# Does providing legal advice to respondents reduce the likelihood of breaching a family violence order?

## Key findings

The provision of legal advice is a great benefit to respondents in family violence matters. Further providing a respondent with legal advice might reduce their risk of breaching a family violence intervention order (FVIO). As such, providing a respondent with legal advice might also work to improve victim safety.

To date, all research argues strongly that providing legal advice to respondents has many positive effects. Providing legal advice to respondents can improve a respondent’s knowledge of their options in responding to a FVIO, the conditions of the FVIO, the consequences of breaching a FVIO, and of court procedures.

Further, research shows that providing legal advice to respondents can facilitate the effective operation of the court and improve the mental state of respondents and applicants. Finally, there is persuasive evidence that a respondent is less likely to breach a FVIO where conditions have been tailored to their particular circumstances. A tailored order is most likely to be achieved with professional legal advice.

It is theorised that a respondent who appreciates the nuances of the conditions imposed by a FVIO, understands the gravity of breaching a FVIO, and has the benefit of tailored and realistic conditions, will be less likely to go on to breach a FVIO.

However, the quantitative evidence that is currently available is limited on the question of whether providing legal advice reduces the risk of further breaches. Limitations of the studies we examine are that they are based in NSW (so may not be applicable to the Victorian context), have small sample sizes and limited follow up periods. Nevertheless the research firmly identifies many other flow-on benefits from being provided legal advice. Further research on this issue is a priority for VLA.

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# Executive summary

This paper reviews the literature on the impact of providing legal advice to respondents of a family violence intervention order (FVIO) and whether providing legal advice reduces the likelihood that a respondent will go on to breach the FVIO.

The literature emphasises the importance of providing legal advice, notwithstanding there is very limited research on this topic and as yet, no conclusive link has been demonstrated between legal advice and a reduction in breaches. The research is also limited in its application to the Victorian context, as all studies relate to NSW, have relatively small sample sizes and limited follow up periods. Yet, despite these limitations, the research clearly shows that the provision of legal advice to respondents in family violence matters has numerous positive flow-on effects.

This paper’s recommendations calls for the continued provision of providing quality legal advice to respondents in FVIO matters. The paper also highlights the need for further research and recommends the establishment of a Victorian study to test the same hypothesis as the NSW studies discussed in this report i.e. does the provision of legal advice to respondents reduce breaches of FVIOs.

# Introduction

Victoria Legal Aid (VLA) provides free legal advice to respondents in family violence matters, this supports the individual’s right to representation and ensures fairness in the legal process. There is no doubt that legal advice is necessary to meet the needs of respondents in family violence matters. However it is also believed that providing legal advice to a respondent will also benefit the victim and the community at large.

VLA’s own data shows that in a one year period (2013/14), almost 80 per cent of clients who received legal aid services when charged with breach of a FVIO, had not received legal advice from VLA prior to the breach. Which leads us to the question, if they had received legal advice, would they have avoided breaching the FVIO?[[1]](#footnote-2)

Research on the provision of legal advice to respondents indicates that there are many positive benefits, including that legal advice improves the respondent’s knowledge of the conditions of a FVIO, and the criminal consequences of breaching the order. Also, a respondent with a legal representative can benefit from having the conditions of their FVIO ‘tailored’ to make the order more workable.

The research also suggests that there are numerous flow-on benefits from providing a respondent with legal advice. These include an increase in their knowledge of options in responding to a FVIO, as well as facilitating the easy operation of the court and improving the mental state of respondents and victims.

At the least, it would seem logical that a respondent who appreciates the extent of the conditions of a FVIO, understands the gravity of the consequences of breach, and who has the benefit of a workable, tailored FVIO, would be less likely to breach the FVIO.

Despite this, evidence to support this hypothesis is limited. Some studies have noted a link between providing legal advice to respondents and a reduction in the number of breaches of a FVIO. Other studies have suggested that legal advice has no impact on the number of subsequent breaches. However, these studies do indicate that there are many proven benefits of providing legal advice to respondents.

As such, it is likely that providing legal advice to respondents in FVIO matters not only benefits the respondent themselves, but also the victim and the community at large. For this reason it is important to support the provision of providing legal advice to respondents.

