

4. Assessing the objectives

- Difficulties In determining validity
- Effectiveness of protection orders
- Factors influencing effectiveness

4.1 In this chapter, the Commission examines ways of assessing the validity of the policy objectives discussed in the previous chapter, and notes the drawbacks associated with any attempt to make such an assessment. It also looks generally at the effectiveness of AVOs, and Part 15A in particular, as a means of stopping or preventing violence or abuse.

DIFFICULTIES IN DETERMINING VALIDITY

4.2 If the central object of the AVO provisions is to prevent violence and abuse, then the validity of the objectives is determined by their effectiveness in achieving that goal. As noted in Chapter 1, the effectiveness of AVOs can be difficult to measure.¹

4.3 Available statistics do not provide a comprehensive picture of the use or effectiveness of AVOs, and are open to a number of interpretations. For example, the increase in the number of final AVOs granted in the past year² may be interpreted by some to mean that the threshold for obtaining an order is too low. Alternatively, that statistic could be seen as an indication that Part 15A is fulfilling its objective of accessibility, and that better awareness of legislation, better training of police, solicitors, court staff, chamber magistrates, domestic violence counsellors and support services, etc, has led to greater use of the Act.³ Similarly, recent statistics show that the total rate of assault increased by 7.6% from January 2000 to December 2001.⁴ This could mean

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1. See para 1.17-1.20.
 2. The number of AVOs finalised by Magistrates in Local Courts jumped from 21,800 in 2000 to 26,407 in 2001: NSW Bureau of Crime Statistics and Research, *NSW Criminal Courts Statistics 2001* at Table 1.18 (Statistical Services Unit, March 2002) «www.lawlink.nsw.gov/bocsar1.nsf/files/ccs01.pdf».
 3. J Stubbs and D Powell, *Domestic Violence: Impact of Legal Reform in NSW* (NSW Bureau of Crime Statistics and Research, 1989) (“BOCSAR Report 1989”) at 29.
 4. The rate of non-domestic assault rose by 6.4%, while domestic assault rose by 10.2% in the same period: BOCSAR, *NSW Recorded Crime Statistics 2001* «www.lawlink.nsw.gov.au/bocsar1.nsf/files/rcs01.pdf».

either that Part 15A has failed in its objective of preventing violence, or that more domestic and personal violence is being reported and prosecuted as a result of measures such as AVOs.

4.4 A final, controversial example concerns the fact that over 40% of interim AVOs are withdrawn or dismissed prior to the final hearing.⁵ Some commentators have claimed that this indicates that the applications were not soundly enough based to begin with.⁶ Others argue that the rate of withdrawal could reflect a number of factors, such as pressure on the applicant from the defendant, family, friends or the community, fear of reprisal, or uncertainty concerning legal processes, or technical problems such as failing to serve the summons on the defendant.⁷ These arguments highlight deficiencies in the law and its implementation for failing to keep applicants in the system. However, the withdrawal rate could also indicate that the act of initiating process in itself was sufficient, in some cases, to stop or prevent violence, indicating that Part 15A had succeeded in its objectives. Consequently, any inferences drawn from statistics must be approached cautiously.

4.5 Another way to gauge the effectiveness of AVOs is to look at the perceptions of people who have used AVOs under Part 15A and other equivalent legislation.

5. In 2001, approximately 44% of ADVOs were withdrawn or dismissed prior to the final hearing (2.39% were dismissed following the hearing. For APVOs, the withdrawal/dismissal rate is over 50%: note that this information is based on unofficial, unaudited figures provided to the Commission on a confidential basis by the Local Courts Statistics Unit.

6. M McMillan "Should we be more apprehensive about apprehended violence orders?" (1999) 37(11) *Law Society Journal* 48 at 53.

7. N Gouda, "The AVO Backlash" (2000) 38(1) *Law Society Journal* 63 at 64.

EFFECTIVENESS OF PROTECTION ORDERS

General views

4.6 Protection orders are said to have the advantage of being quicker, cheaper, more accessible and have better enforcement mechanisms than injunctions under the FLA or PRA.⁸ They are seen as a “necessary complement” to, but not a replacement of, the criminal law,⁹ and have the potential to act as a useful “circuit breaker” without evoking the full force of the criminal law.¹⁰ In recommending a system of protection orders for the ACT, the Australian Law Reform Commission (“the ALRC”) noted the educational importance of such orders:

[T]he importance of instituting a protection order regime goes beyond whatever effectiveness it may have in preventing or deterring future domestic violence offences. Undoubtedly, it will not be completely effective: it will not stop some offenders. But the symbolic and educative role of the law should not be overlooked. Provision for protection orders is a substantial measure which would reflect the law and society’s disapproval of violence in the home. Given the importance of public perceptions in this matter, a clear statement of the law’s position is obviously desirable.¹¹

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8. R Alexander, *Domestic Violence in Australia: The Legal Response* (3rd ed, The Federation Press, Sydney, 2002) at 87-88. 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, South Australia (June 1985) (“Naffin Report”) at 70.
 9. Part 15A specifically refers to concurrent criminal proceedings by providing that a court may grant an AVO even though criminal proceedings exist in relation to the same conduct: Crimes Act s 5620.
 10. Alexander at 88.
 11. Australian Law Reform Commission, *Domestic Violence* (Report 30, 1986) at para 110.

