

Australian Domestic Violence Protection Order Legislation: A Comparative Quantitative Content Analysis of Victim Safety Provisions

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Abstract

In Australia, protection orders are a key legal response to domestic violence, and are often viewed as a way of providing for victim safety. For instance, recently the joint Australian and New South Wales Law Reform Commissions recommended that a common core purpose of all state and territory domestic violence legislation should be ‘to ensure or maximise the safety and protection of persons who fear or experience family violence’ (2010:Recommendation 7-4). Drawing and building upon prior research in Australia and the United States (‘US’), this paper uses comparative quantitative content analysis to assess the victim safety focus of domestic violence protection order legislation in each Australian state and territory. The findings of this analysis show that the Northern Territory, South Australia and Victoria ‘stand out’ from the other jurisdictions, having the highest victim safety focus in their legislation. However, there remains sizeable scope for improvement in all Australian jurisdictions, in terms of the victim safety focus of their legislative provisions and considerations of legislative inconsistency between jurisdictions.

Introduction

A key legal response to the prevention of family and domestic violence — and to the goal of safety for victims — involves access to, and the granting of, domestic violence protection orders. As is increasingly the case in many common law jurisdictions, ‘protection orders ... [have become] a well-used component of the Australian domestic violence legal landscape, providing a widely accepted and central strategy in Australia’s domestic violence response’ (Wilcox 2010:2). In particular, over the last decade, all states and territories have made important amendments to their protection order legislation to improve victim safety by ensuring greater access to justice and protection for victims of domestic violence. Certainly, the release of the National Council to Reduce Violence against Women and their Children’s (‘National Council’) action plans (2009a, 2009b, 2009c) formally embedded the goal of

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safety from violence for women and children as a national governmental priority. In their 2010 report, the combined Australian and New South Wales Law Reform Commissions ('ANSWLRC') also highlighted the importance of a focus on victim safety in any effective national legal framework responding to domestic violence. These changes and law reform concerns could be said to reflect a stronger social and political recognition in Australia of the prevalence of violence against women and their children and the need to address it more effectively.

In light of the developing Australian law reform focus on safety for victims of domestic violence, an analysis of the nature of the legal provisions and processes available to victims across the states and territories is important for two key reasons. First, there has been, and remains, concern about what constitutes good practice in legal frameworks with regard to the safety of women and children (see, for example, ANSWLRC 2010: terms of reference). Second, as domestic violence and protection orders are issues covered by state and territory laws in Australia's federal system, a critical element of best practice in an effective national response to domestic violence is the uniformity of policy and legislation across all states and territories (ANSWLRC 2010).

This article provides a comparative quantitative content analysis of domestic violence protection order legislation in each state and territory as a continuation of a conversation about 'good practice' and domestic violence protection orders started by Wilcox (2010:2). In so doing, we analyse the cogency of each jurisdiction's legislative focus on victim safety and the level of consistency that has been achieved across Australian jurisdictions.

Past research: Protection orders and victim safety

In recent years, two qualitative reviews of changes in Australia's protection order legislation have been conducted (Wilcox 2010; National Council 2009a). To date, however, there has been no systematic quantitative comparative assessment of how protection order legislation across Australian jurisdictions may support safety for victims of domestic violence.

In 2009, the National Council (2009a) compared the legislation in each Australian state and territory with New Zealand's, identifying legislative similarities and variations across the jurisdictions. This review found, for example, a range of similarities in terms of the scope of relationships covered and the definitions of 'domestic violence', as well as the types of orders and conditions that could be made. However, the review did not attempt to assess the cogency of victim safety within the legislative provisions.

In contrast to the National Council's review (2009a), Wilcox (2010) identified innovations in protection order legislation across Australian jurisdictions that promote victim safety. In total, she described the following categories of innovations designed to increase victim access to justice and protection, although these progressive elements were noted as not being present in all jurisdictions: the inclusion of victim-focused interpretive guidelines, objectives or preambles; the expansion of the types of relationships covered; the expansion of definitions of 'family' and 'domestic violence' to include non-physical forms of abuse; the use of legal tests focused on the impact of violence on the victim; the broadening of the types of order conditions available; the inclusion of mechanisms to promote protection (such as obligations on police to apply for orders); the availability of emergency and interim orders; the strengthening of provisions around the protection of children affected by domestic violence; and access to justice provisions making it easier for victims to apply for protection orders and to give evidence.

