DOMESTIC VIOLENCE AND THE LAW

A Study of S.99 of the Justices Act (S.A.)

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South Australia

June 1985

This project has been completed with the assistance of the
Criminology Research Council, A.C.T.

DOMESTIC VIOLENCE AND THE LAW:

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by

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INTRODUCTION

The aim of the study documented in this report is to evaluate a 1982 amendment to S.99 of the Justices Act as a form of legal protection for victims of domestic violence (1). As an initiative of the Women's Adviser to the South Australian Premier, this study is particularly concerned with the effectiveness of the law in restraining violence and behaviour directed at women.

S.99 functions as a legal remedy for domestic violence by investing victims with the right to apply to a court for an order proscribing the offensive behaviour of a violent spouse (2). This order of restraint, or 'restraining order', can instruct the offending party to refrain from doing any number of things to the complainant: from not molesting her to keeping away from her premises. The potential consequences for the offending party of breaching such an order are arrest and imprisonment.

The impetus for this study was provided by the considerable concern about the adequacy of the law expressed by individuals and organisations providing professional services to victims of domestic violence (3). The timing of the inquiry was determined by the need to allow a sufficient period to elapse after the passage of the law to provide a suitable data base. At the time of writing, 2 years' data were available.

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(1) For the purposes of this Report, violence is regarded as 'domestic' in character if the parties in question are past or present lawful or de facto spouses or boyfriends and girlfriends. (This defunction expressly excludes violence directed at children, a separate and substantial topic requiring investigation in its own right) References to 'spouses' throughout this Report employ this artificially extended definition.
The 'violence' considered in this Report includes low level harassment and verbal threats as well as physical assault.

(2) Note the extended difinition of 'spouse', ibid.

(3) The interview findings, which form the substance of this Report, explain these concerns in some detail.

The principal task of the present study is to determine whether S.99 orders, or 'restraining orders', work. Do they act as a deterrent to the violent spouse? Are they the best legal means of combatting domestic violence?

This evaluation of S.99 as a means of protecting the victim of domestic violence takes the following form. It begins with an explanation of the law. Section 1 presents a brief review of the history of the legislation. It considers the deficiencies of the previous law and the research which provided the catalyst for the restraining order legislation, passed in June 1982. It then explains the key ingredients of S.99.

The Report proceeds by way of an explanation of the research design. It explains the survey method adopted, the samples sought and the reason for their selection, the design of questionnaires and the method of their administration.

The remainder and substance of the Report comprise an analysis of the survey findings. The approach it adopts is to work from the general to the particular by posing a set of increasingly detailed questions about the value of S.99.

Section 3 begins the task of evaluating S.99 by posing the broadest question: Is S.99 redundant? It considers the existing range of responses to domestic violence provided by the criminal law and queries whether S.99 performs a useful additional function.

Sections 4 and 5 continue this comparative approach by contrasting the restraining order with its predecessor, the peace complaint, and with its Commonwealth counterpart, the Family Law Act injunction. The purpose of these comparisons is variously to determine whether S.99 represents an improvement on the previous law and whether it is a better form of legal relief than that provided to married couples under the family law.

The practical significance of S.99 for domestic violence victims is considered in Section 6 where the question is asked, "Is the law accessible?" The endeavour here is to determine whether there is a disparity between the extent to which restraining orders are sought and the extent to which they are made available. This section also examines the accessibility of the criminal law as either an alternative or additional legal response to complaints of domestic violence.

The focus of the study is narrowed in Section 7 when the evaluation considers S.99 in isolation. A catalogue of the strengths and weaknesses of restraining orders is constructed from responses to the general question, "Do restraining orders work?" "Do they restrain the violent spouse?"

Section 8 brings S.99 into even closer focus with its examination of the internal workings of the restraining order process. It explores patterns in the use of S.99, from the initial application for an order to the final conviction and sentence for breach of an order. It also seeks to expose problems encountered by victims at each stage of the legal process.

The final part of the Report addresses issues of public information and education on the law. It identifies deficiencies in current information services and examines ways of improving the public's understanding of, and access to, the law.

1. THE LAW OF DOMESTIC VIOLENCE IN SOUTH AUSTRALIA

1.1. Background: History of The Legislation

Before June 1982, a victim of domestic violence seeking the assistance of the law to restrain her assailant was obliged to take out a court order requiring that person to keep the peace. The complaint was lodged by the victim at the Magistrates' Court. In the complaint the victim made an allegation of assault. The alleged offender would then receive a summons to attend Court to answer this complaint.

When the alleged offender attended Court, he could be required to enter into a reconnaisance or bond to keep the peace toward the victim, usually for a period of 12 months. Failure to observe the conditions of the bond would result in a forfeiture of the bond money which ranged from about $300 to $750. Refusal by the offender to enter into a bond made him liable to be imprisoned for up to six months. In circumstances where the alleged offender alleged that he was also the victim of an assault (where he made a counter-allegation), the court could order both parties to enter into bonds. If the alleged offender elected to contest the whole matter, both parties were obliged to provide evidence of their stories. This usually meant the adjournment of the hearing to a later date.

The peace complaint system harboured defects. At common law there was no power to restrain the defendant specifically from engaging in certain forms of behaviour, such as coming near the home. A second problem was that breach of a bond was not an arrestable offence. Police could only act upon a complaint of breach if there was evidence of what would be an offence in any event, regardless of the bond. This left the responsibility with the complainant to take further action if the respondent disobeyed the court. She was obliged

to return to court and lodge another complaint, alleging that the bond had been breached and asking that the bond be forfeited. Breach of the bond attracted no other penalty.

In its Report and Recommendations on Law Reform, the Domestic Violence Committee of the Women's Adviser's Office (1) identified several other weaknesses in the peace complaint. These included:

> "The weak and cumbersome enforcement of existing sanctions or court orders ... the inability of the court system, apart from the Federal Family Court, to direct parties to supportive services in order to examine sources of conflict and to attempt to negotiate a constructive resolution to them; [and] the cost in money, time and physical and emotional energy for the victim"(2).

1.2. The Enactment of S.99

In its report on the law, the Domestic Violence Committee not only identified the flaws in the current set of remedies but also proceeded to investigate alternative legal models. Its approach was to consider remedies available to victims of domestic violence in comparable jursidictions. It selected for analysis the law of the United Kingdom and of various jurisdictions of the United States of America.

The model for reform provided by the British Law - the Domestic Violence and Matrimonial Proceedings Act - was then a recent piece of legislation, the product of extensive debates by Parliamentary Select Committees. This Act was particularly significant for South Australia in that appearing to

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(1) The constitution and functions of the Domestic Violence Committee are explained on p. .

(2) Domestic Violence Committee, Report and Recommendations on Law Reforms, Women's Adviser's Office, Department of the Premier and Cabinet, South Australia, November 1981, p.23.

offer specific solutions to some of the problems associated with the local peace complaint.

First, the British Act spelt out a range of prohibitions which could be built into an injunction. These included the exclusion of "the other party from the matrimonial home" and "requiring the other party to permit the applicant to enter and remain in the matrimonial home". Second, the United Kingdom legislation empowered a Judge to attach a power of arrest to an injunction in circumstances involving the use of violence and the likelihood of its recurrence. It also gave a power of arrest without warrant to the Police where there was reasonable cause to suspect a breach of the injunction by reason of the use of violence or entry onto the excluded premises or area.

In assessing the British remedy, the Domestic Violence Committee maintained that:

> "[its] major virtue .... is that (in theory, at least) it places priority on protection of victims by removing the offenders, and arrest is not dependent upon concern about satisfying the high criminal standard of proof necessary on assault charges". (1)

The Domestic Violence Committee was critical, however, of what it deemed to be the "unnecessarily restrictive" requirement that actual bodily harm precede the attachment of a power of arrest to an injunction.

Another basis for preferring the United Kingdom legislation to South Australia's law was the British law's specific inclusion of married and

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(1) Domestic Violence Committee Report, op. cit., p.27.

non-married people. The Act applies to "a man and woman who are living with each other in the same household as husband and wife" with any reference to the matrimonial home being construed accordingly. Therefore provisions empowering the court to exclude a violent party from the "matrimonial home" extend an unusual protection to a de facto spouse whose name is not on the title to property.

The Domestic Violence Committee also considered legislative endeavours to protect victims of domestic violence in the United States. It canvassed a range of remedies, observing a tendency towards decriminalisation, with state agencies increasingly being required to mediate domestic disputes and provide counselling for the parties. The Committee claimed that this was an unfortunate development:

> "it is as if a 'solution' or 'resolution' can always be found, and people can be persuaded to be reasonable and caring". (1)

To illustrate the naivety of this approach, the Committee drew on M.D.A. Freeman's analysis of wife battering:

> "the success of mediation depends on a common interest in having the conflict resolved. But what common interests do a brutal husband and a terrorised wife have?..... once within the Family Court setting and a social welfare counselling orientation we may lose track of the fact that wife beating may be a brutal criminal assault and not just a symptom of a troubled marriage". (2)

From the various overseas approaches to domestic violence reviewed in its report, the Committee extracted the best elements. It was attracted, in particular, by the United Kingdom legislation with its "self contained package

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(1) Domestic Violence Committee Report, op. cit., p.34.

(2) Quoted, ibid, p.35.

of provisions". It saw its key advantages as (a) the power to exclude a spouse from the matrimonial home; (b) the emphasis on removing the offender from the scene of the incident; (c) the ability of the court to specifically proscribe a range of behaviour; (d) the removal of the action from the criminal sphere and hence the reduced standard of proof; and (e) the provision of a remedy for both lawful and de facto spouses.

The Committee concluded that South Australia's peace complaint procedure should be adapted to accommodate each of these provisions. The use of "existing procedures and structures, as a basis of reform was thought to provide "an easier transition to a new remedy for courts, parties and police". (1)

Although it approved of the general approach of the United Kingdom legislation, the Committee identified a number of deficiencies in the British scheme. It sought, therefore, to distinguish the South Australian remedy in the following ways. In relation to the burden of proof, it recommended that the civil standard (on the balance of probabilities) should apply to the application for an order. It reasoned, however, that an offender should not become liable to imprisonment on the basis of evidence established on the civil standard. It suggested, accordingly, that a breach of a restraining order should have to be proven beyond reasonable doubt - the criminal standard of proof.

The Committee foreshadowed problems with the simple adoption of the British

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(1) Domestic Violence Committee Report, op. cit., p.38

system of attaching a power of arrest to an order. It felt that by investing the court with the discretion to attach a power of arrest, police would feel uncertain about their power to arrest at any particular incident of domestic violence. In order to standardize the police response, the Committee recommended that breach of an order should itself be an offence. This would have the added advantage of doing away with the need for the respondent to enter into a reconaissance, with its attendant administrative procedures.

The substance of the Committee's recommendations were submitted to Cabinet in November 1981 and became law in June 1982 by way of an amendment to S.99 of the Justices Act. The present law now reads:

"S.99(1) Where, upon a complaint .... a court of summary jurisdiction is satisfied on the balance of probabilities -

(a) that - (i) the defendant has caused personal injury or damaged property; and
(ii) that the defendant is, unless restrained, likely again to cause personal injury or damage to property;

(b) that - (i) the defendant has threatened to cause personal injury or damage to property; and
(ii) the defendant, is unless restrained, likely to carry out that threat; or

(c) that - (i) the defendant has behaved in a provocative or offensive manner;
(ii) the behaviour is such as is likely to lead to a breach of the peace; and
(iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner, the court may make an order imposing such restraints upon the defendant as are necessary or desirable to prevent him from acting in the apprehended manner".

Sub-section (2) specifies that either a member of the police force or the person against whom the behaviour is directed can make the complaint. Sub-sections (3) and (4) provide for the granting of interim orders in

the absence of the defendant and for their confirmation if he fails to appear when summonsed. Sub-section (5) incorporates the Committee's recommendations about excluding violent persons from their own property having considered the effect of such an order on the accommodation of the parties and their children.

Sub-sections (6) and (7) give S.99 its teeth. Sub-section (6) determines that breach of an order (which has been served on the respondent) is an offence punishable by up to six months' imprisonment. Sub-section (7) empowers the police to arrest without warrant upon breach of an order (with sub-sections (8) and (9) indicating the period the offender may be kept in custody).

Finally, sub-section (10) enables all parties to an order to apply to the court for its variation or revocation.

2. THE SURVEY

2.1. Survey Design

In the research proposal submitted to the Criminology Research Council, the method of investigation was confined to a set of interviews of applicants for restraining orders attending the Adelaide Magistrates' Court. It was proposed that, at the first interview, the author would question the subject about the incident which precipitated the complaint and about her perceptions of her interactions so far with the different agencies of the criminal justice system. Two months later, a second interview of the subject was to be conducted. She would be asked for her opinion of the ability of the restraining order legislation to deal with her particular circumstances and about her experiences with the police and with the courts. These interviews would be designed to identify and to evaluate each stage in the victim's efforts to prevent the recurrence of violence.

This research design was modelled on a study currently being undertaken by the New South Wales Bureau of Crime Statistics. In August 1983 the Crimes (Domestic Violence) Amendment Act was passed in New South Wales introducing legislation similar to S.99 of the Justices Act. The Bureau is conducting a longitudinal study of the period of legal transition. It has already conducted interviews of victims of domestic violence and Magistrates with experience of the law immediately prior to the amendment. It is now holding interviews of a second group of victims who have experienced the new law. The Bureau intends to analyse comparatively the findings of the two groups.

A decision to augment the original research model was made several weeks into the present study on the basis of interviews of a range of professional persons

providing social services to victims of domestic violence (1). These indicated the value of constructing a network of opinions of S.99 of persons with direct knowledge and experience of the operation of the law both before and after the amendment. The problem of exclusive reliance on the survey method originally proposed was identified as the fact that individual applicants for S.99 orders would only have an appreciation of their own case. Each subject's observations about the law would therefore necessarily be restricted to their direct experiences. They would have no basis for comparing their experiences with those of other women. And they would be unlikely to have experienced the period of legal transition and would have no overview of developments in the law. Accordingly it was decided to employ both kinds of data: the opinions of professional persons working directly with the legislation, as well as individual case studies of users of S.99.

2.2. The Samples Of Professionals

The set of professional opinions eventually sought represented an attempt to provide a comprehensive range of perspectives on the law. It comprised persons working in various capacities with parties to domestic violence - as providers of social advice and services, as legal advisers, and as enforcers of the domestic violence laws. To simplify and to lend uniformity to the administration of questionnaires and analysis of findings, survey respondents were divided into three groups:

a) Welfare workers, comprising members of the Domestic Violence Committee, the Domestic Violence Action Group, the Women's Information Switchboard, the Crisis Care Unit, District Officers of the Department for Community Welfare and co-ordinators of shelters;

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(1) This pilot sample comprised members of the Domestic Violence Committee chaired by the Women's Adviser to the Premier.

b) The legal profession, represented by Community Legal Centres and family lawyers from the Legal Services Commission and the Law Society; and

c) The police, comprising officers from Darlington, Port Adelaide and Holden Hill.

The involvement of each of these groups with the problem of domestic violence takes the following forms.

2.2.1. Welfare Workers

a) Domestic Violence Committee (D.V.C.)

Briefly, the key events leading up to the constitution and aims of the Domestic Violence Committee, whose members were interviewed in the present survey are these. In 1975 discussions between representatives from the South Australian Police Department and the Department for Community Welfare identified the need for a specialist unit of welfare workers to cope with the problem of domestic violence. The result was the Crisis Care Unit (see below) established late in 1975. Early in 1978 the Women's Shelters Advisory Committee held a seminar designed to stimulate public discussion on domestic violence. The outcome of this meeting was a set of recommendations for law reform submitted to the Federal and State Attorneys-General. Later that year, the Women's Adviser to the Premier sought to improve police understanding of, and attitudes towards, domestic violence by developing commections with members of that department.

In May 1979, another seminar on domestic violence was convened by the Women's Adviser reaffirming the demands of the earlier meeting. In August, 1979, the Women's Adviser set up the Domestic Violence Committee. Its membership comprised representatives from "the organisations most actively concerned in this state with the immediate problems generated by domestic violence". (1) They were the Police

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(1) Domestic Violence Committee Report, op. cit.

Department, Crisis Care Unit (Department for Community Welfare), S.A. Council of Social Services, the Women's Shelters Advisory Committee, Mental Health Services, the Child Protection Unit of the Adelaide Children's Hospital, and the State Attorney-General's office.

By the time of writing, the representation of the Domestic Violence Committee had extended to include the Custody and Access Counselling Service of the Department for Community Welfare, the Women's Information Switchboard, the Office of Crime Statistics (Attorney-General's Department), and the Children's Interest Bureau.

b) The Domestic Violence Action Group (D.V.A.G.)

The Domestic Violence Action Group, (D.V.A.G.), formerly titled the Domestic Violence Support Group, describes itself as "a group of professional counsellors working with domestic violence". The group came into being in December 1982. It has conducted three training workshops for counsellors and health workers in South Australia and a number of workshops interstate. The membership of the D.V.A.G., at the time of the survey, comprised representatives from the following organisations: The Adelaide Children's Hospital, Ingle Farm Community Health Centre, Crisis Care Unit, St. Corantyn's Clinic, Vietnam Veterans' Counselling Service, Christies Beach Women's Shelter, Elizabeth Department for Community Welfare, Clovelly Park Community Health Centre and Adelaide Central Mission.

c) Women's Information Switchboard

The Women's Information Switchboard comes under the umbrella of the Women's Adviser's Office of the Department of the Premier and Cabinet. The functions of the Switchboard are described succinctly in its last Annual Report (1).

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(1) Women's Information Switchboard Annual Report, 1980-82, p.1.

> The Women's Information Switchboard is a specialized information service for women ... In our terms information provision incorporates referral: such as referral to other agencies, self-help groups, appropriate professionals, and other women's groups and organisations ... the Women's Information Switchboard provides feedback and policy advice to Government and other organisations ... Where appropriate, an accompanying and support service is provided for women attending court cases, and in other areas where they require assistance with additional experience, knowledge or support."

The Women's Information Switchboard comprises a co-ordinator, two general Information Officers as well as an Italian, a Greek, an Aboriginal Information Officer and a Clerical Officer. The Switchboard is also supported by a staff of volunteers.

d) Crisis Care Unit

The Crisis Care Unit is the emergency and after-hours service for the Department for Community Welfare. It provides 24 hour mobile counselling to the metropolitan area of Adelaide.

A large proportion of the Unit's work is the provision of services to victims of domestic violence. The Unit offers emergency counselling, emergency telephone and on-the-spot counselling, legal and resource information, and 24 hour access to emergency refuge accommodation. The Unit also provides an emergency welfare service to families experiencing problems with child care and finance.

e) District Offices of the Department for Community Welfare (D.C.W.)

The Department for Community Welfare is divided into six geographical regions within the State which are further sub-divided into 45 District Offices. The District Offices provide a range of services to the community. They have statutory responsibilities in relation to such matters as juvenile offending and child protection. They also respond to local community needs. In the latter capacity they provide counselling and practical assistance to victims of domestic violence.

f) The Shelters

The South Australian Women's Shelters provide a variety of services for female victims of domestic violence. They not only provide emergency - and sometimes longer term - accommodation, but also counsel women, and provide information on, and referrals to, other social services. There are seven city shelters: Para Districts in Elizabeth Vale, Bramwell House in Fullarton, the Women's Emergency Shelter in North Adelaide, Christies Beach Women's Shelter, Irene Women's Shelter in Glandore, Hope Haven in Adelaide, and Western Areas Women's Shelter in Woodville. There are four shelters in the country: Eloura in Whyalla, South East Women's Emergency Shelter in Mount Gambier, Women and Children's Hostel in Port Augusta and Port Lincoln Women's Shelter.

2.2.2 The Legal Profession

a) Community Legal Centres

There are four government-funded community legal centres in South Australia: the Parks, Norwood, Bowden-Brompton and Noarlunga. Each centre is community based and therefore operates within a defined geographic area. The purpose of the centres is to provide legal advice and assistance to community members who are unable to afford the fees of private lawyers.

b) The Legal Services Commission

The Legal Services Commission was established by State government legislation in 1978 to provide legal assistance to the needy. The Commission functions from a central office in Adelaide and has a growing number of regional offices. All outlets of the Commission provide free legal advice and legal representation to those who are eligible (sufficiently impecunious) either through the services of lawyers employed by the Commission or through private practitioners.

c) The Law Society

The Law Society is the professional association representing lawyers in South Australia. It is also responsible for upholding the ethics and standards of lawyers, and representing their issues to the public.

Within the Law Society there is a Family Law section. It is elected by members of the Law Society interested in family law to provide a forum for discussion of family law matters.

2.2.3. The Police

The S.A. Police Department is central to the operation of the laws relating to domestic violence. When a women complains that she has been the victim of a crime involving domestic violence (such as assault), it is the police who respond to her complaint, who decide whether to pursue the matter, who prosecute the matter before the Magistrates' Court, who investigate the crime and who charge the alleged offender. In relation to restraining orders, the subject of the investigation, police play a vital role in all stages of the process. They receive the complaint, take the evidence from the victim, act as the complainant in court in seeking the order, serve the order, receive complaints of a breach, investigate the breach, charge the offender and then prosecute him in court.

In South Australia there are no specialist police trained to deal specifically with cases of domestic violence. Instead complaints of domestic violence are received by local police officers performing general duties either on patrol (if the request is to attend the scene of the incident) or at a police station (if the complainant attends her local station).

2.3. Sample Of Users

The study also endeavoured to obtain the view of those using the law. To this end, the author employed a variety of methods to approach women who had experienced domestic violence and were seeking a solution. The key problem was the identification of "catchment areas": places or organisations which attracted victims of domestic violence in significant numbers. After an unsuccessful bid to interview applicants for restraining orders at the Adelaide Magistrates' Court, the final sample of women comprised two groups: inhabitants of shelters and clients of the Crisis Care Unit. The methods employed to obtain these samples are explained below.

2.4. The Questionnaires And Their Administration

The general purpose of all questionnaires administered was to discover whether S.99 is working as a legal remedy for victims of domestic violence. The type of questions asked, their wording and the particular focus of the questionnaire was determined by the nature of the experience of domestic violence of the respondents. This is turn was a function of the services provided by their organisation (explained above).

2.4.1. Welfare Workers

Questionnaires administered to welfare workers on the whole, took the following form. Respondents were first asked to describe their organisation, the extent and the nature of their experiences of domestic violence, and whether they were in a position to advise victims of domestic violence. The perspective of the respondent was thus established. Survey subjects were then asked to indicate whether they had received any feedback from victims about the value of restraining orders. In their answers, subjects were asked to refer to welfare agencies, shelters, the police and the courts. Respondents were then asked to give their own opinion of restraining

orders and to indicate whether they regarded them as an improvement on the peace complaint. Finally, welfare workers were asked whether they could think of any way of improving either the law and/or general services for victims of domestic violence.

Questions put to members of the Domestic Violence Committee deviated from this format. Members agreed to intensive semi-structured interviews which sought information about their experiences of, and opinions about, the legislation, and their suggestions for its assessment.

Members of the D.V.A.G., the Women's Information Switchboard and the Crisis Care Unit received a verbal explanation of the survey and questionnaires (see Appendices 1 and 2) presented by the author at one of their regular staff meetings. With the assistance of the Acting Women's Adviser to the Department for Community Welfare, all 45 District Officers were sent written explanations of the survey and slightly abbreviated questionnaires (see Appendix 3). A letter of explanation and questionnaires were also posted to all co-ordinators of both metropolitan and country shelters (see Appendix 4).

2.4.2. The Legal Profession

Questionnaires were posted to all four community legal centres with an accompanying letter explaining the aims of the survey administered to welfare workers (see Appendix 5).

The Family Law Section of the Legal Services Commission offered to convene a meeting of its members. This provided an opportunity for the author to explain the purposes of the survey in person and to ensure the distribution of questionnaires to all family lawyers employed by the Commission. The head of the Family

Law section of the Law Society also invited the author to attend a meeting of this group. Accordingly questionnaires were explained and distributed by the author in person. At this meeting it was suggested that the scope of this part of the survey could be extended significantly by distributing questionnaires to lawyers at the Family Court. This suggestion was taken up, with 100 questionnaires being made available to family lawyers at the Family Court.

The design of questionnaires administered to family lawyers from the Legal Services Commission and the Law Society was based on the assumption that family lawyers were more likely to have a working knowledge of the Family Law Act injunctions (applications for which require the assistance of, and representation by, a private legal practitioner) than of S.99 applications (which are usually made by police, acting in the place of the complainant). Accordingly the focus of the questions put to family lawyers was the connection between the two remedies (see Appendix 6). Lawyers were asked about the advice they typically give to clients complaining of domestic violence, about the respective roles of S.99 and of the Family Law Act injunctions and about any problems encountered with the operation of the two laws. Lawyers were also asked to compare restraining orders with their predecessor (the peace complaint) and to suggest any improvements that could be made in the law and in legal procedures.

2.4.3. The Police

The police view of the law was sought in the following way. An application for approval to interview police officers was submitted to the Police Department's Research Committee, together with the proposed questionnaire. The Committee approved a plan to administer a slightly modified questionnaire to patrol officers at three regional bases. Darlington, Port Adelaide and Holden Hill were selected for their reach into the northern, western and southern areas of the metropolitan district.

As a matter of expedience (1), the study was confined to the city.

The questionnaire finally administered to patrol officers was designed to do several things (see Appendix 7). First, it sought to determine whether police regard S.99 as a useful legal remedy for victims of domestic violence (Questions 2 and 3) and whether they believe it to be an improvement on the previous law (Question 5). Second, it enquired into the level of police satisfaction with their powers in relation to S.99 - whether police feel they are able to enforce the law adequately employing their present powers. Third, the questionnaire explored the relative use of restraining orders and the criminal law. More specifically, it queried police about the extent of their experience of domestic violence (Question 6), the incidence of their use of S.99 (Question 7) and the frequency with which they charged with assault (Question 8). It then asked police to describe the sort of evidence they required to proceed with an application for a restraining order (Question 9) and the evidence they required for a charge of assault (Question 10). These final two questions were to provide the basis of a comparative analysis of the use of the restraining order legislation and the criminal law. To this end, police were instructed to describe the circumstances in which they were willing to proceed with an application for a restraining order and those in which they regarded a criminal charge of assault as appropriate. These questions also sought to discover the extent of police knowledge and understanding of the relevant civil and criminal law.

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(1) As explained earlier in the Report, even this limited survey of police officers represents a substantial extension of the original project design.

2.4.4. Users

Two samples of users of S.99 (victims of domestic violence) were employed. The first comprised clients of the Crisis Care Unit. For one month all Crisis Care Workers approached every client complaining of domestic violence and asked them to participate in a survey about the operation of the law. All those who agreed to participate were then contacted by telephone by Ms. Janzy Murphy, a law student who volunteered to assist with the survey. Questionnaires were all administered by telephone.

A second sample of users of S.99 comprised women residing in Shelters. Questionnaires were sent to all city and country shelters with an accompanying explanation of the aims of the survey. In addition, the author attended meetings at two city shelters where questionnaires were explained and distributed. All residents of all shelters were asked to participate in the survey.

One questionnaire was administered to both samples of users (see Appendix 8). This questionnaire was designed to determine the extent of the respondent's experience of the restraining order legislation and the nature of any problems encountered. Users were asked for their assessment of every stage of the process: finding out about S.99 (Question 1 & 2); the application for the order (Question 3); the court hearing and the terms of the order (Question 4); the service of the order (Questions 5 & 6); confirmation of the order, the success of the order (Question 7); breaching of the order (Question 9); the response of the police (Question 10 & 11); and penalties for breach of the order (Question 12). Users were also asked about the extent to which police had also made use of the charge of assault in response to their complaint, and whether they were satisfied with the performance of police (Questions 13-17). Finally, users were asked for their view of the best way to prevent domestic violence, to themselves (Question 18) and to others (Question 19).

A supplementary questionnaire was administered to the sample of clients of the Crisis Care Unit. The administration of questionnaires to this sample in person (over the telephone) rather than by post made it feasible to seek additional information about the social background of the subject, the nature of her experiences of domestic violence and the extent to which she had sought and received legal, welfare and medical assistance (see Appendix 9).

2.5 The Final Samples

The methods explained above to obtain samples of welfare and legal workers, of police officers and users of S.99, produced the following numbers of completed questionnaires whose contents constitute the survey's findings.

2.5.1. Welfare Workers

a) Domestic Violence Committee: interviews were conducted with all thirteen members of the Domestic Violence Committee.

b) The Domestic Violence Action Group: completed questionnaires were received from four Committee members.

c) Women's Information Switchboard: two completed questionnaires were received.

d) Crisis Care Unit: completed questionnaires were received from nine Crisis Care Workers.

e) District Officers (Department for Community Welfare): twenty-three questionnaires were completed by representatives of District Offices.

f) The Shelters: eight questionnaires were completed.

2.5.2. The Legal Profession

a) Community Legal Centres - Three of the four legal centres completed five questionnaires.

b) The Legal Services Commission: five family lawyers and one duty solicitor completed questionnaires.

c) Law Society: eleven family lawyers completed questionnaires.

2.5.3 The Police

Wholly or largely completed questionnaires were received from 11 officers from Darlington, 13 officers from Pt. Adelaide and 18 officers from Holden Hill.

2.5.4. Users

Of eighteen domestic violence victims who indicated to Crisis Care workers a willingness to participate in the survey (during the one month survey period), only six finally consented to being interviewed.

Wholly or partly completed questionnaires were received from sixteen women residing in shelters.

3. IS S.99 REDUNDANT?: AN ASSESSMENT OF THE SUFFICIENCY OF THE CRIMINAL LAW TO DEAL WITH DOMESTIC VIOLENCE

In addition to, and quite apart from, the restraining order legislation, the criminal law provides a response to the violent or provocative person - which of course includes the lawful or de facto spouse. The most common criminal response to the person who commits or threatens to commit a crime against the person is the charge of assault.

The crime of assault takes a number of forms, depending on the degree of seriousness of the offending behaviour. Common assault requires nothing more than an unlawful display of force which causes the victim to believe that force is about to be used against her, coupled with an intention by the offender to create such a belief, and a perceived ability to carry out the threat. In other words, the mere threat of the application of force, if taken seriously by the victim, constitutes the crime of common assault. More serious forms of assault include the crimes of assault occasioning actual bodily harm, malicious wounding, and assault occasioning grievous bodily harm.

In view of the general availability of a range of criminal offences with which to charge the violent or potentially violent spouse, the need for a court order which forbids a person from behaving in a violent or provocative fashion perhaps is not immediately evident. Why have a court order restraining violent persons, which demands the time and effort of the victim, when the criminal law appears to deal with most contingencies? Why not standardise the law's response to the problem by making every complaint of domestic violence a criminal matter?

To question the need for the restraining order legislation is to begin this evaluation with its most basic challenge. Before proceeding to a comparative analysis of S.99 with other related laws, and before narrowing the focus on S.99 and examine its internal workings, it is essential to establish whether it serves any useful purpose. Is there a need for a civil response to domestic violence such as S.99 when there is already a range of criminal laws which are specifically designed to respond to violence?