# Benefits of legal advice

This research brief will examine the question of what benefits legal assistance provides to a respondent and ultimately victim safety. In addition to a desktop review of published materials which contain anecdotal evidence of the general benefits of legal assistance, much of the research discussed has come from three NSW studies that specifically look at the benefits of providing duty lawyer legal services to respondents, including whether or not the provision of this type of legal assistance can reduce the likelihood of subsequent breaches.

## Mount Druitt Study

The Mount Druitt Pilot was commissioned in response to the NSW Government’s *Stop the Violence End the Silence NSW Domestic and Family Violence Action Plan* which made specific provision for Legal Aid NSW to ‘explore the option of an evaluated pilot AVO-Defendant lawyer scheme in two regions…to ensure better outcomes for victims and defendants.’[[2]](#footnote-3) The study (published in June 2013) sought to determine whether providing representation to defendants in Apprehended Domestic Violence matters (the NSW equivalent of the FVIO regime) would ’reduce future legal problems’.[[3]](#footnote-4) A total of 114 respondents were included in the study.

## Burwood Local Court pilot

After an internal evaluation of the Mount Druitt Pilot in 2013 and the launch of the *NSW Domestic Violence Strategy 2013-2017,* Legal Aid NSW sought to develop a second pilot to provide legal advice to Apprehended Domestic Violence Order (ADVO) respondents.[[4]](#footnote-5)

The Burwood Local Court study (published in November 2014) sought to determine whether providing legal advice to defendants in ADVO proceedings reduces the frequency with which ADVOs are breached. In the second phase of the pilot, a total of 65 respondents participated in the study, 28 of whom had received a legal advice service.

## Wyong Local Court study

The Wyong Local Court Pilot sought to determine whether or not the ‘duty advice given by the Central Coast Community Legal Centre (CCCLC) improves or increases the knowledge of defendants in relation to legal process, their legal problems and their options.’[[5]](#footnote-6)

The study (published in October 2014) gauged success not only by measuring the reduction in breaches but also increases in the respondent’s knowledge ’in reaction to legal process, their legal problems and their options’.[[6]](#footnote-7) A total of 36 clients of the legal advice service participated in the survey.

Whilst the studies did not answer the question conclusively, all three studies noted strong additional benefits from the provision of legal advice to respondents.

# Benefits of legal advice that might contribute to preventing breach

All three studies identified benefits of legal advice that might be considered germane to the prevention of breach and noted that respondents who received legal advice showed greatly increased understanding of the conditions of an order and the consequences of breach. Anecdotal evidence suggests that a respondent who has knowledge of the conditions and consequences of an order will be less likely to breach.

Further, because respondents in all three studies received legal assistance, all benefited from the chance to have the conditions of their ADVO tailored. It is believed that the negotiation of ADVO conditions can only be performed effectively by a lawyer. Further, anecdotal and empirical evidence suggests that a respondent will be less likely to breach a ‘workable’, tailored order.

## Increase in respondent’s knowledge of conditions

All three pilot studies indicated an improvement in respondents understanding of the conditions of an ADVO. Most of the 29 respondents who received legal advice in the Burwood Pilot said they ’understood the ADVO conditions as explained to them by their solicitor and the serious consequences that would result from breaching the ADVO conditions.’[[7]](#footnote-8) Stakeholders echoed this sentiment, noting that ‘defendants left the courthouse with a clear understanding of the ADVO conditions’ and ’the implications of each condition.’[[8]](#footnote-9) Further, 21.4 per cent of respondents stated that it was ‘hard’ or ‘very’ hard to understand the conditions imposed by the magistrate.[[9]](#footnote-10) This suggests that an appreciable number of respondents would greatly benefit from having a lawyer explain the conditions in detail.

The Wyong Local Court Pilot provided anecdotal evidence from the presiding magistrate. Magistrate McIntyre stated that ‘respondents are regularly served with ADVOs in ignorance of what they mean’. [[10]](#footnote-11) ’Without legal advice that explains what an ADVO is, the consequences of an ADVO and the expectation of defendants in court, people will attend court anxious and upset’.[[11]](#footnote-12) There is clearly a greater risk of breach where a respondent does not understand the nature of the conditions imposed. VLA Family Violence, Program Manager, Leanne Sinclair warns that when respondents are ’given orders they don’t understand, they can go on to breach straight away.’[[12]](#footnote-13)

