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Women's experiences of  
seeking a domestic violence  
protection order in NSW

**Dr Lesley Laing**

Faculty of Education and Social Work  
University of Sydney, 2013



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# Executive summary

THIS RESEARCH explored women's lived experience of navigating the legal system to obtain protection from domestic violence. The findings highlight areas in which improved service delivery is needed as well as providing examples of situations in which women were well supported within a network of coordinated interagency services.

Protection orders have been a cornerstone of the Australian response to domestic violence for almost 30 years. In NSW, the relevant legislation is the *Crimes (Domestic and Personal Violence) Act 2007* which provides for applications to be made to the Local Court for Apprehended Domestic Violence Orders (ADVOs) for a wide range of 'domestic' relationships, and for Apprehended Personal Violence Orders (APVOs) for other, non-domestic relationships (e.g. neighbours)<sup>1</sup>. The object of the Act is to provide victims of domestic violence with protection from *future* violence, intimidation and stalking through facilitating access to civil law.

Key features of the NSW legislation include: recognition that that domestic violence is predominantly perpetrated by men against women and children; specific reference to international Human Rights instruments; the requirement for proactive policing; and a 'fear test' for granting an order that considers the effects of violence on the victim (Wilcox, 2010b).

**Chapter 1** outlines the methodology used in the study and provides an overview of the participants and the legal outcomes. The guiding Research Question was: How do women experience the processes involved in seeking an AVO in NSW? This question inevitably involves consideration of questions of core concern to the NSW Law and Justice Foundation, that is, to what extent are women affected by domestic violence able to:

- participate effectively in the legal system
- obtain legal assistance (information, advice and legal representation)
- obtain non-legal support and advocacy

This project used in-depth, semi structured interviews to elicit rich, qualitative data. It aimed to 'give voice' to those who are vitally affected by policies and legislation, yet whose voices are often not heard. Women who had experienced domestic violence and had sought an AVO were recruited through a flyer which was distributed widely through relevant service networks. Efforts were made to recruit women from marginalised groups, such as Aboriginal and CALD women, since they often face additional barriers to accessing the law. As in all domestic violence research, safe participation of women was attended to at all stages of the research. The women were positioned in the study as having expertise that was invaluable and unique because it arose from their lived experience of the service system. Interviews were transcribed and through the process of coding, categories and concepts were identified, compared and explored to identify key themes relevant to the research question, with the assistance of the software program N\*Vivo.

Prior to the women's interviews, four focus groups were conducted with 24 legal and non-legal service providers whose role involved supporting women through the AVO process. In these groups, workers discussed their experiences of assisting women in accessing justice, focussing on: barriers to women's access; aspects of the current arrangements that facilitate access; and suggestions for systemic and practice improvements. These focus groups provided sensitising information that

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<sup>1</sup> In line with common usage, the Term AVO is used in this report unless an APVO is being referred to. ADVOs have been available in some form in NSW since 18 April 1983. They were first introduced by the *Crimes (Domestic Violence) Amendment Act 1982* (NSW).

helped to shape the interviews with women. The report on this stage of the research, *'Women get lost in the gaps': Service providers' perspectives on women's access to legal protection from domestic violence*<sup>2</sup> is referred to in this report where the findings of the two data sources came together.

Forty women participated in the interviews, the majority aged in their thirties and forties with smaller numbers of younger and older women. The respondent to the AVO was an ex-partner for the majority of the women (32). Other respondents were current partners (2); other family members (3); other household member (1); neighbour (1); and the new partner of the ex-husband (i.e. 2 APVOs). Two of the women identified as having a diagnosis of a serious mental illness and one woman had a hearing impairment. The group was culturally diverse: 17 of the women were Anglo-Australian; 14 were Aboriginal; 5 were from culturally and linguistically diverse backgrounds (CALD) and 4 were migrants from English speaking countries. There were two lesbian participants: in one case the respondent was her ex-partner and in the other, a household member. The women were living in Sydney, outer Sydney and rural areas of NSW.

In terms of legal outcomes, 28 of the 40 women were successful in obtaining an AVO; eight were not and one matter was still in progress at the time of interview. A further three women had received undertakings<sup>3</sup> and two were not satisfied with this outcome.

The overall group was divided into an Intimate Partner Violence (IPV) group (N = 34) and a non IVP group (N = 6). In the IVP sub-sample, there were four CALD women; ten Aboriginal women; sixteen Anglo Australian women and 4 migrants from English-speaking countries. Of the CALD women, one had come to Australia to marry an Anglo Australian; three women and their partners had migrated together, two of the couples being recent arrivals and one couple having lived in Australia for many years. In the IVP group of 34 women, 25 were granted an AVO while five women's applications were not successful; three women did not receive an AVO but undertakings; and one matter was still in progress. Results in the Non IVP group were evenly divided into successful and unsuccessful in obtaining on order.

Consistent with other research, and contrary to the common belief that women apply for protection orders on frivolous or vexatious grounds, the women in this study described situations of abuse that were severe and ongoing. Many of the narratives contained examples of high risk factors such as: a context of separation, sexual assault, non-fatal strangulation and controlling behaviours (Campbell, Glass, Sharps, Laughon, & Bloom, 2007). Children were both exposed to violence towards their mothers and in some cases to direct abuse by the domestic violence perpetrator.

**Chapter 2** follows women through their initial encounters with the legal system, to the Court and beyond. Consistent with the literature, women in this study sought legal protection when they recognised that the abuse was escalating, often because of a particular incident of violence and because they had 'had enough'. Protecting their children was another strong driver of women seeking legal protection. Some wanted to let their partner know that the abusive behaviour was wrong, and others were encouraged to take action through support and information from both formal and informal sources. Taking this step into the formal service system was both motivated and inhibited by fear: fear of retaliation, of making things worse, of harming their partner and of handing control for 'managing' the situation to an unknown system.

Many women talked about previous times when they had not been ready or able, for a variety of reasons (including the danger and interference posed by the perpetrator), to pursue legal protection.

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2 Available at: <http://hdl.handle.net/2123/9195>

3 The defendant may offer undertakings (formal promise). This means they agree not to do the things listed in the AVO. The terms of the undertakings are put in writing and placed on the court file. Undertakings can't be enforced. If the defendant breaches an undertaking they will not face any legal consequences. See: [http://www.lawassist.lawaccess.nsw.gov.au/lawassist/lawassist\\_avo/lawassist\\_gettingavo\\_home/lawassist\\_pinopgoingtocourt\\_avo/lawassist\\_present\\_hear\\_pinop.html](http://www.lawassist.lawaccess.nsw.gov.au/lawassist/lawassist_avo/lawassist_gettingavo_home/lawassist_pinopgoingtocourt_avo/lawassist_present_hear_pinop.html)



Unfortunately, these previous decisions could subsequently become barriers to their accessing assistance when they were ready to take this step. These barriers comprised, for example, unhelpful Police attitudes, a paucity of evidence of long-term violence, or the ability of the perpetrator to exploit the woman's prior non-disclosure of the abuse in order to escape accountability.

The women described their fear at facing the abuser at Court and the additional features of the unknown and intimidating Court context that added to their sense of fear and confusion. Where it was available, the women spoke unreservedly about the positive support and advocacy that was provided through the Women's Domestic Court Advocacy Service (WDVCAS) and the sanctuary provided by 'safe rooms' at Court. In rural courts where this was not available at the time of the interviews, the women's accounts give evidence that this support service is sorely needed for all women.

Having been through the process, it was disappointing to many of the women that Police were unable or unwilling to act as they hoped in response to breaches of the AVO, describing inconsistencies in the responses received. They also faced the dilemma of ensuring that they were protected when the AVO expired, describing a 'catch 22' situation in which they still feared the perpetrator and understood, more than anyone, the risk that he posed, yet found it difficult to extend their AVO if he had not breached (or been detected breaching) the order.

This chapter also explored the experiences of five of the women who had been arrested and/or become defendants in AVO applications. Three were Aboriginal, one a recent CALD immigrant and one Anglo Australian. Their accounts serve as a reminder that women seeking assistance for domestic violence face risks beyond those posed by the perpetrators' violence. A terrible sense of injustice pervades these accounts. All women, and women 'on the margins' in particular, may be rightly cautious in making decisions about whether or not to use the law to deal with domestic violence and require sensitive outreach and consistent support and advocacy.

In **Chapter 3** the key issues raised by the women are discussed. Women stressed the importance of the initial response that they received from the Police and the benefits of proactive policing. Unfortunately, there were many examples of situations in which women's initial concerns were dismissed and trivialised when further assessment could have identified high risk factors and serious domestic violence. Many women emphasised the courage and persistence that was needed to have their situation responded to by Police. Aboriginal participants stressed that negative and stereotypical Police attitudes, for example, assuming that a woman had been drinking, provide formidable barriers to their pursuing legal protection.

While there were examples provided of excellent Police responses, the data highlights the need to increase Police skills in talking to women, exploring their concerns and assessing risk so that the documentation provided to the Court can usefully inform the Court's subsequent decision-making. Being told that there was insufficient evidence for an application, or for a breach, was a common experience that contributed to women's sense of injustice, as did their very limited (if any) time with the Police Prosecutor who was presenting their case. Where the defendants were able to afford what the women saw as high quality and consistent legal representation, their sense of injustice was further heightened.

The women also raised important issues of process – most crucially, being provided with timely and accurate information. They also discussed the stress and financial and other costs associated with protracted legal processes and the importance of being treated with courtesy and respect. Some commented on the paradox of the large amount of time spent at Court, yet the short amount of time actually dedicated to their matter.

Women highlighted the importance of the support and advocacy that they received from a wide range of personnel and agencies, both inside and outside the legal system. They provided examples

of the importance of support, advocacy and resources beyond the legal system – crucially access to housing. The legal response is but one element of the assistance that is required by women dealing with domestic violence. Linking women into support and advocacy beyond the Court is essential.

**Chapter 4** explores the additional barriers to legal participation faced by women who are engaged in multiple legal systems and/or who are affected by multiple, interlocking patterns of inequality. More than half of the women seeking an AVO were involved simultaneously with the Family law system; twelve women were also involved with the statutory child protection system; and eighteen women with the criminal justice system. In the case of this latter group, criminal justice involvement was through situations where the AVO respondent was also subject to criminal charges, where the AVO had been breached, or in some cases, where there were concurrent allegations of child sexual assault under investigation. These cases were particularly protracted. In addition to these legal intersections, five women - three English-speaking migrants and two CALD women - were also dealing with the intersection of domestic violence and immigration law.

Consistent with many other research studies, women who were seeking an AVO and were also involved with Family Law system reported that they encountered scepticism in both systems that their allegations of domestic violence were tactics to gain advantage in their family law matter. They reported that the interaction of the AVO and Family Law proceedings undermined the protections potentially offered by the AVO and that in many cases, the children continued to be exposed to domestic violence. For example, one woman was faced with a cross application for an AVO by her partner and was advised to consent to the order, to 'get it out of the way', only to find that the AVO was used against her in the Family Court.

No woman found involvement with statutory child protection services helpful, describing either under-engagement or intrusive intervention with removal of children in three cases. In contrast, the involvement of the early intervention arm of Community Services provided a number of women with excellent support and advocacy.

This chapter provides a number of examples and case studies that highlight the complexity of women's efforts to access legal protection. For example, one case study looks at the experiences of a woman facing limited options in escaping violence in an isolated rural setting, when she was unable to meet the conflicting requirements of the Family Law, child protection and AVO systems. It also addresses some of the challenges faced by immigrant, CALD and Aboriginal women and the differences when they have, and do not have, access to effective outreach, support and advocacy.

**Chapter 5** asks the question: 'Was it worth it?' and finds that the answers to this question are not straight forward. Women's perceptions of the value of attempting to obtain legal protection from domestic violence are complex. At each extreme, there were women who were clear either that the experience was worth it and empowering or that the whole exercise was futile. Most women, however, expressed a range of reactions, depending on factors associated with both the outcome of their application, and the ways in which they had experienced the processes involved, including the nature of their encounters with various service providers.

Similarly, the concept and meaning of safety was not straight forward. For example, the reaction to obtaining an AVO and a woman's assessment of her level of safety often depended on factors such as whether or not the conditions of the order had been tailored to meet the woman's needs, the woman's confidence in the likelihood of the Police enforcing breaches and the woman's knowledge of the level of danger posed by the perpetrator and his respect, or not, for the law.

The situations involving unsuccessful applications were explored to see if any patterns could be identified. Five women in the IPV group and three in the non IPV group did not obtain an AVO. Each of the unsuccessful IPV applicants had elements of complexity that can affect access to justice: two were CALD, recent immigrant women; one woman was from a remote rural location and was

dealing with intersecting civil, child protection and Family Law systems; one had a diagnosed mental illness; and one woman's protracted matter crossed the civil, Family and criminal legal systems due to allegations of child sexual assault. Two of the unsuccessful applicants in the non IPV group were Aboriginal women; and the third was a young woman experiencing ongoing abuse into adulthood.

**Chapter 6** draws out some broad themes that emerged from the research and discusses these findings in the context of the research literature and recent policy reviews and service reforms in NSW.

A key theme was that the women *struggled to be heard*. This occurred at a number of stages of their journey, beginning with initial encounters with Police where there often appeared to be a mismatch between Police understandings of domestic violence (which emphasised discrete incidents and physical assault rather than a pattern of behaviours) and the ways in which women tried to talk about their experiences of abuse and their reasons for seeking legal protection. The sense of not being heard was exacerbated for women in Court when the vast number of matters dealt with left them with minimal (or no) opportunity to meet with the Police prosecutor. This can also impact on the quality of protection offered by an order if the conditions are not adequately tailored to the woman's situation. A further contributor to women's sense to not being heard was the very short time allocated in Court to their matter – in contrast to the amount of time women had to commit to being available at Court, and the number of occasions on which they had to attend Court. In addition to these points in the system where women's voices were not always heard, some women from marginalised groups confronted additional barriers to having their concerns heard and acted upon.

Despite many examples of good practice in supporting women's legal participation that are seen in this report, another strong theme in women's accounts was *a strong sense of injustice*. Understandably, this was acute for those women who were not granted an AVO. However, a sense of injustice was also expressed by women who were successful in obtaining an AVO. For some women, this was related to the issue of being heard, since the full extent of the perpetrator's abuse was not named nor were their devastating experiences of abuse recognised and validated. For many others, a sense of injustice arose primarily from their perception that the legal system failed to adequately hold the men who abused them accountable. This could be because only small aspects of the men's behaviour were recognised as abusive, because breaches of orders were not responded to, or because the levels of sanctions for the abusive behaviour were seen as manifestly inadequate by the victims harmed by these behaviours.

Countering this sense of injustice were individuals in the system who provided legal and non legal support and advocacy and who partnered with women on their journey through the system. The women highlighted the importance of receiving support and advocacy from a wide range of personnel and agencies, both inside and outside the legal system. Police Officers, who demonstrated understanding of the complexities of domestic violence and were patient with the process that women go through in deciding to take action, provided important support and validation to women. Women spoke unreservedly about the support provided through the WDVCS and the importance of the 'safe room' at Court, and the benefits of being linked into specialist women's and domestic violence services which offered broader and longer-term advocacy and support.

It is not surprising that women's strongest call was to be provided with timely and accurate information. Partnering with women in ways that enable them to make informed decisions has the potential to begin to restore to the women the sense of control of their lives that is undermined by domestic violence.

Given the findings about the emphasis on discrete incidents and physical forms of abuse, the question is posed as to whether in current practice we *are making full use of the legislative provisions*

for protection orders? The findings of this study from the perspective of women's experiences support the argument by Wangmann (2012) that the full potential of the protection order legislation to respond to the complex and patterned range of abusive behaviours is not being realised.

It is noted that many of the recommendations of recent policy and practice reviews and the elements of the *NSW Domestic Violence Justice Strategy* (2012) address issues raised by the women in this report. Two additional recommendations are made based on the findings of this report.

## **Conclusion**

The present study is one of the few that has sought to explore women's experiences of accessing legal protection from domestic violence in NSW. While not a representative sample, the women in this study raised issues that have also been identified in other policy reviews and in the focus group interviews with NSW service providers, affirming that these issues are serious and need to be addressed if the safety of women and children is to be enhanced. In the context of efforts to reform the domestic violence service system in NSW, it is imperative that evaluation includes both outcome measures and feedback from women who have used the system. Hearing the voice of women is essential both for individual women, as attested by the women in this report, and in the ongoing evaluation and improvement of policy and practice.

# CHAPTER 1

## Introduction

### Background

#### Protection Orders

Protection orders have been a cornerstone of the Australian response to domestic violence for 30 years (Alexander, 2002). They have played a much greater role in the Australian context than in similar jurisdictions in North America and the United Kingdom (Young, Byles, & Dobson, 2000). Each State and Territory has developed and progressively revised protection order legislation since the 1980s. There are common elements across the Australian jurisdictions, for example, the breach of an order constituting a criminal offence. However, there are also differences, for example in the types of interpersonal relationships included and in the types of grounds on which a Court bases the decision whether to grant an order.<sup>4</sup>

In NSW, the relevant legislation is the *Crimes (Domestic and Personal Violence) Act 2007* which provides for applications to be made to the Local Court for Apprehended Domestic Violence Orders (ADVOs) for a wide range of 'domestic' relationships, and for Apprehended Personal Violence Orders (APVOs) for other, non-domestic relationships (e.g. neighbours). In practice, the shortened term Apprehended Violence Order (AVO) is commonly used, and this terminology is adopted in this report<sup>5</sup>. The object of the Act is to provide victims of domestic violence with protection from future violence, intimidation and stalking through facilitating access to civil law.<sup>6</sup> Applications for orders can be made by Police or by the 'Protected Person' through the Registrar of the Local Court (a 'private' application). If the Police apply for the AVO on the protected person's behalf<sup>7</sup>, the Police Prosecutor presents the matter in Court. If a private application is made, legal representation is required, for which Legal Aid is available.<sup>8</sup>

Protection orders complement the interventions afforded by the criminal law: while the criminal law is concerned with violence that has already been enacted, these civil law remedies aim to prevent future violence by placing limitations on the future behaviours of the defendant. Potential strengths of civil protection orders in making legal protection accessible to victims of domestic violence lie in the fact that they can be obtained quickly via interim orders in comparison to slower moving criminal justice processes; that the standard of proof required is the 'balance of possibilities' rather than the higher criminal standard of 'beyond reasonable doubt'; and that the conditions can be tailored to the victim's particular situation (Laing, 2008). Civil protection order processes were established in recognition of the complexity of domestic violence, in that the violence is enacted within the context of an intimate (or former intimate) relationship, and hence victims may want the violence to stop, but not to end the relationship or to have a partner suffer criminal penalties that may impact on the economic well-being of the woman and her children. They can also be seen as an attempt to redress the lack of "fit" between criminal justice processes and domestic violence. For example, the criminal justice system is incident-specific, while domestic violence comprises a pattern of abusive behaviours aimed at exercising coercive control over the victim (Stark, 2007). One of the features of domestic violence that the Parliament of NSW recognises in enacting the legislation is that: 'domestic

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4 For an excellent and comprehensive overview see Wilcox (2010b)

5 The Term AVO is used in this report unless an APVO is being referred to.

6 Object 2b of the Act: 'ensuring that access to Courts is as safe, speedy, inexpensive and simple as is consistent with justice'

7 Police have a very strong obligation to make such application

8 A person can also represent themselves – and may have to if not eligible for aid (or in an area with a practitioner scheme) and cannot afford private representation.

violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years;<sup>9</sup> and Section 7 of the Act provides that: 'For the purpose of determining whether a person's conduct amounts to [intimidation](#), a Court may have regard to any *pattern of violence* (especially violence constituting a [domestic violence offence](#)) in the person's behaviour.' (Emphasis added).

Key features of the NSW legislation include:

- While the Act is gender neutral, there is recognition that that domestic violence is predominantly perpetrated by men against women and [children](#)<sup>10</sup>
- Specific reference is made to international Human Rights instruments, the Declaration on the Elimination of Violence against Women, and the United Nations Convention on the Rights of the [Child](#).<sup>11</sup>
- Proactive policing – the Act sets out the circumstances in which the Police are obliged to apply for an order on behalf of a person.<sup>12</sup>
- The test for granting an order is a 'fear test' that considers the effects of violence, in contrast to other jurisdictions in which there is a 'commission and likelihood test' that looks at the acts of violence.<sup>13</sup> The former is characterised as victim-focussed and the latter, perpetrator-focussed (Wilcox, 2010b, p. 8)

## Facilitating access to the law

It is widely recognised that legal remedies alone are an insufficient response to the complex issue of domestic violence (Shepard, 1999) and that women are unlikely to be able to make constructive use of the law without the provision of support, advocacy and information (Laing & Humphreys, 2013). In NSW, the Women's Domestic Violence Court Advocacy Program (WDVCAP) has been funded since 1996 to enhance women's access to justice, in recognition that contact with the legal system, often for the first time, can be overwhelming and frightening. The provision of information, support, advocacy and referral to other community supports can be crucial to women pursuing, rather than abandoning, efforts to access legal protection and can link them into the broader range of services that make up the coordinated response to domestic violence.

The Women's Domestic Violence Court Advocacy Program (WDVCAP) currently funds 28 [Women's Domestic Violence Court Advocacy Services](#) (WDVCAS), servicing 108 Local Courts in NSW. The expansion of this service in 2010 resulted in the employment of more specialist workers to assist Aboriginal women and women who are non-English speaking. Legal Aid NSW administers state government funding for the program as well as the Domestic Violence Practitioner Scheme which is available in a 32 metropolitan and regional Local Courts<sup>14</sup> to provide legal advice and assistance for Apprehended Domestic Violence Order applicants. Lawyers funded under this scheme provide free, independent advice to clients (including to those who have Police-initiated applications) on ADVOS, family law, care and protection and victim's compensation matters and can make referrals to other services for further legal assistance. Free, specialist legal advice is also provided by community legal services such as the Women's Legal Service, through its Domestic Violence Legal Service and Indigenous Women's Legal Program and the Wirringa Baiya Aboriginal Woman's Legal Centre.

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9 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 9(3)(d).

10 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 9(3)(b).

11 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 9(1)(c)-(d).

12 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 49.

13 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 16.

14 Most of the interviews for this project were conducted before the expansion of these programs.

## Previous research

Research into the effectiveness of civil protection orders reveals a mixed picture with studies finding rates of violation of orders of between 23 and 76 per cent (Humphreys & Thiara, 2003; Jordan, Pritchard, Duckett, & Charnigo, 2010; Logan & Walker, 2009). This variation can in part be related to different measures used, such as victim reports or arrest data. Logan and Walker's longitudinal study (2009) found that 58 per cent of the women experienced a violation of the order. A majority of women reported that the order was extremely (51 per cent) or fairly (27 per cent) effective and a majority felt safe (34 per cent 'extremely' and 34 per cent 'fairly'). Stalking and returning to, or resuming the relationship were the two factors associated with increased likelihood of an order violation. They argue that effectiveness should be measured both in terms of violations of orders and the perceptions of women.

The limited NSW studies into AVO effectiveness (Trimboli & Bonney, 1997; Young, Byles and Dobson, 2000) suggest that AVOs can offer protection against further physical assault. However, both the Trimboli and Bonney (1997) study and others have shown that their potential effectiveness is undermined by Police reluctance or inability to take action when they are breached (e.g. Katzen, 2000; NSW Ombudsman, 1999, 2006). Other NSW studies have explored the limited use of provisions that exclude the perpetrator from the home, with the consequent increase in homelessness of women and children (Edwards, 2004) and the attitudes of magistrates (Cumines & Hickey, 1999).