3.1. Do welfare and legal workers regard the criminal law as sufficient to deal with domestic violence?

This assessment of the need for a civil response to domestic violence begins with the perspective of welfare and legal workers. In the course of surveying these two professional groups, a number of opinions were offered on the sufficiency of the criminal law to deal with domestic violence.

3.1.1. Welfare Workers

Two members of the Domestic Violence Committee pursued similar lines of reasoning in their discussion of the respective roles of S.99 and of the criminal law. Both were against a single interpretation of all domestic violence as criminal on the basis of the civil rights of the victim.

The first respondent contended that the legal solution to domestic violence lay somewhere between the criminal and the civil response. The reason given was this. Although the family was once regarded as private and sacred, it now was recognised to harbour violence which necessitated a public legal response. The recentness of this transition explained society's ambivalence about how to deal with violence in the family. Against this background of social change, a criminal response was thought not to be

appropriate in every instance. Other factors also thought to conduce to a flexible legal approach to domestic violence were the diversity of behaviour comprising domestic violence and domestic disputes and the uniqueness of the relations within each family unit. From a welfare worker's point of view, it was claimed each family has its own prognosis -- its own complex set of factors which generate conflict. A criminal justice response may be positively harmful in a variety of circumstances. For example, where a victim is unwilling to proceed against her spouse (for any of the several reasons discussed above), the police and the courts are obliged to go against the will of the victim if they are to enforce the criminal law uniformly in every case. This has the unwanted effect of redefining the police as an intrusive element which, in turn, is likely to deter victims from seeking their help.

To impose a criminal response in cases as these would be to deprive the victim the freedom to decide how best to deal with her circumstances. As a footnote to this analysis, the same repondent also noted that a criminal charge was not possible in every domestic dispute given the need for clear evidence of violence enabling the police to act.

Another member of the D.V.C. employed similar reasoning to maintain that a uniform interpretation of domestic violence as criminal would deny the victim the freedom to decide how to cope with a disputatious or violent spouse.

A third D.V.C. member offered a different perspective on the relationship between civil and criminal remedies for domestic violence. S/he argued for the provision of both approaches on the basis that they proscribed different types of behaviour and therefore performed different functions.

The argument was that "S.99 covers situations where persons are in fear and nothing has happened ... S.99 is preventative justice." However, "S.99 is not the remedy once the domestic violence has got to the assault stage". This Committee member saw the role of S.99 as strictly limited to the initial stages of violence, which are not always criminal.

A detailed commentary on the respective roles of S.99 and the criminal law was provided by a member of the D.V.A.G. Again the case was put that both responses are necessary. The basis of this argument was the need to respect the wishes of the victim who, at least in the first instance, was unwilling to proceed with a criminal charge:

> "I believe that some women who propose to continue to live with their spouses may be, initially, reluctant to have their husbands charged with assault and therefore may be reluctant to call the police if this is their only option. Further, there may be some women who, while reluctant to lay assault charges on the first contact with police, will be prepared to do this after having taken the prior step of taking out a restraining order."

The same person, however, expressed concern about the possible abuse of S.99: it presented a "soft option" to both victims and the police when the appropriate response to domestic violence was a criminal one. In cases of "real" violence, it was claimed, the only response was the full force of the criminal law:

> "Where there is evidence of an assault, a criminal charge should be laid by police. Where there is no obvious evidence of assault, it should be part of police procedure that women be informed of their right to press the assault charge and encouraged to do this before a restraining order is discussed."

The role of restraining orders, the same respondent argued, should be specific and restricted:

> "I am not totally opposed to restraining orders. Because they enable immediate imprisonment of men who break them, they are useful as a means of protection, in conjunction with assault charges. My concern is that they may be substituted for assault proceedings ... restraining orders should be used as a response to fear of future violence, not as a response to a violent crime which has already been committed."

Two other members of the D.V.A.G. were even more stringent in their appraisal of all domestic violence as criminal. They maintained that the due processes of the criminal law were entirely sufficient to deal with violence in the family. Accordingly the only obstacle to justice was the unwillingness of police to enforce the criminal law of assault. Restraining orders were not only redundant but positively harmful in that they diminished the gravity of family violence.

Members of the Crisis Care Unit and District Offices from D.C.W. did not offer comments on the relationship between S.99 and the criminal law. (1)

Three shelter workers considered the connection between S.99 and the criminal law. All were concerned about what they saw as the police preference for a restraining order rather than an assault charge, and the consequent failure of the police to treat as criminal incidents of domestic violence.

> "Restraining orders reduce the crime of assault to a 'domestic dispute' with all its accompanying firmly held myths."

The ultimate solution, it was said, was a change of attitude:

> "The assault that enables women to seek restraining orders is seldom viewed as a crime. When orders are breached and action follows, the men are charged with a breach rather than an assault. The impression we and the women get is that assault is not a crime; a breach of an order is."

3.1.2 Legal Workers

The idea that restraining orders provide a soft option for police who should, instead, be pressing criminal charges was also voiced by one respondent from a Community Legal Centre:

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(1) It should be noted that questionnaires were not directed specifically at this issue. The comments contained in this section were raised independently by a number of respondents who were particularly concerned about the role of the criminal law.

> "It seems that the S.99 procedure is open to abuse by the police where they use it instead of laying charges for assault. This is an easy way to delay effective action."

A markedly different proposition concerning the range of responses the law should offer to domestic violence was put forward by two other respondents from Community Legal Centres. Their suggestion was for a more moderate and conciliatory approach by Magistrates to disputing spouses:

> "Magistrates should have the power to order counselling and medical reports (without imposing restraining orders) or to refer cases for mediation. Mediation services (both for domestic and neighbourhood disputes) along similar lines to the New South Wales Community Justice Centres should be funded in areas other than Norwood."

The importance of counselling for parties to domestic violence was also stressed by two members of the Law Society. They suggested automatic referral by courts to community or other support services.

3.1.3 Discussion

Bringing together the views of welfare and legal workers on the sufficiency of the criminal law to deal with domestic violence, one finds a fundamental professional disagreement. On the one hand, a number of welfare and legal workers have taken the view that, ideally, the criminal law should represent only one of a number of legal options for the domestic violence victim. They maintain that the hand of the complainant should not be forced by a uniform or standard criminal response to all domestic violence. A second approach, diametrically opposed to this, is advocated by other professionals. The mere existence of a civil solution to domestic violence is said to be dangerous: it provides a "soft option for law enforcers".

How are these two views to be reconciled? We have, on the one hand,

the idea that a flexible approach to domestic violence is optimal, one which encompasses both civil and criminal remedies. It is argued in opposition to this, that a uniform and inflexible criminal approach to domestic violence is vital. With a view to assessing the respective merits of these two approaches, the view of the domestic violence victim is sought below.

3.2 Do users favour a range of legal responses to domestic violence or a uniform criminal approach?

The following accounts of domestic violence and of the operation of the law are based on the responses to questionnaires administered to clients of the Crisis Care Unit and to women residing in Shelters. The methodology employed and details of the samples of women who were approached and who responded are explained earlier in this Report.

3.2.1 Clients of the Crisis Care Unit

Of the sample of 18 women, only 6 could be contacted and/or were willing to participate in the survey. The smallness of the sample and the unique characteristics of each case makes it sensible to consider responses on an individual rather than a comparative basis. To protect the identity of respondents all are given pseudonyms.

Sue

Sue's assailant was her de facto spouse of three years. Sue describes the violence leading up to her complaint as "a course of conduct" which became more severe, more frequent and resulted in injury. The severity of her most recent injuries precipitated this complaint which was her first.

On the night of the attack, the police attended, arrested the defendant (presumably for assault) and detained him at the Port Adelaide jail overnight.

This provided Sue with an opportunity to pack her bags and leave. Sue describes these patrol officers as disliking "domestics" and as "abrupt". She claims that they endeavoured to discourage her from proceeding with the matter by asking her whether she "wanted to go on with it". Sue attended court the next morning at 9 o'clock to obtain a restraining order. She waited "bruised and embarrassed" in a crowded court for one and a half hours and walked out before her case came on - without an order.

Ruth

After 10 years of a non-violent marriage, Ruth was attacked by her husband. She reported the incident at a police station, attended court and received an interim restraining order. Ruth was unhappy with the terms of the order - that her husband should refrain from contacting or molesting her. She considered this to be too drastic a reaction to the incident.

Ruth became increasingly anxious about the plight of her husband. She was concerned about his business problems and about his being threatened by police. She decided to withdraw the order.

Reflecting on her experiences with the law, Ruth maintains that she was "pushed into a course of action prematurely". She had taken the advice of a young, inexperienced D.C.W. officer (when applying for benefits), who failed to offer any alternative to a restraining order. The police to whom she reported the incident, she says, also "pushed" the order too soon, failing to explain its full implications.

When asked how she would advise another victim of domestic violence, Ruth suggested that they should "get their emotions together first" and not apply

for a restraining order immediately. She favoured the parties meeting with an intermediary as well as independent counselling for both parties. Restraining orders were counter-productive, Ruth claimed, if they prevented the parties from speaking to each other. Instead the orders should allow for "meetings with supervision so things can be worked out".

Helen

Helen was married for 26 years. After 3 years of unemployment due to back injury, her husband threatened to "smash up the house and kill the family". He warned the police of his intentions, the police failed to respond, and he proceeded to put his plan into action.

Helen fled, with her children, to a police station. There the police were "very helpful". They "took down" her account of the incident and advised her to attend court the next morning. They also informed her that her husband could be charged with assault but she opposed this idea.

Helen was granted a restraining order requiring her husband to vacate the premises for a month. She regards the restraining order as a success. In fact her husband "co-operated so well" that she decided to have the order revoked.

Janet

Janet has a violent 16 year old son. She describes his offending behaviour as "constant physical and psychological harassment".

Janet sought help at a police station after one attack. There a middle-aged police sergeant was "very helpful" and encouraged her to take out a

out a restraining order. A younger police constable was "not very keen".

At the court hearing, the Magistrate issued an order on the basis of the physical violence. At a second hearing the order was confirmed.

Although Janet was unhappy with the failure of the order to proscribe what she termed "mental abuse", she reports that her son has not touched her since. Her advice to other victims of domestic violence is to take out a restraining order.

Julie

Julie was hospitalised by the attack which precipitated her complaint against her husband. She has been assaulted periodically for 5 years. The ill-health and unemployment of her spouse, she says, contributed to an increase in the frequency and severity of these attacks.

Julie has taken out "two or three" restraining orders naming her spouse as the respondent. Her first order was obtained with the assistance of a lawyer. She describes it as "quite flimsy" because it did not require her spouse to stay away from the premises. She decided, accordingly, to revoke the order.

Julie later obtained a second order, more detailed in its conditions. It also proved unsatisfactory as it failed to proscribe the sort of behaviour which concerned her - that is physical abuse. Julie decided, therefore, "to drop" this order too.

Julie was dissatisfied with the performance of the police. When she

reported her husband to the police for breaching one of the orders, Julie alleges that the police did nothing; they simply helped him to pack his belongings. Another time, between orders, Julie reported her husband to the police for assaulting her, but the police were unwilling to press charges without an undertaking that she would attend court to give evidence.

To complete her story, Julie has since reconciled her differences with her spouse, after his being charged twice for assault for other incidents of violence. He is now on a bond. Her advice to other victims of domestic violence is not to get a restraining order (they are "ineffectual - not followed through") but to press for criminal charges ("the impact of a charge is much greater").

Mary

Mary first took out a restraining order against her son in 1982 after he attacked her. The order prescribed that her son not communicate with her in any way. Thinking this was too harsh, she "took him back". Again he was violent and again she called in the police who "let him go", but "let the order stand". She continued to "breach" the order herself by agreeing to have him back. He was violent a further time, was arrested and charged with breaching an order. He hired a lawyer to present his case and "got off".

After the most recent incident of violence (seven weeks ago) Mary called in the police but asked them not to charge her son. She says that they could not have charged him with a breach of the order anyway because he was living with her at the time. The police let him go.

Mary spoke favourably of the police. She maintains that she has had contact with several police officers and that they have done everything she wanted.

Asked about her advice to another victim of domestic violence, Mary favoured the use of restraining orders. She cautioned, however, that without an adequate understanding of their function, women would probably find restraining orders more impeding than protective. It should be made clear to potential users that the terms and duration of orders can vary. In her case, neither aspect of her orders had been suitable.

3.2.2 Women in Shelters

Sixteen women from twenty one metropolitan and one country shelter responded to the questionnaire. Of these, thirteen had obtained an order and seven had experienced a breach of an order.

Again, the non-uniformity of these women's experiences militated against a comparative analysis of findings in purely numerical terms. Indeed it was felt that a search for the statistical significance of responses would prove more misleading that clarifying. Accordingly an alternative approach is adopted here. The accounts of these women are treated as individual case studies. Their answers are regarded less as an indication of any particular statistical trend than an expression of the diversity of victims' experiences of the processes of the domestic violence laws.

Three women, A, B and C, for various reasons failed to obtain a restraining order and therefore had few comments to offer about the legal process. 'A', having called the police, later "backed out" because she did

not think she could "come to terms with everything that way". At the time of the incident, however, she had urged the police to charge her attacker with assault. The police refused as she was unable to produce evidence of physical injury.

'B' claimed that she had applied for a restraining order but that her lawyer bargained in court with her assailant's lawyer resulting in a mutual agreement not to proceed with legal action. She expressed dissatisfication with this result.

'C' sought a restraining order through the police. The matter did not get to court. 'C' says she asked the police to charge her attacker with assault but the police refused. Although 'C' maintains that at the time of her complaint she displayed clear signs of injury, the police reasoned with her that an assault charge would only make the other party more violent.

'D' took out several orders naming her husband but none were served. She was advised that they could not be served because her husband refused to accept them. 'D' describes her husband as "a perfect gentleman to everyone else but behind closed doors he is an animal". His violence, she says, has caused one of her children to commit suicide and another to attempt it.

'D' was highly critical of the police. She claims that at one stage her husband pursued her to a shelter and abused her again, but that when she reported this to the police they simply "told him to go home and have a good sleep". At her second attempt to take out an order, 'D' says that the police delayed acting until her husband had left because of their fear of him. 'D' maintains that eventually the police did charge her husband with assault but that he received only a suspended jail sentence.

'E' to 'I' succeeded in obtaining enforceable orders (orders that were served). Their stories all differ.

'E' was satisfied with both the response of the police and of the court. She "rang the police; they came to take a statement and were very efficient". The restraining order, she says, seems to have succeeded in restraining her assailant.

Upon the advice of the police, 'F' took out a restraining order. She says that her husband nevertheless has continued to harass her over the telephone. 'F' claims that he has done this in the presence of the police who only tried to talk him out of "a violent mood", while she remained terrified. 'F' has asked the police to charge her husband with assault but was told that "it would not stick" as it was "a private offence" and there were no witnesses.

'G' went to a police station to obtain a restraining order. She found "the police weren't at all sympathetic", that "it seemed to be too much trouble for them" and that "they tried to talk me out of it". She found this embarrassing. The police, she says, did not charge her attacker with assault, although she displayed clear signs of injury at the time. When asked about the effectiveness of the order, 'G' simply replied that "he can't touch me because I am in a shelter".

In order to obtain an order, 'H' rang the police and gave a statement. She describes the police response at this stage as "brilliant". 'H' obtained an order which was served on her assailant. 'H' claims that the order has succeeded in restraining her assailant.

'I' attended a police station to obtain an order. She describes the police as "very cooperative". 'I' subsequently received an order which was served on her assailant. 'I' was critical of the police over a previous incident. Then a neighbour called the police on her behalf. Although 'I' was extensively bruised and urged the police to charge her assailant, the police refused to do so. They advised her that the best thing she could do was to pack her bags and leave. This notwithstanding, 'I' claims that the restraining order has been successful in that it has made him "more careful".

'J' - 'P' experienced breaches of their restraining order. Again, their stories differ markedly.

In a very brief response, 'J' stated that her restraining order had only succeeded in making her assailant "more stupid". 'J' reported him for breaching the order and expressed satisfaction with the police response.

'K' was unhappy with the police response at all stages of the restraining order process. She applied for an order at a police station and claims that "the police seemed to treat the whole thing as a boring, useless issue". Although her husband was hard to locate, the order was eventually served. 'K' maintains that the order made her husband more violent. She reported him for breaching the order but the police only "stood and watched until he left the premises". Although she asked the police to charge him with assault, they refused to do so.

'L' asserts that her order made her assailant more violent. She reported him to the police for breaching the order. The police apprehended him and "locked him up". She describes the police response as "good".

'M' described the police to whom she complained domestic violence as "uncaring" and "obstructive". 'M' succeeded in obtaining an order but found that it made the other party "verbally aggressive". She reported him for breaching the order but said the police did "very little". She urged the police to charge him with assault but, although she claimed to show clear signs of injury at the time, they refused to press charges.

'N' also expressed satisfaction with the police response. She applied for an order through the local police station and "was told I was wasting my time with a S.99 because it wasn't worth the paper it was written on". 'N' says that she was made to feel that she was wasting the time of the police. Eventually 'N' managed to pursue an application for an order through Angas Street Police Station "where the woman police officer was very helpful"

'N' alleges that when it came to the service of the order, her assailant approached the police and attempted to dissuade them from proceeding. The police contacted her by phone "while he was with them and said that I should reconsider my actions, which I refused to do". 'N' goes on to claim that "they still didn't serve the order even though he was in the room". As a result, it took the police a further two weeks to serve the order.

After service, 'N' declares that the order had no deterrent effect on her husband's behaviour. He breached the order, she reported it to the police, but her husband "had left by the time they arrived". The police, she says, urged her "to be more reasonable". The police did not proceed with an assault charge although, according to 'N' her front teeth had been knocked out and her son had witnessed the incident.

At the initial stage of receiving advice and seeking a restraining order, 'O' maintains that the police treated her well. 'O' says, however, that the restraining order did not help. It only made her de facto spouse "more mad". When he breached the order, the police, she says, did "absolutely nothing", even though "they were present when my ex de facto was harassing me". Although 'O' requested the police to charge her de facto with assault, and despite the presence of witnesses, 'O' says that the police refused to press charges.

When 'P' sought a restraining order at Angas Street Police Station, she found the woman police officer to be sympathetic. 'P' altered her view of the police later when she reported a breach of her order:

> "They warned him the first time but did not arrest him ... they were more sympathetic to my husband than to my situation."

A second breach of the order left 'P' badly injured:

> "I had my front teeth knocked out and my glasses had broken into my right eye".

And yet, 'P' has it, no police action was taken as 'P's husband had left before the police arrived.

All survey subjects were asked for their thoughts on the best way of stopping their domestic violence. The questionnaire suggested a range of options: a) counselling for him; b) a restraining order; c) charging him with a criminal offence/arrest; d) separation; and e) other. Subjects were also asked what advice they would give to another woman experiencing domestic violence.

There were two types of responses. One solution, favoured by six women, was separation from the other party and possibly a civil action. Three of these women seemed to prefer a graduated response to violence. Hence, first try "counselling for him", if that doesn't work,

separation, and then "maybe a restraining order" after separation, if he continues to be violent. Similarly, "separation first" and "if he doesn't stay away a restraining order and if that doesn't stop him, then arrest". A third subject suggested approaching a women's shelter, counselling for him, a restraining order, and separation. Two women recommended a restraining order and separation; one woman recommended separation only.

A second solution put forward stressed the value of the criminal response. Within this group of respondents, however, there was a marked diversity of opinion. Four women favoured a multi-faceted approach which included separation, counselling for him, as well as a criminal charge. One of these women favoured the use of a restraining order as well. Three women suggested a criminal charge and separation. Three other women urged an even stronger response. Their comments were "lock him up for life", "kill him" and "put him down like a dog; he will be violent for ever".

3.2.3. Discussion

The preceding accounts of victims of their experiences with the law clearly provide a good deal more than a commentary on the sufficiency of the criminal law to deal with domestic violence. Of perhaps the greatest additional interest is the range of critical appraisals of the performance of the police. These, and other aspects of these victims' stories, will be taken up later in this Report.

For the moment, the concern is to assess the respective roles of the criminal and civil law in relation to domestic violence and to query the redundancy of the latter. The relevant questions are, Is a civil response needed? Can the criminal law do the job of S.99?

The small sample of Crisis Care clients highlights, in particular, the caution employed by some victims in their approach to the law. Ruth continually expressed concern about involving her husband in a police matter and eventually withdrew her restraining order. For other victims, she suggested counselling rather than legal action. Helen specifically opposed the police suggestion that her husband be charged with assault. And when her husband "co-operated" with her restraining order, she had it revoked. For several years Mary was uncertain about the wisdom of (having taken out a restraining order), repeatedly breaching the terms of the order herself by agreeing to house her son. For these three women at least, it would appear that a criminal response could be regarded as too extreme.

The circumstances and hence the needs of Janet and Julie were different. Janet supported the use of restraining orders. Julie positively preferred the use of criminal charges.

On the whole, the women from the Shelters opted for a criminal solution to their problems. While three women expressed satisfaction with their restraining order, eight women wanted their partners to be charged with assault. When asked specifically to advise other victims of domestic violence, three women advocated in successive stages counselling in the first instance, then a restraining order and later an assault charge only if a conciliatory approach proved unsuccessful.

With the shelter sample who favoured the use of the criminal law, there was nevertheless a stated preference for a range of legal options. Only a small minority favoured a uniform forceful criminal response to their assailants ("lock him up for life").

The findings of our victim survey demonstrate clearly that the answer to our principal question, Is the criminal law sufficient to deal with domestic violence? must be answered in the negative if we are to take account of the wishes of the victim. While the criminal law is approved by some women, for others it is regarded as too drastic a response.

In summary, from these accounts of domestic violence there emerges a range of needs demanding a range of legal and non-legal responses. While some women prefer counselling or mediation, others want a civil court order (a restraining order), while still others favour the strongest response provided by the criminal law.

It could be said in reply to these demands of victims for a flexible legal approach to domestic violence that the victims themselves do not know what is best for them. Recall that in an earlier section, the view was put by certain welfare workers that anything less than a criminal approach to domestic violence is an undesirable "soft option". To resolve this debate, an endeavour is made below to explore the motives and reasoning of women who are hesitant to employ the full force of the criminal law.

3.3. Are we to take seriously the victim who wants less than the full criminal response to domestic violence? Professional opinions on the equivocating victim.

In the course of surveying welfare and legal workers, a number of respondents, of their own initiative, sought to explain the considerable tensions inhering in the decisions of domestic violence victims to invoke the law. They discussed what they saw as the inevitable uncertainties surrounding the decision to involve one's spouse in legal processes.

These comments, of professionals, presented below serve to explain, and perhaps validate, the concerns of domestic violence victims who appear equivocal about legal solutions to their domestic problems.

3.3.1. Welfare Workers

One member of the D.V.C. expressed particular concern about women's uncertainty about pursuing legal remedies. S/he observed that many women who experience violence or intimidation in the home do not want to separate permanently from their spouses. These women are more interested in receiving counselling which will allow their marriage to survive. It was the view of this respondent that even restraining orders were an extreme response to marital discord. In taking out an order, a woman was indicating that she had had enough - that she had reached the point of no return. S.99, s/he maintained, did not allow the relationship to continue. For this reason, it was the practice of this welfare worker not to advise a S.99 application unless the client wished to terminate the relationship. The law, she maintained, was not the only way to protect women from violence. Other approaches included developing women's self respect and teaching them to protect and to defend themselves.

Women who did not want to engage the processes of the law were also discussed by a second member of the D.V.C. A variety of reasons were offered for the unwillingness of women to invoke their legal rights against a violent spouse. Some women were scared to be alone or were concerned about the impact of a separation on children. Others believed that the periods during which their spouse was pleasant off-set the occasional bouts of violence. Some were ashamed to reveal that their marriage was not a success. They felt that any failings of the family reflected poorly on

themselves. This tendency was exacerbated by husbands casting the blame for any failures within the marriage on the wife. Still other victims were sceptical about the value of the law. Some feared reprisals. Some had been brought up in a violent home and had learned to accommodate violence. Some had experienced institutional life and therefore chose to avoid the agents of the law, either in the form of the police or welfare workers.

The conviction of women that they are responsible for the success of the marriage was identified by another D.V.C. member as a reason for inaction. Women who are victims of domestic violence, it was claimed, come from "stereotyped" marriages. These women feel immense pressure to succeed as wives and mothers. Also, they have been trained to see themselves as dependent.

Another D.V.C. member characterised domestic violence as a cycle of behaviour which inevitably raised doubts for the victim about the wisdom of destroying the relationship. S/he maintained that an attack on the wife would typically be followed by a period of remorse on the part of the husband which would, in turn, cause the wife to reconsider her decision to leave. She would, at this stage, see a new sympathetic side to her husband. Thus the relationship would re-establish itself and continue a peaceful course, often without intervention, until the next bout of violence, when the cycle would begin again and the pattern would repeat itself.

A fourth member of the D.V.C. was aware of a number of cases of domestic violence in which the woman refused to proceed with a S.99 application because she considered this too extreme a response, preferring to deal with the matter privately. This same Committee member believed that S.99 had increased the likelihood of women taking legal action against spouses because it did not,

in the first instance, label him a criminal. S.99 was seen as less punitive and therefore more attractive than the criminal response.

A member of the Women's Information Switchboard also observed that women responded well to the fact that restraining orders did not start their life as criminal matters:

> "This, in itself, eases the conscience of the victim who is reluctant to take criminal action against the spouse or father of her children."

3.3.2 Legal Workers

Two respondents from Community Legal Centres regarded restraining orders, let alone the criminal law, as inappropriate for some women. They urged that restraining orders be employed judiciously since "whenever used, they often make the situation unnecessarily adversary". Further, "they will usually destroy the chance of effective counselling or treatment for the perpetrator". The argument here was that certain women were right to hesitate in using even the civil law. When counselling treatment and mediation would be effective, these were better options.

3.3.3 Discussion

The above observations of welfare and legal workers on the plight of victims who are unsure of the wisdom of employing legal processes strengthen the case for a multilateral approach to domestic violence. It appears that, for at least some women, any sort of legal intervention is regarded as extreme and inappropriate. For such women, a standard criminal procedure for every complaint of domestic violence would be unwelcome. If reporting domestic violence meant an automatic criminal charge, the incentive for remaining silent would be strong.

3.4 Does the literature assist in a determination of the sufficiency of the criminal law?

A further source of information on the legal needs of domestic violence victims and, more particularly for our purposes, on the sufficiency of the criminal law, comes from an extensive literature on the subject. The following review of the literature is necessarily selective. It serves only to draw out some of the key themes in the debate about the respective contributions of criminal and civil approaches to domestic violence.

3.4.1 The case for civil court orders

According to some writers, the case for retaining a civil response to domestic violence has a number of bases. One is therefore not obliged to rely exclusively on arguments about the wishes of the victim, although this is inevitably a prime concern. Firstly, it has been noted that civil court orders are easier to obtain than a criminal prosecution, say for assault, because of the reduced standard of proof. The restraining order starts its life as a civil remedy which means that the facts alleged by the victim or complainant need only be established on the balance of probabilities. All criminal offences, however, must be proved to the satisfaction of the court beyond reasonable doubt.

The practical import of the differing standards of proof when the offending behaviour is domestic violence has been analysed by Penny Stratmann in a paper presented to the 1981 National Symposium on Victimology:

> "There may be an overt assault but, as so often is the case in domestic assaults, it happens without witnesses and injuries are explained away by the offender who denies all. The police are reluctant to proceed. The criminal standard of proof is too high to be of use in such a private domain. No charge, no arrest: the victim remains at risk". (1)

A second and related reason for the provision of a civil response to domestic violence is the nature and range of the behaviour one is seeking to eliminate. Whereas the criminal law is geared to deal explicitly with anti-social activity which either poses or threatens to pose a clear threat to the victim, domestic violence is not so susceptible to classification and prohibition. At one end of the continuum of the behaviours comprising domestic violence are subtle forms of intimidation and harassment which fall short of assault and are therefore not amenable to the criminal law. (2)

The plight of the victim of intimidatory tactics has also been documented by Stratmann:

> "These incidents tend not to be of the spectacular kind that readily attracts police or other intervention. If the victim is adequately intimidated, the aggressor may not even have to resort to actual violence very often and when he does, he knows how to leave no marks. The victim lives in a pervading, oppressive atmosphere, helpless because she has no confidence in legal intervention. Indeed, there is an implicit understanding between parties that the victim is unable to complain ... I do not think we adequately assess the debilitating effect of living in fear and uncertainty ..." (3)

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(1) P. Stratmann, "Alternatives to the Criminal process for the Domestic Violence Victim", in P.N. Grabosky, ed., National Symposium on Victimology, Aust. Inst. of Criminology, Canberra, 1982, p. 319 at p.320.

(2) It is in the nature of the criminal law to define and prohibit forms of behaviour which are sufficiently specific not to threaten to criminalize all forms of human activity resulting from social conflict nor unfairly infringe the civil liberties of the individual, and which are capable of proof.

(3) Stratmann, op. cit., "Alternatives to the Criminal process for the Domestic Violence Victim", p.320.

A further reason for the provision of both civil and criminal responses to domestic violence is to give victims a choice. In the 1981 Report of the Women's Adviser's Office it was noted that:

> "The literature suggests that fear of retaliation is probably one of the major reasons why victims withdraw from prosecutions for assault. Their reasons include a belief that the criminal law is too harsh and alien a sanction, or worry that the breadwinner may be imprisoned or lose his job". (1)

There are still other reasons for victims of domestic violence hesitating to press criminal charges. The married victim of domestic violence who finds her husband in prison stands to suffer considerably herself. The dilemma of the victim of domestic violence who still lives with, or who is financially dependent upon, her assailant is described by Lenore Walker:

> "If she is economically dependent upon him, and he may lose his job, then she has no support. Even in those cases where the woman has financial resources, a large fine may be more than the family's finances can stand". (2)

Walker identifies still another reason for a woman hesitating to define her spouse's behaviour as criminal.

> "Social embarrassment caused by court proceedings, especially if the man is found guilty, is another deterrent to following through on criminal charges". (3)

Some argue that the equivocation of the victim of domestic violence is itself a powerful reason for not proceeding with a criminal charge. Although

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(1) Domestic Violence Committee, Report and Recommendations on Law Reform, op. cit., p.16.

(2) Lenore E. Walker, The Battered Woman, Harper and Row, New York, p.216.

(3) Ibid, p.216.

recent changes to the Evidence Act means that spouses can be compelled to give evidence against each other in criminal prosecutions, the reality of the situation is that a spouse who is an unwilling or hostile witness, and perhaps the only witness, can destroy the case against her assailant. There is also an important ethical dimension to the problem of coercing the victim of crime to proceed with her complaint and give testimony.

3.4.2 The case for the criminal law

The various arguments for the provision of a civil remedy for victims of domestic violence do not, in themselves, diminish the importance of the provision of the criminal response. In its report on the law, the Women's Adviser's Domestic Violence Committee urged that the criminal law "remain as the epitomy of society's response to violence, where this occurs between non relatives or within the family". (1) While recommending the amendment of S.99 of the Justices Act, in order to augment the power of civil court orders to keep the peace, the Committee remained adamant that "only a rigorous prosecution policy will convey the unacceptability of physical violence in all contexts". (2)

Separate but complementary roles for civil court orders and the criminal law were identified by the Committee in its statement that:

> "there are many situations where preservation of a relationship is no longer an option or even an issue ... [then] excuses for inaction are quite invalid". (3)

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(1) Domestic Violence Committee Report, op. cit., p.44.

