SUMMARY

**Review of Legislation and the Justice Response to Domestic and Family Violence in the Northern Territory – Proposals for Consultation**

|  |  |
| --- | --- |
| Acronyms |  |
| AGD | Department of the Attorney-General and Justice |
| ANROWS | Australian National Research Organisation on Women’s Safety  |
| DFV | Domestic and Family Violence |
| DFSV | Domestic, Family and Sexual Violence |
| DFSV-ICRO | Domestic, Family and Sexual Violence Inter-agency Co-ordination and Reform Office |
| DFV Act | *Domestic and Family Violence Act 2007* (NT) |
| DVO | Domestic Violence Order |
| LGBTIQ+ | Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer |
| TFHC | Department of Territory Families, Housing and Communities |
| NTPFES | Northern Territory Police, Fire and Emergency Services |
| DoH | Department of Health |
| DoE | Department of Education |
| AJU | Aboriginal Justice Unit, AGD |
| AJA | Aboriginal Justice Agreement |

**Disclaimer**

This document provides a summary of proposals from the paper ***Review of Legislation and the Justice Response to Domestic and Family Violence in the Northern Territory: Proposals for Consultation.*** Readers interested in the detail and rationale of each proposal should read the full-length paper.

The Northern Territory Government does not accept any liability whatsoever for the information or use of information provided in this paper or incorporated into them by reference. The content of this paper is provided for strictly information purposes only, and to inform general discussion about the issues. No claim or warranty is made as to the accuracy, completeness or currency of the content in this paper. The paper is not intended for the purpose of providing legal advice. You should seek your own legal advice in relation to your statutory and legal obligations.

Published by the Northern Territory Government, August 2022.

Contact: Legal Policy, Department of the Attorney-General and Justice Policy.AGD@nt.gov.au.

Contents

[1. Introduction 5](#_Toc110434161)

[2. The NT’s inter-agency response to DFSV 6](#_Toc110434162)

[3. Essential background 7](#_Toc110434163)

[3.1. What is domestic and family violence? 7](#_Toc110434164)

[3.2. DFV and violent crime 8](#_Toc110434165)

[3.3. Lived experience 8](#_Toc110434166)

[3.4. Misidentification 9](#_Toc110434167)

[3.5. Coercive control 9](#_Toc110434168)

[3.5.1. What is coercive control? 9](#_Toc110434169)

[3.5.2. Why is it important for governments to address coercive control? 10](#_Toc110434170)

[4. Proposed approach to coercive control 11](#_Toc110434171)

[4.1. Options regarding the criminalisation of coercive control 11](#_Toc110434172)

[4.2. Proposed coercive control reforms 11](#_Toc110434173)

[4.2.1. Coercive control legislative proposals (regardless of criminalisation) 12](#_Toc110434174)

[4.2.2. Coercive control systemic reforms (regardless of criminalisation) 12](#_Toc110434175)

[4.2.3. Questions – Coercive control 13](#_Toc110434176)

[5. Proposed legislative reforms 15](#_Toc110434177)

[5.1.1. *Domestic and Family Violence Act 2007* 15](#_Toc110434178)

[*5.1.2. Bail Act 1982* 25](#_Toc110434179)

[5.1.3. *Sentencing Act 1995* 25](#_Toc110434180)

[5.1.4. Criminal Code 26](#_Toc110434181)

[5.1.5. *Evidence Act 1939* 27](#_Toc110434182)

[5.1.6. *Evidence (National Uniform Legislation) Act 2011* 27](#_Toc110434183)

[5.1.7. *Local Court (Criminal Procedure) Act 1928* 27](#_Toc110434184)

[5.1.8. Questions – Legislative reforms 27](#_Toc110434185)

[6. Proposed systemic reforms 28](#_Toc110434186)

[6.1.1. Inter-agency co-ordination and reform 28](#_Toc110434187)

[6.1.2. Coercive control prevention and reform 29](#_Toc110434188)

[6.1.3. Specialist Court Approaches 29](#_Toc110434189)

[6.1.4. Improved Policing 30](#_Toc110434190)

[6.1.5. Improve prosecutions 32](#_Toc110434191)

[6.1.6. Legal assistance 32](#_Toc110434192)

[6.1.7. Non-legal support and assistance at court 32](#_Toc110434193)

[6.1.8. Access to quality DFV perpetrator programs and services 33](#_Toc110434194)

[6.1.9. Identifying DFV and managing the risk of DFV 33](#_Toc110434195)

[6.1.10. Family Safety Framework (FSF) 33](#_Toc110434196)

[6.1.11. Multi-agency Children and Community Safety Teams 34](#_Toc110434197)

[6.1.12. Systemic DFV death review process 34](#_Toc110434198)

[6.1.13. Questions – Systemic reforms 34](#_Toc110434199)

# Introduction

The Northern Territory Government is committed to improving the justice response to domestic and family violence (DFV), with the expectation that a more consistent and specialist focus on victim safety and offender accountability will help reduce the cycle of violence.

DFV causes serious physical and psychological harm to many Territorians. While DFV affects people across all population groups, it has a disproportionate impact on women, particularly Aboriginal women.

The Territory Coroner identified that from August 2000 through to August 2019 there were 65 Aboriginal women killed by a current or former partner.[[1]](#footnote-2) The Coroner’s office has advised that, in the twenty-year period 2000-2020, there were 160 DFV-related homicides in the NT (101 homicides by former or current partners and 59 homicides by other family members).[[2]](#footnote-3)

Research documenting the perspective of victim-survivors of DFV suggests that the system is disjointed and disconnected, is overloaded by the volume of cases, does not have sufficient focus on victim safety or victim support, and does not hold defendants to account. Despite the best efforts of many professionals, the system as a whole is not effective in breaking the cycles of abuse.[[3]](#footnote-4)

The Department of the Attorney-General and Justice (AGD) is undertaking a review of the *Domestic and Family Violence Act 2007* (DFV Act) to identify legislative and non-legislative proposals (systemic reforms) to improve the justice response to DFV in the NT. [[4]](#footnote-5) The review is also considering the question of whether coercive control should be criminalised in the NT and what other reforms are necessary to incorporate coercive control into law and procedure.

A paper has been prepared setting out proposals for consultation called: ***Review of Legislation and the Justice Response to Domestic and Family Violence in the Northern Territory: Proposals for Consultation.***

This document provides a summary of the proposals in that paper. Readers who are interested in the detail and rationale of each proposal should refer to the full-length paper.

Submissions and queries should be emailed by **12 October 2022** to Policy.AGD@nt.gov.au

Submissions may be made publically available, and may be published on the Department’s website, unless they are clearly marked as ‘confidential’.

# The NT’s inter-agency response to DFSV

The initial findings of this review are that a co-ordinated inter-agency response to DFV is necessary to improve the way the justice system deals with DFV. The Government is already acting in this regard.

In April 2022, the NT Government appointed the Hon Kate Worden MLA as the NT’s first Minister for the Prevention of Domestic, Family and Sexual Violence. This marked a significant strengthening of the NT’s whole-of-government inter-agency response to domestic, family and sexual violence (DFSV).[[5]](#footnote-6)

The Government has established a 12-month Domestic Family and Sexual Violence Inter-Agency Co‑ordination and Reform Office (DFSV-ICRO) so that all relevant agencies – police, health, territory families, education and justice – can all work together with a single point of accountability to prevent and respond to DFSV.

The DFSV-ICRO will lay out a whole-of-government reform agenda for DFSV. This will include reforms within the existing operational capability of agencies and identify areas where new investment is required.

This paper aims to stimulate a conversation with stakeholders about the justice component of the NT’s inter‑agency response to DFSV. The response will inform both AGD’s legislative program going forward and DFSV-ICROs reform work over the coming year.

This review – and the systemic reforms being led and co-ordinated by the DFSV-ICRO – is working towards full implementation of the NT’*s Domestic, Family and Sexual Violence Reduction Framework 2018-2028 ‘Safe, Respected and Free from Violence****.***[[6]](#footnote-7)

Given the number of Aboriginal families affected by DFV in the NT, the review is also informed by, and complementary to, the NT’s Aboriginal Justice Agreement (AJA).

In 2021, the Government committed to a seven-year AJA after an extensive two-year community consultation process across the NT. The AJA aims to:

* reduce offending and imprisonment of Aboriginal Territorians;
* engage and support Aboriginal leadership; and
* improve justice responses and services for Aboriginal Territorians.

Research shows that Aboriginal women are the group most affected by DFV in the NT. Aboriginal women living in the NT are over eight times more likely to be assaulted than either non-Indigenous women or non‑Indigenous men and over three times more likely to be assaulted than Aboriginal men.

