



THE LAW SOCIETY
OF NEW SOUTH WALES

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8 August 2025

The Hon. Michael Daley, MP
NSW Attorney General
GPO Box 5341
SYDNEY NSW 2001

Via [online form](#)

Dear Attorney,

INCREASING AGENCY FOR PROTECTED PERSONS IN APPREHENDED DOMESTIC VIOLENCE ORDER PROCEEDINGS

The Law Society of NSW writes to encourage review of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (**Act**) with a view to increasing the agency and participation of protected persons in Apprehended Domestic Violence Order (**ADVO**) proceedings. The Act was last reviewed over 10 years ago.¹ It would complement existing work to address domestic and family violence in NSW to review the Act to improve outcomes for protected persons by ensuring the legislation is fit for purpose. In particular, we suggest legislating consideration of the views of protected persons by both police and the Court may better promote the agency and autonomy of protected persons in ADVO proceedings and ensure that orders made are appropriate and tailored to the circumstances of each matter.

The Law Society's position

The Law Society recognises that domestic and family violence is an issue of significant and ongoing concern in New South Wales. To effectively respond to domestic and family violence, a range of mechanisms must be used to ensure the safety of the victim and address the offending behaviours of the alleged perpetrator. We recognise that the latter will often require targeted intervention by law enforcement, including the use of ADVOs in appropriate matters.

However, the Law Society is concerned that the current ADVO regime in NSW inappropriately limits the capacity for protected persons to meaningfully engage in ADVO proceedings, despite such proceedings being for their protection. We suggest that it is fundamental to an effective and fair justice system that persons who are in need of protection, or whom police have identified may be at risk of harm, have agency and control in the legal proceedings that affect them. Failure to have regard to the specific concerns and viewpoints of protected persons in ADVO proceedings may contribute to outcomes that do not serve the individual needs and vulnerabilities of protected persons, contribute to their revictimisation or result in the imposition of inappropriate or unworkable conditions.

¹ Department of Communities and Justice, [Statutory Review of the Crimes \(Domestic and Personal Violence\) Act 2007 \(NSW\)](#) (2015).

As a matter of procedural fairness, the Law Society considers orders which can impose significant prohibitions or restrictions on the behaviour of the defendant, often despite no criminal offence being charged or proven, should be made with a complete understanding of the relevant circumstances, which necessarily must include the protected person's perspective. We suggest that consideration of the protected person's views may better assist the Court to understand what is necessary to manage risk and create safety in each individual matter, and to mould orders that do not, inadvertently, generate additional hardship for the protected person.

The importance of listening to protected persons has more recently been recognised in the Specialist Domestic Violence List Pilot Practice Note, which operates in ten Local Courts across NSW (**the Practice Note**). The Practice Note expressly provides that the presiding magistrate should "give complainants as much agency and choice as possible"² and "give the complainant the opportunity to communicate their views... including addressing the Court if desired".³ In harmonisation with the Practice Note, we suggest the Government consider legislative reform requiring protected persons to be properly consulted at key stages of ADVO proceedings, from police application through to final order, and be given standing to directly address the Court.

ADVO proceedings in NSW

In NSW, applications for ADVOs are typically made by police.⁴ Police must apply for a "provisional ADVO" if the officer suspects or believes that a domestic violence offence has recently been committed, is being committed, is imminent or is likely to be committed, and believes the order needs to be made immediately to ensure the safety and protection of the person.⁵

However, there is no requirement for police to charge the defendant with a domestic violence offence when applying for an ADVO. ADVOs without associated criminal charges are often called "standalone ADVOs".

All ADVOs contain an order prohibiting the defendant from assaulting, threatening, stalking, harassing or intimidating the protected person or damaging the protected person's property (often called "the standard orders" or "Order 1").⁶ Police may also attach additional conditions to the ADVO, for example, prohibiting the defendant from contacting the protected person, going to the protected person's home or workplace, or trying to locate the protected person.⁷

When a provisional ADVO is made by a police officer, the matter must be listed in Court within 28 days,⁸ at which time the Court may dismiss the application, revoke the provisional order or, if the defendant consents to the order, make a final apprehended violence order.⁹ If the defendant does not consent to the ADVO, the

² Local Court of New South Wales, Specialist Family Violence List Pilot Practice Note, online: https://localcourt.nsw.gov.au/documents/practice-notes/Practice_Note_-_Specialist_Family_Violence_List_Pilot_v.1.1.pdf, s 4.3(d)

³ Ibid, ss 8.37 and 8.48

⁴ More than 50,000 ADVOs were commenced in NSW in 2024. 98% were Police-initiated. See: BOCSAR, [New domestic violence data: monitoring Apprehended Violence Orders and coercive control in NSW](#) (9 October 2024).