Despite the centrality of AVOs to domestic violence intervention in NSW, there has been very limited research on their accessibility, particularly from the perspective of the victims of violence. Using focus groups, Elizabeth Moore (2002) explored the social and cultural barriers for Aboriginal women in rural NSW obtaining protection through the AVO scheme. She found that:

Disincentives in the ADVO legal response [we]re 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. (p. 1)

Maria Vucko (2000, 2001) interviewed 15 women who had sought protection orders in the late 1990s, with a focus on the factors affecting their decision making and found that taking legal action meant giving up the 'romantic' hopes that had been held for the relationship. She also found that the women were largely dissatisfied with their encounters with the legal players in the system - Police and legal personnel and the Court process, whose responses were inconsistent and often victim-blaming. Other types of support were more helpful. Nevertheless, the majority thought that pursuing a protection order had been worthwhile in regaining a sense of control over their lives.

More recently, based on the findings of a comprehensive case study of cross applications in NSW, Wangmann (2012) has argued that 'the progressive promise of the ADVO system to look beyond the lens of the criminal law is militated by a range of factors such as: the limited nature of the complaint narrative; the continuing focus in practice on incidents of violence; and the constraints of the court environment.' (p. 695)

It is increasingly argued that evaluation of domestic violence legal reforms need to focus on the *process* as well as outcomes, exploring the ways in which legislative reforms are implemented (Hunter, 2006; Young, et al., 2000), including, importantly, women's experiences of the process (Bell, Perez, Goodman, & Dutton, 2011). In the United States, Bell and colleagues (2011) explored what

severely abused, low income Black women found helpful and harmful about their encounters with the civil and criminal justice systems. While they found that the respondents did talk to some extent about outcomes (for example, the extent to which sanctions were enforced), they spoke more about aspects of the court process in their assessment of helpfulness or otherwise. Aspects of the Court process that shaped women's positive or negative experiences were their treatment by Court personnel, whether supportive and inclusive of their views or cold and impersonal; the length of the process and its impact on child care and work commitments; the quality of information provided about other resources; and the public exposure that comes with Court involvement. The research reported in this study takes up this focus on process and aimed to explore in depth, the experiences of women in NSW who have attempted to access protection from domestic violence through an AVO.

## Methodology

This project used in-depth, semi structured interviews to explore women's experiences of attempting to obtain an Apprehended Violence Order. The guiding Research Question was: How do women experience the processes involved in seeking an AVO in NSW? This question inevitably involves consideration of questions of core concern to the NSW Law and Justice Foundation, i.e., to what extent are women affected by domestic violence able to:

- participate effectively in the legal system
- obtain legal assistance (information, advice and legal representation)
- obtain non-legal support and advocacy

The approach aimed to allow the women to tell their story in their own words with only questions for clarification, or prompts for detail by the interviewer. This methodological approach is designed to elicit rich, qualitative data. Women were encouraged to take the lead in talking about their experiences in the ways and the amount of detail that felt comfortable for them. This approach is consistent with principles of research with vulnerable, socially disadvantaged populations, in that it aims to 'give voice' to those who are vitally affected by policies and legislation, yet whose voices are often not heard.

A limitation of this methodology is that the sample is self selected and not necessarily representative of women seeking a protection order in NSW. However, triangulation of findings from these interviews, the service provider focus groups and recent policy reviews, indicates that the findings reflect current practices in NSW.

Women who had experienced domestic violence and had sought an AVO were recruited through a flyer which was distributed widely through relevant service networks. Efforts were made through the networks and expertise of reference group members to recruit to the study women from marginalised groups, such as Aboriginal and CALD women, since groups such as these often face additional barriers to accessing the law. As in all domestic violence research, safe participation of women was attended to at all stages of the research. The ability of the women to participate in the research without placing them at risk from the perpetrator was assessed at all stages of the project. In order to minimise the risk that talking about the violence experienced could re-traumatise the women, the focus of the interviews was on women's experiences of negotiating the service system rather than on the violence per se. This gave the women control over the extent to which they discussed the violence that they had experienced. The women were positioned in the study as having expertise that was invaluable and unique because it arose from their lived experience of attempting to negotiate the system that is established to assist survivors of domestic violence, rather than as 'victims', although the extent of the suffering and injustice that they had experienced was in no way minimised. The research was carried out under the approval of the University of Sydney's Human Research Ethics Committee.



The majority of the interviews were conducted between during 2010, with a small number in early 2011, either face-to-face, or by telephone, depending on the preference of participants. Rural interviews were conducted by telephone in order to make the research accessible to women outside the metropolitan area.

Prior to the women's interviews, four focus groups were conducted in late 2009 with 24 legal and non-legal service providers whose role involved supporting women through the AVO process. In these groups, workers discussed their experiences of assisting women in accessing justice, focussing on: barriers to women's access; aspects of the current arrangements that facilitate access; and suggestions for systemic and practice improvements.<sup>15</sup>

Interviews and focus groups were transcribed and through the process of coding, categories and concepts were identified, compared and explored to identify key themes relevant to the research questions, with the assistance of the software program N\*Vivo. The strength of this methodology lies in the generation of rich data. A limitation is that the findings of a non-representative sample such as this cannot be generalised. However, the collection of data from multiple sources – in this case women and service providers – can strengthen the findings where there is consistency in findings across the different data sources. Where relevant, the findings from the women's interviews are discussed in relation to findings that emerged in the focus groups.

## The Women Participants

Forty women responded to the invitation to participate in an interview about their experiences of attempting to obtain an Apprehended Violence Order (AVO). They were recruited primarily from women's services. Just over half (23) were referred by domestic violence services (WDVCAS, 11; women's refuges, 9; and other specialist domestic violence services, 3). Others were recruited from generalist support services (8) and family support services (2), while the remaining women heard about the research via other networks (7).

The majority of the women were aged in their thirties (18) and forties (14). Four women were aged in their twenties; 3 in their fifties and one was in her sixties. They were parents/carers of 99 children. Two of the women identified as having a diagnosis of a serious mental illness and one woman had a hearing impairment.

The respondent to the AVO was an ex-partner for the majority of the women (32). Other respondents were current partners (2); other family members (3); other household member (1); neighbour (1); and the new partner of the ex-husband (i.e. 2 APVOs).

The group was culturally diverse: 17 of the women were Anglo-Australian; 14 were Aboriginal; 5 were from culturally and linguistically diverse backgrounds (CALD) and 4 were migrants from English speaking countries. There were two lesbian participants: in one case the respondent was her ex-partner and in the other, a household member. The women were living in Sydney, outer Sydney and rural areas. Eighteen women were from Western/South Western Sydney; six were from Southern Sydney; three from Inner Sydney; two from Northern Sydney; five from outer Sydney (Blue Mountains/Central Coast); and five from rural NSW.

Probably reflecting the legislation's requirement that NSW Police take a proactive approach to applying for AVOs on behalf of victims of domestic violence, the majority of applications were made by Police. Only two matters involved the women approaching the Chamber Registrar initially, both non intimate partner violence (IPV) matters. In 7 of the matters, both Police and privately initiated applications were involved.

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<sup>15</sup> Available at: <http://hdl.handle.net/2123/9195>

In terms of legal outcomes, 28 of the 40 women were successful in obtaining a protection order while 8 were not. In addition to these 8, a further three women had received undertakings, bringing the total who did not obtain an AVO to 11 (just over 25% of the sample). One woman's matter was still in progress at the time of interview and she had an interim AVO.

## **Ex/Intimate partner violence (IPV) group**

The main focus of the analysis in this report is on intimate partner violence: where the respondent is a partner or ex-partner of the woman, that is, 34 of the cases. The respondents in these cases were ex-partners in the majority of cases (32). Two women were in a relationship with the AVO respondent at the time of the interview.

In this sub-sample, there were four CALD women; ten Aboriginal women; sixteen Anglo Australian women and 4 migrants from English-speaking countries. Of the CALD women, one had come to Australia to marry an Anglo Australian; three women and their partners had migrated together, two of the couples being recent arrivals and one couple having lived in Australia for many years.

As with the broader sample, the majority of the women were in their thirties (16) and forties (12); four were in their twenties and one each was in her fifties and sixties.

## **Legal outcomes**

In this sub-sample of 34 women, 25 were granted an AVO while five women's applications were not granted. A further three women did not receive an AVO but undertakings. As will be discussed later, only one woman was satisfied with undertakings as an outcome: the others felt that they were forced to accept this outcome and did not believe that their safety was adequately protected. One matter was still in progress at the time of the interview and this woman had an interim AVO.

## **Cases in which the respondent was not an ex/intimate partner**

For six of the respondents, their most recent experience of seeking a protection order did not involve a matter in which the respondent was a partner or ex - partner. The majority, however, had had previous contact with the legal system as a result of the intimate partner violence they had experienced. Four of these women were Aboriginal, one was CALD and one was Anglo Australian. In three cases the respondent was another family member: two respondents were the women's son-in-laws and the AVO was applied for against a background of domestic violence towards the women's daughters. In another case, a woman approached Police and the Chamber Registrar seeking an AVO against her parents following a long history of child abuse and ongoing stalking; she did not proceed because facing them in Court would be re- traumatising, and no support was offered to her.

One of the Aboriginal women in this sub group was successful in obtaining an AVO against a housemate. She had grown up with domestic violence and had a previous difficult and distressing experience as a victim of crime within the criminal justice system. Another Aboriginal participant was unsuccessful in obtaining an APVO against a neighbour. She also described her unsuccessful attempt to obtain an AVO against a former partner many years earlier. The outcome of the unsuccessful APVO for this woman was the loss of the home that had provided safe refuge from the violence from her previous partner, as she had to relocate in order to be safe.

One CALD woman successfully obtained an APVO against the new partner of her ex-partner. However, she felt that she had been compelled to accept an APVO against herself as part of the process. She also described a previous unsuccessful attempt to obtain an AVO against her former partner which she understood was unsuccessful because they needed to have contact around parenting.

The legal outcomes for this sub-group were mixed. Three women obtained orders (one via being included on the order of another family member) and three did not. Of these, two were not granted and one did not proceed beyond the initial inquiry, because of the advice received. However, two of these unsuccessful applications involved at least one high risk factor, such as the presence of firearms and threats to kill. In these cases, the woman relocated as the only way that they could be safe.

## The Violence Experienced

There is a common belief in both the wider community (Postmus, 2007) and among some Magistrates (Hickey & Cumines, 1999) that applications for civil protection orders are often based on frivolous, or even vexatious grounds. However, in common with the research literature, the types of violence reported by the women in this study were serious, severe and often life-threatening. All but two women in the IPV sample described situations involving at least one high risk factor for injurious and lethal domestic violence (Campbell, et al., 2007). These included:

### Threats to harm, including with weapons

*After that incident he kept harassing me on the telephone and calling me and saying that he was coming to my house and he was going to break in and do this and do that and all this sort of stuff... I was very, very scared for myself and my life. He was a very unpredictable person, especially when he was drinking and stuff like that. (Woman 1)*

*And he was threatening to douse me with fuel and burn me alive. So naturally the Police stepped in – and he was saying this to them while I was there. (Woman 37)*

*... the ex, stood up at the dinner table and picked up a steak knife ... and raised the knife over her head and said: 'I feel like stabbing something' and moved towards me and I didn't know which way it was going to go – whether she was actually going to stab me or not. (Woman 3)*

*He had a knife there. I drove up and there was a knife sitting beside him ... He was going to put me in a boot while I was 6 months pregnant and put the car over the cliff. (Woman 33)*

### Non-fatal strangulation

*And because I was screaming, and I'm still lying on the floor, and he gets up and I thought 'ok, he's got up' – maybe he was scared that I was screaming and I was so scared. He went to the kitchen, he gets a kitchen towel and he is holding my face, and I'm still lying on the floor, he's holding my face with left hand and he's pushing the towel, he's shoving the towel in my mouth. (Woman 14)*

*The night I tried to leave, he physically tried to strangle [me] but I was still scared and I didn't report it ... (Woman 28)*

### Coercive, controlling behaviours

Jealous , controlling surveillance is the most predictive factor for physical violence (Mouzos & Makkai, 2004) and many women reported this type of abuse:

*So it's been violence and very bad stalking ever since I started going out with him. And all of my work knows of him stalking me. And the physical violence as well. And the manipulation and the threatening behaviour and just ringing me up on my phone and sending me text messages asking where I am or bring home the receipt to prove where you've been for the day. You know, just things like that. He just was constantly wanting to know where I was and accusing me of having affairs. Would break my things or hurt me if he thought I was lying to him. (Woman 20)*

*Even the mail box, I was not allowed to open – he had a set of keys to the mail box. ... And then he would open the mail, he would read even my mail. And if it was only for me, it was meant for me to read it, he would read the mail. That much controlling he was. My passport, he had locked it up in one of the cupboards – only he had the keys. My certificate, my University Certificate, my HSC certificate. All my work experience that I had and everything – all of it was locked up. All my details ... So everything was like, you know, under his control. He said 'yes,' I had to say 'yes.' If he said 'no,' I had to say 'no.' (Woman 14)*

## **Physical and sexual violence**

*Because all up at the end of this year, I would have been with him for 10 years and 7 ½ or 8 years of that was full on violence. Like I got thrown down the stairs, black eyes, everything. (Woman 32)*

*[M]y child was probably 18 months at the time. I'd got orders after he was born for visiting, so he could visit his child. But I was concerned about my child's safety so I got the orders so that he would have to visit in my home. And during his visiting – while my ex-husband was visiting his child, there was ongoing abuse whilst he was here and on one – on more than one occasion, but there was a significant occasion where he sexually assaulted me. (Woman 8)*

## **Violence during pregnancy**

*I was actually living with my husband and our relationship was deteriorating. It had done so probably from the moment I became pregnant ... And then he started to becoming more verbally aggressive towards me and just insults and put downs and it just gradually got worse and worse and worse. Again, I thought at that at time – I thought maybe he's not coping with the fact that he's going to become to a father and things like that. So but anyway, it got to the point where – I think actually, it was the first time he – yeah, he had smashed the door... (Woman 2)*

## **Stalking**

*He follows me in [suburb]. He watches me. ... I don't need to be watched and followed. I mean, it's intimidation. It's frustrating ... But at the same time, I focus – I know I've got to be somewhere. So I focus on that. Like today – it was just hoof it, I know I've got to be somewhere. I know I've got to be somewhere. It might sound stupid to a lot of people but if I focus in my mind that I've got to be somewhere, then I just go ... you know. Yeah, but it's more frustrating because you don't know where he is. You know, you're constantly looking over your shoulder and it's a horrible feeling, it really is. (Woman 35)*

## **Financial abuse**

*[H]e said that he was going to stop the child support payments for a couple of weeks just to teach me a lesson. He said he knew how little money I had and that without his payments I would be unable to pay my rent and I would soon go under. That frightened me. He said that to me several times since we separated. And being a New Zealander, I'm not a permanent resident, which means that I'm not entitled to any other payments from the government apart from the family assistance. So without a single parent payment, you know, I'd be homelessness and I explained to him that it would directly affect the children if he didn't pay but he said that he didn't care. (Woman 5)*

## Direct and indirect abuse of children

The exposure of children to the violence was common, as was direct abuse of children. As will be discussed later, protecting their children was an important factor in many women's decisions to take action:

*[H]e pulled out his bunch of car keys and he then started threaten me with them and say that he's going to 'stick them through my fucking neck' and then he sort of lunged over – he's a big man, and he lunged over to try and – just sort of go for me. I ran out of the way and then because I ran out of the way, he then started slamming the door and he, because he's a big guy and he was slamming and slamming and slamming at the door and he said 'I'll teach you a f'ing lesson for ever' – you know, smash the door over with me, and then he slammed the door so hard that he cracked the framework on the door, and then he kept saying 'I'm going to put your f'ing head in this door and your head's next' and at that point [child] was still asleep in his cot. He would have been probably about a year old – round about a year old at that time. ... I just thought he could do this and there's no-one to protect [child]. So I picked [child] up and just ran out the door.... (Woman 2)*

*He bashed my kids. He used to get my eldest son and put his head against the bunk beds and smash his head against. He made my kids stand against the wall where they would pee themselves. Hold their arms out for hours after hours. My second child, he was made to stand against the wall from 6 o'clock in the morning to 11 o'clock at night. And not move. He would tell them he would smash their fingers with hammers. Break their fingers. He'd do nasty things. (Woman 33)*

*It's just that he gets really angry and throws things and hits the kids. Because I told him like, you know, like we don't need to discipline the children by excessively belting them. Like he can't draw the line between discipline and abuse. And I try to explain to him that, you know, one smack on the bottom is enough to make the children understand. You don't even need to do that, you know. Violence is not the answer. There are other ways to discipline the children without hitting them and belting them. And he just doesn't understand that because he's really old school, you know, like – and that was the way it is. (Woman 36)*

These examples highlight the range of violent, frightening and abusive behaviours for which the women were seeking protection through the legal system. During the interviews, the women described in detail many more ways in which they were humiliated, emotionally abused and manipulated. While the examples above are the more overt tactics of abuse, the women also described the ways in which a range of tactics were deployed to both control and frighten them, and to undermine their efforts to seek help. For example, one man contacted child protection services and asked that his wife have a mental health assessment, claiming initially that she had post natal depression and then bipolar disorder.

Many of the women were isolated, either because of their rural location, their limited English language, or the perpetrator's disruption of their relationships with friends and family:

*Like he'll be when I'm on the phone talking to mum, he'll be like this, you know, like hurry up, get off the phone or he'll make noise or he'll upset one of the kids so I've got to hurry up and deal with them while I'm on the phone talking to mum or – you know, just little things like that. Mind games, you know. (Woman 36)*

One woman was forced into prostitution and illegal drug activity:

*Because if I don't do what he says, I get a beating. And that was what it was like. Like if I didn't want to go and prostitute to bring money into the house – he used to [say] 'go get me drugs,' force it into me and then beat me and send me to work. (Woman 26)*

## Offender tactics to undermine women's access to assistance

In addition to overtly violent behaviours, the women described the ways in which the abuser manipulated the situation to his advantage, disarming the interveners that could potentially help:

*The Police were at my house once a week ... Once a week they were at my house. They hated me. [They never took out an AVO] ... Do you know what they said to me? They said that I was making it up. And I couldn't believe it because what my husband was doing, he was assaulting me but not bad yet. So I'd call the Police before he'd get bad, right. And I'd go and hide in the bedroom with the children and wait. When they'd arrive, he'd be already settled himself and hide the beer and everything and sit out the back. And when they'd come, all calm. I'm not calm. I'm in the bedroom. I'm like this. Well they're not looking at it in the right way. And they're saying 'oh well, we've interviewed him out in the other room and now we're interviewing you in this room and we've interviewed the children' and then they'll just say 'look, he's got nowhere to go but you have. So we'll escort you off the property.' And I think 'but he's drunk.' And I got angry with the Police. I said 'How dare you. He is drunk. He needs to go. And he does have friends he can go to their place' ... (Woman 21)*

*Even my solicitor come back into the room during mediation and said: 'Your husband looks like he couldn't hurt a fly to me.' And I thought 'Here we go. The Police first. Now you.' (Woman 21)*

Woman 16's partner, who earns a very high salary went initially to Legal Aid NSW, she believes as a tactic to make her ineligible:

*Because he went in there first. And I said to them that he would have known that he couldn't get Legal Aid. So that was a tactical manoeuvre which ended – so every time we've spoken to Legal Aid they said: 'We can't help you, there's a conflict of interest'<sup>16</sup>. Here is a list of lawyers who can. So then I come home with a list of lawyers. I have made that many phone calls and approached that many lawyers and I can't tell you, so many of them said 'No, we can't help you.' 'No, sorry mate, we can't help you.' So that for me has been so frustrating.*

## Summary

Consistent with other research (Fischer & Rose, 1995; Postmus, 2007), and contrary to the common belief that women apply for protection orders on frivolous or vexatious grounds, the women in this study commonly described situations of abuse that were serious and ongoing. Many of the narratives contained examples of high risk factors such as: a context of separation, sexual assault, non-fatal strangulation and controlling behaviours.

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<sup>16</sup> The response should have been to the effect that assistance is available, but not through the in-house service.

# CHAPTER 2

## Going through the legal process

### Applying for an AVO

#### Factors in women's decision to use the law

##### A particular incident of violence

By far the most common reason for the women's decision to apply for an AVO was a particular incident of violence, which represented a significant escalation of the abuse:

*[The relationship] was always very volatile and with his drinking and stuff like that there was, you know, one incident where he actually tried to kill me – had his hands around my throat and tried to choke me to death ... I felt like for the first time in my life I ever thought I was going to die. (Woman 1)*

*[The relationship] was breaking down over a period of 6 to 8 months. And even though there were probably incidences of domestic violence, they weren't that bad but the final incident was extremely bad. And the Police actually put the original one on. The charges involved in this one are aggravated kidnap, sexual assault, aggravated assault. (Woman 9)*

*I'd left my former partner and he wouldn't allow me to take the children and all for a period of 7 weeks. There were events leading up to him – he kept wanting to touch me and all of those things and it spiralled out of control one day – he just turned up at the house and just took it upon himself – he sexually assaulted me, like – I contacted the Police and they took out the AVO from there. (Woman 13)*

The types of violence reported in these examples included behaviours that are recognised as indicating high risk of further (and possibly) lethal violence: attempted strangulation, estrangement and sexual assault (Campbell, et al., 2007).

##### Protecting children – now and in the future

For some women, the decision to take legal action was their recognition of the impact of the violence on their children and the need to protect them.

*I had to get an AVO against my partner because he was being quite violent to me and the children. And we've had problems over the last 10 years or so that we've been together on and off with violence with our relationship. But I realised that the only way to protect me and the children is to get an AVO against him to make him calm down ... (Woman 36)*

*He got out of the car [during a contact change-over]. All of a sudden he punched me in the side as I sat in the driver's seat. I felt very vulnerable because I'd given him the keys so I couldn't just reach over and close the door and just go and reverse out. And he – he said he was going to take the children ... They were visibly frightened in the back. I very reluctantly let him take the children because I knew that if I tried to get one of them from him, who he was holding at the time, I knew that I'd probably be endangering them. They'd be placed right physically in the middle ... So after he was gone, I almost went into a panic attack because it was all just becoming too much for me. I think of the years when I hadn't reported him. It was just him and I and for some reason it didn't seem so bad if there weren't children involved. But because he directly exposed them to that sort of behaviour, I knew that at the very least I needed to have a record of the assault legally. (Woman 5)*

In addition to the immediate protection of children, some of the women thought about the message that standing up to violence would send to their children:

*And I just had that thought when I was little the effects that it had on me growing up and I didn't want my son to go through that either so I'm thinking 'well enough's enough'. Like I've got to think of his life and his future too because I don't want him growing up hurting women either. And if I stand back and do nothing then it's teaching him well you can be a doormat for people. So I refused to be a doormat, you know. Well you have to hey. They say that you're a victim but nup, me, I'm a survivor. (Woman 32)*

*[So] I felt quite happy that the AVO would be sending a very powerful message and also to my children, at least they'd know 'mummy had acted' and I didn't let the situation go. (Woman 5)*

## Women had 'had enough'

A common theme for the women in their decision to take action that they had just 'had enough':

*We were together. So we hadn't separated. But it just took its toll and enough was enough. I wasn't, you know, going to put up with it anymore. I was sick of my furniture being damaged, my wall being damaged, you know. (Woman 35)*

Woman 15 recognised that the violence was affecting her health:

*I'd had enough. And yeah, I went to the doctors because I wasn't feeling well. And then I just decided that I was – because I got to the stage where I couldn't go outside and all that sort of thing. So I went to the local Police station and it went on from there.*

## Getting stronger through support and information

Getting to this point for some women also involved both having 'had enough', together with becoming stronger, often because of support, either formal or informal. Informal support was provided for one woman by her mother and for another by her brother.

