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Apprehended Personal Violence Orders – A survey of NSW magistrates and registrars

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Aim: *To establish whether frivolous or vexatious Apprehended Personal Violence Orders (APVO) are common in NSW and, if so, the circumstances under which they arise.*

Method: *Online survey of 210 NSW magistrates and registrars.*

Results: *Over two-thirds of magistrates and registrars surveyed reported that frivolous or vexatious APVO applications never, rarely or only occasionally occur, while just one in ten survey participants reported that they frequently deal with these types of matters. Magistrates and registrars reported that frivolous or vexatious APVO applications typically involve trivial/insignificant matters or a single act of harassment, and that the dispute is most often between neighbours or acquaintances/former friends.*

Conclusion: *Despite recent media reports claiming that APVOs are overused and abused in NSW, the current study suggests that only a small proportion of APVO applications are frivolous or vexatious in nature.*

Keywords: *Apprehended Personal Violence Order, Apprehended Violence Order, frivolous, vexatious, survey.*

INTRODUCTION

The *NSW Crimes (Domestic and Personal Violence) Act 2007* allows a court to make an Apprehended Violence Order (AVO) if they are satisfied that one or more persons are in need of protection from violence, intimidation (including harassment) or stalking. This legislation differentiates between two types of AVOs; (1) Apprehended Domestic Violence Orders (ADVO) and (2) Apprehended Personal Violence Orders (APVO). ADVOs can be made in cases where a domestic relationship[2] exists between the person(s) in need of protection and the defendant, while APVOs can be made in cases outside these relationships. This bulletin focuses on the latter category, APVOs.

Under Section 18 of the Crimes (Domestic and Personal Violence) Act a person(s) who is in need of protection from someone with whom they do not have a domestic relationship can personally apply for an APVO through the Local Court (known as a 'private application') or the police can apply for an APVO on their behalf (known as a 'police application'). Section 53 of this Act provides registrars with the discretion to refuse to issue process[3] in APVO applications if they are satisfied that the application is frivolous, vexatious or has no reasonable prospect of success, or if they believe it can be dealt with more appropriately through mediation.

For an APVO to be granted, the court must be satisfied on the balance of probabilities that the person(s) in need of protection has reasonable grounds to fear and in fact fears that the defendant will engage in violence, stalking or intimidation against them. If an APVO is granted, the court can place restrictions on the defendant's behaviour to ensure the safety of the protected person. This can include prohibiting or restricting the defendant from approaching the protected person; prohibiting or restricting the defendant's access to the protected person's home or place of work; and prohibiting or restricting the possession of firearms or other weapons by the defendant. If a defendant knowingly breaches conditions of an APVO order then he or she is guilty of a criminal offence and can be imprisoned for up to two years.

The object of this personal violence legislation is "to ensure the safety and protection of all persons who experience personal

This bulletin has been independently peer reviewed.

violence outside a domestic relationship" (Section 10 of the Crimes (Domestic and Personal Violence) Act). However, recently there have been concerns raised by the media that APVOs are being sought for trivial issues and that these frivolous applications are consuming valuable court resources. The Daily Telegraph, for example, reported on March 19, 2011, that "the abuse and over-use of personal apprehended violence orders is out of control" and that "personal apprehended violence orders are among the most misused pieces of legislation"; citing cases where AVOs have been obtained by homeowners against tradesman to avoid paying bills and by criminals against police officers who have arrested them. These concerns have been echoed by members of the judiciary. In his dismissal of an appeal against an APVO decision involving two disputing neighbours, Judge Williams of the District Court commented that "[regrettably], APVOs are being sought and, even more regrettably, obtained in many circumstances where an order is not justified, thereby bringing the objects and purpose of this piece of incredibly vague legislation into even further disrepute" (in *P E v M U* [2010] NSWDC 2).

It has also been suggested that APVO applications are sometimes sought by vexatious litigants for vindictive purposes and in these cases are simply being used as a tool to cause personal distress. These vexatious APVOs would undoubtedly have a significant impact on the parties involved. Media reports of a recent high profile case involving a well-known radio broadcaster quoted the defendant as saying "the pressure I've been under has been incredible" and that "he choked back tears" after learning that an APVO application against him, which involved false allegations, had been dismissed by a Local Court magistrate (*The Australian*, February 25, 2011).

Both frivolous and vexatious APVO applications consume valuable court resources and can cause significant personal distress. However, there is an additional concern that the frequent abuse of APVOs in this way could negatively impact upon community perceptions of the Apprehended Violence Order (AVO) process more generally, and in doing so, undermine "the effectiveness of ADVOs (Apprehended Domestic Violence Orders), since a great deal of the benefit derives from community respect for the seriousness of the AVO process" (Section 3.81; NSW Law Reform Commission, 2003).

For these reasons, the current study sought to examine whether frivolous or vexatious APVO applications are common in NSW. In this study, a frivolous APVO application refers to one which lacks substance or seriousness; a vexatious APVO application refers to one which is intended to harass, annoy, cause delay or is initiated for some other ulterior purpose. The term 'frivolous' is used in conjunction with 'vexatious' to refer to matters which lack reasonable grounds or have no reasonable prospect of success. This is consistent with the use of these terms in relevant statutes (see for example, Section 53 of the Crimes (Domestic and Personal Violence) Act) and procedural rules (see for example Rule 13.4(1) of the *Uniform Civil Procedure Rules 2005*).

What do we know about Apprehended Personal Violence Orders in NSW?

Figure 1 displays the rate of APVOs granted in NSW from 2001 to 2010. As seen here, there has been some variation in the annual APVO rate over the last 10 years. Between 2001 and 2003, the APVO rate ranged between 114 orders and 109 orders per 100,000 population. Then in 2004, the APVO rate decreased to 104 orders per 100,000 population and dropped further in 2005 to less than 96 orders per 100,000 population; remaining at this lower level until 2008. In 2009, the rate of APVOs increased to 111 orders per 100,000 population and in 2010 fell back to 102 orders per 100,000 population. Over the entire 10-year period, however, there was no statistically significant upward or downward trend in the monthly number of APVOs granted (source: unpublished data from NSW Bureau of Crime Statistics and Research, ref: jh11-10256).

APVO rates are not uniform across the State. Table 1 shows the rates of APVOs granted in 2010 by NSW Statistical Division. The highest rates of APVOs are recorded in the Far West and North Western regions of NSW followed by the Murrumbidgee and Northern Statistical Divisions of NSW. The lowest rates are in Central Northern and Lower Northern Sydney, followed by the Northern Beaches and Inner Western areas of Sydney. This geographical variation in APVOs is consistent with overall rates of non-domestic violence in NSW. Police recorded crime statistics show that the Far West and North Western regions of the State record the highest rates of non-domestic violence related assault, while the Central Northern and Lower Northern areas of Sydney record the lowest rates (Goh & Moffatt, 2011).[4]

Figure 1. Rate of personal AVOs granted in NSW, 2001-2010

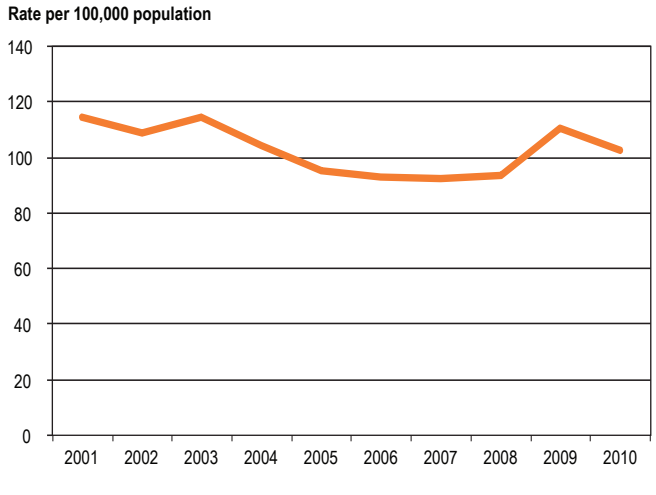


Table 1. Number and rate of APVOs granted by the Statistical Division of residence of person of interest (POI), 2010, NSW

Division	Number granted	Rate per 100,000 population[a]
Sydney		
Inner Sydney	321	91.6
Eastern Suburbs	122	47.8
St George-Sutherland	270	58.7
Canterbury-Bankstown	201	61.1
Fairfield-Liverpool	276	73.2
Outer South Western Sydney	262	104.5
Inner Western Sydney	74	39.2
Central Western Sydney	211	61.3
Outer Western Sydney	237	72.7
Blacktown	316	105.4
Lower Northern Sydney	80	25.5
Central Northern Sydney	84	18.7
Northern Beaches	80	32.8
Central Coast	268	84.8
Hunter	789	122.5
Illawarra	543	125.9
Richmond-Tweed	358	148.0
Mid-North Coast	511	165.1
Northern	457	247.3
North Western	349	294.4
Central West	300	163.8
South Eastern	315	145.4
Murrumbidgee	408	257.3
Murray	197	166.2
Far West	90	395.9

[a] For the rate calculations, population data were obtained from the Australian Bureau of Statistics publication: Regional population growth, Australia (ABS, 2010).

