

# 9. AVOs and vulnerable groups

- Impact on vulnerable groups

9.1 This chapter considers the impact of the AVO 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.

9.2 Previous studies have revealed some of the reasons why people have not applied for AVOs. Some of those reasons relate to the procedural aspects of AVOs, such as lack of knowledge concerning law and practice, a lack of confidence in the police or the justice system or concerns about the cost of the process. Other reasons were more personal ones. For example, some people feared the consequences that may follow applying for an AVO, such as violent reprisals from the defendant, the impact on children and the financial repercussions for the applicant if the defendant were removed from the home. There may also be feelings of shame or embarrassment associated with bringing violence and abuse into the “public” arena, or pressure from family, friends, or the local community to remain quiet. In other cases, the mere threat of applying for an AVO may have been sufficient to stop the violent behaviour.<sup>1</sup>

## IMPACT ON VULNERABLE GROUPS

9.3 For some groups, the problems associated with applying for an AVO may be more difficult than for others. This may be because some people are in more vulnerable positions than others. It may also be because particular barriers may exist for some people or groups of people that make it more difficult to gain access to violence-prevention measures such as AVOs.

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1. 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 4.24; New Zealand, H Barwick, A Gray and R Macky, *Domestic Violence Act 1995: Process Evaluation* (Ministry for Justice and Department for Courts, April 2000) at 122-124.

9.4 An evaluation of the *Domestic Violence Act 1995* (NZ) made the following observation:

There are people who need the protection of the Act but tend not to make applications in proportion to their need. Those most frequently mentioned were victims of domestic violence who are: on low incomes but above the threshold for legal aid; Maori; Pacific people; people of other cultures; men; people in same-gender relationships; and victims with gang associations.<sup>2</sup>

9.5 The ability to gain access to AVOs is a significant factor contributing to the effectiveness or otherwise of the legislation. The following paragraphs raise issues concerning particular difficulties that may be experienced by some people. It is not an exhaustive list. The Commission is interested in hearing about other problems that some sections of society may experience in gaining access to AVOs, and suggestions for overcoming them.

### Indigenous people

9.6 Reports in Australia have indicated that violence is significantly higher in Indigenous communities than in the general population, and is apparently increasing.<sup>3</sup> A significant amount of violence is believed to go unreported, due to shame, fear of reprisals, lack of information or lack of support.<sup>4</sup> Indigenous people have also consistently been over-represented in the criminal justice

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2. Barwick, Gray and Macky at 10.

3. Australia, *Violence in Indigenous Communities* (Report to the Crime Prevention Branch of the Attorney General's Department, 2001) at 2. See also Australian Law Reform Commission, *Equality Before the Law: Justice for Women, Part 1* (Report 69, 1994) ("ALRC Report 69") at para 5.27; Queensland, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (1999); Partnerships Against Domestic Violence, *Rekindling Family Relationships Forum Report* (2001) at iii; D Bagshaw, D Chung, M Couch, S Lilburn and B Waldham, *Reshaping Responses to Domestic Violence: Final Report* (University of South Australia, 2000) at para 3.8.

4. ALRC Report 69 at para 5.27.

system, and their contact with the criminal law is an ongoing issue of concern.<sup>5</sup> Due to this, the victim may distrust police, or may fear that the perpetrator will be imprisoned. A Queensland review of domestic violence orders noted that:

may be ineffectual due to the way they have been constructed, implemented and enforced, based on ethnocentric and racial values. Some Indigenous women may only want 'time out' from the perpetrator with alcohol and substance abuse counselling and anger management programs enforced, rather than removal, containment or incarceration of their spouse.<sup>6</sup>

9.7 Although AVOs are not criminal measures in themselves, their association with the criminal law may make them a less attractive option for Indigenous people seeking to prevent violence.<sup>7</sup> An alternative may be to provide for a "cooling off" order, whereby the offender is temporarily removed from the home, giving time for the explosiveness of the situation to subside.<sup>8</sup>

## People from non-English speaking backgrounds

9.8 Similar problems can exist regarding people from non-English speaking backgrounds. In some cultures it is inappropriate for a woman to take action against a family member. Shame or fear of reprisals may prevent some women from seeking legal assistance. Some victims may not be aware of their legal rights, as