4.7 Another significant advantage of protection orders is that they shift what in the past has been considered “private” violence between intimate partners, etc, into the public sphere.

The restraining order is a critical tool for lawmakers attempting to deal with private violence. When properly crafted, the restraining order will protect individuals from immediate harm, prevent the recurrence of violence, and send a message to the community which will discourage others from perpetrating acts of domestic violence.¹²

4.8 Those expressing an alternative view consider that protection orders only deter people who are normally “law abiding” from future acts of violence, and have little effect on persistent offenders.¹³ It has also been suggested that breaches of protection orders are not policed as vigilantly as they should be,¹⁴ that they operate unfairly on defendants,¹⁵ and weigh heavily on police and court time.¹⁶

Effectiveness studies

4.9 A number of studies have been conducted in Australia and overseas in which applicants for protection orders were surveyed concerning their experiences with the procedural aspects of obtaining the orders and their effect in stopping or reducing violence. The surveys revealed positive and negative results.¹⁷ The outcome of these studies needs to be seen in the light of the

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12. G R Brown, “Battered Women and the Temporary Restraining Order” (1980) 10 *Women’s Rights Law Reporter* 261 at 267.
 13. See Naffin Report at 116.
 14. 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).
 15. M McMillan at 50.
 16. T Nyman, “Apprehended Violence: Industry or Disease?” (1999) 37(11) *Law Society Journal* 52 at 53.
 17. Note that each study utilises different methodology and survey samples.

inherent limitations in assessing the effectiveness of AVOs noted by the Commission in Chapter 1.¹⁸

4.10 Studies of relevant legislation in Western Australia and the United States reported that the majority of applicants were largely satisfied with the outcome and were of the view that obtaining a protection order had been beneficial.¹⁹ In a 1992 Western Australian study, 83% of applicants who received final restraining orders were satisfied with the outcome,²⁰ 70% saying they would re-apply for an order in the future if further violence occurred,²¹ and 67% would advise others to seek a restraining order if the need arose.²² Curiously, this view was held despite the fact that most applicants said that the order had either no effect, or resulted in reduced levels of physical violence accompanied by a concurrent increase in verbal abuse or harassment.²³ A study in southern California revealed that physical violence continued for 1 in 8 applicants following the protection order, with none reporting increased levels of violence.²⁴ A Connecticut study found that the orders increased police responsiveness to domestic violence and empowered the applicants to end abusive relationships, with the likelihood of future violence dependant on other factors such as prior criminal history or substance abuse.²⁵

18. See para 1.17-1.20.

19. Note that both of these studies considered only domestic violence protection orders.

20. A Ralph, *The Effectiveness of Restraining Orders for Protecting Women from Domestic Violence* (Report prepared by the Centre of Behavioural Analysis for the WA Office of the Family, March 1992) at Table 4.46.

21. Ralph at Table 4.56.

22. Ralph at Table 4.57.

23. Ralph at Table 4.34, 4.35 and 4.40.

24. J H Kaci, "Aftermath of Seeking Domestic Violence Protective Orders: the Victim's Perspective" (1994) 10(3) *Journal of Contemporary Justice* 204.

25. M Chaudhuri and K Daly, "Do Restraining Orders Help? Battered Women's Experience with Male Violence and the Legal Process" in Buzawa and Buzawa (eds) *Domestic Violence* (Auburn House, Connecticut, 1992) at 245.

4.11 This is consistent with findings of the Australian Institute of Criminology (“AIC”) on the effectiveness of legal intervention in domestic violence.²⁶ When comparing outcomes for women who had sought protection orders as opposed to women who had experienced violence but not sought orders, the AIC found that physical violence had ceased for most women in the 12 months prior to the interview, regardless of whether they had sought police or court intervention.²⁷ However, for those who had sought both police protection and court orders, the level of violence was significantly reduced compared with women who had sought only one remedy.²⁸

4.12 Two studies conducted by the Bureau of Crime Statistics and Research (“BOCSAR”), specifically relating to Part 15A, have yielded mixed results. The first, conducted in 1989, reported that almost half of the survey respondents felt that the AVO had met their expectations of stopping the violence or keeping the defendant away, while a further 20% indicated that the AVO had been at least partially effective. However, almost one-third of respondents considered that the AVO failed to achieve its objectives.²⁹ Despite this, almost 90% of respondents indicated that