# Essential background

The rationale and context for the proposals are set out in the full-length paper. However, some essential background information is summarised below.

## What is domestic and family violence?

The model definition of domestic and family violence (DFV) is behaviour by a person towards a current or former partner or a family member that —

* 1. is physically or sexually abusive; or
	2. is emotionally or psychologically abusive; or
	3. is economically abusive; or
	4. is threatening; or
	5. is coercive; or
	6. in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person.[[7]](#footnote-8)

In addition, behaviour that causes a child to hear, witness or be otherwise exposed to DFV constitutes DFV against the child. This is because it is inherently abusive and harmful for a child to be exposed to an adult family member using violence against another family member.[[8]](#footnote-9)

DFV is a highly gendered behaviour. Statistics show that in the NT and elsewhere, DFV is predominantly, but not exclusively, perpetrated by men against women and children.[[9]](#footnote-10) However, people who are LGBTIQ+ or identify as gender diverse or non-binary also experience DFV. People of all ages (including children and older people), all cultural groups, and all abilities experience DFV.

An important feature of DFV is that it is often a pattern of abuse[[10]](#footnote-11) over time in which a person aims to control and dominate an intimate partner, ex-partner or family member. This control and dominance is central to understanding what DFV is, and how to address it. The power and dominance contributes to keeping people trapped in violent relationships.

The definition of DFV set out above differs from the definition in the NT’s DFV Act. It is one of the proposals in this review that the definition in section 5 of the DFV Act is modernised so that it is more closely aligned with the above understanding of DFV.

## DFV and violent crime

The majority of violent crime in the NT is caused by DFV.

* 63% of assaults in the NT are DFV-related.
* 63% of prisoners are held for DFV-related offences.
* DFV matters represent 35% of all matters finalised in NT courts in 2020/21.
* Every week in the NT, there are on average 69 DFV-related criminal matters finalised in the courts and 82 applications for Domestic Violence Orders (DVOs).

DFV has a high rate of repeat offending. Data shows 77% of defendants found guilty of a DFV-related offence have a prior violent offence and 72% have a prior DFV offence.[[11]](#footnote-12)

Australian Bureau of Statistics data shows the rate of DFV in the NT is higher than any other state and territory, and is more than double the next closest jurisdiction (Western Australia) and more than three times as high as the rates in all other jurisdictions for which data is available. [[12]](#footnote-13)

DFV appears to be increasing. The rate of DFV-related assault in the NT increased by 27% in 2020, compared with 2019.[[13]](#footnote-14)

## Lived experience

The lived experience of DFV victim-survivors has been taken into account in this review, through the DFV Victim Journey Mapping Project, conducted by Alex Richmond then from Dawn House for the Domestic Violence Justice Reform Network.[[14]](#footnote-15)

The report released in February 2019 identified that the justice system is a ‘system’:

* that is disjointed and disconnected (some people believed it could hardly be called a system at all);
* where victim-survivors have inadequate support;
* that is overloaded;
* where long timeframes affect outcomes;
* where there is not a focus on victim safety; and
* that is not breaking the cycles of abuse which is critical for making individuals and communities safer.

## Misidentification

The misidentification of the victim and the perpetrator is a significant challenge for the justice response to DFV and is one of the issues that has been considered in this review. Specialist DFV services have expressed concern about the growing number of women who are both (1) long term victim-survivors of DFV and (2) named as defendants in DVO applications or orders.[[15]](#footnote-16) This often occurs where there are cross-allegations of violence, or it is unclear who committed violence against whom, or it may appear that both parties have committed violence against each other. A common response from police and courts is to make mutual DVOs, that is, a corresponding DVO against both parties.

Misidentification may occur because a victim-survivor has used violence themselves in self-defence or retaliation. However, some offenders uses the legal system as a vehicle to continue to harass, intimidate or control the victim (often referred to as ‘systems abuse’ or ‘gaming the system’). Misidentification is a serious impediment to the safety of victim-survivors because being identified as a defendant provides a large disincentive to report future incidents of violence. Victim-survivors in this circumstance are particularly at risk.

## Coercive control

### What is coercive control?

Coercive control is a predominant feature of DFV but is not adequately recognised in the justice response in the NT.

Coercive control is a pattern of abusive behaviour that dominates and controls a partner, ex-partner or family member. It may include physical, sexual, emotional, psychological or financial abuse, with the perpetrator typically deploying multiple forms of abuse to make the victim-survivor fearful, isolated and subordinate. The behaviours often build up slowly over time and can be difficult to identify. The cumulative effect of this behaviour is that the perpetrator comes to control and dominate the victim‑survivor to such an extent that it diminishes their autonomy and independence, and damages their sense of self and self-worth.[[16]](#footnote-17) The effect can be so all-encompassing that ANROWS has described it as effectively removing the victim-survivor’s ‘personhood’.[[17]](#footnote-18)

The tactics used to control the partner are often interrelated. They include:

* making the victim-survivor dependent on, or subordinate to the perpetrator;
* isolating the victim-survivor from friends, relatives or other sources of support;
* controlling, regulating or monitoring victim-survivor’s day-to-day activities;
* depriving victim-survivor of, or restricting the victim-survivor’s, freedom of action;
* frightening, humiliating, degrading or punishing victim-survivor.

Physical violence is often used as part of coercive control. However, physical violence may be rare or not present at all. [[18]](#footnote-19) As a result, coercive control is under-recognised as a form of DFV, even though victim‑survivors commonly describe it as ‘the worst part of the abuse’.

The tactics used to control the victim-survivor can be hard to identify because they are often nuanced and highly personal or context-specific. Some tactics are specific to the particular relationship, and have meaning only in the context of that relationship. What controls and intimidates one person in one relationship, may not control and intimidate another person.

The abuser may exploit the vulnerabilities of a victim in an attempt to control her. Particular fears and anxieties, unemployment, disabilities, alcohol use or misuse, immigration status, mental health issues and concerns about children can all be used in this way.

The tactics have a cumulative effect over time to create significant harm to the victim-survivor.

### Why is it important for governments to address coercive control?

Coercive control is an overarching (some argue defining) feature of DFV and there are important reasons why governments across Australia and internationally are seeking to address coercive control.

* Coercive control significantly breaches a person’s human rights.
* Coercive control is extremely harmful to persons subjected to it.
* Coercive control traps people in violent relationships.
* Coercive control is a risk factor for domestic homicide.
* Responses to DFV cannot be improved unless we address coercive control.
* Understanding coercive control may reduce the misidentification of victims and perpetrators.

Coercive control is often dismissed as less serious or damaging than physical violence when in fact it causes serious harm.

Over the past three years, significant work has occurred around Australia in an effort to improve responses to coercive control, most notably in New South Wales[[19]](#footnote-20) and Queensland.[[20]](#footnote-21) Both the New South Wales and Queensland Governments have now agreed to criminalise coercive control. Tasmania is the only Australian jurisdiction that has current offences criminalising specific aspects of coercive control[[21]](#footnote-22), but the offences are not well-utilised.

Internationally, Scotland, England, Wales, Northern Ireland and the Republic of Ireland have criminalised coercive control. The Scottish approach has been described as the ‘gold standard’ and been accompanied by an extensive implementation process.

# Proposed approach to coercive control

## Options regarding the criminalisation of coercive control

There are good reasons to not criminalise coercive control prematurely in the NT. This is because:

* There is a need to raise awareness of what coercive control is before it is criminalised.
* Comprehensive improvements to the justice response to DFV are needed prior to criminalisation (in fact they are necessary whether the NT criminalises coercive control or not).
* There are changes to law, policy and procedure *other than a new criminal offence* that can be made in the NT to improve responses to DFV and coercive control. If these are effective, a new criminal offence may not be necessary.

There are therefore two main options in relation to criminalising coercive control in the NT.

**OPTION 1**

Not criminalise coercive control in the short term but immediately prioritise a raft of other legislative and systems reforms (over four years) to improve the justice response to DFV and coercive control. This option provides an opportunity to evaluate how effective these reforms have been, and for any future decisions about whether coercive control should be criminalised in the NT to be informed by that evaluation, along with the experience of other jurisdictions**.**

**OPTION 2**

Alternatively, commit to criminalising coercive control in the NT but ensure a long (four year) implementation phase prior to commencement, to enable the implementation of a raft of legislative and system improvements to the justice response to DFV and coercive control. This is along the lines of the approach being taken in Queensland, with the Queensland Women’s Safety and Justice Taskforce recommending a four-phase implementation process over at least four years.

