



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: DHrgCrim1562879

12 July 2018

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

By email: [Nick.Wilkinson@justice.nsw.gov.au](mailto:Nick.Wilkinson@justice.nsw.gov.au)

Dear Mr Cappie-Wood,

**ADVO duration and related matters – proposals**

Thank you for the opportunity to comment on proposals to amend the *Crimes (Domestic and Personal Violence) Act 2007*. Our comments on the proposals are contained in the attached table.

We also bring to your attention last year's NSW Bureau of Crime Statistics and Research (BOCSAR) findings on recent trends in Indigenous incarceration. BOCSAR found a significant upward trend in convictions for breach ADVO offences despite no significant change in the percentage imprisoned for any of these offences. The growth in the number imprisoned for breach ADVO offences (as well as breach s9 and s12 bonds) was found to be due to a growth in the number arrested and convicted, not a change in penal severity.<sup>1</sup>

In our view, the current proposals are highly likely to impact disproportionately on Indigenous and other vulnerable respondents and may increase the concerning trend identified by BOCSAR.

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](mailto:rachel.geare@lawsociety.com.au).

Yours sincerely,

Doug Humphreys OAM  
**President**  
Encl.

<sup>1</sup> NSW Bureau of Crime Statistics and Research, *Indigenous imprisonment in NSW: A closer look at the trend*, Issue Paper No 126, November 2017, p7.  
<http://www.bocsar.nsw.gov.au/Documents/BB/Report-2017-Indigenous-Imprisonment-in-NSW-BB126.pdf>

