



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: DHrgCrim:1549999

20 June 2018

Mr Andrew Cappie-Wood
Secretary
Department of Justice
GPO Box 6
SYDNEY NSW 2001

By email: nick.wilkinson@justice.nsw.gov.au

Dear Mr Cappie-Wood,

Consultation paper – ADVO duration and related matters

Thank you for seeking the Law Society's comments on the reform options contained in the consultation paper *ADVO duration and related matters*.

We understand that the Department is conducting the review in response to Recommendation 3 of the Domestic Violence Death Review Team 2015-2017 (DVDRT) report, which recommended that the Attorney General consider mechanisms to ensure that ADVOs are made for an appropriate duration, including increasing the default length of ADVOs from 12 months to a longer duration to promote enhanced victim safety.

Ensuring ADVOs are of appropriate length to improve victim safety

The two case studies provided in the consultation paper relate to domestic homicide. We query whether increasing the default length of an ADVO would be effective in minimising the risk of homicide. We also note that there is nothing in the current legislation to prevent a prosecutor seeking a longer duration for an ADVO. As acknowledged in the consultation paper, increasing the default length of ADVOs may lead to more contested hearings, as well as an increase in the number of breaches, applications to the court for revocations and variations, and appeals.

However, as we understand that the Department will amend the legislation to achieve the DVDRT's recommendation, our preferred option for reform is Option 1; amend the *Crimes (Domestic and Personal Violence) Act 2007* to:

- extend the default period specified in the Act to a longer period of two (or more) years.
- indicate that an ADVO should be made for a longer period of time than specified in the Act if the court considers it necessary to do so.

- prompt the court to consider factors to determine the appropriate duration in the circumstances of each matter. These factors could include: the history of violence; violations of previous ADVOs; previous convictions for crimes against the protected person, or any other person with whom the person of interest has had a domestic relationship; any assessment made by the Police applicant; and the views of the protected person and the views *or any relevant circumstances* of the defendant.

We do not support the proposal for permanent or quasi permanent orders, and note the Victorian Royal Commission into Family Violence recommended against permanent orders:

As noted, some support was expressed for the introduction of permanent FVIOs. In the Commission's view, however, the indefinite imposition of orders would be excessive in some circumstances, and it should not be incumbent on the respondent to demonstrate in such cases that this is so. The duration of an FVIO, as with its conditions, should reflect the needs and concerns that arise from particular cases and in particular the safety of the person protected by the order. The Commission does not recommend a move to permanent orders.¹

Any longer default period than two years will have a potentially harsh and disproportionate impact on vulnerable people. Many respondents will be unrepresented and therefore not necessarily able to advocate about the impact of a lengthy order in their case. We submit that there should at least be some safeguards for vulnerable respondents, i.e. children and people with a cognitive impairment. For example, the Victorian legislation provides that if the respondent is a child, the default period is a maximum of 12 months unless there are exceptional circumstances.²

We also suggest that the court consider "*the views or any relevant circumstances of the defendant*", so the court is directed to consider such matters whether or not the defendant is able to raise them.

Ensuring ADVOs continue upon release from custody

We note that entering into custody creates a complete change in circumstances for both the victim and offender. Couples may get back together, and the offender may be reformed and rehabilitated while in custody.

We suggest that an alternative option to extending an ADVO upon release from custody would be to build the conditions of the ADVO into the offender's parole conditions. The State Parole Authority is in a position to consider the offender's current circumstances when determining parole, and therefore set appropriate conditions.

Ensuring ADVOs can be amended promptly to respond to emerging risks to victims

It is appropriate that the order can only be varied by a court.

We do not support amending the legislation to allow police to approve an immediate variation of an ADVO. The power is unnecessary. If there is a fresh incident, the police can impose appropriate bail conditions (or refuse bail), or take out a new provisional order.

¹ Royal Commission into Family Violence, March 2016, Volume III Report and Recommendations, p179.

² Section 98, *Family Violence Protection Act 2008* (Vic)

I trust these comments are of assistance.

The Law Society contact for this matter is Rachel Geare, Senior Policy Lawyer, who can be reached on (02) 9926 0310 or at rachel.geare@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink that reads "Doug Humphreys". The signature is written in a cursive, flowing style.

Doug Humphreys OAM
President