

TO THE HON. THE PREMIER AND CABINET TO NOTE**RE REVIEW OF DOMESTIC VIOLENCE LAWS****1. PROPOSAL**

- 1.1 That Cabinet note progress on the Government's review of the domestic violence laws, including its terms of reference and the engagement of an independent person to prepare a discussion paper.

2. BACKGROUND

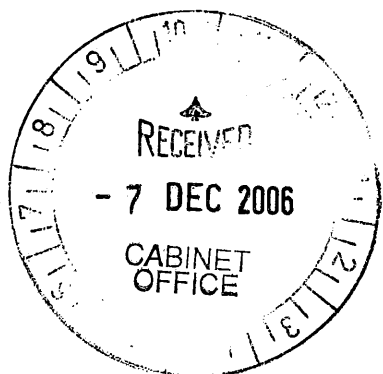
- 2.1 As part of a whole-of-Government policy initiative called *Our Commitment to Women's Safety in South Australia*, the Premier, the Minister for the Status of Women and I announced on 9 November, 2005 that the Government would 'pursue a comprehensive overhaul of South Australia's rape, sexual assault and domestic violence laws, building on legal reforms already approved by Cabinet to help victims'.
- 2.2 The review is taking place in two stages. The first is the review of rape and sexual assault laws. The second is the review of the domestic violence laws.
- 2.3 The review of domestic violence laws was postponed pending the completion of a review of the domestic-violence restraining order process, already underway when this broader review was announced. That operational review was prepared by the South Australian Department of Justice under the sponsorship of the Commissioner for Police in 2006.

3. DISCUSSION

- 3.1 The terms of reference for the review of domestic violence laws are

3.1.1 To develop options and seek comment on these topics:

- (a) whether the *Domestic Violence Act 1994* (the Act) should contain a preamble of guiding principles, and if so, what they should be;
- (b) whether the Act is effective in protecting children who are at risk of experiencing or witnessing domestic violence;
- (c) whether the Act makes the perpetrator take sufficient responsibility for the consequences of his domestic violence and for stopping domestic violence;
- (d) whether the grounds for making restraining orders under the Act adequately reflect the experience of victims of domestic violence;
- (e) whether there is a need to broaden the relationships to which the Act applies to better reflect the situations in which domestic violence occurs;
- (f) whether the law governing the expiry of domestic violence orders, the dismissal of complaints, and the time limits and expiry of summonses should take into account the possibility of a continuing risk of domestic violence;



- (g) whether the Act should give greater emphasis to the removal of the alleged perpetrator or defendant rather than the victim from the victim's usual place of residence, and, in particular, whether police should have authority to remove an alleged perpetrator of domestic violence from the victim's home to prevent continuing abuse;
- (h) whether police powers to investigate and intervene in situations of domestic violence are effective to protect victims and their children; whether the sentencing principles and penalties that apply to offenders who contravene domestic violence restraining orders or who commit offences of violence give sufficient weight to the offender's past history of domestic violence;
- (i) whether victims of domestic violence should be liable for offences of contravening domestic-violence restraining orders or aiding or abetting such offences; and
- (j) whether there is a need for a public awareness program on domestic violence laws.

3.1.2 In making recommendations, to take into account:

- (a) The review of the domestic violence restraining order process prepared by the South Australian Department of Justice under the sponsorship of the Commissioner for Police in 2006. That review is attached for Cabinet to note (see *Attachment 1*) but will not be published separately.
- (b) Domestic-violence prevention strategy, legislation and legislative proposals in other Australian jurisdictions.
- (c) Relevant court decisions and research into domestic-violence prevention policy and domestic-violence law, law enforcement and processes.

3.2 I have engaged Maurine Pyke Q.C., a barrister at John Bray Chambers, to prepare a discussion paper to initiate the review of domestic-violence laws. I expect that the discussion paper will be released early next year.

4. RECOMMENDATION


4.1 That Cabinet note progress on the Government's review of the domestic violence laws, including its terms of reference and the engagement of an independent person to prepare a discussion paper.

I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

MICHAEL ATKINSON M.P.

PORTFOLIO:

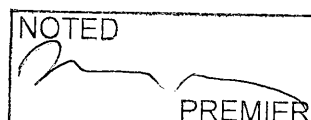
DATE:


ATTORNEY-GENERAL
04/12/2006 **In Cabinet**

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11 DEC 2006



Review of the Domestic Violence Restraining Order Process





Table of Contents

| | |
|---|--------|
| Acknowledgements..... | 4 |
| GLOSSARY | 5 |
| Executive Summary | 6 |
| 1. Introduction | 8 |
| 2. Project Overview | 9 |
| 3. Methodology | 10 |
| 4. Participation in Mapping Consultation..... | 11 |
| 5. Introduction to the Maps of the DVRO Process..... | 12 |
| 5.1 A Key for Interpreting the Maps | 13 |
| 6. The Maps of the DVRO Process | 14 |
| 6.1 Applying for a DVRO - Maps A, Parts 1 to 3..... | 14 |
| 6.2 Serving the DVRO – Maps B, 1 and 2..... | 15 |
| 6.3 Confirming the DVRO - Maps C, 1 and 2..... | 16 |
| 6.4 DVRO Breaches - Maps D, 1 to 5..... | 17 |
| 6.5 DVRO Variations/ Revocations - Maps E, 1 and 2..... | 19 |
| 6.6 Registering a Foreign DVRO - Map F..... | 20 |
| 7. What the Consultation Identified..... | 21 |
| 7.1 Issues Identified | 22 |
| 7.1.1 Access to restraining order protection..... | 22 |
| 7.1.2 Record keeping, data management and reporting..... | 27 |
| 7.1.3 Inconsistent practice / non-compliance with legislation | 28 |
| 7.1.4 Country variations..... | 31 |
| 7.1.5 SPOs (Summary Protection Orders)..... | 32 |
| 7.1.6 Victims of Crime..... | 32 |
| 7.1.7 Aboriginal People and Communities | 34 |
| 7.1.8 Integrated Responses..... | 35 |
| 7.1.9 Evidence based and problem solving approaches..... | 36 |
| 8. Recommendations | 37 |
| Appendices | i |
| Steering Committee for the Review of the DVRO Process | ii |
| Agencies Participating in Mapping Consultation | iii |
| Preliminary Data Report | iv |
| DVRO Applications, 1st July 2004 to 30th June 2005..... | vi |
| Breaches of DVRO, 1st July 2004 to 30th June 2005 | ix |
| The Maps | xv |
| Applying for a DVRO Maps A, Parts 1 to 3..... | xvi |
| Serving the DVRO Maps B, Parts 1 and 2..... | xix |
| Confirming the DVRO Maps C, Parts 1 and 2 | xxi |
| DVRO Breaches Maps D, Parts 1 to 5..... | xxiii |
| DVRO Variations/ Revocations Maps E, Parts 1 and 2..... | xxviii |
| Registering a Foreign DVRO Map F..... | xxx |

Acknowledgements

The initiative to review the domestic violence restraining order (DVRO) process is sponsored by the Commissioner of Police.

The Chief Executive, Attorney-General's Department supports project coordination and management of the review through the Justice Strategy Division (JSD).

This report has been prepared by the secretariat to the Steering Committee for the project.

The Steering Committee includes representatives of the:

- Attorney-General's Department (AGD)
- Courts Administration Authority (CAA)
- Department for Correctional Services (DCS)
- Department for Families and Communities (DFC)
- Legal Services Commission (LSC)
- Office for Women (OFW)
- South Australia Police (SAPol)
- Domestic violence and women's services sectors

(Steering Committee membership is listed in Appendices)

Robyn Morisset of CPD BIZ Consulting prepared the maps of the domestic violence restraining order process through extensive stakeholder consultation.

Over 100 workers generously provided substantial input to develop the maps by participating in consultations between June and October 2005. The mapping work would not have been possible without the commitment, goodwill and operational knowledge of the many individuals and agencies that have contributed substantial amounts of their time and experience to ensure the success of this work. (Participating agencies are listed in the appendices.)

Glossary

| | |
|---------------------|---|
| AFVLS | Aboriginal Family Violence Legal Service |
| AGD | Attorney-General's Department |
| AMC | Adelaide Magistrate's Court |
| CAA | Courts Administration Authority |
| CARL | Child Abuse Report Line |
| CFIU | Child and Family Investigation Unit, SAPol |
| CJS | Criminal Justice Section, SAPol (includes prosecution section) |
| CVIP | Central Violence Intervention Program |
| DCS | Department for Correctional Services |
| DFC | Department for Families and Communities |
| DPP | Director of Public Prosecutions |
| DV | Domestic Violence |
| <i>DV Act</i> | <i>Domestic Violence Act (1994)</i> |
| DVRN | Domestic Violence Incident Report |
| DVRO | Domestic Violence Restraining Order, issued under the <i>DV Act</i> |
| JIS | Justice Information System |
| JSD | Justice Strategy Division, AGD |
| LSC | Legal Services Commission |
| NDV | This is not an abbreviation. It is the name given to a policing pilot project. |
| NDV Evaluation 2004 | The NDV Project Final Evaluation, Frank Morgan, Crime Research Centre, University of WA, 2004 |
| NVIP | Northern Violence Intervention Program |
| OCSAR | Office of Crime Statistics and Research, AGD |
| OFW | Office for Women, DFC |
| PIMS | Police Information Management System |
| PIR | Police Incident Report |
| RCIADIC | Royal Commission Into Aboriginal Deaths in Custody |
| SAPol | South Australia Police |
| Sleeman Judgement | 1998 Sleeman (appeal) Judgement [SASC 6915] |
| <i>SP Act</i> | <i>Summary Protection Act (1921)</i> |
| SPO | Summary Protection Order, issued under the <i>SP Act</i> |
| VIP | Violence Intervention Program |
| VLO | Victim Liaison Officer, sometimes called Victim Contact Officer in the maps |

Executive Summary

A review of the Domestic Violence Restraining Order (DVRO) Process has been completed as an initiative of *Our Commitment to Women's Safety in South Australia* launched by the Premier and the Minister for the Status of Women on International Women's Day, March 8, 2005.

Police and Court staff were central to the review as most domestic violence restraining order applications in SA are made by police; a restraining order is an order of the court and a breach of that order is a criminal offence.

Engagement of women's services, domestic violence services, Indigenous agencies and other relevant agencies and services was also key for the review to:

- engage external stakeholders who had identified significant concerns with the process, particularly those who would provide a women's advocacy perspective.
- include a process of accountability to the experiences and safety of the victims of domestic violence.

The review involved broad consultation between June and December 2005 to map the domestic violence restraining order process, identify issues and gaps, and develop recommendations to improve the protection offered to victims of domestic violence.

The consultation reflected the perceptions and experiences of the DVRO process of those people who participated in the consultation and of the victims and offenders with whom they have contact in DVRO related matters.

Consultation identified the complex and potentially confusing nature of the DVRO process. A number of significant issues were identified that require that the process be improved to give better protection to victims of domestic violence, and improve confidence that the criminal justice system can and will intervene effectively to prevent domestic violence.

Consultation identified some shining examples of good practice in current arrangements that relate particularly to the operation and outcomes of specialist resources such as:

- Child and Family Investigation Units and Victim Liaison Officers in SAPol,
- Family Violence Courts with separate listings and dedicated Magistrates,
- Integrated approaches at the local level that prioritise safety of victims and children and accountability of perpetrators, such as the Violence Intervention Program.

Consultation also painted a clear picture that there has been considerable inconsistency in practice in some key aspects of the process.

Consultation for the Review also identified a number of recommendations for action with implications beyond the DVRO process, extending to the broader response to domestic violence by criminal justice, domestic violence, women's advocacy, Indigenous, health and human service agencies. These include recommendations that will:

- Increase the protection and the focus on victim safety and offender accountability offered by the restraining order process.
- Increase integration of service responses.
- Increase the focus on safety and risk assessment.
- Improve victim access to restraining order protection.
- Simplify the processes of obtaining and tailoring restraining orders.
- Improve compliance, and provide more consistent practice and more consistent outcomes for victims of domestic violence.
- Improve responses to breaches of restraining orders to demonstrate that victim safety and defendant accountability are taken seriously by the criminal justice system.
- Improve the law that provides for restraining orders by building on existing South Australian law and key recent initiatives in other jurisdictions.
- Provide ongoing information, updates and/or training as appropriate for police, magistrates, legal officers, domestic violence workers and relevant workers in other agencies.
- Implement specific initiatives to improve the protection provided to Aboriginal people in domestic violence situations, and that prevent further harm to Aboriginal families.
- Improve data collection and reporting to provide for effective communication, monitoring and system development.

1. Introduction

Our Commitment to Women's Safety in South Australia is a whole of government framework for responding to violence against women.

Government committed to undertake a review to improve the effectiveness of the DVRO process.

The Attorney-General is responsible for the relevant legislation.

DVROs are made under the *Domestic Violence Act 1994 (DV Act)*. This Act contains a definition of family that does not cover all intimate relationships in which domestic violence takes place. People who experience domestic violence and are not eligible for a DVRO under the *DV Act* have recourse to legislation intended to provide equivalent protection using Summary Protection Orders (SPOs) under Section 99 of the *Summary Procedures Act (1921) (SP Act)*.

The review of the DVRO process had 4 phases:

1. Develop detailed maps of the DVRO process as it currently operates.
2. Put data against the maps, identify and document issues, assess strengths and gaps.
3. Identify, document, report and make recommendations on strategies.
4. Implement and evaluate implementation of recommendations.

This Report includes:

- an overview of the review project
- a complete set of DVRO process maps
- a summary of issues or gaps that are apparent from the mapping, or were gathered during consultation including recommendations
- a preliminary data report prepared by the Office for Crime Statistics and Research (OCSAR).

2. Project Overview

The following summary of the Project Brief provides an overview of the plan for the Review.

The Review aims to ensure services that:

- increase the safety of victims of domestic violence
- improve accountability of perpetrators of domestic violence
- ensure consistent service in relation to restraining orders
- increase women's confidence and participation in the Criminal Justice System (CJS), and
- support the development of a culturally responsive CJS.

The scope of the review includes:

- all applications where a restraining order is sought in relation to domestic violence, including under Section 99 of the *Summary Procedure Act, 1921*
- reporting, analysis and assessment of available data
- restraining orders initiated by both police and by victims
- focus on Magistrates Court involvement
- an explicit focus on Aboriginal people and communities
- metropolitan, regional and remote locations
- access to information by victims and offenders
- the degree to which the Declaration of Principles Governing Treatment of Victims in the Criminal Justice System (Victims of Crime Act 2001) are incorporated in the current restraining order process
- possible reforms to process, practices and operational guidelines, and the education and information provided to:
 - SAPol and police officers
 - relevant persons in Courts
 - Legal Services Commission and Community Legal Centres and legal services staff
 - Corrections and correctional staff
 - any other relevant agencies and staff that are partners in a coordinated approach to domestic violence
 - comparison with legislation and practice in other jurisdictions
 - links between Restraining Orders and Family Court process and outcomes.

3. Methodology

The mapping process required engagement of agency staff with relevant operational knowledge of the DVRO process.

Consultation for the review included four levels:

- a) Targeted small group - a targeted small group with operational knowledge of DVROs from police, courts, legal services, corrections and the Violence Intervention Program (VIP).
- b) Targeted focus groups - five two-hour focus groups held over two days provided agency and sector based operational knowledge of the DVRO process to review and further develop a second draft of the maps.
- c) Larger combined workshops - three larger one-day workshops were conducted, one in each of metropolitan Adelaide, Riverland and Port Augusta to review the second draft maps and contribute to the third draft.
- d) Peak/Key Network workshops - two workshops were conducted through the Women's Services Network and the Indigenous Family Violence Working Group to consider the draft report on the review and propose recommendations to improve the DVRO process.

Further information contained in this report was sourced from:

- *Our Commitment to Women's Safety in South Australia* framework
- Minutes of the Family Violence Court Steering Committee.
- Minutes and other records from the Northern Violence Intervention Program (NVIP) and Central Violence Intervention Program (CVIP).
- The NDV Project Final Evaluation, Frank Morgan, Crime Research Centre, University of WA, 2004.
- Observations and comments on the maps by the consultant.
- Data provided by OCSAR.

4. Participation in Mapping Consultation

104 people from 40 agencies and services participated in the mapping process. (Participating agencies are listed in Appendices.)

69 participants were from metropolitan Adelaide and 35 from country areas. This included two from Maria and several others with experience working in remote areas. Country participants came from Murray Bridge, Riverland, Clare, Port Pirie, Port Augusta, Whyalla, Port Lincoln and Adelaide Hills.

12 participants worked in either agencies or positions with specific Aboriginal focus and two with specific non-English speaking background focus.

The spread of participation across agencies included:

- 21 police from metropolitan, country and remote locations, from patrols, Child and Family Investigation Units (CFIUs), and officers with specific victim liaison/ domestic violence related roles, from criminal justice sections (prosecutions), the warrants/restraining orders unit, and the crime reduction and crime strategy/special projects areas.
- 6 participants from Courts Administration Authority including Magistrates with Family Violence Court experience, a Registrar and Listings Officers.
- 11 participants from legal services in metropolitan and country locations.
- 11 correctional services staff from Community Corrections (metropolitan and country) and from Adelaide Women's Prison.
- 24 participants from domestic violence specific services across the metropolitan and country areas.
- 31 participants from other health, community and support services.

The Review noted that there may be a range of issues to be addressed or specific strategies required to ensure an appropriately responsive and accessible DVRO process for non-English speaking background populations.

5. Introduction to the Maps of the DVRO Process

Six maps spanning 15 pages have been prepared through consultation based on the following functions in the DVRO process:

- applying for an order
- serving the order
- confirming the order
- dealing with breaches of an order
- variation and revocation of an order
- registration of a foreign order

The Maps are included in Appendices.

The maps focus on the decision points that impact the path and outcomes of the restraining order process for a victim of domestic violence. They include identification of the key areas of inconsistency, difference, and good or poor practice, including where practice may conflict with the relevant legislation.

Legislation, case law, the Magistrates Court Rules and Police General Orders guide the DVRO process. The aim of mapping was to document and assess the current operational process. At times, consultation to map the process revealed areas of inconsistency or non-compliance.

The maps do not reflect:

- every administratively or legally possible pathway in the restraining order process,
- aspects of the current DVRO process that occur infrequently, or
- a range of administrative procedures that operate in relation to DVROs that are significant but do not directly bear on the path or outcomes for victims.

Related matters referred to in consultation and not captured in the maps include:

- bail conditions imposing restraint in relation to domestic violence,
- restraining orders made under *Bail Act* (1988) or the *Criminal Law (Sentencing) Act* (1988) provisions,
- confiscation of firearms.

The maps include notes identifying practices highlighted during consultation as varying with reasonable frequency from what was mapped as common practice. These variations may occur between:

- individual workers,
- police Local Service Areas (LSAs),
- metropolitan and country locations,

or may reflect variations in the process of administering restraining orders under the *Summary Procedures Act* (1921) as relevant to those people in domestic violence situations in relationships not included in the definition of family adopted in the *Domestic Violence Act* (1994).

While identifying issues, gaps, or ideas for improvement was not the focus of mapping, some of these inevitably arose or become evident through the conversations to identify and document the process and get a clear picture of how it currently operates.

In examining the outcomes of the mapping process:

- first a brief summary description is presented of each of the six stages mapped, then
- the issues revealed in the consultation are collated under topical headings, and finally
- recommendations for action are presented.

5.1 A Key for Interpreting the Maps

Each of the 15 maps includes a key using colour, shape, and patterned lines to illustrate different aspects of the map identified during consultation. The consultant has also included a number of colour coded notes to the maps that highlight points of significance.

The key to the maps includes the following:

- boxes highlight actions
- diamonds highlight key decision points
- a decision “Yes” is mapped horizontally
- a decision “No” is mapped vertically
- diamonds are colour coded according to who is making the decision
- boxes and diamonds are coded red with a broken line where consultation identified practice that varies from the legislation
- boxes and diamonds are coded grey where consultation identified practice that varies between LSAs or officers
- additional mapping notes from the consultant are colour coded to cover matters as follows:
 - o red notes indicate matters of concern, variation, inconsistency or non-compliance with the legislation
 - o green notes indicate variations in the restraining order process that were captured in consultation with country participants
 - o blue notes indicate variations in the restraining order process that were captured specifically in relation to SPOs.

On a number of occasions in the maps gendered language such as “women”, “her” or “she” is used in referring to the victims of domestic violence. This is so, first, because available evidence highlights that most domestic violence occurs in heterosexual relationships in which the man is the offender and the woman the victim. Second, because the review is an initiative under the Government’s Commitment to Women’s Safety in South Australia.

The Review recognises that, while domestic violence is perpetrated mainly by men against women in heterosexual relationships, some men are also victims of domestic violence from women, and domestic violence occurs in same sex relationships. The law addressing domestic violence and restraining orders is not gendered. It is intended to provide the appropriate response to any situation of domestic violence and provide protection for any victim of domestic violence.

6. The Maps of the DVRO Process

This section provides an outline of the common current operational DVRO process as outlined through consultation. Some of the data provided by OCSAR will be included where relevant. More detailed reporting of the preliminary data provided is contained in Appendices.

6.1 Applying for a DVRO - Maps A, Parts 1 to 3

The first stage of the process maps covers applying for a DVRO through the three steps of:

Map A Part 1: Making a request for a DVRO at a Police Station,

Map A Part 2: Preparing the DVRO application, and

Map A Part 3: Lodging the DVRO application at Court.

Most (98% in 2004-05¹) DVRO applications in South Australia are made by police who determine whether the victim's situation fits the criteria for a DVRO.

In most instances, although the legislation allows for a telephone application to be made, the victim is required to attend a police station. Very few (<1% in 2004-05²) telephone applications are made in SA. Telephone applications are used in country areas to overcome issues of distance, however they are rarely used in metropolitan areas.

If a telephone application is made to a Magistrate, the Magistrate must be satisfied that the complaint is genuine and that the case is of sufficient urgency to justify the making of an order by phone rather than by application to the Court on the following business day. Sufficient urgency has been defined as 'when an immediate order is required and no other course of action is possible in the circumstances'.