Rec	Description of amendment	Reason for or benefit of amendment	Law Society feedback on proposals
1	<p><b>Amend the <i>Crimes (Domestic and Personal Violence) Act</i> to include a provision that sets out the minimum duration of an ADVO to be sought by an applicant for a final ADVO where the defendant is a child or young person or adult</b></p> <p>This proposal is to insert a provision in the CDPV Act to provide that, where the defendant is an adult, an applicant for a final ADVO must request an ADVO with a minimum duration of 2 years where there have been no previous ADVO or domestic violence offence. An applicant may request an ADVO for a period of longer than 2 years if one or more of the following exists:</p> <ul style="list-style-type: none"> <li>• an ADVO made for the protection of the protected person, or any other person with whom the defendant has had a domestic relationship, has been breached by the defendant</li> <li>• the defendant has been found guilty of a domestic violence offence in relation to the protected person or any other person the defendant has had a domestic relationship with</li> <li>• the application relates to an allegation of a domestic violence offence by the defendant and the nature of the alleged offence is such that, in the opinion of the applicant, a longer duration is warranted</li> <li>• the application relates to allegations that the defendant has engaged in domestic violence related behaviour towards the protected person that, in the opinion of the applicant, warrants a longer duration.</li> </ul> <p>In relation to orders of indefinite duration, the amendment would provide that written submissions for indefinite orders should be filed and served in advance of an ADVO hearing. Where the application is brought by police or FACS, the application should be supported by sworn evidence of a senior authorised officer as to their belief that an indefinite order is required.</p> <p>This proposal is also to insert a provision in the CDPV Act to provide that where the defendant is a child or young person, an applicant for a final AVO may request an ADVO to remain in force for only as long as is necessary to ensure the safety and protection of the protected person. Where an applicant seeks an order for longer than 12 months the applicant would be required to detail the reasons for seeking a longer period in the application, and, if the applicant is a police officer, they will be required to include a sworn statement of a senior officer as to their belief that a longer order is needed.</p>	<p>This amendment would support implementation of the Domestic Violence Death Review team recommendation that the Attorney General consider mechanisms to ensure that Apprehended Domestic Violence Orders are made for an appropriate duration (Recommendation 3). Applications for ADVOs are application proceedings meaning it is generally for the applicant to turn their mind to the appropriate duration of the order they are seeking. Applications for ADVOs may be made by NSW Police, a victim of domestic violence (with assistance from a court registrar), or FACS in care proceedings. Where the defendant is an adult, this amendment would provide clear legislative requirement that the standard ADVO duration for the purposes of an ADVO application where the adult defendant has had no previous breaches or domestic violence offences. This would support applicants, including victims of domestic violence, by providing clear guidance on the appropriate duration of an ADVO, and promote a consistent approach.</p> <p>The amendment would also operate to prompt applicants to consider requesting an ADVO of a longer duration than the standard two years (including an indefinite order), where certain circumstances exist. For private applications, this would afford a victim of domestic violence the option to seek an order of longer duration if they consider that the relief is necessary to promote their safety and protection needs. For NSW Police, this amendment would provide a legislative framework to determine where a departure from the standard 2 years may be desirable having regard to the particular circumstances of the case.</p> <p>The proposal to seek an ADVO for a minimum period of two years will only apply to ADVOs sought against an adult defendant. Where the defendant is a child or young person the ADVO can only be sought for as long as is necessary to ensure the safety and protection of a person, and will require reasons to be included in the application where an order is sought for more than 12 months. This amendment recognises that the dynamics surrounding incidents of domestic and family violence inflicted by children and young people are usually different to those dynamics inherent in adult relationships.</p> <p>For many children and young people, problematic and challenging behaviour such as acting out, aggression, anger, mood swings and resistance to authority are normal and predictable behaviours, which will usually dissipate as the young person continues to mature. For example, it is common for ADVO applications to be brought against a young person for the protection of their sibling or someone they live with, where conflict has escalated, and where the child or young person is unable to control and regulate their behaviour.