

ANROWS

AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY

to Reduce Violence against Women & their Children

Compass

Research to policy and practice

Issue 07 | October 2017

Domestic and family violence protection orders in
Australia: an investigation of information-sharing
and enforcement with a focus on interstate
orders: *Key findings and future directions*

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ANROWS Compass (Research to policy and practice papers) are concise papers that summarise key findings of research on violence against women and their children, including research produced under ANROWS's research program, and provide advice on the implications for policy and practice.

This report addresses work covered in ANROWS research project 4.1 "Domestic and family violence protection orders in Australia: An investigation of information sharing and enforcement". Please consult the ANROWS website for more information on this project. In addition to this paper, ANROWS Landscapes (state of knowledge) and ANROWS Horizons (research report) are available as part of this project.

ANROWS acknowledgement

This material was produced with funding from the Australian Government and the Australian state and territory governments. Australia's National Research Organisation for Women's Safety (ANROWS) gratefully acknowledges the financial and other support it has received from these governments, without which this work would not have been possible. The findings and views reported in this paper are those of the authors and cannot be attributed to the Australian Government, or any Australian state or territory government.

Acknowledgement of Country

ANROWS acknowledges the traditional owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander elders past, present and future; and we value Aboriginal and Torres Strait Islander history, culture and knowledge.

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Published by

Australia's National Research Organisation for Women's Safety Limited (ANROWS)
PO Box Q389, Queen Victoria Building, NSW, 1230 | www.anrows.org.au | Phone +61 2 8374 4000
ABN 67 162 349 171

Domestic and family violence protection orders in Australia: An investigation of information-sharing and enforcement with a focus on interstate orders: Key findings and future directions / Annabel Taylor et al.

Sydney: ANROWS, c2017.

Pages ; 30 cm. (ANROWS Horizons, Issue 07/2017)

I. Domestic violence - Australia. II. Domestic violence prevention - Australia. III. Protection orders.

IV. Law enforcement - Australia.

I. Taylor, Annabel. II. Ibrahim, Nada. III. Lovatt, Heather. IV. Wakefield, Shellee. V. Cheyne, Nicola. VI. Finn, Katrina.

ISSN: 2204-9622 (print) 2204-9630 (online)

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Introduction

Throughout the 1980s, every Australian state or territory moved to enact legislation with the purpose of protecting women from intimate partner violence (Easteal, 1994) through the provision of a civil court order, referred to in this paper as a Domestic Violence Protection Order (DVPO). Although there is a degree of consistency in legislative frameworks across jurisdictions,¹ there is considerable variance in the terminology, the scope of behaviours and types of relationships covered, the range of potential conditions on court orders, approaches to aiding and abetting breaches of orders, breach penalties, information sharing, and local police and court practice (Australian Government Solicitor, 2009; The Australian Law Reform Commission & The NSW Law Reform Commission, 2010; Jeffries, Bond, & Field, 2013; Wilcox, 2010). Variations in law, information sharing, and local practice have implications for the enforcement of DVPOs, including enforcement across borders.

Enforcement of DVPOs, including across state and territory borders, is the primary focus of this paper, which draws on empirical research conducted in 2014-16 and published in 2017 (Taylor et al., 2017). The research had three distinct components:

1. a review of the literature to establish the current state of knowledge about enforcement of DVPOs within and across borders, and to inform the other components;
2. an online survey of 836 professionals (police, magistrates, lawyers, and victim advocates across Australia who work with victims and perpetrators regarding DVPOs and their enforcement); and
3. semi-structured interviews with 20 victims and 20 service providers in four jurisdictions (New South Wales, Queensland, Northern Territory, and Victoria).

Prior research identified the need for a national system for automatic registration and enforcement of DVPOs across jurisdictions (Domestic Violence Legislation Working Group, 1999; Australian Government Solicitor, 2009; National Council to Reduce Violence against Women and their Children, 2009).

Reciprocal arrangements for the registration of DVPOs made in one state or territory of Australia² to be registered in another state or territory had been in place since the mid-1990s. However, the arrangements were found to be inadequate because of the need for manual registration of DVPOs in receiving jurisdictions, lack of consistency in legislative provisions across borders, and the administrative burden on police and courts. The Domestic Violence Legislation Working Group (1999), the Australian Solicitor General (2009) and the National Council to Reduce Violence against Women and their Children (2009) all recommended a national scheme for automatic registration of DVPOs, including nationally consistent enabling legislation.

In 2015, the Council of Australian Governments committed to a National Domestic and Family Violence Order Scheme. The scheme, to be implemented by November 2017, will feature model laws enacted in each state and territory recognising DVPOs across state and territory borders,³ and a national information system to enable courts and police in different jurisdictions to share relevant information.