An affidavit is prepared documenting the victim's statement for presentation to Court. An application may be prepared by any officer in the course of their duty. Most often an application is taken:

- by a Police Officer at the front counter, or
- by a member of a Child and Family Investigation Unit (CFIU), or in the country, by a victim liaison officer if there is one, or
- in some locations where there are local arrangements in place, by a legal, women's advocacy, or domestic violence service.

There are a number of mechanisms that may operate within the SAPol process designed to ensure that:

- the relevant paperwork is appropriately completed,
- there is sufficient evidence to support the application in Court,
- relevant evidence has been captured in the affidavit,
- the victim wishes to continue with the application, and
- the victim is informed of SAPol decisions regarding the status of the application.

There are also a number of points at which a victim could exit the process with no further action planned by SAPol. At each of these points, if the victim is not satisfied with a SAPol decision to not pursue further action, the victim may seek advice from a legal, women's advocacy, or domestic violence service. These services may refer back to SAPol, with advocacy as required. Such referrals are generally made direct to a CFIU or VLO because of their

¹ Preliminary Data Report, OCSAR, Appendices, Table 2

² Preliminary Data Report, OCSAR, Appendices, Table 1

role and the interagency partnerships developed at a local level. It is not an uncommon practice for DV services and agencies to make or want to make contact with CFUUs for a specialised service, which may include contact to obtain advice in relation to specific situations with their clients.

Criminal charges may also be separately pursued if there is evidence of a substantive offence/s. If this occurs, restraints may be applied through bail conditions. These restraints lapse once the criminal matter is finalised and bail ceases. Generally conditions which may be similar to a RO are made in circumstances of police bail.

If bail conditions are established that would otherwise be conditions of a DVRO, a DVRO application may not be completed in the first instance. However the Court has the power to grant a DVRO on finding of guilt or during sentencing under S19A Criminal Law (Sentencing) Act 1988 which states:

- 1) A court may, on finding a person guilty of an offence or on sentencing a person for an offence, exercise the powers of the Magistrates Court to issue against the defendant a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* as if a complaint had been made under that Act against the defendant in relation to the matters alleged in the proceedings for the offence.
 - (1a) Before issuing an order under this section the court must consider whether, if the whereabouts of the person for whose benefit the order would be issued are not known to the defendant, the issuing of the order would be counterproductive.
- (2) An order issued under this section—
 - (a) has effect as a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* (as the case may require)

Once the complaint and affidavit are suitably prepared and it has been determined that the application will proceed, SAPol lodge the application at Court and a Hearing Date is listed.

6.2 Serving the DVRO – Maps B, 1 and 2

The second stage of the process maps covers serving the DVRO from:

Map B Part 1: The First Court Hearing, and

Map B Part 2: The Second Court Hearing that progresses to service of the Summons and DVRO on the defendant.

Once the application is lodged at Court, a hearing takes place on the listed date. A DVRO under the DV Act or the SP Act is an ex parte order, made without an opportunity for the defendant to answer the allegations made as the basis for the order or dispute the terms of the order. In metropolitan Courts the victim is usually required to attend this first hearing. In country courts the victim is usually not required to attend.

If the Court grants the order, a Summons is issued for service on the defendant by police. The Summons advises the defendant of the conditions of the order and a date to attend Court. Once the Summons is served, the order is legally enforceable. The victim is generally advised:

- early in the process not to let the defendant know that an order is being sought, as it will be easier for police to serve the Summons if the defendant is not alerted. In 2004-05 the defendant did not attend the first court hearing for a restraining order in 89% of applications³. This possibly reflects a lack of knowledge that an application was being made.
- once an order is granted, to carry copies of the DVRO as this could make service of the order easier if the defendant has contact with the victim and police are called. Police are able to hold the defendant for two hours to serve the Summons.

³ Preliminary Data Report, OCSAR, Appendices, Table 8

When the Summons is issued the police Warrants/ Restraints Orders Unit is notified. This Unit lists the information on the Police Information Management System (PIMS). Police attempt to locate the defendant to serve the order. The initial Summons is for the defendant to appear in Court in seven days. If the Summons is not served and a DVRO is still required, the Court will determine whether to re-issue the Summons for a further hearing date. If the Summons is reissued, another hearing date will be set for seven days time, or possibly more if warranted by the circumstances.

There may be several cycles of the Summons being reissued if police are unable to locate the defendant to serve the Summons. The Criminal Justice Section, CFIU or the Investigating Officer will make attempts to speak with the victim and seek additional information or provide clarification of the issues and efforts regarding locating the offender before a Summons is dismissed / discharged by the court. If the Summons cannot be served either the Magistrate or SAPol will eventually decide, generally in consultation with the victim, that the application should be dismissed or discharged.

6.3 Confirming the DVRO - Maps C, 1 and 2

The third stage of the process maps covers confirming the DVRO through:

Map C Part 1: From Summons Served to Pre Trial Conference, and

Map C Part 2: From Pre Trial Conference to Trial.

Once the Summons is served on the defendant, SAPol PIMS is updated, the prosecutor is advised, and the victim may be advised that the order is in force. The serving officer will often initiate contact with the victim to advise that the order has been served and is in force. If the Summons is not served on the first attempt, the victim is often advised to contact SAPol every few days to determine whether service has occurred.

The second Court date provides the defendant the opportunity to agree with or dispute the terms of the order or the grounds on which it was made. If the defendant does not attend, or if agreement is reached over the order, the order is confirmed and continues in force with the agreed terms. The victim does not usually attend.

Confirming the order may involve negotiation between the defendant or the defendant's representative and the prosecutor over the terms of the order. The victim should be consulted over any amendments.

If agreement is not reached, the DVRO continues in force and a pre-trial conference date is set. In this event, SAPol again reviews the available evidence to determine whether there is a reasonable prospect of successful outcome on the 'balance of probabilities' as a basis for proceeding with the matter. If it is considered that further information is required the matter may be referred back to the submitting officer for review.

If SAPol decides to withdraw the application, the victim is advised. The victim exits the process with no further action planned by SAPol. If the victim still wishes to pursue a DVRO, they may seek advice from a legal, women's advocacy, or domestic violence service. A new application is required if the victim still wishes to pursue an order. If SAPol is involved in making the new application, an amended Affidavit can be made using information from the file for the previously withdrawn application, if still relevant.

The victim may also decide not to continue to seek a DVRO. In this case, SAPol will seek an adjournment and refer the victim to the CFIU and an appropriate counselling service to further discuss the situation. The SAPol Criminal Justice Section (CJS) will review the application in light of recommendations from the CFIU and a counsellor's information and assessment report, and decide whether to continue with or withdraw the application.

At the Pre-Trial Conference, again if the defendant does not attend, or matters are agreed including any amendments to the order, the order is confirmed. If matters continue in dispute, the DVRO continues in force and a trial date is set.

There are a number of places during the process of confirming the order in which:

- adjournment of court proceedings may occur
- the victim may decide not to proceed with the application. The common process when this occurs is to refer the victim to the CFIU if the CFIU is not already involved, and to domestic violence counselling.
- SAPol may withdraw the application and the victim may exit the system.

Once again if SAPol withdraws the application, the victim exits the system, and the victim still wishes to seek a DVRO, a new application must be made. The victim can seek assistance from another appropriate service or proceed alone at the Court. Accessing another service may lead to re-referral to SAPol, directly to the CFIU with advocacy support.

Once the summons has been served, the DVRO continues in force until either:

- it is confirmed and remains in force
- it is varied and confirmed with the varied order continuing in force
- the application is withdrawn, and the order is no longer in force
- it is dismissed by the Court, and the order is no longer in force.

Once the DVRO has been confirmed, it continues in force until either:

- it is revoked, and the order is no longer in force
- a varied order has been served, in which case the varied order is then in force
- it expires, and the order is no longer in force. DVROs are often made for fixed periods such as one year or two years (termed a 'sunset clause').

6.4 DVRO Breaches - Maps D, 1 to 5

The fourth stage of the process maps covers responding to DVRO breaches through the five steps of:

Map D Part 1: Reporting a DVRO Breach,

Map D Part 2: Taking action,

Map D Part 3: Getting the Summons,

Map D Part 4: Seeking the warrant for arrest, and

Map D Part 5: Court Hearing of DVRO Breach.

Once the order is served, a breach of the order is a criminal offence in its own right. A higher order of proof is required by the Court to prove a breach (beyond reasonable doubt) than to obtain an order (balance of probability).

When an order is made, the victim is advised to report every breach to the police. A breach may be reported by the victim or by a third party, such as a neighbour who notifies a disturbance. If police are contacted in relation to an incident, a patrol will attend if the incident is in progress or if police determine that there is imminent risk from the defendant. If these conditions are not met and a DVRO is in force, the victim will commonly be advised to attend the police station to report the breach.

When a patrol attends, police consider a number of matters in responding to a reported incident including:

- whether there is a current DVRO in force. Police draw this information from PIMS
- if an order is in force, whether there is sufficient evidence to act on a breach of the DVRO
- whether children are present and if so, whether a child protection notification will be made
- whether the victim is implicated in the breach.

When a victim attends a police station to report a breach, a report should be completed. In some cases no further action will be taken. SAPol may take a Police Incident Report (PIR) where there is evidence of an offence. Once a PIR has been completed a decision to take no further action requires an assessment that available evidence is insufficient to support further action before the report can be filed. If there is not sufficient evidence of an offence a Domestic Violence Incident Report (DVRN) should be made and submitted by officers to record the incident and the outcome of contact with SAPol. Mapping consultation identified this as an area of inconsistent practice.

Whether an offence is recorded is at the discretion of the police officer according to whether the officer determines that there is sufficient evidence that a breach of the criminal law has occurred. The nature of the alleged event reported determines the type of report that is likely to be prepared. If an incident is a substantive offence in its own right apart from the DVRO, it will be recorded on a PIR. If an alleged incident is not a substantive offence in its own right, such as allegations of economic/financial abuse, it is likely to be recorded on a DVRN.

If there is not an order in place or there is not sufficient evidence to act on a breach of the terms of the order, there may still have been a substantive offence committed. If neither a breach nor another offence is identified, the suspect may be warned, a DVRN may be completed and the CFIU may be notified for follow up if resources allow. Where there is insufficient evidence to support action on an offence, the officer may raise a report to ensure a record of the matter is filed.

If a breach or another substantive offence has occurred, and the victim is prepared to proceed, and it is determined that there is sufficient evidence to proceed, then there are a number of possible courses of action in which attending officers have discretionary power.

If the suspect is not present, evidence may be collected, reports prepared, the CFIU notified, and charges progressed. If the suspect is present, and similarly if the victim is implicated in the breach, options include to:

- arrest
- report
- caution
- take no further action.

Any action to charge for breach or other substantive offence involves investigation, charge and case preparation, decisions about whether there is enough evidence to place the matter before the Court, listing the matter for Court appearance, serving the Summons to appear in Court unless the suspect is incarcerated, and a warrant process if either the Summons is not served or the suspect does not attend Court. Once a warrant is issued and a suspect arrested, the suspect will either be kept in custody or bailed. Appropriate conditions should be set to provide protection for the victim if bail is granted.

Once the matter reaches court, if the defendant does not attend:

- the matter may proceed ex parte, though this would only occur for a minor matter, or
- the matter may be adjourned, or
- SAPol may seek a warrant for the defendant's arrest.

If the defendant attends it is likely that there will be at least one adjournment for legal advice followed by a pre trial conference at which either SAPol withdraws, or the matter is listed for trial, or the defendant pleads guilty.

Once listed for trial, again the defendant may plead guilty, or SAPol may withdraw, or witnesses are called and evidence is heard, leading toward a decision by the Magistrate as to whether the defendant is proved guilty or not.

If the defendant does attend and at any point pleads guilty, or is determined as guilty, the matter is proved and a sentencing outcome will be determined.

6.5 DVRO Variations/ Revocations - Maps E, 1 and 2

The fifth stage of the process maps covers making an application to vary or revoke a DVRO through the steps of:
Map E Part 1: Preparing variation or application to revoke, and
Map E Part 2: Court hearing.

Either the victim or the defendant may seek to vary or revoke a DVRO. As most DVRO applications are made by SAPol, most applications to vary or revoke an order are made through SAPol. If SAPol did not make the original application they are likely to refer the applicant to the Magistrates Court to apply in person. If the applicant is the defendant, SAPol also most commonly refer the applicant to the Magistrates Court to apply in person. If the matter was on application by SAPol and the applicant is the victim, the matter is referred to the CFIU. The key question is to determine what in the situation has changed that supports varying or revoking the order. In this case a CFIU officer will consider the application in terms of current risk and safety factors and the victim's situation. If the victim's situation has not changed, SAPol will not proceed on behalf of the victim. The victim may still apply in person to the court.

SAPol will only act on applications where they were the complainant and, therefore, a party to the proceedings.

As a general rule, SAPol do not support applications to revoke an order. If variation is sought to tighten restrictions, the victim will be asked to provide a statement to justify this action. If variation is sought to meet Family Court requirements, an application for variation will be prepared. If restrictions are to be reduced, in metropolitan Adelaide the defendant may be contacted to see if there is agreement with the proposed variation, and the victim will be referred for a counsellor's information and assessment report before the CFIU makes a decision regarding whether to support an application to vary or not.

At any point where SAPol decides not to support an application to vary or revoke an order, the applicant exits the process with SAPol. The applicant may continue in person with an application direct to the Magistrate's Court. SAPol does not represent the defendant in an application to vary or revoke an order. As the applicant for most DVROs, SAPol is required to respond to an application by the defendant to vary or revoke an order and is not in a position to act as the applicant on behalf of the defendant.

If the defendant is the applicant, SAPol contacts the victim to determine whether the application is legitimate, the victim is in agreement, and if the victim's circumstances have changed so that their safety will not be compromised. If the victim is in agreement with the application and the proposed variation or revocation is appropriate in the circumstances, SAPol may support the victim to make an application to vary or revoke.

If SAPol prepares an application to vary the DVRO, the application is forwarded to the CJS for review. In most cases where the application is to reduce the terms of an order, the application to vary will proceed if investigating police support the variation and/or once a DV counsellor's information and assessment report on the woman's position has been obtained. The application to vary is then lodged at court and a hearing date listed, the victim and defendant are advised about the court date, and the court hearing proceeds.

If the victim and defendant attend the court hearing, evidence is heard and the Magistrate determines whether the variation or revocation is agreed. If it is agreed, either the order is revoked, or it is varied and the new varied order is prepared as a Summons to be served on the defendant. The previous order continues in force until the Summons for the varied order is served on the defendant.

If the defendant does not attend court, but the defendant has been served in relation to the application to vary or revoke, or the variation is to ease the DVRO, evidence will be heard in the defendant's absence. Otherwise a variation order will need to be served to ensure the defendant is aware of the changes proposed.

If the variation or revocation proposed is not agreed by the Magistrate, the matter will be adjourned to a pre-trial conference and will proceed in line with the process captured in *Map C Part 2 Confirming the DVRO, From Pre-Trial Conference to Trial*, except that the outcome will be to determine whether the existing order is varied or revoked rather than to determine whether the initial ex parte order is confirmed.

6.6 Registering a Foreign DVRO - Map F

The final process map covers Map F: Registering a Foreign Domestic Violence Order.

OCSAR data indicates that there were two applications to the Court to register a foreign DVRO in 2004-05.

Police or any court can register a foreign DVRO. In practice all applications are referred by agreement to the Adelaide Magistrate's Court (AMC) to support the victim's privacy, confidentiality and safety. In country locations, local police may assist in preparation of the application to register and in lodgement with AMC due to distance.

The applicant is required to provide a certified copy of the foreign order to the court. The applicant can obtain this from the originating court.

A hearing date is listed for the magistrate to determine whether the foreign order will be registered in SA. If a foreign restraining order is registered the Principal Registrar should then notify the defendant and the Commissioner of Police of the registration of a foreign DVRO (Magistrates Court Rules 1992, Section 18A.16 under the *Magistrates Court Act* 1991). In practice, Notice of Registration is issued to SAPol to serve on the defendant. If the defendant is in another jurisdiction, the notice is sent to the nearest police station to the known location of the defendant for service.

7. What the Consultation Identified

The number and detail of the process maps indicate the complexity of the DVRO process. No one person or agency that participated in the consultation was able to provide a complete 'picture' of the process. Frequently people from the same agency or sector had different information regarding the current process depending on their part in it and local variation.

A number of consultation participants commented on the complexity of the process as the maps developed, and the fact that it can be confusing for people working in the system and indeed for both victims and defendants.

Issues are identified under the following themes:

1. Access to restraining order protection.
2. Record keeping, data management and reporting.
3. Inconsistent practice /non-compliance with legislation.
4. Country regions.
5. SPOs (Summary Protection Orders).
6. Victims of Crime.
7. Aboriginal people and communities.
8. Integrated responses.
9. Evidence based and problem solving approaches, and linked to the related recommendation/s.

Concurrently with this review of the DVRO process, SAPol has been undertaking a review of its domestic violence response and investigation systems and processes. The SAPol DV project team has contributed significantly to consultation for the Review and been represented on the Steering Committee. It is anticipated that the Report on the Review of the DVRO Process will be considered as part of SAPols review. The SAPol DV project team has included approaches to domestic violence to manage victims' safety and support them through the system, hold the offender accountable and coordinate multi-agency responses to ensure on-going assessment, victim safety and case management and review.

The Government recently announced a review of South Australia's rape, sexual assault and domestic violence laws that will have implications for current Court practices. Changes in law already committed to by the Government include⁴:

- Providing increased access to provisions for vulnerable witnesses;
- Stopping un-represented defendants personally cross-examining the alleged victim;
- Allowing a transcript or recording of a witness's evidence to be admitted at a retrial, eliminating any need for the victim to endure giving evidence on the same topic again;
- Allowing the court to admit hearsay evidence of out-of-court statements of victims who are children, mentally disabled or intellectually impaired without the victims having to come to court to give oral evidence.

It is important to note that the approved changes outlined above relate to criminal matters. The DVRO process is a civil restraint process, and these changes will not automatically apply. Further legislative amendment will be required to ensure that these measures transfer across to the civil restraint process as required.

Related Recommendation/s:

28

⁴ The Government Media Release, 9 November 2005, Rann Pursues Further Rape Law Reform, is available at <http://www.ministers.sa.gov.au/minister.asp?mld=7&pld=6&slid=5613>

The Family Court of Australia

The Family Court and the Family Law Act 1975 were not specifically addressed in the mapping. There are many sections of the Family Law Act that refer to aspects of family violence, and particularly to the responsibilities of the Court to protect children from its consequences.

Information on the Family Court website, current at the time of writing this report, states that the Court must ensure that any orders made:

- are consistent with any family violence order,
- do not expose a person to an unacceptable risk of family violence,

and that if an order made is inconsistent with any family violence order, the Court must provide copies to various persons including the Commissioner of Police in the relevant jurisdiction.

In 2004 the Family Court of Australia released its 2004-05 Family Violence Strategy⁵ which includes as specific actions to:

- provide a more coordinated response with other agencies, including to develop and maintain effective working partnerships with police.
- to identify shared training opportunities with other Courts.

Consultation identified intersections and tensions between application of the Commonwealth Family Law Act and the State DVRO legislation. It was raised on a number of occasions that often Family Court decisions regarding custody and access arrangements do not adequately address domestic violence and the safety of victims of domestic violence and do not support effective operation of DVROs.

7.1 Issues Identified

7.1.1 Access to restraining order protection

- Lack of confidence was expressed by some women and key DV service providers in the DVRO process and its ability to address DV. This lack of confidence was cited particularly with regard to the consequences for a defendant breaching an order. Some women and service providers felt that police and the courts did not give sufficient attention to the seriousness of DV. This has been identified as having an impact on a victim's decision to try to access restraining order protection. It is acknowledged that police officers are required to meet a 'burden of proof', which invariably causes difficulties in some circumstances. It should also be noted that the consultation gave solid support to specialist resources such as CFIUs and VLOs which were specifically recognised by women and DV service providers as providing an effective and positive police response that has been greatly appreciated.

Related Recommendation/s:

4, 18, 29, 30, 31, 32

- Consultation raised fear and mistrust of Police by Aboriginal women as a major hindrance to accessing a DVRO. Aboriginal women taking part in consultation identified this fear and mistrust as stemming from the historical context of Aboriginal society in Australia including adversarial relationships with Police and other government authorities. The nature of the Police department was identified as alien to Aboriginal culture. The under-representation of Aboriginal people in the public service and police workforces, and the "male culture" of the police force, were seen to negatively impact Aboriginal women's perception of SAPol as a "culturally safe" place to address domestic and family violence. The increase in Aboriginal Community Constables, and in particular female officers, was acknowledged as a meaningful way of building Aboriginal women's confidence in the police force, and with DVRO processes.

Related Recommendation/s:

16

⁵ <http://www.familycourt.gov.au/presence/resources/file/eb00ad0e6c7f4c2/violence.pdf>

- Aboriginal participants in consultation identified that a focus by SAPol on the history of offending behavior of both the man perpetrating domestic violence and the victim of violence when responding to situations of domestic violence has resulted in some Aboriginal women seeking protection from domestic violence being arrested for other matters, such as having an outstanding warrant. It was also cited that on some occasions Aboriginal women have been arrested "for their own protection" from domestic violence. In such circumstances, Aboriginal women have reported being further victimised with little or no accountability for the perpetrator of violence against them.

Related Recommendation/s: 2

- Concern was voiced by Aboriginal participants in consultation that myths and perceptions of "violence in Aboriginal families and communities as an every day normal cultural occurrence" may negatively impact police attitudes and responses to domestic violence in Aboriginal families.

Related Recommendation/s: 16

- Consultation revealed varying opinion on the value of a DVRO for Aboriginal women in rural and remote areas. Contradictory experiences were reported including that:
 - o where police staffing levels are thinly spread or there is not 24 hour Police service, a DVRO cannot be effectively enforced.
 - o a DVRO offers protection in some situations of cohabitation in isolated Aboriginal communities because a government document restraining behaviour carries weight with some perpetrators.