**The Government is seeking input from stakeholders and the community about whether Option 1 or Option 2 is the best approach to coercive control in the NT.**

**THE PRIMACY OF IMPLEMENTATION**

It is important to emphasise that substantially the same legislative and systemic reforms on DFV and coercive control (outlined below) will be required whether a new criminal offence is introduced or not. Both options 1 and 2 will require substantial reform to the justice response to DFV in the NT and that change on this scale will take time and effort to fully implement.

As has been found by the inquiries in other jurisdictions, a long lead time for implementation prior to commencement is critical to the success of a new criminal offence. But even if there is no commitment to a new criminal offence, the same reforms to the justice response to DFV and coercive control are still needed.

## Proposed coercive control reforms

Regardless of whether a new criminal offence is introduced or not, there are legislative amendments and systemic reforms that can be made in the NT to improve responses to coercive control as a central feature of DFV.

These proposals are set out briefly below and then integrated into Part 5 which lists all the DFV legislative reforms that are proposed in this review and Part 6 which lists all the DFV systemic reforms that are proposed as part of this review. A new criminal offence is not included at this stage.

### Coercive control legislative proposals (regardless of criminalisation)

The following legislative amendments are proposed to improve responses to coercive control. These are integrated into the legislative proposals in Part 5 below. Please refer to the full-length paper for the rationale of each proposal and further details.

* 1. modernise the definition of domestic violence in the DFV Act to include behaviour that is emotionally or psychologically abusive, coercive, or in any other way controls or dominates a family member;
	2. incorporate a definition of coercive control into the DFV Act;
	3. develop a statutory guidance framework on DFV and coercive control to provide more detailed guidance on applying the DFV Act;
	4. amend the principles in the preamble of the DFV Act to include coercive control and misidentification of the person most in need of protection;
	5. amend section 19 of DFV Act so that where there are cross allegations of violence the concepts of coercive control and a pattern of abuse can be used to assist police and courts to correctly identify ‘the person most in need of protection’;
	6. amend the DFV Act to require police to provide criminal history and a list of current and prior DVOs against a defendant at the first mention in all applications for DVOs, so that patterns of abuse can be more readily detected early in the proceedings;
	7. amend the DFV Act to mandate attendance at behaviour change programs along the lines of counselling orders provided for in Part 5 of the *Family Violence Protection Act 2008* (Vic) to provide greater impetus and opportunity for DFV offenders to address coercive controlling behaviour;
	8. amend section 6A of the *Sentencing Act 1995* so that it is an aggravating factor for the purposes of sentencing if the offence was committed as part of a pattern of coercive controlling behaviour;
	9. conduct further research into whether coercive control should be a mitigating factor in sentencing (see section 5(2)(f) of the *Sentencing Act 1995*);
	10. amend the definition of harm in the Criminal Code to avoid any doubt that coercive control may result in significant psychological harm;
	11. amend the *Evidence Act 1939* along the lines of section 39 of the *Evidence Act 1906* (WA*)* to allow expert evidence of family violence to be admissible where evidence of family violence is relevant to a fact in issue;
	12. amend the *Evidence Act 1939* to adopt mandatory jury directions in relation to DFV, and establish a working group to advise on the content of the directions for the NT.

### Coercive control systemic reforms (regardless of criminalisation)

The following systemic reforms are proposed to improve responses to coercive control. These are integrated into the systemic reform (SR) proposals in Part 6 below.

1. implement an extensive Territory-wide program of community awareness raising about coercive control and DFV, with a particular focus on education in Aboriginal communities to build a shared understanding of what coercive control is (see proposal SR 7);
2. incorporate coercive control into the training of police, prosecutors, judges, lawyers and front-line workers to assist in identifying and responding to coercive control as a form of DFV (see proposal SR 8);
3. implement a major NT-wide public health campaign about healthy and safe relationships, to make people aware that coercive control is a form of DFV and how to address it (see proposal SR 9);
4. revise the Police General Order on DFV and other relevant policy and procedures to assist police to identify ‘red flags’ for coercive control and respond to coercive control as a high risk factor for serious harm and death (see proposal SR 11);
5. review police training on DFV to assist police in identifying and responding to coercive control in line with the revised Police General Order on DFV (see proposal SR 12);
6. develop a police-specific tool and practices to assess and manage risk associated with DFV and coercive that is aligned with the NT’s Risk Assessment and Management Framework (RAMF) (see proposal SR 13);
7. expand and strengthen DFV perpetrator programs in the NT so that people who use coercive controlling behaviour have support to change their behaviour (see proposals SR 21 and 22).

It is noted that some of the proposals can be implemented within the existing resources of agencies and some require further investment and will be considered by the DFSV-ICRO in the next 12 months as part of the DFV reform agenda.

It is proposed that the DFSV‑ICRO be tasked with driving the implementation of reforms to combat coercive control in the context of strengthening the inter-agency response to DFV. This will include greater alignment between police, justice, health, education and territory families’ approaches to DFV and coercive control and consideration of priorities for future investment.

### Questions – Coercive control

|  |
| --- |
| The NT Government is seeking feedback from the community on how to improve responses to coercive control in the NT:1. Which of following options do you prefer in the NT:
	* + - * **Option 1**: The NT Government undertakes law reform and implementation to improve responses to coercive control (over four years) and then, after considering an evaluation of those reforms, makes a decision about whether to criminalise coercive control.
				* **Option 2:** The NT Government makes a commitment to criminalise coercive control and reform the above laws to improve responses to coercive control, with a phased approach to implementation over four years.
2. Aside from the question of criminalisation, which of the law reform proposals outlined in above do you support? Which do you not support?
3. Which systems reforms outlined above do you think are most important in the NT?

AGD provides these questions for guidance only. Submissions are not required to address all, or any, of these questions. Stakeholders are welcome to provide any views about how to improve responses to DFV and coercive control in the Northern Territory. |

# Proposed legislative reforms

The legislative reforms (LR) proposed in this review to improve responses to DFV in the NT are set out below.

They include proposals to incorporate coercive control into existing legislation along with general proposals that have been identified to improve responses to DFV. They do not include a proposal to create a new criminal offence of coercive control for the reasons outlined above.

**The numbering for the legislative reforms uses the prefix ‘LR’ to facilitate cross-referral to the full-length paper which provides the rationale and detail of each proposal.**

### *Domestic and Family Violence Act 2007*

There is a need to modernise the DFV Act to bring it into line with best practice in other jurisdictions. An example of this is the need to modernise the definition of domestic violence that underpins the DFV Act, to better capture coercive control. In addition, there are procedural shortcomings in the DFV Act that need to be addressed, for example, the need for explicit provisions relating to varying a police DVO before it is confirmed by the court.

#### PROPOSAL LR 1

It is proposed that the preamble in the DFV Act be amended to reflect a contemporary understanding of DFV Act.

#### PROPOSAL LR 2

It is proposed that minor amendments are made to the objects of the DFV Act along the lines:

1. to increase the safety and protection of adults and children who have experienced domestic violence or are at risk of domestic violence, and
2. to increase the accountability of people who commit domestic violence and encourage them to accept responsibility for their actions, and
3. to reduce and prevent domestic violence, and
4. to reduce the exposure of children to domestic violence.

#### PROPOSAL LR 3

It is proposed to amend the definition of ‘party’ to avoid any doubt that it includes:

* the protected person even if the protected person is not the applicant,
* the defendant;
* if the police apply for a DVO under section 28 or section 29 or make a Police DVO under section 41, the police are also a party;
* if a person acting for an adult or a child applies for a DVO on behalf of an adult or a child under section 28 or section 29, they are also a party.

#### PROPOSAL LR 4

It is proposed to amend the definitions of Court DVO, Police DVO and external order in the DFV Act and clarify the structure of the Act.

#### PROPOSAL LR 5

It is proposed that DFV Act be amended so that the definitions of domestic violence, economic abuse and emotional and psychological abuse are modernised along the lines of the Model Definition of Family Violence adopted by the Law Council of Australia (noting that this is substantially similar to the definitions set out in sections 5, 6 and 7 of the *Family Violence Protection Act 2008* (Vic) with some additional examples).

#### PROPOSAL LR 6

It is proposed to insert a definition of coercive control in the DFVA along the lines:

Coercive control is a pattern of behaviour that is coercive or in any other way controls or dominates the protected person and causes the protected person to feel fear for the safety and wellbeing of the protected person or another person. Coercive control may have one or more of the following effects:

1. It makes the protected person dependent on, or subordinate to the defendant.
2. It isolates the protected person from friends, relatives or other sources of support.
3. It controls, regulates or monitors the protected person’s day to day activities.
4. It deprives the protected person of, or restricts the protected person’s, freedom of action.
5. It frightens, humiliates, degrades or punishes the protected person.[[22]](#footnote-23)

It is further proposed to insert a note following the definition along the lines that: ‘Coercive control may occur with physical violence, or in the absence of physical violence.’

