



**New South Wales  
Law Reform Commission**

**Discussion Paper  
45**

**Apprehended Violence Orders:  
Part 15A of the Crimes Act**

**November 2002**

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**New South Wales. Law Reform Commission.  
Sydney 2002  
ISSN 0818-7924 (Discussion Paper)**

**National Library of Australia  
Cataloguing-in-publication entry**

**Apprehended violence orders: Part 15A of the Crimes Act**

**Bibliography  
ISBN 0 7313 0458 6.**

**1. Restraining orders – New South Wales. 2. Family violence – Law and legislation – New South Wales. 3. Stalking – New South Wales. I. New South Wales. Law Reform Commission. (Series : Discussion paper (New South Wales. Law Reform Commission) ; 45).**

**345.94402555**

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## Terms of reference

In a letter to the Commission dated 28 March 2002, the Attorney General, the Hon R J Debus MP referred the following matter to the Commission:

In accordance with section 562Z of the *Crimes Act 1900* (NSW) the Commission is to review Part 15A of that Act to determine whether the policy objectives of the Part remain valid, and whether the terms of the Part remain appropriate for securing those objectives.

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## Participants

Pursuant to s 12A of the *Law Reform Commission Act 1967* (NSW) the Chairperson of the Commission constituted a Division for the purpose of conducting the reference. The members of the Division are:

**The Hon Justice Michael Adams**  
**His Honour Judge Christopher Armitage**  
**Professor Hilary Astor**  
**Professor Michael Chesterman**  
**Ms Andrea Durbach**  
**Master Joanne Harrison**  
**Her Honour Judge Angela Karpin**  
**Professor Michael Tilbury\***

(\* denotes Commissioner-in-Charge)

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## Submissions

The Commission invites submissions on the issues relevant to this review, including but not limited to the issues raised in this Discussion Paper.

All submissions and enquiries should be directed to:

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There is no special form required for submissions. If it is inconvenient or impractical to make a written submission you may telephone the Commission and either direct your comments to a Legal Officer over the telephone, or else arrange to make your submission in person.

**The closing date for submissions is 31 January 2002.**

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### **Use of submissions and confidentiality**

If you would like your submission to be treated as confidential, please indicate this in your submission. Submissions made to the Commission may be used in two ways:

- Since the Commission's process of law reform is essentially public, copies of submissions made to the Commission will normally be made available on request to other persons or organisations. However, if you would like all or part of your submission to be treated as confidential, please indicate this in your submission. Any request for a copy of a submission marked "confidential" will be determined in accordance with the *Freedom of Information Act 1989* (NSW).
- In preparing further papers on this reference, the Commission will refer to submissions made in response to this Discussion Paper. However, requests for confidentiality will be respected by the Commission in relation to the publication of submissions.

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## LIST OF ISSUES

### *Chapter 3*

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#### **ISSUE 1 (page 38)**

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?

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### *Chapter 4*

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#### **ISSUE 2 (page 48)**

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?

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### *Chapter 5*

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#### **ISSUE 3 (page 56)**

What concerns are there about the use of ADVOs in family law matters?

Does the legislation sufficiently address those concerns? What improvements can be made?

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#### **ISSUE 4 (page 59)**

How effective has the discretion to refuse to issue process in APVO matters been? Has it resulted in fewer “frivolous” applications?

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## **Chapter 6**

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### **ISSUE 5 (page 61)**

Does the costs provision act as a deterrent against unmeritorious claims? Please give examples.

Should the costs provision be strengthened?

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### **ISSUE 6 (page 62)**

Should a filing fee be introduced for APVO matters? If so, in what circumstances?

What role should mediation have in the resolution of APVO disputes?

What other measures could be introduced to discourage unmeritorious or abusive APVO applications?

Should AVO legislation continue to provide for APVOs at all? If so, how?

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### **ISSUE 7 (page 69)**

Should the AVO provisions continue to be located in the Crimes Act? Why or why not?

Should the AVO provisions be contained in separate, comprehensive legislation covering both ADVOs and APVOs? Why or why not?

What has been the effect of the split between ADVOs and APVOs in Part 15A?

Should there be separate legislation covering only domestic violence? If so, should that legislation extend beyond ADVOs and take a comprehensive, holistic approach like the *Domestic Violence Act 1995* (NZ)? Why or why not?

If separate domestic violence legislation were to be introduced, how should non-domestic violence be dealt with?

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**Chapter 7**

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**ISSUE 8 (page 73)**

Are the current definitions of domestic and personal violence offence adequate?

Should domestic and personal violence be better defined in Part 15A? How?