*... and mum said to me 'Look, you don't have to put up with that. Let's go and just talk to the Police and see what they say'. (Woman 32)*

Woman 1 had become stronger through the support received from several services:

*There was one time where I sort of got a bit stronger. I'd not been with him for a while. He tried to get me back again and I sort of said no ... And he found out that I was going away without the kids and then he started sending me all these threatening text messages like 'wish you'd commit suicide', 'wish you were dead', all these sorts of things and just really awful type messages ... I was getting support from the DoCS case worker and I was getting support from a counsellor that I was going to see every 2 weeks. And I sort of got to the point where I wasn't going to take it anymore. And all of those messages and just everything else that had sort of happened, 'That's it. I'm going to go to the Police'.*

## Make their partner realise that violence is wrong

For some women, part of their motivation in applying for an AVO was to try to get their partners to realise that what they were doing was wrong and harmful.

*[H]e just appeared to be so out of control and he was clearly intoxicated with something ... it must have been about 11 o'clock at night and I just ran up the street and somebody saw me with a small child and offered me a lift and I went around to a friend's ... He came around and just didn't seem worried about it. Ignored it that there was a problem – wouldn't acknowledge, just nothing. ... I*



*applied for [an AVO] through the Police ... I just don't think he really believed that I would follow it through ... I suppose I was trying to see what he was doing and I was trying see – make him realise, you know, I was hoping that he would acknowledge in some way, you know, what he'd done ... But it didn't get any better, it just got worse. (Woman 2)*

*Like it was good that I did that because it made him realise that he can't treat us like that. That we deserve to be treated better me and the children. But it just made it really hard. Like I felt really slack and bad to him that I had to do that but it was the only way to make him realise and for me to realise too that we need to be treated properly, you know. (Woman 36)*

## **Fear as both motivation and barrier**

Fear was a driving force in women's decisions. At times it propelled them into using the legal system; while at others it had been a barrier to them acting earlier:

*So I was fearful of taking that AVO out because I was in a relationship for 15 years with him, and never once contemplated it ... I was too scared. He always said to me if I ever contact the Police I'll kill you. You live with that fear ... (Woman 28)*

*He threatened me when I was pregnant with [my youngest child]. I had letters in the mail box saying that they were his kids and no-one's going to stop him and I'm dead. Just things like that. (Woman 33)*

## **Fear of making things worse**

Fear of repercussions and making things worse had inhibited many women from seeking an AVO in the past:

*I've tried to before in the past but then he threatened me and I didn't go through with the AVO before in about 2002 or 2003 ... Like I just went and talked to [the Police] and they just said 'Well it's up to you. If you want to give a statement but if you tell us any information, be aware that we might have to go and arrest him'. And I was just like 'Oh no, forget it'. I didn't go through with it because I was scared of the repercussions, you know. Because I know how really violent he is. (Woman 36)*

Taking legal action for the first time is a new situation – women don't know whether the order will be granted or not; whether their use of the law will make things better or worse; or whether there will be retribution.

*It was scary ... Because I didn't know whether they were going to give [the AVO] to me or whether they were going to say no. (Woman 35)*

*He was arrested on the Friday night and Court was on the Wednesday ... And [those days in between] were terrible. The first thing I had to do was change the locks on the house and there had been quite a lot of break-ins around town and I had to wait and they didn't get that done until late Sunday afternoon ... So I lived in fear for those couple of days until I had my locks changed. (Woman 7)*

## **Fears for the consequences for their partner**

One Aboriginal woman's reluctance to use legal protections also stemmed from the fear of the consequences for her partner:

*And that's why I was worried because I know if he was arrested and put in gaol, he wouldn't last. You know, he wouldn't survive in there. But I mean, that's still no excuse for him to be violent. I don't know. (Woman 36)*

## Encountering the consequences of previous decisions

Many of the women described earlier times in the relationship where they had been reluctant to take up legal protection. This could become a barrier when they were later ready to do so:

*[The Police] advised me to apply for an AVO at that time and to go to the Police station the next day and apply for it. I went to the Police station the next day and I told them everything that had been happening and I just couldn't go through with it. A lot of things had been happening while I was pregnant too, and I couldn't go through with it and I just said to him: 'This will only make it worse. I'll try and make things better.' They got me to sign a notebook when I did this. (Woman 8, whose subsequent application for an AVO was not granted)*

*The hardest part, for me, was trying to get – convince the Domestic Violence Liaison Officer that I needed the AVO. I had one in the past that the Police came out to the home and there was evidence of the assault this time. And they photographed it and everything and then they took out the AVO for me. Probably my husband should have been charged then but he wasn't, which is a little bit of my fault because at the time – I've always protected him. He's assaulted me and I've not reported it. Always protecting him thinking he's the father of the children, he's the provider of the home, he's just got angry. I've made him angry, it's my fault. You always think it's your own fault. (Woman 21)*

*And at that time, I knew that I had legal obligation to let [ex] see the children so although I felt that I had to act in order to protect the three of us from further abuse, and that there would be a record of the assault, I was also very afraid of how he would react because I had never reported him before. So I downplayed the whole incident which I really shouldn't have done. But the female Police officer said to me that if I told her and she wrote down in the statement that he actually punched me, then she would be bound to go round and immediately arrest him and charge him. And I just felt that that was too much. So I said 'no, I don't want that included'. And I think if the clock was wound back, I would definitely say 'yes, do that, please.' (Woman 5)*

One woman who had eventually escaped a controlling relationship with severe, escalating violence described how in the earlier stages of the situation she wanted Police help for her immediate safety, but feared going further through the legal process:

*... I quickly opened the garage door from inside and opened it and ran to my neighbour's house ... That incident actually I didn't ring the Police. I kept quiet about it. Because by then I was so set up because I was ringing up the Police so often. They were just coming and the thought of me going through the process of going to Court was the reason why I actually didn't want the Police to come. It's all right if the Police came – all I wanted for the Police to come was come and scare him or just get him. (Woman 14)*

One of the Aboriginal participants described how her previous reluctance to proceed through the legal system became a barrier when she later wanted help.

*My first relationship, I had AVOs against him numerous times. And Police got sick of me because I keep dropping them. Because I kept, you know, taking them out and then dropping them – I was just putting them on and taking them off, putting them on and taking them off. ... They like got sick of it. They did get sick of it. It backfires on you ... Because you want help and they don't come straight away – sometimes they don't even come at all. Or they're fed up with you. (Woman 34)*

Another woman also found future assistance difficult to access because the perpetrator's role in her previous decision not to proceed had not been recognised.

*And when I asked for an AVO because when he assaulted me and the Police came to the door and he's got a knife in my back telling me 'sign it and say there's nothing wrong'. And I did. When I went to ask for an AVO, when my mother took me down there, they didn't give me one because I had signed the book saying that there was nothing wrong. (Woman 38)*

Woman 21 did not want her husband charged and asked for the Police initiated AVO to be reduced from 2 years to 6 months:

*And at the time [of the assault] I'm still thinking to myself 'it's my fault. He's angry. I've made him angry.' And I said to the Police: 'Well if you charge him, he gets a criminal record. I don't want that for him. I do love him. I don't want an AVO that excludes us from living together' and all this. And so that happened. And then what happened as well was the AVO was meant to go for 2 years. By the time we got the AVO and it was time to go to Court, my husband had talked me out of it. So I went in there . . . and said to them: 'Oh he's behaving, can we reduce it down to 6 months of an AVO' and they organised it and we had it done. And then I was safe for 6 months.*

In that time there were no further assaults and she thought that things had improved, but it did not last:

*I had no idea – I just thought 'oh how life's changed around', it was a good thing that I reported to the Police because now he's a new man. But we get to the end of the 6 months and I'm not even thinking that we're 6 months down the track and he started assaulting me again. And I said: 'You're breaching your AVO' and I said 'I'll call the Police' and he said: 'You can call the Police because it won't matter because the AVO's expired'. He knew the date. And that was so awful for me that I thought our lives had changed but he was just holding it all in and building it up to get me.*

## Summary

Women in this study sought legal protection when they recognised that the abuse was escalating, often because of a particular incident of violence and to protect their children. Some wanted to let their partner know that the abusive behaviour was wrong, and others were encouraged to take action through support and information from both formal and informal sources. Taking this step into the formal service system was both motivated and inhibited by fear: fear of retaliation, of making things worse, of disloyalty to their partner and of handing control for 'managing' the situation to an unknown system. Many women talked about previous times when they were not ready, for a variety of reasons, to pursue legal protection. Unfortunately, this previous reluctance could then become a barrier to their accessing assistance when they were ready to take this step.

## Going to court

### Facing the perpetrator

Given the pervasive context of fear surrounding women's entry into the legal system, it is unsurprising that facing the offender in Court represents a major challenge for them.

*I had to wait about 3 to 4 weeks to actually go to Court. But I couldn't go to Court because I couldn't face him. My domestic violence lady [from WDVCAS] actually went to Court for me and did the AVO. If I could go there, I probably would have got more years on it but I just couldn't go, I was too scared. It was just like if I go down to [suburb] I'm thinking that he's going to be there and I'm petrified he's going to get me. (Woman 33)*

*I was put on the stand. [Ex] didn't, as far as I know, didn't even have to go on the stand. I was put on the stand and I was already nervous because I knew he was going to be there ... I'm standing there in Court in front of him knowing that he's going to be – mentally and all – it was just like trigger, trigger, trigger and knowing he was going in – you're going to start crumbling and 'I know you will'. And I could just hear him and his voice the whole [time] while I was standing there. And I thought – I felt like the aggressor because of the way I was being treated in Court. And I thought 'this is wrong'. That the victim here has to stand up in front of him and defend herself. (Woman 2)*

*And the Chamber Magistrate said to me: 'Well, what will happen is if you take out an AVO, you can do that. But because they're flowers and cards and 'nice things', you know, it's going to be pretty hard. They will have to be in Court with you, which is exactly what they want. And I said: 'I can't do that. I don't want to be in the same room as them.' And she said: 'There's no way – they can say that they disagree with the AVO and so then you'll have to go to Court and that will have to happen.' And I said: 'Is there any way that I wouldn't have to be in the room with them? And they said 'No.' So in the end it was so distressing that I was just so upset I said: 'So there's no way to protect me in any way?' And they were like 'No.' (Woman 6, being stalked by family members using seemingly 'innocuous' cards and flowers)*

The common experience of the woman feeling that she is the one 'on trial' was echoed by Woman 31 who also described the frightening experience of being in Court:

*So it's them by themselves against this big Court system – it's like they're stepping into two different worlds and you wonder why we feel so torn because it's like, I don't even understand the language that these people are speaking. I don't understand what they want from me. I'm being put on show like I've done something wrong and I'm the victim.*

Not knowing what to do at Court can increase the stress experienced by women:

*I got there and didn't have a clue about where to go, where to sit and the actual offender was in the same area as me. I was lucky that I had friends that came with me. And I ended up asking, I assume the wrong person – the Aboriginal Liaison Officer - what you do. And then figured out 'ok this is what to do' and then I asked the lady and you just virtually have to wait all together. (Woman attending rural Court where there was no WDVCAS)*

Woman 5 described her experience of the public exposure involved in appearing in Court:

*I found it very intimidating. I've never been in a Court room before. And I was actually – you know, I'm no shrinking violet, but I felt that, you know, with the Magistrate sitting there and then – because it was a hearing, you had a Court room full of people who were all in there for different things.*

She went on to say how important the support provided by the WDVCS and the Women's Legal Service was:

*And I just felt quite scared. But if it wasn't for the wonderful [Community Legal Centre] – it's a legal centre. And it's all free. So I went along there – there's a wonderful woman up here and she's with the Domestic Violence – like the Court Support Scheme*

## The importance of court support and advocacy

The support, advocacy and information and the 'safe room' provided by the WDVCS was appreciated and commented on by many of the women.

*The Shine Room. The Court Support – absolutely brilliant. I can't remember her name – there was in particular lady, she's just – she's there every time. And I know, by face, I don't know a lot of their names, but it's the same group of women that are there in Court Support. And they're just fantastic.*  
(Woman 16)

Even though the Court experience did not go well for one woman, whose ex-partner was found not guilty of serious criminal assaults against her, the support of the WDVCS Coordinator was essential in shaping her experience of the legal system and in linking her into other services:

*It was just horrible. I was just sobbing and sobbing and sobbing with the Court coordinator and she said this seems to happen a lot. She said it's so unfortunate and she said that, you know, we're not getting this right. You know, domestic violence is very real. You know, we're not dealing with this correctly. And she said – she actually advised me then to apply for some domestic violence compensation. [WDVCS coordinator] was the first person to really give me any advice about – it was the first time I'd known about domestic violence [victims] compensation. And she was just – she was very understanding and she was saying – she'll be somebody I'd say would be very helpful to get in contact with because I think she realises how difficult it is for women to go through this process and how often – and the number of times that they do feel very let down.* (Woman 2)

Some of the Aboriginal women commented on the value of having an Aboriginal Court support worker and Woman 36 suggested that this support could be extended to having Aboriginal support workers accompanying Police:

*So I mean it was a bit overwhelming but there was a support there with me. They had a Koori worker there at the Court and she was the support person for me. So that was good. I think maybe if she'd come out with the Police when they did the statement ...* (Woman 36)

For some women, support was provided both by their ongoing worker and the WDVCS:

*[Court] wasn't that bad because I got with the Court Assistance Program, so that I didn't have to see him. I could go into another room. That was a good experience. ... I got to Court early in the morning, sort of before they opened and then my [early intervention] case worker met me there. She stayed with me all day as well, the DoCS case worker and we got taken into – sort of behind the Foyer thing and taken through a few doors into another room where women can wait if they're afraid to see their partners. There was a little TV in there and there's, you know, tea and coffee and stuff like that and other people there and you can talk to people.* (Woman 1)

A number of women commented on the 'safe room' positively. For example:

*[T]o be sitting in a safe room was just, you know, it made you feel as if you were tucked away – and I think there's cameras there and everything and you're never really left alone there. And there were other women in there with me.* (Woman 5)

*Because the perpetrator was like hanging around and stuff like that so it was good to have a place to go and be and not have to worry about being around her. (Woman 3)*

*But I've got to say [Local Court] are fantastic. They know me so well, Shine Room and all the security guards and all the Police ... (Woman 16)*

The contrasting experience of Woman 13 from a rural area demonstrates the impact of inadequate support at Court. She was terrified during the two weeks leading up to Court: 'I was a mess before I got there.' She felt totally unsupported at Court: 'It was terrible. It was terrible. They didn't look after me there. I had to wait there for hours and see him.' She felt uncomfortable in the safe room and said that Police weren't protective of her. Because the Police Prosecutor's office was right next to the men's toilets, she ran into the perpetrator, which really rattled her. In Court, her ex-partner kept glaring at her such that: 'I felt completely vulnerable in my emotional state ... The Court process provided exactly the opportunity for him to do exactly what I was trying to stop him doing.'

Woman 10 (also in a rural setting) reported receiving no Court support:

*I took a girlfriend with me and that was about it. He never even showed in the end, but it was still the fact that, you know, all the night before and that I'm like 'oh you know he's going to turn up' and you know ... And to me, like everything just seems to work in his favour because he's got money and I don't. He had his solicitor there ... They told me I didn't need anybody. Well, we just waited out the front of the Court House till my name was called and then we went up there and they just go 'it's been granted'.*

## After the AVO

### Breaches

The effectiveness of protection orders depends on the willingness and ability of Police and Courts to enforce them. This has been an on-going issue of concern in many jurisdictions, including NSW (e.g. Katzen & Kelly, 2000; NSW Ombudsman, 2006; Peirce, 2005; Robertson et al., 2007). While not the focus of this research, many of the women provided examples of situations in which the Police had not acted as they hoped in response to reporting a breach of the order. This undermined their faith in the protection provided by the order. For example, Woman 10 had moved to a larger regional centre because she did not feel that the order offered protection in a small rural town:

*It got to the point where I didn't sleep because was he going to turn up to my house because every time he broke the AVO, the cops go: 'Oh well, you know, we'll just let it slide and see how he goes and that'. And it's like 'you're not getting the point of this whole exercise'.*

*He broke the [interim] AVO four times. That interim AVO and the Police dropped it each time, I don't know why. I even done a statement out. They would not charge him ... But he comes into the house. He's not supposed to go to the house. He's not supposed to come inside the house. And he got off each time. I don't know why but the paper says – 2 ½ years jail, \$4,000 fine and he didn't get either one ... (Woman 12)*

*Many times [he's breached it]. And the Police have done nothing ... The breach was he threatened me outside the Police station and that he was going to kill me [when my child was there for one of the handovers]... I just kept walking. Waited until I got into the Police station, he was off his face. Reported it to the Police. I was a mess. The Police Officer could see I was a mess ... If you report it, nothing is done anyway. They take your statement. Then the following day they did arrest him. I'd gone home. I'd gotten a phone call ... they had to release him. They didn't have any grounds to hold him. He's breached the AVO. What – does he have to kill me before you do something about it? I mean, the Police Officer was really nice. Didn't work. (Woman 35)*

A common theme in the accounts of the women was that the response to reporting breaches was often inconsistent, meaning that it can be the 'luck of the draw' on who responds to reports of breaches:

*[T]here was other incidences which occurred which I thought constitute breaches like him ... turning up at my friends' houses and asking my friends to contact me, was a breach of AVO. Or him ringing my work clients and asking if I had affairs with them was a breach of AVO or him writing [threats] things on msn ... or him trying to hack into my email address all the time, change the passwords was breaching the AVO and the [suburb] Police would say 'no, that's nothing'. And then the [other suburb] or the [other suburb] Police would say 'that's breaching the AVO, you need to speak to the Inspector'. You need to speak to the sergeants and I'd speak to them and they'd say 'no'. And then they'd say, 'you're cop shopping'. (Woman 20)*

For some women, it appeared that the Police would only respond to physical violence, when their order covered a wider range of intimidating and abusive behaviours:

*I did have about 4 clauses or something [in the interim AVO] – I can't remember the number but he could not do intimidate me, and verbally abuse me and he could not, you know, like the harassment. He cannot go to my workplace and that sort of thing, but it continued and – even when I told the Police, they said they couldn't do anything about it because there was no proof because he kept on denying it all the time ... They said if he does any physical abuse and all that, you just ring up and we'll arrest him. But when I initially did that, they couldn't because he said: 'I didn't do it'. (Woman 14)*

*I think the thing is for me is that there is no way that I can prove the stalkingness. And I think that is a fine line where you don't feel protected by the Police because it's like the last time I went to the station, like after he'd turn up to the football match, I went to the Police station and I said: 'Look, he's turned up' and she basically said: 'Oh well, it's a public place'. And I said 'I want it recorded. I want an event number'. I said: 'Because if it happens again I'm taking it further'. And then I contacted the domestic violence – you know, like the Police liaison? And they basically contacted him and sort of said 'look mate, you're breaching the AVO'. He's like: 'oh I'll do what I want'. (Woman 28)*

From the perspective of the Police, there is a need to collect evidence of a criminal offence, which an AVO breach comprises, and this is often difficult. Some of the women acknowledged that a cunning offender could make this very difficult, while still continuing to harass the woman:

*He's not a stupid man either. He sort of has been able to do a lot of harassing without actually breaching it. But it was only a couple of weeks later and he rang my daughter, because she doesn't live with me and she spoke to him – technically it's not a breach ... Because she spoke to him, it didn't constitute a breach ... he didn't threaten her but he was still on the same obsessive path where he was: 'I still love your mum, blah, blah' and then started sort of swinging completely: 'Well it was her own fault, you know, she knows how to push my buttons and she did this, that and that' – you know like, I suppose it wasn't threatening but it definitely wasn't a nice phone call for her... (Woman 9)*

Other women did not think that the Police had made adequate efforts to collect available evidence of a breach:

*Well prime example, when he broke the last one, my brother was there and my cousin – now he told my brother and my cousin he was going to kill me. Now the Police never even rang to get their statements. He broke the AVO pretty bad stating that. And they didn't even take his statement or my cousin's statement. (Woman 10)*

When a breach occurred in a health facility, witnessed by staff that intervened, Woman 4 felt let down that these important witnesses were not interviewed:

*And all [Police] had done was spoken to two people from my [mental health] group who both have cognitive disorders as well. But they didn't speak to any of the counsellors. They didn't request the [CCTV] footage ... they just dismissed it. So [the Magistrate] thought that I was trying to blacken Mr X, the offender. And I was really, really hurt and angry and vowed that I would never, ever report to the Police again.*

One of the women provided a good example of how consistent reporting and response by Police were important in 'giving the message' that there were consequences. Her situation involved concurrent criminal charges for very serious assaults that had occurred during her efforts to separate from the relationship. In her distressed state at the time of the crisis of the assaults, she had agreed to an order that the offender was only to not approach within 50 metres of her, a condition that she later realised was insufficient:

*He was very quiet for about the first 5 weeks and then every time after that I tried to leave my driveway to go to work, go around the corner, he'd just be sitting there ... Just continual harassment probably for 12 months ... he breached it – like I said it was a mild breach because I'd left work and he came into work and I think he was continually trying to make little steps forward without being pulled up ... The Police were very conscious that I was worried. So I think he was making little continual steps. He rang me, well I'm 99 per cent sure he rang me to hear my voice. I don't know why or to make sure I was at home or whatever it was. Then to go into work to see if he could get away with it I think. And if he got away with that, then there'll be a next step. So he was breached on that. I think if you're conscientious with the AVO, which in this case, I have been – then it starts to pull back. If the little breaches made this keep going and it sort of not reported, nothing's done about it, I don't think it really stops them. (Woman 9)*

Woman 20 expressed what many of the women felt about the importance of every breach, even if considered 'minor', being responded to so that offenders get a consistent message:

*And I think that breaches of AVOs should, even if they're minor – like a telephone – this person knows that they're not to breach the AVO that that's breaking the law. If that happens then they should be charged. Like minor breaches should be treated just the same ... It might be just a phone call to the Police but what was said on that phone call, threatening or intimidating the person on the other line, it makes them feel worse.*

Women who were still living with their partner found it particularly difficult to use the AVO by reporting breaches, because of the threats and intimidation by the offender:

*But then if I say to him ... 'Keep going and I'm going to ring the Police' or 'You're out the door' or whatever I say to him. And he goes, he comes over to me and then tries to threaten me and gets all up in me face and he just makes me real fearful. And he said to me: 'If you ring the Police, I'm going to hurt you and I'm going to hurt the kids' and all this, you know, just all these empty threats. It just makes it hard because sometimes I think 'well what's the point of having the AVO' and then if I ring the Police and he gets taken away, he's going to come back like he did before. And then I worry when he comes he's going to be twice as angry and destroy the house and hurt me and the children you know. (Woman 36)*

Woman 14 was still living with her partner at the time she was involved in proceedings through a series of applications. She felt that the failure of Police to act emboldened her partner to threaten her and undermined her confidence that it was worth the risk:



*They said if he does any physical abuse and all that, you just ring up and we'll arrest him. But when I initially did that, they couldn't because he said: 'I didn't do it'. Then afterwards I just gave up. Because every time I rang the Police, he used to make my life miserable at home. So then I said: 'Ok, what is the use because I'm not getting any result out of it. I might as well not worry about it. Just bear with it and get on with it.'*

Losing faith in the potential protection of an AVO both contributes to women's sense of fear and injustice, and makes it less likely that they will pursue legal protections in the future.

