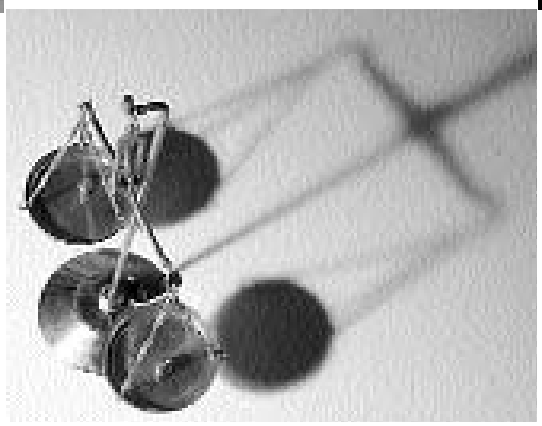
AUDITOR GENERAL
for
Western Australia



PERFORMANCE EXAMINATION

A Measure of Protection:

Management and Effectiveness of Restraining Orders

Report No. 5

October 2002

AUDITOR GENERAL
for
Western Australia

THE SPEAKER
LEGISLATIVE ASSEMBLY

THE PRESIDENT
LEGISLATIVE COUNCIL

PERFORMANCE EXAMINATION – A Measure of Protection: Management and Effectiveness of Restraining Orders

This report has been prepared consequent to an examination conducted under section 80 of the *Financial Administration and Audit Act 1985* for submission to Parliament under the provisions of section 95 of the Act.

Performance examinations are an integral part of the overall Performance Auditing program and seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities thereby identifying opportunities for improved performance.

The information provided through this approach will, I am sure, assist Parliament in better evaluating agency performance and enhance Parliamentary decision-making to the benefit of all Western Australians.

D D R PEARSON
AUDITOR GENERAL
October 16, 2002

Contents

Executive Summary

Why We Did this Examination

Public and personal safety are issues of major significance to the community. For some time the community has been expressing concern about a perceived deterioration in safety and doubts have been raised about the effectiveness of restraining orders as a method of ensuring individual safety. The *Restraining Orders Act 1997* has now been in place for five years and it is timely to look at how effectively it has been implemented and whether it affords the community a measure of protection.

What are Restraining Orders

Restraining orders are court orders designed to prevent acts of violence or misconduct by requiring a person to behave in certain ways, such as to maintain a prescribed distance from the applicant. A restraining order is worded to fit particular circumstances and breaching the terms of an order can result in a fine or imprisonment.

Restraining orders were first introduced in Western Australia in 1982 as an amendment to the *Justices Act 1902* to deter breaches of the peace. However, over time it became apparent that there were a number of inadequacies in the use of restraining orders, including overuse of orders, inappropriate use of orders where alternative options may be more effective, difficulties with the serving of orders, and inconsistency in addressing breaches.

A review of restraining orders was undertaken in 1995 and resulted in the *Restraining Orders Act 1997*. The new Act introduced two forms of order: violence restraining orders to deal specifically with incidents of personal violence, and misconduct restraining orders to address other non-violent forms of public nuisance such as damage to property. This dichotomy was intended to give greater priority to violence restraining orders.

What We Found

This examination focuses on the management and effectiveness of restraining orders. In particular, the examination uses the information gathered during the then Ministry of Justice evaluation of the 1997 Act, carried out in December 1998, as baseline data to make a comparative study of applications for restraining orders before and after the introduction of the Act. None of the evaluation's 33 recommendations for changes to legislation and regulation have been fully implemented across the State.

Although restraining orders are not a stand-alone solution, they can and do work effectively within existing resources in some districts and regions of the State, but only if there is appropriate support and coordination. This is demonstrated by the coordinated approach used in the Geraldton and Armadale regions. On the whole, however, the flaws

and variations in the system render the orders relatively ineffective for the protection of victims of violence. The Act has been in place for five years and yet restraining orders are not demonstrably more effective in the protection of victims of violence.

Use and Effectiveness of Restraining Orders

The 1997 Act has increased the use of restraining orders

The Act was introduced to address the acknowledged inadequacies of the previous legislation. Among the inadequacies of the pre 1997 legislation, the overuse of restraining orders was one of the more serious. This examination found that the 1997 Act has increased the number of restraining orders issued by 55 per cent, and it is not clear whether any of this increased use and access has been more appropriate or effective.

Restraining orders do not always make applicants feel safe

It may be that that the continued overuse of restraining orders has diminished their value as a protection to victims of violence.

Many applicants for restraining orders interviewed during the course of this examination reported that the existence of an order did not make them feel safe. Moreover, the examination found that 69 per cent of respondents have a criminal record and many have multiple orders taken out against them, making it unlikely that this group of respondents will change their behaviour in accordance with the terms of a restraining order.

Cultural and geographical barriers restrict access to the protection of restraining orders

Some groups in the community are unable or unwilling to access the protection of restraining orders because of cultural and geographical barriers. In particular, there is reluctance to access restraining orders among Indigenous people. This is of particular concern because of research indicating that Indigenous people are at greater risk of domestic violence than other groups in the community.

Police make relatively few applications for telephone restraining orders

Telephone restraining orders were introduced to address some of these barriers caused by remoteness or cultural practices. However, police make relatively few applications for telephone restraining orders because of the cumbersome administrative process involved in obtaining this form of order. Telephone restraining orders are also less effective in remote areas than other options currently available to police, such as removing the victim to a temporary place of safety, because breaches are more difficult to enforce due to the large distances involved.

Administration of Restraining Orders

There is wide variation in the administration of restraining orders

Some of the variation is positive, such as where individual courts and police districts have implemented aspects of the Ministry of Justice's recommendations to develop innovative pilot programs to meet specific needs. On the other hand, the administrative inconsistencies can have a negative impact on both applicants and respondents. For example, although variation of final orders is currently allowed, variation of interim orders is not. This can impose hardship on the respondent, particularly in rural areas where, in some cases, access to place of employment has been restricted for the period of the interim order.

The timeliness of hearings for applications and final hearings has improved significantly in the case of misconduct restraining orders, but deteriorated slightly for violence restraining orders. Priority is still given to violence restraining orders as most applications for these are heard the same day, but in some localities it can take more than two days for applications to be heard.

Management of Orders by Police

There is inconsistency across police districts in police involvement and response to restraining orders

Inconsistency in practice across police districts was also found to adversely impact on the effectiveness of orders. Inconsistency included police involvement in the prosecution of restraining orders, police response to consent as defence for breaches, and the timing of service of orders.

Many inconsistencies in practice across districts could be addressed by the provision of ongoing training. Police training in regards to restraining orders is adequate at entry level and promotion points. However, in 60 per cent of the districts visited police reported that they had not received ongoing training.

Restraining orders are used as a replacement for charging perpetrators of violence

Since the early 1990s, it has become common practice for the police to advise victims of domestic violence to apply for a restraining order. Police use of restraining orders as a replacement for charging perpetrators of violence or misconduct was an area of concern to the majority of magistrates interviewed as part of this examination. This practice is in contravention of the stated police policy of laying charges where there is evidence that an assault has occurred.

Few of these victims of violence proceed to lodge a successful application for a violence restraining order. Many who do not apply for a violence restraining order indicated that their primary reason is fear of retaliation. Fear of retaliation is lessened when police make applications for violence restraining orders on behalf of victims. However, such applications by police are rare.

Violence restraining orders are not always given adequate priority by police

In the period immediately following the introduction of the 1997 Act, police gave greater priority to the service of orders than they had previously. However, this has not been maintained. Only 58 per cent of restraining orders are served within four days and the average time for service in the period 1999-2001 was 44 days.

Breaches of restraining orders were a major area of complaints about police procedures. Over 25 per cent of all complaints associated with restraining orders were about alleged lack of police action in relation to reported breaches of restraining orders.

Although seizure of licensed firearms routinely occurs at the time of service of a violence restraining order, more than one week had elapsed between issue of the order and the subsequent seizure of the firearms in 25 per cent of cases reviewed.

Support Services

Victim advice and support services were provided in the majority of districts

Support services play an important role in the success of an application for a restraining order as data shows that applicants who receive adequate support are more likely to be issued with an interim order. However, although the majority of localities provide appropriate legal services and victim support services, there are gaps in the current system, particularly for rural communities and Indigenous people living in remote communities.

Applicants who receive support services are more likely to be successful in being issued an interim order

Restraining orders do not work effectively without support and coordination. It is clear from this examination that restraining orders work best where they are one element of a broader package involving government and community support.

Integrated programs are more effective in preventing further incidents of violence

The most effective model for best practice found during the examination was a coordinated approach by government and non-government services. Integrated programs such as the Joondalup Family Violence Court have been shown to work effectively. In addition, effective coordination of government and non-government services has had a positive outcome for the victims of violence in Geraldton and Armadale.

Summary of Recommendations

Community concerns about public and private safety require a coordinated response by the following government agencies:

The Department of Justice needs to:

- clarify with the Government its intentions regarding the proposed amendments to the *Restraining Orders Act 1997*;
- pursue, where possible, the implementation of policy and administrative changes recommended by the review of the 1997 legislation;
- pursue practical changes to the administration of orders to minimise cultural and geographical barriers to accessing the protection of restraining orders;
- establish clear guidelines for timeliness of court administrative processes for restraining orders; and
- initiate procedures to enable court localities to share strategies that are improving efficiency and effectiveness of restraining order processes and where possible implement consistent processes across localities.

The Western Australian Police Service needs to:

- review the process of application for telephone restraining orders;
- establish clear guidelines and procedures for responding to domestic violence incidents and breaches of restraining orders and ensure that they are applied consistently across districts;
- monitor timeliness of service of orders and minimise delays in service of orders;
- extend current strategies that are improving efficiency and effectiveness of restraining order processes and coordinate implementation of these across all districts;

- strengthen the quality control on information systems to ensure that automated processes are occurring in relation to firearms; and
- identify and address ongoing training requirements.

The Department of Justice and the Western Australian Police Service need to take the lead in encouraging other government agencies to:

- review current practices and procedures to identify opportunities for interagency coordination with the goal of providing integrated service delivery in all localities; and
- provide counselling for prospective applicants and respondents at each stage of the restraining order process where possible.

Introduction

Background

Restraining orders are court orders designed to prevent acts of violence or misconduct by requiring a person to behave in certain ways, such as to maintain a prescribed distance from the applicant. A restraining order is worded to fit particular circumstances and breaching the terms of an order can result in a fine or imprisonment. Restraining order legislation was first introduced in Western Australia in 1982 as an amendment to the *Justices Act 1902*. Prior to 1997 the restraining orders legislation provided for only one form of order that was to deter breaches of the peace.

Research[1] undertaken in the 1990s found restraining orders were overused and too numerous, being used as a solution in circumstances where alternative options may have been more appropriate and effective, particularly as the restraining order itself was often ineffective in changing the respondent's behaviour. Orders were also found to be a source of frustration to the police who often experienced difficulty in locating respondents to serve with the order, and breaches of orders were not pursued vigorously enough. In February 1995, the then Attorney General announced a review of restraining orders. The *Restraining Orders Act 1997* (the Act) gives effect to the recommendations of that review and was designed to address the identified inadequacies of the previous legislation.

The Act was part of a multifaceted response by Government to the prevalence of domestic violence and community responses to its prevalence. While restraining orders are commonly associated with domestic violence, misconduct restraining orders can also be taken out by police, for example to limit loitering near schools in order to provide improved protection to children from paedophile activity, and to restrict soliciting by prostitutes.

