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**Incidence and regulation of
domestic violence in NSW**

by

Rachel Simpson

Briefing Paper No 4/2000

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EXECUTIVE SUMMARY

‘Domestic violence’ refers to one of a range of offences committed against a person who is in a particular relationship to the perpetrator (married, de facto or other intimate personal relationship, a relationship involving dependency or a relative of the perpetrator). While the most obvious manifestation of domestic violence is physical assault, verbal, emotional or psychological abuse, financial and economic abuse and social abuse also constitute domestic violence. The importance of defining domestic violence is discussed in pages 2-5.

The level of non-reporting of incidents of domestic violence to police makes it difficult to accurately quantify the incidence of domestic violence in the community. One study has shown that only 15% of women who had experienced sexual violence and 19% of women who had experienced physical violence reported the incident to police in the previous 12 months. The main reasons for non-reporting were that the woman dealt with the incident herself, that they did not consider the incident a serious offence, or were embarrassed or ashamed. A statistical picture of the incidence of domestic violence, compiled from a number of sources is painted in pages 6 to 9. Characteristics of those who apply for apprehended violence orders, and the nature and timing of their breach are illustrated on pages 10 to 13.

Apprehended violence orders (AVOs) are the primary legal means by which victims of domestic violence are offered protection in NSW. AVOs were first inserted into the *Crimes Act 1900* (NSW) in 1982 and since that time their use has increased dramatically. For example 1,462 AVOs were issued in 1987, compared with 25,556 in 1998. Since its commencement the law relating to AVOs has been amended numerous times, most often to expand its scope and application. Most recently, a major overhaul of the AVO system was implemented by the *Crimes Amendment (Apprehended Violence) Act 1999* in which, among other things, domestic and personal AVOs were distinguished and, for the first time, an objects statement in relation to domestic AVOs was inserted into the *Crimes Act*. A history of AVO legislation can be found in pages 15 to 19. The operation of the AVO scheme in NSW is examined in pages 19 to 21. Other forms of regulation discussed in the paper include injunctions under the *Family Law Act 1975* (Cth) and the *Property (Relationships) Act 1984* (NSW) (pages 25 to 27) and the *Bail Act 1978* (NSW) (pages 27 to 29).

Claims that AVOs are being abused are widespread. These claims usually fall into two categories – that domestic AVOs are being used by women in family court proceedings to gain some tactical advantage against an ex-partner in an attempt to prevent him from having contact with their children, and that trivial or ‘waste of time’ personal AVOs are being sought in disputes between neighbours. These issues are discussed in pages 23 to 25.

While domestic violence is a concern for the whole community, it is the police who in the majority of cases intervene at an early stage. Therefore the response of the police to an initial call for assistance in a domestic violence matter is crucial for the immediate protection of the victim and the overall outcome of the matter. Police powers in relation to domestic violence and the level of satisfaction with police response to the issues of domestic violence are canvassed in pages 30 to 33.

1.0 INTRODUCTION

In 1999 reports from three major research projects concerning domestic violence in NSW were published: the Criminal Law Review Division of the NSW Attorney-General's Department's *Apprehended Violence Orders: A Review of the Law*; the NSW Judicial Commission's *Apprehended Violence Orders: A Survey of Magistrates* and the NSW Ombudsman's *The Policing of Domestic Violence in NSW Report*. In addition, the final report of the Model Domestic Violence Laws working group was released. The release of these reports reflects the continuing seriousness of the problem of domestic violence and the concern in the community that not enough is being done to prevent it or to protect its victims.¹ Late in 1999 substantial amendments to Part 5A of the *Crimes Act 1900* (the Crimes Act) were passed. These amendments were introduced partly as a response to the concerns raised in the above reports, particularly the concern that domestic and personal apprehended violence orders (AVOs) were being 'conflated' and needed to be separated legally and administratively as they had been in the past.² This paper begins by discussing what is meant by the term 'domestic violence' and examines the incidence of domestic violence in NSW. Part 3 examines the regulation of domestic violence in NSW, including the history and use of apprehended violence orders, injunctions under the *Family Law Act 1975* (Cth) and the *Property (Relationships) Act 1984* (NSW), and the *Bail Act 1978* (NSW). The final part of the paper looks at the issue of policing domestic violence in NSW.

1.1 A definition of domestic violence

The importance of the definition of domestic violence has been stated, referring to that contained in the Model Domestic Violence Laws Report, to be:

... The manner in which [legislation] constructs and defines what is legally to be an act of domestic violence will effect the interpretations of lawyers, courts and police and is also likely to have wider effects in terms of shaping community understandings of domestic violence.³

There is no discrete offence of domestic violence in NSW. Rather, a 'domestic violence offence' is defined as one of a range of offences committed against a person who is in a particular relationship to the perpetrator. A definition of domestic violence was first inserted into the *Crimes Act* in 1982 following the publication of a report of the NSW Task Force on Domestic Violence the previous year. The *Crimes (Domestic Violence) Amendment Act 1982*,

¹ For example, 'Shame that can not be tolerated', *The Daily Telegraph* Editorial, 17 December 1999, p. 10; E Cox, 'Violence needs and effective response', *The Australian*, 31 August 1999, p. 9; 'Time to care about a messy business', *The Daily Telegraph*, 1 May 1999, p. 10; N Tsavdaridis, 'Failed by AVO', *The Daily Telegraph*, 30 April 1999, p. 26, and T Bretag, 'Mothers not the only ones to blame – we must not keep silent on domestic violence', *The Australian*, 31 March 1999, p. 13.

² Hon J Shaw, MLC, second reading speech, NSWPD, 25 November 1999, p. 3674.

³ R Hunter & J Stubbs, 'Model Laws or Missed Opportunity?', *Alternative Law Journal*, vol 24, No 1, Feb 1999, p. 13.

which commenced on 18 April 1983, also introduced specific apprehended domestic violence orders, required spouses to give evidence in domestic violence proceedings, confirmed the right of police to enter private premises to investigate domestic violence complaints when invited, and empowered magistrates to issue radio-telephone warrants to police when entry was denied. Prior to that Act, the only protection offered to victims of domestic violence was contained in section 547 of the *Crimes Act* which allowed a court to enter a recognisance to ‘keep the peace’ where there was a reasonable apprehension of violence by that person against the other. Specific mention was made in section 547 of a man’s ‘wife or child’.⁴ Since the introduction of a definition of domestic violence, there have been a number of amendments which have operated to widen the definition, for example, in 1983 to include persons who had previously been married or lived together in a de facto relationship, and again in 1989 to include persons other than married or de facto partners. The 1989 amendment also introduced the notion of ‘personal violence offence’ which is the basis of the current definition of domestic violence offence.⁵

A ‘domestic violence offence’ is defined in section 4 of the *Crimes Act* as:

... a personal violence offence committed against:

- (a) a person who is or has been married to the person who commits the offence, or
- (b) a person who has or has had a de facto relationship, within the meaning of the Property (Relationships) Act 1984, with the person who commits the offence, or
- (c) a person who has or has had an intimate personal relationship with the person who commits the offence, whether the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) a person who is living or has lived in the same household or other residential facility as the person who commits the offence, or
- (e) a person who has or has had a relationship involving his or her dependence on the ongoing care or unpaid care of the person who commits the offence, or
- (f) a person who is or has been a relative ... of the person who commits the offence.⁶

⁴ For further discussion of the *Crimes (Domestic Violence) Amendment Act 1982*, see *Domestic Violence: An Overview of the Legislative Changes in NSW* by Gareth Griffith, Briefing Note No 18/95.

⁵ For further discussion, see *Domestic Violence: An Overview of the Legislative Changes in NSW* by Gareth Griffith, Briefing Note No 18/95, particularly pages 4-5.

⁶ *Crimes Act 1900*, section 4. This section was expanded by the *Crimes Amendment (Apprehended Violence) Act 1999*, assented to in December 1999. The purpose of the amending Act was to amend the apprehended violence order (‘AVO’) scheme to reflect the differences between domestic AVOs and non-domestic or personal AVOs: Hon J Shaw, MLC

A 'personal violence offence' is defined to include such offences as:

- murder;
- manslaughter;
- malicious wounding;
- malicious damage;
- using poison to endanger life;
- not providing wife, child or servant with food etc;
- assault whether or not occasioning actual bodily harm;
- sexual assault and indecent assault, or
- contravening an AVO.⁷

The National Committee on Violence Against Women defines 'domestic violence' as male violence against women who are in a domestic situation with the male. While domestic violence is not only male against female, reported incidents of domestic violence indicate that 95% of the perpetrators are men.⁸ For this reason, many organisations concerned with domestic violence concentrate on violence where a female is the victim. Male violence against women is broadly defined as

violence and abuse perpetrated by a man upon a female adopted to control his victim, which results in physical, sexual and/or psychological damage, forced social isolation or economic deprivation, or behaviour which leaves a woman living in fear.

When that violence and abuse is perpetrated against a wife, de facto spouse, girlfriend, child, mother, flatmate or anyone who is in a domestic relationship with the perpetrator, it becomes 'domestic' or 'family' violence.⁹

The Model Domestic Violence Laws Report, released in April 1999 defines an 'act of domestic violence' as

any one of the following acts that a person commits against a protected person

(a) causing or threatening to cause a personal injury to the protected

NSWPD, 25 November 1999, p. 3674. The operation of the AVO scheme is discussed in greater detail in Part 3.2, from page 14 below, and the *Crimes Amendment (Apprehended Violence) Act 1999* on page 17.

⁷ *Crimes Act 1900*, section 4, as amended by the *Crimes Amendment (Apprehended Violence) Act 1999*, which added the offences of malicious damage and contravening an AVO to those offences included in the definition of 'personal violence offence'.

⁸ Redfern Legal Centre, *Domestic Violence Court Assistance: an information and training kit*, 1996, p. 3, quoting Women's Co-ordination Unit [now NSW Department for Women], *Domestic Violence: you don't have to put up with it*, 1993.