*I felt let down [when the offender was not charged for breaches] – if something's said on paper what happened if you breached it, that's what's supposed to be what happens. But the Police never done nothing ... I felt a little bit safer with that paper. But when he kept breaking it and getting away with it, I thought it made me a bit funny, you know ... Because I wasn't given a fair go ... (Woman 12)*

## When the AVO expires

The time-limited nature of AVOs provides some challenges for women in deciding what to do when it expires. One woman describes her decision not to pursue an extension:

*I actually did go and try and see if I could extend my AVO and I then decided not to – I must admit he has been behaving in the last while. I don't know whether it's because he knows that he has to – because there's been a few hiccups, but nothing too drastic – but I didn't feel, because he hadn't physically threatened me in the last while, I didn't feel that I had enough evidence to ensure that I would get another AVO and so I didn't apply for an extension. Plus I thought – I felt quite disillusioned after that last experience, so I just felt I just couldn't go through that again. I'll not risk not getting one. And I think if I didn't get one, [ex] would he actually love it – me not getting one. I just thought I'll have to wait until he does something sort of significantly, which – so you're left with the waiting. (Woman 2)*

An older woman living in a rural town had the support of the Police in extending her AVO, but was anxious about the outcome:

*The AVO runs out this month and we're trying to have it extended because the good behaviour bond runs out the end of [month ... I just have to go back to the Police and between the Police solicitor and [counsellor]. And [counsellor] has wrote a letter and the Police have put their letter in and we've just got to wait now ... They're not over confident that we can extend it, which I am worried what's going to happen after that. (Woman 11)*

Woman 26 had escaped severe domestic violence that involved the abuser forcing her to engage in sex work and drug use. She found that trying to obtain an extension for the AVO privately was not effective:

*And the Superintendent or whatever he's called, he ended up putting a full AVO on him where he wasn't allowed to come around and all that sort of stuff ... and I had it for another 12 months. And then when I went to extend it myself – I went to the Chamber Magistrate, made an appointment and did all that, and went to Court. But because I didn't go into the Court with the Police backing, I didn't get my AVO, which was like 'You're kidding – You've got all this information' – like I've been able to obtain one. I want an extension and because I haven't walked in with the Police, I'm not going to get it. So I had to go back to the Police and I got another one and I got it for 12 months again.*

She felt that she would be unsafe again when this expired, but anticipated problems in further extending it, despite her recognition that she remained at high risk:

*Because like I already know that once the AVO is finished and dealt with, then [ex] will cause problems in my life again ... But because there's been no Police reports for the next 5 years, I know that when*

*I go back, I'm going to have trouble getting an extension ... because you've got to have evidence in Court to prove that what you're saying is the truth ... And make it easier to get a lifetime AVO. Because that's what I really want. In my circumstances, I require a lifetime one. Like it's been 7 years since I've separated from him ... He's still asking people where I am.*

Woman 20 experienced great difficulty in getting another AVO after the first (for 12 months) expired. This was a case of severe controlling violence with many high risk markers: access to guns; domestic violence and AVOs in previous relationships; breaches of previous AVOs; and stalking. The perpetrator had the resources to employ expensive, consistent legal counsel and a supporter provided him with an alibi for breaches. The Police- initiated application for a further order was unsuccessful, as was the woman's subsequent effort to get an order privately:

*And I had fear. He had a gun. He has a suspended sentence. He was still on a suspended sentence when I applied for the AVO from the breaches from the previous one. He's able to access guns. He's still stalking. I have tampering with [my] vehicle and I fear that I don't know what's going to happen to me if I don't have an AVO. So I thought that was enough but it wasn't. It was 'a point scoring game' the judge [sic] said.*

Losing the safety that the AVO had provided was also a concern for Woman 28. Research indicates that women are good judges of the level of danger that the abuser poses (Cattaneo & Goodman, 2003):

*I do have a lot of concern come the end of my AVO. I have a fear that – because I feel like that's been my security blanket. And yet, I feared taking one out for 15 years! ... [A]pparently it's very difficult to re-apply. So I know I've been speaking to the family violence team ... I still have a very close affiliation with them because they're the ones that helped me set up my house and everything ... and they said 'Come [month], if you want to re-apply, you have to have really good grounds' ... He told the Police Officer, you know, 'I've moved on with my life. And I've got a new relationship' and all of this, that and the other. And I'm like 'well, if he's moved on why [is he] still hassling us?'*

For one woman, the expiration of the AVO did mean the loss of any protection:

*I was assaulted as soon as it ran out. I rang the Police and do you know what they said when they got out here to the house? This AVO's expired, there's nothing we can do. I thought 'you're joking'.*  
(Woman 21)

The very protections provided by the AVO can leave women anxious about what will happen when it is no longer in place:

*The AVO is there and he knows that and it's still current. But the thing that I'm worried about is when it's finished, when the AVO's finished – he knows it's finished and then he's just going to keep going the way he is, back to how he was before. Even worse.* (Woman 36)

## Risks of using the law

Engaging with the law for protection or redress from domestic violence carries both potential benefits and risks for women (Laing & Humphreys, 2013). For example, the risk of retaliation by the perpetrator is something that women take into consideration. Nor can the outcome be guaranteed. Research in North America has found that the introduction of policies of pro- or mandatory arrest has been associated with increased arrest rates for domestic violence. However, an unanticipated outcome has been an increase in the number of women arrested for domestic violence, either in sole or 'dual arrests', with the rates of increase in women's arrests greater than in men's (e.g. Deleon-Granados, Wells, & Binsbacher, 2006). While there is no similar Australian research, service providers have raised concerns about women victims of domestic violence who have been arrested (Braaf & Snedden, 2007). If a woman is wrongly identified as a perpetrator of domestic violence, this is a matter of injustice that can have severe impacts on her safety and well-being. These may include increased risk due to women's reluctance to call Police in the future; intervention by statutory child protection services; loss of care of children in Family Law proceedings; and loss of employment and hence ability to separate from an abusive partner.

## Women arrested and respondents to AVOs

Four of the women in this study had applications for AVOs taken out against them. Two of these were also arrested. Another woman described being arrested some years earlier in a previous relationship. Three of the women were Aboriginal, one a recent CALD immigrant and one Anglo Australian.

### Arrested

An Aboriginal woman whose arrest had occurred some years previously, was still angry at the injustice of the situation:

*I got into trouble for it because I lashed out and hit him first, after protecting myself. And at the end of the day, I didn't want to fight the Court case so I took the wrap on the hand. They actually charged me because he had blood coming out of his nose. But I didn't have the strength in me to fight that then, because a lot of the deal was 'just get over it' and just move on ... I told them everything ... Because I didn't want the shit. It was just a crock of shit. They didn't even want to listen to me in the first place ... They've seen the evidence and that was it. That's what I said, yeah what about the red neck? And there was marks on me but they were only red marks. They weren't black marks. Even with the judge when we went to Court, he even said: 'I don't believe that she hit you with no reason. I'm sorry but' – and [partner] being the smuck he was, he just lapped it all up. I thought 'yeah, lap it up mate.' (Woman 37)*

She went on to talk about the issues that underpinned her decision, crucial issues about housing and the welfare of her children:

*But at the end of the day, I didn't have the strength to fight them. I could have ... Me kids, so it was Christmas time. I had nowhere to live. I had to get out of the fucking house because he wouldn't get out. We're both on the lease ... your kids are in the other room screaming their heads off, which they wouldn't let me go near them, because they wanted to talk to them first. And that's what I thought 'youse are fucking kidding me.' Just fucking take me. That's what I said but I'm ringing a friend to make sure my kids don't see youse taking me away. At least give me that and I'll go with you. But don't take that from me because my kids don't need to see this.*

Woman 21 had not been able to extend her AVO beyond six months and was living with her children at a friend's home to get away from the violence, coming back to the house when her partner was at work to collect children's clothes and other essentials. While she had been reluctant for many years to have him charged or to seek an AVO, she eventually did so, but asked to reduce the length of his AVO.

However, he subsequently showed no such concern for her. She described an incident when she 'cracked' at the injustice of 'camping' with her children in a friend's small flat while her partner lived in the home they had shared (and which she had purchased):

*In the end, I reached boiling point and I lost my temper when they'd all left the house and broke a lot of the plates and things in the kitchen. And ... he called the Police and had me charged with malicious damage and got an AVO against me saying that I had been violent to somebody. This was all done with nobody in the house. I had rang him and said: 'Oh my God, I have lost my temper and there is broken glass everywhere, don't bring the kids home until we clean it up'. Well he didn't. He rang the Police and had me charged. And I ended up on Christmas Day in the cells for 7 hours while they waited for a judge to sign this interim AVO that said I was dangerous towards my children and everything – even though I hadn't done it in front of – there was no witness. But the Police pressured me and recorded the interview and told me I had to do it. And I didn't want to lie anyway. I said 'Yes, I did it. But then when I seen a solicitor, she said 'You probably couldn't have been charged if you didn't admit it'. . . 'But you've signed it. There's nothing you can do. You're going to get into a lot of trouble now'. So we went to Court and had to have the children's names taken off the AVO because I'm the person who cares for them.*

Her partner would then threaten to call the Police as a means of exerting his control over her:

*He said: 'I can ring them up now and say that you've harassed me and you can get handcuffs and in jail'. . . And on the AVO it said I wasn't to damage property because I smashed all those things. He's slamming the cupboards in the kitchen and saying 'I can just ring them up with the breaks and say you've done it and you can go jail now'. So I'm hiding in the bedroom, waiting for the Police to knock at the door. I didn't know if he'd call them or not. I got no sleep that night. He was pacing up and down the hallway – **so he didn't need to hit me anymore. He had the Police on his side so there was no need to hit me anymore** ... I'm terrified thinking they're going to put me in handcuffs and take me away and how are the kids going to go to school tomorrow? All that going through my mind thinking if I breach the AVO I'll get in trouble, but if he breaches it, they won't believe me. (Emphasis added)*

She expressed her sense of injustice that her loyalty to her partner resulted in her being seen as the offender:

*And then you look at – well where are the facts? The facts are yes, you were charged with malicious damage. Yes there is an AVO against you saying you're dangerous to your children. I never done anything that was. He was the victim and the protected person. There's the facts laid out. So how do I look? Where's my proof? I should have had him charged every single time. I should have went to the doctor every time. I should have had photographs every time. I should have told the doctor – when my teeth got knocked out, I told that dentist that I got bumped in the mouth, not the truth. I should have done it the right way. I should have said 'look, my husband smacked me in the mouth' and went to her she said 'you're going to lose these teeth'. She said 'they're loose. They're finished'. She said 'you're sure you just bumped them?' I said 'yeah, yeah, I just bumped them'. . . Because this is family. This is my family, you know. I'm supposed to protect my husband. I'm supposed to feed him. He's supposed to go to work and bring the money home to put the roof over our head. I'm supposed to do all that cleaning and the feeding and the clothing – he always told me 'you don't do on your husband'. You don't – this is not what family does to each other. (Woman 21)*

Woman 35, also Aboriginal, cut her ex-partner's hand when trying to protect herself and her toddler daughter when he turned up and tried to enter their home. She was charged with a serious criminal offence - assault with a deadly weapon - pleaded guilty and received a 12 month Good Behaviour Bond. She was subsequently supported by a relative to take out an AVO against her ex-partner:

*I was charged and I've never done anything in my life. Anyway, so I now had a criminal record. He tried entering the house by the screen door and I picked up a knife, which was the wrong thing to do*

*I realise that now, but at that time I didn't think it was. Anyway, I hit him on the hand with it. I think I cut his little finger or his thumb, I'm not too sure. It was just a graze. Well he had me arrested and I was charged. The Police then took out an AVO on me on his behalf.*

She described the impact of the arrest:

*Well I was making a cup of tea and my brother was there and my dad was there. Next minute the Police come to the door and: 'We're looking for [woman's name]. We need to arrest her.' They didn't handcuff, they were nice. They didn't handcuff me. They didn't want to humiliate me in front of my daughter. They took me out the front and there were 3 bull wagons for a little person like me. Not that I care but anyway. Yeah, and they just said 'we have to arrest you. You're under arrest for assaulting [ex]'. OK. Fair enough. 'We won't handcuff you because of your daughter' ... They locked me up. And it was terrible. If you wanted to go to the toilet, they had to come with you. It was horrible. I've never been inside a Police station. Never in my entire life. Scary.*

## Cross applications

Woman 17, a recent immigrant woman with limited English, applied for an APVO against the new partner of her ex-partner, because of ongoing harassment with phone calls and text messages. The other woman took a cross application AVO against her, necessitating her paying for legal advice. She was never assisted by an interpreter, either in many contacts with the Police or in Court. However, she received some invaluable support from her neighbours and a TAFE multi-cultural support worker. She was acutely aware of the extent to which her immigrant status shaped her experience:

*Because my country is very, very strict. And here, you have proof in your mobile, that's showing phone calls and smss where it is so badly abusing and putting you down as a human being, you are nothing in this country. And they say: 'Oh we can't do nothing about it. Sorry. It's not threatening your life' ... It's so bad, going to Police station, you are trying to get help and you will not get help ... in my case, I do not know this country law. I don't know this country my rights ... And I'm a daughter of, in my country, a work hard [professional] who work for 36 years for my country. And here I am nobody and nothing ... I am telling you, Police will send you maybe to hospital for crazy ... And I have been many, many times at the Police station. And one day, Police station call me and they told me that I must immediately come to Police station ... And they served me with an AVO from this woman [ex new partner]. Then she got AVO interim hearing. She immediately got, because she knows the system...*

Woman 30's ex-partner, represented at the AVO hearing by barrister, took out a cross application. She received legal advice from the duty solicitor to accept the AVO to 'get it over with', and that she should: 'Just accept it – it shows you don't want to see him'. Community Services also gave that same advice. Against her better judgement, she reluctantly agreed. This is now being used against her in Family Law proceedings, as discussed further in Chapter 4.

While generalisations cannot be made from this non-random sample, the experiences of Aboriginal women and the CALD immigrant woman highlight the additional complexities and risks that confront women from disadvantaged social locations in their encounters with the law. The examples cited here convey the terrible sense of injustice that women experience when arrested or subjected to a protection order, creating a barrier to further legal engagement. The issue of women being arrested and being defendants in AVO matters was one that was identified as a growing concern by service providers in the focus groups. Indeed, with the move to proactive policing of domestic violence, this is an issue confronting many jurisdictions<sup>17</sup>.

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<sup>17</sup> The NSW Police Force is responding to this concern by participating in a research project: Pro-arrest policies, dual arrest and the policing of domestic violence: Building the knowledge, with a research team from UNSW, UTS, USYD and the NSW DV Coalition

## Summary

The women described their fear at facing the abuser at Court and the additional features of the unknown and intimidating Court context that can add to their sense of being overwhelmed. The courage required by women to face their abuser at Court cannot be underestimated, whether or not they are required to give evidence. Where it was available, the women spoke unreservedly about the support provided through the WDVCS. In rural Courts where this was not available at the time of the interviews, this support service was sorely needed.

Having been through the process, it was disappointing to many of the women that Police were unable or unwilling to act as they hoped in responses to breaches of the AVO. They also faced the dilemma of ensuring that they were protected when the AVO expired, describing a 'catch 22' situation in which they still feared the perpetrator and understood, more than anyone, the risk that he posed, yet little assistance was available if he had not breached the order.

The experiences of women who had been arrested and/or become defendants in AVO applications serve as a reminder that women seeking assistance with domestic violence face risks beyond those posed by the perpetrator's violence. All women, and women 'on the margins' in particular, may be rightly cautious in making decisions about whether or not to use the law to deal with domestic violence.

# CHAPTER 3

## Key issues from women's perspectives

### The importance of the initial response

Women, who initiate the AVO process, have usually experienced domestic violence over a considerable period of time before seeking help. This can be seen in the IPV group where just over half the women had been in the relationship for more than 6 years, and of these, 9 women had been in the relationship for more than 10 years. Barriers to seeking legal protection can include fear; not naming their experiences as domestic violence; hoping that things will change; and loyalty to their partner (e.g. fear of his getting a criminal record, losing his job).

This means that when women take the step to seek legal protection, the initial response is crucial. This is the point at which they assess whether they should take the risk of reporting the violence and asking for help. For example:

*After that incident [attempted strangulation] he kept harassing me on the telephone and calling me and saying that he was coming to my house and he was going to break in and do this and do that and all this sort of stuff... Harassment. Not leaving me alone. So I took the messages on my phone to the Police. And I showed them and like initially I just walked into the Police station and showed the guy at the desk and said: 'I wanted to do something about this. I want to get an AVO on this man.' And he said: 'Well you can't go through us because those messages, that's not many. We've seen worse than that. We've seen messages worse than that.' And I felt really terrible about that experience at the Police too. I just walked out of there going 'Hello, you know. I'm scared for my life. I'm scared for my child.' (Woman 1)*

This example points to an issue that was raised in the service provider focus groups concerning the level of skill of Police in assessing the risks that women are facing. In this case, the woman did not tell Police about the incident of attempted strangulation, or her fears for her safety and the safety of her child. Had she not been persistent and gained strength from involvement in counselling, this may have been her one and only attempt to access legal protection. However, she persisted, trying again with the support of her early intervention caseworker:

*That wasn't a very good experience either because the two Police Officers just sort of were very nonchalant about it and they actually rang him while I was giving the statement – to talk to him, like in the room – they went out of the room and talked to him so he's told them a whole heap of bullshit and, you know, and they've come back and said: 'You're not going to get anywhere with this. We're not going to help you with the AVO!'.. she said to me 'Oh it sounds like you're trying to get back at each other and we're not going to be part of your game, revenge on each other'. And it was like 'You've got to be kidding me!' I'm sitting here with a DoCS case worker... And that sort of made me really angry. I got out there and I said to my case worker, I said 'If they don't do anything about it, I'm going to go to the media.'*

She makes the point that other women, especially those without any support, may give up at this point:

*Like at that point I was getting pretty strong and I'm a pretty strong person anyway but what sort of got me was... women [who] aren't that strong or have been in that sort of relationship for a while, it's hard to break out of – if they had those initial experiences with the Police, they're going to think that they've got no options, you know what I mean?*

Losing faith in the Police can impact on women and children's future safety:

*Before this relationship, I had no reason to even be involved with the Police whatsoever, sort of thing. So I was thinking, you know, Police will help me. They'll help me. They're there to help. They're there to protect me. They're there to, you know, look after me and make sure that I'm OK and that my kids are ok. And then I got there and it was just like total opposite of what I thought should happen.*

However, it was not uncommon for women to report that their fears and concerns were minimised by Police. For example, Woman 8, who was sexually assaulted by her ex-partner during a contact visit, had previously tried to get help from the Police a number of times, but had been told that her situation was 'not serious enough':

*Now before applying to this, I had gone to the Police in the past year numerous times to obtain an AVO and I had been turned away because they had said to me: 'Women who get AVOs, generally it's those women where there's a gun and there is something to prove that there is a fear of safety.' This man was turning up at my home – I ended up in Court when my son was 5 weeks old because he was just visiting all the time and he had upset me.*

Women 15 reported that if the violence did not involve physical assault, that it was difficult to have a complaint taken up by Police:

*But in my opinion, because I wasn't hospitalised or I didn't have visual scaring on me, the Police weren't interested. They didn't think it was urgent enough or, you know, nobody said to me: 'We're going to go and serve him with an AVO.' Nobody suggested that AVO straight away, except when I went to counselling.*

However, in this case, the referral of the woman by Police to a specialist domestic violence service did put her on a path to assistance:

*... over the 6 months there was a lot of pushing around, there was a lot of arguing, there was a lot of abusive language and I wasn't game enough to go back to the Police station. And then I moved out. I got my own house and all that sort of thing. And then I just kept on recording what was happening in a book, and all that sort of thing. Keeping the messages on my phone. And then one day I just had enough and my counsellor came with me to the Police station and I said: 'That's it. I want to take an AVO out.'*

## Mixed views on the policing of domestic violence

Some of the women reported that proactive Police action in taking out the AVO helped them to get past their fear of taking action. For example:

*The detective said: 'Yes, we're just going to apply for the AVO.' ... In certain circumstances when you're a single mum, you want to make the right decision for your children and for yourself but in my circumstances I had one child that didn't want to know his father, and then I had another child that wanted to see her father ... But he made the decision for me which took the responsibility off me – it didn't matter whether it was the right decision or the wrong decision, the responsibility of that decision was taken from me. So at that stage in my life, I needed that because it was too much conflicting interests in my life to be able to make what I considered the right decision in that. (Woman 26)*

Another woman, in contrast, was fearful that Police action would make her more unsafe, although she supported proactive policing as a general approach. Her response highlights the complexity of policing domestic violence:

*I think the Police are fairly good if they come to an incident and they see that it's needed, they step in and they'll put the AVO in place. The hard part was though that not everybody wants that either.*



*So I actually felt the night they did it for me that they put me in danger. Inadvertently they put me in danger by doing that. Because then they served it on him and I was quite stressed because I felt that it could escalate it. I think the Police, if they can see there's a need for it, they can step in and they do it and I think they're a good thing to have if you're dealing with somebody that's stable enough, to pay attention to the restrictions on it ... It depends on who you're dealing with. And I think sometimes women have a fair idea of what they're dealing with. I mean, some men you can't do anything with. And others you can. So it's hard to say. (Woman 9)*

Several women reported that putting the responsibility for the decision about Police action onto them was not helpful and in some cases, escalated the danger they were facing:

*[H]e turned up at the front of my house and after 2 hours of ringing the Police they finally turned up and he was at the front. And they called me out the front and said: 'Would you like us to let him go or take him away?' And my ex-partner was nodding his head from side to side. So I said 'just let him go'. But I feel like they shouldn't have asked me to come out there anyway. (Woman 20)*

*They come and they'd calm [ex] down but it was because they'd ask me do I want him removed and because I was so scared of what he was going to do to me, I'd say 'no'. (Woman 26)*

Nor did failing to be proactive help women who were trapped in a relationship and self-blaming:

*The Police did not help. They'd come to the home, see him drunk but not remove him and say: 'Well he's got nowhere to go but you have'. So they'd stand there while I packed the children up in pyjamas and everything and watch him so I could go away safely. But I'd have to go to my girlfriend's [place] and sleep on the lounge with the children. (Woman 21)*

This response was especially disappointing to this woman because she had delayed seeking help for a very long time, making it a huge step for her to take:

*See I went through that for years, not ringing them. Then I thought well maybe if I ring the Police you'll know I mean business. That I am going to report him here. He's not allowed to assault me. So I started ringing them and they'd just leave. 'Why are you staying here? This is your fault. We can't keep coming out here, we're too busy.' All that sort of thing towards me.*

## Helpful Police responses

While many women reported disappointing encounters with Police, there were also examples of Police who were pivotal to women's continuing through the process. For example, Woman 9 spoke of the crucial role of the Police in her matter that involved both criminal charges and an AVO:

*The Police in this case have been beyond anything you could ever hope for. Because the initial night when they came, it was two younger sort of Police Officers – probably late 20s. At the point when they were called, the neighbour rang. I'd already left. So when they got to my house they sort of just got the front door opened and a lot of blood. So I think the horror of it sort of – probably being a bit younger too, I don't know – two extremely nice Police Officers. And from that point on they just kept coming back, coming back, bringing detectives and they pretty much have stayed with me the whole way through this.*

Police Officers who demonstrated understanding of the complexities of domestic violence and were patient with the process that women go through in deciding to take action, provided important support and validation to women:

*The Police were very good. I rang up the Senior Constable who had taken down the statement and I said: 'Look, I've decided I would like to have it recorded that he did hit me.' He said to me: 'Well, if you do that, then I still have to go and arrest him'. And I thought 'well it's probably not worth it'. And*

*probably he'll never do anything like that again. He'll be so scared of the ramifications. I think several weeks after that, the Senior Constable rang me back again and said: 'How have things been? If he does start to do anything and you're scared, just let us know and we'll go and lock him up' – which I found very satisfying. (Woman 5)*

An older woman who whose initial contact with Police was unhelpful, valued a different approach from another Officer:

