

domestic violence LEGAL SERVICE

14 September 2015

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Dear Ms Daniel-Yee

REVIEW OF DOMESTIC AND FAMILY VIOLENCE ACT ISSUES PAPER APRIL 2015

Thank you for providing the Domestic Violence Legal Service ('DVLS') with the opportunity to make a submission in relation to the *Domestic and Family Violence Act NT* ('the Act') and for the patience of your office as we worked to finalize this submission outside of the stipulated closing date for responses.

Request for exposure draft

Following the review of the Act, we ask that the Government make available an exposure draft of any new Bill, so as to enable stakeholders with a close working knowledge of the domestic and family violence law and processes to have input into the workability or any unforeseen effects of amendments.

Convening of working group

To assist the Department to implement recommendations and actions arising from this review process, we ask you to consider convening a cross-agency working group to provide input for example, if changes are to be made to standard forms of orders and forms for use in domestic violence matters.

Summary of DVLS response to the Issues Paper

- **Section 1 – Systemic issues**, (below) makes brief points in relation to some of the broader systemic issues in addressing DFV in the NT, chiefly going to the need for increased resourcing for prevention and support services, policing and legal services, and for a coordinated focus on implementation of existing law and policy.
- **Section 2 – Legislative amendments**, details specific recommendations in relation to the operation of the Act by way of a range of suggested legislative amendments.
- **Section 3 – Operational issues**, focuses on operational issues associated with the Act, and sets out practical recommendations aimed at ensuring the legislative scheme operates as intended by the Legislature and is efficient and effective.

About DVLS

DVLS is funded by the Northern Territory Government Department of Attorney-General and Justice, and operates under the auspices of the Northern Territory Legal Aid Commission.

In the year to June 2015, DVLS provided Court duty assistance and individual legal advice and casework assistance to around 1100 people at risk of domestic and family violence in the Greater Darwin Region. Our client base is comprised of approximately 88% women and 12% men. Around 30% of our clients are Indigenous, and 18% are born overseas.

In addition to legal assistance, DVLS provides referrals to victims to a range of other agencies and services, including counselling, parenting programs, drug and alcohol services, family law mediation and family law services. In the last reporting period January – June 2015, we made 732 referrals to other agencies and services. As part of our Court duty service, we also provide information and referrals to defendants in domestic violence proceedings.

DVLS carries out advocacy on domestic violence related issues, contributes to law and policy reform, and provides community legal education about domestic violence to community groups, government agencies and non-government organisations.

DVLS provides an effective and high quality service to victims of domestic and family violence. We do so with a team of three: a managing solicitor, junior solicitor and office coordinator. With a high ratio of client duty, advice and casework services, as well as the provision of community legal education sessions, we have limited resources available to devote to law and policy reform.

DVLS has experienced an increase in the complexity of matters in the last 2 years and demand on its services. This may be a combination of the impact of the focus on domestic and family violence as a result of the NTG Domestic and Family Violence strategy, the national attention on domestic and family violence, heightened since the appointment of Rosie Batty as Australian of the Year, and the increasing impact of the use of ICE in the community.

Summary Section 2: Legislative Amendments

Specific recommendations, discussed in detail at Section 2, are:

1. Amend section 82 to include a provision to clearly and specifically provide for an interim variation to Police section 41 orders;
2. Amend section 27 to ensure the duration and enforceability of Police section 41 DVOs is beyond doubt, whether as made or as varied on an interim basis;
3. Amendment to provide for a clause in relation to a Police DVO being in force until such time as it is confirmed or revoked under section 82;
4. Amend section 82 to require Court to consider if grounds to continue a Police DVO and in what terms, and the power to summarily revoke a Police DVO where no grounds to make DVO disclosed or grounds manifestly inadequate;
5. Amend section 9 to broaden the definition of domestic relationship to include certain relationships not currently covered under the Act, including for example, where person in

dating relationship is threatened by their date's ex-partner or new partner, or parents are threatened by a person their adult child is or has been dating;

6. Amend section 21 to provide for the inclusion of power to make orders restraining the defendant from exposing children of the parties to domestic violence where children not named as protected persons on order;
7. Amend sections 28, 29 and 52 to clearly and specifically provide that Police/Child Protection Officers have standing as a party in proceedings and at hearing;
8. Amend section 48 to require that young persons who are protected persons must apply for and be granted leave before making an application to vary/revoke;
9. Amend section 104 to expand the of definition of "vulnerable witness" to include applicants/protected persons, as well as persons named on a DVO, in relation to manner of giving evidence during domestic violence court proceedings;
10. Amend section 85 to include provision for retrieval of protected person's property from premises of a defendant.
11. Amend section 106 to provide for closure of Court where defendant is a young person;
12. Amend section 82(2) to require the Court to take into account evidence of and submissions for the protected person when revoking a Police DVO;
13. Amend section 43 to include a provision for information on a Police DVO to be given to the protected person, as well as that a plain English guide on relevant legal options and contacts for legal services be provided to defendants/protected persons on service of DVO;
14. Amend section 30 to make clear that the applicant's address must not be stated on an application where to do so would compromise the safety of the applicant and/or a protected person named on the application.
15. At Regulation 12, review to ensure numbering is correct.