Quantitative assessments of the ways in which protection order legislation promote victim safety have also been undertaken in the US, most recently by Eigenberg et al (2003) and DeJong and Burgess-Proctor (2006). Eigenberg et al's study examined shifts in protective order legislation, comparing US state statutes in 1988 to those in 1999 and 2001. Results indicated a number of key changes between the 1988 and 1999–2001 protection order legislation, with more recent legislation promoting a stronger focus on victim safety by providing greater access to protection orders and covering a broader range of applicants. Key changes identified in this study included: adults being able to file on behalf of minors; expanded types of eligible relationships; fewer states with filing fees for victims; the protection of victims' addresses; longer time periods possible for temporary and final orders; and judges having more options available in terms of making protective orders (including, for example, monetary compensation). There were also few differences found between time periods in the burden of proof required in order to grant an order.

DeJong and Burgess-Proctor (2006) assessed victim safety (or, as they termed it, 'victim friendliness') by assessing how compliant the US states' protection order statutes (in force as at June 2003) were with the US federal government's *Violence Against Women Act* ('VAWA'). Similar to Australia's National Plan, the VAWA is 'a comprehensive package' designed to reduce domestic violence in the US (DeJong and Burgess-Proctor 2006:71). Using an additive index, the authors (2006:75–6) coded (that is, scored) and compared each US statute regarding its 'victim friendliness' and its level of compliance with the VAWA. The study revealed that, in general, most states have protection order legislation that is consistent with the VAWA. Nonetheless, interesting regional differences were found: the south-eastern region of the US had lower victim friendly scores than other regions, suggesting more conservative legislative frameworks that were less focused on achieving victim friendliness.

Measuring victim safety in Australia's protection order legislation

While protection orders can in theory be considered as contributing to victim safety because they 'are designed to reduce the incidence of domestic abuse by limiting contact between victim and offender', there is no established set of criteria by which to assess the extent to which protective order legislation promotes victim safety (DeJong and Burgess-Proctor 2006:69). DeJong and Burgess-Proctor (2006) defined 'victim friendly' legislation using three key standards: compliance with the US national statement on violence against women; relationship between applicant and respondent; and administrative processes. These standards can be seen as consistent with Wilcox's review (2010:1–2) of Australian legislation, which identified 'provisions which have been developed in order to improve the safety of victims of domestic violence'. We have adopted and adapted these standards or criteria to develop four dimensions of legislative provisions that promote victim safety:

- the protective scope of the legislation;
- specified matters to be considered by the court when granting orders;
- procedural mechanisms for applications and hearings; and
- order options available.

First dimension of victim safety: Protective scope of the legislation

Protective scope is concerned with who is protected by the legislation and from what kind of violence. The importance of recognising the diversity of relationships and moving away from ‘stereotypically masculine definitions of violence (focusing on physical violence)’ (Wilcox 2010:7 quoting Hunter and Stubbs 1999) is explicitly acknowledged in the National Plan (Council of Australian Governments 2010:2; National Council 2009c), the ANSWLRC report (2010) and in commentary and assessments of protection orders and domestic violence research more generally (for example, Bagshaw et al 2000; Bartels 2010; DeJong and Burgess-Proctor 2006; Eigenberg et al 2003). For example, DeJong and Burgess-Proctor (2006:73) considered US states progressive if they allowed ‘victims in any type of relationship to apply for personal protection orders’. Similarly, Wilcox (2010:6) notes that ‘recent law reform activity across the nation [Australia] has expanded the breadth of relationships which can be covered by protection order legislation, reflecting a view that a wider net better addresses the safety needs of victims’.

In adopting this dimension for assessing the victim safety orientation of Australian legislation, we are assuming that the coverage of a greater diversity of relationships means protection is available to different types of victims, making the legislation more victim safety focused. However, this position is not unproblematic. As Wilcox (2010:5) points out, expanding legislative coverage makes ‘philosophical and conceptual differences regarding what constitutes the ‘problem’ of domestic violence ... apparent’. Making protection orders available to a broader range of relationships could take the focus away from the gendered nature of domestic violence (New South Wales Legislative Council Standing Committee on Social Issues 2012:225–31; Wilcox 2010:5). While domestic violence undeniably remains a gendered issue (National Council 2009c), ‘we must recognize that violence takes place in many non-traditional types of relationships’ (DeJong and Burgess-Proctor 2006:73; see also Dasgupta 2002; Greenwood et al 2002; Turrell 2000). Increasing concern with the prevalence of violence in non-traditional relationships is demonstrated by a growing body of commentary and research, including:

- primary and secondary domestic violence victimisation of children (Australian Domestic and Family Violence Clearinghouse 2011; Bagshaw et al 2000:68–83; Holt et al 2008; Richards 2011; National Council 2009b);
- elder abuse at the hands of family members and other carers (Cooper et al 2008; James 1994; Kurrle and Naughtin 2008; National Council 2009b);
- abuse within dating relationships (Ackard et al 2007; Lewis and Fremouw 2001; Sety 2012; Straus 2004);
- violence against Indigenous women within contexts of extended kinship structures (Fadwa et al 2006; Mitchell 2011:12–14; National Council 2009b);
- domestic violence in same-sex intimate partnerships (Bagshaw et al 2000; Bartels 2010; Jeffries and Ball 2008; Kay and Jeffries 2010; National Council 2009b).

