27th of July 2015

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

Dear Attorney General and Minister for Justice,

Submission in response to the Review of the *Domestic and Family Violence Act 2007* (NT) - Issues Paper

The Alice Springs Women's Shelter (ASWS) would like to thank the Attorney-General and Minister for Justice, for the opportunity to provide comment on the review of the *Domestic and Family Violence Act 2007* (NT) (the Act).

ASWS is a domestic and family violence crisis and support service located in Alice Springs, which seeks to prevent and respond to domestic and family violence (DFV) in Central Australia through the provision of crisis response and support services to women and children who have experienced DFV. ASWS provides 24/7 crisis response, crisis accommodation, outreach services and court support services, as well as raising awareness of the nature and effects of DFV through the delivery of training and education programs to the community, the sector and relevant stakeholders.

Introduction

Despite recent Federal, state and territory action on DFV, the number of women experiencing DFV in Australia is still high. It is reported that since the age of 15, 1 in 3 women have experienced physical violence while 1 in 5 have experienced sexual violence.[1] Women make up the overwhelming majority of victims of DFV with men largely the perpetrators of such violence.[2]

The Northern Territory has the highest rate of DFV in Australia with more than three times the rate of Western Australia, which is the next highest state or territory. A recorded 61% of all assaults are DFV related in the Northern Territory.[3] Particular groups are over-represented in DFV statistics, with one of those groups being Aboriginal and Torres Strait Islander communities. Indigenous women are 35 times more likely to be hospitalised due to DFV related assaults than their non-indigenous counterpart.[4]

[1] Accessed at http://www.anrows.org.au/publications/fast-facts/violence-against-women-key-statistics, on 10 July 2015.
[2] Accessed at http://www.anrows.org.au/publications/fast-facts/violence-against-women-key-statistics, on 10 July 2015.
[3] Northern Territory Government Submission to the Senate Inquiry into Domestic Violence in Australia, November 2014.
[4] Steering Committee for the Review of Government Services (2009), *Overcoming Indigenous Disadvantage:* Key Indicators 2009, Canberra: Productivity Commission.

These Northern Territory figures correlate closely with the experience of ASWS. Despite ASWS not being an Indigenous controlled organisation, the majority of women who access our service identify as Indigenous. In this context, it is essential that legislation and services dealing with DFV reflect the particular needs of these specific groups within the Northern Territory.

The Northern Territory has robust provisions in place under the Act providing legislative protection to victims of DFV. However, there is still much room for improvement and the current review should look closely to other Australian jurisdictions for guidance as to how to provide further protection. ASWS advocates for further expansion and investment in integrated approaches which are being rolled out in all jurisdictions. It is through close collaboration between DFV services, the police and the court that will ensure better application of the legislative provisions ensuring Northern Territory victims of crime get the full protection of the law.

In light of the high incidence of DFV in the Northern Territory, particularly among Indigenous communities, the ASWS welcomes the review of the Act, and would like to take this opportunity to put forward a number of recommendations for the improvement of this legislation and its application.

Recommendations for Reform

- **Recommendation One**

NT legislation should permit a 'no sunset clause' Domestic Violence Order (DVO), in addition to already existing provisions allowing for DVOs to have attached fixed dates, pursuant to client instructions.

Australian states and territories differ on the approach taken towards protection orders and expiry dates.[5] Northern Territory legislation does not specify a time limit for the duration of an order, but section 27 of the Act does require it to be enforced for the period stated in it, with court issued DVO's usually expiring after one year.[6] This results in the burden being placed on the aggrieved person to extend or re-apply for an order once it expires.

The South Australian legislation provides for 'no sunset clauses', where protection orders do not have an expiry date.[7] They can only be varied or revoked by the court, with revocation granted only on the basis of *changed circumstances*.[8] A police officer, the aggrieved person or the defendant (in

[5] *Domestic Violence and Protection Orders Act 2008 (*ACT*)* s 55(1); *Domestic Violence & Protection Orders Act 2008*, (QLD), s 34A; *Domestic and Family Violence Protection Act 1989,* WA s 16(5), s 50A.