There is further anecdotal evidence to support the Magistrate’s view that respondents might not fully appreciate the nature and extent of FVIO conditions. In one case study “Raoul” was told by his lawyer that ‘calling the family home seven times a week to speak to his children might be regarded as “stalking”..’[[13]](#footnote-14) The *NSW 2002 AVO Report* recognized that ‘orders are not always properly explained to parties.’[[14]](#footnote-15) The 2002 report noted that some technical language might not be easily understood, terms such as “*loiter”* and “*molest or otherwise interfere with”* are said to be unclear.[[15]](#footnote-16)

An example of a lawyers’ role in explaining the conditions of an order, can be found in the following interview with a VLA duty lawyer Tara Bressan. Ms. Bressan explained to her client that a message that read “*can I see Amy at 5pm on Saturday, pick up from McDonalds*?” would comply with the FVIO condition that he only make contact with the victim in relation to arranging contact with his child.[[16]](#footnote-17) Without this thorough explanation, respondents may breach an order if they don’t appreciate the nuances of the conditions imposed on them.

The provision of legal advice is necessary to increase a respondent’s knowledge of the conditions of a FVIO. Further, it seems likely that a respondent who understands the nature of the conditions will be less likely to breach.

## Increase in respondent’s knowledge of consequences

All three pilot studies indicated an improvement in respondents’ understanding of the consequences of breaching an ADVO.

The Burwood Pilot strongly suggests that legal advice contributed to an appreciation of the consequences of breaching an ADVO. The study detailed 82 per cent of respondents understood that breaching the ADVO conditions would result in ’serious consequences’.[[17]](#footnote-18) When surveyed, the majority of respondents stated that the solicitor gave them detailed information about the consequences of breach including the possibility they may be arrested, serve jail time or be fined.[[18]](#footnote-19) Only 6.9 per cent stated that the solicitor had told them nothing about the consequences of a breach and 6.9 per cent stated that they could not remember what the solicitor had said.[[19]](#footnote-20)

The Mount Druitt Pilot made effort to educate respondents about the ‘potential consequences under care and protection laws (e.g. removal of children by the State) if ADVO’s were breached.’[[20]](#footnote-21) It is possible that this knowledge contributed to the low number of breaches in that study.

The Wyong Local Court study relies on the testimony of Magistrate McIntyre who says that ’legal advice is necessary to emphasise the seriousness of a breach; it is in the interests of fairness that defendants know the criminal consequences that arise if they breach an ADVO.’[[21]](#footnote-22)

As such, it is clear that providing legal advice improves a respondent’s knowledge of the consequences of breaching a FVIO. There is anecdotal evidence to suggest that respondents do not fully appreciate the consequences of breach; if the respondent appreciates the consequences, it would be hoped they would be less likely to breach.

The quasi-criminal nature of FVIOs make them inherently confusing to respondents. Ms. Sinclair warns that respondents who do not receive a proper explanation of the consequences of breach ‘may not understand the criminal repercussions.’[[22]](#footnote-23) Stakeholders in the Burwood Pilot believed that in ’order to prevent defendants from breaching ADVO conditions, they should be given a detailed explanation of the…ramifications.’[[23]](#footnote-24) Further, these stakeholders recognised that this was a job best performed by ‘someone who represents the interests of the defendant and whom they can trust.’[[24]](#footnote-25)

## Tailoring conditions of a FVIO

The respondents in all three pilots benefitted from having the conditions of their ADVO negotiated by their legal representative. The ‘tailoring’ of ADVO conditions can only be effectively performed by a lawyer, who must negotiate with the police as well as the victim’s lawyer. A respondent is unlikely to be able to negotiate effectively themselves. The respondent is clearly invested and seeking an unsafe outcome due to heightened emotion, stress or anger. Further, lawyers are trained in negotiation and mediation. There is evidence to suggest that an effective means of preventing breach of a FVIO is by making them more workable by tailoring the conditions attached.