#### PROPOSAL LR 7

It is proposed to create a statutory guidance framework on coercive control to guide proceedings under the DFV Act, including to reduce the misidentification of the person most in need of protection.

#### PROPOSAL LR 8

It is proposed to amend the definitions in the DFV Act as follows:

Domestic relationship (section 9)

1. Amend section 9(d)(ii) along the lines ‘someone else who is *or has been* in family relationship with the other person.’

Family relationship (section 10)

1. Amend the definition of family relationship to include the relationship between a person’s former spouse or defacto partner and their current spouse or defacto partner.

Intimate personal relationship (section 11)

1. Amend the definition of intimate personal relationship to include the relationship between a person’s former ‘intimate personal relationship’ and their current ‘intimate personal relationship’.
2. Amend the definition of intimate personal relationship to include the relationship between a person and the relatives of a person with whom they are engaged to be married or with whom they are having an intimate personal relationship.
3. Amend the definition of intimate personal relationship to include persons who have had casual or one-off sexual incidents, whether consensual or not.
4. Amend section 11(4) to provide recognition that an intimate personal relationship may exist between people of the same or opposite sex, and regardless of the gender identity or sexual orientation of the persons.

It is further proposed to insert a note along the lines that conduct which meets the definition of DFV in the DFV Act directed towards a child is DFV.

#### PROPOSAL LR 9

It is proposed to amend section 16 to align the object of this Chapter with the object of the DFV Act along the lines:

The objects of this Chapter are to provide for:

1. The making of domestic violence orders to:
	1. increase the safety and protection of adults and children who have experienced domestic violence or are at risk of domestic violence, and
	2. to increase the accountability of people who commit domestic violence and encourage them to accept responsibility for their actions, and
2. the variation and revocation of domestic violence orders.

#### PROPOSAL LR 10

It is proposed to:

* Amend section 19(1) along the lines: In deciding whether to make a DVO, and in deciding the terms of a DVO, the issuing authority must consider the safety and protection of the protected person and any children to be of paramount importance.
* Amend section 19(2) to include the following additional matters that must be considered in making a DVO:
	+ any DVOs made against the defendant, whether or not they are currently in force;
	+ other current legal proceedings involving the defendant or the protected person;
	+ orders and applications under *Care and Protection of Children Act 2007.*
* Insert a new mandatory requirement in section 19, along the lines that if there are children in the care of, or who have regular contact with, a protected person or the defendant the court must consider whether section 18(2) applies in relation to the children, and must consider whether the children should be included as protected persons on the adult protected persons DVO or require their own DVO.

#### PROPOSAL LR 11

It is proposed to add a new requirement to the DFV Act that for all applications for DVOs (police or private) a certificate from police outlining the defendant’s criminal history and any DVOs made against the defendant, whether or not they are currently in force, must be put on the court file at the first mention (along the lines of section 10F in the *Restraining Orders Act 1997* (WA)).

#### PROPOSAL LR 12

It is proposed to amend section 19 of the DFVA to introduce an additional test if there are cross allegations of DFV or cross applications for a DVO:

1. If there are cross allegations of DFV and the requirements of section 18(1) are likely to be met for both parties, the court must consider the nature of the DFV in the relationship between the parties to identify if one party is the person most in need of protection.
2. In determining if one party is the person most in need of protection, the court must weigh up:
	1. whether there is a pattern of DFV over time that indicates that one party is the person most in need of protection; and
	2. whether there is a pattern of coercive control by one party towards the other over time that indicates that one party is the person most in need of protection; and
	3. whether there are differences in the type, extent, severity of any injuries, in relation to the current incident or over time, that indicate one party is the person most in need of protection.
3. If the court determines that one party is the person most in need of protection, the court must not make a DVO against that party unless the court is satisfied that, in order to give effect to the objects of the Act, it is necessary to issue a DVO against both parties.

#### PROPOSAL LR 13

It is proposed to amend section 41 along the lines:

* Police must consider whether there are any children in the care of the protected person or the defendant who may need to be protected by being included on the adult’s DVO or through their own DVO.
* If there are cross allegations of violence, or police are concerned that both parties may have used violence against each other, police must seek to identify the person most in need of protection.

It is further proposed to add a note to section 41 referring to the provisions proposed for section 19 above.

#### PROPOSAL LR 14

It is proposed to replace sections 20 and 22 with new provisions to exclude a defendant from the premises along the lines of sections 63 and 64 of the *Domestic and Family Violence Protection Act 2012* (Qld).

#### PROPOSAL LR 15

It is proposed to amend section 21 to make it a mandatory condition in all DVOs that the defendant must not commit DFV against the protected person.

#### PROPOSAL LR 16

It is proposed to amend section 21 so that a DVO may provide an order that the defendant be restrained from locating or attempting to locate the protected person, including any children named as protected persons.

#### PROPOSAL LR 17

It is proposed to amend section 21 to provide explicit power for the court to order the defendant to destroy intimate images or hand them to police.

#### PROPOSAL LR 18

It is proposed that attendance at DFV behaviour change programs be mandated along the lines of counselling orders provided for in Part 5 of the *Family Violence Protection Act 2008 (Vic)*.

#### PROPOSAL LR 19

It is proposed to amend section 26 so that a court DVO can prohibit the publication of personal details of a party or witness in a proceeding if satisfied the publication would expose the protected person or witness to a risk of harm or if satisfied it is appropriate in the circumstances. It is further proposed to amend sections 123 and 124 to clarify that these provisions do not apply to information shared with another entity under a recognised information sharing scheme (including Chapter 5A of the DFV Act or Chapter 5.1A of the *Care and Protection of Children Act 2007*).

#### PROPOSAL LR 20

It is proposed to amend section 27 to provide the Court with greater guidance in determining the duration of a DVO along the lines of *Family Violence Protection Act 2008* (Vic):

* A DVO (other than an interim court DVO) is in force for the period stated in it.
* If the Court fails to specify a period for an order against an adult, the order continues for five years or until it is revoked or set aside on appeal.
* If the Court fails to specify a period for an order against a child, the order continues for 12 months.
* The duration of the DVO should be the period that the court considers necessary and desirable for the safety and protection of the protected person.
* In determining the period for which the DVO is in force, the court must take into account:
	+ that the safety and protection of the protected person is paramount;
	+ any assessment by the applicant of the level and duration of the risk from the defendant;
	+ if the applicant is not the protected person, the protected person’s views, including the protected person’s assessment of the level and duration of risk from the defendant.
* In determining the period for which the DVO is in force, the court may take into account the length of a prison term to which the defendant has been, or is likely to be, sentenced to provide a period of protection for the protected person upon the defendant’s release.
* The court may also take into account any matters raised by the defendant that are relevant to the duration of the order.

It is further proposed that there be a specific provision for making a DVO of indefinite duration where there is significant and ongoing risk that cannot be adequately mitigated by an order of limited duration, along the lines of section 79B of the *Crimes (Domestic and Personal Violence) Act 2007 (NSW).*

#### PROPOSAL LR 21

It is proposed to amend section 27 along the lines that:

* A police DVO is in force until it is either confirmed under Part 2.10 when it becomes a court DVO, or is revoked or set aside on appeal.

This amendment presupposes that the proposed amendments to Parts 2.8, 2.9 and 2.10 outlined below in proposal LR 32 also occur.

#### PROPOSAL LR 22

It is proposed to amend the DFV Act to provide for the extension of a court DVO along the lines:

* The court may order the extension of a final DVO:
	+ on application by a party to the DVO;
	+ on its own initiative.
* The application to extend a DVO must be made while the DVO is in force or within six months of it expiring.
* The court may, on application, order the extension of a final order if the court is satisfied, on the balance of probabilities, that there are reasonable grounds for the protected person to fear the commission of domestic violence against the person by the defendant if the order is not extended.
* This applies whether or not the defendant has:
	+ committed DFV against the protected person while the DVO is in force, or
	+ complied with the order while it has been in force.
* The extension must be served on all the parties.
* Allow an interim extension order for 28 days to allow for circumstances in which the defendant has not yet been served with the notice of the application (along the lines of section 107 of the *Family Violence Protection Act 2008* (Vic).

#### PROPOSAL LR 23

It is proposed for the DFV Act to be amended along the lines that:

* an application for a DVO is to be filed in the venue closest to the protected person or the defendant;
* the court may hear and determine the proceedings at the venue in which the proceedings were commenced or at another venue the court considers appropriate.

#### PROPOSAL LR 24

It is proposed to amend section 30 so that the applicant’s address must not be stated on an application form unless:

* the protected person consents to it being included knowing that the form will served on the defendant, or
* the defendant already knows the address, or
* where it is necessary to state the address in order to achieve compliance with the order.