[6] *Domestic and Family Violence Act 2007 (NT) s27.*

[7] *Intervention Orders (Prevention of Abuse) Act 2009 (SA) s 11.*

[8] *Intervention Orders (Prevention of Abuse) Act 2009 (SA) s26.*

certain circumstances), may apply to the court for the variation or revocation of the protection order. This shifts the onus away from the applicant and removes the stress and burden associated with renewing a protection order.

ASWS submits that applying the South Australian model of no-end date protection orders is particularly relevant in the NT context, as many of ASWS clients live in very remote settings, making it difficult to access the courts when extending or applying for DVO's. A number of our clients are initially reluctant to engage in the justice system and having to reapply for DVO's requires victims to relive traumatic events unnecessarily. The ongoing element of protection orders better reflects the nature of DFV, which is often perpetrated over a matter of years, and sometimes over a lifetime. No-end date DVO's provide more certainty and predictability for the aggrieved person, while also giving them more control and agency over the court process and their own protection.

No-end date DVO's should not replace ones with a fixed date, but should be provided as an option to reflect the particular circumstance of the protected person. The ASWS argues that by shifting the onus onto the perpetrator of abuse to prove changed circumstances or behaviour, no-end DVO's are better equipped to protect the aggrieved person from further violence, as well as holding the perpetrator to account for their behaviour.

- **Recommendation Two**

Application forms for DVOs in the Northern Territory should clearly set out the types of conditions that a court may attach to a protection order, allowing for the possibility of tailored conditions. The forms should be drafted to enable applicants to indicate the types of conditions that they seek to impose.

All Australian jurisdictions provide, to some degree, provisions for courts to attach tailored conditions to protection orders, in order to suit the particular needs of the protected persons. Some state and territory parliaments have set out further special conditions in their legislation to enable courts to provide broader protection to the aggrieved person through exclusion orders and tenancy orders. The Northern Territory should adopt and apply some of the robust legislative measures taken by other states to further enhance the safety of the protected person.

Under the Act a DVO can be obtained through the court or, in certain circumstances, through the police. There are three main general conditions stipulated on the protection order application form: that the defendant is restricted from contacting the protected person; harming or assaulting the protected person; or contacting the protected person while intoxicated.[9] The legislation also allows for the court to order the defendant to participate in a rehabilitation program or to make an order to replace tenancy agreements in favour of the aggrieved.

[9] *Domestic and Family Violence Act 2007* (NT). s21

In the Northern Territory, the court applies a presumption in favour of the protected person and child remaining at home, but only in matters involving children.[10] Under ACT and Victorian legislation the court is *required* to consider accommodation needs of the victim when making a final order even when a child is not involved.[11] In NSW the court must give reasons for not granting an exclusion order when an application for it has been made.[12] Both Victorian and South Australian legislation explicitly ask the court to design orders which 'minimise disruption' for the aggrieved person and child, with the South Australian court considering the continuity and stability of care of any child and allowing the continuation of education, training and employment of a protected person and any child living with them.[13]

Northern Territory legislation should adopt the approach of other jurisdictions whereby courts must explicitly consider exclusion orders regardless of whether children are involved, and judges must give reasons when exclusion orders are applied for and are not granted. Court should be required to consider ways in which to minimise disruption to the aggrieved person and their children when making a protection order.

ASWS advocates for increased opportunities for victims to be supported in making tangible contributions to the conditions set out in DFV protection orders.[14] Application forms for protection orders must be flexible to ensure conditions are tailored to the unique and particular circumstances of the aggrieved person. The nature and dynamics of DFV can be very specific in each individual case, and some clients of ASWS have found that despite legislative concession for some flexibility, they are unable to properly express their needs through the current DVO system. For instance, ASWS has noted that some clients would like a 'no harm' and 'non-intoxication' DVO but with conditions of no-contact on certain days (such as known pay-days) and certain places (such as the workplace). Although there is provision for this to some extent under s21 of the Act, this is not always happening in practice. This may be due to the application forms themselves, the barriers to communication or the need for more guidelines and training. A solution may be as simple as providing space on the form for applicants to specify any other conditions. However, it is apparent that a review of this process needs to take place to ensure the instructions of the client are best reflected under the DVO conditions.

