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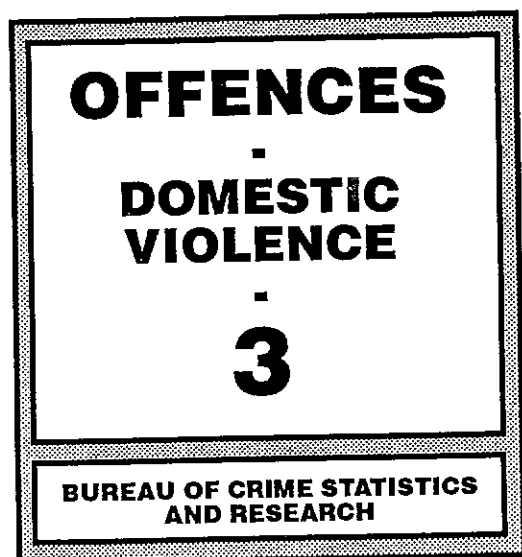
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Domestic violence : impact of legal reform in NSW
1989

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**DOMESTIC VIOLENCE:
Impact of Legal Reform in NSW**

Julie Stubbs
Diane Powell

NSW Bureau of Crime Statistics and Research
Attorney General's Department

1989

Published by the Bureau of Crime Statistics and Research

Attorney General's Department
8-12 Chifley Square, Sydney

ISBN 0 7035 7021 5



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PREFACE

Effective crime control strategies are hard to find, especially in the area of criminal violence. The probable success of the Apprehended Domestic Violence Order (ADVO), in curbing the incidence of domestic violence, is all the more to be welcomed for this reason. The success of the order cannot, of course, be gauged in any direct way, since it is impossible to measure the true incidence of domestic violence in the community. The present report, however, provides compelling indirect evidence of the success of ADVOs.

The number of orders granted by the courts rose from 423 in 1984 to 1,426 in 1987, an increase of over 200 per cent. Last year the number of orders granted by the courts more than doubled again, to 3,439. It is hard to believe that such a sharp increase in the utilization of these orders would occur were they not frequently effective in protecting victims of domestic violence from further assault. Indeed, as the present report shows, nearly 70 per cent of the women surveyed who sought such orders expressed at least some measure of satisfaction with the effect of the order in curbing violence.

The report also confirms a marked improvement in the willingness of police to lay charges rather than leave the victim to initiate court proceedings. Although victim initiated and police initiated ADVOs have both increased in frequency, police initiated orders have increased far more rapidly than those initiated by victims. This is reassuring given the traditional ambivalence shown by police toward assaults in domestic circumstances. No doubt it is also in part responsible for the decline in the proportion of cases withdrawn from the courts by complainants. Despite the increase in police-initiated ADVOs, however, the great majority of orders are still secured by the victims themselves.

Apart from the findings already mentioned, the report contains much valuable information on the experiences of victims of domestic violence both in relation to the assaults themselves and in relation to the contact victims have with police, chamber magistrates and the courts. It is hoped that this information will further assist in raising public understanding of the problems and needs of such victims.

Dr. Don Weatherburn
Director



ACKNOWLEDGEMENTS

The NSW Bureau of Crime Statistics and Research has monitored the Crimes (Domestic Violence) Amendment Act since its introduction in 1983. Over this period many members of the Bureau's staff, past and present, have contributed to the project, and their assistance is gratefully acknowledged.

Particular thanks are due to Isabel de Meur, Judy Putt and Genevieve Vignes, who together with Julie Stubbs collected the data from Local Courts which is analysed in Chapter 3. Isabel de Meur was also largely responsible for establishing and maintaining a database relating to bail determinations and Apprehended Domestic Violence Orders.

Much of the impetus for the section of the project involving interviews with victims of domestic violence came from Robyn Lansdowne, the Lecturer in Law at the University of NSW. The interview schedule used in the project was designed by Robyn and Julie, with the assistance of Ann Mara. The co-operation and support of the workers, residents and ex-residents of Bringa Women's Refuge in participating in the pilot testing of the interview schedule is also acknowledged.

The chamber magistrates at 19 metropolitan and suburban courts gave their support to the project by referring victims of domestic violence to the research team for interviews. Seventeen chamber magistrates were interviewed about their own experiences of the legislation. Without their assistance this section of the project would have been difficult to pursue, and their assistance in that regard is very much appreciated as is the support of the Local Courts Administration and the Chamber Magistrates Conference.

The work of contacting women for interview, maintaining contact with those women until three months after the finalisation of court proceedings, and organising and co-ordinating interviews was done efficiently and sensitively by Jennie Burrows and Diane Powell. The interviews with the women were conducted by Ann Mara, Dee McShan, Alix Goodwin, Diane Powell and Julie Stubbs.

Data analysis and the writing of the report were carried out by Diane Powell and Julie Stubbs, and the report was edited by Tom Robb.

Word processing of the manuscript was done by Carmel Byrne, Tina Manoleros, Tricia Myers and Jackie Robinson. Cover design was by Johnny Bruce.

The research was supported and assisted by many people concerned with the issue of domestic violence, in particular the members of the NSW Domestic Violence Committee, the Domestic Violence Advocacy Service, and Mr. Bill Wheeler, the then Clerk of the Local Court at Burwood.

Most importantly, the research could not have proceeded as it did without the courage and co-operation of the many victims of domestic violence who agreed to speak about their own experiences of violence, and their attempts to seek a legal remedy.



CHAPTER 1

INTRODUCTION

The 1980s has seen the re-emergence of domestic violence as a significant social issue in Australia.¹ Most State governments have conducted inquiries into domestic violence in recent years, and many States and the Australian Capital Territory have introduced legislative reforms. Proposals for law reform are currently under consideration in the Northern Territory, and the Queensland Task Force on Domestic Violence has recently produced its report.

In NSW the Crimes (Domestic Violence) Amendment Act, 1982 was introduced on 18 April 1983, based largely upon the recommendations of the NSW Task Force on Domestic Violence which had been established by the then Premier, Mr. N. K. Wran. The NSW Bureau of Crime Statistics and Research was directed by the Premier to monitor and evaluate that legislation in conjunction with the NSW Domestic Violence Committee.

Definition

Domestic violence was defined by the NSW Task Force as that violence perpetrated by a man upon a woman with whom he lived or had lived, although it was recognised that other forms of family violence do exist.

The definition of domestic violence, however, and even the term itself is not uncontroversial (Pahl, 1985). The report of the Victorian inquiry, for example, uses the term 'criminal assault in the home' in preference to that of 'domestic violence', which is seen as euphemistic (Women's Policy Co-ordination Unit, 1985; Scutt, 1986). The legislation adopted in that State refers to family violence (Crimes (Family Violence) Act, 1987), and like the South Australian provisions (enacted by way of the S.A. Justices Act) applies to a much broader range of relationships than the NSW legislation (prior to February 1988). Others have commented that gender-neutral terms such as domestic violence obscure the reality that a vast majority of such violence is directed by men against women (Scutt, 1986) and, as such, some authors prefer the use of terms such as wife assault or wife battery.

Whilst much of the literature differentiates violence between adult partners from other forms of family violence, that is not always the case, and the term 'domestic violence' is sometimes used to incorporate issues such as child abuse or elder abuse. There is also much variation in the extent to which non-physical 'violence' is acknowledged by literature concerning domestic violence.

¹Allen (1986) indicates that nineteenth-century feminists had paid much attention to wife battering.

Since the purpose of this report is to present the findings of an evaluation of the Crimes (Domestic Violence) Amendment Act, it is the legislative definition of domestic violence which is the focus; that is, physical violence, harassment or molestation between people who live together or have lived together in a marital or de facto relationship. The available data, however, from criminal justice agencies and from relevant research rarely conform to that legislative definition. In preparing this report, it has been necessary to gather and interpret a range of available data incorporating various operational definitions of domestic violence. Thus, not all of the following information may relate to that behaviour specified in the legislation.

The nature of domestic violence

Whilst theoretical approaches to the study of domestic violence vary (see Knight and Hatty, 1987; Gelles, 1980), there is general agreement within the literature that domestic violence is widespread, not historically or culturally specific and is primarily male violence directed against women within the family.

That domestic violence encompasses psychological abuse, harassment, threats, physical and sexual violence and murder is amply demonstrated by the literature. Research conducted in NSW by Alison Wallace (1986), for example, demonstrated that one in four of all homicides which occurred during the period 1968 to 1981 was a spouse killing. In almost half of these (48%) there was evidence of previous domestic violence - usually male violence directed against a female spouse. (For a discussion of women who kill in response to domestic violence see also Bacon and Lansdowne (1982); Jones (1980).)

Whilst it is the more extreme forms of violence which capture public attention, reinforcing the notion that domestic violence is perhaps rare, pathological or aberrant, the reality is more mundane. As Johnson (1981) argues, domestic violence is an all too common feature of family life.

Early theoretical accounts of domestic violence tended to focus upon the individual characteristics of offenders and/or victims. The 'victim blaming' approaches of some of the psychiatric literature (see for example Gayford, 1979) were the more extreme examples of an approach which saw the causes of domestic violence in psychological disorder.

More recent approaches have advocated the role of social-structural factors and have included a range of models developed within the social psychological and sociological traditions. These are reviewed more thoroughly by Gelles (1980) and include, for example, the examination of issues such as the transmission of violence from one generation to another, family interaction patterns, socially structured inequality, cultural and sub-cultural factors and attitudes towards violence.

Feminist theory and research have contributed much to the analysis of domestic violence in recent years. The manner in which historical and contemporary social and legal institutions have supported and

sustained the practice of domestic violence has been carefully argued by a number of more recent works such as those of Dobash and Dobash (1979, 1981) in Scotland, Freeman (1979) in England and Judith Allen (1982, 1986) in Australia.

The writings of Pahl (1985), Hammer and Stanko (1985) and Dobash and Dobash (1979), amongst others, also argue that the issue of privacy is fundamental to an understanding both of the dynamics of domestic violence and of the reason why the criminality of domestic violence has been until recently largely denied. According to Pahl:

It is impossible to understand the nature of wife abuse without taking account of the social and ideological context in which it occurs. In attempting to help abused women it is important to recognize the taken for granted assumptions about marriage and family which shape the ways in which women are defined. Ideas about marriage and the family are inextricably linked, at least in western European thought, with ideas about privacy, and an emphasis on protecting privacy can work to the detriment of those who are weakest within the social and physical space defined as private... (1985, pp. 18-19).

Notions of privacy and property, according to these writers, support and maintain the largely non-interventionist approach to domestic violence adopted by the state until recent times (Allen, 1982; Dobash and Dobash, 1979; Scutt, 1983). This, they say, has been particularly evident in the policies and practices of the police.

Research in the United Kingdom has found that many police do not consider domestic violence to be 'real' police work (Southgate and Ekblom, 1986). Evidence in Australia suggests that police attitudes to domestic violence have often been ambivalent (Hatty and Sutton, 1986) and that some police consider domestic violence as a private matter (Faragher, 1985; Samiya, 1987). The NSW Police Department has in recent years invested considerable effort attempting to redress these problems.

The incidence of domestic violence

No reliable estimates exist of the actual incidence of domestic violence in Australia. The often-cited figure of domestic violence occurring in 30 per cent of Australian homes (Rowan, 1986; The Bulletin, 11/8/87) seems to derive from the research of Straus, Gelles and Steinmetz (1980) conducted in the United States.

In a random sample of 2,143 couples throughout that country, Straus and his associates found that 28 per cent of couples interviewed admitted to the use of violence in their relationship. Further, in 12.2 per cent of cases the violence was quite severe, including, in some cases, the use of weapons.

In Canada it has been estimated that one in 10 women is assaulted by her partner (Standing Committee on Health, Welfare and Social Affairs, 1982 as reported by Jaffe, Wolfe, Telford and Austin, 1986).

No comparable research has been conducted in Australia, and caution must be exercised in extrapolating from such overseas research, since it is not clear to what extent, if at all, such findings are generalisable to Australia.

Whilst the actual incidence is unknown, it is clear that domestic violence continues to be very much under-reported. An earlier study by the NSW Bureau of Crime Statistics and Research (Johnson, Ross and Vinson, 1982) found that of a sample of domestic violence matters recorded by chamber magistrates in NSW courts, only 47 per cent had been reported to police. A similar percentage (41.6%) was found to have reported domestic violence to the police in the domestic violence phone-in conducted by the Western Australian Task Force on Domestic Violence during 1986, and in the Victorian Domestic Violence Committee's phone-in the figure was 27 per cent (Women's Policy Co-ordination Unit, 1985). The newspaper survey conducted by the NSW Domestic Violence Task Force during 1981 also found that only 27 per cent of the respondents who had suffered domestic violence had reported that violence to the police.

Overseas research on the reporting of domestic violence incidents to the police has produced similar results. The Islington crime survey in the United Kingdom (Jones, McLean and Young, 1986) found that only 27 per cent of women who had experienced domestic violence had reported it to the police. Dobash and Dobash (1979) whose research in Scotland found that wife assault was the second most common form of violent assault recorded by police, also found that only a small proportion of such events were ever reported to the police: the women interviewed in that study indicated that only 2 per cent of the assaults which they said they had suffered throughout their marriages had ever been reported to the police.

Victim-of-crime surveys, which are typically used to detect the level of unreported crime in the community, are limited in the extent to which they are able to reflect the actual level of violence committed against women by those with whom they share a close personal relationship (Hough and Mayhew, 1983; Edwards, 1985; Hanmer and Stanko, 1985).

As Hough and Mayhew (1983) argue, a reluctance on the part of victims to report incidents of domestic violence in such surveys is hardly surprising when, in fact, the perpetrator of that violence may be present during the interview.

The victim-of-crime surveys conducted in Australia to date have not included any questions specifically related to domestic violence (ABS, 1975, 1984).

Not only is domestic violence under-reported, but many of the agencies which deal with victims of domestic violence do not keep records of such contact. This is true of most public hospitals, doctors and lawyers. The NSW Police Department is currently developing a computerised system to identify and record domestic violence calls as such. Until that system is implemented, however, no reliable record is kept of the number of calls received by police which relate to domestic violence, nor of the outcome of police response to these

calls. Apart from a 1978 study by the now Commissioner of Police, Mr. John Avery, data are available concerning only those cases in which police have taken formal action (see below).

The data which are collected by official sources must be interpreted with caution. Many of the agencies which do record data are those that deal with economically disadvantaged members of the community. Middle class victims of domestic violence not only have a greater range of options available to them which might not result in any official record of the violence, but it has also been suggested that they are less likely to disclose that they have been victimised (Egger and Crancher, 1982). For these reasons, 'official' statistics may reflect much more about the clientele of the particular agencies collecting the data than they do about the nature and incidence of domestic violence in society. This problem is not, of course, confined to domestic violence. Domestic violence, however, would not appear to be confined to any one cultural group or class (Royal Commission on Human Relationships, 1977), nor is it a recent phenomenon (Allen, 1982).

Although no reliable estimate of the actual extent of domestic violence in NSW is available, such incidents make up a large proportion of police work. Whilst there are no current data available concerning the number of calls police receive to attend domestic violence incidents, a 1978 study by John Avery (1981) suggests that figure is relatively high. Avery documented all calls for assistance received at four major Sydney police stations. He found that family violence and domestic disturbance calls were second only to traffic accidents.

Evidence from other Australian States (Cornish, 1986; McCulloch, 1986) as well as from other countries (Dobash and Dobash, 1979; Bell, 1982) confirms the high volume of domestic violence calls to police.

Similar findings have been noted in the U.K. by Edwards (1985), and in the U.S.A. In a frequently cited study conducted in Kansas City and Detroit by the Police Foundation (1976), it was found that in 85 per cent of spouse killings police had intervened at least once in the previous two years, and in 54 per cent of cases police had intervened five times or more. Such findings have been used in several countries to argue for a more effective response by police to domestic violence (MacLeod, 1986).

Refuge occupancy figures provide further evidence that domestic violence is widespread throughout the community. In a study of refuges over the period from April 1984 to March 1985, Noesjirwan (1985) collected data concerning the number of women and children accommodated in the women's refuges in NSW. At the time, there were 40 refuges operating in NSW. She found that whilst 5,605 women and 6,949 children had been accommodated by refuges in that year, a further 23,000 women and children had been turned away due to overcrowding. It was estimated that 50 per cent of all refuges' clients were at the refuges for reasons associated with domestic violence.

In short, there is no doubt that domestic violence is of vital concern to the Australian community.

The Crimes (Domestic Violence) Amendment Act, 1982²

The NSW Task Force on Domestic Violence, which was established in 1981, made a total of 187 recommendations in its report to the Premier, which covered a wide range of issues including health, welfare, housing, law and policing. The legislative reforms, which were introduced subsequently, closely followed the recommendations of the Task Force. In introducing the legislation into Parliament, the then Premier Mr. Wran gave emphasis to the criminal nature of domestic violence:

The Government believes that these reforms in themselves will contribute to the reduction of violence in New South Wales by giving the lead to the community in recognising that domestic assault is assault, and by making the police and courts more effective in dealing with the problem... (Second Reading Speech, Parliamentary Debates, 9 November 1982).

The Crimes (Domestic Violence) Amendment Act, 1982 which commenced on 18 April 1983 did not introduce a new offence of domestic violence but, rather, defined as domestic violence any of a specified range of existing offences (see Appendix 1.1):

committed upon a person at a time when the person who commits the offence and the person upon whom the offence is committed are married to each other or, although not married to each other, are living together as husband and wife on a bona fide domestic basis. (Section 4(1)(a))

The attempt to commit such an offence was also defined as domestic violence (Section 4(1)(b)). A further amendment introduced on 16 December 1983 broadened the definition of domestic violence to include also persons who had previously been married or who had previously lived together in a de facto relationship.³

The legislation makes spouses compellable witnesses (Section 407AA) subject to limited exceptions. A Judge or Justice may excuse a spouse from giving evidence where that person has applied to be excused, and if satisfied that the application to be excused is made freely and independently of threat or any other improper influence. The Judge or Justice is to have regard to:

- (a) the importance in the case of the facts in relation to which it appears that the husband or wife is to be asked to give evidence and the availability of other evidence to establish these facts; and

²For a comparison with legislation in other Australian States see Landsdowne (1985) and Long (1986).

³The Legislation was again amended in February 1988 by the introduction of the Crimes (Personal and Family Violence) Amendment Act (see Appendix 1.2).

- (b) the seriousness of the domestic violence offence with which the accused person is charged.

In recommending that spouses become compellable witnesses the Task Force's acknowledged aims were to:

- (a) encourage police and to produce greater certainty in legal response to domestic violence;
- (b) relieve the woman from having to make a choice about whether or not to give evidence, and to limit the scope of possible intimidation. (NSW Task Force on Domestic Violence, 1981, p. 56)

The Task Force also stressed that the then common practice of police requiring the complainant to sign the charge book and to act as the legal informant should cease. It was recommended that, where evidence upon which a charge of assault could be laid exists, the charge should be laid by a police officer as informant and the case conducted in court by a Police Prosecutor. Police instructions were amended to comply with this recommendation.

Police powers of entry were clarified by the legislation, and extended to provide for radio-telephone warrants to authorise entry where denied by the occupier. This was a controversial proposal since it was suggested by some that police might abuse their powers to obtain telephone warrants (see Lansdowne, 1985).

Central to the reforms was the introduction of the Apprehended Domestic Violence Order (Section 547AA). This order was introduced to provide some measure of protection to victims of domestic violence and to redress the inadequacies of the pre-existing apprehended violence order (Section 547). The recognizance to keep the peace available under Section 547 (which has not been repealed) has been widely criticised as unenforceable and ineffective. No procedure existed for bringing a person before the court for the breach of that order, except by instituting new proceedings for another Section 547 order, or for any offence arising out of that breach (NSW Task Force on Domestic Violence, 1981; Lansdowne, 1985).

The Apprehended Domestic Violence Order (ADVO) is instituted by way of complaint, which must be sworn and may be made by the victim or by a police officer verbally or in writing. The complainant is required to demonstrate, on the balance of probabilities, that the aggrieved spouse has a reasonable apprehension of the commission of a domestic violence offence upon themselves by the defendant. A subsequent amendment to the legislation in December 1983 extended the provision to include the apprehension of conduct consisting of harassment or molestation, falling short of actual or threatened violence.

The legislation allows for such restrictions and prohibitions to be placed upon the behaviour of the defendant as appear necessary or desirable (Section 547AA(1)), for a period of up to six months.⁴

⁴The six month maximum duration of an order was removed in February 1988 when amendments to the legislation were introduced via the Crimes (Personal and Family Violence) Amendment Act.

Specifically, orders may be made which prohibit or restrict:

- approaches by the defendant to the aggrieved spouse;
- access by the defendant to any specified premises occupied by, the workplace of, or places frequented by the aggrieved spouse, whether or not the defendant has a legal or equitable interest in the premises;
- specified behaviour by the defendant which might affect the aggrieved spouse of the defendant.

Section 547AA(4) requires that before any order is made prohibiting or restricting access by a person to premises in which the complainant resides, the court shall consider the accommodation needs of all relevant parties and the effect of making such an order on any children.

In addition, where a person is before the courts charged with a domestic violence offence, the court shall enquire whether a complaint of apprehended domestic violence also has been made, or is to be made, and then may deal with that complaint forthwith (Section 547AA(s)).

Breach of an ADVO constitutes a criminal offence and police may arrest without a warrant. The legislation provides for a penalty of up to six months' imprisonment and, following the December 1983 amendment, a fine of \$2,000 may be imposed in addition to, or instead of, any term of imprisonment.

Whilst provision exists for ADVOs to be made ex parte, that is, in the absence of the defendant (Section 547AA(6)) where it appears to the court to be necessary and appropriate, this provision seems to have been interpreted by the courts to apply only in cases where a defendant fails to appear in court following the service of a summons.

In addition to the changes in police instructions mentioned above, police were also required to give particular consideration when determining bail for domestic violence offences to the likelihood of further offences. A special domestic violence bail form was introduced to guide police in reaching a bail determination. Bail is a particularly significant consideration in domestic violence matters, since it allows for the provision of victims with a measure of protection by way of bail conditions, pending the matter being determined in court.

The Task Force had raised in its report the possibility of a mandatory 12-hour 'cooling off' period following the arrest of an accused person for domestic violence. This course was not adopted, since the provisions of the existing Bail Act were considered to be adequate to impose such conditions upon bail where appropriate.

A further amendment, adopted in December 1983, applied the provisions of the Bail Act to matters in which an ADVO applied by the court was subject to appeal. This was a significant amendment, since otherwise alleged victims could be left with no legislative protection for considerable periods of time pending the outcome of an appeal. (The order is stayed once an appeal is lodged.)

The legislative policy adopted in NSW is thus a two-pronged approach, emphasising both the use of the criminal law to prosecute domestic violence offences and the use of the ADVO to provide protection to the complainant.

Evaluating the reforms

In determining the goals of the legislative reforms adopted in NSW, some guidance is available from the Parliamentary Debates.

As previously indicated, the Premier Mr. Wran emphasised firstly that domestic assault was criminal assault and secondly that the reforms would assist in making police and courts more effective in dealing with the problem (Parliamentary Debates, 9 November 1982). In doing so, he alluded to the educative role of the legislation:

By giving the lead to the community in recognising that domestic assault is assault.

He also articulated some more specific aims of particular provisions in the legislation to:

Take the onus off the women in deciding whether or not to give evidence [re: the compellability of spouses];

Remove legal doubts about police powers to enter and remain on premises to investigate a domestic violence offence [Section 357F];

Give police the power to enter by way of telephone warrant [in limited circumstances] where entry to the premises is denied [Section 357G];

Provide an effective and enforceable protection by way of an Apprehended Domestic Violence Order [Section 547AA].

On the basis of the goals of the legislation articulated by Mr. Wran, and in consultation with the NSW Domestic Violence Committee, the following aims were established for the research to:

- (i) monitor generally the implementation of the legislation;
- (ii) compare the number of assault charges brought by police and private informants before and after the introduction of the legislation;
- (iii) monitor the use of the Bail Act and the new police bail form to effect short-term separation between the parties in domestic violence situations;
- (iv) monitor the number and nature of Apprehended Domestic Violence Orders made by courts, and to compare the numbers initiated by police and private informants;

- (v) to determine the extent to which complainants seeking Apprehended Domestic Violence Orders were successful;
- (vi) monitor the number of breaches of Apprehended Domestic Violence Orders brought before the court;
- (vii) monitor the number of telephone warrants used by police to authorise entry into premises;
- (viii) monitor the use of the provisions to compel spouses to give evidence in court;
- (ix) survey victims concerning their experiences of the legislation, and to identify any problems which may exist in the legislation and/or associated procedures;
- (x) survey chamber magistrates concerning their views on the adequacy and appropriateness of the legislation, and to identify any problems which may exist in the legislation and/or associated procedures.

It is recognised that the police have a key role to play in the implementation of domestic violence policy, and that the above objectives do not specifically include any assessment of police attitudes towards the legislation. At the time of the research the NSW Police Department had engaged a research team to investigate, among other things, police attitudes to domestic violence and to new departmental training and policies. For that reason the research described in this report did not extend to such issues.

Methodology

A detailed account of the methodology used is presented in Chapters 2, 3, 4 and 5, each of which deals with a particular aspect of the project. An analysis of some methodological issues relevant to the study of domestic violence is provided by Knight and Hatty (1987).

As evident from the stated objectives of the research, the project required the use of a range of methods. These included the collection of statistics from routine police and court statistics, the establishment of specific mechanisms to allow the monitoring of bail forms and ADVOs, the analysis of a sample of court records and interviews with victims of domestic violence and with chamber magistrates.

As stated, there are a number of separate components to the monitoring and evaluation reported in this document. The available statistical evidence from routine police and court statistics and from special monitoring procedures established for the research are analysed and reported in Chapter 2. The nature and progress of complaints seeking an ADVO are considered further in Chapter 3 in a sample survey of court records. Chapter 4 provides evidence of victims' experiences with the legislation in an analysis of interviews conducted with victims who had sought an ADVO. The assessments of the legislation by chamber magistrates are presented and discussed in Chapter 5.

CHAPTER 2

POLICE AND COURT STATISTICS

In assessing the effectiveness of the legislation, an obvious starting point is a consideration of the available statistical data. Official statistics which reflect upon the operation of the legislation are generated by police and by the courts. Such statistics, whilst valuable, also have a number of inherent limitations.

Using official statistics

The extent to which such statistics are limited as indicators of the actual level of crime in the community is well recognised. A given incident must first be perceived and labelled as criminal, reported to or detected by the police and subsequently accepted by police and documented as a criminal incident before it is incorporated in the official statistics. Considerable discretion in the way in which an incident is defined, labelled and recorded rests not just with the police but also with victims and witnesses to the incident (see Bottomley and Coleman, 1981).

Such limitations may be even more significant with respect to domestic violence than for other offences. The acknowledged 'dark figure' of unreported crime is greater where offences occur primarily in the private rather than the public domain, such as in the case of domestic violence and sexual assault. Police ambivalence about being involved in domestic violence matters, together with the victims' reluctance to report the violence, may ensure that much of the actual violence is never officially recognised and documented.

The recording of incidents in which police attend domestic violence calls but take no formal action has been inconsistent in the past - in many instances no record of such calls is kept at all. Such a practice has meant that the available data understate the level of police involvement in domestic violence matters to an unknown extent.

For this report, official statistics are most usefully seen not as an indication of the level of incidence of domestic violence, but as an indication of the extent to which domestic violence matters are being acknowledged and dealt with by the criminal justice system. Since one of the stated objectives of the legislation was to make the police and courts more effective in dealing with domestic violence (Parliamentary Debates, 9 November 1982), and since great emphasis was placed upon educating the community, police and other agencies about the new legislation, an increase in the number of matters being dealt with by the police and courts would be expected to occur over time if the legislation is effective. To assess this, trends in the data are examined below.

Sources of data

Reported offences accepted by police as genuine are recorded on computer and form the basis of the official police statistics (NSW Police Department, 1987). Not all offences recorded by police result in court appearances though, since some never involve an arrest, whilst others don't proceed for a variety of reasons. Criminal matters which do result in a Local Court determination, however, whether initiated by police or by private informant, generate a statistical report which is sent to the NSW Bureau of Crime Statistics and Research, and are compiled into the Lower Criminal Court Statistics.

In addition to these routine statistics, a mechanism was put into place at the time of the introduction of the Crimes (Domestic Violence) Amendment Act to generate further data which would assist in the evaluation of that legislation. New forms for specific use in domestic violence matters were introduced to document, inter alia, police bail determinations, the use of telephone warrants, the nature of Apprehended Domestic Violence Orders handed down by courts, whether the complainant is a police officer or the victim, variations to or revocations of such orders and cases in which spouses are exempted from being compelled to give evidence. It was arranged that copies of these forms be sent to the Bureau of Crime Statistics and Research.

In keeping with the various provisions of the legislation the discussion of the official data which follows will be dealt with in three parts: firstly, considering domestic violence offences; secondly, the use of the ADVO and the available data on breaches of that order; and finally, examining the use of telephone warrants and the exemption of spouses from the requirement to give evidence relating to domestic violence offences.

Domestic violence offences

As discussed in Chapter 1, the Crimes (Domestic Violence) Amendment Act defines as domestic violence any of a range of offences, where such an offence occurs between parties who are, or have been, married or living together in a de facto relationship.

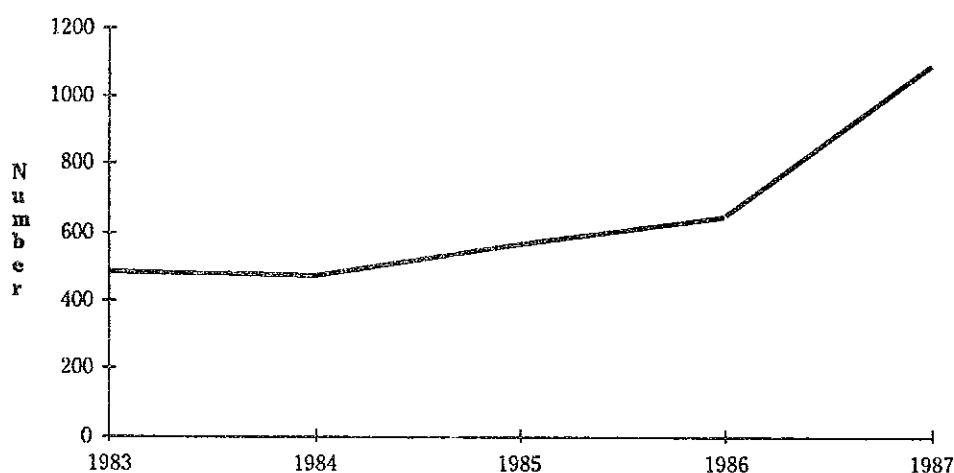
Published police statistics in NSW provide, at best, an imprecise measure of domestic violence. Incidents are reported using broad offence categories and, whilst some additional information is recorded (such as the location of the offence), it is not possible to identify incidents which conform to the legislative definition of domestic violence in these figures.

In an attempt to overcome this problem, data on alleged domestic violence offences were collected from the police bail forms completed for all persons charged with a domestic violence offence for whom a bail determination was made by police. In some instances, however, persons arrested and charged by police are taken straight before a court and therefore no police bail determination is made.

In other instances, a domestic violence bail form is completed although the suspect has not been charged with a domestic violence

offence. This may happen where a person is arrested by first instance warrant on a complaint for an ADVO, irrespective of whether the complaint alleges any actual offence, or other proscribed behaviour. The arrest is made for the purpose of having the complaint determined before the court, rather than for the prosecution of an alleged offence. Nevertheless, bail procedures must be adhered to.

FIGURE 2.1
Domestic Violence Bail Returns
1983 - 1987



Note: The data for 1983 relate to less than a full year, since the legislation was introduced on 18 April 1983.

Figure 2.1 and Appendix 2.1 show the number of police bail returns received since the legislation commenced on 18 April 1983. Increases are evident in the number of bail returns each year since 1985, with a particularly large increase in 1987.

However, the average number of bail returns per week decreased markedly from 13.1 in 1983 to 9.0 in 1984, and despite increasing in each subsequent year did not again reach the 1983 level until 1987, a year which showed a 70 per cent increase over the previous year (see Appendix 2.1).

Table 2.1 shows the alleged offences for which bail determinations were made by police in domestic violence matters during 1987. In the majority of cases, a single count of 'assault female' or common assault was involved (71%). In 3.9 per cent of cases, police were acting on a first instance warrant authorising the arrest of an accused on a complaint of apprehended domestic violence (i.e. an application for an ADVO).

In 3.7 per cent of cases, the charges on arrest involved the breach of an existing ADVO, or the breach of bail. The absence of any charges for murder and the small number of charges of sexual assault in the

TABLE 2.1
Domestic violence charges
for which police bail determinations were made
1987

Charges	No.	%
Assault female	655	60.2
Common assault	118	10.8
Apprehend domestic violence/1st instance warrant	40	3.7
Assault occasioning actual/grievous bodily harm ^(a)	34	3.1
Assault female and/or assault and assault occasioning actual/grievous bodily harm	50	4.6
Indictable assault (Section 61), assault female/assault and/or other offences	12	1.1
Assault female/assault and weapon/firearm offences	17	1.6
Assault female/assault and malicious injury	39	3.6
Assault female and assault child under 12	5	0.5
Assault female, indictable assault and apprehended domestic violence/1st instance warrant	2	0.2
Assault female and/or common assault, resist arrest and/or assault police	19	1.7
Assault female and/or common assault and breach of D.V. order and/or bail	9	0.8
Assault female, trespass and other offences	8	0.7
Assault female and/or assault and alcohol related offences (drink drive)	5	0.5
Assault female and/or assault and other offences	4	0.4
Assault occasioning actual/grievous bodily harm and assault child under 12	4	0.4
Sexual intercourse without consent (or attempt) and assault	2	0.2
Breach of D.V. order and/or bail	28	2.6
Breach of D.V. order and/or bail and other offences	3	0.3
Malicious injury	8	0.7
Other (damage telephone, firearm and trespass and resist arrest)	4	0.4
Unspecified	22	2.0
TOTAL	1,088	100.0

(a) Includes three with added malicious injury (i.e. property damage) charges and one with a firearm offence.

results were unexpected, given the findings of other research in this area. Both offences fall within the definition of domestic violence when they occur within the relationships specified by the legislation. As Wallace (1986) has demonstrated, approximately 25 per cent of all homicides in NSW are spouse killings. On this basis as many as 25 homicide matters would be expected to appear in the domestic violence bail returns. One interpretation of the lack of bail returns for such serious offences is that the accused persons may be taken straight before the court without any police bail determination. It is unlikely, however, that this would be the case in all homicide and sexual assault matters which occur in the context of domestic violence. Another interpretation is that police do not perceive those offences to be 'domestic violence'. This is consistent with research indicating that police tend to see domestic violence matters as 'trivial' (Hammer and Stanko, 1985; Crancher, Egger and Bacon, 1983) and tend, therefore, not to label more serious offences as domestic violence. To the extent that this interpretation is correct, it may be the case that other serious offences are also understated in the domestic violence bail returns. This is a reminder that the bail forms only give a picture of what is *seen as* domestic violence by *police*. They are, therefore, an indicator of police practices, not of the nature and incidence of domestic violence *per se*.

Sex of accused

The vast majority of persons for whom a bail determination was made with respect to a domestic violence offence were male. As evident in Table 2.2, males have consistently accounted for over 98 per cent of all domestic violence bail returns.

TABLE 2.2
Domestic violence bail returns - Sex of accused
1984 - 1987^(a)

Sex	1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%
Male	464	98.7	559	98.8	635	98.6	1,072	98.5
Female	5	1.1	6	1.1	8	1.2	16	1.5
Unknown	1	0.2	1	0.2	1	0.2	0	0.0
TOTAL	470	100.0	566	100.0	644	100.0	1,088	100.0

(a) Data for 1983 not available.

Bail conditions

The nature of, and conditions imposed by, the bail determination are important considerations in domestic violence matters, since bail can

provide a measure of protection to the alleged victim prior to the court determination of the matter. The Domestic Violence Task Force (1981) had considered a mandatory 12 hour period before which bail could not be granted in cases of domestic violence. Whilst this proposal was not recommended, a specially designed domestic violence bail form was introduced to assist police in making bail determinations which might afford some protection to alleged victims.

The domestic violence bail form draws the attention of officers making bail determinations to a number of possible conditions which may be appropriate in domestic violence offences, including a requirement not to return home within a specified period such as 12 hours (see below).

Tables 2.3 and 2.4 which follow provide details of the nature of the bail determinations made by police in domestic violence matters. The most common bail determination consistently has been conditional bail, which imposes restrictions upon the future conduct of the accused but imposes no other conditions. In 1987, for example, 64.3 per cent of all bail determinations included such restrictions.

Table 2.3 also indicates that the use of unconditional bail is relatively infrequent in domestic violence offences, ranging between 2.2 per cent in 1986 and 5.6 per cent in 1983. This compares with the granting of unconditional bail in approximately 38 per cent of all offences against the person, and the refusal of bail in 13.3 per cent of such cases (Stubbs, 1984).

The relatively low use of unconditional bail suggests that police are, consistent with their training, paying due regard to the need to provide alleged victims of domestic violence with some measure of protection prior to the matter going before the court. The large increase in police bail returns from 1986 to 1987, however, was accompanied by a reduction in the percentage of cases in which bail was refused, from 17.6 per cent in 1986 to 12.7 per cent in 1987. This may indicate that the large increase in domestic violence matters in which police laid charges mainly concerned incidents judged by police to be less serious.

Further detail regarding the nature of bail determinations is presented in Table 2.4. In the vast majority of conditional bail determinations, the accused has consistently been required not to assault or molest the alleged victim and not to harass or intimidate the alleged victim. It is clear that the 'cooling off' period mooted in the Task Force report is, in effect, being imposed by way of bail conditions in the majority of cases. In 1987, for example, 60 per cent of conditional bails included the requirement that the accused not enter premises occupied by the alleged victim nor contact the alleged victim during the next 12 hours.

The conditions listed in Table 2.4 are those incorporated in the special domestic violence bail form mentioned above. Whilst similar to the bail forms used with other offences, the domestic violence bail form draws attention to factors said to be relevant to an assessment of the likelihood of the accused committing further domestic violence offences, and specifies conditions which it may be appropriate to impose upon the accused person's conduct in an attempt to ensure the protection of the alleged victim.

TABLE 2.3
Police bail determinations - Domestic violence matters
1983 - 1987

Bail determination	1983		1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%	No.	%
Unconditional	27	5.6	19	4.0	17	3.0	14	2.2	32	2.9
Conditional - Condition/s as to conduct of accused	273	56.3	278	59.1	351	62.0	385	59.9	700	64.3
Conditional - conduct and other condition/s	100	20.6	86 ^(a)	18.3	94	16.6	131	20.4	218	20.0
Bail refused	85	17.5	87	18.5	104	18.4	113	17.6	138	12.7
TOTAL	485	100.0	470	100.0	566	100.0	643	100.0	1,088	100.0

(a) In two matters the bail determinations required a surety, but no conditions were imposed concerning the defendant's conduct towards the victim.