*Yeah, so now the lady – the Police lady was a very, very nice and I must have been there about 3 hours. I was extremely upset because I was very frightened and it all started from then ... Well you have to tell the Police what happened, which I did. And also the letter, I had tore up and threw in the garbage bin and after he went to bed, I got up and got it and I took that to the Police to show them. We had to go over everything. All the details and the things that lead up to, like how he had been. Also my previous life, which was nothing like this. Then I think all this happened on the Wednesday night and on the Friday night he was arrested and charged. And went to Court on the Wednesday and that's when I got that first AVO. (Woman 7)*

## Access to accurate and timely information

The issue most commonly raised by women was the need for timely and accurate information. Women gave examples of situations in which they did not know how the system worked and hence how the provision of information would have assisted them in navigating it:

*I got really pissed off that he'd been first to Legal Aid ... like I made the appointment. They didn't even ring me and call me say: 'you can't come because of the conflict of interest'. Well they actually made me go in there ... And then she said to me: 'Oh I'm sorry, there are conflicts of interest. We can't discuss anything with you.' And I was like 'what do you mean?' At that point I didn't really know what she meant – Conflict of Interest? She couldn't even tell me that he'd been there first. You know what I mean? She couldn't even say that to me. She just said: 'Look I'm really sorry. All I can say to you is that there's conflict of interest here and we can't take the case.' She gave me a list of other places that I could go to – like other lawyers that I could go to that do Legal Aid as well. (Woman 1)*

Woman 9, whose ex-partner had been arrested and charged with serious offences against her and who had had to overcome fears in order to go to the Police was shocked that the perpetrator had been released on bail and she had not been informed<sup>18</sup>:

*And then to find out that he'd been released on the Monday and no-one had told me was – that was horrendous ... The Court didn't tell anyone. So he was released and I found out from a friend [who] saw him in the street. So when they rang and told me, [I was] absolutely hysterical for a couple of days ... because I didn't want to deal with them anymore because I really did feel let down by them. Terribly let down by them. Because, you know, it took 3 days of them pushing and saying 'we'll help you' and all that – me actually to talk to [the Police]. And then to find out that he'd been released and no-one had told me was – that was horrendous. So by that point I did not want to talk them.*

She recommended better provision of information:

*One of the main things is to be informed of what's going on and be supported. To really be informed ... Like if you know what's going on, it's so much easier to deal with everything. And it's so much easier to ask for help if you know people – the Police and the officials sort of put enough effort into making sure you know what's going on. And explaining it to you and – I don't know. It just makes it a lot easier from my point of view, because you get quite hysterical when you're sort of building up waiting and nobody bothers to let you know what's going on.*

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<sup>18</sup> Contrary to the Charter of Victims Rights

In a similar vein, another woman felt that the responsibility was put onto her to get the appropriate conditions of the AVO, when she had no knowledge of what was possible:

*I don't understand what clauses are in the AVO and stuff like that. And then when he started breaching it and the DVLO says: 'Oh this needed to be in it and that needed to be in it' and I'm like, 'I'm vulnerable. How do I know what to put in? I'm trusting that you guys are giving me the right information.' (Woman 28)*

The importance of getting information about the types of conditions possible in the orders was echoed by another woman:

*... and I think if I was given advice at the very beginning about putting on my AVO about phone calls and that sort of thing, and emails, then he wouldn't have gotten away with not breaching – that charge wouldn't have been dropped – had I had that on my AVO right from the very beginning about phone calls and everything. That sort of thing. Because again, you don't really think – you don't realize ... that there is an option for you to put certain things into your AVO that are specific to your case. (Woman 2)*

In contrast, another woman talked of the benefits of having legal advice<sup>19</sup> available as part of the WDVCS service:

*The WDVCS lawyer ... it's like a lawyer that's sort of advises and helps with the Orders ... [W]e talked for a little bit and I told him about what happened and was going on and he said 'what do you want. I can go and liaise with him about.'*

Woman 4 described her experience of believing that she had obtained an AVO but finding that she did not:

*But then I was like free to leave the Court but apparently – like I didn't find out until several months after when he had kept harassing me and I was trying to report to the Police and they said 'oh well, there's an AVO but it's not enforceable' and I'm like 'why?' Then I had to go to the Court House and get a copy of the thing from the Court House and then go back to the Police. So there was a lot of running back and forth from the Police Station to the Court House. And apparently what had happened was after we had been – I had been dismissed, like free to go from the Court, the offender and his solicitor turned up to Court, had it put before the Judge [sic] again and I don't know whatever was done, it was, you know, made non-enforceable. So there was one there but it wasn't enforceable. And I was very scared and angry and upset because I'm like 'how can that happen without any knowledge to me at all?'*

Two women had been disadvantaged by not being given information about the availability of victims' compensation and the time limit in which they had to lodge an application:

*I put a claim in [for victim compensation] and again 'why didn't you do this earlier?' And I said 'because' – and he said 'they will not accept the answer that you didn't know you were entitled to it' and honest to God, I did not know I was entitled to it ... The solicitor said that the Board that it goes to will not accept 'I did not know I was entitled to victim compensation' as a reason for not applying.*

The time limit for applications was not adequate for Woman 26, who was engaged in a protracted AVO Court process and simultaneous Family Court proceedings:

*I've lost so much because of [ex] but because I've been concentrating on other Court cases and stuff, I missed the 2 year mark. (Woman 26)*

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<sup>19</sup> Most of the women's interviews were conducted before the enhancement of the Domestic Violence Practitioner Scheme

## The importance of support and advocacy<sup>20</sup>

Support – its availability and importance, or in some cases its absence, was raised as an important issue by all of the women. Some of these responses regarding Court support were included on the previous section on going to Court. Given the major step that women take in seeking legal protection, the provision of support to follow through the system is crucial, as one woman explained:

*A woman needs a lot of reassurance round about that time to keep going and to keep – they need to be convinced that this is – it's still ok for them to do this. And, you know, it's important that they do it and it's important that they report it and that they're not – they're not the problem. You're so damaged at that point by the time you get that point you're already damaged. You're not convinced that you're even doing the right thing. And I think – I suppose from the time that you get there, you've probably been through enough so you probably need some people in the Court room to acknowledge that and say: 'What you're doing is ok. It's important that you do this. Keep doing this. Keep on top of the process.' (Woman 2)*

Another woman doubted that she could have proceeded in the absence of support and advocacy, and indeed, whether she would have survived:

*I'm not sure that if I didn't have those supports whether I would have even tried to get an AVO you know. I might still to this day be in that relationship and maybe not even be here. (Woman 1)*

Woman 5 underlines the core importance of advocacy both at Court and in providing access to resources beyond the Local Court:

*... I think if it wasn't for [WDVCAS worker] coming in to bat for me – I went to meet her before, you know, I had to go to Court. She went through everything that would happen – went through my whole history and everything. And on the day, because it was a safe room – although he didn't show up, he just wrote the letter, I still wasn't sure if he might show up at the last moment ... And there were other women in there with me and then to have [WDVCAS worker] actually go into the Court room with me, sit beside me and tell me what to do with the protocol. Like nodding as you go in the door ... Just being able to speak to a woman who can tell you whether or not something that's happened is a breach. And give you all the resources that you need. Things that you didn't know about. They point them out to you and say, you know, there's a refuge – this is a phone number for it.*

*The first time I went to Court for the AVO, the Court Support lady said to me: 'You need a really good solicitor. I can see you're going to need a good one'. She gave me the name of two family law solicitors that she could recommend. And I have since – I've been with one of them since that time. I've been in [Family] Court for 7 years. (Woman 8)*

One woman was involved in a complex matter involving the AVO and criminal and Family Law proceedings, and said that: 'Without support, I couldn't have done it.' She was distressed when her ex-partner was acquitted of serious criminal offences against her and expressed a great sense of injustice:

*[When he was] found not guilty for the sexual assault, I literally just went 'why did I do that?' 'Why did I just endure 2 days being grilled?' ... The justice system is geared for them and it's not geared for people that are genuine. And people that are genuine victims ... I never did anything in the 15 years. And mind you, I was locked out of the house. And I use to have sleep in the dog kennel. And all these horrible things he used to make me do.*

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<sup>20</sup> The term 'advocacy' is used to convey the range of activities undertaken mainly, but not exclusively, by specialist domestic violence workers. One definition is 'interventions that: '... help survivors of domestic violence navigate the systems involved in the community response as they attempt to acquire needed resources.' (Allen, Bybee, & Sullivan, 2004, p. 1017)

Nevertheless, she appreciated the support and advocacy that had kept her going through multiple legal processes, consistent with the research evidence that a positive and supportive experience of the legal process can assist women's recovery from violence, even if the outcome is not favourable (Bell, et al., 2011). She listed the support that made her one of the 'lucky ones' who had been able to stand up to the deep fears that her abuser had imposed over a very long period of time:

*The DV Women's Legal Advocacy. The Family Violence team at [suburb]. They were my pillar of strength. My counsellor from Victims of Crime. And obviously I had a very supportive detective. He was running the case ... If I didn't have that, I would have just pulled out of the charges and walked away ... And pretty much the Family Violence team because I didn't want the AVO because I was so scared of getting it. And it was just constant reinforcement that I was doing the right thing ... And honestly, I seriously thought about dropping the charges and it wasn't until, you know, they're going 'what are you doing? You know what this man's done to you! I was just like – because they instil the fear into you, they'll come and kill you. (Woman 28)*

Support beyond the Court is also essential as women try to rebuild their lives. Women talked of the importance of the assistance they received from specialist women's and domestic violence services:

*[T]here's an outreach program – because I've moved out and gone into my own place now. And I have had some horrible troubles setting it up so I've got some support from outreach services from the Refuge so they support you for a while after you move out of the Refuge so yeah – just for moral support and anything else you need. (Woman 3)*

*[W]e had to try and mediate again through the Family Law system – and I suppose again, you don't know where your rights are or you don't know what you can and can't do so it's organisations like the [women's centre] – they're really good – they really do support women throughout this whole system (Woman 2)*

*The [women's centre<sup>21</sup>] have been absolutely brilliant when [ex] made threats about he was going to come and climb in through the window and break locks and change locks and do all that, they came out and gave us a back to base monitored alarm with a panic alarm. I've had that for quite some time. (Woman 16)*

Specialist domestic violence groups were also an important to women's recovery, assisting them to understand the tactics to which they had been subjected, in common with many other women:

*And I only know what I do know now because I'd done course on Living Beyond Abuse ... And yeah, and I never knew there were different – 7 different forms of abuse. Never knew that. You know, I just sat there and I'm just like 'wow all of us women in this room could probably identify and say yep every single one of them things has happened' you know. And we didn't even know it was wrong. And then, you know, you're told 'well you should know your rights' ... (Woman 4)*

Woman 14's situation highlights the importance of workers in 'mainstream' agencies being educated about the dynamics of domestic violence. This woman was trapped in an extremely controlling relationship with many high risk markers for lethality. Despite protracted hearings over several years, she was never successful in obtaining a final AVO. One tactic of this abuser was to report the women to statutory child protection and mental health services as unwell and a risk to their child:

*So I went and had a mental assessment at the [suburb] Hospital and I went there and spoke to them. And that woman who heard me, she said 'This hospital is for people who are really mentally sick, not people like you.' She said: 'It is actually your husband who should come here to have a mental assessment, not you.'*

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21 Which provides a range of services including Staying Home Leaving Violence (SHLV)

As part of the interagency processes, a woman from a non-government agency began to visit the woman when her husband was absent, discussing the level of risks that she was facing and supporting her to develop a plan to leave safely. The workers involved in this situation had recognised the degree of control exercised by the perpetrator, the escalating risks with the women's pregnancy and were able to assist the woman to escape in the absence of legal protection, and provided ongoing support and advocacy:

*[A]fter that I moved to the refuge, the women's refuge. They were amazing. I cannot ever, ever forget them. And I can never be thankful for what they taught and how much help they gave me. I actually lived for 6 months in that refuge because I went there, was nearly 8 months pregnant. I had my child in the hospital. I came home and I lived in the refuge for 4 months. But the place was so small but they were the best years of my life because I had no stress. I had so much help, so much help. I cannot – I don't know how I could ever be thankful for those people. And not only did they, you know, take me to Court and because, by then I had applied for custody – residence of my children. And so it was – it was a long, long process. So it was like – a lot of help from them. (Woman 14)*

Two of the women summed up the quality of effective support – support that recognises both the danger that women face, as well as their strengths in seeking safety and that validates their right to safety:

*They really understand the situation that you're in, and that you're living it. And that you're trying to get on top of it and heal but at the same time you're surviving it. (Woman 16)*

*The Court advocacy lady came into the Court and she had a basket of stones and she said everybody take a stone and we want you to make it represent something and when you don't need it anymore we need you to throw it away. Mine represents that I have the right to be protected by the law, and the Police. I still need it. And I carry it with me all the time. (Woman 21)*

## Process issues

### The length of the process

The length of time that was involved in the process of obtaining an AVO was identified as a barrier by some women:

*I just think that the loophole is that there's too many adjournments. And cases aren't dealt with there and then. And it leads to an attitude of: 'why do I bother?' and that's why a lot of AVOs get dropped. And a lot of women don't feel supported. So then they don't pursue it because, you know what? In the end, they go 'oh maybe I deserved it because no-one supported me'.*

For this woman, who did not get an AVO, the time involved in the process was particularly challenging:

*The Court system has to be improved for woman like me. It has to be more clearer. And more simpler. And you know, it shouldn't be running so long. I mean, from the first AVO took me nearly 11 months. The second one almost went for 2 years ... And the second AVO I've lost count of how many times it went – it went from [suburb] again to [suburb], then from [suburb] it went to some other Court and then from some other Court it went to [other suburb] Court. And then from [other suburb] Court it went to [yet another suburb]. How many times? I had to go from – because it was like, you know, it was – because there were so many AVOs on that day, but if they want to have more evidence, then it goes moved to another a few months, after 2 or 3 months. So you're waiting for 2 or 3 months ... And I go to Court and this is what I get [no AVO] ... And you know, it's very stressful. It shouldn't go on for so long ... You know, it's just a really, really slow process. Stressful. Already stressful. (Woman 14)*

*In the last 2 years I've been 9 times to Court. And each time it's been to extend interims and I was never actually granted a full AVO, and I still haven't been. And the reason for that is that [ex] has had a very persistent lawyer that's fought it every step of the way. (Woman 21)*

As will be discussed in the next chapter, obtaining assistance for domestic violence does not necessarily involve one legal action, and women can be involved in multiple legal systems. Several women talked about the experience of involvement in long processes across multiple Courts, making it difficult to discriminate between the complex and time consuming legal processes:

*It was nearly four years. He kept fighting – he kept taking back to Court ... This is for the Family Court one yeah. But the AVO went for 12 months. (Woman 12)*

*Obviously then I had to pursue custody orders, property settlement, all of those things. So it was rolled into a 2 year experience. Basically it was interim AVO and he just kept – he pleaded not guilty. And it just kept getting adjourned and adjourned, adjourned. And it wasn't until [month] last year – last year that I finally got a final AVO order ... For 2 years Interim – and pretty much what happened was obviously I had lots of in-betweens – I was constantly at Court. (Woman 28)*

This woman found that having a criminal matter tied to the AVO, made the whole process more drawn out:

*... It's been very, very frustrating because the criminal – the AVO was tied into the criminal matter and that's why the duration took so long. And in between that, like I said, I had to attend and be defended.*

For women who were working and who had child care responsibilities, the time involved in Court processes takes a toll beyond the emotional, and it may be judged not to be worth the stress:

*[Referring to a breach hearing] And then when they go to Court they get a slap on the wrist. You know, it's like 'well what's the point in taking a day off work, which I lost \$130 for the day.' And still had to have the kids babysat ... But it's the fact that this only lasts for a year ... So it's like 'well what do I do after that – go get another one and go through the same process?' (Woman 10)*

*And that the system is so long – it's been – you know, you go in for interim hearings and then another interim hearing and then they stand it over for another date and these are all days off work that you have to pay. I'm trying to finance a child and living in the city. It's just long and protracted and it's – and he wins. (Woman 2)*

*All day. With a little baby. I had a newborn then, probably about 3 months old. So yeah, we were up there all day. And like I said, the whole day and we never even got called in. [Partner] did but I didn't go in because it wasn't my name that was called. But then [WDVCAS worker] came out later and told me what had went down. (Woman 37)*

Several women commented on the paradox involving the brief time accorded to the matter, in contrast to the long wait for their matter to be called<sup>22</sup>:

*Like it was only like a 3 minute process but it was the fact that we waited around until bloody 2 o'clock in the afternoon. (Woman 10)*

*[A]nd it moves so fast. They do it really quickly. And the time process – when you actually have your hearing, you've got to be prepared to go and sit there all day ... They just call you up when they feel like it. Or not when they feel like it but when they – I mean, they have their processes but, you know, you've got to have time – you've got to have the time to go and do these sorts of things. (Woman 3)*

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22 The brevity of AVO court proceedings has been identified by Wangmann (2012) and Hunter (2008)

## Police Prosecutor – not enough time

A common concern for many women was the quality of the legal representation that they received when the matter was initiated by Police. They found that there was little, if any time, available to talk with the Police Prosecutor<sup>23</sup>:

*And yet, when I went to Court about the second breach, it was probably just one of the worst days of my life because he was there and I had about 5 minutes with the Police Prosecutor to try and explain my story and explain the circumstances and what – to me, abuse isn't just about one day, it's about – it's an ongoing thing. And that it's not one incident. You know, quite often the one incident isn't the significant, you know, it's not the thing that, you know, turns a man from a normal man to an abuser – it's an accumulation of days and days and days of this ... And I didn't feel that at that time the Police Prosecutor had given me 2 minutes of – hardly of my time. I went there really, really early and I was sort of chasing him around that morning, 'please see me' – 'can you listen to me' – 'please give me some time' – and you just don't get given that time. (Woman 2)*

*And then when I got into the Court room, assuming the Police Officer or the prosecutor the AVO he didn't have a clue as he didn't talk to me beforehand or anything like that. So walk into the Court House, haven't got a clue. He didn't have a clue about me. He didn't even have the paperwork ready. The Judge was getting really ticked off with him, which disrupted what's going, what actually had to be done ... Yeah, I mean he was so busy that day. I understand that he's very busy. But on a personal point of view, it was upsetting enough and then getting in there and he wasn't organised. (Woman 11)*

These experiences stood in contrast to those of the small group of women attending Courts where legal advice was provided through a specialist community legal service.

## Unequal access to legal representation

While many of the women reported feeling limited in the assistance provided by the Police Prosecutor, this issue was thrown into sharp relief for women whose partners could afford what in their view was strong legal representation, including across different jurisdictions, such as the Local and Family Courts.

*I just feel like it's whoever has got the most amount of money sometimes. Like he had this big barrister, Queens Counsel or whatever representing him in Court, going through every section of the Act – we couldn't use this material because it might be wrong, all that kind of stuff. But they were able to use anything and everything against me. It had nothing to do with an AVO when they were able to use [child] contacts and a note and all that kind of thing when I wasn't even the one being supervised, it was him. (Woman 20)*

Woman 16 had been in the legal system for over two years and still did not have a final AVO. She was also in the Family Court. She applied through the Chamber Registrar for an AVO and appreciated that she was assisted in the initial hearings by solicitors from the Women's Legal Service and had access to Legal Aid for the hearings. However, she felt that her ex-partner benefitted from access to consistent legal representation across jurisdictions:

*One of the strengths is that he's had a lawyer. A consistent lawyer. He's had the same lawyer for 2 ½ years because he pays for his lawyer and he can afford to. So his lawyer – he doesn't have to re-explain everything over and over again with each – whereas with me, I've had different lawyers, different representatives and each time I have to go through the same stuff over and over again.*

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<sup>23</sup> This reflects the issue of resourcing of local courts in the light of increasing workloads, a matter raised in the focus groups with service providers and elsewhere (e.g. Wangmann, 2012)



## The question of evidence

The quality of the evidence presented to the Court is clearly crucial to the Court's decision about the AVO application. Yet Wangmann (2012) notes that there has been very limited research that into complaint narratives in AVO matters. Her study (Wangmann, 2010, 2012) identified significant issues in the quality of these narratives – including irrelevant and inadequate content, brevity, and a focus on a single incident.

In this study, problems with evidence presented to the Court are reflected in the women's reports that they were frequently told that they did not have 'enough' or 'good enough' evidence for an AVO or for a breach.

