



31 July 2015

Ms Emma Worthington
Department of Justice

By email: Emma.Worthington@agd.nsw.gov.au

Dear Ms Worthington,

Review of Police-Issued Apprehended Domestic Violence Orders Reforms

1. Women's Legal Services NSW (WLS NSW) thanks the Department of Justice for the opportunity to provide comment on the Police-Issued Apprehended Domestic Violence Order (ADVO) Reforms.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. A significant proportion of our work involves working with women who have experienced domestic and family violence.
4. In addition to providing feedback about the Police-issued ADVO Reforms we also raise more general issues relating to Police responses to domestic violence.

Correct identification of primary aggressor and primary victim

5. For a number of years WLS NSW has raised concerns about the incorrect identification of the primary aggressor and primary victims by NSW Police in domestic violence situations.
6. In 2014 we published a report entitled *Women Defendants to AVOs: What is their experience of the justice system?* This report is an exploratory study of WLS NSW 2010 experience of representing women who were defendants to ADVO proceedings. While the research was limited by a number of factors and is not a random sample of NSW cases, the results highlight some of the systemic issues experienced by women



AVO defendants.

7. As outlined in the executive summary of the report:

The study findings include that over two-thirds of [WLS NSW] women clients defending AVOs reported that they were the victims of violence in their relationship. Fewer than 40% of these clients had a final AVO made against them when the case came before the court....

In the majority of cases where women were defending AVOs, the other party's complaint related to a single incident only. In several of these cases injuries to the other party could be indicative of self-defence, such as scratching or biting on the arm or hand.

8. We have continued to see the incorrect identification of women defendants as primary aggressors since the introduction of Police-issued ADVOs. In some of these cases women who contacted our service in the context of defending an ADVO reported experiencing violence allegedly perpetrated by the person the Police identified as the primary victim, including choking, strangling, punching and attempted sexual assault. In some instances the wounds of the other party were self-inflicted or defensive wounds, such as scratching.
9. Consistent with the findings in our 2014 report, women continue to feel their version of events are not viewed as credible compared with the other party, due to their heightened stress and anxiety. Our clients' trauma may manifest as behavior that is considered to be hysterical, unco-operative or aggressive compared to the other party who may present as calmer, more measured and therefore more believable in terms of their version of events. This is further supported by anecdotal feedback from domestic violence services.
10. Furthermore in our experience women are more likely to make admissions about their actions than do men and those admissions are often used inappropriately; sometimes to lay charges, but at least as the basis for an ADVO to be taken against the woman without a full investigation and consideration of the respective protection needs of the parties.
11. We are also hearing anecdotally from domestic violence services that they have seen a number of female clients who are known to their service who have been victims of domestic violence being charged with assault and defending applications for ADVOs. These women are being listed as perpetrators at a Safety Action Meeting but during the meeting are identified as victims of domestic violence, frequently having been a victim of domestic violence for several years.
12. We recommend that statistics be collected about the number of women defendants to ADVOs, including provisional, interim and final orders and details of whether the ADVO was by consent, consent without admissions or after a contested hearing. These statistics should include both Police and private ADVOs, including the breakdown of women defendants to Police-issued ADVOs. This data should be published.

13. We refer to the Victoria Police – Code of Practice for the Investigation of Family Violence. There are at least five key references to “primary aggressor” throughout the Code of Practice. At 3.1 a number of important key indicators to identify primary aggressor are listed:
- i. Respective injuries
 - ii. Likelihood or capacity of each party to inflict future injury
 - iii. Whether either party has defensive injuries
 - iv. Which party is most fearful
 - v. Patterns of coercion, intimidation and/or violence by either party
14. We recommend consideration be given to including similar key indicators in the NSW Police Force Standard Operating Procedures.
15. We further recommend ongoing training for Police about the nature and dynamics of domestic violence and primary victim and primary aggressor policy.

Standard of proof

16. We frequently hear from women through our legal advice line and outreaches that they have reported domestic violence to Police, including threats to harm and/or kill and technology facilitated stalking and abuse, but Police commonly respond that there is insufficient evidence for an ADVO and/or insufficient resources to investigate. This is an issue of concern that we have also heard from other domestic violence services in NSW.
17. If there are no witnesses other than our clients to the incidents of domestic violence our clients are often told by Police there is insufficient evidence even though a statement by a person in need of protection (PINOP) may be sufficient evidence for an ADVO or a charge.
18. In our experience there appears to be confusion and misunderstanding on the part of Police about the standard of proof required for an ADVO application, with Police confusing the test for criminal charges and Police obligations to apply for an ADVO in certain circumstances and the discretion to do so.
19. Further, we have identified through our casework the need for better documenting of a victim’s injuries, including the gathering of forensic evidence such as photographs. For example, in response to an incident where the other party tried to strangle our client the Police response was “You’re only red around the neck”.
20. In another incident, Police failed to photograph our client’s obvious domestic violence related injuries. Further, there was a failure to apply for an ADVO for our client’s protection in circumstances where the other party made admissions of violence in his statement. Instead our client was charged.