TABLE 2.4
Bail conditions imposed regarding conduct of offender^(a)
1984 - 1987

Bail conditions imposed	1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%
Not to assault or molest alleged victim	330	91.2	423	95.1	499	96.7	914	99.6
Not to harass or intimidate alleged victim	319	88.1	396	89.0	475	92.1	885	96.4
Not to enter premises occupied by alleged victim during next 12 hours	200	55.2	259	58.2	309	59.9	551	60.0
Not to drink alcoholic beverages	71	19.6	91	20.4	118	22.9	208	22.7
Not to visit licensed premises	36	9.9	54	12.1	76	14.7	119	13.0
Other	54	14.9	98	22.0	106	20.5	174	19.0
TOTAL CONDITIONAL BAILS (WITH CONDUCT CONDITIONS)	362		445		516		918	

(a) 1983 data not available.

Note: Percentages do not sum to 100 for each year due to multiple conditions imposed.

Police are required to record on each bail form their reasons for reaching a particular bail determination. Table 2.5 shows a comparison of the reasons given to justify the various determinations.

The most commonly cited reasons for an unconditional bail determination were that there was little likelihood of further assaults (42.1%), and/or no history of domestic violence (26.3%). By contrast the most common reason for both conditional bail determinations (49.3%) and particularly bail refused (84.6%) was the likelihood of further assault.

In 27.3 per cent of conditional bails police recorded that there was evidence of previous domestic violence, in 2.8 per cent the accused was known to have previous convictions and in 4.1 per cent the accused was currently on bail or the subject of an ADVO. These figures cannot be summed due to the use of multiple responses. However, they do indicate that in at least one-quarter and perhaps as much as one-third of cases in which conditional bail was granted, police were aware of previous incidents of domestic violence involving the accused. Similarly, where bail was refused 23.5 per cent of accused persons were said to be already on bail, recognizance or an ADVO at the time, in 18.4 per cent of cases it was said that police were aware of previous domestic violence and in 16.2 per cent of matters there had been previous court action for similar offences.

These figures are certain to underestimate the actual extent of previous domestic violence in these matters. This is, firstly, because not all such violence would come to official attention, secondly, because no system yet exists whereby previous police intervention not resulting in an arrest is routinely recorded and, thirdly, because police are not specifically required to document such a history but have discretion to record whatever information they see as pertinent to their bail determination.

The above data provide evidence of a substantial increase in the number of alleged offences classified as domestic violence matters and formally dealt with by police in 1987 as compared with previous years. Evidence regarding the involvement of courts in domestic violence matters can be gained from the Lower Criminal Courts in Court Statistics.

Figure 2.2 and Appendix 2.2 provide details concerning the number of assault matters resulting in Local Court appearances for the years 1980 to 1987 in those categories of assault which are most common - namely 'assault female' (Section 494), common assault (Section 493), assault occasioning actual bodily harm (Section 59) and common assault prosecuted by indictment (Section 61). Whilst the 'assault female' category is not a precise measure of domestic violence the majority of domestic violence offences are charged as 'assault female' (see Table 2.1). The converse is not true. For example, in 1987 the number of police bail returns for domestic violence offences constituted approximately 40 per cent of the number of 'assault female' cases brought before the courts by way of charge. (Summons matters are excluded from this comparison since no information is available to allow any assessment of the proportion of 'assault female' matters brought by summons which may arise out of incidents of domestic violence.)

TABLE 2.5
Reasons cited for bail determination
1987

Reason for determination	Z of Unconditional Bails (N = 32) ^(a)	Z of Conditional Bails (N = 918) ^(a)
(a) Unconditional Bail		
Little likelihood of further assaults	42.1	49.3
No history of domestic violence	26.3	0.9
Family background or employment status	5.3	27.3
Offence not serious	10.5	2.8
Victim or accused vacating premises	5.3	4.1
Not specified	10.5	16.4
No complaint made by victim/victim's request	10.5	1.3
(b) Conditional Bail		
Fear of further offence/prevent further violence/safety of victim		13.8
Apprehended domestic violence/1st instance warrant		13.2
Previous domestic violence		2.3
Previous other convictions/record		2.1
Currently on bail/ADVO, Apprehended breach of bail/ADVO		14.4
Accused intoxicated		6.4
Mental state, adverse psychological history, agitation		
Seriousness of offence		
Aggressive demeanour, threats		
Victim or accused vacating premises		
Cooling off period		
Not specified/other		
No fears of further assault		

(a) Percentages do not sum to 100 in each category due to multiple responses.

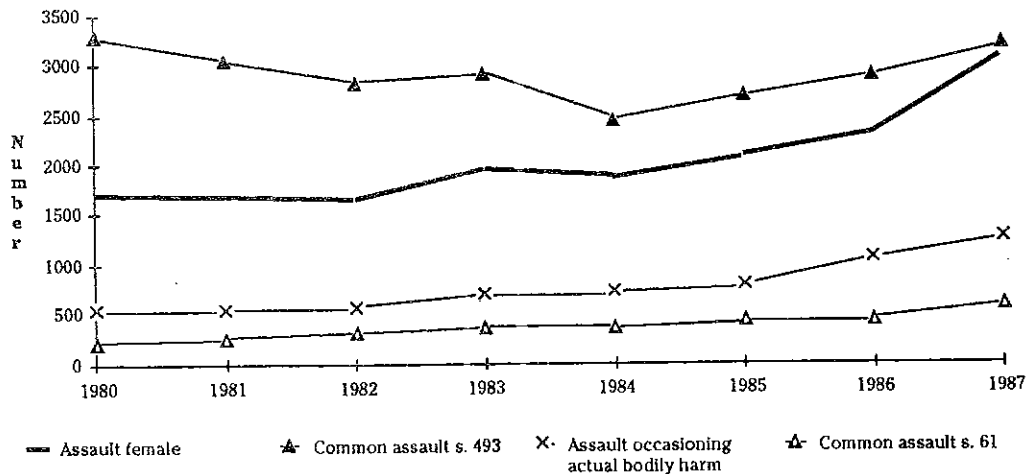
TABLE 2.5 (CONTINUED)
Reasons cited for bail determination
1987

Reason for determination	Z of Bails Refused (N = 138) (a)
(c) Bail Refused	
Likelihood of further assaults	84.6
Accused aggressive, threaten victim, resist arrest, assault police	30.1
Previous domestic violence	18.4
Previous court action for similar offences	16.2
Previously failed to appear/apprehended non-appearance	8.8
Accused currently on bail/recognition/ADVO, subject to other court appearance, breach/apprehended breach of bail conditions	23.5
Alcoholism or intoxication	25.7
Previous other conviction/record	5.1
Mental state, agitation, adverse psychological history	5.9
Firearms, threat to shoot/kill	8.1
1st instance warrant	2.2
Request of accused	2.2
Serious nature of offence	8.8
Unspecified	0.7

(a) Percentages do not sum to 100 in each category due to multiple responses.

The other categories of assault are included in the figures for the purpose of comparison although, as shown by Table 2.1, small numbers of domestic violence charges were also laid in each of these categories during 1987.

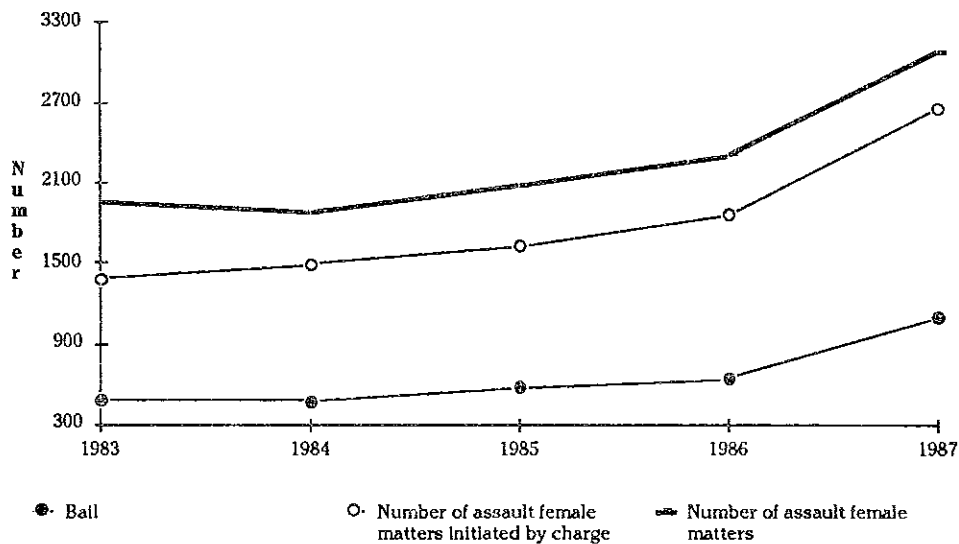
FIGURE 2.2
Local Courts Appearances for Selected Assaults
1980 - 1987



As shown in Figure 2.2, appearances for 'assault female' have increased each year since the introduction of the legislation, with the exception of 1984. This pattern does not appear, however, to be true only of domestic violence, since it is similar for each of the four categories of assault. The relatively large increase in police bail for domestic violence in 1987 is reflected in the 33.3 per cent increase in court appearances for 'assault female' (see Figure 2.3). However, as a similar level of increase is also evident in the common assault Section 61 category, and to a lesser extent in assault occasioning actual bodily harm, this may say more about a general trend towards an increase in assaults coming to police attention than about domestic violence per se. A recent study of serious assaults has indicated that the considerable growth in that category of offences which has occurred in recent years, particularly since 1977, has not been attributable to increases in domestic violence offences alone (Robb, 1988).

Further information concerning the policing of domestic violence is available from a consideration of the relative proportions of police versus private actions in assault matters before the courts. Figures 2.4 and 2.5, and Appendix 2.3, compare the number and percentage of matters initiated by police for the four categories of assault over the period 1980 to 1987. Since the legislation was introduced in 1983, there has been an emphasis in police training and community education upon the importance of police laying charges for assault wherever evidence is sufficient to justify such a charge. To the extent that such education has been effective, it would be expected that the number of 'assault female' charges instituted by police as compared with private informants would increase following the introduction of the legislation.

FIGURE 2.3
Bail Returns for Domestic Violence Offences and
Court Appearances for 'Assault Female'
1983 - 1987



Note: The bail data for 1983 relate to the 37 week period subsequent to the introduction of the Crimes (Domestic Violence) Amendment Act on 18 April 1983

FIGURE 2.4
Number of Matters Initiated by Charge
(Selected Assaults)
1980 - 1987

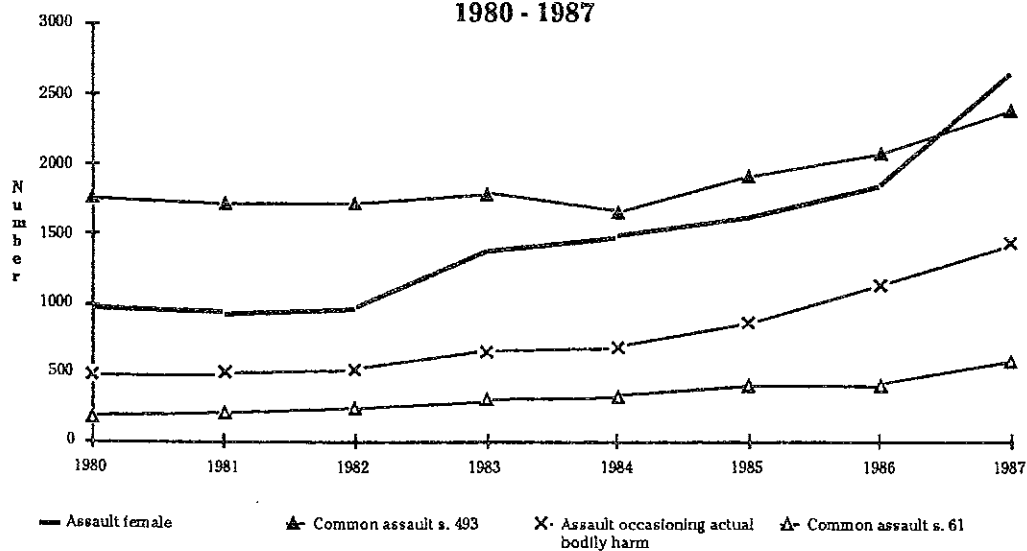
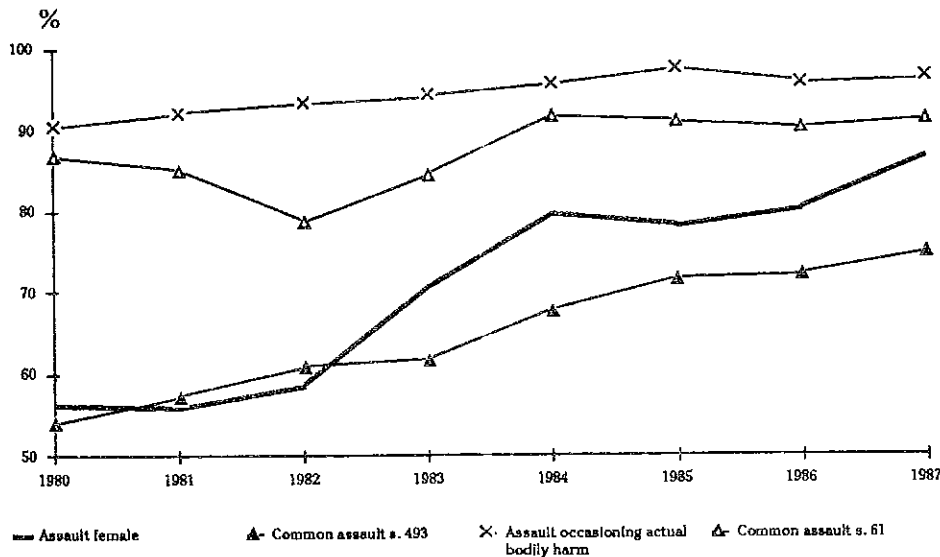


FIGURE 2.5
Percentage of Matters Initiated by Charge
(Selected Assaults)
1980 - 1987



Whilst the number of police charges for 'assault female' had been fairly constant for the years 1980 to 1982, a substantial increase occurred in 1983, which coincided with the introduction of the domestic violence legislation. Each year since 1983 has shown a growth in the number of police charges within this category, with another substantial increase occurring between 1986 and 1987. The number of summons matters in the category 'assault female' has shown a decrease over the decade. As a consequence, the percentage of 'assault female' matters proceeded with by charge rather than by summons has increased substantially, from 56.3 per cent in 1980 to 86.7 per cent in 1987 (see Figure 2.5).¹

The magnitude of the increase in charges between 1986 and 1987 may reflect, to some degree, changes in Police Department policy and training, and the appointment of Domestic Violence Liaison officers in each division which occurred around that time. Unfortunately, the currently available data don't allow that possibility to be evaluated.

Other categories of assault have also shown increases over this period in the numbers dealt with by charges (see Figure 2.4). The size of this increase in each category is as follows:

¹In addition, offences in all of the selected categories have shown increases in the proportion of offences coming before the courts being initiated by police (rather than private informants), with the largest changes being in the 'assault female' and common assault Section 493 categories (see Figure 2.5), although the remaining categories were already nearly always initiated by police.

'Assault female'	175.5%
Common assault Section 493	34.7%
Assault occasioning actual bodily harm	193.8%
Common assault Section 61	216.9%

The data presented in Figure 2.4 and Appendix 2.3 indicate a trend towards an increasing number of assaults being formally dealt with by police, particularly in recent years. In the category of 'assault female', there was a marked increase in 1983, which coincided with the introduction of the domestic violence legislation.

Along with these changes, there has been a change in the proportion of these matters which are withdrawn prior to a court determination. Victims' withdrawal from proceedings in domestic violence matters is a problem of particular concern to police (see also Chapter 5 for the views of chamber magistrates regarding victim withdrawal, and Chapter 4 for the victims' accounts of factors associated with their decisions to withdraw in ADVO proceedings) and has been put forward as a disincentive to police involvement in domestic violence matters. These issues together with an acknowledgement of the many reasons why women withdraw from proceedings are canvassed in the Domestic Violence Task Force Report (1981) and the Report of the NSW Domestic Violence Committee (1985).

FIGURE 2.6
Percentage of Matters listed before the Courts which were Withdrawn
(Selected Assaults)
1980 - 1987

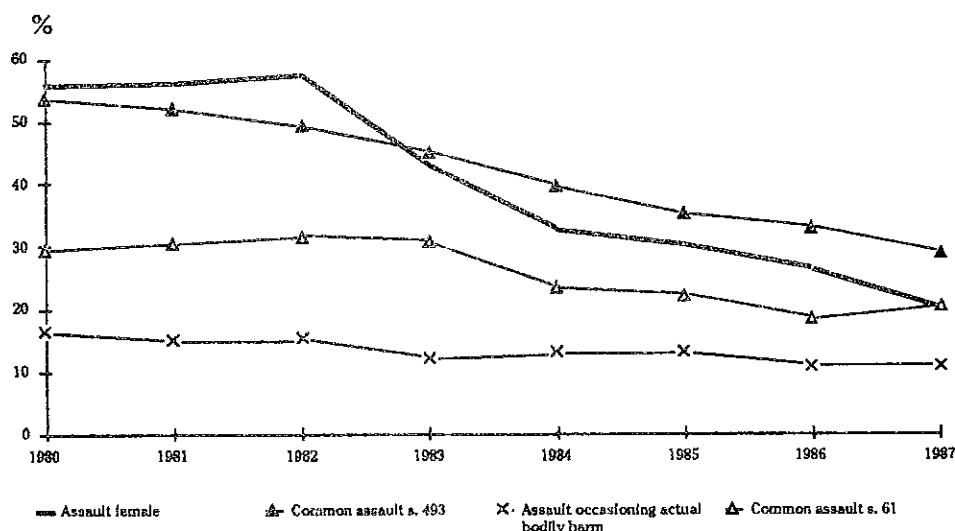


Figure 2.6 and Appendix 2.4 provide data on the percentage of 'assault female' matters listed before the courts which were withdrawn, as compared with other offences over the period 1980 to 1987. As depicted by the graph, the percentage of cases being withdrawn has fallen over the past eight years in each of the four offence categories. The largest change is evident in the 'assault female' category in which the 1987 withdrawal rate of 20.2 per cent represents a little over one-third of the rate which had been apparent in 1980 (55.7%). The percentage of withdrawals in this category had increased

marginally in 1981 and 1982, but a large decrease occurred in 1983 coincident with the introduction of the domestic violence legislation.

The proportion of 'assault female' cases withdrawn is highly correlated with the proportion of cases initiated by charge, ($r = -0.99$) meaning that as the proportion of charges increases, the proportion of withdrawals decreases.² The figure indicates that none of the other assault categories displayed a decrease as large as that for the 'assault female' category. Nor did any other category exhibit such a large difference between the 1982 and 1983 levels.

As Table 2.6 indicates, the outcomes for matters initiated by charge differed substantially from those instituted by summons. (The number of cases initiated by the Court Attendance Notice Scheme introduced in 1987 are included in the table but were too few to base any comparison upon.) Whilst two-thirds of all summons matters were withdrawn or dismissed, only 13.2 per cent of charge matters were finalised in this way. Most commonly, charge matters resulted in recognizances (29.6%) or fines (23.2%). Of summons matters not withdrawn or dismissed, the most common outcome was a not-guilty finding (35%). (The available data do not permit any analysis of whether the nature of incidents prosecuted by summons differs from that of those prosecuted by charge, so differences in sentencing may be due to differences in the nature of those incidents, rather than differences in the manner of proceeding.)

Further detail on the outcome of 'assault female' matters as compared with other assault matters is given in Appendix 2.5. The most notable change between 1980 and 1987 is in the proportion of matters not proceeded with, which fell from 56 per cent to 20 per cent over this period. If only those cases proceeded with are considered, however, the proportion of penalties of each type handed down by the Local Courts was not markedly different between these two years, although the proportion of recognizances fell by about 4 per cent and the proportion of not guilty and Section 556A dismissals rose by 2.5 per cent and 2 per cent respectively (see Table 2.7).

As detailed in Appendix 2.5, the pattern of outcomes for common assault, Section 493, is similar to that for 'assault female', although fines are used to a greater extent and recognizances to a lesser extent. In 1987, the most common outcome in that category was a fine (29.7%) with a similar proportion being withdrawn or dismissed. The categories of assault occasioning actual bodily harm and common assault, Section 61, each resulted in a greater percentage of matters being dealt with by imprisonment (around 7.5%) than was evident in the previously discussed categories. In both cases, though, the most common outcome in 1987 was a recognizance (37% for assault occasioning actual bodily harm and 29.1% for common assault Section 61).

²The relationship is given by the regression equation: $w = 125.0 - 1.198c$, where w = the percentage of matters withdrawn and c = the percentage of matters initiated by charge. This suggests that for every 10% increase in the proportion of charges, there is about a 12% fall in withdrawals. If all matters were handled by charge, the withdrawal rate would fall to about 5%, all else being equal.

TABLE 2.6
Outcomes for 'assault female' matters, proceeding by charge as compared with summons
1987

Outcome	Charge		Summons		Court Attendance Notice		Total	
	No.	%	No.	%	No.	%	No.	%
Not guilty	364	13.7	48	11.8	0	0.0	412	13.4
Withdrawn/dismitted	351	13.2	271	66.4	1	6.7	623	20.2
Recognition forfeited	2	0.1	0	0.0	0	0.0	2	0.1
Section 556A Recognition/dissmissal	383	14.4	31	7.6	3	20.0	417	13.5
Rising of the Court	10	0.4	0	0.0	0	0.0	10	0.3
Fine	617	23.2	35	8.6	9	60.0	661	21.5
Recognition	785	29.6	23	5.6	2	13.3	810	26.3
Community Service Order	41	1.5	0	0.0	0	0.0	41	1.3
Periodic Detention	11	0.4	0	0.0	0	0.0	11	0.4
Imprisonment	92	3.5	0	0.0	0	0.0	92	3.0
TOTAL	2,656	100.0	408	100.0	15	100.0	3,079	100.0

NSW Bureau of Crime Statistics and Research, unpublished statistics from NSW Local Courts.

TABLE 2.7
Outcomes for 'assault female' matters proceeded with
1980 and 1987

Outcome	1980 %	1982 %
Not guilty	13.3	16.8
Recognizance forfeited	2.0	0.1
Section 556A	14.9	16.9
Rising of the Court	1.1	0.4
Fine	25.5	26.9
Recognizance	37.0	33.0
Periodic Detention/CSO ^(a) /Imprisonment	6.1	5.9

(a) Community Service Order.

Summary

The available evidence suggests that a substantial increase has occurred in the number of matters being formally dealt with by police as 'domestic violence' since the legislation was introduced in 1983. In particular, a large increase is apparent in the 1987 figures as compared with previous years. Whilst this increase may relate to changes in Police Department policy, training and the appointment of Domestic Violence Liaison Officers within each police division which occurred at about that time, it is not currently possible to isolate the effects of those initiatives from other factors. Community education, for instance, may have led to an increase in the reporting of domestic violence, whether or not any increase in the level of domestic violence within the community has occurred. These possibilities are not mutually exclusive, and each could have contributed to the increase.

The comparison of 'assault female' matters with other categories of assault indicate that there has been a general increase in the number of assault matters being dealt with by police and courts in recent years. The magnitude and nature of the increase in the 'assault female' category, however, suggests that the introduction of the domestic violence legislation has had a particularly noticeable effect on methods of dealing with offences in this category.

Apprehended Domestic Violence Orders

The provisions for an Apprehended Domestic Violence Order under Section 547AA of the Crimes (Domestic Violence) Amendment Act were outlined in Chapter 1. Data on the extent to which such provisions have been utilised have been collected from copies of ADVOs which are sent to the Bureau of Crime Statistics and Research, and also from the routine court statistics.

There are however, some limitations to the data available from these sources. In particular, an analysis of the ADVOs granted by courts does not allow a consideration of the nature and progress of the complaints which are made seeking an ADVO. A special project established to collect data concerning these issues, inter alia, is described in Chapter 3.

The copies of ADVOs which are sent to the Bureau of Crime Statistics and Research allow an analysis of both the numbers of orders which have been made by the courts over time and the actual nature of the orders made.

As shown in Table 2.8, the number of orders which have been handed down by courts has increased substantially in each year since the legislation commenced, from an average of 4.6 orders per week in 1983 to 27.4 per week in 1987. As indicated in Figure 2.7 and Appendix 2.6, the proportion of all ADVOs in which police acted as the complainant on behalf of the victim showed a very substantial increase from 1986 to 1987, having been at a consistently low level in previous years. Almost one in five (18.9%) orders made by courts in 1987 was initiated by a police complainant. Despite this large increase in police initiated orders, the number of victim initiated orders also increased substantially between 1986 and 1987.

An analysis of the orders made from 1983 to mid 1985 indicated that at that time the increase in orders was due to new applications being made, and did not reflect complainants renewing orders which had expired (Stubbs, 1986).

It is not possible to judge from the available data whether the growth in the number of ADVOs being handed down by NSW courts reflects an increase in the actual level of violence within the community. It is to be expected that a greater community awareness of the availability of such protective orders, together with the training of police, solicitors, court staff and other relevant workers concerning the legislation and its associated procedures, would produce an increase over time in the number of ADVOs, irrespective of any change in the actual number of assaults taking place.

The relationship of the defendant³ and alleged victim in domestic violence proceedings is an important issue. In its original form the Crimes (Domestic Violence) Amendment Act, 1982 included only those couples who were at the time married or living together in a bona fide de facto relationship. A later amendment which commenced in December 1983 broadened this definition to include also those couples who had previously been married, or had previously lived together in a de facto relationship.

The information recorded upon the ADVO forms allows, at best, an imprecise measure of the relationship between the two parties. Each party's name and address is recorded upon the form, although often the victim's address is not disclosed as a precaution to ensure their

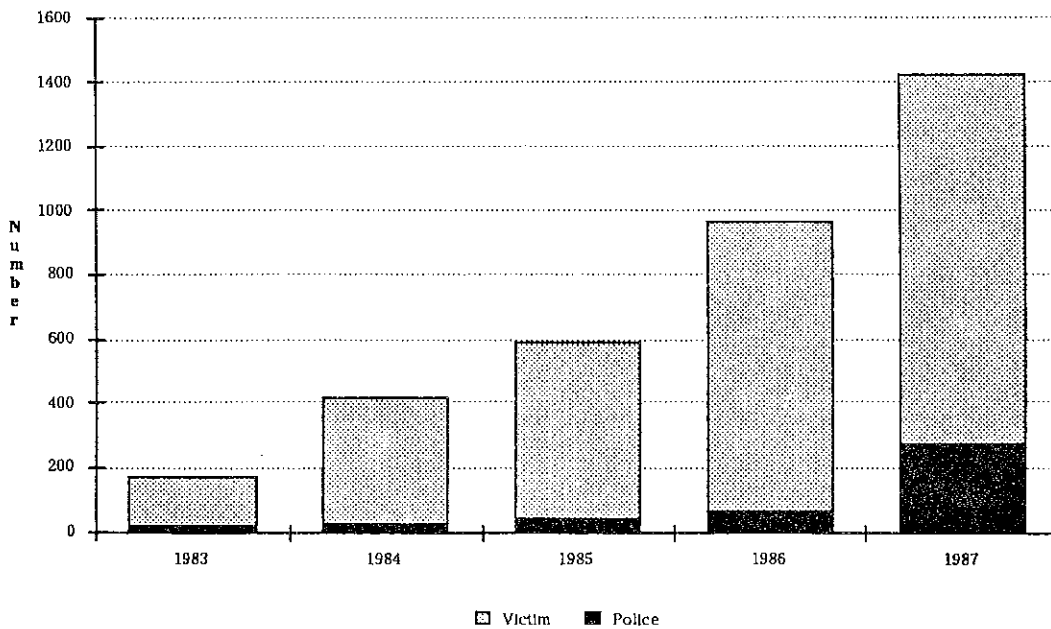
³This is the term used in the legislation to refer to a person against whom a complaint of apprehended domestic violence has been made. It does not necessarily mean that any criminal charge has been laid against this person as the more typical usage of the term 'defendant' might suggest.

TABLE 2.8
Apprehended Domestic Violence Orders
1983 - 1987

Year	Number	% change	Average per week
1983 (37 weeks) ^(a)	172	--	4.6
1984	423	+74.8	8.1
1985	596	+40.9	11.5
1986	968	+62.4	18.6
1987	1,426	+47.3	27.4

(a) The legislation was introduced on 18 April 1983.

FIGURE 2.7
Number of ADVOs Initiated by police or victim complainants
1983 - 1987



safety. Table 2.9 provides details of whether the victim and defendant shared the same name and address, as a crude indicator of the relationship between the two parties.

In each year other than 1983, over 60 per cent of ADVOs granted concerned parties with different addresses - in 1987, 908 ADVOs (66.2%) were made concerning parties who had specified different addresses. It is not possible to determine from these data the extent to which a separation may have been a response to the alleged violent incident, or had actually preceded the incident or incidents associated with the application for an ADVO. The large number of orders made in cases where the victim and defendant did not reside together at the time at which the order was made, however, serves to reinforce the importance of the December 1983 amendment to the legislation which extended the definition to encompass such cases. Whilst the proportion of orders made involving those with the same name but a different address remained about the same level as in 1983, the proportion in the 'different name, different address' category increased markedly in 1984 as compared with 1983.

The vast majority of defendants against whom ADVOs were made by the court were men: 98.2 per cent of defendants in 1987 were male.

The nature of the orders made by the court in 1987 is presented in Table 2.10, and for previous years in Appendix 2.7. The order most commonly made has consistently been that the defendant 'not assault, molest, or interfere with his spouse or children' - this occurred in 34.6 per cent of 1987 cases. Various orders restricting the defendant's contact with his wife and/or children, and in some cases prohibiting his approach to the spouse's home and/or workplace, were made in approximately 38 per cent of cases. In 45 cases (3.2%) defendants were explicitly ordered to vacate the premises in which they were living. This may represent an underestimate of the number of orders which effectively required the defendant to vacate premises, given that orders not to approach the spouse's premises may in some cases have also required that the defendant move out of these premises. As many as 45.4 per cent of orders may, in practice, have involved the defendant vacating premises for these reasons.

In 15.3 per cent of orders, reference was made to access arrangements concerning children of the relationship. These orders typically prohibited the defendant from visiting his spouse's premises except for the purpose of exercising his rights of access. In many cases, such a provision did not detail the nature of any agreed upon arrangements for access, thus making the order potentially difficult to enforce since the defendant could claim that any visit to the spouse's premises was for the purpose of access, whether or not that was the case.

The data presented above have demonstrated a substantial increase in both the number of ADVOs that were granted by the courts over the last five years and the level of police involvement in acting as complainant on behalf of victims. In order to assess the effectiveness of the orders, however, it is crucial also to consider what the available data indicate about the number of breaches of ADVOs.

TABLE 2.9
 Apprehended Domestic Violence Orders, relationship between victim and defendant
 1983 - 1987

Relationship	1983		1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%	No.	%
Same name, same address	59	37.1	104	25.0	128	24.3	197	21.1	349	25.5
Same name, different address	56	35.2	144	34.6	169	32.1	346	37.0	524	38.2
Different name, same address	25	15.7	40	9.6	44	8.4	73	7.8	114	8.3
Different name, different address	19	11.9	128	30.8	185	35.2	319	34.1	384	28.0
TOTAL	159 ^(a)	100.0	416 ^(b)	100.0	526 ^(c)	100.0	935 ^(d)	100.0	1,371 ^(e)	100.0

(a) Relationship unknown in 13 cases.
 (b) Relationship unknown in 7 cases.
 (c) Relationship unknown in 70 cases.
 (d) Relationship unknown in 33 cases.
 (e) Relationship unknown in 55 cases.



TABLE 2.10
The nature of Apprehended Domestic Violence Orders
1987

Categories of restrictions and prohibitions	No.	%
General		
Not to assault, molest, interfere with spouse/children	494	34.6
Not to assault, molest spouse, accept treatment/supervision	2	0.1
Not to approach or contact spouse, not to approach premises not to assault/threaten spouse	300	21.0
Not to approach or contact spouse, not to approach premises/workplace	82	5.8
Not to approach or contact spouse/workplace	6	0.4
Not to approach or contact spouse except through solicitor	18	1.3
Not to approach spouse/children, not to visit premises	21	1.5
Vacate premises, not to approach premises or spouse	25	1.8
Not to assault, molest, contact directly, by third person or by telephone	112	7.9
Access		
Not to assault, approach premises/spouse's workplace except to exercise rights of access	187	13.1
Vacate premises, not to approach premises except to exercise rights of access	20	1.4
Not to assault, not to approach premises except to exercise rights to access (when not intoxicated)	12	0.8
Alcohol		
Not to assault, not to approach, assault, molest spouse, not to drink alcohol	15	1.1
Not to assault, molest spouse, not to approach spouse's residence when intoxicated, not to consume alcohol on premises	33	2.3
Other ^(a)	95	6.7
Not specified	4	0.3
TOTAL	1,426	100.0

(a) The 'Other' category typically includes very specific conditions not able to be coded into general categories.

Breach of ADVOs

The domestic violence bail forms analysed earlier in this chapter indicate a relatively small number of cases in which police laid charges against an accused relating to the breach of an ADVO.

Table 2.1 indicates that, in 1987, 40 of the bail forms, at most, included a charge of breaching an ADVO (it is not possible to be precise about the number of charges since the table categorises breaches of ADVOs together with breaches of bail provisions). This may, however, underestimate the extent of police action on breach. It may, for example, be common practice that where a breach of an order is constituted by behaviour which is in itself a criminal offence, such as an assault, police will charge for that offence and not also charge for the offence of breaching the ADVO. It is not possible to determine the extent to which this may occur.

It should also be kept in mind that not all police arrests result in bail determinations, since in some instances accused persons are taken before a court immediately after their arrest.

The court statistics provide evidence of the number of matters in which breach of an ADVO was the principal offence determined before the court. Table 2.11 indicates the number of breach actions before the court over the period 1984 to 1987, and whether those matters were initiated by charge or by summons. Police rarely use summonses for such offences, and most summons matters would be initiated by a chamber magistrate, or another court officer, on a complaint concerning the breach from the victim or the victim's legal representative. The table indicates a much greater number of charges for breach of an ADVO than the number indicated by the bail forms, and shows a substantial increase in the number of court appearances for breach of an ADVO over the period 1984 to 1987. In each year the majority of matters were instituted by way of charge rather than summons, but the percentage of matters initiated by summons has more than doubled since 1984.

TABLE 2.11
Court appearances for breach of ADVO
Matters initiated by charge or summons
1984 - 1987

Matters initiated by	1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%
Charge	22	84.6	49	76.6	61	71.8	112	68.3
Summons	4	15.4	15	23.4	24	28.2	52	31.7
TOTAL	26	100.0	64	100.0	85	100.0	164	100.0

TABLE 2.12
Outcomes for breach of ADVO
1984 - 1987

Outcome	1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%
Not guilty	1	3.8	0	0.0	3	3.5	13	7.9
Withdrawn/dismissed	8	30.8	24	37.5	30	35.3	42	25.6
Recognizance forfeited	-	-	-	-	-	-	-	-
Section 556A dismissal	2	7.7	2	3.1	2	2.4	8	4.9
Rising of the Court	1	3.8	3	4.7	3	3.5	2	1.2
Fine	5	19.2	15	23.4	15	17.6	24	14.6
Recognizance	3	11.5	11	17.2	19	22.4	51	31.1
Periodic Detention	-	-	-	-	2	2.4	0	0.0
Community Service Order	-	-	-	-	-	-	4	2.4
Imprisonment	6	23.1	9	14.1	11	12.9	20	12.2
TOTAL	26	100.0	64	100.0	85	100.0	164	100.0

The increase in the number of breaches coming before the courts is an expected result given the tremendous growth in the number of ADVOs being handed down by courts. It is not possible, however, to calculate the precise proportion of orders which resulted in breach proceedings, since the absence of any central register of ADVOs means that it is not possible to determine how many orders were in effect at any given time (the varying duration of orders makes this difficult to estimate).

The finding that an increasing proportion of breach matters proceeded by summons rather than by charge is open to a number of possible explanations. It may simply reflect an increasing awareness in the community generally, or amongst solicitors, court staff and others associated with the criminal justice system, of the procedures available to deal with breaches of ADVOs. Whilst breach of an ADVO is a criminal offence, it may be that many of the victims who initiated court action for an ADVO themselves also initiated breach proceedings without reporting the incident to the police. Alternatively, it may indicate some problems with the policing of breaches - this issue is considered further in Chapters 4 and 5, where the issue of breach is canvassed in interviews with women who had been granted ADVOs by the court, and also with chamber magistrates.

The outcomes for breach proceedings are presented in Table 2.12. The data indicate that a relatively high proportion of proceedings for breach of an ADVO are withdrawn. In fact, this was the most common outcome in 1984, 1985 and 1986. The decrease in the percentage of matters which were withdrawn in 1987 as compared with the previous years was coincident with an increase in the not guilty category (from 3.5% in 1986 to 7.9% in 1987) and an increase in the use of recognizances (from 22.4% in 1986 to 31.1% in 1987). The use of fines in 1987 was actually less than it had been in previous years, and the level of imprisonment at 12.2 per cent was similar to that in 1985 and 1986 (the number of matters in 1984 is too small for that year to be included in any comparison of outcomes). Community Service Orders were imposed as an outcome for breach of an ADVO for the first time in 1987.

Whilst the data indicate that an increasing number of breaches of ADVOs are being prosecuted before the courts, the data are likely to understate the actual level of breach since breaches not reported or not prosecuted will, by definition, not be recorded in these figures.

Table 2.13 compares the outcomes for ADVO breaches instituted by way of charge with those commenced by summons for 1987 matters (data for earlier years are not included in the comparison because the numbers of cases were too small). The table indicates a substantial difference in the outcomes depending upon the manner in which the proceedings were commenced. Approximately 60 per cent of summons matters were withdrawn or dismissed without hearing as compared with only 9.8 per cent of charge matters. Whilst the percentage of cases resulting in recognizances appears similar for charge and summons matters when only those matters proceeding to a court outcome (i.e. excluding those withdrawn/dissmised) are considered, summons matters (71.4%) were approximately twice as likely to result in recognizances as charge matters (35.6%). Although recognizances were the most common outcome for charge matters, fines were also imposed relatively

frequently (20.5%, or 22.8% excluding matters not proceeding). Only one summons matter resulted in a fine however (1.9%, or 4.8% excluding matters not proceeding). Not guilty outcomes and prison sentences were both more common for charge matters.