</p> <p>The requirement to detail the reasons why an ADVO against a child is sought for a period of longer than 12 months acknowledges the Children’s Court of New South Wales view that a long term-final order final order may be unnecessary and inappropriate given the dynamics of domestic violence in a child and young person context, and that it is preferable to help children and young people resolve the conflict through counselling and other interventions.</p>	<p>We submit that the requirement “<i>must request</i>” should be replaced with “<i>should request</i>”. The applicant, whether police or a private applicant, is best placed to determine (estimate) how long the order needs to be to ensure the safety and protection of the protected person.</p> <p>It could be counterproductive for police to have to request an order of 2 years, for example, where the applicant considers that the PINOP’s safety is best protected by a shorter term order.</p> <p>A legislative presumption is more appropriate than an inflexible requirement that will waste court time in unnecessary argument about the length of the order. A presumption is consistent with the explanation in the column headed “Reason for or benefit of amendment.”</p>
2	<p><b>Amend the <i>Crimes (Domestic and Personal Violence) Act 2007</i> to provide that an Apprehended Domestic Violence Order remains in force for a period of 2 years (for adult defendants) and 12 months (for defendants who are children and young people) if the court fails to specify a period in the order</b></p> <p>Section 79(3) of the CDPV Act currently provides that a final Apprehended Domestic Violence Order remains in force for such period as is specified in the order by the court. If the court fails to specify a period in the order, the order remains in force for a period of 12 months after the date the order is made.</p> <p>This amendment would provide that an order remains in force for a period of 2 years (for adult defendants) from the date the order was made if a court fails to specify the duration in the order. The current approach in relation to defendants who are children and young people would be maintained.</p>	<p>This recommendation would support implementation of the DVDRT’s recommendation in relation to increasing the default length of ADVOs from 12 months to a longer duration to promote enhanced victim safety (Recommendation 3).</p> <p>The DVDRT questioned the sufficiency of short ADVOs of six or 12 months in length and noted that the expiry of ADVOs can highlight the insufficient duration of these orders to maintain victim safety. NSW Bureau of Crime Statistics and Research (BOCSAR) data indicates that the median duration for a final ADVO is approximately 12 months, which is consistent with the current default period specified in the Act.</p> <p>This proposal maintains the current approach to ADVO duration whereby a final ADVO remains in force for such period as is specified in the order by the court. This recognises that it is preferable for the duration of an ADVO to be specified in each order, as the circumstances of each case will require different approaches. However, a extending the default duration of an ADVO for adult defendants where no period is specified in the order sends a clear message that the standard approach should be two years. The default period which applies where no period is specified in an order would be consistent with the minimum ADVO duration for the purposes of an ADVO application for an adult defendant (outlined in Proposal 1 above).</p> <p>Domestic violence can dramatically alter the victim’s life and living conditions. Victims may experience challenges such as physical and mental health issues, substance abuse, homelessness, loss of employment, single-parenting arrangements and financial distress. ADVOs can help improve quality of life for victim of domestic violence and extending the default</p>	<p>Refer to comments made in 1 above.</p> <p>We also note that the commentary under the explanation for the amendment provides:</p> <p>“A number of studies suggest that the overall effectiveness of protection orders tends to remain stable over time (cited in AIC; 2018). This supports a longer standard duration for ADVOs for adult defendants.”</p> <p>The cited research does not draw that conclusion. The AIC research states, in context:</p> <p>... the overall effectiveness of protection orders tends to remain stable over time (Holt et al. 2002, 2003; McFarlane et al. 2004; Trimboli &amp; Bonney 1997). This tentatively suggests that protection orders are primarily useful in mitigating the short-term risk of re-victimisation, while longer-term risk mitigation measures (eg victim/perpetrator treatment, victim services) are gradually taking effect, although further research is needed to support this conclusion. (p9)</p>