#### PROPOSAL LR 25

It is proposed to review the application forms for DVOs to consider whether procedural fairness for the defendant can be provided through information in the form itself without the need to serve the Affidavit on the defendant.

#### PROPOSAL LR 26

It is proposed to amend section 13(3) to limit DVO applications to one adult protected person**,** with an exception that children up to 24 years of age of an adult protected person, or in the care of an adult protected person, may be included on the adult protected person’s DVO.

#### PROPOSAL LR 27

It is proposed to amend Part 2.4 Division 3 ‘Miscellaneous Matters’ so that the court may refuse to make a DVO, or may revoke a police DVO, at any stage in the proceedings if the court believes that the making of a DVO against the defendant is likely to be inappropriate given the objects and principles in the DFV Act.

It is further proposed to add a note beneath the provision along the lines:

An example for the purposes of this section is that the court believes that defendant in a DVO application or order is the person most in need of protection.

#### PROPOSAL LR 28

It is proposed to amend section 35 along the lines that:

* an interim court DVO can made or varied by the court at any time in the proceedings before the Local Court DVO is finalised; and
* can be made or varied before the defendant has been served.

#### PROPOSAL LR 29

It is proposed to amend section 38 so that reciprocal orders cannot be made by consent unless the court is satisfied that there are grounds for making the order against each party.

It is proposed to add a note beneath the provision along the lines:

The court may refuse to make a DVO, or may revoke a police DVO, at any stage in the proceedings if the court believes that the making of a DVO against the defendant is likely to be inappropriate given the objects and principles in the Act.

#### PROPOSAL LR 30

It is proposed to amend Part 2.6 in relation to police DVOs along the lines that:

1. On the first occasion a police DVO is before the court, the court may consider whether the order should continue in the terms made or with different terms;
2. The court may revoke a police DVO if the court believes that:
	1. there are no grounds for the DVO to be made, or
	2. the making or variation of the order may be inappropriate given the objects of the Act.
3. Add a note beneath this provision along the lines:

An example of when making an order may be inappropriate given the objects of the Act is if the court believes that a victim of DFV has been named as a defendant in a DVO application and that making the order may expose the defendant to domestic violence and be contrary to their safety and protection.

1. To avoid any doubt, a police DVO is in force until it is either:
	1. confirmed under Part 2.10 when it becomes a court DVO, or
	2. varied by the court in accordance with 2.8, or
	3. it is revoked, or
	4. set aside on appeal.
2. Amend section 43(2) to require the police to also give an explanation of the order to the protected person.

It is further proposed to amend Part 2.6 to:

* avoid any doubt that a police DVO may be made when police are considering releasing a person on bail; and
* the bail decision maker must ensure that the bail conditions and the DVO conditions are not inconsistent.

#### PROPOSAL LR 31

It is proposed to amend Part 2.7 along the lines:

* The court may make an interim DVO or vary a DVO on its own initiative or on application of the prosecutor at any stage in the criminal proceedings.
* After a plea of guilt or a finding of guilt, the court ‘*must’* consider whether to make a DVO (currently it is ‘*may’*).
* If a police or court DVO is already in force against the person, the court:
	+ must consider the DVO and whether, in the circumstances the DVO needs to be varied, including for example, by varying the date the DVO ends;
	+ may vary the DVO if the court considers it should be varied;
	+ may confirm the DVO.
* To avoid any doubt, if the defendant has been found guilty of an offence, the court may confirm a police DVO or a court DVO without complying with Part 2.10.
* The court may hear submissions from the parties to the DVO and the prosecutor in making a decision about the conditions in the DVO but is not required to do so.
* Notice of order must be provided – see section 46.

It is further proposed to include a provision along the lines that: To avoid any doubt, the Supreme Court may make a DVO in accordance with Part 2.7.

#### PROPOSAL LR 32

It is proposed to retain the overall structure of Chapter 2 of the DFV Act but clarify and strengthen the provisions for varying and revoking DVOs as follows:

1. Make various amendments to Part 2.8 ‘Variation and revocation of DVOs’, including to amend section 56 so that it includes revoking a DVO and that the order must not be revoked or significantly varied to make it less restrictive without the protected person, being made aware of the application and having an opportunity to be heard.
2. Amend Part 2.9 ‘Review of police DVOs’ along the lines:
	1. amend section 74(2) to enable the judge to vary a Police DVO on an interim basis without confirming it, and
	2. provide that the DVO must not be revoked or significantly varied to make it less restrictive without the protected person, being made aware of the application and having an opportunity to be heard.
3. Amend Part 2.10 ‘Confirmation of DVOs’ along the lines:
4. amend section 82(1) so that the court may:
	* 1. confirm the DVO (with or without variations);
		2. vary the DVO on an interim basis without confirming it;
		3. revoke the DVO; and
5. amend to provide a procedure for the defendant to object to the DVO if he/she does not attend the confirmation hearing to ensure procedural fairness.

#### PROPOSAL LR 33

It is proposed to amend section 85 to enable either the defendant or the protected person to retrieve their personal property in the company of a police officer in circumstances where a DVO would otherwise prevent them having contact with each other (regardless of whether a premises access order is in place). It is also proposed to require that reasonable notice be given to the person residing in the premises.

#### PROPOSAL LR 34

It is proposed to amend section 110(2) to add words along the lines ‘unless the witness requests that a screen or partition is not used.’

#### PROPOSAL LR 35

It is proposed to amend the DFV Act along the lines along the lines of section 93 of the *Care and Protection of Children Act 2007*:

* Court proceedings must be conducted with as little formality and legal technicality as the circumstances permit.
* Subject to any directions of the court, the court is not bound by the rules of evidence.

#### PROPOSAL LR 36

It is proposed to maintain the mandatory reporting provision in section 124A as currently worded.

#### PROPOSAL LR 38

It is proposed that sections 121 and 122 be repealed and replaced with a tiered approach to sentencing for the contravention of a DVO along the following lines:

* If a person is found guilty of an offence against section 120(1), the person is liable to a penalty imprisonment for two years (along the lines of existing section 121(1)).
* For persistent contravention, on three occasions within **28 days**, the person is liable to a penalty of three years in prison.
* For a contravention where a person has a prior finding of guilt for a DFV-related offence, the person is liable to a penalty of three years in prison.
* If the contravention is accompanied by harm to the protected person or threats of harm, the person is liable to a penalty of **five years in prison**.

#### PROPOSAL LR 39

Subject to the findings of the Information Commissioner’s Review of Chapter 5A, it is proposed to:

1. Amend the DFV Act and/or the *Information Act 2002*, so that theInformation Privacy Principles (IPPs) in relation to the collection of information (IPP 1 and IPP 10) do not apply if the test for information sharing in Chapter 5A is met.
2. Amend section 124T of the DFV Act to clarify that Chapter 5A has effect despite the operation of any other laws, and explicitly name the *Information Act 2002* to avoid any doubt that Chapter 5A is not to be limited by the IPPs (and any corresponding changes that may be required to the *Information Act 2002* to give effect to that amendment).
3. Amend the DFV Act to explicitly provide that information is permitted to be shared in case management meetings if the purpose of the meeting is to assess, lessen or prevent a serious threat to a person’s life, health safety or welfare, including to provide or arrange a domestic violence related service.
4. Amend the DFV Act to provide a definition of information sharing that includes the giving and receiving of information, and encompasses the collection, use and disclosure of information.
5. Amend section 124B(g)(ii) of the DFV Act so that additional information sharing entities (ISEs) are published in the Gazette rather than being prescribed by regulations and that the complete list of ISEs be provided on the website alongside the Information Sharing Guidelines.

#### PROPOSAL LR 40

It is proposed to amend the DFV Act to require police to refer alleged victims of DFV to a 24 Hour Specialist DFSV Referral Service. It is proposed that police have the power to refer victim-survivors automatically without the victim-survivors consent but police will be required to explain the reason for the mandatory referral to the victim-survivor.

This amendment is complementary to proposal SR 15 to establish a 24-hour specialist DFV referral service.

#### PROPOSAL LR 41

It is proposed that AGD in collaboration with NT Police and the DFSV-ICRO develops a policy on the service of applications and DVOs, and further considers the need for legislative amendments, to ensure there is a co-ordinated inter-agency response that prioritises victim-survivor safety.