⁹ *Ibid.*

- person, or the abduction or confinement of the protected person;
- (b) causing or threatening to cause damage to the protected person's property;
- (c) causing or threatening to cause the death of, or injury to, an animal, even if the animal is not the protected person's property;
- (d) behaving in a harassing or offensive way towards the protected person;
- (e) stalking the protected person.¹⁰

While the most obvious manifestation of domestic violence is physical assault, as illustrated in the above definitions verbal, emotional and psychological abuse, financial and economic abuse (for example, withholding money and other resources) and social abuse (such as preventing contact with family and friends) are also manifestations of 'domestic violence'. Even where there is physical abuse, it may take many forms, from pushing, slapping and threats of violence to the use of weapons such as knives and guns. It may result either in serious wounding or even death, or in little or no physical injury.¹¹

2.0 INCIDENCE OF DOMESTIC VIOLENCE IN NSW AND AUSTRALIA

It has been stated that 'the hidden nature' of domestic violence

makes it difficult to know the extent of this problem in our society. Some statistics on victims of family violence can be obtained from police, courts, hospitals, medical practitioners and social services, but it is still not possible to find out the total number of victims and the social demographic characteristics of them due to the nature of this crime.¹²

In fact, it has been stated that 'no reliable estimates exist of the actual incidence of domestic violence in Australia'.¹³ Statistics on domestic violence generally come from two main sources: police statistics and crime victim surveys. Crime victim surveys are important because they indicate the level of reporting to police, whereas police records are important because they

¹⁰ Partnership Against Domestic Violence, *Model Domestic Violence Laws Report*, April 1999, p. 18.

¹¹ E Matka, *Domestic Violence in NSW*, NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin no 12, March 1991, p. 1

¹² Eng Chee, 'Family violence – findings from the 998 Crimes and Safety Survey', National Centre for Crime and Justice Studies, Australian Bureau of Statistics, October 1999, paper faxed to the author 24 January, 2000, p. 1.

¹³ J Stubbs & D Powel, *Domestic Violence: Impact of Legal Reform in NSW*, NSW Bureau of Crime Statistics and Research, 1989, p. 3.

indicate the action taken once reported. A major problem when attempting to quantify the extent of domestic violence is the degree to which it remains unreported (see Part 2.1 below). In addition, definitional problems discussed above have made categorising violence as 'domestic' difficult. Most significantly, victims may not define their experience as falling within the scope of a 'crime', and will therefore either not report it to police or include the experience in a crime victim survey.¹⁴ Further, it has been suggested that 'a large proportion of the community still seems to regard domestic assault as more trivial or more acceptable than other forms of violence'.¹⁵

2.1 Extent to which domestic violence is reported to police

Studies have shown that victims of domestic violence often suffer in a violent situation for a long time before being willing or able to get official help.¹⁶ The number that report the incident to the police is likely to be even smaller. As an illustration, the 1996 Australian Bureau of Statistics (ABS) Women's Safety Survey revealed that only 15% of women who had experienced sexual violence and 19% of women who experienced a physical assault in the previous 12 months reported the incidence to police. In contrast, 58% of physical assault victims and 59% of sexual assault victims spoke to a friend or neighbour about the incident. 4.5% of women physically assaulted and 8.1% of women sexually assaulted contacted a crisis service organisation.¹⁷ The results also show that nearly 15% of victims did not discuss the incident with anyone else. These figures are supported by results of a similar study undertaken in Britain where 22% of 'chronic' and 9% of 'intermittent' victims of domestic physical assault reported the incident to the police. As in Australia, the largest proportion of victims told a friend or relative about the incident (60% of chronic and 49% of intermittent victims).¹⁸

The main reasons given for not reporting the incident to the police were: that the women dealt with the incident themselves; because they did not consider the incident a serious offence; or, in the case of sexual assault, because the woman was ashamed or embarrassed. These findings

¹⁴ Catriona Mirrlees-Black, *Domestic Violence: findings from a new British Crime Survey self-completion questionnaire*, Home Office Research Study 191, 1999, p. 4.

¹⁵ E Matka, n 11, p. 1.

¹⁶ *Ibid.*

¹⁷ Australian Bureau of Statistics (ABS), *Women's Safety Australia*, 1996, ABS Catalogue No 4128.0, p. 28. Other responses included speaking to a work colleague, seeking legal help, speaking to a doctor, seeking financial help and speaking to a minister or priest.

¹⁸ C Mirrlees-Black, n 14, p. 53. 'Chronic' victims are defined as those who reported three or more domestic assaults to the survey, and 'intermittent' victims are those who reported 'one or two' domestic assaults. The British survey differs from the ABS survey insofar as it also identifies male victims of domestic violence. Interestingly, the survey found that men appeared to be at equal risk to women of domestic assault (4.2% of both sexes reported an assault in the previous year). However, the authors of the Home Office report pointed out that women were found to be at a far greater risk of serious assault, and are far more likely than men to be repeatedly assaulted (p. 28). In respect to notifying police of the assault, the survey found that 8% of chronic and 4% of intermittent male victims reported the incident to the police. In contrast, 29% of chronic and 30% of intermittent male victims told a friend or relative about the assault.

are illustrated in the following table:

Table 2.1.1 Main reason police not told about the last incident of physical/sexual assault (during last 12 months)

Main reason police not told	Physical assault	Sexual assault
Dealt with it herself	42.4%	54.9%
Did not regard it as a serious offence	26.5%	16.1%
Did not think they could do anything	8.8%	8.2%
Fear of perpetrator	2.6%	2.3%
Shame/embarrassment	2.2%	5.7%
Did not want perpetrator arrested	4.7%	**
Would not be believed	2.8%	**
Other	10.0%	11.7%

Note: ** indicates less than 3 or no observations fitting into this category were recorded. 'Other' includes fear of legal processes, cultural/language reasons and other reasons.

Source: ABS *Women's Safety Australia*, table 4.6

The likelihood of reporting the incident to the police was greater where the perpetrator was a stranger or a previous partner rather than a boyfriend or date, or current partner:

Table 2.1.2 Women who reported last incident of physical/sexual assault to police Relationship to perpetrator

Relationship to perpetrator	Physical assault	Sexual assault
Current partner	6.3%	**
Previous partner	34.6%	25.1%
Boyfriend/date	**	**
Other known man	17.4%	12.2%
Stranger	21.9%	23.3%

Note: ** indicates less than 3 or no observations fitting into this category were recorded.

Source: ABS *Women's Safety Australia*, table 4.7

Women in the 25-34 year age group were the most likely to report the incident to police (25.1% of physical assault victims and 19.3% of sexual assault victims). Women born **in** Australia were slightly *less* likely (17.7% of physical assault victims) to report the incident to police than women born **outside** Australia (22.5% of physical assault victims). Note that there was insufficient data recorded for sexual assault victims to make a similar comparison. Women **without** post-school qualifications (22.1 % of physical assault victims and 21.2% of sexual assault victims) were *more* likely to report the incident than women **with** post-school qualifications (14.8% of physical assault victims and 9.4% of sexual assault victims). Employment status was also relevant: **employed** women (15% of physical assault victims and 10.8% of sexual assault victims) were *less* likely to report the incident to police than women not in the labour force (24.1% of physical assault victims and 26.78% of sexual assault victims) or unemployed women (21.7% of physical assault victims – no data for sexual assault victims).¹⁹

¹⁹

ibid, table 4.9.

2.2 Incidence and nature of domestic violence

Table 2.2.1 (page 8) illustrates the incidence of domestic violence offences recorded by police where the offender is known to the victim. Figures for both males and females are included. The figures are for the calendar years 1997 and 1998. Note that the category 'family member' does not include ex-partners, who are included in the 'non-family member' category, as are a victim's boyfriend or ex-boyfriend. However, not all personal crimes committed by a non-family member known to the victim can be classified as 'domestic violence' – the category would also include crimes committed by a neighbour or colleague, for example.

Table 2.2.2 (page 8) illustrates the incidence of domestic violence recorded by the 1998 National Crime and Safety Survey, and compares it to the number of victims recorded by the police (discussed above). The National Crime and Safety Survey was carried out by ABS in April 1998. The survey was sent to approximately 51,800 persons, of whom approximately 42,200 (81.4%) responded. Information was sought on personal offences of robbery, assault (persons aged 15 and over) and sexual assault (females aged 18 and over). Data pertaining to household crimes of break-in, attempted break-in and motor vehicle theft was sought from approximately 25,600 households, of which 81.6% or about 20,900 responded. In table 2.2.2 the term 'family violence' is used rather than 'domestic violence'. Family violence is defined to include

a range of violent behaviours, some of which attract criminal sanction and others which are not recognised as criminal behaviour but are damaging to the victim. These violent behaviours include assault, sexual abuse, verbal abuse, psychological or emotional abuse, spiritual abuse, economic and social abuse.²⁰

It is therefore very similar to the definition of domestic violence discussed in part 1.1 above. The author of the paper from which table 2.2.2 is taken concentrated on **assault** victims where the perpetrator's relationship to the victim is a partner, ex-partner or a member of the victim's family. From table 2.2.2 it becomes very clear that the incidence of family violence in the Crime and Safety Survey is far greater than that reflected in the recorded crime statistics.

²⁰

Eng Chee, n 12, p. 1.