*I asked for AVOs and that. But I had to get proof that he was doing stuff... And he was very, very sneaky of what he did. It was the letter in the mailbox saying that they're his kids and no-one going to stop him from seeing his kids. That I'm going to be dead. Things like that. I get that to the Police station. I gave them a copy of the Facebook [containing threats] which they reckon they can't do much with ... It could have been anyone writing it, he reckons. Where to me, you can tell it was from him. And it was directed to me ... So it's hard to have things like a Facebook and then take it to the Police station and they'll say 'no, we really can't take that in as proof'. It's wrong. (Woman 33)*

*I can't make a report. I'm afraid to make reports unless I have evidence. Like even now I go to contact visits and my ex-partner tries to spit on me in front of my daughter. McDonald's staff have seen it. It's just never enough information ... Like my brother was with me when we were almost run us over in the car and we ran to a lady's house. She did a Stat Dec for me and the Police went out to her house and they said: 'Did you know [woman 20] for long? Did she tell you to do this statement?' And they didn't even bring a report book with them. They didn't even take any notes. And she was disgusted as well. (Woman 20)*

Based on her experience, she had advice for other women, although she recognised that the dynamics of domestic violence are a barrier to women doing this:

*I would suggest that they take down notes of everything in their diary. And they will carry their camera with them at all times to gather evidence to prove to the Police, because if you don't have the evidence it's nothing ... Yeah, you have to note everything – keep text messages. Keep them all. Bring your camera with you if he's following you or stalking you. If you've got bruises, go to the doctor. Talk to somebody about it so they can document it as well. Because the more evidence you have, the more likely you're to get an AVO. But these men try to manipulate you to make you believe it's your fault so you don't do any of these things.*

Woman 15, initially not supported by Police to get an AVO, retained copies of harassing and threatening texts which she provided to Police when she made a statement, yet when she got to Court:

*All the information that I'd given to that Police Officer and the photocopies of the book where I'd written everything down, the messages that he read, that he wrote down as evidence – didn't make Court. They didn't turn up. Nobody knows where they are. My counsellor knows that information was taken down it was copied and everything. Because she was there when it happened. On the day of Court there was no evidence. There was nothing there.*

She felt that the evidence that was presented to the Court did not reflect what she had told the Police:

*... like on the day, half the words in the statement were not my words, were not even what I said ... On the statement it says: 'On some occasions the contact has contained sexual references as the person named has made attempts to reconcile with the victim and wishes to recommence sexual relationships'. No my counsellor said, and I say, once I moved out of the place there I don't want to reconcile. Like the wording in it. And it says 'the contact is for most part unwanted' – like saying the*

*contact is for the most part unwanted. Like I didn't want any contact with him. But they're saying most part of it was unwanted. (Woman 15)*

Woman 8 did not feel that the Court Registrar was willing to listen to and accurately record the events that prompted her to apply for an AVO. Her experience points to the tendency to focus on incidents, rather than to elicit a comprehensive narrative:

*So when I told the counsellor about the sexual assault, she took me down to the Chamber Magistrate to apply for an AVO... And I had a long list of all the things that had been happening and when I went to put the application in, the Chamber Magistrate said: 'Oh, you can stop. That's enough. This is enough to apply for your AVO.' And so I, you know, just gave that brief amount of information. (The application was unsuccessful.)*

When perpetrators employed tactics other than physical violence, women reported that it was difficult to get recognition of domestic violence:

*[H]e cut off the health insurance, cut off the electricity, the gas, the water, the rates – he just refused to pay... So all companies disconnected the services in my name. And that took 6 months and thousands of dollars trying to sort out all those different companies and sort out paying those... Like this is the problem with my AVOs. You know, he hasn't come around and punched us. And you kind of wish he would because then that would make things a lot easier for the Police to understand. (Woman 16)*

The experiences recounted by these women reflect concerns that have been raised in other studies about the limitations in the implementation of protection order legislation. These include the 'shaping' of women's narratives by Police and Court Officers, which can reflect narrow understandings of domestic violence, despite the legislation itself recognising a wider range of harmful behaviours and indeed, a pattern of behaviours (Hunter, 2008; Wangmann, 2012). The mismatch between the ways in which women may tentatively raise the issue of domestic violence and the legal terms in which the Police must prepare a complaint, was also described by a participant in the service provider focus group:

*And women sometimes don't articulate in a legal sense exactly what they want or what they're asking for which doesn't help Police because, you know, they need to tell them specific facts and incidents and things that fall into personal violence category. And with women often prioritise children and things like that because they'll go in saying 'I need to get my children back' and then Police put up a barrier and say 'that's family law, we can't help with that', and instead of asking further questions about what's going, what's the issue here – they refer onwards. And women, I think, get lost in the gaps a lot because they don't present and articulate their problem in a legal sense. (Lynch & Laing, 2013, p. 6)*

## Attitudes of service providers

Since women commonly approach the legal system at a point of vulnerability, they reported distress when they were not treated with respect by service providers in the legal system:

*I think as well that the Police should be compassionate to their victims of domestic violence rather than – I was treated as a bit of a nuisance. Like, 'oh here she is ringing again'. And the domestic violence officer said to me that I was a 'hyper'. He said that he had '5 hypers like me'. I don't know if he meant hyper vigilant, hypochondriac – I don't know what he meant... But I was continually ringing because I wanted to confirm if my ex-partner was going to be charged with something because I want it to stop. (Woman 20)*

*[The Magistrate] asked me how many times I had phoned the Police station. And I said about 101 times. And she said '101 times Ms [X]'. And I said 'I'm sorry but, you know, it's probably an exaggeration'. She goes 'Obviously'. She was quite, you know, I felt she was quite harsh in the Court Room. And then I said 'The Officer's name is Y' and then when she was speaking back, she referred to him as [wrong name]. And I said 'Excuse me, your Honour' and she went off at me for interrupting her when she was speaking. And so I waited until she had finished and I turned around and I said 'Excuse me your Honour, I said [name] not [name]'. And she said 'Whatever'. And I just thought that if this is the attitude what hope do women have? (Woman 4)*

Several Aboriginal women recommended that Police be more culturally sensitive, for example:

*Like prior to this I went to see the Police at [suburb] and I tried to speak to the Officer at the front desk and he wasn't very helpful. He was really derogatory and I think the other thing is with the Police they need to be taught like what's culturally appropriate and how to work with the community because a lot of them have just got no skills at all. Like even for the non-Indigenous community for women who have been victims of DV, you know, some of them just don't know how to act culturally appropriate to any of them and they've got no sensitivity. They're just hard and mean. And I think that needs to be looked at more closely so they can help break down the barriers. Because I think that's one of the main fears why a lot of women don't come forward ... (Woman 36)*

Attitudes that are dismissive and insensitive towards women seeking assistance may result in women withdrawing from the system and may make them reluctant to seek further help, potentially escalating the risks that they face.

## Beyond the law – Housing and material support

The legal response is only one component of the response required by women escaping domestic violence. Several of the women gave voice to a strong sense of injustice that domestic violence had rendered them and their children homeless and financially vulnerable, in some cases making it likely that they will have no option but to return to the violent partner:

*The hygiene of communal living is quite difficult and if the children get sicker, I'll probably still have to go home [and] once again, my husband's right. I can't leave. Where can I go? [W]hat you need is you need to tell a woman she needs her bond money before she leaves. And she needs the first month of rent before she leaves. And then even then, the real estate agents may not rent anything to you – the Housing Commission, dragging their heels. They're not going help. And then if you've got a mortgage like I have – you know what the Housing Commission 'you're rich, we're not helping you'. Yet my husband's there, in my house saying, 'I've changed the locks. Don't you dare come back.' So where does the woman go? There's nowhere to go. So I'm [in the refuge] now ... But we could end up going home ... I've been out looking at real estate ... [Agents] won't rent it to you because ... I'm on Centrelink benefit. So it's roughly about \$550 a week. Now if I go to work, I'll bring home \$230 a week. How can I pay \$300 a week rent on \$230 a week? Because I've got children to look after ... so I'm safer on a Centrelink payment because I know it's coming every week. I go and get a job, I'm not safe ... You can't leave. You have to go back. There's no choice. (Woman 21)*

Woman 37 described the injustice of homelessness to women and children:

*Why do we have to get up and move the kids out? If we've got the kids, we should be able stay there. Make the man go because it's a lot easier for them to pack their bloody one bag and get out there rather than us have – I had to remove myself and my children and go and stay in damn hotel, Friday and Saturday night because they had nowhere else to put me. I don't even drink ... So there's me and 4 kids stuck in a room in a hotel around men and drunks. You know, that wasn't right ... You're stranded. You've got no car. There was stuff for me at [suburb] if I wanted to get over there. I could*

*have stayed in a motel over there. But again, how do I get there? ... Again, where does that leave me? Where does that leave a lot of other people? That's why a lot of them go back because there's not enough follow on. Yeah, well after it's all done and over, yep that's it. The Court's proceedings are all done and then leave them alone. It's not enough. You need to keep going back to these women and make sure they're not falling back in the same situation. (Aboriginal participant)*

These women highlight the limitation of the law in responding to domestic violence and the necessity for a comprehensive and well resourced interagency response within which legal protection may make it possible, for example, for women and children to remain safely in their own homes<sup>24</sup>.

## Summary

The women's accounts highlighted the importance of the initial response that they received when they made the decision to contact, or encountered the legal system. Police Officers, who demonstrated understanding of the complexities of domestic violence and were patient with the process that women go through in deciding to take action, provided important support and validation to women.

In many cases, Police are called to situations where the level of risk to women and children is clear. However, when women approach Police for assistance outside of a crisis situation, it is unlikely that their accounts of the violence and abuse that they experience are going to be expressed in the types of terms that the legal system requires to make a decision about a protection order. In this context, Police require skills in talking to women, exploring their concerns and assessing risk. Unfortunately, there were many examples in this study of situations in which women's initial concerns were dismissed and trivialised when further assessment could have identified high risk factors such as sexual assault after separation and non-fatal strangulation.

The women also raised important issues of process – being provided with timely and accurate information (about the process and the types of conditions that could be included in orders); the financial and emotional costs associated with protracted legal processes; and the importance of being treated with courtesy and respect. A number commented on the paradox involving the brief time accorded to the matter once it was called, amid the long periods of time spent waiting at Court, often on multiple occasions.

Despite their best efforts, Police Prosecutors are faced with an enormous volume of matters as the service providers in the focus groups and the women attested. Some women in this study reported that this situation left them with the sense that they had inadequate time with the person who was to represent their case in Court, which left them with a sense of injustice.

The women's experiences of being told that there was 'insufficient evidence' point to issues which have been raised in the literature about the complex processes involved in shaping women's narratives of domestic violence into a format required in legal proceedings; the quality of complaint narratives; and an incident-based focus that is similar to the criminal law, despite the protection order legislation encompassing a broader range of behaviours including, from 2006, '... when the legislation made it clear that the Court may refer to any 'pattern of behaviour' in determining whether conduct amounts to intimidation.' (Wangmann, 2012, p. 699)

The women also highlighted the importance of receiving support and advocacy from a wide range of personnel and agencies, both inside and outside the legal system. The examples provided by the women about the importance of access to housing and about personnel in the mental health and child protection systems identifying domestic violence and working with non-Government agencies towards women and children's safety, emphasise the importance of a collaborative, interagency response to domestic violence.

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<sup>24</sup> There is provision within the legislation for exclusion orders but these may not be applied for or granted (Edwards, 2004). Specialist domestic violence services such as *Staying Home Leaving Violence* have been established in recognition of this need, but have limited capacity given the prevalence of domestic violence.

# CHAPTER 4

## Intersecting systems, complex lives

### Introduction

In order to appreciate the complexities of women's experiences of seeking a protection order, it is necessary to look at the factors that contribute additional challenges to their efforts to achieve safety for themselves and their children. One element of this complexity is the frequency with which women are involved simultaneously in multiple legal systems, which are poorly integrated. This element of complexity is attested by the Australian Law Reform Commission and NSW Law Reform Commission review of the interaction of State and Territory family/domestic violence and child protection laws with the *Family Law Act* and relevant Commonwealth, State and Territory criminal laws. The ALRC and NSWLRC report (2010) documented the effects on the safety of women and children of the fragmentation of the laws and practices across the different jurisdictions and public and private law:

*The fragmentation of the system has also led to a fragmentation of practice. A number of stakeholders in this Inquiry commented that the different parts of the legal framework dealing with issues of family violence operated in 'silos' and that this was the key problem in the system. Although the laws utilised within each 'silo' might be perceived to operate effectively, or to require minor refinement and change, the problems faced by victims of violence required engagement with several different parts of the system. Consequently ... these people could be referred from Court to Court, and agency to agency, with the risk that they may fall into the gaps in the system and not obtain the legal solutions—and the protection—that they require. (p. 520)*

Many of the women in this study were involved simultaneously with the criminal justice system, the Family Law system and/or the statutory child protection system, and in some cases with multiple legal systems. More than half of the women (23) were involved with the Family law system; twelve women were involved with the statutory child protection system; and eighteen women with the criminal justice system. In the case of this latter group, criminal justice involvement may be through situations where the AVO respondent was also subject to criminal charges, where the order had been breached, or in some cases, where there were concurrent allegations of child sexual assault under investigation. In addition to these legal intersections, five women in this study - 3 English-speaking migrants and two CALD women - were also dealing with the intersection of domestic violence and immigration law, another area of fragmentation that has been recently been addressed by the Australian Law Reform Commission (2012).

A further element of complexity is associated with the ways in which women are socially located. Crenshaw's (1991) concept of "intersectionality" highlights the effects of multiple, interlocking patterns of inequality – based on factors such as age, ethnicity, (dis)ability, sexuality, immigration status and poverty – on women's experiences of, and vulnerability to violence, on their options for responding and the responses they receive from the service system. An intersectional approach moves beyond the notion of cumulative disadvantage, to highlight the complex interactions of multiple coexisting, inequalities (Thiara & Gill, 2010). In this chapter, women's experiences of seeking an AVO are discussed through the lens of the complexities shaped by engagement in multiple legal systems and women's complex social locations.

## Legal Fragmentation

### Intersections with Family Law

The complexities and risks for women in attempting to navigate the Family Law system and protect themselves and their children from violence have been extensively documented (Bagshaw et al., 2011; Kaspiew et al., 2011; Wilcox, 2012). In this study, the women identified some of the effects of being located at this complex legal intersection.

### Scepticism about the women's motives

Consistent with previous research studies, many women reported that their simultaneous seeking of a protection order and involvement in the Family Law system resulted in their efforts to seek protection being met with an attitude of scepticism (in both arenas of law).

*And I think that women with children have a very disadvantaged – because they are looked upon as if they are using [the AVO] as a tactic. So women with children can't escape domestic violence. It's just not possible. Whether Family Court or the Local Courts ... I feel like the women are treated as the perpetrators and the poor men, they're missing out on seeing their children when they're the ones that are putting our children at risk of psychological abuse or physical abuse, because they're in the middle. (Woman 20)*

Woman 25 compared her experience of obtaining an AVO in a previous relationship where no children were involved, with her current experience as a mother of three very young children, simultaneously seeking an extension of her AVO while being in the Family Law system. This was a very high risk case involving stalking, threats with firearms and all forms of abuse from a man with a previous history of violence in other relationships and who was charged with multiple breaches of the original AVO. Yet, she still felt her motives for seeking protection were treated with suspicion:

*I feel like the whole system for women escaping domestic violence and who have children is very hard because they think you are doing it for some other reason – family Court purpose ... they are looked upon as though they are using it as a tactic.*

Woman 16 pointed to the absurdity of implications that she was deliberately using the law to exclude her ex-partner from the lives of their children:

*I needed to have a partner. I didn't want to be a single mum. I needed to have a partner. I needed him to have the kids every fortnight so I could bloody study. And I needed him to be a dad. My point to people is could you point out to me at one time, in the last 2 years, that he actually behaved like a father? Yes, he's got father's rights. He's got the right to be a father. It's not an automatic – I don't believe it should be an automatic given but it is ... I mean, I've even had the Police at JIRT question me as to whether I had made these [allegations of child sexual assault] up.*

### 'Deal with this in the Family Court'

In previous research, women have reported that Police are less willing to apply for an AVO if the woman is also in the Family Law system (Laing, 2010). In this study, Woman 27 was advised by the Police to go through the Family Court, rather than to take out an AVO, because 'Family Court orders over-ride ADVOs'. However, she found that her ex-partner continually breached Family Court interim orders and to deal with this she faced great expense in going back to the Family Court. At the time of the interview she was pursuing an AVO, but had been frustrated by delays due to Police not having served him (at this stage after 9 weeks). She has found the process between the two systems confusing and had received contradictory advice from various service providers. She concluded: 'I am still left unprotected.'

In a reverse situation, Woman 12 was advised by Police to seek an AVO but in the Family Court she was criticized by the judge for this:

*I was going to two different Courts. And it just made it hard. And before, when we got the interim AVO and went to the Court for custody of [child], the judge there said 'she can overrule the AVO and make sure I don't get the AVO, she would drop it' ... She didn't think I should take the AVO out on the dad. But see I didn't do it, the Police done it. Different. And I agree. I said no then. But the Police wanted me to go ahead with it. They didn't want me to drop it. And I went ahead with it.*

This turns out to have been a wise decision, as a final AVO was not granted in this case and the child was protected by Family Law orders.

## Blurring the focus on safety

Several women described graphically how their involvement in both the Family law and civil legal protection systems undermined the safety potentially offered by their AVO:

*When the Family Law Court Orders were in place, the Police's attitude [is], because the house is in his name and we're involved in the property dispute settlement, 'Well, it's his house. He can come and go as he likes.' I even had a phone call from a Policeman who said: 'If he wants to break into the house and change the locks, he can do that. It's his house.' And I said: 'What about my rights as a separated wife and the mother of the children, don't we have rights too?' (Woman 16)*

For woman 10, the protection of the AVO was undermined by the fact that her ex-partner could use child contact to continue his harassment of her:

*Well, he was still allowed to contact me over the kids. And it was like: 'but that's the whole point'. You know, he can contact me but because he's ringing up about the kids [so] they can't do nothing about it. Like if he carries on the way he was carrying on, they can't do nothing about it because he rang up about his kids. So, to me, the AVO was a waste of time ...*

The requirement of the Family Law system that she provide her address put her safety at risk:

*... like even with Family Court, he's got to know my address and my phone number – how does that work? The AVO is supposed to protect me but he has my address. Fair enough the kids do live with me, but the point is now that he's got my address, I'm back to: 'Is he going to turn up?' or you know, that's what I tried to fight at Court and my solicitor for the day said: 'Just go along with it. We're not going to be here all day'. As it turned out we were there until 4 o'clock...*

Woman 21 originally had an AVO while still living with her partner, but the abuse resumed as soon as it expired. She was initially unsuccessful in getting it renewed and fled to a refuge with her two young children to escape the violence. She was subsequently successful in obtaining an AVO but was still in the Family Court. Despite the risks, she had decided that she would return and live with domestic violence if her ex-partner got residence of the children, exposing the potential consequences of system's failures for women and children's safety:

*... and I can tell you now that if those children get put back in that house, I have to go back. I have to do whatever I can to go back there. So I have to crawl to him and say 'I'm sorry. I'll behave. I'll do everything right' to get back there to look after them. Because they won't be safe.*

## Child not protected from exposure to domestic violence

As documented in many other studies (e.g. Kaye, Stubbs, & Tolmie, 2003; Sheehan et al., 2005), child contact and change-over can provide a context for continuing domestic violence against women and the concurrent continued exposure of children. Woman 8 was concerned for the safety of her

infant child on contact with her ex-partner, so had sought Family Law orders for contact in her home. She was sexually assaulted by her ex-partner on one of these contact visits.

Because the ex-partner of woman 10 is able to phone the children under Family Law orders, she feels that she remains under his ongoing control, despite having an AVO:

*Like I know with this Family Court business, like he's still saying to the kids on the phone – like he knows exactly what I'm doing 24 hours a day. It's a control thing. You know, because of the kids and no-one seems to see that...*

Woman 20's opinion was that the AVO did not protect children, because of the scepticism about women who were also in the Family Law system:

*... they don't help children, the AVOs ... No [child wasn't put on the AVO]. And she was in the car with me when I first had the things – she was in my house. That's just the thing – they think that it's a tactic but yet he did all these things wrong but they think it's OK for them do it wrong but I'm still using it as a tactic [for Family Law].*

## **Inadequate legal representation**

Many of the women who were in both the Local and Family Courts, talked about the limitations of legal aid funding in Family Law matters. Women who were struggling to keep themselves and their children safe, did not necessarily separate out the various legal systems, their experiences of one colouring their views of whether the law is protective or not.

*Yeah, well I know heaps of other women as well, including myself who either lose their children because the Legal Aid just don't help. They don't fight hard enough. I just feel like we're just people who just need some kind of assistance. So either the mothers have lost their children or we have to agree to shared care or we don't get legal help at all because that's what they said to me – 'If I don't agree, then I risk losing my child' – so I agreed. (Woman 20)*

*But he's at home damaging the house. [While she and the children are in refuge.] And there's nothing I can do. I asked my solicitor. He said Legal Aid ran out of funding ... all I want is an order made from the Family Law Courts stating that he's not to damage or alter the home. And he's doing that and there's nothing I can do because I can't – I found – I got some forms off the internet for me. And I've got to try and fill those in and go to the Court and put them in myself because I can't get represented ... There was a conflict in the beginning because he went and got advice. Then they wouldn't see me. So I had to wait. It took me ages to get represented. I was running around every day – all day, every day trying to get represented. And what happened was there was a list of solicitors that you're allowed to use that are private and then they're allowed to apply to Legal Aid and it was granted and it took ages to get granted. (Woman 21)*



## CASE STUDY:

### Caught at the intersection of family law and the avo system

Woman 30 was involved with the DoCS early intervention program because of concerns for her child's safety. She sought an AVO and wanted the child on the order. She went to the Police station a number of times but they were 'too busy' to see her so she went to DoCS with tapes that she thought would provide evidence of the need for the AVO. The third time she went to the Police station she got to talk to someone but it was over the counter in front of everyone. A new Officer took notes of the conversation. The AVO was moved to another station but she was not informed. The tapes couldn't be used in Court. Her ex-partner opposed the application and instructed a barrister who put in a cross application against her. She was advised by both her Family Law solicitor and DoCS to consent to the AVO in order to 'get it over with'; Now, the fact that she is subject to an AVO is problematic in the Family Court. She says: 'I wish I had stuck to my guns because [the AVO] is now held against me.'

## Intersection with the child protection system

Twelve of the women also had some involvement with the Community Services, half of whom were Aboriginal women. The difficulties of statutory child protection services responding to domestic violence where there are two victims, an adult and a child, are long-standing (Humphreys & Absler, 2011) and present an ongoing challenge for collaborative intervention. In this study, women reported one of two types of responses from Community Services: either they would not get involved when women wanted help because of the risks posed by the perpetrator to their children, or they became involved in unhelpful ways.

For example, Woman 10's children had been notified multiple times to Community Services because of the children's exposure to domestic violence by her doctor, school and counsellor, yet she said: 'We still haven't heard nothing about DoCS<sup>25</sup>, from DoCS – nothing at all.' She felt that decisions about how to protect the children and to negotiate the Family Law system had been left totally to her:

*The system stinks when the mother's still got to be scared for her life, and the children – and then when something does happen – because I've said to DoCS, because I was so angry with them – I said 'Look, if he touches a hair on my kids' head, I'll sue you.' I said 'This is unfair that you make me make the decision when I can't answer you if he is or if he's not going to do anything. And [if] I break my [Family Court] orders and nothing might not happen [to the children].'*

Woman 16 received a letter from the DoCS, which she thought reflected no understanding of her struggle to protect herself and her children and that placed responsibility onto her, rather than the perpetrator of the violence:

*I actually got a bollocking from DoCS in a letter stating that 'Mrs \*\* is showing a great difficulty in shielding her children from the trauma of separation' – incredibly patronising letter ...Yeah, and I know what they're saying, but when the Police are at my house and there's paint on my car and paint on my fence and glass under my car and my kids can see that, then how can I possibly shield them? The only thing that I can do as a mum is to keep chipping away at this and to not give in.*

Two of the Aboriginal women had lost the care of children due to domestic violence following the intervention of statutory child protection services. Woman 26 had been in a relationship in which the violence was severe and where she had been forced into illegal activity as part of the abuse.

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25 The statutory child protection agency was called the Department of Community Services (DoCS) at the time of the interviews and more recently has been renamed Community Services

She believed that she had lost the care of her child because DoCS had failed to protect her and her children and had also failed to understand the efforts she was making to care for the children through liaising with the agencies that were working with her:

*The stuff this guy was able to do to me, which the system **allowed** him to do to me ... The Department had authority at this stage to put an AVO on him for me. And like I read it, and it was to ensure that the children and the mother did not have to leave their home because of the stability to the children being in their own environment. But the Department never did ... I needed help with someone to get that AVO on him because [ex] followed me everywhere I went ... So I blame my life on the Department and their lack of duty of care to me and my children, when all they want to do is remove children ... you can talk to my family worker, you can talk to my Aboriginal social worker, you can talk to CUPSS (Chemical Usage in Pregnancy Support Service). And they never rang any of them. They never spoke to any of them.*

She felt she had also had inadequate legal representation:

*My problem with the Court system is that I didn't have a solicitor for the first couple of cases for it. I had duty solicitors. And then I got a solicitor who was friends with my ex-partner's solicitor. And he didn't put anything in that I gave him and he got rid of 170 pages of documents that I gave him. And then another solicitor I got, she delayed proceedings for 12 months. So now the only thing against me is that the time that [my daughter's been in care]. So when I say the system has failed me, the system has failed me.*

Three of the women were involved with the Community Services early intervention service, **Brighter Futures**. This service was experienced much more positively than were the statutory child protection services. For example, Woman 1 had made three attempts to talk with the Police about an AVO, but had received a dismissive response. On one of these occasions her Brighter Futures caseworker accompanied her as an advocate, but again she was not assisted. The woman described how the caseworker then intervened:

*And my [Brighter Futures] worker spoke to her manager and her manager then got in touch with the DVLO at [suburb] and said, you know, whatever – whatever she told them. And then I actually got a phone call from him, and he was very nice and said come back in and make another statement and then the 2 Officers at that time were very nice.*

## Intersection with immigration status

Four of the women in the study were immigrants from English speaking countries, who had to deal with immigration issues simultaneously with their protection applications and Family Law involvement. Woman 19, for example, was prevented from taking her child to visit her parents overseas. Woman 5 was a New Zealand citizen, so was not eligible for most income support payments, making her initially reluctant to apply for an AVO in case her ex-partner made good his threats to withdraw his financial support for the children. When she did call Police in a crisis following a frightening assault, she did not want the Police to record the assault for fear that he would retaliate by leaving her without any income for herself and the children.