The Act provides for two types of orders: violence restraining orders (VROs) to protect victims from personal violence and misconduct restraining orders (MROs) that relate to damage to property and disorderly conduct. Recognition of the two types allows for greater priority to be attached to the VROs by enabling confiscation of firearms, shorter periods of time before hearings, heavier penalties for breaches and application for VROs by police through the telephone (TROs).

A restraining order is easier to obtain than a conviction in a criminal process. The standard of proof required is civil, with 'balance of probabilities' proof. Prior to the Act, approximately 5 000 orders were issued each year. This has increased, with over 23 000 restraining orders of all types issued in the three year period 1999-2001. Approximately two thirds of applicants for restraining orders are women.

1 Ralph, Alan (1992). The Effectiveness of Restraining Orders for Protecting Women from Domestic Violence. Centre for Behavioural Analysis, Office of the Family, Perth. (Unpublished report).

Examination Focus and Approach

This examination reviewed the management and effectiveness of restraining orders following the introduction of the Act. It included review of:

- trends in the application, issue and breaches of restraining orders for 1999-2001;
- the profile of applicants and respondents of restraining orders;
- the effectiveness of the management of restraining orders and associated services;
- models of service delivery that provide best practice examples; and
- whether restraining orders truly protect victims of violence and misconduct.

The methodology included:

- analysis of centrally held data for the period 1999-2001 from the Department of Justice, the Western Australia Police Service (WAPS), and Legal Aid Western Australia;
- visits to a sample of 11 of courthouse localities representing a cross section of practice in metropolitan, regional and rural Western Australia to gather comparative information on variation in practice and the effectiveness of orders. In each locality interviews were conducted with court administrative staff, magistrates, police at the local station and district offices, community refuge services and advocacy groups; and
- review and tracking of a statistically significant sample of restraining order applications.

The then Ministry of Justice (MoJ) conducted an evaluation of the effectiveness of the Act in December 1998, six months after its establishment. This evaluation included a comparative study of applications before and after the introduction of the legislation. Due to limited data collection prior to implementation of the Act in 1997, comparative data prior to the introduction of the legislation is not available. Central data collection, with input from all metropolitan and regional courthouses, was implemented in 1999. This performance examination report uses the MoJ six-month evaluation as baseline data.

Restraining Order Legislation

- *The 1997 Act has increased utilisation and access to orders but it is not clear whether this increased use and access is more appropriate or effective.*
- *Restraining orders are not always effective in making applicants feel safer or in actually protecting them from violence.*
- *Relatively few telephone applications are made by police with minimal occurrences in rural and remote locations.*
- *Cultural and geographical barriers restrict access to the protection of restraining orders for some groups including those of Indigenous and non-English speaking backgrounds.*

Background

The then Ministry of Justice (MoJ) evaluated the effectiveness of the Act six months after its establishment. The main purpose of the review was to assess its effectiveness in access to protection, and to determine whether the system was placing a higher priority on VROs. The major findings of the evaluation were that:

- orders granted had increased by 48 per cent;
- VROs were being finalised more quickly than before but MROs took considerably longer than before;
- the percentage of orders not being served decreased from 13 per cent to 10 per cent;
- the percentage being served within four days increased from 58 per cent to 68 per cent, but the percentage being served within 10 days remained constant at 78 per cent;
- the change of legislation had little effect on the proportion of applications that proceed to confirmation of a final order;
- police attitudes towards orders had not changed, particularly in relation to orders for domestic violence. Police continued to be reluctant to intervene in domestic violence situations, and were disinclined to act on allegations of breaches; and
- the new telephone restraining order (TRO) service for police was being utilised for 15 to 20 applications per month.

The 1998 MoJ six-month evaluation report made 33 recommendations relating to changes in regulations and legislation. In September 1999 the then Attorney General established a Ministerial Committee to oversee the implementation of these recommendations and provide advice. Amendments to the legislation and regulations were drafted and passed by Executive Council. Although the *Restraining Orders Amendment Act 2000* was assented to, the *Restraining Orders Amendment Regulations 2000* (later 2001) were not gazetted. Audit has been advised that the Department of Justice has recently undertaken a review of the six-month evaluation report, but as yet no formal action has been taken by the Department of Justice to implement the evaluation's recommendations across the State.

In addition, a Domestic Violence project that incorporates court management of restraining orders, a dedicated domestic violence police unit and employment of domestic violence support workers at the court has been trialed in the Joondalup District in 2000-2001. The project offers case management to clients to try to address the behaviour of perpetrators and provide support to victims and incorporates many of the recommendations of the 1998 MoJ evaluation report. An evaluation of the effectiveness of this project, completed in February 2002[2], recommended that: the Joondalup Family Violence Court continue to operate in its current format and that a modified family violence court service be developed for incremental implementation across the Courts of Petty Sessions. It was recommended that the modified family violence court service incorporate the most successful elements of the Joondalup pilot, including an interagency approach with formalised information sharing agreements between key agencies; case management of high risk situations; and the use of alternative sentencing options with an emphasis on programmatic interventions.

Types of Orders

There are two types of orders...

The Act provides for two types of orders: the Violence Restraining Order (VRO) and the Misconduct Restraining Order (MRO). The process of application and hearing of VROs and MROs is outlined in Figure 1.

Violence Restraining Orders

... VROs for the more serious cases ...

VROs aim to provide protection to an applicant from a respondent who is likely to commit a violent personal offence against the protected person or behave in a way which will cause fear that they will commit such an offence. Applications for VROs can be made to the court in person or by telephone by a police officer.

Under the new legislation applicants may choose to have the first hearing of the application for a VRO in the absence of the respondent. This option is widely used with applicants indicating that it was a critical element in making a decision to apply for an order.

2 Department of Justice (2002) Joondalup Family Violence Court Final Report.

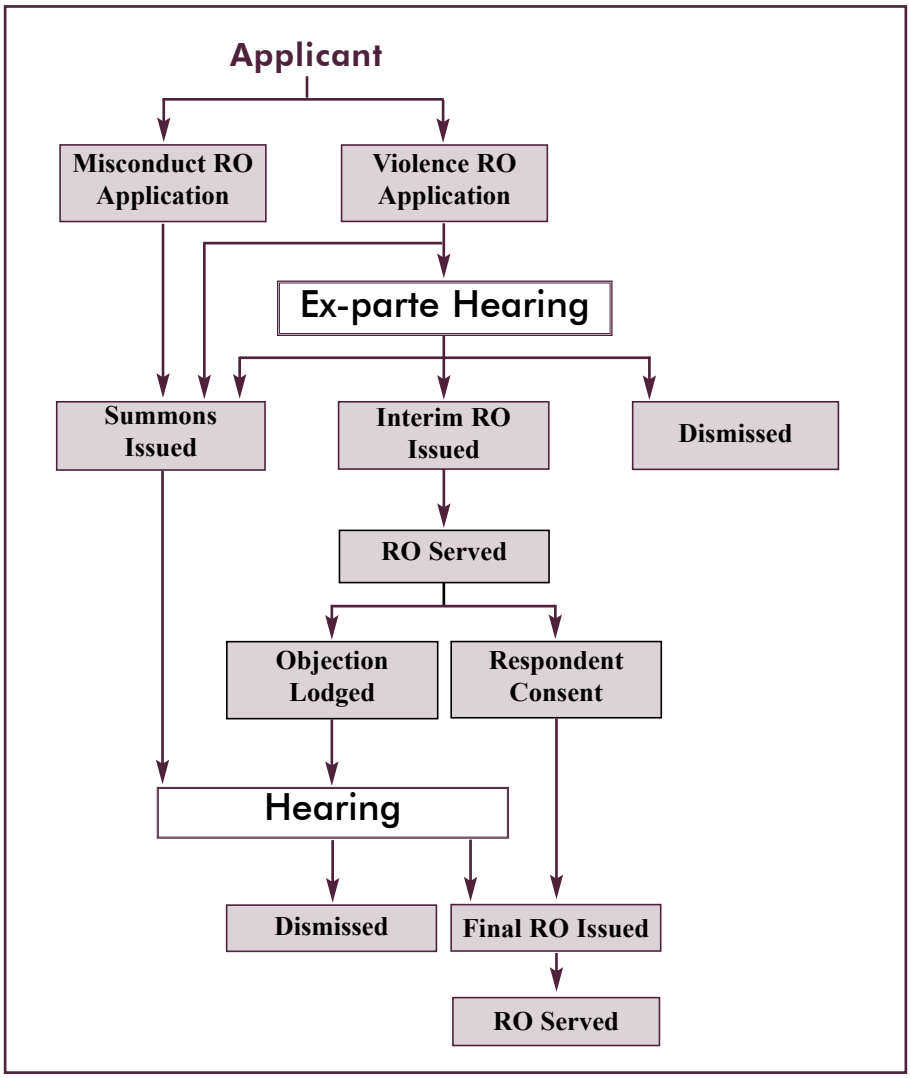


Figure 1: Process of application and hearing of restraining orders.

Source: OAG

Following issue of an interim order at an ex-parte hearing the respondent has the opportunity to lodge an objection to the order within 21 days. If the interim order is not objected to, it will automatically become final and no further attendance is required by either applicant or respondent. Where an objection is lodged, both parties are notified to attend a contested hearing. At this hearing the interim order may be cancelled and the application dismissed, the matter may be adjourned to a final hearing or final orders may be made. At the final order hearing each party is able to submit evidence and may bring witnesses to testify on their behalf.

Misconduct Restraining Orders

... and MROs to prevent harassment.

MROs aim to restrain a person who is likely to behave in an intimidating or offensive manner towards an applicant, damage the property of the applicant or behave in a way that is, or could lead to, a breach of the peace.

Following submission of an application for a MRO a hearing date is set at which both parties are required to attend and submit evidence.

Unlike applications for VROs, MROs incur a fee of $43.00, however, this may be waived for 'financially disadvantaged persons'. The MoJ evaluation recommended that the fee to lodge an application for a MRO should be abolished. In one locality all MRO fees were waived as a matter of general practice.

Trends in the Application and Issue of Restraining Orders

The number of restraining orders being issued has increased ...

Utilisation and access to the protection of restraining orders has increased. Magistrates, court staff and police indicated in interviews that many orders continue to be sought in circumstances where they may not be the most effective option. Prior to 1997, approximately 5 000 orders were issued each year. Since then, the number of restraining orders being issued each year has increased by over 55 per cent. Applications for restraining orders and the number of restraining orders being issued have continued to increase over the period 1999-2001. Figure 2 shows the number and proportion of restraining orders of each of the types VRO, MRO, and TRO applied for and issued over this three year period.

Figure 2: Restraining order applications and orders issued 1999-2001.

Notes:

1. *The greatest increase, of 25 per cent, was in the application and issue of MROs.*
2. *TROs represent less than 0.5 per cent of applications.*
3. *Orders issued includes interim and final orders.*

Source: OAG summary of Department of Justice data

Expectations of restraining orders go far beyond their capacity to provide an effective solution. Magistrates and court staff indicated that many MROs are sought for disputes between neighbours that will not be resolved by issue of a restraining order. Also, VROs are being increasingly sought by children against other children in response to schoolyard bullying issues and in some instances orders are sought in response to issues that are more appropriately resolved in the Family Court.

Final Orders

... but many applications do not proceed to issue of final orders.

The majority of applications do not proceed to confirmation of a final order. Half of all restraining order applications are either cancelled or dismissed. Others are withdrawn by the applicant. Comparison of applications lodged to orders finalised shows a gap of 54 per cent. Figure 3 shows the outcome of applications lodged in the period 1999-2001.