#### PROPOSAL LR 42

Other proposed changes to the DFV Act are to:

1. Amend section 14(3) so that a defendant must be at least 14 years (currently it is 15).
2. Amend section 28 (or the definitions in section 4) so that a young person between 14 and 18 years may apply for a DVO with the leave of the court (currently it is between 15 and 18).
3. Amend the DFV Act providing that when the defendant is under 18 years, the matter is to be heard in a children’s court.
4. Amend the DFV Act to provide for explanations to be given to the parties about the orders.
5. Section 90 requires an applicant for a DVO to inform the issuing authority of family law applications and orders, and a police officer considering making a DVO must make reasonable inquiries about the existence of such applications/orders. It is proposed to add a similar provision along for applications and orders under the *Care and Protection of Children Act 2007.*
6. Review all references to the registrar in the DFV Act.
7. Clarify the terminology and remove inconsistencies in relation to references to children and young people in the DFV Act.
8. Amend section 106 to require the court to be closed if the defendant is under 18 years.
9. Amend sections 107-109 so that it applies to ‘child’ protected person.

### *Bail Act 1982*

#### PROPOSAL LR 43

It is proposed to amend the *Bail Act 1982* along the lines of section 5AAAA of the *Bail Act 1997* (Vic) to explicitly require bail decision makers to:

* make inquiries of the prosecutor about whether there is a DVO in force;
* consider the risk that if the accused is released on bail he/she would commit domestic violence and to consider whether there is a need to mitigate the risk through the making of a bail condition or a DVO under the DFVA;
* ensure that any bail conditions or conditions of a DVO are not inconsistent.

#### PROPOSAL LR 44

It is proposed to amend the *Bail Act 1982* so that in cases of DFV or sexual offences:

* the court may adjourn the matter to enable the prosecutor to obtain the alleged victim’s view about whether the release of the accused person on bail could lead to a risk to the alleged victim’s safety or welfare, and
* provide that, if the prosecutor hasn’t had prior notice of the bail application, the court must adjourn the matter if requested by the prosecutor to enable the prosecutor to seek the alleged victim’s view.

#### PROPOSAL LR 45

It is proposed to require police to take reasonable steps to inform complainants in DFV related criminal proceedings as soon as practicable of decisions to grant or refuse bail and, if bail is granted, the conditions of release that are relevant to the safety of the complainant.

### *Sentencing Act 1995*

#### PROPOSAL LR 46

It is proposed to amend section 5 to add a note after section 5(1)(e) ‘to protect the Territory community from the offender’, along the lines:

Note: To avoid any doubt section 5(1)(e) includes the protection of persons in a domestic relationship with the offender, as defined in the *Domestic and Family Violence Act 2007*.

#### PROPOSAL LR 47

It is proposed to amend section 6A of the *Sentencing Act 1995* to add the following aggravating factors to which a court must have regard in sentencing an offender:

The offender and the victim are in a domestic relationship and

* 1. there is physical or sexual abuse by the offender against the victim (including prior acts whether charged or uncharged); or
	2. there is a pattern of coercive control by the offender against the victim; or
	3. some or all of the conduct that formed part of the offence exposed a child or children to DFV; or
	4. some or all of the conduct that formed part of the offence was also a contravention of a court order, including a DVO.

It is further proposed that domestic relationship be defined in accordance with the DFV Act.

#### PROPOSAL LR 48

It is proposed to conduct further research into whether an amendment to the *Sentencing Act 1995* is required so that being subjected to DFV, including coercive control, may be considered a mitigating factor in sentencing, and what form such an amendment should take.

#### PROPOSAL LR 49

It is proposed that amendments to the *Sentencing Act 1995* are made requiring the Court to consider the risk of domestic violence and how it could be mitigated along the lines:

If the court is considering making a sentencing order for a domestic violence offence where the offender will be living in the community, the court must:

1. consider whether there would be a risk that the accused would commit domestic violence;
2. consider whether a condition of the order needs to be made to mitigate any risk of domestic violence;
3. consider whether a DVO needs to be made under section 45 of the *Domestic and Family Violence Act 2007* to mitigate any risk of domestic violence;
4. if a DVO is already in force, the court must consider whether the conditions and duration of the DVO need to be varied; and
5. ensure that the conditions of the order and any DVO in force are not inconsistent.

It is proposed that the court may have regard to any evidence before the court in relation to the risk that an offender would commit domestic violence. Domestic violence and domestic relationship are proposed to be defined in accordance with the DFV Act.

#### PROPOSAL LR 50

It is proposed to amend section 106B(9) so that the offender or the offender’s legal representative cannot cross-examine a victim about the contents of a victim impact statement.

### Criminal Code

#### PROPOSAL LR 51

It is proposed to amend the definition of harm in section 1A(3) of the Criminal Code to recognise that coercive control may result in harm, along the lines:

A pattern of coercive control or other forms of domestic violence occurring in a domestic relationship may result in significant psychological harm, even in the absence of physical harm.

It is proposed that domestic violence, domestic relationship and coercive control is defined in accordance with the DFV Act. This review proposes that a definition of coercive control be added to the DFV Act.

#### PROPOSAL LR 52

Amend section 188(2) of the Criminal Code so that the following factors are listed as aggravating features in section 188(2):

The person assaulted was subjected to choking, suffocation or strangulation.

#### PROPOSAL LR 53

It is proposed to amend section 21J to simplify the requirements for admissibility of recorded statements and bring it into line with Part 3 along the lines:

To be admissible, a recorded statement must be made as soon as practicable after the events mentioned in the statement occurred, with the consent of the complainant, and in compliance with section 20 of the *Oaths, Affidavits and Declarations Act 2010.*

### *Evidence Act 1939*

#### PROPOSAL LR 54

It is proposed to amend the *Evidence Act 1939* along the lines of section 39 of the *Evidence Act 1906* (WA) to allow expert evidence of family violence to be admissible where evidence of family violence is relevant to a fact in issue.

#### PROPOSAL LR 55

It is proposed that the NT adopt mandatory jury directions in relation to DFV, including coercive control, and establish a working group with appropriate DFV expertise and criminal law expertise to advise on the content of the directions for the NT.

### *Evidence (National Uniform Legislation) Act 2011*

#### PROPOSAL LR 56

It is proposed to amend section 19 of the *Evidence (National Uniform Legislation) Act 2011* so that the right to object to giving evidence against a spouse, defacto partner, parent or child (provided in section 18 of that Act) does not apply in a proceeding for a domestic violence related offence (just as it does not apply for a breach of a DVO).

### *Local Court (Criminal Procedure) Act 1928*

#### PROPOSAL LR 57

It is proposed to amend the *Local Court (Criminal Procedure) Act 1928* to create a presumption that if an accused is charged with more than one sexual offence, it is presumed that the charges are heard together, along the lines of the presumption for indictable matters in section 341A of the Criminal Code. In addition, it is proposed to give further consideration to whether there should also be a presumption that DFV-related offences are heard together.

### Questions – Legislative reforms

|  |
| --- |
| The following questions are for consideration:1. Which of the proposed legislative reforms do you support? Which do you consider to be a priority?
2. Which of the proposed legislative reforms do you not support?
3. Do you have suggestions to strengthen any of the proposals?
4. Have you identified any unintended consequences of any proposals?

AGD provides these questions for guidance only. Submissions are not required to address all, or any, of these questions. Stakeholders are welcome to provide any views relevant to improving legislation and the justice response to DFV in the NT. |

# Proposed systemic reforms

The non-legislative or systemic reforms proposed in this review are set out below.

On its own, changing the law is not enough to improve responses to DFV or coercive control. Systemic reforms are also required to policies, procedures and practices, to programs and services, to training, and to inter-agency co-ordination.

The DFSV-ICRO will drive co-ordinated inter-agency reform of responses to DFSV (including coercive control) over the next year.

This does not mean that other Ministers and government agencies will relinquish DFSV reform. The DFSV‑ICRO will be staffed by representatives from relevant agencies such as the NTPFES, TFHC, AGD, DoH, DoE for a period of 12 months. This approach is intended to ensure that all DFSV activities are fully aligned and underpinned by a common framework that represents best practice. The DFSV-ICRO will be located in the Government’s Reform Management Office to facilitate fulsome cross-agency engagement and reform.

The DFSV-ICRO in collaboration with agencies will:

* map existing agency initiatives and investment on DFSV across all agencies;
* co-ordinate and align NTG reforms on DFSV;
* establish a monitoring and evaluation framework for DFSV reform;
* develop a cross-agency funding bid to fill existing gaps; and
* advise on a cross-agency co-ordination and governance mechanism for DFSV going forward.

The systemic reforms set out below will be considered by DFSV-ICRO as part of its DFSV reform agenda in the next 12 months.

**The numbering for the systemic reforms uses the prefix ‘SR’ to facilitate cross-referral to the full-length paper which provides the rationale and detail of each proposal.**

### Inter-agency co-ordination and reform

#### PROPOSAL SR 1

It is proposed that the systems reforms identified in this review are integrated into the DFSV-ICRO reform agenda.

