



## Top End Women's Legal Service Inc

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Our Ref:

16 July 2015

Director, Legal Policy  
Department of the Attorney General and Justice  
GPO Box 1722,  
Darwin NT 0801

Via email: [Policy.AGD@NT.gov.au](mailto:Policy.AGD@NT.gov.au)

Dear Director,

**Re: Review of the *Domestic and Family Violence Act* (NT)**

Thank you for providing TEWLS with the opportunity to make a submission in relation to the review of the *Domestic and Family Violence Act*.

### Who we are

Top End Women's Legal Service ('TEWLS') is a community legal centre focused on the advancement of the rights of all women. We are funded by the Commonwealth Attorney General's Department and the Department of Prime Minister and Cabinet to provide legal advice, casework and community legal education to women living in the Top End of the Northern Territory. We provide advice, information and assistance to women in a number of areas of law including family law, domestic and family violence, housing and tenancy, debts, sexual assault, discrimination and compensation for victims of crime. We provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and women in prison.

### Our submission

We have had the opportunity to consider the issues paper provided by the Department of the Attorney-General (NT) (the Department) and the document summarising the recommendations of the Australian Law Reform

Commissions' report: *Family Violence- A National Legal Response* (the ALRC report) in part, with comments from the Department where relevant.

We have also had the opportunity to consider the submission of the Central Australian Women's Legal Service (CAWLS). In general terms, TEWLS concurs with this submission.

A lack of comment in relation to recommendations in either of these submissions does not indicate a lack of support for these recommendations.

### **The definition of Domestic and Family Violence**

The definitions of '*Domestic violence*' in relation to property (currently s 5(b) DFVA) should be broadened to include damage to property and animals in the possession of someone with whom the person is in a domestic or family relationship, regardless of whether that property or animal belongs to that person or someone else.

TEWLS supports the inclusion of behaviour that causes a child to be exposed to violence, in the definition of domestic violence as recommended in the ALRC report. It is important for the impact on children either witnessing or hearing violence to be recognised, and for children to be protected in these circumstances.

Additionally, the definition of 'intimidation' under s 6 DFVA does not consider the full spectrum of emotional and psychological abuse. TEWLS agrees with Recommendation 5-2 of the ALRC report that illustrative examples of intimidation, emotional and psychological abuse and harassment should be included in the DFVA, with particular reference to vulnerable groups.

It is further recommended terms in s 6 DFVA such as '*harassment*', '*unreasonably controlling*', '*mental harm*' and '*pattern of conduct*' be either defined or illustrated by examples. We endorse CAWLS' recommendation of the inclusion of examples economic abuse and intimidation outlined in s8 (5) of the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*.

Trans-gender individuals are not explicitly covered by the definition of 'Intimate relationship' in s 11(4) DFVA. Specifically including trans-gender peoples within the DFVA would align it with current discrimination policies.

### **Guiding principles**

TEWLS endorses CAWLS' submission in relation to the inclusion of a preamble outlining guiding principles and recognition of the nature of domestic and family violence within a human rights framework.

## **Clarification of the nature of domestic and family violence**

The DFVA should reflect current understandings and clearly explain the nature, features and dynamics of domestic and family violence in the broader community. The example given in CAWLS' submission of s 10 of the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)* is a useful starting point.

## **Prohibition on the defendant from locating or attempting to locate the victim**

TEWLS is aware of at least one occasion where the address of a self represented applicant was printed on the domestic violence order as the address for service, allowing the defendant to easily locate her. It is recommended that where an Applicant is self represented, care needs to be taken not to publish the Applicant's address.

TEWLS agree with the Department's opinion that, while s 21 of the DFVA is broad enough to encompass an order prohibiting a defendant from attempting to locate a victim, it would be helpful to clearly state this in the legislation.

## **The impact of domestic violence orders on accommodation**

TEWLS agrees with Recommendation 11-9 of the ALRC report that exclusion orders should be made only when necessary to ensure the safety of a victim or affected child, and the primary and secondary factors to be considered.

## **Mutual Protection Orders**

We endorse the ALRC view that mutual protection orders should not be made by consent, but rather that the court must be satisfied that there are grounds for making an order against each party.

## **ALRC recommendations:**

TEWLS supports the following recommendations from the ALRC report:

**7-4:** State and Territory legislation should articulate the following common set of core purposes: to ensure or maximise the safety and protection of persons who fear or experience family violence; to prevent or reduce family violence and the exposure of children to family violence; and to ensure those who use family violence are accountable for their conduct.

