

**NOT JUST COURT:
INDIGENOUS FAMILIES,
VIOLENCE AND
APPREHENDED
VIOLENCE ORDERS IN
RURAL NEW SOUTH
WALES**

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18 – 22 February 2002, University of Sydney, Australia

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INDIGENOUS FAMILIES, VIOLENCE AND
APPREHENDED VIOLENCE ORDERS IN RURAL
NEW SOUTH WALES¹

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It's going to be a long process but, yeah, I mean, women have got to
take a stand because it's happening far too many times to women.

(Aboriginal woman – Bourke 1752-1754)

Abstract

Legislation in New South Wales provides for a justice response to family violence. People who are subject to domestic violence and abuse can seek police assistance in response to a crisis, and ongoing legal protection through an application to the Local Court for an Apprehended Violence Order (AVO). The AVO scheme offers essential legal protection to many women in violent relationships, and performs important public education and deterrence functions. Access to legal protection under the AVO scheme is not equitably available, and is affected by regional and cultural differences. This paper outlines issues raised by Indigenous women in three rural and remote towns, about perceived social and cultural barriers to obtaining protection through the AVO scheme. It describes perceived disincentives within the AVO process for Indigenous women who might be considering seeking an order, appearing at court or breaching an order. These disincentives relate to limitations in both the operation of the scheme and the legislative framework, both of which are regarded as having more protective potential than is realised. The effectiveness of legal proceedings and orders may be improved by the addition of court connected processes that enable widened and more effective participation in decision making and programs for perpetrators and victims. In addition to more effective legal responses, multi-faceted, community driven approaches are needed that incorporate both preventive and reactive measures.

¹ ©The author holds copyright of this paper, which is adapted from a forthcoming report.

² The author acknowledges the support provided by the NSW Attorney-General's Department Aboriginal Justice Advisory Group and Violence Against Women Unit and the practitioners and Aboriginal women of Wagga Wagga, Dubbo and Bourke.

In the mid 1980s justice responses to domestic violence were introduced in all Australian State and Territory jurisdictions. They were the outcome of the political influence of second wave feminism of the preceding decades that challenged patriarchal social structures and the legitimacy they accorded inequality, discrimination, exploitation and abuse of women. During this time the extent, diversity and severity of violence perpetrated by men against women, both in public places and in the private domestic sphere received increased public exposure. Governments responded with the introduction of women's services, public education campaigns and legal reform.

During the 1970s measures were introduced in New South Wales that increased support to women who experienced sexual violence by men. They included public education campaigns, increased services and support to women victims and survivors and an improved justice response by police and courts to criminal violence against women. Improvements in the crisis response resulted in extended and improved health and accommodation services and an improved and more collaborative approach to police investigation and prosecution of criminal violence against women. There subsequently emerged increasing evidence that much violence against women occurred within the privacy of the domestic sphere and intimate relations. In the 1980s additional legal reforms were introduced that aimed to address violence against women in the private sphere.

Legislative reforms concerned with domestic violence have been described as having two key aims:

The first was to make the criminal law more effective in dealing with criminal assaults occurring within the privacy of the home. ... The second aim was to provide protection from future violence and harassment for victims through the creation of 'quasi-criminal' protection or restraining orders (Laing, 2000 p 4).

Reforms introduced in New South Wales in 1983 addressed the second aim of providing protection to women from future violence. Having strengthened the criminal justice response to violence against women, new legislative provisions extended the court's civil jurisdiction by enabling applications to be made for legal protection from violence. With the introduction of Apprehended Violence Orders (AVOs) women could now seek protection from violence through both the criminal and civil jurisdictions of the court. Subsequent reforms to the AVO scheme extended legal protection to a wider range of violent behaviours and to relationships beyond the domestic sphere.

The AVO scheme now provides for people experiencing or threatened with violence in relationships outside the domestic sphere to apply for a personal Apprehended Violence Order (APVO), and for those experiencing violence within domestic relations to seek a domestic violence order (ADVO). The focus of this research is ADVOs, the aims and intentions of which are described in the *Crimes Act 1900* as follows:

Section 562AC

(2) This Division aims to achieve its objects by:

- (a) empowering courts to make apprehended violence orders to protect people from domestic violence, and
- (b) ensuring that access to courts is as speedy, inexpensive, safe and simple as is consistent with justice.

(3) In enacting this Division the Parliament:

- (a) recognises that domestic violence, in all its forms, is unacceptable behaviour, and
- (b) recognises that domestic violence is predominantly perpetrated by men against women and children, and
- (c) recognises that domestic violence occurs in all sectors of the community.