Apart from the rate at which orders are granted, routinely collected court data provide very little reliable information regarding APVOs in NSW. In particular, not much is known about the nature of the allegations made in APVO applications or the parties involved in these types of disputes.

Some data bearing on this issue comes from an AVO study conducted by the NSW Bureau of Crime Statistics and Research in 1997. In this study, a sample of men and women granted AVOs (both personal and domestic) were interviewed after the order was first granted and then interviewed again one month or more after the order was served on the defendant. These data showed that of the survey participants who had been granted an APVO, more than one-third had taken the order out against a neighbour or friend/acquaintance and nearly 20 per cent against someone with whom they work. The survey also found that police are an important referral point in the process of obtaining an APVO. Over half of the survey participants who had been granted an APVO reported that they had first heard about APVOs from the police and 80 per cent of survey participants who had been granted an APVO through a personal application to a Local Court reported that they had been referred to the court by the police.[5] These data also revealed that 85 per cent of all APVO defendants were not represented in court when the matter was heard and that 21 per cent were neither represented in court nor present during the hearing. There was also evidence of a low breach rate for APVOs; with only around one in five survey participants reporting a breach of the order six months after it was granted. These findings led the authors to conclude that APVOs can be an effective method for dealing with issues of personal violence and harassment (Trimboli & Bonney, 1997).

Another study of APVOs undertaken by the NSW Judicial Commission in 1999 canvassed magistrates' views regarding these types of orders. This study found that of the 68 magistrates surveyed, 71 per cent thought APVOs were an effective way of dealing with personal violence or harassment. Reasons given by magistrates for the effectiveness of these orders included the low breach rate, the existence of severe penalties for violations, the protection that they provide and the fact that they can act as a catalyst for change. However, all survey respondents agreed that APVOs are open to abuse, with some magistrates (*n*=11) suggesting that APVO applications often occur where there was no real fear of violence and that many matters involve disputes that were trivial, frivolous or vexatious (Hickey & Cumines, 1999).

METHOD

Both AVO studies described above were conducted over 10 years ago and involved relatively small sample sizes. Moreover, they failed to estimate the frequency with which frivolous or vexatious matters are being brought before the courts. In the absence of these data it is difficult to assess the effectiveness of APVOs or determine the extent to which the APVO process is being routinely abused. Given this, the current investigation aimed to establish whether vexatious or frivolous APVO applications are common in NSW and, if so, the circumstances under which they arise and the parties involved in these types of disputes. This study also sought to examine whether the current measures which are in place to minimise abuse of the APVO process, namely registrar discretion to refuse to issue process and legislative power to refer APVO matters to mediation, are being utilised.

Under the *Vexatious Proceedings Act 2008* a person who frequently takes legal action without reasonable grounds or for improper purposes can be subjected to a Vexatious Proceedings Order. A Vexatious Proceedings Order can halt all or any part of current court proceedings that the named person is engaged in or can prohibit that person from commencing any new proceedings. Determining the extent to which the Vexatious Proceedings Act could be applied in vexatious APVO matters was an additional objective of this study.

To achieve these aims, NSW magistrates and registrars were surveyed regarding their experience of APVOs. The survey was designed to address the following key research questions:

1. How frequently do magistrates and registrars deal with APVO applications that they perceive to be vexatious or frivolous in nature?
2. What is the nature of the behaviour complained about in vexatious or frivolous APVO applications?
3. Who are the parties involved in vexatious or frivolous APVO applications?
4. What is the nature of the dispute in vexatious or frivolous APVO applications?
5. Are there any groups which are particularly affected by vexatious or frivolous APVO applications?
6. Are multiple or cross applications an issue in APVOs?
7. How often do magistrates refer APVO applications for mediation?
8. What types of APVO matters do magistrates refer for mediation?
9. How easily can a vexatious proceedings order be made in APVO matters that are frivolous or vexatious in nature?
10. How often do registrars use their discretion (under Section 53 of the Crimes (Domestic and Personal Violence) Act) to refuse to issue process in APVO matters?
11. What barriers do registrars face in applying Section 53 of the Crimes (Domestic and Personal Violence) Act to APVO matters?

Survey sample

The sample comprised all magistrates and registrars employed in NSW Local Courts. An email was sent by the Chief Magistrate to all NSW magistrates in early October inviting them to participate in the survey. A similar email was sent by the Director General of the Department of Attorney General and Justice inviting all NSW registrars to participate in the research. This email contained a brief description of the study and its purpose, and a link to an external website which hosted the survey. Participants were asked to complete the survey during the period from October 10th 2011 to October 26th 2011 (inclusive).

To maximise responses to the survey, a further three reminder emails were sent to magistrates and registrars during the data collection period.

A total of 135 NSW magistrates received the email from the Chief Magistrate asking them to participate in the survey. Five magistrates were on leave for all of the data collection period which left 130 magistrates available to complete the survey. A total of 237 people on the Department's 'registrar email list' received the email from the Director General asking them to participate in the survey. Only 209 of these people had registrar, deputy registrar, relieving registrar or assistant registrar listed as their current or substantive position on the Department's Establishment records. Eight registrars were excluded because they were on leave for all of the data collection period which left 201 registrars available to complete the survey.

217 participants accessed the online survey (130 registrars and 87 magistrates) during the data collection period. Seven of these 217 participants were excluded because they did not respond to any of the survey questions. This represents an overall response rate of 63 per cent (210/331). The magistrate response rate (64.6%) was slightly higher than the response rate from the registrars (62.7%). This is a good response rate for an online survey, particularly in light of the fact that not all magistrates and registrars who were contacted to participate in the survey deal with APVOs on a regular basis (e.g. state coroner, chief industrial magistrate and magistrates/registrars of the drug courts). It is also higher than the response rate achieved in previous NSW research on AVOs which used a more traditional paper-and-pencil survey methodology (56%; Hickey & Cumines, 1999).

It is possible that this survey underestimates the proportion of frivolous or vexatious APVO matters which involve young people. This is because APVO applications in which the defendant is aged less than 18 years must be dealt with by a specialist Children's Court magistrate or registrar. While all Children's Court magistrates and registrars were invited to participate in this research, it is not possible to establish how many actually completed the questionnaire because of the anonymity of survey responses. Having said this, almost 90 per cent of 'persons of interest' named in APVO matters are aged 18 years or over (source: unpublished data from NSW Bureau of Crime Statistics and Research, ref: tp12-10427). Furthermore, Local Court magistrates and registrars outside of the Children's Court jurisdiction can still deal with applications where the person in need of protection is under the age of 16 years. Although a person under the age of 16 years cannot make a private APVO application through the Local Court, the police can make an application on their behalf or they can be included as a protected person on a parent's private application. Thus, any underestimate of the involvement of young people in frivolous or vexatious APVO matters arising from the current research is likely to be small.

Questionnaire

The questionnaire items included in the online survey are provided in full in the Appendix. Note that two surveys were designed; one which was distributed to all magistrates and another which was distributed to all registrars. The first two sections of these surveys contained exactly the same questions but the last section asked a series of questions that were specific to their role.