To acknowledge the high rates of DFV perpetrated against Indigenous women in the NT, there should be scope for conditions to reflect complex cultural, familial and gender norms within Indigenous communities, as well as taking

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[10] *Domestic and Family Violence Act 2007(NT), s 20*; See also *Domestic Violence & Protection Orders Act 2008 (QLD),* s 25 (3).

[11] *Domestic Violence and Protection Orders Act 2008 (*ACT*), s47; see also* 82 of the *Family Violence Protection Act 2008 Vic*

[12] *Restraining Orders Act 1997*, (NSW) (s 17 (2) (c)), (s 17 (4)).

[13] *Intervention Orders (Prevention of Abuse) Act 2009 (SA)* s 10 (1) (d).

[14] This recommendation corresponds with the Recommendation 11-7 noted in the issue paper.

note of the remoteness and isolation of these communities. Conditions on the application should be in plain English, as many of our clients and their perpetrators speak English as a second language.

If these measures are to be implemented under legislation it is important to ensure the tangible application of such provisions, through guidelines and the training of relevant service providers.

- **Recommendation Three**

Review the provisions surrounding cross-examination of vulnerable witnesses by unrepresented defendants and increase the protection afforded to vulnerable witnesses when giving evidence.

ASWS would encourage an expansion of provisions surrounding vulnerable witnesses giving evidence and a review of the application of already existing provisions.

a. Cross-examination of vulnerable witnesses by unrepresented defendants

The Northern Territory does not provide adequate protection to vulnerable witnesses in comparison to other Australian jurisdictions. In Victoria a defendant who is unrepresented, is prohibited from directly cross-examining the vulnerable witness in proceedings related to DFV, and instead must gain representation from Legal Aid Victoria for the purpose of cross examination.[15] By comparison in the Northern Territory, under s114 of the Act, the court *may* prevent an unrepresented defendant from directly cross-examining a witness, instead allowing the defendant to question the witness through the court or another person authorised by the court. This is a discretionary power of the court and is restricted to witnesses who are in a domestic relationship with the defendant. There is no protection afforded to witnesses who are not in a relationship with the defendant.

The NT provision is inadequate and too narrow. It unreasonably disadvantages the witness when providing evidence, given the nature of DFV and its effect on victims. ASWS supports the adoption of the Victorian model, whereby expressly preventing the cross-examination of witnesses by the defendant regardless of whether the witness is in a domestic relationship with the defendant. In implementing this provision, the NT government must ensure adequate resources are available to provide legal representation to the defendant through Northern Territory Legal Aid.

[15] Family Violence Protection Act 2008 (VIC) s70

b. Vulnerable witness provisions

Vulnerable witnesses are permitted under s110(1) of the Act to provide evidence via audio-visual link in matters related to DFV, however this is rarely applied in practice especially in remote settings, as the courts do not have the required facilities. Where these facilities are not available the Act allows for the use of a screen or partition to block the witness from the view of the defendant. This does not provide adequate protection for the witness, further re-victimising the witness and discouraging them from engaging with the court process. Outside of the courtroom, safe rooms should be provided for protected persons and vulnerable witnesses to ensure they are not intimidated or influenced by the defendant during hearings relating to DFV.

- **Recommendation Four**

Domestic violence service providers should be afforded greater protection under NT legislation, which includes the adoption of a provision allowing courts to attach conditions to DVOs preventing defendants approaching approved specialised DFV services.

ASWS submits that when issuing a DVO, there should be scope for the Court to attach conditions excluding the defendant from approaching certain organisations or areas, such as approved specialised DFV services like ASWS. This measure is adopted in sex offender legislation across Australia, whereby prohibiting child sex offenders from going within a certain distance from a school or playground.