The *2002 NSW AVO* report noted that FVIOs are ‘often inappropriately drafted and may result in unworkable, vague and unclear orders being made, which are then difficult to enforce, and create unrealistic expectations and a consequent burden on police and court resources.’[[25]](#footnote-26) Anecdotal evidence from VLA duty lawyers supports the idea that tailoring conditions can prevent later breach. Ms Bressan believes that ’tailoring the intervention order to the client’s situation can prevent the men and women from returning to court because of a breach that could have been avoided.’ Ms. Bressan’s client “Graham” raised concerns about not being able to see his child due to a FVIO. Ms. Bressan made arrangements with police and the girlfriend’s lawyer to allow Graham to text his girlfriend only in relation to their child. Ms. Bressan further negotiated to amend the FVIO so that Graham could contact the girlfriend to arrange a time to see their child in a way that was safe to do so while the 12 month FVIO was still in place

This suggests that FVIOs are made more workable and realistic when conditions are tailored to meet the specific circumstances of the parties. Ms Sinclair notes that where conditions are tailored, a respondent is ‘more likely to comply with the order’ which in turn ’promotes victim safety.’[[26]](#footnote-27) It is clear that where conditions cannot plausibly be followed, there is likely to be a breach. This is especially true in instances where there are children. In the Burwood Local Court Pilot, one respondent conceded that he did not believe he could comply with the conditions on the ADVO, as he was still in a relationship with the victim and he regarded it as impossible not to be in contact with her.[[27]](#footnote-28) While it is impossible to assess the veracity of that claim, it seems that some people seek to continue in the relationship while an FVIO is in place. In circumstances where a belief is held by either party that a reconciliation is possible, then there may be less motivation to comply with a no-contact order.

The empirical research supports the view that FVIOs are less likely to be breached where the conditions are tailored. The authors of the Mount Druitt study noted that when a lawyer was able to negotiate the conditions of the ADVO, they ‘tended to be more realistic, took into account child contact arrangements and were therefore less likely to be breached.’[[28]](#footnote-29) Similarly, Mount Druitt stakeholders noted that respondents were less likely to breach an order if they had a plan in place to have contact with their children (where it was safe to do so).[[29]](#footnote-30) The research showed that there were no breaches where a final order was granted and two conditions were changed, and there were no breaches where there was some tailoring of orders relating to children.[[30]](#footnote-31) The Burwood Pilot noted that legal advice led to ’negotiated and practicable ADVOs’ that were developed to ‘reflect the unique needs of both the PINOPs (Person In Need Of Protection) and the defendants.’[[31]](#footnote-32)The Wyong Local Court Pilot noted improvement in the respondent’s self-reported knowledge of their option to negotiate undertakings. Prior to obtaining legal advice, 26 respondents (72 per cent) indicated that they did not know anything about their option to negotiate undertakings. After the provision of legal advice, 41 per cent reported knowing everything that they needed to know about negotiating undertakings.[[32]](#footnote-33)

A respondent that receives legal advice is likely able to have the conditions of their FVIO tailored to make them more workable. Further it seems that a ‘workable’ FVIO is far less likely to be breached, assisting with victim safety.

# Additional benefits of legal advice

Irrespective of the impact on breach rates, legal advice has many positive flow-on effects. Some of these help improve the lives of the respondent; including an appreciation of the legal options available to them, an understanding of the court procedure, and a general elevation of mood. Some of these help the wider community, through the easy administration of the court process. Some of these help the victim by facilitating the respondent’s acceptance of an order.

## Increase in respondent’s knowledge of options

Research suggests that above all, respondents are most ignorant about their options in responding to a FVIO. Many are unaware of what options they have during the FVIO application process. Respondents may not be fully aware of their option to defend the matter at a contested hearing. In particular, respondents seem ignorant to the ’consent without admission’ procedure, in which a respondent can accept the conditions of the FVIO without making any admission as to their liability or the veracity of the victims’ complaint.

Data taken from interviews from the Wyong Local Court Pilot show a clear self-reported increase in respondents’ knowledge about their option to consent to an AVO without admissions, following the provision of legal advice.[[33]](#footnote-34) There were 23 surveyed defendants (64 per cent) who indicated that prior to obtaining legal advice, they ’did not know anything’ about their option to consent without admission.[[34]](#footnote-35) Following the provision of legal advice, approximately 55 per cent of defendants ’knew everything they needed to know’ about their option to consent without admissions.[[35]](#footnote-36)

Similarly the Wyong Pilot data indicates that prior to obtaining legal advice, 23 defendants (64 per cent) indicated that they ‘knew nothing’ about their option to defend the AVO. After obtaining legal advice, 22 defendants (61 per cent) said they ‘knew everything they needed to know’ about their option to defend. This strongly suggests that legal advice can significantly increase a respondent’s knowledge of their options. Further this implies that many respondents may be consenting to AVO’s without fully considering the options available to them. This might mean that some respondents stubbornly seek to defend the AVO because they think it is an admission of guilt. Or inversely, some respondents might accept an AVO, despite their belief that the grounds for application are untrue, as they are unaware of their option to defend.