⁵ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 27.

⁶ Ibid, s 36.

⁷ Ibid, s 35(2).

⁸ Ibid, s 29.

⁹ Ibid, s 33(1).

Court will ordinarily make an interim order in the same or similar terms to the provisional ADVO, and set the matter down for hearing, which will typically be several months away.

While ADVOs are civil orders, it is a criminal offence to breach an ADVO, whether in its provisional, interim or final form.¹⁰

The limited agency of protected persons in ADVO proceedings

We recognise that in many matters protected persons are grateful for the assistance of police in seeking an ADVO for their protection. Indeed, the Law Society considers it critical that police are empowered to seek immediate orders for the protection of persons suspected to be, or at risk of, suffering from domestic or family violence. To promote access to justice for domestic violence victims, we also consider it essential that police continue to appear in Court on behalf of protected persons in ADVO applications and be responsible for the case management of these proceedings.

However, significant difficulty arises when the police officer's assessment of the need for a provisional ADVO, the risk of harm to the protected person, or the necessary ADVO conditions, differs to the views of the protected person.

This difficulty is exacerbated in circumstances where the current scheme does not require police to consult with or obtain the consent of the protected person to apply for an ADVO. The 'Code of Practice for the NSW Police in response to Domestic and Family Violence' reminds officers (**NSW Police Code of Practice**, emphasis added):

It is important to remember that in police initiated ADVOs, it is not the victim that applies for an ADVO against the defendant; it is in fact police that do, and they will do so with or without the victim's consent under these circumstances.¹¹

Once a provisional ADVO is made, only the police officer or the defendant may apply to vary or revoke it.¹² If one of the protected persons under the order is a child, only the police officer may apply for variation or revocation of the provisional ADVO.¹³ The protected person does *not* have standing to seek the variation or revocation of a provisional ADVO.

Under current legislation, police are not legally required to inform the Court of the protected person's views on the application or its conditions. In practice, police often do seek to obtain and convey the views of the protected person, with the assistance of NSW Police Domestic Violence Liaison Officers (**DVLOs**). However, in Courts where DVLOs are unavailable or on busy list days, our members advise that it is not uncommon for a protected person's position to not be conveyed to the court accurately, in full, or at all.

¹⁰ Ibid, s 14.

¹¹ NSW Police, *Code of Practice for the NSW Police Force response to Domestic and Family Violence*, 1 June 2018, online: https://www.police.nsw.gov.au/_data/assets/pdf_file/0016/165202/Code_of_Practice_for_the_NSWPF_response_to_Domestic_and_Family_Violence.pdf p. 44.

¹² *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 33 and 33A.

¹³ Ibid, s 33A(2).

This situation is further complicated in matters where the protected person expressly opposes the order or its conditions. Noting that the protected person does not have standing in relation to a provisional ADVO, if the protected person asks police to vary or revoke the provisional order, and police refuse, the protected person must wait until the ADVO is made interim to apply for its variation or revocation.

The protected person will have to make a variation or revocation application without the assistance of police and at their own expense, despite the order being police-initiated and possibly applied for without the protected person's consent. The NSW Police Code of Practice specifically states:

Police will not take an active role in proceedings where they oppose the variation or revocation of a police-initiated order. The police prosecutor will not assist the protected person if they are making the application against the advice of police and they will indicate to the court that they oppose the application in court.¹⁴

Lastly, in making a final ADVO, the Court is not required under existing legislation to consider the views of the protected person in relation to the making of the order or its conditions.