Not just court – exploratory research

The impetus for the exploratory research described here came from a review of the Chamber Magistrate and other Local Courts' services undertaken by the Office of the Director of Local Courts of the New South Wales Attorney-General's Department. Participants in that review included Aboriginal individual and professional users of Local Courts' services from inland rural towns. Aboriginal participants expressed concern about the limitations of existing measures for obtaining legal protection from family violence and a desire for additional protective measures (Moore, 1999).

The research project was entitled *Not Just Court*, and provided the opportunity to revisit the towns of Wagga Wagga, Dubbo and Bourke and discuss ideas about strengthening legal protection for women experiencing family violence and additional protective measures. Aboriginal women led the discussion and the research retained that cultural focus, while raising issues that have relevance for women in rural, remote and metropolitan locations. The research objectives included documenting perceptions of Aboriginal people in inland rural and remote New South Wales towns about: family violence and protection available through the New South Wales AVO scheme

administered by police and courts; the cultural appropriateness of existing measures, and; ideas about additional measures that might be effective in reducing levels of family violence. Documenting these experiences and ideas was intended to inform government policy makers and program administrators about particular rural and cultural concerns.

Rural town profiles were constructed to provide a broader context in which to understand the experiences and ideas of the total 37 focus group participants at the three towns. Participants included Aboriginal women with experience of family violence and practitioners who regularly provide services to women seeking safety from family violence. Facilitated discussion addressed women's experiences of family violence, of seeking safety using services and social supports, and of applying for legal protection through the justice system, and sought their ideas about additional anti-violence measures. In preparing for discussions and writing the report a search of the literature on domestic and family violence provided information, concepts and exemplary programs used to guide discussion and report the findings.

The towns of Wagga Wagga, Bourke and Dubbo were established during 19th century colonisation. Their agricultural economies were founded on the dispossession of Aboriginal people from their land and resulted in their exploitation, geographic dislocation, loss of traditional cultures and marginalisation in the emergent mainstream society. Statistics obtained for each town describe the socio-economic make up, officially recorded violent crime and applications and outcomes of domestic apprehended violence orders (ADVOs), and allow comparisons with New South Wales. Rural town profiles provide a broader context in which to understand the experiences and ideas of the total 37 focus group participants at the three towns. Participants included Aboriginal women with experience of family violence and practitioners who regularly provide services to women seeking safety from family violence. Facilitated discussion addressed women's experiences of family violence, of seeking safety using services and social supports, and of applying for legal protection through the justice system, and sought their ideas about additional anti-violence measures. In preparing for discussions and writing the report a search of the literature on domestic and family violence provided information, concepts and exemplary programs used to guide discussion and report the findings.

Compared with New South Wales, the populations of these towns are less culturally diverse. They have higher representations of people who are Aboriginal, under 14 years of age, unemployed, and economically dependent on government welfare payments. These are amongst the factors that result in Indigenous people being the most socio-economically disadvantaged sector of the Australian population. Crime data for the combined non-Aboriginal and Aboriginal town populations shows that these towns have comparatively higher levels of officially recorded crimes of assault, sexual assault and weapons offences than for New South Wales. In keeping with these higher rates of violence, the rates of ADVO applications in the towns are also higher than for New South Wales. Statistics used by Local Courts for management purposes indicate that the higher rate of ADVO applications in these towns is not consistently matched by higher rates of orders being granted through the courts. This raises questions about the effectiveness of the legal response to the safety needs of women in these rural towns who are experiencing family violence. It may also be an indication of the unevenness in the provision of support services and the positive impact of the Women's Domestic Violence Court Assistance Scheme (DVCAP). The New South Wales government first funded this scheme in 1996 through the Legal Aid Commission following a report for the Department for Women that found that women needed assistance to participate in the legal process (Bradfield & Nyland, 1998 p 14). At Wagga Wagga, where DVCAP was well established before 1998, the percentage of applications that resulted in final orders was higher than for New South Wales in both 1998 and 1999. At Bourke, where DVCAP was an emerging service in 1999, the percentage of orders granted increased from 35% in 1998 to 43% in 1999.

Since the commencement of the AVO legislation in 1983, there has been no comprehensive evaluation of the New South Wales AVO scheme. A limited scope evaluation of the AVO scheme published by the Bureau of Crime Statistics and Research (Trimboli & Bonney, 1997) focused on orders granted in selected metropolitan courts. It found AVOs to be effective in reducing the incidence of harmful behaviours by perpetrators of violence. It also found very low rates of police enforcement of orders in response to reported breaches. The evaluation did not address the experiences of applicants for ADVOs who were not granted a final order or who were in rural or remote locations.