(2) ibid

(3) ibid

The case for the criminal response to domestic violence has been put even more forcefully than this. There is a school whose basic tenet is that the criminal law is appropriate in every case of domestic violence. For example, the Australian criminologist, Jocelynne Scutt, has argued against the creation of special rules for crimes occurring within the family, maintaining that they thereby negate or mitigate the criminal element of violent acts" (1). This was also the view taken by certain shelter workers and victims surveyed above.

Perhaps the clearest demonstration of the value of the criminal response in cases of domestic violence comes from an experiment conducted by the Minneapolis Police Department. The research design was simple. Different members of the Department were assigned one of three responses to simple assault between lawful and de facto spouses: arrest, "advice" (which ranged from warnings to referral for counselling), or informal mediation (which included an order to the suspect to leave for eight hours). The behaviour of suspects so dealt with was examined for the 6 months following Police intervention. The project's findings were dramatic:

> "... the arrested suspects manifested significantly less violence than those who were ordered to leave, and less violence than those who were advised but not separated" (2).

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(1) Jocelynne Scutt, has published extensively on the subject of domestic violence and has consistently put this case. Her most comprehensive study of domestic violence is documented in Even in the Best of Homes: Violence in the Family, Penguin, 1983.

(2) Laurence, W. Shernan and Richard A. Berk, "Police Responses to Domestic Assault; Preliminary Findings", A Police Foundation Working Paper.

The case for employing the criminal law in the domestic arena can also be made on the basis of its symbolic function. J. Willis, at the National Symposium of Victimology, argued from this position:

> "As a matter of general policy, it seems to me that Police should treat all assaults and violence which occur between separated couples as prima facie non-domestic. Such assaults should be seen as more akin to assaults upon a stranger rather than extensions of domestic conflict". (1)

To Willis, the law has an important role to play as community educator in the domestic violence sphere. It should serve to condemn publicly any violence between couples:

> "the whole criminal justice process and, in particular the trial, is seen as a public ritual denunciation of behaviour considered abhorrent to the values of the community".

The vital role of the criminal law in condemning violence within the family is underlined by Willis by what he perceives to be the equivocation of members of the community about the opprobium which attaches to such behaviour:

> "The enactment of legislation clearly setting out prohibited behaviour and the enforcement through the criminal courts of this legislation can serve to determine and then fix for the community what behaviour will not be tolerated .... when the community lacks a consensus morality the law tends to become the community's morality". (2)

3.5 Conclusion

The necessary conclusion to be drawn from this discussion of the respective roles of the criminal and civil law in dealing with domestic violence is that

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(1) J. Willis, "Exemplary Prosecution of 'Domestic Violence' Offenders", in P.N. Grabosky, ed., National Symposium on Victimology

(2) Ibid.

both approaches are essential. Welfare and legal workers recognise the tensions inhering in the victim's decision to invoke the law. Victims themselves display a wide range of legal problems and legal needs. The criminal law alone is therefore not sufficient.

It does not follow from this that the criminal law is unimportant as a legal response to domestic violence. On the contrary, it is the only appropriate action in cases where the victim is endangered by the behaviour of another person and seeks immediate protection. There are indications that the quick and efficient enforcement of the criminal law is an effective deterrent to further acts of violence. Moreover, as a matter of principle, when victims of violence complain of assaults of a domestic nature, it is vital that the law treat them with equal gravity as assaults between strangers.

RECOMMENDATION 1

The principal finding of this initial investigation into the need for restraining orders (given the range of criminal offences already governing all forms of violence) is that both court and criminal approaches to domestic violence serve important purposes.

The key question posed by this section must therefore be answered in the negative. S.99 of the Justices Act is not redundant.

Accordingly it is recommended that S.99 be retained as a civil response to domestic violence.

4. IS THE RESTRAINING ORDER AN IMPROVEMENT ON THE PEACE COMPLAINT?

The largest question that can be put in any evaluation of a law is, Is that law needed? or Is it redundant? In the first section of this Report this question was addressed and the response was firmly in the positive. It was concluded that S.99 serves an important role alongside the criminal law.

The second question to be posed here narrows the focus slightly. Having established that an evaluation of S.99 can be got off the ground - that there is a need for such a law - the next concern is with the contribution of S.99 as a relatively new civil remedy for domestic violence. This evaluation concerns a law with a life of less than three years. It is therefore pertinent to find out whether it is a better civil remedy than its predecessor.

The restraining order legislation was designed to replace the peace complaint. The nature of the changes brought about by the amendment to S.99 was explained earlier in this report. All professional persons administered questionnaires (1) were asked specifically to compare the old and the new law. Their responses, presented below, help to determine whether S.99 amounts to a reform in any useful sense.

4.1. Welfare Workers

Only two members of the Domestic Violence Action Group had experienced the transition from the old to the new law. Both regarded S.99 as an improvement. One stated that s/he used the new section "to point out to men that they could no longer assault their wives - that it is in fact against the law." The other maintained that there was a greater likelihood of action being taken. The same respondent also believed that, for some cases, restraining orders were a more effective deterrent. Although respondents from the Women's Information

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(1) Semi-structured interviews were conducted with members of the Domestic Violence Committee.

Switchboard preferred S.99 to the peace complaint, this was largely a function of the perceived inadequacy of the old law which was described as "totally useless".

All members of the Crisis Care Unit responding to the questionnaire considered restraining orders an improvement on the peace complaint. Some regarded the improvement as only slight, maintaining that the orders were easier and speedier to obtain than peace complaints. It was also observed that "clients used to regard the old peace complaint as useless because Police seldom intervened and the offender remained at large". Other comments were more positive:

- "The new law has allowed the police to remove a violent spouse from the scene and to initiate an order application to be heard the next morning."
- "Restraining orders allow speedier action and allow the police to act promptly, rather than going back to court."
- "Restraining orders provide more positive protection for victims. The assailant can be arrested immediately upon the breach and police are assisting the women to apply for protection."
- "The restraining order is potentially a more immediate, practically effective remedy but it depends on a) the complainant understanding how to use it and b) the police response."

The last respondent added the caveat:

> "I am not convinced that restraining orders are working yet because of a) and b)."

Sixteen of the twenty District Officers who gave an opinion about the relative value of restraining orders and peace complaints maintained that the law had improved. Five of these officers said the new law had "more teeth". Restraining orders were seen to be more freely available and the police were thought to be more willing to encourage their use. Restraining orders were also regarded as "more specific", "the circumstances easier to establish" and "the process of obtaining an order much more simple than before". The fact that police can now take immediate action upon a breach "without further court action having

to be taken by the client" was seen to make them "potentially easier to enforce". One District Officer who favoured the new law, however, saw the improvement as marginal "because although the process of instigation is quicker, the end result appears the same".

The four District Officers who could see no improvement suggested that this was a function of the administration and the enforcement of the law, rather than the drafting of the section itself:

> "The new law has the potential to be more effective and on paper appears to address the problem. However, in reality, the new system does not appear to be working."

It was also claimed that reforming the law did not improve the protection of victims of domestic violence. Rather:

> "It is the willingness and the time available on the part of agencies involved that in the end offers some real feeling of security or protection for those at risk."

The distinction between the theory and the practice of the law was also considered by the shelters. Although it was generally felt that peace complaints were of little value, the real potential of restraining orders was thought not to have been realised:

- "S.99 seemed an improvement in terms of the legislation. However, reality proves otherwise."
- "Restraining orders provide police with a power of arrest, but various interpretations hinder action being taken at times."

One shelter co-ordinator went further than this. S/he argued that restraining orders were positively detrimental to the victims of domestic violence:

> "There has been no increase in the protection of women and children. It has encouraged inappropriate Police and community attitudes towards domestic violence in that it reduces the crime of assault to a 'domestic dispute' with all of its accompanying firmly held myths."

Other shelters thought S.99 compared favourably with the old law:

- o "It is easier to obtain; it provides a power of arrest (even if it is only overnight)."
- o "It is easier to take out."
- o "Immediate action by police was not even possible before."
- o "Restraining orders can be put into effect much quicker."

4.2 Legal Workers

Only one respondent from Community Legal Centres had experienced the law prior to the amendment of S.99. Again, the practice rather than the theory of the law was challenged.

> "Many more women have become familiar with the restraining order as they believe it has been designed to protect them. However this service in particular has had difficulty with the Police in having restraining orders issued and enforced."

All respondents from the Legal Services Commission regarded S.99 as an improvement. Various reasons were given: "peace complaints were useless"; court orders can now be obtained ex parte; police are now empowered to arrest; and the penalties for breaching a restraining order are more of a deterrent. One Commission lawyer regarded the whole restraining order process as a change for the better:

> "In terms of providing protection for parties in a domestic situation the restraining order legislation is a definite improvement over the peace complaint system. It allows for immediate action to be taken by the police; for protection to be given to the complainant notwithstanding that it is on the basis of prima facie evidence - without undue prejudice to the person against whom the complaint is made; and restraining orders can be seen by the public to have an immediate effect if it appears, on the face of it, that the order has been breached."

All lawyers from the Law Society who compared the old and new laws regarded restraining orders as an advance on the peace complaint. Some based their answers

on the deficiencies of the peace complaint:

- o "Peace complaints were rarely taken seriously by litigants or the court."
- o "In my experience defendants ignored peace complaints."
- o "The peace complaints system is predominantly useless."
- o "Peace complaints were hopeless. I didn't recommend them as they were unenforceable."

Several Law Society lawyers regarded the improvement as only minimal for a variety of reasons:

- o "Restraining orders are a little easier to enforce and the person issuing the restraining order is not so easily forced into giving undertakings herself or himself."
- o "The advantage is that, to a small extent, police are more willing to become involved in 'matrimonials' if it is a breach of a restraining order rather than another 'ordinary' row."
- o "Restraining orders are better for the alleged victim. Except they still leave the discretion with the police to prosecute. Without their assistance a legally unrepresented person is often left floundering."
- o "There is a marginal improvement on the peace complaint system. There is just far too much lip service given to violence upon spouses, legal or de facto."

Still other lawyers regarded restraining orders as significantly better than peace complaints:

- o "They are faster and more efficient."
- o "My clients seem to regard the restraining order system as more effective."
- o "There is more teeth in the breaches of orders. The procedure seems to be somewhat more streamlined to get a matter on."
- o "The power of arrest causes defendants to treat restraining orders with more respect."
- o "Restraining orders are substantially better. They have more teeth when used swiftly and effectively."

4.3. The Police

Ten of the eleven Darlington officers responding to the questionnaire considered the restraining order legislation an improvement on the peace complaint (Question 5). The eleventh said the question was not applicable. Seven officers gave reasons for their preference for the new law along the following lines:

> "As police officers we hardly ever knew if a peace complaint was taken out. We could only advise victims what to do. Now at last, we can take positive action."

Two officers claimed that the new order succeeded in restraining violent persons:

- "A threat of immediate police/court action seems to stop/quieten down a lot of domestic arguments."
- "S.99, when implemented, defuses a situation by getting the offender out of the home."

Another officer favoured restraining orders because of the increased choice they gave the victim:

> "Before restraining orders there was no alternative for victims of domestic violence other than criminal charges. Some were very reluctant to charge their partner. Others did not have sufficient evidence; for example harassment was the only offending behaviour."

Twelve of the thirteen Port Adelaide police preferred the new law. (The thirteenth did not respond.) The opportunity "to take positive action" when a person complains of domestic violence was given as a reason for this preference by nine officers. For example:

- "Police are now involved from the beginning of the application and records are kept at the Restraining Order Unit which are readily accessible to the police."
- "We can take immediate action (when the party is in possession of an order) instead of referring the matter to court and not resolving the immediate threat of violence."

Three officers referred to the extended options of the victim - above and

beyond those offered by the criminal law. Hence:

- o "Instead of having to find a specific offence at the time, a history of harassment, threats or violence can be taken into account. S.99 orders cover a heap of things that specific laws don't."
- o "S.99 gives power and control over situations which may occur in the future."
- o "They offer a better alternative to the victim."

Fifteen Holden Hill officers preferred restraining orders to peace complaints. Two said S.99 was not an improvement. One officer indicated that the question was inapplicable.

Several advantages of the new law were identified by Holden Hill police. It was thought to have a positive deterrent value; it gave police the power to take "immediate" and "positive" action; people were now "less hesitant to initiate orders"; and the whole process was "quicker and more efficient". Of the two officers who objected to the new law, one thought that obtaining an order took too long to be of any use. The other officer believed that "people still ignore orders and that "complainants allow offenders to re-offend".

4.4. Discussion

Among welfare workers responding to the questionnaire, the restraining order legislation is almost overwhelmingly regarded as an improvement on the previous law. The peace complaint is described as "hopeless". The new method of obtaining court orders is said to be quicker and more efficient; the complainant's case is considered easier to establish; and the power of arrest is thought to give the new law "more teeth".

All lawyers say the new law is better. Again, the peace complaint is described as useless. The new restraining order process is also said to be "more efficient" and to have "more teeth".

On the whole, the police also agree that the new law is an improvement

on the peace complaint system. The police observe that they were not, in fact, involved in the enforcement of the previous legislation. With the restraining order, the police are now able to take "positive action". Restraining orders are viewed as a "positive deterrent". Again, they are said to be quicker and more efficient.

4.5 Conclusion

In summary, the responses of welfare workers, lawyers and police indicate clearly that the amended S.99 is regarded as vastly better than the peace complaint which is consistently described as "useless". The professional view of S.99 is that it does represent a significant law reform.

5. IS S.99 BETTER THAN ITS COMMONWEALTH COUNTERPART?

RESTRAINING ORDERS AND FAMILY LAW ACT INJUNCTIONS

S.99 of the Justices Act is State legislation which provides a legal remedy to "any person". From this it would seem that both married and non-married persons are able to apply for restraining orders. The recent history of the legislation, however, reveals that the ambit of S.99 has not always been so clear.

In March of 1983, an Appeal to the Supreme Court, Tape v. Pioro, established that a spouse could not apply in person for a State restraining order but instead, had to seek protection in the form of an injunction from the Family Court. The reason was one of constitutionality. Where a Commonwealth law and a State law conflict, the constitution makes plain that the former takes precedence. Hence the Supreme Court in Tape v. Pioro came to the view that a married person could not seek an order under the State law when a Commonwealth injunction was available under the Family Law Act. That same judgment, however, also indicated that a police officer could apply for a State restraining order on behalf of a married person (even though the married person could not apply in person) because the State police did not have a right of audience before the Family Court. This avoided a conflict of interest between the State and Commonwealth law because, with the Police acting as complainant, the matter could not be duplicated in the Family Court (where the victim of violence was obliged to seek the order in person).

In December 1983, an amendment to the Family Law Act created a section preserving S.99 of the State Justices Act - thereby removing potential for conflict between the two Acts. Another amendment strengthened the Commonwealth remedy by providing for a power of arrest, enforceable by both State and Federal police, to attach to a Commonwealth injunction. This was not automatic however.

The power of arrest could only attach upon the application of the victim and in certain specified circumstances. The net effect of these amendments was to give married persons a choice of legal remedy for domestic violence. They could either apply for a State restraining order (which the amendment had preserved) or seek a Commonwealth injunction and ask for the power of arrest to attach if they so desired. Indeed it would seem that parties to a marriage now can employ both State and Commonwealth remedies simultaneously, although direct conflict between the terms of a State and Federal order would still, on constitutional grounds, result in the Commonwealth order taking precedence.

With the provision in S.99 for police to act as the complainant in addition to their usual role of prosecuting matters in Magistrates' Courts, S.99 has tended to become the province of the police rather than lawyers. Equally the incapacity of police to appear before the Family Court reduces their role in Family Law Act matters: when a victim of domestic violence applies for a Family Law injunction a lawyer, not the police, acts on her behalf. In view of this demarcation of function it seemed logical to focus on the Family Law Act when formulating questions to be directed at lawyers.

The thrust of the lawyer's questions was the connection between the Family Law Act and S.99. The concern was whether married persons were experiencing any special problems in obtaining legal protection from violent spouses. The questionnaire was designed to ascertain whether the provision of two remedies for married people had improved or complicated the position of women married to violent men. It also sought information on the respective merits of the two laws so that the question could then be posed, Is a victim of domestic violence better off using the State or Commonwealth law?

The findings discussed below also include comments made by respondents other than lawyers about the effects of the Family Law Act on S.99 of the Justices Act. In the case of welfare workers, these comments were largely unsolicited since their questionnaire was confined to matters arising out of the State law.

5.1. Welfare Workers

Two members of Crisis Care said that some police are not aware that married women can now apply for restraining orders. They referred to cases in which married women had been advised by police to attend the Family Court for legal relief from domestic violence.

Two shelters also identified as a problem the confusion generated by the provision of a second legal remedy for married women. One noted the "conflicting advice by police as to eligibility if Family Court order is out". The other maintained that "confusion exists between State and Federal law resulting in inaction".

5.2. Legal Workers

Only one respondent from Community Legal Centres referred to the Family Law Act (1). This respondent was aware of a case in which the victim was discouraged by the police from taking out a restraining order. The Police suggested that instead she seek a non-molestation order from the Family Court.

As noted above, the focus of questions put to lawyers was the relationship between restraining orders and the Family Law Act (see Appendix 6). The questionnaire was designed both to elicit from lawyers a comparative evaluation of the two laws, and to probe lawyers' understanding of the respective functions of the two remedies. To the first question "When a client complains about a

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(1) In view of the breadth of their work, Community Legal Centres were administered a questionnaire similar to that of the welfare workers.

violent lawful or de facto spouse, what advice do you usually give her?", all lawyers from the Legal Services Commission responded that regardless of the marital status of the client they would advise her about restraining orders. If the client was married, she would also be told about her rights under the Family Law Act.

Responses to Question 2 were also uniform. When asked "If you recommend a restraining order, what is your advice about the appropriate procedures to follow?" all Commission lawyers replied that clients were advised to go to the local police station.

The third question put to lawyers was "When do you consider a Family Law Act injunction to be the more suitable remedy?". Two Commission lawyers replied " "hardly ever" and "rarely". Others indicated that there were circumstances in which family law injunctions were appropriate. These were identified as low level harrassment or when there was a history of violence but no recent assault. Four Commission lawyers indicated that the existence of allied Family Court matters (for example, custody or use and occupation) would cause them to consider this approach.

Only one Commission lawyer maintained that s/he had not "encountered any problems with the relationship between State and Federal injunctions" in response to Question 4. One lawyer identified three problems:

> "State police will not act on Family Court injunctions. Also, you can't get an order under S.99 if you have a Family Court injunction. Also the Family Court can't discharge a S.99 order - a problem in negotiations".

Another lawyer confirmed that there was a problem in the Family Court being unable to discharge a State order, with the consent of both parties, "as a package deal". As a result, the parties were obliged to return to the State court for this purpose. S/he suggested that since "the injunctive power of the Federal Court and the restraining orders of the State court are aimed in the same direction ... there

should be some provision whereby each can be ameliorated or altered by the court before whom the victim is presently appearing".

A third lawyer confirmed the observation that "police may refuse to apply for a S.99 order where there is an existing Family Law Act order, saying that the client should go to the Family Court".

Another Commission lawyer objected to the fact that restraining orders could exclude the respondent from premises after the Family Court had allowed him use and occupation. Nevertheless the same lawyer felt that, since the preservation amendment to the Family Law Act (1), the two acts have co-existed well.

Commission lawyers' responses to question 5 ("Have you encountered any problems with restraining orders generally (from initial application to complaint of breach?") have been incorporated into later sections of this report which focus more specifically on defects in the restraining order legislation.

Savage criticism of the family law met Question 6, "Have you encountered any problems with Family Law Act injunctions (from initial application to complaint of breach)?" A range of criticisms was levelled at the police, the Family Court and the law itself:

- o "Several times State police have declined to act and even said to my clients the order was not worth the paper it was written on".
- o "Limited or no power of arrest: very difficult to get a strong contempt reaction from the Family Court".
- o "The main difficulties that have always been encountered with Family Law Act injunctions are that the State police are unaware of the extent of their power under them. There are always insufficient Federal police available to assist".

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(1) This amendment eliminated the problem of conflict between state domestic violence laws and the Commonwealth Family Law Act.

- "They really have no bite to them". Establishing a case for the need of the power of arrest to attach "involves a time delay".
- "Wieldy, cumbersome, ineffective in both application and breach".

Less uniform answers were received from members of the Law Society about the role and the value of Family Law Act injunctions, and their relationship with S.99 orders.

Obvious differences between the practices of different lawyers emerged in response to the first question, "When a client complains about a violent lawful or de facto spouse what advice do you usually give her?". One group (of 5 lawyers) distinguished cases in which the client was married and/or in which Family Law Act proceedings were in train, from those involving de facto spouses.

- "My experience has mainly been within the marriage and I usually advise prompt application to the Family Court".
- "If Family Court proceedings are underway, injunction".
- "If married consider ... applying to Family Court for non-molestation and injunction. If de facto ... consider peace complaint for order to be of good behaviour and keep the peace".
- "To issue injunction proceedings in the Family Court if married. Peace complaint in Magistrates Court if not married".

A fifth respondent in this group omitted all reference to the existence of an alternative remedy to the Family Law Act injunction. His/her advice to any victim of domestic violence was "injunctive orders to be obtained ex parte and Commonwealth police advised".

The remaining Law Society lawyers advised all their clients of their full range of options, including their legal right to apply for restraining orders and Family Law Act injunctions (where the client was married), as well as the availability of counselling and alternative housing.

"If you recommend a restraining order, what is your advice about the appropriate procedures to follow?" was the second question put to Law Society lawyers. Five advised their clients to talk to local police. Two did not respond. One referred generally to the provision of advice about "Magistrates Court procedures". Another replied that "you simply take instructions and make the application". With two other respondents there was a degree of confusion about what exactly was a "restraining order". One answer revealed that the term had been interpreted to mean a Family Law Act injunction. Another response seemed to indicate that the lawyer was using the term "restraining order" generically to refer to both Commonwealth and and Federal injunctions. Hence his/her advice about the appropriate procedures to follow when seeking a restraining order was:

> "If married, written application to Family Court ... if de facto, urgent application to Supreme Court if degree and frequency of violence warrants. Otherwise peace complaint and arrange hearing as soon as possible".

To the third question "When do you consider a Family Law Act injunction to be the more suitable remedy?" only one lawyer answered "never". The same lawyer, however, was under the impression that s/he was obliged to use Family Law Act injunctions when other proceedings were underway in the Family Court. The reason was a presumed "conflict of jurisdiction" between State and Federal Courts in these cases. A second lawyer considered Family Law Act injunctions to be "always, if possible" the more suitable remedy but offered no explanation for this answer. A third preferred Family Law injunctions "when there is a marriage". The remaining respondents, on the whole, indicated that they preferred Family Law Act injunctions when a client's case involved family law matters.

There was an interesting diversity of responses to the fourth question which sought to identify problems with the relationship between State and Federal injunctions. Three lawyers had encountered no problems. Another lawyer failed

to respond to this question. Others criticised the powers and the attitudes of police. Two respondents were under the (wrong) impression that State police cannot enforce Commonwealth orders. They added that they considered this unsatisfactory. Another lawyer said that "State police claim they do not have jurisdiction to enforce Federal injunctions". The same lawyer believed that "Federal injunctions over-ride State injunctions". Another respondent thought there was a problem with what s/he saw as the extreme variability of the police response, from "very active, strong, vigilant and sensible" to "a 'hands-off' attitude". The reluctance of police to involve themselves "in what they term 'domestic matters', even when a Family Court order is enforced", concerned another Law Society lawyer. One other criticism of the relationship between the Commonwealth and State laws echoed a comment of a Legal Services Commission lawyer. It was thought to be unfair that people could be excluded from their home by a restraining order when proceedings for use and occupation were currently before the Family Court.

In keeping with the treatment of the responses of Commission lawyers, Society lawyers' answers to the fifth question concerning problems with restraining orders have been incorporated into other sections of this report under "The Legal Profession".

Three major criticisms were generated by the question "Have you encountered any problems with the Family Law Act injunctions?". One was that "family injunctions are rarely given with a power of arrest and often this is preferable". A second objection to the operation of the Commonwealth injunctions was the reluctance of judges to "read the riot act" to people breaching them. Indeed six lawyers commented on "the court failing to use its powers in circumstances of a breach", on "the court appearing to be weak - for example it is difficult to obtain an order for imprisonment" and on the court's reluctance "to properly punish for contempt".

Five Law Society lawyers referred to delays in the Family Court. Comments were received about all stages of the legal process:

- "Problem occurs with getting ex parte written oral applications in any court unless there are quite serious circumstances. They usually take quite some time to be typed and sealed".
- "Some Family Court judges are reluctant to make injunctions. Sometimes one has to delay a matter in order to get a decisive judge - delay can be very stressful for the whole family".
- "There are delays in orders being prepared for service".
- "Defended list is too long to provide early and effective remedies. Would suggest an internal summary, or urgent and immediate, trial procedure be developed".
- "There are delays in hearing contempt applications ... also a problem re deferral of other outstanding matters so contempt of injunction can be heard first. The 'innocent' party may be delayed and prejudiced in the resolution of other matters pending the hearing of contempt appliction, and so may be compelled to abandon the contempt application to have the other matters dealt with ... also the delay in resolving all matters ... may aggravate the situation, causing more violence".

5.3. Discussion

Questions addressed to lawyers about the relationship between S.99 and the Family Law Act were designed to provide the basis of a comparative assessment of the two remedies. They allow two questions to be asked: What are the respective merits of the two laws? and Which is the better remedy?

Responses to questionnaires also provide answers to several second order questions. These relate to the level of professional understanding of the two remedies on the part of the police and the legal profession.

À propos professional persons' awareness of the two laws, there are indications from both welfare and legal workers that some police are confused

about the intended coverage of S.99. Some police are said to believe (wrongly) that the section is intended for the use of single persons only. The level of police understanding of the application of S.99 arises as an issue in a later section of this report which presents the results of a survey of police practices when they attend 'domestics'. These tend to confirm the impression received here that there is some confusion about the use of S.99 when the parties to a domestic dispute are married.

Among some Law Society lawyers there appears also to be a misapprehension about the availability of S.99 to married couples. Some lawyers believe that, for constitutional reasons, lawful spouses are prevented from employing S.99 whenever they have matters pending in the Family Court. For this reason, and also due to the ease of having all matters dealt with in the one court, Society lawyers tend to prefer to use the Commonwealth rather than the State Act.

A discrepancy appears between the method employed by Commission and Society lawyers to invoke S.99. All Commission lawyers refer clients to the police. Less than half the Society lawyers indicate the use of this procedure.

Both Commission and Society lawyers tend to regard the Family Law Act as suitable for certain marital disputes. They refer not only to cases involving allied matters in the Family Court, but also cases of low level harassment with a history of violence.

Both Commission and Society lawyers level strong criticisms at the Commonwealth Act. Indeed Commission lawyers display a clear preference for the State law rather than the Commonwealth remedy which they describe as having "no bite", as "unwieldy" and "cumbersome" and lacking sufficient back-up from the police. While Society lawyers tend to employ the Family Law Act rather than the Justices Act with married

clients, many are nevertheless highly critical of the practical operation of the Commonwealth law. They say that too rarely is the power of arrest invoked, the Court's response to breaches is too weak, and the whole procedure takes too long.

5.4. Conclusion

In summary, the general view of the Commonwealth remedy is that it is neither as forceful nor as efficient as the State law. This notwithstanding, a number of practitioners prefer to employ the Family Law Act to sort out marital disputes which involve allied legal matters because of the practical advantages of dealing with a single court.

A secondary finding of this comparative analysis of the State and Commonwealth laws is that divisions within the legal profession about the respective merits of the two laws are at least partially a function of confusion, on the part of some practitioners, about the elements and ambit of each law.

RECOMMENDATION 2

To ensure that legal practitioners acquire a thorough understanding of the requirements of the State and Federal injunctions it is recommended that the Law Society undertake to conduct a training seminar on these laws for all South Australian family lawyers.

6. IS THE LAW ACCESSIBLE? A STUDY OF THE USE OF INFORMAL, CIVIL AND CRIMINAL APPROACHES TO DOMESTIC VIOLENCE.

Discussion so far has established that, on principle, it is important to have a law such as S.99 as one of a range of legal responses to domestic violence. It has also been shown that, as a civil remedy for domestic violence, S.99 is an improvement on its predecessor and that it is better than its Commonwealth counterpart. Having considered the respective merits of S.99 and related laws, the next task is to take a closer look at the actual operation of the present range of laws.

The nature of the various legal responses to domestic violence provided by the criminal and the civil law was discussed above in Section 3. There it was explained that, in addition to the restraining order legislation, the criminal law provides a number of responses to the violent person. The most frequently employed charge against a person who commits or threatens to commit a crime against the person is probably the charge of assault.

Recall that the crime of assault varies according to the degree of violence employed by the accused. Common assault, for example, requires only an unlawful display of force which causes the victim to believe that force is about to be used against her, coupled with an intention by the offender to create such a belief, and a perceived ability to carry out the threats. More serious forms of assault include the crimes of assault occasioning actual bodily harm, malicious wounding and assault occasioning grievous bodily harm.

In Section 3 above the different evidentiary and substantive requirements of restraining orders and assault charges were also explained. The first important difference between the civil restraining order and the criminal charge

of assault is the standard or proof. Because restraining orders start their life as civil matters, an applicant for an order need only establish the facts complained of on the balance of probabilities. She must prove to the satisfaction of the magistrate that it is more likely than not that she was abused by the respondent. It is only when the respondent breaches the conditions of the order that the standard of proof is raised to the criminal level: beyond reasonable doubt. To prove a breach of a restraining order the prosecution must establish his or her case against the accused beyond reasonable doubt. The charge of assault, by contrast, is always a criminal matter. To establish that an assault has been committed the prosecution must prove its case beyond reasonable doubt.

A second significant distinction between the civil restraining order and the criminal charge of assault is the greater reach of the former. To obtain an order, a complainant need only prove that the other party has behaved in a provocative or offensive manner, that the behaviour is likely to lead to a breach of the peace and that the defendant, unless restrained, is likely again to behave in the same way. These actions clearly fall short of the behaviour constituting the crime of assault and therefore, at least in theory, cover a wider range of behaviour.

A third factor distinguishing the civil restraining order from the crime of assault also relates to their respective ambits. To explain, once the need for an order of restraint has been established, a magistrate can instruct the respondent to refrain from engaging in any form of behaviour the applicant finds objectionable. This may include, for example, telephoning the complainant or coming near her premises. The effect of incorporating such behaviour into the conditions of an order is, in fact, to criminalise it. When the respondent next telephones the complainant he commits a crime. Accordingly the potential

ambit of a restraining order is considerably greater than a charge of assault - or in fact any criminal charge, since it can criminalise any behaviour directed at the complainant.

