Improving Order 6 in Apprehended Domestic Violence Orders

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About Women's Legal Service NSW

Women's Legal Service NSW ('WLS NSW') is a community legal centre established over 40 years ago that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.

Since 1995 WLS NSW has provided a statewide First Nations Women's Legal Program ('FNWLP'). This program delivers a culturally safe legal service to First Nations women, including regular engagement with communities across NSW. An Aboriginal Women's Consultation Network guides the FNWLP. It meets quarterly to ensure that we deliver a culturally safe service. The members include regional community representatives and the FNWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.

Acknowledgments

We acknowledge the Traditional Custodians of the lands on which we work across NSW and on which we live. We pay deep respects to Elders past and present. Is, was and always will be Aboriginal land.

We acknowledge the many women who have experienced sexual, domestic and family violence and abuse with whom we work and whose voices and experiences inform our advocacy in the hope for positive change.

Use of language

Gendered language

While acknowledging that anyone can experience sexual, domestic and family violence and abuse, the research and our experience over forty years clearly highlights that sexual, domestic and family violence and abuse is predominantly perpetrated by men against women and children. Our language in this submission is gendered to reflect this.

Opening Comments

1. We thank the Department of Communities and Justice ('DCJ') for the opportunity to provide comment on the Discussion Paper: *Contact between children and people who care for them in ADVOs: Ways to improve Order 6*.

2. Women's Legal Service NSW provides legal advice on Apprehended Domestic Violence Orders through our advice lines, outreach services, and as Apprehended Violence Order list day duty solicitors at Penrith, Blacktown and Mt Druitt Local Courts. Our representation services to clients includes advocating with police and the courts about ADVO conditions.

3. We support efforts to improve the understanding and implementation of Order 6 in Apprehended Domestic Violence Orders ('ADVOs'). There have been longstanding issues of confusion arising from Order 6, including due to confusing wording of the orders.

4. We believe it is a missed opportunity to only consider the operation of Order 6 in isolation to the other orders.

5. To ensure any change to Order 6 is most effective it would be very useful to also review and modernise Order 1 with a particular focus on non-physical forms of coercive control. This is because the issue with Order 6(d) and 6(e) is not only the need for greater clarity on the method and form of reaching a written agreement in relation to contact with children but also preventing the perpetration of abusive behaviour in the process of reaching and implementing such an agreement.

6. In addition to these reforms, we reiterate our calls for a more comprehensive review of the *Crimes (Domestic and Personal Violence) Act* including legislative as well as cultural and systems reform to properly address misidentification of the person most in need of protection.

7. We acknowledge that for any change to the orders to be effective it must be accompanied by updates to police policies and procedures and Bench Books as well as training and education for police, judicial officers, legal practitioners and the community more broadly.

Recommendations

8. In summary, we recommend

8.1 If taking action focused on Order 6 (responding in the order outlined in the DCJ Discussion Paper):

- Option 1: Retain Order 6(d) and 6 (e).
- Option 2: Retain a stand-alone Order 2 and Order 6(a).

  Draft a separate reference to family law parenting orders.

  Draft a separate condition for child protection orders and confirm they are subject to the ADVO.

  Include parenting plans and care plans as examples of written agreements but not limit written agreements only to these forms.

  Adopt a tick a box to select the forms of written agreement allowed, including:

  - Text
  - Email
  - Letter
  - Parenting app
- Option 3: Include guidance notes.

  Test the guidance statements and new subsections of Order 6 to ensure they are understood by the general public.
- Update Police Codes of Practice, Domestic and Family Violence Guidelines, policies and procedures and Bench Books to reflect the reforms.
- Accompany the reforms with training of police, judicial officers, legal practitioners and the broader community about the changes to Order 6 as well as ongoing training in identifying and responding to coercive control and evaluation of the effectiveness of such training.
- Monitor the implementation of reforms to ensure they are achieving the intended policy objective.