Summary Section 2: Operational issues

Practical issues associated with operation of the Act, include:

16. Orders, documents and notices are not served on protected persons as required under various provisions in Act;
17. When Court sitting, matters are not called on when defendant and Police in attendance resulting in protected person or their representative not being heard in proceedings;
18. DVO application forms and Registry procedures do not have sufficient protections and give rise to risk of protected person's address being disclosed to defendant;
19. DVO application forms and form of orders sought should be improved to assist applicants and achieve more effective orders;

20. Police DVO forms give rise to a risk to protected person's safety due to construction and use of clauses 3 and 5 while lack of prominence of and effect of return date on summons may be a factor in low court attendance in Police DVO matters by defendant and protected persons.
21. Registration of interstate DVO forms as Forms 12, 13 and 14 are not consistent with provisions in the Act;
22. When Police DVOS are given to the parties or on service of CSJ DVO applications, plain English information should be attached to the order or application providing legal information and contacts for legal services for both defendants and protected persons.

SECTION 1: SYSTEMIC ISSUES

Due to our limited resources and with direct client services necessarily being our priority, DVLS are unable to provide specific comment on the recommendations of the Australian and New South Wales Law Reform Commissions, as set out in Attachment A of the Issues Paper.

Further, in relation to the Department's invitation to comment on any aspect of the response to DFV in the NT and the response of agencies other than the Department of Justice to DFV issues, again, due to resource constraints, we can only provide the following brief comments below.

In future, where we have capacity, we would welcome the opportunity to meet with representatives of the Department to discuss these broader issues. In addition, we welcome the opportunity to provide ongoing input on policy and procedure matters to the DV Directorate and other agencies.

Commensurate with fulfilling the aims of the NTG "Safety is Everyone's Right" Strategy and more generally to prevent and reduce domestic and family violence in the NT, we recommend as follows:

a) *Options for a Specialist Domestic and Family Violence Court*

That the Government should convene an expert committee to explore options in relation to the development of a specialist domestic violence court for the NT.

Chapter 32 of the 2010 ALRC/NSWLRC report *Family Violence: A National Legal Response* explores in great depth the issue of 'specialisation', that is, the establishment of specialised courts, programs or lists for family and domestic violence matters.

The research shows that specialist family violence courts in Australia exist in many different forms and exercise many different powers and functions. Evaluations of these courts have indicated that they may effectively assist victims of domestic violence throughout the process of applying for a Domestic Violence Order or accompanying criminal proceedings, including by ensuring they are linked in with appropriate community and legal services and otherwise feel safe during the court process.

However, the research also shows that the costs of setting up specialist family violence courts may not be justified due to their limited impact on reoffending rates. Moreover, continued efforts need to be made to ensure that victims and offenders from Aboriginal or CALD backgrounds are supported in an appropriate manner.

Specialist family violence courts appear to have had a largely positive impact in other jurisdictions, yet the complexities of setting up similar specialist courts in the Northern Territory necessitates proper discussion and debate.

We suggest the NTG give detailed consideration to how specialist family violence courts, and their powers, processes and functions, could be tailored to suit the unique needs of the Northern Territory. This would need involve extensive community input and an examination of both victim and perpetrator perspectives.

Any review into the establishment of specialist family violence courts should also focus on how such courts can be designed to appropriately and effectively assist both victims and perpetrators from Aboriginal and Torres Strait Islander and CALD backgrounds, an issue which has, in other jurisdictions, reportedly failed to receive adequate attention.

Finally, key questions about the jurisdiction of such a Court require expert consideration as well as community consultation, for example, such as to whether the Court would deal with civil DVO proceedings only, or also related criminal matters (and if so which categories of charge would be appropriately dealt with therein), whether to link with Care and Protection proceedings, whether to include SMART Court type functions, whether to utilize options for exercise of jurisdiction in relation to Commonwealth Family Law matters, and whether the model would include a role for Court Clinician with expertise in mental health, and drug and alcohol.

b) *Resourcing Police*

That the NT Police should be adequately resourced in relation to their day-to-day and first response to DFV incidents, including by providing ongoing DFV training to General Duties, training and resourcing in responding to and dealing with breaches of DVOs and laying charges in relation to domestic violence offending. Finally, it is critical that sufficient resources are applied to provide for a strong NT-wide audit and oversight of the General Duties response to DFV and thus ensure effective implementation of law, policy and procedure in relation to DFV.

c) *Resourcing legal services for victims*

That the NTG consider the need for additional resources for legal services for victims and protected persons. DVLS, for example, has consistently been operating beyond maximum capacity in recent months, with wait lists for appointments at times up to two weeks. Although clients can be referred to Police for urgent matters, there are many matters not classified as urgent that still leave vulnerable people at risk of continuing to experience or be exposed to family and domestic violence. During protracted wait times for appointments, the DFV may escalate putting victims and children at risk or the victim may lose momentum to seek help and continue to suffer DFV. To ensure an adequate level of services to victims that will reduce and prevent DFV, services need to be sufficiently resourced to see clients within reasonable wait times.

