



Northern Territory Legal Aid Commission

NT Legal Aid Commission
Submission to
Domestic and Family Violence Proposals
November 2015

1. Do you think the introduction of a law similar to Clare's Law in NT would succeed in its aim of protecting people who are at risk of domestic and family violence from someone with a history of violent behavior?

While the legislative scheme is based on Clare's Law UK, which has been the subject of a process evaluation of its pilot, the evaluation did not report on outcomes: the extent to which the scheme reduced the incidence or severity of domestic violence. The pilot was conducted by four of the 48 police forces in England and Wales. No evaluation of the national scheme has yet been undertaken. It is difficult therefore to predict the success of such a law in the NT.

The Northern Territory's Domestic and Family Violence Reduction Strategy incorporates the Integrated Response to Domestic and Family Violence, a multi-agency approach which was developed and successfully trialled in Alice Springs, and is now being rolled out across the Territory. It includes the Family Safety Framework, which identifies people at high risk of domestic and family violence and plans interventions to minimise those risks. These measures, which are subject to continuous review and monitoring by Local Reference Groups, are more appropriate and adapted to meet the objective of reducing domestic and family violence in the Northern Territory than the introduction of a local version of Clare's Law.

2. Do you think that there are any specific factors that should be considered or modifications to Clare's law that would be required in the Northern Territory Context?

- The assessment of the pilot program in the UK found that the average cost was the equivalent of about \$A1,500 per application.¹ This scheme would have considerable resource implications, which may not be justifiable taking into account the economies of scale in the NT.
- In a small jurisdiction such as the NT the limited resources available, for a potentially minimal outcome, could be better spent in other areas such as improved police responses to DV.
- The scheme could impact on parties' decisions to consent to orders, as this may be later disclosed and taken into account by future partners. Government should seriously consider whether the risk of increased defences is in the best interests of victims.
- The benefits of the scheme must be clear and evidence based so that they can be appropriately balanced with the right to privacy and the criminal justice policy goal of rehabilitation.
- Literacy issues, language barriers and geographical barriers will present challenges to victims making requests.

3. Do you consider that there are other alternatives which would better achieve the aim of protecting people at risk of domestic and family violence from someone with a history of violent behavior?

Appropriate resourcing of specialist domestic violence services and agencies including legal services, police and shelters, and continued implementation of the Domestic and Family Violence Reduction Strategy.

4. Do you think that the ability of the parole board to consider rehabilitation measures as well as conditions that should be attached to the parole order provides appropriately for considerations of the completion, or non-completion, of domestic violence offenders by prisoners?

¹ Home Office *Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment* (2013) p. 4, accessed at <https://www.gov.uk/government/publications/domestic-violence-disclosure-scheme-pilot-assessment>

Whether parole is granted and on what terms is a decision for the Parole Board, which already generally has regard to whether the offender has undertaken rehabilitation programs. There is no need to fetter the discretion of the Parole Board by introducing a statutory requirement that such matters be considered.

Unfortunately, DV programs are not available to all prisoners in correctional facilities and the Board should be able to take into account that the failure of a person to undertake a course may have been solely because it was not available to him or her. For example, the Violent Offenders Program has been discontinued in the Alice Springs Correctional Centre, and is currently only available to prisoners in the Darwin Correctional Centre.

An additional problem is the lack of culturally relevant programs that meet the needs of Aboriginal offenders. Given that Aboriginal people make up the vast bulk of the prison population, this is a significant issue. Furthermore, programs are currently delivered without the use of interpreters. This significantly reduces their effectiveness. The practice of having groups of people from the same language group do the course an 'help each other along' is apparently standard practice, despite the obvious dangers and inadequacies of such an approach.

5. If you think a more direct link should be made between the completion of domestic violence programs and parole, what methods would best achieve this?

As a matter of urgency, a best practice DV perpetrators program (such as the Men's Behaviour Change program currently run by Tangentyere Council) should be re-introduced into the Alice Springs Correctional Centre.

A best practice program that responds to the needs of Aboriginal offenders is needed in the NT

6. Do you think that the *Sentencing Act* provides adequately for the continuing detention of serious violent offenders by providing the Supreme Court with the ability to sentence an offender convicted of a violent offence to an indefinite term of imprisonment?

Yes. Several such orders have been made by the Supreme Court since the commencement of Division 5 Subdivision 4 of the *Sentencing Act* in 1996.

These provisions have been carefully considered and applied by the Court of Criminal Appeal,² which has not suggested that they are in need of reform.

7. Do you think a similar scheme to the serious sex offenders scheme providing for continued detention or supervision of violent offenders should be implemented in the NT? Why/why not?

No. The principles of the *Sentencing Act*, coupled with judicial discretion and the role of the Parole Board, provide sufficient checks and balances. The Commission does not support the use of “civil detention” imposed after the completion of a sentence of imprisonment, whether for violent offenders or sex offenders.

8. Do you think that Community Custody Orders would be more effective if there were clear and predictable sanctions for breaching them?

The Commission supports the maintenance of the CCO provisions, which provide magistrates with an additional sentencing option. The Commission, however, is concerned that the resources required to enable CCOs to be implemented are unavailable in some remote communities in which offenders reside who would otherwise be eligible for this sentencing disposition.