All respondents were initially asked demographic questions regarding their age, gender and experience, as well as questions about their current work role. Respondents were then asked to indicate on a 7-point Likert scale how frequently they had dealt with APVOs in the last 12 months which they perceived to be frivolous or vexatious in nature. The Likert scale used in the survey was as follows: never, rarely (less than 10% of all applications), occasionally (between 10% and 29% of all applications), sometimes (between 30% and 49% of all applications), frequently (between 50 and 69% of all applications), usually (between 70% and 90% of all applications), almost always (more than 90% of applications). Respondents, who indicated that they had dealt with frivolous or vexatious APVOs in the last 12 months, were then asked a series of questions regarding the nature of these disputes, the parties involved and the allegations being complained about. All respondents were also asked how often they dealt with multiple or cross APVO applications from the same parties and whether they perceived these to frequently be frivolous or vexatious in nature. The same 7-point Likert scale was used for each of these subsequent questions.

In the final section of the magistrate survey, respondents were asked to indicate on the same 7-point Likert scale how often they referred APVO applications to mediation (under Section 21 of the Crimes (Domestic and Personal Violence) Act). They were also asked to select from a list of eight alternatives the most common reasons for not referring APVO matters to mediation. Two open-ended questions were included at the end of the magistrate survey. The first open-ended question asked magistrates to identify any major impediments to making a Vexatious Proceedings Order under the Vexatious Proceedings Act in matters that involve APVOs. The second open-ended question invited them to offer up any other comments they had in relation to APVOs.

In the final section of the registrar survey, respondents were asked to indicate on the 7-point Likert scale used earlier in the survey how often they had used their discretion (under Section 53 of the Crimes (Domestic and Personal Violence) Act) to refuse to issue process in APVO matters and how often people had withdrawn their APVO application after the prospects of success and/or consequences of an unsuccessful application were explained. Registrars were also asked to select from a list of eight alternatives, the major impediments to the use of Section 53 of the Crimes (Domestic and Personal Violence) Act in APVO matters. A final open-ended question for general comments was included at the end of the survey.

RESULTS

CHARACTERISTICS OF SURVEY RESPONDENTS

Descriptive data on the characteristics of the final sample of respondents (n=210) are displayed in Table 2.

Table 2 shows that over half of the respondents to the online survey were male (57.1%) and over three-quarters (77.1%) were aged between 41 and 60 years. Half of the respondents had spent 10 years or less in their current role. However, a large proportion of respondents reported considerable experience; with one in five respondents reporting that they had served as a magistrate or registrar for more than 20 years. Almost half of the respondents (48.6%) spent all of their time in country courts, while almost one-quarter (22.9%) spent all of their time in metropolitan courts. The majority of respondents (76.7%) worked 20 hours or more as a magistrate or registrar and over 80 per cent estimated that they spent less than 20 per cent of their time dealing with APVO applications. In fact, over one-third estimated that less than five per cent of their magistrate/registrar work involved APVO applications. Note that three respondents (two magistrates and one registrar) did not spend any time on APVOs in the previous 12 months. These respondents were excluded from further analyses.

There were several statistically significant differences between the magistrate and registrar samples in terms of the characteristics of survey respondents. Magistrates who responded to the survey were more likely to be over 50 years old (Pearson Chi-Square=46.307, df=3, p<.001), to have been in their current role for five years or less (Pearson Chi-Square=28.157, df=4, p<.001), to spend more than half of their time working in metropolitan courts (Pearson Chi-Square=32.170, df=1, p<.001) and to spend more time attending to magistrate work (Pearson Chi-Square=8.203, df=1, p=0.004). Notably, there were no significant differences between magistrates and registrars in terms of the proportion of their work which involved dealing with APVO applications.

FRIVOLOUS OR VEXATIOUS APVO APPLICATIONS

Of the 207 respondents who dealt with APVOs in the last 12 months, 121 (58.5%) indicated that they occasionally or sometimes dealt with frivolous or vexatious APVOs (see Table 3). Nearly 30 per cent indicated that they rarely dealt with frivolous or vexatious APVOs and five respondents reported they never dealt with these types of matters. Only 21 respondents (10.1%)

Table 2. Characteristics of survey respondents

	Magistrates		Registrars		Total	
	n	%	n	%	n	%
Gender						
Male	51	60.7	69	54.8	120	57.1
Female	33	39.3	57	45.2	90	42.9
Total	84	100.0	126	100.0	210	100.0
Age						
30-40	3	3.6	22	17.5	25	11.9
41-50	17	20.2	66	52.4	83	39.5
51-60	46	54.8	33	26.2	79	37.6
60+	18	21.4	5	4.0	23	11.0
Total	84	100.0	126	100.0	210	100.0
Years in role						
5 years or less	36	42.9	22	17.5	58	27.6
6-10 years	19	22.6	28	22.2	47	22.4
11-15 years	14	16.7	23	18.3	37	17.6
16-20 years	11	13.1	15	11.9	26	12.4
21+ years	4	4.8	38	30.2	42	20.0
Total	84	100.0	126	100.0	210	100.0
% of time in metropolitan courts						
None of the time	26	31.0	76	60.3	102	48.6
Less than 50%	2	2.4	17	13.5	19	9.0
50% of time	4	4.8	4	3.2	8	3.8
More than 50%	23	27.4	10	7.9	33	15.7
All the time	29	34.5	19	15.1	48	22.9
Total	84	100.0	126	100.0	210	100.0
Av. amount of time per week on bench/ working as registrar						
19 hours or less	11	13.1	38	30.2	49	23.3
20 hours or more	73	86.9	88	69.8	161	76.7
Total	84	100.0	126	100.0	210	100.0
Av. amount of time spent on APVOs						
0-5%	31	36.9	45	35.7	76	36.2
6-10%	20	23.8	37	29.4	57	27.1
11-20%	20	23.8	21	16.7	41	19.5
More than 20%	13	15.5	23	18.3	36	17.1
Total	84	100.0	126	100.0	210	100.0

reported that more than half of the APVOs that they deal with are frivolous or vexatious in nature. The proportion of magistrates who reported that frivolous or vexatious APVOs frequently or usually occur was not significantly different from the proportion of registrars who agreed with this statement. Furthermore, magistrates/registrars with greater experience and those who reportedly spent more time dealing with APVO

Table 3. Frequency with which magistrates and registrars deal with vexatious or frivolous APVO applications, NSW

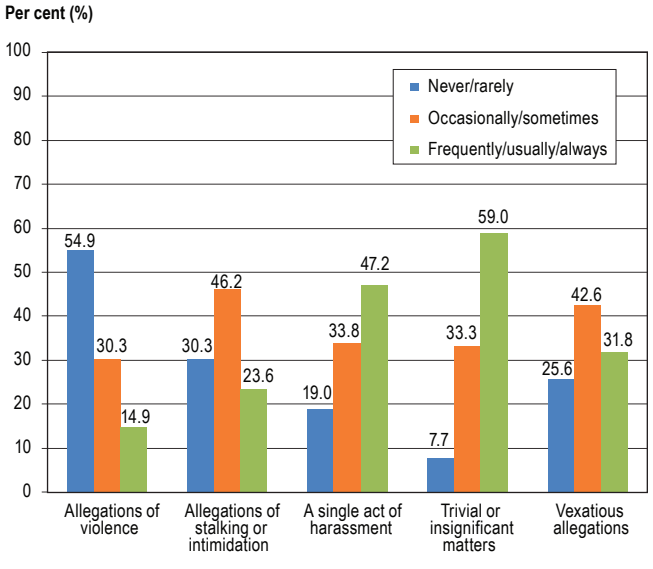
	Magistrates		Registrars		Total	
	n	%	n	%	n	%
Never	2	2.4	3	2.4	5	2.4
Rarely	24	29.3	36	28.8	60	29.0
Occasionally	31	37.8	47	37.6	78	37.7
Sometimes	18	22.0	25	20.0	43	20.8
Frequently	7	8.5	9	7.2	16	7.7
Usually	0	0.0	5	4.0	5	2.4
Almost always	0	0.0	0	0.0	0	0.0
Total	82	100.0	125	100.0	207	100.0

Note. 2 magistrates and 1 registrar excluded because they didn't spend any time on APVOs in the previous 12 months.

applications were no more likely to state that frivolous or vexatious APVOs frequently or usually occur than were other survey respondents.

