for AVOs were women: information supplied by the Bureau of Crime Statistics and Research, July 2002. A survey of women in 1996 revealed that 23% of women who had ever been married or in a de facto relationship had experienced violence by a previous partner: Australian Bureau of Statistics, *Women's Safety Australia* (Survey, 1996, Cat 4128.0).

10. R Hunter and J Stubbs, “Model Laws or Missed Opportunity?” (1999) 24(1) *Alternative Law Journal* 3.

11. *Domestic Violence Act 1995* (NZ) s 5.

rehabilitative focus than Part 15A,¹² and contains the following additional objectives:

- Providing, for persons who are victims of domestic violence, appropriate programs;
- Requiring respondents to attend programs that have the primary objective of stopping or preventing domestic violence; and
- Providing more effective sanctions and enforcement in the event that a protection order is breached.¹³

SHOULD THE OBJECTS BE EXTENDED?

3.9 It is possible to infer from Part 15A certain unstated objectives which extend beyond those that are prescribed. As noted previously, only the ADVO provisions of Part 15A contain stated objects. This has the advantage of highlighting the special nature of domestic violence, and the particular need to empower women who are most likely to be the subjects of such violence, and the desire of the legislature to provide adequate means of addressing its prevention. However, it could be seen as clouding the focus of Part 15A as a whole to have a set of objectives for one Division but not for the others.

3.10 It is possible to expand the objects of Part 15A to apply generally to ADVOs and APVOs, while still recognising the significance of measures designed to prevent domestic violence. An example can be found in the *Protection Orders Act 2001* (ACT). Like Part 15A, the ACT legislation covers violence in domestic and other relationships. Its objects are:

- To prevent violence between family members and others who are in a domestic relationship, recognising that domestic violence is a particular form of interpersonal violence that needs a greater level of protective response; and

12. The scope of the New Zealand legislation is discussed further at para 6.12.

13. *Domestic Violence Act 1995* (NZ) s 5(2).

- To provide a mechanism to facilitate the safety and protection of people who experience domestic or personal violence.¹⁴

3.11 An expanded statement of objects for Part 15A could read as follows:

- To supplement the criminal law by attempting to prevent violence, harassment, stalking and intimidation being perpetrated by one person against another;
- To provide an effective, fast, responsive, accessible and enforceable legal mechanism to deter violence in all its forms before it occurs;
- To recognise the particularly insidious nature of violence within domestic relationships and the need for an appropriate and effective legislative response;
- To recognise that women and children are most likely to be the subjects of domestic violence; and
- To limit the opportunities for the legislation to be used inappropriately, particularly outside the domestic context.

The Commission seeks views on whether the objects of Part 15A should be stated in this manner.

ISSUE 1

Are the current objects applicable to ADVOs appropriate?

Is the fact that the objects apply only to ADVOs beneficial, or does it detract from the overall effect of Part 15A?

Should the objects be made more general, yet still emphasise the special nature of domestic violence?

14. *Protection Orders Act 2001* (ACT) s 5.