Family violence – Experiences and contributing factors

The term 'family violence' is used by Indigenous people to describe interpersonal violence that occurs within the privacy of the domestic sphere and intimate and extended family relationships. The preference for the term 'family violence' rather than 'domestic violence' reflects the extended nature of the family structure in modern Indigenous communities, and the fact that the violence might be perpetrated by or against a family member other than an intimate partner. The following Aboriginal and Torres Strait Islander Commission (ATSIC) definition is adopted here:

... the beating of a wife or family members, homicide, suicide and other self-inflicted injury, rape, child abuse, child sexual abuse, incest... (more than) serious physical injury but also verbal harassment, psychological and emotional abuse and economic deprivation, which although as devastating are even more difficult to quantify than physical abuse (Atkinson, 1996 p 5).

Aboriginal women in this study expressed grave concern about the high incidence of all types of violence covered by this definition including physical, sexual, verbal, mental, social and financial. There have been instances in the three towns in which women have died as a result of family violence by a male partner. Aboriginal men were identified as the most frequent perpetrators of family violence. Concerns about family violence include the extreme and immediate harm caused to individual women, children and elders, and extend to the harm caused to the wider community and culture, both in the present and future. Identified contributors to family violence fall within Memmott et al.'s typology (2001) that includes 'underlying factors' such as arise from colonisation processes, 'situational' factors connected for instance with unemployment and alcohol abuse, and 'precipitating' factors that can arise in the stress and conflict of daily life.

Seeking help – Inhibitors, services and supports

Rural Aboriginal women are inhibited from seeking help from family violence by the same factors that confront other Australian and rural women. Women generally confront fear, isolation, shame, commitment to family relationships, fear of being negatively judged and a lack of confidence that services and

supports can help (Keys Young, 1998). Rural women also confront conservative attitudes about women's role that contributes to community tolerance of violence against women, differing conceptions of what constitutes family violence, lack of confidentiality, lack of access to services and supports, and fear of exclusion from the community and town (Alston, 1997). Aboriginal women confront additional culturally specific inhibitors, including a comparatively higher level of tolerance of violence within their communities, fear and mistrust of government officials in general, and fear of police and justice officials in particular. So widely held is the fear of government intervention, that it is said that members of the Aboriginal community who report incidents of family violence to public officials risk reprisal from others in their extended family and community.

Women in rural towns who decide to seek safety for themselves from family violence, and those who seek safety for their children, lack adequate access to services, information and the informal and formal social supports they need. Improved access is needed to mainstream services including telephones, transport, financial assistance and housing. Women experiencing family violence, and their most accessible informal supports of neighbours, friends and extended family, commonly lack the awareness and information essential in validating the wrongfulness of the violent conduct and identifying potential sources of help. The most helpful formal supports were identified as specialist social service agencies that provide services to women and Aboriginal people. There is a need for new strategies to improve Aboriginal access to a wider range of formal support services. Strategies to improve cultural access include publicising the services in media that is accessed by people in the communities, employment of cultural specialists, and adopting outreach and home visiting models of service provision.

Legal protection and formal justice

The New South Wales justice system can provide legal protection from interpersonal, domestic and family violence through criminal and/or civil proceedings. The criminal justice response can be invoked when police intervention in a violent incident results in their decision to charge and prosecute the alleged perpetrator. They rely on information provided by witnesses to the incident and evidence gathered at the scene. Civil

proceedings are initiated when an individual or a police officer applies to the court for a personal or domestic AVO, as described here previously. A breach of the conditions of an AVO constitutes a criminal offence, an offence against justice that is subject to criminal process and sanctions, including the potential for a sentence of imprisonment.

Colonisation experiences of Aboriginal people operate as both an underlying contributing factor to family violence and an inhibitor to women's use of the formal justice system to seek protection for themselves and their children. Under assimilation policies governments have used the justice system, police and courts, to remove children from families. The operation of the criminal justice system has resulted in the substantial overrepresentation of Aboriginal people in law and justice processes, prisons and deaths in custody (Australian Bureau of Statistics, 1997). Thus, Aboriginal women are typically ambivalent about seeking help through the police and courts. The need for help is countered by an unwillingness to contribute to the criminalisation of a male partner.

...usually, when you talk to an Aboriginal woman who's been pretty well assaulted by their man, they won't lay charges because they say, "We just want him to stop. We don't want him to go to gaol. We just want him to stop." And you can explain the process to them, "Okay, an AVO doesn't mean a criminal offence unless he breaches that AVO," and you do explain it to them but still - the thought of gaol- (Transcript dp395-405)

Contact with police and courts is often experienced as victimising. The police crisis response to family violence is often marked by misunderstanding, discrimination and mutual hostility. Court experiences are marked by high levels of public scrutiny and shame, lack of access to information, lack of opportunity to participate fully in processes and decision making, and risk of being subjected to blame, discrimination and reprisal.