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26. M Young, J Byles, A Dobson, “The Effectiveness of Legal Protection in the Prevention of Domestic Violence in the Lives of Young Australian Women” *Trends and Issues in Criminal Justice* (Australian Institute of Criminology, March 2000, No 148) at 4.
 27. Young, Byles and Dobson at 4. The AIC notes, however, that this finding should be viewed with caution as it does not factor in the underlying differences between the two groups of women, that is, those who sought protection had sustained more serious injuries, were more likely to have children and their partners were more likely to have a history of violence or criminal behaviour.
 28. While violence continued for some women following contacting police and obtaining a court order, there was no reported increase in the severity of violence. There was an increase in violence for some women who contacted police but did not obtain an order: Young, Byles and Dobson at 4.
 29. BOCSAR Report 1989 at 120.

they would apply for an AVO again if the need arose in the future,³⁰ and 39% would encourage others to apply for an AVO.³¹

4.13 The second evaluation in 1997 was more positive overall.³² BOCSAR surveyed a sample of people (men and women) who had been granted AVOs,³³ concerning their experiences after the AVO was issued and their general level of satisfaction with the AVO process. The findings revealed that, prior to the AVO, 75.2% of subjects had experienced a continuing pattern of violence, abuse or harassment, some for more than ten years.³⁴ Following the AVO, the vast majority of those surveyed reported that the AVO had brought about a reduction in, or cessation of, the violent, abusive or intimidating behaviour.³⁵ 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,³⁶ approximately 75% reported that the AVO had created no problems,³⁷ and 88.1% replied that they would apply for another AVO in the future if the need arose.³⁸

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30. BOCSAR Report 1989 at 114 and 121. The reasons given include lack of alternatives, the AVO kept the defendant away or was otherwise effective, it created a feeling of safety, and the applicant felt that she should not have to put up with violence anymore.
 31. BOCSAR Report 1989 at 115.
 32. 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").
 33. People were interviewed as soon as the AVO was granted and one month after the AVO was served on the defendant. A sub-sample of people were interviewed again three months after the AVO was served, and a further sub-sample were interviewed after a six month interval following the AVO being served: BOCSAR Report 1997 at para 2.1-2.4.
 34. BOCSAR Report 1997 at para 3.2.4.
 35. BOCSAR Report 1997 at para 4.1.
 36. BOCSAR Report 1997 at para 3.6.1.
 37. BOCSAR Report 1997 at para 3.6.2.
 38. BOCSAR Report 1997 at para 3.6.3.

4.14 The BOCSAR Report concludes that while these effects may have occurred anyway without the AVO, the fact that there had been a continuing pattern of violence before the AVO was taken out made this unlikely.³⁹ The reasons given for this apparent effectiveness were:

- the ramifications of breaching an AVO acted as a deterrent;
- the act of taking out an AVO showed the defendant that the applicant was serious;
- the decision to apply for an AVO and pursue the process acted as a catalyst for changes to the lives of the applicants, which lessened the risk of being subjected to violence, abuse or harassment. For example, the AVO may have resulted in the applicant terminating communications with the defendant, or implementing alternative methods for handing children over to the defendant for contact visits.⁴⁰

FACTORS INFLUENCING EFFECTIVENESS

4.15 It is clear from the above studies that many factors contribute to the effectiveness of AVOs. Some concern the scope and procedural elements of the legislation. Other factors impinging on the effectiveness of AVOs operate beyond the scope of the legislation. For example, it is one thing to have adequate legislative provisions enabling easy access to AVOs and providing sanctions in the event that an AVO is breached, but quite another for those provisions to be properly enforced:

[I]n order to be effective, restraining order legislation must ensure that orders are readily accessible, tailored to the particular needs of the victim, and consistently enforced to deter batterers from continued violent behaviour.⁴¹

39. BOCSAR Report 1997 at para 4.1.

40. BOCSAR Report 1997 at para 4.1.

41. G R Brown, "Battered Women and the Temporary Restraining Order" (1980) 10 *Women's Rights Law Reporter* 261 at 267.

4.16 As pointed out in the BOCSAR 1997 Report, AVOs can also have repercussions in terms of behavioural changes in the applicant and defendant which can contribute to the effectiveness of AVOs. These have been described as “collateral” effects of AVOs, which can “create an environment in which the offender will perceive that it is in his interest not to continue abuse”.⁴² The collateral effects are those such as increased police responsiveness to domestic violence, and empowering applicants to become more independent which results in them being at less “risk” of violence.⁴³ It has been argued that, in effect, the process of obtaining an AVO is “partially its own reward”.⁴⁴

4.17 While the Commission’s main focus is on legislative reform, we are interested in how the implementation and “collateral” effects of Part 15A can be optimised by improvements to legislative policy and procedure.

Issue 2

Are AVOs an efficient and effective way of preventing violence, intimidation, stalking and harassment? Why or why not?

What general factors promote or hamper the effectiveness of AVOs?

Are these factors largely issues of implementation, or can they be addressed by amending Part 15A?

42. M Chaudhuri and K Daly, “Do Restraining Orders Help? Battered Women’s Experience with Male Violence and the Legal Process” in Buzawa and Buzawa (eds) *Domestic Violence* (Auburn House, Connecticut, 1992) at 227.

43. Chaudhuri and Daly at 228.

44. Chaudhuri and Daly at 246.