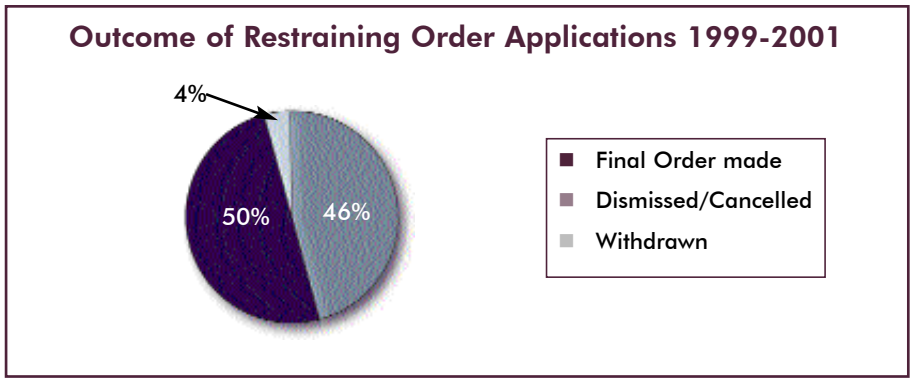


Figure 3: Outcome of restraining order applications 1999-2001.

The majority of restraining orders are cancelled or dismissed and four per cent are withdrawn by the applicant.

Source: OAG summary of Department of Justice data

The reason most frequently provided in interviews by applicants and refuge workers for not proceeding with an application was a fear of confronting the aggressor in court or disclosing personal information publicly. In these cases the application was withdrawn after issue of interim orders and lodgement of an objection by the respondent.

Withdrawal of an application should not always be interpreted as a negative outcome of the restraining order process. Interviews with magistrates, court staff, police and refuge workers have indicated that many applicants do not proceed after the initial ex-parte hearing as their need for protection has been achieved in this process. In many cases, engagement in the restraining order process can itself bring about resolution of problems that initiated the application.

Profile of Applicants and Respondents of Restraining Orders

Applicants

Most applicants are women ...

The gender profile of applicants for restraining orders has remained constant since the introduction of the Act. Overall, in the period 1999-2001, 69 per cent of all restraining order applicants[3] were female. This proportion is consistent with the baseline data where approximately two-thirds of applicants were women[4]. Just over 50 per cent of applications were taken out by female applicants against male respondents.

The proportion of restraining orders applied for by Indigenous persons has decreased from 12 per cent in the first six months of operation of the Act to seven per cent in the period 1999-2001. The proportion of orders issued for Indigenous applicants varies considerably across localities, ranging from three per cent in one metropolitan locality through to 61 per cent in one of the rural localities.

Respondents

... and the majority of respondents have a criminal record.

This examination reviewed a sample of restraining orders over the period 1999-2001. Fifty-four per cent of respondents had other restraining orders taken out against them, the average being four orders. In addition, 69 per cent of respondents had a criminal record, not including those with traffic infringements only.

Seventy-five per cent of respondents to orders were male[5]. This is again consistent with the baseline data which found that two-thirds of respondents were male.

Telephone Restraining Orders

TROs were used at first ...

The Act allows TROs to be made where the time or the location makes it impractical for the applicant to take out an order. TROs were introduced to provide greater access for urgent cases. The efficiency of the process of application and the effectiveness of the strategy require review as there has been minimal use made of this initiative.

... but within 12 months their use was rare ...

In the first month there were 23 TRO applications of which 21 were granted. In the first six months following implementation there were 67 TROs, constituting two per cent of orders issued. In the second six months this declined to 14 TROs. Over the time period 1999-2001 only 144 applications for TROs have been lodged. This is less than half of one per cent of all applications lodged.

---

3 Where gender was recorded.

4 Ministry of Justice (1998) Report of the evaluation of the first six months of operation of the Restraining Orders Act 1997.

5 Where gender was recorded.

Figure 4 shows the number of TROs issued in each police district over the period 1999-2001. With the exception of two of the metropolitan districts they have not been widely used. The intent of the legislation was to increase access for persons in rural and remote locations. However, very few instances of application for TROs have been made in rural and remote locations.

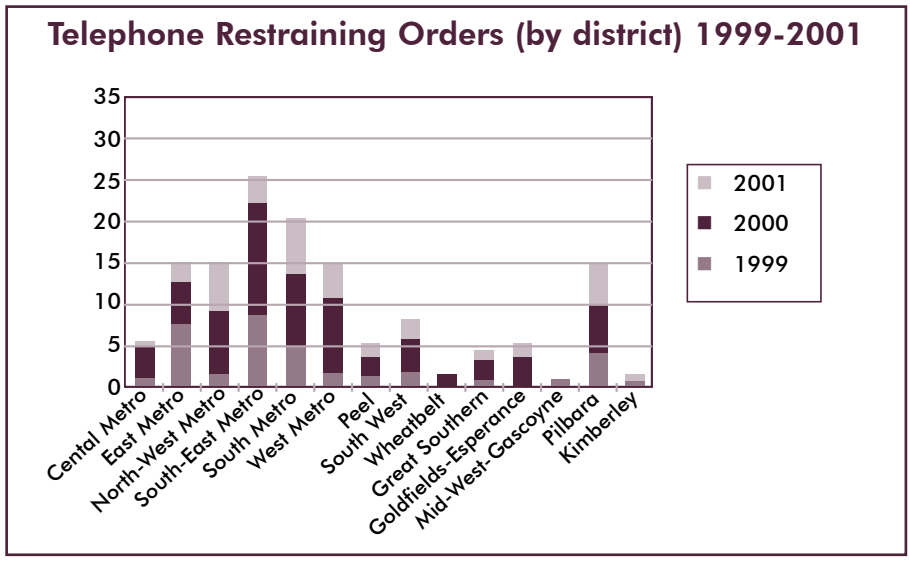


Figure 4: Telephone Restraining Orders by police districts 1999-2001.

Notes: Minimal use is made of TROs in rural districts.

Source: OAG summary of WAPS data

Police interviewed in 80 per cent of localities indicated that they never or rarely used TROs. They were seen to be an inefficient, time consuming option. Other options such as removing either the victim or perpetrator were seen to be preferable. In most cases it is the victim who is removed to a refuge or relatives home and any restraining order action is then taken by that individual on the following day.

Process of Obtaining a TRO

... as the process for obtaining TROs is cumbersome.

Two magistrates are rostered for duty each fortnight to be available by mobile phone to hear TRO applications from across the State. Police attending incidents do not have direct access to these magistrates in the first instance. The WAPS procedure is to first contact the officer in charge of the station. If approved the attending officer then contacts the duty officer at the Communications Branch of WAPS. If approved the officer may at that point contact the duty magistrate. The majority of magistrates indicated that there was minor inconvenience associated with being on roster for TROs though the few orders sought minimised the inconvenience. Several magistrates indicated that they would not be willing to be included on a roster for TROs.

There is a reluctance by police to make use of phone access to orders. Qualitative feedback from police indicated that the process required too many decision points and that notation of required orders was time consuming. There is a need for a pro-forma with general conditions pre-printed to expedite the process. The MoJ six-month evaluation recommended that the WAPS should consider including the role of TROs in its training programs and review current police processes with respect to TROs.

The Act indicates that TROs may be made by fax, radio, video conference, electronic mail or any combination of such methods in addition to the telephone. No instances of use of any of these other media was found.

Service of TROs

If not served on the respondent, telephone orders lapse within 24 hours of the order being made. In the first month after establishment, only one was not served in the required 24 hour period. Police data indicates that nine per cent of TROs applied for by districts, in the period 1999-2001, were not served within the required 24 hours of issue and therefore lapsed before they could take effect.

Length of Orders

Orders may be longer than the default period ...

MROs may be made for periods of up to one year and VROs for periods of up to two years. These are the default periods if none is specified in the order. Eighty-six per cent of orders were made for these default periods from 1999-2001. In extenuating circumstances orders may be made for longer periods. For example, in September 2001 an applicant was given permanent protection from an individual where violence had extended over a 12 year period. TROs are generally made for a period of 72 hours, though they may remain in force for a period of up to three months.

... but few short term orders are made.

Short term orders of 72 hours were included in the legislation to meet stated needs of Indigenous people who often require protection from violence for short periods of time but do not wish to have orders in place that restrict the relationship between the parties or the operation of normal family life in the longer term. Including TROs, less than one per cent of orders were made for periods of time of less than one week.

Five of the 14 magistrates, interviewed as part of this examination, commented that police powers should be extended to authorise the granting of short VROs (up to 72 hour orders) where there is evidence of violence as a practical alternative to TROs as a way of overcoming shortcomings currently associated with TROs. They considered that this would result in a decrease of applications and repeat applications that come before the court for issue of interim orders that do not proceed to final orders.

Effectiveness of Protection

Prior to introduction of the Act, research in this State[6] found that 41 per cent of women with restraining orders in place reported that it did not help them at all. In addition, 50 per cent said that it placed them in danger of even worse violence than that from which they were seeking to escape.

Some applicants do not feel protected by orders ...

Applicants are still reporting that orders are not effective in making them feel safer or in actually protecting them from violence. Applicants interviewed in refuges indicated that they did not feel safer as a consequence of the order, any feelings of safety in the short term were due to residence in the refuge.

... and some who need protection don't apply.

Prior to the Act, 50 per cent of the women who had been murdered by their spouse had a restraining order against that spouse. Police information still indicates that at least 50 per cent of homicides in Western Australia are related to family and domestic violence. There have been 57 domestic related homicides and attempted homicides in Western Australia in the period 1999-2001. Police do not monitor whether a restraining order was in place in these incidents. However, on conducting a check of incidents over this time period police indicated that only one of the homicide victims had a history of VROs on their database.

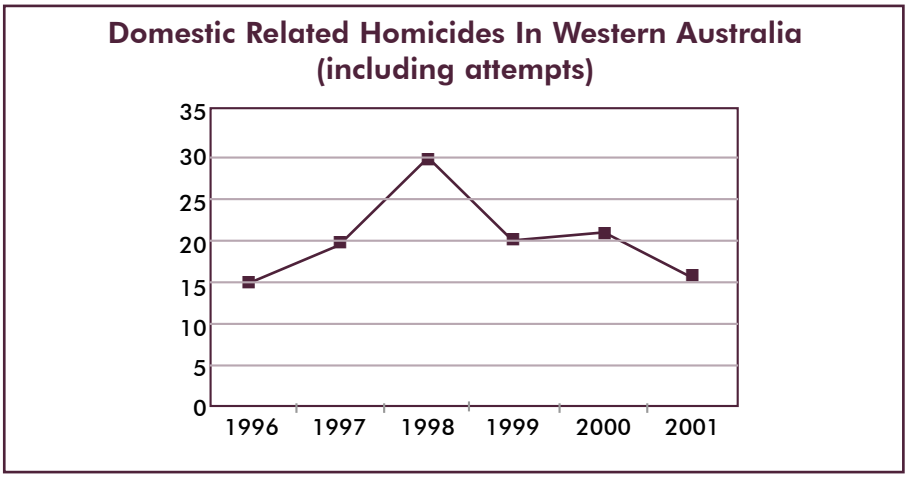


Figure 5: Domestic related homicides in Western Australia 1996-2001.

In most cases of domestic related homicide a restraining order was not in place.