8.2 The Government modernise Order 1 to more clearly capture the differing forms of abusive behaviour, including the expansion of non-physical forms of abusive behaviour that can be captured since the introduction of the new coercive control offence. Consider the Magistrates' Court of Victoria Family Violence Intervention Order application form as an example of how family violence (abusive behaviour in NSW) can be explained in plain language.

8.3 Consider the Victorian approach of clearly outlining the behaviour that is prohibited and including a single list of exceptions. This recommendation relates to an examination of all orders and is not limited to Order 6. If reviewing all orders, it is also important to test updated orders to ensure they are understood by the general public.

8.4 The Government address misidentification of the person most in need of protection including by:

- legislative guidance to identify the person most in need of protection in the context of the relationship as a whole.

- Legislative provisions to limit dual and cross applications and where such applications do occur to hear these together.

- Implementing processes to rectify misidentification.

8.5 The Attorney-General commission a comprehensive review of the *Crimes (Domestic and Personal Violence) Act*.

Part 1: Options to address Order 6

9. We respond to the options proposed in the Discussion Paper to address Order 6. The options fail to recognise that what is also needed is the consideration of a review of all the orders and their intersection with each other. There is value in examining the work of other jurisdictions to determine if there are clearer plain language models available. It is also useful to have consistency across jurisdictions where possible and in a way that does not weaken protections, such as adopting the lowest common denominator. We discuss this as well as the need for a comprehensive review of the *Crimes (Domestic and Family Violence) Act* in Part 2.

Question 1: Do you agree with some or all of the problems affected Order 6 identified in Section 2 of the Discussion Paper? Are there any other problems with Order 6 that are not covered in Section 2 of the Discussion Paper?

10. We agree that many of the issues outlined in Section 2 affect Order 6.

11. The issues we see include confusion about:

    - what contact is permitted
    - the timing of when a written agreement about contact with the children can be negotiated
    - the form of the written agreement
    - what topics are permissible to discuss
    - how Order 6 interacts with other orders, including when there are inconsistencies between an ADVO and written agreement
    - how an ADVO interacts with Family Law Orders and/or Children's Court orders

12. We are also aware of people in need of protection being forced into 'on the spot' parenting negotiations and are very concerned about this practice.

13. There is also inconsistency in the language used in Order 6 and the *Family Law Act 1975* (Cth) and the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

14. We agree that the drafting is confusing and not in plain language.

Question 2: Are there any other problems with Order 6 that are not covered in Section 2 of the Discussion Paper?

15. A further key concern is the interaction between Order 1 and Order 6. It is not only the form of the agreement but the abusive behaviour that occurs in the process of negotiating or implementing the agreement which must be addressed. Victoria addresses this very effectively. This is discussed further below.

16. We need a modernised and plain language Order 1 that better captures non-physical forms of coercive control since the introduction of the new coercive control offence. Expanding Order 1 to better capture non-physical forms of coercive control also reinforces the message of the awareness raising campaign which largely focuses on non-physical forms of coercive control. This issue is discussed further in Part 2.

17. The current structure of exceptions within an order is confusing. We recommend the Department of Communities and Justice considers the Victorian Family Violence Intervention Order ('FVIO') application form which lists the orders and then separately lists all the exceptions together.[1] This form is useful to consider not only with respect to improvements to ADVO Order 1 and Order 6 but a review of all the orders within an ADVO.

Option 1
Question 3: Do you think Order 6 should be amended to remove Order 6(d) and Order 6(e)?

18. We oppose Option 1 the removal of Order 6(d) and 6(e).

19. In addition to the reasons outlined in the Discussion Paper, there is also a risk that children might not be included in the orders, or the order might not be as protective as the victim-survivor would like to ensure the safety of her children and herself.

20. We make recommendations below about improvements to Order 6(d) and 6 (e).

Option 2
Question 4: Do you agree with any of the suggestions for revising Order 6 in Section 3.2 of the Discussion Paper?