TABLE 2.13
Court outcomes: Breach of ADVO for charge and summons matters
1987

Outcome	Charge		Summons		Total	
	No.	%	No.	%	No.	%
Not guilty	12	10.7	1	1.9	13	7.9
Withdrawn/dismissed	11	9.8	31	59.6	42	25.6
Section 556A	5	4.5	3	5.8	8	4.9
Rising of the Court	2	1.8	0	0.0	2	1.2
Fine	23	20.5	1	1.9	24	14.6
Recognizance	36	32.1	15	28.8	51	31.1
Periodic Detention	0	0.0	0	0.0	0	0.0
Community Service Order	4	3.6	0	0.0	4	2.4
Imprisonment	19	17.0	1	1.9	20	12.2
TOTAL	112	100.0	52	100.0	164	100.0

One interpretation of the substantial difference in outcomes between charge and summons matters is that matters proceeding by charge were more serious, or were perceived to be more serious, than summons matters. The available data, however, do not allow any independent analysis of the nature of the breaches alleged in matters proceeding by way of charge compared with summons matters, so this interpretation cannot be tested here.

Summary

A substantial increase has occurred in the number of ADVOs being granted by courts since the amended legislation was introduced. Whilst the great majority of these orders continue to be sought by victim complainants rather than by the police, the proportion of police initiated ADVOs increased markedly from 1986 (6.2%) to 1987 (18.9%).

The vast majority of ADVOs were made against male defendants (98.2%) and, in 1987, two-thirds of matters involved parties who were living separately at the time that the order was made. The orders most commonly made required the defendants not to assault, molest or interfere with their spouse and children, and/or prohibited the defendants from approaching or contacting their spouse. Reference was commonly made in ADVOs to access arrangements regarding children.

The number of matters brought before the courts each year for the breach of an ADVO has increased and, consistent with the pattern for other domestic violence offences, has shown a substantial increase from 1986 to 1987. The most common outcome for such offences in 1987 was a recognizance. The proportion of breach actions instituted by summons has also increased over time. The court statistics provide evidence, though, that breach actions brought by summons are much less likely to proceed to a court determination than are matters brought by charge. Not only were the majority of summons matters withdrawn but, of those determined before the court, the outcomes varied considerably when compared with outcomes for charge matters, and focused almost exclusively upon recognizances of various kinds or dismissals under Section 556A of the Crimes Act. A much higher proportion of charge matters than summons matters resulted in fines and sentences of imprisonment. These penalties were almost never imposed in summons matters.

Telephone warrants

As discussed in Chapter 1, the introduction of telephone warrants authorising police to enter premises to investigate domestic violence had been controversial. As Lansdowne (1985) states, there had been fears that police would abuse their power to obtain telephone warrants.

Table 2.14 presents data concerning the use of telephone warrants by police since the legislation was introduced in 1983. As evident from the table, telephone warrants are rarely sought by police and, in fact, the highest number of applications for such warrants in any given year was eight. The number of warrants sought and issued has declined almost every year since the introduction of the measure.

TABLE 2.14
Telephone warrants for domestic violence matters
1983 - 1987

Year	Number sought	Number issued	Number of arrests
1983	8	6	3
1984	6	5	2
1985	3	3	0
1986	3	3	0
1987	2	2	0

Spouses excused from giving evidence

Magistrates are required to complete a form each time a complainant is excused from giving evidence, and to document their reasons for that decision. Table 2.15 shows the number of forms received by the Bureau

TABLE 2.15
Spouses excused from giving evidence
1983 - 1987

Year	No.
1983	19
1984	35
1985	37
1986	29
1987	20

of Crime Statistics and Research each year since the legislation was introduced indicating that complainants had been excused from giving evidence. In 1987 there were 20 cases in which spouses were excused. Table 2.16 documents the reasons which were cited for granting exemptions in these cases.

As discussed in Chapter 1, the legislation specifies that where a spouse applies to be excused from giving evidence, a Judge or Justice

TABLE 2.16
Reasons for excusing spouses from giving evidence
1987

Reasons for being excused ^(a)	1987 N = 20
Reconciliation of parties	14
Interests/welfare of children	5
Other evidence available	2
Husband vacated premises/now separated	1
Violence minimal/injury not severe	10
Woman's request/refusal/hostile witness	1
Evidence that wife exchanged blows with husband	1
Woman has no recollection of the event	1
Wife has moved out of district	1
Divorce pending	1
No subsequent violence	3
Wife has no further fears of violence	3
Age of defendant/long marriage	1
No undue pressure/influence on wife/ withdrawing of own free will	2
No previous violence	3
Application motivated by concern for property, not personal safety	1
Man attending counselling/no longer drinking	2

(a) More than one reason in some cases.

may excuse that person if satisfied that the application is made freely and without threat or any improper influence. In doing so consideration must be given to the availability of any other evidence concerning the offence and the seriousness of the offence.

As evident from Table 2.16, the most commonly cited reasons for excusing a spouse from giving evidence were that the parties had reconciled or that the violence was minimal.



CHAPTER 3

COURT RECORDS STUDY

Courts study

Method

In order to assess the numbers of applications being made for ADVOs and the outcomes of such applications, a study was made of the records of 22 Local Courts over the six month period from 1 January to 30 June, 1986. Eighteen metropolitan courts and four country courts were included in the study (see Appendix 3.1 for a list of the courts). Resource limitations did not permit the inclusion of other courts in the sample. The 22 courts studied were known to have been the courts at which 50.4 per cent of all ADVOs throughout NSW were granted in that year.

The analysis of the court records allowed for data to be collected concerning the nature of the complaints, details of the progress of the complaints before the court, the level of legal representation of applicants and defendants and the actual outcomes of the complaints. The data also allowed for a consideration of those factors associated with successful applications. A copy of the data collection form used is included in Appendix 3.2.

It should be noted that unless otherwise stated, the data presented in this chapter relate to ADVOs sought, and not to ADVOs granted as was the case in Chapter 2.

The complainants

A total of 781 applications were listed in the records of the 22 courts during the six month period for which data were collected. Consistent with the data presented in Chapter 2, the majority (98.5%) of applications were initiated by the alleged victim; in only eight cases was a police officer known to have been the complainant, and in four cases it was not clear who the complainant was.

In 746 cases (95.5%) the alleged victim of apprehended domestic violence was female. Orders were sought by, or on behalf of, 32 men (4%) and in four cases the sex of the applicant victim was not known. In 13 cases (40.6%) in which men were the alleged victims, cross complaints had been made - that is, the female (ex) partners of the men had also sought orders for their own protection.

The relationship between the complainant and defendant, as indicated on the court records, is shown in Table 3.1. The fact of the applicant and respondent having the same or different names and addresses is not necessarily indicative of the marital status of the parties.

TABLE 3.1
Relationship between applicant and defendant

Relationship	No.	%
Same name, same address	214	27.4
Same name, different address	241	30.9
Different name, same address	87	11.1
Different name, different address	206	26.4
Unknown	33	4.2
TOTAL	781	100.0

There is a relatively low incidence of cases (11.1%) where parties had different names but lived at the same address. Where the parties had different names, 70.3 per cent lived separately, as compared with 53 per cent of those with the same names. This might indicate the different degree of mobility of individuals in de facto relationships. There may be less jointly owned property and generally less economic and social enmeshing of lives and families. There may be less shared obligation towards children and, perhaps, applicants may be more likely to have an independent income.

Such factors may enable complainants to leave an allegedly violent relationship more readily, or to be in a better position to insist that the defendant vacate the premises.

The relatively low percentage in the 'different name, same address' category is consistent with the data presented in Chapter 2 and the data gathered from interviews with victims (8.0%, see Chapter 4).

The 1986 Census indicates that approximately 5.5 per cent of NSW couples live in de facto relationships. Whilst the fact that a couple do not share the same name is not necessarily a good indicator of a de facto relationship, the 33.6 per cent of applicants for ADVOs with names different from their partner may suggest an over-representation of de facto relationships amongst applicants as compared with the general population.

The complaints

When seeking an ADVO, complaints may be made by the alleged victim or a police officer, verbally or in writing. Most commonly, the details of an alleged incident, or incidents, which form the basis for the complainant's apprehension of domestic violence are recorded by a court officer on the complaint form, and the complaint is sworn before a justice by the complainant. The level of detail recorded, and the nature of the complaints, varied enormously throughout the sample and from court to court.

In 509 cases (65.2%) the complaints included allegations of previous domestic violence; that is, previous to the most recent incident. In only three complaints (0.4%) was it stated that the incident prompting the complaint was the first occurrence of actual or threatened violence between the couple. In the remaining 269 complaints it was not clear whether there had been such prior incidents (see Table 3.2).

TABLE 3.2
Allegations of previous actual or threatened violence

Allegation	No.	%
No previous violence	3	0.4
Previous violence	509	65.2
Not known	269	34.4
TOTAL	781	100.0

The complaints alleged that police and/or court action had been taken with respect to previous domestic violence in 88 cases (11.3%). Both the incidence of previous threats or violence and previous police and/or court action are likely to be understated in the complaints, since the complaints provide brief details only. What constitutes the complaint depends upon what the complainant and the chamber magistrate or justice preparing the complaint consider to be relevant at the time.

Table 3.3 indicates the nature of the incidents described in the complaints as forming the basis for the alleged victims' apprehension of domestic violence. In three-quarters of cases the complaints alleged assaults, whilst almost 60 per cent included reference to harassment or molestation. In almost one-quarter of cases the complaint related to threats to kill the defendant's (ex) partner and/or child or children.

It should be noted that these findings are not generalisable. That is, whilst they provide very useful detail about the nature and history of the alleged domestic violence in those matters where a complaint was laid, they should not be interpreted as indicative of the nature of domestic violence in the community generally.

Complaints for ADVOs may proceed either by summons or warrant, as outlined earlier in this report. The chamber magistrate is normally the person who determines how the matter is to proceed. In 75 cases (9.7%) a first instance warrant was issued authorising police to arrest the defendant, 696 cases (89.1%) proceeded by way of summons and in 10 cases (1.3%) it was not clear whether a summons or warrant had been issued.

TABLE 3.3
Nature of apprehended domestic violence complaints^(a)

Complaint	No.	%
Harassment/molestation	455	58.3
Actual assault	591	75.7
Threatened assault	285	36.5
Use of weapon/s	43	5.5
Threatened use of weapon/s	71	9.1
Violence against child/ren	53	6.8
Threatened violence against child/ren	33	4.2
Threats to kill (ex)partner/child/ren	180	23.0
Sexual assault	11	1.4
Alcohol abuse	114	14.6
Drug abuse	7	0.9
Other	53	6.8

(a) The table does not sum to 100% since most complaints listed more than one category of incident.

TABLE 3.4
Nature of threatened or actual violence for
complaints proceeded with by warrant or summons

Nature of complaint ^(a)	Warrant ^(b) %	Summons ^(b) %
Harassment/molestation	7.8	92.2
Actual assault	10.8	89.2
Threatened assault	7.9	92.1
Use of weapon/s	23.3	76.7
Threatened use of weapon/s	18.6	81.4
Violence against child/ren	11.3	88.7
Threat of violence against child/ren	15.6	84.4
Threat to kill (ex)partner/child/ren	16.3	83.7
Sexual assault	18.2	81.8
Alcohol abuse	10.7	89.3
Drug abuse	14.3	85.7
History of domestic violence	9.9	90.1
Previous police or court action	16.3	83.7
PROPORTION OF TOTAL SAMPLE	9.7	90.3

(a) Each element of a complaint is considered separately, therefore some complaints are counted more than once.

(b) 10 cases in which it was not known whether proceedings were by way of summons or warrant have been excluded.

Table 3.4 compares the nature of violence alleged in matters proceeding by way of warrant or summons. Whilst 9.7 per cent of all cases (excluding cases where the manner in which matters proceeded was unknown) proceeded by way of warrant, the proportion of cases proceeding by warrant varied according to the nature of the violence alleged in the complaint. Warrants were issued in 23.3 per cent of cases involving allegations of the use of weapons, 18.6 per cent of cases involving threats with weapons, 18.2 per cent of cases of alleged sexual assault and 16.3 per cent of cases involving threats to kill the defendant's (ex) partner or child. Clearly warrants were not issued very frequently, and tended to be associated with allegations of more serious violence or threats.

TABLE 3.5
Length of time between making complaint and final outcome

Length of time	No. of cases		No. of cases reaching court determination	
	cases	%		%
Same day	28	3.7	27	8.1
1 - 7 days	63	8.4	36	10.8
8 - 14 days	118	15.7	52	15.7
15 - 21 days	123	16.4	53	16.0
22 - 28 days	106	14.1	40	12.0
29 - 35 days	95	12.6	30	9.0
36 - 60 days	106	14.1	42	12.7
61 - 90 days	57	7.6	24	7.2
More than 90 days	56	7.4	28	8.4
TOTAL	752 ^(a)	100.0	332 ^(b)	100.0

(a) Details of dates were unknown in 29 cases.

(b) Details of dates were unknown in 7 cases.

The time taken for the complaint to be finalised, whether by a determination before the court or otherwise (e.g. withdrawn), varied greatly. As Table 3.5 shows, 3.7 per cent of cases were finalised on the same day as the complaint was made, and a further 8.4 per cent within the first week. However, 41.7 per cent of cases took longer than four weeks to be finalised, and 15 per cent took longer than 60 days. The table also shows the time taken for those matters ultimately determined before the court (i.e. which were not withdrawn or did not lapse due to the failure of one or both parties to appear at court, or because the summons wasn't served) to reach finalisation. The median time to finalisation for cases reaching a court determination was in the range of 15 to 21 days, whilst for the total sample the median range was 22 to 28 days.

Table 3.6 shows the length of time taken to finalise summons cases as compared with warrant cases. A much higher proportion of warrant cases (27.1%) than summons cases (10.3%) were determined within the first week. However, similar proportions of warrant (32.9%) and summons (34.5%) matters took between 29 days and 90 days to be finalised.

TABLE 3.6
Length of time between complaint and final outcome
for matters proceeding by warrant and summons

Number of days	Warrant		Summons	
	No.	%	No.	%
Same day	8	11.4	19	2.8
1 - 7 days	11	15.7	50	7.4
8 - 14 days	7	10.0	109	16.2
15 - 21 days	7	10.0	115	17.1
22 - 28 days	5	7.1	101	15.1
29 - 35 days	8	11.4	85	12.6
36 - 60 days	10	14.3	95	14.1
61 - 90 days	5	7.1	52	7.7
More than 90 days	9	12.9	46	6.8
Total ^(a)	70	100.0	672	100.0

(a) In 36 cases details concerning whether proceedings were by way of summons or warrant, and/or details concerning the length of time between complaint and finalisation were unknown.

Not surprisingly perhaps, contested matters took longer to finalise than uncontested matters. In 46 per cent of contested matters as compared with only 8.5 per cent of uncontested matters, the complaint took in excess of 60 days to be finalised.

The length of time taken between seeing the chamber magistrate and the case being finalised may have an important bearing on the level of protection available to the complainant and, thus, the degree to which the legislation is effective. Complainants may be in danger after having made the complaint even in cases where the initial incident or incidents did not involve physical violence. As pointed out in the *Violence Against Women and Children Law Reform Task Force Consultation Paper* (July 1987, p. 105):

The lack of provision for interim Apprehended Domestic Violence Orders, and ex parte applications for such orders, is a serious gap in the protection offered by section 547AA. During the days or weeks before an application first comes to court the woman and any

children may be extremely fearful for their own safety, and may in fact suffer violence from the defendant. They may feel driven to leave their homes, putting pressure on limited emergency accommodation and causing disruption to their own and their children's lives.

This issue has been addressed, however, by amendments proclaimed in February 1988, which allow for interim ADVOs to be granted ex parte (i.e. in the absence of the defendant) pending the service of a summons and the complaint being determined in court (see Appendix 3.3).

Outcome of complaints

Apprehended Domestic Violence Orders resulted from 232 (29.7%) of the complaints, as depicted in Table 3.7. Twenty-seven of these were granted ex parte. In 12 cases (1.5%) applications for orders were dismissed after evidence was heard by the magistrate. In a substantial number of cases (351, 44.9%) the matter was either withdrawn or did not proceed due to the failure to appear of one or both of the parties.¹ In almost 11 per cent of cases the summons to attend court was never served upon the defendant. A similar proportion of cases resulted in the matter being withdrawn following undertakings being given to the court by the defendant and sometimes also by the complainant.²

Non-appearance of the complainant, or of both parties, is usually understood to signify a withdrawal of the complaint. Where the complainant is present, however, and the defendant having been served with the summons fails to appear, the complaint may be dealt with in the defendant's absence (ex parte). As noted above, 27 ADVOs were granted ex parte and in seven cases where a defendant failed to appear a warrant was issued authorising the defendant's arrest. In 19 cases where the defendant did not appear, however, no action was taken and the complaint lapsed.

In the 339 cases (43.4%) where the application resulted in a court determination (i.e. excluding those cases which lapsed due to a failure to appear by one or both parties, the withdrawal of the matter prior to court or the fact that the summons was never served) 68.4 per cent of complaints resulted in ADVOs. As shown in Table 3.8, complaints were withdrawn on undertakings in 23.9 per cent of cases determined at court, 3.5 per cent of such cases were dismissed after hearing and 4.1 per cent of cases were referred to Community Justice Centres or to Family Courts.

¹ A detailed discussion concerning the withdrawal of complaints appears in Chapter 4.

² The matter is withdrawn on the undertaking, or promises of the defendant to the court concerning his/her future conduct. Police have no specific powers to enforce an undertaking. For a detailed discussion see Chapter 4.

TABLE 3.7
Outcome of complaints for ADVOs

Outcomes	No.	%
Complainant failed to appear	28	3.6
Defendant failed to appear/no action taken	19	2.4
Both parties failed to appear	118	15.1
Matter withdrawn prior to hearing	110	14.1
Matter withdrawn at the hearing	76	9.7
Complaint withdrawn on undertakings	81	10.4
Complaint dismissed	12	1.5
Order granted	205	26.2
Order granted ex parte	27	3.5
Summons never served	84	10.8
Warrant issued for non-appearance	7	0.9
Other (complainant or defendant deceased), referred to CJC ^(a) or FC ^(b)	14	1.8
TOTAL	781	100.0

(a) CJC - case referred by court to Community Justice Centre.

(b) FC - case referred by court to Family Court.

TABLE 3.8
Outcome of complaints proceeding to a court determination

Outcome	Contested complaints		Not contested		Total	
	No.	%	No.	%	No.	%
ADVO granted	27	55.1	205	70.7	232	68.4
Withdrawn on undertakings	14	28.6	67	23.1	81	23.9
Dismissed	7	14.3	5	1.7	12	3.5
Other ^(a)	1	2.0	13	4.5	14	4.1
TOTAL	49	100.0	290	100.0	339	100.0

(a) Referred to Community Justice Centre, or Family Court.

Sixty-two complaints were known to have been contested (7.9% of the total sample)³, and 49 of these proceeded to a court determination. This represented 14.5 per cent of cases proceeding to a court determination. Whilst the majority of contested complaints resulted in orders (55.1%), this is a lesser proportion than for uncontested complaints. The percentage of complaints withdrawn on undertakings and the percentage dismissed were both higher for contested complaints than for uncontested complaints. The difference in outcomes between contested and uncontested complaints was statistically significant ($X^2 = 19.9$, $df = 2$, $p < 0.01$; 'Other' outcomes were excluded from this comparison).

The outcomes of applications proceeding to a court determination for male and female victims are compared in Table 3.9. Complaints on behalf of female victims (69.7%) were much more likely to result in ADVOs than were complaints involving male victims (37.5%). Whilst no complaints by male victims were dismissed after hearing, 56.3 per cent resulted in the matter being withdrawn on undertakings; such undertakings were the result in 22.5 per cent of cases involving female victims. The difference in outcomes between male and female complainants was statistically significant ($X^2 = 10.34$, $df = 2$, $p < 0.05$; 'Other' outcomes were excluded from this comparison).

TABLE 3.9
Outcome of applications proceeding to a court
determination for male and female victims

Outcome	Male		Female		Total	
	No.	%	No.	%	No.	%
ADVO granted	6	37.5	223	69.7	229	68.2
Withdrawn on undertakings	9	56.3	72	22.5	81	24.1
Dismissed	0	0.0	12	3.8	12	3.6
Other ^(a)	1	6.3	13	4.1	14	4.2
TOTAL	16	100.0	320	100.0	336 ^(b)	100.0

(a) Referred to Community Justice Centre, or Family Court.

(b) Sex of victim was unknown in three cases.

It has been suggested in the report of the NSW Domestic Violence Committee (1985) that courts may be more willing to grant orders where the parties no longer live together. The outcome of applications for those separated is compared to that for those living together in Table 3.10. Those applicants with a different name to the alleged offender,

³This is probably an underestimate, since in 28.3 per cent of matters it could not be determined whether the complaint was contested.

TABLE 3.10
Relationship of parties and the outcome of complaints proceeding to a court determination

Outcome	Same name, same address		Same name, different address		Different name, same address		Different name, different address		Total
	No.	%	No.	%	No.	%	No.	%	
ADVO granted	65	75.6	61	53.5	29	82.9	66	75.0	221 ^(a) 68.4
Withdrawn on undertakings	18	20.9	42	36.8	1	2.9	17	19.3	78 ^(b) 24.1
Dismissed	2	2.3	4	3.5	1	2.9	3	3.4	10 ^(c) 3.1
Other ^(d)	1	1.2	7	6.1	4	11.4	2	2.3	14 4.3
TOTAL	86	100.0	114	100.0	35	100.0	88	100.0	323 100.0

(a) Relationship unknown in 11 cases.

(b) Relationship unknown in three cases.

(c) Relationship unknown in two cases.

(d) Referred to Community Justice Centre or Family Court.

but who continued to live at the same address, had the highest percentage of applications resulting in orders. This was the case when considering ADVOs granted as a proportion both of all applications (39.7%) and of all cases which reached a determination before the court (82.9%). The lowest proportion of applications resulting in ADVOs on both measures was for those applicants who shared the same name as the defendant, but who lived at a different address. This category had the highest proportion of applications resulting in cases being withdrawn on undertakings (36.8% of matters reaching a court determination). Whilst there is a statistically significant difference between the outcome of a complaint for parties living separately and together ($X^2 = 8.41$, $df = 2$, $p < 0.05$), the data do not support the notion that magistrates are more likely to grant orders to parties who are separated. (This comparison was based upon whether the parties were living together or separately irrespective of their names, and excluded 'Other' outcomes.)

The report of the NSW Domestic Violence Committee (1985) also suggested that the manner in which the legislation concerning domestic violence was being interpreted and implemented varied substantially between courts. For this reason an attempt was made to analyse the outcomes of applications for ADVOs by court, although the small amount of data on each court meant that few reliable conclusions could be drawn.

Whilst, for the total sample, 43.4 per cent of applications did not proceed to a court determination, this proportion varied substantially between courts, from a low of 31.5 per cent to a high of 68.2 per cent (see Appendix 3.3). These differences do not necessarily reflect on the practices of the court but may, rather, reflect differences in the nature of the complaints or of the complainants, for example. Of those applications which did reach a court determination, there was considerable apparent variation between courts in the proportion of those applications in which orders were granted, but none of these differences were statistically significantly different from the sample mean ($\bar{x} = 63\%$, $SD = 21.4\%$, $LSD = 41.9\%$ at $p = 0.05$). Thus, the current data provide no evidence that there are reliable differences between courts in the proportions of applications granted.

Legal representation

The details noted on court records do not always specify the source of a person's legal representation. Whilst an attempt was made to code the source of legal representation (for example, private solicitor, legal aid, or police prosecutor), the only information which could be reliably determined was whether the parties did or did not have legal representation.

There were 306 complainants who were legally represented at the initial court appearance. This is 39.2 per cent of the total sample or 60.9 per cent of those known to have attended court on the first occasion. Of those who had more than one court appearance (253 complainants or 32.4% of the sample) 148 were legally represented at the final court appearance, representing 75.5 per cent of those who appeared at court on the final date.

The defendants were legally represented at their first court appearance in 213 cases (27.3%) or 47.9 per cent of those who attended court. Of those who had more than one court appearance 115 were legally represented at the final hearing (69.3% of those who appeared at court).

Tables 3.11 and 3.12 present details concerning the legal representation and outcome of complaints for complainants and defendants respectively. For the purpose of these tables, legal representation is recorded for the last occasion on which the matter was before the courts (in many cases this was, in fact, the first and only appearance), and the tables include only those cases which proceeded to a court determination. The differences in the numbers of persons recorded as having had legal representation in these tables as compared with the data presented in the previous paragraph is due in part to cases in which matters did not proceed, and in part to cases in which individuals had multiple court appearances and were legally represented on some occasions and not represented on other occasions.

Table 3.11 indicates that a higher proportion of cases in which complainants were not legally represented (82.8%) resulted in ADVOs than cases in which complainants were legally represented (59.1%). Legally represented complainants (31.7%) were almost three times as likely as unrepresented complainants (11.5%) to have their complaints withdrawn on undertakings. The proportion of cases dismissed or leading to other outcomes was similar between the two groups.

TABLE 3.11
Legal representation of complainants
at final appearance and outcome

Outcome	Represented		Not Represented		Total	
	No.	%	No.	%	No.	%
ADVO granted	123	59.1	101	82.8	224 ^(a)	67.9
Withdrawn on undertakings	66	31.7	14	11.5	80 ^(b)	24.2
Dismissed	9	4.3	3	2.5	12	3.6
Other ^(c)	10	4.8	4	3.3	14	4.2
TOTAL	208	100.0	122	100.0	330	100.0

(a) Legal representation unknown in eight cases.

(b) Legal representation unknown in eight cases.

(c) 'Other' includes cases in which warrants were issued for the arrest of the defendant who failed to appear in court, and cases which were referred to the Family Court, or to a Community Justice Centre.

Similar results appear in Table 3.12 with respect to legal representation for defendants. ADVOs were the outcome in a much higher proportion of cases in which defendants were unrepresented (82.8%) as compared with those who were represented (50.7%), and those with legal representation (42%) were almost four times more likely to have the complaints withdrawn on undertakings than were unrepresented defendants (11%).

TABLE 3.12
Legal representation of defendants
at final appearance and outcome

Outcome	Represented		Not Represented		Total	
	No.	%	No.	%	No.	%
ADVO granted	76	50.7	120	82.8	196 ^(a)	66.4
Withdrawn on undertakings	63	42.0	16	11.0	79 ^(b)	26.8
Dismissed	9	6.0	3	2.1	12	4.1
Other ^(c)	2	1.3	6	4.1	8 ^(d)	2.7
TOTAL	150	100.0	145	100.0	295	100.0

(a) In 27 cases orders were granted ex parte following the failure to appear of the defendant and in nine cases it was not known whether the defendant was legally represented.

(b) Legal representation unknown in one case.

(c) 'Other' includes cases referred to the Family Court, or to a Community Justice Centre.

(d) Legal representation unknown in six cases.

These results cannot be interpreted to mean that legal representation *causes* the greater likelihood of a withdrawal on undertakings. Legal representation may be correlated with many other factors (e.g. characteristics of the alleged incident involved), any of which may have a greater influence on outcome than legal representation. Because of the lack of independence of the factors, however, legal representation would then only appear to be the cause of the different rates of withdrawals. These data must also be interpreted cautiously due to the large numbers of cases in which complainants or defendants did not appear in court, or in which details concerning legal representation were not known. Whilst Table 3.11 indicates that unrepresented complainants were particularly successful in their applications for ADVOs, this may not provide a true indication of the outcomes for those without legal representation. For example, it may be the case that a lack of legal representation was a factor in those cases which did not proceed to a court determination. It is not possible to determine from the available data what factors were

associated with the decision not to appear at court. However, this issue is considered further in Chapter 4.

In some cases, matters withdrawn on undertakings are granted leave to be restored to the court list on breach of the undertaking for further consideration by the magistrate. Where such leave is granted it is up to the applicant to seek to have the matter again raised at court. Police have no powers to enforce an undertaking, and may only act where the breach of the undertaking constitutes an offence.⁴

Summary

The vast majority of complainants were alleged victims (98.5%) rather than police officers, and most complaints were made by or on behalf of female victims (95.5%). Over half of the couples (57.2%) were living separately at the time that the complaint was lodged. Complaints included allegations of previous actual or threatened violence in 65.2 per cent of cases and 11.3 per cent made reference to previous police or court action having been taken regarding domestic violence. Most complaints related to actual physical violence (75.7%).

In those cases which proceeded by warrant (9.7%) rather than summons (90.3%), the allegations were more serious - a higher proportion of matters proceeded by warrant where allegations included the use of weapons (23.3%), the threatened use of weapons (18.6%), sexual assault (18.2%) and threats of violence against the defendant's (ex) partner, child or children (16.3%).

Whilst approximately 60 per cent of complaints were finalised within four weeks, 15 per cent of complaints took longer than 60 days to be finalised. Contested matters took longer to be finalised than uncontested matters.

In 29.7 per cent of cases complaints resulted in ADVOs being granted. Excluding cases which did not proceed due to the failure of one or both parties to appear at court, the withdrawal of the complaint or the fact that the summons was never served, 68.4 per cent of complaints resulted in ADVOs. Few applications (12, 3.5% of those determined before the court) were dismissed after hearing by a magistrate, but a substantial number of complaints (23.9% of matters determined at court) were withdrawn on undertakings. Female victims (69.7%) were more likely than male victims (37.5%) to be successful in their applications for orders, with males (56.8%) more than twice as likely as females (22.5%) to withdraw their complaints upon undertakings.

Legally represented complainants and defendants were much more likely than those without legal representation to have matters withdrawn on undertakings, although no causal link between these can be demonstrated here.

⁴Police may, of course, seek an ADVO although the incident does not constitute a criminal offence.

CHAPTER 4

**INTERVIEWS WITH APPLICANTS FOR
APPREHENDED DOMESTIC VIOLENCE ORDERS**

Chapters 2 and 3 provide statistical data concerning the level of domestic violence matters being formally dealt with in the criminal justice system. In order to examine more fully the effectiveness of the legislation, however, it is crucial to consider the experiences of those persons whom the legislation was designed to assist - the victims of domestic violence (see Chapter 2). Since the substantive change offered by the amended legislation was the introduction of the Apprehended Domestic Violence Order, it was decided to interview women who had sought such an order.¹

Careful consideration was given to the design of this component of the study, particularly with regard to the safety and privacy of the complainants to be interviewed. Women to be interviewed were located with the assistance of chamber magistrates.

This method was considered, and adopted, as more viable than other alternatives for a number of reasons.

As indicated in previous chapters of this report, the large majority of actions seeking ADVOs are initiated by alleged victims, with the complaints and summonses being prepared by chamber magistrates. Therefore, most applicants seeking protective orders under the NSW legislation will have contact with a chamber magistrate. Whilst access was available to the actual orders made by courts including the complainants' name and address, it was considered unethical to use this information to contact complainants, as this may not only have breached their privacy but could also have put them at risk. It was also important to locate not only those whose applications seeking ADVOs had been successful, but also to speak to those whose applications had not been granted, or whose cases had not reached a court determination, for whatever reason.

Women's refuges were not used as a means of contacting women to be interviewed since not all women seeking protective orders are in contact with women's refuges. In addition, since women's refuges not only provide emergency accommodation but also provide information about the law and legal options, and give support, choosing applicants from this source would provide a biased account of complainants' experiences in seeking an ADVO.

¹Although men also sought such orders, the number of persons was small. It was considered unnecessary in the circumstances to obtain a sufficient sample of male applicants to attempt any detailed analysis.

Method

Chamber magistrates at all courts throughout the Sydney Metropolitan Area and in Campbelltown, Katoomba, Wollongong, Port Kembla, Wyong and Newcastle were asked to participate in the project (see Appendix 4.1). In all, 27 courts were included, together with the chamber magistrate at Mount Druitt who is not located at a court but has an office at the local polyclinic. The available resources did not allow the inclusion of courts which were not within ready access of central Sydney. Victims were referred to the project by 19 courts.

Chamber magistrates were asked to discuss the research with all women seeking an ADVO over a three month period. An information leaflet about the research, together with a consent form authorising the researchers to contact the applicant (in a manner and at a time determined by the applicant to ensure that they were not put at any risk) was to be given to each complainant (see Appendix 4.2).

Two hundred and four complainants gave their consent to be contacted by the researchers. Initial contact was made with them, usually by telephone, and attempts were made to maintain contact with them throughout the duration of the court proceedings. In some cases (at the complainant's request) contact would be through family members, friends, women's refuges or by mail to an address other than the complainant's home. Interviews did not take place until at least three months after the finalisation of each case (irrespective of the outcome, or whether the matter did not proceed to a court determination). Interviewers were generally careful not to enter into any discussion with, or provide any information to, the complainants to be interviewed which might have an influence on the progress or outcome of the complaints.

In two cases, however, complainants who initially agreed to participate in the project appeared to be in such immediate danger or in need of such emotional support that the researchers felt ethically bound to provide whatever information and referrals seemed appropriate. Such cases were then not included in the research. It was not possible to maintain contact with all of those initially expressing interest in being involved in the project. Many complainants moved, some on more than one occasion, usually in an attempt to escape the alleged violence. Others could not be contacted, or chose not to go ahead with the interviews. In some cases the court proceedings were not completed in sufficient time to allow the interview to be completed within the time allotted for the research. Table 4.1 presents the apparent reasons for non-participation in the project by complainants who had initially agreed to be interviewed. It was not possible to determine the outcomes of court proceedings for those complainants who did not participate in the project, however, it must be acknowledged that those agreeing to go ahead with interviews may also have been more likely to proceed with their complaints in court.

A semi-structured interview schedule was developed for use in the project. This covered a broad range of issues including demographic details of both the complainant and the alleged assailant, the nature of the complaint and any history of violence within the relationship, details of the complainants' interactions with police, lawyers,

chamber magistrates and other agencies in an attempt to seek protection and/or a legal remedy and the complainants' opinions on the legislation and on domestic violence in general. Complainants were asked to comment upon the needs of domestic violence victims and to suggest ways of assisting women experiencing domestic violence. The questionnaire was pilot-tested with the assistance of some residents and ex-residents of a Sydney women's refuge who had previously sought ADVOs. The questionnaire is reprinted in Appendix 4.3.

TABLE 4.1
Apparent reasons for non-participation in the project

Reason	No.	%
Complainant decided not to participate	29	25.9
Moved out of metropolitan area	14	12.5
No response to telephone calls/letters re project	54	48.2
Matter not determined before court within life of project	4	3.6
Didn't appear at scheduled interview	3	2.7
Too angry/upset for interview	2	1.8
Deceased	1	0.9
Hospitalised with injuries	1	0.9
Excluded from project because of support/ referrals provided	2	1.8
Unknown	2	1.8
TOTAL	112	100.0

In all, 92 interviews were conducted over the period December 1986 to June 1987. More than half (56.8%) of those interviewed were referred to the project by a single chamber magistrate and the potential bias of this referral pattern is acknowledged. Whilst a very large number of domestic violence matters are determined at that particular court, it would seem that the pattern of referral to the project also reflected the level of interest in and commitment to the project by chamber magistrates at various courts.

A team of five researchers, all women, conducted the interviews, and each interview took between 45 minutes and two-and-a-half hours to complete. The interviews took place in a variety of locations dependent upon the preference and availability of each complainant being interviewed. Locations included the complainant's home, cars, coffee shops and parks. On several occasions elaborate arrangements had to be made to ensure the safety of the complainant to be interviewed (and, perhaps, the interviewer). Also, on several occasions the alleged assailant arrived unexpectedly during the course of an interview. On one such occasion both the interviewer and the complainant she was interviewing had to flee the house for safety. The safety of all parties was of paramount consideration during the project. No incidents were reported of any complainant suffering

violence or threats as a consequence of her participation in the study.

Whilst 92 interviews were conducted, the analysis which follows relates to 88 of these. The remainder were excluded from the analysis for one of the following reasons: the complainant's action for protection from domestic violence had been under legislation other than the Crimes (Domestic Violence) Amendment Act, the complainant's recall of events was confused and unclear and of insufficient detail to assist in the research or it became clear during the interview that the matter was still proceeding before the courts.

It should be borne in mind that the following results relate to the sample of complainants interviewed, and cannot be taken as being representative of domestic violence incidents in general.

Characteristics of the complainants

Interviews with 88 complainants are analysed in the section which follows. Although seven complainants were of non-English speaking backgrounds only one required an interpreter. The complainants' ages ranged from 17 to 52, seven (8%) were under 20 years of age and 23 (26.1%) were aged over 40 years (see Table 4.2).

TABLE 4.2
Age of complainants

Age	No.	%
Under 20 years	7	8.0
20 to 25 years	9	10.2
26 to 30 years	19	21.6
31 to 35 years	10	11.4
36 to 40 years	20	22.7
41 to 45 years	14	5.9
46 to 50 years	7	8.0
51 years and over	2	2.3
TOTAL	88	100.0

Tables 4.3, 4.4 and 4.5 provide data concerning the complainants' employment, source of income and weekly net income. As Table 4.3 shows, 41 (46.6%) were in paid employment and the same number were doing unpaid work at home. Five (5.7%) were 'unemployed' and one was a student at high school. Only 30 (34.0%) were in full-time paid employment. Whilst five women (17.2%) earned net incomes above \$400 per week, the most common salary was in the range of \$200 to \$299 (55.2%). Table 4.4 indicates that the majority of the complainants

TABLE 4.3
Complainants' employment

Type of employment	No.	%
Professional Managerial	1	1.1
Semi-professional/mid Management	6	6.8
Sales/Clerical/Skilled Trade	24	27.3
Unskilled	10	11.4
Student	1	1.1
Mother/At home	41	46.6
Unemployed	5	5.7
TOTAL	88	100.0

TABLE 4.4
Complainants' sources of income

Source of income	No.	%
Widow's or Supporting Parent's Benefit	36	40.9
Unemployed	5	5.7
Part-time Salary	5	5.7
Full-time Salary	30	34.1
Nil	6	6.8
Other	2	2.3
Unknown	4	4.5
TOTAL	88	100.0

were dependent upon some form of social security benefit. Thirty-six of the interviewees (40.9%) were receiving a supporting parent's benefit or a widow's pension, five received unemployment benefits and six reported having no independent income at all. Those who were employed worked in a wide range of occupations including teacher, curriculum consultant, VDU operator, sales representative, deputy matron, youth worker, clerk and process worker.

TABLE 4.5
Complainants' full-time salaries

Amount (weekly net)	No.	%
\$400 or more	5	16.7
\$300 to \$399	4	13.3
\$200 to \$299	16	53.3
\$100 to \$199	4	13.3
Unknown	1	3.3
TOTAL	30	100.0

Overall, the majority of complainants interviewed had limited economic resources available to them. Few worked full time, and those who did were in receipt of relatively low incomes.

Characteristics of the defendants

As shown in Table 4.6 the defendants' ages ranged from 18 to 63 years, three were under 20 (3.4%) and 26 (29.5%) were aged more than 40 years; the most common age was 36 to 40 years (27.3%). Their jobs included psychologist, photographer, sales manager, police officer, prison officer, soldier, butcher, baker, labourer and truck driver.