In addition, when DV legal services are confined to advice and casework there is a reduction in the ability to carry out cross-agency and community legal education and in the ability to share specialised and practical knowledge of DV law and processes

with other agencies working in the field. This deficit ultimately limits the information and support available to victims.

d) *Resourcing across the DFV sector including in relation to defendants*

That the Government should consider more funding for legal and support services for defendants, as well as victims and protected persons, so as to assist defendants to understand the reasons for the proceedings against them and to assist them to link with services and programs aimed at behaviour change and prevention of further domestic violence. Commensurate with increased funding, is the need for better coordination, targeting and accessibility of services.

A critical shortfall in today's efforts to address DFV is the lack of service for defendants. A substantial proportion of DFV matters (that is the making of a DVO and/or the finalization of related criminal charges) do not mean the permanent end of a relationship and contact between the parties. Thus, as many DFV perpetrators and victims have children together, they will continue to have some form of contact because of the children or because their relationship continues.

This means our way of responding to perpetrators must extend beyond the making of orders and criminal justice responses, which of themselves often fail to achieve positive change in the family unit. For example, following court proceedings, our service sees defendants antagonized and alienated with no insight into their behaviours, leading to situations where the DFV continues with the effect that victims and their children continue to be at risk of and suffer DFV or that the defendant commits further DFV on a new partner and their children. The harms that follow (emotional or physical injuries, breaches of DVOs, criminal offending) place a further strain on community services, Police, the Courts and legal services.

As Police and Court intervention only sometimes sees defendants reaching a real understanding of why they are involved in DV and related criminal proceedings, or taking responsibility for their actions, or gaining insight into their actions and engaging with relevant services and programs, there is an urgent need for resourcing and coordination of services to defendants.¹

Similarly, victims also can require support and counselling to understand the dynamics and impacts of DFV and how to they can equip themselves to better protect themselves and their children. To this end, we hope to see better outcomes as a result of the introduction of the Supportlink service. However, as discussed below, service mapping and the identification of gaps in services is critical to ensuring people affected by DFV are able to get the help they need.

e) *Service mapping and identification of service gaps*

In light of the points above, that the NTG conduct service mapping of DFV services and supports in the NT and implement a process (and the concomitant funding) to assist agencies to identify, monitor and report to Government on the gaps in legal and other services in relation to reducing and preventing DFV.

Gaps in legal services for victims and protected persons, as well as defendants, remain an ongoing issue. In the Top End, the increase of communities serviced by

¹ For more detail on this issue, see the recent study, Centre for Innovative Justice, "***Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View***", March 2015, accessed at < <http://mams.rmit.edu.au/r3qx75qh2913.pdf>>, 14 September 2015.

the North Australian Aboriginal Family Legal Services is a welcome development, but only goes part way to filling the gaps.

Outside of the major centres, there remains a lack of services in remote areas, for persons in need of protection who have previously been a defendant or perpetrator and may not meet the NAAFLS guidelines for assistance; for male victims in areas where there are only women's specific DV legal services; for non-indigenous victims of DFV outside of the major centres; and, across both urban and remote NT, meaningful and holistic legal and support services for defendants in DVO and related criminal matters.

SECTION 2: LEGISLATIVE AMENDMENTS

Most the issues raised below arise because the law is not clear, giving rise to uncertainty about either the outcomes that may be obtained under the legislation or the enforceability of orders obtained. Legislative reform would address these issues.

SECTION 82 - DECISION AT HEARING

Issue: No clear power to make interim variation to section 41(1) Police DVO

Under section 35 the Court may make an interim DVO at any time, but only during the hearing of an application for a **CSJ DVO**.

Under section 32, there is also a power to proceed ex-parte, and so make an order that is interim in nature being subject, under section 37, to a summons to show cause why the order should not be confirmed.

In relation to a Court DVO (ie a DVO other than a Police DVO made under s 41(1)), at section 52A the Court is empowered to make an interim variation order "until the application is finally decided".

In relation to a Police DVO, a variation that is interim in nature is only clearly provided under Act at Division 2: "Variation of domestic violence orders in urgent circumstances". This ability to apply for a variation, which is then subject to a summons to show cause under section 77, applies only in limited circumstances. We understand that this is included in the legislative scheme primarily to cover situations in remote communities where Court sittings are infrequent. As such, only a Police Officer can make the application, the circumstances must be urgent, and there must be substantial change in the relevant circumstances since the order was last made or varied (section (1A & (2)).