Draft a separate reference to family law parenting orders

21. We support the proposal for a separate reference to family law parenting orders outlined in paragraph 3.2.2. One way to do this is through the proposed wording which was used prior to the 2016 changes which included words to the effect the defendant must not approach or communicate with the PINOP except:

> As permitted by a current parenting order under the *Family Law Act*, including where the Court has varied, suspended or discharged the parenting order according to section 68R of the *Family Law Act*.

22. We consider this wording useful because it draws attention to s68R of the *Family Law Act,* a provision that is under used by the Local Court. The Court can 'revive, vary, discharge or suspend a parenting order to the extent to which it provides for a child to spend time with a person or expressly or impliedly requires or authorises a person to spend time with the child'. It can do this on its own initiative or by application of the parties. It is therefore useful to remind the Court and parties of this power. However, we understand the wording was changed during the 2016 changes as there was a focus on plain language.

23. Alternatively, wording similar to that in the Victorian FVIO application form could be adopted. A question is included asking the victim-survivor if they would like the Family Law Order about their child/children to be revived, varied or suspended. This question is in plain language and while it does not specifically refer to s68R of the *Family Law Act* it should act as a reminder to police, judicial officers and lawyers to seek the use of this power when such issues are raised.

24. The Discussion Paper acknowledges the narrow focus of s68R of the *Family Law Act* to 'revive, vary, discharge or suspend a parenting order **to the extent to which it provides for a child to spend time with a person or expressly or impliedly requires or authorises a person to spend time with the child**' (emphasis added). The Discussion Paper acknowledges the need for legislative reform for Local Courts exercising federal jurisdiction to vary orders relating to parental responsibility. We do not support such legislative reform.

[1] Magistrates' Court of Victoria, *Applying for a Family Violence Intervention Order*

25. We believe the primary jurisdiction for the making of ADVOs should continue to be the NSW Local Court as it has the relevant experience and focus on safety. Further, where charges are laid, ADVO applications generally run alongside charges. Similarly, family law orders should continue to generally be made in the Federal Circuit and Family Court of Australia ('FCFCoA'). Where there are already parenting orders in place and a later ADVO is made in a NSW Local Court, section 68R of the *Family Law Act* gives power to the Local Court making an ADVO to exercise federal jurisdiction to revive, vary, discharge or suspend an existing parenting order where it provides for a child to spend time with and/or communicate with a person, where there are inconsistencies between the FCFCoA order and the ADVO to ensure safety is prioritised.

26. The Australian and NSW Law Reform Commissions in 2010 recommended greater use of s68R of the *Family Law Act*; amendments to protection order application forms to include an option for an applicant to request the court to revive, vary, discharge or suspend a parenting order; legislative provisions in state/territory legislation that provide the courts not significantly diminish the standard of protection afforded by a protection order for the purpose of facilitating consistency with a parenting order; and education about these provisions to increase awareness and use of these provisions.[2] We support these recommendations most of which are yet to be implemented in NSW. The recent federal *Family Violence Orders Report* recommended legislative amendments to 'require courts making or varying an [family violence order] to consider varying parenting orders to prioritise the safety of victim-survivors and children under section 68R of the *Family Law Act 1975*, and to notify the court that made the original parenting order if the parenting order is varied'.[3]

Draft a separate condition for child protection orders and confirm they are subject to the ADVO

27. We support the drafting of a separate condition for child protection orders and that they are subject to the ADVO.

Permissible forms of communication if there are no court orders or parenting/care plans

28. We support specifying the permissible forms of writing and including a tick box so it is clear which form of communication is agreed to.

29. We recommend a tick box for each of the following forms of communication:

    29.1 Text (and providing examples of text messaging platforms which could include SMS, WhatsApp)

    29.2 Email

    29.3 Letter

    29.4 Parenting app

30. Paragraph 3.2.5 states a letter can only be selected if it does not conflict with orders regarding physical contact. It should be made clear that a letter that is posted, rather than physically hand delivered to the letterbox or front door of the home would be allowed in these circumstances.

