

**INQUIRY INTO IMPACT OF THE *FAMILY LAW*
AMENDMENT (SHARED PARENTAL RESPONSIBILITY)
ACT 2006 (CTH)**

Organisation:

Name: Mr William Turner

Telephone:

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Partially Confidential

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Dear Committee Members,

RE: NSW DVO APPLICATIONS UNJUST IN FAVOR OF THE APPLICANT.

- 1) I am a Suicide prevention and intervention officer in Wagga Wagga NSW. I have performed this role for several years. Despite the fact that most suicides are men, I work with both genders and to date my public work is funded by a 52% majority of women. All of my public support is from women.
- 2) The DVO system is a system in crisis as it is continually being criticized as unable to protect those it is intended to protect while also creating untold hardship and grief to countless others. The 'almost compulsory' granting of DVO applications with scant regard to their substance is a process lending itself to increasing abuse for reasons other than the protection that is intended.
- 3) The existing system appears 'Prima Facie' to be procedurally fair, however it has to answer criticisms that it does not deliver Substantive Fairness before the law. It is obvious to all involved in the system that the **untested statements result in injustice** in the DVO system which seriously erodes community confidence. The system **always favors the applicant regardless of gender**, and not the Defendant regardless of merit to any allegation.
- 4) This results in a growing culture where during the implementation of family law proceedings it has become essential to be the Applicant to gain a ADVO first. This lack of integrity and substantive fairness erodes the community confidence in the system as it is seen, not as the tool it is intended to be, but rather as an instrument of gain toward both property and custody.
- 5) While historically it has been mainly men condemning the DVO system the increasingly diminishing community respect and community support is found in the abuse of the existing law and legal culture where the ADVO statutes fail to deliver its intended results of protection and is used and manipulated to facilitate gain in Family Law proceedings.
- 6) The current system appears completely in favour of applicants as judges administer ADVO's as instruments of intervention and prevention with little if any regard of Family law implications which are / or may be the real motivation behind the application. According to Seth Hill, Clerk of the Court for Wagga Wagga, Magistrates fear that not granting an application for a DVO leaves them (magistrates) open for serious criticism in the event that the applicant is subsequently hurt. Therefore it is in the interest of the Magistrate to grant any ADVO application as and intervention measure presented to the court.
- 7)

Case study kept confidential as per Committee resolution.

- 8) By the time the matter came before the Family Court – the second husband claimed impecuniosity and financial hardship threatening bankruptcy while being represented by a barrister and a QC. His claim was impossible to test after being excluded from the business and book keeping for two years because of a claim of a ADVO protection order.
- 9) This is a tragic story supported by many police who now claim that had they known the true circumstances they would never have agreed to the ADVO order. But too often the Applicant's statement is all that is needed without verification or collaboration.
- 10) Given that 18,000 orders are made per year, police do not possess the resources to investigate statements. The Federal Parliamentary enquiry found that 'Evidence if any is not made available to the court'.
- 11) Consequently the New Federal law requires at Section 4 (1)
 - i) *“Family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the persons family to*

reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.” And A Note; A person reasonably fears for, or reasonably is apprehensive about his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety.

- 12) How are NSW police officers trained to determine if an AVO application is justified by the applicant? Under the **Crimes Act (NSW) of 1900 Part 15A** & the Justices Act 1902 – (Domestic) States the following;

Section 562AI: Court may make APVO

*A court may, on complaint, make an apprehended personal violence order if it is satisfied on the balance of probabilities that a person has **reasonable grounds to fear, and in fact fears:***

- (a) the commission by the other person of a personal violence offence against the person, or*
- (b) the engagement of the other person in conduct amounting to harassment or molestation of the person, being conduct that, in the opinion of the court, is sufficient to warrant the making of the order, or*
- (c) the engagement of the other person in conduct in which the other person:*
 - (i) intimidates the person, or*
 - (ii) stalks the person,*
 - 1. being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.***

- 13) The bolded areas above appear to be ignored. In theory if the applicant [or police] has a **‘reasonable’** fear and **‘in fact fears’**, for their safety, the DVO / AVO is justified as an instrument of intervention. If an officer has reasonable fears for the safety then the officer is taught that he ‘must’ apply for an order. It is the concern of many that the ‘reasonable’ requirement required in the act is undeterminable and therefore if the Applicant says or claims that they fear, then this is sufficient grounds in practice. The ‘reasonable’ test no longer applies in real terms, if it ever really did.

- 14) The result is many unreasonable orders are placed without consequence to the Applicant or justification against the defendant who may lose a great deal in family law. As the finding of the Federal report shows, the lack of evidence ... *may or may not be available to the [family] courts* as was the case for [name kept confidential as per Committee resolution] above.