ASWS is a frontline service, working directly with victims of DFV on a day-to-day basis. The service operates 24 hours a day, 7 days a week, with night shifts posing an increased risk to workers. Due to the nature of the service, staff and clients have at times experienced, either directly or indirectly, threats of violence. ASWS has had several major security issues over the last 2 years, which have threatened the viability of the service. These include a perpetrator breaching ASWS security measures and forcefully kidnapping a client in 2013, and in early 2014 there was an incident where a man with a knife trespassed inside the ASWS premises.

ASWS is particularly vulnerable to harassment or threats from perpetrators of DFV. Unlike in other states or territories, where specialised DFV shelters are in secret locations, in the NT, their locations are well known in the community. The ASWS premises is familiar to not only victims of DFV but also perpetrators, which poses an increased risk to both clients and staff. There have been numerous occasions recorded by staff where perpetrators have approached the service and threatened or harassed clients and staff members. In one instance a perpetrator was threatening to kill himself by running on the road directly outside the ASWS to further intimidate and coerce his partner to return to him. We are aware of numerous examples were men

are making threats to their partner that if they attend the service they will just come and take them out again.

ASWS has access to normal criminal and civil recourse against these actions, however these provisions do not adequately cover the full extent and varied nature of DFV, and further protection must afforded to DFV specialised services. The legislation should be amened to include a discretely power of the court to attach exclusion conditions to DVO's, preventing defendants from approaching the ASWS and other approved specialised DFV agencies.

ASWS would also advocate for offences occurring within, or towards the ASWS, be treated as an extra cause for aggravation in property, stalking, harassment or assault offences. We would also like to introduce a provision into the Act whereby, the court may declare a worker of a domestic violence service provider to be a vulnerable witness for a proceedings relating to DFV. ASWS recommends that these stronger measures be put in place to deter and prevent further threats to ASWS and to further strengthen the security and ongoing viability of the service.

The safety and security of ASWS clients and our staff is a paramount concern. ASWS has developed strong internal guidelines and protocols in order to safeguard the protection of staff and to minimise risk within the workplace. The recent move by the NT government to provide funding support to implement increased security measures to ASWS has been very much welcomed by the organisation. But without legislative change and the practical application of such change, ASWS is limited as to how much protection it can provide to staff and clients.

ASWS submit that these changes to the legislation and its application are essential to ensuring that, as a community, we take women and children's safety seriously, and that we are able to provide a safe space for women and children to be free from DFV.

- **Recommendation Five**

There should be a stronger intersection between family laws, child protection laws and DFV laws in the NT.

ASWS would recommend a more integrated response between family laws, child protection laws and DFV laws. When experiencing DFV, victims often have to engage in more than one of these courts and legal frameworks, which can be complex and overwhelming. At times inconsistencies between these laws can arise, which creates confusion for DFV victims who have to negotiate the system. For example, there have been instances when the family court has made parenting orders for the perpetrator to have contact with the children, when a no-contact DVO already exists, placing the victim at further risk of violence.

The intersection between DV law and the Care and Protection of Children Act 2007 (NT) can also be problematic at times. The child protection laws do not adequately acknowledge the nature and effects of DFV on the victim and often treats the victim as complicit in the abuse. Victims are at times reluctant to report DFV incidents, which are witnessed by children, for fear of not being seen to be showing 'protective parenting behaviour', and for orders to be made against them. The legislation should acknowledge that the paramount concern should not only be the safety of children, but also of adult victims of DFV.

The adoption of a common interpretative framework would be supported by ASWS, where central guiding principles would allow courts and services dealing with DFV to approach DFV in a more collaborative and succinct way. It would be recommended that core guidelines are put in place to allow for a better understanding of the nature and dynamics of DFV and for this understanding to inform other legislation where DFV is involved. It is vital that these legal frameworks align together in as seamless and as efficient way as possible, to provide better access to the victims of DFV and their children.