31. Parenting apps are used by some parents as a communication tool so including this as an option provides clarity.

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[2] ALRC and NSWLRC (2010) *Family Violence – A National Legal Response*, Recommendations 16-1, 16-2, 16-6, 16-8, and 16-9

[3] House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into family violence orders*, 2025, Recommendation 3.

32. We do not support including social media as a communication option because there is a higher potential for abuse through this mode of communication. We are also concerned that social media platforms where messages disappear, such as Snapchat, not be used.

Question 5: Do you have concerns about any of the suggestions for revising Order 6 in section 3.2 of the Discussion Paper?

Delete ADVO Order 2 and rename Order 6

33. We oppose the option of removal of Order 2.

34. We believe it is imperative to retain a no contact order.

35. A no contact Order 2 provides a strong option which clearly prioritises safety.

36. It also ensures that persons in need of protection ('PINOPs') who do not have children can have a no contact order. The current heading for Order 6 refers to 'orders about family law and parenting' and so may not seem relevant for PINOPs without children.

37. We are also concerned that only having a no contact order except through a lawyer as Order 6(a) may mean the effect of this order is lost, as it is one of many possible orders in Order 6.

38. We recommend retaining the current orders: Order 2 and Order 6(a).

Instead of 'agreement in writing', refer to parenting plans and care plans

39. We support the inclusion of parenting plans and care plans whether the parenting/care plan was made before or after the ADVO.

40. However, we oppose only including parenting plans and care plans within the meaning of agreement in writing. This is because there are benefits to having flexibility in the form of the written agreement.

Communication through a third party

41. We oppose the option 'communication through a safe named third party'. It is not clear what it is proposed this person would do nor how it is determined they are a 'safe' third party. We do not support a 'safe named third party' negotiating the written agreement between the parties. We are concerned that family members may be called upon to play this role. Women already comment that domestic and family violence and abuse is often not limited to intimate partner violence but that men may also draw on other family members to continue the abuse. The other family members may not be aware they are colluding with the predominant aggressor, may deliberately be colluding with the predominant aggressor or may themselves be experiencing domestic and family violence and abuse perpetrated by this same person and feel pressured into abusing and pressurising the woman.

42. If this option is chosen, there must be safeguards to protect against this and consultation on those safeguards.

Permissible topics and wording of Order 6(d) and (e)

43. We do not support stipulating permissible topics.

44. We agree that it is important there is an option for a defendant to inform the protected person about a medical emergency of the child/ren while in their care and propose this is included in the 'spend time with' and 'communicate' with the children orders.

45. We do not support extending communication to issues relating to parental responsibility. We believe this is best decided by the FCFCoA as outlined above.

46. Consideration could be given to the use of the language 'contact with the child/children' in Order 6(d) and 6(e). While this language is used in the *Children and Young Persons (Care and Protection) Act 1998*, the language of 'spend time with' and 'communicate' is used in the *Family Law Act* 1975 and there are benefits in using language consistent with the different Acts. We also recognise that the current phrasing may be used as plain language.

Question 6: Are there any other options you would like the NSW Government to consider to overcome the problems with the current operation of Order 6?

47. We recommend consideration of the Victorian FVIO application form.

48. This application form clearly outlines the behaviour of the defendant that is prohibited and where exceptions apply.

49. The current wording of Order 6(d) and (e) in the NSW protection orders is silent on the timing of the development of the written agreement, that is, whether or not the written agreement needs to be in place prior to the finalising of the ADVO. This is causing confusion.

50. It is our view that a written agreement relating to contact with children can be negotiated after the finalising of an ADVO where Order 6(d) or (e) are included. Clearer wording is needed to clarify this.