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		<p>period of an ADVO to 2 years would allow time for victims to address some of their basic needs following an act of violence. ADVOs can also help victims by reducing fear, anxiety and stress levels associated with the experience of domestic violence and empowering victims who would otherwise trivialise their victimisation. This may also help increase the likelihood of a victim reporting further domestic violence to the police.</p> <p>ADVOs have been linked to improved protection of victims of domestic violence and reduced reoffending. Research undertaken by the BOCSAR indicates that ADVOs are generally effective in protecting victims from proscribed behaviours, such as assault, abuse threats and intimidation. In addition, research from the Australian Institute of Criminology indicates ADVOs may deter perpetrators from reoffending by increasing the risk of contravention and punishment; making it more difficult for perpetrators to access victims and engage in further violence; and setting clear rules for victim-perpetrator interactions. A number of studies suggest that the overall effectiveness of protection orders tends to remain stable over time (cited in AIC; 2018). This supports a longer standard duration for ADVOs for adult defendants.</p> <p>Stakeholders have also indicated that the often short duration of ADVOs could limit victim protection and require the victim to extend the ADVO annually. In particular, requiring the victim to extend an ADVO annually can increase pressure on the court system, add to victim stress, and provide a further opportunity for an offender to exert power and control through a court process. Extending the default duration may also reduce the need for a victim to go back to court to have an ADVO of a short duration varied, potentially alleviating the burden on the court. Extending the default duration for adults would better align NSW with approaches to ADVO duration in other jurisdictions where longer orders (e.g. 2-5 years or open ended) are standard. In addition, since the introduction of the National Domestic Violence Order Scheme in November 2017, NSW will recognise ADVOs made in other jurisdictions for the period that the ADVO remains in force in the jurisdiction where it was made, including where no end date is specified. The current approach to the default duration of an ADVO for young offenders will be maintained, noting the Children's Court of New South Wales views in relation to long term-final order final order (see in relation to Proposal 1 above).</p>	
3	<p><b>Amend the <i>Crimes (Domestic and Personal Violence) Act 2007</i> to provide that the court must take into account factors when determining the duration of a final ADVO where the defendant does not consent to the duration of the order sought by the applicant or the ADVO is made in the context of criminal proceedings for a DV offence</b></p> <p>This proposal is to amend section 79 of the CDPV Act to provide that, where the defendant does not consent to the duration of the order sought by the applicant, the court must, when making a determination as to the duration of a final ADVO, take into account:</p> <ul style="list-style-type: none"> <li>• the nature and dynamics of the domestic violence</li> <li>• the history of the violence, including previous ADVO breaches or DV offences</li> <li>• the seriousness of the violence</li> <li>• the frequency of violence</li> <li>• the extent to which the length of the order is likely to impact the safety of the protected person and any child with whom a protected person above the age of 18 years has a domestic relationship</li> <li>• the safety of the protected person and any dependents</li> <li>• the views of the protected person in relation to duration</li> <li>• whether the respondent is a child or young person and the age of the child or young person at the time the order is made</li> <li>• the views or any relevant circumstances of the respondent.</li> </ul>	<p>This amendment would support implementation of the Domestic Violence Death Review team recommendation that the Attorney General consider mechanisms to ensure that Apprehended Domestic Violence Orders are made for an appropriate duration (Recommendation 3).</p> <p>While standard duration of an ADVO would be two years (see Proposal 2 above), this amendment aims to prompt the court to consider the ADVO holistically and tailor the duration of an ADVO to the circumstances of each protected person, rather than taking a one-size-fits-all approach, particularly where there is a dispute between the parties as to the length of the ADVO being sought.</p> <p>The presence of certain factors can indicate an increased risk of re-offending and harm to victims, which may warrant greater consideration by the court on the appropriate duration of an ADVO. The factors would not be determinative, but would provide the court legislative prompts to guide their decision on ADVO duration. This would also act as guide for applicants as to whether an ADVO of a longer, or shorter, duration is needed, and a legislative framework to assist the court to determine ADVO duration when it is necessary to do so.</p> <p>The consideration of factors when determining ADVO duration is consistent with advice in the National Domestic and Family Violence Bench Book, which refers to research that suggests 'flexibility is necessary to tailor the order to the totality of the circumstances of the particular case with regard to any aggravating factors such as increased risk of harm or recidivism, rather than adopting a one-size-fits-all approach' (Conner; 2015).</p> <p>As ADVO proceedings are dealt with as application proceedings, the court's consideration of these factors would be limited to circumstances where the defendant does not consent to the duration of the order sought by the applicant or is made in the context of DV offence proceedings.</p>	<p>We suggest the inclusion of the following additional factor: <i>whether the respondent is cognitively impaired and the degree of cognitive impairment of the respondent.</i></p>
4	<p><b>Amend the <i>Crimes (Domestic and Personal Violence) Act 2007</i> to provide that an ADVO remains in force for a minimum of two years following the release of an adult offender from custody</b></p> <p>This proposal is insert a provision in the CDPV Act to provide that an existing or new ADVO must extend for period of at least 2 years from the end date of a custodial sentence arising from a DV related offence against the protected person with whom the respondent has had a domestic relationship, unless the court determines otherwise.</p>	<p>This amendment would support implementation of the Domestic Violence Death Review team recommendation that the Attorney General consider mechanisms to ensure that Apprehended Domestic Violence Orders are made for an appropriate duration (Recommendation 3).</p> <p>The DVDRT report expressed particular concerns about the duration of ADVOs where there is a significant history of violence and where the ADVO expires prior to the release of a perpetrator from custody, leaving the victim unprotected. For example, case review 3596 involved the death of a woman who was fatally assaulted by her partner. At the time of the fatal assault, the offender had recently been released from custody where he had been serving time for a prior</p>	<p>We suggest that the power should simply be framed as a power for the court to extend the duration of the order for a period post custody which is as long as is necessary, in the opinion of the court, to ensure the safety and protection of the protected person (i.e. reflecting the terms of existing section 79) OR the operation of the order is suspended while the defendant is in custody (and recommences on release).</p>