Table 2.2.1 Victims of 'domestic violence' offences by sex of victim and relationship to offender 1997-1998 NSW and Australia

Year	1997								1998							
	Male				Female				Male				Female			
Sex of victim	Family member		Non-family member		Family member		Non-family member		Family member		Non-family member		Family member		Non-family member	
Relationship to offender	Family member		Non-family member		Family member		Non-family member		Family member		Non-family member		Family member		Non-family member	
Incidence	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Murder	11	13.9	27	34.2	11	35.5	9	34.2	12	16.9	30	42.3	13	52.0	3	12.0
<i>(Aust)</i>	29	14.2	70	34.3	43	36.8	32	34.3	34	19.2	69	39.0	55	51.9	21	19.8
Attempted Murder	9	12.7	37	52.1	13	44.8	11	37.9	12	14.1	44	51.8	20	55.6	13	36.1
<i>(Aust)</i>	31	13.5	86	37.4	28	32.9	28	32.9	39	15.2	101	39.5	48	38.4	45	36.0
Manslaughter	3	33.3	3	33.3	1	50.0	0	0	5	29.4	7	41.2	3	2	37.5	25.0
<i>(Aust)</i>	6	21.4	8	28.6	3	30.0	3	30.0	9	25.0	13	36.1	5	5	38.5	38.5
Sexual Assault	192	21.6	319	36.0	708	20.5	1405	40.6	253	32.1	329	41.7	1091	31.5	1420	41.0
<i>(Aust)</i>	397	15.3	811	31.3	1969	17.6	3292	29.5	541	20.6	918	35.0	2517	21.6	3729	32.0
Kidnapping/Abduction	9	8.6	48	45.7	22	14.9	67	45.3	11	7.5	43	29.3	17	8.0	62	29.2
<i>(Aust)</i>	17	9.0	51	27.0	28	8.0	79	22.7	14	6.2	58	25.6	27	19.1	79	19.1

Notes: NSW does not currently record the relationship of the offender to the victim for assault offences.

Source: Australian Bureau of Statistics *Recorded Crime Australia* 1997, 1998, catalogue No 4510, tables 2.5, 2.10, 2.15, 4.4 & 5.2.

Table 2.2.2 Assault victims by State and Territory 12 months to April 1998

		NSW	Vic	Qld	SA	WA	Tas	NT	ACT	Aust
Recorded Crime	Assault No	53,283	15,434	15,866	12,726	13,355	1,868	2,336	1,479	116,347
	Family No	n.a	1,217	1,336	4,137	1,465	385	165	117	n.a
	Violence %	n.a	7.89	8.42	32.51	10.97	20.61	7.06	7.91	n.a
Crime & Safety survey	Assault No	192,300	139,000	126,000	48,800	69,000	18,600	6,800	16,200	618,300
	Family No	45,700	37,500	29,100	10,800	16,100	4,600	2,400	2,900	149,300
	Violence %	23.76	26.8	22.99	22.13	23.33	24.73	35.29	17.90	24.15

Notes: The number of victims of 'family violence' in the 'recorded crime' section is derived from the 'relationship of offender to victim' in the assault offence. NSW did not record relationship of offender to victim for assault offences (see note table **).

Source: Eng Chee, 'Family violence – findings from the 1998 Crime and Safety Survey', National Centre for Crime and Justice Statistics, ABS, October 1998.

2.2.1 Apprehended violence orders

One measure of the level of domestic violence is the number of Apprehended Violence Orders (AVOs) that are granted. AVOs may be granted to people in domestic relationships (eg spouses, de facto partners) as well as people in personal relationships (eg neighbours, housemates, colleagues). The operation of AVOs in NSW is discussed in detail in Part 3.1.2, page 18, below. Table 2.2.3 shows the number of domestic and personal AVOs granted in NSW local courts in 1996-1998.

The following points can be made regarding the data in the table:

- The number of domestic AVOs granted is more than double the number of personal AVOs granted in all three years.
- Over the three years 1996-1998, the number and rate of personal AVOs granted has increased steadily, from 101.1 per 100,000 population in 1996 to 116.1 per 100,000 population in 1998.
- The number and rate of domestic AVOs granted has increased also, from 227.3 per 100,000 in 1996 to 239.6 per 100,000 in 1998. However, note that the 1998 figure represents a decrease from the number granted in 1997 – 265.6 per 100,000 population.
- The number and rate of AVOs granted in Sydney regions is significantly less than that in country NSW. In all three years, the number and rate of both domestic and personal AVOs granted in Far West and North Western NSW have been the greatest in the State. The lowest number and rate of AVOs granted has consistently been in the Sydney regions of Hornsby Ku-Ring-Gai and Lower Northern Sydney. The greatest number and rate of domestic AVOs awarded in Sydney regions is consistently in the Outer Western Sydney region, and the greatest number and rate of personal AVOs awarded in Sydney regions is consistently in the Inner Sydney region.

Table 2.2.3 Domestic and Personal Apprehended Violence Orders awarded in NSW Local Courts 1997-1998

Year	1996				1997				1998			
	Domestic		Personal		Domestic		Personal		Domestic		Personal	
Statistical division of protected person	No	Rate	No	Rate	No	Rate	No	Rate	No	Rate	No	Rate
SYDNEY:												
Inner Sydney	684	267.6	326	127.5	766	278.0	290	105.2	674	239.2	392	139.1
Eastern suburbs	372	161.4	110	47.7	432	177.3	110	45.1	394	161.7	168	68.9
St George-Sutherland	710	174.0	175	42.9	908	220.2	158	37.9	780	185.3	237	56.3
Canterbury-Bankstown	569	190.5	133	44.5	552	180.4	118	38.6	476	154.4	133	43.1
Fairfield-Liverpool	726	240.0	217	71.7	1,002	312.5	269	83.9	861	262.5	297	90.6
Outer Sth-Western Sydney	623	289.4	189	87.8	767	350.2	212	96.8	679	304.8	252	113.1
Inner Western Sydney	250	162.1	62	40.2	291	185.8	43	27.5	206	130.1	56	35.4
Central Western Sydney	612	225.8	179	66.0	692	244.5	114	40.3	546	189.7	188	65.3
Outer Western Sydney	636	211.0	244	80.9	761	249.4	289	94.7	716	232.3	292	94.8
Blacktown Baulkham Hills	872	237.9	367	100.1	967	260.3	335	90.2	860	227.0	316	83.4
Lower Northern Sydney	270	97.3	111	40.0	280	98.9	59	20.8	284	99.3	107	37.4
Hornsby Ku Ring Gai	224	88.8	55	21.8	241	95.6	54	21.4	186	73.1	52	20.4
Northern Beaches	259	118.3	89	40.7	271	120.4	129	57.3	240	105.9	90	39.7
Gosford-Wyong	612	227.6	238	88.5	695	251.6	265	95.9	641	227.9	236	83.9
Hunter	1,528	270.3	724	128.1	1,909	339.8	930	165.5	1,705	300.5	969	170.8
Illawarra	875	233.6	480	128.2	1,165	309.9	475	126.0	1,121	294.5	469	123.2
Richmond-Tweed	551	268.6	333	162.4	634	311.2	415	203.7	700	338.6	452	218.6
Mid-North Coast	840	315.6	477	179.2	956	360.5	635	239.4	1,086	404.2	642	238.9
Northern	486	258.9	323	172.0	677	382.1	352	198.7	515	292.8	323	183.6
North Western	490	407.7	340	282.6	565	481.2	352	299.8	574	490.0	362	309.0
Central West	542	308.4	311	177.0	638	369.8	295	171.0	523	302.7	302	174.8
South Eastern	432	236.3	215	117.6	501	278.6	321	187.5	489	270.8	366	202.7
Murrumbidgee	402	264.6	307	202.0	455	305.2	310	207.9	457	306.6	380	255.0
Murray	355	317.5	191	170.8	325	293.3	193	174.2	299	268.4	174	156.2
Far West	148	542.1	60	219.8	207	831.5	74	297.3	182	739.7	107	434.9
TOTAL NSW	14,068	227.3	6,256	101.1	16,667	265.6	6,797	108.3	15,194	239.6	7,362	116.1

Source: NSW Bureau of Crime Statistics & Research, *New South Wales Criminal Court Statistics 1996-1998*, table 1.18.

Breach of an AVO

A measure of the success of the apprehended violence order scheme is the level of breach of AVOs. An AVO is breached when the defendant fails to abide by one or more of the conditions set by the magistrate when granting the order against the defendant. An evaluation of the AVO scheme was published by the NSW Bureau of Crime Statistics and Research (BOSCAR) in 1997.²¹ Six local court houses in metropolitan Sydney were chosen for inclusion in the study, and subjects were initially interviewed immediately after the granting of an AVO. Follow-up interviews were conducted by telephone approximately one month ('Phase 2'), three months ('Phase 3') and six months ('Phase 4') after the AVO was served on the defendant.²² Table 2.2.4 shows the number of orders breached in each of the three follow-up periods, by type of order.

Table 2.2.4 Number of AVO orders breached by type of order

Order Breached?	Phase 2		Phase 3		Phase 4	
	No	%	No	%	No	%
All AVOs						
Yes	62	30.8	34	29.6	19	32.2
No	139	69.2	81	70.4	40	67.8
Total	201	100	115	100	59	100
DVOs						
Yes	54	33.3	32	34.8	17	34.0
No	108	66.7	60	65.2	33	66.0
Total	162	100	92	100	50	100
PVOs						
Yes	8	20.5	2	8.7	2	22.2
No	31	79.5	21	91.3	7	77.8
Total	39	100	23	100	9	100

Source: Trimboli & Bonney, NSW Bureau of Crime Statistics and Research, *An Evaluation of the NSW Apprehended Violence Order Scheme*, June 1997, p. 56.

Note: even though legislation at this stage did not specifically differentiate between ADVOs and APVOs, it is possible to distinguish between the two based on the relationship between the defendant and the victim.

The following points can be made from the information in the table:

- approximately 30% of all orders were reportedly breached in each of the follow-up phases of the study;
- breaches of DVOs were only slightly higher than the overall breach rate with around one-third being breached in each phase;
- a more uneven distribution of breaches occurred with PVO – although about 20% of

²¹ Trimboli & Bonney. *An Evaluation of the NSW Apprehended Violence Order Scheme*, NSW Bureau of Crime Statistics and Research, June 1997.