51. We recommend adopting similar language to that used in Victoria which provides an exception to a no contact order to 'negotiate child arrangements by letter, email or text message'.[4] The wording could be 'negotiate spend time with and communication arrangements with children'. Such language makes clear this is limited to 'spend time with' and 'communication' arrangements rather than including parental responsibility more broadly. Other options could be 'to negotiate contact with children'.

52. To make even clearer that the written agreement does not need to be finalised before the making of a final ADVO other wording could be used. For example, 'worked out'.

53. We also recommend a guidance note that you do not have to reach a written agreement. This is important to include as predominant aggressors may use the process of negotiating spend time with and communication with the child/children arrangements to continue to perpetrate abusive behaviour such as harassing and pressuring the PINOP into reaching an agreement.

54. We recommend testing the language to ensure it is understood.

Option 3
Question 7: Do you agree or disagree with including guidance notes in the Regulation? Why or why not?

55. We support the use of guidance notes to help parties understand the meaning of orders. It is important guidance notes use plain language and are easy to understand.

56. The Discussion Paper provides an example of a current guidance note - 'Order 6(e) is an alternative to order 6(d)'.

57. The Discussion Paper also refers to the Victorian guidance note to all its protection order exceptions, including our equivalent Order 6: 'BUT ONLY if the respondent does not commit family violence while

[4] *Applying for a Family Violence Intervention Order*, Note 1.

doing so.' We support the use of such clear and plain language and the use of capital letters to emphasise this.

58. The alternative to this proposed by DCJ on page 18 of the Discussion Paper is

> In a NSW context, guidance could take the form of an express statement that any exceptions (currently drafted as 'unless' statements) to the restrictions and prohibitions in the ADVO do not excuse the defendant from complying with all other conditions of the ADVO, such as the requirement not to intimidate or threaten the protected person, or any additional requirements such as not making contact when intoxicated or not attending the protected person's home.

59. This is a convoluted and wordy way to achieve a similar purpose.

60. It is not possible currently to replace the word 'family violence' with 'domestic abuse' in NSW as even though a definition of domestic abuse has been included in the *Crimes (Domestic and Personal Violence) Act*, the definition does little work. For example, the definition does not currently ground an ADVO so would not be enforceable in a breach application.

61. An alternative is to use the language of the new coercive control offence – course of conduct of abusive behaviour in an intimate partner violence context. If using this or similar language it must be accompanied with a clear explanation. We again refer to the Victorian FVIO application form as an example of a clear explanation of family violence.

62. There appear to be different practices in different jurisdictions about whether a written agreement negotiating child arrangements can carve out exceptions to protection orders that are inconsistent with the protection order. For example, the DCJ Discussion Paper indicates that written agreements about spending time or communicating with the children particularly those that are inconsistent with the ADVO that are not orders of a court will not prevail over the conditions of the ADVO.

63. In contrast, in Victoria it appears to be the practice in some courts that a written agreement developed after the finalising of a protection order which includes, for example, a do not approach within X metres of where the protected person lives can include an exception to return children to their home on a specified day and time and the defendant would not be in breach of the order 'BUT ONLY if the respondent does not commit family violence while doing so'.

64. It would be useful if DCJ could clarify the practice in different jurisdictions and once this is clarified to include a guidance note on this. It is important to have consistency, particularly for the benefit of people living on state/territory borders.

65. We also believe it is essential to include guidance that an ADVO can be finalised without having a written agreement or parenting plan. This is an important safeguard against a victim-survivor feeling coerced into entering into an agreement about parenting arrangements in order to obtain a protection order. Safety of children and adult victim-survivors must be the priority in apprehended violence order proceedings and should not be predicated on parenting arrangements. This is discussed further below.

66. We also support guidance about the interaction between FCFCoA orders and ADVOs as proposed by DCJ:

> In the case of a court order made with the knowledge of the events and behaviour causing this ADVO, if any part of those orders is inconsistent with this condition, those orders will apply'.