Further in relation to a Police DVO, there is the scheme at part 2.9 which provides for revocation or confirmation with or without variation on application of a party via Police officer to a Magistrate. Again, this scheme was constructed with a view to achieving appropriate orders in between infrequent bush court sittings. Even if used in an urban setting, the mechanism does not allow for variation on an interim basis, only for revocation or confirmation.

The Court's daily practice of varying section 41 Police DVOs on an interim basis is thus done without a clear legislative basis, though it is not necessarily without a power to do so.

On one view, the power for the Court to vary a section 41 on interim basis is derived from the general powers of the Court under Justices Act, in particular at section 44(e) and (f) as follows:

44 Powers of a single Justice

In any case, whether the matter of complaint is or is not directed or required to be heard by 2 or more Justices, a single Justice may do any or all of the following:

- (a) receive the complaint;
- (b) grant a summons or warrant thereon;
- (c) issue his summons or warrant to compel the attendance of any witness;
- (d) by consent of the parties expedite the date of hearing;
- (e) either upon the return of the summons, or at any other time before the completion of the hearing, adjourn the hearing as hereinafter provided;
- (f) do all other acts and matters preliminary to the hearing;
- (g) issue any warrant of distress or commitment upon any finding of guilt or order.

Further, section 65 *Justices Act* provides a substantial powers at subsections 1,2 and 3 in relation to the adjournment of hearing and on the terms on which the Court thinks fit:

65 Power of the Court or a Justice to adjourn hearing

(1) The hearing of any complaint may be adjourned from time to time, and at any time before it is completed, either:

- (a) by the Court before which the complaint comes for hearing; or
- (b) if the Court is then sitting to hear the complaint, then by any Justice.

(2) Every such adjournment shall be to a time and place appointed and stated by the Court or the Justice in the presence and hearing of the party or parties then present.

(3) The adjournment shall be allowed upon such (if any) terms as the Court or the Justice thinks fit, and in the meantime the Court or the Justice may remand the defendant into custody, grant him bail in accordance with the *Bail Act*, or dispense with the requirements for bail pursuant to the *Bail Act*.

Discussion:

Notwithstanding the absence of a clearly stated power to do so, Police DVOs are regularly varied on what is essentially an interim basis, with the consent of the parties, and adjourned either for mention or hearing. However, when there is no consent, Magistrates often find that they cannot amend even when it is their view that the evidence does not warrant the terms of the order or an order at all (for more on this aspect see “Section 82 – Decision at hearing” below).

The ability to make an interim variation to a Police DVO, given that often a date for hearing will not be available for 1-3 months, has a number of a benefits:

- Where Police orders do not provide adequate protection, they can be varied up on an interim basis to ensure the safety of a protected person. This may occur in circumstances where attending Police were not able to obtain full details from the protected person at the time of the incident. Where new evidence is provided there can be a basis for an increase to the terms of the Police DVO to ensure the protected person’s safety.
- Where orders are too restrictive, there is then an ability to relax the orders to allow for options including that the defendant contact with children; practical support from the defendant to protected persons (such as financial or transport); to avoid a defendant being made homeless where not necessary; to ensure the safety of the protected persons; to allow for contact around medical or mental health issues; or where the

defendant conducts business from the home, to allow that to continue where it does not compromise the safety of the protected persons.

- Where the parties wish to address domestic violence issues in a proactive way, orders can be adjourned on an interim basis for a longer period, such as 3 or 6 months, to allow the defendant to attend a behaviour change program, alcohol and drug services or similar, with a view to the Police DVO being revoked or confirmed in less restrictive terms if there are no further incidents by defendant.

Our service finds this is an option that is often welcomed by parties and provides a positive incentive to a defendant to take responsibility for their behaviour. This is particularly so in cases where the defendant has interest in retaining their eligibility for a firearms licence.

Arguably, there are better prospects of change within the family where there are positive incentives rather than where a final order is made at an early stage, without any engagement by the defendant in the process or the reasons why Police made orders in the first place.

Where a defendant voluntarily elects to address their behaviours, with the incentive of not have a final DVO made against them or a DVO in less restrictive terms made against them, there are better prospects for long-term behaviour change and harm prevention.

- In providing a power for an interim variation to a section 41, regard needs to be had to under what circumstances this may occur. It seems unproblematic to say this may rightly occur with the consent of all the parties (Police, protected person and defendant) and the imprimatur of a Court satisfied that the orders so varied will be appropriate having regard to the safety of the protected persons.

Recommendation:

At section 82, the Act be amended to clearly allow for variations to s41 orders on an interim basis with the consent of the parties.

SECTION 27: DURATION OF A DVO

Issue: Duration and enforceability of Police DVO

It is of great concern to our service that there is currently uncertainty around the duration and enforceability of Police DVOs. We understand these issues are currently on appeal before the Supreme Court.

We understand that in some criminal matters in relation to breach DVO, defence counsel have raised questions as to the enforceability of a Police DVO and its duration.

This has then had an effect on the Court's approach in relation to adjourning Police DVOs in the civil jurisdiction.

We understand there is a view that there are real questions around the enforceability of a Police DVO, particularly where it is adjourned beyond the summons to show cause date.