Despite the disincentives for using the formal justice system, legal responses were upheld by participants here as essential elements of an overall protective system that can be accessed by Aboriginal women seeking safety from family violence in these towns. It was said that in some cases, such as those involving physical violence that pose a threat of physical injury, death or sexual violation, prosecution of criminal violence is the only available effective response possible. Suggestions were made to improve the criminal justice response and address the cultural disincentive for contributing to criminal prosecution. These include strengthening practices and roles of police in investigating and prosecuting criminal forms of violence, and reducing police

reliance on women's statements and decisions as the sole form of evidence in support of criminal prosecutions against their male partners. ADVOs granted under the court's civil jurisdiction are regarded as important mechanisms for individuals to gain protection from criminal and non-criminal forms of family violence. They set legal limits on the perpetrator's future contact with, and conduct toward, protected persons. They can also serve to confront tolerance of family violence within communities by publicly validating the social unacceptability of all forms of family violence.

Four aspects of the AVO scheme were identified as barriers or disincentives to its use. One barrier lies in the broad definitions of family violence adopted by feminists, policy makers and social service practitioners, and the lack of wide social acceptance of these definitions in public attitudes, media representations and the police and legal response. It seems that the predominant wisdom is that evidence of physical injury is a necessary condition for obtaining protection from family violence, and that the narrow definition of physical injury is applied to both the criminal and civil legal responses. Suggestions to address this included public and practitioner education. A second issue concerns the disincentive that stems from the potential for civil protection orders, to escalate into the court's criminal jurisdiction when breached. Many ADVO applicants are reluctant to participate in a process through which they contribute, even indirectly, to the criminalisation of a male partner. This concern is a strong motivator for the search for additional processes and services. A third set of disincentives lies in negative court experiences, and a fourth in a perception that the final order is 'just a piece of paper', as it is seldom breached and does not provide an opportunity for harmful conduct to be changed.

Disincentives in the ADVO legal response are identified during the police crisis response, the time before court, the court proceedings and enforcing the order. Without access to formal support services, other than police, applicants lack the information and emotional support needed to be confident about their decision to proceed and to participate in the process. This increases the risk of their not pursuing the application. The highly visible and often intimidating architecture of rural court buildings, together with the fact that court proceedings are open to the public, leaves applicants exposed to public shame and intimidation by perpetrators. There is no certainty that an applicant will be legally advised or represented.

Their lack of legal assistance in the face of strong legal advocacy on behalf of a perpetrator can lead the applicant to withdraw their application or agree to undertakings by the perpetrator that are not legally enforceable. Suggestions for strengthening the formal justice response include tapping the latent informal support within Aboriginal communities and expanding existing DVCAP services. Expansion of the existing services would involve extending their coverage to unserved locations, and providing a pre-court service and legal representation. Closed courts, use of closed circuit television (CCTV) to give evidence and reduced formality were suggested as measures to afford applicants greater privacy and safety during the court process. While court proceedings alone are not considered sufficient to reduce levels of family violence, it is widely held that the protective potential of ADVOs could be increased. Amongst the ideas canvassed was the introduction of provisions that would allow adjournments, or conditions attached to orders. These could incorporate requirements for one or both parties to participate in an agreed intervention.

Not just court – Additional measures

An effective response to family violence needs to be both preventive and responsive. In addition to strengthening the tertiary level criminal and civil justice processes that outlaw and sanction violent conduct, there is a desire for an increased range of anti-violence strategies that includes preventive and rehabilitative approaches. Community anti-violence plans must be based on principles of community ownership and implementation, and a whole of community focus, with a particular emphasis on partnerships between men and women. Prevention requires community education that addresses cultural loss and healing. Secondary interventions that aim to deter identified perpetrators from future violence could include counselling and rehabilitation programs that are designed and delivered within a cultural framework. Legal provisions under the civil AVO scheme could be introduced to provide greater impetus and accountability for the use of secondary interventions. By enabling a response to non-criminal forms of family violence there is potential for intervention at the time that harmful conduct has emerged and before it has become entrenched or criminal. The process of determining an AVO could incorporate provisions for court connected facilitated decision-making to

be used in selected cases of non-criminal harmful conduct, and in which both parties request an opportunity to jointly identify contributing factors, and formulate an anti-violence agreement that might be included in a final order. Court monitoring of anti-violence agreements could provide ongoing legal protection.

Conclusion

Improvements in the access to and use of the AVO scheme by Aboriginal women in these inland rural remote towns require systemic reform and the development of a continuum of culturally relevant initiatives and services. Violence prevention programs will focus on education, cultural healing and leadership. An improved and extended range of geographically and culturally relevant services and supports is needed for women seeking safety from family violence for themselves and their children. Services are needed that support early intervention and resolution of family conflict, and provide opportunities for perpetrators to reduce harmful behaviours. Within this framework provisions could be made within the AVO scheme for access to court-connected facilitated decision making processes and anti-violence agreements.

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