Woman 2 was an immigrant, caught in the intersection of the AVO system and the Family Court. After a history of violence that began during her pregnancy, she went overseas to visit an ill relative. She was directed to return to Australia under the Hague Convention, effectively isolating her from any family and financial support. Her ex-partner was to provide accommodation for herself and the child, but she returned with her young child to find:

*[H]e brought me to another address and – there was no telephone, no fridge – it was freezing. We had virtually no blankets that night apart from the clothes that I had brought over. My card had been stopped on the way back over because I had gone out of the country so they automatically*

*locked my cards. I had no access to money ... He had a scalpel knife in his hand and I said 'There's no fridge. There's no phone. Where's our phone?' – all the belongings that we had in our flat from before and I said 'Where's all this stuff?' and then he started kicking boxes all around and telling me that I was an ungrateful pig ... So I just went straight to the Police again and told them that he had been threatening to smack me face in again and that – at that time I didn't even sort of really think about the fact that he had a knife. I just thought he was kicking boxes and – and this again, was all in front of [child] – and I just thought I can't – I was devastated because we'd been in [country] for a year and I had been away from it all and to have come back was just awful.*

Her ex-partner was charged but found not guilty of breaching the AVO, with the outcome reflecting the intersection with Family Law:

*And his solicitor had this whole case prepared and brought up all this stuff about ... the fact that had I been prosecuted through the Hague which I actually haven't been prosecuted through the Hague. But again, there was this implication ... and eventually the charges were dropped. The Magistrate said: 'Look people argue.' And she said: 'It seems that Mr X just wants to see his child.' I thought, this is nothing to do with it. I had no real defence at all to explain exactly the background of all of this and the fact that this had be going on for years...*

## Complex social locations

### CALD women

Women from culturally and linguistically diverse communities can face many barriers to using the law to gain protection (Burman, Smailes, & Chantler, 2004), such as language, isolation, vulnerability to visa abuse, racism within the service system and fear of loss of community. Two of the CALD women in this study (half of the CALD women in the IPV sample) were unsuccessful in obtaining an AVO.

Woman 23 provides an example of a situation where an AVO was obtained. She was a recent immigrant, with her husband, from an Asian country. Following an incident in which he threatened to kill her, the woman rang 000, wanting assistance to leave with her child. The Police gave her an ultimatum: they would only take her to a safe place if she followed through in Court with an AVO. She felt pressured to agree, was taken to a refuge and went to Court. Luckily, the ECLC at the Police station spoke her language, and explained everything that would happen. Although she felt pressured at the time, with hindsight, she thought that she had done the right thing.

In contrast, Woman 22 was not successful in obtaining an AVO, despite her many efforts to obtain legal protection. She had come to Australia with her two children to marry an Australian man she had met in her home country in South East Asia. The physical abuse began before she arrived in Australia, but then escalated to include controlling behaviours, isolation, financial abuse and threats to herself and her children. Her partner exercised control by threatening to would threaten to revoke his sponsorship and send her back to her country. Even with support from refuge workers, she was unable to get the Police to support her efforts to obtain an AVO because of the partner's health status which led the Police to assume that he posed no danger. Her conclusion that: 'This is his country not mine,' suggests that she felt her immigrant status also influenced the responses that she received.

### Rural Location

Women living in rural settings faced unique challenges in achieving safety. One is the sheer distance from assistance, for example from Police, if an AVO is breached:

*The night I rang the Police, like from [rural town], I rang the Police and they were going to be 4 hours. Anything could have happened in that 4 hours. (Woman 10)*

*Well I left the household and drove into town because where I was actually living there was the community of about 100. So very small community and of course, no Police Station. The nearest other Police Station would have been half an hour's drive and then possibly they have been out at the time. So the nearest thing was the biggest town to go to. So chuck the kids in the car and get in the car and drive. (Woman 11)*

Police being friendly with the perpetrator was another issue that was raised about living in small communities:

*Being in an isolated situation, I'm a farmer's wife. And you know, and there farms that are attached to smaller towns. And generally if the police Officer has been there for so long, and the days off they might go to the pub or whatever. Generally they're friends with their mates and everything else, which that's their private life, they're allowed to. But the isolation doesn't help any woman that needs help.*

An older woman described how living in a rural town meant that she could not avoid seeing the perpetrator. Even though he breached the order, she did not report it, because it was in a public place and she was embarrassed:

*I haven't [reported a breach] but I should have done on one occasion. I was in the street, it's quite a busy town, and I was walking through the arcade and I saw him coming and I went into a shop and next thing he came back and he was bending down looking for me. And that's why I should have rung the police, but of course I didn't. I waited for him to go and then I went out and I went the opposite way ... [I was] probably embarrassed about it. (Woman 7)*

### **CASE STUDY: Intersecting legal systems, rural context**

Woman 18 was originally from the city but moved to a small country town where she lived on an isolated farm with no neighbours. She left the farm with her four young children to escape violence but received legal advice that she needed to stay in the town to facilitate shared parenting arrangements. In fact, she was told that she would not be given legal help if she left.

However the violence escalated at changeovers and raised issues regarding the protection of the children. As a consequence, a health worker said she would report her to child protection services if she didn't leave in order to protect the children. She was caught between the conflicting and irreconcilable requirements of the child protection and Family Law systems. She ended up packing the kids in the car and drove to a refuge in Sydney.

She was unable to get the police to take out an AVO. She was sent to the Chamber Registrar who told her she needed to go to the Police – falling through the gap between the systems for Police and private applications and was 'stuck between the two'. She contacted another Police Officer who was apologetic but said: 'There is nothing I can do for you. If he turns up with a gun call us straight away'. The Police, Chamber Magistrate, solicitors and legal aid solicitors told her that too much time had now elapsed to get an AVO. The lack of privacy in a small rural town meant that her location in Sydney was revealed to the perpetrator and she had to move to a different refuge. She did not initiate family Court proceedings while attempting to get an AVO, so her ex-partner was able to get a recovery order, resulting in her pursuit by the Federal Police. She was battling to 'prove' the domestic violence in the Family Court, as she did not have an AVO. Her rural context added additional complexity to her efforts to achieve safety for herself and her children, complexity that was not assisted by inconsistent and poor legal advice. She concluded: 'A lot of us in this situation got out because we had to survive and we don't know what is up or down'. She was caught at the intersection of the civil and Family Law, statutory child protection and was now representing herself in the Family Court.

## Aboriginal women

One of the legacies of colonisation, violent dispossession and family and kinship destruction through government policies resulting in the 'Stolen Generations', is the high rates of violence, including lethal violence, experienced by Aboriginal women (Lumby & Farrelly, 2009). This highlights the importance of Aboriginal women's access to legal protection from domestic and family violence.

All but one of the ten Aboriginal women in the IPV group had been successful in their application for an AVO; the remaining woman has an undertaking and was still in the process of seeking an AVO at the time of the interview. Of the 4 Aboriginal women in the non-IPV group, half had successful applications. Since the women were referred to this study by service providers, they were women who had received support in their efforts to use the law. As with all women in the study, this support was critical to their ability to navigate the legal system. A number of the women were participating in a support group at a Women's Health Centre, jointly facilitated by a women's health worker and the local WDVCS coordinator. Their experiences highlight the importance of providing support and advocacy by service providers who have long-term and ongoing relationships with the Aboriginal women, offering assistance that is not solely directed to legal matters.

*Well, my experience was pretty good. I mean, see I had [support worker] and that so I was pretty lucky there ... You know, a lot of it is self-esteem, that's a lot of the issue. Because I mean, they take so much of that away from us. And you do end up believing it and after a while you're lower – you know, that you're down here so you don't belong anywhere but down there. But it's not the case. These girls put you through these, you know, counsellings and stuff like that, that is available ... until you realise but, you know, there is hope out there mate – get out there. (Woman 37)*

Important additions to support were assertive outreach and the promotion of mutual support through group work:

*See these girls come back and they'll check after months and months. And they'll just out of the blue ring and 'how are you going?' and if you're right, well bang I won't hear from them for another six months. But again, they go back and they check. Even when they've still got their clients on the table mate, they'll still go back – especially the ones that have like really struggled. They'll get on the phone and they'll call them after 6 months to make sure they're alright. (Woman 37)*

*I think having the strength from the other women ... is good because it's helped me realise that we don't have to be treated like that. No-one does and you shouldn't have to be, you know. That's not the way to deal with things. Violence is not the answer. So yeah, so I've just sort of come to that realisation so I want to be happy. I've had enough stress in my life. (Woman 36)*

Support from other family members was also important to several of the women. For example, Woman 35 was arrested when protecting herself from her ex-partner, but with her brother's support, successfully took out an AVO:

*My brother helped me do it. Like I said, I've never been in trouble with the law in my life. So it was a whole new experience. Something like you'd see in the movies basically. But I was actually living it. And I'm still living it to this day, you know, because I'm absolutely petrified of the man. So he said, you know, we need to take an AVO out on him to protect you and to protect my niece. And so we went through the Courts.*

However, on the other side of the coin, some Aboriginal participants spoke about the reaction of family and community as a barrier to seeking legal protection. For example:

*I don't want to go through Court. I want to just be able to live without any of that. Like I'm the bad one because I ran to the Police and because I had no family. I had no support. I had no-one. I was isolated and everything. I make him a criminal so I'm the bad one, not him. So all the family hates you, on his side of the family everyone hates you. 'Oh she's the bad one.' 'He's the good one.' (Woman 34)*

This barrier to using services needs to be understood against the context of the history of trauma and ongoing racism that many Aboriginal women continue to experience in interactions with 'mainstream' services (Herring, Spangaro, Lauw, & McNamara, 2012). While it was not uncommon for women in this study to have delayed involving the legal system out of a sense of loyalty to their partners, this can be an even more difficult dilemma for Aboriginal women, given the history of Aboriginal-Police relations and concerns about deaths in custody. For example, Woman 36 was torn between her desire to protect herself and her children, and protecting her husband:

*[A]nd the Magistrate said to him: 'You have to calm down. If you don't calm down we'll arrest you now and put you in jail. You're on your last chance basically. If your wife's willing to accept you back, you know, then you need to follow the terms and conditions of the AVO because if you don't then you're going to be locked up and put in jail' and all this sort of thing and he's on his last chance. And that's why I was worried because I know if he was arrested and put in jail, he wouldn't last. You know, he wouldn't survive in there. But I mean, that's still no excuse for him to be violent. I don't know.*

Woman 40 provides an example of the power of long-term support that enables the establishment of trust. Her prior experiences of violence and the law were far from positive. She witnessed brutal abuse of her mother while growing up, and her father's reaction when her mother got an AVO: 'Because my father just ripped it up and then turned around and punched the living shit out of me mum as soon as she'd done it'. She had also experienced violation in the legal system as a victim seeking redress for child sexual assault:

*When a woman goes into a Court thing as a victim, they don't want to walk out of there feeling like they're just as worse as the perpetrator. I've taken my foster father to Court when he's sexually abused me. I walk in there as a victim and I walked out there feeling like I deserved it, you know, as a 12 year old ...*

Yet, participating in a support and educational group gave her the strength to take a stand:

*I really didn't want to call the Police but I gave him two choices, too many times – he's done it too many times. So I said 'nup'. How can I do a course on domestic violence, graduate from that, and then go home and live that. It's a bit of a contradiction. And therefore it's a slap in the other women's face to put myself through it when I know they came out of it. So I couldn't live that. So I said: 'Nup. I'm not going to stand here and be a living contradiction', so that's why I done it for.*

Woman 31 described the ways in which negative stereotypes about Aboriginal people by service providers can be a barrier to justice. In one incident, Police assumed that she had been drinking, when she had not:

*They didn't actually mention anything to do with AVO that first time [when I was assaulted]. I actually asked a guy and inquired about it. I said: 'Can you just explain to me what an AVO is?' and then they automatically assumed that I was under the influence and said: 'Would you like to talk about this when you're sober because we come across a lot of people like yourself that make AVOs and then want to withdraw because they're drunk?' And then I said 'Actually I'm not under the influence. I haven't been drinking.' So I got pretty pissed off at that point in time. And I kind of just went 'oh stuff the legal system.'*

She later went to the Police following incidents of harassment by her ex-partner: 'And they basically told me to stop wasting their time and that I would only go back to him. And told me to carry on with my evening.' She talked about the impact of these encounters on herself:

*You know, that stereotype or that kind of judgement like they have – straight up, it's body language. You can read body language from anywhere. And as the worse state I was in that I could possibly be in, I could still read their body language as they were walking towards me and their facial expressions*

*and I just didn't want to talk to them. So I just kept crying because I could just see in their – the way they looked and the way they pulled their book out to write notes, it was just like 'oh here we go again'. And I'm like 'oh my God. I'm the victim here and you're just like this is every day'. They're just making an automatic assumption that we're both drunks and this DV episode is normal to us.*

She talked about the ways in which attitudes such as these can impact on Aboriginal women's access to the legal system:

*Another barrier may be even the language that they used and the tone of their voices. I mean, Police in general, I think, kind of talk with a lot authority anyway. Even more so, I think, towards Indigenous people and especially when you're an Indigenous woman that has been through domestic violence and you're at that stage that you're most vulnerable kind of stage. It just makes you feel that much smaller and then like, it makes you not want to go through with every – you know, 'you've got to sign this' and 'you've got to show up here' and it's like 'you know what, I don't want to see you again. But you didn't make me feel comfortable at that first point of contact so why would I want to?... And it's about at that stage, like the Police get there and not babying you but making you feel comfortable and making you feel safe. And I didn't get that twice, like in those two times I never got that once ... And I consider myself, you know, quite intelligent and I just think to myself: 'I'm probably one of the few that would actually stand up and go 'you know what, this isn't right'. And it's sad to me to think how many other of my aunties or families or mob are out there going through this and think it's normal. And have absolutely no faith in the justice system. So continue to live in this cycle of abuse where, you know what? Ok, I know in my heart and I know that my body knows that this type of abuse is wrong but what else is there, out there? What other avenues are there to?*

As previously discussed, engaging with the law for protection or redress from domestic violence carries both potential benefits and risks for all women (Laing & Humphreys, 2013). However, engaging with the state can carry greater risks for women from marginalised groups. As already seen in the section of this report about the intersection of the civil protection and child protection systems, Aboriginal women may risk losing their children if the domestic violence becomes known to the formal helping system. This had happened, for example, to woman 33, whose children were removed for a year. However, the WDVCS worker had advocated for the return of the children, working across organisations to assist her to obtain the resources to rebuild a life with her children:

*If it wasn't for [WDVCAS Worker] again, she's helped me out so much with getting my kids back. Helping me getting a house. So I'm stable. [Without her], I'd be back where I was living homeless with no children. And my kids are my life.*

## Summary

While all women need support and advocacy to make good use of the law, women affected by multiple, interlocking patterns of inequality require active outreach and assertive support to enable access to the law and other essential resources. Despite the barriers to using the legal system, some of the women in this chapter provided compelling accounts of the value of outreach and the provision of tailored resources and supports both inside and outside the legal sphere. There were also examples of situations in which women were insufficiently supported to overcome the barriers to accessing legal protection. While each part of the legal system operates within its legislative framework, it is women attempting to navigate multiple, complex systems to escape violence who bear the consequences of poorly integrated systems.





# CHAPTER 5

## Was it worth it?

WOMEN'S perceptions of the value of attempting to obtain legal protection from domestic violence were complex. At each extreme, there were women who are clear either that the experience was worth it or that the whole exercise was futile. Most women, however, expressed a range of reactions, depending on factors associated with both the outcome of their application, and the ways in which they had experienced the processes involved and their contacts with various service providers.

### Successfully obtaining an AVO

As noted earlier in the report, the majority of the women in the study had been successful in their AVO application, even though for many this had taken several attempts and involved a stressful and protracted process. For a minority of the women, the process had been successful and fairly smooth:

*So he just sent a letter saying that he didn't admit to any culpability with what had happened but he would abide by the terms of an AVO. I thought that he was pretty cowardly not showing up in Court. He's not the type of guy that you would look at and think there's a domestic violence perpetrator. He doesn't – he's not tattooed, he has a very good job ... So I think he didn't want to show up because he was probably quite embarrassed because of his job and everything. But the AVO went straight through for a period of one year and I felt very happy about that...*

Relief was a common reaction:

*[When it as over] I felt relieved. I felt really relieved. [During the process] I feel like I'm being prosecuted. I feel like I'm a prisoner or a bad person (Woman 34)*

*I was so relieved. So relieved. And he rang me and told me that I had an AVO for 12 months and a good behaviour bond. He was on a good behaviour bond for 18 months. (Woman 7)*

Some women experienced the process as empowering:

*... I felt quite comfortable at that time in saying 'you're not welcome to come here. I have an AVO and if you turn up unannounced and drunk, then I'll have no hesitation ringing the Police.' And I stood my ground and I felt like, I suppose, I was superwoman – I had this magical bit of paper, it was going to make everything right. I never felt that it wasn't worth the paper it was printed on. (Woman 39)*

*[I]t made me feel a bit more empowered about what was going on and that I have – especially because I'd gone through so many barriers to get to that point, it made me feel a bit stronger and it made me feel more empowered so that he didn't have all the power anymore to make me feel scared and stuff like that. You know, it did make me feel better that I had got it, and that you know, finally he's going to have to answer to stuff that he's done. (Woman 1)*

Even though her partner was found not guilty of sexually assaulting her, this woman was empowered by having taken action in Court:

*So I stood up there and I was questioned at length for an hour and I do remember at one stage saying – at just at one stage I said to my ex husband, I said something like: 'What you did you should – it wasn't ok for you to do what you did to me.' And I found that was quite empowering but, you know, considering that this was a sexual assault. (Woman 8)*

For some women, the AVO was effective in stopping or reducing the behaviours that had led them to seek the AVO. One woman had made three attempts to get the Police to take out an AVO on her behalf, finally succeeding with the support of an advocate. While the process had been difficult, her experience of the Court outcome was positive:

*And that sort of when it sort of dissipated a bit and things sort of calmed down a bit after that. And he pretty much stuck to the order. He didn't harass me or bother me within that 12 month period.*  
(Woman 1)

## The conditions of the AVO

Contributing to Woman 1's satisfaction with the outcome was the fact that she had been able to get conditions that suited her situation, assisted by the lawyer from the Domestic Violence Practitioner Scheme:

*I got mainly everything I wanted because at that time they had a legal aid lawyer there, and we actually went and saw him while I was waiting and he said 'OK, what extra things do you want on there?' and he actually went and liaised with my ex and talked to him about what we were including and what we weren't ... And so [ex] basically agreed to everything except for [youngest child] being on the actual AVO ... at no point was [youngest child] really in danger and was always very good with his son and he never hurt him or was mean to him or anything like that. It was just me that he was so I sort of said that was ok as long as he doesn't go and take him out of the child care centre and so there were a few additions – like he couldn't go to his day care and see him there or take him out of the day care unless both of us have agreed to it in writing and signed it and things like that. So there were some additional things that were on the AVO that he agreed to and that was all pretty well.*

Other women had been successful in being granted an AVO, but were not necessarily happy with the conditions. For example, Woman 5 had not judged it safe to press for all the conditions she would have liked:

*Well because I tried to down play everything, I only asked for mandatory orders. So looking back, I mean, I should have stopped him from coming to my home or to the children's childcare. So I was always quite scared that he might just show up and take them. There's always been that risk of, you know, abduction – because he's so – what's the word I'm looking for? Unpredictable. He's very volatile. So I only sought the mandatory orders and I think that probably helped pushed it through. I was told that the more you ask for, the more risk there is that, you know, you won't get it.*

Woman 15 (whose evidence went missing on the day of Court) felt that she had been pressured by the DVLO on the day of Court into letting go of certain conditions that she regarded as essential to keeping her children and herself safe:

*So the condition of the AVO was that he wasn't to contact me within 24 hours of consuming alcohol. And a 2 year AVO – the conditions were for 2 years ... the DVLO spoke to me and my counsellor and said to me 'he will accept the AVO on the conditions that he doesn't have the part about not consuming alcohol within contacting you within 24 hours because he won't accept that. And he won't accept the 2 year ban of the AVO'. And she then said to me ... 'If you accept the AVO today under the conditions that he wants, you've got an AVO. If you don't accept the conditions, you don't have an AVO and you have to come back and get up in the box and he'll have to get up in the box and it might be 6 months down the track'. So I felt like I was bullied into it.*

## Unsuccessful applications

Five women in the IPV group and three in the non IPV group did not obtain an AVO. Only one woman withdrew from the process, because she was advised that she had little chance of succeeding and was not offered support. The others were decided by the Court. Each of the unsuccessful IPV applicants had elements of complexity that can affect access to justice: two were CALD, recent immigrant women; one woman was from a remote rural location and was dealing with intersecting civil, child protection and Family Law systems; one had a diagnosed mental illness; and one woman's protracted matter crossed the civil, Family and criminal legal systems due to allegations of child sexual assault. Two of the unsuccessful applicants in the non IPV group were Aboriginal women; and the third was a young woman experiencing ongoing abuse into adulthood.