Figure 2 shows the frequency with which perceived vexatious or frivolous APVO applications involve complaints about the following behaviours: allegations of violence, allegations of stalking or intimidation, a single act of harassment, trivial or insignificant matters and vexatious allegations. Survey respondents indicated that trivial or insignificant matters were most frequently complained about in vexatious or frivolous APVOs, with 59 per cent reporting that frivolous or vexatious APVOs frequently, usually or almost always involve these types of complaints. Nearly half of respondents stated that frivolous or

Figure 2. Nature of behaviours complained about in vexatious or frivolous APVO applications



vexatious APVOs frequently, usually or almost always involve complaints of a single act of harassment and almost one-third stated that they frequently, usually or almost always involve vexatious allegations. A smaller proportion of respondents reported that allegations of violence, stalking or intimidation were frequently complained about in frivolous or vexatious allegations (14.9% for violence; 23.6% for stalking or intimidation). However, magistrates were more likely than registrars to indicate that these latter behaviours were typical of frivolous or vexatious APVOs, with almost one-quarter reporting that frivolous or vexatious APVOs frequently, usually or almost always involve allegations of violence (24.1% v 8.6%; Pearson Chi-Square=13.699, *df*=2, *p*=0.001) and almost one-third reporting that they frequently, usually or almost always involve allegations of stalking or intimidation (31.6% v 18.1%; Pearson Chi-Square=9.524, *df*=2, *p*=0.009). Registrars, on the other hand, were more likely than magistrates to report that frivolous or vexatious APVOs never or rarely involved vexatious allegations (31.0% v 17.7%; Pearson Chi-Square=8.292, *df*=2, *p*=0.016).

Figure 3 shows the frequency with which vexatious or frivolous APVO applications involve the following parties: neighbours, co-workers/business associates/customers, acquaintances/former friends, public housing authorities/tenants, school children/staff. Neighbours and acquaintances/former friends are most often the parties involved in frivolous or vexatious APVOs, with 64 per cent of respondents reporting that neighbours are frequently, usually or almost always involved in these types of matters, and 42 per cent reporting that acquaintances/former friends are frequently, usually or almost always the disputing parties. Disputes between public housing authorities/tenants were the next most frequent category of response, with nearly one-third of respondents stating that frivolous or vexatious APVOs frequently, usually or almost always involve disputes between these parties. Compared with registrars, a larger proportion of magistrates indicated that housing authorities are often involved in frivolous or vexatious APVO applications (39.2% v 24.1%), but this difference was not statistically significant at the 0.05 level (Pearson Chi-Square=5.294, *df*=2, *p*=0.071).

Further exploratory analysis suggested that the involvement of public housing authorities or tenants is more of an issue in metropolitan than country courts. Respondents who spent more of their time in metropolitan courts were more likely to report that frivolous or vexatious APVOs frequently/usually/almost always involve housing authorities/tenants (48.6% v 19.0%; Pearson Chi-Square=24.150, *df*=2, *p*<.001).

Only a small proportion of frivolous or vexatious APVO applications involve school children/staff, with three-quarters of respondents indicating that school children/staff are rarely or never involved in these types of matters. Co-workers/business associates/customers are also less often involved, with more than a half of respondents reporting that co-workers/business associates/customers are rarely or are never the disputing parties in frivolous or vexatious APVO applications. Registrars were more likely than magistrates to report that co-workers/business associates/customers were rarely or never involved in these matters (60.3% v 45.6%; Pearson Chi-Square=7.818, *df*=2, *p*=0.020).

Figure 4 shows the frequency with which frivolous or vexatious APVO applications involve the following matters: financial disputes, school disputes, tenancy disputes, neighbourhood disputes, work disputes. By far the most frequent response was

Figure 3. Parties involved in frivolous or vexatious APVO applications

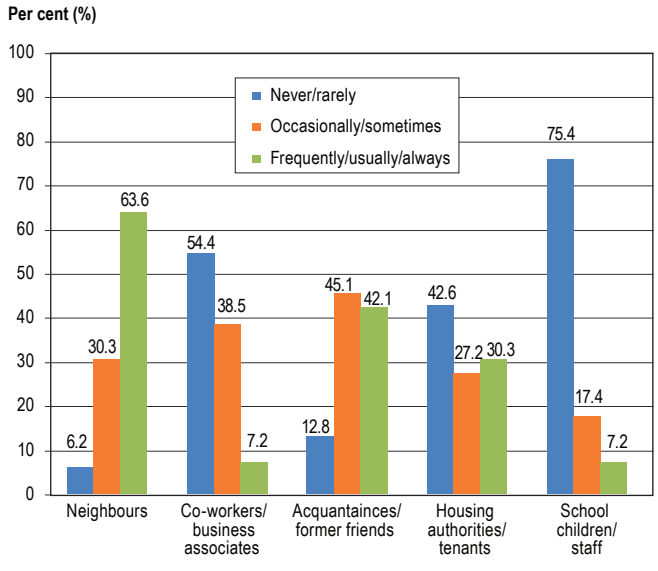


Figure 4. Nature of the dispute in frivolous or vexatious APVO applications

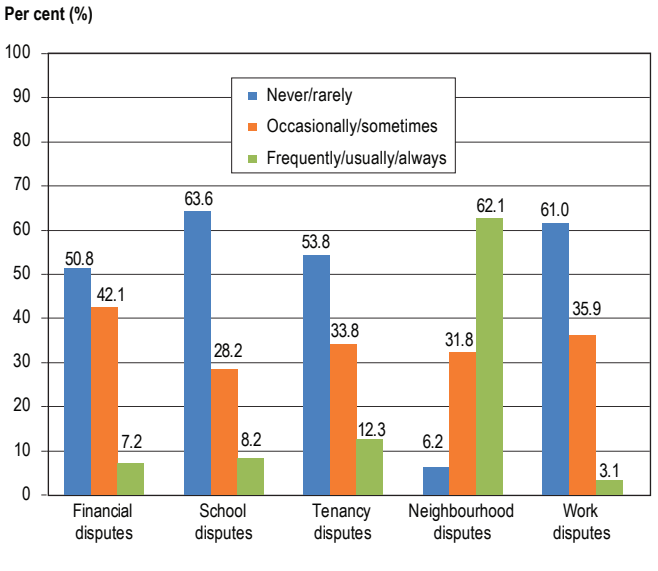


Figure 5. Other groups involved in frivolous or vexatious APVO applications

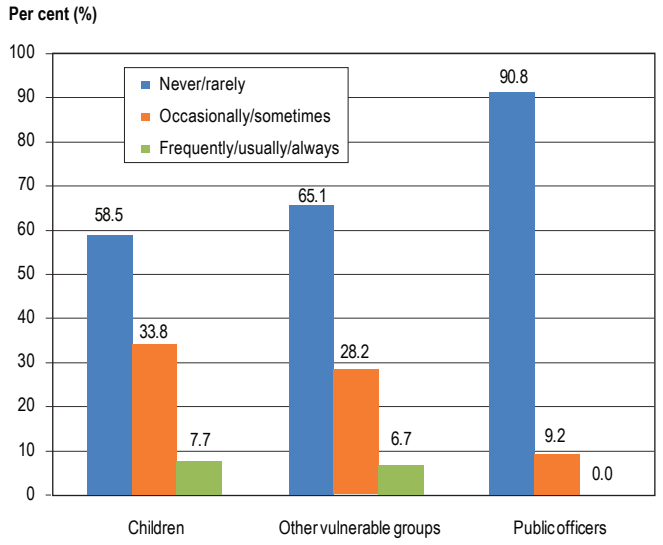
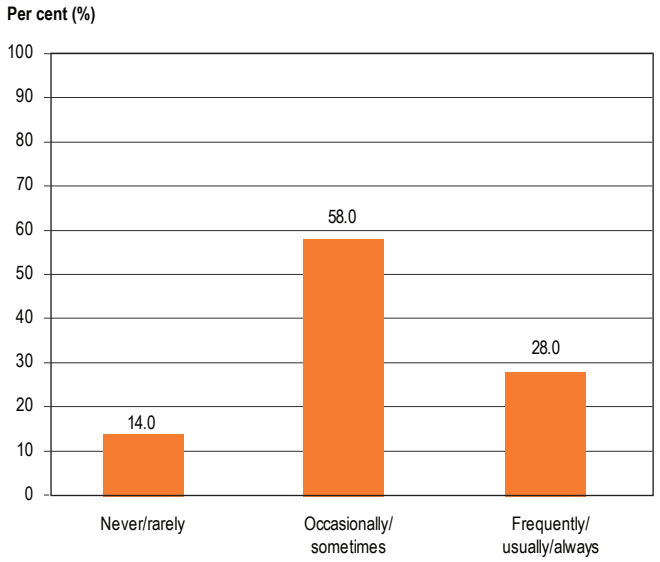