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5. The percentage of Indigenous people in prison is 9 times higher than the percentage of Indigenous people in the general population: See NSWLRC, *Sentencing: Aboriginal Offenders* (Report 96, 2000) at 4.
  6. Queensland, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (1999) at 4.6.1. See also NSW, Violence Against Women Unit, *Working Well With Women: Creating Non-Violent Futures* (2000) at 28.
  7. See H Blagg, *Crisis Intervention in Aboriginal Family Violence, Summary Report* (2000).
  8. Such a provision exists in WA: the *Restraining Orders Act 1997* (WA) provides that the court may make a 72 hour "cooling off" order: s 16.

they differ from those recognised by other cultures. Victims may be reluctant to use the legal system as a result of experiences with police or courts in other countries. They may consider that their experience is normal, or that it is not serious enough to warrant legal intervention.<sup>9</sup>

### People in rural and remote areas

9.9 There is a higher incidence of domestic violence in rural and remote communities than in urban areas.<sup>10</sup> Specific groups which experience a high incidence of domestic violence include indigenous women, young women and women living on farms, stations or in mining communities. The prevalence of firearms in regional areas also increases vulnerability to violence. Geographic, social and economic isolation compound the difficulties for people who experience violence in accessing legal protection. Victims do not have access to the support networks, alternative housing or other services which are available in metropolitan areas. Those who have no access to money, transport or telecommunications have very limited options. Enforced isolation may become another element of the perpetrator's control over the victim.<sup>11</sup>

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9. S Currie, *A Report on Legislative Options for Non-Spousal Domestic Violence* (Queensland, 1996) at 69; Australia, *Attitudes to Domestic and Family Violence in the Diverse Australian Community* (Partnerships Against Domestic Violence, June 2000) at 31. See also D Bagshaw, D Chung, M Couch, S Lilburn and B Waldham, *Reshaping Responses to Domestic Violence: Final Report* (University of South Australia, 2000) at para 3.5.
  10. In 2000-2001, the highest rates of domestic assault in NSW occurred in the Murrumbidgee, the Far West and North Western areas of the State: NSW Bureau of Crime Statistics and Research, *New South Wales Recorded Crime Statistics 2001* «[www.lawlink.nsw.gov.au/bocsar1.nsf/files/rcs01.pdf](http://www.lawlink.nsw.gov.au/bocsar1.nsf/files/rcs01.pdf)» at 6.
  11. The Women's Services Network, *Domestic Violence in Regional Australia: A Literature Review*, 2000. See also D Bagshaw, D Chung, M Couch, S Lilburn and B Waldham, *Reshaping Responses to Domestic Violence: Final Report* (University of South Australia, 2000) at para 3.4.

9.10 AVOs may be of limited use where court hearings are held only infrequently, and access to legal advice and representation are limited. Court assistance and advocacy programs are often unavailable. Confidentiality can also be a problem in smaller communities, where many people, including the police or court staff, may know the perpetrator. The thought of airing disputes publicly may also deter people in regional areas from applying for AVOs.<sup>12</sup>

### **People with a disability**

9.11 People with a disability may experience a number of difficulties gaining access to AVOs. There may be practical or procedural considerations such as the need to provide documents in alternative formats or to explain clearly what AVOs entail. Other difficulties may emerge due to circumstances which may make people with a disability more susceptible to violence. People with an intellectual disability living in group homes may be particularly vulnerable to violence.<sup>13</sup>

9.12 In some circumstances, people with an intellectual disability or a mental illness may lack capacity to apply for an AVO on their own behalf. Currently, Part 15A provides only for applications to be made by a police officer or the applicant themselves, where that

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12. The Women's Services Network, *Domestic Violence in Regional Australia: A Literature Review* (2000) at 17.

13. See Women with Disabilities Australia, Response to the Domestic Violence Legislation Working Group Discussion Paper "A Model Domestic Violence Law for Australia" (1998) at «[www.wwda.org.au/dvllaws.htm](http://www.wwda.org.au/dvllaws.htm)». The incidence of physical, sexual and emotional abuse in residential care facilities was also documented in the Burdekin Report: Australia, Human Rights and Equal Opportunity Commission, *Human Rights and Mental Illness* (Report of the National Inquiry into the Human Rights of People with Mental Illness, AGPS Canberra, 1993). Residents of group homes, boarders, and those in a relationship of ongoing care fall within the definition of "domestic relationship", and so may apply for an ADVO.

person is over the age of 16 years.<sup>14</sup> It has been suggested that the legislation should be amended to allow for third parties, such as parents, friends, or the Protective Commissioner or Guardianship Board, to apply on behalf of people with an intellectual disability or mental illness.<sup>15</sup> Provisions of this nature exist in other jurisdictions.<sup>16</sup> The benefit of this approach is that it would provide greater access to AVOs for people with a disability. The major drawback is that it would remove autonomy from people with a disability, and may be used inappropriately: for example, by parents to interfere with the rights of adult children to form relationships.<sup>17</sup> The Commission would like to hear views on this matter.