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	<p>The proposal will only apply to an existing or new ADVO in relation to the same protected person against whom the DV related offence was committed. The proposal would also only apply to adult offenders.</p> <p>It is intended any amendment would cover circumstances where an ADVO is made final at time where it is known that the offender will be in custody when in the context of criminal proceedings or on sentencing of an offence, or where a final ADVO is made while the offender is in the community, and sometime later there is further offending that results in the offender receiving a custodial sentence during which the original order would expire.</p> <p>The amendment would provide that an existing or new ADVO may extend for a period of longer than two years following the release of an adult offender from custody if the court considers it is necessary to do so. In making a decision as to duration, the court must take into account:</p> <ul style="list-style-type: none"> <li>• the nature and dynamics of the domestic violence</li> <li>• the history of the violence, including previous ADVO breaches of DV offences</li> <li>• the seriousness of the violence</li> <li>• the frequency of violence</li> <li>• the extent to which the length of the order is likely to impact the safety of the protected person and any child with whom a protected person above the age of 18 years has a domestic relationship</li> <li>• the safety of the protected person and any dependents</li> <li>• the views of the protected person</li> <li>• the views or any relevant circumstances of the respondent.</li> </ul>	<p>assault against the victim. In addition, stakeholders have advised that offenders, where their ADVO expires while in custody, often seek contact with victims soon after being released. Offenders who are not on parole can enter the community without any restrictions and may often be looking for accommodation. This increases the likelihood of an offender returning to previous domestic residences and relationships. In addition, offenders are often at risk of homelessness and financial distress immediately after leaving custody. If the offender does not have necessary support networks, desperation may cause them to seek support from the victim. This can occur because of the risk of homelessness and financial difficulty, which are key stressors in domestic and family violence.</p> <p>Having an ADVO in place for a period time from the end date of a custodial sentence would mitigate the immediate risk posed to the victim and would assist in providing some safety to victims in circumstance where offenders are transitioning back into the community, where the risk of violence may be heightened. This would also add to the protection of a victim who may not know the exact timing of the release of the offender from custody.</p> <p>In addition, where an offender is on parole, the terms of the parole may not necessarily be designed to protect the victim of domestic violence. This amendment would therefore be a useful additional protection tool in these circumstances.</p> <p>This amendment would broadly align the approach in NSW to the approach taken in Western Australia where an ADVO remains in force for a period of 2 years or longer as specified following the release of an offender from custody.</p>	
5	<p><b>Amend the <i>Crimes (Domestic and Personal Violence) Act 2007</i> to enable the court to make a final ADVO of indefinite duration in certain circumstances and to provide that an application for the variation or revocation of an ADVO made by the person against whom an indefinite ADVO was made requires leave of the court</b>  <b>(Proposal based on approach suggested by Legal Aid NSW)</b></p> <p>This proposal is to insert a provision in the CDPV Act to provide that a court may make an ADVO of indefinite duration where the court is satisfied that there are circumstances giving rise to a significant and ongoing risk of lethality or serious physical harm to the protected person or any dependents, and where that risk cannot be mitigated by an order of limited duration. Section 79 of the CDPV Act would also be amended to clarify that a period specified by the court may include an indefinite period.</p> <p>In determining whether there is a significant and ongoing risk of lethality or serious physical harm to the protected person or any dependents the court should take into account the factors outlined in Proposal 3.</p> <p>Where a court has made a final ADVO of indefinite duration the order would remain in force until varied, revoked or set aside on appeal. In addition, an application for the variation or revocation of an indefinite ADVO made by the person against whom the ADVO was made must have the leave of the court, and the applicant must show a significant change in circumstances.</p> <p>This amendment would not apply to a child or young person whom is a defendant or protected person.</p>	<p>This amendment would support implementation of the Domestic Violence Death Review team recommendation that the Attorney General consider mechanisms to ensure that Apprehended Domestic Violence Orders are made for an appropriate duration (Recommendation 3).</p> <p>An ADVO of indefinite duration may be required in certain circumstances, for example, where there is a severe, persistent and/or going risk of domestic violence and the defendant has shown a persistent unwillingness to comply with an ADVO or a systemic disregard for the criminal justice system. Indefinite ADVO may be required to protect the safety of a protected person in very limited circumstances and may be the most suitable option for certain types of offenders, noting punitive measures may still be required.</p> <p>However, an ADVO of indefinite duration may have significant adverse impacts on a defendant. While an ADVO is not a criminal penalty, the consequences for a defendant's employment prospects, working with children check obligations and their ability to repair or maintain familial relationships may be significant. An order of indefinite or permanent duration may further operate to undermine a perpetrator's motivation to ultimately change their behaviour.</p> <p>Accordingly, any amendment would guide the court to restrict ADVOs of indefinite duration to exceptional circumstances. A defendant will also be able to appeal an ADVO or apply for leave to vary or revoke the indefinite ADVO. Leave to vary or revoke an ADVO will be contingent on the existence of a significant change in circumstances. This threshold will mitigate against the risk of repeated applications to vary or revoke an order which may further traumatise victims. This amendment would not apply to a child or young person whom is a defendant or protected person.</p>	<p>We are opposed to this proposal. Courts already have a broad power to make an order of very long duration.</p> <p>We support the other aspect of the DVDRT's Recommendation regarding duration of ADVOs, that:</p> <p><i>The Judicial Commission of NSW update the Local Court Bench Book or other education and training to invite judicial officers to consider factors relevant to setting an appropriate duration for an ADVO (including any period of time an offender is in custody to ensure that the person in need of protection is protected upon the defendant's release).</i> (Rec 3)</p> <p>Consistent with that recommendation, police, prosecutors and courts should be provided with greater awareness and training as to the potential scope of the existing law.</p> <p>Should the proposal proceed, and consistent with the rationale, indefinite orders should only be available in exceptional circumstances and, in the Law Society's view, tied to consideration of whether there has been persistent breaches with violence of an ADVO and/or serious domestic violence offending.</p> <p>In addition, we submit that indefinite orders should only be available on application of the DPP.</p>
6	<p><b>Amend the <i>Crimes (Domestic and Personal Violence) Act 2007</i> to enable Police to approve an immediate variation of the conditions of a final ADVO in certain circumstances</b></p> <p>The proposal is to insert a provision in the CDPV Act provide that the Police can make an immediate variation to an ADVO if there is an immediate risk of domestic violence and the protected person</p>	<p>At present, where a provisional, interim or final ADVO is in place, the order cannot be varied except by a court on the next court date. This can create safety problems for a victim who has an ADVO in place that was made by the court and their circumstances rapidly change. When a situation rapidly changes, police are may rely on variation of bail conditions (if existing) or otherwise make an application to vary an existing order (which is not immediate) in order to address the risk. However, both these circumstances may not be adequate to ensure the</p>	<p>We are opposed to this proposal.</p> <p>The proposal usurps the role of the court. In particular:</p> <ul style="list-style-type: none"> <li>• The proposal undermines fundamental legal principles of finality</li> </ul>