TABLE 4.6
Age of defendants

Age	No.	%
Under 20 years	3	3.4
20 to 25 years	10	11.4
26 to 30 years	16	18.2
31 to 35 years	9	10.2
36 to 40 years	24	27.3
41 to 45 years	14	15.9
46 to 50 years	3	3.4
51 years and over	9	10.2
TOTAL	88	100.0

Table 4.7 shows that five defendants were in professional, semi-professional or management positions (5.7%), 27 worked in skilled trades or semi-skilled occupations (30.7%), 25 (28.4%) were in unskilled work and 20 were unemployed (22.7%).

TABLE 4.7
Defendants' employment

Type of employment	No.	%
Professional Managerial	1	1.1
Semi-professional/mid Management	4	4.5
Sales/Clerical/Skilled Trade	27	30.7
Unskilled	25	28.4
Student	4	4.5
Mother/At home	1	1.1
Unemployed	20	22.7
Unknown	6	6.8
TOTAL	88	100.0

The relationship between complainant and defendant

Sixty complainants (68.2%) lived separately from their spouses at the time of seeking the order (Table 4.8) and 67 (76.1%) were separated at the time of interview (Table 4.9). In 36 cases (40.9%) the couple had been together five years or less (as indicated by Table 4.10), and the majority of relationships were of 10 years' duration or less (68.2%). There were, however, nine cases (10.2%) in which relationships had a

TABLE 4.8
Relationship of parties at time of complaint

Relationship	No.	%
Married, living together	19	21.6
Married, separated	30	34.1
Divorced	2	2.3
De facto, living together	7	8.0
De facto, separated	28	31.8
Other ^(a)	2	2.3
TOTAL	88	100.0

(a) Separated but sharing same house.

duration of greater than 20 years. Seventy-five (85.2%) of the complainants in the sample had dependent children living with them (see Table 4.11).

TABLE 4.9
Relationship at time of interview

Relationship	No.	%
Living together	16	18.2
Separated, living under same roof	3	3.4
Sometimes together	2	2.3
Living separately	67	76.1
TOTAL	88	100.0

TABLE 4.10
Duration of relationship

Duration	No.	%
2 years or less	21	23.9
3 to 5 years	15	17.0
6 to 10 years	24	27.3
11 to 15 years	10	11.4
16 to 20 years	9	10.2
21 to 25 years	7	8.0
More than 25 years	2	2.3
TOTAL	88	100.0

TABLE 4.11
Dependent children living with complainant

Number of dependent children	No.	%
Nil	13	14.8
One	31	35.2
Two	29	33.0
Three	11	12.5
Four	3	3.4
More than 4	1	1.1
TOTAL	88	100.0

History of alleged violence

Seventy-eight complainants (88.6%) said they had been assaulted or threatened by the same person before the event which led them to seek an ADVO (see Table 4.12) and 65 (73.9%) reported that they had also experienced harassment. Sixty-six (75%) complainants said that they had been injured by the defendant in the past. For 20 (22.7%) complainants, allegations of previous violence included sexual assault, and 25 (28.4%) indicated that there had been actual assault, abuse or serious threats to children. Forty-eight (54.5%) of the defendants were said to have threatened or attempted suicide.

TABLE 4.12
Time lapse since the first time complainant was
allegedly assaulted or threatened by the defendant

Time lapse	No.	%
Never before this complaint	10	11.4
Less than 1 year before	12	13.6
1 to 5 years before	25	28.4
6 to 10 years before	19	21.6
11 to 15 years before	6	6.8
16 to 20 years before	8	9.1
21 to 25 years before	2	2.3
26 or more years before	1	1.1
Unknown	5	5.7
TOTAL	88	100.0

Fifty-eight complainants (65.9%) alleged that violence and threats were frequent events throughout the whole of their relationship. Some

reported that they were first assaulted on their wedding night, others attributed miscarriages and still-births to bashings from their spouses. One complainant said that she had first been assaulted 26 years ago and had been continually abused since. In 25 cases (28.4%) the first threats or assaults had reportedly occurred between one and five years prior to the complaint, and in 19 cases (21.6%) the first violent incident was reported to have occurred six to 10 years previously. Seventeen complainants (19.3%) said that the violence had first occurred more than 10 years ago (see Table 4.12).

Nature of alleged violence

Complainants were asked to describe the circumstances which had led them to swear out a complaint for an ADVO. While some were reportedly prompted by a particular incident, others sought an order because they could no longer tolerate the abuse which had allegedly gone on for years, or the harassment they had been allegedly subjected to since leaving their spouses. The nature and range of abuse and incidents reported by the complainants can best be demonstrated by noting a few examples (the names used are fictitious):

Sue is an 18-year-old, married to a 20-year-old tow-truck driver. They've been married less than two years, she has one child and is pregnant with another. The husband is father of both children. During an argument the night before seeing the chamber magistrate he assaulted her, fracturing her skull and one rib. She ran away the next morning when he threatened her with an iron bar.

Joan, a 44-year-old woman left her 52-year-old sales manager husband during an argument one night. They had been married 25 years but she was only now financially able to leave the marriage since her children had grown up and she had been able to get a job. During their marriage there had been intermittent violence and a series of incidents of abuse, including stripping her naked and dragging her outside in front of other people and locking her in the garage when he went to work, leaving their five small children alone in the house. During this episode one of the children had found a garage key in the house and had let her out. She had been able to spend the day looking after the children and they had locked her back in before her husband came home from work so that he would not know. On another occasion he had refused to buy any food (he was in charge of all money). They had been without food for a few days until she withdrew money from the children's school bank accounts. After they had eaten the food, they cleared all evidence of it away. When he found out, there was a violent argument and he threw petrol around the house, threatening to burn it.

Helen and her ex-de facto had lived in her house for three years on and off. Six weeks before seeing the chamber magistrate, Helen had ended the relationship and evicted the man. He refused to accept her decision and continued to visit her home, typically after having consumed alcohol. He would continually knock on her door, bang on her windows, sit on her doorstep and call out to her for hours. If she let him in (for the sake of

her neighbours) she couldn't get rid of him. If she drove him to his home he would refuse to get out of the car.

As previously mentioned, 66 complainants (75%) reported having received injuries in the past. Injuries ranged from bruising, black eyes and strangulation marks to having their teeth knocked out and their hair pulled out. More serious injuries included temporary and permanent ear damage and fractured or broken fingers, ribs, skull, nose, jaw or shoulders. Some complainants said that they had been sexually assaulted, others described being thrown down stairs, over balconies or against walls. Twenty-one (23.9%) reported having been attacked or threatened with weapons including a gun, knives, an iron bar and a range of blunt instruments. In one case it was said that a gun had been held to the complainant's head (a 17-year-old) and six bullets fired over her head. Others spoke of threats to set fire to their houses or actual attempts to run them over with trucks and cars, to note a few.

Although less serious in physical terms, the alleged 'pestering' and harassment that fell short of actual violence which complainants in the sample described was often reported to be extremely harrowing. Some defendants reportedly patrolled around streets past complainants' homes, keeping watch and following them, parking outside their homes for hours, days or nights at a time. Some defendants allegedly entered complainants' homes whilst they were out, going through their clothes, opening mail or waiting to ambush them.

Cars were reported to be frequent targets for defendants who were allegedly harassing complainants. Several complainants interviewed reported that they had had cars disabled through damage, air let out of tyres, wires torn out of engines, keys and parts stolen or the car itself taken. Such an action could have more serious consequences than merely being a nuisance if the car was a means of escape for the victim. In other examples, complainants said that they had been run off the road whilst driving, or that they had been passengers in cars which were driven violently and recklessly by their partners or ex-partners.

Telephones were another means commonly used to annoy the complainants interviewed. Several reported that telephone wires had been cut, disconnecting the telephone and cutting off a possible way of getting help or protection. In one case, where the couple were separated but living under the same roof, the defendant would reportedly regularly leave his telephone hand-set 'off the hook' in his part of the house making it impossible for the complainant to make or receive calls. A number of complainants reported that their (ex) partners continuously telephoned to abuse or threaten them and/or caused their telephones to ring constantly throughout the day and night at home and at work - one complainant allegedly lost her job as a consequence of the defendant's harassment by telephoning.

Involvement of police

The most recent incident leading up to the complainant's action in seeking an ADVO had been reported to police in 62 cases (70.5%). In 11 of these cases police had not been called to the house on this

occasion but, rather, the complainant had attended a police station after the incident to make a report or to get advice as to what the police could do about her situation. One reported that she and her children had been living in a car for several days before going to the police for help and advice. In this case, the police are alleged to have said that they could not do anything. The woman then asked for an application for a shooter's licence which she said the police wouldn't give her, but rather they advised her to see a chamber magistrate.

In those cases where police were called to the incident, they were called by the alleged victim herself in 31 cases, by her children in seven cases, or friends, neighbours or other family members in nine cases. Three complainants did not know who had called the police.

A passing motorist had called the police in one case where the complainant had been running along the street with blood streaming from her face. Her husband was said to have been chasing her and making threats concerning the child, and the complainant returned to the house fearing for the child's safety. She said that when the police had come they had questioned her in a way that she felt was unnecessarily harsh. Her injuries were obvious - a bleeding nose, two black eyes and a cut lip - and she was very agitated and frightened. She felt that the police were unsympathetic, however, and seemed only interested in getting their evidence correct for the charge sheet.

She said that the four police who came to the scene repeatedly asked her questions about the way in which her husband had hit her, asking 'which hand did he hit you with?' 'which foot did he kick you with?'. They suggested she might have to stand up to a tough cross-examination in court and might weaken under pressure. She claimed they had continued to question whether she was serious about 'going through with it', telling her they couldn't do anything unless she was prepared to charge him. One officer in particular ('one with two stripes') was alleged to have said that many women withdraw their complaints and waste the time of police and courts. She felt very intimidated by their manner, and very upset that they did not seem to believe her.

As shown in Table 4.13 six (9.7%) of the cases reported to police resulted in the arrest of the defendant. In 18 cases (29%) where the matter was reported, the police reportedly took no action or said that there was nothing they could do. Eleven cases (17.7%) resulted in police removing the man from the premises (but not arresting him), or asking him to leave. Nine complainants (14.5%) were advised to see a chamber magistrate, and two complainants (3.2%) were asked to lay charges themselves. In no case, reportedly, did a police officer lay a complaint seeking an ADVO on the complainant's behalf, although they do have this power under the legislation.

Twenty-eight (45.2%) complainants in cases where the incident had been reported to the police were satisfied with the police response. Almost the same number (26 or 41.9%) were not satisfied. Six (9.7%) were uncertain about how satisfied they felt about the police handling of the incident.

TABLE 4.13
Reported action taken by police

Action	No.	%
Came, took no action/said they could do nothing	18	29.0
Arrested or laid charges	6	9.7
Asked complainant to lay charges	2	3.2
Referred complainant to chamber magistrate	9	14.5
Took defendant away/told him to leave	11	17.7
Talked to defendant, calmed/warned him	3	4.8
Took complainant to safety/advised her to leave	2	3.2
Explained ADVO procedure	2	3.2
Other	8	12.9
No response	1	1.6
TOTAL	62	100.0

Complainants' perceptions of the police handling of the incidents appeared to be based on expectations which were not usually informed by specialised knowledge of correct or possible police procedures. Hence, many women were satisfied by the police action of taking the man away temporarily or quietening him down although a number of other options were available to police.²

For example, in one case where a complainant allegedly had been threatened by her ex-husband who had held a knife to her throat, the police, who had been called by her 18-year-old son, said they would take the ex-husband away if she would lay charges. She said she could not do that and felt that charging him would not solve the problem. Nevertheless, police took the ex-husband away and the complainant went to the police station to discuss the situation. The police reportedly suggested she go to see the chamber magistrate and said they would keep the man at the station for a couple of hours. The ex-husband was released without being charged soon after she left the police station. She vacated the home and lived with her children in the car for several days. This complainant found the police handling of the whole incident to be satisfactory, saying that they were understanding, they were thinking of her protection and that they talked to her about refuges.

In another example, the defendant, who was intoxicated, was asleep: 'when police came he was passed out from drink and police said they couldn't touch him, that he had to be awake'. This complainant was not satisfied with the way the police handled the incident and would have liked them to 'lock him up for a couple of days until he realised

²Police instructions encourage police to arrest wherever they are satisfied that an offence has been committed, no matter how minor. In addition, where there is insufficient evidence to lay a charge, and/or there are fears for the victim's safety, police are instructed to consider laying a complaint seeking an ADVO on behalf of the victim.

what he had done'. She appreciated, however, that they calmed her down, said there was nothing to be frightened of and told her to go to a chamber magistrate first thing Monday morning.

Other examples illustrate the way many complainants measured the police handling of the incident in terms of their attitude rather than the action they took:

The arresting officer was marvellous; doesn't like men who bash women.

Finally another policeman came along who was over the top, friendly and helpful.

One complainant's response to the question about satisfaction with the police action shows some doubt about the assurances and protection they offered. The police reportedly spoke to her, told her to calm down and said that they were behind her. They told her not to worry, that she should go to bed, 'that there was no way anything would happen' to her that night. The woman said that she didn't know how they were going to ensure her safety. The only other action taken by police in this case was to talk to and warn the defendant. The incident which led the complainant to call the police did not involve an assault but there had been a history of alleged assaults and the police had been called on three previous occasions. When the complainant applied for an ADVO the chamber magistrate began process by warrant. The warrant was still outstanding at the time of the interview.

In order to gain as detailed an account as possible of each encounter with the criminal justice system, the complainants were asked with reference to each stage of the process:

What was the **MOST** satisfactory thing about...

and

What was the **LEAST** satisfactory thing about...

(the police handling of the incident/talking to the chamber magistrate/the way the lawyer handled the case).

In answering the question 'What was the most satisfactory thing about the police handling of the incident' (shown in Table 4.14) few referred directly to the law enforcement role of the police.

Despite the fact that 26 complainants indicated that they were dissatisfied with the police handling of the incident (see earlier discussion), only 17 (27.4%) said that there had been nothing satisfactory about it.

For 10 complainants (16.1%) the most satisfactory thing about police handling of the incident was that they were friendly or helpful and understanding. Eleven (17.7%) found that the police action in calming the defendant down was most satisfactory.

The 'Other' category (6.5%) included statements such as 'you could see how much hatred they had for a man hitting a woman' or 'told me to go to someone else's place for a few days'. The 'Other' category also contained one of the most clear and positive accounts of the police handling of the situation. In this case, the police reportedly attended the complainant's home immediately, took details and went to the defendant's house that night and charged him with malicious damage. They kept her informed as to what was going on at every step and had a friendly and reassuring manner. The complainant said 'the police have been more helpful than anyone'. Later, the police telephoned and told her that they had the defendant in custody and that they were releasing him on bail. They told her that if she had any more trouble they would lock him up for the night.

TABLE 4.14
Complainants' judgments of the most satisfactory thing
about the police handling of the incident

Complainants' judgments	No.	%
Nothing	17	27.4
They were understanding/helpful/friendly	10	16.1
Calmed defendant down/made defendant leave/ took defendant away	11	17.7
They arrived quickly	3	4.8
They arrived eventually	1	1.6
Arrested defendant	2	3.2
Got complainant medical attention/to a safe place	2	3.2
Other	4	6.5
Referred complainant to chamber magistrate	8	12.9
Don't know	2	3.2
No response	2	3.2
TOTAL	62	100.0

As shown by Table 4.15, 17 complainants (27.4%) found everything satisfactory about the police handling of the incident and answered 'nothing' to the question 'What was least satisfactory about police handling of the incident'. (Although this is the same number who answered 'nothing' to the previous question, few complainants answered 'nothing' to both questions.) Whilst 28 complainants indicated that, overall, they had found the police response to the incident to have been satisfactory, they nonetheless found aspects of the police response to be less than satisfactory.

Fourteen complainants (22.6%) reported that the least satisfactory thing about the way the police handled the incident was that they did not do anything, or said that they could not act in domestic violence cases. Seven (11.3%) found the 'negative' attitude of the attending police officers to be least satisfactory; for example, police were said to have been unsympathetic, or to have treated the matter as

'just another domestic'. Others cited the delay in the arrival of the police (4 or 6.5%) or having been given no information or the wrong information or advice (4 or 6.5%) by police as least satisfactory; for example, telling complainants that police could not take any action in cases of threatened violence, or where no injuries had occurred, and telling complainants that a chamber magistrate would give them an ADVO. Two complainants (3.2%) expressed disappointment in the police response or said they 'could've done better'. Two others (3.2%) said that the police were no help at all or that everything about the police handling of the incident was awful.

TABLE 4.15
Complainants' judgments of the least satisfactory thing
about the police handling of the incident

Complainants' judgments	No.	%
Nothing/they did their job	17	27.4
Negative attitude	7	11.3
They did nothing/could not do anything	14	22.6
Delay in arriving	4	6.5
Reluctance to act in domestic violence situations	2	3.2
Gave wrong/no information	4	6.5
Complainant was not kept informed	1	1.6
'Everything was awful'	2	3.2
They could have done better/disappointed	2	3.2
Other	5	8.1
Don't know	2	3.2
No response	2	3.2
TOTAL	62	100.0

In answering this question, one complainant said that she believed the police 'weren't impartial and took his side'. Yet another said the least satisfactory thing was that when she spoke to police at the time they came to serve the summons upon her partner, they told her they didn't think she needed to go ahead with the action because 'he seems like a quiet bloke'. Another woman said that 'the police didn't want to know about it. You're just another woman whingeing about your husband'. One woman qualified her comment by saying, 'there wasn't really anything they could do. They never had the power to do anything, can't blame them'.

In order to assess how realistic complainants' expectations were with regard to what police should do at domestic violence incidents or when advising women who apprehend violence from their spouses, the question 'what would you have liked the police to have done?' was asked.

As shown in Table 4.16, 13 complainants (21%) had wanted police to do exactly what they did do, 11 (17.7%) had wanted police to arrest and

charge the man and 17 (27.4%) wanted the man 'taken away' or 'locked up'. Other responses included wanting police to calm the man down (4.8%), wanting them to respond more quickly to their calls for help (3.2%), stay with the woman to protect her (1.6%) or to be more sympathetic (6.5%). One woman wanted police to issue a restraining order. Other responses included that of one woman who wanted police to 'hit him'.

Clearly, in the majority of cases, the expectations that the women had of the police related to powers which the police did, in general, have. Only one complainant expected that the police could themselves issue an ADVO for her protection.

In stating that the complainants' expectations of the police in almost all cases were 'realistic' ones, it is not implied that the police *should* have acted in that particular way in the incident under discussion. That police must use their discretion to take whatever action they feel is justified on the basis of the available facts is acknowledged. What is being stressed, however, is that the complainants, in general terms, were not unrealistic in their expectations of what the police could do.

TABLE 4.16
Action complainants wanted police to take

Action	No.	%
Arrest defendant	11	17.7
Take defendant away	10	16.1
Lock defendant up	7	11.3
Calm defendant down	3	4.8
Come more quickly	2	3.2
Be more sympathetic	4	6.5
Issue an ADVO	1	1.6
Stay to protect complainant	1	1.6
What they did	13	21.0
Not sure, don't know	4	6.5
Other	3	4.8
No response	3	4.8
TOTAL	62	100.0

In cases where police take no action or where the action taken does not provide some means of protection for the complainant, however, there is a risk of further violence or harassment after the police have left the scene. As shown in Table 4.17, in 26 of the 51 cases where police were called to the scene of the incident (51%), nothing of any consequence happened after the police left. Another eight (15.7%) complainants left their homes to seek safety with friends, relatives or neighbours. One left the house with her children when the defendant was released from police custody without being charged

(and therefore not bound by any bail conditions). She and her children lived in the car for four days, returning home to get food. In three cases (5.9%) the defendant returned but without causing further abuse, and in seven cases (13.7%) there was further abuse after the police left the scene.

Other responses included one case in which the police were called to check on the complainant's house (which she had vacated temporarily to escape her partner) following threats by her partner to burn it down, and another case in which the complainant returned to her house accompanied by several members of her family to force her ex-spouse to leave the premises.

TABLE 4.17
When police left

When police left	No.	%
Nothing happened/defendant left or went to sleep	26	51.0
Complainant left to seek safety	8	15.7
Complainant sought medical attention	2	3.9
Defendant returned	3	5.9
Defendant returned and there was violence/harassment	7	13.7
Other	5	9.8
TOTAL	51	100.0

One complainant had gone to stay the night with friends after alleged violence and abuse from her ex-de facto husband. She said that when she returned to her home unit the next day she discovered that he had returned there after having been warned by the police and after she had left. He had allegedly slept in her car, let down the tyres, wrecked the contents of the car and written 'SLUT' on the front door of her unit.

This complainant eventually gave up pursuing her complaint and reported that generally she had had a difficult time with the procedure from beginning to end. The couple had been separated for six months but the defendant wanted to resume the relationship. During a visit to her home at a time when other friends of the complainant were there, he allegedly 'tore her place apart, tore the telephone out of the wall and threw her around'. Her friends called police, who came but apparently took no action against the defendant, and are said to have given her no information about her options with regard to protective orders. The advice they reportedly gave her was to move out. The complainant also reported that, as she was leaving with her friends, the police asked her if she would be able to give the defendant a lift.

The action this complainant would have liked the police to have taken was for them to have given her information about what she could do and

have them remove the defendant from her home so that she would feel safe. She phoned the courthouse next day and then visited the chamber magistrate. She said that he was sympathetic, and that he had told her about the option of an ADVO, which she then applied for. She felt, however, that the procedures for, and consequences of, obtaining an ADVO were not explained well. She had hoped that the chamber magistrate might be able to give the defendant a warning of some kind to keep away.

A summons was issued and listed before the court on a date six weeks later. The complainant did not seek legal representation and she did not qualify for legal aid. She lived in fear that the defendant would harm her. During the period before the court appearance he allegedly threatened her, asking her to withdraw or he would 'get her' by embarrassing her in court. He threatened suicide and his parents also intervened and asked her to withdraw.

Eventually the complainant gave in to the pressure and abandoned the complaint. During the interview she said that she thought she would not have withdrawn the matter if it could have been dealt with more quickly.³ During the period between making the complaint, having the summons served and the first court date, she felt unsafe and unprotected and more vulnerable to his threats. She said she regretted not having gone ahead with the complaint.

TABLE 4.18
Number of times police assistance sought in past

Number of times assistance sought	No.	%
None	44	50.0
Once	12	13.6
More than once	19	21.6
Many times	12	13.6
Unknown	1	1.1
TOTAL	88	100.0

As indicated in Table 4.18, half of the complainants interviewed (44 or 50%) said that they had previously called upon the police for assistance or advice in relation to domestic violence. Twelve of these (13.6%) had called the police once in the past, 19 (21.6%) had called them more than once and 12 (13.6%) had called them many times. Two said that police had laid charges relating to a prior incident of

³As indicated earlier in this report, amendments introduced in February 1988 allow for interim ex parte orders which were not available at the time that the interviews were conducted. Such orders exist in other States such as South Australia. A temporary order is made in the absence of the defendant, who is then notified that a temporary protective order exists, and advised of a date on which that order is to be reviewed at court. The order is enforceable once it is served upon the defendant.

domestic violence, and in a third case a complainant said that the police had required her to sign the charge book as the informant for an assault charge. Some of the complainants said that their previous calls for assistance to the police had resulted either in no action being taken (29.5%) or the defendant being removed from the premises (temporarily) but not charged (29.5%). Similar to the police response in the most recent incident (see Table 4.13), other police action in the past had involved referring the victim to see a chamber magistrate, speaking to the defendant about his behaviour or assisting the complainant to get to a safe place.

Of those who had called the police in the past, 21 (47.7%) reported that they were satisfied with police action taken at these times, whilst 16 (36.4%) reported that they were dissatisfied and 15.9 per cent were not sure of their degree of satisfaction with the police.

Complainants' knowledge and experience of legislation and procedures

There was little or no detailed knowledge of the legislation among those interviewed. The majority (70.5%) had not been involved in court proceedings with respect to domestic violence before. Of the 26 who had previous court involvement, five had sought an ADVO and seven had sought Family Law injunctions. Two complainants had been witnesses in assault proceedings commenced by police, and three had been the informant in private prosecutions for assault. The remainder included cases where they had taken action for divorce, maintenance or child custody. Three did not specify the nature of the court proceedings. Apart from these instances, those interviewed had had little or no contact with the criminal justice system or court procedures generally.

Whilst many expressed knowledge of the availability of some form of legal protection or restraining order, most did not know the precise nature of the available protection, nor the procedures associated with getting that protection. Many (57.7%) mistakenly believed that the chamber magistrate could issue an order or arrange protection; 17 per cent expected an 'on the spot' restraining order. They did not realise that it was not within the chamber magistrate's power to grant an order, and that laying a complaint for an ADVO with a chamber magistrate was only the first step in the procedure. They did not know that they would be required to appear before a magistrate who would determine whether an order was necessary (i.e. whether their apprehension was reasonable) and, if so, the nature of the order. The expectation that a chamber magistrate could issue an ADVO may have been encouraged by the advice of police. As alleged in the interviews with chamber magistrates (see Chapter 5), police often tell complainants to 'go to the chamber magistrate and get a restraining order' without explaining the procedure. When asked about what action the police had taken when called, only 2.3 per cent said police had explained the ADVO procedure to them.

Chamber magistrates

Whilst not knowing the exact nature of the chamber magistrate's role, approximately half of the complainants either had prior knowledge of the existence of the chamber magistrate (28.4%) or had family or friends who advised them of it (21.6%). This is not surprising given that complainants were selected for the study on the basis of having attended a chamber magistrate and may not be a true reflection of the extent to which chamber magistrates are known generally in the community. As shown by Table 4.19, a further 25 cases (28.4%) had been referred to a chamber magistrate by the police. (This is greater than the number of cases of police referral to a chamber magistrate in Table 4.13 since, in some cases, advice to see a chamber magistrate may have been given by police in addition to some other action taken by them and may not have been recalled by complainants in that context.)

TABLE 4.19
Source of referral to see chamber magistrate

Source	No.	%
Family/friend/neighbour	19	21.6
Police	25	28.4
Legal centre/solicitor	9	10.2
Agency/refuge/counsellor	9	10.2
Past experience/general knowledge	25	28.4
Other	1	1.1
TOTAL	88	100.0

TABLE 4.20
Complainants' expectations of chamber magistrate

Expectations	No.	%
Give advice	25	28.4
Issue an ADVO	15	17.0
Arrange for an ADVO	24	27.3
Arrange protection/keep defendant away	10	11.4
No idea/had no expectations	9	10.2
Other	4	4.5
No response	1	1.1
TOTAL	88	100.0

When asked about their expectations of what the chamber magistrate might be able to do to assist them, the most common response was that of 'give advice' (28.4%). Fifteen women (17%) expected that the chamber magistrate would issue them with an ADVO. Ten (11.4%) expected that the chamber magistrate could provide them with some (unspecified) form of protection or keep the alleged offender away, while nine (10.2%) did not know the procedure (see Table 4.20).

Complainants gave similar responses to the question 'What happened in your interview with the chamber magistrate?'. This could, in part, be due to the high number of interviewees who had visited the same magistrate (57% had been referred by a chamber magistrate at one particular suburban court). Sixty-five (73.9%) told the chamber magistrate what had happened, and a complaint was prepared by the chamber magistrate. In a further 12 cases (13.6%) complainants were given additional legal advice (maintenance, custody, legal representation, legal aid) and non-legal advice (referral re baby, advice about keeping ADVO papers with her at all times). Three said that chamber magistrates had been reluctant to issue a complaint either because of a lack of grounds or because of other legal action. Two felt that the chamber magistrate had either talked them into taking action to seek an ADVO, or had 'directed' the complainant to take that course of action. Six women gave other responses which included comments on the attitude or manner of the chamber magistrate - in one such example the complainant said that the chamber magistrate had been cross with her for being uncertain about what action to take. Eighty-five complainants (96.6%) said that the action the chamber magistrate suggested was to proceed with the ADVO application.

TABLE 4.21
What happened in interview with chamber magistrate

What happened in interview	No.	%
Made complaint/applied for ADVO	65	73.9
Made complaint/applied for ADVO/got other advice	12	13.6
Chamber magistrate reluctant to issue application	3	3.4
Chamber magistrate directed/talked complainant into applying for ADVO	2	2.3
Other	6	6.8
TOTAL	88	100.0

When asked 'What was the most satisfactory thing about talking to the chamber magistrate' 25 complainants (28.4%) said that nothing had been satisfactory. Thirteen (14.8%) found the chamber magistrate sympathetic, and 42 (47.7%) felt that the most satisfactory thing was knowing something could be done, feeling protected and the anticipation of getting an ADVO (see Table 4.22). Most answers in the 'Other' category related to the action they were taking and the

positive attitude of the chamber magistrate as being the most satisfactory thing about seeing the chamber magistrate.

In one response, the complainant stated that the most satisfactory thing about seeing the chamber magistrate was that he had made the situation quite clear and he had explained how an ADVO worked. However, he had warned her against withdrawing again, saying that if she did she would have trouble getting help next time. (This woman did proceed with the matter and obtained an order.) Another said that the chamber magistrate had made her feel as though she was guilty because of the questions he asked in order to find out what had happened. Once she realised that he was going to do something to help, however, she was satisfied.

TABLE 4.22
The most satisfactory aspect of talking to chamber magistrate

Most satisfactory aspect	No.	%
Nothing	25	28.4
Sympathy/understanding	13	14.8
Knowing something could be done	27	30.7
Protection/felt safer	3	3.4
Anticipation of getting ADVO	12	13.6
Other	7	8.0
No response	1	1.1
TOTAL	88	100.0

When asked about the least satisfactory aspects of their visit to the chamber magistrate, the most common response, that of 33 complainants (37.5%), was that nothing had been unsatisfactory. Table 4.23 shows that 19 (21.6%) of the complainants were dissatisfied with the chamber magistrate's attitude or perceived inefficiency. For example, some expressed the feeling that the chamber magistrate had lacked sympathy or proper understanding of their situation. Some said that they had had trouble convincing the chamber magistrate of their need for a protective injunction and others felt that they did not receive enough information about the legislation and procedures or were given insufficient advice. Fifteen (17%) were dissatisfied because there was no restraining order issued immediately or because of the delay in getting the matter before the court. Four (4.5%) felt embarrassed about talking to the chamber magistrate about their situation (in some cases because the chamber magistrate was male), or felt that the chamber magistrate was embarrassed discussing domestic violence. Many of those in the 'Other' category felt that the chamber magistrates lacked the power to adequately deal with their situation. For example, one complainant commented that the chamber magistrate had no power over police ('or anything'), whilst another said that there was nothing the chamber magistrate could do about getting back furniture which her de facto had taken. Others had little faith in the ability

of restraining orders to protect them - one complainant commented that 'the thought of getting a piece of paper' didn't make her feel more confident.

The fact that 15 complainants expected that the chamber magistrate could issue them with an ADVO, and that the same number expressed dissatisfaction that this had not occurred, is indicative of a misunderstanding of the procedures associated with seeking an ADVO. It also indicates a misconception of the role of a chamber magistrate. These findings are discussed further in Chapter 5, where the findings of interviews with chamber magistrates are presented.

TABLE 4.23
The least satisfactory aspect of talking to chamber magistrate

Least satisfactory aspect	No.	%
Nothing/everything satisfactory	33	37.5
Poor or insufficient advice	5	5.7
Delay/not getting ADVO immediately	15	17.0
Delay in seeing chamber magistrate	1	1.1
Lack of sympathy/understanding	9	10.2
Embarrassed talking to (male) chamber magistrate/ chamber magistrate embarrassed talking about domestic violence	4	4.5
Lack of information about legal process	3	3.4
Thought ADVO too severe for situation	2	2.3
Having to convince chamber magistrate of need for ADVO	2	2.3
No confidence in ADVO's ability to protect	1	1.1
Other	10	11.4
No response	3	3.4
TOTAL	88	100.0

Warrant or summons

Domestic violence situations may demand an urgent response in order to protect the alleged victim. In the absence of interim ex parte orders (as was the case prior to the 1988 amendments), often the quickest way of ensuring protection for the victim is through the issuing of a warrant. A warrant authorises the immediate arrest of the defendant, who then becomes subject to bail conditions that offer early protection to the complainant. Procedures commenced by way of summons are subject to delays in serving the warrant, and in obtaining the suspect's appearance in court, and it is not until the defendant appears at court on the first occasion that bail conditions can be imposed. In the interview sample, delays of up to six weeks were experienced and a four week wait for the matter to be heard in court was not uncommon (see Table 4.24).

Consistent with the data presented in earlier chapters of this report, most matters proceeded by way of summons. As can be seen in the above table, matters which proceeded by way of warrant resulted in a first court appearance in a shorter time than those which proceeded by way of summons - 61.5 per cent of warrant matters as compared with only 18.9 per cent of summons matters resulted in a first court appearance within seven days of the complaint being made. The median time period for summons matters was between 15 and 22 days.

TABLE 4.24
Time between issue of process and first court appearance

Period of time	Warrant or in custody		Summons		Total	
	No.	%	No.	%	No.	%
0 - 7 days	8	61.5	10	18.9	18	27.2
8 - 14 days	2	15.4	8	15.1	10	15.2
15 - 21 days	1	7.7	13	24.5	14	21.2
22 - 28 days	-	-	15	28.3	15	22.7
29 - 35 days	1	7.7	4	7.5	5	7.6
36 days or more	1	7.7	3	5.7	4	6.1
TOTAL	13	100.0	53	100.0	66 ^(a)	100.0

(a) In 22 cases the dates of issue of summons and/or of first court appearance or the method of proceedings were unknown.

The issue of a warrant, however, did not always guarantee an early listing of the matter before the court. Police must first locate the defendant before the warrant can be executed. Two cases were heard 12 and 14 days from the date of complaint respectively, and others were at 20 days and 34 days. The longest delay was 127 days (4.5 months). In this case the suspect was not arrested until the police were called to another incident where he was attempting to break into the complainant's house.

Sixteen of the complaints in the sample proceeded by way of warrant and one suspect was in custody at the time of complaint, having been arrested at the incident the previous night.

Given the delays typical of matters proceeding by way of summons, the degree of urgency with which the complainant requires the protective order might be expected to be a key consideration in the decision of the chamber magistrate to proceed by way of summons or warrant (see further discussion of this issue in Chapter 5). In fact, 37 complainants (42%) said they had raised the issue of urgency with the chamber magistrate, whilst 31 (35.2%) said that the chamber magistrate had raised it. In eight cases (9.1%) the urgency had been raised by

both or it was not known who had raised the issue. Nine women reported that the issue of urgency had not been raised at all.

In 13 cases where a warrant was issued, the defendants were subsequently arrested. One other had been arrested at the incident and was in custody. The complainants were told of the arrest by the police in nine cases, one was told by a family member and four were present at the arrest.

TABLE 4.25
Was there any discussion about the urgency of the matter?

Discussion	No.	%
Yes, issue raised by complainant	37	42.0
Yes, raised by chamber magistrate	31	35.2
Yes, raised by both	7	8.0
Yes, don't know who raised it	1	1.1
No, there was no discussion	9	10.2
Don't know/no response	3	3.4
TOTAL	88	100.0

Nine of those arrested were released before their appearance in court. As previously discussed, the nature of any bail conditions imposed upon a defendant in the interim before the court determines the outcome of the complaint may be critical for the complainant. Appropriate bail conditions can function in a way similar to an ADVO, and thus provide a measure of protection for the complainant. Eight of the nine suspects released from custody had conditions placed upon their bail. One complainant did not know whether conditional bail had been granted when the defendant was released from custody. In three of these cases, the police had informed the complainants of the conditions of bail and in five cases they were informed by others such as their solicitor or family members. Table 4.26 indicates the types of bail conditions imposed in these cases; in each case the bail conditions imposed were similar to the conditions typically imposed by way of ADVO (see Chapters 2 and 3).

Seven of the nine released on bail were reported to have made contact with the complainants after being released from custody. Three cases involved alleged contact only, three involved verbal harassment and in one case a complainant was allegedly abducted. Four complainants considered the behaviour of their spouses to be in breach of bail conditions and in three cases the breach was reported. One of these reports resulted in an arrest, in another case the suspect was not found and in the third case no action was taken.

TABLE 4.26
Conditions of bail

Conditions	No.
Not to assault, molest, interfere with spouse/children	3
Not to approach or contact spouse, not to approach premises, not to assault, threaten spouse	4
Not to approach or contact spouse/children, not to visit premises	1
TOTAL	8

Adjournments and delays

Twenty-three (26.1%) cases were adjourned at the first court appearance for various reasons. Fourteen of these had proceeded by way of summons. The length of the adjournment reportedly varied between seven days and five months (see Table 4.27).

TABLE 4.27
Length of adjournment

Length of time	No.	%
0 - 7 days	3	13.0
8 - 14 days	7	30.4
15 - 21 days	2	8.7
22 - 28 days	4	17.4
29 - 35 days	1	4.3
Other	5	21.7
Unknown	1	4.3
TOTAL	23	100.0

Some adjournments or relistings were made because the summons had not been served on the defendant. In one such case, there were three adjournments before the defendant appeared before the court and an order was made. This case had been delayed for 12 weeks. In other cases, the adjournment occurred because the defendant did not appear, or appeared without legal representation or because the complaint was contested and a later date was set for a hearing.

At the final hearing of the case which had commenced five months earlier, the magistrate refused to grant an order and the case was dismissed allegedly because so much time had elapsed since the

complainant had laid the complaint and there had been no further incidents of violence or harassment during the period of adjournment.

The complainant in question said that she had not been consulted about the adjournment at the first court appearance and would have preferred to have had the matter settled then. She said that her solicitor had informed her that the court was too busy that day to hear the matter. It appears that the defendant had notified his intention to contest the complaint, and that the magistrate had adjourned the matter for hearing at a date five months later. She had engaged a private lawyer and believed she did not qualify for legal aid; she earned \$150 net per week. At the time of interview she was very unhappy about the delay in having her case dealt with in court, and with the eventual outcome. She said that she had no order, was still feeling threatened and was still paying for her legal representation which had 'cost her heaps'.

In another matter, proceedings were adjourned for a period of two months. The complainant here said that she had been terrified and had wanted the matter settled at the first court appearance, preferably with the issue of an ADVO. An adjournment, reportedly, had been suggested by the magistrate. The accused had no lawyer at that first appearance but did so at the final court appearance where he made undertakings not to molest, assault or harass the woman but no order of the court was made. According to the complainant, there had been harassment and threats during the period of the court case - he had entered the house, had been on her bed, made abusive phone calls and had driven past her house regularly. The complainant had not been at all happy about the undertakings and felt degraded by the whole court procedure. The magistrate reportedly asked what prompted her to apply for an order. When her solicitor said that her husband had threatened to burn the house down with the wife and daughter in it, the magistrate allegedly asked if the house was still standing. When the solicitor said 'yes', 'everyone in the court laughed'.