In brief, we understand the issues are as follows.

The Act provides a scheme for the making of DVOs by Police in circumstances where it is necessary to ensure a person's safety because of urgent circumstances or because it is not otherwise practicable to obtain a CSJ DVO.

- Section 41 provides for the making of a Police DVO.
- Section 42 requires the Police officer making the DVO to record on it "the time and place for its return".
- Section 44 provides that the DVO is taken to be summons to appear before the Court, at the time and place shown on it for its return, to show cause why the DVO should not be confirmed by the Court
- Under Part 2.10, which deals with "Confirmation of Domestic Violence Orders", section 82 provides that "at the hearing, the Court may, by order: (a) confirm the DVO (with or without variations); or (b) revoke the DVO".
- Section 27 "Duration of a DVO" states only that "A DVO (other than an interim DVO) is in force for the period stated in it".
- Section 4 defines "DVO" only as "an acronym for a domestic violence order".
- Section 4 defines "domestic violence order" as meaning "a Court DVO or police DVO, and includes: (a) a DVO as varied under part 2.7 or 2.8; and (b) a police DVO as varied under Part 2.8, Division 2, or confirmed under 2.9".

From all this it is clear that section 27 in relation to duration can be read as applying to a Police DVO.

Questions then arise as to:

- (a) Whether the period between the making of a Police DVO and the date recorded for its return suffice as a "duration" for compliance with section 27;
- (b) Ancillary to this, where no compliance with section 27, is the Police DVO enforceable regardless?
- (c) Where a police DVO is adjourned beyond the return date (being neither confirmed or revoked) whether it remains enforceable, regardless of non-compliance with section 27.

Discussion:

The usual practice of Police in making a DVO means that a duration of DVO is not specifically stated in it, though a date is stated for the return of the DVO for the defendant to show cause why the DVO should not be confirmed.

We are not clear as to whether the Court at times may have a concern in relation to the enforceability of a Police DVO from its making to the summons to show cause date, but we do know that once a Police DVO comes before the Court and is to be adjourned (rather than confirmed or revoked) that at this point questions as to the validity and continuing enforceability of the police DVO are arising.

This is happening because of the concern of the Court in some instances that a Police DVO cannot be valid and enforceable if it is not in compliance with section 27, ie that it does not have duration stated in it.

To counter this, in some instances, the Court has opted to make a variation to the DVO by way of stating a duration, such as to the next date for mention (we do not know if such a variation has the effect of meaning the DVO is then confirmed with a variation, as provided under section 82, or if the Court has proceeded to make an interim variation using the general powers it has under the *Justices Act* sections 44 and 65).

Alternatively the Court in some instances has proceeded to make an interim DVO that then does not require a specific duration because section 27 does not apply to an interim DVO (it is not clear on what basis the Court makes an interim DVO on its own initiative and without an application before the Court in a form approved under section 30 and filed in accordance with that section. There are other possible bases on which the Court may purport to proceed but we will further not discuss these here).

At other times, the Court is content to simply adjourn a Police DVO, with or without an interim variation, for mention or hearing. Often, to avoid doubt, ancillary to this the Court will order in terms along the lines that the “section 41 is to continue”.

In these circumstances, we can locate a power providing for the ongoing enforceability of the Police DVO through a combination of the provisions at sections 41-44, Part 5.2, ss 119 and 120 of the Act and section 82).

Noting the following with particular regard to underlined sections:

44 DVO taken to be summons to appear before Court

The copy of the police DVO given to the defendant is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the DVO should not be confirmed by the Court.

Notes

1 Part 2.10 deals with the confirmation of DVOs.

2 On confirmation of a police DVO, conduct that constitutes a contravention of the DVO may still be an offence even if the Court order made on the hearing is not given to the defendant before the defendant engages in the conduct, see section 120(2).

119 When DVO is given to defendant

A copy of a DVO is given to the defendant if:

- (a) for a court DVO – the defendant was before the issuing authority when it was made; or
- (b) it is served in a way mentioned in section 25 of the *Interpretation Act*; or
- (c) a police officer informs the defendant, orally or in writing, of its making and terms;
- or
- (d) it is given to the defendant in another way the Court or a magistrate orders.

Part 5.2 Offences

120 Contravention of DVO by defendant

(1) A person commits an offence if:

- (a) a DVO is in force against the person; and
- (b) the person engages in conduct that results in a contravention of the DVO.

(2) Subsection (1) does not apply unless:

- (a) the person has been given a copy of the DVO; or
- (b) for a DVO that has been varied under Part 2.7 or 2.8 or confirmed with variations under Part 2.9 or 2.10:

- (i) the person has been given a copy of the DVO as varied or confirmed; or
- (ii) the person's conduct also constitutes a contravention of the DVO last given to the person. ...