Source: OAG summary of WAPS data

6 Ralph, Alan (1992). The Effectiveness of Restraining Orders for Protecting Women from Domestic Violence. Centre for Behavioural Analysis, Office of the Family, Perth. (Unpublished report).

Cultural Barriers to Access

Some groups are unable or unwilling to access restraining orders ...

Restraining orders are less effective in providing a means of protection for some groups of people, including those of Indigenous and non-English speaking backgrounds. This is of particular concern as research[7] indicates that Indigenous persons are many times more likely than non-Indigenous persons to be a victim of domestic violence.

The Joondalup evaluation found that people from Indigenous backgrounds were under-represented in utilising the resources of the court, four per cent in comparison to their representation in recorded domestic violence incidents of 13 per cent by police. The evaluation report recommended that Indigenous specific alternatives for interventions be considered.

... due to geographical and cultural barriers.

Police, court staff, refuge and advocacy workers indicated that there are cultural and geographical barriers that continue to restrict access to the protection of restraining orders. The Ministerial Subcommittee to examine restraining orders noted the necessity for courts and police *'to take into account of the reality of inter-family feuding'* in responding to domestic violence in Indigenous communities as Indigenous people who invoke the legal system to stop domestic violence are often at risk of further violence from the respondent's family. Interviews with Indigenous people indicated that this continues to be a reason why restraining orders are not accessed.

Police interviewed in 40 per cent of localities also indicated that there is limited access and utilisation of orders by some other cultural groups. In particular, it was noted that there was reluctance to access assistance, including restraining orders, by Muslim and Phillipina women.

Recommendations

The Department of Justice needs to:

- clarify the Government's intentions regarding the proposed amendments to the *Restraining Orders Act 1997*;
- pursue, where possible, the implementation of policy and administrative changes recommended by the review of the 1997 legislation; and
- pursue practical changes to the administration of orders to minimise cultural and geographical barriers to access the protection of restraining orders;

The WAPS needs to:

- review the process of application for telephone restraining orders.

7 Ferrante, A., Morgan, F., Indermaur, D. and Harding, R. (1996) Measuring the Extent of Domestic Violence, The Crime Research Centre, The University of Western Australia, The Hawkins Press; and Ministry of Justice (1995) Report of the Review of Restraining Orders.

Administration of Restraining Orders

- *There is wide variation in practice across localities which results in inequitable treatment for some applicants.*

Variations in Court Administrative Processes

Variation in processes can lead to inequitable treatment for applicants.

This examination has found that there is wide variation in practice across localities that impact on access and utilisation of orders for persons in those localities. This finding is consistent with the MoJ evaluation of the 1997 Act which concluded that limitations were placed on the restraining order process not only by the legislation, but also by court administrative practices. Since 1998 there have been some localised attempts to implement aspects of the evaluation's recommendations and develop pilot projects that meet local needs. However, little has changed and the deficiencies identified in 1998 remain in current court administrative practices.

Incorrect or Inappropriate Lodgement

The MoJ evaluation found that procedures for dealing with incorrect and inappropriate lodgements, where an applicant seeks the wrong form of restraining order for the circumstances of the matter, were inconsistent and recommended that if the applicant seeks the wrong form of restraining order, the legislation should require the judicial officer to amend the application in court to whichever order is appropriate.

Some incorrect applications are dealt with in the original hearing ...

Court staff, magistrates and legal advocacy centres indicated that applications are still made for incorrect or inappropriate orders. This occurs most often where a person applies for a VRO where a MRO would have been more appropriate. This may be due to confusion regarding the pre-requisites for the two types of order. However, court staff indicated that the reasons were often the absence of costs for a VRO and opportunity for an immediate hearing. In the period 1999-2001, 749 VROs were amended to MROs. Only 54 MROs were amended to VROs.

... but others have to restart the application process.

In 60 per cent of the courts visited it was routine practice for applicants to have to reapply following dismissal of the inappropriate application. Magistrates indicated that in the case of a VRO they would adjourn the matter and issue a summons for a MRO hearing. In the case of a MRO they would make an order for a VRO based on the evidence provided at the hearing if that was the appropriate order to be made.

Closure of Courts

Most courts try to provide a degree of privacy for applicants.

Timing of hearings in most localities is organised such that there are few members of the public present to hear the evidence. Courts achieve this by listing these matters first or last; requesting extraneous persons to leave the court for the duration of the hearing; or conducting ex-parte hearings in chambers. Applicants and support workers interviewed indicated that this provided a less traumatic environment in which to give their evidence. This is consistent with the recommendations of the MoJ evaluation.

Use of Affidavits

The legislation allows the court to consider affidavit evidence. The MoJ six-month evaluation recommended that the legislation be amended so that magistrates are compelled to consider affidavit evidence unless cause is shown to do otherwise.

Affidavits are used to good effect in some courts.

Although courts are at present required by the legislation to hear an application for a restraining order in the absence of the applicant where an affidavit has been filed prior to the hearing, at present affidavits are not being used in lieu of persons attending court.

However, 45 per cent of courts visited routinely provide the opportunity for applicants to submit an affidavit when appearing at the ex-parte hearing. In each of the localities currently using affidavits, magistrates, court staff, support workers, applicants and respondents were supportive of the practice. Magistrates interviewed found it an efficient way to obtain the required evidence. Support workers and applicants found it more effective in ensuring only relevant evidence was presented and also a less traumatic way of providing evidence for the applicant.

Respondents in Geraldton are routinely provided with a copy of the affidavit when served with the interim order. This enabled them to fully understand the allegations being made and determine whether to lodge an objection without having to request and possibly pay for a transcript of the court proceedings.

The Joondalup project evaluation also recommended that the use of affidavits at the interim stage of a restraining order matter be extended to other courts.

Objections

Following service of an interim restraining order a respondent may, within 21 days, lodge an objection against that order. Objections were lodged in 20 per cent of applications for VROs. Interviews have indicated that the most common reasons for lodging an objection are to either dispute the evidence submitted at the ex-parte hearing or to request variations to existing orders that impose hardship and restriction on access to children or conduct of employment.

Only 31 per cent of applications that have objections lodged are successful in having final orders issued. The Joondalup evaluation found that when contested only nine per cent proceed to final orders.

Variation and Cancellation of Orders

Final orders can be varied ...

Variation of the terms of a final order and cancellation of orders may be applied for by either an applicant or respondent. In the case of VROs, 72 per cent of variations over the period 1999-2001 were lodged by the protected person, whereas for MROs variations were more often (65 per cent of cases) lodged by the respondent to the order. For both VROs and MROs variations were granted more frequently than cancellations. Cancellations were granted in 18 per cent and 30 per cent of instances respectively.

Police and courts indicated that it is still not uncommon where a reconciliation of parties has occurred for neither party to apply for the cancellation or variation of an existing final order. As a consequence the order was breached. Police indicated that due to the consent as a defence clause, difficulties were created if a breach were reported by the applicant at a later time.

... but interim orders cannot.

The legislation does not allow for variation and cancellation of interim orders. Magistrates and court staff indicated that where interim orders created unforseen hardship for respondents this was problematic, particularly, where there is a delay in finalisation of orders.

Cases were cited where respondents in rural communities could not traverse the only route to their place of employment; where a student could not attend school; and where neither parent could access the home to care for their children (in an instance where mutual orders were taken out) without breach of the order.

The MoJ six-month evaluation recommended that the provisions should be amended to allow interim restraining orders to be varied where the safety of the person to be protected is not compromised. It also indicated that where the amendments are mutually agreed the court should expedite the variation.

Adjournments

The potential for manipulation of the court system through the use of adjournments was recognised by the MoJ six-month evaluation. The report recommended that adjournments of restraining order matters should be granted sparingly and, in the case of final order hearings, only for most exceptional circumstances.

Most courts minimise adjournments.

Over the period 1999-2001 there were over 13 000 adjournments of restraining order matters. Magistrates and court staff indicated it is still a matter of concern that one party could use adjournments as a tactic to harass the other party in restraining order matters. For applicants it caused stress at having to re-attend court. For respondents this caused delay in their being able to defend allegations made at an ex-parte hearing and request variations of orders that may be causing significant inconvenience for employment.

Accommodation Needs

For practical reasons victims are more likely to be removed.

In considering the terms of an order the legislation requires courts to have regard to the accommodation needs of the respondent and the applicant. WAPS policy states that *'where possible the preferred option is for the victim to remain in the premises and for the perpetrator to be removed'*. However, police indicated that they more frequently remove women from a residence following a domestic violence incident as there are more services available offering safe accommodation for women. There is a lack of short term accommodation for men, particularly in rural areas. Review of a sample of 97 police domestic violence incident reports indicated that in instances where police attended and removed one party, it was the victim in 82 per cent of cases.

Applicants who had left the home, often with children, to take shelter in a refuge indicated in interviews at refuges that they were then unable to return home. These applicants cited provision of adequate shelter as a reason for withdrawing their application.

Cohabitation

Terms of orders can allow cohabitation.

Because of the difficulties associated with accommodation needs, orders that are tailored to meet individual needs of both applicants and respondents are being issued in some localities. For example, 30 per cent of localities visited are issuing orders that allow cohabitation by the parties. There is strong support in Indigenous communities for such orders.

Several magistrates, however, raised a concern regarding cohabitation. For example residency issues are especially problematic where a business is conducted from those premises or when it restricts access to tools of trade. Seven of the 14 magistrates interviewed indicated that they would issue orders without a contact restriction clause to allow cohabitation in appropriate circumstances. Such orders were seen to be useful where access to a workshop or home office was required or where the parties wanted to maintain their relationship.

Timeliness

Application to Ex-parte

Most VROs are heard on the same day as application ...

The Department of Justice has not set a central policy regarding the timeliness of hearing restraining order matters. However, they have indicated that in practice applications should always be dealt with at an ex-parte hearing within 48 hours. The mean time gap from lodgement of the application to the interim ex-parte hearing in the three months both prior to and following the change of legislation was less than one day. This timeliness for the ex-parte hearing has been maintained for VROs. In the time period 1999-2001 the average time was also less than one day.

... but in some districts it takes several days.

Delay in obtaining an ex-parte hearing was more commonly experienced by applicants attending courts at particular locations where either magistrates do not sit every day or restraining order matters are not listed each day. In two of the metropolitan locations visited the mean time for a hearing was 2.5 days. At one of these locations ten per cent of applicants had to wait for over a week to have their ex-parte hearing and the maximum delay recorded between lodgement of the application and the ex-parte hearing was 31 days. Refuge workers in some metropolitan localities indicated that they frequently advise clients to travel to Perth or an alternative courthouse to make an application.

Time to Final Outcome

Priority is still given to VROs ...

The length of time an applicant was involved in the court system is calculated from the date of lodgement of the application till the hearing date of the final outcome. This final outcome could result in issue of a final order or could result in dismissal or cancellation. The MoJ evaluation shows that the average period from lodgement to finalisation for all types of orders reduced by almost 30 per cent in the sample period from 47 to 33 days with the rate of timeliness for VROs being 13 days. At this time the emphasis had been placed on the processing of VROs at the expense of MROs, with average timeliness for each type of order above and below this mean respectively.

The rate of timeliness for VROs has not been maintained, but there was an improvement in timeliness of hearings across the State from 1999 to 2001: the time taken to finalise VROs decreased from 40 days in 1999 to 30 days in 2001 and the average was 35 days. However, in comparison with MROs the timeliness of VROs indicates that the courts give them priority.

... but timeliness has only improved for MROs.