67. It would be useful to test all the guidance notes to ensure they are understood by parties and if the current structure of Order 6 is retained to test the Orders within Order 6. In the context of a broad

review of all ADVOs, we also support a review of all orders, including testing the model in Victoria which lists the orders and then separately lists all exceptions together with the requirement 'BUT ONLY if the respondent does not commit family violence while doing so. This is important to ensure they are understood by all parties.

Option 4

Question 8: Do you agree or disagree with a requirement for oversight such as set out in Section 3.4 of the Discussion Paper? Why or why not?

Registering Agreements or Court Orders

68. We do not support the option of registering agreements or court orders as we believe it is impractical for parties, the courts and police. Further, this does not address the fundamental problem of the perpetration of abusive behaviour in the process of developing and facilitating written agreements and the need to pursue breach proceedings relating to this.

Requiring an impartial third party and/or advice

69. We strongly support PINOPs obtaining independent legal advice before entering a written agreement about parenting agreements to ensure that where made, it is made with the benefit of informed consent and with a focus on the safety of children and the adult victim-survivor.

70. It is also important for defendants to receive independent legal advice to ensure they understand the terms of their ADVO as well as how it interacts with any Family Law Order, parenting plan or written agreement and to have assistance in developing a written agreement where such an order is made.

71. We are very supportive of both PINOPs and defendants accessing independent legal advice from family law lawyers with experience in developing written agreements about spend time with and communication arrangements with the children which prioritise safety. We strongly believe such agreements should be decided away from the pressure of a busy and stressful court event which has a primary focus on safety. In most cases this would mean Order 6 provides the process for discussing and reaching a written agreement which would occur after the finalising of an ADVO.

72. The reason for this is because the primary purpose of ADVO proceedings is to ensure the safety of the PINOP – both children and adult victim-survivors of abusive behaviour.

73. In *John Fairfax Publications Pty Ltd v Ryde Local Court* (2005) 62 NSWLR 512 then Spigelman CJ in describing the difference between ADVO proceedings and 'the traditional criminal or quasi-criminal jurisdiction of the Local Court' stated at [20]:

> The legislative [ADVO] scheme is directed to the protection of the community in a direct and immediate sense…. Apprehended Violence Orders constitute the primary means in this State of asserting the fundamental right to freedom from fear.

74. As a primary way to uphold the fundamental right to be free from fear it is important that parties are not forced into an agreement, including a rushed agreement, regarding the predominant aggressor's contact/spend time with and communication arrangements with children. We are aware anecdotally that finalising a written agreement about spending time with and communicating with children before the finalising of an ADVO is being used as a bargaining tool by defendants and/or defendant's lawyers to reach final consent orders in ADVO proceedings in circumstances where the written agreement may not prioritise the safety of the children or the adult victim-survivor. The 'trade off' for PINOPs is avoiding a contested hearing where they would be called to give evidence, including being subjected to direct cross-examined by their abuser if their abuser is unrepresented and there are stand-alone

ADVO proceedings. Further it would bring the matter to an end rather than prolonging the process. Consideration needs to be given about how to guard against this.

75. Further, we are aware that some Judges require parties to negotiate a written agreement relating to defendant's contact with children prior to the finalising of an ADVO.

76. We opposed any practice that **requires or pressures** the making of a parenting plan/written agreement prior to the finalising of an ADVO.

77. We also do not support mandating a process such as family dispute resolution outside Order 6(b) 'to attend accredited or court-approved counselling, mediation and/or conciliation'.

78. We reiterate the primary jurisdiction for the making of ADVOs should continue to be the NSW Local Court. Similarly, family law orders should continue to generally be made in the FCFCoA. Local Court Judges should use s68R of the *Family Law Act*, supported through implementation of the 2010 Australian and NSW Law Reform Commission recommendations relating to s68R and training.

Question 9: Are there any other existing non-legislative mechanisms or operations which could be modified or adopted to support the written agreements intended by 6(d) and (e)?