Indeed there is some anecdotal evidence of respondents ’consenting to orders they didn’t’ fully understand.’[[36]](#footnote-37) The presiding magistrate in the Wyong Local Court Magistrate McIntyre, suggests that some respondents don’t fully appreciate the quasi-criminal nature of an ADVO and ’consent to an ADVO without contemplating the prospective ramifications of this.’[[37]](#footnote-38)

## Increase of respondents knowledge of court procedures

The research indicates that the provision of legal advice helps to improve the respondent’s knowledge of court procedures.

The Central Coast Community Legal Centre (CCCLC) stated that ADVO defendants regularly sought legal advice about court procedure, these ’practical concerns’ often took ’precedence over substantive concerns’.[[38]](#footnote-39) The CCCLC identified the most common concerns of respondents to be procedural, questions of ’where to physically stand in court, how to address the Magistrate’ and ’what they are expected to say in court.’[[39]](#footnote-40)

The Wyong Pilot showed that 21 defendants (58 per cent) indicated that they ‘did not know anything’ about what to do or say in the courtroom before the provision of legal advice. After receiving legal advice, no defendants felt that they ’did not know anything’ about what to do or say in court, with 20 defendants (56 per cent) indicating that they subsequently ‘knew everything’ they needed to know.

## Facilitates efficient operation of the court

All three pilots suggested that the provision of legal advice facilitated the effective operation of the court. Further, all three indicated that informed respondents were more manageable.

Stakeholders in the Burwood Pilot stressed that ’unrepresented defendants often waste the courts time by using the court as a forum to outline their position, asking questions of the magistrate, not understanding questions asked by the magistrate or requesting adjournment in order to seek legal advice or to obtain a qualified interpreter.’[[40]](#footnote-41) The stakeholders stated that following the provision of legal advice or where defendants were actually represented in court, ’magistrates received clear and concise advice regarding the matters, ensuring the court processes ran smoothly and matters were disposed of efficiently.’[[41]](#footnote-42) Similarly, stakeholders noted that matters in which the respondent had a lawyer ’proceeded more smoothly in the courtroom and were finalised more quickly due to the prior negotiation and resolution of issues.’[[42]](#footnote-43)

The authors of the Wyong Pilot expressed very similar sentiments, with the CCCLC advice clinic leading ’directly to a smoother running of the Local Court.’[[43]](#footnote-44) Stakeholders like the Registrar at the Wyong Local Court indicated that ‘since the inception of the…Legal Advice Clinic, defendants are more inclined to present in court with an understanding of what their options are.’ [[44]](#footnote-45)

## Positive psychological benefits for respondents

All three studies indicated that the provision of legal advice improved the mental wellbeing of respondents. Stakeholders in the Mount Druitt Pilot reported that the provision of legal advice led to an ‘increased level of engagement in defendants…and a greater sense of empowerment and satisfaction with the outcome.’[[45]](#footnote-46)

Stakeholders in the Burwood Pilot observed that having ’solicitors available to advise and represent them, the defendants tension levels were reduced’. This also helped improve the general court environment.[[46]](#footnote-47) Similarly, stakeholders in the Wyong Pilot indicated that the procedural advice has a ’calming or reassuring impact on defendants before they present to court.’[[47]](#footnote-48)

# The link between legal advice and reducing breach of intervention orders

All three studies showed that respondents had an improved understanding of the conditions of a FVIO and the consequences of breaching them. Further, respondents in all three studies benefited from having the conditions of their order tailored – a factor strongly linked to reducing instances of breach. As such, we might expect the same three studies to show that the provision of legal advice led to a comprehensive reduction in instances of breach. However the evidence is inconclusive as the sample sizes are small in each study. A longer period of follow up may allow for a more accurate assessment of the usefulness and benefits of legal advice.