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	<p>requires increased protection to address that risk.</p> <p>A police-issued variation is taken to be an application to the court for a variation of order conditions. The variation is to contain a direction for the appearance of the defendant at a hearing of the application by an appropriate court on a date specified in the order by the issuing officer. The specified date must be the next date on which the matter can be listed on a domestic violence list at the appropriate court, and, in any case, a date that is not more than 28 days after the making of the provisional order. The variation would apply as soon as it is approved by Police, but its continued application would depend on the outcomes of consideration by the court.</p> <p>The Act would provide for safeguards to prevent misuse of the provision. The Act would provide that the variation should:</p> <ul style="list-style-type: none"> <li>• only be for increased protection, not decreased protection</li> <li>• be no longer than 28 days</li> <li>• require the same burden of proof required by an ordinary application to vary an ADVO</li> <li>• not operate to extend a final ADVO beyond its end date</li> <li>• not significantly disadvantage a child or young person</li> <li>• take into account the views of the protected person.</li> </ul> <p>The Police-issued variation would also be required to be approved by an officer with the ranking of Sergeant or above.</p>	<p>immediate safety and protection of a protected person.</p> <p>Enabling police to immediately vary the conditions of an ADVO, with appropriate safeguards in place, would allow police to immediately address increased risks to victims of domestic violence, potentially save victims who are experiencing ongoing violence and further tailor the ADVO to the needs and circumstances of the victim.</p> <p>The aspect of the amendment detailing that the police-issued variation is taken to be application for court order and the court date that must be specified in the variation by the issuing officer is consistent with section 29 of the <i>Crimes (Domestic and Personal Violence) Act 2007</i>. It is designed to ensure the variation comes before the court as soon as practicable.</p> <p>The amendment would not apply to a defendant whom is a child or young person, noting concerns from the Children's Court of New South Wales that the practical effect of a variation could disadvantage a young person in a material way.</p>	<p>and certainty. Parties who have either reached agreement on the terms of an ADVO, or a court who has heard evidence and made a decision as to the terms of an ADVO, will know/expect that the terms of that order may change the next day, or may be altered at any time, unilaterally by police.</p> <ul style="list-style-type: none"> <li>• The proposal will have a disproportionate impact on Indigenous, young and cognitively impaired defendants. The power may be exercised to add a non-contact condition which will render the defendant homeless for up to 28 days.</li> <li>• The proposal appears to be inconsistent with the principles and provisions of the Model National DVO scheme. These principles include that: <ul style="list-style-type: none"> <li>○ a DVO that is nationally recognised can be amended in any jurisdiction, but only by a court;</li> <li>○ if a DVO made in one jurisdiction is in force, a new order can (if necessary) be made in another jurisdiction, but only by a court.</li> </ul> </li> <li>• Expansion of police powers is not necessary: police should arrest and charge if the final ADVO is breached.</li> </ul> <p>If the proposal is to proceed, it needs stronger safeguards, including:</p> <ul style="list-style-type: none"> <li>• A variation should only be available in exceptional and urgent circumstances where there is a change of circumstances since the imposition of the final court order that result in an increased risk to the safety of the PINOP which cannot be addressed either: <ul style="list-style-type: none"> <li>○ under the terms of the current (court) order, or</li> <li>○ by way of an application for variation of the current court order.</li> </ul> </li> <li>• There should be a limit on the number of such variations. Police should not be able to make another variation application (unless there has been a change in circumstances) if their first variation application is rejected by the court.</li> <li>• The variation should not operate so as to render the defendant homeless.</li> </ul> <p><b>Process</b></p> <ul style="list-style-type: none"> <li>• A notice of the variation should be immediately served upon the defendant.</li> <li>• The variation should operate as a summons to appear for urgent listing <b>within 2 working days</b>.</li> <li>• A police officer who is applying for the variation of the provisional order should not be the same police officer who makes the provisional order.</li> <li>• The defendant should be able to apply to the appropriate court for a variation or revocation of the provisional order, as varied.</li> </ul>