Related Recommendation/s: 17

- It was reported to the Review that some Aboriginal women are reluctant to involve police in domestic violence situations because of the fear of possible death in custody if the police response is to incarcerate the defendant. It was stated in consultation that Aboriginal women prefer diversion and rehabilitation options to imprisonment.

Related Recommendation/s: 1, 17, 18

- The ability of a defendant to act as a self-represented litigant in trial proceedings and cross examine the alleged victim has negatively effected some women's decisions to apply for a DVRO. Currently, if a defendant cannot afford representation or the type of offence does not qualify them for legal aid, the defendant has no choice but to self-represent. Defendants in DVRO matters have not been eligible for legal aid.

Related Recommendation/s: 28

- The definition of 'family member' contained in the DV Act should be extended to reflect all relationships in which domestic violence may occur. Failure to do this undermines the response to domestic violence, and suggests domestic violence against some people is less significant than against others. For example, consultation identified as inequitable and unjust the fact that a higher level of sanction (assault family member) is available for an appropriate domestic violence offence if committed against a person who is a family member under the *DV Act* than is available for the same domestic violence offence against a partner not included as a family member under the DV Act.

Related Recommendation/s: 29

- Aboriginal participants in consultation further highlighted the importance of extending the definition of 'family member' to include extended family, kin and intergenerational relationships to enable DVROs to be applied in a culturally appropriate way for the safety of Aboriginal women. Particularly in Aboriginal communities, domestic violence reverberates throughout extended family and kin relationships and across generations as relatives and kin can join in support of the perpetrator by participating in and perpetuating violent and abusive behaviour towards the victim and the victim's family, friends and associates in the community.

Related Recommendation/s: 29

- There is no provision to extend an existing DVRO. A new application is required. If there is no evidence of DV preceding the application (because another application was in place) then no application will be granted. If a woman's partner is about to be released from prison then it may be difficult to obtain a DVRO because of insufficient evidence. A safety and risk assessment which considers the individual circumstances of the victim is required as part of the DVRO process in order to address these issues.

Related Recommendation/s:

2, 29, 30

- Consultation identified the importance that the aim of any safety and risk assessment process is to optimise victim safety and safety planning, in line with the key principle that safety of the victim and children is a priority in responding to domestic violence, and not be used as a tool for resource allocation decisions.

Related Recommendation/s:

2

- The decision of the Supreme Court in *Sleeman v Police* [1998] SASC 6915 was identified as having had an impact on police attitudes, sometimes being cited as a reason for not proceeding with a DVRO. It is not clear whether police have always interpreted the decision correctly. *Sleeman* is binding on courts when they consider s4 of the Act, namely whether to confirm an interim DVRO. At the time of the *Sleeman* decision, s4 defined domestic violence in terms of engaging in certain kinds of conduct 'so as to reasonably arouse a family member's apprehension or fear'. *Sleeman* is the authority for these propositions:
 - (a) at a hearing for confirmation of an interim DVRO the complainant must prove on the balance of probability that there is a reasonable apprehension that the defendant may, unless, restrained, commit domestic violence, and that the making of the order is appropriate in the circumstances (s4(1) of the DV Act);
 - (b) before confirming the order, the court must be sure that
 - i. the defendant committed an act of domestic violence in the past or,
 - ii. if there has been no domestic violence in the past, that the defendant's conduct constitutes a threat to commit domestic violence in the future,
 and that the complainant's apprehension or fear of future domestic violence is reasonably based on that act or threat;
 - (c) that the aim of the Act is to prevent possible personal injury to a family member or damage to the property of a family member in the domestic setting;
 - (d) that the behaviour described in s4(2)(c)⁶ must reasonably arouse in the family member an apprehension or fear of personal injury or damage to property; and
 - (e) that personal injury includes physical and mental injury in the sense of trauma that has an effect on the person's physical, mental or psychological health and not mere emotional distress, sorrow, anger, grief, annoyance and like emotions.

The "significant apprehension or fear" of the victim is a subjective test to be determined by the Magistrate based on the circumstances. SAPol has a responsibility to ensure that matters put before the court are properly founded on the personal apprehension or fear of the victim, that the fear or apprehension is real and/or significant, and that it is in no way planted in the mind of the victim. It is important for police to appreciate the limits of *Sleeman* and also that the section to which it refers (s4(2)) has since been amended so that the apprehension or fear aroused by the defendant's conduct is no longer confined to an apprehension or fear of personal injury or damage to property, but can now be 'any significant apprehension or fear'.

Related Recommendation/s:

30

⁶ Now described in this way (DV Act 1994 4(2)(c)) ... "if on two or more separate occasions -

- (i) the defendant follows a family member; or
- (ii) the defendant loiters outside the place of residence of a family member or some other place frequented by a family member; or
- (iii) the defendant enters or interferes with property occupied by, or in the possession of, a family member; or
- (iv) the defendant (A) gives or sends offensive material to a family member or leaves offensive material where it will be found by, given to, or brought to the attention of a family member; or (B) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, a family member; or
- (iva) the defendant communicates with a family member, or to others about a family member, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication; or
- (v) the defendant keeps a family member under surveillance; or
- (vi) the defendant engages in other conduct, so as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any significant apprehension or fear."

- Having to attend a police station to apply for a DVRO hinders some women, for example, women with disability; women who are aged, frail, ill or injured; or women in prison who are due for release and may on release be returning to a domestic violence situation. Police advise that there are services in place to assist women to attend where this is difficult and that CFIU officers will go to a woman's home if advised of the circumstances. Consultation revealed that these provisions are not well known.

Related Recommendation/s:

4, 6

- Aboriginal consultation further highlighted the value of access to a safe and neutral place apart from attending a police station for Aboriginal women to pursue a DVRO as a strategy to overcome fear and mistrust of police. It was also identified that an informal referral process has been established through Aboriginal Justice Officers based in courts to enable Aboriginal women to address court fines while applying for a DVRO. It was strongly recommended that such initiatives be formalised as critical pathways to provide Aboriginal women with culturally appropriate and safe pathways to accessing DVRO protection.

Related Recommendation/s:

2, 26

- It was raised in consultation that recent WA legislation has provided police the power to implement an on-the-spot 24 hour DVRO and a 72 hour order with victim consent or where child protection concerns are present. It was suggested that 24 hours is a minimal period. Police have previously mooted on-the-spot orders of seven or 10 day duration, with appropriate guidelines. A longer time would provide space for a victim to consider the terms required in an order, for the application to be made and a summons be served while the protection of a short term order is in place. This may result in orders with conditions that better fit the situation of victims and minimise the need for subsequent variation.

Related Recommendation/s:

29

- Consultation with Aboriginal women highlighted the value of short-term, on-the-spot DVROs in providing respite for victims of DV and a cooling-off period for perpetrators. In addition, for many Aboriginal families and people, including in small Aboriginal communities, brief police detainment of perpetrators would prove to be a key strategy to immediately stop violence in times of crisis.

Related Recommendation/s:

29

- The consultation revealed instances where women attending a police station front counter seeking a DVRO have been:
 - o turned away and no record of their attendance made.
 - o given a DVRO request proforma and referred to a support agency to seek assistance to complete the application rather than be assisted on the spot (it should be noted that informal protocols have been established between some support agencies and police to assist access to support services).
 - o viewed as 'vexatious' applicants if they have previously sought an order and either withdrawn from the application or revoked the order once made.
 - o told they do not have sufficient evidence to make a DVRO application. If they subsequently attend with a DV advocate and/or are referred to a CFIU the same evidence has been viewed as sufficient.
 - o asked (sometimes on more than one occasion) to return to the police station at a later date or asked to ring to make an appointment to make an application. This may not give sufficient regard to the 'crisis' nature of DV or the issues of safety and risk involved. SAPol advised that appointments are sometimes made in order to streamline the process for both victim and officer, and it is noted that genuine efforts have been made by SAPol to facilitate making an application, such as implementing an electronic proforma and referral to a CFIU.

Related Recommendation/s:

4, 6, 10, 11, 14, 15, 16, 29, 30

- Shift structures and operational resources may mean that an application is not completed in one attendance.

Related Recommendation/s:

4, 6, 14

- It was suggested that insufficient regard is given to the lack of privacy of the 'front counter' environment. Consultation highlighted that currently LSAs are expected to provide a private room and an officer with relevant experience to discuss sexual assault matters and take relevant information. It was reported that LSAs largely do well on this and suggested that this expectation be extended to include domestic violence.

Related Recommendation/s:

5

- If a Summons has lapsed the DVRO application process must recommence. There is no facility to 'reactivate' or extend a lapsed application. Consultation highlighted repeatedly that if an Application for a DVRO lapses because police have been unable to locate the defendant for service of the Summons, this may result from a number of factors, including the success of the defendant in avoiding police, rather than due to reduced risk to the victim of further domestic violence. (Consideration of due process and a safety and risk assessment would be required if provision is made to reactivate or extend a DVRO application.) A fresh Summons can be issued on application by the CJS. In this case a new application is not required. Aboriginal consultation identified the local arrangements between police and the Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service in Port Augusta in which the Service locates defendants and serves Summons on behalf of police. This arrangement has assisted police and courts to process DVRO applications for Aboriginal women in the region and to effectively provide a more culturally responsive service.

Related Recommendation/s:

27, 29

- Reliance on the victim as the primary source of evidence without a thorough investigative approach to collecting and documenting all evidence to build a case as independent of victim testimony as possible impacts on those women with complex social needs.

Related Recommendation/s:

16

- Not all breaches are acted upon. Action taken on a breach is influenced by:
 - o the 'burden of proof' and available evidence
 - o operational resources available to address the matter
 - o the assessment of the seriousness of the breach by the officers involved.

Victims are told to report all breaches of a DVRO. Lack of action on breaches by police may frustrate and undermine the confidence of victims in the DVRO process and discourage them from reporting further breaches. Consultation reported that some victims in this situation have been asked by police why they did not report the previous breaches and have themselves been viewed by police as undermining the effectiveness of the DVRO. This may give rise to confusion for victims in such a position. Aboriginal consultation identified that in such circumstances Aboriginal women find any further attempt to access DVRO protection difficult. Access to DVRO protection should be provided without prejudice. Support to access DVRO protection including action when DVRO conditions are broken is particularly important for Aboriginal women. It was noted that Aboriginal Family Violence Legal Services (AFVLSs), such as that in Pt Augusta, advocate for and facilitate access for Aboriginal women to DVRO protection in such circumstances. New AFVLSs are being established in Ceduna, and the APY Lands. Consultation recommended that working partnerships be built between police and AFVLSs and court circuits and AFVLSs where these exist, or any other appropriate legal services assisting Aboriginal people to access DVRO protection.

Related Recommendation/s:

27, 32

- Breaches may be responded to as a 'single-incident' and therefore a pattern of behaviour and risk, may not be identified. 'Minor' breaches may show a pattern of ongoing harassment. Where dedicated resources such as CFIUs are involved, a case management approach links individual incidents.

Related Recommendation/s:

1, 2, 16, 22, 29, 31, 32

- The consultation found that it is difficult to vary the conditions of an order at any point after the initial application has been lodged at Court.

Related Recommendation/s:

29

- The consultation reported that Court adjournments can delay the finalisation of a breach for up to 12 months.

Related Recommendation/s:

13, 16, 22

- It was identified in consultation that when Police attend a domestic violence related assault they may lay an assault charge without also making an application for a DVRO at that time. If the defendant is arrested and bailed, bail conditions are put in place. Investigating police may collect evidence in a way that relies primarily on the evidence of the victim for the charges to proceed. They may not necessarily collect collateral evidence with a focus on establishing a case independent of victim testimony where possible. As time passes, possibly due to normal delays in the criminal justice process, the victim may decide for a number of reasons not to give evidence. The victim is likely to be referred for counselling regarding the decision not to proceed. A number of victims continue to withdraw their allegations. Without independent evidence on which to proceed, the case is withdrawn. If an interim DVRO has not been put in place, the victim does not have the ongoing protection a DVRO can provide. At that point, the victim is unlikely to seek or proceed with a DVRO application for the same reasons she has decided not to proceed to give evidence on the criminal charges. If an application for a DVRO had been made at the time of the initial assault charge and an interim order granted, then at the time of withdrawal of the charge the prosecution has the option to negotiate a confirmed DVRO without admissions. This strengthens the protection provided to the victim even when charges do not proceed, and strengthens the victim's position if a future assault occurs. The fact that this does not occur as standard practice was raised as a significant failing in current DVRO processes.

Related Recommendation/s:

32, 33

- The enforcement of DVROs across jurisdictional boundaries is not consistent.

Related Recommendation/s:

19

- SAPol provided information to the review that, as a result of the Supreme Court decision in the matter of Police V Trzesniowski (No2) (2005) SASC 457, police should consider making an application for suppression of the content of the victim's affidavit pursuant to s69A (1) (b) (ii) of the Evidence Act, 1929, where an applicant believes that they may be exposed, embarrassed or humiliated by those details being made public. It was suggested that the nature of domestic violence may require an applicant to provide details of personal relationships including the disclosure of details that are private, embarrassing and distressing. Disclosure of such material to the public may cause applicants considerable hardship and the possibility of its release may act to deter victims from seeking restraining order protection.

Related Recommendation/s:

25

7.1.2 Record keeping, data management and reporting

- Police and Magistrates strongly supported a simpler application process for DVROs.

Related Recommendation/s:

10

- The NDV evaluation found that:
 - o Police information systems were not adequate to support the operational identification of repeat DV cases, or to provide management reports indicating whether DV incidents (first-time incidents, repeat incidents, and all incidents) were increasing or decreasing.
 - o CFIU officers need to have available more useful reports that make easier the job of monitoring the response of patrols. Police cannot ensure that there is a consistent and appropriate response to domestic violence unless systems are in place to monitor the quality of that response.
 - o Police cannot respond to reports of first-time or repeated incidents of violence unless there is good system of information about the nature of these incidents and those involved in them.

Related Recommendation/s:

31

- Consultation found that police information systems are not adequate to support the operational identification of repeat DV cases or to provide management reports indicating trends in DV incidents for individual victims/perpetrators.

Related Recommendation/s: 31

- Independent data systems have been developed in some LSAs to compensate for insufficiencies in SAPol recording and reporting systems. This information does not link to other SAPol systems or the Justice Information Systems (JIS).

Related Recommendation/s: 31

- Consultation reported that police do not always prepare the affidavit with the victim present. The victim may then not have the opportunity to review their affidavit prior to being asked to sign it immediately prior to appearing in Court. As a result, there is potential for significant errors to occur in the affidavit, which the victim does not have an opportunity to correct. Additionally the affidavit may not best reflect the interests/needs of the victim. This may contribute to delays in the processing of a DVRO.

Related Recommendation/s: 6, 16

- If a DVRO application is not completed there will be no evidence that a DVRO application was sought. Recording all information and events (including breaches) is important when determining a history of DV related incidents or behaviour. It is also important to note that access to other support services, such as emergency accommodation or financial support, can depend on such documented evidence.

Related Recommendation/s: 11

- Due to the volume of crime being processed by SAPol there can be substantial delays (three to six months) for a DVRO breach matter to be laid in Court. SAPol members identified the need for a rapid response to breaches. Increasing the varying priority given to DV within SAPol was also identified as an issue requiring attention.

Related Recommendation/s: 12, 16, 22, 32

- Resource demands placed on police prosecution service impact on the processing of DVRO applications. The 'just in time' approach to managing briefs was identified as impacting on the progression of a DVRO, the number of adjournments and delays as well as the provision of information provided to victims.

Related Recommendation/s: 12, 16

- File management between SAPol and the Court was identified as an area requiring further investigation. Inappropriate file management contributes to significant delays in the DVRO confirmation process, although this issue is not unique to the DVRO process. (This was identified as a significant issue at the Adelaide Magistrates Court (AMC). The consultation found that an SPO application may be incorrectly taken or 'mixed up' with a DVRO application. At Court, the Magistrate may reject the application until the correct paper work is submitted.

Related Recommendation/s: 10, 16

- Significant benefits would be achieved by increasing the automation of the restraining order process.

Related Recommendation/s: 10

7.1.3 Inconsistent practice / non-compliance with legislation

- Inconsistent approaches to policing DV was identified as an ongoing issue. The maps detail a number of inconsistencies in the DVRO process.

Related Recommendation/s: 2, 14, 15, 16, 20, 31, 32

- The importance of police and judicial discretion was acknowledged. However, the consultation process identified examples of significant inconsistent practice.

Related Recommendation/s: 9, 12, 21, 22

- There was evidence of inconsistency in:
 - o identification and recording of domestic violence events,
 - o application of eligibility criteria to a DVRO application, and
 - o access to legal information and Court support for victims during the DVRO process.

Related Recommendation/s:

16, 20

- Other areas of practice identified as inconsistent include:
 - o Police may question whether the relationship has ended as part of determining whether to proceed with making a DVRO application.
 - o A matter may not proceed if both parties continue to reside at the same address (cohabit).
 - o If a woman is not satisfied with the response she is given at one LSA and attends another LSA she may be accused of 'shopping around for the response she wants'.
 - o Referral to support agencies is inconsistent. It should be noted however, that the availability of support services can be inadequate, making referral difficult.

Related Recommendation/s:

1, 15, 16, 20

- The consultation found that individual police officers (VLOs or VCOs) in some country LSAs had a significant commitment to the prevention, detection, investigation and reduction of DV and a role as DV coordinators and/or specialists at the local level. Officers with such a DV role were not present in all country LSAs. It was suggested that where they are present this was a result of the personal commitment of individual police officers and/or their commanding officers rather than an endorsed corporate SAPol approach. Whether such a role was recognised at the local level is at the discretion of the LSA Commander.

Related Recommendation/s:

4

- Consultation suggested that quality assurance and vetting of DVRO applications was sometimes based on the sufficiency of paperwork rather than an assessment of the content of the application.

Related Recommendation/s:

2, 16

- Some individuals questioned whether 'generalist' police officers had sufficient knowledge of DV and the DVRO process. Many expressed support for the model of practice incorporated by CFIUs. Aboriginal consultation strongly recommended that Aboriginal constables be included in CFIUs.

Related Recommendation/s:

4, 15, 16

- Women and women's advocates stated that sexual violence in a DV context did not receive a consistent response. Aboriginal consultation highlighted that sexual violence in intimate relationships is a priority for AFVLSs to address with Aboriginal women, particularly young Aboriginal women.

Related Recommendation/s:

15, 16, 27

- It was reported to the consultation that in some LSAs DVRO applications are prepared by the CFIU while in other LSAs 'front counter' staff take the applications and CFIU staff may only become involved if an application is to be withdrawn.

Related Recommendation/s:

1, 4, 14, 15, 16

- The response to the presence of children and assessment of the need for any, or any subsequent child protection notification was thought to be inconsistent and contrary to mandatory notification obligations and standards. It was suggested that increased focus be given to incorporating children in restraining order conditions and that all forms of child abuse connected to domestic violence events be referred to the Child Abuse Referral Line (CARL).

Related Recommendation/s:

1, 16, 30

- A DVRO is not in force until police have served a Summons on the defendant. This may be difficult to do as some defendants 'avoid' being served. Concern was raised in consultation about inconsistent police attitudes regarding the priority of serving the initial DVRO. It was suggested that SAPol adopt the expectation that all LSAs prioritise prompt service of Summons and DVROs.

Related Recommendation/s:

14, 16, 29

- There is inconsistency as to whether the victim is required to appear in Court. In some country areas victims are not required to attend. Country consultation identified that a decision not to seek victim appearance in Court is based on concerns for safety, confidentiality, distance to travel to court and not having a specific DV listing or Family Violence Court.

Related Recommendation/s:

8, 13, 16, 22

- Inconsistencies in relation to whether action is taken for a DVRO breach are highlighted in the maps.

Related Recommendation/s:

13, 15, 16, 21, 22, 23, 29, 30

- Inconsistencies in Police practice and approach were identified with regard to the circumstances in which SAPol will support an application to vary or revoke a DVRO. It was noted that SAPol does not normally assist with revocation of an order, however there was evidence that SAPol does at times assist victims to do this. While common practice regarding variations of an order has been mapped, consultation did not show a consistent SAPol perspective on whether police should provide assistance to a victim applying for a variation to DVRO conditions. Some police officers explained that they were reluctant to relax conditions, as they believed restrictive conditions (particularly non-contact conditions) might minimise future incidents. Other officers clearly expressed the need to be responsive to the changes in the victims' circumstances and to ensure that the victims' needs (however altered) were reflected in the DVRO conditions. Some police officers were very aware that a failure to reflect the needs of victims could either make DVROs 'unattractive' to victims, or 'set victims up' to breach orders. (See additional consideration of Victims and the *Victims of Crime Act* further in this report.)

Related Recommendation/s:

1, 2, 4, 13, 15, 16

- Consultation highlighted the key role of Magistrates, prosecutors and legal officers in the DVRO process and the implications of court outcomes for victims and other agencies. It was strongly supported that Magistrates, Prosecution and legal officers require relevant information on domestic violence including:
 - o the nature and dynamics of domestic violence as a crime of power
 - o the nature, myths and stereotypes of domestic violence in Aboriginal communities
 - o the historical context of domestic violence in Aboriginal communities, including the impact of colonisation and the changes that followed
 - o the key priorities of:
 - o safety of victims and children, and
 - o accountability of offenders
 - o the special issues for victims and children
 - o integrated approaches for effective intervention to prevent domestic violence
 - o safety and risk assessment in the criminal justice process
 - o the SAPol policing approach to domestic violence that victims leave relationships and violence, not homes
 - o the DVRO process
 - o options to remove the defendant from the home as a condition of a DVRO
 - o standards of practice in domestic violence and DVRO matters
 - o strategies of the defendant in the criminal justice process, such as use of adjournments, as part of the pattern of domestic violence.