In addition to a broader range of relationships, definitions of ‘domestic violence’ in Australian protection order legislation have expanded to include non-physical forms of abuse (ANSWLRC 2010:196–9). For example, s 8(1) of the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) states that ‘abuse may take many forms including physical, sexual, emotional, psychological or economic abuse’. An even broader definition can be found in s 8(1) of the *Domestic and Family Violence Protection Act 2012* (Qld), which lists physical or sexually abusive violence first, but goes on to include emotionally,

economically or psychologically abusive behaviour; threatening or coercive behaviour; and behaviour that in any other way controls or dominates a person and causes him or her to fear for his or her safety or wellbeing or that of someone else (including property damage under s 8(2)).

It is particularly important to note in these definitions the explicit inclusion of sexual abuse in the definition of ‘domestic violence’ (although this is not the case in all jurisdictions: see, for example, the Western Australian legislation). The clear recognition of ‘sexual offences as constituting domestic and family violence’ signals to victims, perpetrators and the community the unacceptability of this behaviour in intimate relationships, as well as ‘addressing the general ‘invisibility’ of sexual assault as a form of family violence’ (ANSWLRC 2010:196, 237; National Council 2009c:112).

Like broader ranges of relationships, expanded legislative definitions are not surprising given the now extensive research on the prevalence and adverse impacts of non-physical forms of violence, such as verbal, emotional, economic and sexual abuse (see, for example, Hepburn 2009; Mitchell 2011; O’Leary 1999; National Council 2009b). However, the importance of wider definitions to promoting victim safety lies in moving legislation ‘to address women’s actual experiences including the detrimental impact of verbal, economic and emotional [and we would add, sexual] abuse’ (Wilcox 2010:7).

Finally, the impact of the portability of domestic violence protection orders across jurisdictional borders on victim safety has been somewhat under-appreciated. The legislative capacity for protection orders obtained elsewhere to be registered across Australian jurisdictions has obvious implications for victim safety, including not requiring victims to revisit the hearing process. Although the need for such ‘portability’ of orders has been recognised (National Council 2009b:17), only some jurisdictions allow orders obtained outside of Australia to be registered, thus limiting legislative protective scope and victim safety.

Second dimension of victim safety: Specified matters to be considered by the court

The matters that courts are legislatively directed to consider when making protection orders can either promote or impede victim safety (Wilcox 2010:8). Protection order legislation may direct courts to consider matters such as the victim’s financial, employment and psychological or social needs, as well as, for example, his or her right to remain in the home or, more generally, the need to minimise the disruption to his or her everyday life; such matters are important in the promotion of victim safety (see, for example, the extensive list of factors to be considered in making an ouster order in Victoria’s *Family Violence Protection Act 2008* s 82(2)). Matters that promote victim safety to be considered by the court will ensure that the actual lived and real experiences of victims are the focus of the decision-making process.

Of these issues, the ability to stay in their own homes is of particular importance to victims’ psychological wellbeing and safety, as it is linked to, among other issues: social and employment networks, children’s routine activities, friendships and schooling (McFerran 2007). Research demonstrates that the ability of victims to remain in their own homes reduces the probability of homelessness and associated poverty and, more importantly, can be a key pathway for leaving a violent relationship (see, for example, National Law Center on Homelessness and Poverty 2007; Patton 2003:76–7; Walsh and Douglas 2008; Nancarrow 2010:845–6). The strong interconnectedness of homelessness with poverty means that victim poverty can be the (in)direct outcome of domestic violence

(for instance, financial control by the perpetrator), creating a further barrier to exiting violent relationships (Franzway and Chung 2005; Johnson and Ferraro 2004:958–9; Patton 2003; Wilcox and McFerran 2009). Thus, a jurisdiction that has a strong focus on victim safety will consider the safety issues associated with excluding the perpetrator from the family home. For example, s 20 of the *Domestic and Family Violence Protection Act 2007* (NT) provides for a presumption in favour of the protected person with a child remaining in the home.

Further, perpetrator-focused factors, such as the possibility of orders causing hardship to offenders through a negative impact on their financial position, their accommodation needs or their contact with their children, can be said to reduce the victim safety focus of legislation. Section 64(2)(g) of the *Domestic and Family Violence Protection Act 2012* (Qld), for example, requires the court to take into account the particular accommodation needs of the defendant when making an ouster order. These directives may symbolically reinforce patriarchal assumptions around gender and home ownership ('a man's home is his castle') while failing to acknowledge that this is where the violence occurred (McFerran 2007; Wilcox and McFerran 2009:25). In short, perpetrator-focused considerations are likely to have negative symbolic impacts on victims, and can in some instances be considered as contrary to victim safety.