Figure 6. Frequency of multiple or cross APVO applications

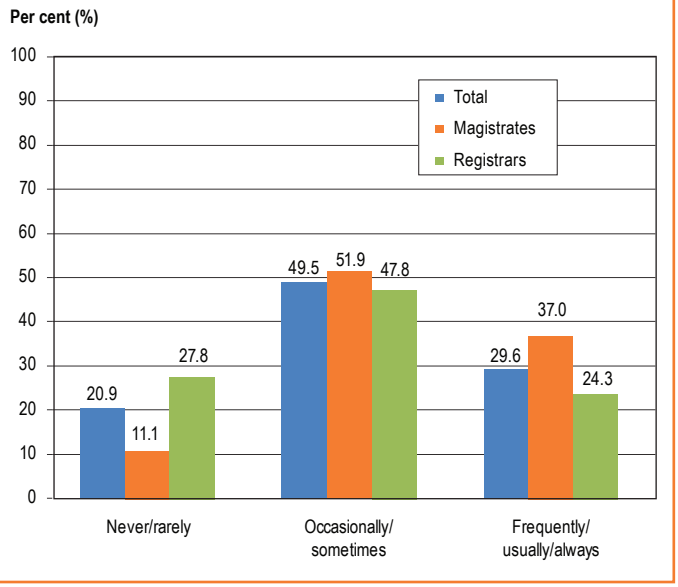


neighbourhood disputes, with over 60 per cent of respondents indicating that frivolous or vexatious APVO applications frequently, usually or almost always involve neighbourhood disputes. The next most frequent category of response was tenancy disputes,[6] but these were much less common, with only about one in ten respondents reporting that frivolous or vexatious APVO applications frequently, usually or almost always involve tenancy disputes. Magistrates were more likely than registrars to report that frivolous or vexatious APVO applications frequently, usually or almost always involve tenancy disputes (20.3% v 6.9%; Pearson Chi-Square=7.816, *df*=2, *p*=0.020). Over 60 per cent of respondents indicated that frivolous or vexatious APVO applications rarely or never involve school or work disputes and 51 per cent reported that they rarely or never involve financial disputes.

Figure 5 shows the frequency with which frivolous or vexatious APVO applications involve children (under 16 years), other vulnerable groups (e.g. intellectually disabled persons) or public officers (e.g. police, sheriffs). The vast majority of respondents to the survey reported that frivolous or vexatious APVO applications rarely involve these three groups. Almost 60 per cent reported that children are rarely or never involved in frivolous or vexatious APVO applications, 65 per cent reported that other vulnerable groups are rarely or never involved and 91 per cent reported that public officers are rarely or never involved in these matters.

Figure 6 shows the frequency with which magistrates and registrars deal with multiple or cross APVO applications from the same parties. Figure 7 shows the frequency with which these multiple or cross APVO applications are perceived by magistrates and registrars to be frivolous or vexatious in nature. As seen from these graphs, over one-quarter of survey

Figure 7. Frequency of vexatious or frivolous multiple or cross APVO applications



respondents indicated that APVO applications frequently, usually or almost always involve cross applications or multiple applications from the same parties. A large proportion of these multiple or cross APVO applications are perceived as frivolous or vexatious in nature, with 30 per cent of respondents stating that multiple or cross APVO applications frequently, usually or almost always are frivolous or vexatious. Magistrates were more likely to report that cross APVO applications and multiple APVO applications from the same parties are frequently, usually or almost always frivolous or vexatious (37.0% v 24.3%; Pearson Chi-Square=9.809, *df*=2, *p*=0.011).

Referrals to mediation and refusal to issue process in APVO applications

As shown in Table 4, over one-third of magistrates reported that they frequently, usually or almost always referred APVO applications to mediation under Section 21 of the Crimes (Domestic and Personal Violence) Act.[7] Put another way, over one-third of magistrates reported that they will more often than not refer an APVO application for mediation. However, there is also a substantial proportion of magistrates who do not refer APVO matters for mediation, with one in five magistrates stating that they rarely or never refer APVO matters for mediation.

Figure 8 shows the most common reasons why magistrates do not refer APVO matters for mediation. Over 80 per cent of magistrates indicated that the most common reason for not referring APVO matters to mediation was because of the general unwillingness of parties to mediate. Other common reasons for not referring matters to mediation included: the application involves allegations of violence or a history of violence (56.8%); the parties involved have had prior unsuccessful attempts at mediation (45.7%); or the application involved intimidation, stalking or harassment (32.1%). One-quarter of magistrates also indicated that another common reason why they do not refer APVO matters for mediation is because the defendant is not contesting the action.

The survey also asked magistrates whether they thought there were any major impediments to making a Vexatious Proceeding Order under the Vexatious Proceedings Act in APVO matters. While Local Court magistrates are not authorised to make these orders of their own motion they can make a recommendation to the Attorney General to apply to the Supreme Court to have an order made in cases where they believe it is warranted. This question was open-ended and was answered by 71 magistrates.

Table 4. Frequency with which magistrates refer APVO matters for mediation under Section 21 of the Crimes (Domestic and Personal Violence) Act

	Total	
	n	%
Never	3	3.7
Rarely	13	16.0
Occasionally	21	25.9
Sometimes	14	17.3
Frequently	13	16.0
Usually	11	13.6
Almost always	6	7.4
Total	81	100.0

Note. 1 magistrate did not respond to this question.

Twenty of these magistrates indicated that the process of applying for a Vexatious Processing Order is too complex, time consuming or expensive to initiate in APVO matters. Fourteen magistrates stated that APVOs which do not have reasonable grounds are usually not 'vexatious' but are frivolous in nature. Furthermore, if they are vexatious, they tend to involve one-off complaints and therefore the Vexatious Proceedings legislation would not be applicable. Five magistrates were not aware of this legislation and ten reported that a major impediment was the fact that the Local Court was not an 'authorising court' for the purposes of the Vexatious Proceedings Act.

Figure 9 shows the frequency with which registrars use their discretion (under Section 53 of the Crimes (Domestic and Personal Violence) Act) to refuse to issue process in APVO matters. As seen from this graph, the vast majority of registrars

Figure 8. Most common reasons for NOT referring APVO matters for mediation - NSW magistrates

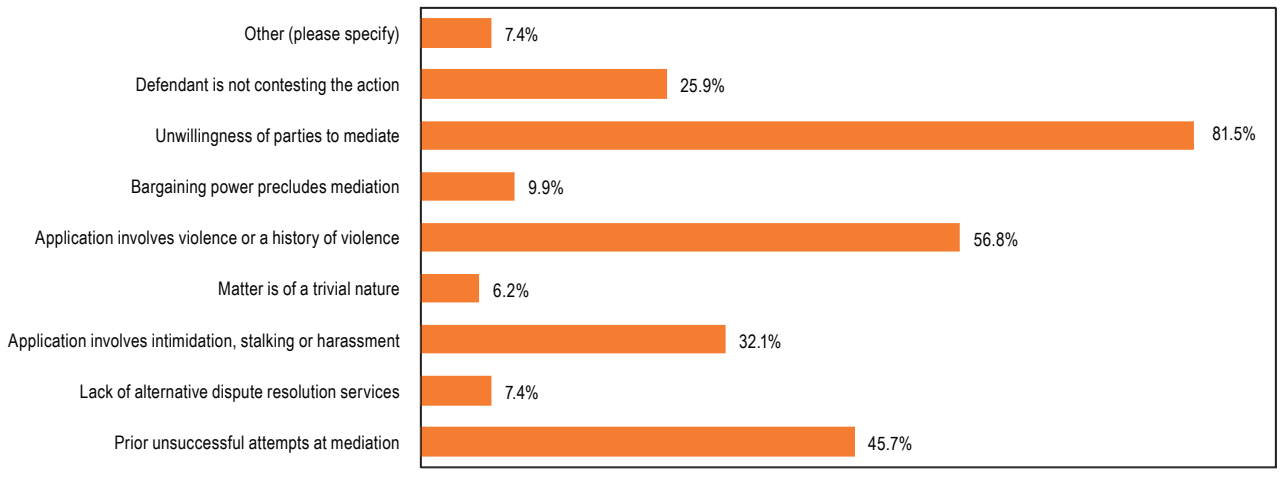


Figure 9. Frequency with which registrars refuse to issue process in APVO applications