Related Recommendation/s:

15, 16, 21, 22

- It was raised in consultation that some offenders released on bail for other than DV related offences are bailed inappropriately to an address where an occupant has been a victim of DV and has a DVRO in force against that same offender. DCS identified that Bail reports can and often do address the existence of DVROs for courts.

Related Recommendation/s:**13**

- Consultation revealed an unresolved issue over the appropriate length of an order (including the use or desirability of sunset clauses) and whether there should be a standard approach to the length of DVROs or a more tailored approach linked to safety and risk assessment. Current legislation does not allow for an extension of an order, or easy access to a new order when an existing order lapses because of current eligibility requirements.

Related Recommendation/s:**21, 22, 29, 30**

- Consultation identified the value of a corporate approach by SAPol to expecting dedicated contact persons with expertise in domestic violence and DVROs to be available in each police station and accessible in critical situations. It was suggested the role of this officer include support for an informed and consistent approach where not all officers may have a high level of training, skill and experience in working with domestic violence.

Related Recommendation/s:**4, 15, 16, 31**

- Consultation highlighted the value of Court responses that incorporate:
 - o domestic violence listings separate to other matters heard by the court
 - o separate listings for applications for DVROs and for other DV related offences to separate victims from defendants in DV related matters
 - o designated Magistrates to hear domestic violence matters
 - o an understanding by Magistrates, prosecutors and other relevant officers involved in court-related DVRO proceedings of the cases coming through including the history of violence and the nature and dynamics of domestic violence.

An apparently contradictory issue was also raised. If a victim is charged with an offence relating to a breach of a restraining order (aid and abet) the subsequent charging and court processes apply for both the offender and the victim. These will be heard in the Criminal listing rather than the Family Violence Court. There is potential, depending on how the matters are listed and how the Magistrate wishes to hear the matters, for the defendant and victim breaches to be heard together allowing a more coherent and consistent approach that effectively addresses the DV.

This emphasised the value of a case management approach to DV by designated Magistrates allowing relevant DVRO related matters to be listed separately or together as appropriate to the matter, to the point in the DVRO process at which the matter arises, and to the safety and risk issues for the victim at that time.

It was raised that this may pose particular challenges for country Court circuits.

Related Recommendation/s:**7, 8, 9, 21, 22, 24****7.1.4 Country variations**

- In country areas SAPol takes the matter to Court and the victim is only required to attend if the Magistrate insists. Consideration should be given to adopting this model more broadly.

Related Recommendation/s:**1, 8, 13**

- Consultation found that the DVRO process may be assisted in the country because many Justice and other agency staff involved in the process know each other. In the metropolitan areas, victims and defendants may reside in different LSAs, which impacts negatively on establishment of worker relationships, and on coordinated and timely services.

Related Recommendation/s:**1**

- Consultation suggested that it is rare for adjournments to occur in a trial process to determine a disputed order in country areas. This was contrasted with the number of adjournments that may take place in the metropolitan area. It was noted however, that the volume of crime and pressures on police prosecution services in metropolitan areas may contribute to this difference.

Related Recommendation/s:

13

7.1.5 SPOs (Summary Protection Orders)

- There are intimate relationships in which DV occurs that are excluded from the *DV Act* (1994). The *DV Act* (1994) requires cohabitation as a legal or de facto spouse in a heterosexual relationship. This does not include, for example, partners of the same sex, or people in relationships who have not cohabited. It also excludes a range of third parties from the DVRO who may either be:
 - o subjected by the defendant to a range of violent, abusive or harassing behaviour as part of the domestic violence, or
 - o engaged by the defendant to engage in violent, abusive or harassing behaviour against the victim or other third parties supporting the victim as part of the domestic violence.

People experiencing domestic violence in relationships not covered by the definition of "family member" in the *DV Act* can apply for a restraining order under the *Summary Procedures Act, 1921*.

Related Recommendation/s:

29

- The mapping did indicate some differences in the process for SPOs, although largely the process was the same as that for DVROs. Particularly CFUOs and VLOs appear to have worked to endeavour to ensure that victims of domestic violence not eligible for a DVRO receive the same support in pursuing an SPO. The primary area of difference appears to be access and referral to support services. There are, for example, very few specialist services for gay men experiencing DV.

Related Recommendation/s:

20

- Referral of a victim for a counsellor's information and assessment report if a variation to an SPOs conditions is being sought is difficult because of the limited availability of counselling services providing service to or with knowledge of DV in same sex relationships. The VIP responds specifically to domestic violence perpetrated by men towards their women partners.

Related Recommendation/s:

1, 20

7.1.6 Victims of Crime

- As indicated in the DVRO process maps, consultation raised that the principles of the *Victims of Crime Act (2001)* are not reflected consistently or in all stages of the process. Division 2 of the Act provides a Declaration of principles governing treatment of victims in the criminal justice system of relevance to the DVRO process as mapped and the matters raised in consultation including:

"Fair and dignified treatment

6. A victim should be treated

- (a) with courtesy, respect and sympathy; and
- (b) with due regard to any special need that arises
 - (i) because of the victim's age; or sex; or; race or ethnicity; or cultural or linguistic background; or
 - (ii) for any other reason.

Right to have perceived need for protection taken into account in bail proceedings

7. If a victim feels a need for protection from the alleged offender, a person representing the Crown in bail proceedings should ensure that the perceived need for protection is brought to the attention of the bail authority.

Right to information about criminal investigation and prosecution

8. (1) A victim should be informed, on request, about the following:
- (a) the progress of investigations into the offence;
 - (b) the charge laid and details of the place and date of proceedings on the charge;
- “8. (1) (d) if an application is made by the alleged offender the outcome of the application and, in particular, any condition imposed to protect the victim from the alleged offender;
- (e) if the prosecutor decides not to proceed with the charge, to amend the charge, or to accept a plea to a lesser charge or agrees with the defendant to make or support a recommendation for leniency the reasons for the prosecutor’s decision;
 - (f) the outcome of the proceedings based on the charge and of any appeal from those proceedings;
 - (g) details of any sentence imposed on the offender for the offence;
 - (h) if the offender is sentenced to imprisonment and later makes an application for release on parole the outcome of the proceedings and, in particular, any condition imposed to protect the victim from the offender.”

“Victim to be informed about access to health and welfare services

11. A victim should be informed about health and welfare services that may be available to alleviate the consequences of injury suffered as a result of the offence.”

“Protection of privacy

14. (3) A victim should be protected as far as practicable from unnecessary contact with the alleged offender and defence witnesses during the course of the trial and in proceedings under this Act.
- (4) A victim should only be asked to attend proceedings related to the offence if the victim’s attendance is genuinely necessary.”

Related Recommendation/s:

13

- It is not clear who is responsible for informing the victim of what is happening at all parts of the process. For example, a victim may not be notified if a defendant is seeking to have an order varied or revoked. A victim or victim advocate may have to contact different SAPOL officers to gain information on different aspects of the status of their application. Consultation identified that this could be daunting. It has already been noted in this report that provision of information to victims is inconsistent.

Related Recommendation/s:

4

- The mapping process found that the *Victims of Crime* booklet is not provided to victims in a systematic way at any part of the DVRO process.

Related Recommendation/s:

13

- A Magistrate can order the use of vulnerable witness provisions under the *Evidence Act (1929)*, however, it was noted in consultation that these provisions are rarely applied in DV cases.

Related Recommendation/s:

28

- Consultation raised cross-examination of the victim by a self-representing defendant as a matter of significant concern in DV related court processes. A victim must be in line of sight for cross-examination by a self-representing defendant. A defendant in domestic violence proceedings is ineligible for publicly funded legal representation through legal aid provisions. Some form of legal representation must be available to the defendant as a requirement of due process. Currently a defendant unable to afford legal representation most commonly self-represents. This undermines implementation of vulnerable witness provisions.

Related Recommendation/s:

28

- Consultation raised conflicting perspectives regarding whether a victim should be required to attend court at the first hearing of the DVRO application. The *Victims of Crime Act* establishes the principle that victims should not be required to appear unnecessarily. Some Magistrates identified a preference for the victim to appear at the first court appearance for a DVRO application and this is currently common practice in metropolitan areas. Common practice identified in country areas is that the victim does not attend the first court hearing unless there are particular reasons requiring this. Women's advocates from metropolitan areas indicated that women may value attending court and having the opportunity to witness proceedings first-hand.

Related Recommendation/s: 2, 13, 21, 22

- Current SAPol practice commonly makes the victim responsible to monitor whether a DVRO has been served, advising the victim to ring the police station every few days to check, rather than the justice system taking responsibility to provide appropriate information.

Related Recommendation/s: 4, 12, 15, 16

- Consultation in court between the prosecutor and the defendant or defendant's representative may lead to amending the Order to achieve confirmation. Pragmatic decisions may be made without consultation with the victim. The victim should however be informed of the reasons for changing the charge or order.

Related Recommendation/s: 12, 13, 21, 22

- The consultation also found that the prosecutor did not always explain the role and responsibilities of a witness to a DV victim even though this is a common practice in other offences.

Related Recommendation/s: 4, 12, 13, 21, 22

- A Court Order that A Firearm Be Confiscated And Dealt With As Directed, Supplementary To A Domestic Violence Restraining Order can lapse or be revoked and the firearm be returned without consultation with the victim and the victim may not be alerted that this has occurred.

Related Recommendation/s: 1, 2

7.1.7 Aboriginal People and Communities

- Concern was identified during Aboriginal consultation about the cultural appropriateness of criminal justice responses to:
 - o Aboriginal women who are victims of crime.
 - o enhance the personal and cultural safety of Aboriginal women.

It was raised that various barriers impede the access of Aboriginal women to DVROs, and impact on general reporting to police of domestic violence by Aboriginal women.

Related Recommendation/s: 15, 16, 17, 18, 21, 22, 26, 27

- Police response times in the Country (particularly in isolated communities) can be delayed. Consultation with Aboriginal women from the APY Lands between 2002 and 2004 for Women's Action Plans⁷ identified that on some occasions it has taken up to three days for Police to respond in times of violence. Aboriginal consultation for this Review reported similar experiences in other remote Aboriginal communities. Feedback from the Statewide Gathering on Aboriginal Women's Safety held in Adelaide in July 2005 raised the issue of Police response times, and also identified the need to provide safe houses in Aboriginal communities to provide immediate harbour from harm for Aboriginal women experiencing violence.

Related Recommendation/s: 15, 16, 17, 18

⁷ Condensed Merge Of All Aboriginal Women's Action Plans, 2002 To 2005 as at 05/09/2005, provided by OFW.

- It was stated in consultation that Police staffing levels and access to secure facilities in remote communities do not provide for custodial responses to DV which are consistent with the *Royal Commission into Aboriginal Deaths in Custody (RCIADIC)*. The current absence of a secure facility on the Lands means that if a defendant is remanded in custody they must be driven 1400 kms to the Port Augusta prison.
- SAPol provided information to the review that they work collaboratively with Indigenous communities and agencies on the Lands to attempt to ensure a culturally appropriate good practice police response to domestic violence in Indigenous communities in the context of lacking a secure facility at the local level.

Related Recommendation/s:

17, 18

- SAPol indicated that domestic violence is the major crime issue on the APY Lands and is treated with priority by police in partnership with other agencies such as the NPY Women's Council. Through participation in initiatives such as Operation Kungka Punkuytja Wiya (Don't Hit Women), there is ongoing priority to respond to and investigate DV issues on the Lands focused on preventing and reducing the incidence and severity of domestic violence. A number of specific policing strategies have been developed within an overall Zero Tolerance approach. Policing strategies include:
 - o proactive visits to victims on a weekly basis
 - o a red file cover to highlight the importance of the brief
 - o a pro-arrest and no bail policy for offenders
 - o police act as the complainant and investigate fully to obtain evidence to substantiate charges without reliance on victim evidence
 - o police proceed with charges even where the victim may not wish to proceed.
 - o coordination with NPY Women's Council for response to victims.

This work was recognised in 2003 with an Excellence in Policing award from the Australasian Council of Women and Policing for the Most Significant Achievement in Improving Relationships Between Women in the Community and Law Enforcement and Policing.

Related Recommendation/s:

17, 18

- SAPol's AP Lands service delivery project recognised the need to improve police services on the AP Lands. SAPol reported that for the last 18 months there have been at least 6 police on the Lands at any time. From April 2006 there will be 8 police officers on the Lands, plus 10 Community Constables and 7 sworn police at Maria adjoining the Lands. This totals 25 police for a population of 2,500. Police currently do not have custodial facilities on the Lands and use the Maria cells. From May 2006, there will be two new police stations at Amata and Ernabella, both with cells that comply with the RCIADIC. Currently, with the standing policy of arresting all DV offenders and refusing bail in most cases, prisoners are transported to Maria and if bail is refused, driven to Port Augusta prison.

Related Recommendation/s:

17, 18, 27

7.1.8 Integrated Responses

- The consultation found that the DVRO process would be aided if there was a shift in the Criminal Justice system's approach to DV from a 'single incident' based approach to a pattern based approach. As mentioned previously, this would incorporate safety and risk assessment into all agency responses.

Related Recommendation/s:

1, 2, 3, 15, 16, 21, 22, 29, 30, 31

- Some agencies, for example some schools, do not give due regard to the DVRO.

Related Recommendation/s:

1

- Integrated responses, such as those delivered in the Violence Intervention Program, involving multi-agency partnerships based on a shared understanding of domestic violence, agreed principles including a priority on safety of victims and children and accountability of perpetrators, and clear agreements for effective work together, were considered 'best practice' and should be extended.

Related Recommendation/s:

1, 2, 3

- It was identified in consultation that SAPol, DCS and VIPs are all developing safety and risk assessments for their responses to domestic violence. Effective implementation will require a common understanding of safety and risk assessment in relation to domestic violence across agencies, and safety and risk assessments that speak to one another and are similarly weighted.

Related Recommendation/s:

2, 3, 15, 16, 21, 22, 24

- Consultation identified the importance of prosecutors and prosecution processes being linked into safety and risk assessment and that this be reflected in priority setting in listing of matters for the court.

Related Recommendation/s:

2, 3, 7, 8, 9, 12, 15, 16, 21, 22

- Consultation suggested that aspects of the national work of Chung et al (University of South Australia, 2004) on integrated responses to DV be incorporated in integrated models, recognising the importance of tailoring to local service and community configuration. Indigenous consultation highlighted that development and extension of integrated approaches must include investigation of the most appropriate service delivery models for Indigenous communities. Extension of the integrated model may include:
 - o drug and alcohol services, and mental health services to address issues of co-morbidity
 - o other emergency services
 - o sobering up units in Indigenous communities.

Related Recommendation/s:

1, 2, 17, 18, 20, 27

7.1.9 Evidence based and problem solving approaches

- Consultation raised the need for a problem solving approach to policing DV incorporating improved investigative practices and on-scene evidence collection to enable evidence based prosecution that does not rely primarily on victim testimony as the key source of evidence.

Related Recommendation/s:

31, 32

- Consultation suggested that evidence based and problem solving policing approaches provide a broad framework incorporating intelligence led policing that will provide more effective overall outcomes in policing domestic violence.

Related Recommendation/s:

15, 16, 31, 32

- Substantial concern was raised in consultation that the focus must be on the behaviour and violence of the perpetrator and the facts and evidence relating to the violence, and not on other matters relating to the victim. The priorities are victim safety and offender accountability.

Related Recommendation/s:

15, 16, 32

8. Recommendations

The following recommendations are made to address issues raised in consultation to map the DVRO process.

It is recommended that:

1. Integrated response models be promoted, further developed and extended in South Australia and that these models include a multi disciplinary and cross-agency approach to practice and training.
2. Those agencies involved in safety and risk assessment ensure their approaches and tools provide a consistent and coherent approach within and between agencies at all relevant points in the DVRO process and:
 - are based on inter-agency partnerships including police, courts, correctional services, domestic violence services and other relevant services
 - are formally documented
 - incorporate the outcomes of safety and risk assessment into DVRO pathways
 - commence from the first point of contact
 - take into account the history and pattern of violence.
3. Courts ensure that outcomes of safety and risk assessment are considered in:
 - listing of matters
 - assessing vulnerable witness status
 - scheduling of court time designated for DVRO related matters.
4. Every SAPol LSA provides an identified point of contact for information and/or referral in DVRO related matters.
5. SAPol ensure that privacy is a prime consideration in discussing DVRO related matters with victims of domestic violence and that, where practicable, a suitable private area will be made available.
6. Where possible SAPol assess eligibility for a DVRO application during the first victim contact for a DV related event and where appropriate, complete an application for a DVRO with the victim at that first contact.
7. Family Violence Courts be expanded to all metropolitan Magistrates courts.
8. In a Magistrates court where a Family Violence Court is not provided, a separate listing should be provided for DVRO related matters and another separate listing for other DV related offences.
9. Where possible all offences committed in relation to a particular DVRO be heard by the same Magistrate.
10. SAPol review and implement training to ensure appropriate and consistent use of the electronic DVRO application pro forma (PD115).
11. SAPol ensure that all contacts for DV related events are recorded via PIR or DVRN, as appropriate, and that outcomes of each contact are recorded in the investigation diary.
12. SAPol provide appropriately trained and experienced prosecutors to all courts hearing domestic violence matters.
13. SAPol and the Magistracy review the DVRO process as mapped, in partnership with other key services, and address any areas of inconsistency or legislative non-compliance.

14. SAPol include outcome data relevant to the DVRO process (including breaches) in internal Performance Outcome Reviews.
15. SAPol review the provision of DV training to all staff, with a view to providing an ongoing program of professional development and updates.
16. The SAPol DV training program include and not be limited to a focus on:
 - o the nature and dynamics of domestic violence as a crime of power
 - o the nature, myths and stereotypes of domestic violence in Aboriginal communities
 - o the historical context of domestic violence in Aboriginal communities, including the impact of colonisation and the changes that followed
 - o the key priorities of:
 - o safety of victims and children, and
 - o accountability of offenders
 - o the special issues for victims and children
 - o integrated approaches for effective intervention to prevent domestic violence
 - o safety and risk assessment in the criminal justice process
 - o the SAPol policing approach to domestic violence that victims leave relationships and violence, not homes
 - o the DVRO process
 - o options to remove the defendant from the home as a condition of a DVRO
 - o standards of practice in domestic violence and DVRO matters
 - o strategies of the defendant in the criminal justice process, such as, use of adjournments as part of the pattern of domestic violence
 - o evidence based and problem solving approaches to policing and prosecuting DV related matters.
17. SAPol continue to work with the NPY Women's Council and other relevant agencies in the far north region of the State and in other regions to develop and deliver effective and culturally appropriate responses to domestic violence in Aboriginal families and communities.
18. SAPol continue to explore alternatives in partnership with Aboriginal agencies and communities, particularly for communities in remote locations, to provide increased access to safety for victims of domestic violence including through initiatives such as:
 - provision of safe house accommodation in local Aboriginal communities to provide immediate harbour from harm
 - access to information and support
 - support for a victim leaving violence to collect their belongings in safety.
19. The Cross-Border Justice Project address improvements in the remote central Australian region of South Australia, Northern Territory and Western Australia, including the Ngaanyatjarra Pitjantjatjara Yankunytatjara lands to:
 - administering DVROs across borders
 - apprehending, processing and following-up on DV offenders who have crossed borders.
20. All agencies ensure access to relevant service information and referral protocols for staff providing front-line response to domestic violence to facilitate appropriate referral and support for victims and perpetrators, and include information on targeted services for particular communities (for example, counselling and support services for people identifying as gay, lesbian, bisexual, or transgender).