Studies examining whether providing respondents with legal advice reduces the number of breaches of an order are limited. We have only found a few studies, the studies from New South Wales discussed in this paper. The Mount Druitt pilot recognised a link between the provision of legal advice and a reduction in the number of breaches of intervention orders. The Wyong Local Court Pilot also recognised a link between the provision of legal advice and reduction in the number of breaches over a twelve-month period. However over a longer eighteen month period, there was in fact a slight increase in the rate of breaches. The Burwood Local Court pilot was commissioned as a follow-up to the Mount Druitt Pilot and aimed to determine the question conclusively with better research conditions. The Burwood Local Court pilot found no link between the provision of legal advice and a reduction in the number of breaches of intervention orders. As such, the results are inconclusive.

It would be helpful to commission a similar Victorian study to help determine this question.

## Positive link

### Mt. Druitt Pilot

The specific aim of the pilot was to test the hypothesis that ’providing holistic minor assistance and duty representation to defendants in AVO matters [would] reduce future legal problems.’[[48]](#footnote-49) This was a completely original proposal as Legal Aid NSW had not previously provided this kind of service to respondents. A Legal Aid NSW duty solicitor provided legal advice to respondents in family violence matters from the end of November 2011 until December 2012.

The official BOCSAR data from 2009-2012 showed that on average, 33.5 per cent of all ADVO issued in Mount Druitt were breached.[[49]](#footnote-50) During the pilot period of 1 July to 30 December 2012, 58 final and 36 interim orders were granted.[[50]](#footnote-51) Of these, only 7 breaches occurred representing a breach rate of 7.44 per cent.[[51]](#footnote-52) This supported the tested proposition, with the authors noting the ’seemingly low breach rate for defendants during the second half of the pilot.’[[52]](#footnote-53) This data would suggest a significant reduction in the rate of breaches following the introduction of the duty lawyer service to respondents of ADVOs.

Further the Mount Druitt pilot suggests that negotiating undertakings or tailoring the conditions of an ADVO may help reduce breach rates. In the Mount Druitt pilot, there were significantly fewer breaches of orders where conditions had been negotiated by the respondent’s lawyer, and no breaches were recorded that involved tailoring orders related to children.[[53]](#footnote-54)

Similarly, in the Mount Druitt Pilot, breaches of orders only occurred where advice was given at the first mention of the matter and the matter was not adjourned.[[54]](#footnote-55) There were no breaches of final orders in cases where the matter was adjourned.[[55]](#footnote-56) This may indicate that adjourning matters for legal advice has a positive impact on the rate of breaches.[[56]](#footnote-57) Where a respondent had an associated charge, the ADVO solicitor would often have the matter adjourned so that the respondent could attend a crime advice clinic.[[57]](#footnote-58) The ADVO and charge matters would then be mentioned in court together by a crime duty solicitor, not the pilot solicitor.[[58]](#footnote-59) This may explain the impact of adjournment on low breach rates.

However, the study suffered from several limitations. A consistent period of time was not applied when checking to see whether defendants had gone on to breach the order. For some defendants a number of months would have passed, for others only a number of weeks.[[59]](#footnote-60) Further there was a change in police operations during the pilot, which means that the ’breach rate may also have been impacted by operational changes in the policing of ADVOs.’ Further, this study lacked an appropriate baseline for comparison, relying only on the official breach data, rather than a control group.[[60]](#footnote-61)

### Wyong Local Court Pilot

The aim of the Wyong Local Court pilot is slightly different, in that it also seeks to assess improvements in respondent knowledge. The authors assumed that legal advice would be beneficial for respondents. They recognized the benefits of legal advice in assisting respondents in ’understanding the serious and widespread consequences that may flow from an ADVO’ as well as reducing the prospect of ’defendants blindly consenting to an ADVO against them, without a proficient understanding of the impacts that it may have.’[[61]](#footnote-62)

Statistical data showed that in the immediate twelve months before the commencement of the CCCLC’s Legal Advice Clinic there were 310 finalised charges for breach of ADVO at Wyong Local Court, representing a breach rate of 26 per month. In the first twelve months following the commencement of the Legal Advice Clinic, there was a 21 per cent decrease in the number of charges brought at Wyong Local Court for breach of ADVO.[[62]](#footnote-63) The number of finalised breach charges for this period was 245, at a rate of approximately 20 per month.[[63]](#footnote-64) This suggests that legal advice may have an impact on reducing instances of breach of an ADVO.

However over a longer time period, the Wyong Local Court actually reported a gradual increase in the rate of breach for ADVOs. The report did not explore the reasons for this. Further, the Wyong Pilot used a very small survey sample size of 36 respondents, and as such it is difficult to draw wider conclusions as to its effectiveness.