Complexities in jurisdictional powers also have implications for the victim safety focus of protection order legislation. In our federal system of government, family law matters, including parenting decisions, are governed by federal law, while protection order legislation is state and territory based. Nonetheless, evidence suggests that there is hesitation on the part of state and territory courts to make protection orders that do, or could potentially, conflict with federal Family Court orders allowing abusers contact with their children (National Council 2009:226; ANSWLRC 2010). Federal legislative provisions have for some time supported a child's ongoing relationship with both parents post-separation where it is in their best interest. Protection order legislation that is focused on victim safety would explicitly recognise the priority of victim safety over pre-existing parenting orders and/or parenting arrangements. Research shows that periods of contact with children, particularly the handing-over of children for visitation with domestically violent parents, are times of particularly elevated risk for both women and children (Kaye et al 2003; Lynch et al 2000; National Council 2009a:213–43).

Third dimension of victim safety: Procedural mechanisms

The need for accessible and responsive justice processes for women and children is clearly stated in the National Plan (Council of Australian Governments 2010:26 National Outcome 5). DeJong and Burgess-Proctor (2006:75) argue that victim safety is promoted where there are formal administrative processes that make filing for a protection order less complicated and troublesome. Wilcox (2010) identified a range of procedural mechanisms that would enhance access to, and support during, the protection order application process for domestic violence victims. These can be grouped into three categories of provisions: the inclusion of mechanisms to promote protection (such as obligations on police to apply for orders); legal tests which focus on the impact of violence on the victim; and access to justice provisions making it easier for victims to apply for a protection order and to give evidence.

First, the inclusion of provisions that promote protection independent of the victim is an important aspect of improving the victim safety focus of legislation. Negotiating the application process, including appearing in court and facing abusers, can cause victims a high degree of anxiety and fear (Bell et al 2011; Fischer and Rose 1995; Logan et al 2006;

Murphy 2002; Ptacek 1999; Roberts et al 2008). In practice, legislation that allows for or directs others (such as police or child safety officers) to apply for protection orders may alleviate some of the emotional burden, as well as fear, that victims may experience when applying for a protection order. Potentially, these legislative mandates make the process of obtaining a protection order easier on the victim. However, these types of provisions are not without considerable debate about the implications of the denial of choice and autonomy for victims (see Goodmark 2012). An alternative view is that victims should be afforded the ability to choose how proceedings should be initiated; that is, whether by police or on their own private application. However, without further empirical research on the impact of the removal of choice for victims in these types of applications, we characterise provisions that allow others to apply on the victim's behalf as pro-safety. Indeed, Wilcox (2010:12) argues that 'given the current emphasis on violence prevention in national and state/territory domestic violence public policy', it is anomalous that the states and territories have been slow to include "'pro-protection" action on the part of police or courts'.

Second, the legal grounds (or test) used by a court to decide whether to grant a protection order or not are an important component of a victim safety focus in protection order legislation. These grounds can prioritise either the victim or the offender's perspective and experiences and, in doing so, 'they can maximise or thwart the likelihood of the victim receiving protection' (Wilcox 2010:8).

In Australia, legal tests for protection orders may be based on victim fear or on the perpetrator's intent or conduct. An example of the fear test can be found in s 18(1) of the *Domestic and Family Violence Act 2012* (NT), which states that 'the issuing authority may make a DVO [domestic violence order] only if satisfied there are reasonable grounds for the protected person to fear the commission of domestic violence against the person by the defendant'. The test in the Northern Territory legislation is subjective (satisfied on the balance of probabilities as to the reasonable grounds) based on the victim's own levels of fear. Although this can cause some concern for victims in that they must be prepared to provide evidence to support their claim of fear (Wilcox 2010:9), a fear test assessed on an objective basis (as occurs in some jurisdictions, such as New South Wales) is less supportive of victim safety.

In contrast, the offender conduct or behaviour test — which focuses on an act or incident — looks at whether an act of domestic violence has been committed. Examples of the offender test can be found in the *Family Violence Protection Act 2008* (Vic) and *Domestic and Family Violence Protection Act 2012* (Qld). With this test, it is the focus on conduct or intentions of the perpetrator that supports the request for protection, rather than its consequences for victims (Wilcox 2010:6–8).