21. A range of mechanisms be developed to provide ongoing opportunities for Magistrates, Prosecutors and other members of the legal profession to obtain relevant information and updates on domestic violence.
22. The information made available for Magistrates, Prosecutors and other members of the legal profession include and not be limited to a focus on:
 - o the nature and dynamics of domestic violence as a crime of power
 - o the nature, myths and stereotypes of domestic violence in Aboriginal communities
 - o the historical context of domestic violence in Aboriginal communities, including the impact of colonisation and the changes that followed
 - o the key priorities of:
 - o safety of victims and children, and
 - o accountability of offenders
 - o the special issues for victims and children
 - o integrated approaches for effective intervention to prevent domestic violence
 - o safety and risk assessment in the criminal justice process
 - o the SAPol policing approach to domestic violence that victims leave relationships and violence, not homes
 - o the DVRO process
 - o options to remove the defendant from the home as a condition of a DVRO
 - o standards of practice in domestic violence and DVRO matters
 - o strategies of the defendant in the criminal justice process, such as, use of adjournments as part of the pattern of domestic violence.
23. Police Prosecution practice notes clarify that where a victim has contributed to a breach of a DVRO it is not in line with the principles of victim safety and perpetrator accountability and is not generally in the public interest to charge or prosecute the victim.
24. Court listing provide for fast tracking of a new application for a DVRO on the grounds that a previous application has lapsed or on the basis of safety and risk assessment, and that this be supported by protocols between police and Magistrates and appropriate historical record keeping in SAPol databases.
25. The SAPol PD115, electronic restraining order application form, be amended to include an area where an applicant can request that a suppression order be made pursuant to s69A(1)(b)(ii) of the Evidence Act, 1929 where the content of the affidavit would, if made public, cause undue hardship to the applicant.
26. Formalised processes be established in conjunction with Aboriginal Justice Officers based in Courts to enable Aboriginal women to address outstanding court fines while applying for a DVRO.
27. Working partnerships be built between LSAs and Aboriginal Family Violence Legal Services (AFVLSs), and between court circuits and AFVLSs, where AFVLSs exist, to expedite a culturally appropriate response to Aboriginal victims and defendants in DVRO matters.
28. The measures provided in the legislative reform approved by Cabinet to amend the *Evidence Act 1929* to:
 - o provide for automatic vulnerable witness status for alleged victims of DV, and
 - o prevent defendants who self represent being able to cross examine the alleged victimbe extended to cover the civil restraint proceedings of DVROs while ensuring due process and representation of the defendant.
29. The *DV Act* be amended to:
 - incorporate a statement of the aims of the Act and principles applying to the Act, including:

- o the priority on the safety, wellbeing and interests of the people affected by domestic violence
 - o the accountability and responsibility of the person perpetrating the domestic violence for their behaviour and for observing the conditions of a DVRO
 - extend the definition of ‘family member’ to:
 - o apply to all intimate relationships in which domestic violence occurs
 - o apply to a broader range of relatives and kin to provide means to restrain extended family or kin who may contribute to the perpetration of domestic violence or protect extended family or kin or who may also be targeted along with the identified victim of the domestic violence
 - include as a possible condition that a person to whom an order is issued be required to vacate any premises, whether or not that person has a legal or equitable interest in the premises
 - enable police to issue on-the-spot 24 hour or 72 hour DVROs in line with recent WA legislation
 - provide for extending the time limit for service of a Summons on the defendant
 - provide a means to reactivate a lapsed Summons
 - clarify that difficulty in locating a defendant does not in itself provide a reason to dismiss an application for a DVRO. The court should satisfy itself as to whether the victim is still at risk before an application is dismissed.
 - provide a means to effect service of a summons by registered mail
 - provide facility for a victim to lodge an application to vary the conditions of an order at any time following initial lodgement of the application at court
 - provide the means to re-instigate an Order that has lapsed where a safety and risk assessment determines the victim remains at risk or has reasonable apprehension that further domestic violence may occur if not restrained, even though no further incidents may have occurred
 - make provision for an application to the court to extend a DVRO before the order lapses if a time limit is attached to the term of the order
 - make provision to emphasise the seriousness of breaches of an order as part of the pattern of domestic violence, of repeat breaches, and particularly of a pattern of multiple repeat breaches, regardless of whether the breaches are substantive offences in their own right
 - recognise that it is not generally in line with the aims and principles applying to the Act (if incorporated as outlined above) for a victim to be charged with an offence where the victim may have contributed to a breach of an order
 - recognise that in line with the aims and principles applying to the Act (if incorporated as outlined above), in most circumstances a defence to a breach should not be that the victim invited or agreed to the breach.
30. Consideration be given to amending the legislation to:
- provide guidance for interpreting the grounds for making a DVRO as outlined in Section 4 of the DV Act to ensure that the Act adequately reflects the nature of domestic violence, a priority on victim safety and/or the aims and principles of the Act (if amended as proposed in Recommendation 29). Aspects of the Act where guidance is to be considered include:
 - o the interpretation of “reasonable apprehension”, “fear” and “personal injury” as grounds for making an order
 - o whether the occurrence of specific behaviour in the past offers the best indicator of future risk
 - o whether a specific number of incidents offers an effective measure of safety and risk
 - delete reference to a number of incidents from the grounds for making a DVRO in Section 4 of the DV Act
 - broaden the range of behaviour recognised as grounds for making a DVRO to include economic abuse, emotional abuse and intimidation, and violence against pets or animals, in line with recent legislation in WA, Tasmania and ACT

-
- recognise children as being victims of domestic violence where they have witnessed domestic violence or property damage and include children in DVROs in such circumstances
 - recognise domestic violence in the presence of children as an aggravated offence
 - provide guidance as to the term for which a DVRO should be made
 - include mandatory sentencing guidelines
 - grant Magistrates the power to require a defendant, where appropriate services are available, to:
 - o attend assessment for a stopping domestic violence program
 - o seek and receive appropriate reports as a condition of a DVRO
 - o attend and participate in a stopping domestic violence program if assessed as suitable and agreeing to attend and participate.
 - incorporate any other such relevant legislative initiatives from other Australian jurisdictions that would strengthen the South Australian domestic violence legislation and enhance the safety of victims and children and accountability of perpetrators.
31. SAPol institute information systems that facilitate identification and management of domestic violence cases and include means of readily:
- flagging all domestic violence related events
 - identifying the history of domestic violence including DVRO related matters
 - linking to updated safety and risk assessment.
32. SAPol respond to all domestic violence related events as crime-related and:
- conduct appropriate criminal investigation and evidence collection in all matters
 - proceed with investigation and charging of substantive domestic violence related offences in addition to any other DVRO related action that may be pursued
 - where a domestic violence related criminal charge is laid consider the completion of a DVRO application and the seeking of an interim order.
33. Where domestic violence related criminal charges are laid and subsequently withdrawn due to evidentiary insufficiency, including as a result of the victim deciding not to proceed with giving evidence, and an interim DVRO is in force, the prosecution will consider negotiating a confirmed order without admissions in the withdrawal process.

Appendices

Steering Committee for the Review of the DVRO Process

Members of the Review Steering Committee are:

| | |
|--------------------|---|
| Tim Goodes | Chair of Steering Committee Director, Justice Strategy Division (JSD), AGD |
| Madeleine Glynn | Assistant Commissioner, SAPol |
| April Lawrie-Smith | Director, Aboriginal Justice, AGD |
| Kylie O'Connell | Principal Policy Officer, JSD, AGD |
| Sue King | Manager Specialist/ Intervention Courts, CAA |
| Robynne Williams | Domestic Violence Worker, Advice and Community Education, LSC |
| Ann Bloor | Regional Manager, Southern Metropolitan Region, DCS |
| Richard King | Manager, Aboriginal Services, DCS |
| Liz Teesdale-Smith | Women's services nominee Coordinator, Northern Violence Intervention Program |
| Jo Battersby | A/ Director, Child Protection Directorate, DFC |
| Fiona Mort | Senior Policy Officer, Office for Women, DFC |
| Steve Golding | Senior Project Officer, JSD AGD |
| Jeff Hack | SAPol |
| Nichole Hunter | Office of Crime Statistics and Research (OCSAR), AGD |
| Robert Lindsay | Director, Magistrates Court Division, CAA |

Agencies Participating in Mapping Consultation

Participating agencies included (in alphabetical order):

Aboriginal Legal Rights Movement
Adelaide Central Community Health Service
Attorney-General's Department
Centacare
Central Eastern Domestic Violence Service
Central Northern Primary Health Care Services
Central Violence Intervention Program
Courts Administration Authority
Dale Street Women's Health Centre
Department for Correctional Services
Department for Families and Communities
Domestic Violence Crisis Service
Domestic Violence Helpline
Gay Men's Health, Aids Council of SA
Legal Services Commission
Lesbian Domestic Violence Action Group
Migrant Women's Support and Accommodation Service
Noarlunga Health Services
Northern Community Legal Service
Northern Domestic Violence Service
Northern Metropolitan Community Health Service
Northern Violence Intervention Program
Port Augusta Women's Legal Service
Relationships Australia SA
Riverland Domestic Violence Unit
South Australia Police
Southern Domestic Violence Service
Southern Women's Community Health Centre
The Parks Community Health Service
Uniting Care Wesley
Victim Support Service
Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service Inc.
Western Domestic Violence Service
Women's Legal Service
Yarredi Services (Port Lincoln Domestic Violence Service)

Preliminary Data Report

OCSARs data collections are derived from the formal recording of operational data resulting from DVRO processes. The maps of the DVRO process are considerably more detailed than and extend beyond the scope of the operational data formally recorded or available to OCSAR.

OCSAR considers the value of the snapshot analysis of Offences Reported to Police provided here as questionable, given the exclusion of incident reports classified as domestic violence (Domestic Violence Reports - DVNRs) from the SAPol data to which OCSAR has access. Concern was also expressed that the clearance status applied to domestic violence restraining order matters may need some further clarification with SAPol, as the results of this analysis do not "look right" in comparison to other data.

OCSAR considers snapshot data provided in relation to apprehension reports and court cases to be an accurate representation.

The following preliminary data report reflects snapshot data extracted relating to Domestic Violence Restraining Orders and breaches of such orders for the period 1st July, 2004 to 30th June, 2005 in response to some of the matters raised in consultation. It is based on analysis as follows:

- Offences Reported to Police (excludes incident reports classified as domestic violence)
Counted once per offence
 - o By type of report
- Offences Cleared by Police (excludes incident reports classified as domestic violence)
Counted once per offence
 - o By clearance status
- Offences apprehended by Police
Counted once per offence
 - o By type of report by Indigenous Status
 - o Offences by Gender of defendant
 - o By Gender of victim (breaches only)
 - o By relationship between victim and offender (breaches only)
 - o By age of victim (breaches only)
- Interim Restraining Orders issues by Magistrates Courts
Counted once per application
 - o By Indigenous Status
 - o By Gender
 - o By Court Location (data requires validation)
- Court Cases finalised involving application for orders and breaches of orders in all courts
Counted once per offence
 - o By Gender and Indigenous Status
 - o By Outcome
 - o By Outcome by Jurisdiction
 - o By Court Location (data requires validation)
 - o By Major Penalty (using standard OCSAR order of severity) for outcomes of convicted/guilty/found proved/order issued, varied or revoked

- o By Number of Court Appearances
- o By whether the Defendant appeared at the first hearing
Counted once per case participant
- o By Number of matters considered

Inclusions:

Matters considered under the Domestic Violence Act under the following sections:

- 4(1) Issuance Of Domestic Violence Restraining Order By The Court Or By Telephone
- 12(1) Provision For Court To Vary Or Revoke A Domestic Violence Restraining Order
- 14(1) Registration Of Foreign Domestic Violence Restraining Order
- 14(4)(A) Provision For Court To Vary A Registered Foreign Domestic Violence Restraining Order
- 14(4)(B) Provision For Court To Cancel The Registration Of A Registered Foreign Domestic Violence Restraining Order
- 15(1) Fail To Comply With Domestic Violence Restraining Order Or Registered Foreign Domestic Violence Restraining Order

Exclusions:

Matters considered under the Domestic Violence Act under the following sections:

- 10(1)(A)(I) Court Order That A Firearm Be Confiscated And Dealt With As Directed, Supplementary To A Domestic Violence Restraining Order
- 10(1)(A)(II) Order Authorising A Police Officer To Enter Premises And Search For And Take Possession Of Firearm, Supplementary To A Domestic Violence Restraining Order
- 10(1)(B) Order For The Cancellation Of A Firearms Licence Or Permit And Deliverance Of Such Licence Or Permit To The Registrar, Supplementary To Domestic Violence Restraining Order
- 10(1)(C) Order To Disqualify A Defendant From Holding Or Obtaining A Firearms Licence Or Permit, Supplementary To A Domestic Violence Restraining Order
- 10(1)(D) Order To Prohibit A Defendant From Possessing A Firearm In The Course Of Employment, Supplementary To A Domestic Violence Restraining Order
- Restraining Orders issued or breached under the Summary Procedure Act (SPOs), but related to domestic violence. (It is not possible with current data coding and recording practices to identify which SPOs relate to domestic violence and which to other unrelated matters, such as neighbour disputes.)
- Restraining Orders issued under section 19A of the Criminal Law Sentencing Act, which states that a court may issue a restraining order under the Summary Procedure Act or the Domestic Violence Act on finding a person guilty of an offence or on sentencing a person for an offence

Notes:

SAPol identifies that this data may significantly under-report the number of applications for DVRO variation, as it is not required that an Apprehension Report or a PIR be completed for an application to vary a DVRO. These would be completed at the discretion of the officer making the application to vary the Order. Data would therefore not be routinely available to enable accurate reporting.

DVRO Applications, 1st July 2004 to 30th June 2005

TABLE 1: Police data available to OCSAR indicates that 90% of DVRO related applications are applications for an order and 10% are applications to vary or revoke an order.

| | Number | % of Total |
|--|--------|------------|
| Application for issuance of DVRO (court) | 675 | 88.9% |
| Application for issuance of DVRO (telephone) | 5 | 0.7% |
| Application to vary/ revoke DVRO | 77 | 10.1% |
| Registration of foreign DVRO | 1 | 0.1% |
| Application to vary/ cancel registration of DVRO | 1 | 0.1% |
| TOTAL | 759 | 100.0% |

TABLE 2: Data from all Courts indicates that the large majority (98%) of DVRO applications in SA are initiated by police. A small number (2%) are, however, initiated as private applications.

| | Application for issuance of DVRO (court) | Application for issuance of DVRO (telephone) | Application to vary/ revoke DVRO | Registration of foreign DVRO | Total |
|---------|--|--|----------------------------------|------------------------------|-------|
| Police | 724 | 19 | 6 | 2 | 751 |
| Private | 13 | 1 | - | - | 14 |
| TOTAL | 737 | 20 | 6 | 2 | 765 |

TABLE 3: Where Indigenous Status was known, the defendant was non-Indigenous in 92.3% of DVRO related applications and Indigenous in 7.7%. Indigenous status was not known in 17.4% of applications.

| | Indigenous Status of Defendant | | | Total |
|--|--------------------------------|------------|---------|-------|
| | Non-Indigenous | Indigenous | Unknown | |
| Application for issuance of DVRO (court) | 500 | 46 | 125 | 671 |
| Application for issuance of DVRO (telephone) | 5 | - | - | 5 |
| Application to vary/ revoke DVRO | 70 | 2 | 5 | 77 |
| Registration of foreign DVRO | - | - | 1 | 1 |
| Application to vary/ cancel registration of DVRO | 1 | - | - | 1 |
| TOTAL | 576 | 48 | 131 | 755 |

TABLE 4: The defendant was male in 95.6% of all DVRO related applications and female in 4.4%.

| | Gender of Defendant | | | | TOTAL |
|---|---------------------|------|----------|--------|-------|
| | Female | Male | % Female | % Male | |
| Application for issuance of DVRO (court) | 31 | 664 | 4.5% | 95.5% | 695 |
| Application for issuance of DVRO (telephone) | 0 | 6 | 0% | 100% | 6 |
| Application to vary/revoke DVRO | 2 | 75 | 2.6% | 97.4% | 77 |
| Registration of foreign DVRO | 1 | 0 | 100% | 0% | 1 |
| Application to vary/cancel registration of DVRO | 0 | 1 | 0% | 100% | 1 |
| TOTAL | 34 | 746 | 4.4% | 95.6% | 780 |

TABLE 5: For all applications relating to DVROs in all courts (Magistrates, Higher Court, and Youth Court), 63% resulted in issuance of an order, 21% in variation of an order, and 3% in an order being revoked. In the remaining 13% of cases the application was either withdrawn, dismissed, refused, or it was determined there was no case. Two DVROs and one variation to an existing DVRO were issued in the Youth Court. All other applications were made in the Magistrate's Court.

| | Application for issuance of DVRO (court) | Application for issuance of DVRO (telephone) | Application to vary/ revoke DVRO | Registration of foreign DVRO | Total | % of Total |
|---|--|--|----------------------------------|------------------------------|------------|---------------|
| Issuance of restraining order | 469 | 10 | - | 2 | 481 | 62.9% |
| Variation of restraining order | 153 | 4 | 2 | - | 159 | 20.8% |
| Revocation of restraining order | 25 | 1 | - | - | 26 | 3.4% |
| Application for restraining order withdrawn | 62 | 4 | - | - | 66 | 8.6% |
| Application for restraining order dismissed | 24 | - | 1 | - | 25 | 3.3% |
| Application for restraining order refused | 2 | 1 | - | - | 3 | 0.4% |
| Restraining order - no action/ no case | 2 | - | 3 | - | 5 | 0.7% |
| TOTAL | 737 | 20 | 6 | 2 | 765 | 100.0% |

TABLE 6: The following identifies the court in which DVRO related applications were made (including the Youth, District and Supreme Courts).

| | Application for issuance of DVRO (court) | Application for issuance of DVRO (telephone) | Application to vary/ revoke DVRO | Registration of foreign DVRO | Total | % of Total |
|---|--|--|----------------------------------|------------------------------|------------|---------------|
| Adelaide Youth Court | - | - | - | - | 0 | 0.0% |
| Adelaide Magistrates Court (Criminal) | 137 | 1 | 2 | 2 | 142 | 18.6% |
| Berri Youth Court | 1 | - | - | - | 1 | 0.1% |
| Christies Beach Youth Court | 1 | - | - | - | 1 | 0.1% |
| Mount Barker Youth Court | 1 | - | - | - | 1 | 0.1% |
| District Court Of South Australia (Central Court) | - | - | - | - | 0 | 0.0% |
| Supreme Court Of South Australia | - | - | - | - | 0 | 0.0% |
| Berri Magistrates Court (Criminal) | 30 | 3 | - | - | 33 | 4.3% |
| Ceduna Magistrates Court (Criminal) | 6 | - | - | - | 6 | 0.8% |
| Christies Beach Magistrates Court (Criminal) | 100 | 7 | - | - | 107 | 14.0% |
| Cooper Pedy Magistrates Court (Criminal) | 19 | 1 | - | - | 20 | 2.6% |
| Holden Hill Magistrates Court (Criminal) | 77 | 1 | - | - | 78 | 10.2% |
| Kadina Magistrates Court (Criminal) | 4 | - | - | - | 4 | 0.5% |
| Port Lincoln Magistrates Court (Criminal) | 10 | - | - | - | 10 | 1.3% |
| Mount Barker Magistrates Court (Criminal) | 18 | - | - | - | 18 | 2.4% |
| Mount Gambler Magistrates Court (Criminal) | 16 | - | 1 | - | 17 | 2.2% |
| Murray Bridge Magistrates Court (Criminal) | 17 | 2 | - | - | 19 | 2.5% |
| Naracoorte Magistrates Court (Criminal) | 3 | - | - | - | 3 | 0.4% |
| Port Adelaide Magistrates Court (Criminal) | 84 | 2 | - | - | 86 | 11.2% |
| Elizabeth Magistrates Court (Criminal) | 111 | 1 | 3 | - | 115 | 15.0% |
| Port Augusta Magistrates Court (Criminal) | 50 | 1 | - | - | 51 | 6.7% |
| Port Pirie Magistrates Court (Criminal) | 23 | - | - | - | 23 | 3.0% |
| Tanunda Magistrates Court (Criminal) | 11 | - | - | - | 11 | 1.4% |
| Whyalla Magistrates Court (Criminal) | 18 | 1 | - | - | 19 | 2.5% |
| TOTAL | 737 | 20 | 6 | 2 | 765 | 100.0% |

TABLE 7: The number of court appearances for matters relating to DVRO applications finalised in all Courts. It was most common for applications to have two or three Court appearances (53%). 87% of applications were finalised with five or less appearances. A further 12% of applications were finalised with between six and nine appearances. The remaining 1% of applications required from ten to 18 Court appearances for finalisation.

| Number of Appearances | Application for issuance of DVRO (court) | Application for issuance of DVRO (telephone) | Application to vary/ revoke DVRO | Registration of foreign DVRO | Total | % of Total |
|-----------------------|--|--|----------------------------------|------------------------------|------------|---------------|
| 1 | 53 | - | 3 | - | 56 | 7.3% |
| 2 | 212 | 2 | 2 | 2 | 218 | 28.5% |
| 3 | 176 | 8 | 1 | - | 185 | 24.2% |
| 4 | 128 | 3 | - | - | 131 | 17.1% |
| 5 | 72 | 2 | - | - | 74 | 9.7% |
| 6 | 41 | 3 | - | - | 44 | 5.8% |
| 7 | 24 | - | - | - | 24 | 3.1% |
| 8 | 11 | 1 | - | - | 12 | 1.6% |
| 9 | 10 | 1 | - | - | 11 | 1.4% |
| 10 | 4 | - | - | - | 4 | 0.5% |
| 11 | 2 | - | - | - | 2 | 0.3% |
| 12 | 2 | - | - | - | 2 | 0.3% |
| 13 | 1 | - | - | - | 1 | 0.1% |
| 14 | - | - | - | - | 0 | 0.0% |
| 15 | - | - | - | - | 0 | 0.0% |
| 16 | - | - | - | - | 0 | 0.0% |
| 17 | - | - | - | - | 0 | 0.0% |
| 18 | 1 | - | - | - | 1 | 0.1% |
| TOTAL | 737 | 20 | 6 | 2 | 765 | 100.0% |

TABLE 8: "In DVRO applications finalised in all Courts, did the defendant appear at the first hearing of the application?" Available data shows that in 89% of cases, the defendant did not appear at the first hearing in making an application for a DVRO. In a further 7% of cases (possibly slightly higher than this depending on the nature of some of the other data categories provided), the defendant did appear at the first court hearing.

| | Application for issuance of DVRO (court) | Application for issuance of DVRO (telephone) | Application to vary/ revoke DVRO | Registration of foreign DVRO | Total | % of Total |
|------------------------------|--|--|----------------------------------|------------------------------|------------|---------------|
| Applicant appears | 4 | - | - | - | 4 | 0.5% |
| Defendant appears | 51 | 1 | 1 | - | 53 | 6.9% |
| Defendant appears ex custody | 7 | - | - | - | 7 | 0.9% |
| No appearance | 8 | - | 1 | - | 9 | 1.2% |
| No appearance applicant | 8 | - | 1 | - | 9 | 1.2% |
| No appearance defendant | 654 | 19 | 3 | 2 | 678 | 88.6% |
| No appearance youth | 3 | - | - | - | 3 | 0.4% |
| Ex parte leave granted | 1 | - | - | - | 1 | 0.1% |
| Unknown | 1 | - | - | - | 1 | 0.1% |
| TOTAL | 737 | 20 | 6 | 2 | 765 | 100.0% |

Breaches of DVRO, 1st July 2004 to 30th June 2005

TABLE 9: 98.6% of DVRO breaches were reported by the victim and the remainder by police.

| | Reported By | | |
|-------------|-------------|--------|-------|
| | Police | Victim | Total |
| Breach DVRO | 22 | 1,596 | 1,618 |

TABLE 10: Where an apprehension was made for a breach of a DVRO and Indigenous status was known, in 87.6% of cases the defendant was non-Indigenous and was Indigenous in 12.4% of cases. Indigenous status was not known in 2.4% of apprehensions. Where the apprehended defendant was non-Indigenous, the defendant was arrested in 41% of cases and reported in 59%. Where the apprehended defendant was Indigenous, the defendant was arrested in 71% of cases and reported in 29%.

| | Indigenous Status of Defendant | | | | | | Total |
|-------------|--------------------------------|--------|------------|--------|---------|--------|-------|
| | Non-Indigenous | | Indigenous | | Unknown | | |
| | Arrest | Report | Arrest | Report | Arrest | Report | |
| Breach DVRO | 247 | 356 | 60 | 25 | - | 17 | |
| TOTAL | 603 | | 85 | | 17 | | 705 |