The ensuing evaluation of the relative accessibility of the civil law (the restraining order) and the criminal law (the charge of assault) to the victim of domestic violence takes the following form. It begins with the view of the victim. Employing the findings of the survey of Crisis Care clients and of women residing in shelters documented above, it seeks to ascertain whether victims feel they are given full access to the law. The section next endeavours to test the accuracy of these perceptions of victims by identifying the relative use by police of informal procedures (no action), the civil law (restraining orders) and the criminal law (assault charges) in response to complaints of domestic violence. Here the police understanding of, and attitude towards, the civil and criminal approaches to domestic violence are also examined for their impact on the accessibility of the law. Finally, a third perspective on the law's availability is provided by the survey of welfare and legal workers. In this final part of the discussion the focus is on how these professionals perceive the performance of the police - the key determinant in the provision of justice to the victim emerging from all findings.

6.1. Do victims feel they have full access to the law?

Even a brief review of victims' accounts(1) of the legal process reveals that the extent of their satisfaction or frustration is closely connected with the perceived nature and quality of the police response. It is at the point of contact with the police that victims feel that their legal needs are either met or denied.

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(1) Findings of the victim survey are documented in Section 3.

Recall that of the Crisis Care group, two women were satisfied with the performance of police, one was ambivalent and two were dissatisfied. Reasons given for dissatisfaction were police allegedly discouraging the complainant from proceeding with a S.99 application and the failure of police to charge a respondent; instead they "helped him" to go.

Five of the women from Shelters were satisfied with the police. Twice this number, however, were highly critical. A, C, F, I, K, M and O claimed that the police poistively refused to charge the other party with assault. G and N maintained that the police failed to take the initiative of charging their assailant despite clear, visible evidence of injury. Failure of the police to take the matter seriously was another common complaint about the police (made by D, G, K, M and N).

On their face, these findings reveal that at least some victims of domestic violence believe that they are denied access to the full range of legal options. More particularly, they feel that the criminal charge of assault is not being employed by police in circumstances which justify it.

One obvious reply to these claims of denial of justice is that victims are not fully apprised of the law: they are wrong in believing that the facts of which they complain justify a criminal response. Another riposte is that it does not lie with the victim to decide whether a crime has been committed. This is the task (at least in the first instance) of the law enforcers who, for every complaint made must decide whether there is evidence to support legal action. In other words, the police, not unreasonably, could respond that a criminal charge involves an allegation by the State, and

not the victim, against the other party. Therefore it is in the power of the police (the State's law enforcers), not the victim, to decide whether such a charge is supported.

To assess the merits of these arguments it is necessary to look beyond the necessarily limited experiences of individual victims and develop an overview of police practices. The perceptions of victims can be tested by identifying the relative use of informal procedures (no official action), of the civil law (S.99) and the criminal law (assault charges) by police responding to reports of domestic violence. Ascertaining the reasons behind police decisions to employ any one or more of these approaches will also assist in evaluating the fairness of the treatment of the domestic violence victim. It should then be possible to say whether victims' sense of denial of justice is based in fact, or is more to do with misapprehensions about the law and legal processes.

Unfortunately there are no published statistics on the extent to which police employ the various legal responses to domestic violence (1). Nor, therefore, is there any published information on the nature of police decisions to adopt an informal, a civil or a criminal approach. The solution of the present author to the dearth of statistics was to approach police officers directly and inquire into their practices in cases of domestic violence. The obvious immediate objection to this approach - that police are also likely to give a partial account of their practices - is answered, to some extent, by a supplementary survey of welfare and legal workers' view of the police documented below. We then have a composite picture of police practices: the view of the victim, the view of welfare and legal workers.

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(1) See Section 8 for a review of the statistics that are available.

6.2. How do Police Respond to Domestic Violence - the Civil or Criminal Approach?

Three questions were put to police (1) designed to determine the level of each officer's experience of domestic violence (Question 7), as well as the frequency of their use of S.99 (Question 7) as opposed to assault charges (Question 8). In responding to each of these questions, officers were asked to indicate frequency by marking one of five boxes identified by the numbers "1-10", "11-25", "26-50", "51-100" and "over 100". The purpose of this set of questions was to discover the nature of the police response to domestic violence and, in particular, the relative use of restraining orders and criminal charges of assault.

6.2.1. Use of S.99

How often does a report of domestic violence result in police taking action under S99?

In Question 6, police were asked to indicate the number of complaints of domestic violence they had attended over the past year. In Question 7 they were asked about the incidence of their use of S.99 over the same period. Comparative analysis of replies to Question 6 and 7 provides an indication of the volume of reported domestic violence which never reaches the Magistrates Court.

The incidence of the use of restraining orders approximated the number of incidents attended in only four of the eleven responses received from Darlington officers, (that is, the same boxes were ticked in Questions 6 and 7). One officer failed to respond to this question. The remaining six officers revealed that the number of incidents they had attended was greater than the number of restraining orders sought.

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(1) For a description of the police survey method and questionnaire design see Section 2 and Appendix 7.

Only two officers from Port Adelaide disclosed a parity in the number of incidents of domestic violence they had attended and the extent of their use of S.99. One officer failed to respond. In all other cases a greater number of incidents of domestic violence had been attended than restraining orders sought. In several cases the difference was dramatic. Two officers had attended "51-100" 'domestics' but used S.99 only "1-10" times. Two had attended "26-50" 'domestics' and used S.99 "1-10" times.

At Holden Hill, eight officers revealed an equivalence between the number of 'domestics' attended and the use of S.99. One failed to respond. For nine officers the incidence of their use of S.99 was less than the number of 'domestics' attended. Again some dramatic differences were detected. Two officers had attended "51-100" 'domestics' but used S.99 "11-25" times. Four had attended "26-50" 'domestics' but used S.99 only "1-10" times.

6.2.2. Use of the Criminal Law

A second comparative analysis of police practices can be conducted on the basis of replies to Questions 7 and 8. Officers were asked to disclose the extent of their use of S.99 (Question 7) as well as the extent of their use of assault charges (Question 8). Here the findings reveal whether the circumstances which give rise to a restraining order also give rise to a criminal charge of assault.

At Darlington only one response displayed a difference between the number of restraining orders sought and the number of assaults charged - the criminal law having been used fewer times than S.99.

At Port Adelaide, six officers indicated a parity between their use of S.99 and their use of assault charges. Four officers had charged persons with

assault fewer times than they had employed S.99. One of these responses indicated a dramatic difference: the officer had employed S.99 "51-100" times but only "charged the violent person with assault" "1-10" times. Two officers indicated the opposite: they had employed the charge of assault more frequently than they had sought a restraining order (1).

Six officers from Holden Hill revealed that their use of S.99 and of assault charges was the same. Four officers gave incomplete answers. Six revealed that they had charged with assault fewer times than they had used S.99. Two officers indicated a greater use of assault charges (2).

6.2.3. Circumstances in which S.99 and the Criminal Law are Used

A clear trend emerges from the findings. There is a ladder of responses to domestic violence. The charge of assault tends to be used a good deal less than S.99, while the number of times S.99 is used is, on the whole, much less than the number of "domestics" attended by police.

Questions 9 and 10 of the police survey throw light on the possible reasons for such a scale of responses by examining police officers' own reasons for their actions. Here the police are asked to describe the circumstances appropriate to the taking out of a restraining order. In their answers, police are requested to specify the marital status of the parties (Question 9a), as well as the level of violence (Question 9b) and the type of evidence they require (Question 9c). Police are also asked to indicate whether their answer would differ if they were considering a charge of assault. In other words, do they look for different

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(1) It is possible that these respondents misunderstood the question and included in their answers non-domestic assaults.
(2) Again, note the word of caution contained in the previous footnote.

circumstances of fact in order to proceed with a criminal charge of assault (Question 10)?

Darlington police, on the whole, displayed a fair knowledge of S.99 and its relationship with the criminal law. Nine of the ten who responded maintained (rightly) that there was a clear difference between the legal requirements for S.99 and for the charge of assault. One observed that there was none in practice.

All but one officer (who failed to respond) said (rightly) that S.99 was available to anyone, regardless of marital status (Question 9a). All but one officer (who failed to respond) maintained that intimidating behaviour falling short of the crime of assault was sufficient to justify an application for S.99 (Question 6). Hence:

- "Threats, harassment etc. are sufficient"
- "I do not think you should wait for the offence to take place before a restraining order is taken out."
- "Even damaging property is sufficient."
- "The level of violence may be none so long as there is intimidation."
- "Does not necessarily have to be any violence."

Answers to Question 9c, concerning the evidence required for a restraining order, were more diverse. Five Darlington officers were satisfied with the victim's testimony alone, although they stated a preference for corroboration by witnesses. Another officer referred vaguely to the need for "just enough evidence to convince the court that it is likely to take place". The other officers failed to respond to this part of the question.

When asked to distinguish the circumstances necessary for a restraining order from those which would justify a charge of assault (Question 10), two officers revealed that they were under the (false) impression that the charge of assault was not generally available. Hence:

- "I would give serious thought about charging assault on one of a married party."
- "S.99 usually applies when parties have continual contact, regardless of where the parties reside. Assault charges often arise between parties who have never met before assault and may never meet afterwards."

All but one Darlington officer considered (rightly) that the level of violence needed to constitute the crime of assault was higher than that for a restraining order (Question 10b). Finally, only two officers from Darlington indicated that there are different standards of proof for S.99 applications and charges of assault.

Eight officers from Port Adelaide maintained (rightly) that S.99 orders were available to both married and non-married persons (Question 9a). Another four referred generally to the section being available to "persons" and "victims", without specifying their marital status. One said, however, that S.99 was available "definitely only if the couple intended to separate".

Twelve of the thirteen Port Adelaide officers considered (rightly) that harassment and/or threats were sufficient grounds for an application for a restraining order. One spoke of "a high degree of violence" (Question 9b).

Only six Port Adelaide officers referred to the evidence they would require (Section 9c). Five said that the victim's statement alone was sufficient. A sixth

noted that the evidence had to be established on the balance of probabilities.

All thirteen officers from Port Adelaide said specifically that "the circumstances necessary for taking out a restraining order differ from those which would normally constitute a charge of assault" (Question 10). However, different reasons were given. Two officers distinguished S.99 from assault (wrongly) on the basis of the status of the parties to whom it was available (Question 10a):

- "If they are married and there are no injuries you may take a restraining order out you would not charge assault".
- "Restraining orders are concerned with close relationships where such an order is more appropriate than a charge of common assault. This is due to the fact that the relationship is an on-going thing".

Ten Port Adelaide officers thought (rightly) that the level of violence required by the law distinguished S.99 from assault (Question 10B). Assault was said to apply, inter alia to more seriously threatening behaviour, to physical contact and to acts resulting in injury. One officer noted that "assault can often be 'one-off' and not likely to continue". Three officers referred to the differing standards of proof for criminal and civil actions (Question 10e).

Sixteen of the eighteen officers from Holden Hill maintained (rightly) that restraining orders were available to anyone, regardless of marital status (Question 9a). Two failed to respond to this part of the question.

Nine Holden Hill officers claimed (rightly) that behaviour falling short of actual physical assault was sufficient to justify an application for a restraining order - for example, "lengthy verbal abuse or harassment" and "where no assault occurs but just an invasion of civil rights" (Question 9b). Two officers failed to respond to this question. Four spoke generally of

provocative behaviour and of "domestic violence" justifying a restraining order. Three officers (wrongly) seemed to require an assault before they would act. Hence they were only willing to seek a restraining order:

- "Where minor assaults have occurred and/or serious threats."
- "Anything more than trivial assault, for example a push."
- "I only take out an order if action is sufficiently violent to warrant it and if I believe it will occur again; for example a slap on the face in a heated moment does not warrant it."

Seven Holden Hill officers commented specifically on the evidence they required for an order. Six said that the statement of the victim would suffice (Question 9e). The seventh officer claimed that it is "best to have physical evidence (for example bruises etc. from the assault) or sound witnesses".

When asked whether it was possible to distinguish the facts which would justify the taking out of an order from the facts which would constitute an assault (Question 10), ten officers from Holden Hill maintained (rightly) that it was, five said there was either no or little difference, one said (wrongly) that there was little difference with married couples living together as an "actual assault must occur", and three failed to indicate. Those who distinguished the civil from the criminal action did so on the basis of the level of violence and the evidence required. Three specifically mentioned the level of violence they required for an assault: "actual physical assault", "visible signs of assault" and an "assault of a serious nature". Four noted (rightly) that the standard of proof for assault was higher than that for restraining orders.

Three officers from Holden Hill seemed to regard the criminal law as inappropriate in the context of domestic disputes. Hence:

- "I normally require fairly serious assault to charge a defendant with assault only because I have in the past had victims back out of going ahead re assault, thus wasting my time working until 4.00 a.m. in the morning for nothing."

- "In most cases it is pointless to charge with assault as reconciliation takes place and wife doesn't wish to continue."

- "If there is any chance of the parties having a good relationship in the future by means of some type of counselling, a restraining order is far preferable to a charge of assault as a restraining order can be later varied or withdrawn - a conviction can't."

6.2.4. Interpreting the Police Response

The impetus to probe the practices of police responding to complaints of domestic violence was the expressed dissatisfaction of victims. A large proportion of victims interviewed considered that they were denied access to their full legal rights and, in particular, to the criminal law of assault. The above findings of the police survey appear to provide at least some support for the victims' point of view. They reveal that all reported 'domestics' do not result in legal action. Instead, there is a graduated police response to domestic violence, from informal procedures (the most common legal response) through to the criminal charge (the least common action).

This pattern of police practices, however, is open to several interpretations. One is the riposte to the complaints of victims suggested above - that based exclusively on the requirements of evidence. To explain, S.99 has a lower standard of proof than the charge of assault (the criminal standard is beyond reasonable doubt, and therefore more difficult to establish), while the mere reporting of a domestic dispute does not even require the complainant to prove her case on the balance of probabilities (the civil standard employed for an application for a S.99 order). Reporting

the incident to the police is simply a matter of alleging that an offence has been committed. Accordingly what the survey victims claimed was a denial of justice may be simply a matter of the requirements of evidence.

There is a second interpretation of the findings based on the wishes of the victim. It is entirely possible that women who complain of domestic violence sometimes want to proceed informally (without a S.99 order) and without a criminal charge. They want only to scare their assailant with the presence of police and want no further action. Other women may be willing to apply for a S.99 order but not to invoke the criminal law. Still other women may urge police to charge their assailant with a criminal offence. The graduated police response to domestic violence may be therefore simply a function of the range of legal options available to the victims of domestic violence.

A third interpretation of the above findings is that domestic violence embraces a wide range of behaviour. Some of it is either insufficiently serious or definable to meet the requirements of S.99. Some behaviour comes within the section but does not amount to assault. Still other domestic violence is clearly of a criminal nature.

A fourth interpretation of the findings exists. Police may employ their own judgements of the seriousness of a particular domestic dispute. It is possible that police invoke a hierarchy of seriousness so that, regardless of the wishes of the victim, some disputes are deemed suitable for informal treatment (that is, no official police action is taken), other domestic disputes are seen to warrant a restraining order, while the most serious forms of violence justify a criminal charge.

By amalgamating the results of the victim survey and the present police survey, it is possible to point to evidence supporting all four interpretations of the graduated police response to domestic violence. In other words, a combination of factors (rather than just the sheer 'pig-headedness' of police implied by victims) ensures that a 'domestic' is more likely to be dealt with informally than to become a criminal matter.

Turning first to the responses of the Darlington Police, it is evident that, in line with the third interpretation, most officers operate from the correct assumption that the circumstances which justify a restraining order are easier to establish than the elements of the crime of assault. Evidence of violence is not required for S.99: "threats, harrassment etc. are sufficient". The practices of other Darlington Police, however, support the fourth interpretation. These police invoke their own views about the suitability of any domestic dispute for criminal treatment, rather than adhering to the strict letter of the law. Hence "I would give serious thought about charging assault one of a married party".

The vast majority of Port Adelaide Police are also aware that the facts needed to support a S.99 application are easier to establish than those for assault because of the reduced level of violence. But, again, there is evidence of a discretionary view of the types of 'domestics' which justify a criminal charge. By illustration, one officer observes that disputes between married couples, which do not result in the infliction of injury, are not to be regarded as criminal matters. Another officer offers the view that restraining orders are more appropriate than assault charges when there is a close relationship between the parties.

While several Holden Hill police recognise the reduced level of violence required for S.99, the operation of personal judgements about the sort of persons and the sort of disputes which warrant police action is strongly in evidence. The clearest example of this is the observation of one officer to the effect that

> "I only take out an order if action is sufficiently evident to warrant it and if I believe it will occur again; for example a slap on the face in a heated moment does not warrant it".

The first interpretation is supported by the observations of a handful of officers from all three patrol bases. In their replies, they referred to the reduced standard of proof (on the balance of probabilities) as a basis for distinguishing applications under S.99 from criminal matters.

There are several bases of support for the second interpretation. A number of references were made by patrol officers to the wishes of the victim as a factor influencing their decision whether to proceed informally or to set in motion a civil or criminal action. Indirect support for the idea that victims' wishes account for a graduated response to domestic violence is provided by frequent references by patrol officers to the victim's testimony as forming the sole basis upon which they proceed with the relevant legal action. More direct support for interpretation two comes from the victim's themselves (1). While a good deal of dissatisfaction was caused by the perceived unwillingness of police to accede to victims' demands, there were also expressions of approval of certain police who were willing "to do everything asked" of them. Moreover, the diversity of the legal demands of these victims - some wanted only informal police action, others wanted the full criminal response - would support an interpretation of the observed scale of police responses to domestic violence as a reflection of the range of wishes of victims.

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(1) For a full account of the findings of the victim survey see Section above.

A further factor contributing to the observed scale of police responses is suggested by the survey findings. This is a tendency for police to shift their perspective: a position of sympathy with the victims' demands (interpretation number two) is eroded by repeated encounters with equivocating victims, which in turn foster feelings of scepticism about all complaints of a domestic nature. While the replies to Questions 8 and 9 provide some indications of this shift in attitude (witness the cynicism of several Holden Hill police), the best evidence of this process of disillusionment is provided by police responses to another question concerning the deficiencies in S.99.(1).

Here the most common complaint was directed at equivocating victims who were said to waste the time of police by repeatedly calling on the police for assistance and then, later, withdrawing their complaint. Thus, an officer from Darlington maintained that

> "Quite a number of times the couple ends up together again and the order is withdrawn. On other occasions it is in the nature of the people and the relationship that they will continually be at each others throats and if the order is in effect is is often forgotten over a longer period. Spouses learn to live with the threat of arrest and eventually they would 'have a go' anyway".

At Holden Hill, the most common criticism of the restraining order process concerned the behaviour of the victim. Eight officers complained of the paper work and/or time spent on cases in which victims decided not to pursue their legal rights. For example:

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(1) For a full account of police responses to this question see below.

"Many spouses make up by the time court appearance is required. Police often spend much time doing the paper work required for a restraining order, only to find that the victim has obviously made a hasty decision in wanting it and has changed his/her mind".

And, again at Port Adelaide, the bulk of criticisms of the orders focussed on the equivocation of victims who either withdrew their complaints, failed to attend court or 'conspired' with the respondent in breaching the order. Eight officers saw this as a problem. Here is a typical answer:

"Some people expect us to take out an order ... with very little effort on their part ... an order is often taken out in the heat/emotion of a particular incident and the next day the applicant can't be bothered going through with it. This is frustrating after doing heaps of paperwork ... the system is abused especially by women who take out a S.99 then reconcile with the restrained person. Then when it blows up again the S.99 comes out of the woodwork and we are obliged to act on it though it doesn't seem fair. It shouldn't be used as a convenience".

It is experiences such as these which engender attitudes such as that expressed by one Holden Hill officer in response to Question 10:

"In most cases it is pointless to charge with assault as reconciliation takes place and the wife doesn't wish to continue".

To summarise this assessment of police practices in cases of reported domestic violence, there is evidence of a graduated response to complaints. This appears to be variously a function of differing standards of proof, of diverse wishes of victims, of the differing levels of violence requiring for civil and criminal actions and, finally, of the personal preferences or discretion of individual police officers. There is therefore some basis to the complaints of victims (documented above) that police do not accede to their demands but instead act according to their personal assessment of the situation. Equally, though, it can be assumed that at least some complaints about police are founded on victims' misapprehensions about the different requirements of the civil and criminal law.

Notwithstanding that the evidence of a scale of police responses to domestic violence is susceptible to a range of interpretations, two things are certain. One is that some victims feel that they are denied justice. The other is that a number of police feel that women complaining of domestic violence do not merit too much effort (they are "too capricious"). The question to which this section is addressed, "Is the law accessible?", therefore cannot be answered in the positive without qualification. There is sufficient evidence here of a filtered system of justice - one in which the best treatment is reserved for those perceived to be the most deserving.

6.3. How do Welfare and Legal Workers view the attitude and performance of the Police?

In the course of the survey of welfare and legal workers, a range of comments were received on the attitude and performance of police. These observations are worth exposing here in that they throw further light on the principal issue which has emerged from this study of police practices. This is the close connection between police perceptions of the law and the accessibility of victims to the law's full range of responses to domestic violence.

All members of the Crisis Care unit commented on the performance and attitude of the police. A group discussion with all staff from the Unit disclosed the general view that the effective operation of S.99 depended entirely on the attitude of police: "what they say and how they say it." The attitude of police was observed to vary "from station to station and patrol to patrol". It was suggested that the approach of many police to domestic violence had not improved since the amendment to S.99. Prior to the restraining order legislation, police were said to be reluctant to

involve themselves in domestic violence. A pervasive mood of cynicism had been generated by a popular belief that it was typical for women to complain repeatedly of assaults in the home, but to refuse to follow up each complaint by appearing in court or giving evidence. Accordingly there was seen to be little point in pursuing legal solutions to domestic violence. Members of the Crisis Care United believed that, with some police, this attitude persisted today.

Comments from individual members of the Crisis Care Unit about the police are as follows:

- "Occasionally ... police officers do not offer sufficient information and advice."
- "Police attitude varies immensely towards it."
- "There is inconsistent administration by police and confusion for the women because of it."
- "Not convinced that police patrols understand S.99."
- "Police are reluctant to initiate injunctions."
- "Police are refusing to make the application until the women has been consulted.
- "Police are reluctant to take out a S.99 if there are no physical signs of violence."
- "Some police interpret S.99 as not being valid for married couples."

Seven District Officers from D.C.W. referred to the attitude and performance of police. Four opinions were favourable, two were critical and one was mixed. Three of the positive responses came from country District Offices. They were:

- "Pleased with the support received from the local police officer."

- "The police are usually seen as helpful but limited. No-one can provide protection over 24 hours."

- "The Department for Community Welfare and the police have a good relationship. The police here will go out of their way to offer protection with or without an order. We have a couple of very caring police sergeants who will make sure uinformed staff offer real assistance. They also have the time to do this ... if we contact police here and request assistance, we feel confident that women in particular will feel they are receiving real support."

The one favourable comment received from a metropolitan District Officer was that "general feedback has been positive re police willingness to co-operate". The two critical comments (both from metropolitan areas) were:

- "Police are viewed as unfriendly and objectionable ... would be better if police were more sympathetic ... police tend to wait until the victim is hit rather than act when victim is afraid."

- "I think police would rather not know about restraining orders ... police do not take them seriously. Police have given conflicting information about them to clients."

One District Officer offered a mixed view of the police and their attitudes:

"Where an order is made, feedback is positive (on police attitudes, treatment received at court etc.). In other cases feedback is decidedly negative ... police are reluctant to enforce order in the occasional cases where that is needed".

Six shelters volunteered opinions on the police attitude. Two, from the country, offered a positive view:

- "Police personnel have been on the whole very helpful."

- "The police have acted straight away ... police will act when phoned."

Shelter workers' criticisms of the police concerned their alleged

inconsistency, their antagonism, their ignorance and their tendency to diminish the problem of domestic violence:

- "Police officers are not always consistent. Officers from various stations interpret situations differently - no uniform action is taken throughout the state which causes confusion to victims ... confusion exists between State and Federal law resulting in inaction."
- "Antagonistic male and female officers blame the victim."
- "Incorrect and inappropriate advice to women is given by police ... S.99 has encouraged inappropriate police attitudes towards domestic violence ... there is a need to educate police about domestic violence."
- "Breaches are seldom taken seriously by the police ... a change of attitude would be most useful. It appears that senior police officers have a more appropriate attitude than their juniors, that is, those who have the direct contact ... the trickle down theory is useless ... if senior police officers are concerned about the attitudes they espouse they have a responsibility to pass these on to the patrol men and women who become involved with the victims of violence."

Three respondents from Community Legal Centres were critical of police attitudes to domestic violence and of their enforcement of S.99.

- "The primary improvement in the S.99 procedure would be a change of police attitude to the matter. Police officers should be trained to regard domestic violence as a matter of great importance".
- "Police seem to take a pretty low key role and only take very brief statements".
- "There is still a reluctance (on the part of the police) ... to become involved in domestics. I believe the police should be directed clearly to lodge a complaint on request and the magistrate should decide its merit".

Two lawyers from the Legal Services Commission also commented on the unwillingness of police to involve themselves in 'domestics'. One lawyer sought to avoid this problem of poor police attitude by advising clients not to reveal, in the first instance, that the offending behaviour

occurred in domestic circumstances. The other lawyer noted marked differences between the police response to complaints of violence between spouses ("police are reluctant to become involved") and those between neighbours ("police are too ready to take proceedings"). The other Commission lawyer, however, expressed considerable satisfaction with the performance of the police:

> "In respect of breaches, I have generally found from discussions with my clients that the police have behaved fairly sympathetically to complaints."

The attitude of police was mentioned specifically by three lawyers from the Law Society. Two saw the police as reluctant to act. One observed "Disinterest by the police force who appear frequently overtaxed with other problems and do not wish to be burdened with domestic disputes". The other spoke of police reluctance both to employ S.99 in the absence of physical violence and to enforce breaches.

A third Law Society lawyer gave a detailed account of police attitudes, highlighting their extreme variability:

> "Since commencing practice thirteen and a half years ago I have invariably found the State police as follows:
>
> (1) Very active, strong, vigilant and sensible. Often they will say that it is an internal 'domestic matter' and not want to be involved but will state that if there is to be a breach of the peace they will act and remove the offending party or parties. That usually cools downs the situation.
>
> (2) Police who say they have instructions from superior officers that they can't and will not involve themselves in 'domestic matters' or matters that are 'outside our jurisdiction' because they belong to the federal police.
>
> (3) A 'hands-off' attitude.

6.4 Discussion

To the question posed by this section, "Is the law accessible to victims of domestic violence?" the answer consistently indicated by the findings of the three surveys (of victims, of police, and of welfare and legal workers) is that "It all depends on the attitude of police". Although there are clearly conflicting views on the manner and conduct of the police generally, there also emerges a common theme. This is that whenever police are committed, enthusiastic and conscientious, victims of domestic violence receive justice. The prevailing view of police however is that, from station to station and from officer to officer, there is an inconsistency of attitude. Some police are helpful and sympathetic (a view expressed by some of our victims). Others are said to be reluctant to become involved in cases of domestic violence (also affirmed in the victim survey). There are police who receive complaints with a cynical, if not positively hostile, attitude (a view prevalent among the victims from Shelters). There are also allegations of police indifference to victim's request for information and of police ignorance of the relevant law.

At least three changes to present relations between the police and the public are required to improve substantially the law's accessibility. One is the creation of a mechanism by which individual victims of domestic violence can complain of their treatment by the police. Another is the introduction of a considered and co-ordinated police policy which will guide the response of officers throughout the state to complaints of domestic violence. A third is a sustained endeavour both to improve the attitude of all police to the domestic violence victim and to raise the level of understanding of the police of the relevant laws.

6.4.1 Complaints Against Police

At present there is no mechanism by which victims of domestic violence who are dissatisfied with the police response can complain about their treatment to an agency which is independent of the police. Instead they are obliged to complain directly to the Police Department which may undertake an internal investigation of the matter.

This situation will shortly be changed by the recent enactment of the Police (Complaints and Disciplinary Proceedings) Act 1985. This Act provides for the appointment of an independent Police Complaint Authority to investigate complaints against the police. Although the Act envisages that the police will continue to conduct investigations into complaints against themselves, the outcome of these investigations will be reviewed by the Police Complaints Authority. In addition, the Authority will be empowered to conduct his or her own investigations when s/he deems it appropriate.

Under the new legislation, a member of the public wishing to complain of an action by a police officer can either approach the Authority or contact the police directly.

Although the new Police Act does not envisage that either the Authority or members of his or her office should give special attention to particular types of complaints, the range and severity of problems identified above with the performance of police when responding to complaints of domestic violence indicate an area of special need.

Recommendation 3

Accordingly it is recommended that a senior officer (to be designated the

Domestic Violence Complaints Officer be appointed in the office of the Police Complaints authority. The principal task of this officer should be the receipt and investigation of complaints against police concerning their enforcement of the laws related to domestic violence.

6.4.2 A Co-ordinated Police Policy

The problem of the poor co-ordination of police responses to complaints of domestic violence is an organisational matter. Currently the approach of police to the domestic violence victim is a function of the decisions and actions of individual police officers operating from a number of patrol bases and police stations around the state. There are no specialist police trained specifically to deal with complaints of domestic violence (1).

One method of ensuring a uniform police approach to domestic violence suggests itself. This is the creation of a specialist squad of officers, perhaps along the lines of the Rape Enquiry Unit: a squad of four police women who deal exclusively with complaints of rape (2). The job of a Domestic Violence Unit would necessarily be much larger than that of the Rape Unit because of the much greater volume of complaints of violence of a domestic nature. In fact the volume of reported domestic violence (3) would necessarily dictate against a centralised, city-based unit for the handling of all complaints.

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(1) See section 2 for a description of police methods of responding to complaints of domestic violence.
(2) The desirability of a specialist domestic violence squad is also indicated by Mara Olekalns, Senior Research Officer, National Police Research Unit, in her paper on "Police Training in Crisis Intervention", Paper presented at the Australian Institute of Criminology Research Seminar, 19-22 February, 1985. However the thrust of Olekalns' model is crisis intervention and counselling rather than law enforcement, the preferred approach of the present author.
(3) See section 8 of this report for a review of the available statistics.

Recommendation 4

Although the development of a detailed plan for reconstructing the police approach to domestic violence goes beyond the scope of the present evaluation of S.99, it is recommended that consideration be given to the following proposal: the creation of a Domestic Violence Unit which, at least in its pilot stages, could perform the following minimum functions:

(a) provide a core squad of police officers expert in the handling of domestic violence cases which could respond to a limited number of complaints in the inner-metropolitan area;

(b) develop a state-wide standard approach to complaints of domestic violence;

(c) devise domestic violence training programmes for all police officers

(d) train select police officers from each patrol base whose task would be, inter alia, to provide advice and guidance on domestic violence matters to all other officers stationed at their base;

(e) devise a longer term plan for the placement of specialist domestic violence squads at all patrol bases.

6.4.3 Police Training

The third area of proposed change is clearly a matter of police education (1). To develop a tolerant attitude towards equivocating domestic violence victims, police officers need to acquire insight into the complexity of decisions to report domestic violence. They need information on the disincentives to reporting a violent spouse and on the type of pressures which can be applied to a woman after she has contacted the police.