Generally, the fear test can be said to promote victim safety over the offender test because it considers the emotional impact of a perpetrator's behaviour on the victim. In other words, the fear test:

does not require waiting for a violent act to occur before an order can be made, and provides some evidentiary benefits for victims, in that perpetrator intent or conduct cannot be rationalised through blame, excuse-making or minimising, given the court's focus on effects rather than conduct (Wilcox, 2010:8 quoting Hunter and Stubbs 1999).

Third, as noted previously, the protection order application/court process can cause domestic violence victims a high degree of anxiety and fear (Bell et al 2011; Fischer and Rose 1995; Logan et al 2006; Murphy 2002; Ptacek 1999; Roberts et al 2008). Thus, provisions that promote victim safety will make it easier for them to apply for protection

orders and/or give evidence in court. Such provisions include legislative directives that do not require a perpetrators' presence when granting orders (including emergency, interim and final orders) and/or reduce court appearance dates. For example, in some Australian jurisdictions, an interim order can be granted without the perpetrator being summonsed (see, for example, *Domestic and Family Violence Protection Act 2012* (Qld) s 23(4)).

The process can also be made more accessible to victims, thus facilitating victim use of protection orders, through victim evidence-giving provisions that prohibit perpetrators from cross-examining victims and allow victims to give evidence through alternative arrangements, including via telephone or closed circuit television (Wilcox 2010:17). For example, in s 21(2) of the *Intervention Orders (Prevention of Abuse) Act 2009* (SA), evidence being given in relation to an interim order application can be by 'telephone or other electronic means'. Other types of pro-victim safety provisions include the ability for victims to have a support person in the courtroom with them (under, for example, s 29(2)(e) of the *Intervention Orders (Prevention of Abuse) Act 2009* (SA), which states that a court can 'order that the witness be accompanied by a relative or friend for the purpose of providing emotional support').

Fourth dimension of victim safety: Order options

Our final dimension of victim safety focuses on the nature of legislative protection that is available to victims, such as the different types of conditions available in emergency (or police) orders, order duration and legislative directions about order extensions and revocations. Although the availability of emergency (or police) and interim orders can provide victims with protection pending the outcome of the final court hearing (Wilcox 2010:12–13), the status and protective breadth of these orders is critical for enhancing victim protection and safety. For instance, legislation that only permits emergency orders of short duration, with a limited range of conditions that can be placed on perpetrators, provides victims with less protection than orders that remain in force for extended periods with unrestricted conditions that can better address the particular circumstances of each case (Wilcox 2010:13–14). Similarly, legislation that restricts the duration of final orders, requiring victims to apply for an extension, is less victim safety focused than statutes allowing final orders to remain in place until a revocation application is made (Wilcox 2010:13–14).

More generally, provisions around revocation and extensions could potentially have negative impacts on victims. For example, legislation that allows perpetrators to apply for the revocation of an existing order without leave of the court could result in victims being summonsed, and thus having to reargue their case. Further, legislation that requires a consideration of a victim's behaviour towards the perpetrator in decisions about extensions and revocations reduces victim safety through the promotion of a patriarchal ideology of victim provocation and blame (Dear 2007). For example, s 46(4) of the *Restraining Orders Act 1997* (WA) states that:

the court is to grant leave for the person to continue the application to vary or cancel the order if it is satisfied that there is evidence to support a claim that a person protected by the order has persistently invited or encouraged the applicant to breach the order, or by his or her actions has persistently attempted to cause the applicant to breach the order.

The current study

Drawing and building upon the prior research in Australia and the US, the current study aims to assess the victim safety orientation of each Australian jurisdiction's domestic violence protection order legislation. To do this, we conducted a quantitative content analysis of Australian domestic violence protection order legislation in each state and territory (n=8) in force as at June 2012 (see Appendix A for a list of the legislation covered by the study). The statutes range from 38 sections (or provisions) to 272 sections in length.

The last decade has seen considerable amendments to domestic violence protection order legislation in Australian jurisdictions in response not only to changing community and governmental attitudes to the protection of victims of violence, but also to implementation issues of past legislative regimes. We rely on information in the legislation only. Information was coded about the protective scope, matters to be considered, procedural mechanisms and order options for each jurisdiction. To improve the reliability of the data, the legislation was coded by two coders. Where there was disagreement, coding rules were revisited and, where necessary, revised. This approach systematically organises the manifest content and language of the statutes into common categories, which can be counted to assess the frequency, relative emphasis, extent of coverage, or presence/absence of particular themes or issues. In turn, this allows us to compare across jurisdictions to identify the extent of common approaches, but also the extent of legislative inconsistencies. Unlike detailed qualitative analyses (which have already been conducted in Australia), this quantitative approach provides a clearer picture of the ranking of individual jurisdictions on our dimensions of victim safety.