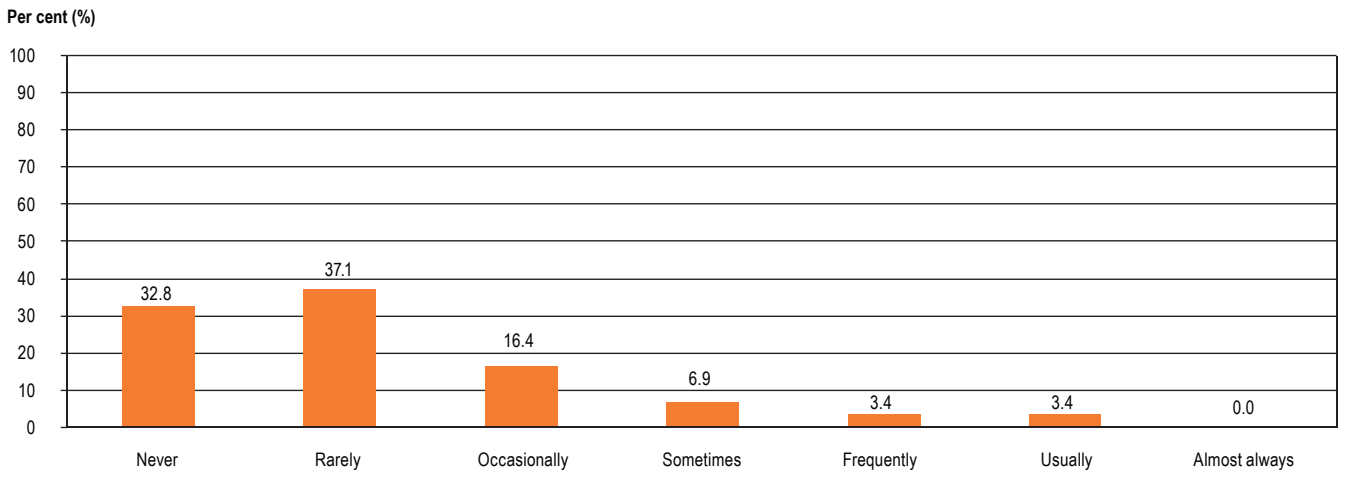
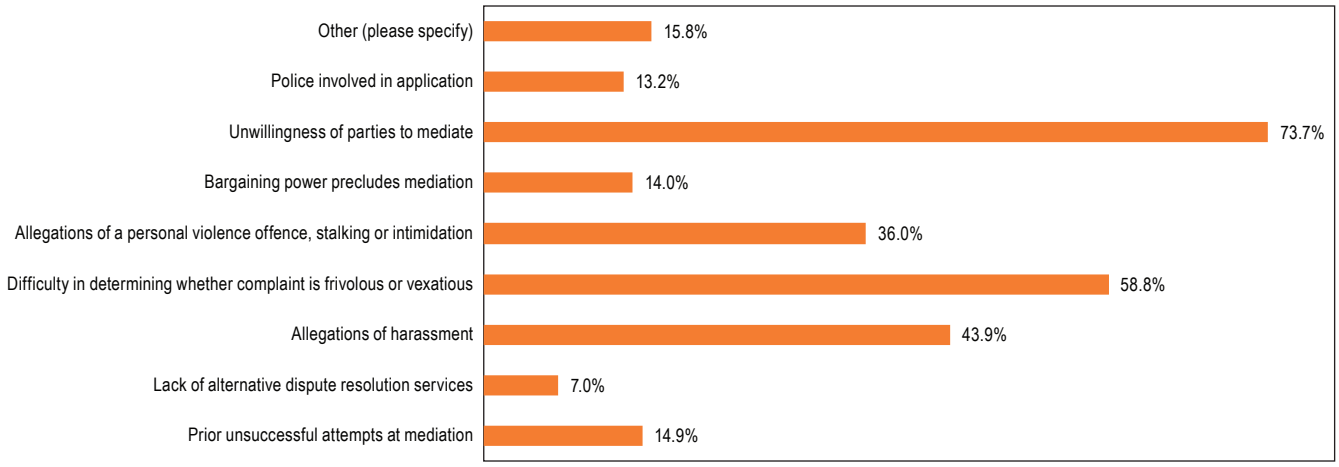


Figure 10. Major impediments in refusing to issue process in APVO applications - NSW registrars

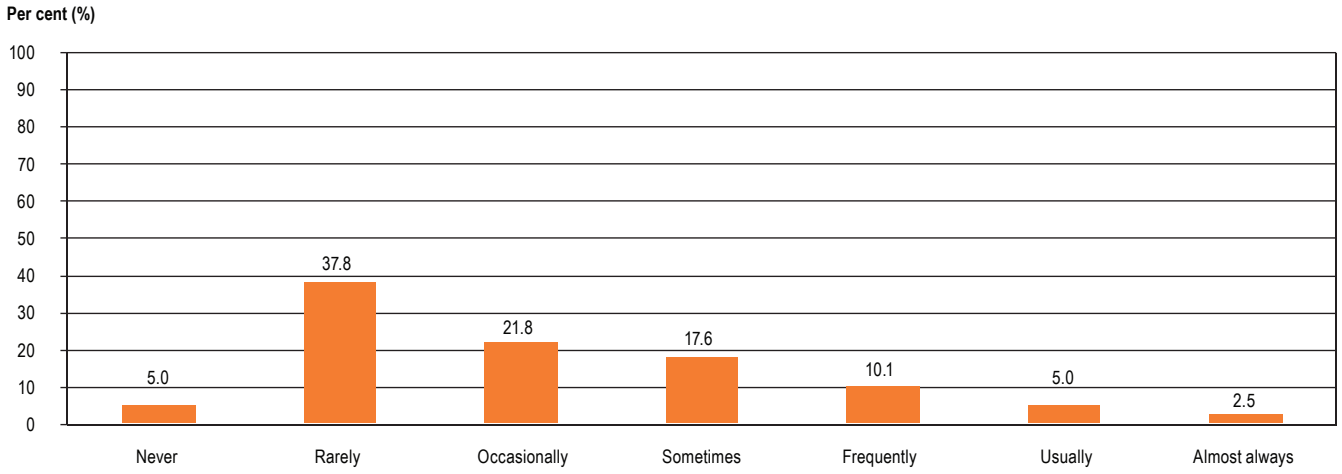


reported that they never or have rarely refused to issue process in APVO matters, with over two-thirds of respondents agreeing with this statement.

Figure 10 shows the biggest impediments to the use of Section 53 in APVO matters. Nearly three-quarters of registrars indicated that the general unwillingness of parties to mediate was an important barrier in refusing to issue process in APVO applications, while over a half of the registrars indicated that difficulties in determining whether the allegations are frivolous or vexatious is also an issue. Other barriers to the use of Section 53 identified by registrars related to the type of allegations being made in the applications, with 44 per cent indicating that allegations of harassment and 36 per cent indicating that allegations of a personal violence offence, stalking or intimidation are a major factor impacting upon decisions to refuse to issue process in APVO matters. Two respondents also stated (as 'other' reasons) that because an applicant can apply to the court for an APVO application to be accepted even after a registrar has refused to accept the notice, this means that, in practice, refused applications still end up going to court. This acts as a disincentive for registrars to apply Section 53 in APVO matters.

Although Section 53 of the Crimes (Domestic and Personal Violence) Act is used infrequently by registrars, there is a larger proportion who report informally diverting APVO matters. Figure 11 shows the frequency with which people withdraw an APVO application after the registrar has explained the prospects of success and/or consequences of being unsuccessful. Nearly one in five registrars reported that people frequently, usually or almost always withdraw their APVO application if the consequences are explained to them in this way. Still, more than 40 per cent of registrars stated that in their experience the withdrawal of APVO matters in this way rarely or never occurs.