21. Since 1 June 2015 Police can make a video and/or audio recording of the domestic violence complainant's statement about a domestic violence offence as soon as reasonably practicable after a domestic violence incident which can be used as the complainant's evidence-in-chief at court.
22. We anticipate this may go some way to addressing inadequate forensic evidence.
23. However, bruising or soft tissue injury may not be evident at the time Police attend an incident. Police resources must be committed to ensure forensic evidence is captured which may not be evident at the time of the assault.
24. There also needs to be better resourcing of health services to provide forensic examinations across NSW. Additionally this needs to be consistently offered and available as a routine part of Police domestic violence investigations.
25. We also recommend regular and ongoing opportunities for Police training about domestic violence and the law in addition to the nature and dynamics of domestic violence and the identification of the primary victim and aggressor.

Including children on ADVOs

26. Section 38(2) of the *Crimes Domestic and Personal Violence Act* requires the inclusion on the ADVO of any child(ren) with whom the PINOP has a domestic relationship. Section 38(3) provides that the court or issuing officer does not need to comply with this where they can show "good reasons for not doing so". They are required "to give the reasons for not doing so".
27. Based on our experience of assisting women with ADVOs it is often the case that children are not included on an ADVO where the mother is the PINOP. It is rare that "good reasons for not doing so" are provided. This failure to include children has continued since the introduction of Police-issued ADVOs reforms.
28. For example, a mother was threatened with a weapon by the person of interest in her home and her children were at home in a different room during the incident and the children were not included on the ADVO.
29. In another example the father threatened to kill the mother with a weapon he had in his hands. The mother and child were in her car at the time and the father standing in front of the car blocking her exit. The mother was named on the ADVO but the child was not.
30. In another case an ADVO was taken out for the protection of the mother in response to an alleged sexual assault. The sexual assault took place in another room while the young child was in the house. The child was not included on the ADVO.
31. Furthermore, when a request is made by a mother for her children to be added to her ADVO, Police often refuse to do so.
32. It is also of concern that Magistrates appear reluctant to include children on ADVOs where Police have failed to do so.

33. We recommend greater accountability with respect to the provision of good reasons as to why children are not included on an ADVO including providing the PINOP with written reasons why their children are not included on the ADVO.

34. We believe it would be useful to collect and publish data on the following:

- number of ADVOs where the PINOP is male and children are included on the ADVO and the circumstances for inclusion;
- the number of ADVOs where the PINOP is female and children are included on the ADVO and the circumstances for inclusion; and
- number of ADVOs where only the children are included as the PINOP and the circumstances for inclusion, as well as the number of such ADVOs where orders in addition to the mandatory orders are included and the nature of such orders.

Data should be across provisional ADVOs, interim ADVOs and final ADVOs and include both Police applications and where Magistrates have added children.

General unwillingness to change provisional order

35. It is also our experience as well as the experience we have heard anecdotally from some domestic violence services that there is a general unwillingness on the part of Police to change a provisional order.

36. Exclusion orders have not been sought in situations where they are appropriate, including the person of interest having alternative accommodation.

37. It would be useful to publish data about the number of applications to change a provisional order before the first mention date and the circumstances of such requests.

Breach of ADVOs

38. We acknowledge the work of NSW Police in prosecuting breaches to ADVOs. We understand that over 70% of reported breaches that are recorded by Police result in applications to court about breaches of ADVOs. This is to be commended.

39. However, we are concerned that not all breaches reported to Police may necessarily be recorded and so are not investigated.

40. Additionally, women often tell us that they have been told by Police that the breach was “only a technical breach” and so a charge of breach of ADVO is not laid.

41. Alternatively, women are told there is insufficient evidence for a charge of breach of ADVO as “there are no witnesses”. One of our clients had an ADVO for her protection which included no contact orders. The person of interest contacted the PINOP from a private number and spoke to the PINOP. Police refused to lay charges for a breach of ADVO as there was insufficient evidence because it was “just her word”.

42. On other occasions, Police respond to reports of breaches of ADVOs from our clients

with comments such as “He’s a father. He only wants to see the kids”. This has been said in the context of a charge and conviction where the terms of the good behaviour bond make clear the defendant is not to be in the area in which the PINOP lives and the PINOP is very fearful for her safety.

43. Another issue of concern includes that there may be delays in investigating breaches of ADVOs.
44. We recommend research into reports of breaches of ADVOs and the proportion of these that are recorded in Police systems, investigated and prosecuted in addition to conviction rates for breach of ADVOs. This data should be made publicly available.

Police accountability

45. We also recommend Police accountability with respect to the use of discretion to seek an ADVO, include children on an ADVO, provide good reasons for not including children on an ADVO and respond to breaches of ADVOs. This data should be publicly available.
46. In our submission in response to the Review of Police Oversight in NSW we recommended a specialist domestic violence and sexual assault unit within a single independent body. We note the complexity of domestic violence, including sexual assault, lends itself to specialisation and in our experience is essential to good practice.
47. We also recommended specialist domestic violence and sexual assault units within Police to investigate Police responses to domestic and sexual violence matters. These could be complaints referred back from the independent body that are deemed by their specialist unit “not to be serious” as well as Police undertaking a mandatory review of Police responses to domestic and sexual violence. The review could happen by way of an annual audit of at least 40% of randomly selected cases involving Police response to domestic and sexual violence incidents.

If you would like to discuss any aspect of this submission, please contact me or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,
Women’s Legal Services NSW



Pip Davis
Acting Principal Solicitor