The goal is to explore the priorities of governments, rather than how these laws are implemented in practice (see DeJong and Burgess-Proctor 2006 for a similar argument). We recognise that this may be an unusual approach. Clearly, the implementation of protective order legislation is a vital question, as implementation may undermine legislative intent and significantly impact on victim safety and access to justice. However, these are two distinct questions that should not be conflated. Here, we are interested in identifying what values are embodied in current statutory language, as this language can play an important symbolic role in affirming or legitimating victims' rights to protection and access to justice.

Table 1 describes the dimensions (based on past research and the National Plan) coded to measure the victim safety of the legislation in each jurisdiction. Each statute is assigned a numeric score for each item. Coding is 0 to 1, with zero values indicating provisions that do not add to, and may detract from, a victim-oriented process, and positive values indicating provisions that enhance a victim-oriented process. There were a number of provisions that were common across the jurisdictions. For example, all legislation, regardless of jurisdiction: included past and present relationships in their definitions of applicable relationships; covered spousal or de facto relationships; included actual and threatened abuse in their definitions of domestic violence; provided protection for physical and emotional abuse; had emergency and interim orders available; allowed victims and police officers to initiate applications; and provided the same range of conditions as available in final orders to be imposed in interim orders. All states and territories also provided for the protection of children from exposure to domestic violence and prioritised victim safety and the wellbeing of children. In the absence of variation, these items were excluded from the index. The remaining scores were then summed together to form a single additive index to measure the victim safety of the legislation, which could range from 0 to 31. Thus, higher

scores indicate a higher victim safety focus in the protective provisions and processes of domestic violence protective order legislation.

Table 1: Description of victim safety dimensions index

Indicator	Coding
<i>Protective scope of legislation</i>	
Covers intimate relationships beyond spousal/de facto	0=no; 1=yes
Covers carer relationships	0=no; 1=yes
Covers other relatives	0=no; 1=yes
Includes sexual abuse	0=no; 1=yes
Includes economic abuse	0=no; 1=yes
Includes property damage	0=no; 1=yes
Registration of out-of-jurisdiction orders	0=other Australian jurisdictions only 0.5=other Australian jurisdictions and New Zealand only; 1=domestic and international orders
<i>Specified matters to be considered</i>	
Victim's accommodation needs	0=no; 1=yes
Victim's life disrupted as little as possible	0=no; 1=yes
Victim's employment	0=no; 1=yes
Victim's financial position	0=no; 1=yes
Offender hardship	0=yes; 1=no
Offender's financial position	0=yes; 1=no
Offender's accommodation	0=yes; 1=no
Prior family court arrangements for offender's contact with child	0=yes; 0.5=family court arrangements recognised, but victim safety higher priority; 1=no, court directed to use existing powers under other legislation, or provided with power to impose conditions prohibiting contact
<i>Procedural mechanism</i>	
Obligation on police/child safety agencies to apply for either an interim and/or final order in certain circumstances	0=no; 1=yes
Child safety officers may initiate applications for at least one order type	0=no; 1=yes
Legal test applied in final orders	0=focus on offender behaviour (actual or likely); 1=focus on victim's fear of domestic violence (actual or likely)
Interim orders made in absence of defendant	0=can grant in defendant absence provided evidence of service; 0.5=can grant in defendant absence even if no evidence of service; 1=can grant in defendant absence regardless of whether summonsed
Final orders made in absence of defendant	0=can grant in defendant absence provided evidence of service; 0.5=can grant in defendant absence even if no evidence of service; 1=can grant in defendant absence regardless of whether summonsed

Indicator	Coding
<i>Procedural mechanism (cont)</i>	
Cross-examination of victim restrictions	0=no mention; 0.5=court may restrict cross-examination of victim; 1=no cross-examination of victim
Special provisions for victim evidence	0=no mention; 0.5=court may order alternative arrangements; 1=victim entitled to alternative arrangements
Support person present for victim	0=no mention; 0.5=may have during evidence; 1=may have during hearing
<i>Order options</i>	
Status of emergency/police orders	0=stand-alone order of <1 month; 0.5=serves as a court summons; 1=stand-alone order of >1 month
Status of interim orders	0=order in place until final hearing; 0.5=order of short duration, not requiring a further hearing; 1=order of long duration, not requiring further hearing
Conditions available for emergency/police orders	0=restricted set of conditions may be applied; 1=full set of conditions available for final orders may be applied
Duration of final order	0=set maximum period; 0.5=set maximum period if no court imposed length; 1=no set maximum period
Obligation on court to notify child safety agencies of orders involving children	0=no mention; 0.5=court may require child safety agency to intervene; 1=court must send copy of order to child safety agency
Defendants can apply for revocation only with leave of court	0=no leave of the court required; 1=only with leave of the court
Victim behaviour towards, or contact with, defendant a consideration in revocation hearings	0=yes 1=no
Changes in circumstances is a consideration in revocation hearings	0=no; 1=yes