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(1) The recommendations contained in this Report which relate to the nature and quality of police training presuppose that all police cadets receive training on all laws they will be required to enforce. The author has also been advised that as laws are amended (such as S.99), operational police officers receive fresh instruction on police training days. Accordingly the recommendations presented here refer to training in addition to this basic instruction on the content of new laws.

Recommendation 5

Accordingly, it is recommended that all police officers receive instruction on the social, psychological, physical and financial disincentives to reporting domestic violence. It is suggested that a training manual for counsellors prepared by the D.V.A.G. be employed as an aid to instruction (1). A second reference which should prove useful to such a programme is the study of counselling techniques in battering relationships conducted by Lenore Walker whose work is discussed in the body of this report (2). The responsibility for this training programme should be assumed by the training branch of the Domestic Violence Unit.

The poor understanding of the domestic violence laws of many police officers is also a problem which can be remedied by appropriate training.

Recommendation 6

Accordingly it is recommended that all operational patrol and station officers receive comprehensive training on the laws related to domestic violence. In particular, they should be instructed on the distinction between the nature and level of violence required for an application under S.99 and for the charge of assault, and on the differing standards of proof. The responsibility for devising this training programme should be assumed by the training branch of the Domestic Violence Unit.

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(1) Domestic Violence Support Group, Domestic Violence: A Three Day Workshop, Adelaide, May 1984.
(2) Lenore Walker, The Battered Woman, Harper and Row, New York 1980, pp. 71-184.

7. ARE RESTRAINING ORDERS EFFECTIVE? ASSESSING THE STRENGTHS AND WEAKNESSES OF S.99

In this section, the focus of this evaluation of S.99 begins to narrow. The point of discussion thus far has been to establish the relative value of S.99. The contribution of the restraining order legislation has been compared with that of the criminal law (Is S.99 redundant?) with its predecessor (Is it better than the peace complaint?) and with its Commonwealth counterpart (Is it better than the Family Law Act Injunction?). The study has also considered the relative accessibility of S.99 and the criminal law. The present task is to conduct a more particular study of restraining orders in isolation.

Two steps are taken here to narrow the focus on S.99. The section immediately below considers the general strengths and weaknesses of restraining orders. Employing the observations of all survey subjects the question is posed: Do restraining orders work? Do they restrain violent persons? In the next part of this Report, S.99 is subjected to even greater scrutiny. Here the restraining order process is dissected and each of its stages (from initial complaint to report of breach) is subjected to critical analysis using statistical and opinion evidence.

7.1. The View of the Victim

This general evaluation of restraining orders begins with the view of the victim. Returning again to the findings of the victim survey, the present task is to consider victims' comments on the general advantages and disadvantages of restraining orders.

Of the six Crisis Care clients, three (Helen, Janet, Mary) offered a positive general assessment of the effectiveness of restraining orders. A fourth (Ruth) regarded the order as "counter productive", if they prevented parties from

communicating with each other. Another (Julie) described the orders as "ineffectual" preferring the use of a criminal charge. (The sixth victim, Sue, failed to obtain an order.)

Of the sixteen women from shelters responding to the questionnaire, eleven offered general comments on the efficacy of restraining orders. Only three of these women regarded them as successful in the sense of deterring the respondent from further bouts of violence. One woman declared that the order had "no effect". The others all maintained that the taking out of an order had had the effect of provoking further violence.

7.2. Welfare and Legal Workers

Questionnaires administered to welfare and legal workers assumed some experience of the relevant law on the part of the respondent.(1) This made it feasible to ask questions of a more general nature about the advantages and disadvantages of the restraining order legislation. A wide range of views was received. These provide a more thorough overview of the law than that offered by the brief comments of victims (whose experiences of the law were necessarily restricted to their own cases).

An obvious method of sorting findings was to identify positive and negative comments about the efficacy of S.99. Discussion begins with a consideration of arguments in favour of restraining orders.

7.2.1. The Benefits of Restraining Orders

Four members of the D.V.C. had positive comments to offer about the advantages of restraining orders.

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(1) In fact respondents were asked to describe the nature and the extent of their experience with cases of domestic violence.

Respondent 1:

"They give Police some teeth do so something."

Respondent 2: (also a member of the D.V.A.G.)

"Historically it is very good to get a law that says that it is not socially tolerated to thump your wife ... the men take restraining orders very seriously. They take it as meant - that is they are not to approach their wife. They may transgress it but are very wary of it initially and more inclined to take notice when she says 'go away'. Three men have actually said that they realised they had a problem when she took out a S.99 order. Therefore it was very advantageous ... it is better to have a S.99 order than wait for a matter to become an assault ... men won't take responsibility for actions unless a women says she won't take it."

The professional role of this respondent, that of counselling violent men, enabled him/her to address a question about the value of restraining orders directly to his/her clients:

"they generally believe (when they first receive counselling) that S.99 helps to motivate change. At the end (of counselling) they do not like the label as they no longer see themselves as violent."

Respondent 3 (also a member of the D.V.A.G.):

"S.99 is working for a lot of people. Those who work with shelters get a lot of support. [It also works for] people who are articulate and well connected. ... [it is valuable] for some situations where there are a lot of threats and genuine fear but the man is not the sort who would be violent no matter what. These men would be genuinely scared of doing something in the face of S.99."

Respondent 4 (also a member of the D.V.A.G.):

"Restraining orders work for a middle ground. For men who are socially aware ... it will work for men who are not generally violent, that is when it is out of character for him to be violent."

Other members of the D.V.A.G. said this about the value of restraining orders:

Respondent 1:

"At a subjective level it appears to act as a deterrent for a number of men."

Respondent 2:

> "Several women have reported feeling more secure as a result of taking out a restraining order. One male client reported that he was assisted in controlling his violence by the knowledge that a restraining order was in force."

The Women's Information Switchboard offered this view of restraining orders:

> "For low level cases restraining orders are useful, that is where the violent man has some fear of the legal process."

Comments favourable to the restraining order legislation made by members of the Crisis Care Unit turned on the immediacy of the remedy. Five respondents saw this as the chief benefit of restraining orders, both in terms of the experience of the applicant (many S.99 applications are heard on the first available working day) and in terms of the police response to a breach (the power of immediate arrest was said "to offer practical protection and profound potential impact on offenders and would-be offenders").

A sixth Crisis Care Worker thought it a good thing that women received support from Police in submitting their applications for restraining orders. A seventh member of Crisis Care believed that Police were more inclined to intervene under the new legislation. This was seconded by another worker who observed:

> "It has allowed Police to remove a violent spouse from the scene and initiate an order application to be heard next morning. Not aware of any refusal of Police to act to remove offending spouse when an order exists. Many Police seem to appreciate it after feeling unable to assist previously in the grey area of domestic violence."

Further:

> "It gives the victim of domestic violence some power/protection that did not exist to any real extent pre-S.99. It can obviate the necessity to move from their environment to

avoid further violence. It acknowledges the increasing concern of authority/society re the prevalence of domestic violence and the helplessness of some victims".

Finally, a member of Crisis Care noted:

"Restraining orders give victims of domestic violence protection without having to justify their right not to be subjected to violence."

Several District Officers from D.C.W. reiterated the claim that restraining orders are, on the whole, only of value when the respondent is not committed to violence and has a healthy respect for the law:

- "Good if people are rational but not if emotional or irrational."
- "They appear to have the effect of calming irate spouses who appear to accept intervention by the law."
- "They tend to deter the less violent people: women of really violent men feel it provides little protection."

"Court orders of any kind only bind the law abiding. Some persons to whom the orders are applied don't care a fig about breaching them and continue to bash clients regardless."

The psychological value of restraining orders for the victim was mentioned by others. They referred to the ability of orders to invest the victim with feelings of self-determination and a sense of security.

- "Victims feel more secure."
- "A major advantage of an order is the sense of power it gives the victim over their own lives, thus making them more independent in their dealings with support agencies."
- "Restraining orders appear to offer some peace of mind to the clients".

A number of District Officers were almost unequivocally enthusiastic about restraining orders:

- "Generally valuable and effective."
- "Most effective".

- "Generally feedback has been positive re police willingness to co-operate and the effectiveness of the order ... restraining orders have the advantage of teeth; that is action can be taken by police ... before violence occurs therefore such order have greater deterrent value."

- "The clients have found the orders useful."

- "The threat of invoking the order certainly has been a deterrent to the abuser in cases known to me."

- "They work very effectively providing the client is consistent."

Other District Officers were more reserved in their praise of restraining orders:

- "Generally found them useful but respondents can usually find a way around them."

- "Some said it had some deterrent effect: some said it didn't stop the harassment."

- "About half see them as quite effective; the others see them as not protecting them."

- "Restraining orders give some protection to the victims of abuse."

An explanation of the diversity of perceptions of restraining orders was attempted by a District Officer from the country who also endeavoured to identify the basis of an effective law:

> "The real level of protection is directly proportional to the level of trust between welfare and police ... in our area, because there is a good relationship between agencies, police will provide reasonable protection, with or without a restraining order. The law doesn't protect in itself - it is the willingness and the time available on the part of agencies involved that in the end offers some real feeling of security or protection for those at risk."

Shelter workers on the whole, were more critical of restraining orders and therefore had fewer things to say in their favour. Nevertheless, two shelter workers noted the psychological benefits of restraining orders for the victim. One shelter worker saw this as a mixed blessing:

"Upon obtaining an order most women feel safer. Nevertheless, experience suggests that if women need to call Police in relation to a breach of the order, they often find that the feeling of safety was an illusion. Therefore, those whose male partners accept the terms of the order and comply with its directions feel safer and continue to do so as long as the order is not breached".

The other shelter respondent expressed considerable enthusiasm for the psychological effects of restraining orders on the victim. S/he offered a catalogue of such benefits:

"1. It gives them [victims] a sense of security.
2. More able to relax -- a feeling of relief.
3. They feel that the law is on their side.
4. They have taken a positive step.
5. They feel they can now ring the police and receive immediate assistance."

Another shelter worker saw the benefits of restraining orders as extremely limited:

"Occasionally they work as an interim bluff for a few men who are still frightened by policemen."

Still other shelter workers were more positive:

"The restraining order can help to make people in authority - that is teachers, doctors, police, hospital staff, social workers - aware of a serious problem so that appropriate action can be taken."

"Restraining orders can be obtained quickly from local police. Police will act when phoned."

"Restraining orders provide some security for self and some restraint on a partner."

Turning to the positive comments on S.99 offered by legal workers, three respondents from Community Legal Centres commended restraining orders. One spoke of the psychological benefits for the victim:

"I believe the restraining order is of great value; it allows the client to feel that the law is giving them some sort of protection."

The other comments were of a more general nature:

. "Restraining orders are valuable when used selectively."

. "On the basis of my limited experience in this field I believe the orders are of considerable value."

Questionnaires administered to lawyers were principally designed to identify problems with the relationship between restraining orders and the Family Law Act (1). Accordingly, lawyers were not asked specifically to identify the advantages of restraining orders. This notwithstanding, the duty solicitor from the Legal Services Commission volunteered the comment that restraining orders are "a good idea" and that they work well enough when the case is straightforward - that is when an order is made and confirmed ex parte. Also, lawyers from the Law Society said this in favour of restraining orders:

. "I think by and large the Magistrates Court system works reasonably well."

. "Generally restraining orders work well."

. "To a small extent, police are more willing to become involved in matrimonials if it is a breach of a restraining order than an 'ordinary row'."

7.2.2. The Disadvantages of Restraining Orders

A list of general objections to restraining orders, at least as extensive as the above catalogue of positive comments, was provided by both welfare and legal workers.

Criticism of restraining orders made by members of the D.V.C. tended to focus on the limits of law reform in general. Even a perfect law, it was said, cannot guarantee model behaviour. Thus:

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(1) It was noted above that a decision so to restrict the questions put to lawyers seemed logical given that it is in the interpretation and enforcement of the Family Law Act, and not the Justices Act, that a lawyer's services are usually required when a legal issue involves domestic violence.

- "Whatever you do, there are limits to the protection society can give people."

- "The law doesn't change human behaviour ... restraining orders don't solve anything in themselves. Women go into hiding if they want restraining orders to be successful. .. an order is not going to change fundamental personality. The desperate person is not going to change with an order."

Another Committee member was sceptical about the value of law reform because of the alleged lack of immediacy of court orders:

> "Restraining orders do not do a lot for a victim's immediate situation ... victims need more practical survival techniques."

Members of the D.V.A.G. who found flaws in the restraining order system concentrated on what they perceived to be the mild repercussions of breaching an order. It was claimed that once a respondent to an order tested the effect of a breach, he learned to disregard the order. And more specifically:

> "I estimate that 80-90% of the women whom I had contact with and who had these orders have not found them useful. Typically the response has been that he breaches the order and when reported to police either no action is taken or the individual is warned not to do it again. In some cases he has been apprehended - but is normally quickly released and ultimately placed on a bond. The vast majority of these women report that they feel no safer and that the order doesn't deter them (the respondent)."

The same person urged a more forceful and reliable police response:

> "More effective police action is necessary. I believe that police intervention at times is excellent but is not consistent."

A member of the Women's Information Switchboard also believed that the major problem with restraining orders was their weak enforcement.

> "Where violence is frequent that order is not of adequate protection for the victim ... restraining orders break down at the point of ongoing violence and enforcement of the orders."

Two members of the Crisis Care Unit reverted to the idea that "there is no way of effectively stopping violence" because "you cannot put people under surveillance." The problem lay in the limits of the law. A third Crisis Care

worker reiterated the point that there is "still not protection from the persistently violent man who disregards the order."

The inability of restraining orders to cope with persistent offenders was identified by several District Officers from the Department for Community Welfare. They claimed that restraining orders simply did not provide the protection for which they were designed. Worse still, some thought they incited violence. Hence:

- "The violence does not stop ... sometimes an order may provoke an attack."
- "Most clients suggest they are ineffective. They are concerned that even if an order is obtained, the husband will still use violence."
- "The presence of the order may incite violence when restraint on the respondent breaching the application is barring discussion.
- "Respondents continue to abuse clients regardless."
- "I have found the restraining order not worth the paper it was printed on as husbands completely ignore the existence of the restraining order and continue to make contact at will. Some women are also reluctant to report these breaches to police fearing further aggression and lack of police action. Hence restraining orders are only as effective as the male decides they will be and often escalate anger/violence."
- "They are of little value. Rarely do they stop a determined spouse."
- "Clients see them as ineffective ... I see them as lacking power - they are not carried through."
- "Of those that have had them, most feel negatively about them - that they do not provide sufficient protection and that the police don't take them seriously. For some people they seem to be OK. However, for very violent spouses it is not a sufficient deterrent and may be treated as a piece of paper to be discarded."
- "Those who have been through the process on more than one occasion give the impression that it does not add to their security and they still fear attacks."
- "Some said it did not stop the harassment."

- "Some said it did not stop the harassment."
- "Women of [sic] really violent men feel it provides little protection."
- "Restraining orders are very necessary but not much protection. Where a permanent separation is fully intended and protection is necessary, the best answer is possibly a house dog."
- "Protection isn't perceived to be very great: attacked first, protection later ... these orders are of little value."

Shelter workers tended to endorse this view that restraining orders do not protect against the violent and determined offender. As one observed, they only provide protection when the terms of the order are accepted by the respondent. If the respondent chooses to breach the order, the adverse consequences for him are apparently minimal:

- "Since Police fail to respond to breaches adequately they are worthless in the present form."
- "Police don't always feel obliged to act on an order."
- "They don't stop violent attacks on women and children."
- "They are ineffective."

In the opinion of several workers from Community Legal Centres, restraining orders are of little value when the respondent is determined to ignore its terms. Again the problem is seen to be two-pronged: "The persistent offender is undeterred by an order and the police fail to respond in a sufficiently forceful manner to challenge the offender's cynicism of the law."

Accordingly:

- "Restraining orders are of little value in protecting victims of domestic violence ... often the background of the man makes it apparent that the issue of a restraining order is unlikely to affect his conduct. Furthermore, it appears that

police do not rigorously enforce restraining orders. Reports have been received that the police may issue warrants for breach of the same restraining order up to four times. Without a determination to arrest for breaches on the part of the police, restraining orders appear to provide little protection."

- "They are quite ineffectual where the perpetrator ... has established a criminal behaviour pattern, and has demonstrated the intention to harm the victim. That is the S.99 order is for 'good people' - it doesn't deter the person who is not bound by the criminal laws relating to assault etc."

- "The disadvantages are in the administration of the order. The police on patrol seem reluctant to enforce them."

Restraining orders were thought to be catalysts for further violence by one respondent from a Community Legal Centre:

"Victims seem to feel that restraining orders are provocative and should be a last resort if no other solution is possible ... the order may defeat the whole purpose."

The few general criticisms of restraining orders made by lawyers concerned the rights of the respondent rather than the victim initiating the complaint. One lawyer from the Legal Services Commission noted that a person named in an order could find himself denied such basic rights as access to his own home without an opportunity to put his case:

"On the other side of the coin, the spouse against whom a restraining order is made faces the difficulties that many of the orders are made ex parte and later confirmed in their absence and are made subject to certain vague provisions for access."

This criticism was also voiced by a member of the Law Society:

"Ex parte orders, on the statement of the victim ... when disputed by the other party remain in existence until the trial. It is grossly unjust to the other party whose initial order refers to access and use of property as well as non-molestation."

This lawyer also offered a general comment about the limits of the law in modifying behaviour:

"I am aware that husbands often break restraining orders or injuctions and the law seems powerless to prevent them. It seems only possible to punish recalcitrant husbands after the event."

7.3 The Police View of Restraining Orders

All police surveyed were asked to assess the value of restraining orders as a remedy for domestic violence (1) (Question 2). Their responses are as follows. Ten of the elevent respondents from Darlington indicated that restraining orders discouraged violence. One said it had no effect. No-one claimed the orders escalated violence.

A range of reasons were given for the deterrent value of restraining orders:

- "The victim, and in most cases the offender, can actually see a patrol doing something."
- "The aggressor is afraid of being locked up for a breach of S.99."
- "When police explain to offenders what can happen to them if S.99 conditions are breached they usually comply with orders. They may also attempt to sort matters out in a calm and rational manner as a result of the order."
- "It has to do more good than harm. However if someone is intent on committing violence, they will carry out their wishes no matter how many restraining orders have been taken out."
- "It is an attempt at positive action by a victim which in most cases is sufficient to deter."

To the question "Have you identified any deficiencies in the restraining order legislation at any stage of the legal process?" (Question 3), seven Darlington police officers responded in the negative.

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(1) Domestic violence was described in the questionnaire as "violence between lawful and de facto spouses and between boyfriends and girlfiends".

What were identified by the remaining respondents as deficiencies in the legislation were in fact matters of procedure and general practice.(1)

Twelve of the thirteen Port Adelaide police maintained that restraining orders discouraged domestic violence (Question 2). One officer indicated that the orders either discouraged violence or had no effect. No-one suggested that the orders escalated violence.

The overall assessment of restraining orders offered by the Port Adealide police was that, for law-abiding citizens, they discouraged violence. Hence:

- "Some people do take heed of warnings."
- "As most people are normal citizens and have little contact with police, a threat of jail discourages violence."

And a further example:

- "Restraining orders act as a reminder to them that they are still covered by laws in domestic situations."

The threat of imprisonment was said to give weight to the orders:

- "People generally tend to abide by the decisions of the court as they know that if they breach the order they face imprisonment."

The clear implication of most responses, however, was that with the determined offender restraining orders were of little value:

> "They don't always have the desired effect. In extreme cases especially, or if the offender is a continual drinker of alcohol."

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(1) One police officer had been advised (inappropriately) to use the wording "behave in a provocative manner" to describe the behaviour to be proscribed in the complaint, yet felt this was too narrow as it failed to mention damage to property. A second officer was concerned that between the time of the report and the court hearing, the victim had no protection, apart from the police response to any crimes committed. A third officer said that some Magistrates refused to hear applications for a restraining order if a charge, such as assault, was simultaneously laid against the offender.

The officer who indicated that a restraining order could either discourage violence or have no effect at all reflected on the practical limits of the law:

> "Some people are too emotionally involved to take any notice of a court order and S.99 only gives police the power or opportunity to take action after an incident/breach occurs."

To the question "Have you identified any deficiencies in the restraining order legislation at any stage of the legal process?" (Question 3) only one officer said s/he had not (while another failed to indicate).

The most common criticism of restraining orders made by Port Adelaide police concerned the perceived number of withdrawals (see Section 6 above). A second major complaint (made by five officers) was the difficulty of locating respondents for the service of orders coupled with the fact that orders are unenforceable until this is done. Problems of service were exacerbated by the fact that "at times the offender eludes police to avoid being served".

Comments on S.99 by Holden Hill police were more varied. Although six officers claimed that the orders discouraged violence, three indicated that sometimes they discouraged violence but other times had no effect, five said they had no effect, four thought they escalated violence and one chose not to respond (Question 2).

Of those police who favoured the legislation, several offered explanatory comments revealing ambivalence about the value of the orders. Two officers thought restraining orders would work if women didn't invite breaches. Another said "some will still use violence under any circumstances." Still a further officer noted that restraining orders usually lead to a separation of the parties and "it is much easier for police to remove the offender for

a breach of S.99 than it is to charge for other offences". More positively it was claimed that "the majority of offenders obey restraining orders under threat of being arrested for a breach of the order" and yet "this does nothing to solve or cure the reason for the violence."

Officers who claimed that orders sometimes discouraged violence and other times had no effect also focussed on what they saw to be the caprice of victims. Women complaining of violence were accused of failing to attend court "after we have done all the paper work" and "of openly breaching orders". It was also said that the orders had little effect "especially if couples are used to using violence on each other".

Holden Hill officers who argued that the orders were ineffective gave several reasons. They were unhappy about the fact that orders could not be enforced until service: "In the meantime the offender often returns and causes trouble". There was dissatisfaction with the ability of S.99 to deal with the incident precipitating the complaint. It was also said that even the criminal law was unable to tackle effectively "continual domestic problems". The only deterrent was "the presence of police".

Those officers from Holden Hill who alleged that restraining orders escalated violence reasoned that respondents to orders were inflamed by their spouses taking legal action.

Perhaps the most thoughtful evaluation of S.99 came from an officer who elected not to commit him/herself to a firm view. S/he claimed that "it is often very difficult for the aggrieved party to decide if a restraining order is going to relieve the situation or aggravate it". The application for a restraining order can have any of the effects listed in the questionnaire

(see Question 2) and the complainant is obliged simply to take a punt.

When asked to identify deficiencies in the restraining order legislation only two Holden Hill officers were unable to do so. The most common criticism concerned the complainant who withdrew her complaint (See Section 6 above). The second most common complaint (made by seven respondents) concerned the unenforceability of orders prior to their service and the difficulties of service.

A further question put to police officers, designed to elicit their objections to S.99, concerned the adequacy of their powers to enforce this law (Question 4). On the whole, respondents regarded their powers as sufficient.

Only two of the eleven Darlington officers indicated dissatisfaction with their powers. Neither suggested any specific changes. Only five of the thirteen Port Adelaide police officers were unhappy with their present powers. Three officers wanted the power to demand the alleged offender's name and address. Two wanted an increased power to break and enter premises. Other suggestions were for powers to enter premises to speak to the "offending person", to "remove the offending person" before the issue of an order and in circumstances where "no other offences are indicated", and "to stay on the premises where the offender is the owner of the premises". No reasons were given for any of these suggestions.

Eight of the sixteen Holden Hill officers responding to this question expressed satisfaction with their powers. Seven officers said they were frustrated by delays in service and several recommended that the police be empowered to enforce orders prior to service. One officer favoured a power of arrest and detention until the court hearing because "often the offender returns to the scene after being given bail or not being arrested and re-offends".

7.4. Discussion and Conclusions

The present endeavour to produce a general evaluation of restraining orders has met with mixed success. Persuasive arguments have been offered both for and against the efficacy of restraining orders. The task now is to search for some common themes among the range of comments received.

Commencing with the perspective of the victim, the more common view of restraining orders is that they do not work. Rather than restraining the respondent, the orders are thought to inflame a situation and provoke further violence. A significant minority of victims, however, adopt a different view of S.99. Six of the twenty-two women surveyed regarded the orders as useful (they made the respondent "more careful") and recommended them to other women experiencing domestic violence.

The more detailed assessment of restraining orders provided by welfare and legal workers helps to explain this divided approach. According to this survey group, the chief advantage of the orders is that they deter persons who are normally law-abiding from engaging in further acts of violence. To a limited extent, the orders are effective. The main problem with the orders - their principal disadvantage - is that they fail to deter persistent offenders who have developed cynical attitudes toward the law. It follows that the attitude of the respondent is all important. The extent to which the respondent takes the order seriously is the extend of its effectiveness.

Although this assessment of restraining orders smacks of tautology - restraining orders are effective whenever the respondent obeys their terms - it in fact says more than this. For certain type of persons (those who have infrequent dealings with the law) restraining orders appear to work. They make the victim feel more secure, they invest her with a sense of her

own agency (she feels she is taking control over her life) and they function as an important symbol of society's condemnation of the behaviour in question.

The value of restraining orders therefore lies primarily in its role as a threat of legal action. While the threat is taken seriously by the respondent the order is effective. Once the respondent decides to ignore the terms of the order a different story emerges. Orders are said to be either ineffectual or positively disfunctional with the persistently violent person. Not only may the order itself provoke an attack, but the offender soon becomes positively contemptuous of the order as he learns of the mild repercussions of breaching an order.

A similar evaluation of S.99 emerges for the police survey. Again it is observed that the orders are most effective with the law abiding. In such cases the orders allow victims to play a postive role in protecting themselves; they give police a positive and visible role - as prosecutor and law enforcer; and they instil in the respondent a fear of arrest. In line with the welfare and legal workers surveyed, the police also observe that there is however a limit to what any law can do. Neither increases in police powers (which are, anyway, generally deemed to be adequate) nor fine-tuning the law will restrain the determined spouse. "If someone is intent on committing violence, they will carry out their wishes no matter how many restraining orders have been taken out."

8. IS EACH STEP OF THE RESTRAINING ORDER PROCESS EFFECTIVE? WHAT DO THE OFFICIAL DATA REVEAL?

The approach adopted in this evaluation of S.99 has been to work from the general to the particular. It began with the largest question: Do we need a civil remedy for domestic violence? It proceeded by way of a comparative analysis of S.99 with related laws: with the previous law, with the Commonwealth law, and with the criminal law. In the previous section the focus was narrowed to consider S.99 in isolation. There the question was posed: Does S.99 work? Is it an effective legal remedy for domestic violence?

A final narrowing of focus occurs here. The present aim is to examine the internal workings of the restraining order legislation.

The first part of this analysis of the restraining order process comprises a review of the available statistics on the operation of S.99. Employing data from the South Australian Police Department and the Office of Crime Statistics (Attorney General's Department), information is presented on a number of stages and facets of the restraining order process. These are: a) the incidence of orders made, confirmed, served, withdrawn and breached; b) the terms and duration of the orders themselves; c) the geographic distribution of orders issued and breached; d) delays in the service of orders and between the various court hearings; e) the incidence of arrests for breaches of orders; f) the incidence of private versus police-initiated complaints; and g) the court outcomes for alleged breaches of orders.

The second part of this assessment of the operation of the restraining order legislation employs the findings of the survey of welfare and legal workers to identify problems perceived to occur at different stages of the legal process. These stages are the complaint, the court hearing, the order and the breach.

Whenever suitable data are available, these observations on the operation of S.99 are supplemented with the findings of the victim and police surveys.

8.1. Statistics On The Restraining Order Process

8.1.1. Data Sources

The South Australian Police Department collects and stores information on the nature and incidence of Restraining Orders at its Restraint Order Unit. The Unit serves at least two purposes. It provides information on the status of orders to Patrol Officers responding to complaints of breaches of orders. It also provides statistics on Restraining Orders to the Special Projects Section of the South Australian Police Department which are collated, analysed and then forwarded to the Women's Adviser's Domestic Violence Committee for its information. At the time of writing, two years data on restraining orders are available.

Although they provide interesting information on trends in the use of restraining orders, the value of the police statistics are limited by several omissions (1). Firstly, they do not place the incidence of the use of restraining orders against a background of the extent of domestic violence reported throughout South Australia - an unknown figure. Hence it is impossible to estimate the frequency with which victims of domestic violence (who complain to the police) make use of restraining orders. A second problem with the data is that they do not allow a comparison of the use of restraining orders by people complaining of domestic violence with the incidence of criminal charges against their assailants. That is, it is not known how the extent of victims' use of restraining orders compares with the incidence of the police use of criminal charges such as assault - a statistic which would mesh well with the study of police practices documented in Section 6.

Another important omission from the police data is information on

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(1) Some of the limitations of the police data are an outcome of the nature of the information requested by the now-defunct Domestic Violence Committee in order to monitor the first two years of the legislation.

how often, and the stage at which, complainants either withdraw from or are excluded from the restraining order process. At present it is impossible to tell when and why complainants are dropping out of the restraining order system. Data are needed on the number of orders refused upon the first application, the stage at which complainants themselves withdraw their orders (the incidence of withdrawals is known), the number of orders successfully contested by respondents, and the number of orders the court refuses to confirm.

The most fundamental defect in the police statistics, from the point of view of the present report, is their failure to distinguish restraining orders between parties to domestic disputes from those between unrelated persons. This means that any trend which emerges in the police statistics can only be a trend in the use of restraining orders generally. It is not necessarily a trend in the use of restraining orders by parties to domestic disputes.

A second set of statistics on the use of restraining orders is provided by the Office of Crime Statistics (O.C.S.). These data, which are derived from court files, (1) offer a crude estimate of the number of restraining orders granted in connection with domestic disputes. While the best data would specify the relationship between the parties, the O.C.S. statistics are only able to indicate when a restraining order involved an assault on a female. Although this figure automatically eliminates restraining orders involving an assault on a male, it is still too inclusive in that it incorporates an unknown figure of assaults on females occurring in non-domestic circumstances. A more certain measure of the number of restraining orders relating to domestic violence was not available owing to the failure of the court data, from which the O.C.S. data derive, to distinguish domestic cases from those between unrelated persons.

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(1) Court files are summarised in a statistical collection form by Clerks of Court. This process is part of the O.C.S. method of data collection.

