

## 10.0 CONDITIONS OF A DOMESTIC VIOLENCE ORDER OR SIMILAR

Non-consensual sharing of intimate images occurs in a range of circumstances, including situations of domestic or intimate partner violence.

The *Domestic and Family Violence Act (NT)* provides for the making of orders protecting people from domestic and family violence. A Domestic Violence Order (DVO) may restrain a defendant from making any contact with the ‘protected person’, including by the use of technology. Section 5, of the *Domestic and Family Violence Act (NT)* provides that ‘domestic violence’ includes ‘intimidation’, which is defined by section 6(c) as including ‘any conduct that has the effect of unreasonably controlling the person or causes the person mental harm’. A person experiencing domestic violence may apply to the Local Court for a DVO or have one issued by Northern Territory Police (see section 28 of the Act).

A DVO is a civil order; it is not a criminal charge. An application for a DVO may be accompanied by related criminal charges and criminal penalties may apply if a DVO is breached. Part 5.2 of the *Domestic and Family Violence Act (NT)* sets out the offences. If there is not, or there has not been, a ‘domestic’ relationship, provisions akin to those in the *Domestic and Family Violence Act (NT)* apply in the form of Personal Violence Restraining Orders.

In its submission to the Australian Law Reform Commission on ‘Serious Invasions of Privacy in the Digital Era’, in 2014, the North Australian Aboriginal Justice Agency noted that its clients had been able to obtain limited protection against ‘harassment and control by the uploading of sexually explicit material which can then be readily accessed on the internet’ through seeking novel forms of orders under the *Domestic and Family Violence Act (NT)* in the (then) Court of Summary Jurisdiction. By relying both on the provision under the Act that provides for orders to include restraints (section 21(1)(a)), but also the facility of orders imposing obligations (section 21(1)(b)), orders were obtained in the following terms:<sup>55</sup>

1. The defendant is restrained from posting, uploading or otherwise displaying, disseminating, duplicating or distributing any image of the protected person in any form whether electronic, digital, hard copy, video or any other form.
2. Within 24 hours of service of this order, the defendant is to permanently delete and destroy any images or video of the protected person that are in the possession of the defendant or to which the defendant has access.

A DVO in the Northern Territory can restrain the defendant from ‘intimidating’ and ‘harassing’ the protected person. This can provide protection from future threats to post or distribute material to which a reasonable expectation of privacy attaches. Accordingly, threats may constitute harassment or intimidation.

Limitations to the use of DVOs include that they are not effective until served, so if the perpetrator cannot be found, the orders cannot be enforced. Further difficulties may include the ability of Northern Territory Police to devote resources to enforcing any alleged breach of such an order or in the Court finding a particular breach is enforceable.

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<sup>55</sup> Submission: Serious Invasions of Privacy in the Digital Era (DP80), Domestic Violence Legal Service/North Australian Aboriginal Justice Agency, May 2014 pp.6-7.