Notes: Statutes in all jurisdictions provided for: (1) past and present relationships in their definitions of applicable relationships; (2) protection to spousal, married or de factor relationships; (3) actual and threatened abuse in their definitions of 'domestic violence'; (4) protection for physical and emotional abuse; (5) access to emergency and interim (during court processes) protection orders; and (6) same conditions for both interim and final orders. All states also: (1) recognise the need to protect children from exposure to domestic violence; (2) prioritise victim safety and the wellbeing of children; and (3) allow victims and police officers to initiate applications.

Findings

Overall, there is diversity across Australian jurisdictions in their domestic violence protection order legislation. Table 2 lists the victim safety scores for each jurisdiction, with an average score of 17.1 (sd=3.8). The distribution of scores is positively skewed, suggesting that all jurisdictions have an awareness of the need for victim supportive legislative frameworks (the lowest score is 38.7 per cent of the total possible score). Based on these scores, the jurisdiction with the strongest focus on victim safety in its legislative framework is the Northern Territory (having the highest score of 23.0), while the

jurisdiction with the least victim safety focus in its legislation is the Australian Capital Territory (with a score of 12.0).

Table 2: Overall victim safety of domestic violence protection order legislation by jurisdiction

State/Territory	Total score	Protective scope	Matters to be considered	Procedural mechanisms	Order options
Northern Territory	23.0 (74.2%)	7.0 (100.0%)	4.0 (50.0%)	6.5 (81.3%)	5.5 (68.8%)
South Australia	21.0 (67.7%)	6.0 (85.7%)	6.0 (75.0%)	4.5 (56.3%)	4.5 (56.3%)
Victoria	20.0 (64.5%)	5.5 (78.6%)	7.0 (87.5%)	3.0 (37.5%)	4.5 (56.3%)
New South Wales	15.5 (50.0%)	5.5 (78.6%)	2.5 (31.3%)	4.5 (56.3%)	3.0 (37.5%)
Tasmania	15.5 (50.0%)	4.0 (57.1%)	3.0 (37.5%)	1.5 (18.8%)	7.0 (87.5%)
Queensland	15.0 (48.4%)	6.0 (85.7%)	6.0 (75.0%)	2.0 (25.0%)	1.0 (12.5%)
Western Australia	15.0 (48.4%)	4.0 (57.1%)	2.5 (31.3%)	4.0 (50.0%)	4.5 (56.3%)
Australian Capital Territory	12.0 (38.7%)	3.5 (50.0%)	2.0 (25.0%)	1.5 (18.8%)	5.0 (62.5%)
Mean score (sd)	17.13 (3.75)	5.19 (1.22)	4.13 (1.94)	3.44 (1.76)	4.38 (1.77)
Coefficient of variation	---	0.24	0.47	0.51	0.40
Total possible score	31.0	7.0	8.0	8.0	8.0

Note: The percentages in brackets represent the score as a percentage of the total possible points.

Looking at the dimensions, we can identify the key criteria on which legislation differs across jurisdictions. The breadth of the protective scope of the legislation ranged from 3.5 (in the Australian Capital Territory) to 7.0 (in Northern Territory) (out of a possible 7.0). All legislation achieved at least 50 per cent in recognising the diversity of relationships, as well as types of domestic violence. The coefficient of variation (0.24) suggests that this dimension (compared to the others) had the least variation between jurisdictions. However, for victim-oriented matters to be considered in making a decision about a final protection order, there was greater diversity (ranging from 2.0 in the Australian Capital Territory to 7.0 in Victoria, out of a possible 8.0). This suggests that the explicit recognition of matters that capture the lived experiences of victims of violence is not standard in Australian protection order legislation. The provision of procedural mechanisms to improve victim access to, and protection during, the protection order application process was the least well-achieved dimension for all jurisdictions. The legislation with the highest victim safety score (Northern Territory) scored 81.3 per cent (6.5 out of 8.0) of the possible victim safety procedural mechanisms suggested in the commentary and research discussed above. By comparison, the Australian Capital Territory legislation scored 1.5 (or 18.8 per cent). It was also the dimension with the greatest variation between the jurisdictions (coefficient of variation of 0.51). Finally, the types of order options available in each jurisdiction ranged from 1.0 (out of 8.0, or 12.5 per cent) in Queensland to 7.0 (or 87.5 per cent) in Tasmania, with a mean score of 4.4 (sd=1.8).