Section 48L(2) of the *Sentencing Act* provides that the court “must” impose imprisonment if a CCO is breached, unless it would be unjust to do so because of exceptional circumstances which have arisen since the order was imposed. That is both abundantly clear and abundantly predictable.

9. Do you think that ‘flash incarceration’ would provide an effective deterrent to breaching court orders?

Possibly, but not on its own.. The Commission acknowledges the impressive outcomes of the HOPE Program, and would welcome a trial of a similar initiative in the NT. It is important to note, however, that “flash incarceration” is only one element of HOPE, which in some other respects is similar to the therapeutic justice model of the CREDIT Court and SMART Court which were tried (and, in the view of the Commission, unfortunately) discontinued. In particular, if a version of the HOPE program were to be introduced, it is essential that sufficient resources be provided to enable the intensive case

² For example, *Murray v R* [2006] NTCCA 9

management by specially trained probation officers that is an essential feature of the program.³

10. Do you think that there are particular modifications to the HOPE model that would be required for the NT context in order for it to be effective?

The usual considerations relevant to the NT including:

- Geographical considerations (distances/remoteness/ accessibility)
- Demographic, language and cultural considerations
- Disability and cognitive impairment
- Service bases/availability and resource considerations, including access to appropriate rehabilitation programs;
- Appropriate police responses; and
- Time frames necessary to bring perpetrators before the justice and corrections systems which may militate against the length of incarceration envisioned for flash incarceration.

11. Do you have any comments about the use of electronic monitoring?

Electronic monitoring of persons convicted of domestic violence and stalking type offences may well serve as a deterrent for further offending and increase safety for victims.

12. Do you think that the use of alarms would achieve the aim of protecting victims of domestic and family violence and deterring perpetrators from attempting to interact with them?

We are unaware of any evidence supporting this and therefore are unable to comment

13. Do you think that proximity alarm or a personal safety device would be a more effective tool?

³ Institute for Behaviour and Health Inc, *State of the Art of HOPE Probation* (2015), accessed at http://www.courts.state.hi.us/docs/news_and_reports_docs/State_of_%20the_Art_of_HOPE_Probation.pdf

We are unaware of any evidence supporting this and therefore are unable to comment.

14. Are there other methods that you consider would be more effective in achieving the aims of protecting victims of domestic and family violence and deterring perpetrators?

We support the development of the Integrated Family Violence Response for the NT.

We support services to represent respondents in an appropriate way that does not re-traumatise victims, but focusses on ensuring advice is provided to assist them in understanding the process and, where possible, negotiating consent orders on behalf of the respondent.

15. Do you have any comments on the proposal to broaden the scope of the Witness Assistance Service to encompass a greater number of victims of domestic violence. In particular, how might this be achieved?

We support increase of resources to WAS to enable them to support all court users who are appearing as a victim of domestic and family violence. Their current resources only enable them to provide very limited assistance and this is inadequate.

16. Should there be a separate specialised list for criminal prosecutions involving domestic violence in the Court of Summary Jurisdiction?

We support an integrated response by the Court to dealing with domestic and family violence matters and specialised courts, at least in Darwin and Alice Springs.

17. Do you think it would be preferable for a group of specialist prosecutors to conduct criminal prosecutions involving domestic violence and to appear for Police in applications for domestic violence orders?

Yes

18. Do you think that expending behavioral change programs that target domestic and family violence would be beneficial in helping reduce domestic and family violence?

Yes, if they are adequately resourced, evidence based, designed in accordance with best practice models, and evaluated in an NT context.

19. Do you think the expansion of these programs to prisoners on remand would be likely to achieve the aim of reducing domestic and family violence?

Prisoners on remand should be given access to perpetrator programs, but they are far less likely to change their behaviour than defendants on bail who engage in such programs in the community. There are at least two reasons for this. Firstly, prison is a relatively poor learning environment. Secondly, best practice perpetrator programs involve engagement with the participant over a lengthy period of many months, and also include collateral engagement with victims. During the program, the participant has the opportunity to put into effect the lessons he is learning. That can not easily occur in prison.

20. Are there any particular programs that you consider are particularly effective in changing violent behavior?

No. To effect behaviour change is a complex generational challenge which will require broad strategies including social marketing, early childhood education, reduction in substance abuse and substantial improvement in education, employment, housing and health for disadvantaged Territorians, particularly in remote areas.

21. Do you have any comments on the mutual recognition of domestic violence orders?

We support mutual recognition of domestic violence orders. The Commission is concerned at the lack of progress in this area despite the long-standing commitment of COAG to implement a national scheme.

22. Do you have any comments of the proscribed amendments to the Criminal Code?

The proposed amendments are unnecessary and unlikely to confer any benefit. Almost every charge of assault is already accompanied by a circumstance of aggravation, elevating the matter from a simple offence with a maximum penalty of two years to a crime with a maximum penalty of five years. Adding to the list of aggravating circumstances would achieve nothing. Courts already have regard to a comprehensive list of circumstances as set out in section 5 of the *Sentencing Act*, including:

the nature of the offence and how serious the offence was, including any physical, psychological or emotional harm done to a victim;
(s5(2)(b))

Although in many cases a violent offence may be more serious because it is committed in the context of a domestic or family relationship, that is not always the case. In some matters, for example, where the perpetrator has herself previously been the victim of domestic violence by her partner, the fact the victim was her abusive husband may well be a mitigating circumstance.