15)

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Case study kept confidential as per Committee resolution.

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Case study kept confidential as per Committee resolution.

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19) Every Picture Tells A Story Report found the following,

- Para 4.21 The committee heard evidence about the apparent ease with which an apprehended violence order can be obtained through the system. In NSW in 2002 - 18,926 DVO orders were made. Subsequently “if an AVO is in place prior to making an application in the FCoA it is required to be included in the application.
- Para 4.22 Evidence ...(gender neutral) if any, may or may not be available to the courts, often no reports of an investigation by State Authorities is available”
- Para 2.25 “This produces serious gaps in the ability of the Family Court to deal with child abuse and domestic violence”
- Para 2.20 “ A real child focus is not yet a reality in the system or in the behaviour of separating parents”

20) This abuse of the ADVO system is about to get worse with the Federal Governments adoption of the recommendations from the Standing Committee on Family and Community Affairs into the Child Custody Arrangements in the Event of Family Separation. The first recommendation which is now law is;

The committee recommends that Part VII of the Family Law Act 1975, be amended to create a clear presumption, that can be rebutted in favor of equal shared parental responsibility, as the first tier in post separation decision making. (para 2.82)

However the State Based System is the backbone of the second principle because;

The committee recommends that Part VII of the family Law Act 1975 be amended to create a clear presumption AGAINST shared parental responsibility with respect to cases where there is entrenched conflict, family violence substance abuse or established child abuse, including sexual abuse. (para 2.83)

21) Under the Current State based system and especially in relationship breakdown there appears to be a unintentional and indirect bias against the defendant which is lending itself to be used to gain advantage in the Family Court of Australia such as examples like [name kept confidential as per Committee resolution] being stripped of her wealth by manipulative use of the DVO system. It is almost impossible and consequently expensive to pursue any DVO defense especially when you are separated from accessing your wealth by a ADVO.

22) So how many AVOs do the NSW police issue per annum? I have provided comprehensive data in the following tables between police numbers private application numbers and total numbers for NSW. See below. In NSW in 2002 – 18,926 orders were granted. – *Fed Parl report "Every picture tells a story" para 4.21 page 70*

23) Then by comparison the Australian Bureau of Statistics, report Personal Safety– Australia. (Re-issue 2005) Summary Of Findings states the following for consideration. (Available at www.adbs.gov.au/AUSSTATS/abs@.nsf)

- Women who experience violence [only] 5.8% 443,800
- Women who did not experience violence, 94.2% 7,249,400
- Men who experience violence 10.8% 808,300
- Men who did not experience violence 89.2% 6,669,900

24) How many AVOs were issued by police in 2000, 2001, 2002, 2003, 2004 and 2005?

NSW Recorded Crime Statistics

2001 - 2005

Recorded Criminal Incidents

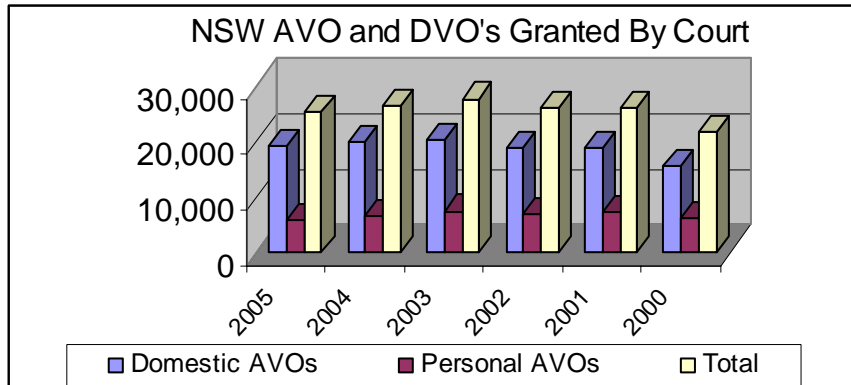
Type of offence	2001		2002		2003		2004		2005	
	Total	Rate per 100,000	Total	Rate per 100,000	Total	Rate per 100,000	Total	Rate per 100,000	Total	Rate per 100,000
NSW Total Harassment, threatening behaviour and private nuisance	16036	243.9	16057	242.0	18118	271.1	19288	286.5	21799	323.8
Other offences against the person	994	15.1	1130	17.0	1270	19.0	1414	21.0	1503	22.3

Wagga Wagga

Harassment, threatening behaviour and private nuisance	280	493.6	299	523.8	328	573.4	282	489.9	321	557.7
Other offences against the person	8	14.1	23	40.3	24	42.0	22	38.2	18	31.3

[http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/NewSouthWales.xls/\\$file/NewSouthWales.xls](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/NewSouthWales.xls/$file/NewSouthWales.xls)

25) In table form the above data appears as below;



26) Since a peak in 2003 it appears that the trend is for the number of NSW DVO's to be falling. One possible suggestion is that DVO's are being defended more vigorously or weighed against Family law considerations. Such a statement remains anecdotal as there is no research or methodology to gather such reasoning. In my experience scarce resources of broken families are increasingly being prioritized by most parents toward fighting DVO claims in court prior to child custody matters in the Family Court. This leaves both parties and the children poorer.