One complainant reported having withdrawn her complaint following a series of adjournments. Her ex-husband had been arrested on a warrant after an incident in which he had reportedly head-butted her, breaking her nose. She expected the matter to be determined at the first court appearance and said that she had found the whole experience of going to court 'degrading and humiliating'.

Other complainants reported 'unacceptable' delays in having matters listed before the courts on the first occasion - several reported delays of five to six weeks. In one matter, the complainant said that she had withdrawn her complaint due to the six week wait for the matter to be listed in court on the first occasion. She said that she was frightened because her ex-de facto was getting 'more and more angry'. She said that she felt that she was in grave danger since he had threatened to 'get her' if she went ahead with court action. She indicated that she felt increasingly vulnerable during the interval prior to the date of the first court appearance, and ultimately withdrew the complaint because she felt that she would be safer.

⁴At this time the length of time to obtain a hearing date in NSW Local Courts varies from court to court, with average delays ranging from 6 to 26 weeks (Attorney General's Department, 1987).

Other cases in which complainants indicated that court delays had influenced their decision to withdraw their complaints are discussed later in the section concerning matters which were withdrawn.

Legal representation

Fifty-two complainants (59.1%) said that they had a lawyer to represent them in court for their application for an ADVO, and 36 (40.9%) did not have any legal representation. Of the 52 who had lawyers, 17 (32.7%) had been referred by the chamber magistrate or officers of the court, and 16 (30.8%) had previously had contact with the solicitor. The remaining 19 (36.6%) had been referred by friends or family, had contacted a lawyer on their own initiative or had been referred by other solicitors or community agencies. Thirteen (25%) of the complainants who had no legal representation were assisted at the first court appearance by the Police Prosecutor and one (2.8%) was advised by the Duty Solicitor.

Legal aid

The Report of the NSW Domestic Violence Committee (1985) claimed that since 1983, when legal aid was made available to victims of domestic violence, the rate of legal aid granted was small compared with the number of ADVOs made by courts.

In contrast to this claim, a relatively high proportion of complainants interviewed for this project had obtained legal aid. In 19 cases (36.5%) the lawyer engaged was a legal aid solicitor and in 33 cases (63.5%) the complainant had engaged a private solicitor. The complainant paid the solicitor herself in 11 of these 33 cases and 22 of the private solicitors were paid by legal aid; that is, 41 (46.5%) complainants had obtained legal aid.

Eighty of the interviewees (90.9%) said they knew that legal aid might be available. Sixty-eight (85%) of these said that they had been told about legal aid by the chamber magistrate, eight (10%) were told by another solicitor and four (5%) had prior knowledge of legal aid.

It is not possible to determine whether the level of access to, and awareness of, legal aid demonstrated by the complainants interviewed in this study is representative of all complainants, or of the community generally. The high proportion reporting that they were told about legal aid by the chamber magistrate suggests a number of possible alternatives. It may be that the availability of legal aid in such matters is widely known amongst chamber magistrates. It could also be that chamber magistrates participating in this project were particularly sensitive to domestic violence and considered legal representation to be of importance in such matters. Despite this, however, it appears that some of those who might have qualified for legal aid did not know that it was available, or believed that they would not qualify. Table 4.28 shows that two complainants who were in receipt of a supporting parent's benefit and one who was receiving unemployment benefits paid for a private solicitor themselves.

TABLE 4.28
Private lawyer, who paid?

Source of income	Complainant paid	Legal aid paid
	No.	No.
Pension/Supporting Parent's Benefit	2	12
Unemployed	1	3
Part-time salary	-	1
Full-time salary	7	2
Nil	-	2
Other	-	2
Unknown	1	-
TOTAL	11	22

Note: 36 complainants did not have legal representation; 19 complainants had legal aid representation.

TABLE 4.29
What was most satisfactory about the lawyer's actions?

Comment	No.	%
Efficiency, advice, competence	20	38.5
Understanding, empathy, support	10	19.2
Nothing	8	15.4
Having something done	1	1.9
Protection	2	3.8
Other	7	13.5
Don't know	4	7.7
TOTAL	52^(a)	100.0

(a) 36 complainants did not have legal representation.

When asked what was the most satisfactory thing about the way the lawyer handled the case, 20 complainants (38.5% of those who had lawyers) said that the efficiency, advice and competence of the solicitor was the most satisfactory thing (see Table 4.29). Ten complainants (19.2%) were impressed by the understanding, empathy and support they were shown, and eight (15.4%) said that nothing had been

satisfactory. A further 10 (19.2%) found other things were the most satisfactory, such as something being done, getting protection, other advice received from the solicitor and combinations of the above.

When asked about the least satisfactory aspects of the lawyer's handling of the case a majority of the complainants (56.9% of those who had lawyers) felt that there was nothing unsatisfactory or that everything was satisfactory (see Table 4.30). Six (11.8%) felt the advice was unsatisfactory or inadequate, three (5.9%) complained that the legal situation was not properly explained to them and four (7.8%) complained that the solicitor had not consulted with them enough and gave a poor performance in court. In three (5.9%) cases, a different lawyer was sent to the court hearing from the one the woman had initially consulted. Other negative aspects included the feeling that the lawyer was too slow or lacked understanding.

TABLE 4.30
What was least satisfactory about the lawyer's actions?

Comment	No.	%
Nothing, everything satisfactory	29	55.8
Bad advice, lack of advice	6	11.5
Delay, too slow	1	1.9
Lack of sympathy, understanding	1	1.9
Didn't explain things fully	3	5.8
Poor performance, didn't consult complainant, didn't consider her interests	4	7.7
Another solicitor sent	3	5.8
Other	4	7.7
No response	1	1.9
TOTAL	52 ^(a)	100.0

(a) 36 complainants did not have legal representation.

Two complainants reported being extremely dissatisfied with their legal representatives. In the first of these cases the lawyer apparently instituted proceedings in the Family Court which the complainant did not wish to pursue, and briefed a barrister. She received a bill for over \$1,000 from the solicitor. She says that she had reported the solicitor to the Law Society of NSW who had received other complaints about him and had instituted action against him. In the second case the complainant was most upset with the solicitor who she said had 'bungled' the case. She said that she informed the solicitor that the suggested adjournment date was unsuitable to her because she would be away on holidays for a month. She claims that the solicitor wrote to her confirming a later court date at which she could attend. When she returned from holidays, however, she found the matter had been listed in court during her absence, and dismissed due to her failure to attend.

Another complainant commented that she would have liked some independent legal advice, 'not the advice of a solicitor who had his own financial interest involved'.

Complainants were asked if they had trouble getting a lawyer, regardless of whether they did have a lawyer for the matter. Fourteen (16.3%) said they had experienced a variety of difficulties in getting a lawyer. One lawyer had recommended that a complainant represent herself, and in another case a particular legal aid lawyer was not available to represent the complainant because the lawyer was already acting on the defendant's behalf. Another complainant was told by a solicitor that she was not eligible for legal aid; she contacted the Duty Solicitor (a solicitor employed by the Legal Aid Commission of NSW and attached to the court) who said he could not help her.

Of the 62 cases in which defendants appeared at court on the first date that the matter was listed, or were dealt with ex parte, 29 were legally represented (46.8%). Fourteen of these were represented by the court's Duty Solicitor (48.3%) and 15 had a private solicitor (51.7%). In 24 cases (38.7%) the defendant was not legally represented, and in nine cases (14.5%) it could not be determined whether he had legal representation or not.

What happened at court

First court appearance

As previously mentioned, 23 of the complaints (26.1%) were not determined on the first court date, but were adjourned to a later date. Reported reasons for the adjournments included the need to set aside sufficient time for a hearing, the failure to appear in court of one or both of the parties, the summons not having been served or the need for the defendant to arrange for legal representation.

As illustrated by Table 4.31, 65 complaints (73.9%) were either determined by a magistrate at the first court date or did not proceed beyond that date for a variety of reasons.

Complainants' involvement in court decision

The complainants were asked about the manner in which the outcome of the first court appearance had been determined, and whether or not they had been consulted about it. Where orders are made by the court, or bail is granted during an adjournment subject to conditions, it is crucial (given the aim of protecting the complainant) that the conditions of bail or the order are appropriate to the needs and circumstances of the complainant.

Complainants reported that they were not consulted about the outcome of the first court appearance in 24 cases (36.9% of those who appeared in court on that occasion). This was particularly the case where proceedings were adjourned - approximately half of the complainants in matters which were adjourned indicated that they had not been consulted about the adjournment.

TABLE 4.31
Outcome of first court appearance

Outcome	No.	%
<i>Did not proceed to a determination</i>		
No appearance of both parties	10	11.4
No appearance of complainant	3	3.4
No appearance of defendant - withdrawn	3	3.4
No appearance of defendant - bench warrant	1	1.1
Warrant outstanding	1	1.1
Warrant withdrawn	1	1.1
Summons not served - lapsed/dismissed	4	4.5
Both in court - withdrawn	2	2.3
Application not dealt with ^(a)	1	1.1
<i>Ad journed</i>		
No appearance complainant	1	1.1
No appearance defendant	3	3.4
Summons not served	3	3.4
Both parties present	16	18.2
<i>Determined</i>		
Order by consent	23	26.1
Order after hearing	4	4.5
Order ex parte	4	4.5
Order with undertakings by complainant	2	2.3
Transferred to Family Court	3	3.4
Withdrawn on undertakings	3	3.4
TOTAL	88	100.0

(a) The defendant in this matter was convicted of an assault, and sentenced on that matter, but the ADVO complaint was never dealt with.

In nine cases the outcome of the matter was reportedly suggested to the court by the defendant or his legal representative and in three of these cases the complainant said that she had not been consulted. Where the outcome of this first court appearance was suggested to the court by their own legal representatives, in seven out of 18 cases, complainants indicated that they had not been consulted. Magistrates were said to have consulted with the complainant in 14 (53.8%) of the 26 cases in which it was said that they had determined the outcome in the absence of submissions by the complainant or defendant. There were no cases where the complainant herself suggested the outcome.

Satisfaction with outcome of first court appearance

Complainants were asked whether the outcome of the first court appearance was the outcome that they wanted. As shown by Table 4.32, 25 (28.4%) said they wanted nothing different from the outcome they had. Twenty-six (29.5%) wished the matter had been resolved at the first hearing, preferably with them obtaining an ADVO. Six (6.8%) would have preferred a non-legal outcome and four (4.5%) wished there had been an alternative legal outcome. Three (3.4%) complainants would have liked different or additional conditions and six (6.8%) would have preferred the defendant to have been gaoled.

TABLE 4.32
First court appearance - preferred outcome

Comment	No.	%
Satisfied with outcome	25	28.4
Gaol for defendant	6	6.8
Immediate ADVO	13	14.8
ADVO	13	14.8
Different legal outcome	4	4.5
Non-legal outcome	6	6.8
Different/additional conditions of ADVO	3	3.4
Other	7	8.0
Unknown/no response	11	12.5
TOTAL	88	100.0

The final result (whether first or last court hearing)

Table 4.31 presented the outcomes of the *first* court appearance. The final outcome of complaints is presented in Table 4.33. As shown by Table 4.33 more than half of the sample (45 or 51.1%) were successful in obtaining ADVOS.

Thirty-two orders were consented to by the defendant and six were granted ex parte. An order was granted in five cases where the complaint was contested by the defendant. In two cases the magistrate made orders against the defendant but also required the complainant to give undertakings to the court concerning her future conduct. In two matters the complaint for an ADVO was dismissed following a hearing.

Before looking in detail at the nature of the orders, and the extent to which they were effective, the outcomes of those cases which did not result in ADVOS will be considered.

Matters not proceeding to a court determination

As evident from Table 4.33 there were 32 matters (36.4%) which did not proceed to a court determination. In three cases the complaints were

withdrawn before the date listed for court, and in four matters the complaint was withdrawn at the court. Six cases did not proceed when the complainant failed to appear at court on the required date, and in 11 cases neither the complainant nor the defendant appeared. The summons was not served in four cases and the complaint lapsed as a result. In one matter a complainant had a warrant withdrawn before it could be executed, and in two cases warrants were still outstanding at the completion of the study. In one other case a defendant appeared in court with respect to an assault charge and a complaint for an ADVO. He was convicted and placed on a bond for the assault but the ADVO complaint was not dealt with.

TABLE 4.33
Final outcome

Outcome	No.	%
Order by consent	32	36.4
Order after hearing	5	5.7
Order ex parte	6	6.8
Order and undertaking	2	2.3
De Facto Relationships Act order	1	1.1
Transferred to Family Court	3	3.4
Withdrawn	3	3.4
Summons not served/lapsed/dismissed	4	4.5
Non appearance - complainant	6	6.8
Non appearance - both parties	11	12.5
Withdrawn - dismissed	4	4.5
Withdrawn on undertakings	5	5.7
Hearing - dismissed	2	2.3
Warrant outstanding	1	1.1
Bench warrant outstanding	1	1.1
Warrant withdrawn by complainant	1	1.1
Application not dealt with	1	1.1
TOTAL	88	100.0

Given the various beliefs about complainants' reasons for not following through with court action in domestic violence cases (see Cannings, 1984; Crancher, Egger and Bacon, 1983; NSW Task Force on Domestic Violence, 1981), it is important to consider in some detail the cases which did not proceed.

Of the four matters which lapsed due to the summons not having been served, it was reported that two of the defendants went to considerable lengths to avoid being served with the summons. In the other two cases it was not clear why police, who according to the complainants had full details of the whereabouts of the respective defendants, were not able to serve the summons.

In three of these four matters complainants reported that, at the time of the interview, the violence and harassment was continuing. In two of these cases police later arrested and charged the defendant due to alleged further violence - one of the complainants had been hospitalised as a result. In the third case where violence was allegedly continuing, the complainant, who was in full-time employment and supporting two children, decided that she could not afford to pursue court action after her solicitor told her that it would cost at least \$450 for representation in proceedings for an ADVO.

The nature of the remaining cases which did not proceed in court varied enormously. Three complainants reported having decided not to pursue the matter in court because they had reconciled with their partners and wanted to 'give it a go'. One of these said that the serving of the summons had scared her husband into trying to work out their problems, and that their communication had improved as a result.

One other woman said that the matter had resolved itself following the service of the summons and court action was no longer necessary. Others indicated that they had decided that court action was not the answer, and were trying to pursue other 'less heavy options'. In one such case the complainant was attending counselling (although the defendant refused to go) and was 'learning not to trigger the violence'. She said that she could not 'take the children away from their father' and so had decided to stay and 'make the best of it'. Another said that the problem was essentially the result of her partner's drinking excessively, and so she had decided that court action would not really help. Instead, she was trying to assist him to overcome his drinking problem.

Several complainants said that they had been persuaded not to pursue court action by the defendants. Two defendants apparently made concessions over finances or the division of property in exchange for having the court action against them withdrawn, and in a third case a complainant said that she had acted on her solicitor's advice to withdraw the matter in exchange for her husband agreeing to arrangements concerning access to the children. Another said that the defendant had threatened her on the way to court and that he had told her that she had been the one responsible for sending him to gaol. One other complainant also said that she had withdrawn the proceedings because she did not want the defendant to go to gaol. Two women reported agreeing not to proceed in court when the defendant promised not to 'hassle' them or their children further. Some complainants reported being pressured to withdraw, not just by the defendant but by other family members and by friends.

Four complainants said that they had decided not to pursue court action because there had been further violence, or because they feared further violence as a result of involving the courts.

Two complainants indicated that court delays had influenced their decisions not to go ahead with the matter. One said that she felt extremely vulnerable in the period between making the complaint and the date that the matter was first listed before the court, which was some six to seven weeks later. She said that she had decided that it would be safer to withdraw the matter rather than risk further violence during that interim. The defendant had allegedly threatened

further violence towards her and had also threatened to commit suicide if she did not withdraw. In the second matter, the complainant had separated from the defendant and moved a considerable distance from him. She had wanted to return to the area in which he lived, however, to spend Christmas with her family who also lived in that area, and so had sought an ADVO specifically to provide her with protection during her stay. She said that the length of court adjournments meant that the matter would not have been listed in court until after the Christmas period, and so she didn't want to pursue the complaint.

One complainant reported that she had felt so degraded by her experience in court on the first occasion that she had not appeared again following the adjournment. She was particularly upset at having to appear in an open court with other people listening to the details. She was also unhappy about having to stand in the street outside the court waiting for the matter to be called (the particular court had no waiting room).

The above accounts indicated that, for these complainants at least, the decision was often a considered and rational one, and not simply the result of a complainant 'changing her mind' for no particular reason. Some complainants clearly saw benefits to be gained (for example, their own safety, or concessions from their (ex) partners) whilst others found that simply initiating action had assisted. In some cases the proceedings lapsed due to difficulties in the criminal justice process such as summonses not being served, or lengthy court delays.

Those complainants in matters which had been withdrawn, or which did not proceed, were asked whether there had been any other instances of violence or harassment since that time. Their responses indicated that, in 15 of the 32 cases (46.9%), the complainants had been subjected to subsequent violence or harassment. One complainant reported having been thrown down the steps by her partner, and in another matter the defendant had been subsequently charged by police after he allegedly broke into his de facto wife's home, held a knife to her throat and threatened the children:

Although none of these matters had proceeded to a court determination, most of the complainants (26 or 81.3%) indicated that they would apply for an ADVO again if necessary. Only one complainant said that she would not apply for another order, and she considered that alcohol counselling rather than an order was more appropriate for her partner. Two complainants responded that they would seek orders again if there were no other alternative, and if the violence were 'extreme enough to warrant an order'. Three complainants did not respond to the question.

Court determination

(a) Order under De Facto Relationships Act

Although proceedings had commenced by way of complaint for an ADVO, the legal representative of one complainant sought and was granted an injunction under the De Facto Relationships Act for her client. The De Facto Relationships Act injunction is similar to the ADVO but has a number of advantages. It is available for the protection not only of

the complainant herself but of her property and children and it is not limited to six months duration.⁵

A disadvantage of the De Facto Relationships Act is that it is not well known to police, chamber magistrates and court officers except in the context of maintenance and property settlement in de facto relationships. The woman in this study who obtained an injunction under this Act allegedly had great difficulty in getting police to respond to her call for help when it was breached.

Part of the problem was that the typed injunction had no particular identifying text, was not on a special form and had no seal of the court. Police were unsure of its validity and uncertain of their powers to arrest when convinced that it was valid. The complainant in this matter was particularly unhappy about her treatment by police and the court, but said that she would apply for an ADVO again if it were necessary.

(b) Injunctions under Family Law Act

In three cases in the sample complainants had the matter of domestic violence 'transferred' to the Family Court for injunctions under the Family Law Act. As mentioned above, one of the disadvantages with a Family Law Act injunction is getting police action on breach. Authority for the police to arrest the suspect upon an alleged breach of the injunction is not automatically attached to an injunction, but must be specifically sought. Evidence suggests (Landsdowne, 1985) that such powers of arrest are rarely attached. It is also reported that some police fail to act on the breach of an injunction on the mistaken belief that NSW police do not have the power to enforce an injunction under Federal legislation (Waters, 1986; Domestic Violence Solicitor's Kit).

Where there is no power of arrest attached, proceedings can only be commenced under the injunction for contempt of court. These are civil. The accused is summonsed to court, and cannot be arrested and brought there by police for an allegation of breach to be heard. Where the police have reasonable grounds to believe that an ADVO has been breached, however, they do have the power to arrest the suspect without a warrant and either determine bail or take him straight before a court.

One of the three cases was still pending before the Family Court at the time of interview. The complainant reported that she had gone into hiding to escape the violence which she and her children had been experiencing. In the other matters injunctions had been granted by the court, and in both cases these reportedly had been breached by the defendant. Both complainants said that they had contacted the police concerning the breach of the orders, but that police had taken no action.

Two of these complainants said that they would apply for ADVOS again if the need arose, whilst the third said that she had had such a bad

⁵The Crimes (Personal and Family Violence) Amendment Act, 1987, which commenced on 21 February 1988, has removed some of these limitations of the ADVO (see Appendix 1.2 for discussion of the new legislation).

experience in court that she was not sure that she could go through that again.

(c) Cases dismissed

In two cases the matter was dismissed after a hearing. One was the case mentioned above, where the hearing was adjourned for five months. The other was the matter of a school teacher who had had difficulty getting a solicitor to represent her. She received some advice from the Women's Legal Resources Centre before the hearing and was assisted in court by the Police Prosecutor. The matter was adjourned at the first court appearance to allow time for the defendant to get a solicitor. Bail conditions were imposed on him which he allegedly breached by entering the home under the influence of intoxicating liquor. The complainant said that she did not report this breach as she mistakenly believed that he had to break both conditions of bail before she could report the matter and he had not assaulted her on this occasion. At the final court hearing, the complainant was still without legal representation. She felt that the Police Prosecutor who assisted her at this hearing was reluctant to represent her and she considered that he did not represent her adequately.

The complainant was refused an ADVO and the complaint was dismissed, reportedly on the grounds that she was not a credible witness and that she had not called the police when bail conditions were broken. The complainant alleged that there had been a history of domestic violence in the marriage and that she had been assaulted several times over the past 10 years. She had been bruised, knocked unconscious and had sought medical attention at least three times. The event which led her to seek the protection of the law was a quarrel during which there was no actual assault. She said, however, that she was afraid of her husband's threats and abuse as he had assaulted her 18 months before that event, causing her to be absent from her teaching job for 10 days.

In spite of having had their complaints dismissed, both complainants said that they would advise others in the same situation to go to court and apply for an order immediately, and that they would apply again themselves. One said that her main dissatisfaction with the court was that the complaint had taken so long to reach a determination. However, she also said that the experience of going to court had made her think about her legal rights and seek more information about this.

Undertakings

In five cases complainants withdrew on undertakings from their spouse or former spouse concerning his future conduct. One of these complainants was also required to give undertakings concerning her own conduct, as were two of the complainants in matters where ADVOs were made.

Undertakings are essentially promises made to the court. In some cases leave is given to the complainant to have the matter restored to the court list for further consideration if the undertaking is breached. Where such leave is not given, the breach of an undertaking

can only be dealt with by instituting new proceedings before the court. The police have no powers to act upon the breach of an undertaking per se. They may, of course, take appropriate action where that breach constitutes a criminal offence.

Since police have no specific powers to enforce an undertaking, the onus is upon the complainant to bring the matter back before the courts, either by seeking leave to do so or by instituting new proceedings when an undertaking is breached. Complainants whose matters result in undertakings are, therefore, at a disadvantage when compared with those who have an ADVO.

In those cases where complainants withdrew their complaint on undertakings from their spouse or former spouse, the conditions agreed to were that the defendant not harass, molest or interfere with the complainant. Two had additional conditions not to approach the complainant's premises and one had an additional condition only to telephone regarding the children in emergencies. Another dealt with very specific circumstances applicable to both parties in regard to telephoning and/or approaching each other. This was the only case where the undertakings were binding on both parties. In two cases where undertakings were made there was a condition to allow the matter to be restored on breach. In all cases, the conditions of the undertaking were similar to those typically ordered by way of ADVO.

All five complainants who withdrew on undertakings were legally represented as were four of the defendants in the above cases. Two further complainants who obtained orders gave undertakings in relation to their own behaviour towards the defendant; in each case that she not telephone, visit his premises or approach him.

Only one complainant in the seven cases where undertakings were made (including the complainants granted ADVOS who also make undertakings concerning their own conduct) was aware at the time of the difference between undertakings and an ADVO. Others thought they were similar to ADVOS in form and effect or, in fact, thought that they did have orders. One complainant who had appeared in court unrepresented reported that she had agreed to an undertaking at the suggestion of the defendant's solicitor, and that she had not been told that it was different from the order she had sought.

In four cases it was alleged that the undertakings had been breached on more than one occasion, and two complainants said that they had reported the breaches to their solicitor. In both cases the solicitor apparently took no action and in one of these cases it was alleged that the defendant subsequently attempted to strangle the complainant and was arrested.

Three of the five complainants who withdrew on undertakings said they would apply again for an ADVO in similar circumstances. Two said they would not. Four of the five stated that they would have preferred an ADVO rather than undertakings.

⁶That is, the complaint could again be listed before the court if the undertakings were not kept.



When asked what was most satisfactory about having an undertaking, one responded that it had kept the defendant away, another said that it demonstrated that she did have some legal rights and the other three said that there was nothing satisfactory about the outcome.

When asked what was least satisfactory about the undertakings, one complainant said that she thought it was all a waste of time, another said that it had not stopped the defendant from phoning her and a third said that she was dissatisfied because she thought she would be getting an order. Of the remaining two, one replied 'nothing' and the other did not respond.

Outcomes and legal representation

Among those complainants who had legal representation there was a higher proportion granted orders than amongst those without legal representation. Thirty complainants who had lawyers were granted orders (57.7%) as compared with 15 who did not have lawyers (41.7%). As shown in Table 4.34, however, when cases not proceeding to a court determination were excluded from the analysis, the proportion of *unrepresented* complainants who were successful in getting ADVOs (93.8%) was apparently greater than for complainants with legal representation (75%). The differences in outcome between complainants who were legally represented and those who were not, however, was not statistically significant ($X^2 = 1.736$, $df = 1$).

TABLE 4.34
Legal representation and outcome of complaints
proceeding to court determination

Outcome	Represented		Not represented		Total	
	No.	%	No.	%	No.	%
ADVO	30	75.0	15	93.8	45	80.4
Withdrawn on undertakings	5	12.5	0	0.0	5	8.9
Dismissed	1	2.5	1	6.2	2	3.6
De Facto Relationships						
Act order	1	2.5	0	0.0	1	1.8
Transferred to Family Court	3	7.5	0	0.0	3	5.4
TOTAL	40 ^(a)	100.0	16 ^(b)	100.0	56	100.0

(a) 12 complainants who had legal representation had cases that did not proceed to court determination.

(b) 20 complainants who did not have legal representation had cases that did not proceed to court determination.

As depicted in Table 4.34, the use of alternative outcomes such as proceedings for an injunction under the Family Law Act or withdrawing on receiving undertakings from the defendant to restrict or modify his behaviour occurred only in cases where complainants were legally represented; no unrepresented complainants received such an outcome. Three complainants who were legally represented had the matter 'transferred' to the Family Court, compared with none of those without legal representation, and each of the five complainants who withdrew on undertakings were legally represented.

There was a lower rate of withdrawal among complainants who were legally represented. Ten of those with lawyers (19.2%) and 15 of those who did not have lawyers (41.7%) withdrew the complaint (in one case a warrant), or failed to appear at court on the specified day.

Four complainants who withdrew and who did not have lawyers indicated that they had experienced difficulties in getting a lawyer, and one other said that she had been confused and unsure about whether she needed a lawyer or how to get one. One indicated that she had been told by her local legal aid office that they could not give her an appointment for some weeks which would have been after the date at which she was to appear at court. In another case a complainant said that she had approached the local legal aid solicitor who could not represent her because he was representing her husband.

Apprehended Domestic Violence Orders

All 45 orders granted were for the maximum available duration of six months.⁷ In no case was an order also made against the complainant, although where cross accusations are made courts do sometimes impose orders on both parties. Two women who were granted ADVOs, however, were required to give undertakings to the court about their own future conduct.

Conditions

The restrictions and prohibitions imposed on the defendant were sometimes specific to the situation of the couple involved, for example:

Not to travel outside of Parramatta vicinity.

Only to go to the spouse's premises to recover personal property in company of police.

Not to attempt to contact daughters at (name specified) High School.

To stay away from premises and surrounding area bounded by five (specified) streets.

⁷Recent amendments to the legislation have removed this limit from the duration of orders (see Appendix 1.2).

However, most fitted into broad categories as follows:

In eight cases (17.8%) the conditions imposed were those of 'not to assault, molest or interfere with the complainant'. Eighteen orders (40%) had those conditions, with additional restrictions imposed relating to approaching the complainant's home or workplace. Eleven (24.4%) included the above restrictions and others relating to access arrangements. Six others (13.3%) imposed the above conditions and others concerning the consumption of intoxicating liquor, or contact with the complainant through a third person or in any way whatsoever.

Satisfaction with orders

The complainants were asked whether the conditions of the ADVO were as they had wanted. Forty (88.9%) said yes and four were not sure, or were happy in some respects but not in others. One said she had not known what conditions she could have asked for and in retrospect would have liked different conditions. The complainants who had ADVOs were asked whether they were consulted about the conditions of the order. As shown in Table 4.35, 12 complainants (26.7%) were not included in the decision about what conditions to place on the order, a decision which they said was made in discussion between the solicitor and the magistrate. Three said that they themselves had decided on the conditions of the ADVO.

TABLE 4.35
Who decided on condition of order?

Who decided	No.	%
Complainant	3	6.7
Complainant and magistrate	23	51.1
Solicitor and magistrate without consulting complainant	12	26.7
Other (both parties' legal representatives)	1	2.2
Unknown	6	13.3
TOTAL	45	100.0

As evident in Table 4.36 the most common response when asked 'What did you think the order would do' was 'keep him away!' (68.9%). Five said to 'give protection' (11.1%) and a further five (11.1%) thought it would 'bring him to his senses' or make the defendant wake up to himself. Two complainants (4.4%) had other expectations such as giving the couple time and space to work on the relationship. One expressed dissatisfaction: 'not worth the paper they have written on, the order can be broken without the woman being able to prove it'.

One complainant from a non-English speaking background was very pleased to be in a country where such things as ADVOs were possible. When asked what she thought the ADVO would do she replied, 'make

happy, enjoy life - it gave life'. This complainant had sought the ADVO on the advice of women at a women's refuge where she had been provided with a variety of information, together with practical and emotional support. 'It was the best place.' The matter had proceeded by way of warrant and, in court, the complainant was assisted by the Police Prosecutor at both court hearings. When asked what was the most satisfactory thing about having the order she replied, 'I'm sleeping very well. Everything like miracle. In (country specified) I didn't have all these things - house for children, you know, Australia very good country.'

TABLE 4.36
What did you think the order would do?

Comment	No.	%
Keep defendant away, stop violence	31	68.9
Give couple time to work on relationship	2	4.4
Give protection	5	11.1
Bring defendant to his senses, wake up to himself	5	11.1
Other	2	4.4
TOTAL	45	100.0

As evident from Table 4.37, 20 complainants (44.4%) said that the ADVO had achieved what they thought it would ('yes... so far'), and nine (20%) said it had partly achieved what they thought it would or that it had done so for a short time; 'For one month he stayed away then the access matter came to court and it all started up again.' There were 14 (31.1%) cases in which complainants said that obtaining the order had not achieved what they had expected. One said her ex-spouse had been seen trying to get into her house while another said it had not stopped the defendant visiting her. Four complainants said that they had been assaulted since obtaining the orders.

One complainant, who was uncertain whether the order had done what she thought it would do, answered 'yes and no', saying that although her husband of 26 years was still getting drunk and being verbally abusive to herself and her two teenage daughters, he had not actually hit them. She had reportedly sought an order because her younger daughter refused to live at home any longer and would have been placed 'in care'. Teachers at the girl's school had intervened when she came to school with bruises. The defendant, who had allegedly lost his driving licence through alcoholism, had been in the habit of telephoning the complainant or elder daughter at all hours of the night, getting them out of bed to pick him up from his club. The relationship, allegedly, had been violent for 26 years and he was said to be abusing and bashing the complainant and her daughters at increasingly frequent intervals. Obtaining the order had had some effect on the defendant's behaviour but the situation was far from ideal. Nevertheless, the complainant said that she felt relieved that

the defendant was no longer physically assaulting them and saw this as an improvement.

TABLE 4.37
Has ADVO achieved what was expected/hoped for?

Comment	No.	%
Yes	20	44.4
No	14	31.1
In part	7	15.6
For a short time	2	4.4
Other	2	4.4
TOTAL	45	100.0

When asked what was the most satisfactory thing about having the ADVO, 15 complainants (33.3%) made comments related to the degree of safety and protection they felt from obtaining the order (see Table 4.38): for example, saying that it gave them 'six months' respite, a breathing space'; 'it gave some peace and quiet for a while'; 'he hasn't touched me'; 'kept him away... he went to Bundaberg'. Seventeen (37.8%) thought the most satisfactory thing about having the order was that the police would now have to respond and take action if the abuse continued. Some commented that now the police would have to help: 'not just say it's a domestic and do nothing' or 'it didn't stop him but it meant the police were on the scene'.

TABLE 4.38
Most satisfactory aspect of ADVO

Comment	No.	%
Nothing	7	15.6
Security, safety, peace, kept defendant away	15	33.3
Police (now) here to take action if called	17	37.8
Other	6	13.3
TOTAL	45	100.0

Seven complainants (15.5%) could not find anything that was satisfactory about having the ADVO: 'Nothing, don't feel safe at all.' 'Other' comments included: 'The magistrate put the wind up him and told him if he broke it then it would be six months in the clink.'

Despite the fact that all but seven of the complainants who had ADVOs had specified something which they had found satisfactory about having an ADVO, 22 raised a range of factors which they saw as being least satisfactory about the order. As shown in Table 4.39, 10 (22.2%) thought it would not be effective in stopping the harassment: '...knowing that it won't stop him'; 'it's only a piece of paper... it's not a gun...he may not take notice'. Some of those who thought it was ineffective had allegedly been assaulted or harassed since obtaining the order. Other sources of dissatisfaction were that police do not take appropriate action (two complainants), that the duration of the order was too short (two complainants) and two commented that the ADVO had not adequately dealt with the particular problems or circumstances of their relationships. There was a range of other replies including one from a complainant who believed that the defendant was more protected by the law than she was and that 'the law is a joke... offered no protection whatsoever'. Another said that she did not blame the order for the fact that the defendant breached it all the time, 'that's just the sort of person he is'. One complainant was unhappy about the severity of the procedure she had to adopt, having to use the police and go to court 'instead of some other, nicer, friendlier way to get him to stay away'.

TABLE 4.39
Least satisfactory aspect of ADVO

Comment	No.	%
Nothing	22	48.9
It doesn't stop the violence/harassment	10	22.2
Police do not take action	2	4.4
ADVO does not deal with the problem	2	4.4
Duration of ADVO too short	2	4.4
Other	6	13.3
Don't know	1	2.2
TOTAL	45	100.0

An equal number of complainants (22 or 48.9%) indicated that in their experience there had been nothing unsatisfactory about having an ADVO.

Clearly then, complainants' experiences of the ADVO were quite mixed. Seven who said that the ADVO had met their own expectations nonetheless nominated both satisfactory and unsatisfactory factors associated with having an ADVO, as did five women whose expectations had not been met by the order.

Breaches of ADVOs

There were 25 cases (55.6%) where the ADVO was reported to have been breached, 16 where no breaches occurred and four complainants who

reported being uncertain whether a breach had occurred. As indicated by Table 4.40, in most cases where there had been an alleged breach

TABLE 4.40
Breaches of ADVOs: Time between order and breach

Weeks	No.	%
1 week or less	7	28.0
2 to 4	8	32.0
5 to 8	2	8.0
9 to 12	5	20.0
More than 12	3	12.0
TOTAL	25	100.0

(15 or 60%) it had occurred within the first four weeks of the order having been made, and in seven cases (28%) there had been a breach within one week of the order being granted.

Types of breaches

In four 'breach' cases (16%) there were allegations of actual physical abuse involved: 'He barged into the house. One of the kids opened the door and he walked in.' The defendant allegedly then bashed the woman and one of the children. Other alleged breaches (84%) were of a non-physical nature, involving emotional abuse, threats and/or harassment. An example of this was the case of one defendant who was said to have regularly stood in the driveway watching the complainant's house, reported her as an unfit mother to the then Department of Youth and Community Services and telephoned the Department of Social Security seeking to have her supporting mother's benefit stopped. Another defendant was alleged to have smashed a fibro wall at the front of the complainant's house, made telephone calls, jumped out of the bushes at the complainant, 'singing out' and harassed the children, saying to them, 'you'd better hurry up and run to the shop, 'cause your mother's gonna be dead when you get back'.

Complainants attributed the alleged breaches to a variety of circumstances ranging from disputes over access (4 or 16%) to jealousy (7 or 28%). For some (5 or 25%) there was no apparent explanation for the defendant's behaviour whilst others listed other factors such as money or alcohol. Sixteen complainants reported the breach (64%), 12 to the police and four to solicitors or chamber magistrates.

There were nine complainants who indicated that although breaches of the ADVO had occurred - on numerous occasions in some cases - they had not reported these breaches to police, solicitors or officers of the court. Three did not know what the procedure was concerning breaches. In five cases the breach did not involve physical violence, but related instead to such things as constant phone calls, verbal abuse

and threats. Two of the complainants who did not report the breach said that they had since been reconciled with their partners and did not want to take any action which might jeopardise their relationships. Another reported that although her partner's behaviour did breach the terms of the ADVO, it had modified somewhat since his appearance at court, and that she hoped he would 'calm down more' if she gave him time. Other reasons given for not reporting breaches included that it would be very difficult to prove the verbal harassment in court, two cases in which complainants did not want to get their partners into further trouble and perhaps be responsible for sending them to gaol and another who thought that psychiatric help would be a greater benefit to her partner than further court action.

No action was taken in six 'breach' cases (37.5% of those reported). In one case the defendant was alleged to have breached the order on at least six occasions, two of which were said to have been reported to the police. In one such incident an argument was said to have developed because the defendant would not move out of the house as required by the ADVO. He reportedly locked the family inside the house and smashed the phone. The police, who were called by a neighbour, were said to have advised the complainant not to take further action, but to give the defendant another chance. On the second occasion on which the complainant contacted the police, the defendant had come to the home without her prior consent, as required by the ADVO. He left the premises following her call to police, and the police allegedly stated that they would take no action on this occasion but advised the complainant to phone them again if the defendant returned.

Another complainant reported that she had suffered constant phone calls and unwelcome visits by the defendant to her house, both contrary to the terms of the ADVO. She said that when she had reported these matters to the police that she had been told that they could not take any action because she had not been hurt by the defendant's actions.

Despite the fact that breach of an ADVO constitutes a criminal offence, the alleged offender was given a warning by police in three cases and in two cases a letter was written to the defendant by the complainant's solicitor. Five reported breaches resulted in arrests and charges, only two of which had been finalised by the courts at the time of the interview.

'Technical' breach

Sometimes couples who have separated get back together again and in doing so may be in breach of some or all of the conditions of any existing ADVO. There are provisions in the legislation to have the order varied or revoked. Where necessary, for example, the conditions restricting the approach of one party to another (or other conditions that may be breached if a couple resume living together) could be altered or revoked, whilst the conditions preventing assault, threats and molestation could be retained to provide protection to the complainant. Some couples do not do this, however, perhaps because they are unaware of the provision or are afraid to return to the chamber magistrate to admit to a breach of the order under these circumstances.