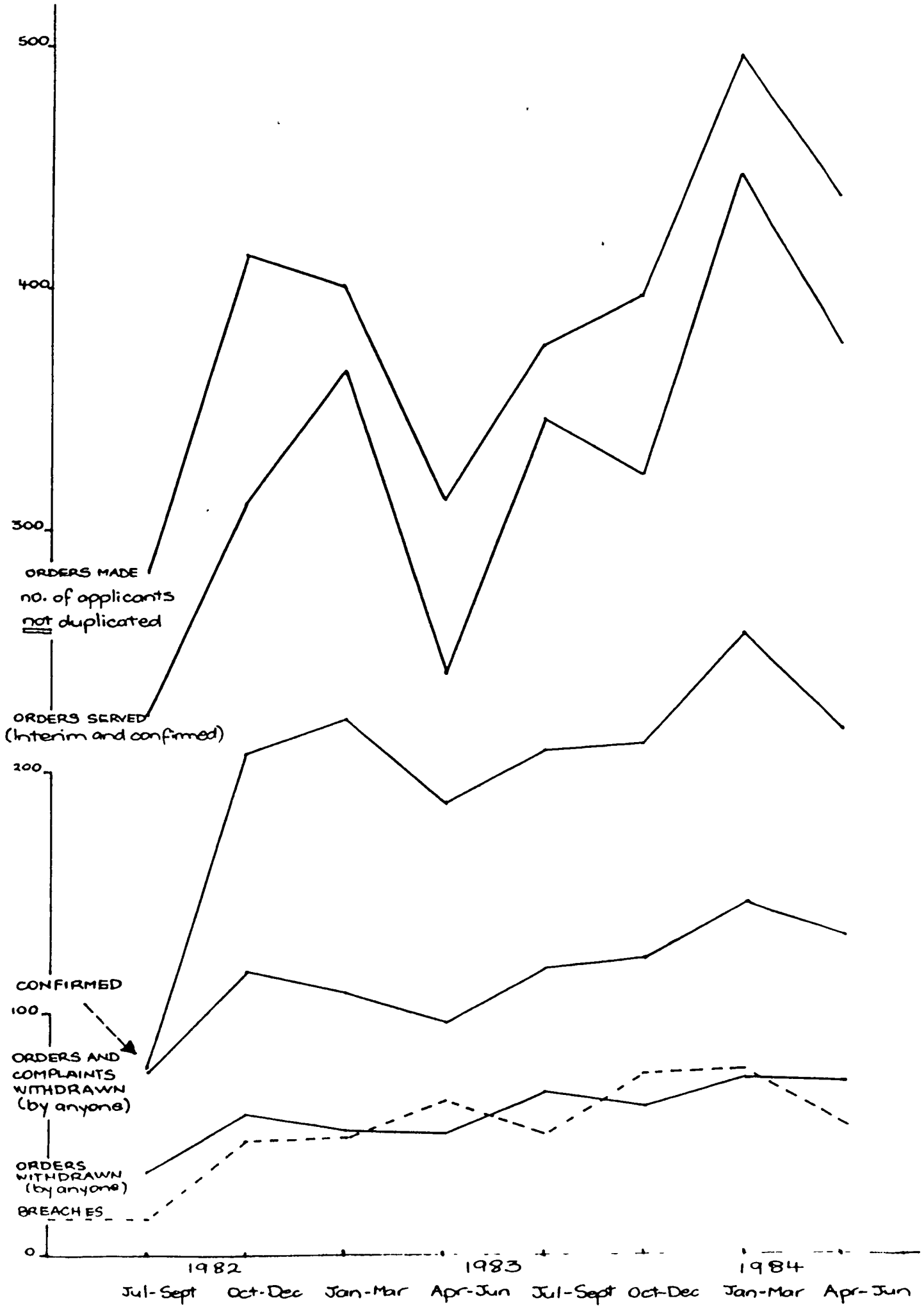
Granting that these statistics are far from ideal, they do at least provide a rough measure of domestic restraining orders which can be examined for trends - cannot be conducted with the police statistics.

The following statistical analysis of the use of restraining orders relies on both sets of data - from the Police Department and the O.C.S. As an aid to developing a quick overview of trends in the general use of the restraining order legislation, the bulk of the police data are presented in a graphic form depicting the first two years of the operation of the new law - from June 1, 1982 to July 31, 1984. The O.C.S. data, which cover a shorter period - June 1, 1982 to July 31, 1983 - are presented in a tabular form. Whenever possible, connections are made between the two bodies of data.

8.1.2. The Incidence Of Restraining Orders

The first batch of police statistics provides a comparative analysis of several stages of the restraining order process (from the issue of the first order to breach of an order) for a two year period (from July 1982 to June 1984). Figure 1 provides information on the number of orders "made", "confirmed", "served", "withdrawn" and "breached". It is possible to say several things about the restraining order process from this graph. Firstly, the number of restraining orders "made" fluctuated substantially over the two year period. At the inception of the legislation, the number of orders made was at its lowest. The number of orders "made" reached its peak in the first quarter of 1984: nearly 500 orders were issued. The general pattern for orders "served", not surprisingly, tends to follow the pattern of orders "made", although it is apparent that significant numbers of orders are never served. The extent of the problem of unserved orders is in fact even worse than Figure 1 would seem to indicate due to counting methods employed by the police. To explain, while the figure for "orders made" counts

Figure 1 ALL ORDERS MADE, SERVED, CONFIRMED, WITHDRAWN & BREACHED



individual complainants only once, regardless of the number or orders they received, "orders served" includes interim, varied and final orders and therefore counts the same complainant twice or more. It is therefore an inflated figure. The number of orders "confirmed" is roughly half of the number of orders "made". The graph tells us that this is partly attributable to orders not served and partly to do with the withdrawal of orders.

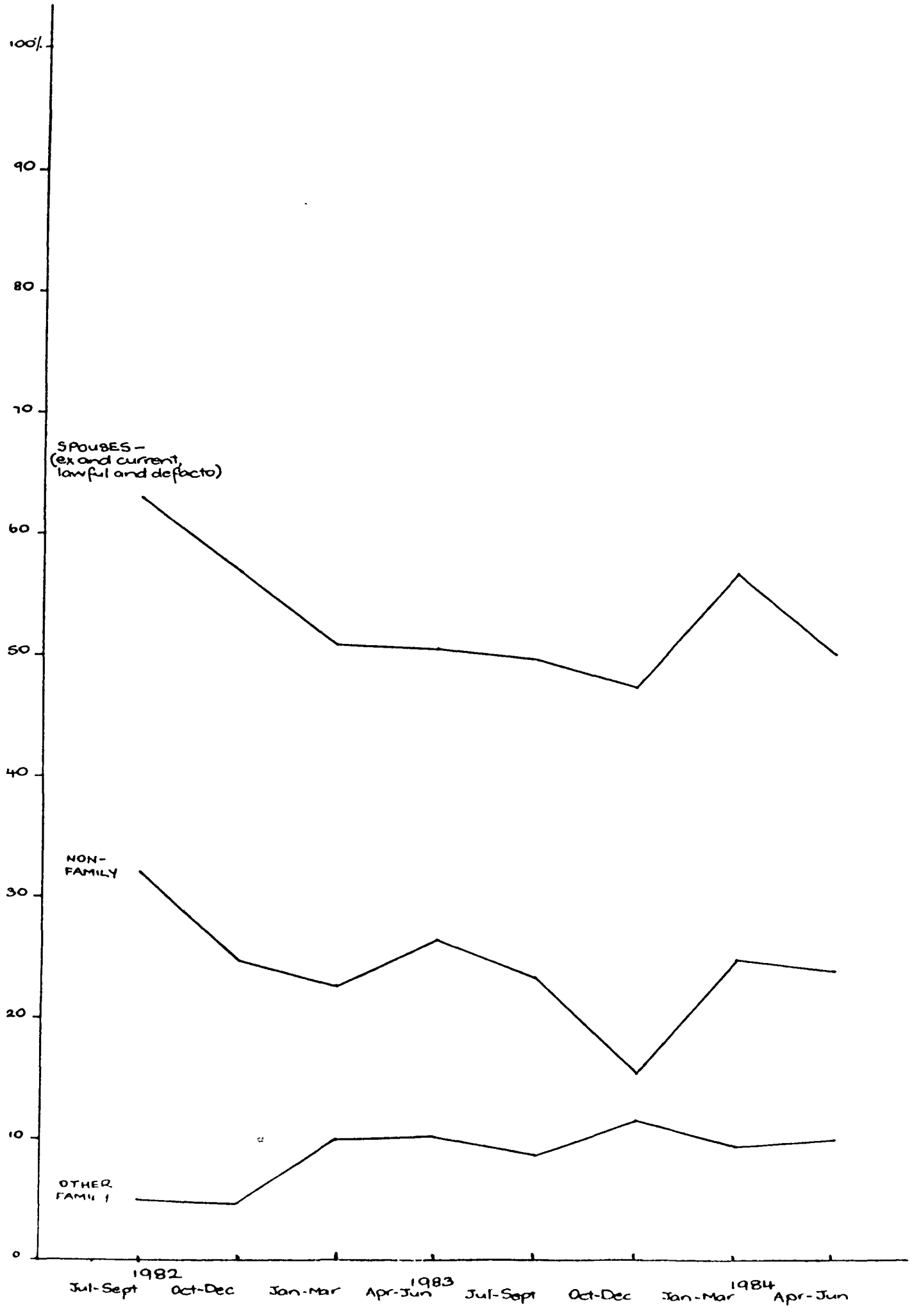
Over the two years represented, the proportion of orders withdrawn remained fairly stable. Averaging over the entire period, about one-sixth of orders were withdrawn. Unfortunately, this figure does not tell us who was doing the withdrawing as it amalgamates withdrawals by complainants, by defendants, and by the court (that is when the court refuses the order).

After an initially low figure for "breaches" (less than one-fourteenth of orders made resulted in reported breaches), there was an increase which stabilized around one-sixth to one-seventh of orders "made".

Figure 2 is an important supplementary graph to Figure 1 as it provides an indication of the number of restraining orders involving "domestics". (It does not however allow a breakdown of the other police data according to the relationship between the parties.) Figure 2 reveals that about the same number of unrelated persons have used restraining orders as have "lawful and de facto spouses", treated as a group. The disclosure of such a high proportion of non-domestic orders necessarily confounds any attempt to employ Figure 1 (which combines all orders) as an indicator of trends in the use of restraining orders by parties to domestic disputes. Indeed, the considerable use made of Section 99 by unrelated persons points to a clear need for police statistics to distinguish restraining orders related to "domestics" from those involving other parties. Otherwise it is impossible to say anything useful about trends in domestic orders.

Figure 2

USERS OF s.99



Turning to the O.C.S. data, Table 1 shows us that roughly equal numbers of domestic (involving an assault on a female) and non-domestic (not involving an assault on a female) restraining orders were issued during the financial year of 1982 to 1983 - the first year of the life of the restraining order legislation. Recall that Figure 2 of the police data, which is more specific in its identification of relationships between the parties, also indicated that about 50% of restraining orders involved domestic disputes. To a limited extent then, the parity between Figure 2 and Table 1 serves to vindicate the method chosen by the O.C.S. to identify domestic orders. In other words, the description of a restraining order as domestic in nature, according to whether it involved an assault on a female, produces similar numbers of domestic orders as Figure 2, which identifies, with some precision, the relationship between the parties. We can therefore proceed to employ the O.C.S. data on domestic restraining orders with a limited degree of confidence.

In addition to the relative numbers of domestic and non-domestic restraining orders issued for the given period, Table 1 also reveals the number of applications for orders in which the respondent was summonsed to court as opposed to arrested. Table 1 indicates that a respondent to a domestic restraining order was about as likely to be arrested for the incident precipitating the application as the respondent to a non-domestic order.

8.1.3. Terms And Duration Of Orders

Information about the terms and duration of orders is presented in the Police Department annual reports on the first two years of the restraining order legislation. The first annual report observed that:

> "the types of restraining orders given varied widely ... the two most common types of orders given were for the defendant to be 'restrained from assaulting, molesting, harassing, insulting, offending etc.' or 'assaulting or threatening to assault' the aggrieved party ... the

TABLE 1

*Domestic and Non-Domestic Restraining Orders Issued, June 1, 1982 - July 30, 1983, by Type of Apprehension

TYPE OF APPREHENSION	DOMESTIC ORDER	% OF TOTAL	NON-DOMESTIC ORDER	% OF TOTAL
TOTAL (KNOWN)	412	100	389	100
ARREST	97	23.5	106	27.2
SUMMONS	315	76.5	283	72.8
UNKNOWN	4		4	

* Domestic = Assault on a female

> majority of orders had more than one condition. The most common second constraint was that the defendant be restrained from 'approaching, entering, remaining in or being near' the complainant's premises ..."

In the second annual report the following was noted about the terms of orders:

> "the types of restraining orders given varied widely ... the most common type of orders given were for the defendant to be 'restrained from assaulting, molesting, harassing, insulting, offending etc.'".

On the duration of orders, the first annual report had this to say:

> "the majority of orders in all categories state no time limit or until further order (78.3% of orders). 16.4% of orders had time limits between one and five years; very few had less."

In the second annual report similar remarks were made:

> "the majority of orders in all categories state no time limit or until further order (91.3% of orders). 7.4% of orders had a time limit between one and five years. Very few had less."

It was also concluded that "there does appear to be a tendency for even more orders to have indefinite time limits".

8.1.4. Distribution

Figure 3 presents information on the geographic distribution of restraining orders. It reveals that the majority of orders are made in the metropolitan area, but that significant numbers are issued in the country, peaking in the Oct-Dec 1982 and Jan-March 1984. Figure 3 also shows numbers of orders breached by country and by metropolitan areas. No consistent trend is discernible.

By dividing South Australia into seven regions Table 2 of the O.C.S. data provides a more detailed breakdown of the geographic distribution of both domestic and non-domestic restraining orders. By far the largest cluster of domestic orders was issued in the north-east of Adelaide (40.2% of all domestic orders). This was also the case for non-domestic orders, although the proportion was not as great (33.4%). In the country the largest group of domestic orders was in the Iron Triangle, while non-domestic orders tended to cluster in the area described

Figure 3 DISTRIBUTION

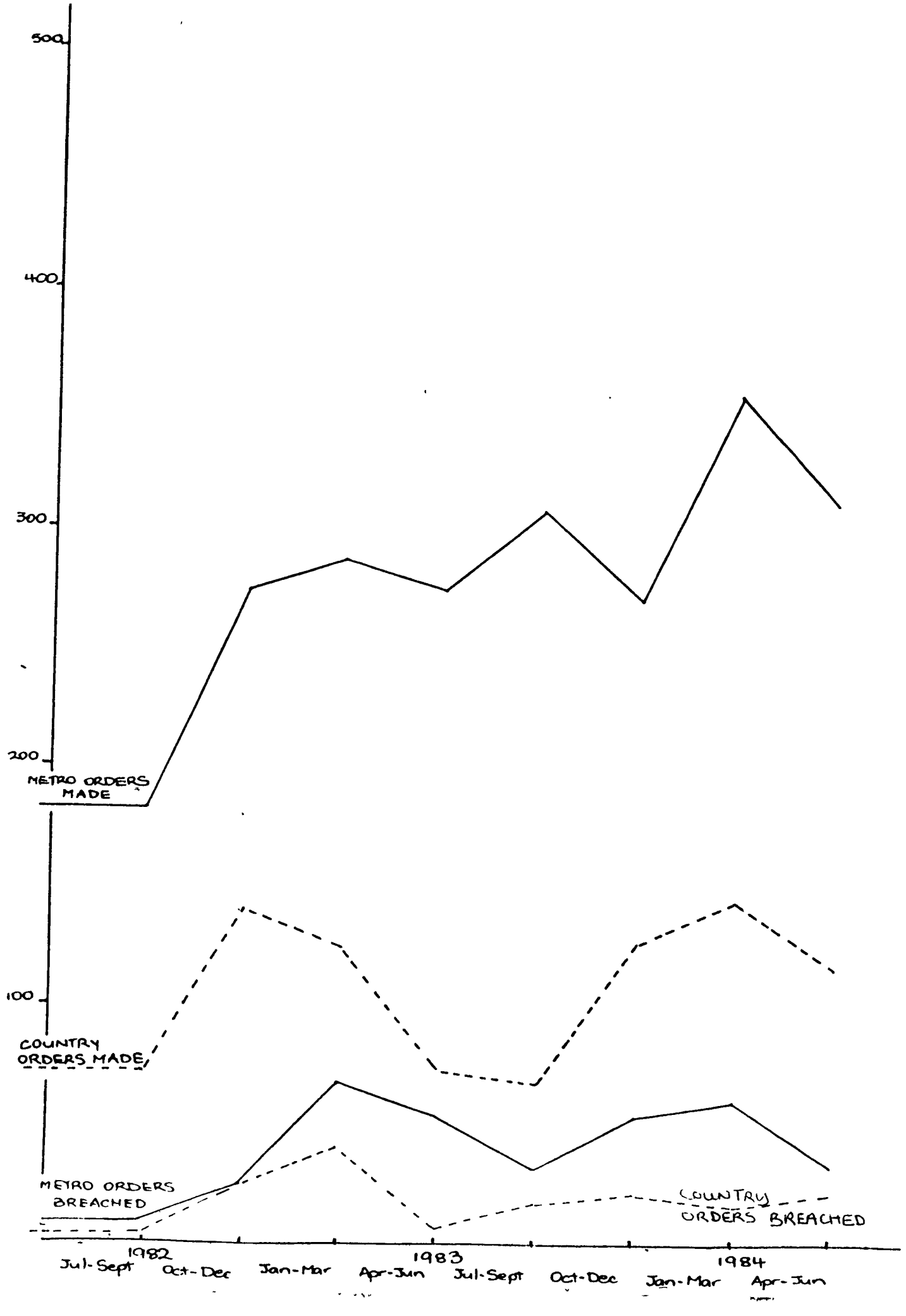


TABLE 2

Distribution of Restraining Orders, June 1 1982 - July 31 1983

	AREA OF COURT	DOMESTIC ORDER	% OF TOTAL	DOMESTIC BREACH	% OF TOTAL	NON-DOMESTIC ORDER	% OF TOTAL	NON-DOMESTIC BREACH	% OF TOTAL
	Total (Known)	413	100	42	100	392	100	50	100
Metro	Adelaide	24	5.8	3	7.1	13	3.3	5	10.0
	Metro, S-E	61	14.8	4	9.5	24	6.1	8	16.0
	Metro, W	60	14.5	4	9.5	83	21.2	9	18.0
	Metro, N-E	166	40.2	12	28.6	131	33.4	6	12.0
Country	Iron Triangle	63	15.3	7	16.7	53	13.5	11	22.0
	S-E	2	.5 24.8	-	- 45.3	-	- 35.9	-	- 44.0
	Other Country	37	9.0	12	28.6	88	22.4	11	22.0
	Unknown	3				1			

as "other country".

The pattern of distribution changes dramatically when it comes to reports of breaches. Whereas only 24.8% of domestic orders were issued from the country, 45.3% of breaches were reported in country areas. In other words a disproportionately large number of breaches of domestic orders were reported in country areas. These figures can be interpreted in two ways. One interpretation is that more breaches of orders are occurring in country areas. The other view is that there is a greater willingness to employ the legal process. The various positive comments received about police in some country areas tend to give weight to the latter interpretation.

8.1.5. Delays

Figure 4 of the police data illustrates the extent of delays in service of orders from the time of the incident precipitating the application. It shows that although over the entire period canvassed the majority of orders were served within a week, there has been a general slowing down in service. While 70% of orders were served within a week at the inception of the legislation, only 54% had been served at this rate by the last quarter.

Tables 3 and 4 of the O.C.S. data provide further information on delays in the restraining order process. Table 3 provides two sets of information. It indicates delays between the incident giving rise to the order and the first court appearance. It also reveals delays between the report of a breach of an order and and the court appearance of the alleged offender. From Table 3 it is apparent that there are no important differences in court delays between cases involving domestic and non-domestic orders. In other words, court delays do not seem to be a function of whether a restraining order concerns a domestic or a non-domestic dispute.

Figure 4

DELAYS IN SERVICE OF ORDERS

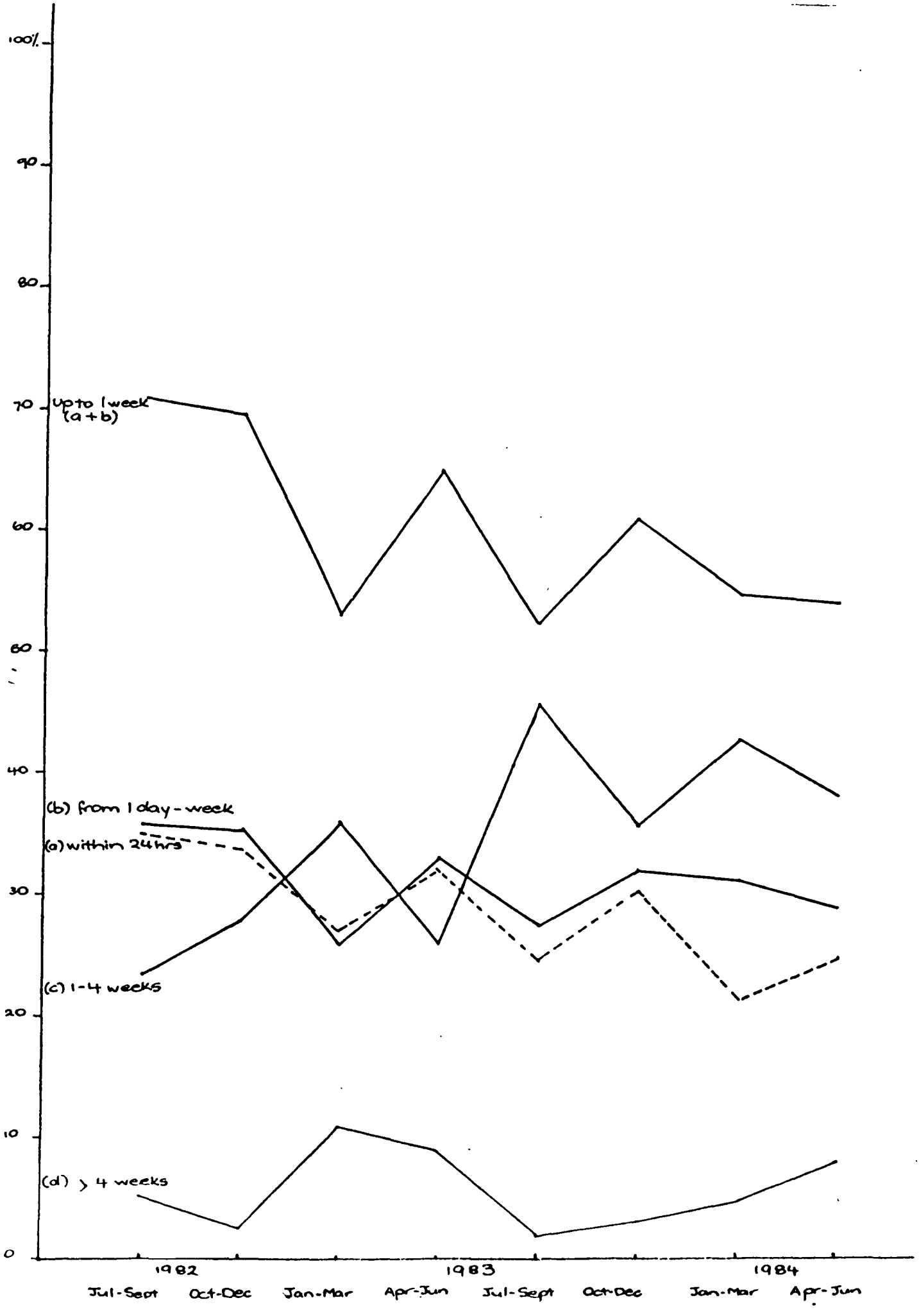


TABLE 3

Delays in the Restraining Order Process
- from Offence to First Court Appearance

	ISSUE OF DOMESTIC ORDER	%	BREACH OF DOMESTIC ORDER	%	ISSUE OF NON-DOMESTIC ORDER	%	BREACH OF NON-DOMESTIC ORDER	%
Total Known	412	100	42	100	385	100	50	100
(a) One Day	28	6.8	7	16.7	29	7.5	6	12
(b) 2-6 Days	243	59	28	66.7	204	53	37	74
(c) 1Wk up to 1 Mth	61	14.8	4	9.5	67	17.4	3	6
(d) 1 Mth or More	80	19.4	3	7.1	85	22.1	4	8
(a)+(b) Up to 1 Week	271	65.8	35	83.3	233	60.5	43	86
Unknown	4		0		8		0	

TABLE 4

Delays in the Restraining Order Process
- from First Court Appearance to Case Finalized
(June 1, 1982 - July 31, 1983)

	DOMESTIC ORDER	%	BREACH OF DOMESTIC ORDER	%	NON-DOMESTIC ORDER	%	BREACH OF NON-DOMESTIC ORDER	%
Total	416	100	42	100	393	100	50	100
(a) One Day	167	40.1	5	11.9	176	44.8	9	18
(b) 2-6 Days	20	4.8	8	19.1	22	5.6	6	12
(c) 1 Wk up to 1 Mth	83	20	11	26.2	70	17.8	5	10
(d) 1 Mth or More	146	35.1	18	42.9	125	31.8	30	60
(a) + (b) Up to 1 Week	187	50.0	13	31.0	198	50.4	15	30
Unknown	0		0		0		0	

Table 3 shows that significant numbers of applicants for both domestic and non-domestic orders (19.4% and 22.1% respectively) are obliged to wait a month or more for their case to come on. The majority of court hearings for both applications and breaches, however, take place within a week of the relevant incident. Even so, it is only a small minority of cases which get to court within 24 hours of the incident (6.8% and 7.5% for orders; 16.7% and 12% for breaches). It can therefore be said that the efficiency of the first stage of the restraining order process is variable: despite the simplicity of the application procedure, most orders take more than a day to obtain.

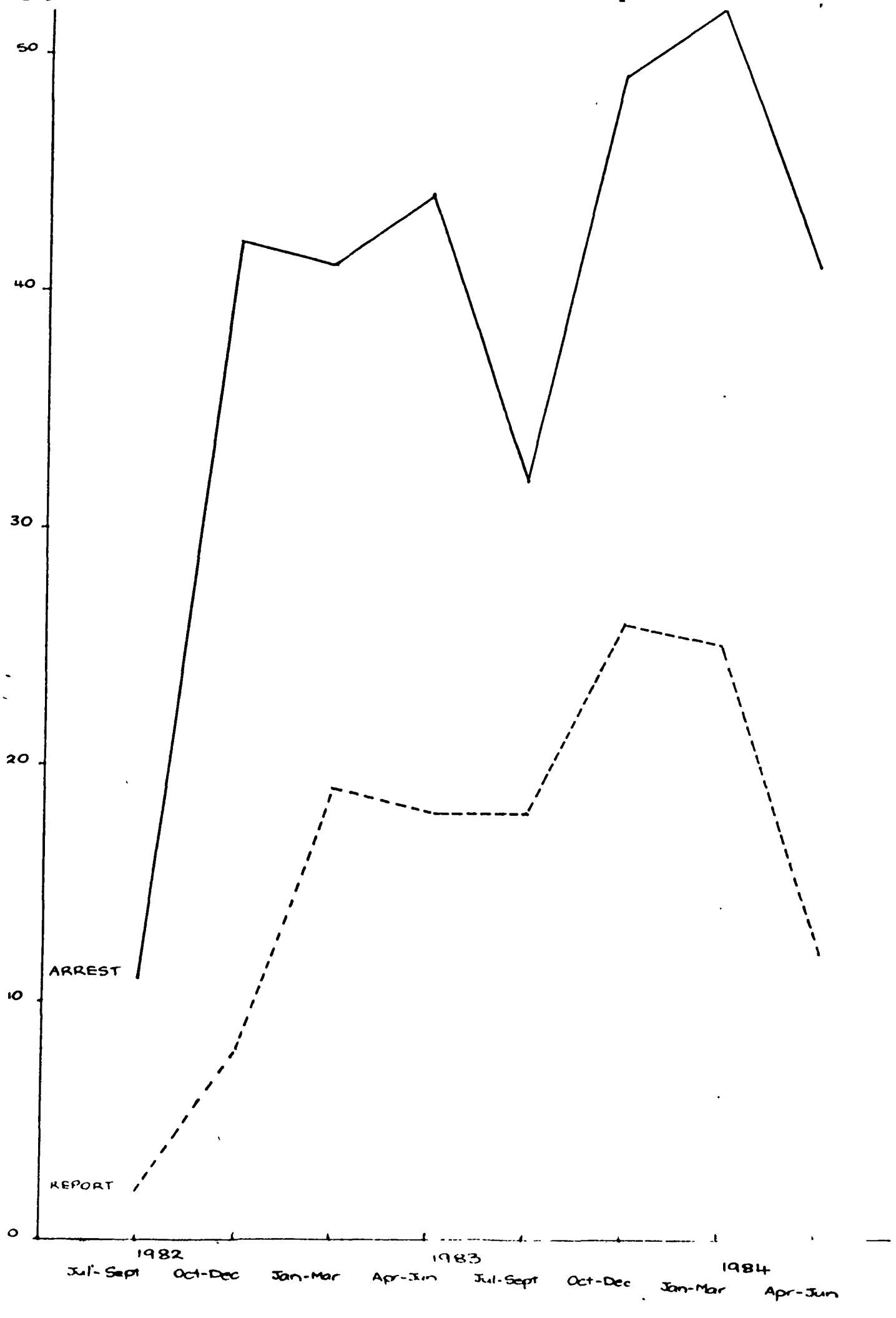
Table 4 refers to time delays between the first court appearance and the final hearing for both applications for orders and reports of breaches. Again, there are no important differences between the pattern of delays for matters relating to "domestics" and those of a non-domestic nature. For both types of order, about 50% are finalized within a week, while about one-third take one month or more to be finalized.

The pattern for breaches (the time between first and last court appearances of persons accused of breaching orders) is different. The largest category for both types of order (domestic and non-domestic) is the largest period, "one or more". In other words, court hearings for breaches of orders tend to take longer to finalize than applications for orders.

8.1.6. Police Response To Breaches: Arrest vs. Report

The final Figure presented from the police statistics, Figure 5, indicates the relationship between the number of police arrests and police reports in response to a breach. This shows quite dramatically that the arrest response is used significantly more than the report. Put differently, police are a good

figure 5 POLICE RESPONSE TO BREACH: Arrests vs. Reports



is used significantly more than the report. Put differently, police are a good deal more likely to arrest than report a person accused of breaching an order.

Table 5 of the O.C.S. data allows a determination of whether the police response to alleged breaches of restraining orders involving 'domestics' differs from their response to breaches of a non-domestic nature. Table 5 illustrates clearly that police are equally likely to arrest for an alleged breach of a restraining order when a matter involves a 'domestic' as when the parties are unrelated. In response to approximately two-thirds of complaints of breaches of both types of order, police arrest.

8.1.7. Private vs. Police Initiated Complaints

The Police Department also provides information on the number of complaints taken out privately as opposed to through the police. From its first annual report on restraining orders we learn that:

> "In the first quarter of operation of the new system, 23% of orders were initiated privately (with no police involvement at the complaint stage), but this decreased to only 3% of orders made in the second half of the year (or only 3 orders per month on average)."

In their second annual report it was observed that:

> "In the second year of operation of the system only 3.5% of orders were initiated privately (with no police involvement at the complaint stage)."

8.1.8. Convictions And Sentences

O.C.S. data presented above disclosed that for the first year of the operation of the restraining order legislation there were 92 reported breaches: 42 of a domestic nature and 50 involving 'non-domestics'. Table 6 presents the 'court outcomes' for these alleged breaches. It reveals that while 34 accused persons were found guilty of breaching domestic orders, only 15 received any penalty. Table 6 also shows that there were no acquittals in the domestic category. The remaining 8 persons not found guilty all had their charges withdrawn.