In brief, it can be said that the provisions referred to above provide for the enforceability of an adjourned Police DVO as follows:

Section 41 provides for making of the Police DVO

Section 43 provides that a police officer must give the DVO to the defendant and explain the consequences of breach

Section 44 provides for a summons to show cause why the DVO should not be confirmed

Section 119 provides that DVO is “given” to a defendant including at (c) where a Police officer informs the defendant orally or in writing of the making and terms of the DVO

Section 120 (1) provides for an offence where the defendant engages in conduct that results in a contravention of the DVO

Section 120(2) provides some limits to section 120(1); namely that a person only commits an offence if at 120(2)(a) the DVO has been given to the person; and at 120(b), for a DVO that has been varied or confirmed with variations under 2.8, 2.9, 2.10:

- (i) the person has been given a copy of the DVO as varied or confirmed; or
- (ii) the person’s conduct also constitutes a contravention of the DVO last given to the person.

On our reading of the above, a Police DVO is in force until it is confirmed or revoked under 2.10. The Police DVO thus remains in force until revocation or confirmation notwithstanding there is no stated duration.

Section 27 necessarily provides for duration for an order that is not either an interim order or a Police DVO (which is interim in nature being subject to confirmation or revocation).

Section 27 is to ensure that where orders are not interim or interim in nature (as in a Police DVO), they are in force for a defined and specified period of time. Without section 27, final orders could be made that are operative infinitely.

However, there is no requirement to provide a duration for an interim DVO because circumstances during which it is in force are set out at section 35(3).

Similarly, a Police DVO does not require a stated duration because the combined effect of ss41-44 and section 82 mean it is in force until revoked or confirmed.

Further, section 120 provides that where the Police DVO has been given to the defendant it is enforceable, ie a person commits an offence if they engage in conduct in contravention of the terms of the DVO.

Notwithstanding the above, as there is clearly room for doubt, room for misinterpretation and scope for the enforceability of a Police DVO to be challenged, it would be prudent that the Act be amended to make clear that a Police DVO is in force until confirmed or revoked, whether in its original form or as varied on an interim basis and given to the defendant.

Recommendation:

That, to avoid any doubt, the Act be amended to provide that a Police DVO, whether as made or as varied on an interim basis, is in force until it is confirmed or revoked, with such an amendment not to act or have effect so as to limit the application of section 120(2)(b)(ii).

SECTION 82 – DECISION AT HEARING

Issue: Court's powers when Police DV comes before Court – no clear power or duty of Court to exercise to revoke or modify prior to hearing

Section 41 provides for the making of Police DVOs as follows:

Part 2.6 Domestic violence orders made by authorised police officers

41 When authorised police officer may make DVO

(1) An authorised police officer may make a domestic violence order under this Part (a *police DVO*) if satisfied:

- (a) it is necessary to ensure a person's safety:
 - (i) because of urgent circumstances; or
 - (ii) because it is not otherwise practicable in the circumstances to obtain a CSJ DVO; and
- (b) a CSJ DVO might reasonably have been made had it been practicable to apply for one.

(2) The police DVO may be made even if the defendant has not been given an opportunity to answer any allegation made in relation to the making of the DVO.

Section 18 provides for the making of a DVO:

18 When DVO may be made

(1) The issuing authority may make a DVO only if satisfied there are reasonable grounds for the protected person to fear the commission of domestic violence against the person by the defendant.

Under s 44 a copy of the police DVO given to the defendant is taken to be a summons to the defendant to appear before the Court to show cause why the DVO should not be confirmed by the Court.

Under s 82, at hearing, the Court may by order confirm the DVO with or without variations, or revoke the DVO.

Notwithstanding these provisions, most significantly the factors at section 41(1)(s), matters come before the Court with some frequency where Police have made section 41 DVOs but provide no accompanying evidence or manifestly inadequate evidence in support of the making of the section 41.

The court does not, however, have a clear power to revoke a s 41 DVO before hearing, even if there is no material before the Court supporting the making of an order.

Discussion:

As a matter of practice, in some instances a Magistrate will summarily revoke a Police DVO at the first return on the summons to show cause date, usually on application of the Police representative.

This occurs in circumstances where there is no statement of a Police officer or protected person disclosing reasonable grounds for the protected person to fear the commission of domestic violence, or even as to whether there is a domestic relationship between the parties.

Where it is indeed the case that there are no grounds for DVO, such a course is unproblematic. Where there are grounds but poor preparation means these are not put in evidence before the Court, victims in real need of protection are at risk of being left unprotected.

At other times, a Magistrate will proceed to list the matter for hearing, even if there is not evidence of the need for an order before the Court. From our observations it appears that if Police are persist in seeking the order, then the Court may see its only option under the Act is to list the matter for hearing.

This sets up a worrying disjunct between the Court's powers as between Police DVOs and CSJ DVOs.

While it is both appropriate and desirable that Police have the power to make a DVO as provided under section 41, once the matter comes before the Court, it is proper that the Court then have the power to deal with the matter in a just and expeditious manner, much as it does in relation to an interim CSJ DVO.