## No link

### Burwood Local Court Pilot

The Burwood Local Court Pilot aimed to determine whether providing legal advice for defendants in ADVO proceedings reduces the frequency with which ADVOs are breached. The Burwood Pilot used two groups, a control group in which defendants did not receive legal advice, and an assisted (treatment) group which did receive legal advice. As such, the Burwood Pilot was able to obtain a ’baseline measure of the reduction in proscribed behaviours that normally follows the granting of an ADVO.’[[64]](#footnote-65) This is distinguished from the Mt. Druitt Pilot which did not have a control group, and relied exclusively on records from previous years.

The Burwood Pilot found that ’contrary to expectation’ the reduction in breaches was no greater for those defendants who “had the advantage of free legal advice” compared to those who did not receive legal advice.[[65]](#footnote-66) The authors noted, though, the perceived benefits of legal advice, with respondents having ’ADVO conditions tailored to their specific circumstances, receiving an explanation of each condition as well as information regarding the ramifications of breaching any condition, being referred to relevant agencies to receive assistance regarding social issues and being professionally represented in court.’[[66]](#footnote-67)

The report implied that both the conditions and criminal consequences of breaching an ADVO are inherently easy to understand, and as such, legal advice could provide no additional benefit in this regard. The report detailed that 57 per cent of defendants interviewed, felt that the ADVO conditions imposed by the magistrate were ‘easy or very easy to understand.’[[67]](#footnote-68) A total of 92 per cent considered themselves capable of complying with the conditions.[[68]](#footnote-69) This led the authors to conclude that the legal advice may have had ‘no additional impact’ because ’ADVO defendants already know the potential ramifications of breaching an ADVO and therefore comply with the conditions.’[[69]](#footnote-70)

This study is again limited by its very small sample size, with only 28 people in the treatment group. Further the study used a four-week follow-up period, the difference between the control and treatment groups may have been more pronounced over a longer period.

### Wyong Local Court Pilot

The final, most up-to-date statistics obtained by the Wyong Local Court Pilot indicated that for the total period (November 2013 – March 2014, an additional 6 months) there was actually a steady increase in the monthly rate of breaches of ADVOs brought in the Wyong Local Court since the commencement of the CCCLC Legal Advice Clinic.[[70]](#footnote-71)

While the first iteration of the pilot (November 2012 to October 2013) saw a reduction in the number of subsequent breaches, over the extended period (October 2013 – March 2014), an additional 147 charges for breach of ADVO were brought. This meant that for the total period (November 2013–March 2014) there was a relative monthly increase, with an approximate rate of 29 breaches per month (up from 26 prior to the pilot).[[71]](#footnote-72) However, the authors suggest that the increase may be ‘attributable to the observed tendency for a higher number of ADVO matters to arise between December and January.’[[72]](#footnote-73)

## Evidence is insubstantial

Given the strong theoretical foundation for the belief that legal advice would reduce instances of breach and the empirical evidence that legal advice actually increased respondent knowledge, the results are surprising.

All three studies suffered from limitations. The Mount Druitt study did not use a baseline for comparison, and changes to police operations may have impacted the breach rate. The Burwood Local Pilot used a very small follow up period. All three studies had very small sample sizes.

More evidence is needed to determine the question conclusively. It would be greatly beneficial to have a Victorian pilot study that used a large sample group and used a control group for effective comparison.

# Conclusion

It’s clear that respondents to FVIOs benefit from the provision of free legal advice. It is believed that providing respondents with legal advice may reduce instances of breaching an order. As such, providing respondents with legal advice will have wider benefits to the victim and the community.

Research has shown that the provision of legal advice improves the respondent’s knowledge of the conditions of a FVIO and the criminal consequences of breach. Further, research has shown that having the conditions of a FVIO tailored may reduce instances of breach. The negotiations of the conditions is best achieved by a lawyer. As such, this supports the theoretical belief that providing legal advice to respondents will reduce instances of breach.

Despite this, the three studies considered did not draw a conclusive link between legal advice and a reduction in breach rates. It would be beneficial for a Victorian study to determine this question conclusively, given the strong rationale for the belief that legal advice will reduce instances of breach and improve victim safety.

Irrespective, it is clear that providing legal advice has many positive benefits. Not only those listed above, but also flow-on benefits that can help the respondent, the victim and community.

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