²² 250 subject were interviewed initially, 201 after one month, 115 after three months and 59 after six months.

PVOs were allegedly breached in Phase 2 and Phase 4, less than 10% were breached in Phase 3.

The BOSCAR report states that 77.7% of subjects reported their order had been breached only once in any follow-up phase, while 16.7% reported breaches in two follow-up phases and 5.5% subjects reported breaches in all three follow-up phases. Many breaches occurred within a week of the AVO being granted. In a few cases defendants breached the order on the same day as it was served, before leaving the court complex at the conclusion of hearings. Table 2.2.5 shows the length of time from serving the AVO to the first breach.

Table 2.2.5 Breached Orders: time from serving AVO to first breach

DATE FIRST BREACHED	No	%
Same day AVO served	8	9.2
In 1 st week after service	29	33.3
In 2 nd week after service	11	12.6
In 3 rd week after service	6	6.9
In 4 th week after service	6	6.9
> 4 weeks and ≤ 9 weeks after service	16	18.4
> 9 weeks and ≤ 13 weeks after service	8	9.2
More than 13 weeks after service	3	3.4
TOTAL ORDERS BREACHED	87	100.0

Source: Trimboli & Bonney, NSW Bureau of Crime Statistics and Research, *An Evaluation of the NSW Apprehended Violence Order Scheme*, June 1997, p. 58.

The way in which an order was breached differed from follow-up phase to follow-up phase. The most common form of breach in Phase 2 involved the defendant approaching the subject either at home, work or some other prescribed place (35.5% of all breaches). The most common form of breach in Phases 3 and 4 was verbal abuse. Table 2.2.6 shows the manner in which the order was breached.

Table 2.2.6 Characteristics of breach of AVO during each follow-up phase

MEANS OF BREACH	Phase 2		Phase 3		Phase 4	
	No	%	No	%	No	%
Approach subject at home, work or other place	22	35.5	7	20.6	4	21.1
Proscribed telephone contact	19	30.6	11	32.3	5	26.3
Verbal abuse	17	27.4	13	38.2	10	52.6
Threat to assault or kill	10	16.1	2	5.9	1	5.3
Intimidate or harass	7	11.3	6	17.6	2	10.5
Approach drunk	6	9.7	3	8.8	2	10.5
Other proscribed contact	4	6.5	1	2.9	0	0.0
Physical assault	2	3.2	1	2.9	0	0.0
Assault of third person	2	3.2	0	0.0	0	0.0
Stalking	1	1.6	1	2.9	0	0.0
TOTAL ORDERS BREACHED	62		34		19	

Note: Percentages are based on the number of orders breached in each follow-up phase and do not add up to 100% because of multiple responses in some cases.

Source: Trimboli & Bonney, NSW Bureau of Crime Statistics and Research, *An Evaluation of the NSW Apprehended Violence Order Scheme*, June 1997, p. 57.

3.0 REGULATION OF DOMESTIC VIOLENCE

Legislation pertaining to domestic violence varies from state to state. This Part concentrates on legal measures to prevent and impose sanctions on domestic violence in NSW. Domestic violence legislation primarily is concerned with prevention, however it must also deal with the criminal nature of the aftermath of domestic violence where the system has failed to prevent its occurrence. This Part examines preventative measures in the form of Apprehended Violence Orders and injunctions accessible under the *Family Law Act 1975* (Cth) and the *Property (Relationships) Act 1984* (NSW), and provisions relevant to domestic violence in the *Bail Act 1978*. Specific aspects of the criminal law dealing with police powers, including powers of entry and arrest, are discussed in Part 4, page 28 below.

All States and Territories have enacted legislation which enables victims of domestic violence to obtain a protection order to endeavour to stop future violence or harassment. While called by different names in different jurisdictions (AVO in NSW, intervention order in Victoria, restraining order in South Australia for example) and varying in detail among jurisdictions, the essential features of protection orders are the same, as explained in *The Laws of Australia*:

... it is obtainable in the magistrates' [local] court quickly with the required proof on the balance of probabilities rather than beyond reasonable doubt; it can be tailored to meet not just violent conduct but harassing and pestering conduct which may not in itself be criminal; if is possible to obtain an interim ex-parte order which is effective once it is served on the respondent; and a breach of an order is a criminal offence for which the police may arrest without warrant.²³

In April 1999 the Model Domestic Violence Laws Report was published by the Domestic Violence Legislation Working Group. This group consists of officials from the Commonwealth, states and territories and was formed in response to recommendations from the National Domestic Violence Forum, convened by the Commonwealth Government in September 1996. The aim of the working group is to develop domestic violence legislation which is consistent across all states. The Report focuses on protection orders as the primary means of responding to domestic violence. Other relevant forms of criminal or family law are not dealt with.²⁴ Another criticism of the Model Laws Report is that it does not include a preamble or statement of guiding principles. Many of the debates

²³ *The Laws of Australia*, title 17.5 – domestic violence, chapter 5 – protection orders, ¶62.

²⁴ In a critique of the discussion paper which preceded the report, Rosemary Hunter and Julie Stubbs stated that 'the discussion paper reflects a limited vision of the task involved in domestic violence law reform and seems concerned primarily to address inconsistencies between extant State and Territory laws concerning protection orders. This is despite international recognition that tinkering with reform in discrete sectors of the legal system is an inadequate response. Reform in one sector may be undermined by failings in other sectors of the system and the absence of a shared vision and meaningful coordination across different sectors.' See Hunter & Stubbs, n 3, p. 12.

and controversies canvassed in the discussion paper that preceded the Report could, it has been argued, be resolved by reference to an appropriate set of principles:

The over-riding principle should be to protect those who experience domestic violence. A preamble to the model legislation should also specify the need for such legislation with reference to: 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 children; and the need for perpetrators of violence to take responsibility for their actions and for stopping the violence.²⁵

For the first time in NSW, an objects statement in relation to Apprehended Domestic Violence Orders was inserted into the NSW Crimes Act by the *Crimes Amendment (Apprehended Violence) Act 1999* (see p. 18).

3.1 Apprehended Violence Orders

The purpose of Apprehended Violence Orders (AVOs) is to provide people who obtain them with protection against violence, abuse, or harassment. Since being introduced in 1982, AVO legislation has been subject to a number of significant amendments, outlined in Part 3.1.1 below. The number of AVOs being sought and granted has increased significantly since AVOs were first available. For example in 1987 the number of AVOs issued by NSW local courts was 1,462, compared to 23,464 in 1997 and 22,556 in 1998. There are constant claims that the AVO system is being abused, particularly by parties to Family Court proceedings, because of the ease with which AVOs can be obtained.²⁶ This claim is discussed in further detail in Part 3.1.3, page 21, below. These concerns were a contributing factor to the Government's latest round of amendments to the AVO scheme, announced in November 1999 and which commenced in February 2000 (discussed below, page 17).

3.1.1 History of Apprehended Violence Orders in NSW

The forerunner to the Apprehended Violence Order (AVO) scheme was the recognisance 'to keep the peace' found in section 547 of the Crimes Act. This section has been part of the Crimes Act since its enactment in 1900. Although still in force, in practice the use of recognisances to keep the peace has been overtaken by the provisions relating to AVOs as contained in Part 15A of the Crimes Act.²⁷

²⁵ Hunter & Stubbs, n 3, p. 12.

²⁶ In the introduction to a NSW Bureau of Crime Statistics and Research *Evaluation of the New South Wales Apprehended Violence Order Scheme* published in June 1997, the director of the Bureau, Don Weatherburn, stated that this concern 'is unfortunate, since questions about the administration of the Apprehended Violence Order scheme are secondary to the question of whether the scheme itself is effective'.

²⁷ This section relies heavily on section 3 of a discussion paper published by the Criminal Law Review Division, NSW Attorney-General's Department, *A Review of the Law Pertaining to Apprehended Violence Orders as contained in Part 15a of the Crimes Act 1900 (NSW)* in

Provision for AVOs was first inserted into the Crimes Act in 1982, by means of the *Crimes (Domestic Violence) Amendment Act 1982*, commencing in April 1983.²⁸ This legislation was introduced in response to recommendations of a task force on domestic violence appointed by the then Premier, the Hon N Wran. The purpose of the taskforce was to examine existing NSW laws in regard to domestic violence, particularly the capacity of the law and its processes to provide protection to married and de facto spouses who are subject to domestic violence. The Crimes Act was amended by inserting a new section 547AA which enabled a magistrate to make an apprehended domestic violence order (ADVO) for a person in fear of apprehended violence by that person's married or de facto spouse. The section enabled a complaint for an ADVO to be laid by the claimant him or herself, or by a police officer. The magistrate was also empowered to include in the ADVO whatever conditions were deemed appropriate by the court. An ADVO under section 547AA was effective for 6 months. Once the defendant had been personally served with a copy of the order, any breach of the order constituted a criminal offence subject to a maximum penalty of 6 months imprisonment.

Since its commencement, the law relating to ADVOs has been amended a number of times, most often to expand its scope and availability. For example, following the NSW Law Reform Commission Report on De Facto Relationships in June 1983, section 547AA was amended by the *Crimes (Domestic Violence) Amendment Act 1983* to extend its application to parties who had been married or living as de facto spouses, even though at the time the complaint was made they were not living together. It was also extended to enable an ADVO to be made where the complainant was in fear of harassment or molestation rather than only physical violence. The purpose of this extension as explained in the second reading speech was to cover cases 'that might involve significant damage to property or the threat of it, or behaviour of a genuinely distressing kind which nevertheless falls short of actual physical violence'.²⁹ The Act also empowered a court to impose a fine of up to \$2,000 in addition to the maximum period of 6 months imprisonment for breach of an ADVO.