#### PROPOSAL SR 2

It is proposed that DFV reforms and AJA reforms are aligned to ensure that:

1. The views and experiences of Aboriginal people inform DFV reforms.
2. DFV responses and programs are culturally safe and competent.
3. Victim-survivor safety is the first priority of all responses and programs.
4. Offenders are supported to take responsibility for their behaviour and to change their behaviour in order to reduce DFV offending and reoffending.
5. In addition to behaviour change objectives, there are culturally appropriate supports in place to ensure that Aboriginal women, Aboriginal men, and Aboriginal children are supported to heal from inter-generational trauma and recent trauma.

#### PROPOSAL SR 3

It is proposed that reforms to community-based sentencing options and the expansion of programs:

1. are informed by specialist expertise on DFV; and
2. include safeguards to monitor and prioritise the safety of victim-survivors while DFV offenders are on community-based orders and participating in community-based programs.

#### PROPOSAL SR 4

It is proposed that the DFSV-ICRO (and the DFV inter-agency co-ordination mechanism which succeeds it) co-ordinates a DFV analysis of proposed new Government initiatives.

#### PROPOSAL SR 5

It is proposed that collaboration between stakeholders occur to agree on shared expectations of the justice response, with the above expectations as a starting point for discussion.

### Coercive control prevention and reform

#### PROPOSAL SR 6

It is proposed that the DFSV-ICRO be tasked with driving the implementation of reforms to combat coercive control in the context of strengthening the inter-agency response to DFV.

#### PROPOSAL SR 7

It is proposed that the DFSV-ICRO reform agenda include consideration of funding for TFHC to implement an extensive program of community awareness raising about coercive control and DFV. The project will empower Aboriginal families and communities to identify, prevent and respond to coercive control through culturally safe and appropriate community-level engagement. The project aims to initiate greater community action on DFV and coercive control on an ongoing basis, through a range of non-government agencies and through involvement of the Law and Justice Groups, established under the AJA.

#### PROPOSAL SR 8

It is proposed that the DFSV-ICRO reform agenda include consideration of funding to significantly expand the availability of training in relation to DFV, including training and education specifically tailored to police, prosecutors, judges, lawyers and front-line workers to assist in identifying and responding to coercive control and DFV.

#### PROPOSAL SR 9

It is proposed that the DFSV-ICRO reform agenda include consideration of a major NT-wide public health campaign about healthy and safe relationships, to make people aware that coercive control is a form of DFV.

### Specialist Court Approaches

#### PROPOSAL SR 10

It is proposed that the NT progressively work towards a specialist approach to DFV (incorporating civil and criminal law) centred around the Local Court in the following areas:

Southern Region

1. continuation of the Specialist Approach in Alice Springs; and
2. commence discussions in Tennant Creek.

Northern Region

1. commence discussions in Darwin; and
2. commence discussions in Katherine.

It is further proposed that:

1. The specialist approach to DFV be permitted to evolve in each location to take into account local needs and circumstances but that it be guided by a set of Territory-wide overarching shared principles to ensure consistency and co-ordination and to align with good practice.
2. The DFSV-ICRO reform agenda include consideration of funding for a DFV Co‑ordinator/Registrar position in each Local Court (other than Alice Springs which already has that position) and a central position in the AGD dedicated to support the development of the response.
3. The Specialist Approach to DFV in the Local Court in Alice Springs continue and that the DFSV‑ICRO reform agenda include consideration of funding to strengthen its approach in line with its Internal Evaluation Report.
4. AGD identify funding to conduct the three-year external evaluation of the Specialist Approach for the period July 2020 to June 2023.
5. The Local Court commence discussions with key stakeholders about the establishment of a Specialist Approach to DFV in the Local Court in Darwin, Katherine and Tennant Creek.
6. AGD consider how a more integrated specialist approach can be fostered in bush courts, and that this be done in collaboration with the Aboriginal Justice Unit (AJU), as part of the AJA.
7. The DFSV-ICRO reform agenda include consideration of funding for a comprehensive training package on DFV for all personnel working in the justice system, including both introductory and advanced courses.
8. The DFSV-ICRO reform agenda include consideration of funding for additional specialist DFV training for judges, with a two–tiered approach:
	1. advanced understanding of the dynamics of DFV; and
	2. best practice court craft and a trauma-informed approach to handling DFV matters in court.

### Improved Policing

#### PROPOSAL SR 11

It is proposed that the Commissioner of Police, in collaboration with the DFSV-ICRO and informed by consultation with DFSV specialists, revise the Police General Order on DFV and other relevant policy and procedures to:

1. convey a contemporary understanding of DFV, that reflects the centrality and seriousness of coercive control and psychological abuse;
2. assist police officers to identify the ‘red flags’ for coercive control;
3. assist police to identify and manage the high risk factors associated with DFV in a way that is aligned with the NT’s Risk Assessment and Management Framework (RAMF) including:
	* 1. history of DFV between the parties;
		2. coercive control;
		3. choking;
		4. threats to kill;
		5. pregnancy of new birth;
		6. actual or pending separation;
4. guide police officers on when to initiate a police DVO;
5. guide police in identifying the person most in need of protection where there are mutual allegations of violence or signs that both parties may have used violence (also a process for an internal review where mutual DVOs are being considered);
6. guide police in relation to appropriate responses to intoxicated victim-survivors (to prioritise safety and so that the best practice response is not downgraded if victims are intoxicated);
7. encourage the use of recorded statements for victim evidence where possible;
8. guide police responses in remote contexts where there are limited services and options for safe accommodation available.

It is further proposed that the Police General Order on DFV – or a summary of police procedures in responding to DFV – is made available to DFV service providers to facilitate continuous improvement of inter-agency responses to DFV.

#### PROPOSAL SR 12

It is proposed that a review of police training on DFV be conducted to bolster the training with respect to DFV and coercive control. Consideration should be provided to:

1. compulsory training for all police officers in the NT;
2. high level training for selected officers;
3. the identification of selected police members as DFV champions to foster best practice through NT Police (see the Scottish model).

It is further proposed that the review be jointly conducted by the DFSV-ICRO and the police Training and Assessment Advisory Committee (TAAC), and include representation from Police with a high level of DFV experience and DFV experts outside of NT Police.

#### PROPOSAL SR 13

It is proposed that NT Police, in collaboration with DFSV-ICRO, institute effective practices to assess and manage risk associated with DFV that are aligned with the NT’s Risk Assessment and Management Framework (RAMF), including:

1. At the scene,
	1. ensure the immediate safety of alleged victims, alleged offenders and children;
	2. ensure that the parties are interviewed separately to accurately identify risk in the context of the relationship overall.
2. Develop a modified Common Risk Assessment Tool (CRAT) specifically for frontline police to assist them to accurately assess and manage risk of harm, or further harm, from DFV during operational duties that:
	1. is aligned with, and informed by, the RAMF/CRAT;
	2. assists frontline police to accurately identify the person most in need of protection;
	3. meets police requirements and is compatible with the existing police IT systems (Promise/Serpro);
	4. minimises administrative burden for frontline police officers;
	5. is incorporated into the NT Police Minimal Response.
3. Continue to use the CRAT to identify victims at risk of serious harm for referral to the Family Safety Framework inter-agency response.

#### PROPOSAL SR 14

It is proposed that, in accordance with the proposed legislative amendments (see proposal LR 11 above), the Commissioner of Police require police to provide a certificate to the court at the first mention in all applications for DVOs, that summarises the defendant’s criminal history and a history of all DVOs that have been in force, in accordance with the legislative amendment.

It is further proposed that this be an automated system in similar terms to the generation of criminal histories to ensure the certificates can be generated efficiently by police with minimal administrative burden. Alternatively the process could mirror to current practice for the production of antecedent reports for courts in criminal matters.

#### PROPOSAL SR 15

It is proposed that the DFSV-ICRO reform agenda include consideration of funding for TFHC to establish a 24 Hour DFV Specialist Referral Service and that TFHC and NTPFES via the DFSV-ICRO develop an appropriate service model so the service operates effectively across all the regions of the NT and in urban and remote community settings.

### Improve prosecutions

#### PROPOSAL SR 16

It is proposed that the resourcing of the Witness Assistance Service at the Director of Public Prosecutions be reviewed by the DFSV-ICRO to determine if it is adequate in light of the current level of DFV offending and the needs of complainants in DFV and sexual offences.

#### PROPOSAL SR 17

It is proposed that AGD, in collaboration with the DFSV-ICRO, identify the best way to provide prosecutors with specialist training on DFV and sexual assault.