Where women were not granted an AVO, there was an acute sense of having been let down by the legal system. For example, Woman 14 was involved in a controlling relationship. Despite a protracted and complex process, she was not granted an AVO. Her understanding was that this result was due to the Magistrate not believing that she was in fear of her ex-partner, based on the arrangements she had agreed to for child contact at her home, because one child was an infant:

*I was shocked that I didn't get the AVO. Because I thought I did very well in Court to prove to the Judge [sic] – but I think the Judge could not get enough evidence that I was fearful. Yes, I did spend time [with my ex] but you have to see the circumstances why I spent time. I was dropping the child [for contact]. He was coming to my house [for contact] but he was never allowed inside my house. All those sort of things he was trying to – he was trying to create a picture, which was not there and I was basing my energy trying to prove that what he is saying is not true. It was just like a battle I was fighting – everyone – against the Judge, the Court, the system, my ex-husband. It was just 'oh my God' (Woman 14)*

Nevertheless, she thought that she had done the right thing in trying to use the law:

*And also going to Court – yes, it is frustrating but you still have to do – because it is the right thing to do. You still have to go to Court and you have to try. You might be lucky to get it. You might be, you know, lucky enough to scare him for what he has done. Or – I went, and I had decided even now when he does it, I will go. Even though – every time I went to Court I have not got, you know, I haven't got an AVO. So I still go ahead with it because I think it is the right thing to do. And he doesn't like to go to Court because it costs him a lot of money. That is scaring him a little bit too. So I – and I think if I had that help, if that justice is there – if that is the law in this country, you know, that you should not abuse someone or physically abuse someone, you don't do it. You just don't do it.*

Where grandparents did not get an AVO against another family member, they saw the harmful impacts on their grandchildren:

*If we did get the AVO it would have stopped a lot of hurt things. A lot of things that happened to [older child]... (Woman 12)*

The outcome for Woman 8 was affected by the ways in which her earlier attempts to get help from Police had been disregarded:

*And in the end, I wasn't granted the AVO because they feel that – the Magistrate thought what I said had happened [sexual assault]. He did agree with that but I hadn't proven my fear for my safety because I didn't report it to the Police. That was the basis of it. Now before applying to this, I had gone to the Police in the past year numerous times to obtain an AVO and I had been turned away...*

Not obtaining an AVO can influence women's future decisions about using the law and can place them at greater risk:

*And I was really, really hurt and angry and vowed that I would never, ever report to the Police again ... Because I always thought that was, you know, the important thing to report the stuff, you know, because it gives other women the strength to stand up against it. You know, and say hey, somebody else can stand up and fight against it then so can I. And to make women, you know, feel safer and not have to go through the things that they go through and that's why I fought, you know, for my safety as well. But also for, you know, women as a whole and, you know, I just think now 'ok, I've given my best fight for that. All I can do now is focus on keeping myself as safe as possible. (Woman 4)*

Woman 20 feared that not getting the AVO renewed would undermine the support she would receive from her informal network:

*I can't work it out. I'm baffled [about not getting the AVO]. Everyone around isn't. I start getting to the point where if I don't get an AVO no-one is going to believe me, including my friends. They must be thinking that I'm not telling them the whole story. Because of everything that has happened, they're like 'how come you don't have an AVO?'; 'How come he's not in jail?'. . . And I'm like 'I don't know'. And I feel like 'people must think I'm nuts now'.*

## Undertakings

Three women were persuaded to accept an undertaking rather than an AVO. For one of the women, this was an acceptable outcome:

*They put it to me – the Police prosecutor came up to me before Court and said because – basically because there was a passage of time from the knife incident and he didn't want to put me on the stand, and also that if I went through with the AVO, the ex would instantly be dismissed from her job – so I considered what they also said, and I thought well it's not my intention to be malicious because I'm not like the partner, ex. I didn't want to be malicious and take her livelihood away from her, so I settled for an undertaking to the Court, which was her promise to the Court that she would not harass, intimidate or stalk me. A written promise to the Court. (Woman 3)*

The other women, however, were disappointed with the outcome. Woman 29 was applying to renew an AVO following a relationship of severe violence towards herself and her children and protracted proceedings in the Family Court. Her original AVO had expired and she initiated proceedings because of stalking from her ex-partner, but she was advised on the day that it was safer to accept an undertaking rather than risk getting nothing, because of the particular Magistrate hearing the matter:

*And [the Police Prosecutor] was very good and he explained everything from start to finish and he said, 'Look, we believe you that he's harassing you and stalking you.' He said: 'The problem is that we have to try and prove it in a Court of law.' He said 'The Magistrate that we've got on today, she virtually wants the law to be broken before she'll issue you an AVO. I don't really want you to leave here today with nothing. You've got a 50/50 chance of going in there with her and getting an AVO. He said: 'If it was the Magistrate that is usually in this area, I would definitely take it in because I believe you would get an AVO. I believe there's enough evidence here.' But he said: 'I don't really want to risk it with this Magistrate. Would you accept an undertaking for yourself and the children?' Then if he breaches that, you can get an AVO'. So I agreed to that.*

A third felt pressured into accepting an undertaking. As soon as it expired, the harassment and intimidation continued, leading her to continue to seek an AVO:

*In the last 2 years I've been 9 times to Court ... And we agreed to an undertaking last year, which isn't worth the piece of paper it's written on. It really isn't. But I was pressured by my lawyer and by his*

lawyers and the agreement was that [ex] would abide by the undertaking – he didn't want an AVO against him and he was to abide by the conditions of the undertaking. He didn't. He breached them. And so another interim order was put in place. And then when we went back to Court for another AVO for the breach of the undertaking, my lawyers again made an agreement with [ex's] lawyer that if he didn't offend in 3 months, if he didn't come anywhere near the property for 3 months, that I would drop the matter. So for 3 months [ex] was nowhere to be seen. (Woman 16)

## Views of the AVO

The process of attempting to obtain an AVO and the women's views about it, were quite varied. Woman 28 was very clear that she needed to use it and report all breaches if it was to be effective:

*Every single time – anytime I felt that he had crossed the line, I contacted the Police and they'd go and see him. I wanted him to know not to – basically not to mess around with me because I was like 'don't touch me'. It was like 'well you keep going and I'll keep going as well' and you know, the thing is for me is that if he does breach it, I won't hesitate to contact the Police. And I don't care how trivial they think it is, and I always make the point of saying: 'I'd like an event number please'... Because otherwise, if I took it back to Court they would say 'oh there's no history of you reporting any events' when they pull up every event number that I contacted them. (Woman 28)*

This was a woman who had been through a protracted process involving criminal and AVO proceedings and who had been very well supported by a number of justice and criminal and community agencies working closely together. She had developed a good understanding of the system and how to use it effectively, and had been able, with support, to endure a prolonged and very difficult process.

Another woman thought that the order had some effect on making their ex-partner realize that their behaviour was wrong:

*Well, I think that it did open his eyes up a bit and sort of make – like I said, there wasn't much trouble within that 12 month period with him and he wasn't – he didn't harass and, you know, he was pretty good... (Woman 1)*

Another recognised that its strength lay potentially in what has been termed the perpetrator's 'stake in conformity' (Sherman, Smith, & Schmidt, 1992):

*I don't believe for one minute if we moved it would be any different ... He'd find us. He'd follow us home from school one day. And then it would all start again at the next house. So I need to have an AVO in place really clearly. And then if he abides by them, that's up to him. I mean, how many AVOs do women get murdered on. You know what I mean? They are only just a piece of paper. It's just that when you've got a man like [ex] that's a solid citizen, he doesn't particularly want to get arrested. (Woman 16)*

More commonly, however, the women's attitude was along the lines that: 'Don't believe these men. They're not going to change.' (Woman 2) For another woman, the effect of the AVO was short-lived. She attempted to renew the relationship because there was an initial change after the AVO, but it did not last: 'Yeah. And he was good that time. But once that finished, he went back to the way he was.' (Woman 32) Similarly for those seeking to continue the relationship, the effects of the AVO soon wore off: 'And he still to this day got that same attitude and you just can't reach him. And that's hard. It's so hard.' (Woman 39)

## Safe and free from fear?

Safety is a complex and often relative issue for women dealing with violence from intimate and ex intimate partners (Austin & Dankwort, 1999). At the end of a complex continuum was an Aboriginal respondent who was clear about her increased feelings of safety:

*Well the only outcome I can think of was that I was safe because I wasn't with him and ...They gave me a release - a chance for freedom, a chance to be safe, to live life the way you were meant to. And not worry that every time you turn your back someone's watching you ... I mean, it is scary at first but for anyone who knows it's worth it especially if you've got kids. (Woman 32)*

For another Aboriginal participant, however, the safety was seen as entirely contingent on the response that she might receive to a breach of the order:

*I felt safe, yeah. Yeah, I felt safe because I knew that – but then you do feel safe to a point where 'what if the right Police Officers aren't on duty when [something happens]?' – that's my fear. You know, I know – a lot of other people probably wouldn't have the fear because they've not had that taken away from them either. So yeah, to me I just hoped that I got the right person, which I was lucky I did. But then on the other hand, if I got one that didn't want to do his job properly where the fuck would that leave me? Excuse the French again but where would it leave me. You know, I could be doused and burnt by the time they got their arses there. And so could a lot of women, like – it's about the spirit, getting there on time as well, rather than a lot of the time you've got to wait an hour or two or three or four, however long it takes for them to get there. (Woman 37)*

Having an AVO did not necessarily increase women's sense of safety. A range of factors contributed to this. Some were related to the characteristics of the man, where women recognised the level of danger that he posed to her, including his respect for the law. Research indicates the accuracy of women's predictions of re-abuse (Cattaneo, Bell, Goodman, & Dutton, 2007).

*I'll be safe if he's locked up. You know, he's a walking time bomb. It's just a matter of time. No matter who I'm with, he'll still get me ... it's just a matter of time of them doing it. And the Police won't do nothing until it happens. (Woman 33)*

Woman 10 did not feel any safer with the AVO as her ex-partner had scant respect for the law. In addition, her situation provides an example of the intersections of different areas of law, as discussed in Chapter 4. Her safety was jeopardised, despite the AVO, because she had to remain living in the same rural area because of Family Law orders, and these orders meant that her ex-partner knew her address and her movements:

*He doesn't take it [seriously]. He's been in that much trouble with the law he doesn't give a rats arse ... He actually said to someone that he'd kill me and he'd only get 2 or 3 years jail. And the worse thing is I don't know where he is all the time. I could be driving down the street and he could run over me, I wouldn't even know. He can – like he knows exactly what car I drive ... I couldn't leave my own house because he had someone watching me across the road. So it's a waste of time. It's a waste of time and energy ... Yeah, and that's what I don't understand how with the AVO in place, how he can still know my address and everything like that. Because he knows exactly when those kids aren't here. He knows that they go to school. He knows exactly what time they go to school. Everything. So if he knows that I'm not working – like if the kids say to him 'oh look mum's not working tomorrow', he'll know exactly that I'll be at home doing housework on me day off because he knows I do that.*

## Failing to hold perpetrators accountable

A strong theme in the women's accounts was that the system failed to hold the perpetrators of violence accountable, either in granting AVOs, dealing with breaches or in the level of sanction applied. Women recognised that the system's failure to hold men accountable can reduce their safety in the longer term:

*And over the years he got bolder because he knew he could get away with such and such thing. He knew there were a lot of things that he could get away with. So [he] found every loophole that was there. And I felt so helpless because it's not only the first AVO, the first, second, third – I went through the whole process, you know. It was so hard on me. (Woman 14)*

*But he always found a way out of going to jail. He did 5 days' jail at one time and he came out telling me that he had to stay away from me. And that lasted for about a day because he went and scored his drugs. And then came back. (Woman 26)*

*All he got was a slap on the wrist. He had to attend parole and probation. He had to attend counselling, alcohol, anger management, and grief counselling and that was pretty much it. (Woman 28)*

Woman 19 felt thoroughly let down by the legal system. Despite an assault that resulted in her hospitalisation, the perpetrator only received a Good Behaviour Bond (without conditions) and a one year AVO, following an extremely protracted process. He continues to breach the order, stalking the woman and her new partner, harassing and making death threats. She has been unable to get the Police to act on the breaches, leaving her to conclude that: 'He gets away with it over and over again.' She believes the leniency shown at the beginning from the system led to the whole progression of events, leading the perpetrator to believe that: 'I can get away with it again' and that 'Nothing was going to stop him.'

Referral of offenders to behaviour change programs can be an outcome of involvement of the legal system. One man was both charged with assault and had an AVO taken out by Police and was referred from the Court to a program. However, a requirement of accredited men's programs – partner liaison for safety and support<sup>26</sup> – was not met:

*... he's going into anger management and he's not being totally honest because at no point in time did anyone ever speak to [my daughter, his wife] – asked her how she was, asked her how he was. If there's been any change in his actions and that toward her, any more understanding on his part. She was never part of – she was part of the problem apparently but she was never part of the solution. And she felt cheated and, on her behalf, I thought cheated for her too because that was quite right. And this is often the case with men. They go to their men's groups and that but they don't have the input of a woman or somebody go to the woman who's been abused. And they go through all this and think they're all cured and then the slightest thing and they're back right where they started. They haven't learnt to respect women. They haven't really changed their thinking or where they're coming and so it just go on and on, and on and on. And it's really hard. (Woman 39)*

Another woman was advised about eligibility for Victims Compensation, but she did not think that this made up for her ex-partner having been found not guilty of breaching the AVO:

*It is compensation but it's not the same because – and I would rather it was recognised ... I know that the Police say that punishes him. That's doesn't. It's not a judgment. He still feels that he's 'all right Jack'. You know, he's done nothing wrong and the Magistrate's vindicated that. And, you know, I'm left again sort of being blamed for being hysterical and it's just – it's so demoralising – after everything else that you've been through with him, to not to be recognised in the easily – you know, with the harassment and the put downs ... these men are constantly just forgiven. And they're constantly seem to be just to repeat their behaviour and then they're forgiven and then women are expected then to just put up with it and wait for the next episode. And then you have to apply for another AVO. (Woman 2)*

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26 See: NSW Attorney General & Justice. (2012). Minimum Standards for Men's Domestic Violence Behaviour Change Programs [http://www.domesticviolence.lawlink.nsw.gov.au/agdbasev7wr/\\_assets/domesticviolence/m42200112/dfv\\_behaviour\\_change\\_program\\_standards\\_april\\_2012.pdf](http://www.domesticviolence.lawlink.nsw.gov.au/agdbasev7wr/_assets/domesticviolence/m42200112/dfv_behaviour_change_program_standards_april_2012.pdf)

## Sense of Injustice

The failure to hold perpetrators accountable resulted in the women very commonly expressing a great sense of injustice, sometimes because of the legal outcome, at others because of the process:

*I didn't get anything ... As a consequence, I think it has meant that he would get away with everything and it never stopped until the way I stopped him was when we went to [Family] Court for Orders, I sought Orders which would try and protect me. (Woman 8)*

*He was found not guilty for the sexual assault. I literally just went 'why did I do that?' 'Why did I just endure 2 days being grilled?' How I wanted him to have sex with me when I hadn't been with him for 2 months. The justice system is geared for them and it's not geared for people that are genuine, people that are genuine victims. (Woman 28)*

*I think I've been so disappointed by the Court, so disappointed that I don't know ... You have every proof over there, but you know, the problem is that I have to prove that I'm innocent and that the guilty person is guilty. It is actually the proof of burden lies on me, not on the person who did the wrong thing. So it is just like – I find like, what am I supposed to do. How am I supposed to get that proof that abuse went in that home. Like, you know, even if people have seen it or if I have going on – so many times the Police have come to my house. There is record after record, what am I supposed to do. Am I supposed to be dead? (Woman 14)*

Woman 2 was frustrated about the lack of 'fit' between the dynamics of domestic violence as she had experienced them and what was taken into account in the Court:

*I had no real defence at all to explain exactly the background of all of this and the fact that this had been going on for years and that – and apparently all their previous AVOs – they're just not taken into consideration. So his history isn't taken into consideration. And domestic violence, it's ongoing. And this is what the difficulty about it is. And yet, the Courts don't seem to recognise this in any way, shape or form. (Woman 2)*

This woman speaks to the failure of the system to move beyond a focus on incidents, to a broader understanding of domestic violence as a pattern of behaviour.

## Summary

The accounts of women in this chapter illustrate the ways in which women's experiences of the legal system are shaped by both the legal *outcomes* and their experience of the legal *process*. At each end of a continuum of responses, there were some women who were primarily positive about their experience of the process and the outcomes, and at the other, women who regretted having ever becoming involved in the legal system. However, for the majority of the women, their experiences were more nuanced. A devastating legal outcome, for example, might be balanced by empathic support offered by someone in the system; a woman may be well supported through a protracted process and referred to essential resources outside the legal system. What did emerge was that individuals within the legal and wider interagency systems can make an important contribution to women's journey through a complex system. This was expressed well by Woman 9, whose early contact with the system was extremely negative, and who was involved in both the criminal and AVO systems:

*Everywhere that I do go, even to the DPP and all that, I'm just always astounded about the compassion and how much extra people are willing to put in to help you. ... There's a lot of breakdowns in the system but the people inside that system are really good people. That's the way I look at it anyway. I mean, the system itself needs a lot of improvement, especially the Court system.*

Nevertheless, a very strong theme in women's accounts was a sense of injustice because the legal system does not adequately hold the men who abused them accountable.



# CHAPTER 6

## Emerging themes and discussion

THIS RESEARCH explored women's lived experience of participating in the legal system seeking protection from domestic violence. This chapter draws out some broad themes that emerged from the research and discusses these findings in the context of the research literature and recent policy reviews and service reforms in NSW.

### Struggling to be heard

There were many stages of the process at which women reported that they did not feel that their voice was heard. Most women's initial encounter with the legal system was with the Police. While some women reported that the Police response was positive and pivotal to their continuing through the process, more women reported experiences in which their concerns were dismissed and trivialised when further assessment could have identified high risk factors and serious domestic violence. It appeared that there was often a mismatch between Police understandings of domestic violence (which emphasised discrete incidents and physical assault rather than a pattern of behaviours) and the ways in which women tried to talk about their experiences of abuse and their reasons for seeking legal protection.

Some women from marginalised groups confronted additional barriers to having their concerns heard and acted upon. For example, one Aboriginal woman reported that Police assumed that she had been drinking; a partner's threat to revoke a newly arrived immigrant women's visa was not recognised as a risk factor, nor was she provided with information about the domestic violence provisions of the Immigration Act; and evidence that could have supported the claims of a woman with a diagnosed mental illness was not collected from health professionals who witnessed the events reported.

The sense of not being heard was exacerbated for women in Court when the vast number of matters dealt with left them with minimal (or no) opportunity to meet with the Police prosecutor. Many were left with the perception that the person, who they saw as representing them in Court, had minimal understanding of their situation. This did not provide the women with a sense of being heard and receiving 'justice.' A similar point was made in the report of the Standing Committee on Social Issues of the NSW Legislative Council:

*There appears to be a lack of support to enable prosecutors to prepare effectively. This can leave victims feeling 'voiceless' in the very system that purports to protect them (2012, p. xliii).*

Failing to listen carefully to women and to more fully understand the risks they are facing also impacts on the quality of protection offered by an order, beyond the issue of whether or not an order is granted. This point was also made in the Standing Committee's Report:

*Moreover, in practical terms, where victims are not adequately consulted, supported and engaged in the Court process, the chances of their ADVO containing inappropriate or unworkable conditions is greatly increased (2012, p. xliii).*

Examples of women's dissatisfaction with the conditions of orders were seen in Chapter 5. The small number of women provided with legal advice by specialist services such as the Women's Legal Service or the Domestic Violence Practitioner Scheme reported a more satisfactory experience, including ensuring that the conditions of the order were tailored to their safety needs.

A further contributor to women's sense to not being heard was the very short time allocated in Court to their matter – in contrast to the amount of time women had to commit to being available at Court, and the number of occasions on which they had to attend Court. The brevity of protection order proceedings has been noted in other Australian research (Hunter, 2008; Wangmann, 2012).

## A sense of injustice

Despite many examples of good practice in supporting women's legal participation that are seen in this report, an overwhelming theme in women's accounts was a strong sense of injustice. Understandably, this was acute for those women who were not granted an AVO. However, a sense of injustice was also expressed by women who were successful in obtaining an AVO. For some women, this was related to the issue of being heard, as described above, since the full extent of the perpetrator's abuse was not named nor were their devastating experiences of abuse recognised and validated. For many others, a sense of injustice arose primarily from their perception that the legal system failed to adequately hold the men who abused them accountable. This could be because only small aspects of the men's behaviour were recognised as abusive, because breaches of orders were not responded to, or because the levels of sanctions for the abusive behaviour were seen as manifestly inadequate by the victims harmed by these behaviours.

## The importance of partnering with women

Countering this sense of injustice were individuals in the system who provided legal and non legal support and advocacy and who partnered with women on their journey through the system. The women highlighted the importance of receiving support and advocacy from a wide range of personnel and agencies, both inside and outside the legal system. Police Officers, who demonstrated understanding of the complexities of domestic violence and were patient with the process that women go through in deciding to take action, provided important support and validation to women. Women spoke unreservedly about the support provided through the WDVCS and the importance of the 'safe room' at Court, and the benefits of being linked into specialist women's and domestic violence services which offered broader and longer-term advocacy and support.

It is not surprising that women's strongest call was to be provided with timely and accurate information. Partnering with women in ways that enable them to make informed decisions has the potential to begin to restore to the women the sense of control of their lives that is undermined by domestic violence.

## Making full use of the legislative provisions?

In this study, a common theme was for the women to be informed that there was insufficient evidence for an application for an order, or for them to report that what they regarded as important evidence was not accepted or put before by the Court. This may be because the women had limited understanding of the legal system and the types of evidence required. It could also point to limitations in the process of working with women to elicit relevant evidence. While this project did not have access to the material put before the Court, other NSW research has raised the issue of the quality of complaint narratives:

*[M]any complaints were overly brief, lacking in detail, focused on a single incident, and contained considerable irrelevant information. This negative assessment of complaint narratives was shared by the professionals interviewed. This ... raises critical questions for the legal process: how is the legal system able to make determinations, and effective and appropriate protection orders, in the context of such paucity of information? (Wangmann, 2010, p. 957)*

As was seen in the women's accounts, the ways in which women described their experiences of violence to Police often did not 'fit' with the Police Officers' understandings of domestic violence. Despite the breadth of behaviours included in the protection order legislation in NSW, and the provision since 2006 in legislation that 'made it clear that the Court may refer to any 'pattern of behaviour' in determining whether conduct amounts to intimidation' (Wangmann, 2012, p. 699), the women reported that the Police response to their accounts of domestic violence tended to be incident-focussed and to emphasise physical forms of abuse. Hunter (2006) has used the term 'implementation problem' to describe the slippage between the intentions of feminist violence against women law reform and the impacts in practice of these reforms. The findings from this study from the perspective of women's experiences support the argument by Wangmann that the full potential of the protection order legislation to respond to the complex and patterned range of abusive behaviours is not being realised.

## Into the future

Over the period in which this research was undertaken, there has been much important policy and practice review in NSW: the reports of the NSW Auditor General (2011); of the Standing Committee on Social Issues of the NSW Parliament (2012); and the government's domestic and family violence reforms: *It Stops Here: Standing together to end domestic and family violence*.

In this context, this report does not make extensive recommendations, but recognises that many of those made in these other reports can address both the issues raised in this report and the broader response to domestic violence. Of particular relevance to the issues raised by women in this report are the Standing Committee recommendations aimed at enhancing the quality of policing of domestic violence (Recommendations 38-48); providing consistent legal and non-legal supports to women in the Local Court (Recommendations 61, 63 – 80); and increasing access to safe accommodation for women and children escaping domestic violence (Recommendations 31-34).

While recommendation 70 suggests expanding the Domestic Violence Practitioner Scheme upon its evaluation, it is recommended that the extension of legal support also include enhancement of the specialist community legal services that have expertise in domestic violence and particularly in outreach and engaging the most disadvantaged women for whom the challenges of using the legal system are greatest.

Of particular relevance to the findings of this report is the Department of Attorney General and Justice *NSW Domestic Violence Justice Strategy* (2012). Many elements of the strategy directly address issues raised by the women in this report, including for example, consistent collection of evidence, coordinated interagency risk management, immediate referral to victim services, Court support and advocacy for victims, specialist domestic violence training for Police Prosecutors, pre-hearing meetings with victims, domestic violence list days at Local Courts, timely and fair Court processes and proactive investigation of alleged breaches.

Two additional recommendations are made based on the findings of this report.

### **1. The provision of free legal advice to all women seeking an AVO**

As policies of proactive policing of domestic violence are increasingly adopted across jurisdictions (primarily for criminal justice responses but also in NSW for civil protection orders), the decision about whether, and when, to seek legal redress is increasingly taken out of women's hands. There are many advantages of this policy direction – such as ensuring that domestic violence is taken seriously and abusers are held to account. However, in taking the decision about using the legal system out of the hands of many women, it is argued here that there is a concomitant responsibility on the state to ensure that women are provided with adequate legal and non-legal services to support their effective participation in the legal system.

In this study, many of the women were engaged in multiple legal systems, which are fragmented and complex (Australian Law Reform Commission and NSW Law Reform Commission, 2010). At entry to the legal system in seeking an AVO, it is recommended that all women – whether they make a private application or one is made by Police – have access to legal advice not only about the AVO and its conditions, but also information and legal referral about intersecting Family Law, child protection, tenancy and other legal issues facing women in domestic violence situations.

## **2. Renewing/extending AVOs**

While extremely comprehensive, the *Justice Strategy* does not specifically address one of the issues raised by women in this study about the difficulties that they encountered in seeking to extend or renew their orders. While some elements of the strategy such as consistent evidence collection, proactive investigation of alleged breaches and improved risk assessment and management are relevant to addressing this issue, further measures should be considered to support women at this vulnerable and stressful point of the process.

## **Conclusion**

The present study is one of the few that has sought to explore women's experiences of accessing legal protection from domestic violence in NSW. While not a representative sample, the women in this study raised issues that have also been identified in other policy reviews and in the focus group interviews with NSW service providers, affirming that these issues are serious and need to be addressed if the safety of women and children is to be enhanced. In the context of efforts to reform the domestic violence service system in NSW, it is imperative that evaluation includes both outcome measures and feedback from women who have used the system. Hearing the voice of women is essential both for individual women, as attested by the women in this report, and in the ongoing evaluation and improvement of policy and practice.

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