

Top End Women's Legal Service Inc

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Honourable John Elferink MLA
Attorney-General and Minister for Justice
NT Government

By email to: Minister.Elferink@nt.gov.au

Dear Minister Elferink,

Reform of Personal Violence Restraining Orders

Top End Women's Legal Service provides free legal advice, community legal education and advocacy on issues of importance to the women of Darwin and surrounding areas. We have observed a particular deficiency with the legislation relating to Personal Violence Restraining Orders (PVRO's), which is of particular concern to our client base. Both Nicki Petrou and solicitor Aditi Srinivas have raised these concerns with you in separately in 2013 & 2014. There has been an increasing incidence and need for services to assist in Personal Violence matters.

In the Northern Territory:

1. Police rarely if at all assist victims in obtaining PVRO's despite having the discretion to do so pursuant to s 82 (c) *Justices Act*. This appears to be due also from a mistaken belief that they in fact do not have the powers to do so, notwithstanding the legislation contemplated that Police would be required in some instances to take out such applications.
2. Victims are unable to obtain interim PVRO's. This leaves victims vulnerable for a minimum of a month before the matter is set for final hearing. The absence of a provision enabling a court to order an interim PVRO to immediately protect the person, has also been cited as a reason why police don't get involved, unlike domestic violence orders (DVOs).

Currently, a client will have to await until the situation escalates in seriousness to warrant police intervention (that is sufficient evidence for charges to be laid for assault or property damage) or it runs its course through the court system. Either are inadequate and lack immediate protection for a party genuinely in fear.

3. The filing fee is excessive, and especially vulnerable victims experiencing financial hardship are unable to initiate proceedings as a result. We note that there is no filing fee for applications for Domestic Violence Orders (DVO's). Whilst there is an ability to apply for waiver/reduction of this fee, this creates a hurdle in the process and could potentially act as a deterrent for individuals already trying to maneuver their way through the system. It is our understanding that PVRO applications made to the courts have drastically reduced since the fee was increased on 1 July 2013.
4. Whilst prima facie the system is designed for self-represented litigants, court resources are restricted and applicants and defendants are often left confused with the specificities of the proceedings, including but not limited to the drafting of court documents such as affidavits, the effective drafting of summons of witnesses and documents and aspects of litigation such as eliciting testimony and undertaking cross-examination.
5. Further, section 86 of the Act which requires that parties are referred to mediation before a magistrate can hear the application except where the Court 'is satisfied it is in the interests of justice to do so', should be made clearer. Currently, the legislation specifies that '*it is in the interests of justice to do so, including, for example, because:*
 - (a) *there is a history of violence committed against the protected person by the defendant; and*
 - (b) *there has been a previous attempt at mediation in relation to the same matter and the attempt was not successful.*

TEWLS experience is the application of this provision varies depending on the magistrate to a strict interpretation where the absence of violence means that the matter can be mediated. In one example, a Magistrate did not consider it sufficient grounds to not refer a matter to mediation where there was not a valid relationship on foot and worth preserving through a satisfactory mediated outcome. This case involved a girl who was bullied at school by the defendants who were otherwise not acquainted to her.

6. With the exception of Top End Women's Legal Service there are currently no other free legal services that represent clients in PVRO's matters in the Darwin region at the Magistrates Court. (There are duty solicitors from NT Legal Aid Commission who appear *amicus* for clients in exceptional circumstances.) In some instances, we have been required to step in to redraft the applicant's Affidavit to their application in order to better define the issues and assist the court.
7. Legislation relating to DVO's is contained within a specific Act, the *Domestic and Family Violence Act*. Legislation relating to PVRO's is contained within the *Justices Act*, adding further difficulty to self-represented litigants.

8. Unlike DVO's where this is contained in the initial application, there is no guidance to applicants as to what orders they could seek. This then leaves it entirely upon the applicant being able to properly articulate their issues, and the Magistrate to assist them through this, and determining the appropriate orders.
9. The legislation in its current form does not anticipate all circumstances in which a PVRO may be required. Further, the legislation does not appear to envisage the extent and seriousness of situations outside neighbourhood disputes over a dividing fence, where protection is required by one party against the behavior of another.. This is important where there is significant emotional or other abuse involved. The current *Domestic and Family Violence Act* recognises emotional abuse as a form of domestic violence.
10. Currently, there is no process to assist applicant's to obtain information such as the identity or address of the defendant, where numerous enquiries have failed to ascertain this. One suggestion would be a preliminary discovery process, to be heard before the court prior to the commencement of the PVRO application. Therefore, where the applicant is unable to acquire this information, they are unable to proceed, and therefore remain unable to take out their own PVRO- a process designed for self-represented parties. It is acknowledged that clear parameters and guidelines need to be put in place in relation to preliminary discovery applications to ensure that this process is not misused or abused.

Case study 1

Norma's son 12 year old Tony, was the victim of years of sexual abuse perpetrated by a trusted family friend. The perpetrator was convicted for an array of sexual offences and sentenced to an extensive prison term. The perpetrator's wife, Claire, began to stalk Tony. She would go to his primary school, follow him to the skate park on the weekend and accuse him of 'stealing' her husband. Claire's behaviour became increasingly volatile and quickly progressed to threats of violence. Approximately two months after Claire attempted to hit Tony with her car. She was convicted of unlawful assault and given a 2 year behaviour bond. Norma was advised to obtain a PVRO by the police. The police did not utilise their discretion to make this application on behalf of Tony. Norma attended Top End Women's Legal Service and successfully sought advice and representation. Whilst the court was sympathetic to Norma and Tony's plight, Claire was unable to afford a private lawyer and with no CLC available to represent, was successfully able to delay proceedings as a self-represented litigant for some 2 months. During this time, Tony was subject to further violence until orders by consent were obtained, immediately preceding the hearing date.