### Legal assistance

#### PROPOSAL SR 18

It is proposed that as part of the DFSV-ICRO reform agenda, AGD review the capacity of legal services to provide legal assistance to protected persons and defendants in proceedings under the DFV Act, with a view to:

* 1. strengthening the provision of legal advice and assistance for protected persons in DVO proceedings;
	2. introducing a service in Alice Springs to provide legal advice, assistance and support to male defendants in DVO proceedings;
	3. identifying other service gaps in relation to legal assistance for proceedings under the DFV Act.

### Non-legal support and assistance at court

#### PROPOSAL SR 19

It is proposed that as part of the DFSV-ICRO reform agenda consideration be given to whether:

1. existing DFV support services for victim-survivors and defendants involved proceedings under the DFVA at court are resourced adequately to meet current demand;
2. an expansion of specialist DFV courts in the NT would require an increased capacity for support.

### Access to quality DFV perpetrator programs and services

#### PROPOSAL SR 20

It is proposed that the DFSV-ICRO reform agenda include consideration of funding for a specialist trauma-informed counselling service for women prisoners who have experienced DFV, sexual abuse, child abuse or other forms of trauma.

#### PROPOSAL SR 21

It is proposed that DFSV-ICRO in collaboration with TFHC and AGD (including AJU and NT Correctional Services (NTCS) give consideration to developing a costed plan to increase the availability of high quality DFV perpetrator programs in the NT. It is proposed that programs are:

1. aligned with recognised good practice and standards for DFV programs;
2. able to provide a culturally competent and cultural safe program for Aboriginal participants;
3. address all forms of abuse, including coercive control;
4. prioritise victim safety;
5. operate across three settings but with shared principles:
6. correctional settings
7. residential facilities / Alternatives to Custody settings
(For example the DFV Alternatives to Custody being developed as part of the AJU in Alice Springs)
8. community‑based settings.

#### PROPOSAL SR 22

It is proposed that DFSV-ICRO give consideration to establishing a multi-agency oversight committee or body comprised of key agencies (TFHC and AGD, including the AJU and NTCS) and DFV experts whose purpose is to ensure a suite of accountable high quality DFV perpetrator programs are provided in the NT that prioritise victim safety and offender accountability. The committee or body may include a review of existing programs, development of best practice standards, and recommendations as to which programs should be declared or approved for the purposes to the *Domestic and Family Violence Act 2007* and the *Sentencing Act 1995.*

### Identifying DFV and managing the risk of DFV

#### PROPOSAL SR 23

It is proposed that the DFSV-ICRO reform agenda include consideration of funding for TFHC to significantly expand the implementation process and training for the NT’s DFV RAMF to ensure that the approach to DFV risk assessment and management is consistent across the system, and that coercive control is recognised as a predominant feature of DFV.

### Family Safety Framework (FSF)

#### PROPOSAL SR 24

It is proposed that the DFSV-ICRO reform agenda include consideration of strengthening the Family Safety Framework (FSF) as an action based, integrated, multi-service response for women experiencing or at risk of experiencing serious harm or death because of DFV.

### Multi-agency Children and Community Safety Teams

#### PROPOSAL SR 25

It is proposed that TFHC, in collaboration with DFSV-ICRO, give consideration to developing guidelines on how the Multi-Agency Children and Community Safety Teams will deal with children exposed to, and affected by DFV, and their families, that is aligned with the NT’s DFV RAMF. The guidelines should prioritise victim safety and offender accountability and include:

1. responses to children who are primary victims or otherwise exposed to DFV;
2. responses to non-offending adults who are victims of DFV;
3. responses to DFV perpetrators; and
4. responses to the high risk factors outlined in the RAMF.

### Systemic DFV death review process

#### PROPOSAL SR 26

It is proposed that, as part of the DFSV-ICRO reform agenda, consideration be given to:

1. establishing a model for a systems-driven DFV Death Review Process in the NT;
2. including consideration of funding to implement the model for a DFV Death Review Process in the NT;
3. linking the DFV Death Review Process to the ongoing inter-agency leadership and governance structure for DFSV going forward.

### Questions – Systemic reforms

|  |
| --- |
| The following questions are for consideration:1. Which of the proposed systemic reforms do you support? Which do you consider to be a priority?
2. Which of the proposed systemic reforms do you not support?
3. Do you have suggestions to strengthen any of the proposals or the approach to DFV overall?

AGD provides these questions for guidance only. Submissions are not required to address all, or any, of these questions. Stakeholders are welcome to provide any views relevant to improving legislation and the justice response to DFV in the NT. |

1. *Inquest into the death of Roberta Judy Curry [2022] NTLC 010*, at paragraph 65. [↑](#footnote-ref-2)
2. Personal communication with the NT Coroner’s Officer 20 June 2022. Note these figures do not include deaths considered by the Coroner in which there was DFV in the circumstances leading up to the death but it was not identified as being a cause of the death (for example, where there was DFV in the lead up to a person’s death but a victim either took their own life or there was insufficient evidence to determine the cause of the injury that lead to the death). [↑](#footnote-ref-3)
3. Richmond, A (2019) *Journey Mapping Workshop Report: Exploring the Voices and Experiences of Victim Survivors in the NT Justice System*, published by Dawn House for the Domestic Violence Justice Reform Network, February 2019. [↑](#footnote-ref-4)
4. The review includes sexual violence where the victim and the offender are in a domestic relationship (ie. in DFV circumstances). Legislative reforms in relation to sexual offences are being considered separately by the Government as a priority action in the NT’s *Sexual Violence Prevention and Response Framework 2020-2028*. [↑](#footnote-ref-5)
5. The NT’s inter-agency response to DFSV and policy framework includes domestic and family violence, and sexual violence (DFSV). [↑](#footnote-ref-6)
6. [https://tfhc.nt.gov.au/domestic,-family-and-sexual-violence-reduction/domestic-and-family-violence-reduction-strategy](https://tfhc.nt.gov.au/domestic%2C-family-and-sexual-violence-reduction/domestic-and-family-violence-reduction-strategy) [↑](#footnote-ref-7)
7. This definition is set out in section 5 of the *Family Violence Protection Act 2008* (Vic), and has recently been adopted as a model definition of family violence by Law Council of Australia. [↑](#footnote-ref-8)
8. See section 5(1)(b) of the *Family Violence Protection Act 2008* (Vic). [↑](#footnote-ref-9)
9. In the NT in 2020/21 83% of defendants in DFV-related criminal proceedings are men and 17% are women. Extracted from IJIS on 19 July 2021. [↑](#footnote-ref-10)
10. This includes physical and non-physical abuse. [↑](#footnote-ref-11)
11. Data from the 2019/20 financial year provided by the Department of the Attorney-General and Justice Research and Statistics Unit. Extracted from IJIS on 31 July 2020. [↑](#footnote-ref-12)
12. Australian Bureau of Statistics (ABS), Recorded Crime, Victimisation, Australia (Released 45100DO 005\_2019, Released date 9 July 2020). Data is not available for Queensland or Victoria. [↑](#footnote-ref-13)
13. Australian Bureau of Statistics Recorded Crime Victims 2020 (released on 24 June 2021) https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release#victims-of-family-and-domestic-violence-related-offences [↑](#footnote-ref-14)
14. Richmond (2019) [↑](#footnote-ref-15)
15. This was also a key finding of ANROWS research: Nancarrow, H, Thomas, K., Ringland, V. and Modini, T. (2020), *Accurately identifying the “person most in need of protection” in domestic and family violence law.* Australian National Research Organisation on Women’s Safety (ANROWS) (Research Report 23/2020). [↑](#footnote-ref-16)
16. See New South Wales Government (2020) *Coercive control – discussion paper*, at p. 7*.* [↑](#footnote-ref-17)
17. ANROWS (2021), *Policy Brief: Defining and Responding to Coercive Control, at p. 1.* [↑](#footnote-ref-18)
18. ANROWS (2021) [↑](#footnote-ref-19)
19. Parliament of New South Wales, Joint Select Committee on Coercive Control (2021), *Coercive control in domestic relationships,* Report 1/57 – June 2021. [↑](#footnote-ref-20)
20. Queensland Women’s Safety and Justice Taskforce (2021), *Hear her voice: Addressing coercive control and domestic violence in Queensland* (Volume 1, 2 and 3). [↑](#footnote-ref-21)
21. Section 8 (economic abuse) and section 9 (emotional abuse or intimidation) *Family Violence Act 2004* (Tas) [↑](#footnote-ref-22)
22. While these five illustrations of coercive control are from the *Domestic Abuse (Scotland) Act 2018* and apply to a criminal offence [↑](#footnote-ref-23)