Discussion and conclusion

This analysis, through coding of particular legislative features, allows us to assess the extent to which Australian protective order legislation provides a focus on victim safety and supportive processes for gaining protection from domestic violence. There are two key findings of interest.

First, no Australian jurisdiction achieved 100 per cent on the victim safety dimensions index used in this research. The Northern Territory ranked the highest of all Australian jurisdictions, but only obtained 74.2 per cent of the total possible victim safety score. South Australia and Victoria also ranked relatively highly. More worryingly, three jurisdictions — Queensland, Western Australia and the Australian Capital Territory — scored under 50 per cent of the total possible score. Thus, while Australian jurisdictions may have recently made important amendments to their protection order legislation to improve victim safety, there is still significant scope for improvement.

Importantly, the victim safety dimension that was best achieved across all jurisdictions was the protective scope of the legislation, with a mean score of 5.2 (sd=1.2) out of a possible 7.0. This finding suggests that changes to definitions of ‘domestic violence’ and expansion of the types of relationships that fall within legislative frameworks may be more easily made than reforms that potentially challenge traditional legal processes (such as perpetrators’ rights to be present and address accusations; and men’s rights to have contact with their children and remain in their homes).

Second, there was systematic evidence of legislative inconsistency across Australian states and territories. Scores for each jurisdiction varied considerably for overall victim safety, as well as for the individual dimensions of protective scope, matters to be considered by the court, procedural mechanisms and types of order options. For instance, procedural mechanisms had the greatest variation between the jurisdictions (coefficient of variation 0.51). The dimensions of matters to be considered and types of order options also show considerable jurisdictional variation (coefficients of variation 0.47 and 0.40, respectively). This raises serious questions about inequality of treatment for victims of domestic violence across jurisdictions (ANSWLRC 2010:294). As noted (2010:325, 334–5):

[I]t is simply unacceptable that victims suffering similar experiences of abuse in different jurisdictions may have varying chances of obtaining a protection order based [for example] on the legislative thresholds for the granting of orders in their jurisdiction [or on other legislative processes and definitions].

Concerns about inconsistencies in protection order legislation across Australia’s states and territories is not new. In 1999, Australian governments attempted to respond to this issue through a project to develop a national model for protection order legislation (Partnerships against Domestic Violence 1999). However, due to warranted criticism, the project never reached fruition. Hunter and Stubbs (1999) argued that the project reflected a limited vision, being more concerned with solving jurisdictional inconsistencies than with implementing best practice in victim effective legislation. More recently, to improve consistency and thus equality in victim treatment, the ANSWLRC (2010) argued for consideration of a common interpretative framework (rather than prescriptive national legislation) across Australian protection order legislation. This framework, at a minimum, should include core or standard definitions of ‘domestic violence’, legislative purposes/aims, grounds for obtaining protection orders, and applicable relationships/persons (ANSWLRC 2010:chs 5, 7). Our findings suggest that there is more convergence around

protective scope (applicable relationships and definitions of domestic violence), with less convergence around procedural mechanisms promoting victim safety.

The Commission's concerns about jurisdictional legislative inconsistency, alongside the current study's results, may suggest revisiting the discussion about the introduction of model national domestic violence protection order legislation. However, rather than superficially resolving inconsistencies, as occurred in the 1999 attempt, this model legislation should draw and build on good practice, such as the victim safety focused practices identified in this study as operating in the Northern Territory, South Australia and Victoria.

One final point needs to be reiterated. Although the current research measures the victim safety focus of Australian protection order legislation, it does not answer the question of how that legislation is put into practice. There is a critical need for more research that examines the execution of domestic violence protection order decision-making and enforcement in Australia, as recent Australian research has tended to focus on cross-applications or mutual protection orders (see, for example, Wangmann 2010; Douglas and Fitzgerald 2013). Victim safety-focused legislation is obviously important, but whether the written intentions translate into practice is another question. For example, legislation may recognise victim/offender relationship diversity, the connection between domestic violence and homelessness, and the need to protect children from domestic violence. But, in practice, do courts grant orders to victims in diverse relationships (for example, same-sex and dating couples), put in place order conditions that allow victims to stay in their homes, or grant orders that shield children from abusive parents?

Appendix: Australian domestic violence protection order legislation included in the study

Crimes (Domestic and Personal Violence) Act 2007 (New South Wales)

Domestic and Family Violence Act 2007 (Northern Territory)

Domestic and Family Violence Protection Act 2012 (Queensland)

Domestic Violence and Protection Orders Act 2008 (Australian Capital Territory)

Family Violence Act 2004 (Tasmania)

Family Violence Protection Act 2008 (Victoria)

Intervention Orders (Prevention of Abuse) Act 2009 (South Australia)

Restraining Orders Act 1997 (Western Australia)

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