Figure 11. Frequency with which people withdraw an APVO application after registrars explain the prospects of success and/or consequences of being unsuccessful



General comments

The final question in both the magistrate and registrar surveys was an open-ended question inviting respondents to offer up any other comments they had in relation to APVO matters. Ninety-four participants provided text responses to this question. These text responses were thematically coded into one or more of the following categories: (1) imposition of a filing fee (*n*=23); (2) mandatory mediation/increasing the use of mediation services (*n*=15); (3) education of police (*n*=15); (4) education of applicant (*n*=13); (5) improve screening/enhance registrars discretion to refuse (*n*=12); (6) costs to be made more readily available (*n*=3); (7) better definition of violence, harassment or intimidation (*n*=2); (8) allow mediation in cases where violence is raised (*n*=2); (9) other (*n*=31). The five most frequent categories of response are discussed below.

Many of the respondents who answered the open-ended general comment question (*n*=23) supported the introduction of a fee for lodging personal violence applications with the court; with an option for these fees to be waived or postponed in appropriate circumstances. It was suggested that such a fee could "weed out" a proportion of the frivolous or vexatious matters by giving applicants cause to think or by encouraging greater participation in mediation.

> "Previously I found the requirement to pay a fee (with discretion to waive) made applicants think about proceeding. I have always believed some breathing space between incident and application being lodged may help people cool down." (ID 1573511920)

One of these respondents suggested that the introduction of a filing fee for APVO matters may also have an impact on cases where individuals submit multiple APVO applications against different parties involved in the same dispute.

> "There should also be a fee for filing of APVO. This will force applicants to address exactly who they name as defendant instead of issuing numerous applications against neighbours or the members of one family or group." (ID 1592257802)

Fifteen respondents suggested that mandatory mediation should be introduced for APVO matters and/or the referral process to Community Justice Centres (CJCs)[8] should be improved. A number of these respondents indicated their support for adopting a model similar to that used in family law matters whereby parties are directed to attend mediation except in cases where there is violence or serious threats of violence.

> "People are generally unwilling to go to mediation. They only do so when the Court directs them to go. Perhaps it could be like the family law jurisdiction where mediation is compulsory, except where there is actual violence." (ID 1572500936)

> "Access to court is far too easy in these matters.....Disputes involving violence or serious threats of violence, should be initiated by police. In other matters, parties should be required to attend mediation. If mediation fails, a party should be required to file a certificate that they have attended mediation prior to any court action (similar to family law matters)." (ID 1592257802)

One respondent recommended that CJC mediators be present at courts on APVO list day to determine whether matters are suitable for referral.

> "CJC mediators should be present at court on APVO list day to determine whether matters (are) suitable for referral which I believe would generate a greater number of matters being mediated and a more final resolution to conflict." (ID 1572515954)

Other respondents indicated that there should be better education of police (*n*=15) in regard to the referral of APVO matters. Respondents indicated that police could make greater use of CJCs or other alternative dispute resolution services

rather than referring disputing parties straight to court to resolve personal violence matters.

> "Any attempt to change the current situation would also require co-ordination with other agencies particularly the police as often they deal with 'warring parties' and cannot resolve the issues for all sorts of reasons. There is, particularly in the country, simply no where (sic) else to turn other than go and see the court and apply for a(n) APVO. It is very difficult to convince someone sent by police that perhaps they need to look at other alternatives...." (ID 1573511920)

> "…police officers across the board are poorly educated in this area. I am aware of instances where police have NOT involved themselves where clearly they should have, other cases where police have involved themselves unnecesarily (sic) and other instances where they have fobbed off the client. Police need to make greater use of ADR (alternative dispute resolution)." (ID 1592347676)

> "My experience is that often matters are reported to the police, the police tell the complainant "we can't do anything, but you could take out an AVO", and the matter comes before the Local Court for that reason rather than meeting legislative requirements for an APVO." (ID 1585274086)

> "Unfortunately, in my experience, most issues result from inappropriate referrals by police, in particular referral of people with mental health issues and disabilities. In my view if police are advising people that there is nothing they can do unless an AVO is in place, then it should be the responsibility of the police officer giving this advice to apply for an apprehended violence order." (ID 1589132720)

Respondents also thought that people applying for APVOs should be better educated about the process involved (*n*=13). Concerns were raised that often applicants will be sent to the court to 'get an APVO' but they have little understanding of the process involved, the potential consequences of an unsuccessful application or the legal implications if the defendant breaches an order. People often do not know that they will have to go to court, sometimes on numerous occasions, and/or are unaware that if their application is unsuccessful costs could be awarded against them. It was suggested by some respondents that the police, being the primary source of referral for APVO matters, would be the most appropriate agency to supply this information to complainants.

> "Too often people who complain to police about the behaviour of a neighbour about something trivial will simply be referred to the court 'to get an AVO'. The expection (sic) then is that an AVO is available on request. Many applicants do not understand (at least initially) that they are, in fact, commencing litigation with all its obligations and risks. Legal aid is not available, so parties frequently represent themselves. The result too often is unrealistic expectations about the result; ignorance about the process; failure to understand the rights of the opposing party; and lack of objectivity in assessing the best way to deal with their problem". (ID 1572328657)

Another concern related to the fact that complainants in APVO proceedings, who often represent themselves, are sometimes inadequately prepared when the matter goes before the court. This can result in lengthy or multiple hearings and therefore substantial delays in matters being finalised. One respondent suggested that information sheets which set out the APVO process step-by-step should be made available to assist unrepresented applicants in this process.

Twelve respondents indicated that APVO matters should be more effectively screened before being listed before a court. They suggested that a reduction in frivolous or vexatious matters could be achieved by encouraging more registrars to use their discretion to refuse to issue process or by increasing registrar powers so that they can direct parties to attend mediation.

> "Registrar should have stronger powers in respect of PVO's (sic) where violence is not an issue. Eg. directions as to mediation, rejecting applications without the need to refer to court." (ID 1589270258)

Two magistrates discussed a scheme that is currently in operation in their court which they maintain has been a successful method for dealing with APVOs, particularly those which are frivolous in nature. This procedure requires the disputing parties to prepare, file and exchange statements before the matter is listed for hearing. The advantages of this approach is that parties are required to clearly specify the grounds upon which the complaint is based and are reminded that applications for APVOs are legal proceedings which can result in the awarding of costs if allegations are not proven. By ensuring both parties are well prepared before appearing in court, this scheme may also have the added benefit of reducing lengthy APVO hearings and court delay.

> "The procedure in my court is to require both sides to prepare and file statements of their evidence prior to hearing. That procedure has the following advantages: it ensures both sides come to the hearing apprised of the case they have to meet; it forces parties to think about their case and how they will present it before the day of hearing; it reinforces the point that they are engaged in litigation before a court of law and must prepare accordingly - many people withdraw/consent when faced with an obligation to put effort into asserting their position." (ID 1572328657)

> "We have a scheme at this court for the mandatory preparation, filing and exchange of statements by the parties before the matter is listed for hearing. It works very well because it requires the parties to turn their mind to proof of the allegations/ it makes them do work to support their claims/it crystalises the issues and dramatically shortens any subsequent hearing!! Many people can't be bothered to make the effort and failure to comply leads to dismissal. It certainly sorts out those with less substance and also gives the magistrate the opportunity to talk to and negotiate/attempt settlement with the parties directly on what the parties disclosed. Works well for everyone and at all stages the parties are warned as to costs." (ID 1586545948)

DISCUSSION

Despite recent media reports claiming that APVOs are overused and abused in NSW, the current study suggests that only a small proportion of APVO applications are frivolous or vexatious in nature. Just one in ten NSW magistrates and registrars surveyed in this research reported that they frequently deal with frivolous or vexatious APVOs, while over two-thirds reported that these types of matters never, rarely or only occasionally occur. When frivolous or vexatious APVO applications do occur, magistrates and registrars reported that they typically involve trivial/insignificant matters or a single act of harassment, and that the dispute is most often between neighbours or acquaintances/ former friends. Disputes between public housing authorities or housing tenants also appear to be an issue in APVO matters perceived to be vexatious or frivolous in nature. Nearly one-third of magistrates and registrars reported that the frivolous or vexatious APVOs that they deal with frequently involve housing authorities or housing tenants, with those who spend most of their time working in metropolitan courts more likely to report that disputes between these parties frequently occur.