79. We reiterate the need to:

- User test the understanding of any updated orders and guidance notes.
- Update Police Codes of Practice, Domestic and Family Violence Guidelines, policies and procedures and Bench Books to reflect the reforms.
- Accompany the reforms with training of police, judicial officers, legal practitioners and the broader community about the changes to Order 6 as well as ongoing training in identifying and responding to coercive control and any changes to Order 1.
- Monitor the implementation of reforms to ensure they are achieving the intended policy objective.

Part 2: Other reforms

The Victorian Family Violence Intervention Order application form

80. We strongly recommend DCJ considers the Victorian FVIO application form in this review. This is because of its plain language drafting and structure. This application form is useful if just reviewing Order 6 and Order 1 of the ADVO or if undertaking a more extensive review of all orders with an ADVO.

81. Positive aspects of this form include:

- A clear list of behaviours the respondent is prevented from committing, including 'the respondent is prevented from committing family violence against the protected person' with a plain language definition of family violence included.
- A clear list of exclusions as a single list rather than exclusions included within orders which can be confusing with the requirement 'BUT ONLY if the respondent does not commit family violence while doing so'. We support the use of capital letters for emphasis.
- Exceptions to the no contact order including written agreement to 'negotiate child arrangements' making clear that a written agreement about the respondent spending time with the children can be developed with the protected person after the finalising of the protection order by way of an agreed form – text, letter, email.

- A question asking the victim-survivor if they would like the Family Law Order about their child/children to be revived, varied or suspended. Section 68R of the *Family Law Act* provides the power for the Court to do this on its own initiative or on application by a party but in our experience is rarely used. A specific question about this can prompt police, lawyers and judicial officers to consider the use of this power.

Incorporating the new coercive control offence into the ADVO

82. The Victorian FVIO application form has a clear, plain language description of behaviour the respondent is prevented from committing – for example, 'the respondent is prevented from committing family violence' with an explanation in the form about family violence. This phrasing is also repeated when outlining exceptions. For example, an exception to the no contact order may include the respondent 'negotiat[ing] child arrangements by letter, email or text message' 'BUT ONLY if the respondent does not commit family violence while doing so'.

83. The inclusion of the latter statement is important as it is both the form of the written agreement if not complied with as well as the behaviour while developing or facilitating the written agreement, that is, the perpetration of family violence, that can result in a breach of the order. This would capture behaviour that women often say they experience while developing or facilitating the written agreement about child arrangements such as harassment in the form of multiple text messages each day urging them to agree to particular spend time with arrangements with the children and the defendant which may not be safe or behaviour that shames, degrades or humiliates them, such as repeated derogatory name calling by the defendant and denigration of the protected person by the defendant. Women often tell us that when they report such behaviour to police, police respond to the effect there is little they can do 'as this is a family law matter'.

84. This also highlights that improving the wording of orders, while important, is not enough. There also needs to be regular and ongoing training of the police, lawyers and judicial officers to improve the enforcement of Order 6 and Order 1.

85. We would welcome the adopting in NSW of simple, clear, plain language.

86. Current barriers to this include the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) ('*Crimes (DPV) Act*') being built around a 'domestic violence offence' model.

87. While we now have a definition of 'domestic abuse' in our *Crimes (DPV) Act*, this definition appears to do little work as it does not of itself ground an ADVO. Therefore, there would be enforcement issues if using the phrase 'BUT ONLY if the defendant does not use domestic abuse while doing so'.

88. Other alternatives include:

    - to refer to a course of conduct of abusive behaviour in an intimate partner context (the coercive control offence), with a plain language explanation of what this means,

    - Provide a non-exhaustive list of abusive behaviours, and/or

    - A combination of both.

89. Other suggestions are proposed in the Discussion Paper, such as a guidance note as discussed at paragraph 58. While this guidance note seeks to achieve the same effect as the statement 'BUT ONLY if the respondent does not commit family violence while doing so' it is much more cumbersome and less easy to understand.