It is easy to understand why some couples may be reluctant to go through a second court procedure, particularly when, in the midst of a hopeful reconciliation, they may not want to recall the circumstances of their separation. The prospect of waiting to see the chamber magistrate, waiting further weeks for a court hearing and facing the stress of the court room may be daunting. One breach in the sample had apparently begun in this way: after the couple moved back together, 'things were "on again" for a week and then he started bashing again, smashed up the house'. He allegedly threatened to kill her and 'he cut off the phone, the electricity, the fridge - everything was destroyed'. When this complainant was asked 'Did you know that it might be possible to take some action about the breach?' she replied, 'No, the chamber magistrate didn't either.' She initially reported the breach to a chamber magistrate and then had to return a few days later after he had found out about the provisions concerning breaches of orders. He then issued a warrant.

Impressions of court

Complainants were asked whether they had understood what had happened in court. Forty of the 65 (61.5%) who had been to court said they had understood what was happening in court. Nineteen (29.2%) had not understood and six (9.2%) were not sure whether they had understood court proceedings adequately. Many of those who did understand the proceedings added spontaneously that the chamber magistrate or their solicitor had explained the procedure to them prior to appearing in court. Two who had not understood what had happened indicated that their solicitors had explained it carefully to them afterwards. Two also said that they had had the likely course of proceedings explained to them by solicitors but had been too upset to 'take it in'.

In nine cases, complainants who had legal representation nonetheless had not understood what had occurred in court, and in several of these cases said that no-one had explained it to them. One complainant who spoke only limited English had not understood what had happened at the first court appearance at all, since no interpreter had been provided. An interpreter was provided at the second court appearance, however, and the woman reported that she had understood what had occurred on that occasion and was happy with the outcome.

The complainants were asked both what they had expected would happen in court (see Table 4.41) and if those expectations had not been met how their experience in court differed from those expectations (see Table 4.42).

The most common response to the first of these questions indicated that 23.1 per cent of those who had appeared in court had no expectation of what might happen. In 15.4 per cent of cases complainants indicated that the court experience had met their expectations but did not specify what these were. Equal numbers (6 or 9.2%) expected either that the defendant would be sent to gaol or get an ADVO. Others expected either to have to give evidence (7.7%) or not to have to give evidence (1.5%). The majority of those interviewed did not express unrealistic expectations of what might happen in court. The finding that almost one-quarter did not have any

idea of what to expect, however, together with six complainants who expected a gaol sentence to be handed down (an impossible outcome on a complaint seeking an ADVO) clearly demonstrates that many complainants lacked knowledge of the court procedure and of the legal protection which they were seeking.

TABLE 4.41
Complainants' expectations of court

Response	No.	%
No idea, no expectations	15	23.1
What happened	10	15.4
Thought might have to give evidence	5	7.7
Did not expect to have to give evidence	1	1.5
Expected help from court but didn't get it	1	1.5
Gaol for the defendant	6	9.2
That defendant be ordered to vacate premises	2	3.1
To be granted ADVO	6	9.2
Other legal response	5	7.7
Thought it would be a long procedure	2	3.1
Thought it would be over quickly	2	3.1
Other	10	15.4
TOTAL	65	100.0

TABLE 4.42
How the court experience differed from complainants' expectations

Comment	No.	%
It was rushed	3	4.6
Delay	2	3.1
Did not have to give evidence	4	6.2
Had to give evidence	1	1.5
A very degrading experience	1	1.5
Attitude to court officials positive	1	1.5
Defendant not put in gaol/sentenced	5	7.7
Got desired outcome	2	3.1
Did not get desired outcome	4	6.2
Other (various individual responses)	9	13.8
Did not differ from expectations	18	27.7
Had no prior expectations	15	23.1
TOTAL	65	100.0

What happened at court was contrary to the expectations of 32 complainants (49.2%) (see Table 4.42). For example, there were some (4 or 6.2%) who had expected to give evidence, whilst one who had been required to give evidence said that she had not expected to. Some (5 or 7.7%) had expected the defendant to be sentenced. The court proceedings appeared to some to be rushed whilst others thought the whole process took far too long. One found the whole court experience 'degrading'.

Four complainants commented that they had not received the desired outcome, and two said that, contrary to their expectations, they had received the desired outcome. Other responses included that of one complainant who said that she thought the magistrate 'would want to hear my side' - she was not represented in court - and another who had not expected to be able to express her opinion, but was given that opportunity.

One other complainant expressed surprise at not having been 'believed more' and she asked, 'why would a woman go to court to lie?'

When asked to say what they thought was the most satisfactory thing about court proceedings (see Table 4.43), 21 (32.3%) of those who had attended court said that they could not find anything that they could say was most satisfactory about the court proceedings. Understandably, many complainants (26 or 40%) answered in terms of the court having achieved the desired outcome, of having got something done, of feeling safer or 'making it legal'. One said that the most satisfactory thing was that she 'got the order, got the piece of paper'. She felt that court orders worked, not only for her but for other women she has known.

TABLE 4.43
The most satisfactory thing about court

Response	No.	%
Nothing	21	32.3
The ADVO	13	20.0
It was over quickly	6	9.2
Felt safer/protection	2	3.1
Getting desired outcome	5	7.7
Had desired effect	2	3.1
Something being done	3	4.6
Not having to give evidence	1	1.6
Being treated with respect, understanding	1	1.6
It made it legal	1	1.5
Other	9	13.8
Don't know	1	1.5
TOTAL	65	100.0

Other comments of a similar nature included:

Just made it legal, haven't been hit since I got the order.

Did get the order... had hopes that it would work.

Got the order... treated well by everyone.

Others thought the most satisfactory thing was that it was over quickly (9.2%), or in one case (1.6%) not having to give evidence: 'I didn't have to get up in front of the magistrate and the lawyer was able to talk for me.'

In answer to the question 'What was the least satisfactory thing about court', 21 complainants (32.3%) said that nothing had been *least* satisfactory (see Table 4.44). This is equivalent to the number who had said nothing had been *most* satisfactory. The public nature of the courtroom was something that nine (13.8%) found to be a problem. One said she had wanted it to be more private, that it was embarrassing and that she did not know who the people (strangers in the courtroom) were. Another said in answer to this question, 'The embarrassment of it all.'

TABLE 4.44
The least satisfactory thing about court

Response	No.	%
Nothing	21	32.3
Lack of privacy/embarrassment/humiliation	9	13.8
Not getting ADVO	1	1.5
Other legal outcome not expected	1	1.5
Short notice of court appearance date	1	1.5
Court delay	3	4.6
Not getting a copy of the ADVO	1	1.5
Non-appearance of the defendant	2	3.1
Duration of order too short	4	6.3
Outcome too severe	4	6.3
Not knowing what was happening	4	6.3
It was too rushed	1	1.5
Being nervous	2	3.1
Wanted different conditions	1	1.5
No child care	1	1.5
Still feels scared	1	1.5
Other	8	12.3
TOTAL	65	100.0

The delay of getting into court (3 or 4.6%), the lack of information (4 or 6.2%) given to them concerning the court proceedings or not

getting the expected or desired outcome (7 or 10.8%) were also raised. One complainant said that the lack of child care was least satisfactory.

Other comments included those of one complainant who said that the least satisfactory thing was 'having to go there at all', another who said she had found court 'very intimidating, impersonal and undignified' and a third who said she had felt she was being treated like a number.

Previous court action involving domestic violence

Twenty-three complainants (26.1%) had been to court before for matters involving domestic violence. This had, in most cases, been as an applicant for a restraining order under the Family Law Act (30.4%) or for an Apprehended (Domestic) Violence Order^B (21.7%). Other actions referred primarily to access, custody or divorce matters. In six of these cases (26.1%) the action had been taken before the amendments to the Crimes Act regarding domestic violence were introduced in 1983 and 16 (69.6%) had taken action since 1983. One complainant (4.3%) had taken action in another State. Table 4.45 shows that only two complainants (8.7%) thought that the previous court action had been more effective than the more recent court action which was the subject of this interview.

TABLE 4.45
Previous court action:
How effective compared with the current action?

Response	No.	%
More effective	2	8.7
Less effective	5	21.7
The same effectiveness/ineffectiveness	9	39.1
Other	3	13.0
Don't know/not sure	4	17.4
TOTAL	23	100.0

The most common response was that the previous action had been as effective or ineffective as the current action (39.1%), whilst in 21.7 per cent of cases the recent action had been rated as more effective. The number of cases was too small to permit any comparison between particular courses of action.

^B Prior to April 1983, an apprehended violence order could be sought under Section 547 of the Crimes Act. With the introduction of the Apprehended Domestic Violence Order in 1983, the pre-existing order remains for those not falling within the definition of domestic violence.

One complainant, who had previously sought an injunction under the Family Law Act 14 years ago, commented:

This time was much easier - not like the dark ages when women weren't the legal guardians of their own children. Last time, the police didn't want to know...

She also commented on how surprised she had been that everything had been dealt with so quickly. Her husband agreed to the order, and the magistrate discussed with her the appropriate conditions for an order.

Thirty-three complainants (37.5% of the sample) had sought other, non-legal help from people such as priests, counsellors, psychologists and social workers and/or institutions such as Alcoholics Anonymous or Marriage Guidance. Only nine of these thought it was as effective or more effective than court action.

Complainants' views on the ADVO, the legislation and procedures

The complainants interviewed were asked a series of questions about the effectiveness and usefulness of an ADVO, whether applying for an ADVO and/or going to court had helped or hindered their situation, what they saw as appropriate legislative and social responses to domestic violence and what advice they would give others in a similar situation.

As indicated in Table 4.46, a majority (65.9%) said that applying for the order had assisted them in some way, whilst 34.1 per cent responded that applying for the order had not assisted them in any way. Not surprisingly perhaps, those who had been granted ADVOs by the court were more likely than other complainants to answer that seeking an order had assisted them; 80 per cent of those who had successfully applied for an ADVO had found that applying for the order had assisted them in some way.

TABLE 4.46
Has applying for an ADVO assisted you in any way?

Response	ADVO granted		Other outcome		Total	
	No.	%	No.	%	No.	%
Yes	35	77.8	17	42.5	52	61.2
In some ways	1	2.2	3	7.5	4	4.7
No	9	20.0	20	50.0	29	34.1
TOTAL	45	100.0	40	100.0	85 ^(a)	100.0

(a) 3 complainants did not respond to this question.

In 20 cases (50%) those who had withdrawn their complaints, or been otherwise unsuccessful in having an ADVO granted, commented that, nonetheless, applying for an ADVO had assisted them at least in some ways. An equal number found that their application seeking an ADVO had not been of assistance.

The majority of complainants who had found that applying for an ADVO had assisted them in some way (56 of 85 complainants) referred to having protection (21.4%), keeping the defendant away (19.6%) or some reduction in violence or harassment (28.6%) consequent upon applying for, or having, an order (see Table 4.47). Examples of the comments made by complainants who had found applying for the order helpful include:

It shows that I'm going to stand my ground. I'm not going to put up with it. He knows this now... (application withdrawn).

He knows if he breaks it he's in trouble. He's kept away... (order).

He has woken up to himself. [I'm] no longer frightened to answer the phone or worried that he's here if a taxi arrives... (order).

It's slowed him down a bit. (withdrawn on undertakings).

TABLE 4.47
The manner in which applying for an ADVO has helped

Response	No.	%
Provided protection	12	21.4
Kept defendant away	11	19.6
Reduced violence/harassment	16	28.6
'He now knows I'm serious'	3	5.4
Complainant now has more self confidence	2	3.6
It's shown that something can be done	3	5.4
Other	6	10.7
No details given	3	5.4
TOTAL	56	100.0

As evident in Table 4.48, 15 complainants (18.1%) thought that applying for an ADVO had hindered them in some way.

Five of those who expressed this view had, in fact, been successful in gaining the order - this represents 11.1 per cent of all complainants

who had been granted orders. Those complainants whose applications resulted in other outcomes (including those withdrawn) were more than twice as likely to respond that the application had hindered them in some way. However, only 26.3 per cent of this group indicated having been hindered as a result of making the application. Both complainants whose applications for orders had been refused by a magistrate following a hearing at court felt that they had been hindered in some way.

These 15 complainants recounted a variety of ways in which applying for an ADVO had hindered them. Three said that it had made their (ex) partners more angry, or violent:

He went off his head about it and abused me because he had been in police custody. (order).

He got more threatening, and more violent. (application withdrawn).

It made him angry. (order).

TABLE 4.48
Has applying for an ADVO hindered you in any way?

Response	ADVO granted		Other outcome		Total	
	No.	%	No.	%	No.	%
Yes	5	11.1	10	26.3	15	18.1
No	40	88.9	28	73.7	68	81.9
TOTAL	45	100.0	38	100.0	83 ^(a)	100.0

(a) In 5 cases there was no response to this question.

Three others said that applying for the order had had an effect with respect to the children - in one case it was reported that communication with her ex-husband concerning the children had become more difficult - whilst two others said that the children were affected by no longer seeing their father.

One complainant whose application for an ADVO had been refused by the magistrate commented that she felt she had been hindered by the justice system itself and by poor legal representation. In the other case in which an application for an ADVO was refused, the complainant also felt that applying for the order had hindered her, in this case financially in that 'the lawyer cost heaps'.

Other comments included those of one complainant who expressed a concern that an order for six months was too short, and would soon

leave her vulnerable, and another who spoke of the inconvenience in having to wait hours to see a chamber magistrate and then the mounting anxiety she felt as she waited several weeks for the summons to be served without any protection in that interim. Two complainants anticipated that having applied for an order would make it more difficult to obtain police assistance in the future - one because she had withdrawn the proceedings and the second because her husband was a police officer and the magistrate had not granted an order, but rather had determined that the matter should be withdrawn on undertakings.

Questions were also asked concerning whether applying for an ADVO had affected the complainants' relationship with their partners or ex-partners. Fifty (56.8%) responded that their relationship had been affected and 40 (50%) gave details of how it had changed. The proportion of those who had been granted ADVOs who said that their relationship had changed (61.4%) did not differ significantly from the proportion of those who did not have orders (56.1%) whose relationships had changed ($X^2 = 0.237$, $df = 1$).

Following are some examples of what was said about the way in which seeking the order had altered relationships between complainants and their partners or ex-partners.

Not all of those who reported a worsening in their relationships saw that as negative. One complainant stated that she was pleased that the relationship had worsened because the defendant now stayed away from her. Another said that although her relationship with her partner had deteriorated to the point where they had begun sleeping in separate rooms, she now felt much freer and did what she pleased, no longer asking her husband's permission.

Comments included:

He's angry at me for taking out the order. (order).

He really hates me now. (order).

He tries to make me feel guilty about it.
(withdrawn).

It's put the wind up him. (withdrawn).

I feel safer now - he's resumed psychiatric treatment.
(order).

It finished the relationship. (application not dealt
with, defendant convicted of assault).

The complainants were also asked whether their (ex) partner's behaviour had changed since the application for an ADVO was made. Table 4.49 shows that in 47 cases (53.4%) the defendant's behaviour was said to have changed, in 28 cases (31.8%) there was no change reported and in nine cases there had been no contact between the parties. Excluding cases in which there had been no contact between the parties (since it was not clear whether this lack of contact was in response to the court proceedings or was unrelated), the proportion of complainants who indicated that the defendant's behaviour had

changed did not differ greatly between those granted ADVOs (60%) and those who were not (65%).

TABLE 4.49
Any change in partner's behaviour

Response	No.	%
Yes	47	53.4
No	28	31.8
No contact	9	10.2
No response	4	4.5
TOTAL	88	100.0

In 49 cases the complainants gave further information about the manner in which their (ex) partners' behaviour had changed.

Some examples of comments include:

Went back on to medication, drinks much less. Good as gold. (order).

Wary and not as aggressive. (withdrawn on undertakings).

Yes it has definitely. Not only the order but the separation. He is trying harder. He is more positive towards the children. Realises I won't tolerate that sort of behaviour. (order).

More placid. If we argue he walks out rather than anything else. He tries not to take out his anger on me. (withdrawn).

He doesn't hit or threaten anymore. (withdrawn).

He realised that I wasn't going to take the violence anymore. I was serious. Changed him for the better. Now we can talk to each other. (withdrawn).

Feels he has to pay me back for what I've done to him. (order).

Made him more angry that a woman can do this to him. (order).

He became more aggressive. (withdrawn).

As indicated in Table 4.50, 34 complainants (38.6%) responded that applying for an ADVO had changed the way in which they personally

dealt with violence or harassment: 29 (33%) reported no such change, 10 (11.4%) did not know and 12 (13.6%) gave other responses. The proportion of responses in each category were similar for those who had ADVOs as compared with those who did not.

In 11 cases complainants indicated that they would no longer tolerate violence or harassment, and 10 others said that they would call the police more readily in the future. Six indicated that they now knew that they had 'rights' or what these rights were, and three said that they felt stronger, and had greater self-esteem as a result of having taken some action. Other responses included:

I've learnt not to trigger his violence, to keep out of his way. (withdrawn).

I now know something can be done but I'm hesitant because of the trauma of the last occasion. (withdrawn).

...doesn't help, it embarrasses me and doesn't get me anywhere. (withdrawn on undertakings).

I'd rather lock myself in than go through the humiliation I had in court last time. (withdrawn on undertakings).

Made me more timid, more frightened of aggression - can't handle it at all. (order).

TABLE 4.50
Violence/harassment dealt with differently
since applying for ADVO

Response	No.	%
Yes	34	38.6
No	29	33.0
Other	12	13.6
Don't know	10	11.4
No response	3	3.4
TOTAL	88	100.0

Complainants were asked whether they would again seek an ADVO if the need arose. Seventy-eight (88.6% of the sample) said they would seek another ADVO, eight (9.1%) said they would not and two (2.3%) were not sure. Four of those who would not seek an ADVO again had been granted an order. The proportions willing to seek an order in the future, if necessary, were similar for those who had an ADVO (91.1%) and for those whose complaints had not resulted in an ADVO (86%).

As indicated in Table 4.51, when asked to clarify why they would or would not seek another ADVO, 20 (22.7%) said that they would seek an ADVO again because they would not tolerate the abuse again or that 'women should not be treated that way'. Ten (11.4%) said the ADVO was the only alternative, and 15 (17%) said that it was effective, or 'keeps them away'. Fourteen (15.9%) would seek an ADVO for security and protection and three (3.4%) because 'police respond when there is an ADVO'.

There was a large range of other responses. One complainant indicated that if it happened again she would go all the way through with it (i.e. not withdraw) to show that she was serious. Another said, 'it would have to get really bad' before she would go through the procedures again.

TABLE 4.51
Reasons complainants would or would not seek another ADVO

Reasons	No.	%
There's nothing else/it's the only alternative	10	11.4
It keeps defendant away/it's effective	15	17.0
Feel safe/protected/at ease	14	15.9
Police respond when there's an ADVO	3	3.4
Won't put up with it again/women shouldn't be treated that way	20	22.7
ADVO is ineffective/a waste of time/why bother	4	4.5
ADVO too severe	1	1.1
Other	19	21.6
No response	2	2.3
TOTAL	88	100.0

Other examples of comments about seeking another ADVO included:

It's the only form of defence or safety you've got without resorting to violence yourself.

Wouldn't hesitate (because it had changed her husband's attitude).

Because it's the only thing you can do, unless you make your home like Fort Knox. Police are unlikely to take action...

Yes because we've had some success with this one, almost 100 per cent.

No. It is easier to solve the problem yourself.

Advice to others

When asked what advice they would give to other women experiencing domestic violence, the most common response, that of 39 respondents (44.3%), was that they would advise them to apply for an ADVO (see Table 4.52). Eighteen (20.5%) would advise them to leave the relationship. Other advice included the following:

Get a gun.

Think about yourself and get out of it.

Would tell of many helpers - refuge, court. You don't have to have big problems - hard times, many helpers.

Don't take what I took, be a stronger person.

TABLE 4.52
Advice to other women experiencing domestic violence

Comment	No.	%
Leave relationship	18	20.5
Apply for ADVO	39	44.3
Go to refuge	1	1.1
It depends on circumstances	5	5.7
Don't take it	3	3.4
Don't know what advice to give	5	5.7
Other	17	19.3
TOTAL	88	100.0

One complainant was bitter about her experience and advised, 'If you feel like wasting your time go and get an order. No-one does anything, you battle it out on your own.' In this complainant's case, the order had allegedly been breached immediately following the court appearance and many times since. When reported to police they had said they could do nothing, saying, 'We'll try and pick him up on drink driving' (he had reportedly harassed her in several ways and chased her in a car at high speed to the police station). She said that she had then reported it to her solicitor, who had written a letter to the defendant's solicitor threatening further court action.

The complainants were asked whether going to court had changed the way that they felt about the court system. Not all those interviewed had actually been to court as a result of their application for an ADVO, since some matters were withdrawn or lapsed before any court proceedings actually commenced. Of the 67 complainants who had been to court, eight said that they had had no prior feelings about the court system. Whilst 57.1 per cent of this group whose complaint had not resulted in an ADVO indicated that their feelings about the court

system had changed, only 24.4 per cent of those who had been granted ADVOs responded in this way. This difference is statistically significant ($X^2 = 7.45$, $df = 2$, $p < 0.05$).

As indicated in Table 4.53, 40 complainants specified the way in which their feelings about the court system had changed.

In 19 cases, complainants commented in a negative way about the court system, with court delays and the length of time taken for court proceedings, particularly, being mentioned. Comments in this regard included:

I'm still not rapt in the court system. You should go to court on one day. There should be no delays. It's a waste of time, both mine and theirs. Why not just get it over and done with.

It's very slow. The waiting list is so long, it's criminal.

TABLE 4.53
Manner in which feelings about court system changed

Response	No.	%
Too harsh, inflexible	1	2.5
Proceedings slow/delays too long	7	17.5
Proceeding conducted too quickly	1	2.5
Court system protects offender	2	5.0
Court system not fair	3	7.5
Court system badly run/a joke	2	5.0
Insufficient consideration of individual circumstances	3	7.5
Good/helpful/supportive	7	17.5
Achieved desired outcome	1	2.5
ADVO too short	1	2.5
Other	8	20.0
Don't know	4	10.0
TOTAL	40	100.0

Others commented that the court system was not fair, badly run or protected alleged offenders. One complainant said:

I thought that the domestic violence legislation was here to protect women but I've realised it's not true. It protects the perpetrator. No-one has been able to do anything to stop him.

Another was concerned that the duration of the ADVO was not sufficient. She commented that:

It's a facade. Women can be beaten by their husband, de facto, then only given an order. What's more it only lasts six months. You bide your time once it's up wondering what he'll do once it's no longer in effect.

Three were concerned that the court proceedings did not allow for the individual's circumstances to be given sufficient consideration.

In eight cases, complainants commented positively about the court system, one saying that she had been impressed by the manner in which her case was dealt with, whilst others indicated that they had found the system to be helpful, supportive or good.

As a further indication of the complainants' experiences in seeking legal assistance with respect to domestic violence, they were asked to indicate whether going to court had changed the way in which they felt about themselves. As indicated previously, not all complainants had actually been to court, as their cases had lapsed at some prior stage. Going to court had changed the way 34 complainants felt about themselves, 17 who had been granted ADVOs and 17 whose complaints had not resulted in an order. Twenty-one (61.8%) said that the experience had made them feel more confident, stronger or had improved their self-esteem. Four (11.7%) had found the experience degrading, three (8.8%) felt bitter and one reported feeling guilty.

One complainant said that going to court has given her more confidence to do things on her own, 'not just to sit back and take it, but to do something about it'.

Other comments included:

Feel I have more backbone now. Prepared to go out and do more for myself.

Has let me know that there are other people around who go through it and that you can do something about it.

I felt like trash because I had to go to court.

Another felt strong because she had had the courage to go to the chamber magistrate and had since had driving lessons and gotten a driving licence.

Assistance for victims of domestic violence

Thirty-two complainants (36.4%) indicated that they had experienced difficulties in getting assistance with respect to domestic violence from one or more of a range of sources. Most commonly, complainants mentioned the police in this regard - 11 of the 32 (34.4%, or 12.5% of the total) had experienced some difficulties in getting police assistance. Problems getting advice and assistance from government departments such as the Department of Social Security, the then Department of Youth and Community Services and the Department of Housing were raised by each of four complainants. Four complainants

also indicated having had difficulties with finding legal representation, or getting legal aid, and three said that they had had problems in getting assistance from chamber magistrates. A number of other welfare agencies and charitable organisations were also mentioned by complainants as having been unable to assist them. One of these complainants added that since she had no private transport the absence of public transport had prevented her from seeking out assistance.

Sixteen (18.2%) of the complainants had sought the assistance of a women's refuge. Of these, most said that they had received accommodation along with other practical assistance and moral support from the refuge.

Complainants were given the opportunity to comment upon what they saw as the needs of domestic violence victims and to suggest what could be done to help women in such circumstances. Most commonly, they spoke of the need for emotional support (40%), and in a further 12.9 per cent of cases specified that they would like the support of other complainants who had been victims of domestic violence. A number of complainants recommended the establishment of self-help groups. In 23.5 per cent of cases, complainants mentioned the need for counselling (mostly for the complainant but, in two cases, for the defendants) and a number stressed the need for ongoing counselling. Several complainants suggested that counselling should be provided by other women who had experienced domestic violence, rather than by professionals.

Accommodation was also a frequently mentioned need, with 25.9 per cent of complainants raising safe accommodation and affordable housing as a requirement, whilst 12.9 per cent spoke of the need for more women's refuges. Sixteen (18.8%) stressed the need for greater police action. Particular comments made with respect to police included the need for police to take domestic violence seriously, to understand the law and give accurate information to victims and to consider removing violent men from their homes rather than requiring women and children to seek emergency accommodation in refuges.

Seventeen complainants (19.3%) indicated a need for advice and information, whilst nine (10.2%) specified the need for greater legal advice and information. The need for financial support was also stressed by nine complainants (10.2%).

There was a diverse range of other comments and suggestions including that social workers be appointed to work at police stations (three complainants), speedier court proceedings (two complainants) and the establishment of 'a place where women could get away and relax when it's all over' (two complainants).

Summary

The majority of the complainants interviewed were not in paid employment, and in fact only 34.1 per cent had a full-time income. Most, however, were supporting dependent children (85.2%).

In almost 90 per cent of cases, complainants reported a history of violence or threats in their relationships, and three-quarters of those interviewed indicated that they had previously been injured by their spouse or ex-spouse. Half had called the police to intervene in domestic violence on at least one occasion prior to the most recent incident.

Few of those interviewed had any detailed knowledge of the legal protection available to them, and most had little previous contact with courts or the criminal justice system generally. Whilst most knew that some form of legal protection or restraining order might be available to them, few had any understanding of the procedures associated with getting that protection. More than half believed that the chamber magistrate could issue some form of protective order - they did not realise that the matter had to be determined in court before a magistrate.

In almost three-quarters of cases the most recent incident leading up to the seeking of an ADVO had been reported to the police. Less than 10 per cent of these reported incidents, however, resulted in the arrest of the alleged offender. Commonly, police were reported to have said that there was nothing that they could do, or else removed the defendant from the premises without taking any further action.

Most matters proceeded by way of summons rather than by warrant. Summons matters typically took substantially longer to reach a first court appearance than did warrants.

Whilst 60 per cent of complainants had legal representation, 40 per cent did not. In the majority of represented cases the complainant had legal aid.

Overall, slightly more than half of all applicants were successful in having an ADVO granted by the court. This represents 80.4 per cent of those applications which proceeded to a court determination. In two cases applications were dismissed after hearing, five were withdrawn on undertakings and three were transferred to the Family Court. In one case the complainant was granted an order under the De Facto Relationships Act, rather than an ADVO.

There were 32 cases which did not proceed to a court determination in a variety of different circumstances. In three cases the parties had reportedly reconciled. In some cases complainants reported that the service of the summons upon their (ex) spouse had been sufficient to alter his behaviour. In a number of cases the matter lapsed because the summons was never served. A number of complainants reported withdrawing court action after reaching agreements with their spouses concerning such issues as access, custody or financial arrangements. Several reported having been pressured to withdraw the proceedings by the defendant and/or family and friends. Four withdrew their actions because of violence or threat of further violence, and two said that court delays had influenced their decisions to withdraw.

In almost half of the cases in which the matter did not proceed to a court determination, the complainants reported that there had been further violence since that time.

Several women who were legally represented had their matters transferred to the Family Court, or dealt with by means of an alternative outcome such as an order under the De Facto Relationship Act, or withdrawing the proceedings on undertakings from the defendant. No unrepresented complainants had their matters result in an alternative outcome. In four cases women who did not proceed with their complaints indicated that they had had difficulty in getting legal representation.

In all cases ADVOs were granted for the maximum duration of six months. The majority of complainants who had been granted orders (88.9%) indicated that they were satisfied with the conditions imposed by the order, although more than one-quarter of those with orders reported that they had *not* been consulted about the nature of the order.

In most cases, the complainants' expectations of the ADVO were that it would keep the defendant away, stop the violence or give them some protection.

In almost half of the cases in which ADVOs had been granted, complainants said that the order had achieved what they had expected (44.4%) whilst a further 20 per cent indicated that the order had been effective at least in part or for some time. In almost one-third of cases, however, the complainants indicated that the ADVO had not achieved what they had expected of it.

Over half of the complainants who had been granted ADVOs (55.6%) indicated that those orders had been breached by the defendant, and two-thirds of the breaches were said to have been reported to police, chamber magistrates or solicitors. Three complainants did not know what to do about the breach of the order, and therefore did not report it.

No action at all was taken in six of the 16 breaches which were reported. Of the remainder, five resulted in arrest, three in warnings from the police and in two cases solicitors wrote letters to the defendants.

Whilst most of the complainants who actually appeared at court said that they had understood what had happened in court, more than one-third either did not understand the proceedings, or were unsure whether they had correctly understood what had happened.

Two thirds of those interviewed indicated that having applied for an ADVO had assisted them at least in some way: 77.8 per cent of those who had been granted an ADVO responded in this manner as compared with 42.5 per cent of those whose applications had not proceeded to a court determination or otherwise had not resulted in an ADVO. Those who expressed the view that applying for the order had assisted them, most often commented that there had been some reduction in violence and/or harassment, that the order provided protection or that taking action had resulted in the defendant staying away.

In contrast, 18.1 per cent of the complainants indicated that applying for an ADVO had hindered them in some way - including five who had been successful in their applications for an ADVO.

Those whose applications had not resulted in ADVOs, for whatever reason, were more than twice as likely as successful applicants to indicate that applying for an ADVO had hindered them in some way.

Forty per cent of complainants indicated that since applying for the ADVO, they personally had changed their manner of dealing with violence or harassment - this change was reported by equal proportions of those with or without an ADVO. Most commonly this group said that they would not put up with violence or harassment in the future, that they would call the police more readily, that they now knew that they had rights and what these rights were or that they felt stronger and had greater self-esteem as a result of having taken action.

Almost 90 per cent of complainants indicated that they would apply for an ADVO again in the future if necessary. Most commonly they said that they would apply for an ADVO again because it was the only alternative available, because it was effective, because it made them feel safe or because they would not put up with the violence or harassment again.

Nearly half of the complainants said that they would advise other women who were experiencing domestic violence to apply for an ADVO, and a further 20 per cent would advise the woman to leave the relationship.

Many complainants (45%) said that having been to court had changed the way that they felt about the court system, and those who had appeared in court on at least one occasion and whose complaints had not resulted in an order (for whatever reason) were more likely to give this answer than were those who had an order. Many of these complainants commented negatively regarding the court system, raising factors such as delays, their belief that the system was not fair or was badly run or that it protected the offender and not the victim. Positive comments indicated that some complainants had experience of the court system as more friendly, helpful or supportive than they had expected.

When asked to comment on the needs of domestic violence victims, 40 per cent of the complainants interviewed stressed the need for emotional support for women experiencing domestic violence, and over one-quarter suggested self-help groups or counselling as necessary - some suggested that the counselling should be provided by women who had experienced domestic violence, rather than by professionals. One quarter of the complainants also raised the need for safe accommodation and affordable housing, and a further 12.9 per cent emphasised that more refuges were needed. Almost one-fifth of all complainants commented that greater action by police with regard to domestic violence was necessary, and one third suggested that victims of domestic violence needed more information and advice, either of a general nature or specifically concerning legal rights and options.



CHAPTER 5

INTERVIEWS WITH CHAMBER MAGISTRATES

As indicated previously, chamber magistrates have a crucial role to play in the implementation of legislation and procedures related to domestic violence. Chapters 2, 3 and 4 provide clear evidence that domestic violence complainants frequently seek advice or information from chamber magistrates concerning their legal rights and options. Police themselves frequently suggest to complainants that they should seek the advice of chamber magistrates and much of the literature produced in NSW for domestic violence victims¹ also emphasises the chamber magistrate as an important resource.

It was therefore important in assessing the effectiveness of the new legislation to interview chamber magistrates. Resource limitations did not permit interviews to be conducted outside the Sydney Metropolitan Area. An attempt was made, however, to solicit the views of chamber magistrates² throughout the State. An article was written and distributed through the journal of the Chamber Magistrates Conference³ seeking comments from chamber magistrates who could not be interviewed personally for the study. Unfortunately, no replies were received to this request for comments. The personal interviews conducted with chamber magistrates did, however, elicit a great deal of information concerning the legislation and associated procedures and this is documented below.

Seventeen chamber magistrates in Local Courts in metropolitan Sydney were interviewed about their role in the legislative procedure associated with ADVOS. The chamber magistrates had varying lengths of experience in the job, ranging from many years to a few months. Some chamber magistrates had worked in a number of Local Courts throughout metropolitan Sydney as well as in country regions in NSW. A few divided their time between two or three smaller courts or were relieving other chamber magistrates and were not permanently attached to any one Local Court. Two chamber magistrates interviewed were female, the remainder were male.

Discussions with chamber magistrates covered a range of questions about their role in relation to domestic violence complaints, how the procedures work in practice, their opinion of the procedures and legislation itself and any problems that have emerged in their experience of the amended legislation. A list of issues covered in these discussions is included in Appendix 5.1.

¹ See 'Domestic Violence - You Don't Have to Put Up With It' produced by the Women's Co-ordination Unit.

² This included those who worked as chamber magistrates on a part-time or relieving basis.

³ The Chamber Magistrates Conference is a regular meeting which some chamber magistrates attend on a voluntary basis.

In general, the chamber magistrates interviewed saw their role as being at the interface between the community and the court system, some seeing it as the 'first contact apart from the police' or the first step complainants take in seeking legal action and others seeing it as the 'last in line' or 'the last step before taking legal action'. Eleven chamber magistrates emphasised their function in giving information and advising people of the legal options available to them:

The chamber magistrate is mainly a referral point, a place to find out the legal options to resolve problems... I explain how to get access to the law and explain the procedures.

Some showed a great deal of concern for the plight of women who complained of domestic violence and saw their role '...in a positive way, as being able to help women in this situation', or as being '...one to assure them of remedies'. Many saw themselves as having a role in addition to that of giving information about the law, and referred women to other agencies. This attitude is summed up in the following comment of one chamber magistrate:

...to be sympathetic to people. It's a big step for women to take. They often have a lot more on their plate than domestic violence and more than people usually have - financial problems, caring for their children, accommodation...

Although they are given substantial training in the law and have a thorough knowledge of the court system, chamber magistrates appear to receive little or no training pertinent to some of the functions they are called upon to perform. When asked whether they had received any special training with respect to dealing with domestic violence complaints, nine answered no and four indicated that they had received training only about the legislation. Only one person said that he had received other training relevant to this function, in this case communication-skills training. The others said that they had sought training from other organisations on their own initiative, or relied upon their own experience. Four chamber magistrates did not see the absence of such training as a problem. One chamber magistrate thought he did a good enough job and did not need any special or additional training. Others believed that their general life and work experience had equipped them with the necessary skills of interpersonal communication and judgement required in their work:

You learn from experience... talking to other chamber magistrates... and... pass on knowledge to younger guys on the road to being a chamber magistrate.

Training is a two-edged sword: unless it's good and relevant, the loss of time spent on training could be better served by serving people.

Those chamber magistrates in close proximity to various legal resource centres⁴ expressed their appreciation of the advice and information gained from the women working there in the domestic violence field, either through seminars they organised or through personal contact - '...the women there keep me informed and educate me'. These and other chamber magistrates talked about the ways they kept in touch with social issues and up to date with changes in legislation and services available in the community: 'chamber magistrates do keep up to date with legal aspects and inform themselves of other agencies and services in the area' and:

There is the Chamber Magistrates Conference, a voluntary organisation which has seminars to keep us up to date, but we're left to our own resources apart from that. It's important to have more information on the social aspects of the law, especially in relation to domestic violence.

Many kept detailed folders and lists of local service agencies, some attended local interagency meetings and others were in the process of setting up liaison groups in their area with police, refuges, community groups and local branches of State and Federal institutions such as the Department of Youth and Community Services, the Department of Housing and the Department of Social Security.

Those who would welcome additional training (10) mentioned communication, local knowledge and social policy as areas they saw as most useful to their work. Following are some examples of comments made on the subject of training:

Communication with people and how to listen, that would help. It's not always or only a legal response that is needed...

...would like more information about new trends and policies. Chamber magistrates only get information through casual contact and don't always know about changes in attitude that are happening in the legal, administrative and general communities.

Training in available community resources, how to collect, maintain and liaise... the type of advice and referrals appropriate to people's needs.

Communication and public relations... it's difficult to avoid ending up counselling.

When asked specifically whether the Local Courts Administration gave them the necessary resources and support to perform their work adequately, 10 chamber magistrates responded no, and three did not know. The remainder did not answer the question. Of those who felt that additional resources were necessary, two raised the need for additional staff and funding. Other comments included:

⁴ For example, Macquarie Legal Centre, Kingsford Legal Centre, Women's Legal Resources Centre and Domestic Violence Advocacy Service.

[We need] resources and support in maintaining community liaison, to assist people with non-legal issues, and we need to know what is available.

We need encouragement to go to interagencies, and experts to give seminars.

Information should be supplied about the intention of the legislation, some involvement at policy level would be appropriate and advice about other resources.

One chamber magistrate mentioned that the Solicitor's Kit prepared by the Domestic Violence Advocacy Service had become an invaluable resource, and was a good example of the type of resources needed.

Beginning the process

Estimates of the proportion of their work as chamber magistrates which was related to domestic violence varied from court to court. Two responded that one third of their work was dealing with domestic violence matters, four estimated between 20 and 30 per cent and four said from 10 to 20 per cent. Four chamber magistrates said that domestic violence matters constituted less than 10 per cent of their work, and the remaining three did not quantify the amount - one responding simply 'a lot'.

The procedure adopted by chamber magistrates when interviewing a woman who has a complaint of domestic violence was similar at all courts in the sample. Nevertheless, there were variations in styles and experiences among those interviewed. One chamber magistrate, in order to save time, had prepared a questionnaire which people complete while they wait their turn to see him. The form asks for details such as the person's name and address and a brief outline of the complaint, degree of severity and conditions sought on any restraining order. Most chamber magistrates, however, obtained this information during the course of the interview where they also noted the details of the incident/s complained of, established the woman's apprehension and explained the options available for legal action. Whilst several indicated that they advised women to commence proceedings seeking an ADVO, others stressed that they did not recommend a particular course of action but rather advised each woman of the options available, and allowed her to choose. Each chamber magistrate said that the procedure they used in dealing with clients was the same in cases of alleged harassment or molestation as it was in cases of alleged physical violence.