TABLE 11: The defendant was male in 91.3% of apprehensions for a breach of a DVRO and female in 8.7%.

| | Gender of Defendant | | | | |
|-------------|---------------------|------|----------|--------|-------|
| | Female | Male | % Female | % Male | TOTAL |
| Breach DVRO | 61 | 644 | 8.7% | 91.3% | 705 |

TABLE 12: The victim was female in 91% of apprehensions where the gender of the victim was known and male in 8.9%. The gender of the victim was not known in 12% of data available to OCSAR.

| | Gender of Victim | | | |
|------------------|------------------|------|---------|-------|
| | Female | Male | Unknown | TOTAL |
| Breach DVRO | 566 | 55 | 84 | 705 |
| % of Total | 80.3% | 7.8% | 11.9% | 100% |
| % of Total Known | 91.1% | 8.9% | - | 100% |

TABLE 13: Where an apprehension was made for a breach of DVRO, the relationships between victim and offender was ex-spouse/ ex-partner/ de facto in 71.1% of cases, current spouse/ partner/ de facto in 9%, current or ex boy/ girl friend in 5.4%. The remaining relationship categories reported in data provided to OCSAR make it unclear whether the victim-offender relationship has been coded incorrectly or whether an order has been made inappropriately, as the relationships reported do not appear to fall within the definition of family member included in the DV Act.

| Relationship | Number | % of Total |
|----------------------------|------------|-------------|
| Acquaintance/ co-worker | 6 | 0.9% |
| Boy/ girl friend | 6 | 0.9% |
| Customer/ Patron | 2 | 0.3% |
| Ex boy/ girl friend | 32 | 4.5% |
| Ex partner/ ex de facto | 342 | 48.5% |
| Ex spouse | 159 | 22.6% |
| Parent/ guardian | 6 | 0.9% |
| Parent's Partner/ De facto | 1 | 0.1% |
| Partner/ De facto | 35 | 5.0% |
| Son/ daughter | 1 | 0.1% |
| Spouse | 28 | 4.0% |
| Stranger | 8 | 1.1% |
| Other | 14 | 2.0% |
| Unknown | 65 | 9.2% |
| TOTAL | 705 | 100% |

TABLE 14: Where an apprehension was made for a breach of a DVRO, the victim was aged between 20 and 59 years of age in 94% of cases where age was known, and between 25 and 44 years of age in 70% of cases where age was known. In 8% of cases, age of the victim was not known.

| Age of Victim | Number | % of Total |
|---------------|------------|---------------|
| Under 10 | 2 | 0.3% |
| 10-13 | 4 | 0.6% |
| 14-17 | 3 | 0.4% |
| 18-19 | 18 | 2.6% |
| 20-24 | 91 | 12.9% |
| 25-34 | 218 | 30.9% |
| 35-44 | 234 | 33.2% |
| 45-59 | 66 | 9.4% |
| 60 and over | 14 | 2.0% |
| Unknown | 55 | 7.8% |
| TOTAL | 705 | 100.0% |

TABLE 15: 30% of breaches of DVRO reported to police were dealt with by report. 19% were dealt with by arrest. 17% were filed after investigation and a further 13% were filed without being cleared. 8% received no further action and in 7% the offender was cautioned.

| | Clearance Status (Police Outcome) | | | | | | | | | | Total |
|------------------|-----------------------------------|---------|-----------------------|---------------------------|---------------------|-------------------|---------------------|----------------------------------|-------|--------|-------|
| | Arrest | Caution | Destroyed not cleared | Filed after investigation | Filed - not cleared | No further action | No offence revealed | Not cleared (being investigated) | Other | Report | |
| Breach DVRO | 311 | 116 | 19 | 276 | 209 | 133 | 27 | 33 | 9 | 482 | 1,615 |
| Percent of Total | 19.3% | 7.2% | 1.2% | 17.1% | 12.9% | 8.2% | 1.7% | 2.0% | 0.6% | 29.8% | 100% |

TABLE 16: In all courts (Magistrates, Higher Court, and Youth Court), 53% of all DVRO breaches finalised resulted in a conviction being recorded. 11% resulted in a determination of guilt with no conviction being recorded. In 35% of cases either the charge was withdrawn by prosecution, or the case was dismissed with no evidence tendered by prosecution. Six convictions were recorded in the Higher Court and one in the Youth Court. All other matters were heard in the Magistrates Court.

| Outcomes for Cases Finalised in all Courts (Counted once per offence) | Number | % of Total |
|---|--------|------------|
| Convicted | 384 | 52.7% |
| Guilty - no conviction recorded | 82 | 11.2% |
| Found Proved/ Agreed | 5 | 0.7% |
| Dismissed for want of prosecution (no trial) (TNE - Tendered no evidence) | 77 | 10.6% |
| Dismissed - trial situation | 1 | 0.1% |
| No action taken | 3 | 0.4% |
| Charge withdrawn - prosecution application (withdrawn) | 172 | 23.6% |
| Committed for trial | 5 | 0.7% |
| TOTAL | 729 | 100% |

TABLE 17: The following identifies the court in which breach of DVRO matters were finalised (including the Youth, District and Supreme Courts). The matters have been counted once per offence, so it is possible that multiple breaches by the same offender are heard at the same time. For example, ten offences heard on one Court date would be counted as ten offences.

| | Total | % of Total |
|---|-------|------------|
| Adelaide Youth Court | 1 | 0.1% |
| Adelaide Magistrates Court (Criminal) | 114 | 15.6% |
| Berri Youth Court | - | 0.0% |
| Christies Beach Youth Court | - | 0.0% |
| Mount Barker Youth Court | - | 0.0% |
| District Court Of South Australia (Central Court) | 3 | 0.4% |
| Supreme Court Of South Australia | 3 | 0.4% |
| Berri Magistrates Court (Criminal) | 50 | 6.9% |
| Ceduna Magistrates Court (Criminal) | 5 | 0.7% |
| Christies Beach Magistrates Court (Criminal) | 89 | 12.2% |
| Cooper Pedy Magistrates Court (Criminal) | 36 | 4.9% |
| Holden Hill Magistrates Court (Criminal) | 81 | 11.1% |
| Kadina Magistrates Court (Criminal) | 3 | 0.4% |
| Port Lincoln Magistrates Court (Criminal) | 20 | 2.7% |
| Mount Barker Magistrates Court (Criminal) | 10 | 1.4% |
| Mount Gambler Magistrates Court (Criminal) | 17 | 2.3% |
| Murray Bridge Magistrates Court (Criminal) | 13 | 1.8% |
| Naracoorte Magistrates Court (Criminal) | - | 0.0% |
| Port Adelaide Magistrates Court (Criminal) | 63 | 8.6% |
| Elizabeth Magistrates Court (Criminal) | 138 | 18.9% |
| Port Augusta Magistrates Court (Criminal) | 33 | 4.5% |
| Port Pirie Magistrates Court (Criminal) | 12 | 1.6% |
| Tanunda Magistrates Court (Criminal) | 10 | 1.4% |
| Whyalla Magistrates Court (Criminal) | 28 | 3.8% |
| TOTAL | 729 | 100.0% |

TABLE 18: Major penalty for breach of DVRO matters finalised in all Courts (counted once per offence). The most common outcomes were No Penalty (36%), Bond Without Supervision (21%), or Fine (16%), followed by Suspended Imprisonment (11%) and Imprisonment/Detention/Home Detention (10%).

| | Breach DVRO | % of Total |
|---------------------------------------|-------------|---------------|
| No penalty | 171 | 36.3% |
| Other order | 6 | 1.3% |
| Restraining order | 2 | 0.4% |
| Estreatment | 1 | 0.2% |
| Fine | 76 | 16.1% |
| Drivers licence disqualification | 2 | 0.4% |
| Bond without supervision | 101 | 21.4% |
| Bond with supervision | 8 | 1.7% |
| Community service order | 2 | 0.4% |
| Suspended imprisonment | 53 | 11.3% |
| Imprisonment/detention/home detention | 49 | 10.4% |
| TOTAL | 471 | 100.0% |

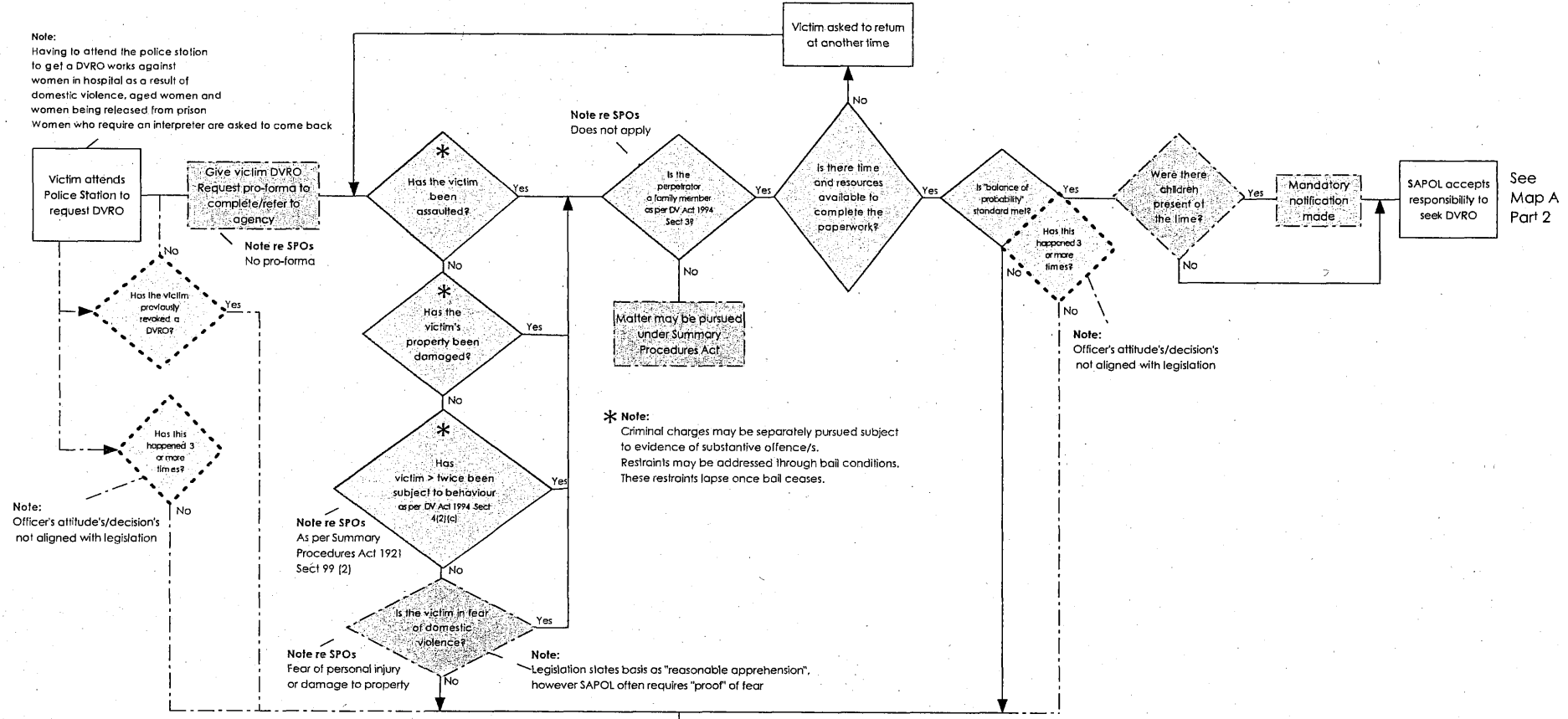
TABLE 19: The number of court appearances for breach of DVRO finalised in all Courts (counted once per offence). 20% of breach matters were resolved at the first court appearance. A further 50% of matters were finalised in between two and six appearances. 27% took from seven to 13 court appearances for resolution. The remaining 3% of applications required from 14 to as many as 23 court appearances for finalisation.

| Number of Appearances | Number of Cases for Breach of DVRO | % of Total |
|-----------------------|------------------------------------|---------------|
| 1 | 145 | 19.9% |
| 2 | 84 | 11.5% |
| 3 | 65 | 8.9% |
| 4 | 81 | 11.1% |
| 5 | 67 | 9.2% |
| 6 | 68 | 9.3% |
| 7 | 39 | 5.3% |
| 8 | 20 | 2.7% |
| 9 | 54 | 7.4% |
| 10 | 34 | 4.7% |
| 11 | 24 | 3.3% |
| 12 | 17 | 2.3% |
| 13 | 8 | 1.1% |
| 14 | 4 | 0.5% |
| 15 | 1 | 0.1% |
| 16 | 2 | 0.3% |
| 17 | 2 | 0.3% |
| 18 | 2 | 0.3% |
| 20 | 3 | 0.4% |
| 21 | 1 | 0.1% |
| 22 | 1 | 0.1% |
| 23 | 7 | 1.0% |
| TOTAL | 729 | 100.0% |

TABLE 20: Number of Breaches of DVRO Finalised in all Courts (Counted once per Case Participant). 70% of case participants had only one breach offence being considered by the Court. A further 24% had between two and four breach matters being considered by the Court at the one time. A further 6% had five or more matters being considered at the one time. 18 was the highest number of breach offences being considered for a single case participant.

| Number of matters per case participant | Breach DVRO | Breach DVRO plus Application for issuance of DVRO (Court) | Total | % of Total |
|--|-------------|---|------------|-------------|
| 1 | 289 | - | 289 | 70.3% |
| 2 | 54 | - | 54 | 13.1% |
| 3 | 30 | 1 | 31 | 7.5% |
| 4 | 12 | - | 12 | 2.9% |
| 5 | 7 | - | 7 | 1.7% |
| 6 | 7 | - | 7 | 1.7% |
| 7 | 3 | - | 3 | 0.7% |
| 8 | 1 | - | 1 | 0.2% |
| 9 | 1 | - | 1 | 0.2% |
| 10 | 2 | - | 2 | 0.5% |
| 12 | 1 | - | 1 | 0.2% |
| 13 | 1 | - | 1 | 0.2% |
| 14 | 1 | - | 1 | 0.2% |
| 18 | 1 | - | 1 | 0.2% |
| TOTAL | 410 | 1 | 411 | 100% |

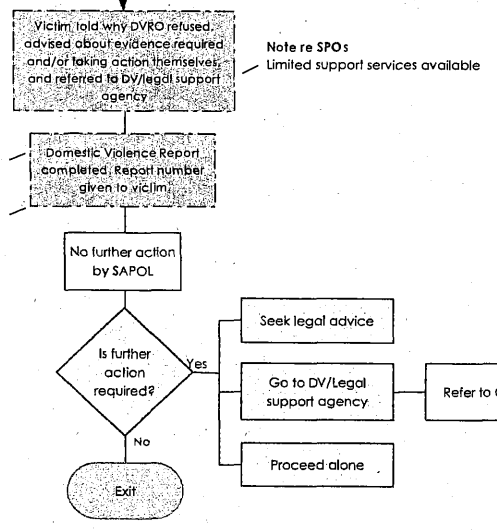
The Maps



Map A - Applying for a DVRO
Part 1: Making a request for DVRO at Police Station
11th October 2005

Note:
When a Domestic Violence Report is not completed, there is no record that DVRO has been refused

Note re SPOs
Police incident report (not DV report) is completed; practice between LSAs and/or officers is inconsistent

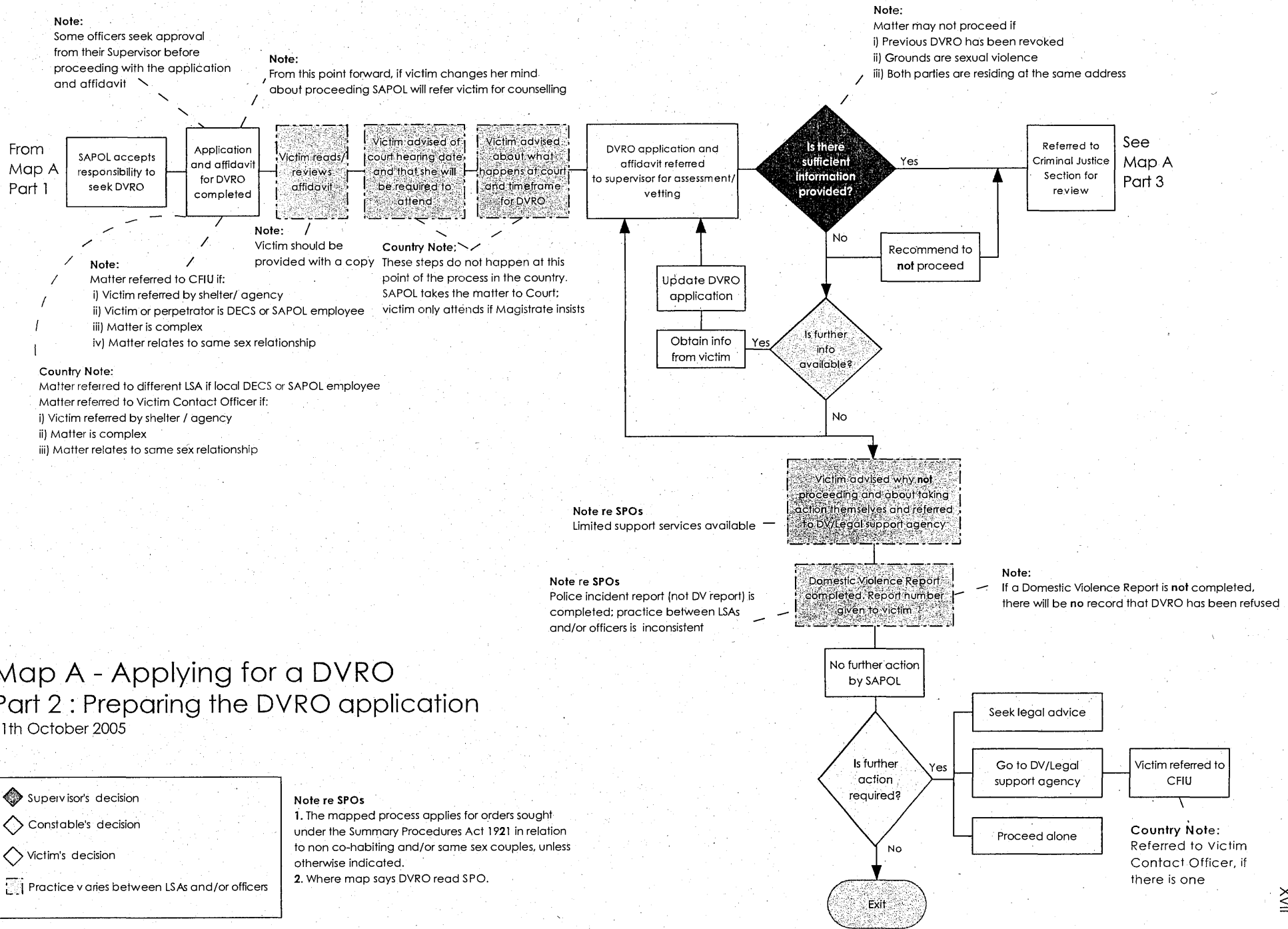


- ◇ Constable's decision
- ◇ Victim's decision
- ⊞ Contrary to the legislation
- ⊞ Practice varies between LSAs and/or officers

Note re SPOs

1. The mapped process applies for orders sought under the Summary Procedures Act 1921 in relation to non co-habiting and/or same sex couples, unless otherwise indicated.
2. Where map says DVRO read SPO.