27) Now however, the increasing abuse of the ADVO system for legal advantage in post separation / divorce and Criminal Defense will be required under the existing NSW Crimes Act, it is now a paramount priority due to the flow on effect into The Family Court of Australia to either "*get in first*" with the ADVO or have the resources to defend a case in both the State Criminal Court and the Federal Family Court.

28) The impact that DVO prosecutions will have on specifically Child Custody in the Federal arena is enormous. This added level of legal complications arising from malicious DVO applications and the necessary defence is clearly beyond the resources of most separated parents, who can only pray for justice and access to their children with any remaining resources following family separation.

29) Department of Family and Community Services Ross Cameron MP, member for Parramatta has been active promoting responsible recovery from separation and expressed his sympathy for the idea of shared parenting. But it appears that parents face additional legal complications and consequences of realizing that goal. The prosecution of the DVO system is the Federal Law loophole to provide a manipulative foundation for an argument toward avoiding forced shared parenting or shared wealth / property settlements. The integrity of the NSW DVO system is at stake in addressing the misuse of the State Law preceding Family Law.

30) Despite talks with the Queensland Minister for Families Judy Spence in March 2003 the promise to provide the numbers of domestic violence applications and subsequent orders issued on behalf of men and women has not been forthcoming. Not since 1999 have we been able to access the gender based figures - department officers claim they are too hard to collect. Last known 1999 figures indicated 17% of all DVO applications were made to protect men from violent female partners.

- 31) Victorian police statistics indicate 20% of applications are from men.
- 32) Queensland Police Commissioner Bob Atkinson, during the same Community Cabinet session said he'd never had those figures put to him. He expressed his amazement and genuine concern.
- 33) The Law Institute of Victoria will try to set up a group with Attorney-General Rob Hulls to look at changing the legislation to ensure intervention orders are used properly.
- 34) Also Law Institute President - Bill O'Shea said the effectiveness of intervention orders had been reduced. **"They were introduced, really, to combat domestic violence, and they're now being used in a whole range of civil disputes, which has the effect of devaluing the significance of an intervention order"**.
- 35) Michele Pathe, a Director of the Stalking and Threat Management Centre, said The Victorian Department of Justice was already looking at intervention orders and where they were applied. Intervention orders were being used indiscriminately in stalking cases **without considering how appropriate they might be**.
- 36) Now under the Federal recommendations attempting to facilitate the principle of shared parenting in the belief that the child has the right to a meaningful relationship with both parents, the responsibility on the states to get DVO allegations right is paramount.
- 37) The purpose for the standing committee is to respond to the Federal Governments New Approach To The Family Law System. The committee is to report upon proposed improvements surrounding the inter dependency of Federal Family Law and State Domestic Violence Law in delivering Family Law Rulings.
- 38) A new Federal presumption of '*equal shared parenting responsibility*' is dependent on the absence of any Domestic Violence or Child abuse. State laws should ensure that both parents and the children involved are protected against false allegations, manipulation of these protective laws and accordingly provided fair investigation, representation and protection where allegations may be the first strategy gaining advantage in wealth or custody in Federal Court.
- 39) Where false allegations (or false denial) of Domestic Violence are to gain advantage in the Federal Court, the Family court can now use State evidence (if collected) and address this with the ability to award costs against the person making false claims/denials. The Family court will remain dependent on State findings in determining these matters. What changes need to be enacted in NSW to ensure all State Domestic Violence evidence / or lack there of, is provided to the Family Court?
- 40) The committee should review the role and resources of police in investigating and identifying suspected misuse of State '*protective mechanisms*' whenever participants appear to be motivated toward gaining legal advantage in parenting or property settlement at any subsequent Federal Family Law matter.
- 41) Both [name kept confidential as per Committee resolution] and I remain available to expand on our examples and relay to the committee the circumstances and experiences we have

endured. We offer our time and our experience if it will assist the committee to address and modernise the abuse of a system that was intended to protect. This system should maintain community confidence and not be allowed degenerate into disrepute or be used as a weapon to the advantage of the opportunist.

Regards,

William Turner
B'Bus Man/HRM (C.Sturt)