A fundamental amendment to the ADVO scheme was contained in the *Crimes (Personal and Family Violence) Amendment Act 1987*. This Act created Part 15A of the Crimes Act comprising new sections 562A to 562R, replacing the former section 547AA. Part 15A extended the availability of ADVOs to any person sharing or who had shared a common residence with the defendant (apart from a tenant or boarder), to a relative of the defendant and to a person in an existing or former intimate personal relationship with the defendant (section 562B). The Act also empowered the court to prohibit or restrict the possession of all or any specified firearms by the defendant, and removed the six month time limit for ADVOs, to enable magistrates to better tailor the ADVO to the individual case. Interim orders were able to be made by a magistrate in the absence of the defendant, which brought

June 1996 (pages 29 to 37). See also Briefing Note 18/95, *Domestic Violence: an overview of the legislative changes in NSW* by Gareth Griffith, particularly pages 9-15.

²⁸ The Act was repealed by the *Crimes (Personal and Family Violence) Amendment Act 1987*.

²⁹ Hon D P Landa, MLC, NSWPD 22 November 1983, p. 3011.

NSW legislation in line with legislation in other states such as Western Australia and South Australia.

The availability of AVOs was again extended in 1989 by the *Crimes (Apprehended Violence) Amendment Act 1989*. Under this Act, ADVOs were available to ‘all people who fear violence towards themselves’. To reflect the change, the term ‘Apprehended domestic violence order’ was changed to ‘apprehended violence order’ (AVO). This amendment recognised that not only people in domestic relationships were in fear of violence and in need of protection. Prior to the amendment, the only protection available to people not in domestic relationships was a section 547 recognisance order. Following the amendment, there was concern that the focus of protection would shift away from victims of domestic violence, and that AVOs would be used inappropriately as a remedy for neighbourhood disputes. This has remained a consistent concern about the AVO scheme since that time and was the impetus behind the 1999 amendments which saw the scheme once again split between personal and domestic AVOs (see further page 17). Under the *Firearms Legislation (Amendment) Act 1992*, police were required to inquire about the presence of firearms when entering premises to investigate a domestic violence offence. The Act imposes a mandatory obligation on police to confiscate firearms where actual or threatened domestic violence has occurred, or where occupants have been involved in a domestic violence offence elsewhere, or from any person against whom an AVO has been issued. Under this legislation, a firearms licence is automatically revoked following the making of an AVO, and an application for a firearms licence or permit must be refused if the applicant has been subject to an AVO at any time in the previous 10 years.

A new division was inserted into Part 15A by the *Crimes (Registration of Interstate Restraint Orders) Act 1993*. The purpose of the Act was to enable the portability of AVOs between Australian states. Prior to this amendment, an AVO made in one state could not be enforced in another state - a fresh order had to be made instead.³⁰ Another major piece of legislation was passed in 1993 – the *Crimes (Domestic Violence) Amendment Act 1993*. This Act made a number of changes: it enabled police officers to apply for an interim AVO after hours over the telephone in certain circumstances; it enabled all persons aged 16 or over to apply for an AVO in their own right (previously a police officer had to make a complaint in respect of a child under the age of 18 years); and a separate offence of intimidation in relation to domestic violence was created, extending to all forms of intimidation that are intended to instil fear for the personal safety of the victim or the victim’s family. Further, the new provisions strictly prohibited stalking. Penalties for breach of an AVO were raised to \$5,000 or 2 years imprisonment (previously maximum penalties were \$2,000 or 6 months imprisonment). The *Bail (Domestic Violence) Amendment Act 1993* removed the presumption in favour of bail in relation to domestic violence offences (including breaches of ADVOs involving violence or intimidation) if the accused has a history of violence.³¹

³⁰ In 1999, the *Crimes Amendment (Apprehended Violence) Act 1999* further amended the Crimes Act so that New Zealand protection orders may be registered and applicable in NSW.

³¹ For a general discussion of the operation of bail in NSW, see Briefing Paper No 25/97, *Bail in NSW* by Rachel Simpson.

The *Crimes Amendment (Apprehended Violence Orders) Act 1996* made a number of changes to the AVO system in NSW. The Act clarified that an authorised justice who receives a complaint for an order **must** issue either a summons or a warrant for the appearance against whom the order is sought – the justice does not have the discretion to reject a complaint that is duly made. Children under 16 years of age may be included on an adult’s AVO without the need for a police officer to make an application on behalf of the child. A new provision was inserted into the Crimes Act which allows a court to hear proceedings for an AVO for the protection of a child under the age of 16 years in the absence of the public or of any specified member of the public. Where a court makes an order, it must explain to the defendant and person protected by the order the effect of the order, the consequences of contravening the order and the rights of both parties under the order. A court that convicts a person for a stalking or intimidation charge is required to make an AVO for the protection of the victim, unless a similar order is already in place. Similarly, where a person stands before a court charged with a stalking or intimidation offence, or a domestic violence offence, the court is required to make an interim AVO for the protection of the victim. The *Weapons Prohibition Act 1998* further protected victims of domestic violence by automatically revoking a weapons permit if the permit holder becomes the subject of an AVO. Where the permit is revoked, the person must surrender any prohibited weapon and the permit to a police officer.³²

In late 1999 the AVO scheme was once again divided into **domestic** and **personal** orders by the *Crimes Amendment (Apprehended Violence) Act 1999*.³³ The move was made in response to community concern about ‘the conflation of domestic violence matters with non-domestic violence or ‘personal’ violence matters under the AVO scheme’.³⁴ Explaining the reasons for this separation in his second reading speech to the Bill, the Attorney-General stated

The seriousness of domestic violence and its effects on women, children and the community at large can be somewhat trivialised and minimised through association with matters such as neighbourhood and workplace disputes. The separation of these two categories of AVO is designed not only to recognise the difference in the nature and level of violence in domestic and non-domestic matters but to establish some significant legislative distinctions in the ways in which AVOs are dealt with according to their classification.³⁵

Apprehended domestic violence orders (ADVOs) are AVOs involving persons in a

³² For a general discussion of firearms legislation in NSW see Background Paper No 5/99, *Firearms legislation: an update* by Abigail Rath and Gareth Griffith.

³³ This Act was assented to on 6 December 1999, and has been proclaimed to commence on 26 April, 2000.

³⁴ Hon J Shaw, MLC, second reading speech, NSWPD, 25 November 1999, p. 3674.

³⁵ *Ibid.*

domestic relationship, and apprehended personal violence orders (APVOs) cover all other AVO matters. A major change to the scheme is that authorised justices are empowered to refuse an APVO application where the complaint is frivolous, vexatious, without substance or has no reasonable prospect of success.³⁶ The scheme is discussed in more detail in part 3.1.2 below.

3.1.2 Operation of AVO scheme in NSW

For the first time an objects statement in relation to ADVOs was inserted into the Crimes Act by the 1999 amendments. It has been argued that debates and controversies regarding domestic violence could be resolved by reference to an objects statement (see p. 14 above). Section 562AC states that the objects of the division are:

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

...

The section continues that Parliament recognises that

domestic violence, in all its forms is unacceptable behaviour, that domestic violence is predominantly perpetrated by men against women and children, and that domestic violence occurs in all sectors of the community.

The importance of this declaration is that it is stated in section 562C that

a court that, or person who, exercises any power conferred by or under this Part [Part 15A] in relation to domestic violence must be guided in the exercise of that power by the objects of this Division [Division 1A – ADVOs].

A complaint for an AVO may be made by either the person seeking protection or a police officer (a police officer must make a complaint for an order if he or she suspects a domestic violence offence has been committed or is imminent). The person seeking either an ADVO or APVO must make an application to the local court, by way of a complaint. The type of order sought will be dependent on the relationship between the parties, as explained above. In either case, the Court may make the order if it is satisfied that the person has reasonable grounds to fear, and does in fact fear:

- the commission of a personal violence offence against the person;

³⁶ J Shaw, MLC, Attorney-General, 'AVO Reform Package', *Press Release* 9 November 1999.

- the engagement of the other person in conduct amounting to harassment or molestation that is conduct sufficient to warrant the order, regardless of whether or not the conduct involves actual or threatened violence to the person or consists only of actual or threatened damage to property belonging to, in the possession or, or used by the person; or
- conduct in which the other person intimidates or stalks the person.

Where the person for whose protection the order would be made is under the age of 16 years or of appreciably below average intelligence, it is not necessary that the court be satisfied that the person in fact fears that such an offence or conduct will be engaged in. Where a person pleads guilty to, or is found guilty of, a domestic violence offence or an offence of stalking or intimidation with intent to cause fear of physical or mental harm, the court must make an order for the protection of the person against whom the offence was committed. If an AVO is already in place, the court may vary the order in order to provide greater protection to the person against whom the offence was committed.³⁷

Any order made by the court may be subject to such prohibitions or restrictions on the behaviour of the defendant as appears necessary or desirable to the court, and will last for as long as the court determines. Prior to its expiry, the applicant can apply for an extension provided there remains a reasonable fear of the defendant. An applicant can apply to the court to have an AVO altered or cancelled if circumstances between that person and the defendant change. Legal aid is available for an ADVO application, provided the applicant can satisfy the Legal Aid Commission's means test and the complaint is not frivolous or vexatious. However, legal aid is not available to applicants for APVOs, nor is it available to defendants in AVO proceedings unless there are exceptional circumstances.³⁸

In respect of applications for an APVO, the court has a discretion to refuse to hear an application unless the complaint was made by a police officer. Where the complaint discloses allegations of a personal violence offence, an offence of stalking or intimidation with the intention to cause fear of actual physical harm, or harassment relating to the complainant's race, religion, homosexuality, transgender status, HIV/AIDS or other disability, there is a presumption in favour of hearing the application. A number of factors must be taken into consideration when determining whether or not to exercise this discretion. These include:³⁹

- the nature of the allegations;
- whether the matter is amenable to mediation or other alternative dispute resolution means, and the availability and accessibility of such services;

³⁷ Section 562BE.