The necessity for the complainant to take some form of legal action seemed to be rarely questioned. One chamber magistrate said that 'the women's apprehension is usually easy to understand and to prove on the balance of probabilities'. Another made the point that in his experience 'very few women came out of revenge or vindictiveness'. Two chamber magistrates remarked that women who came to them via the women's refuge in their area were already well-informed as to the availability of the ADVO and the procedures for obtaining one. One commented that refuges do most of the work for him. These chamber

magistrates said that many such women had made up their minds about the conditions they sought before being interviewed.

In contrast, others said that many women were nervous and worried about how to cope with going to court and afraid of the repercussions of taking legal action against their spouses. Many of the chamber magistrates interviewed were aware of and sensitive to this and paid particular attention to assessing how the service of a summons might affect the man's behaviour. It was said that, in some cases, the women's reluctance to go to court was related to a wish that the matter could be resolved without recourse to the law. As one chamber magistrate put it, 'women often want to stay with the man but for the violence to stop'.

A common observation of the chamber magistrates who were interviewed (14 of the 17) was that of the women's disappointment at having to attend court to obtain the ADVO rather than have one issued by the chamber magistrate immediately. This was thought to be frequently a result of misinformation given by police. It was said that the police often gave women to understand that a restraining order could be issued by the chamber magistrate, an issue which is commented upon at greater length below. In other respects, however, the chamber magistrates did not generally seem to think that women's expectations were unrealistic. One remarked that 'it may be that they are entitled to expect immediate protection'. Another commented that 'the problems they have seem extreme and urgent to them and the process appears to be too long'.

As mentioned previously, the procedure for seeking an ADVO may be commenced either by summons or warrant. The chamber magistrates interviewed all seemed to be equally reluctant to issue warrants except in the most serious of circumstances. Two said that they had never issued warrants, and 12 responded that they rarely issued warrants. One other chamber magistrate said that he would never issue a warrant except on breach of an ADVO. The remaining responses included an estimate that one-tenth of all matters he dealt with commenced by warrant, and another response of 'less than 50 per cent'. The general approach by chamber magistrates is best summed up in the following quote from an interview:

It depends on the circumstances of the assault, any prior history, prior court proceedings, evidence of real fear... also how he will react to a summons or warrant. Is there a need for a warrant? Is a summons sufficient?

Several chamber magistrates indicated that the whereabouts of the defendant was an important consideration in deciding whether to commence proceedings by warrant rather than summons - when the defendant's whereabouts was not known these chamber magistrates would proceed by warrant. Three chamber magistrates also said that the accommodation needs of the victim and any children were important factors, and that a warrant might assist by allowing the victim back into the home following the arrest of the defendant. Two chamber magistrates also said that, in their experience, some women did not want to proceed by warrant, and did not want their (ex) partners to be arrested.

One chamber magistrate indicated that, in cases where there is a history of continual domestic violence, he does not recommend a warrant because he feels that when a victim has been putting up with it for so long another few weeks will not worry them.

Concerns about the rights of defendants were also commonly raised by chamber magistrates, as illustrated in quotes such as '...arrest and bail are very serious and not to be treated lightly' and '...warrant is quicker but there's the question of taking someone's liberty from him'.

One chamber magistrate said he never issued a warrant unless there was an offence which had a gaol sentence as a final possible outcome, since it was not up to him to impose gaol on anyone. 'After all, a man may be held in gaol all weekend waiting for court on Monday morning.'

When asked whether there were advantages in proceeding either by summons or warrant, five chamber magistrates responded that warrants were the quickest way to get matters before the court. Without exception, however, chamber magistrates preferred to proceed by way of summons and in most cases had set up good relations with local police to give priority to the serving of domestic violence summonses. In cases where the service of the summons had to take place outside the local area some chamber magistrates would enclose the summons with a letter explaining the urgency of the matter and the woman herself would deliver it to the appropriate police station.

Police practices

Chamber magistrates were also asked to comment on some aspects of police involvement with domestic violence incidents. Some said that they felt that the police had become more efficient and responsive to domestic violence since the appointment of Domestic Violence Liaison Officers at each Division. As previously mentioned, the most common concern of chamber magistrates with respect to the police was their perception that police often advised victims of domestic violence to 'go to see the chamber magistrate and get a restraining order' which implied that the chamber magistrate could issue the ADVO. Some of the comments about this made by chamber magistrates include:

...even the newly trained ones soon learn from their superiors. After they've been on a few cases they learn to say 'go to see the chamber magistrate and get a restraining order' ...if they said 'go to see the chamber magistrate and he'll help, or he'll tell you how to get a restraining order', it would be okay, they wouldn't have the same expectations.

...women are crest-fallen when told they have to go to court...

It's a cop-out on the part of the police, they must know that women come expecting immediate action or results. They seem to purposely deceive women into

thinking the chamber magistrates have restraining orders to give out.

All but two of the chamber magistrates responded that although the legislation allows for police to make the complaint seeking an ADVO, this rarely happens. The data presented in Chapters 2, 3 and 4 of this report confirm the experience of chamber magistrates who said that police never or rarely acted as complainants (although the 1987 data indicate a substantial increase in police-initiated ADVO complainants). Two of those interviewed said that police were more likely to act on women's behalf since the Domestic Violence Liaison Officers had been appointed. Two others seemed to think that it was too much to ask of the police:

It's appropriate that the police refer women to the chamber magistrate; their job is at the incident, not to give legal advice.

A police officer would find it hard to be able to say on behalf of a woman that she feared her husband. How can a third party say what her fears are? But maybe in cases of serious assault, it all depends on the circumstances.

Most chamber magistrates, however, (13 of the 17) believed there were many occasions and incidents where police could and should take more responsibility for acting on behalf of the complainant, either by charging the defendant or applying for an ADVO as the complainant. One chamber magistrate commented:

There are many times that police should take action; where they can see from the disarray of the house, marks on the woman, fear by children that there are obvious reasons for apprehension. They seem to lack knowledge of legislative procedure.

Another said:

Police are on the spot; if they see no violence there's not much they can do about it. If I see black eyes though, and the cops haven't done anything, I get cranky.

Legal representation and referrals

All chamber magistrates stated that they spoke to women applying for ADVOS about the availability of legal representation. The immediate response from 11 of the chamber magistrates when asked what advice they gave women regarding legal representation was 'the Women's Legal Resources Centre' and/or 'the Domestic Violence Advocacy Centre'. In one case the chamber magistrate answered the question by simply holding up the WLRC/DVAS leaflet⁵:

⁵The Domestic Violence Advocacy Service shares premises with the Women's Legal Resources Centre but is separately funded.

That's the best part of it (the Domestic Violence legislation). Before, legal aid was slow with appointments. Women's Legal Resources Centre talks to them straight away and sorts things out. It's the best tool we've ever had.

Other community legal resource centres such as the Macquarie Legal Centre and Kingsford Legal Centre were equally well known and highly regarded by chamber magistrates in their neighbourhoods.

Most chamber magistrates also said that they spoke to women generally about the availability of legal aid and referred them where appropriate to the Legal Aid Office or to local solicitors who take legal aid work. Two chamber magistrates referred women to the Police Prosecutor for representation in court. Police Prosecutors have been instructed to represent women in domestic violence cases where they are otherwise unrepresented. This is done at the discretion of the magistrate who is asked to give leave for the Police Prosecutor to appear for the woman.

Chamber magistrates are often called upon to make other referrals and give advice of a non-legal nature. One said:

Sometimes it's obvious that they need other help or counselling and I'll often suggest things to help in personal matters.

Another chamber magistrate said that he mentions that counselling is available but if there has been repetitive violence he tells the woman:

...she has to look after 'number one'. Get an order first then try counselling if you like.

Other non-legal referrals which chamber magistrates reported making were to women's refuges, the Department of Social Security, the Department of Youth and Community Services and the Department of Housing. One chamber magistrate mentioned that if a client wanted an alternative to going to court he would tell women about Community Justice Centres. Only one chamber magistrate said that he did not make 'non-legal referrals'.

Non-spousal domestic violence

A survey and multi-lingual phone-in conducted during April 1987⁶ put to question the adequacy of the definition of domestic violence incorporated in the legislation existing at that time. The survey found that women often suffer violence from brothers, sons, sons-in-law, uncles and fathers, relationships which were not incorporated in that definition at that time (NSW Domestic Violence Committee, 1987). Chamber magistrates were asked to comment on the number of matters

⁶The survey and phone-in were conducted by the Premier's Department as part of the Violence Against Women and Children Task Force which made recommendations regarding amendments to sexual assault and domestic violence laws.

which came before them relating to domestic violence not incorporated in the definition provided by the legislation. All chamber magistrates interviewed said that people came to them complaining of family violence which did not fall within the Act. Seven chamber magistrates said that these cases came to their attention 'quite a lot'.

Chamber magistrates particularly mentioned mother/son and boyfriend/girlfriend relationships as ones which commonly came to their notice. All but one of the chamber magistrates spoke of the inadequacy of the available legal remedies to deal with violence or harassment between parties in non-spousal relationships. The available apprehended violence order, under Section 547 of the Crimes Act, was branded by most chamber magistrates as useless, or as a 'paper tiger'. Several suggested that ADVOs should be made available in such circumstances.⁷

How chamber magistrates view the legislation

Chamber magistrates were asked to indicate what they saw as the advantages and disadvantages of the Crimes (Domestic Violence) Amendment Act. All chamber magistrates spoke favourably about the legislation:

It's expedient. It gets into court faster than Family Law and can be initiated by police or victim. It has backbone in the provisions for breach. Breach is expedient too as compared with Family Law. It has support units attached to it - the Women's Legal Resources Centre, Legal Aid, chamber magistrates - and is widely recognised by police.

The greatest thing is that police will respond where there's an order been made. The six months seems to be a cooling off time - few people come back for second orders or breach.

It's great, we had nothing before. This has plenty of teeth, it's simple and it's appropriate... easy to prove. It's a very effective piece of legislation.

Many chamber magistrates remarked that they had had no effective remedy available in the past, and some described the ADVO as 'having teeth'. Other comments were that it was 'enlightened', and 'it is quick and pacifies women's fears'. Four chamber magistrates responded that they could identify no disadvantages with the legislation. One chamber magistrate qualified this assessment by differentiating between the legislation per se and the associated procedures:

I can't see any [disadvantages] - only some procedural problems with summonses and police not acting on

⁷ Legislation which commenced in February 1988 resulted in a broadening of the legal definition of domestic violence. See Appendix 1.2 for a discussion of the Crimes (Personal and Family Violence) Amendment Act 1987.

breach, and where some magistrates impose inadequate conditions.

The major disadvantage of the legislation, raised by 10 of the chamber magistrates, was the narrow definition of domestic violence incorporated in the Act. These chamber magistrates felt that a wider range of people should have been entitled to the protection of an ADVO. Children, other family members and those in a boyfriend/girlfriend relationship were specifically mentioned as requiring the kind of protection afforded by an ADVO. Three chamber magistrates raised as a disadvantage the six months maximum duration for an order specified by the legislation, which they considered to be too short in many cases.

The fact that victims had no protection available to them in the interim between laying a complaint and appearing in court was raised as a disadvantage by three chamber magistrates. It was suggested that an interim order should be available to protect victims during that period.

All chamber magistrates interviewed believed that the ADVO was more effective than the injunctions available under the Family Law Act. Most said that the main advantages of the ADVO over the Family Law Act injunction was that it was quicker to get and it was enforceable, carrying with it an automatic power of arrest on breach. Several chamber magistrates specifically criticised the cumbersome and often lengthy procedures associated with acting on the breach of a Family Law Act injunction. Other comments included the greater accessibility of the ADVO, the fact that police were more aware of the ADVO and could themselves act as complainants. One chamber magistrate said that it has more impact 'because police are involved and it's on pink paper', and he described the Family Law Act injunction as 'a toothless tiger'. Another said that he encouraged women to take out ADVOs while in the process of taking Family Law proceedings, since he believed that the ADVO often stabilised the situation before or during property settlement and/or custody proceedings. Twelve chamber magistrates also commented upon the protection available under the De Facto Relationships Act as compared with the ADVO. Those that saw it as having advantages over the ADVO cited the fact that it is available for an indefinite period and can be used to protect children.

Court delays

Table 5.1 shows that there is some variation in the length of time it takes for a domestic violence complaint to come before the court on the first occasion. The longest time, reported by chamber magistrates at two courts, was four to five weeks. Chamber magistrates estimated that in most cases (64.7%) the duration between a complaint being lodged and the first date that the matter was listed in court was between one and three weeks.

When asked what factors determine this duration, nine chamber magistrates responded that matters could be brought on more quickly if urgent. Six chamber magistrates indicated that the serving of the summons was an important factor in determining this duration and whilst four of these said that local liaison or other such mechanisms

existed to assist in the early serving of summonses, one said: 'there's no control over police serving of summonses', and another said that 'it depends on police priorities'. Other factors mentioned as relating to the delay in getting matters into court on the first occasion included the period of time necessary for people to organise legal representation, and the fact that at one of the courts only one day per week was set aside for the hearing of summons matters.

TABLE 5.1
chamber magistrates' estimates of duration
between complaint for ADVO and first court date

Duration	No.	%
Less than 1 week	1	5.9
1 - 2 weeks	6	35.3
2 - 3 weeks	5	29.4
3 - 4 weeks	2	11.8
More than 4 weeks	2	11.8
Unknown	1	5.9
TOTAL	17	100.0

Ten of the chamber magistrates indicated that once a matter came before the courts, it was usually determined at the first court appearance. Only two chamber magistrates differed from this assessment, one estimating four weeks and the other two weeks as being the typical period between the first and final appearance. (Five chamber magistrates did not answer this question.) The factor mentioned most commonly as being a determinant of the period of time between the first and final court appearance was whether or not the complaint was contested. Three chamber magistrates stated that it was usual for the defendant to consent to orders. The need to adjourn matters in order for legal representation to be arranged was also raised as a determining factor.

Withdrawal of complaints

The extent to which complainants withdraw from proceedings for domestic violence has been raised in some quarters, particularly by police, as being problematic (NSW Task Force on Domestic Violence, 1981). The chamber magistrates were asked to estimate what proportion of domestic violence complaints resulted in the complainant withdrawing. Estimates ranged from very few, or a few (1 case each), to 50 per cent. (in 3 cases) and a large percentage (in 1 case). One chamber magistrate who estimated that around 25 per cent of complaints were withdrawn commented that this was less than the percentage of withdrawals in private actions for apprehended violence orders or assaults. Another commented that the real problem was the number of matters which were withdrawn on undertakings.

Chamber magistrates were equally divided on the question of whether withdrawal of complaints was a problem or not. Five thought it was a problem, seven thought it was not and five were uncertain or did not respond. The range of comments made by chamber magistrates included the following:

Women not proceeding is the biggest problem with the legislation.

Some are soft-hearted and settle, some stay settled and some come back again and again.

I am concerned as to why women withdraw, are they being threatened or pressured or is it because the application has been enough to stop the violence?

It can be frustrating when women have withdrawn and they're back a few weeks later. They don't realise or appreciate the time and energy of lots of people involved in the procedure.

Most women find that the problem has been overcome and don't want to proceed with the action. The process of making the complaint has been enough

It's a problem for the police because of the work involved but sometimes simply issuing the process is useful in stopping the violence/harassment... it's a legitimate use of the law when it's not done with the forethought of abusing the law.

Breaches

In 11 cases the chamber magistrates indicated that action was being taken with regard to the breach of ADVOs. Five of these indicated that they were aware of only a few breaches having occurred. Only one chamber magistrate said that police were not acting on the breach of an order, whilst another chamber magistrate indicated that 'police sometimes don't want to act on a breach... police are sometimes scared of the guy themselves'. Three did not know whether action was being taken on breaches. One other chamber magistrate commented that his practice with regard to breaches was to issue fresh proceedings for an ADVO and then leave it to the court to decide whether a breach had occurred.

Suggestions for improvement

The chamber magistrates were asked to suggest any improvements which could be made, either to procedure or to the legislation per se. Seven offered a range of suggestions for changes which related to procedure. Most suggestions related to the need for the early service of summonses (raised by 4 chamber magistrates), or some other means to speed up the procedure. Other suggestions included the need for a new mechanism to ensure that police receive and have available at police

stations copies of ADVOs, and the need for a re-drafting of the forms used in ADVO proceedings. The need for ADVO complaints to be sworn was also questioned by one chamber magistrate.

Nine chamber magistrates provided suggestions concerning the manner in which the legislation could be improved. The most common suggestion made concerning improving the legislation related to expanding the definition of domestic violence. As previously mentioned, all but one of the chamber magistrates interviewed spoke of the inadequacy of the legislation which existed at that time to deal with non-spousal violence. Seven chamber magistrates specifically recommended that the legislation should be amended to allow the provisions concerning ADVOs to be available to a wider range of relationships. Three recommended that the duration of the orders should be extended beyond the six month maximum which was at the time incorporated in the legislation. Four chamber magistrates raised the need for an interim ex parte order to be available to provide some protection to the victims in the interim prior to the court determination.⁸ It was suggested by one chamber magistrate that a new charge of domestic violence should be introduced to be used instead of the existing range of assault charges. Another chamber magistrate suggested that the conditions available under an ADVO should be defined within the legislation and printed on the relevant forms so that magistrates could simply tick the orders which applied.

In addition to procedural or legislative change, a number of other issues were raised by chamber magistrates as requiring further attention. Three chamber magistrates suggested that additional police training was necessary, both with respect to police knowledge of procedures and also to their attitudes towards domestic violence. One chamber magistrate suggested further training for magistrates:

Magistrates need educating... they think that everything is covered by conviction and sentence on an assault charge... they leave the woman unprotected or they tell her to get a Family Law Act restraining order...

Two chamber magistrates suggested that additional counselling services should be available, and one suggested that women should be educated concerning their rights under the legislation. One chamber magistrate argued that the Domestic Violence Advocacy Service and the Women's Legal Resources Centre should be expanded, and another argued for a greater use of interdepartmental and interagency committees. He said that:

Mostly it's going pretty well. Education is improving things and the new policy of community policing is also improving things. Networks are being built up for victims and police, and inter-departmental and personal contact has proved the best way.

⁸ A number of suggestions have, in fact, been incorporated in the Crimes (Personal and Family Violence) Amendment Act, 1987 (see Appendix 1.2).

Summary

The chamber magistrates interviewed spoke very favourably about the legislation, and all rated it as much more effective than previously available legal remedies.

When asked to suggest improvements to the legislation the chamber magistrates did not recommend any changes to the protective order per se but rather sought to have it made available to a wider range of relationships. Several chamber magistrates also suggested the introduction of interim orders to ensure the protection at the victim of the earliest possible time.

Whilst many of the chamber magistrates saw no problems in having breaches of ADVOs acted upon, several indicated that police were reluctant to enforce the orders. In general chamber magistrates were not aware of many breaches of the orders having occurred.

The chamber magistrates were particularly concerned with the extent to which police advised victims to seek an order from a chamber magistrate, advice which reportedly gave the victims an expectation that the chamber magistrate could issue the order. Most chamber magistrates also agreed that it was rare for police to act as complainants in seeking ADVOs on behalf of victims, and most chamber magistrates also stated that there were many occasions upon which it appeared that police should have taken some action with respect to domestic violence but had not.

Most of the chamber magistrates indicated that they were given little training directly relevant to the role that they were required to fill with respect to domestic violence, and insufficient support and resources. Whilst many of the chamber magistrates had established detailed resource and referral lists, as well as liaison with relevant agencies in their local communities, their need for additional resources, support and training was stressed

CHAPTER 6

DISCUSSION

The available evidence indicates a substantial increase in the number of domestic violence matters being formally dealt with by the criminal justice system since the introduction of the Crimes (Domestic Violence) Amendment Act in 1983.

Whilst police and court statistics indicate that there has been an increase in all categories of assault over this period, there are indications from a number of sources that the introduction of the domestic violence legislation has had an effect over and above this general trend. The number of 'assault female' cases (the category in which most domestic violence offences are included) has shown a substantial increase co-incident with the introduction of the legislation, and the proportion of 'assault female' matters before the courts initiated by police charge rather than by private summons has shown a large increase, particularly since 1983.

The bail forms completed by police and the numbers of ADVOs handed down by courts indicate an increase in both domestic violence offences and the granting of ADVOs since the legislation commenced, with a particularly large increase in 1987 as compared with previous years. This is an important finding, particularly given the controversy which has surrounded the issue of such protective orders in other States.

For example, the experience in South Australia has been interpreted as showing that police in that State were using protective orders to deal with domestic violence matters but were not using the criminal law in cases where evidence of an offence existed. Allegations that the police were acting improperly in South Australia by failing to enforce the criminal law have been associated with calls for the removal of such injunctive provisions from the statutes (Scutt, 1986).

In contrast, the NSW data clearly suggest that police continue to use assault charges and also are increasingly acting as complainants for ADVOs. The increase in the ADVOs in this State, up until 1987 at least, has not been achieved at the expense of police charges for domestic violence offences.

Police in NSW took some time to become involved in seeking protective orders for victims. It was not until 1987 that police began to initiate complaints seeking ADVOs on a widespread basis. An indication of whether or not the move to ADVOs evident in the 1987 data might be the precursor of a shift in policing towards a greater use of the ADVO as an alternative to the use of the criminal law may be ascertained from comparisons between future police and courts' statistical data.

The fact that there has been a substantial increase in police charges for domestic violence offences over recent years, although there has been no substantive change to the criminal assault provisions,

suggests a number of possible explanations, though these are not mutually exclusive. The first is a change in the policing of domestic violence offences as a result, and consistent with the spirit, of the new legislation and/or with new Police Department instructions and training. The second is an increase in the level of domestic violence offences being reported to the police (though not necessarily the incidence of the violence in the community); this has been a goal of the legislation and the community education associated with it. The third is a real increase in the incidence of domestic violence. Elements of all three explanations may be correct. Whilst the available data do not allow the second and third of these explanations to be tested, the increase in the number and proportion of offences dealt with by charge and the decline in summons matters is consistent with a change in the policing of domestic violence.

The large increase which occurred between 1986 and 1987 in the level of reported domestic violence offences and police initiated ADVOs may indicate further changes in the policing of domestic violence. This increase is coincident with the establishment of Domestic Violence Liaison Officers at each police division, and with the introduction of newly developed police training courses. It may be that the establishment of positions with a responsibility to ensure that domestic violence matters are dealt with appropriately by police has had a significant impact on policing. Several chamber magistrates interviewed indicated that, in their experience, police practice with respect to domestic violence had improved significantly since the appointment of Domestic Violence Liaison Officers. The increase in police charges for domestic violence offences is an important finding, particularly in the light of recent overseas research which suggests that arrest may have a deterrent effect in domestic violence matters (Sherman and Berk, 1984; Jaffe et al., 1986).

The substantial increases in the level of police charges for domestic violence offences and police actions for Apprehended Domestic Violence are consistent with Police Department policy in NSW, and suggest an increasing responsiveness by police towards domestic violence incidents. The interviews with victims and with chamber magistrates, however, indicate that the failure of police to act in cases of domestic violence continues to be the experience of many victims of domestic violence.

For the complainants interviewed in Chapter 4, for example, the majority of the incidents which formed the basis of complaints for ADVOs had been reported to police, but in few cases did police arrest an alleged offender. Most commonly, police took no action, took the defendant from the premises without laying charges or referred the complainant to the chamber magistrate. Less than half of the complainants interviewed were satisfied with the police response. Whilst some clearly did find the police response to be satisfactory, those that were not satisfied listed factors such as lack of action, negative attitude, delay in arriving or giving wrong information or no information at all, as the least satisfactory aspects of police handling of the incident. A number of complainants recounted incidents allegedly involving quite serious violence or harassment, in some cases in breach of an ADVO, in which police allegedly took no action when called.

The complainants' accounts of unsatisfactory interactions with the police and their lack of action regarding domestic violence incidents are supported by the interviews with chamber magistrates. A majority of the chamber magistrates indicated that in their experience there were many occasions on which police should have taken action either to charge an alleged offender or to seek a protective order on behalf of a victim.

Chamber magistrates were also particularly concerned that police were apparently misleading victims by implying that chamber magistrates could issue ADVOs. It was reported to be common practice on the part of the police to refer victims to a chamber magistrate 'to get an Apprehended Domestic Violence Order', without explaining the associated procedures. This misunderstanding of the procedures associated with seeking an ADVO, and of the chamber magistrate's role, is evident in the interviews with complainants. Many clearly did not know that they would be required to attend court and have the matter determined before a magistrate. A number of the complainants who expressed dissatisfaction with the chamber magistrate who handled their complaint did so on the basis that he or she had not issued an ADVO.

Whilst the level of policing of domestic violence matters has obviously increased over recent years, the data on the number of ADVOs handed down by courts indicate that the number of orders initiated by victim/complainants has also increased substantially over time, and continued to increase between 1986 and 1987 - the period of the greatest increase in police initiated ADVOs.

This indicates that it is not simply a change in police practices which has been associated with the recent large increases in domestic violence matters coming before courts - privately initiated actions for ADVO, though not for assaults, have also increased. Whilst this may be indicative of an increased community awareness of the existence of ADVOs, it may also demonstrate a preference on the part of private informants for action seeking an ADVO rather than assault proceedings. The increase in ADVOs at a time when summons action for 'assault female' matters has been decreasing may indicate a trade-off between the two. The complaints sworn out by applicants for ADVOs which were analysed in Chapter 3 together with the accounts of the women interviewed described in Chapter 4 indicate that the majority of actions seeking ADVOs involve allegations of actual physical violence which perhaps could have been dealt with by a private (or police) prosecution for assault.

Changes in the level of police initiated action for domestic violence have also been associated with a change in court outcomes. The level of withdrawal for proceedings for 'assault female' offences has decreased to a large extent over the last five years.

Chapters 2 and 3 demonstrated the marked differences in outcomes for police versus privately initiated actions for domestic violence offences (including breach of an ADVO). The key difference is in the level of withdrawal - privately initiated actions continue to be associated with a high level of matters being withdrawn or otherwise not proceeding.

The substantial reduction in the level of withdrawal in domestic violence proceedings is an important finding. As indicated in the Report of the Task Force on Domestic Violence (1981), allegations were made by the police that the high level of withdrawal in domestic violence matters evident at that time was indicative that women were not serious in pursuing legal remedies. The rate of withdrawal was seen as a disincentive to police action. Clearly, the evidence presented in this report indicates that, where police do take arrest action on behalf of alleged domestic violence victims, relatively few matters do not proceed to a court determination.

The issue of withdrawal of proceedings was explored further in Chapters 4 and 5. Chamber magistrates offered a range of comments concerning the extent to which domestic violence proceedings were withdrawn and differed in their assessments of whether withdrawal of proceedings constituted a problem.

Interviews with women who had sought ADVOs but had not proceeded to a court determination indicated that the decision not to proceed was often a well-considered and rational one, and not simply a question of changing their mind for no reason. Concessions by the defendant over access, custody or financial arrangements, or real fears for their own or their children's safety, were factors in some complainants' decisions not to proceed. In several cases, complainants indicated that having initiated the proceedings had been sufficient to affect the defendant's behaviour, and that pursuing the action further was not necessary. Others raised problems with the court process such as the failure of summonses to be served, court delays or lengthy adjournments, or difficulty in getting legal representation as reasons for not proceeding.

The large disparities in the level of withdrawal between police and privately initiated actions, together with the accounts of the complainants interviewed, suggest that the task of negotiating the criminal justice system as a private informant is a difficult one. Where police do not act on behalf of a victim, the burden falls upon the victim to initiate court proceedings and arrange legal representation or else appear in court unrepresented (Stubbs and Wallace, 1988). Where police do initiate the proceedings, the victim's role is as a witness only. The facts that few of the complainants interviewed had had any previous experience with the court system, that over half mistakenly believed that the chamber magistrate could issue an ADVO, and that over one-third (including some with legal representation) did not understand what had happened in court clearly indicate that many obstacles exist for private informants seeking a legal remedy.

In 40 per cent of cases in our sample of applicants for ADVOs the complainant did not have legal representation. The court-records study described in Chapter 3 found that a similar proportion of women appeared in court on the first occasion without any legal representation. Legal representation would appear to assist a complainant to negotiate the various stages of the process, from ensuring that the summons was served prior to the first court date to dealing with adjournments and ensuring adequate protection by way of bail conditions, and ultimately an appropriate order. The available evidence indicates that the rate of withdrawal of proceedings was

higher amongst unrepresented complainants than amongst those with legal representation.

The relatively high level of complaints being withdrawn on undertakings in cases seen by him was also raised by one of the chamber magistrates interviewed. He expressed the opinion that it was the most serious problem he had experienced in the operation of the legislation.

Procedural factors such as delays in the listing of domestic violence matters before the court and the existence or otherwise of mechanisms to ensure the serving of summonses clearly differ from court to court, as evidenced by interviews with chamber magistrates (see Chapter 5). On the basis of these interviews, the period between a complaint being lodged and the first listing of the matter in court was most commonly said to be one to two weeks. The range of delays was said to be from less than one week to, not infrequently, longer than five weeks. Most chamber magistrates indicated that the service of the summons was the crucial factor in determining how quickly the matter could be listed before the court. Whilst some said that they had no control over this factor, that it was entirely up to the police, other chamber magistrates indicated that special mechanisms existed in their local regions to ensure that summonses were promptly served. In fact, the most common suggestion made by chamber magistrates as a means of improving procedures associated with the legislation was the speeding up of the serving of summonses.

Whilst warrants may represent a means of bringing the defendant before the courts more quickly, all chamber magistrates expressed a preference for the use of summonses. Chapters 3 and 4 indicate that summonses are in fact the usual way of commencing proceedings for ADVOs, and that the use of warrants tends to be associated with allegations of more serious violence - for example involving the use of weapons or sexual assault.

In a number of cases examined in Chapter 4, problems in having summonses served, or delays in the service of summonses, were apparently associated with the complaint not proceeding before the court.

The delay in the listing of a matter before the court on the first occasion is quite significant in terms of the protection available to the complainant. As previously outlined, where matters commence by summons no protection is available to the complainant until the first listing before the court. If the case is adjourned at that time, the defendant can be required to enter bail conditions as a means of providing some interim protection to the complainant pending the court determination of the complaint. The need for some early protection for complainants was stressed by a number of chamber magistrates who proposed the introduction of interim *ex parte* orders. The introduction, in February 1988, of amending legislation providing for interim *ex parte* orders is clearly supported by the findings of this report.

A number of other issues raised by the chamber magistrates and/or complainants interviewed were also addressed by the amended legislation enacted in February 1988 (described in Appendix 1.2). The

first of these is the duration of orders. A number of victims expressed concern about the limited duration of the order, and questioned what might occur once the six months had elapsed (at the time six months was the maximum duration available for an ADVO). Several chamber magistrates also suggested that the maximum duration of the orders should be extended.

Some chamber magistrates expressed the view that the definition of domestic violence incorporated in the legislation was too narrow. There was particular concern that other family relationships and those in a boyfriend/girlfriend relationship be covered by the provisions of the legislation. The new amended legislation, as previously described, extends the provisions of the legislation to a much wider range of relationship.

Despite suggestions for improvements such as those listed above, the chamber magistrates were enthusiastic about the effect of the legislation and the ADVO in particular. The complainants interviewed gave a more mixed response.

Whilst the majority of complainants who had been granted ADVOS said that they were satisfied with the conditions of the order (88.9%), just under half felt that the order had achieved what they had expected it to achieve. A further 20 per cent said that the order had achieved their expectations in part, or for some time.

Over half of the complainants who had been granted ADVOS said that the orders had been breached by the defendants. Whilst approximately two thirds of the breaches had been reported to police, solicitors or chamber magistrates, the majority of these resulted in no action at all, warnings or letters to the defendant. Around one third of reported breaches resulted in an arrest. Whilst the experiences of the complainants interviewed suggest that there are some problems in getting police to enforce the ADVOS and to act on breach, the views of chamber magistrates varied somewhat in this regard. Only one indicated that police were failing to act on breaches, whilst several others did not know. A number of chamber magistrates expressed the view that only a few breaches of ADVOS occur.

The statistical data reported in Chapter 2 indicate a large increase in the number of court appearances for breach of an ADVO in 1987 as compared with previous years. This increase was due not just to police initiating action, but the number of summons matters alleging breach also increased substantially.

Despite the high incidence of breach of ADVOS, a large proportion of victims (80%) indicated that having applied for an ADVO had assisted them in some way. Half of the complainants whose actions did not result in an ADVO, for a range of reasons, also indicated that they had been assisted in some way by applying for an ADVO. Irrespective of whether they had been granted an ADVO or not, a number of complainants reported changes in their relationships, their partner's behaviour, their own manner of dealing with violence and their feelings about themselves since seeking an ADVO. Whilst not all reported changes were positive, many were. A number of complainants indicated that initiating action had been a significant step in demonstrating to their (ex) partner that they were serious about not

tolerating the violence. One-quarter of all complainants interviewed indicated that they now felt stronger and more confident since initiating the court action and/or discovering what their legal rights were.

The suggestions offered by the complainants about the needs of victims of domestic violence emphasised clearly that, in addition to the need for protection and legal remedies, such victims have many very practical needs. Emotional support, counselling or self-help groups were frequently raised, as was the need for safe and affordable housing and more women's refuges. A third of the complainants stressed the need for more information and advice, particularly legal information, and one in five spoke of the need for more action by police to enforce the legislation.

In conclusion, the evaluation has demonstrated a number of important findings concerning the operation of the Crimes (Domestic Violence) Amendment Act.

As expected, the number of domestic violence matters being dealt with by the police and courts has increased since the legislation was introduced. The size and pattern of the increases suggests both that police are becoming more responsive to dealing with domestic violence matters and that the community is becoming more aware of the availability of the legislation and its provisions and is using it more to seek protective orders.

Problems in policing remain, with indications that some police do not take appropriate action concerning domestic violence, whether concerning laying charges, seeking ADVOs on behalf of complainants or enforcing those orders. There are some suggestions, however, that the introduction of Domestic Violence Liaison Officers and associated policies and procedures may have assisted in encouraging more effective policing of domestic violence.

Clearly, some victims continue to experience difficulties in getting legal representation and in negotiating the complexities of the court system. Factors related to court practice such as delays in the service of summonses, the delay in listing matters before the court or lengthy adjournments continue to present obstacles to complainants' attempts to seek legal remedies. The dramatic differences in outcomes between police and privately initiated actions emphasise the value of police taking action on behalf of complainants wherever appropriate.

Whilst the newly introduced amendments to the legislation have produced a number of improvements to the protection promised to a greater range of victims of domestic violence, the discussion highlights that it is not essentially the legislation per se which limits the extent to which a victim can be and is protected. Clearly police enforcement continues to be the crucial factor, with factors associated with the court process also important.



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APPENDICES

APPENDIX 1.1

DOMESTIC VIOLENCE OFFENCES

A domestic violence offence is defined in Section 4(1) of the Crimes Act 1900 as amended (NSW) as an offence under or mentioned in specified sections of the Crimes Act, or an attempt to commit those offences. Of course, the definition characterises these offences as domestic violence offences only where committed or attempted by a partner or ex-partner.

Domestic violence offences are:

- . murder (Section 19);
- . manslaughter (Section 24);
- . acts done to the person with intent to murder (Sections 27-30);
- . wounding with intent to do bodily harm (Section 33);
- . discharging loaded arms with intent (Section 33A);
- . maliciously wounding or inflicting grievous bodily harm (Section 35);
- . using poison so as to endanger life (Section 39);
- . administering poison with intent to injure or annoy (Section 41);
- . neglect to provide wife with necessaries or maliciously causing bodily harm to wife so as to endanger life or seriously injure health (Section 44);
- . causing bodily injury by gunpowder or other substance (Section 46);
- . using explosive substance or corrosive fluid with intent to burn, maim, disfigure, disable or do grievous bodily harm (Section 47);
- . placing gunpowder or other explosive substance near a building with intent to do bodily injury (Section 48);
- . setting trap with intent to inflict grievous bodily harm (Section 49);
- . assault with intent to commit a felony (Section 58);
- . assault occasioning actual bodily harm (Section 59);
- . common assault (Section 61);
- . inflicting grievous bodily harm with intent to have sexual intercourse (Section 61E);
- . sexual intercourse without consent (Section 61D);
- . indecent assault (Section 61E);
- . common assault (Section 493);
- . aggravated assault (this includes assault female) (Section 494);

or an attempt to commit any of the above offences.



APPENDIX 1.2

The Crimes (Personal and Family Violence) Amendment Act, 1987.

The stated object of this Act is, inter alia, to extend 'the availability of ADVOs' and [to seek] 'to improve the protection afforded by those orders'. Schedule 1 contains the amendments relating to ADVOs. The Act's explanatory note on this schedule is as follows:

SCHEDULE 1 - AMENDMENTS RELATING TO APPREHENDED DOMESTIC VIOLENCE ORDERS

Schedule 1 (1)-(4) contain consequential amendments.

Schedule 1 (5) and (6) substitute existing section 547AA of the Principal Act relating to apprehended domestic violence orders and replace it with a new Part XVA of the Principal Act. The new Part -

- (a) extends the availability of ADVOs (which are at present restricted to spouses and de facto partners) to persons who share a common household (otherwise than merely as tenants or boarders), are related by blood or marriage or have an intimate personal relationship;
- (b) provides that complaints for those orders are to be made by police officers if they are to protect a child;
- (c) removes the six month time limit on the duration of those orders;
- (d) enables a court to restrict or prohibit the possession of firearms by those orders;
- (e) restricts the award of costs against complainants in proceedings for those orders;
- (f) enables the District Court to make those orders in any case where a magistrate has refused to do so;
- (g) enables the making of interim orders in the absence of and without notice to the defendant; and
- (h) clarifies the circumstances in which proceedings for those orders should be commenced by a warrant for the arrest of the defendant.

The Act extends the definition of 'domestic violence' matters to cover those which involve persons in the same expanded, range of relationships as are now eligible to make ADVO application. The list of specific 'relations' between persons listed in the Act are:

- (a) father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law;
- (b) son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law;
- (c) brother, sister, half-brother, half-sister, brother-in-law or sister-in-law;
- (d) uncle, aunt, uncle-in-law or aunt-in-law;
- (e) nephew or niece; or
- (f) cousin

and includes, in the case of de facto partners, a person who would be such a relative if the de facto partners were married.



APPENDIX 2.1

Domestic violence bail returns
1983 - 1987

	1983 (a) (37 weeks)	1984	1985	1986	1987
Number	485	470	566	643	1,088
Average per week	13.1	9.0	10.9	12.4	20.9

(a) The legislation was introduced on 18 April 1983.