Section 35 provides the power for the making of an interim DVO on an application for a CSJ DVO. The note to this section directs as follows

Part 2.2 provides for the matters to be considered in making a DVO and Part 2.3 provides for the content of a DVO.

Part 2.2 relevantly includes section 18 which prescribes that:

18 When DVO may be made

(1) The issuing authority may make a DVO only if satisfied there are reasonable grounds for the protected person to fear the commission of domestic violence against the person by the defendant.

Moreover, under s 35A, the Court may refuse to hear an application or order a stay of proceeding. However, a police DVO under s 41 is an order and not an application. As such, s 35A cannot apply in relation to a Police DVO.

For a Police DVO first before the Court, there is no clear duty or power invested in the Court to apply any test, nor any recourse for the parties similar to that under section 35A.

It is unlikely the Legislature intended the Court's hands to be tied in relation to Police DVO coming before it or that the Court's powers in relation to Police DVO would be substantially less than in relation to a CSJ DVO.

Moreover, where there is no evidence to be found to support the making of the Police DVO, putting the matter to a contested hearing places an unnecessary burden on the parties, the Court and legal services. Indeed, such a course of events may serve to increase rather reduce tension between parties.

From the perspective of our service, putting the power in relation to continuation of a Police DVO in the hands of the Court will help to:

1. provide flexibility to enable the Court to ensure the level of protection under a Police DVO that continues in force beyond the date for its return is in appropriate terms;

2. promote Police practices that are robust and thorough, so as to ensure the best chance for victims to get the protection they require at the earliest possible time;
3. enable the Court to increase the protection under an order where there are very strong grounds for orders but only limited protections put in place;
4. protect those, including in some cases victims of domestic violence, who have orders made against them with manifestly inadequate grounds, being unnecessarily subject to running a contested hearing in response to a matter that does not meet the bare threshold for the making a DVO; and
5. maintain community confidence in the system for the making of domestic violence orders.

As such inclusion in the Act of a provision in terms to the effect that the Court must not continue a Police DVO unless it is satisfied there are reasonable grounds for the protected person to fear the commission of domestic violence will level the playing field as between a Police DVO returned to the Court and a CSJ DVO in the pre-hearing stages.

Further, that where the material before the Court does not support the continuation of an order in any form, that the Court have a clear power to summarily revoke a Police DVO. Again, this will have a significant benefit in reducing an unnecessary burden on parties, Police representatives, the Courts and legal services.

Recommendation:

1. Amend section 82, broadly consistent with section 35(1), to include that the Court must on the first occasion a Police DVO is before the Court, consider whether order should continue in the terms made, or with different terms and, where no grounds to make DVO disclosed or grounds manifestly inadequate, power to summarily revoke the Police DVO.

SECTION 9: DEFINITION OF DOMESTIC RELATIONSHIP

Issue: Certain relationships not covered

The Act provides for the making of domestic violence orders where two people are in a domestic relationship, and one person has committed domestic violence against the other person. In our practice situations regularly arise where a person is in need of protection from someone that a relative or new partner has had a domestic relationship with, but this relationship is not covered under the Act.

The following examples illustrate situations where the current definition of a domestic violence relationship does not apply, but where the acts complained of arise directly because of domestic relationship between the victim's partner or former partner and another person in a domestic relationship with the victim's partner or former partner.

Example 1

Bob and Jane dated for a couple of months until Jane ended the relationship. During the relationship, Jane lived with her parents and Bob had met them a number of times.

After the break-up Bob starts to harass and threaten Jane's parents. Although Jane can establish a domestic relationship with Bob, as she was in an intimate personal relationship with him, her parents and other family are not covered under s 9(d)(ii) and thus cannot establish a domestic relationship. They are unable to seek relief under the DFVA.

Example 2

Ben and Chloe dated for a couple of months and then separated. Ben then commences a relationship with Sophie and they have a baby together. Chloe finds out about Sophie, becomes jealous, and begins threatening and stalking Sophie and making threats to harm the baby. Sophie's connection with Chloe does not fall within the definition of domestic relationship under the Act.

Example 3

Tom is in a long-term relationship with Marie and they have three children together. Tom goes out with the boys and has a one night stand with Naomi. Marie finds out about the one-night stand and begins sending threatening and abusive messages to Naomi. Naomi (the 'other woman') has no avenue of obtaining relief under the Act because Marie and Naomi have not been in a domestic relationship.

Discussion:

Where a person does not have standing to apply for a DVO, based on their inability to establish a domestic relationship with the defendant, the alternative form of protection is under a Personal Violence Restraining Order (PVRO).

This scheme has a number of limitations that affect all those who access it, most critical being that there the Court does not have a clear power to make orders quickly where there has been no previous history of violence.

In circumstances where the victim is in fear and has been subject to threats, mediation may not be appropriate in any case.

Further, the threshold for the making of a PVRO is higher than for a DVO, meaning some people will find themselves with no avenue of relief.