TABLE 5

Police Response To Breaches Of Restraining Orders: Arrest Vs. Report
(June 1, 1982 to July 31, 1983)

	BREACH			
TYPE OF APPREHENSION	DOMESTIC BREACH	% OF TOTAL	NON-DOMESTIC BREACH	% OF TOTAL
Total (Known)	41	100	50	100
Arrest	33	80.5	39	78.0
Summons	8	19.5	11	22.0
Unknown	1		-	

TABLE 6

Court Outcomes (Verdict and Sentence) for Hearings of Breach of Restraining Orders

	BREACH OF DOMESTIC ORDER	BREACH OF NON-DOMESTIC ORDER
Total	42	50
Convicted With Penalty	15	19
Convicted Without Penalty	12	9
Guilty Without Conviction	7	7
Acquitted	-	1
Charge Withdrawn	8	13
Charge Dismissed	-	1

penalty. Table 6 also shows that there were no acquittals in the domestic category. The remaining 8 persons not found guilty all had their charges withdrawn.

Table 7 narrows the focus even further. It provides information on the penalties received by persons convicted of breaching restraining orders. Of the 15 persons penalised for breaching domestic orders, 3 were imprisoned, while 5 received a fine only. In the non-domestic category, 12 offenders were fined and two were imprisoned. These statistics indicate quite dramatically that the chances of a respondent to an order finding himself in prison for breaching its conditions are slight.

8.2 Improving the Data

The present discussion of the available statistics on restraining orders began with some comments on their limitations. It was pointed out that the value of the police statistics is limited by several omissions. Firstly, the number of restraining orders taken out cannot be set against a background of the number of incidents of domestic violence reported to the police because the latter information is simply not collected. Hence it is impossible to determine the proportion of persons who complain to the police of domestic violence who also make use of the restraining order process. Second, statistics are not collected on the number of assault charges levelled against violent spouses. Accordingly, the extent of the use of restraining orders cannot be compared with the frequency of the criminal response to complaints of domestic violence. A third omission from the police statistics is information on when and why victims of domestic violence are electing not to proceed with legal action.

The most glaring problem with the police data, however, is their failure

TABLE 7

Penalties for Breach of Restraining Orders

	PENALTIES FOR DOMESTIC BREACHES	PENALTIES FOR NON-DOMESTIC BREACHES
Total	15	19
Order	2	1
Fine	5 (Max. $200) (Min. $10)	12 (Max. $400) (Min. $10)
Bond Without Supervision	1	-
Bond With Supervision	-	1
Suspended Imprisonment	4	3
Imprisonment	3 (Max.8 Wks) (Min.3 Wks)	2 (Max.4 Wks) (Min.2 Wks)

to identify the relationship between the parties. At present it is impossible to determine whether the issue, the confirmation or the breach of an order relates to a domestic or a non-domestic dispute.

Although the O.C.S. data do provide an indication of the number of orders granted in connection with domestic disputes, these statistics are also defective in that they are unable to specify with a high degree of precision whether or not an order relates to family violence.

Before turning to the alternative source of data on restraining orders (the opinion data derived from the author's surveys) which will be used as a supplement to the official statistics, it is fruitful to consider ways of improving the official data. Future endeavours to investigate the use of the laws related to domestic violence will benefit considerably from a more comprehensive data base.

The most obvious and dramatic improvement to present police and court methods of recording information on the use of restraining orders would be the identification of the relationship between the parties. This would provide an efficient and accurate method of distinguishing domestic from non-domestic orders.

RECOMMENDATION 7

Accordingly it is recommended that all police statistics on restraining orders identify the relationship between the parties (1). It is also recommended that court files related to restraining order applications indicate the relationship between the parties.

To enable comparative analyses of the incidence of complaints of domestic

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(1) Although the present set of police statistics do not include this breakdown for each stage of the restraining order process, it would be possible to so present the data given that information on the relationship between the parties is already collected by the Police Department.

violence, the use of restraining orders and the use of assault charges, police should extend their statistics accordingly.

RECOMMENDATION 8

It is recommended that police extend their statistics to include information on the incidence of complaints of domestic violence and the number of assault charges arising from domestic disputes (1).

To enable a determination of the extent to which victims of domestic violence "drop out" of the legal process, it is essential to monitor their progress throughout the restraining order process.

RECOMMENDATION 9

Accordingly it is recommended that police record the stage at which complaints are withdrawn and the reasons given for their withdrawal.

8.3. Observations on the restraining order process

While the aggregate data provided by the police and the O.C.S. indicate general patterns and trends in the use of restraining orders, from complaint to conviction, they give one no real sense of the experience of individuals within the process. To develop an appreciation of the specific problems a victim may encounter as she works her way through the legal system, a different type of evidence is required to supplement the available statistics. The perceptions and observations of those directly involved in the operation of the domestic violence laws are needed to provide a critical perspective on the statistics.

The following critical analysis of the restraining order process largely

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(1) Since February 1984 the Police Department has collected information on the incidence of assault charges employed in response to complaints of domestic violence.

comprises the comments of welfare and legal workers obtained during the survey. Whenever they are available, however, the observations of victims and of the police are included as supplementary evidence. For the purposes of this discussion, the restraining order process is divided into four stages: the complaint, the court hearing, the order and the breach (1).

8.3.1. The Complaint

Victims of domestic violence can first engage with the process of the law in a variety of ways. They may telephone the Police during or after an incident of domestic violence asking them to attend their home. They may go to the front desk of a police station to complain of domestic violence. They may seek the help of a lawyer who will advise them of their next step towards legal redress. Or they may go directly to a court themselves and take out an order against their assailant.

In an effort to impose order on a sequence of events which is in fact highly variable, this assessment of the operation of restraining orders begins with what will loosely be termed "the complaint". Here we look at problems which arise when a woman first endeavours to set the wheels of the law in motion.

a) Welfare Workers

The most frequent comment made by welfare workers about "the complaint" stage concerned the attitude of police. In view of the prominent role played by the police in the operation of the restraining order legislation, their high profile in the survey's findings is hardly surprising.

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(1) The breach of an order should not, of course, be regarded as an inevitable and automatic step in the sequence of events making up the restraining order process.

All members of the Crisis Care Unit completing the questionnaire were critical of the Police response - but for a variety of reasons. In connection with "the complaint" the commonest observation was that Police are reluctant to handle proceedings for a restraining order: 5 responses referred specifically to this as a perceived problem. The reluctance of the Police to involve themselves was attributed, inter alia, to confusion about the level of evidence required to obtain an order:

- "Police are reluctant to take out a S.99 order if there are no physical signs of violence on the victim."
- "Police are drawn into a lot of evidence before assisting women to apply for a S.99 order."
- "Police are refusing to make the application until the woman has been assaulted."

Only one District Officer of D.C.W. mentioned the evidentiary requirements of police as a problem. (1) S/he stated that:

> "the workers still do not consider restraining orders a basic answer because Police tend to wait until the victim is hit rather than act when the victim is afraid."

Two Shelters also referred to the reluctance of the Police to act at the complaint stage without substantial evidence of violence:

> "Women need to be threatened or assaulted on three occasions before action is considered".

Another disincentive to women pursuing restraining orders was identified by a shelter co-ordinator. She claimed there was a total lack of privacy for a a woman complaining of an incident at a Police Station.

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(1) It should be noted that, to keep the questionnaire brief, survey questions were not specifically addressed to each stage of the restraining order procedure; instead a general question was asked about the advantages and disadvantages of restraining orders. See Appendix 3.

b) The Legal Workers

Two Community Legal Centres referred specifically to the lack of co-operation of the Police, although, they admitted, on the basis of small samples:

- "One victim was discouraged from taking out a restraining order by the Police".
- "Several clients have approached me expressing frustration at the lack of co-operation from the Police in helping them obtain the order".

On the whole, family lawyers from the Legal Services Commission seemed to view the performance of Police at the complaint stage more favourably, although one indicated that s/he advised clients not to reveal to the police that their complaint arose out of a domestic dispute. Instead, s/he suggested that the client report that "someone was on the premises causing a disturbance". This notwithstanding, the same lawyer also advised clients that "it would be advantageous to them if the Police were prepared to take out the complaint".

The general practice of the lawyers from the Commission was to refer clients complaining of domestic violence to police to request a restraining order. One lawyer maintained that s/he had encountered problems with the police "only initially when some police were reluctant to take action on behalf of spouses" or "where a client is going back a second or third time". Another lawyer stated that "police were at times reluctant to take proceedings with threats". A third lawyer, whose standard procedure was to refer victims of domestic violence to the police, knew of only one case where a client failed to obtain a restraining order.

c) Discussion

Two problems emerge in relation to the complaint. One concerns the evidentiary requirements of police. It is contended that police are reluctant to respond to complaints of domestic violence and tend to wait for evidence

of assault or, worse, evidence of physical injury before pursuing a restraining order. The other concern is the physical conditions at police stations when women are expected to relate incidents of domestic violence. Women are asked to provide sometimes intimate details of family violence over the front desk and not in a private room.

The contention that police are sometimes unwilling to assist the domestic victim was discussed in Section 6 above. In assessing the extent to which victims are given access to both the civil and criminal law it was noted that victims often feel rebuffed by the police (see the findings of the victim survey above) and that police have a tendency to become case-hardened after encountering victims who withdraw complaints (see Police survey, Section 6). Both victim and police data therefore support the contention of welfare and legal workers that the first hurdle for the victim at the complaint stage is likely to be a reluctant police officer.

RECOMMENDATIONS

Recommendation 10

To eliminate the trauma of victims of domestic violence caused by reporting the offending behaviour in view of other members of the public at police stations, it is recommended that the police provide a private room for such complaints.

Recommendation 11

Further to Recommendation 3 (concerning the need for more extensive police training), it is recommended that the training branch of the proposed Domestic Violence Unit devise and organise training sessions for all operational police officers on the type and standard of evidence required for an application for a restraining order. This instruction should stress that a threat of damage to

property or to the person or merely provocative behaviour (that is likely to lead to a breach of the peace) any of which is likely to recur is sufficient.

8.3.2. The Court Hearing

The experiences of the victim of domestic violence at the court hearing are addressed in this section of the survey's findings. The following analysis of findings is complicated by the fact that there is not a standard first hearing. Instead it can assume different forms.

In the simplest instance, for example, a woman complains of domestic violence and the court hearing for an application for a restraining order is set for the next day. She appears at this hearing and acts as a witness to the incidents complained of. The Police Prosecutor becomes the complainant, presenting the victim's case to the court. The Police Prosecutor asks the victim to tell her story to the Magistrate who may question her about the incident. An interim order is granted ex parte (in the absence of the respondent) as there has not as yet been time to summons the other party to court.

Another scenario is this. Should the incident which prompted the application for a restraining order result in the respondent's arrest, he will be in the custody of the Police at the time of the first hearing and will therefore be brought before the court. As it is unlikely that he will have had time to consult a lawyer, and/or if he decides to contest the matter, the Magistrate will adjourn (put off) the matter for him to prepare his case without granting a restraining order. In these circumstances, at the end of the first hearing the victim may leave the court without a restraining order, although if the court chooses to grant the respondent bail with conditions this will function as a form of restraint.

a) Welfare Workers

Confusion about the distinction between the evidence required for a criminal prosecution and that required for a restraining order was identified as a problem by one member of the D.V.C. S/he maintained that although a successful application for a restraining order depended on convincing the court of the likely recurrence of the behaviour complained of, there was a tendency for Police Prosecutors to treat restraining orders like ordinary criminal charges, in the sense that only the facts surrounding the most recent incident of the violence which precipitated the complaint were presented to the court. This D.V.C. member stressed the importance of presenting the full history of violence, not only to establish the likelihood of its recurrence, but also to ensure that the applicant felt adequately represented.

One member of the Crisis Care Unit expressed concern about the anonymity of courthouses. S/he suggested that each courthouse provided a "contact police officer" to deal specifically with S.99 orders. Applicants could then be referred to a particular person when they attended court.

A District Officer from the D.C.W. was critical of the court practice of dealing with restraining orders at the end of the court sessions (a practice confirmed by the author), maintaining that this gave the impression that restraining orders were regarded as unimportant.

b) Legal Workers

According to a family lawyer from the Legal Services Commission a key problem for the victim after she has reported the matter to the Police is her ignorance of what happens next. She is given insufficient information about what to do should her case take a variety of courses. "The common worry", this lawyer claimed, "is what role they play if the matter is defended and

whether an order is effective if the matter is defended.

Another lawyer from the Commission was also concerned about the victim's uncertainty about her role at the first hearing and her relationship with the Police Prosecutor:

> "The most general complaint, which I have heard several times, is that the woman goes to court, is confused as to what her position is and whether she should speak to the Police Prosecutor before the court because he is talking to other lawyers in relation to other matters. She sits in the body of the court, sees her husband's lawyer go up and talk to the Police Prosecutor and the Police Prosecutor has stood up and consented to an 'adjournment' without any discussion at all with the woman."

The same lawyer also maintained that s/he had encountered one case where both s/he and the client believed that the Police Prosecutor was poorly prepared for the hearing for the restraining order.

A Commission lawyer (who had performed the role of duty solicitor for several years) confirmed that when the respondent attended court and asked for the matter to be adjourned (so that he could instruct a lawyer and/or because he wished to contest it) the applicant became confused. The Police Prosecutor was observed to offer inadequate explanations of the proceedings to applicants, who were therefore left floundering. The duty solicitor also commented that restraining orders tended to be left until the end of the day's listings. S/he explained that the court gave preference to people in custody applying for bail, to people represented by lawyers and to cases that did not involve the taking of evidence. The listing of applications for restraining orders in a separate court was suggested as a solution to this problem of delay.

A Law Society lawyer, who had witnessed a case in which the respondent had been arrested for assault for the incident giving rise to the first complaint - and was therefore present at the first hearing - was critical of the fact that

an interim restraining order was not sought by the Police Prosecutor when the defendant asked for an adjournment. In this case there was photographic evidence of the assault. The duty solicitor from the Commission confirmed that when respondents were present at the first hearing and wished to contest the matter, it was usual for no interim order to be made. In such circumstances the applicant left court unprotected and confused about her position.

One method of eliminating all problems encountered by the victim at the first hearing was proposed by another Law Society lawyer:

> "On the first return date it seems that the complainant merely confirms her statement. If there was a form of statement sworn on oath that ensured that all aspects usually raised were covered then their attendance would be avoided in most cases."

Foreshadowing opposition to this suggestion, the same lawyer justified his/her view thus:

> "I think that the saving of the court appearance (and waiting at court) for distressed complainants outweighs the slight chance of dissuading a vexatious or frivolous complainant - assuming personal contacts at court dissuade such a person."

c) Discussion

Concerns of respondents tend to centre on the failure of police to apprise complainants of their rights and of their role in court proceedings for restraining orders; police prosecutors are said not to involve the victim in her own case. It is suggested that police do not explain to victims what will take place in court; nor what will be the effect of an adjournment; that police tend to liaise more with the respondent's lawyer than with the victim herself; and that police fail to give the victim an opportunity to relate the full history of violence which may be important to establish the likelihood of its recurrence.

One method of improving the victim's understanding of proceedings is suggested.

This is the appointment of a police or court officer to whom applicants for restraining orders can be referred for advice when attending court. Another proposal for reducing the distress of the victim is the elimination of the requirement that she appear at the first court hearing. It is suggested that the submission of a sworn written statement of her complaint should suffice.

One other concern is the listing of restraining orders with other general matters and according them a low priority in the day's hearings. It is suggested that matters involving restraining orders be heard in a court separate from the day's general matters.

RECOMMENDATIONS

A range of independent comments received to the effect that victims are given insufficient guidance about court proceedings by police prosecutors would seem to justify the following recommendations:

Recommendation 12

It seems that the confusion of applicants would be greatly reduced by listing proceedings connected with restraining orders in a separate court. The large number of court rooms available in the Adelaide complex of Magistrates' Courts make this feasible in Adelaide. However, in many suburban and country areas the availability of only one or two court rooms for all hearings makes it impossible to segregate cases. Accordingly it is recommended that, in Adelaide, proceedings related to restraining orders be listed for hearing in a court separate from the day's general matters. It is recommended that in suburban and country areas, where the number of court rooms is restricted, proceedings related to restraining orders be listed together at the commencement of the morning's or afternoon's sessions.

Recommendation 13

To ensure that applicants for restraining orders receive adequate instruction on their rights and on their role in court proceedings it is recommended that a police or court officer be nominated to receive such enquiries and to offer advice to applicants in each group of Magistrates' Courts.

Recommendation 14

To improve the level and quality of communication between police prosecutors and applicants for restraining orders, it is recommended that the training branch of the proposed Domestic Violence Unit (see Recommendations 4 and 5 above) arrange training sessions for police prosecutors on the nature of their duties when acting on behalf of an applicant for a restraining order. At these sessions Prosecutors should receive instruction on the desirability of drawing applicants into the case by advising them of their rights and their role in court proceedings. Prosecutors should also be advised of the benefits (for both the victim and for the success of the application) of allowing the victim the opportunity to relate the full history of violence.

Recommendation 15

To cater for victims of domestic violence who are intimidated by the prospect of a court hearing, it is recommended that a written sworn statement from the victim be accepted in lieu of her personal attendance. It is recommended, accordingly, that S.99(2) of the Justices Act be amended by the addition of the following paragraph:

> "Where a complaint under this section is made by a member of the police force, the evidence of the person against whom, or against whose property, the behaviour that forms the subject matter of the complaint was directed, may be taken orally or by a statement signed by the complainant and witnessed by a Justice of the Peace."

8.3.3 The Order

Most restraining orders are granted, in the first instance, in the absence of the respondent and are therefore only of an "interim" or temporary nature. It is only after the respondent has had an opportunity to answer the allegations against him that the order will be confirmed by the court and made final. It follows that if the respondent attends the first court hearing (for example, if he was arrested for the first incident and is therefore in custody) and does not dispute the matter, the first order can be the final order.

Both interim and final restraining orders, on the whole, are served on the respondent by members of the South Australian Police Department. Until served on the respondent in person, a restraining order has no legal effect.

The interim order usually lists a variety of prohibitions on the defendant's behaviour. S.99 gives the court considerable scope to limit the defendant's actions. The section states that "the court may make an order imposing such restraints upon the defendant as are necessary or desirable to prevent him from acting in the apprehended manner" (the manner complained of). Accordingly, the court has a discretion to draft restraining orders in sweeping terms. For example, the court may require the respondent "to keep the peace" or it may closely scrutinise the type of behaviour which is of concern to the applicant and specify in some detail the nature of the prohibited action.

Ideally, the terms of the restraining order and the nature of the offending behaviour prompting the complaint should correspond. Thus a person who is harassing the applicant with constant phone calls should find this particular behaviour prohibited by the order. Ideally too, the terms of the order should take into account the intended future relationship between the parties. If the applicant plans to cohabit with the respondent after the issue of the restraining

order, it makes no sense to include in that order a requirement that the respondent "keep away from the premises". Equally, the restraining order should prescribe a time limit which fits the circumstances of the complaint. If the offending behaviour is foreseen to be only a short-term problem and the applicant wishes to resume full relations with the respondent at some later stage, an order of indeterminate duration may not be in the interests of the applicant. Should she decide to invite the respondent say, to, enter her premises and breach the order, her act of complicity will undermine her credibility should she wish to invoke the restraining order at a later date.

a) Welfare Workers

Two members of the D.V.A.G. identified problems with the service of restraining orders. One referred to a case involving a delay in service, and the other complained that respondents to orders often could not be found and therefore the orders remained ineffective. Both of these complaints were echoed by a member of the Women's Information Switchboard who felt that "as victims of domestic violence need immediate assistance, the granting and serving of the order should take priority over other cases".

Two District Officers of the D.C.W. were concerned about applicants who chose not to adhere to the terms of their order, thereby "nullifying" its effect. A related problem identified by a shelter co-ordinator was that "women are scared they will [unwittingly] break the order and be liable". This respondent believed that restraining orders are "sometimes taken out too quickly and therefore reconciliation means breaking the law". On this matter, the duty solicitor from the Legal Services Commission was of the opinion that breaches of orders encouraged by applicants (therefore involving them in a sort of complicity) did not provide respondents with a legal excuse, although they would probably result in a lighter sentence.

Another issue of concern to shelter co-ordinators was the victim's uncertainty about when they were protected by an order. This was a function of the alleged failure of Police to notify applicants once orders had been served and were therefore enforceable.

b) Legal Workers

The wording of restraining orders was discussed at some length by a respondent from a Community Legal Centre. The main problem identified was the poor correspondence between the wishes of the victim and the terms of the order. This was attributed to victims not having "clearly in their mind exactly what they want and why". It was also suggested that there was insufficient consultation of the victim in the obtaining of the order:

> "[Police] do not seem to discuss with victims what sort of order they want or what sort of order is available. Victims may not know what sort of order they have got in the end".

A member of a Community Legal Centre observed, in relation to orders and their service, that frequently the respondent could not be located and therefore service could not be effected.

Commenting on the duration of orders, a duty solicitor from the Legal Services Commission recommended that many orders should only have a life of six months. Longer periods were often inappropriate because of the likelihood of reconciliation.

c) Discussion

There are three criticisms of the operation of S.99 which relate to the service of orders. Service takes too long; unserved orders are not enforcable; and women are not advised when service has been effected. Referring back to the police data on 'Delays', one finds evidence to substantiate some of these

criticisms. Figure 4 reveals increasing delays in service (by the last quarter nearly one half of orders took more than a week to serve), and a significant proportion of orders which are never served.

Problems are also identified with the wording of orders. There is said to be insufficient consultation of the victim about the behaviour which she wishes to be proscribed and the behaviour she wishes to continue. This results in the issue of orders which from the point of view of the victim are either too broad (or perhaps insufficiently specific) in their coverage, or too long in duration. Confirmation of these observations is to be found in the police statistics on the 'Terms and Duration of Orders' presented above. Not only is there a tendency for the wording of orders to be all encompassing (they are likely not only to cover molestation but also any form of contact with the complainant), but the duration of the vast majority of orders is for an indeterminate period.

RECOMMENDATIONS

Two of the three problems with the service of orders are addressed by the following recommendations:

Recommendation 16

It is recommended that priority be given by the police and by the courts to the speedy service of restraining orders. It is suggested that this might be achieved by the elimination of any intermediate stages in the passage of the order from the court of its issue to the police officers responsible for its service.(1)

Recommendation 17

It is recommended that the police institute a practice of advising applicants when service has been effected.

The third criticism relating to service - that it is a pre-condition of the enforcability of an order - is not easily answered. The obvious solution, that orders be made enforceable upon issue and prior to service, could be said to breach a fundamental principle of natural justice - that people should not be punished for behaviour which they have no reason to believe has been proscribed. This objection could, however, be met by the implementation of the following recommendation.

Recommendation 18

It is recommended that S.99 of the Justices Act allow for the service of orders by post as well as personal service. This would require an amendment to S.99(6) of the Act which relates to the service of orders. The insertion of the words "or by post" would cause the amended sub-section to read:

> "Where a person, having been served personally or by post with an order under this section, contravenes or fails to comply with the order he shall be guilty of an offence and liable to be imprisoned for a term not exceeding six months."

Postal service is already a recognised form of service of certain types of summons under S.27a of the Justices Act. S.27a provides a definition of postal service which could be incorporated into S.99(6). This would require the inclusion of the following paragraph in S.99(6):

> "A restraining order may be served on the respondent by posting the order by ordinary pre-paid post addressed to the respondent named in the order at his last known or most usual place of abode or of business. In the absence of proof to the contrary, the order should be deemed to have been served on the respondent named therein at the time at which it would have been delivered in the ordinary course of the post."

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(1) Enquiries with the police revealed that orders travel from the court of issue to the Restraining Order Unit based at Central Headquarters, and then to the police officers responsible for service allocated in the district where the respondent resides. Service could be expedited by sending the restraining order direct to the serving police officers, with a copy deposited at the Restraining Order Unit simultaneously.

The solution to the problem of poorly worded restraining orders is clearly a matter of careful consultation of the victim. The need to provide victims with more information about their own hearing has already been mentioned above. Further to this:

Recommendation 19

It is recommended that Police Prosecutors be instructed to explain to applicants the range of conditions that can be built into a restraining order, as well as the time limit that can be imposed.

8.3.4 Breaches

The breach of a restraining order can have a number of consequences. The applicant may elect not to report it, in which case it remains a private matter. The applicant may call in the Police, who then have the discretion to report or to arrest the alleged offender, or to proceed in an entirely informal manner - in which case the breach never becomes an official statistic. The police may attempt to reconcile the parties or to separate them. In either case, they may overlook the breach.

If a breach of a restraining order becomes an official matter, the alleged offender is either brought before the court by the Police (if he is in custody) or summonsed to court to answer the charge against him.

Although the original application for a restraining order is a civil matter - the grounds for an application have only to be established on the balance of probabilities - a breach of an order is a crime. It follows that the Prosecution (usually the Police) must prove the case against the alleged offender beyond reasonable doubt.

Where the accused chooses to contest the matter he is likely to instruct a lawyer to present his case. The two parties to the matter are therefore the Police Prosecutor (with the victim as witness) and the alleged offender represented by a lawyer.

Should the Magistrate find against the accused (should s/he convict), s/he has the power to fine the offender or to imprison him for a period of up to six months.

a) Welfare Workers

The most frequently voiced concern of welfare workers was the police response to a breach of a restraining order. The reaction of police was seen by many to lack force. This was attributed to a tendency of the police not to take domestic violence seriously. A strong police reaction to breaches of restraining orders was thought to be critical to their effectiveness. As a member of the D.V.A.G. observed, the reluctance of police to become involved in domestic disputes means that "it is only the most persistent, well-informed, assertive women who can make restraining orders begin to work for them". Consistent with this, a member of the Women's Information Switchboard maintained that:

> "the most common complaint from clients who have obtained a restraining order is that the Police are often reluctant to enforce the power to arrest those who have broken the restraining order".

Confusion on the part of police about the level of evidence required to charge for a breach of a restraining order was identified by members of the Crisis Care Unit as a reason for police hesitating to act. One member maintained that s/he was "not convinced that police patrols understood S.99, especially the differences between the evidence required for assault and the evidence required to enforce a breach of S.99". Another had been led to understand that "police

can only arrest and remove an offender if they are able to catch him breaching conditions". Hence "problems arise if they do not actively pursue offenders". One District Officer from D.C.W. confirmed that some police believe that they cannot act on the word of the complainant alone, but must catch the perpetrator in the act. A third member of the Crisis Care Unit, however, offered quite a different view of the police. S/he claimed that s/he was "not aware of any refusal of police to act and remove an offending spouse when an order exists". Further, that "many police seem to appreciate it after feeling unable to assist previously in the grey area of domestic violence."

District Officers from D.C.W. offered a disparate views of the police reaction to women complaining of breaches of restraining orders. Some were highly critical. Hence one District Officer observed that "the workers did not consider restraining orders an absolute answer because police tend to wait until the victim is hit rather than act when the victim is afraid". Another had "no faith that the order will be enforced by Police". A third stated "the police don't take restraining orders very seriously" and that "the police would rather not know about them". A fourth mentioned "police reluctance to enforce orders in the occasional cases where this is needed". A fifth said "police are still hesitant to become involved".

Other District Officers were approving of the police response to breaches:

> "The police here will go out of their way to offer protection, with or without an order".

Another said that clients had been "pleased with the support received from the local police officers". A third District Officer stated that "police are usually seen as helpful but limited. No-one can provide protection over 24 hours." It is interesting to note that these comments all come from country offices.

The strongest condemnation of the police response to breaches came from the Women's Shelters:

> "Experience suggests that if women need to call police in relation to a breach of the order they often find that the feeling of safety was an illusion".

Further:

> "Breaches are seldom taken seriously by police or in the courts".

A second shelter alleged that:

> "Since Police fail to respond to breaches adequately, restraining orders are worthless in their present form ... women need to be threatened or assaulted on three occasions before action is considered".

A third shelter maintained that:

> "some persons have developed a false sense of security as police do not always feel obliged to act on an order".

It was claimed by a fourth shelter that it is "difficult to get police to act after an order has been breached". A fifth shelter was critical of the police discretion to report or arrest upon breach of an order, maintaining that "this decision is made on the spot without any background knowledge". Two country shelters, however, were generally pleased with the performance of police. One observed that "women feel they can now ring the police and receive an immediate response and protection if necessary". Also, that "police have used their powers of arrest" and "have been on the whole very helpful". The other country shelter said "that police acted straight away" and that offenders were "placed in jail straight away".

In the replies of other welfare workers, the focus was less on the police and their reactions to breaches, than on the applicant herself and her contribution to the offending behaviour. Three District Officers raised this matter. One suggested that:

> "when a separation does take place, many victims seem to unconsciously accept that it will be temporary".

Another maintained that:

> "Client's behaviour undermines the value of the order when a client having taken out a S.99 immediately resumes the relationship sounding the bell for round 13".

A third District Officer was of the view that restraining orders "work very efficiently providing the client is consistent". In the most difficult cases, however, "the partners re-unite (until the next incident of violence) only then to repeat the cycle of events". One shelter co-ordinator also mentioned this problem. S/he contended that:

> "Sometimes restraining orders are taken out too quickly and therefore reconciliation means breaking the law for them [the complainant]."

b) Legal Workers

Replies received from two Community Legal Centres referred to the inadequacy of the Police response to breaches:

> "It appears that Police do not rigorously enforce restraining orders. Reports have been received that the Police may issue warrants for a breach of the same restraining order up to four times. Without a determination to arrest for breaches on the part of the Police restraining orders appear to provide little protection."

It was also said that "the Police on patrol seem reluctant to enforce the order". And more specifically:

> "This service in particular has had difficulty with Port Adelaide Police in having restraining orders issued and enforced. It was necessary for me to ring on seven occasions within a two week period: in all cases the clients more than qualified."

A lawyer from the Legal Services Commission commended the performance of the Police:

> "In respect of breaches, I have generally found from discussions with my clients that the Police have behaved fairly sympathetically to complaints concerning breaches."

This lawyer acknowledged, nevertheless, that s/he had "constant complaints about the non-attendance by the police or police not arresting for breach". And yet

"I have not experienced this in my own practice".

Two explanations of this general impression of police as reluctant to deal with breaches were offered by this lawyer. One was in terms of the number of available police personnel:

> "There is a complaint of course that the police don't come to the premises quickly enough to catch the person on the premises. But I would be prepared to say, and I think my clients would say as well, that the late attendance of the police is more due to manpower problems than a psychological attitude towards the complaint".

An alternative explanation acknowledged the hesitation of police but offered vindicating circumstances:

> "I have had one client who consistently complained that the police did not rush to her when she telephoned with complaints of breach. There was a long history of Police involvement in this matter and I am prepared to concede that my client played as many games as the husband did in this matter. When closely questioned she admitted that on numerous occasions she had allowed him to come to the premises and allowed him to remain ... both in a sober and drunken state, and periodically she decided to get nasty and call the police. She was reluctant to continue proceedings in the Family Court to dissolve the marriage or obtain a property settlement and appeared to have enmeshed herself completely in some sort of masochistic game with her husband."

Here are echoes of the welfare workers' complaint that some women collude in the breach of restraining orders thereby undermining their credibility and complicating the position of those endeavouring to enforce the law.