In the case of MROs the average time between lodgement of the application and the first hearing was 21 days and the average time between lodgement and the final hearing was 52 days. This is a significant improvement in timeliness from the 72 days recorded in the six-month evaluation following introduction of the legislation. There was a wide range of timeliness in hearing of final MRO matters across the locations visited, from 17 days in one regional location to 67 days in a metropolitan region. Analysis of a sample of restraining orders indicated that this location had a high rate of adjournments that impacted on timeliness of the final hearing.

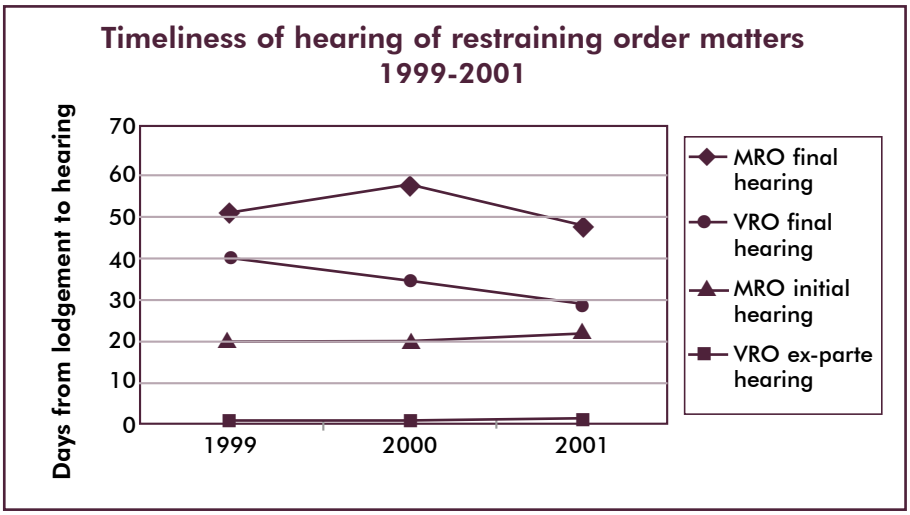


Figure 6: Timeliness of hearing restraining orders 1999-2001.

There was an improvement in the timeliness of final hearings for VROs across the State from 1999-2001.

Source: OAG summary of Department of Justice data

Recommendations

The Department of Justice needs to:

- establish clear guidelines for timeliness of court administrative processes for restraining orders; and
- initiate procedures to enable districts to share strategies that are improving efficiency and effectiveness of restraining order processes and where possible implement consistent processes across districts.

Management of Orders by Police

- *There is inconsistency across districts in police involvement and response to restraining orders.*
- *Restraining orders are frequently used as a replacement for charging perpetrators of violence and misconduct in contravention of stated police policy.*
- *Violence restraining orders are not always given adequate priority by police; only 58 per cent of restraining orders are served within four days and the average time for service in the period 1999-2001 was 44 days.*

Referral of Victims to Seek Restraining Orders

Only ten per cent of the applicants interviewed in the early 1990's[8] said that they had been advised by police to seek a restraining order, and all of these were in the metropolitan area. It is now common practice for police to advise persons, particularly in instances of domestic violence, of their option to apply for a restraining order. Police provide information regarding restraining orders and advise victims of their option to attend court to obtain a restraining order.

In 1997, Domestic Violence Liaison Officer (DVLO) positions were created in each police district. In the Metropolitan region this required the creation of six new, dedicated Sergeant positions. In the ten country districts the 10 DVLO positions may be combined with other duties. These positions are a key element in WAPS response to, and management of issues and incidents related to restraining orders.

It is now more common for police to refer victims to seek a restraining order.

Courts have indicated a concern with the frequency of police referral to seek restraining orders, as persons arrive at court requesting an order with no understanding that they can only apply and will then be required to attend court. Nine of the 14 magistrates interviewed commented that police too often referred victims to courts to seek a restraining order rather than pursuing charges. Data included on domestic violence incident reports (DVIRs) by attending police at domestic violence incidents supports these concerns.

Police Response to Domestic Violence Incidents

Subsequent to police attendance at a domestic incident a DVIR is completed. This DVIR includes information regarding the incident, the action taken, and the presence of, or intention to apply for a restraining order. Review of a sample of police DVIRs, indicated that 60 per cent involved violence, including 46 per cent using violence against the person. Of these, only seven per cent involved use of a weapon, but 20 per cent required the victim to seek medical assistance.

8 Ralph, Alan (1992). The Effectiveness of Restraining Orders for Protecting Women from Domestic Violence. Centre for Behavioural Analysis, Office of the Family, Perth. (Unpublished report).

Call-Outs

Policy response is timely ...

Police attend a large number of domestic violence call-outs. Timeliness data indicates that police are prompt in attending such incidents. Review of a sample of DVIRs showed that they took a mean time of seven minutes to attend after receipt of a call-out and spent a mean time of 37 minutes at the scene.

Police indicated that a significant proportion of time is spent on repeated call-outs to the same address. The Joondalup project evaluation determined that 41 per cent of incidents were for repeat visits. Armadale WAPS are operating a database system that flags when there have been three or more call-outs to the same address. A coordinated approach is then taken with the Department for Community Development.

Police Action Taken

... but in most cases no action is taken.

When police do attend their response may take a variety of forms. Review of a sample of DVIRs showed that in 70 per cent of cases in which police attended no action was taken. Where action was taken it took the form of taking statements from the parties involved, removal of one of the parties, laying of charges or arrest. Of the 88 per cent where no charges were laid, the DVIRs indicated that assault or violence against the person had occurred in 41 per cent of cases. An arrest was made in only nine per cent of cases. Where charges were laid they were for assault in 75 per cent of cases. Some applicants and support workers experienced reluctance by police to intervene to lay charges unless clear physical evidence of violence was available. Even where violence was evident there have been cases where police have laid no charges.

In the cases where violence occurred but no action was taken, police notations on the reports indicated that this was at the request of the applicant in 66 per cent of cases. Interviews with police indicated that many victims do not wish to proceed with assault charges. In many cases they prefer to make no statement and when statements are made they are often withdrawn the following day. This was seen to occur particularly where alcohol had been involved in the incident. Alcohol and drugs were found to be present in 64 per cent of incidents attended.

Victim Requests for No Action to be Taken

Research[9] prior to the introduction of the Act indicated that many people, particularly women in domestic violence situations, were unwilling to report incidents or to make complaints to police in relation to offences of assault. Feedback from victims interviewed in refuges, and refuge, support and advocacy workers indicates that many victims request no action out of fear of retaliation from the offender. One of the intentions of the Act was to assist people to take such action as necessary to protect their well being.

9 Ralph, Alan (1992). The Effectiveness of Restraining Orders for Protecting Women from Domestic Violence. Centre for Behavioural Analysis, Office of the Family, Perth. (Unpublished report).

Police are required to charge if an offence has occurred ...

A WAPS Bulletin sent to all stations in January 1999 stated that *'a victim does not have the right to request that a charge be withdrawn. If an offence has occurred, then it is committed contrary to the laws of the State, not contrary to the wishes of the victim'*. Information printed in the WAPS Police Academy training packages similarly indicates *'The refusal of the victim to make a statement should not end the inquiry. Police should remember that they are the complainant and as such lay the complaint. The victim is a witness to the incident and is competent and compellable'*. Police action in some districts is inconsistent with this stated policy.

... but don't at the request of the victim.

Police indicated that they would not prefer charges when attending an incident where the victim requested no action be taken, unless a serious assault had occurred. There was inconsistency across districts as to whether police proceed with a charge where the complainant requested to have it withdrawn. Police at 20 per cent of localities visited indicated that they do not proceed with charges with a hostile witness, whereas at 80 per cent of localities police indicated that they would proceed once a statement had been made and the charge laid.

Fear of reprisal prevents victims from taking any action.

The number of persons indicating that they would take up the option of taking out a restraining order remains low. Only 20 per cent of victims in DVIRs indicated that they already had or intended to proceed to apply for a restraining order. In those cases where they did not indicate that they would proceed but violence or assault was noted to have occurred, DVIRs indicated that this was due to police having taken alternative action in only eight per cent of cases. Victims interviewed in refuges who had decided not to take out a restraining order indicated that they were unwilling to take action for fear of making matters worse. Those who had made initial applications indicated that this was a common reason for not proceeding with the application.

Application and Prosecution by Police

Under the Act restraining orders may be applied for by a police officer or other authorised person on behalf of the person to be protected by the order. Applications for VROs by police on behalf of victims were rare. Applications for MROs on behalf of businesses, were made by police in 30 per cent of the districts interviewed.

Few applications are made by police ...

Police interviewed, indicated that they did not make applications due to concerns that police may be liable for costs if the application was unsuccessful. However, none of the districts nor the Prosecuting Branch of WAPS were able to provide evidence of any instance where this had occurred. The legislation indicates that costs cannot be found against an applicant unless the application is deemed to be frivolous or vexatious. In any case, costs would not normally be incurred by WAPS. The Department of Justice has indicated that these would be covered under the *Official Prosecutions (Defendant's Costs) Act*.

... but they prosecute on behalf of applicants in some districts ...

There is inconsistency across districts in police involvement in prosecution of restraining orders. In three districts police advocate for applicants by providing representation at the ex-parte hearing. In two of these districts police will also defend at the final hearing. In the majority of districts applicants are required to provide their own representation.

... with a high rate of success.

Services provided by WAPS' Central Metropolitan Domestic Violence Resource and Referral Centre includes provision of information regarding restraining orders and prosecution, on behalf of applicants, at both ex-parte and contested hearings where required. This service is available to persons in all districts. Approximately five per cent of clients seek the assistance of the centre in advocating VRO applications on their behalf. To date, this centre has a record of 100 per cent in relation to applications proceeding through to issue of interim orders. WAPS has recently completed an evaluation of the services provided through this centre. The report recommended that prosecution by police be continued for VRO matters and be undertaken centrally by the Prosecuting Branch of WAPS.

In Joondalup, support from the police prosecutor was limited to victims who were also proceeding with associated criminal matters. Representation would then be for both ex-parte and contested hearings. However, the police prosecutor at Joondalup has recently ceased to represent victims at hearings.

In contrast, in Geraldton all applications for VROs are prosecuted by police. Applicants in the first instance seek assistance or are referred by police and the court to the local advocacy services who assist with the application and affidavit. These are then forwarded to police who prosecute all ex-parte hearings for VROs. No contested hearings are defended by police in Geraldton.

Service of Orders

When an order is issued, the police are required to serve the order on the respondent for it to take effect. Fifty per cent of localities visited were using a dedicated officer or a specific team for service rather than having them served by the officers on shift.

Timeliness of service has not been maintained.

The proportion of orders served by identified periods of time in the pre-post legislative change period showed police had placed a higher priority on the service of orders immediately following introduction of the legislation. More orders were being served quickly, within four days, and fewer were left unserved. The improvement noted in the six-month evaluation report has not been maintained. The higher priority given to service of restraining orders following enactment of the legislation appears to have dissipated.

Figure 7 shows a breakdown in timeliness of service by police district. Service of orders on the same or the following day ranged from as low as 26 per cent of orders through to 51 per cent in the Wheatbelt district. The percentage served within four days has fallen

to 58 per cent but 76 per cent had been served within ten days. Police data indicate that the average time for service of restraining orders was 44 days. This average is impacted by a minority of orders where there is significant delay in service. A clearer estimate of service timeliness may be gained by looking only at orders served within 100 days. Police data indicate that even with orders with a service delay of over 100 days removed, the average time for service was 18 days.