The Victorian approach

We suggest aspects of the approach taken in Victoria to domestic violence orders may guide reform in NSW. In Victoria, the views and concerns of the protected person appear to be more readily considered by Victoria Police and the Court when making a Family Violence Intervention Order (**FVIO**) or issuing a Family Violence Safety Notice (**FVSN**).

For example, in the Victoria Police 'Code of Practice for the investigation of family violence' (**Victorian Police Code of Practice**), police are directed to consider the preferences of the protected person in relation to making the FVIO or issuing a FVSN (emphasis added):

Police officers will consider the preferences of the victim, however the decision to issue a FVSN or apply for an FVIO is ultimately made by police and based on the risk assessment and whether the safety, welfare, property or pets of the victim appear to be endangered.¹⁵

In Victoria, the protected person also has standing to apply for the variation or revocation of a FVIO.¹⁶ Additionally, the Court *must* have regard to the protected person's views about any proposed variation to or revocation of a FVIO.¹⁷

Lastly, the Victorian Police Code of Practice requires the police officer to communicate to the police prosecutor that the protected person does not consent, with implications for the conditions that can be imposed in the final FVIO:

¹⁴ Above n 11, p. 64.

¹⁵ Victoria Police, Code of Practice for the Investigation of Family Violence, 2022, online: [Code-of-practice-for-the-investigation-of-family-violence-Edition-4-Version-2.pdf](#) p. 45.

¹⁶ *Family Violence Protection Act 2008* (Vic), s 108.

¹⁷ *Ibid*, s 100(2)(c).

In situations where the victim has not consented to the FVSN or the FVIO being made, the responding police officers will ensure that this is communicated to the FVCLO [Family Violence Court Liaison Officer] or police prosecutor/police lawyer. Final FVIO orders will have limited conditions in situations where the victim has not consented. Exceptions to this include when the victim is a child, when the victim has a cognitive impairment, and/or when the victim is a person with a guardian who has consented to the conditions.¹⁸

Legislative reform

The Law Society suggests that legislative reform is necessary to ensure that protected persons can meaningfully participate in ADVO proceedings. We suggest this might include legislating a requirement for police and the Court to obtain and consider the views of the protected person at key stages of ADVO proceedings, including at the time police consider applying for a provisional order. Sensitivity to the views of the protected person is especially necessary when the protected person is a parent or carer and the defendant is their child (a scenario common to the Children's Court).

The Law Society suggests that legislating standing for protected persons in relation to provisional ADVOs is a matter of high priority. We suggest that protected persons being statutorily barred from making relevant applications to the Court undermines their agency and autonomy, and is contrary to trauma-informed best practice. While we recognise the valuable and important role DVLOs play in supporting protected persons, we consider it important that protected persons are able to, if they wish, speak for themselves.

We further suggest that protected persons being able to apply for variation or revocation of a provisional ADVO may better ensure that problems caused by the imposition of unworkable or undesired orders or conditions, such as significant disruption to childcare, housing or parenting arrangements, can be minimised at the earliest opportunity. Better ensuring that orders are tailored to the circumstances of each matter may also reduce the incidence of "consensual breaches", where the defendant breaches the ADVO with the consent of or in agreement with the protected person due to the order or condition being unworkable or unwanted. Our members advise that ADVOs which are responsive to the circumstances of the protected person are more likely to be complied with and respected by the parties.

The Law Society considers that better outcomes can be obtained for all parties if protected persons are entitled to communicate their views, even when these are contrary to the police position. It should be, in our view, the role of the Court to weigh these competing perspectives and make an appropriate order having considered all relevant information. The views of the protected person may provide the Court with the appropriate evidence to ensure that any intervention via the imposition of an ADVO is tailored to be necessary and proportionate. A Court will also be better placed, if required, to put in place other or more targeted conditions to ensure the safety and protection of the complainant than those originally contemplated by police.

We look forward to engaging with you in respect of these concerns, and any review or reform processes arising. The Law Society would also be pleased to meet with you in respect of this topic. Should this be of

¹⁸ Above n 15, p. 48. See also: *Family Violence Protection Act 2008* (Vic), s 75.



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interest, or if you have any questions in relation to this letter, please contact Jade Fodera, Policy Lawyer on (02) 9926 0218 or by email: jade.fodera@lawsociety.com.au.

Yours sincerely,

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President