Only one lawyer from the Legal Services Commission raised the issue of enforcing breaches. Her/his view was that there is "still a reluctance by police (and clients) to enforce breaches". Again, problems with the enforceability of restraining orders were attributed both to the poor attitude of police and to the equivocation of the victim of domestic violence.

c) Discussion

The single major concern of respondents in relation to the breach of restraining orders is the behaviour of the police. Although some assessments

of the police are favourable, the more common view is that police are unwilling to take seriously reports of breaches of orders. Police are said not to attend, not to act unless they witness a condition of an order being breached, or not to act unless they witness a physical assault. They are also said not to arrest when it is appropriate. The gravity of this last allegation is indicated in the findings of the Minneapolis Police Study (documented earlier in this report), which disclosed that the arrest response to domestic violence has the greatest deterrent value.

The allegation that police tend not to respond forcefully to report of breaches of orders is echoed in the statements of several victims presented above (see Section 6). Recall that a majority of survey subjects from shelters expressed dissatisfaction with the police response to the alleged breach of their order.

The claim that some police wait for evidence of physical assault before responding to a breach of an order is partially confirmed by the findings of the police survey reported in Section 6. There, a small minority of police officers declared that they would not proceed against a respondent to an order in the absence of evidence of assault. It should be noted, however, that the majority of officers claimed not to require this sort of evidence.

The contention that police tend not to arrest for breaches of restraining orders is contradicted by Figure 5 of the police statistics and by Table 5 of the O.C.S. data. These reveal that police are a good deal more likely to arrest than to report a person accused of breaching an order, whether or not it concerns a domestic matter.

However, Tables 6 and 7 from the O.C.S. data, which present information on

court outcomes and sentences for breaches of restraining orders, could be said to confirm the general impression that the repercussions for the respondent of breaching a restraining order are likely to be slight. Recall that in the first year of the legislation there were 42 court hearings for breaches of domestic orders, 35 guilty findings, but only 15 offenders penalised. Of those 15, 5 were fined and 3 imprisoned.

A second problem raised here is that of the equivocating victim who resumes relations with her assailant after the issue of an order, and yet still wants to invoke that order at times of disharmony. This is seen to complicate the enforcement of that order.

This complaint was echoed in the findings of the police survey documented above (see Section 6). Many police develop a strong sense of grievance with victims who are thought to waste their time by behaving inconsistently. With the police, the primary concern was the victim who repeatedly made and then withdrew complaints.

Less impressionistic data on the extent of withdrawals was presented in Figure 1 of the police data. On an average, about one-sixth of orders were withdrawn over the 2 year period canvassed. Although this figure appears to strengthen the case of welfare and legal workers and of the police who complain of equivocating complainants, discussion on the police statistics has already pointed out that the "withdrawal" statistic is inflated. It not only includes withdrawals by victims, but by the police and by the courts. One could therefore infer from this that the extent of victim withdrawals is significantly less than one-sixth of orders made. If this is so, the impression of some police that women who complain of domestic violence are chronic equivocators may not be justified. Even taking the figure as is, it is clear that the vast majority

five-sixths) of complainants do not withdraw their complaints.

With the minority of complainants who behave inconsistently and/or who withdraw their complaints, the preceding discussion (see Section 6) determined that there is a need for immense patience and understanding. Inevitable uncertainties surround the decisions of domestic violence victims to invoke the law. There is simply no easy answer to this.

RECOMMENDATIONS

Returning to the principal focus of responses concerning the breach of restraining orders - that of the strength and quality of the police response - the following recommendations seek to address the main grievances:

Recommendation 20

Further to Recommendation 5 (concerning the need for more extensive police training) it is recommended that police receive clear instruction of the type of evidence required for a charge of breach of a restraining order. This instruction should focus on the distinction between the elements of the crime of breaching an order and the elements of the crime of assault.

Recommendation 21

Further to Recommendation 4 (concerning inter alia, the need for a co-ordinated police approach to domestic violence), it is recommended that the proposed Domestic Violence Squad (see Recommendation 2) be responsible for developing clear policy guidelines on the police response to reports of breaches of restraining orders. In particular, it is recommended that emphasis be placed on the value of the arrest response in view of its revealed deterrent value.

9. IS THERE ADEQUATE INFORMATION ON THE LAW? FINDING OUT ABOUT LEGAL REMEDIES

It is difficult to exaggerate the importance of educating the public about the law. Information about the availability and purpose of any particular law must reach those for whom it is designed before it does any good. The beneficiaries of a law must be told not only that a remedy for their problem exists, but also how that remedy works in their particular circumstances and how it can best be put into effect. Otherwise the infringement of a legal right remains hidden, a private matter. In the case of domestic violence, the victim who lacks information about the relevant law will define her experiences as personal and private, and therefore fail to take action against her assailant.

Access to the law can be facilitated in a number of ways. Written material on the law can be distributed widely in the community. When approached by members of the community about law-related problems, those who are in the business of providing social services can either explain the law, or refer their clients to lawyers; or educational institutions can instruct students about their basic legal rights.

At present there is no agency or organisation in South Australia set up for the specific purpose of providing information to victims of domestic violence about their legal rights. A number of organisations nevertheless provide information when approached by members of the public. These include the South Australian Police Department, the Crisis Care Unit, the Women's Information Switchboard, Lifeline, and District Offices of the Department for Community Welfare.

Efforts to educate members of the South Australian public about the law have been confined to the production of information pamphlets issued by the Women's Adviser's Office of the Department of the Premier and Cabinet and distributed

through the police and other agencies. In addition, the Legal Services Commission has produced a more detailed booklet which provides an overview of Family Law.

A benchmark in any discussion of information services available to victims of violent crime is the service already established in South Australia for victims of rape. The Adelaide Rape Crisis Centre provides information, advice and counselling to women who have been raped. In addition, it offers a sort of lay advocacy service by accompanying women when they report the incident to the police and when they attend court. The aim of this service is to give support to rape victims at each stage of the criminal process. It is also designed to give victims sufficient confidence to persevere with what otherwise might be perceived as an alien, if not hostile, system of justice.

Although there is no equivalent organisation for victims of domestic violence, various agencies offer their services to women who want support when they approach the Police and when they attend court. Since the amendment to S.99, the Women's Information Switchboard has offered to accompany victims of domestic violence to the police station and to court. More recently, Birthright has established a lay advocacy service for victims of domestic violence living in the area of Elizabeth.

9.1. The View of Welfare Workers on the Need for Information Services

Although survey subjects were not asked specifically for their opinion about the adequacy of information currently available to victims of domestic violence, a number of welfare workers independently raised this as an issue. Members of both the Domestic Violence Committee (D.V.C.) and the Domestic Violence Action Group (D.V.A.G.) identified a clear need for public education on legal remedies for domestic violence. They suggested several methods of improving the public's knowledge of the law. These included a concerted campaign to distribute more detailed information about legal remedies and social resources, through pamphlets

and through the written and electronic media, the setting up of a central or community based information service, and the provision of lay advocates for victims of domestic violence when approaching the police or attending court.

Members of the D.V.A.G. were particularly concerned about the community's understanding of the phenomenon of domestic violence. One member expressed this as follows:

> "Education needs to occur both in schools and within the public domain to inform people about the nature and extent of spouse abuse and to encourage community action to discourage the use of force as a means of resolving differences".

Another member of that Group maintained that the problem of the public's ignorance of the nature and incidence of domestic violence, as well as of the legal remedies available to victims, was compounded by the confusion and poor understanding of the law of Police and welfare workers alike. A poor grasp of the law among professional people emerges as an important issue later in this report when the actual operation of S.99 is addressed. For the moment it is worth noting the connection observed between the public's understanding of domestic violence (and its legal remedies) and the alleged failure of professionals to acquaint themselves with the law.

Two members of the Crisis Care Unit also specifically recommended more publicity for the domestic violence legislation. It was pointed out that both victims of domestic violence and "police and other agencies" need to be made aware of the different legal remedies available. Also, the legal procedures for each remedy need to be explained. Another Crisis Care Worker stressed that the efficacy of the law depended upon potential complainants receiving adequate instructions on how to use it.

Although a number of District Offices of the Department for Community Welfare (D.C.W.) saw a need to invest complainants with confidence and stamina in order to ensure that legal remedies were pursued, there were no comments on the provision of public information on domestic violence and the law. Likewise, the observations of shelter workers were confined to the practical application of the law. Their comments on the need for information on the law were directed exclusively at the level of knowledge and understanding of the law of Police and other professional persons (see later discussion).

9.2. Discussion

The level of public knowledge of the nature of domestic violence and of the domestic violence laws is perceived to be poor. Four suggestions are offered here for improving the situation. These are the publication of information pamphlets on the domestic violence laws as well as dissemination of information on domestic violence through the mass media; the setting up of an information and referral service for victims of domestic violence; the provision of lay advocates to assist victims when they attend police stations and appear in court; and the education of school students about the phenomenon of domestic violence.

In the introductory discussion to this section it was noted that the Rape Crisis Centre provides a model of a facility which could be made available to victims of domestic violence. The centre currently provides all the services suggested by respondents. It publishes information on the law of rape; it employs the media extensively to educate the public about rape; it provides a telephone and personal information and referral service to other agencies; it accompanies women to police stations and to court; it also makes available public speakers to educate students in schools as well as community groups about the phenomenon of rape.

RECOMMENDATION

Recommendation 22

It is recommended that the South Australian Health Commission (1) and the Department for Community Welfare (2) consider the funding and constitution of a Domestic Violence Centre to be established along the lines of the Adelaide Rape Crisis Centre. Its purpose would be to provide written information on the law, to educate the public about domestic violence through the media and through schools, to provide a telephone and personal information and referral service and to provide lay advocates for women reporting to the police and attending court.

10. POSTSCRIPT: THE DOMESTIC VIOLENCE COUNCIL

At the time of writing a proposal is being developed to establish a Domestic Violence Council to replace the Women's Adviser's Domestic Violence Committee. This body will have a co-ordinating, research and education function and will oversee the upgrading of service delivery in the area of domestic violence. It will comprise four task forces which will be asked to report to the Government in twelve months.

RECOMMENDATION 23

It is recommended that the Domestic Violence Council be charged with the task of monitoring the implementation of the recommendations of this Report.

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(1) The South Australian Health Commission is the funding body for the Rape Crisis Centre and the new Domestic Violence Counselling Service.
(2) The Department for Community Welfare funds the Women's Shelters and the Crisis Care Unit.

11. SUMMARY OF FINDINGS AND RECOMMENDATIONS

The approach adopted in this study has been to pose a set of increasingly particular questions about the value of S.99 as a mode of restraining the violent spouse.

11.1 Is S.99 Redundant? An Assessment of the Sufficiency of the Criminal Law to Deal with Domestic Violence (Section 3).

The first and broadest question concerned the need for such a law at all. In view of the range of criminal charges which can be employed against the violent spouse, the study queried the role of a civil court order of restraint. Survey findings indicated that the functions performed by the criminal and the civil law are both essential. Victims of domestic violence have a range of legal needs and problems which can not be met by the criminal law alone. The first recommendation of the Report therefore took the following form:

RECOMMENDATION 1

S.99 should be retained as a civil response to domestic violence.

11.2 Is the Restraining Order an Improvement on the Peace Complaint? (Section 4)

The second question posed by the study was whether S.99 is an improvement on its predecessor, the peace complaint. Survey findings disclosed that S.99 represents a significant reform. Restraining orders are quicker to obtain; the complainant's case is easier to establish; and the power of arrest is thought to give the new law "more teeth".

11.3 Is the Restraining Order Better than the Family Law Act Injunction? (Section 5)

Is S.99 better than its Commonwealth counterpart, the Family Law Act injunction? From survey findings the general view emerged that the Commonwealth remedy is neither as forceful nor as efficient as the State law. Survey findings

also indicated that some legal practitioners are confused about the elements and ambit of each law.

RECOMMENDATION 2

The Law Society should conduct a training seminar on the respective requirements of the State and Federal injunctions for the benefit of all South Australian family lawyers.

11.4 Is the Law Accessible? (Section 6)

Question 4 sought to determine the practical significance of S.99 for the victim of domestic violence. It asked, Is the law accessible? This phase of the study examined the relative use of the civil and criminal law in response to reports of domestic violence. The principal finding was that the accessibility of both types of law depends largely on the goodwill, endeavour and competence of the police, but that this is by no means always guaranteed.

On the contrary, findings disclosed considerable variation in the response of individual police officers to complaints of domestic violence - ranging from a sympathetic and conscientious approach to positive hostility. Three recommendations flowed from these findings.

11.4.1 Complaints Against Police

RECOMMENDATION 3

A senior officer (to be designated the Domestic Violence Complaints Officer) should be appointed in the office of the Police Complaints Authority. The principal task of this officer should be the receipt and investigation of complaints against police concerning their enforcement of the laws related to domestic violence.

11.4.2 A Co-ordinated Police Policy

RECOMMENDATION 4

A Domestic Violence Unit should be created within the S.A. Police Department. At least in its pilot stages it should perform the following functions:

a) provide a core squad of police officers expert in the handling of domestic violence cases which could respond to complaints in the inner metropolitan area;

b) develop a State-wide standard approach to domestic violence;

c) provide advice and instruction for domestic violence training programmes for all police officers;

d) train select police officers from each patrol base whose task would be to provide advice and guidance on domestic violence matters to all other officers stationed at their base;

e) devise a longer term plan for the placement of specialist domestic violence squads at all patrol bases.

11.4.3 Police Training

RECOMMENDATION 5

All police officers should receive instruction on the social, psychological, physical and financial disincentives to reporting domestic violence. It is suggested that a training manual for counsellors prepared by the Domestic Violence Group and a study of counselling techniques in battering relationships by Lenore Walker be employed as aids to instruction. The responsibility for this training programme should be assumed by the training branch of the Domestic Violence Unit.

RECOMMENDATION 6

All operational patrol and station officers should receive comprehensive training on the laws related to domestic violence. In particular, they should be instructed on the distinction between the nature and level of violence required

for an application under S.99 as opposed to the charge of assault, and on the differing standards of proof. The responsibility for devising this programme should be assumed by the training branch of the Domestic Violence Unit.

11.5 Do Restraining Orders Work? What are their Major Strengths and Weaknesses? (Section 7)

To identify the general strengths and weaknesses of S.99, considered on its own, the question was posed, Are restraining orders effective? Do they restrain the violent spouse? The benefits of restraining orders were found to be significant but limited. They are useful as a threat of legal action to the normally law-abiding person, but fail to deter the persistently violent spouse who is cynical of the law and may even be provoked to further violence by the taking out of an order. The cynicism of potential offenders was regarded as an intractable problem associated with legal endeavours to control human behaviour.

11.6 Is Each Step of the Restraining Order Process Effective? What do the Official Data Reveal? (Section 8)

The penultimate section of the Report sought to identify problems encountered in the internal workings of the restraining order process employing two sets of data: the statistics on patterns in the use of restraining orders provided by the South Australian Police Department and the Office of Crime Statistics, and the opinion evidence provided by the author's surveys.

11.6.1 Improving the Data

The value of the official data was found to be limited by several important omissions. Three recommendations were proposed to remedy these defects.

RECOMMENDATION 7

All police statistics on restraining orders should identify the relationship between the parties. Court files related to restraining order applications should also indicate the relationship between the parties.

RECOMMENDATION 8

The police should extend their statistics to include information on the incidence of complaints of domestic violence and the number of assault charges arising from domestic disputes.

RECOMMENDATION 9

Police should record the stage at which complaints of domestic violence are withdrawn and the reasons given for their withdrawal.

11.6.2 Assessing the Steps in the Restraining Order Process

The opinion data derived from the author's surveys in conjunction with the official statistics formed the basis of an assessment of four stages in the restraining order process: the complaint, the court hearing, the order and the breach.

a) The Complaint

At the complaint stage the major problem was found to be reluctant or even hostile police officers who tend to wait for evidence of assault before pursuing a restraining order. A secondary problem was found to be the lack of private facilities for complainants at police stations. Two recommendations were made.

RECOMMENDATION 10

To eliminate the trauma of victims of domestic violence caused by reporting the offending behaviour in view of other members of the public at police stations,

the police should provide a private room for such complainants.

RECOMMENDATION 11

Further to Recommendation 5 (concerning the need for more extensive police training) the training branch of the proposed Domestic Violence Unit should devise and organise training sessions for all operational police officers on the type and standard of evidence required for an application for a restraining order. This instruction should stress that a threat of damage to property or to the person, or merely provocative behaviour (that is likely to lead to a breach of the peace), any of which is likely to recur, is sufficient.

b) The Court Hearing

A range of independent comments received to the effect that victims are confused about their role in the court room and are given insufficient guidance about court proceedings by police prosecutors formed the basis of the following recommendations.

RECOMMENDATION 12

In Adelaide, proceedings related to restraining orders should be listed for hearing in a court separate from the day's general matters. In suburban and country areas, where the number of court rooms is restricted, proceedings related to restraining orders should be listed together at the commencement of the morning's or afternoon's sessions.

RECOMMENDATION 13

To ensure that applicants for restraining orders receive adequate instruction on their rights and their role in court proceedings, a police or court officer should be nominated to receive such inquiries and to offer advice to applicants in each group of Magistrates' Courts.

RECOMMENDATION 14

To improve the level and quality of communication between police prosecutors and applicants for restraining orders, the training branch of the proposed Domestic Violence Unit (see Recommendations 4 and 5 above) should arrange training sessions for police prosecutors on the nature of their duties when acting on behalf of an applicant for a restraining order. At these sessions prosecutors should receive instruction on the desirability of drawing applicants into the case by advising them of their rights and their role in court proceedings. Prosecutors should also be advised of the benefits (for both the victim and for the success of the application) of allowing the victim the opportunity to relate the full history of violence.

RECOMMENDATION 15

To cater for victims of domestic violence who are intimidated by the prospects of a court hearing, there should be provision for a written sworn statement from the victim to be accepted in lieu of personal attendance. S.99(2) of the Justices Act should therefore be amended by the addition of the following paragraph:

> "Where a complaint under this section is made by a member of the police force, the evidence of the person against whom, or against whose property, the behaviour that forms the subject matter of the complaint was directed, may be taken orally or by a statement signed by the complainant and witnessed by a ~~failure~~ Justice of the Peace".

c) The Order and its Service

Both the process for service and the terms of orders were found to harbour defects. In view of the difficulties of locating respondents, there were objections to personal service as a pre-condition of the enforceability of an order. Service was said to take too long and there were criticisms of the failure of police to notify applicants when service had been effected.

In relation to the terms of orders, there was said to be insufficient consultation of the victim about the behaviour she wished to proscribe and about what would be a reasonable period for the order to remain in force.

Four recommendations sought to solve these problems.

RECOMMENDATION 16

Priority should be given by the police and by the courts to the speedy service of restraining orders. This could be achieved by the elimination of any intermediate stages in the passage of the order from the court of its issue to the police officers responsible for its service.

RECOMMENDATION 17

The police should institute a practice of advising applicants when service has been effected.

RECOMMENDATION 18

S.99 of the Justices Act should allow for the service of orders by post, as well as personal service. This requires an amendment to S.99(6) of the Act which relates to the service of orders. The words "or by post" should be inserted so that the amended sub-section would read:

> "Where a person, having been served personally or by post with an order under this section, contravenes or fails to comply with the order he shall be guilty of an offence and liable to be imprisoned for a term not exceeding six months".

Postal service is already a recognised form of service of certain types of summons under S.27a of the Justices Act. S.27a provides a definition of postal service which could be incorporated into S.99(6). This would require the inclusion

of the following paragraph in S.99(6):

> "A restraining order may be served on the respondent by posting the order by ordinary pre-paid post addressed to the respondent named in the order at his last known or most usual place of abode or of business. In the absence of proof to the contrary, the order should be deemed to have been served to the respondent named therein at the time at which it would have been delivered in the ordinary course of the post."

RECOMMENDATION 19

Police prosecutors should be instructed to explain to applicants the range of conditions that can be built into a restraining order, as well as the time limit that can be imposed.

d) The Breach

The single major concern of respondents in relation to the breach of restraining orders was found to be the behaviour of the police. Although some assessments of the police were favourable, the more common view was that police are unwilling to take seriously reports of breaches. Police were said variously not to attend, not to take action unless they witness a condition of the order being breached, or not to act unless they witness a physical assault. Two recommendations were made in response to these findings.

RECOMMENDATION 20

Police should receive clear instruction on the type of evidence required for a charge of breach of a restraining order. This instruction should focus on the distinction between the elements of the crime of breaching an order and the elements of the crime of assault.

RECOMMENDATION 21

The proposed Domestic Violence Unit should be responsible for developing clear policy guidelines on the police response to reports of breaches of restraining orders. Emphasis should be placed on the value of the arrest response in view of its revealed deterrent value.

11.7 Is there Adequate Information On the Law?

The final question addressed in this study was, Is there adequate information on the law? Findings indicated that the level of public knowledge of the nature of domestic violence and of the domestic violence law is poor. The following recommendation was made.

RECOMMENDATION 22

The South Australian Health Commission and the Department for Community Welfare should consider the funding and constitution of a Domestic Violence Information Centre to be established along the lines of the Adelaide Rape Crisis Centre. Its purpose would be to provide written information on the law, to educate the public about domestic violence through the media and through schools, to provide a telephone and personal information and referral service and to provide lay advocates for women reporting to the police and attending court.

11.8 POSTSCRIPT: THE DOMESTIC VIOLENCE COUNCIL

At the time of writing a proposal is being developed to establish a Domestic Violence Council to replace the Women's Adviser's Domestic Violence Committee. This body will have a co-ordinating, research and education function and will oversee the improvement of service delivery in the area of domestic violence. It will comprise four task forces which will be asked to report to the Government in twelve months.

RECOMMENDATION 23

It is recommended that the Domestic Violence Council be charged with the task of monitoring the implementation of the recommendations of this Report.

APPENDICES

APPENDIX 1.

QUESTIONNAIRE FOR MEMBERS OF THE DOMESTIC VIOLENCE ACTION GROUP AND THE WOMEN'S INFORMATION SWITCHBOARD.

1. Your Agency/Organisation. (Please include a description of the services it provides.)

2. The Extent and Nature of your Experience with Domestic Violence:

3. Are you in a position to advise victims of domestic violence about restraining orders?

4. Have you received any feedback from these victims about the value of restraining orders?
(Please include any comments received about welfare agencies, shelters, the police, the courts.)

5. Have you been able to form an opinion about the value of restraining orders? (Please discuss advantages and disadvantages of restraining orders with reference to welfare agencies, shelters, the police, the courts, where appropriate.)

6. If you were working with victims of domestic violence prior to the S.99 amendment in June 1982: Do you regard the new law as an improvement on the old peace complaint? Please explain.

7. Can you think of any way of improving (a) the law (b) services generally, for victims of domestic violence?

APPENDIX 2.

QUESTIONNAIRE FOR ALL MEMBERS OF THE CRISIS CARE UNIT ON THE OPERATION OF S.99 OF THE JUSTICES ACT

1. Approximately how many incidents of domestic violence have you dealt with during the past year?

2. Were you working with the Crisis Care Unit prior to the amendment to S.99 of the Justices Act in June 1982 (the new restraining order law)?

3. If yes to 2, do you regard the amendment as an improvement on the old peace complaint? If yes, why? If no, why?

4. What do you think are the main advantages of S.99? (If relevant, please include comments on welfare agencies, shelters, the police, the courts.)

5. What do you think are the main disadvantages of S.99? (Again, if relevant, please include comments on welfare agencies, shelters, the police, the courts.)

6. Can you think of any way of improving the law?

7. Any other comments?

APPENDIX 3.

QUESTIONNAIRE FOR DISTRICT OFFICES, DEPARTMENT FOR COMMUNITY WELFARE

Location of your District Office: .....

1. During the past year, approximately how many times has a victim of domestic violence sought your advice?

2. During this period, approximately how many times have you found it appropriate to advise victims about their rights to apply for a restraining order?

3. Have you received any feedback from these clients about the value of restraining orders? (Please include any comments received about welfare agencies, shelters, police, the courts.)

4. Have you been able to form an opinion about the value of restraining orders? (Please discuss advantages and disadvantages of restraining orders with reference to welfare agencies, shelters, police, the courts, where appropriate.)

5. Answer only if you were working for D.C.W. prior to the S.99 amendment in June 1982. Do you regard the new law as an improvement on the old peace complaint? Please explain.

APPENDIX 4.

QUESTIONNAIRE FOR CO-ORDINATORS OF SHELTERS

1. Approximately how many victims of domestic violence have you had contact with during the past year?

2. In approximately how many cases have you considered it appropriate to advise victims about restraining orders?

3. Have you received any feedback from these victims about the value of restraining orders?

   If yes,

   (a) what do they say are the main advantages?

   (b) what are the main disadvantages?

(Where appropriate, please refer to welfare agencies, police and/or the courts.)

5. Have you been able to form an opinion about the value of restraining orders? (Please discuss advantages and disadvantages of restraining orders with reference to welfare agencies, shelters, the police, the courts, where appropriate.)

6. If you were working with victims of domestic violence prior to the S.99 amendment in June 1982: Do you regard the new law as an improvement on the old peace complaint? Please explain.

7. Can you think of any way of improving (a) the law (b) services generally, for victims of domestic violence?

APPENDIX 5.

QUESTIONNAIRE FOR COMMUNITY LEGAL CENTRES

1. Please describe the service provided by your organisation:

2. Please describe the extent and nature of your contact with victims of domestic violence:

3. Have you found it appropriate to advise victims of domestic violence about restraining orders?

4. Have you received any feedback from these victims about the value of restraining orders?
(Please include any comments received about welfare agencies, shelters, the police, the courts.)

5. Have you been able to form an opinion about the value of restraining orders? (Please discuss advantages and disadvantages of restraining orders with reference to welfare agencies, shelters, the police, the courts, where appropriate.)

6. If you were working with the Centre prior to the S.99 amendment in June 1982: Do you regard the new law as an improvement on the old peace complaint? Please explain.

7. Can you think of any way of improving (a) the law; (b) services generally, for victims of domestic violence?

APPENDIX 6.

QUESTIONNAIRE FOR FAMILY LAWYERS FROM THE LEGAL SERVICES COMMISSION AND FOR FAMILY LAWYERS FROM THE LAW SOCIETY

1. When a client complains about a violent lawful or de facto spouse, what advice do you usually give her?

2. If you recommend a restraining order, what is your advice about the appropriate procedures to follow?

3. When do you consider a Family Law Act injunction to be the more suitable remedy?

4. Have you encountered any problems with the relationship between State and Federal injunctions? Please explain.

5. Have you encountered any problems with restraining orders generally (from initial application to complaint of breach)? Please explain.

6. Have you encountered any problems with Family Law Act injunctions (from initial application to complaint of breach)? Please explain.

7. Do you regard the restraining order legislation as an improvement on the peace complaint system? Please explain.

8. Can you suggest any way that legal procedures might be improved?

9. Can you suggest any way the law might be improved?

APPENDIX 7.

QUESTIONNAIRE FOR MEMBERS OF THE SOUTH AUSTRALIAN POLICE DEPARTMENT.

(S.99 OF THE JUSTICES ACT)

1. Has your experience of incidents of domestic violence been primarily as:

   a supervisor ☐

   a patrol officer ☐

   an investigator ☐

2. How would you describe the effect of restraining orders on the level of violence between lawful and defacto spouses and between boyfriends and girlfriends?

   they discourage violence ☐

   they escalate violence ☐

   they have no effect ☐

   Please explain.

3. Have you identified any deficiencies in the restraining order legislation at any stage of the legal process?

   application yes/no

   first hearing yes/no

   second hearing yes/no

   breach yes/no

   If yes to any of the above, please explain.

4. Have you found your powers sufficiently broad to enable you to enforce the restraining order legislation at every stage of the legal process?

application	yes/no
first hearing	yes/no
second hearing	yes/no
breach	yes/no

If no to any of above, please explain.

5. If you were a police officer prior to the enactment of the restraining order legislation (June 1982), do you regard restraining orders as an improvement on the peace complaint? yes/no

Please explain.

6. Approximately how many incidents of domestic violence (violence or threats of violence between lawful and de facto spouses, and between boyfriends and girlfriends) have you attended over the past year?

1-10	☐	51-100	☐
11-25	☐	Over 100	☐
26-50	☐		

7. Approximately how many times have you employed S.99 of the Justices Act over the past year?

1-10	☐	51-100	☐
11-25	☐	Over 100	☐
26-50	☐		

8. Approximately how many times have you charged the violent person with assault over the past year?

1-10	☐	51-100	☐
11-25	☐	Over 100	☐
26-50	☐		

9. In what circumstances do you think it is appropriate to take out a restraining order? In your answer, please refer to:
   a) the appropriate marital status of the parties,
   b) the level of violence required,
   c) the evidence required.

10. Do you think the circumstances necessary for taking out a restraining order differ from those which would normally constitute a charge of assault? Again, in your answer please refer to:
   a) the appropriate marital status of the parties,
   b) the level of violence required,
   c) the evidence required.

APPENDIX 8.

RESTRAINING ORDER QUESTIONNAIRE FOR USERS

1. Have you had anything to do with restraining orders?

2. If so, how did you find about them?

3. If you applied for an order, how did you go about it?
(Please state what you thought of the attitude and response of the police at this stage.)

4. Were you satisfied with the first court hearing and the terms of the order?

5. Were there any problems with the service of the order?

6. Were you told when the order had been served (and was therefore enforceable)?

7. If the order has since been confirmed (a second court hearing with or without the other person attending) were you satisfied with the second court hearing and the terms of the confirmed order?

8. Has the order succeeded in restraining the other person?
Has it made him more violent?

9. If he has breached the order, have you reported him to the police?

10. If so, what did the police do?

11. Were you satisfied with the police response?

12. If the other person has been to court for breaching the order, do you think the penalties imposed were appropriate? (e.g. fine or prison)

13. At any stage did you want the police to charge him with a criminal offence such as assault?

14. Did you ask the police to do so?

15. If so, what was their response?

16. Did you show clear signs of injury at the time?

17. Were there any witnesses to the incident?

18. What do you think would be the best way of stopping the other person being violent towards you?

    a) Counselling for him

    b) Restraining Order

    c) Charging him with a criminal offence - arrest

    d) Separation

    e) Other

19. What would your advice be to another woman who was a victim of domestic violence?

APPENDIX 9.

SUPPLEMENTARY QUESTIONNAIRE

Her General Background and Her Impressions of Professionals

1. Name of Interviewee. (Assurance of anonymity.)

2. Personal Particulars. (Age, Marital Status, Ethnicity, Suburb.)

3. What is your relationship with the respondent (including length of relationship)?

4. Can you tell me about the incident which led you to being in court today?

a) Was alcohol involved?

b) Was a weapon involved?

c) Were children present?

d) Were you injured?

5. Have you been assaulted or threatened by this person before?

   a) When was the first time?

   b) Have you been injured before?

   c) Has the violence changed in character since the first time? (More/less severe, frequency, parties involved.)

6. Is this the first time you have sought help from the law?

   a) Why did you wait until now to seek legal help?

7. To whom did you first turn for help?

   a) Was that person/agency able to help you?

8. Have you spoken to any welfare workers?

9. Were they able to help you?

10. Have you spoken to any doctors?

11. Were they able to help you?

12. Have you sought help from anyone you have not mentioned?