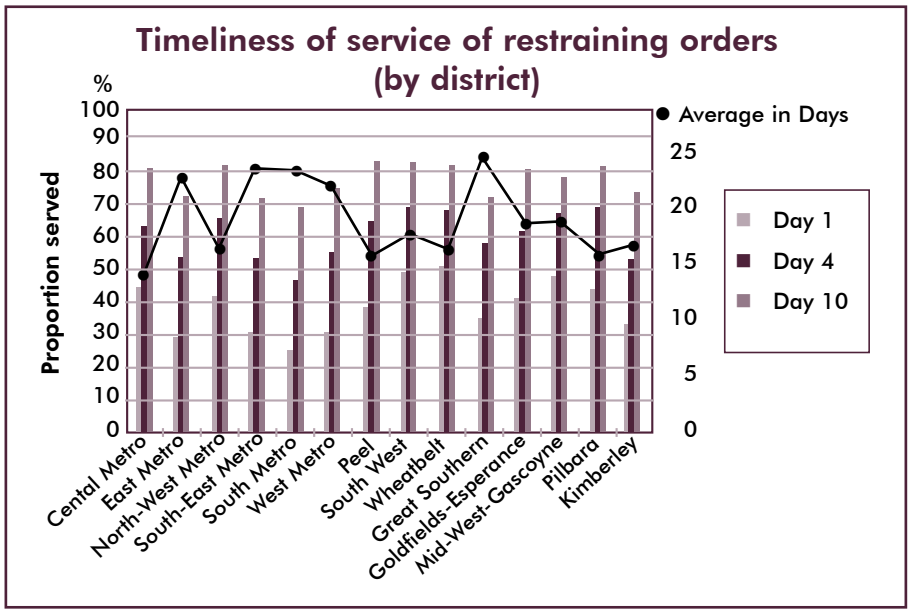


Figure 7: Timeliness of service of restraining orders by district 1999-2001.

Notes:

1. *Thirty-six per cent of orders are served on the same or following day.*
2. *Fifty-eight per cent of orders are served by day four and 76 per cent by day 10.*
3. *The average time for service of an order is 44 days.*
4. *The figures for the average number of days for service are influenced by a small number of orders that take over 100 days to serve.*

Source: OAG summary of WAPS data

When orders are not served, persons deemed by the courts to be in need of protection remain unprotected, as a restraining order does not take effect until it is served. This problem is exacerbated by failure of police to routinely advise applicants of the progress of service. Interviews identified cases where an order had been granted, but not served with the applicant unaware that it had not been served. This places the person in the potentially dangerous predicament of believing they are protected by an order when they are not.

Service of orders has improved since the introduction of the legislation with the percentage of orders not being served decreasing from 10 to four per cent. Police data indicates that there were 857 restraining orders issued that remained unserved after 100 days in the period 1999-2001. Sixty per cent of these orders were in metropolitan districts.

Where police can demonstrate that the orders cannot be served, they may apply to a magistrate for permission to use alternative methods of service such as telephone or certified mail. In contrast the legislation allows for summons relating to restraining orders to be served personally or by post without recourse to a magistrate. In most localities visited, all summons were served personally by police. In one locality summons were served by the Clerk of the Court by post. This was equally efficient for courts and freed police of an additional time consuming task.

Management of Firearms

In order to provide increased protection the Act requires that firearms be surrendered or seized when a VRO is made, and provides an option to the court to order seizure when a MRO is made. Lack of accessibility to and utilisation of firearms was a positive aspect of the sample of cases reviewed. Review of a sample of restraining order applications indicated that in 95 per cent of cases respondents were not known to have access to firearms. This lack of accessibility was confirmed through the review of a sample of DVIRs. Firearms were not utilised in any of the incidents included in the sample. The Joondalup project evaluation also indicated that firearms were present in only 0.5 per cent of the domestic violence incidents across the three localities analysed and used in only a small minority of these incidents.

Possession of Firearms

Firearms are routinely seized when an order is served.

Over the period 1999-2001, 4 857 VROs required action by WAPS in relation to possession of firearms or a firearms licence. Under the legislation, firearm confiscation should occur as a matter of course for VROs. Review of a sample of files found that in 28 per cent of cases this had already occurred prior to issue of the order. This may occur when police have attended a disturbance which subsequently results in the victim applying for a VRO. The review found that seizure routinely occurs at the time of service of the order.

... but delays occur in 25 per cent of cases.

Figure 8 shows the time taken to seize firearms following issue of a VRO and following service of the order. In 25 per cent of cases in the sample, over one week had elapsed from issue of the order before seizure of the firearms.

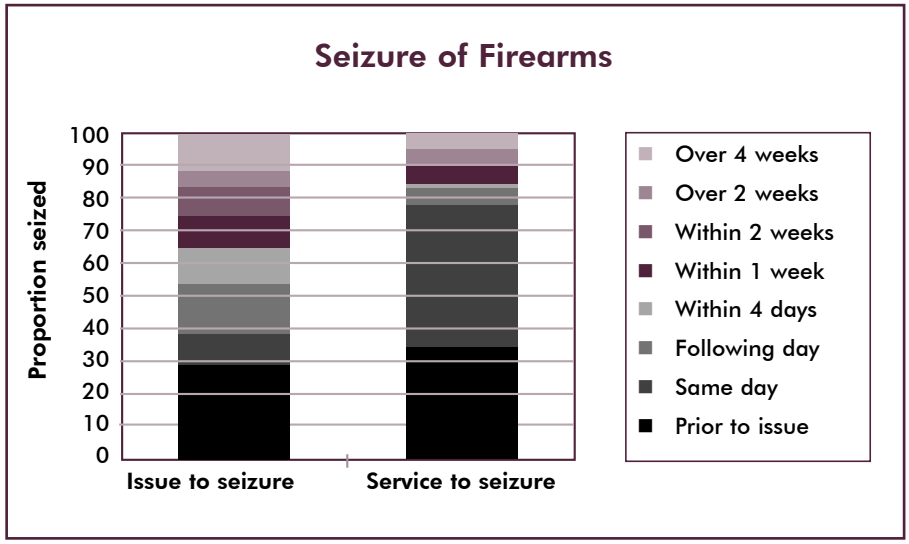


Figure 8: Seizure of firearms 1999-2001.

Notes:

1. *In 28 per cent of cases firearms were seized or relinquished prior issue of the order.*
2. *Forty-one per cent of firearms were seized at the time of service.*
3. *In nine per cent of cases firearms were not seized. The time is recorded as the time the VRO was in effect prior to the order being cancelled/dismissed or revocation action taken by Firearms Branch.*

Source: OAG

Where a firearm is co-licensed with another licence holder the firearm is not seized. A letter is sent to the co-licencee advising of restricted access for the respondent and their responsibility not to provide access to the firearm. Sampling of files found the average time from issue of a VRO to issue of this letter to the co-licensee to be 30 days. This average was affected by two instances where issue of the letter took over three months. A more typical measure of the time taken to issue letters is the median time, which was six days.

When an order is finalised WAPS proceeds to revoke the firearm licence, where it is current. Review of a sample of files found that the issue of revocation letters is not timely, taking an average of 70 days following finalisation of the VRO.

When making a VRO where a respondent requires a firearm to carry on their usual occupation, and under certain conditions a court may permit the respondent to possess, or have access to a firearm and the associated licence. This occurred in seven instances for VROs in the period 1999-2001.

Applications for Firearm Licenses

Procedural weaknesses remain.

Legislation included in the Act and the *Firearms Act* prohibits any person bound by a VRO from possessing a firearm, holding a firearm licence or obtaining a firearms licence. Weakness in procedural controls for persons bound by a VRO who apply for a new firearm licence were reported in Auditor General's Report No. 7 of 2000 *Surrender Arms? Firearm Management in Western Australia*. This posed the risk that a person bound by a VRO might successfully apply for a firearm licence. WAPS implemented a system enhancement to overcome this problem in July 2000 to ensure that persons with a VRO in place were automatically flagged as 'Not to Issue' and therefore could not successfully apply for a firearm licence.

Examination of a sample of records for persons with current VROs revealed that procedural weaknesses remained. Six per cent of records reviewed did not show the required 'Not to Issue' flag. VROs issued from October 1999 to July 2000, plus an additional 11 000 orders in arrears at this time, were not updated on to the WAPS database and therefore did not show a 'Not to Issue' flag. Twenty per cent of the records reviewed with no flag were for VROs issued following the introduction of the new system. WAPS has advised that the cause of this weakness has now been identified and addressed.

Trends in Breaches of Restraining Orders

A person who is bound by a restraining order and who breaches that order commits an offence. In the case of a VRO the penalty could include a fine or imprisonment. The number of charges for breaches of orders has increased at a greater rate than orders issued. Data from WAPS indicates that there was an increase of 33 per cent over the period 1999-2001. Where an individual breaches a restraining order they are likely to breach it numerous times. The number of respondents who have repeatedly breached has also increased by nearly 40 per cent.

Many complaints relate to lack of action on breaches.

Some applicants and support workers interviewed found that police were disinclined to act on allegations of breaches unless there was sufficient evidence to obtain a conviction in court. Police interviewed in 40 per cent of the localities indicated that they experienced difficulty in obtaining sufficient evidence that a breach had occurred.

WAPS Internal Investigations Unit received 64 complaints in relation to restraining order matters in the period 1999-2001[10]. Figure 9 indicates the broad nature of complaints received. Twenty-five per cent related to allegations of lack of action in relation to a breach of a restraining order.

10 Not all complaints would be upheld following investigation.

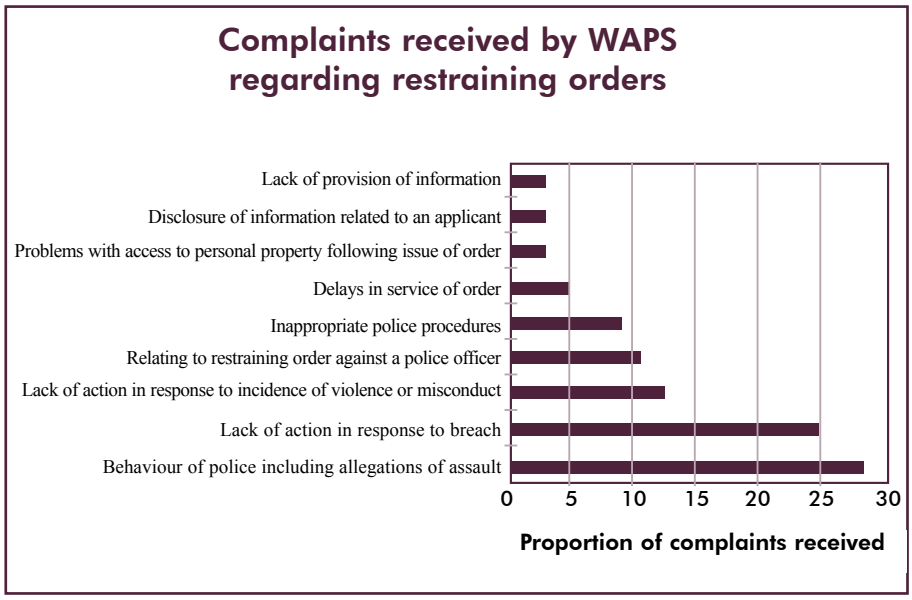


Figure 9: Complaints to WAPS related to restraining orders 1999-2001.