Case Study 2

Mary befriended Sharon through a local sporting organisation. Over a period of time, Sharon embroiled Mary in a series of bizarre alleged events involving

her (Sharon) as the victim such as rape, stalking and attempted murder. Sharon clung to Mary for support and assistance through what would have been traumatic events. Eventually Sharon infiltrated Mary's life through a series of carefully crafted deceptions, which included undermining Mary's relationship with her partner at the time, and her mental health with the use of fictitious characters and communications. This burden upon Mary eventually took its toll, and Mary attempted suicide. Mary's sister sought our assistance to apply for a PVRO against Sharon. During this process, it became evident that there were a number of other women; victims of what was believed to be Sharon's sociopathic personality, which extended to a number of jurisdictions. TEWLS successfully obtained a PVRO against Sharon on Mary's behalf but not before a number of delays were deployed by Sharon to undermine the process. TEWLS presence during the proceedings provided Mary with an anchor in which to regain her strength and life post Sharon.

Case Study 3

Keira, was sexually assaulted by Fred's brother Joe when she was 15 years old. Joe was convicted and sentenced to imprisonment for the offence. Subsequently Fred proceeded to threaten to kill Keira whenever he saw her including turn up at her mother's house to further menace her and the family, as he held her responsible for his brother going to prison. Through Keira's youth worker/counselor, she sought TEWLS assistance for a PVRO at the age of 18 years. Due to the nature of the relationship, Keira would not have qualified for a DVO, and the burden to obtain a PVRO is much greater than that of a DVO. If Keira was unable to secure legal representation, she would had to face Fred in court and argue why the matter was not appropriate for mediation, before being able to proceed to have her case heard in open court. TEWLS were successful in obtaining a PVRO on Keira's behalf. Fortunately, the Magistrate presiding over these proceedings quickly recognised the sensitivity and seriousness of the issues involved and did not refer the matter to mediation. This case clearly demonstrates the potentially damaging behavior between non-related parties, and the significance of police intervention to obtain a PVRO.

Recommendations

1. Police are provided with professional development seminars in understanding the potentially serious and negative consequences of issues between non-related parties and their powers to obtain PVRO's on a victims' behalf.
2. The relevant legislation be amended to enable victims to obtain interim PVRO's prior to the matter being set for final hearing (as is available with Domestic Violence Restraining Orders) and provision to hear such interim applications ex parte.
3. Wording in section 86 be amended to extend this provision to include general discretion for a magistrate in circumstances where the magistrate considers it inappropriate to refer the matter to mediation.

4. The filing fee be reduced dramatically to enable especially vulnerable victims who are experiencing financial hardship to access the protection they need and where appropriate be waived completely. The fee currently appears to have no bearing on the cost to the court.
5. CLC's be provided with funding and resources to assist applicants and defendants in PVRO matters in circumstances where it is inappropriate for police to utilise their discretion in obtaining PVRO's.
6. Legislation pertaining to PVRO's be incorporated into an Act addressing PVRO's and DVO's in the Northern Territory, such as *Crimes (Domestic and Personal Violence) Act 2007* (NSW) or alternatively separate pieces of legislation.
7. Enable the option of longer-term orders in exceptional circumstances.
8. Focus on legislative construction to ensure accessibility for self-represented litigants.
9. Specify provisions as to party costs.
10. For a fair and expeditious process, the PVRO application should be amended to contain orders that an applicant could seek appropriate to their situation and level of protection required, such as that contained in a DVO application. Further a covering sheet to the application in a number of different languages as to an applicants and defendants options for example to seek independent legal advice etc should be included.
11. Provision within the Act that define what constitutes Personal Violence. Currently the Act refers the reader to provisions within the Criminal Code Act which is difficult for self-represented litigants to navigate.
12. That provision is made to enable an application to NT Police or other agency in possession of relevant information to obtain the identity (name and address of the Defendant similar to for example Regulation 5.2 of the NSW Uniform Civil Procedure Rules states that: (1) This rule applies if it appears to the court that:
 - (a) the applicant, having made reasonable inquiries, is unable to sufficiently ascertain the identity or whereabouts of a person ("**the person concerned**") for the purpose of commencing proceedings against the person, and
 - (b) some person other than the applicant ("**the other person**") may have information, or may have or have had possession of a document or thing, that tends to assist in ascertaining the identity or whereabouts of the person concerned'

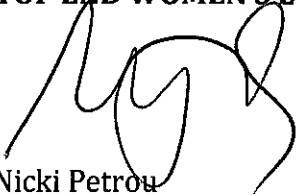
Please note that the Darwin Community legal Service (DCLS) and the Central Australian Women's Legal Service (CAWLS) endorse this submission.

Thank you for considering our submission. We look forward to discussing this with you further, and working with you to improve the process and protections available under a PVRO.

In the meantime, please do not hesitate to contact us should you require more information.

Yours Sincerely,

TOP END WOMEN'S LEGAL SERVICE INC

A handwritten signature in black ink, appearing to read 'NP', is written over the printed name and title.

Nicki Petrou
Managing Solicitor