³⁸ 'Applying for an Apprehended Violence Order', Legal Aid Commission, <http://www.lawlink.nsw.gov.au/lac.nsf/pages/avoapply>, accessed 3 February 2000.

³⁹ Crimes Act, section 562AK.

- whether the parties have previously attempted to resolve the matter by mediation or other means;
- the willingness and capacity of each party to resolve the matter otherwise than through a complaint for an APVO;
- the relative bargaining power of the parties, and
- whether the complaint is in the nature of a cross application, and any other matters considered relevant.

Certain measures are designed to protect children in AVO proceedings.⁴⁰ For example, AVO proceedings for the protection of a child under the age of 16 years are to be held in the absence of the public, unless the court directs otherwise. Even where the proceedings are open to the public, the court may ask any person to leave the court during the examination of any witness. A child under the age of 16 years is not to be required to give evidence in any AVO proceedings unless it is believed that without the child's evidence there would be insufficient evidence to determine the matter. When giving evidence, children have the right of a support person to be present. The name of a child involved in any AVO proceedings is not to be published or broadcast before the proceedings are commenced or before they are disposed of. Accordingly, the publication of any information or picture that identifies the child or is likely to lead to the identification of the child is prohibited. A person who publishes the name of such a child is guilty of an offence punishable by a fine of \$2,200 or two years imprisonment or both (\$220,000 in the case of a corporation). Following the 1999 amendments, a court may direct that similar provisions apply to persons involved in ADVO proceedings. Under the amendments, all persons have the right to have a support person present during AVO proceedings.

A new costs regime was inserted into the Act in 1999 whereby a court cannot award costs against the person for whose benefit an ADVO is sought, unless satisfied that the complaint was frivolous or vexatious. Similarly, a court is not to award costs against a police officer bringing a complaint unless satisfied that the officer made the complaint knowing that contained false or misleading material.

Breach of an AVO

Breach of an AVO is a criminal offence, and hence the required standard of proof in proceedings for breach is 'beyond reasonable doubt'. A person who knowingly contravenes a prohibition or restriction specified in an AVO is guilty of an offence punishable by a fine of up to \$5,500 or two years' imprisonment, or both. Where the breach involves an act of violence and the defendant is over 18 years of age, and the court determines not to impose a term of imprisonment, it must give its reasons for not doing so. A police officer who believes on reasonable grounds that a person has contravened an AVO may arrest and detain that person without a warrant, to be brought before a court as soon as practicable to be dealt with for the offence.

⁴⁰

These measures are contained in sections 562NA and 562NB of the Crimes Act.

3.1.3 *Issues for consideration*

Effectiveness of AVOs

Claims that the AVO scheme is being abused are widespread. The complaints about the AVO system usually fall into two broad categories – that domestic AVOs are being used in family court proceedings, and that personal AVOs are being sought for trivial and inconsequential matters wasting court time. Despite such claims, there have been only a handful of studies actually measuring the effectiveness of AVOs in Australia. The first was undertaken in 1989 and assessed the effectiveness of the *Crimes (Domestic Violence) Amendment Act 1982* (NSW).⁴¹ When asked ‘what did you think the order would do’, 68.9% stated ‘keep the defendant away’, and 44.4% stated that ‘the ADVO had achieved what they had expected’. There were a number of limitations to this study – the number of women granted an order and interviewed was small – 45, and 56.8% of subjects were referred to the study by one particular chamber magistrate, which means that the sample may be more reflective of population serviced by that particular court than the state as a whole. The second study was undertaken by the NSW Bureau of Crime Statistics and Research (BOSCAR) in 1997.⁴² The aim of this study was to ‘determine whether AVOs granted by NSW Local Courts reduce the risk, frequency or severity of violence experienced by the protected persons (persons granted an AVO) from the defendant’.⁴³ Some relevant findings of this study include:

- for the vast majority of subjects there was a reduction in violence, abuse or harassment from the defendant in the six months after the order was served on the defendant;
- more than 90% of interviewees in follow-up interviews conducted one, three and six months after the order was served stated that the AVO had produced benefits, including a reduction or elimination of contact with the defendant, feeling safer, experiencing peace of mind and enjoying a better quality of life;
- at each of the three follow-up interviews, approximately 90% of subjects stated that they would seek another AVO if a similar situation arose.⁴⁴

Overall, the Bureau concluded that ‘Apprehended Violence Orders are very effective, even after controlling for factors such as the level of contact between the parties.’⁴⁵ Similarly, a survey of NSW Magistrates opinions and attitudes towards AVOs published in August 1999 found that all respondents thought ADVOs were effective in responding to domestic violence. Only four respondents said they were of ‘limited use’ however they acknowledged that the process was a valid one. With respect to APVOs, 71% of magistrates thought they

⁴¹ Stubbs & Powel, n 13.

⁴² Trimboli & Bonney, n 21.

⁴³ Ibid, p. 18.

⁴⁴ Trimboli & Bonney, n 21, pp. vii-viii.

⁴⁵ Ibid, p. iii.

were effective in dealing with personal violence. Reasons offered as to why APVOs were not effective included:

- other methods such as mediation were more appropriate in these circumstances to resolve issues;
- the complaints were mostly trivial with no real violence involved;
- effectiveness depended on the parties involved;
- the process was abused, and
- often the orders were too late because actual violence had already occurred.⁴⁶

Abuse of AVOs in Family Court proceedings

It has been alleged by fathers' rights groups that women falsely claim domestic violence and seek AVOs in order to gain some tactical advantage against an ex partner in family law proceedings.⁴⁷ It is claimed their aim is to prevent men from having contact with their children, since in considering what order to make, the Family Court must ensure that any parenting order is consistent with any AVO and does not expose a person to an unacceptable risk of family violence.⁴⁸ This claim was supported by the Hon John Hannaford MLC in a debate in the Legislative Council in July 1999:

There is some reluctance by defendants of an interim apprehended violence order [AVO] to consent to an interim AVO because of the impact that that may have on custody or other proceedings. Whilst we might not like it, AVO proceedings are being used as tools in custody battles and in matrimonial arrangements. Solicitors have told me that they use AVO proceedings as tools in custody and other battles. I believe that that is an inappropriate use of AVOs. I know from what solicitors in regional areas have said to me that a number of defendants fight AVOs because of their concerns about the repercussions of those orders.⁴⁹

The NSW Judicial Commission survey of magistrates found that 90% of respondents agreed that ADVOs were used by applicants in Family Court proceedings as a tactic to aid their case and deprive their partner of access to children. Approximately one-third of those respondents thought that although it occurred, it did not occur often, and were in fact

⁴⁶ J Hickey & S Cumines, Judicial Commission of NSW, *Apprehended Violence Orders: a Survey of Magistrates*, Monograph Series No 20, August 1999, pp. 25- 27.

⁴⁷ NSW Attorney-General's Department, Criminal Law Review Division, *Apprehended Violence Orders: A Review of the Law*, Discussion Paper, August 1999, p. 8.

⁴⁸ Ibid.

⁴⁹ Hon J Hannaford MLC, NSWPD 1 July 1999, p. 1818.

suspicious of how often it was alleged compared to how often it appeared in their courts. In contrast, however, some respondents thought that women were advised by their solicitors to apply for orders and that the *Family Law Act* needs to be amended to overcome this problem.⁵⁰ Despite claims such as these, the Criminal Law Review Division's discussion paper notes that 'the allegation that women use AVOs to gain some tactical advantage in family law proceedings is not reflected in research on Family Court outcomes.'⁵¹ Further, the Discussion Paper states that '[t]he reality is that a claim of domestic violence does not necessarily impact on family law proceedings. There is no empirical evidence to suggest that women are under the impression that it does and deliberately manufacture false claims of domestic violence for this purpose.' It is argued that the fact that an ADVO complaint is made at the same time as an application for a family law order makes sense, given the number of ADVO complainants with dependent children, and the fact that violence often escalates at the time of separation, at which time future parenting arrangements also become an issue.⁵²

The Criminal Law Review Division discussion paper raised the issue of vexatious cross-applications for ADVOs. It is usually men who seek such orders, and occurs where, in response to being served with a complaint against them, a cross application may be used 'as a way for a perpetrator to get even with a victim and indicate to her once again, through the legal system, who is boss'.⁵³ It was noted in the discussion paper that although this issue has been raised, it 'has received very little attention in terms of empirical analysis'.

'Trivial/waste of time' personal AVO claims

It is claimed that APVOs are 'being sought in disputes between neighbours, in matters that once might have led to no more than unneighbourly silence'.⁵⁴ It is also being questioned as to whether Local Courts are in fact the most appropriate forum for many APVO disputes, particularly given the adversarial nature of litigation and the fact that the parties will generally have to continue to live or work in close proximity to one another. For example, the NSW Judicial Commission survey of NSW magistrates found that over half (52%) of the respondents to their survey believed that APVOs would be better dealt with in another forum. Counselling or Community Justice Centres were the most often suggested alternatives. Nearly one-third of magistrates indicated in the survey that the distinction should be made depending on the nature and extent of the violence complained of – where physical violence occurred Local Courts were the most appropriate whereas Community Justice Centres were more appropriate for 'trivial', non-violent matters.⁵⁵

⁵⁰ Hickey & Cumines, n 46, pp. 37-38.

⁵¹ Criminal Law Review Division, n 47, p. 8.

⁵² Ibid, p. 9.

⁵³ Ibid, p. 10.

⁵⁴ Editorial, *The Newcastle Herald*, 1 July 1999, p. 8.

⁵⁵ This was in contrast to 68% of respondents who believed the local court was the most appropriate forum for dealing with ADVO disputes: Hickey & Cumines, n 46, p. 21.