## Older people

9.13 Older people who are frail and dependent on others may be particularly vulnerable to abuse.<sup>18</sup> Types of abuse include emotional manipulation and financial exploitation as well as physical violence. The situation is particularly difficult where an older person is being abused by his or her carer, as the only alternative may be institutionalised care. This may deter older people from seeking legal assistance.<sup>19</sup>

9.14 Older people who fear violence may face additional obstacles when seeking help. They are more likely to suffer from social isolation, and are less likely to be able to communicate effectively.

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14. Crimes Act s 562C(2).

15. See CLRD Discussion Paper at 28.

16. See for example, *Domestic Violence Act 1995 (Family Protection) Act 1989* (Qld) s 14; *Restraining Orders Act 1997* (WA) s 25(1)(c); *Protection Orders Act 2001* (ACT) s 11; *Domestic Violence Act 1995* (NZ) s 11 and s 12.

17. See CLRD Discussion Paper at 28.

18. For example, it has been estimated that one in three women who experience physical or emotional abuse in a relationship are over 50 years of age: Australian Bureau of Statistics, *Women's Safety Australia* (Survey, 1996, Cat No 4128.0).

19. P Kinnear and A Graycar, "Abuse of Older People – Crime or Family Dynamics?" *Trends and Issues in Crime and Criminal Justice* (Australian Institute of Criminology, No 113, 1999) at 5.

Their allegations may not be taken seriously, especially if they suffer from some form of dementure.<sup>20</sup>

## Children and young people

9.15 Children and young people are particularly vulnerable to abuse, both in terms of experiencing it themselves and witnessing others being abused. In situations of domestic violence, children are often exposed to abuse by their parents, or witness one parent abusing the other.<sup>21</sup> Even where they are not directly experiencing it or witnessing it, children are usually aware that it is occurring. Children who are exposed to domestic violence often suffer from low self esteem, poor conflict resolution skills, increased levels of anxiety etc.<sup>22</sup>

9.16 Allegations of violence against children are most frequently raised in the Family Court where one parent is attempting to prevent the other from having contact with the children. The primary function of the Family Court in proceedings related to children is to determine what is in the best interests of the child in all the circumstances of the case. The law clearly recognises and appreciates the damage caused to children not only in becoming the victims of violence but also in witnessing it.

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20. S Currie, *A Report on Legislative Options for Non-Spousal Domestic Violence* (Queensland, 1996) at 29.

21. In 1988, a Queensland “phone-in” revealed that children were present in 88% of violent households and abused by the violent party in 68% of those households. The Report of the Queensland Domestic Violence Taskforce found that 90% of children present in violent homes had witnessed violence against their mother: *Beyond these Walls: Report of the Queensland Domestic Violence Taskforce* (Department of Family Services and Welfare Housing, Brisbane, 1988).

22. T Brown (ed), M Frederica, L Hewitt and R Sheehan, *Violence in Families. The Management of Child Abuse Allegations in Custody and Access Disputes before the Family Court of Australia* (1998).

9.17 In matters concerning children, State and Territory governments are responsible for the protection of children and adolescents from abuse. In NSW, causing physical injury, sexual abuse [or other harm] is an offence under s 227 of the *Children (Care and Protection) Act 1998* (NSW). Part 15A imposes an obligation on the police to apply for an AVO when a child has suffered such abuse.<sup>23</sup> Part 15A also makes provision for an application for an order for the protection of children to be heard in the absence of the public.<sup>24</sup> Further, children are not required to give direct evidence in proceedings unless such evidence is essential.<sup>25</sup>

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### **Issue 13**

**What problems do some people experience in terms of gaining access to AVOs?**

**How can AVO legislation help to overcome those disadvantages?**

**Should third parties be able to apply for an AVO on behalf of people who may have difficulty making an application themselves? Why or why not?**

**Are the existing provisions in Part 15A aimed at safeguarding the interests and identity of children during the AVO process adequate?**

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23. Crimes Act s 562H(2).

24. Crimes Act s 562NA(1).

25. Crimes Act s 562NA(3).