Notes: Twenty-five per cent of formal complaints related to allegations of lack of action in relation to breach of a restraining order.

Source: OAG summary of WAPS data

In some districts police are electing to charge by summons or in the case of minor breaches not to lay charges. In rural and remote areas there are numerous considerations that may impact on any decision by police on whether to charge for a breach. A person charged with a breach needs to be held in custody until bail is granted or the matter heard. In these regions magistrates visit on circuit and may sit to hear matters only once every three to four weeks. Where holding facilities are not available the offender needs to be transported to a regional centre with appropriate facilities. In addition to the resourcing issue due to the accompanying officer being away from the locality, and the subsequent impact on policing the locality in their absence, police are mindful of their obligations arising from the *Royal Commission on Aboriginal Deaths in Custody 1991* in determining whether to arrest an Indigenous person in these circumstances. These factors may combine to the effect that no action is taken against a person who breaches a restraining order in some cases.

Consent as a Defence

The Act allows a person charged with breach of a restraining order to use consent of the protected person as a defence. WAPS faces difficulties in determining whether breaches should be charged in this circumstance and the practice it adopted was inconsistent across localities visited.

Police face difficulties in deciding when to charge.

Instructions to districts from WAPS Legal Services in November 2000 indicate that police should not charge for a breach where they are satisfied there was consent, as in that case no offence has been committed. Police interviewed in 70 per cent of localities indicated that they do not lay charges for breaches where there is evidence of consent unless an assault has occurred. Police in other localities indicated that charges will always be laid where a breach has occurred.

In addition, police in two localities indicated that they have also warned applicants to orders that they will be charged with being an accessory to a crime where they consent to being in breach of an order.

Training

Entry level training is adequate ...

All recruits receive training on the Act and their obligations as police officers under the Act regarding service and enforcement through the Police Academy. The theory component comprises approximately 2.5 hours in a 26 week course. Aboriginal Police Liaison Officers receive minimal training comprising approximately 40 minutes out of a six week theory course. In addition, police officers may elect to do further training through distance learning offered through the Academy. Further training is funded by the Academy and successful completion is necessary for promotion within the police service. Within the two training courses available, restraining orders are included in one of 21 modules and in one of 12 modules offered respectively. Additional training may be provided at district level by District Training Officers and through the mechanism of email broadcasts to stations.

... but there are gaps in ongoing training.

Sixteen WAPS District Training Officers received one full day of training on the Act in September 1997 following its enactment. These training officers were then responsible for delivering training in the districts. All districts interviewed confirmed that training was provided at the time the new legislation was enacted. In addition, Domestic Violence Liaison Officers in each district received a one week advanced training program that included a component on restraining orders. Police reported that ongoing training has not occurred in 60 per cent of localities visited.

Recommendations

The WAPS needs to:

- establish clear guidelines and procedures for responding to domestic violence incidents and breaches of restraining orders and ensure that they are applied consistently across districts;
- monitor timeliness of service of orders and minimise delays in service of orders;
- extend current strategies that are improving efficiency and effectiveness of restraining order processes and coordinate implementation of these across all districts;
- strengthen the quality control on information systems to ensure that automated processes are occurring in relation to firearms; and
- identify and address ongoing training requirements.

Provision of Support Services

- *Victim services that provide advice and support regarding application for restraining orders are provided in the majority of localities.*
- *The current system of support services is ineffective for Indigenous people living in rural and remote communities.*
- *Applicants who receive support services are more likely to be successful in being issued an interim order.*
- *Integrated programs are more effective in preventing further incidents of violence.*

Legal Aid

Legal aid is available in the metropolitan area ...

Legal aid in respect to restraining orders is available to prospective applicants from the Perth office, two metropolitan offices and four regional offices of Legal Aid Western Australia. There are four levels of service provided including:

- legal advice, by phone or in person – involves a 30 minute appointment with a lawyer;
- minor assistance, involves up to three hours assistance from a lawyer or paralegal to resolve legal matters or prepare for self-representation at a court appearance;
- duty lawyer service, which involves advice and limited representation in relation to interim orders and applications for adjournments; and
- case service, which involves the granting of legal aid to be represented at a defended restraining order hearing.

In addition, advice is available from the Domestic Violence Legal Unit (DVLU) which was established in late 1994 as a unit of Legal Aid Western Australia. Its purpose is to provide a specific service to women on matters related to domestic violence, which includes restraining orders.

On matters related to restraining orders, including breaches of orders, Legal Aid Western Australia provided 61 per cent of its legal advice and 87 per cent of its minor assistance over this period to female clients. Over the three year period the level of duty lawyer services provided to male clients has increased. In 2001, services to male clients constituted 50 per cent of duty lawyer services provided in relation to restraining orders. Indigenous persons comprised three per cent, six per cent and five per cent of the client base for advice, minor assistance and duty lawyer services respectively.

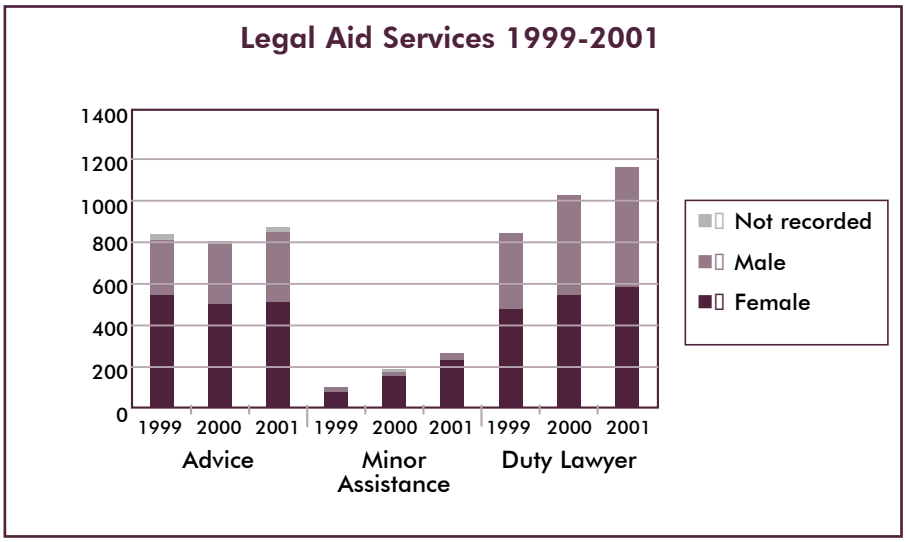


Figure 10: Provision of services on restraining order matters by Legal Aid Western Australia 1999-2001.

Source: OAG summary of Legal Aid Western Australia data.

A duty lawyer service is provided each morning at the Perth Central Law Courts. The duty lawyer can provide advice and representation at Court, including representing an applicant at an ex-parte hearing. Limited access to duty lawyer services is available in regional areas. Sixteen per cent of these services were provided in regional areas over the three year period.

Applicants seeking representation must apply for and obtain a 'Grant of Aid'. This requires that they meet the national means and assets test for aid and that the matter is deemed to have legal merit. Women who apply for and are granted aid are generally represented by lawyers from the DVLU. Men in situations of violence may also be represented in hearings, although not by the DVLU. As a matter of policy, Legal Aid Western Australia does not generally provide representation for respondents unless they are the victim in a situation of violence.

... but access is limited in regional areas.

In regional areas, aid is usually granted to a local private lawyer to conduct the hearing. In regional areas where there is no Legal Aid office and no private practitioner nearby, aid is unlikely to be granted. Only 11 per cent of approved cases were represented in regional areas over the period 1999-2001.

The cost of representation is prohibitive for many applicants and respondents to orders and inequities arise where one party has access to legal advice and representation and the other does not.

The current system is ineffective for Indigenous people living in rural and remote communities. Indigenous persons accounted for only five per cent of applications and approved cases. Aid was approved to 55 per cent of Indigenous applicants.

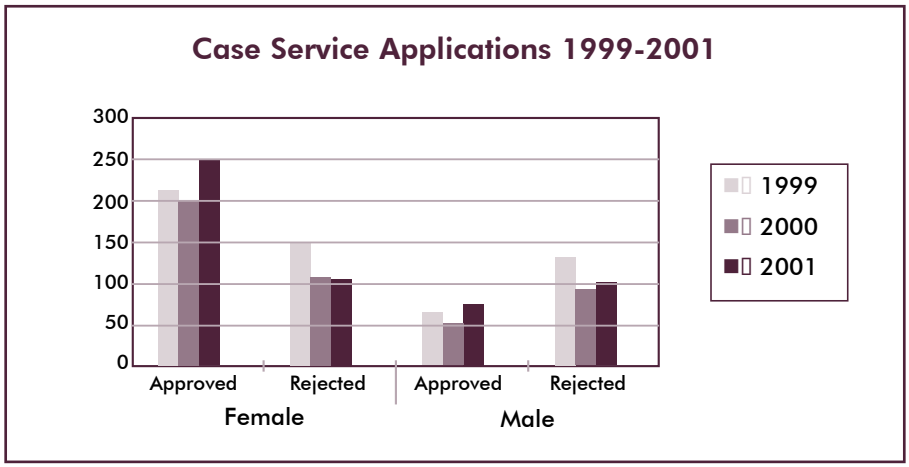


Figure 11: Provision of legal representation on restraining order matters by Legal Aid Western Australia 1999-2001.

Aid was approved to 64 per cent of female applicants and 37 per cent of male applicants.

Source: OAG summary of Legal Aid Western Australia data

Advice regarding restraining orders is also available through Community Legal Centres and the Aboriginal Legal Service. Duty lawyer services were also available for representation on restraining order matters in 18 per cent of the court localities visited.

Many applicants and respondents represent themselves.

In the majority of localities applicants and respondents are required to provide their own representation. In most localities this means that persons defend themselves as there is limited access to legal advocacy, particularly in rural and regional areas.

Provision of Training

Training on restraining orders is conducted by Legal Aid Western Australia for a wide range of organisations and service providers including police, the magistracy, refuge workers and workers from community legal centres. Ninety-three community education and training sessions, for a total of 1 931 participants were conducted in the period 1999-2001. Legal Aid Western Australia also provides advice to workers and agencies in relation to restraining orders.

Support Services

Victim Support Services

Victim support services provide advice of available options to potential applicants for restraining orders. Some services also provide support during the ex-parte hearing. Victim support services were provided in all but one of the court localities visited. This was a country location.

Victim support improves outcomes for applicants.

The majority of individuals (74 per cent) approaching the Victim Support Service in Joondalup were seeking information and advice on restraining orders. The Joondalup project evaluation indicated that victim support workers were significantly more likely to make contacts with female than with male applicants. The reasons for this were not clear but demonstrated the need to ensure that male applicants are able to receive equitable assistance in the restraining order process.

The Joondalup project evaluation also found that applicants who receive some form of support service are much more likely to receive an interim order, 80 per cent compared to nine per cent. In Geraldton and Perth where police assistance is provided through prosecution at the interim hearing, almost 100 per cent of applicants were successful in obtaining an interim order.

The Joondalup pilot did not impact positively on the number of applications resulting in a final order. The Joondalup evaluation found that only one third of applications proceed to final orders. Orders in the Joondalup Family Violence Court (JFVC) were more likely to be adjourned or dismissed than in the other courts in the study.

Assistance for Respondents

Respondents are provided with limited assistance.