90. There is also an opportunity for NSW to review and modernise Order 1 in an intimate partner ADVO with a particular focus on non-physical forms of coercive control.

91. As the new coercive control offence is limited to intimate partner violence this would mean mandatory Order 1 for an intimate partner ADVO would be different to a mandatory ADVO for all other domestic relationships. In the interim we suggest one application form for ADVO – intimate partners and another application form for ADVO – domestic relationship except intimate partners with a 'no wrong door' approach if the incorrect form is used.

92. Making non-physical forms of coercive control more visible in ADVOs is consistent with the awareness raising campaign which focused largely on non-physical forms of coercive control and sends a strong message to the general public that such behaviour is unacceptable.

93. While it is possible for the Court to make an Order 11 that prohibits a course of conduct of abusive behaviour in an intimate partner context (the new coercive control offence) or names non-physical forms of abusive behaviour that are prohibited this occurs in an ad-hoc manner and there is currently very little data available to indicate how often such a provision is being used for this purpose. Further, modernising current Order 1 to better capture the varying forms of coercive control in the ADVO, including non-physical forms, can promote a consistent approach as Order 1 is a mandatory order.

94. It is our view that people in all domestic relationships should be protected from coercive control, including non-physical forms of coercive control. This could be achieved through a comprehensive review of the *Crimes (Domestic and Personal Violence) Act* and a review of the coercive control offence and legislative amendments, the latter to commence from July 2026.

Comprehensive review of the AVO legislation

95. The Discussion Paper identifies the benefit of Victoria's protection orders including the prevention of the respondent from committing family violence and ensuring any exceptions to protections orders require 'BUT ONLY if the respondent does not commit family violence while doing so'.

96. The Discussion Paper also recognises that misidentification of the predominant aggressor occurs, an issue we see often in our practice.

97. Another issue we often see in our practice is that children are not listed on ADVOs in circumstances where they should be.

98. These issues highlight that the need for reform goes much further than just Order 6.

99. We believe it is an opportune time for the Attorney General to commission the NSW Law Reform Commission to undertake a comprehensive review of the *Crimes (Domestic and Personal Violence) Act*.

100. It is an opportune time for such a review as the federal *Family Violence Order Inquiry report* recommends the federal Attorney-General advocate for and assist states and territories to adopt nationally harmonised legal definitions of family, domestic and family violence and family violence laws.[5]

101. The review should also include the NSW Police Domestic Violence Standard Operating Procedures, NSW Police Sexual Assault Standard Operating Procedures, Codes eof Practice, Prosecutorial Guidelines, Practice Directions, Bench Books as well as systemic and structural barriers to access.

[5] *Inquiry into family violence orders*, Note 3, Recommendation 3.

102. A review provides a valuable opportunity to consider the effectiveness of AVOs, response to breaches of AVOs, the effectiveness of bail conditions and ensuring consistency between bail and AVO provisions, use of and breaches of Community Corrections Orders, Intensive Correction Orders, Conditional Release Orders and sentencing. It could also consider practices in other jurisdictions.

103. The review could consider the following:

- Whether the legislation could be simplified?
- Whether the orders could be simplified?
- Whether new orders are required in response to the introduction of the coercive control offence?
- Whether NSW should move away from a domestic violence offence model to ground an AVO and instead adopt a model which relies on the definition of family violence to ground a protection order?
- Inclusion of legislative guidance for the person most in need of protection.
- Limitations on cross-applications and/or applications taken out against both parties.
- Whether property recovery orders should be available for the duration of the ADVO?
- How AVOs, legislation and associated processes can best provide protections for victim-survivors of sexual violence in non-domestic relationships?
- Inclusion of positive obligation orders – eg take down orders.
- Standing for the person most in need of protection.
- Whether the significant change of circumstance test to vary an order is sufficient?
- Evaluation of lapsing orders.

104. There may be further issues that are identified.