Country Note:
Referred to Victim Contact Officer, if there is one

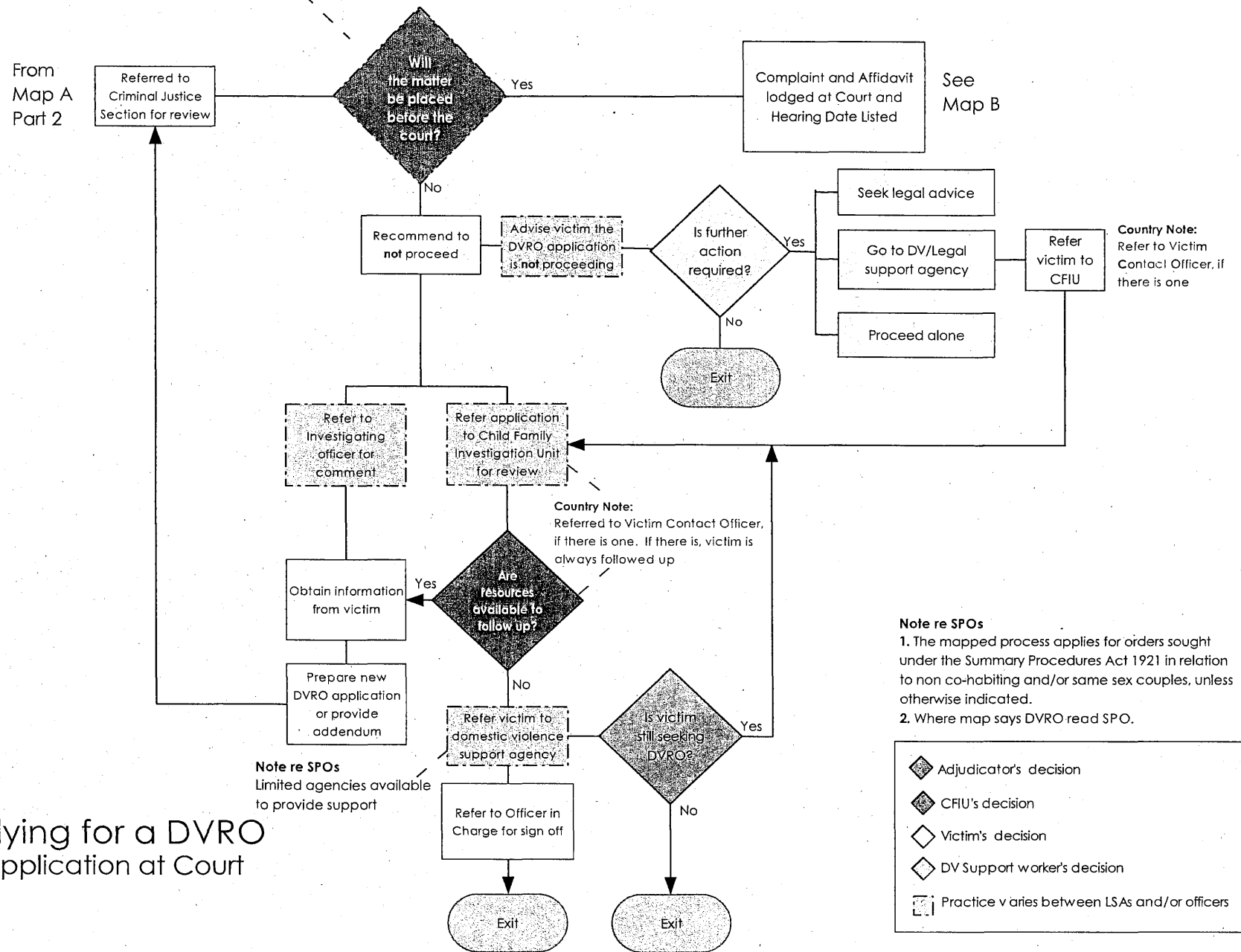


Map A - Applying for a DVRO

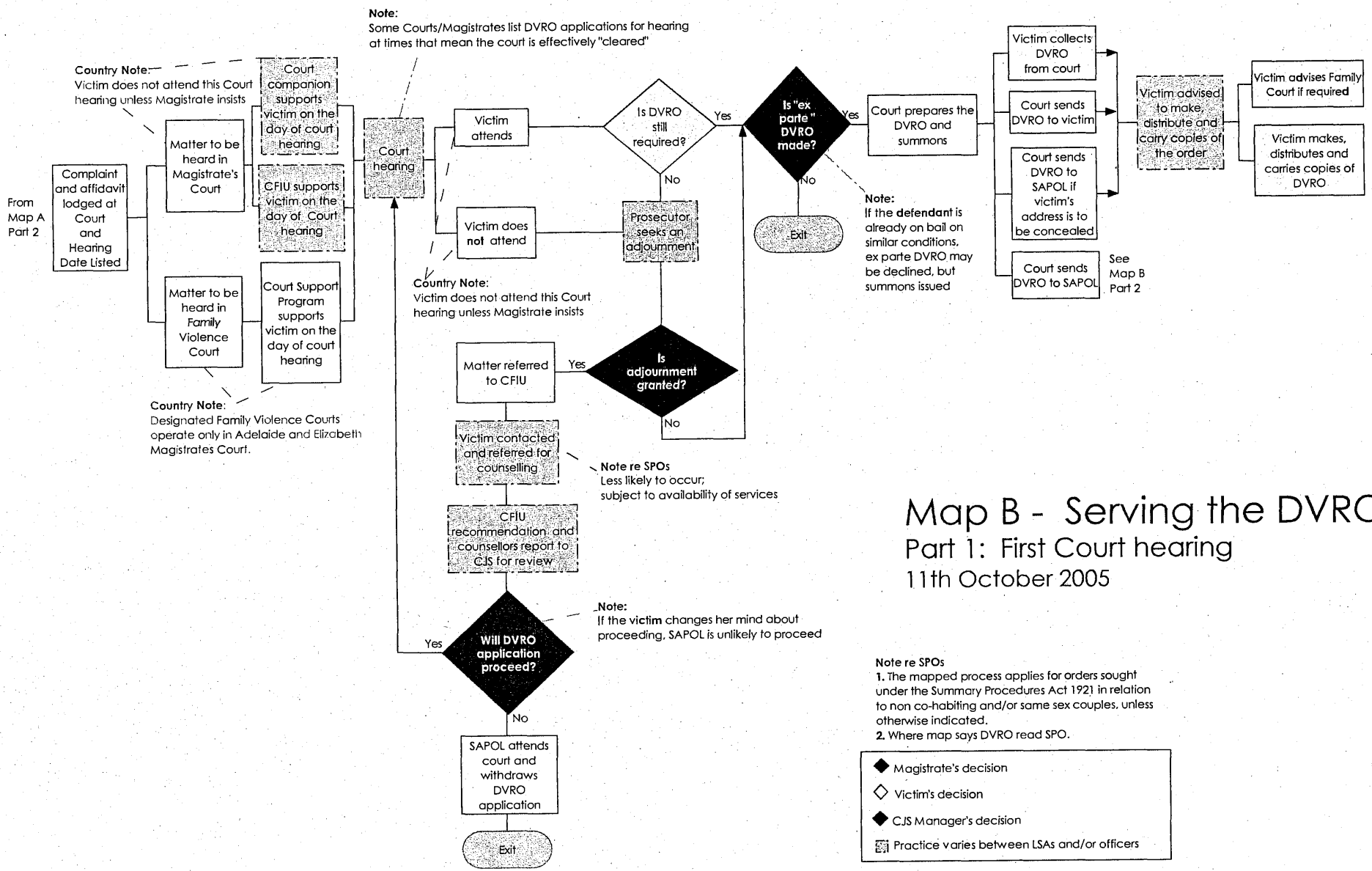
Part 2 : Preparing the DVRO application

11th October 2005

Note:
Most applications proceed once they get to this point.
If the victim changes her mind about proceeding, SAPOL will refer victim for counselling



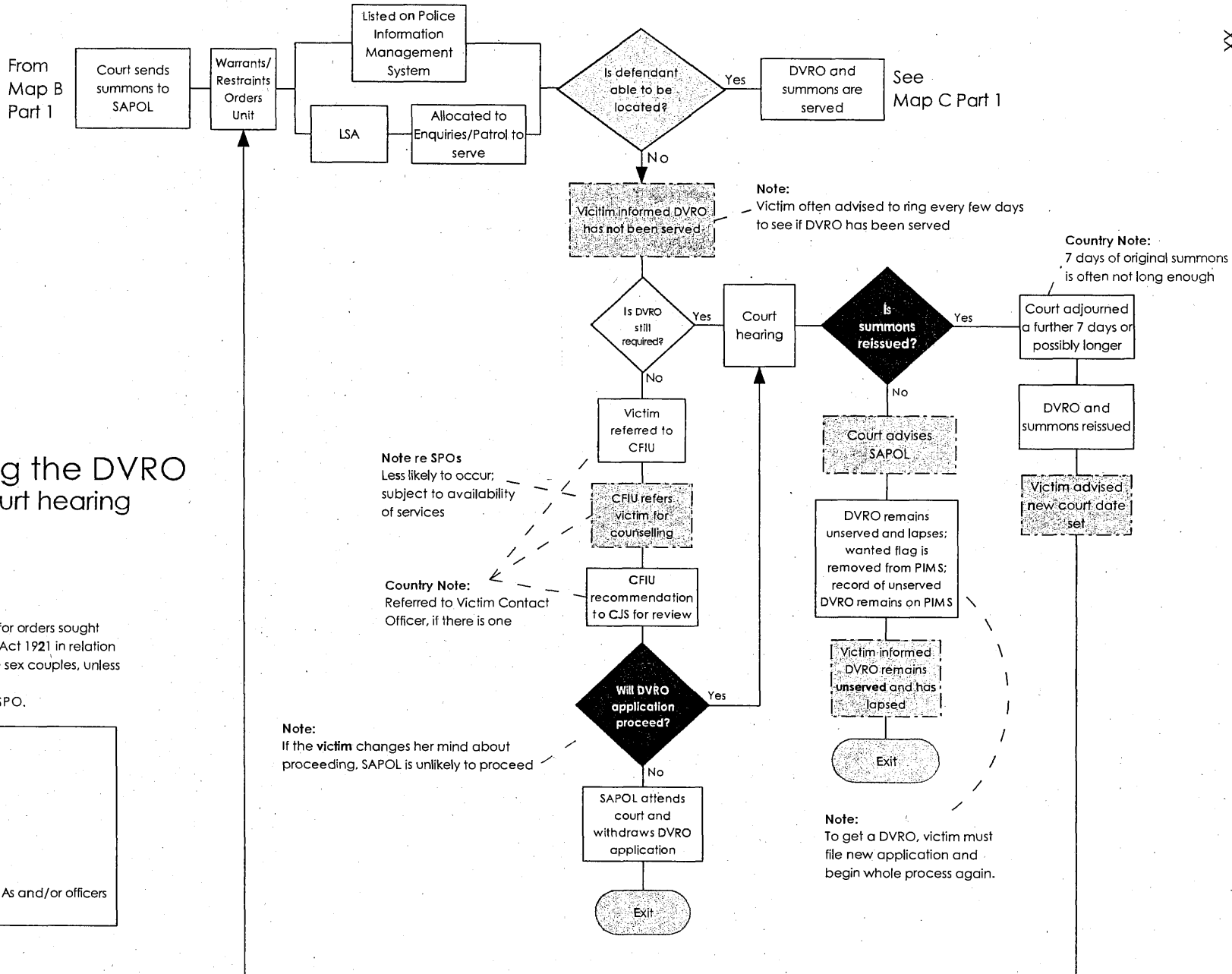
Map A - Applying for a DVRO
Part 3: Lodging application at Court
11th October 2005



Map B - Serving the DVRO

Part 1: First Court hearing

11th October 2005



Map B - Serving the DVRO
Part 2: Second Court hearing
 11th October 2005

Note re SPOs
 1. The mapped process applies for orders sought under the Summary Procedures Act 1921 in relation to non co-habiting and/or same sex couples, unless otherwise indicated.
 2. Where map says DVRO read SPO.

◆ Magistrate's decision
 ◇ Patrol/Enquiries' decision
 ◆ CJS Manager's decision
 ◇ Victim's decision
 [] Practice varies between LSAs and/or officers

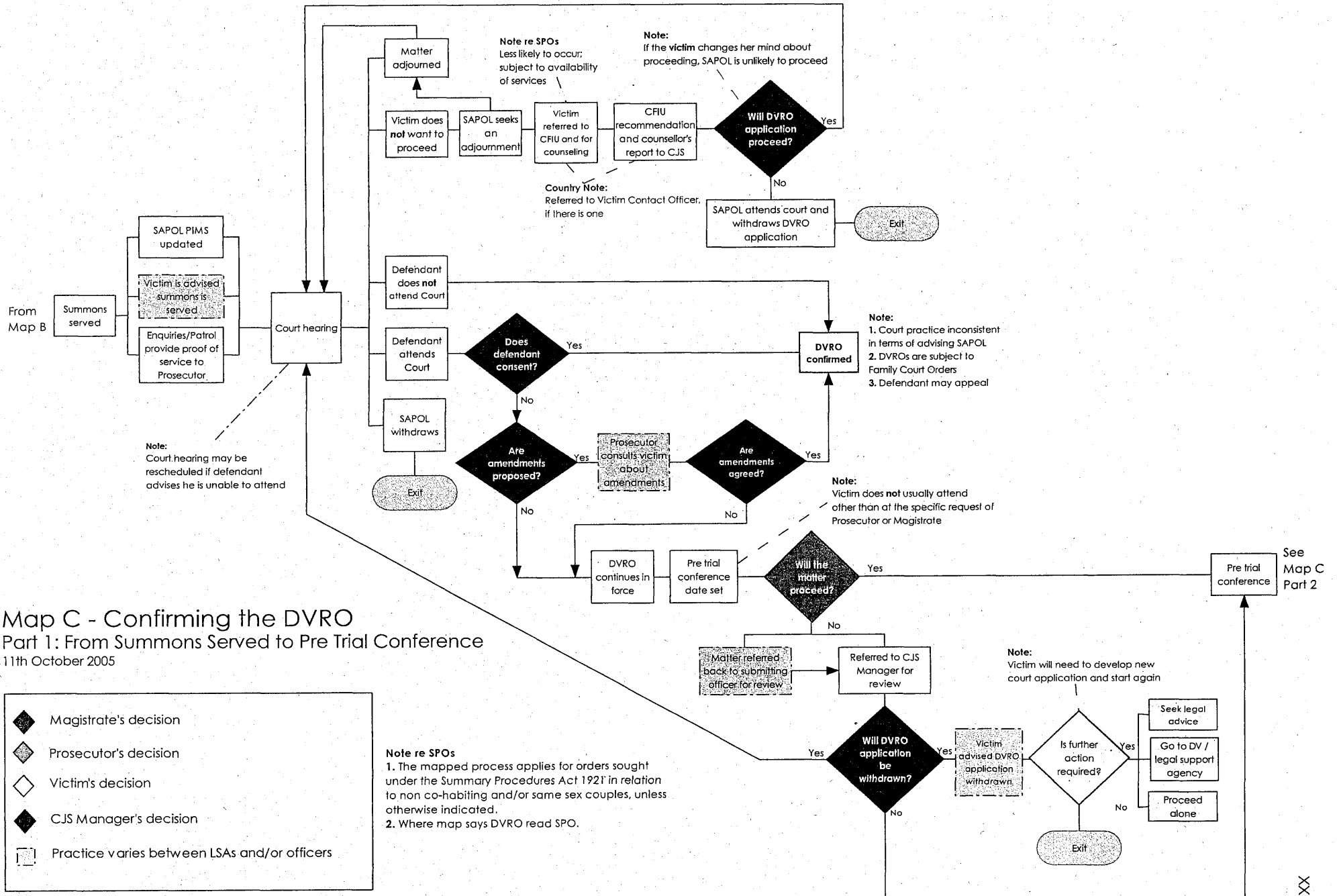
Note re SPOs
 Less likely to occur; subject to availability of services

Country Note:
 Referred to Victim Contact Officer, if there is one

Note:
 If the victim changes her mind about proceeding, SAPOL is unlikely to proceed

Note:
 To get a DVRO, victim must file new application and begin whole process again.

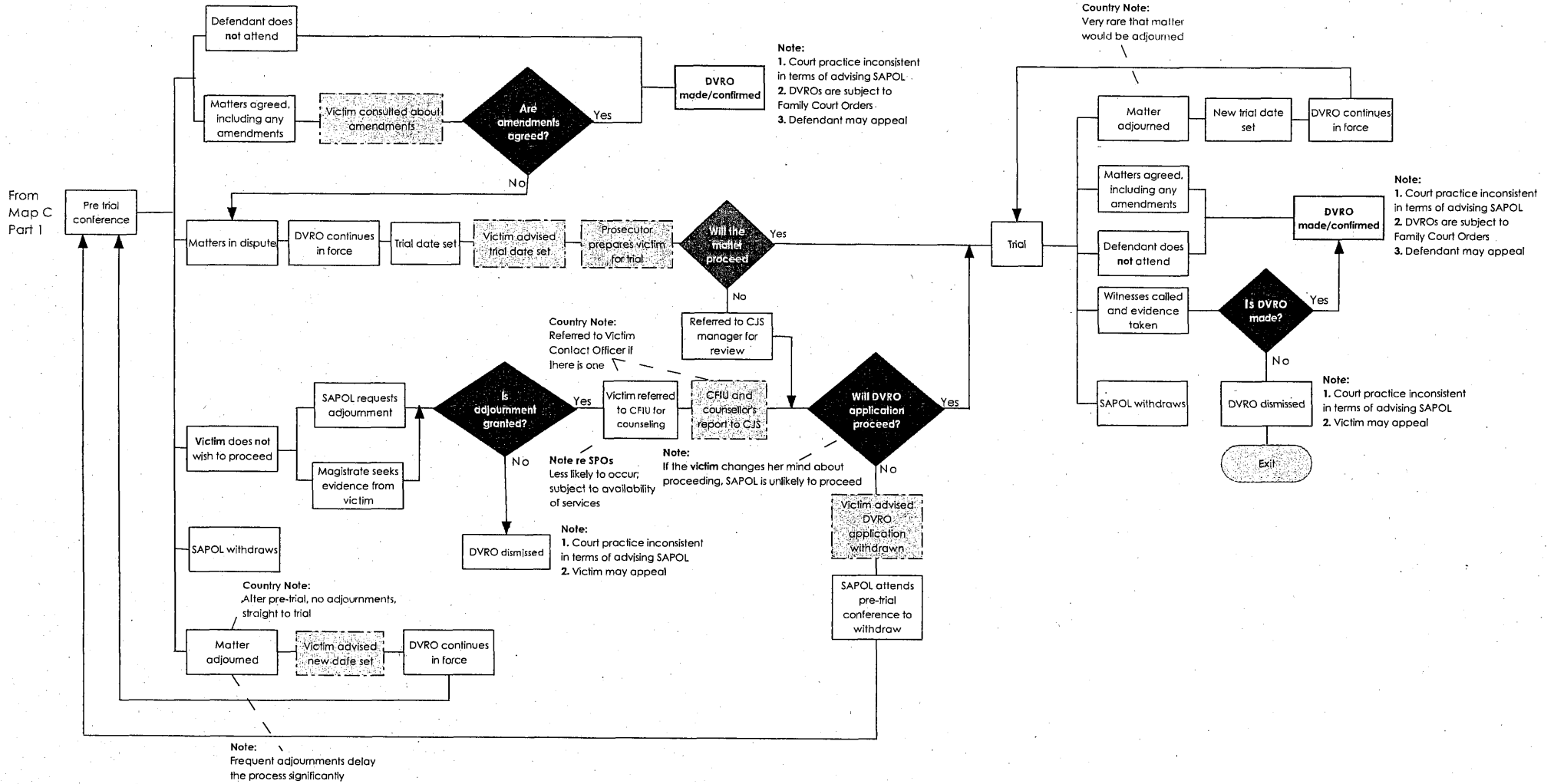
Note:
 May follow this idop a number of times attempting to serve DVRO. Magistrate or SAPOL will eventually decide, if summons cannot be served, that the application should be discharged.



Map C - Confirming the DVRO Part 2: From Pre Trial Conference to Trial 11th October 2005

◆ Prosecutor's decision
 ◇ Victim's decision
 ◆ CJS Manager's decision
 ◆ Magistrate's decision
 [] Practice varies between LSAs and/or officers

Note re SPOs
 1. The mapped process applies for orders sought under the Summary Procedures Act 1921 in relation to non co-habiting and/or same sex couples, unless otherwise indicated.
 2. Where map says DVRO read SPO.

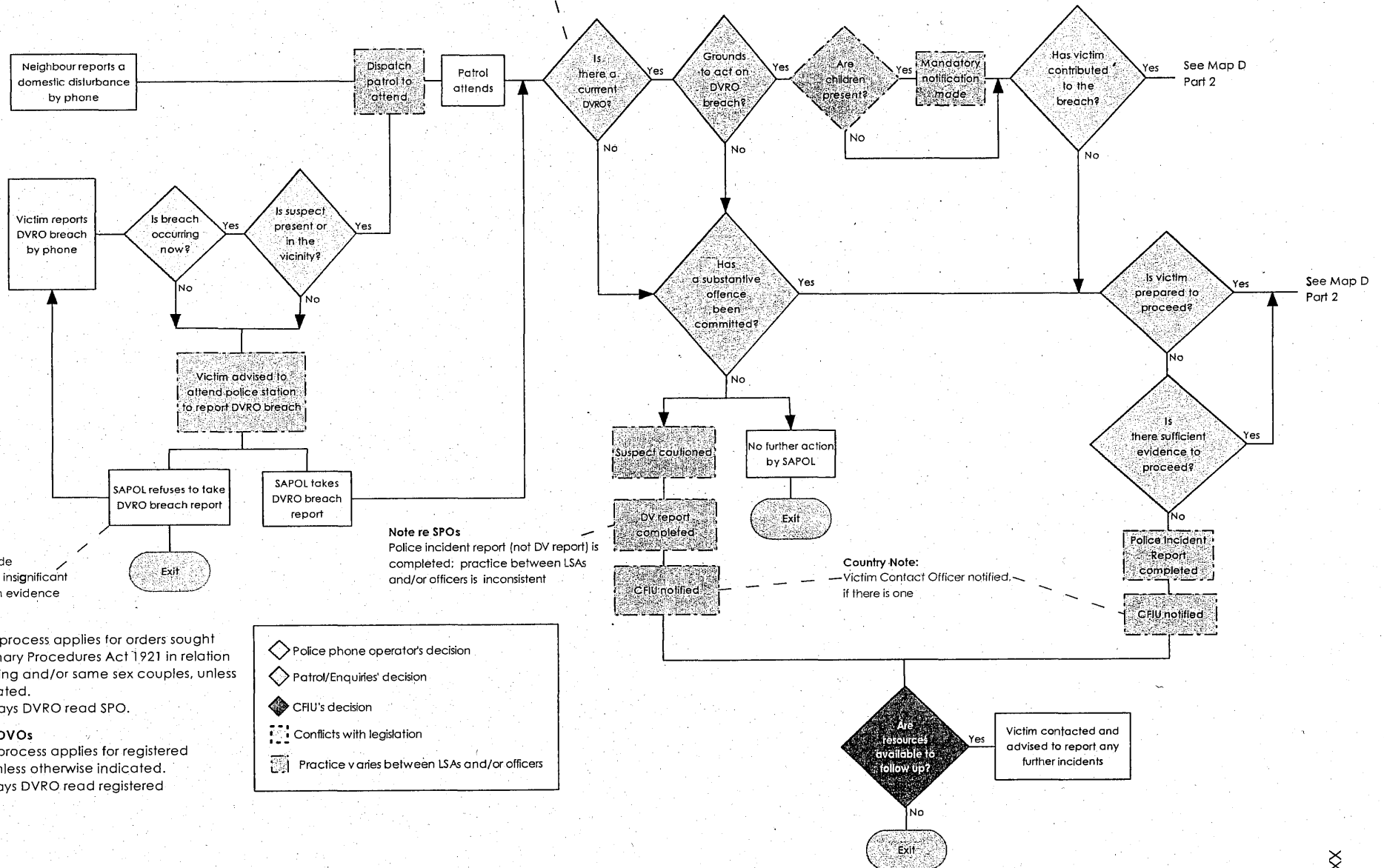


Map D - DVRO Breaches

Part 1: Reporting a DVRO Breach

11th October 2005

Note re foreign DVOs
This decision point becomes - Is foreign DVO registered in SA?