**9-3:** State and Territory governments should ensure that support services are in place to assist persons in need of protection to apply for a protection order without involving police. These should include services specifically for: Indigenous persons; and persons from culturally and linguistically diverse backgrounds.

**10-3:** State and territory legislation should impose an obligation on police and prosecutors to inform victims of family violence promptly of: decisions to grant or refuse bail; and conditions of release, where bail is granted. Victims should also be given or sent a copy of the bail conditions. Where there are bail conditions and a protection order, police and prosecutors should explain how they interact.

**11-1:** State and Territory family violence legislation should make it clear that the making, variation or revocation of such an order, does not affect the civil or criminal liability of a person bound by the order in respect of the family violence the subject of the order.

**11-3:** State and Territory family violence legislation should include an express provision conferring on courts a power to make a protection order on their own initiative at any stage of a criminal proceeding. Any such order made prior to plea or finding of guilt should be interim.

**12-1:** State and territory legislation should provide that protected person cannot be charged with or found guilty of an offence of aiding, abetting counselling or procuring the breach of a protection order.

**12-2:** Federal, state and territory police and directors of public prosecution should train or ensure that police and prosecutors respectively receive training on how the dynamics of domestic and family violence might affect the decisions of victims to negate the existence of domestic and family violence or to withdraw previous allegations of violence.

**12-3:** Police codes of practice or operating guidelines, and prosecutorial policies should ensure that any decisions to charge or prosecute victims of family violence with public justice offences – such as conspiracy or attempts to pervert the course of justice, where the conduct alleged to constitute such offences is essentially conduct engaged in by a victim to reduce or mitigate the culpability of an offender – should only be approved at the highest levels within state or territory police services, and by directors of public prosecution, respectively.

**12-10** State and territory family violence legislation should not impose mandatory minimum penalties or mandatory imprisonment for the offence of breaching a protection order.

**13-3:** State and territory sentencing legislation should provide that the fact that an offence was committed in the context of a family relationship should not be considered a mitigating factor in sentencing.

**14-1:** State and territory criminal legislation should ensure defences to homicide accommodate the experiences of family violence victims who kill, recognising the dynamics and features of family violence.

**18-1:** State and territory courts should ensure that application forms for protection orders include information about the kinds of conduct that

constitute family violence.

**18-3:** State and territory legislation should prohibit the respondent in protection order proceedings from personally cross examining any person against whom the respondent is alleged to have used family violence.

### **Integration of Personal Violence Restraining Orders into the DFVA**

On 13 February 2015, TEWLS wrote to the Hon. John Elferinck MLA, Minister for Justice and Attorney-General, in relation to the reform of the legislation governing Personal Violence Restraining Orders (PVROs). We have attached this letter for your consideration.

Our submissions in relation to PVROs have not changed. In particular, we reiterate the following recommendations:

- Legislation pertaining to PVROs be incorporated into an Act addressing PVROs and DVOs in the Northern Territory, such as *Crimes (Domestic and Personal Violence) Act 2007* (NSW) or alternatively as separate pieces of legislation.
- “*Personal Violence*” should be defined within the legislation, rather than referring to offences within the Criminal Code. Currently the list of offences that constitute ‘personal violence’ does not cover the situations where someone would generally be seeking to obtain a PVRO.
- The relevant legislation should be amended to enable victims to obtain interim PVROs 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*.
- The provisions regarding the requirement for mediation should be amended to include general discretion for a Magistrate to waive this requirement in circumstances where the Magistrate considers it inappropriate to refer the matter to mediation.
- There should be an option within the legislation that allows longer-term orders to be made in exceptional circumstances.
- Provisions should be made in the legislation to enable an applicant to apply to NT Police or another agency to obtain information in relation to the identity of a defendant in certain circumstances.
- The filing fee for a PVRO application should 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.

- Community Legal Centres should 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.

Thank you for the opportunity to contribute to the review of the *Domestic and Family Violence Act* (NT). Please do not hesitate to contact us if you have any questions in relation to this submission.

Yours faithfully,  
TOP END WOMEN'S LEGAL SERVICE

A handwritten signature in black ink, appearing to read 'Melanie Warbrooke', written over a horizontal line.

**Melanie Warbrooke**  
**A/Managing Solicitor**