- **Recommendation Six**

NT legislation should expand provisions to increase the capacity of NT police to share information with, and make mandatory referrals to specialist DFV organisations to provide a better coordinated and effective response to DFV.

a. Information sharing with NT police

The most substantial proposal we wish to put forward is for the increased information sharing capacity between the NT Police and ASWS. The inefficiently and limits of information sharing is one of the most significant issues that continues to impact our day-to-day service delivery. Whilst there is a significant information sharing framework in place under child protection law in the Northern Territory, this is not paralleled under DFV legislation.[16]

Even in situations where police have referred clients onto our service, and when consent is given by our client to gain information, police are still prevented from sharing information that would support ASWS in rendering assistance. The information is treated as confidential belonging to the perpetrator. Without information as to even the whereabouts of the perpetrator, ASWS is unable to advise clients appropriately as to what potential risks they may face.

Information sharing networks between approved DFV services and police is provided for in other state and territory DFV legislation, including in Tasmania, Victoria and the ACT. ASWS believes the Northern Territory government should adopt the ACT model stipulated under sections 17 and 18 the

[16] *Care and Protection of Children Act 2007* (NT).

Domestic Violence Agencies Act 1986 (ACT), whereby approved crisis support organisations are able to receive any information from police regarding a domestic violence incident, if the information is likely to aid the delivery of service to the victim.[17]

Along with these provisions, there must be clear guidelines put in place to require information to be shared in an effective, appropriate and timely manner, with the safety of the victim as a paramount concern. Legislation should ensure that appropriate privacy safeguards are put into place and guidelines established for agencies to better understand rules of information sharing. In turn, the DFV agencies will support the police in identifying offences and gathering evidence. Together these measures would allow for improved coordination and effectiveness of service delivery to people experiencing DFV.

b. Police referral system

After ongoing consultation with the NT police, ASWS would like to recommend that when the NT police attend an incident that involves DFV in Alice Springs, a mandatory referral is made to ASWS even when consent from the victim is not given.

Currently as part of the SupportLink referral system, police can only make a referral to ASWS with consent from the victim. We understand that this has led to only small percentage of the total number of possible referrals being made to the service. By removing the requirement for police to gain consent, the ASWS would take over the responsibility of offering the service directly to the woman.

In practice women are not giving consent to be referred to ASWS because the consequences of the referral may not be adequately understood by the victims themselves. On some occasions, the DFV nature of some incidents may be overlooked, and there is a risk that some referrals are made to inappropriate organisation such as relationship counselling services instead of DFV services.

Unfortunately, there is a possibility that some of our clients maintain feelings of mistrust towards the police force. Revoking the need for consent in referrals may lead to victims of DFV responding more positively to support services, as they are seen to be initiated by ASWS, as a separate service to the police services. With mandatory referrals, ASWS would have an increased opportunity to engage with women who may otherwise not access our service and would allow them a greater chance to benefit from ASWS support. ASWS would be able to gain a better overall picture and understanding of DFV in Alice Springs and how to best respond to need. A mandatory referral framework would allow us to assess risk more accurately and identify patterns

[17] *Domestic and Family Violence Act 2007* (NT) *ss* 17, 18.

of abuse to better inform our crisis response both to individuals and to the community.

With the implementation of mandatory referrals, ASWS may experience an uncontrolled increase in demand, and a mirrored increase in resources would be required to meet that demand. ASWS is currently operating at capacity, and mandatory referrals would not mean that we would be able to respond to more referrals than we currently do. However, it would allow us to develop a better targeted response and to coordinate with government to ensure Alice Springs women and children receive optimal service delivery.

Conclusion

Despite many of the robust provisions provided under Northern Territory law, there remains a number of legislative improvements to be made in order to better ensure the protection of victims of DFV. The ASWS has recommended a number of changes to the Act and its application, including an adoption of more tailored conditions attached to protection orders, no-end protection orders and increased mechanisms for information sharing between the NT police and approved DFV agencies, to aid the rendering of assistance to DFV victims. The review of DFV legislation and implementation of the ASWS recommendations will help to further reduce the unacceptable high rate of DFV in the Northern Territory.