The Criminal Law Review Division found that there was ‘little empirical evidence either supporting or refuting the claim that APVOs are routinely being abused’.⁵⁶ The Discussion Paper cited the NSW Bureau of Crime Statistics and Research *Evaluation of the NSW Apprehended Violence Order Scheme* report, released in June 1997. The aim of the Bureau’s study was to evaluate whether protection orders designed to prevent domestic and/or personal violence are in fact effective. The study examined 51 APVO matters, and found that although neighbourhood disputes constituted the largest category (27.4%), a wide variety of circumstances can form the basis for an APVO complaint. An APVO complaint may arise from a work relationship (17.6%), a partner’s former partner (11.8%), a current/former friend or acquaintance (11.8%), a stranger (9.8%), a flatmate or tenant (9.8%) or some other relationship such as the ‘bloke in the pub’ (15.7%). The Criminal Law Review Division noted, however, that the study did not identify those APVOs that ‘arose from issues that could have been resolved other than through the AVO system.’⁵⁷ However, all of the respondents in the Judicial Commission’s survey of NSW Magistrates agreed that APVOs had been expanded to cover so many areas that they were open to abuse. A few suggested this was ‘even more so than with domestic violence orders’. Some respondents thought that these types of orders were used as a ‘social conscience’ to resolve non-violent disputes, and that this was evident in the number of withdrawals in these types of cases.⁵⁸ A number of proposals were suggested to overcome these problems, including a greater use of mediation and alternatives to court such as Community Justice Centres, more discretion for Clerks of Local Courts to refer matters to Community Justice Centres, and the imposition of a filing fee to discourage frivolous and vexatious matters. Note that a number of these recommendations were catered for by the *Crimes Amendment (Apprehended Violence) Act 1999*.

3.2 Injunctions under the Family Law Act 1975 and the Property (Relationships) Act 1984

3.2.1 Family Law Act 1975

There is provision under the *Family Law Act 1975* (Cth) (‘the Family Law Act’) for an injunction to be obtained for the protection of any party to a marriage or for the protection of a child.⁵⁹ The injunction may be sought by a married adult, or the parent of a child, the child or any person who has an interest in the welfare of the child. ‘Child’ is given a broad definition and would, therefore, include a step-child, allowing an injunction to protect a child from a step-father’s abuse violence. An injunction may be obtained even though there are no other proceedings before the Family Court, although in practice it is most often sought in conjunction with other proceedings before the Court. The injunction may include whatever conditions the court thinks necessary. For example it may restrain a party to the marriage from entering or remaining in the matrimonial home, from being in the area in

⁵⁶ Criminal Law Review Division, n 47, p. 11.

⁵⁷ Ibid.

⁵⁸ Hickey & Cumines, n 46, pp. 44-45.

⁵⁹ *Family Law Act 1975* (Cth), section 114; 68B.

which the matrimonial home is, or the premises in which the other party to the marriage resides, from entering the place or work of the other party to the marriage, or in relation to the property of the marriage.⁶⁰

There are, however, a number of disadvantages to Family Court injunctions when compared to AVOs, which make the latter more attractive to people seeking protection:

- If an injunction is obtained and then breached, the victim must follow up the breach by initiating proceedings – enforcement is not a police matter as in the case of AVOs, although if the injunction is broken and the police believe the breach amounts to actual or threatened violence the police may arrest the person.⁶¹
- The procedure for enforcement is slow: an application must be made to the Family Court, and contravention must be proved beyond reasonable doubt. This can present problems as the Family Court is not a criminal court and judges have shown reluctance to deal harshly with those who breach injunctions. However, the Court does have a wide range of punishment options for breach, including gaol, a fine or recognisance order, or a work order, periodic detention or community service order.
- The philosophy of the Family Court – promoting conciliation and other dispute resolution means including counselling – is not so well suited to domestic situations particularly for the victim who may not feel comfortable attending counselling with his or her possibly abusive partner.⁶²
- It is not possible to apply for a Family Court injunction if a protection order is being sought under state or territory legislation.

3.2.2 *Property (Relationships Act 1984)*

Injunctions are also available to de facto spouses and those in a domestic relationship under Part 5 of the *Property (Relationships) Act 1984*.⁶³ A court may grant an injunction to a

⁶⁰ Family Law Act section 114.

⁶¹ The author of *The Laws of Australia* notes that state and territory police are often unaware of this power of arrest or uncertain of their powers in respect to it. The author also notes that it has been recommended that the power of arrest should be available for any breach of an injunction (for example a breach of an order not to harass), not only one which results in actual or threatened violence: see *The Laws of Australia*, n 23, ¶59.

⁶² A practice note was issued by the Chief Justice of the Family Court in 1993 recognising this problem, in which it noted that mediation is not normally appropriate in cases involving domestic violence because a victim will often be severely disadvantaged and conciliation may not be a proper way of dealing with the violence: *The Laws of Australia*, n 23, ¶55.

⁶³ The *De Facto Relationships Act 1984* was amended and renamed the *Property Relationships Act 1984* following passage of the *Property (Relationships) Legislation Amendment Act 1999* which received assent in June 1999. The Act created an umbrella term – ‘domestic relationship’ which covers both a *de facto relationship* which has been defined to describe a relationship in which the two people involved live together as a couple and are not married to one another or related by family (hence would include both a heterosexual and homosexual relationship) and a *close personal relationship*, in which the

party to a domestic relationship for the personal protection of that party or of a child residing in the same household. The injunction may restrain a party to a domestic relationship:

- from entering the premises or an area in which the premises are situated, in which premises the other party to the relationship resides;
- from entering the place of work of the other party to the relationship or the place of work of a child of the relationship, or
- relating to the use or occupancy of the premises in which the parties to the relationship reside.

Failure to comply with an injunction under part 5 of the *Property (Relationships) Act* is a criminal offence, punishable upon conviction by a magistrate by imprisonment for six months.

In their discussion of injunctions, the authors of *The Laws of Australia* concluded that

Overall, there is probably little point in using an injunction to provide protection as compared with an apprehended violence order. [However] the injunction may be perceived to be a less harsh response to domestic violence, and it may therefore be easier to secure an agreement to an injunction from the violent party.⁶⁴

3.3 Bail Act 1978

In NSW, there are four tiers of eligibility for bail, depending on the seriousness of the offence.⁶⁵ The four tiers are:

- 1) a right to release on bail for minor offences;
- 2) a presumption in favour of bail for certain non-violent offences;
- 3) no presumption either in favour or against bail being granted, and
- 4) a presumption against bail for certain drug offences.

parties live together and one or each of the parties to the relationship provides the other with domestic support and personal care. This would include for example, a daughter or son who cares for an aged parent in his or her own home: NSW Legislative Council Standing Committee on Social Issues, *Domestic Relationships: Issues for Reform, inquiry into De Facto Relationships Legislation*, Report No 20, December 1999, p. 35.

⁶⁴ *The Laws of Australia*, n 23, ¶61.

⁶⁵ See further *Bail in NSW*, Briefing Paper No 25/97 by Rachel Simpson, particularly pages 10-12.

The *Bail Act 1978* (the Bail Act) specifically caters for domestic violence cases by restricting the availability of bail for those accused of domestic violence crimes. It does this by including domestic violence offences in the third tier of eligibility for bail (above).⁶⁶ Domestic violence offences include breach of an AVO. Other offences in this category include murder, attempted murder or conspiracy to commit murder, aggravated robbery, armed robbery and certain drug offences. In cases where there is no presumption in favour of bail, it does not mean the person becomes ineligible for bail and bail cannot be granted. It simply means that the accused must prove to the court why bail should be granted.

Domestic violence victims are also protected by the criteria which must be taken into consideration when determining a bail application. These criteria are contained in section 32 of the Bail Act and are relevant because only those criteria listed in section 32 can be taken into consideration. No other considerations are deemed relevant, 'to avoid the introduction of non-relevant or otherwise inappropriate criteria'.⁶⁷ The criteria are:

- 1) the likelihood of the accused appearing in court if granted bail;
- 2) the interests of the accused;
- 3) the protection of the alleged victim, and
- 4) the protection and welfare of the community.

The third criterion was inserted into the Bail Act by the *Bail (Personal and Family Violence) Amendment Act 1987* to enable bail legislation to be used effectively to protect victims of sexual and domestic violence. This criterion ensures that the police or court 'direct their attention to the well-being of the victim' in a decision about bail in any case of sexual assault or domestic violence.⁶⁸ When determining a bail application, the protection of any person against whom it is alleged the offence concerned was committed, the close relatives of the alleged victim and any other person in need of protection because of the circumstances of the case must be taken into consideration.⁶⁹ Furthermore, a victim of an alleged domestic violence offence has the right to appeal whatever decision is made in regards to bail of the accused under section 48(1)(a)(iii) of the Bail Act.

⁶⁶ *Bail Act 1978*, section 9, 9A. This restriction was first inserted into the Bail Act by the ***Bail (Personal and Family Violence) Act 1987***, according to which an exception to the presumption in favour of bail was made 'in the case of a domestic violence offence, if the accused person has previously failed to comply with any bail conditions imposed for the protection and welfare of the victim. This presumption is restored only if the relevant officer or court is satisfied that those bail conditions will be observed in future': J Dowd, MP, NSWPD, 29 October 1987, p. 15467. The ***Bail (Domestic Violence) Amendment Act 1993*** further extended the restriction, to include domestic violence offences where there has been a history of violence.

⁶⁷ Hon F Walker, MP, NSWPD, 14 December 1978, p. 2016.

⁶⁸ J Face, MP, NSWPD, 17 November 1987, p. 16152.

⁶⁹ Bail Act 1978, section 32(1)(2A).