Note:
Reasons may include breach considered insignificant and/or not enough evidence

- Note re SPOs**
- The mapped process applies for orders sought under the Summary Procedures Act 1921 in relation to non co-habiting and/or same sex couples, unless otherwise indicated.
 - Where map says DVRO read SPO.

- Note re foreign DVOs**
- The mapped process applies for registered foreign DVOs, unless otherwise indicated.
 - Where map says DVRO read registered foreign DVO.

| | |
|---|--|
| ◇ | Police phone operator's decision |
| ◇ | Patrol/Enquiries' decision |
| ◆ | CFIU's decision |
| ▤ | Conflicts with legislation |
| ▨ | Practice varies between LSAs and/or officers |

Map D - DVRO Breaches

Part 2: Taking Action

11th October 2005

Note re SPOs

1. The mapped process applies for orders sought under the Summary Procedures Act 1921 in relation to non co-habiting and/or same sex couples, unless otherwise indicated.

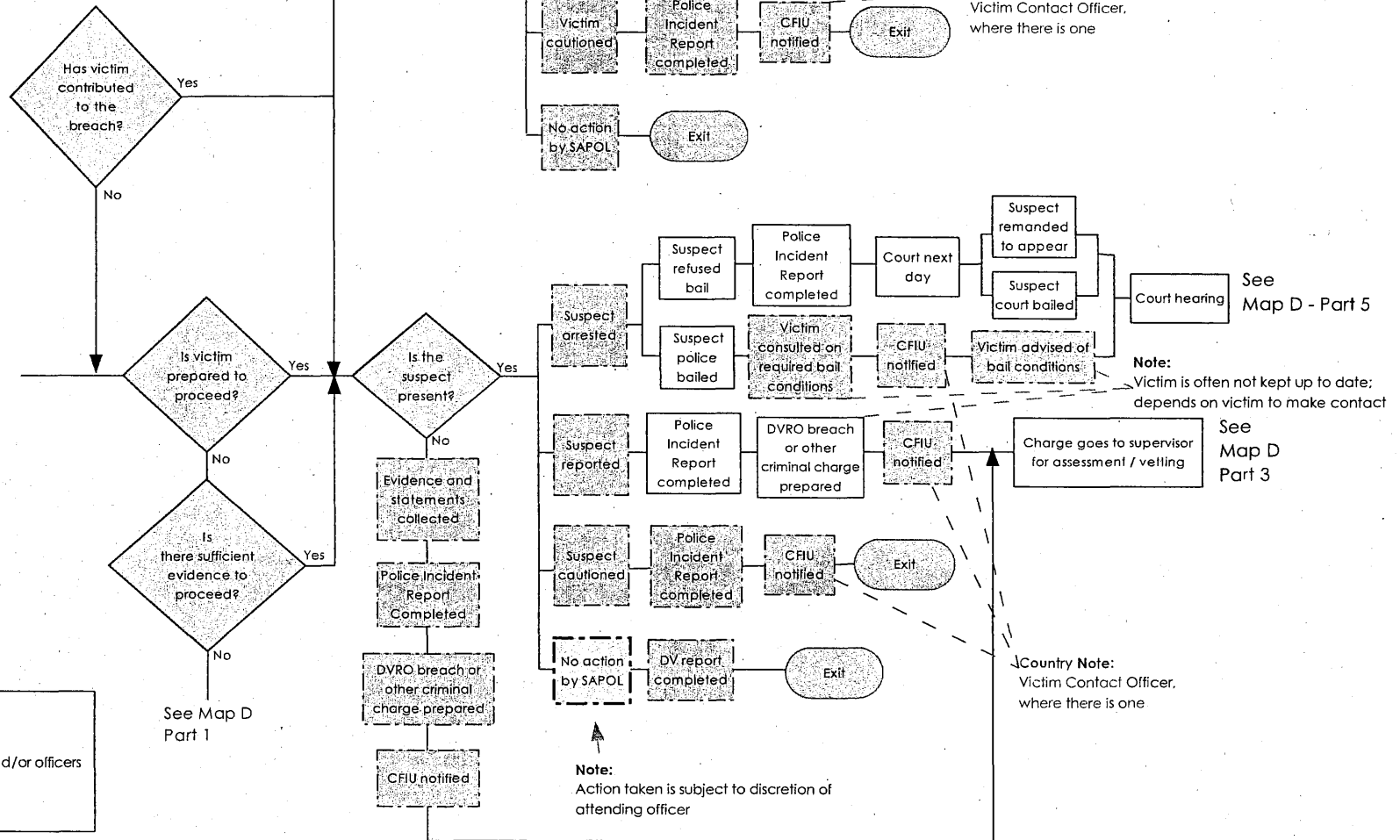
2. Where map says DVRO read SPO.

Note re foreign DVOs

1. The mapped process applies for registered foreign DVOs, unless otherwise indicated.

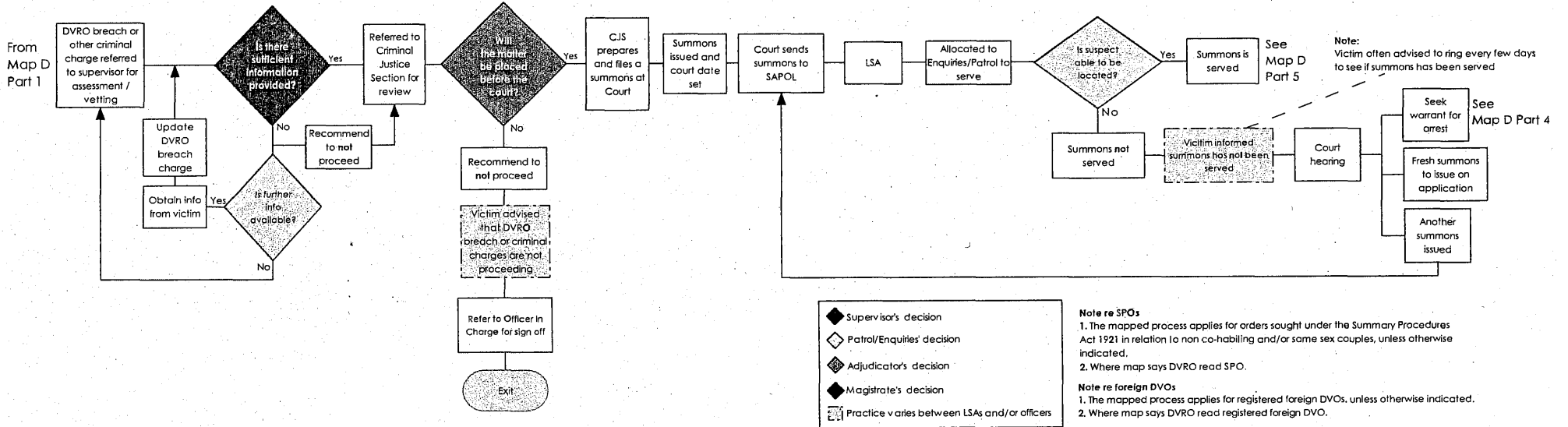
2. Where map says DVRO read registered foreign DVO.

From Map D Part 1



◇ Patrol/Enquiries' decision
▣ Practice varies between LSAs and/or officers
▣ Conflicts with legislation

Map D - DVRO Breaches
 Part 3: Getting the summons
 11th October 2005

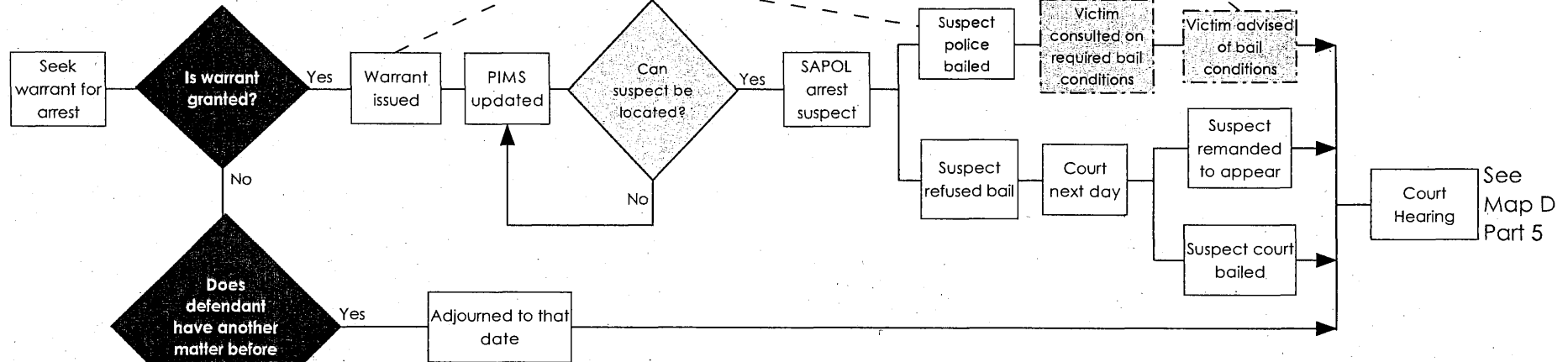


Map D - DVRO Breaches

Part 4: Seeking warrant for Arrest

11th October 2005

From Map D Part 3



Note:
Court has discretion to either require or exclude granting of police bail in the warrant. If warrant does not specify, police have discretion to grant police bail.

Note:
Victim is often not kept up to date; depends on victim to make contact

◇ Patrol/Enquiries' decision
◆ Magistrate's decision
▨ Practice varies between LSAs and/or officers

Note re SPOs

1. The mapped process applies for orders sought under the Summary Procedures Act 1921 in relation to non co-habiting and/or same sex couples, unless otherwise indicated.
2. Where map says DVRO read SPO.

Note re foreign DVOs

1. The mapped process applies for registered foreign DVOs, unless otherwise indicated.
2. Where map says DVRO read registered foreign DVO.

See Map D Part 3

See Map D Part 5

Map D - DVRO Breaches

Part 5: Court Hearing of DVRO Breach

11th October 2005

Note re SPOs

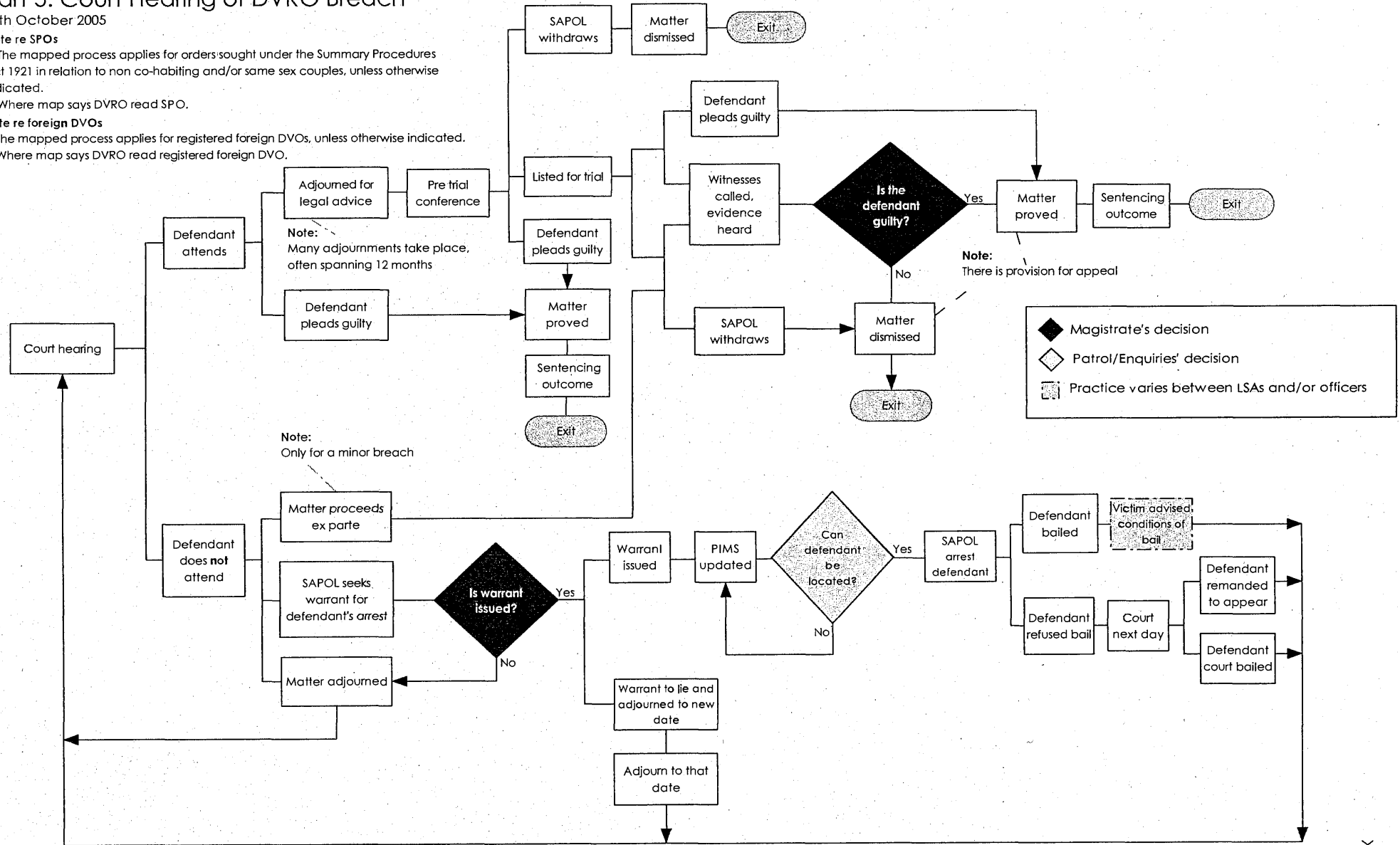
1. The mapped process applies for orders sought under the Summary Procedures Act 1921 in relation to non co-habiting and/or same sex couples, unless otherwise indicated.

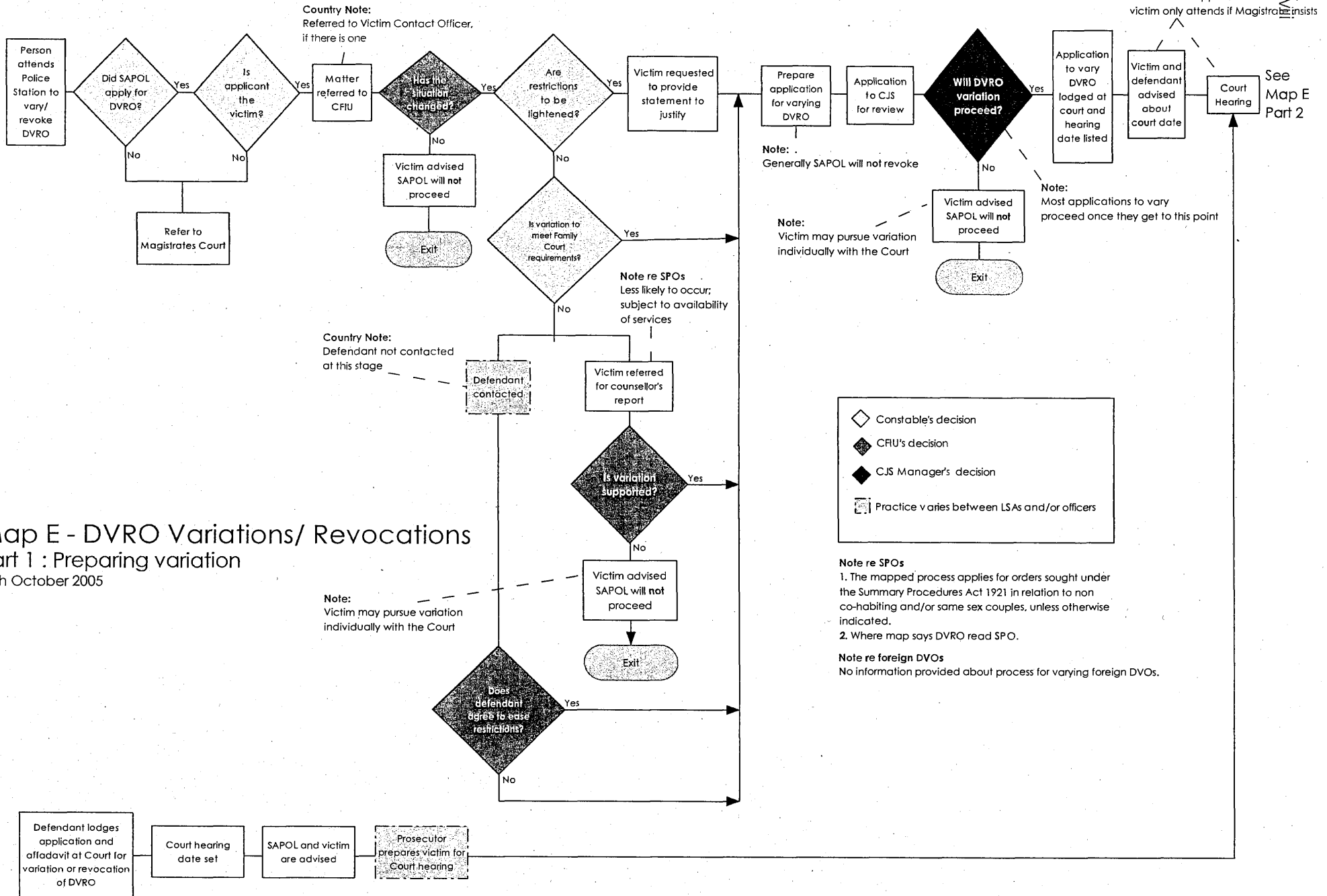
2. Where map says DVRO read SPO.

Note re foreign DVOs

1. The mapped process applies for registered foreign DVOs, unless otherwise indicated.

2. Where map says DVRO read registered foreign DVO.





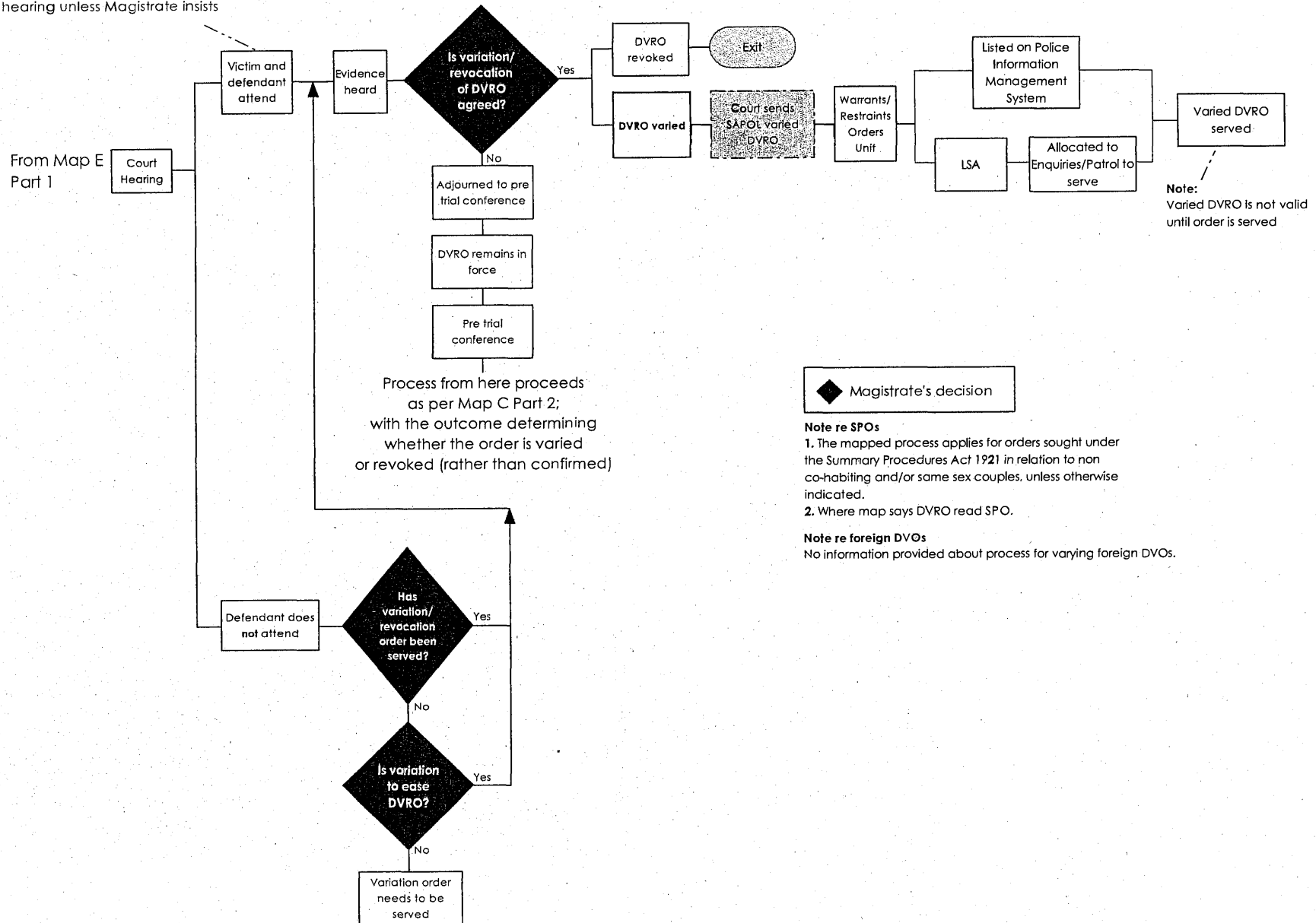
Map E - DVRO Variations/ Revocations
 Part 1 : Preparing variation
 11th October 2005

Map E - DVRO Variations/ Revocations

Part 2: Court Hearing

11th October 2005

Country Note:
Victim does not attend this Court hearing unless Magistrate insists



Map F - Registering a Foreign Domestic Violence Order

11th October 2005