These survey data also suggest that children and other vulnerable groups are not often involved in APVO applications that are frivolous or vexatious in nature. Only eight per cent of magistrates and registrars reported that children under 16 years are frequently involved in these types of matters and only seven per cent reported that other vulnerable groups (e.g. intellectually disabled persons) are frequently involved. Over 90 per cent of respondents reported that public officers, including sheriffs and police, are rarely or never involved in frivolous or vexatious APVO applications.

Another issue to emerge from the current study is the frequency with which the Local Court has to deal with multiple APVO applications from the same party and/or cross APVO applications from multiple parties involved in the same dispute. Over one-quarter of magistrates and registrars reported in the survey that they frequently deal with cross or multiple APVO applications. Furthermore, nearly one-third of the respondents who deal with multiple or cross APVO applications reported that they are frequently, usually or almost always frivolous or vexatious in nature.

Many APVO matters that are brought before NSW Local Courts are referred to mediation in accordance with Section 21 of the Crimes (Domestic and Personal Violence) Act. More than one-third of magistrates reported in the survey that they frequently, usually or almost always refer APVO applications to mediation. But there is also a large minority who do not make use of CJCs or other alternative dispute resolution services, with one in five magistrates reporting that they rarely or never refer APVO matters to mediation. By far the most common reason for not referring APVO applications to mediation was that parties are generally unwilling to mediate in these matters. Lack of alternative dispute resolution services did not appear to be an issue affecting magistrates' decisions to mediate APVO matters.

On the other hand, only a small proportion of APVO applications are refused by registrars under Section 53 of the Crimes (Domestic and Personal Violence) Act. Over two-thirds of registrars reported that in the last 12 months they had never or rarely refused to issue process in APVO matters. The majority of registrars reported that peoples' general unwillingness to mediate and difficulties in determining the merits of the case were significant barriers to the use of Section 53 in APVO matters.

Although vexatious and frivolous APVO applications are not nearly as frequent in NSW as some commentators have suggested, the findings from the current study suggest three areas where changes could be implemented in order to improve the APVO process and potentially reduce the amount of court time consumed by unmeritorious matters: (1) education of applicants; (2) increase in mediation referrals; (3) introduction of a filing fee.

A concern expressed by many of the survey respondents was that people applying for APVOs often are not well educated about the nature of this type of order or the process involved in applying for one. Many people believe that they will be issued an APVO on-the-spot by a court clerk or registrar and do not understand that in applying for an APVO they are commencing litigation and will have to present their case to court. They also are often unaware of the potential consequences of making frivolous or vexatious allegations in APVO applications. Better education regarding these issues may dissuade some people from pursuing frivolous or vexatious complaints.

It was suggested by several respondents that police are the best-placed agency to supply this information to applicants because they are often the first agency an aggrieved person approaches in situations involving personal violence. This is supported by previous research showing that police are the primary source of information for half of all APVO complainants (Trimboli & Bonney, 1997). The frequency with which public housing authorities or tenants are reportedly involved in frivolous or vexatious APVO proceedings also suggests that there may be a role for Housing NSW in better educating applicants regarding the serious nature of APVOs and the potential consequences of unsuccessful applications.

In the general comments section of the survey, respondents also recommended that agencies, such as the police and public housing authorities, make greater use of mediation and conflict management services (such as CJCs) in matters of personal violence. The relatively low referral rate from these agencies is

reflected in recent CJC figures. The CJC annual report shows that in 2009/2010, CJCs across NSW opened 4,633 files and most of these were disputes between neighbours. Almost half of these disputes were referred to CJCs by the Local Court, while only three per cent of referrals came from police and just two per cent came from Housing NSW.

The importance of encouraging greater use of mediation in non-domestic personal violence disputes is reinforced by the fact that the settlement rate of these matters is quite high, with parties reaching an agreement in almost 80 per cent of mediations completed by CJCs. Even in cases where no agreement is reached, mediation has the potential to assist parties in narrowing and better understanding the issues involved in the dispute before they proceed to court and has the potential to increase acceptance of court outcomes (Criminal Justice Centres NSW, 2011). The low frequency of APVO referrals to mediation by a minority of magistrates would suggest that further education regarding the success rate of mediation in neighbourhood disputes is warranted. Providing for mandatory mediation in non violent APVO applications before a matter can be listed for hearing is another strategy that would undoubtedly improve CJC referral rates and has the potential to reduce court workload in APVO matters.

Almost one-quarter of the survey respondents who provided general comments regarding the APVO process supported the introduction of a filing fee for APVO applications, with registrar or court discretion to waive or postpone such a fee in relevant circumstances (e.g. if the order is successfully granted or if financial hardship can be demonstrated). It was argued that such a strategy could serve not only as a deterrent to people who are initiating complaints for trivial matters or vexatious reasons but might also encourage applicants to more clearly specify who the defendant is in the dispute and, in doing so, lessen the frequency of multiple APVO applications. A fee structure such as this is currently in operation in other Australian jurisdictions (such as the Family Court of Australia).

ACKNOWLEDGEMENTS

The author would like to thank all the NSW magistrates and registrars who completed the survey. Many thanks also to Chief Magistrate Judge Henson for encouraging magistrates to participate in the survey and to Deputy Chief Magistrate Mottley for providing feedback on the design of the survey instrument. Thanks are also extended to Helen Wodak and Vanessa Viaggio from the Criminal Law Review Division of the NSW Department of Attorney General and Justice for their very helpful comments on the study's research design, survey instrument, survey implementation and final report. The author also thanks Dr Don Weatherburn and two anonymous reviewers for providing feedback on the final report, as well as Craig Jones and Tiziana Trovato from the NSW Bureau of Crime Statistics and Research for their valuable assistance during the data collection period of the study.

NOTES

1. Suzanne Poynton is an Adjunct Senior Lecturer, Faculty of Law, University of New South Wales.
2. A domestic relationship is defined in Section 5 of the Crimes (Domestic and Personal Violence) Act and includes cases where the parties are (i) married or in a defacto relationship (ii) living in the same household or in the same long-term residential facility (iii) relatives or kin (according to Indigenous kinship system of the person's culture).
3. Refusing to issue process means that the registrar does not sign the APVO application notice and does not file the application with the court. The intention of this provision is to filter out unmeritorious complaints. However, to ensure that genuine applications are not unduly affected, Section 53(5) of the Crimes (Domestic and Personal Violence) Act stipulates that registrars cannot refuse to issue process in any matters involving a personal violence offence, a stalking or intimidation offence (under Section 13 of the Crimes (Domestic and Personal Violence) Act), or intimidation or harassment. If a registrar refuses to issue process in an APVO matter the applicant can appeal to the court to make a final determination as to whether or not the application will proceed to a hearing.
4. Note that the data shown in Figure 1 and Table 1 includes only APVOs which are granted by the NSW Local Court. The actual number of APVO applications made to the Local Court would be much higher than these figures suggest.
5. When this report was written there were two ways to apply for an AVO in NSW. Under Part 15A of the *Crimes Act 1900* an individual could (1) attend a Local Court personally and following discussion with the chamber magistrate, swear an application for an AVO; or (2) as a consequence of an incident have a police officer swear an application for an AVO on their behalf. Eighty per cent of the respondents who had attended a Local Court personally reported that they had been referred there by the police. The APVO application procedure currently in place in NSW is slightly different. Now, where an APVO complaint is made by an applicant in person the application is first considered by a registrar rather than being dealt with by a chamber magistrate (see Section 18 of the Crimes (Domestic and Personal Violence) Act).
6. Note that these tenancy disputes do not refer only to tenancy disputes with public housing authorities but can include tenancy disputes between other parties as well.

7. This question asks about referral to mediation for all APVO matters not just those which were frivolous or vexatious in nature.
8. Community Justice Centres (CJCs) provide free mediation and other alternative dispute resolution (ADR) services to help people resolve disputes and solve conflicts without the need to go to court. Both voluntary mediation and mandatory court referrals are dealt with by CJCs and these services are provided throughout NSW. CJCs are funded by the NSW Department of Attorney General and Justice.

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