The final means by which bail can be used to protect victims of domestic violence is to attach conditions to the bail, which provide the same protection as may be found in an AVO. For example, it may provide that the accused be prohibited from any contact with the victim. When the accused first appears in court, the magistrate is required by section 562O(2)(a) to inquire of the victim, if present, whether he or she has applied or wishes to apply for an AVO. The court may then grant the AVO rather than applying conditions to the accused's bail.⁷⁰

4.0 POLICING DOMESTIC VIOLENCE

In December 1999 the NSW Ombudsman released a report titled *The Policing of Domestic Violence in NSW*. The purpose of the report was 'to canvass possible ways in which the Police Service may be better able to utilise its limited resources and continue to improve its service delivery in the domestic violence area'.⁷¹ The Report noted that, while domestic violence is clearly a concern for the whole community, it is the police who in the majority of cases intervene at an early stage. Thus the response of the police to an initial call for assistance in a domestic violence matter is crucial for the immediate protection of the victim, as well as for the outcome of the matter, including whether victims feel confident in contacting the police in regard to future cases of domestic violence.⁷² Some illustrations of the role of the police in responding to domestic violence are summarised below. These are results from the NSW Bureau of Crime Statistics and Research evaluation of AVOs in NSW:

- Approximately one-third (32.3%) of respondents first heard about ADVOs from police, and just over half of respondents (51.2%) first heard about APVOs from police. Other sources of first knowledge include family/friends, previous experience with AVOs or solicitor/doctor.⁷³
- 77.1% of ADVO subjects whose complaint had been initiated by police officers expressed satisfaction with the way in which their complaint was handled. 22.9% expressed dissatisfaction with the way in which their complaint was handled. Reasons for dissatisfaction include:
 - police gave insufficient information or explanation;
 - police were unsympathetic, rude or indifferent;
 - police refused to take action or press charges;
 - police were inefficient, slow or incompetent;

⁷⁰ *The Laws of Australia*, n 23, ¶29.

⁷¹ NSW Ombudsman, *The Policing of Domestic Violence in NSW Report*, December 1999, p. 1.

⁷² *Ibid*, pp. 1-2.

⁷³ Trimboli & Bonney, n 21, p. 33.

- police didn't take the complaint seriously, or
- police gave misleading or confusing information.⁷⁴
- Almost three-quarters (72.4%) of ADVO subjects were represented in court by the police prosecutor. 11.7% were represented by a solicitor, 14.3% were unrepresented and 1.5% were represented by legal aid. In comparison, only 32% of APVO subjects were represented by the police prosecutor. 14% were represented by a solicitor and 54% were unrepresented.

4.1 Police powers in relation to domestic violence

The intention underlying legislation and policy in respect to police powers and domestic violence favours police intervention, so as to protect and support victims of domestic violence and at the same time send a clear message to perpetrators that their actions are unacceptable.⁷⁵ The *Crimes Act* provides that police *must* apply for an AVO if the police officer suspects or believes that a domestic violence offence has been committed, or is imminent, or is likely to be committed against a person in need of protection.⁷⁶ There are two exceptions to this requirement where the person in need of protection is over 16 years of age and the police officer believes the person intends to apply for an AVO themselves, or where the police officer believes there is 'good reason' not to seek an AVO (officers are required to make a written record of the reason for not applying for an AVO). Hence, despite the requirement to apply for an AVO in cases of domestic violence, in reality police do have a discretion not to do so.

Police Service guidelines in relation to an officer's power of arrest state that, whereas in most areas of policing it is emphasised that the discretion to arrest a person for the commission of a criminal offence should only be exercised as a last resort, in the case of domestic violence offences arrest should be a more favoured alternative:

When officers are satisfied a domestic violence offence has been committed, as your first option, the strongest consideration is to be given to exercising your powers in favour of arresting alleged offenders.⁷⁷

The purpose of this direction is stated in the *Operating Procedures*: 'stopping the conflict and the protection and immediate safety for victims is paramount'. Ongoing protection for the victim is also to be considered through appropriate charges, bail conditions and/or telephone interim orders, interim orders and AVOs.⁷⁸

⁷⁴ Ibid, pp. 35-36.

⁷⁵ NSW Ombudsman, n 71, p. 20.

⁷⁶ Section 652C(3).

⁷⁷ NSW Police Service, *Domestic Violence Standard Operating Procedures*, 1997, 6, in NSW Ombudsman, n 71, p. 4.

⁷⁸ NSW Ombudsman, n 71, p. 19.

Breach of an AVO constitutes a criminal offence. Where there is a suspected breach of an AVO, the *Operating Procedures* state

The role of an officer is to thoroughly investigate breaches of AVOs. Where there is sufficient evidence, charge the offender with breaching the order, as well as [any] substantive offence.⁷⁹

As noted in the NSW Ombudsman report, these guidelines seem to be drafted in such a way as to suggest where there is sufficient evidence of a breach of an AVO, a police officer ‘has no discretion as to whether to prefer a charge in relation to the breach’.⁸⁰ However, in practice officers do exercise their discretion as to whether a charge should be preferred. In the BOSCAR study, there were 115 breaches of AVOs of which 41 (35.6%) were reported to the police. The main reasons why breaches were not reported to the police were:

- subject suffered no physical injury (17.6%)
- subject believed it would make matters worse (17.6%)
- waste of time or police couldn’t do anything (16.2%)
- subject was dealing with the breach or was using other means to deal with the breach (14.9%)
- let breach go first time (10.8%)
- insufficient evidence of breach (9.5%)
- don’t know why didn’t report (8.1%)
- breach didn’t bother subject (6.8%)
- other (including police action would threaten other negotiations, police action would have negative implications for other people, subject ‘didn’t want to cause trouble’ and insufficient English language skills) (14.9%)⁸¹

Table 4.1.1 (on page 32) shows what action police took in response to the call from the subject in relation to the breach.

⁷⁹ NSW Police Service, n 77, p. 11.

⁸⁰ NSW Ombudsman, n 71, p. 4.

⁸¹ Trimboli & Bonney, n 21, p. 60. Note that percentages do not add up to 100% because of multiple responses given.

Table 4.1.1 Police responses to subject's report of breach of AVO

Response	No	%
Police took no action	30	73.2
Police arrested or proposed to arrest or proposed to summons defendant	9	22.0
Police warned or proposed to warn defendant	4	9.8

Note: Percentages do not add up to 100% because of multiple responses. 41 subjects reported the breach to police in the three phases – 24 in phase 2, 7 in phase 3 and 10 in phase 4.

Source: Trimboli & Bonney, NSW Bureau of Crime Statistics and Research, *An Evaluation of the NSW Apprehended Violence Order Scheme*, June 1997, p. 59.

In the vast majority (73.2%) of cases, police took no action in response to the breach of the order. Table 4.1.2 shows the reasons why police took no action.

Table 4.1.2 Breaches reported to the police – reasons for police taking no action

Response	No	%
Police claimed insufficient proof of breach	6	20.0
Police rejected that breach had occurred or considered breach too trivial for action	6	20.0
Subject requested that police take no action	3	10.0
Police claimed order not yet served or claimed order 'not in computer'	3	10.0
Police suggested 'let it go first time'	2	6.7
Police claimed any action by them would antagonise defendant	2	6.7
Police failed to attend or attended after long delay then did nothing	2	6.7
No reason given by police for their inaction	2	6.7
Other (incl suggesting subject see solicitor, claiming defendant was not in their jurisdiction, warning subject that she would have to go to court if they proceeded)	4	13.3

Source: Trimboli & Bonney, NSW Bureau of Crime Statistics and Research, *An Evaluation of the NSW Apprehended Violence Order Scheme*, June 1997, p. 59.

4.2 Satisfaction with Police Service response to domestic violence

A majority (87%) of submissions to the NSW Ombudsman's inquiry claimed that, in their experience, police had at some time failed to act on a reported breach of an AVO.⁸² Many submissions stated that Police Service guidelines for responding to domestic violence were not adequate. A further 87% of submissions stated that they had experiences in which officers did not follow the standard operating procedures in relation to domestic violence, and 47% alleged delay or inaction on the part of police in responding to an initial report of domestic violence. Some examples of concerns raised in submissions include:

- police did not arrest the alleged offender even where an assault had been committed, notwithstanding Police Service policy;

⁸² *ibid*, p. 23.

- some officers fail to take out an AVO in circumstances where legislation requires them to do so;
- some officers are overly reliant on victims to make decisions in circumstances where police are required to take action, and
- officers fail to record or properly record information either in their notebooks or on COPS (Computerised Operational Policing System).⁸³

Domestic Violence Liaison Officers (DVLO) are attached to 165 patrols across NSW, either in a full or part-time capacity.⁸⁴ The DVLO role was created to ensure an effective response to the needs of victims of domestic violence. Duties of the DVLO include:

- providing specialist advice to other officers on specific domestic violence cases and on updated policies;
- supervising other officers who attend domestic violence incidents by monitoring and checking COPS entries they make in regard to those incidents;
- attending court on AVO list days;
- providing information and support to victims of domestic violence, and
- conducting liaison with community groups and domestic violence workers in the local area.

Forty-eight per cent of submissions received by the NSW Ombudsman made positive comments about DVLOs.

5.0 CONCLUSION

It has been estimated that domestic violence costs the community billions of dollars every year in social and economic losses.⁸⁵ It is therefore in everyone's interest to reduce the level of domestic violence in the community. The apprehended violence order scheme is the primary means by which victims of domestic violence are protected, although there are other avenues including refusing bail or imposing bail restrictions on those accused of domestic violence which may also be effective. However, until the level of domestic violence reported to police increases, such measures will only benefit a small proportion of victims. This seems to be a productive focus for future action.

⁸³ NSW Ombudsman, n 71, pp. 19-20.

⁸⁴ 'NSW Police Liaison Officers Domestic Violence', accessed from the Police Service web site, <http://www.police.nsw.gov.au/services/detail.cfm?ObjectID=91&SectionID=liaison>, 9 March 2000.

⁸⁵ *Costs of Domestic Violence*, NSW Government, 1991, extracted in Model Domestic Violence Laws Report, n 10, p. 1.