Following is a summary of key findings of the research undertaken by the Queensland Centre for Domestic and Family Violence Research (Taylor et al., 2017) regarding the enforcement of DVPOs and the implications for policy and practice, including implications for the impending National Domestic Violence Order Scheme.

1 Such as the spirit and intention of the various laws and their provisions for civil law court orders, and breaches of those orders to be dealt with as a summary criminal offence.

2 The reciprocal arrangement extends to New Zealand.

3 All states and territories except Western Australia have enacted the enabling legislation. Western Australia plans to introduce legislation in time for the scheme to commence in November 2017.

Key findings

Enforcement

- In addition to nationally consistent legislation and information-sharing protocols, professionals identified open, shared data access between agencies—which is monitored across systems or agencies—and consistency in police policy on responding to DVPOs as being among the four most important factors in cross-border enforcement.
- A significant proportion (80-99%) of professionals highlighted access to interpreters as an issue in facilitating DVPOs in culturally and linguistically diverse communities, and said that greater availability of domestic and family violence services for police-initiated referrals and improved collaboration between and access to local service providers would assist enforcing DVPOs in culturally and linguistically diverse communities.
- A quarter (28%) of the study’s victim advocates and lawyers believed that victims “rarely” had adequate support to report DVPO breaches.
- More than half of all respondents in each category of professional group (64% of police, 55% of magistrates, 64% of lawyers, 80% of victim advocates) felt that perpetrators “often” or “always” avoided taking DVPO breaches seriously.
- Nearly 60 percent of police surveyed indicated their belief that “often” victims assisted a perpetrator to breach a DVPO, affecting enforcement, compared to 40 percent of magistrates, 37 percent of lawyers, and 15 percent of victim advocates surveyed. Consequently, police were more likely than other professionals to see the need for aiding and abetting clauses in DVPO legislation.
- Survey responses indicated a belief among professionals that domestic and family violence legislation is adequate but that enforcement can be improved by consistency in implementation and enforcement, requiring common understandings of language, processes, and systems.
- Victims, service providers, and professionals perceive the need for further training in domestic and family violence, information-sharing, and privacy laws, and the enforcement of existing legislation for professionals operating in support services and enforcement agencies.
- Half of police surveyed identified “administrative procedures associated with breaches” (55%), “limited resources available to police” (50%), and “high volumes of police workload” (47%) as factors affecting their ability to respond to DVPO breaches.
- An adverse impact of decisions made under the *Family Law Act 1975* (Cth) on the effective enforcement of DVPOs was a key theme identified by professionals surveyed. Specifically, the intersection and competing interests of child protection legislation, DVPO legislation, and family law orders and decisions were highlighted as problematic.

Information-sharing

- A large proportion of professionals (68-81%) perceived the need for specific legislation that facilitates the process of information-sharing between states and territories on DVPOs.
- Protocols for criminal justice and service delivery agencies to share information about family violence matters exist only in some jurisdictions, although more are moving towards an integrated system response, including information-sharing.

Policy implications

- Information-sharing guided by ethical conduct and professional bodies' own policies and procedures was seen as important by service providers interviewed.
- Information-sharing protocols and guidelines should be informed by practitioner comprehension of relevant privacy laws, with an emphasis on the safety of women and their children, and within an ethical framework.
- Monitoring and evaluation of information-sharing protocols is required to address any unintended consequences as they emerge.
- Strategies such as greater community involvement and closer relationships between police, the legal profession, and diverse communities (including Aboriginal and Torres Strait Islander Communities, culturally and linguistically diverse communities, and LGBTIQ communities), are needed to support effective enforcement of DVPOs.
- The development of evaluation frameworks for the ongoing review of service responses to the legal administration of DVPOs is required.
- The implementation of outstanding recommendations from the Australian and New South Wales Law Reform Commission's (2010) report *Family Violence—A National Legal Response* should continue across jurisdictions.

Practice implications

- Access to accredited workplace professional development and training in DFV should be considered for all professional groups.
- While the *Domestic and Family Violence Bench Book* (Australian Institute of Judicial Education, 2017) will go some way towards addressing consistency and specialist knowledge gaps among legal personnel, the need for training and refreshers to reflect new developments in research and practice will be an important requirement for supporting consistency in making and enforcing DVPOs in and across jurisdictions.

Conclusion

The research highlights that issues that compromise victim safety do not occur in legislation, but in its implementation and enforcement. Further, inconsistencies and competing interests at the intersections of domestic and family violence, child protection, and family law remain an impediment to effective implementation and enforcement of DVPOs. Effectiveness of the National Domestic Violence Order Scheme will be compromised without the removal of inconsistencies, along with the safety of women and their children being given the greatest priority.

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