APPENDIX 2.2

Court appearances - selected assaults
1980 - 1987

	Assault female Section 494		Common assault Section 493		Assault occasioning actual bodily harm Section 59		Common assault Section 61	
	No.	% change	No.	% change	No.	% change	No.	% change
1980	1,711		3,274		537		211	
1981	1,683	-1.6	3,037	-7.2	541	0.7	249	18.0
1982	1,648	-2.1	2,820	-7.1	561	3.7	310	24.5
1983	1,950	15.9	2,908	3.1	693	23.5	362	16.8
1984	1,868	-4.1	2,440	-16.1	713	2.9	358	-1.1
1985	2,073	11.0	2,671	9.5	779	9.3	415	15.9
1986	2,307	11.3	2,880	7.8	1,051	34.9	431	3.9
1987	3,076	33.3	3,192	10.8	1,261	20.0	574	33.2



APPENDIX 2.3

Matters initiated by charge or summons - selected assaults (a)
1980 - 1987

	Assault female Section 494		Common assault Section 493		Assault occasioning actual bodily harm Section 59		Common assault Section 61	
	Charge	Summons	Charge	Summons	Charge	Summons	Charge	Summons
1980	No. %	747 43.7	1,771 54.1	1,503 45.9	485 90.3	52 9.7	183 86.7	28 13.3
1981	No. %	924 55.9	1,715 57.3	1,278 42.7	493 92.1	42 7.9	206 85.1	36 14.9
1982	No. %	967 58.7	1,718 60.9	1,102 39.1	523 93.2	38 6.8	244 78.7	66 21.3
1983	No. %	1,378 70.7	1,793 61.7	1,115 38.3	653 94.2	40 5.8	307 84.5	55 15.2

(a) The number in some offence categories in this table differ slightly from those in Table 2.8 due to the exclusion of matters where it was unknown whether proceedings had been by way of summons or by charge.

(b) Matters initiated by the Court Attendance Notice Scheme introduced in 1987 have been excluded from the analysis to maintain comparability with previous years.

Matters initiated by charge or summons - selected assaults^(a) (continued)
1980 - 1987

	Assault female Section 494		Common assault Section 493		Assault occasioning actual bodily harm Section 59		Common assault Section 61	
	Charge	Summons	Charge	Summons	Charge	Summons	Charge	Summons
1984	No.	381	1,650	789	680	32	328	30
	%	20.4	67.7	32.3	95.5	5.4	91.6	8.4
1985	No.	454	1,913	758	847	23	399	40
	%	21.9	71.6	28.4	97.4	2.6	90.9	9.1
1986	No.	452	2,077	803	1,122	52	410	45
	%	19.6	72.1	27.9	95.6	4.4	90.1	9.9
1987 ^(b)	No.	408	2,385	800	1,425	54	580	56
	%	13.3	74.9	25.1	96.3	3.7	91.2	8.8

(a) The number in some offence categories in this table differ slightly from those in Table 2.8 due to the exclusion of matters where it was unknown whether proceedings had been by way of summons or by charge.

(b) Matters initiated by the Court Attendance Notice Scheme introduced in 1987 have been excluded from the analysis to maintain comparability with previous years.

APPENDIX 2.4

Percentage of matters Listed before the courts which were withdrawn - selected assaults
1980 - 1987

	1980	1981	1982	1983	1984	1985	1986	1987
	%	%	%	%	%	%	%	%
Assault female (Section 494)	55.7	56.1	57.5	42.9	32.6	30.1	26.3	20.2
Common assault (Section 493)	53.7	52.0	49.2	45.0	39.5	35.1	33.0	28.7
Assault occasioning actual bodily harm (Section 59)	16.4	15.0	15.3	12.0	12.9	13.0	10.8	10.8
Common assault (Section 61)	29.4	30.5	31.6	30.7	23.5	22.2	18.3	20.5



APPENDIX 2.5

Outcomes for selected assaults
1980 - 1987

Outcome	1980	1981	1982	1983	1984	1985	1986	1987
	%	%	%	%	%	%	%	%
(a) Assault Female (Section 494)								
Not guilty	5.9	4.3	4.8	6.0	9.2	10.0	11.0	13.4
Withdrawn/dismitted	55.7	56.1	57.5	42.9	32.6	30.1	26.3	20.2
Recognizance forfeited	0.9	0.1	0.1	0.3	0.3	0.1	0.2	0.1
Section 556A	6.6	6.8	6.3	9.4	12.4	11.4	13.6	13.5
Rising of the Court	0.5	0.1	0.1	0.0	0.1	0.4	0.4	0.3
Fine	11.3	12.2	11.8	14.1	16.1	19.4	19.8	21.5
Recognizance	16.4	17.6	17.7	24.5	25.1	23.6	25.2	26.3
Periodic Detention/CSO ^(a)	0.2	0.2	0.2	0.5	1.3	1.4	0.9	1.7
Imprisonment	2.5	2.7	1.6	2.4	2.9	3.6	2.6	3.0

(a) Community Service Order.

Outcomes for selected assaults (continued)
1980 - 1987

	1980	1981	1982	1983	1984	1985	1986	1987
Outcome	%	%	%	%	%	%	%	%
(b) Common Assault								
Not guilty	8.0	7.3	7.7	8.3	8.2	9.8	10.6	12.8
Withdrawn/dismitted	53.7	52.0	49.2	45.0	39.5	35.1	33.0	28.2
Recognizance forfeited	0.9	0.2	0.2	0.2	0.2	0.1	0.1	0.1
Section 556A	5.4	6.1	7.0	8.0	10.5	10.2	9.2	10.8
Rising of the Court	0.2	0.2	0.2	0.1	0.3	0.1	0.2	0.4
Fine	18.0	19.5	22.1	22.0	24.3	26.7	28.2	29.7
Recognizance	11.9	11.5	10.8	13.3	13.9	14.0	13.6	12.8
Periodic Detention/CSO ^(a)	0.2	0.6	0.8	0.9	1.2	1.6	1.8	1.6
Imprisonment	1.8	2.6	2.0	2.2	2.0	2.5	3.1	3.1

(a) Community Service Order.

Outcomes for selected assaults (continued)
1980 - 1987

	1980	1981	1982	1983	1984	1985	1986	1987
Outcome	%	%	%	%	%	%	%	%
(c) Assault Occasioning Actual Bodily Harm (Section 59)								
Not guilty	17.7	18.5	17.1	19.3	14.5	14.9	15.5	17.3
Withdrawn/dismitted	16.4	15.0	15.3	12.0	12.9	13.0	10.8	10.8
Recognizance forfeited	1.7	0.4	0.5	0.1	0.4	0.3	0.4	0.1
Section 556A	5.8	5.4	5.9	7.1	7.2	7.3	5.1	5.8
Rising of the Court	0.4	0.2	0.0	0.4	0.0	0.0	0.1	0.2
Fine	7.1	7.8	9.1	7.2	11.2	17.2	18.4	15.8
Recognizance	42.6	46.0	40.3	41.1	40.0	34.3	35.3	37.0
Periodic Detention/CSO ^(a)	0.6	1.8	4.0	4.6	7.1	6.9	6.4	5.8
Imprisonment	7.8	5.0	7.7	8.1	6.7	6.2	7.5	7.4

(a) Community Service Order.

Outcomes for selected assaults (continued)
1980 - 1987

Outcome	1980	1981	1982	1983	1984	1985	1986	1987
	%	%	%	%	%	%	%	%
(d) Common Assault (Section 61)								
Not guilty	14.7	14.9	14.8	14.9	12.0	11.3	11.4	16.2
Withdrawn/dismitted	0.9	30.5	31.6	30.7	23.5	22.2	8.3	20.5
Recognition forfeited	0.9	0.4	0.0	0.0	0.8	0.2	0.2	0.0
Section 556A	4.7	5.6	7.4	4.4	8.1	9.9	9.1	8.0
Rising of the Court	0.0	0.0	0.0	0.3	0.0	0.2	0.5	0.2
Fine	13.3	11.2	14.8	13.8	19.3	19.8	21.4	16.9
Recognition	29.4	27.7	23.6	29.0	27.7	27.5	29.9	29.1
Periodic Detention/CSO ^(a)	0.9	1.6	0.9	1.7	3.6	3.8	3.2	1.6
Imprisonment	6.6	8.0	6.8	5.3	5.0	5.1	6.0	7.5

(a) Community Service Order.

APPENDIX 2.6

Complainants for Apprehended Domestic Violence Orders
1983 - 1987

Complainant	1983		1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%	No.	%
Police	13	7.6	22	5.2	32	5.4	60	6.2	270	18.9
Victim	159	92.4	401	94.8	564	94.6	908	93.8	1,156	81.1
TOTAL	172	100.0	423	100.0	596	100.0	968	100.0	1,426	100.0



APPENDIX 2.7

The nature of Apprehended Domestic Violence Orders
1983 - 1987

Categories of restrictions and prohibitions	1983		1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%	No.	%
(a) General										
Not to assault, molest, interfere with spouse/children	55	32.0	129	30.5	220	37.0	298	30.8	494	34.7
Not to assault, molest spouse, accept treatment/supervision	3	1.7	1	0.2	4	0.7	5	0.5	2	0.1
Not to approach or contact spouse, not to approach premises, not to assault/threaten spouse	52	30.2	142	33.6	181	30.4	248	25.6	300	21.0
Not to approach or contact spouse, not to approach premises/workplace	10	5.8	35	8.3	42	7.0	105	10.8	82	5.8
Not to approach or contact spouse/workplace	--(a)		--(a)		3	0.5	9	0.9	6	0.4
Not to contact spouse except through solicitor	3	1.7	3	0.7	8	1.3	7	0.7	18	1.3
Not to approach spouse/children, not to visit premises	13	7.6	3	0.7	0	0.0	17	1.8	21	1.5
Vacate premises, not to approach premises or victim	10	5.8	15	3.5	10	1.7	31	3.2	25	1.7
Not to assault, molest, contact directly, by third person or by telephone	--(a)		--(a)		10	1.7	17	1.8	112	7.8

(a) These classifications were not used in 1983 or 1984.

The nature of Apprehended Domestic Violence Orders (continued)
1983 - 1987

Categories of restrictions and prohibitions	1983		1984		1985		1986		1987	
	No.	%	No.	%	No.	%	No.	%	No.	%
(b) Access										
Not to assault, approach premises/ spouse's workplace except to exercise rights of access	6	3.5	52	12.3	54	9.1	138	14.2	187	13.1
Vacate premises, not to approach premises except to exercise rights of access	1	0.6	0	0.0	3	0.5	5	0.5	20	1.4
Not to assault, not to approach premises except to exercise rights to access (when not intoxicated)	1	0.6	6	1.4	6	1.0	8	0.9	12	0.8
(c) Alcohol										
Not to assault, not to approach, assault, molest spouse, not to drink alcohol	3	1.7	10	2.4	7	1.2	6	0.7	15	1.0
Not to assault, molest spouse, not to approach spouse's residence when intoxicated, not to consume alcohol on premises	8	4.7	20	4.7	14	2.3	20	2.0	33	2.3
Abstain from drinking	1	0.6	2	0.5	0	0.0	1	0.1	0	0.0
Other (b)	6	3.5	4	0.9	31	5.2	53	5.5	95	6.7
Not specified	0	0.0	1	0.2	3	0.5	0	0.0	4	0.3
TOTAL	172	100.0	423	100.0	596	100.0	968	100.0	1,426	100.0

(b) The 'Other' category typically includes orders of a very specific nature not able to be coded into general categories.

APPENDIX 3.1

Courts sampled in study of complainants seeking ADVOs

Court	Number of Complaints	% of Sample
Bankstown	49	6.3
Blacktown	111	14.2
Bourke	5	0.6
Brewarrina	1	0.1
Burwood	33	4.2
Campbelltown	47	6.0
Campsie	31	4.0
Dubbo	22	2.8
Fairfield	50	6.4
Glebe	11	1.4
Hornsby	18	2.3
Liverpool	75	9.6
Manly	36	4.6
Newtown	26	3.3
North Sydney	13	1.7
Parramatta	68	8.7
Penrith	66	8.4
302 Castlereagh Street	19	2.4
Redfern	49	6.3
Ryde	20	2.6
Sutherland	17	2.2
Walgett	11	1.4
Unspecified	3	0.4
TOTAL	781	100.0



16. Did the complainant have legal representation at the final court date (if only one court date code this question '8'.)
1. complainant didn't appear
 2. yes, by police prosecutor
 3. yes, by legal aid
 4. yes, by private solicitor
 5. yes, by source unknown
 6. no.
 8. not applicable
 9. don't know
17. Did the defendant have legal representation at the first court date?
1. defendant didn't appear and matter didn't proceed.
 2. ex parte (matter heard in absence of defendant)
 3. yes, by legal aid
 4. yes, by private solicitor
 5. yes, by source unknown
 6. no
 9. don't know
18. Did the defendant have legal representation at the final court date? (code 8 if only 1 court date)
1. defendant didn't appear and matter not heard
 2. ex parte (matter heard in absence of defendant)
 3. yes, by legal aid
 4. yes, by private solicitor
 5. yes, by source unknown
 6. no
 8. not applicable
 9. don't know
19. Was the complainant contested by the defendant?
1. yes
 2. no
 8. not applicable
 9. don't know

20. On how many occasions was this matter before the court?

21. What was the final outcome?

- 1. complainant failed to appear
- 2. defendant failed to appear and no action was taken
- 3. both parties failed to appear
- 4. matter withdrawn prior to hearing
- 5. matter withdrawn at the hearing
- 6. complaint withdrawn on undertakings
- 7. complainant dismissed
- 8. order granted
- 9. other (specify) _____

22. What were the terms of order - consult code list

If other, specify _____

code '88' if no order made

23. Other factors? (Will be post coded) _____



APPENDIX 3.3

Outcome of complaints by court

Court	ADVO		Withdrawn on Undertakings		Dismissed	Other ^(a)	Sub-total		TOTAL
	No.	%	No.	%			Not Proceeding to court determination	Proceeding to court determination	
Bankstown	25	51.0	5	10.2	0	0	30	19	49
					0.0	0.0	61.2	42.2	100.0
Blacktown	26	23.4	7	6.3	0	2	35	76	111
					0.0	1.8	31.5	68.5	100.0
Bourke	3	60.0	0	0.0	0	0	3	2	5
					0.0	0.0	60.0	40.0	100.0
Brewarrina	0	0.0	0	0.0	0	0	0	1	1
					0.0	0.0	0.0	100.0	100.0
Burwood	7	21.2	3	9.1	0	1	11	22	33
					0.0	3.0	33.3	66.7	100.0
Campbelltown	10	21.3	4	8.5	0	2	16	31	47
					0.0	4.3	34.0	66.0	100.0

(a) Referred to Community Justice Centre or Family Court.

Outcome of complaints by court (continued)

Court	ADVO			Withdrawn on Undertakings			Dismissed			Other (a)			Sub-total		
	No.	%		No.	%		No.	%		No.	%		Not Proceeding to court deter- mination	Proceeding to court deter- mination	TOTAL
Campsie	16	51.6		1	3.2		0	0.0		0	0.0		17	14	31
													54.8	45.2	100.0
Dubbo	9	40.9		5	22.7		1	4.5		0	0.0		15	7	22
													68.2	31.8	100.0
Fairfield	11	22.0		8	16.0		0	0.0		1	9.1		20	30	50
													63.6	36.4	100.0
Glebe	4	36.4		2	18.2		0	0.0		1	9.1		7	4	11
													63.6	36.4	100.0
Hornsby	5	27.8		3	16.7		1	5.6		0	0.0		9	9	18
													50.0	50.0	100.0
Liverpool	24	32.0		4	5.3		0	0.0		1	1.3		29	46	75
													38.7	61.3	100.0

(a) Referred to Community Justice Centre or Family Court.

Outcome of complaints by court (continued)

Court	No.	ADVO	Withdrawn on			Other (a)	Sub-total		TOTAL
			Undertakings	Dismissed			Not Proceeding to court determination	Proceeding to court determination	
Manly	No. 4 % 11.1	4 11.1	7 19.4	0 0.0	0 0.0	11 30.6	25 69.4	36 100.0	
Newtown	No. 6 % 23.1	6 23.1	4 15.4	0 0.0	0 0.0	10 38.4	16 61.5	26 100.0	
North Sydney	No. 4 % 30.8	4 30.8	3 23.1	0 0.0	0 0.0	7 53.8	6 46.2	13 100.0	
Parramatta	No. 18 % 26.5	18 26.5	9 13.2	2 2.9	2 2.9	31 45.6	37 54.4	68 100.0	
Penrith	No. 21 % 31.8	21 31.8	7 10.6	0 0.0	2 3.0	30 45.5	36 54.5	66 100.0	
302 Castlereagh St.	No. 7 % 36.8	7 36.8	0 0.0	0 0.0	0 0.0	7 36.8	12 63.2	19 100.0	

(a) Referred to Community Justice Centre or Family Court.

Outcome of complaints by court (continued)

Court	ADVO	Withdrawn on			Dismissed	Other (a)	Sub-total		
		No.	Undertakings	%			Not Proceeding to court determination	Proceeding to court determination	TOTAL
Redfern	20 40.8	3 6.1	3 6.1	3 6.1	1 2.0	27 55.1	22 44.9	49 100.0	
Ryde	4 20.0	2 10.0	3 15.0	3 15.0	0 0.0	9 45.0	11 55.0	20 100.0	
Sutherland	5 29.4	3 17.6	0 0.0	0 0.0	1 5.9	9 52.9	8 47.1	17 100.0	
Walgett	2 18.2	0 0.0	2 18.2	2 18.2	0 0.0	4 36.4	7 63.6	11 100.0	
Unspecified	1 50.0	1 50.0	0 0.0	0 0.0	0 0.0	2	1	3	
TOTAL	232 29.7	81 10.4	12 1.5	12 1.5	14 1.8	339 43.4	442 56.6	781 100.0	
% of matters proceeding to court determination	68.4	23.9	3.5	3.5	4.1				

(a) Referred to Community Justice Centre or Family Court.

APPENDIX 4.1

Courts from which chamber magistrates were
asked to refer victims for interview

Court	Number referred	Number interviewed ^(a)
Balmain	0	0
Bankstown	14	4
Blacktown	127	50
Burwood	0	0
Campsie ^(b)	0	2
Central	0	0
302 Castlereagh Street	1	1
Fairfield	8	6
Glebe	0	0
Hornsby	2	1
Kogarah	0	0
Lidcombe ^(b)	0	1
Liverpool	1	1
Manly	0	0
Newtown	1	0
North Sydney	3	1
Paddington	0	0
Parramatta	11	6
Penrith	8	4
Redfern	4	1
Ryde	1	1
Sutherland	0	0
Waverley	1	0
Campbelltown	10	9
Katoomba	0	0
Newcastle	1	0
Port Kembla	0	0
Wyong	2	0
Wollongong	0	0
Wallsend	1	0
TOTAL	204	88

(a) Only those interviews which were included in the analysis are tabulated in this list.

(b) In some cases victims were referred to the project by a particular court and had their complaint dealt with in a different court - the data concerning interviewees were collected concerning the court at which the matter was determined, not for the referring court.



APPENDIX 4.2

New South Wales Government



Women's Co-ordination Unit

Level 8, Goodsell Building
8-12 Chifley Square
Cnr Hunter and Elizabeth Streets
Sydney 2000

Our reference:

Your reference:

Telephone: [REDACTED]
228 7088

We understand that you want an order to stop violence or harassment from your husband or defacto. We are talking to people about these orders and how they work.

We need to speak to people like you who are applying for orders. Anything you tell us will be confidential and your name, will not be used. The interview will be at a time and place you choose. We want to know your ideas about what victims of domestic violence need. What you tell us will help other women who have the same problems as you.

If you agree could you please sign the attached form. We will then contact you in the next few weeks to speak to you. If you would like more information please ring one of us. Thank you for your help.

Julie Stubbs 238-7283
Ann Mara 238-7256

N.S.W. Bureau of Crime Statistics and Research

CONSENT FORM

Thankyou for your help. We need your name and address to contact you
- All this information will be kept absolutely confidential. If you
would like us to contact you somewhere other than at your home please
give us the contact address and/or telephone number as well.

We will aim to contact you within the next few weeks.

Name:

Address: (Where you expect to be living for the next few weeks)
.....
.....

Telephone No.: Work Home
Best hours Best hours

Court:

Date:

a) on which you spoke to chamber magistrate

b) you will be coming back to court for the order (if known)
.....

Contact Address/Telephone No.: (If different to where you will be
living)

Best hours for contact

Preferred language for interview (if not English)
.....

I give my consent to being contacted in relation to my application
for a domestic violence order.

(Signed)

Date

NOTE: Chamber Magistrate.

Please Return to Bureau of Crime Statistics and Research,
G.P.O. Box 6, SYDNEY N.S.W. 2001

APPENDIX 4.3

1. DEMOGRAPHIC

Date: _____ Preferred language if not English: _____
 Interpreter (1) Yes (2) No
 Name/Agency: _____

Name of Interviewer: _____

Court: _____

Name of Interviewee: _____ Age: _____

Occupation: _____

Name of Defendant: _____ Age: _____

1. What was your relationship with him when you applied for the order?

- (1) Married and cohabiting
- (2) Married, but separated. When? _____
- (3) Divorced. When? _____
- (4) De facto, cohabiting.
- (5) De facto, separated. When? _____
- (6) Other _____

2. (a) Do you still live together?

- (1) Yes (2) Yes, but separated (3) Sometimes (4) No

(b) If you were living together when you applied for the order but are not now, when did you separate? _____

(c) How long have you/or did you live/d together? _____

3. (a) Do you have any dependent children?

- (1) None (2) One (3) Two (4) Three (5) Four (6) More _____

(b) Is the defendant their father?

- (1) Yes
- (2) No
- (3) In some cases
- (4) N/A

Comment: _____

4. (a) Have you had any help from a women's refuge?

- (1) Yes
- (2) No

(b) What kind of help?

2. CHAMBER MAGISTRATE

5. On what date did you go to see the chamber magistrate? _____

6. How did you know to go to see the chamber magistrate?

7. What did you think the chamber magistrate might be able to do?

8. What happened in your interview with the chamber magistrate?

9. What action did he/she suggest?

10. Was there any discussion about the urgency of the matter? What?

11. What was the MOST satisfactory thing about talking to the chamber magistrate?

(b) Describe:

Go to Question 28(a).

B. WARRANT

19. (a) Do you know why a warrant was issued?

- (1) Yes (2) No

(b) Why?

20. Was your husband/de facto arrested? When?

21. Were you told about the arrest? By whom?

22. Was he released from police custody before going to court?

- (1) Yes (2) No (3) Don't know

23. (a) If yes, were bail conditions imposed on him?

- (1) Yes (2) No (3) Don't know (4) N/A

(b) What were they?

24. Who told you?

25. Did police contact you about bail?

31. If it was a private lawyer, did you pay or was he/she paid by legal aid?

- (1) Paid by complainant
- (2) Paid by legal aid
- (4) Didn't have a lawyer

32. If it was a private lawyer and you paid, did the lawyer discuss legal aid with you?

33. Did you know that legal aid might be available?

34. What was your income at the time of the complaint?
(per week)

35. What was the MOST satisfactory thing about the way the lawyer handled the case?

36. What was the LEAST satisfactory thing about the way the lawyer handled the case?

37. (a) Whether you had a lawyer or not, did you experience any difficulties in getting a lawyer?

- (1) Yes
- (2) No

(b) What were they?

4. COURT

A. *FIRST COURT APPEARANCE (after complaint was made)*

38. Did you go to court?

39. When was the first time?

40. (a) Did you contact anyone before the first court appearance for support or information? (other than solicitor)

(1) Yes (2) No

(b) Who?

41. (a) Did you have a lawyer at this stage?

(1) Yes (2) No

(b) Did he/she go to court with you?

(1) Yes (2) No

Comment:

42. If you didn't have a lawyer did anyone assist you in talking to the magistrate (e.g. police prosecutor)?

OUTCOME

43. What happened at court?

(1) No appearance of either party

(2) No appearance of complainant or representative

Summons not served:

(3) Adjourned

(4) Dismissed

(5) No action - complaint lapses

(6) Order made in absence of the defendant (ex parte)

Summons served, no appearance of defendant or representative:

(7) Adjournment

(8) Withdrawn

(9) Order made in absence of defendant (ex parte)

(10) Complaint lapsed - no action taken

(11) Bench warrant issued

Both parties present or represented:

(12) Adjournment

(13) Withdrawn on undertakings (either dismissed or at liberty to restore)

(14) Withdrawn and dismissed

(15) Hearing, complaint dismissed

(16) Hearing, order made

(17) No hearing, order made by consent

44. Is that the outcome you wanted? Why/why not?

45. Did you know what the alternatives were?

Comment:

46. What outcome would you have preferred?

47. Who suggested this outcome?

48. Were you consulted?

(i) Undertaking

49. (a) What was the nature of this undertaking?

(b) Did the undertaking include a condition to allow the matter to be restored to the list on breach? (interviewer to explain)

(1) Yes (2) No (3) Don't know (4) N/A

Comment:

50. (a) What is the effect of an undertaking?

(b) Is it different to an order?

51. Were you both bound by the undertaking?

(ii) Adjournment

52. What was the period of the adjournment? _____

53. (a) Were bail conditions imposed during the adjournment?

(1) Yes (2) No (3) Don't know (4) N/A

(b) Or, were undertakings?

(1) Yes (2) No (3) Don't know (4) N/A

(c) What were the undertakings/bail conditions?

54. (a) Were the bail conditions/undertakings broken?

(1) Yes (2) No (3) N/A

(b) In what way?

(c) Did you report it to the police? _____

(d) If so, was any action taken?

55. Did you know that police can take action where bail conditions are broken?

- (1) Yes (2) No (3) N/A

(iii) Legal Representation

56. (a) Was your husband/de facto legally represented at the first court appearance?

- (1) Yes (2) No (3) Don't know (4) He didn't appear

(b) If yes, by whom?

- (1) Duty solicitor (2) Private solicitor (3) Unknown

(iv) Number of court appearances

57. How many times in all did you go to court? (excluding visits to the chamber magistrate)

- (1) None (2) Once (3) Twice (4) Three (5) Four (6) More _____

58. How long did the case take to be finalised (from the first court appearance to the last one)?

59. Were there any instances of violence or harassment during the period of the court case?

* If only one court appearance go to Question 72.

B. OUTCOME OF FINAL APPEARANCE (if not the first)

60. (a) Did you have a lawyer at this stage?

- (1) Yes (2) No (3) Complainant didn't appear at court

(b) Did they go to court with you?

- (1) Yes
- (2) No
- (3) N/A

61. If you didn't have a lawyer with you at court, did anyone assist you in talking to the magistrate?

62. What happened at the final court appearance?

- (1) No appearance of either party
- (2) No appearance of complainant or representative

Summons not served:

- (3) Dismissed
- (4) No action - complaint lapses
- (5) Order made in absence of the defendant (ex parte)

Summons served, no appearance of defendant or representative:

- (6) Withdrawn
- (7) Order made in absence of defendant (ex parte)
- (8) Complaint lapsed - no action taken
- (9) Bench warrant issued

Both parties present or represented:

- (10) Withdrawn on undertakings
- (11) Withdrawn and dismissed
- (12) Hearing, complaint dismissed
- (13) Hearing, order made
- (14) Order made by consent
- (15) There was only one hearing

63. Is that the outcome you wanted?

- (1) Yes
- (2) No
- (3) In part

Comment:

64. Did you know what the alternatives were?

Comment:

65. What outcome would you have preferred?

66. Who suggested this outcome? _____

67. Were you consulted?

(i) Undertakings

68. (a) What was the nature of the undertaking?

(b) Did the undertaking include a condition to allow the matter to be restored to the list on breach? (explain)

- (1) Yes (2) No (3) Don't know (4) N/A

69. (a) What is the effect of an undertaking?

(b) Is it different to an order?

70. Were you both bound by the undertaking?

71. (a) Was your husband/de facto legally represented at the final court appearance?

- (1) Yes (2) No (3) He didn't appear

(b) If yes, by whom?

- (1) Duty solicitor (2) Private solicitor (3) Unknown

*FINAL OUTCOME (IRRESPECTIVE OF HOW MANY COURT APPEARANCES)***(i) Undertakings (if obtained)**

72. What did you think that the undertaking would do?

73. What was the MOST satisfactory thing about the undertaking?

74. What was the LEAST satisfactory thing about the undertaking?

75. Has the undertaking been broken?

76. How soon after the undertaking was given?

77. What did he do to break the undertaking?

78. How many times did this occur?

79. Was this related to access?

80. Did you report this to anyone?

81. If yes, what action did they take/advice did they give?

(ii) Withdrawal (if withdrawn)

82. Has there been any further violence since the matter was withdrawn?

83. Would you apply for another order if necessary?

(iii) Order (if made)

(a) General

84. What is the duration of the order? _____

85. Were orders made against both of you?

- (1) Yes
- (2) No
- (3) N/A

86. What are the conditions of the order/s?

87. Did any of these relate to access?

88. How were these decided?

89. Were these the conditions you wanted?

90. (a) What did you think the order would do?

(b) Has it done that?

91. Why did you seek the order?

92. What is the MOST satisfactory thing about having the order?

93. What is the LEAST satisfactory thing about having the order?

(b) Breach

94. (a) Have the conditions of the order been broken?

(b) How soon did this occur after the man learnt of the order?

95. What did he do that broke the order?

96. How many times did this occur?

97. Can you explain the circumstances of the breach? (i.e. what set him off/sparked it off/was there anything?)

98. Did it happen while he was visiting the kids?

99. (a) Have you reported this/these to anyone?

(b) To whom?

100. What action did they take/advice did they give you?

101. Did you know that it might be possible to take some action about the breach?

102. Have you taken legal action against your spouse for breaching the conditions of the order?

103. Have the police taken legal action against your spouse for breaching the conditions of the order?

104. (a) If either you or the police have instituted proceedings was it by summons or arrest?

- (1) Summons
- (2) Arrest
- (3) Don't know

Comment:

(b) What has happened so far? (with regard to the prosecution of the breach)

C. COURT - GENERAL

105. Did you understand what was happening in court?

106. What did you expect might happen in court?

107. (a) Was what happened different to what you expected?

(b) In what way?

108. What was the MOST satisfactory thing about court proceedings?

109. What was the LEAST satisfactory thing about court proceedings?

PRECIPITATING FACTORS (if more than one precipitating incident ask about most recent)

110. Can you tell me about the incident that led you to seek an Apprehended Domestic Violence Order?

111. (a) Was a weapon involved?

(1) Yes

(2) No

(3) Don't know

(b) If yes, what sort of weapon?

112. Were you injured, and did you require medical treatment?

- (1) Yes, was hospitalised
- (2) Yes, sought other medical treatment
- (3) Yes, needed medical treatment but didn't/couldn't seek treatment
- (4) Yes, but treatment unnecessary
- (5) No

113. Were the police called?

- (1) Yes, by the victim
- (2) Yes, by the children
- (3) Yes, by friend/family/neighbour
- (4) Yes, by accused
- (5) Yes, not known who called them
- (6) No
- (7) Don't know

114. What did the police do?

115. Were you satisfied with the police handling of the incident?

- (1) Yes
- (2) No
- (3) Don't know
- (4) N/A

116. What was MOST satisfactory about police handling of the incident?

117. What was LEAST satisfactory about police handling of the incident?

118. What would you have liked the police to have done?

119. What happened after the police left?

126. Have you been harassed by this person before? (e.g. tyres let down, unbidden phone calls, property damage, etc.)

(1) Yes

(2) No

Comment:

127. (a) Have you been injured by him in the past?

(1) Yes

(2) No

(b) If yes, in what way?

128. (a) Have the police been called for reasons involving domestic violence in the past?

(1) Yes

(2) No

(b) If yes, on how many occasions?

129. (a) Were you satisfied with the action taken by the police in the past?

(1) Yes

(2) No

(3) Don't know

(4) N/A

(b) In what way?

PAST PROCEEDINGS OR OTHER ATTEMPTS TO GET HELP

130. Have you been involved in court proceedings with respect to domestic violence before?

131. What was the nature of those proceedings?

- (1) Police action for assault against husband/de facto
- (2) Complainant in assault matter against husband/de facto
- (3) Previously sought Apprehended (Domestic) Violence Order
- (4) Previously sought Family Court injunction
- (5) Other
- (6) Not applicable

132. When was this action taken (prompt to determine whether under current or previous legislation)?

133. What was the outcome of this action?

134. How effective were these previous proceedings compared with the most recent action taken? (comment on difference)

135. (a) Have you sought other types of assistance or taken other action (legal or otherwise)?

(b) How effective were these actions as compared with seeking this order?

OBTAINED A DOMESTIC VIOLENCE ORDER (1) YES (2) NO

136. (a) Has applying for the Apprehended Domestic Violence Order assisted you in any way?

(1) Yes (2) No

(b) In what way?

137. (a) Has it hindered you in any way?

(1) Yes (2) No

(b) How?

138. (a) Has applying for the order affected your relationship with your husband/de facto in any way?

(1) Yes (2) No (3) N/A

(b) How?

139. Has applying for the order changed the way that you deal with violence/harassment?

140. (a) Has applying for the order changed the behaviour of the offender in any way?

(1) Yes (2) No (3) No contact

(b) In what way?

141. Have you ever sought a new Apprehended Violence Order because an existing one has expired?

(1) Yes

(2) No

Comment:

CONCLUSION

142. (a) Do you know anyone else who has gone to court because they were a victim of domestic violence?

(1) Yes

(2) No

(b) If yes, did this influence you in your decision to go to court? In what way?

143. (a) Would you seek an order again if similar circumstances arose?

(1) Yes

(2) No

(3) Don't know

(b) Why/why not?

144. What would your advice be to another woman who was the victim of domestic violence?

145. (a) Has coming to court changed the way you feel about the court system?

(1) Yes

(2) No

(3) Don't know

(4) N/A

(b) In what way?

146. (a) Has coming to court changed the way you feel about yourself in any way?

- (1) Yes (2) No (3) Don't know (4) N/A

(b) How?

147. (a) Have you encountered any difficulties in getting help (from any source) when you needed it?

- (1) Yes (2) No (3) Don't know

(b) Source?

(c) In what way/ways?

148. What sort of help do you think women who are victims of domestic violence most need?

149. What do you think should be done to help such women?

S U M M A R Y

APPENDIX 5.1

ATTORNEY GENERAL'S DEPARTMENT - BUREAU OF CRIME STATISTICS & RESEARCHQUESTIONNAIRE - INTERVIEWS WITH CHAMBER MAGISTRATES

THE ROLE OF THE CHAMBER MAGISTRATE

1. How do you see the role of chamber magistrates in respect of domestic violence?

2. (a) Have you been given any special training with respect to dealing with domestic violence complaints?

(1) Yes (2) No (3) Don't know (4) N/A

- (b) What sort of training?

3. (a) Do you think there should be additional/different training to that which you have been given?

(1) Yes (2) No (3) Don't know (4) N/A

- (b) What sort of training?

4. Does the administration give the necessary resources and support you feel are necessary for you to perform your work adequately?

(1) Yes (2) No (3) Don't know (4) N/A

5. What additional/different resources and support would you like to see, if any?

DOMESTIC VIOLENCE COMPLAINTS

6. How big a percentage of your work is domestic violence?
_____ % of weekly work/number of cases per week

7. What procedure do you adopt when someone comes to you with a complaint of assault in the context of domestic violence?

8. What action would you advise the complainant to take?

9. What procedure do you adopt with complaints of harassment, threats or molestation short of actual violence or apprehended violence?

10. What action would you advise the complainant to take?

11. In making a decision regarding summons or warrant in response to a complaint, what factors would you take into consideration?

12. In what proportion would you estimate that you would issue a warrant as compared with a summons?

_____ to _____ (ratio)

13. (a) Do you see any advantage in proceeding in one way rather than another?
(1) Yes (2) No (3) Don't know (4) N/A

(b) Which way? _____

(c) What advantage?

14. How often do police act as complainants in applications for ADVOs in your experience?
_____ % of applications or (1) Often (2) Seldom

15. (a) How often do police, when called to a domestic violence incident, refer women to seek advice from the chamber magistrate?
_____ % of referrals or (1) Often (2) Seldom

(b) Do you see this as appropriate?
(1) Yes (2) No (3) Don't know (4) N/A

(c) Why/why not?

16. (a) Do you give advice regarding legal representation?
(1) Yes (2) No (3) Don't know (4) N/A

(b) What advice?

17. (a) Do complainants ever request non-legal advice or referrals?
(1) Yes (2) No (3) Don't know (4) N/A

(b) How do you respond to these requests?

18. (a) Do you see victims of domestic violence who do not fall within the definition provided by the legislation? (e.g. between parents and children or between siblings)

- (1) Yes (2) No (3) Don't know (4) N/A

(b) What percentage of your domestic violence complainants?

_____ %

(c) Does current (other) legislation adequately deal with this?

- (1) Yes (2) No (3) Don't know (4) N/A

(d) What legislation?

(e) In what way is it adequate/inadequate?

THE LEGISLATION

19. What do you see as the advantages, if any, of the amended legislation over the former legislation in adequately meeting the needs of domestic violence victims?

20. What do you see as the disadvantages, if any, of the new legislation?

21. How does it compare with the Family Law Act?

22. How does it compare with the De facto Relationships Act?

23. (a) Do you think the Apprehended Domestic Violence Order is effective in protecting the victim?

- (1) Yes
- (2) No
- (3) Don't know
- (4) N/A

(b) Why/why not?

THE LEGAL PROCEDURE

24. What do you think victims of domestic violence are seeking when they come to see the chamber magistrate?

25. Do you think their expectations are realistic? (Do you think they expect more than the law offers?)

- (1) Yes
- (2) No
- (3) Don't know
- (4) N/A

Comment:

26. What procedural difficulties are complainants likely to encounter?

27. Are there problems in having summons served?

- (1) Yes
- (2) No
- (3) Don't know
- (4) N/A

28. (a) How soon after applications are made is the matter listed for hearing?

- (1) 1 - 7 days
- (2) 7 - 14 days
- (3) 14 - 21 days
- (4) 21 - 28 days
- (5) More than 28 days

(b) What factors determine this?

29. (a) How long does it usually take before the matter is finalised in court?

_____ weeks

(b) What factors determine this?

30. In what proportion of domestic violence cases does the complainant withdraw the complaint without a hearing?

_____ %

31. Do you think the rate of withdrawal is a problem?

(1) Yes (2) No (3) Don't know (4) N/A

Comment:

32. Are breaches of the orders being acted upon?

(1) Yes (2) No (3) Don't know (4) N/A

GENERAL

33. What procedural improvements would you suggest could be made?

34. What improvements would you suggest could be made to the legislation?

35. Are there any points we haven't covered/anything you'd like to add?