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**ISSUE 9 (page 74)**

Is the current definition of domestic relationship adequate? If not, how should it be amended?

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**Chapter 8**

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**ISSUE 10 (page 81)**

Does Part 15A provide fair and effective access to AVOs?

How can procedures for applying for AVOs better reflect the objectives of Part 15A?

Should the provisions requiring authorised justices to explain the consequences of granting an AVO be clarified or expanded?

Do the AVOs provisions offer adequate protection in emergency situations?

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**ISSUE 11 (page 82)**

How effective are the current provisions in Part 15A dealing with police applications for AVOs?

Should police have more or less discretion when applying for AVOs?

Should police discretion be more prescribed in AVO legislation?

Is the AVO application process more effective in stopping or preventing violence when police lay the complaint?

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**ISSUE 12 (page 84)**

Given that the primary objective of Part 15A is to protect victims of violence, are the provisions relating to the withdrawal of AVO applications satisfactory?

Should the legislation require certain criteria to be satisfied before an application can be withdrawn?

If so, what should those criteria be?

Should police be able to proceed with an AVO application without the consent of the applicant in certain circumstances?

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**Chapter 9**

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**ISSUE 13 (page 93)**

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 protecting the safety and identity of children during the AVO process adequate?

Should officers of the Department of Community Services be authorised to make an application for an AVO on behalf of children?

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**Chapter 10**

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**ISSUE 14 (page 99)**

Should the legislation limit the duration of interim AVOs?

Should the grounds for an interim AVO be clarified?

Should an interim AVO automatically convert to a final order after a specified time period?

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**ISSUE 15 (page 102)**

Are the provisions regarding TIOs sufficient to protect people experiencing violence?

Are the grounds for and terms of TIOs adequate?

Do TIOs adequately protect against damage to the applicant's property?

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**ISSUE 16 (page 107)**

Is the default duration of 6 months for a final order appropriate?

Are the grounds for a final order adequate?

Should the criteria in the legislation for obtaining an AVO be more specific? If so, how?

How workable and effective are the prohibitions and restrictions that may be included in an AVO?

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**ISSUE 17 (page 108)**

Are the provisions allowing for AVOs to be made with the consent of both parties operating fairly and effectively?

Should clerks of the court be able to issue final AVOs by consent?

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**ISSUE 18 (page 109)**

Are the current provisions relating to service effective?

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**ISSUE 19 (page 110)**

Are the standard orders adequate? If not, how should they be revised?

Should the standard orders be incorporated as a schedule to the Act?

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**ISSUE 20 (page 113)**

Are the circumstances in which the court must make an AVO appropriate?

Should the legislation be more specific about the factors the court must consider before making an order?

Should the legislation indicate how the factors should be weighted?

Should different factors be listed for consideration in applications for interim, telephone interim and final orders?

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**Chapter 11**

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**ISSUE 21 (page 123)**

Are the provisions relating to the breach of AVOs appropriate?

Are they adequately enforced?

Are the penalties for breaching an AVO appropriate?

Should there be defences to the breach provisions?  
In particular, should consent be a defence?

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**Chapter 12**

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**ISSUE 22 (page 126)**

How can the legislation prevent unwarranted cross applications?

Is there a way of keeping police and courts informed of cross applications?

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**ISSUE 23 (page 127)**

Is there a way of keeping police and courts informed of multiple applications?

Should the right to reapply for an order be limited, for example where an application has already been dismissed and the circumstances have not altered?

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**ISSUE 24 (page 130)**

Should police officers be allowed to apply for a variation regardless of who made the initial complaint?

Is it possible to safeguard against variation or revocation where the protected person has been threatened or coerced?

Is it realistic to expect victims to return to court for a variation or revocation where they have reconciled with a violent partner?

Should section 562F(8) be simplified, to provide that an application for extension can be made before the order expires?

Do the provisions dealing with variation and revocation provide adequate protection where more than one person is included on the order?

Should defendants be prohibited from applying for variation or revocation where the order has already been contested?

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**ISSUE 25 (page 132)**

Is the appeals process satisfactory?

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***Chapter 13***

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**ISSUE 26 (page 141)**

How effective are the stalking and intimidation provisions in Part 15A in protecting people against acts or threats of violence?

Is the requisite intent, that the behaviour in question be “likely to cause fear of physical or mental harm”, appropriate?

Should the legislation include any defences or exclusions?

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**ISSUE 27 (page 144)**

Should the offence of stalking or intimidation cover behaviour causing detriment or distress, or should it remain limited to behaviour causing fear?

Does the legislation draw an appropriate line between nuisance behaviour, which is annoying but lawful, and criminal conduct?

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