Respondents to restraining orders are not routinely provided with information by the courts regarding the meaning of the order, the options available to them or the penalties if breached. A verbal explanation of the order is provided by the police serving the order, but in many cases the respondent is not willing to listen to, or able to comprehend the details provided at this time. The MoJ six-month evaluation recommended that information brochures about restraining orders and associated issues be made available, particularly to respondents. This has not yet occurred in any of the localities visited.

Effective Models for Best Practice

Coordination of Government and Non-Government Services

Several localities are providing more effective services to their communities by utilising models with integrated service. The common feature of these programs is the degree of coordination between key agencies in the restraining order process, including the court, police, and victim support services including refuges and advocacy services.

The JFVC project utilised an inter-agency case management approach involving the Department of Justice, WAPS, Department for Community Development and a local refuge service. A formalised information-sharing agreement was established between these key agencies. The Joondalup project evaluation report estimates that this project has been implemented at a cost to government of approximately $650 000 per annum.

Some districts are running integrated programs with no special funding.

In other localities, such as Armadale and Geraldton, coordination of services has been occurring for some time. Additional funding has not been provided for these localities. The Armadale Domestic Violence Intervention Project is supported by participating agencies, including the court and Department of Justice, WAPS, the local refuge, the hospital and Homeswest, that meet on a regular basis to collaborate to ensure that victims of domestic violence gain more ready access to support services appropriate to their needs. For example, the Victim Support Officer (a position employed by the refuge and funded by Department of Justice) is based in the local police station and attends the court daily to offer support to applicants for restraining orders. Being based in the police station ensures consistent advice and service regardless of whether applicants approach police, the courts or the refuge in the first instance.

Community groups play a key role in the success of integrated programs.

In Geraldton a model of service delivery has been developed that includes the court, police and two advocacy services. One of the advocacy services is linked to the local Yamatji Patrol, the other to the refuge. When a prospective applicant approaches one of these services they are initially referred to one of the advocacy services for advice as to their options and assistance in completion of an affidavit if they elect to proceed with application for a restraining order. The affidavit is then forwarded on to the police who represent the applicant at the ex-parte hearing. A copy of the affidavit is provided to the respondent by the police on service of the interim order. Where further hearings are required the advocacy services may assist with legal representation. Each agency reported that this process is both efficient, as there is no duplication of roles, and effective in providing consistent high quality service.

The involvement of alternative counselling mechanisms for Indigenous people, such as the Alternative Dispute Resolution Service operating in the Armadale locality, assist in providing support that aims to minimise contact of Indigenous people with the justice system. Involvement of these groups and also Aboriginal community patrols assists in providing advocacy to applicants and respondents and minimises the occurrence of breaches where orders are issued. The successful approach used in Geraldton, also enhanced the usefulness of the courts, and particularly the restraining order system, to Indigenous people.

Counselling Services

Counselling can provide an alternative to restraining orders ...

The need for mediation services at the beginning of the process for both applicants and respondents was raised by 50 per cent of police and 73 per cent of courts in localities visited. The Children's Court and Geraldton are currently running mediation services for youth impacted by restraining orders.

The Joondalup project included counselling services for offenders provided through Relationships Australia. The evaluation recommended the use of alternative dispute resolution processes for people involved in domestic or family violence situations. This view was strongly supported by magistrates, court staff, police and refuge and advocacy workers interviewed through this examination. It was an approach that was seen to have potential in achieving a more effective long term outcome for applicants and respondents of orders and in increasing the efficiency of the process by minimising applications that are likely to be withdrawn.

... and reduce the rate of reoffending.

In the Fremantle locality counselling is being offered through a joint program with WAPS and Relationships Australia. In a 24 month period 315 families were contacted by the DVLO offering information regarding counselling services. Of these 32 per cent of victims and 21 per cent of offenders took advantage of these services. Analysis of repeat incidents showed that where either the offender or victim had received counselling there was a lower incidence of repeat offences: only 17 per cent where victims had counselling and nine per cent where offenders had received counselling.

Alternative Sentencing

Four of the 14 magistrates indicated that they impose counselling requirements in sentencing offenders in breach of restraining orders. A characteristic of the Joondalup project and the Geraldton locality was the use of an alternative sentencing approach.

In Geraldton, sentencing for restraining order breaches is included in the Geraldton Alternative Sentencing Regime which is a project designed to take a holistic, therapeutic, team-based and innovative approach to offender rehabilitation.

The Joondalup project emphasised the use of programmatic interventions. Defendants who pleaded guilty are remanded for a pre-sentence report and required to appear in court 28 days later for sentencing. The defendant would then be placed on bail on the condition that they attend a domestic violence perpetrator program. Progress was reviewed throughout the program. Where progress had been demonstrated, a non-custodial sentence may be made at the end of the program reflecting the level of commitment of the individual to the process of behavioural change.

Recommendations

Justice and Police need to take the lead in encouraging government agencies to:

- review current practices and procedures to identify opportunities for interagency coordination with the goal of providing integrated service delivery in all localities; and
- provide counselling for prospective applicants and respondents at each stage of the restraining order process where possible.

Previous Reports of the Auditor General

1997	
On Display – Public Exhibitions at: The Perth Zoo, The WA Museum and the Art Gallery of WA	April 9, 1997
The Western Australian Public Health Sector	June 11, 1997
Bus Reform – Competition Reform of Transperth Bus Services	June 25, 1997
First General Report 1997 – covers financial statements and performance indicators of departments, statutory authorities (excluding hospitals other than Wanneroo Hospital) and subsidiary bodies	August 20, 1997
Get Better Soon – The Management of Sickness Absence in the WA Public Sector	August 27, 1997
Waiting for Justice – Bail and Prisoners in Remand	October 15, 1997
Report on Controls, Compliance and Accountability Audits – Public Property Management – Management of Information Technology Systems – Payroll and Personnel Management – Purchasing Goods and Services	November 12, 1997
Public Sector Performance Report 1997 – Examining and Auditing Public Sector Performance – Follow-ups of Previous Performance Examinations – Sponsorship in the Public Sector	November 13, 1997
Private Care for Public Patients – The Joondalup Health Campus	November 25, 1997
1998	
Report on Ministerial Portfolios – Audit Results – Consolidated Financial Statements – Summary of the Results of Agency Audits	April 8, 1998
Selecting the Right Gear – The Funding Facility for the Western Australian Government's Light Vehicle Fleet	May 20, 1998
Report on the Western Australian Public Health Sector	May 20, 1998
Sale of the Dampier to Bunbury Natural Gas Pipeline (Special Report)	May 20, 1998
Weighing up the Marketplace – The Ministry of Fair Trading	June 17, 1998
Listen and Learn – Using customer surveys to report performance in the Western Australian public sector	June 24, 1998
Report on the Western Australian Public Tertiary Education Sector	August 12, 1998
Do Numbers Count? – Educational and Financial Impacts of School Enrolment	August 19, 1998
Report on Controls, Compliance and Accountability Audits 1998 – Control of Agency Expenditure – Human Resource Management – Administration of Superannuation Systems	October 14, 1998
Public Sector Boards – Boards governing statutory authorities in Western Australia	November 18, 1998
Send Me No Paper! – Electronic Commerce – purchasing of goods and services by the Western Australian public sector	November 18, 1998
Accommodation and Support Services for Young People Unable to Live at Home	November 26, 1998
Public Sector Performance Report 1998 – Monitoring and Reporting the Environment – Recruitment Practices in the WA Public Sector – The Northern Demersal Scalefish Fishery	December 9, 1998
Report on Audit Results 1997-98 – Financial Statements and Performance Indicators	December 9, 1998
1999	
Report on the Western Australian Public Health Sector – Matters of Significance – Summary of the Results of Agency Audits	April 21, 1999
Proposed Sale of the Central Park Office Tower – by the Government Employees Superannuation Board	April 21, 1999
Lease now – pay later? The Leasing of Office and Other Equipment	June 30, 1999
Getting Better All The Time – Health Sector Performance Indicators	June 30, 1999
Report on the Western Australian Public Tertiary Education Sector – 1998 Annual Reporting Cycle	June 30, 1999
Fish for the Future? Fisheries Management in Western Australia	October 13, 1999

1999 (continued)	
Public Sector Performance Report 1999 – Controls, Compliance and Accountability Audits – Follow-up Performance Examinations	November 10, 1999
A Stitch in Time – Surgical Services in Western Australia	November 24, 1999
Report on Ministerial Portfolios to November 5, 1999 – Issues Arising from Audits – General Control Issues - Summary of the Results of Agency Audits	November 24, 1999
2000	
Public Sector Performance Report 2000 – Emerging Issues – Management Control Issues	April 5, 2000
Report on the Western Australian Public Health Sector and of Other Ministerial Portfolio Agencies for 1999	April 5, 2000
A Means to an End – Contracting Not-For-Profit Organisations for the Delivery of Community Services	June 14, 2000
Private Care for Public Patients – A Follow-on Examination of the Joondalup Health Campus Contract	June 21, 2000
Report on Western Australian Public Universities and TAFE Colleges – 1999 Annual Reporting Cycle	June 21, 2000
Bus Reform: Further down the road – A follow-on examination into competition reform of Transperth bus services	June 28, 2000
Surrender Arms? Firearm Management in Western Australia	September 13, 2000
Second Public Sector Performance Report 2000 – Administration of Legislation – Financial and Management Control Issues	October 11, 2000
A Tough Assignment – Teacher Placements in Government Schools	October 18, 2000
Report on Ministerial Portfolio at December 1, 2000 – Summary of Audit Results – Accountability Issues (Corporate Governance, Accounting for GST Transitional Loan)	December 20, 2000
2001	
Sale of the Gas Corporation's Businesses (Special Report)	February 14, 2001
On-line and Length? Provision and Use of Learning Technologies in Government schools	May 23, 2001
Implementing and Managing Community Based Sentences	May 30, 2001
Public Sector Performance Report, 2001 – Administration of Legislation – – Financial and Management Control Issues – Follow-up Examination	June 20, 2001
Report on Public Universities and TAFE Colleges - 2000 annual reporting cycle	June 20, 2001
Lifting the Rating: Stroke Management in Western Australia	August 22, 2001
Good Housekeeping: Facilities Management of Government Property and Buildings	August 29, 2001
Second Public Sector Performance Report 2001 – Management , Compliance and Control Issues – Follow-up Performance Examinations	September 19, 2001
Righting the Wrongs: Complaints Management in the Western Australian Public Sector	October 17, 2001
Third Public Sector Performance Report 2001 – Appointment and Use of Contract Staff – Management of Mobile Phones in Government – Ombudsman's Statistics and Complaints Automated Register Project – The Perth Convention Centre	November 7, 2001
Life Matters: Management of Deliberate Self-Harm in Young People	November 28, 2001
First Byte: Consortium IT Contracting in the Western Australian Public Sector	December 5, 2001
Report on Ministerial Portfolios at November 30, 2001 – Summary of Audit Results – Accounting and Contemporary Issues – Summary Results of Agency Audits	December 19, 2001
2002	
Level Pegging: Managing Mineral Titles in Western Australia	June 19, 2002
Report on Public Universities and TAFE Colleges and of other Ministerial Portfolio Agencies for 2001	August 14, 2002
A Critical Resource: Nursing Shortages and the Use of Agency Nurses	August 14, 2002
Public Sector Performance Report 2002 – Agency Management of Fringe Benefits Tax – Common Use Contracts in Government – Procurement of Medical Equipment – Fish for the Future?	September 25, 2002

The above reports can be accessed on the Office of the Auditor General's web site at www.audit.wa.gov.au/

On request these reports may be made available in an alternative format for those with visual impairment.