While the behaviour complained of may not meet the test for PVRO, it still may be such that it has a profound impact on the victim. Moreover, in some cases, the perpetrator uses their harassment of the victim as way of continuing to indirectly harass and control their ex-partner with whom the victim is now in a relationship.

Careful thought needs to be given as to whether to expand the definition of domestic violence as this will increase the workload of the Court and those agencies providing support and assistance to those seeking the Court's protection. However, balancing this, is the cost to the community where matters are not resolved and the safety of the protected person is not secured. If problems do not abate or worse, escalate, human and economic costs in terms of the victim's safety, mental health and employment may accrue, along with an increased burden on police and other agencies.

Recommendation:

Amendment of section 9 to the effect that domestic relationship include where a person

is or has been in a family relationship with a spouse, de facto, or relative of the other person; or

is or has been in an intimate personal relationship with a spouse, de facto, or relative of the other person.

SECTION 21: WHAT DVO MAY PROVIDE

Issue: No clear power to make order not to expose children to domestic violence where children not named as protected persons on the order

The legislation clearly provides that children can be included as protected persons in an application for a DVO where there are reasonable grounds to fear the children will be exposed to domestic violence (section note to section 13(3)) and further that a DVO may be made where the Court is satisfied there are reasonable grounds to fear the children will be exposed to domestic violence (section 18(2)).

Section 18 – “When DVO may be made” provides as follows:

(2) In addition, if the protected person is a child, the authority may make a DVO if satisfied there are reasonable grounds to fear the child will be exposed to domestic violence committed by or against a person with whom the child is in a domestic relationship.

However, it is not clear that an order restraining the defendant from exposing the children to domestic violence can be made when the children are not named as protected person on the application, hence the reluctance of some Magistrates to make such orders in these circumstances.

As there is also no provision in the Act clearly providing the Court a power to amend an application so as to add a new protected person, this can present an applicant with the challenge of instituting separate new proceedings for orders in relation to the children.

Discussion:

However, notwithstanding the lack of a clear provision that the “not expose” clause can be included even when children are not named as protected persons, many DVOs, including many Police DVOs, are regularly made and confirmed restraining the defendant from exposing the children to domestic violence even though the children are not named as protected persons on the DVO.

The difficulty here is the uncertainty that arises, perhaps more as a result of daily practice in the Court, rather than from a question of uncertainty as to what the law provides, as to whether or not the clause may be included if the children are not named as protected persons on the application. As many people make applications to the Court without legal assistance and omit to include their children as protected persons, they can then find themselves in the position of having their children without protection from being exposed to

domestic violence. Some argue that as the defendant will usually be restrained by other clauses in the DVO from committing acts of domestic violence against the adult protected person, the “not expose” clause is in any event redundant, because there will be no domestic violence against the adult protected person to which the children could be exposed, and if there is, then defendant in any event is in breach of the order.

An argument could be put that the making of orders restraining the defendant from exposing the children to domestic violence when the children are not named as protected persons is empowered under a combined application of the Objects at section 3, and at 21(1)(b)(ii) “to encourage the defendant to change his or her behaviour”.

Predicating against this is that section 18(2) clearly refers to the child being a protected person, while what a DVO may provide is arguably limited to orders relating to only the adult protected person, as 21(1)(a) is confined to where “an order imposing the restraints on the defendant stated in the DVO as the issuing authority considers are necessary or desirable to prevent the commission of domestic violence against the protected person”.

A clear power to include a clause restraining the defendant from exposing the children of the parties to children to domestic violence in a DVO naming only an adult/s as protected person should be included in the Act and would be useful for following reasons:

- 1) inclusion of the “not expose” clause sends a clear message to the defendant that whilst the acts done that provide for the making of a DVO were directed against the adult applicant/protected person, their actions also impact the children of the relationship. This is in keeping with the objects of the Act (section 3) to help “ensure that people who commit domestic violence take responsibility for their conduct” and to ensure “ensure the safety and protection of all persons, including children, who experience or are exposed to domestic violence” (section 3(1)(a)).
- 2) Inclusion of the clause protects the children from the defendant committing acts of domestic violence against other members of the defendant’s family or other persons with whom the defendant is in a domestic relationship while the children are in their care or company.
- 3) It is the experience of our service that defendants are often unwilling to consent to orders on which their children are named as protected persons, but may be agreeable to consent where the order names only an adult protected person but also includes the clause that the defendant not expose the children to domestic violence.

In situations where the domestic violence is not at the level that children require specific protections relating directly to them, this option can save the applicant from the stress and trauma of a contested hearing and reduce the level of conflict between the parties.

Early settlement of matters also reduces the burden on the court system and the agencies providing assistance to applicant/protected person and defendant.

Recommendation:

That section 21 be amended to provide for the making of an order that the defendant is restrained from exposing the children of the parties to domestic violence where children are not named as protected persons on the DVO.

SECTION 28 - WHO MAY APPLY FOR A DVO

SECTION 29 - WHEN APPLICATION MUST BE MADE FOR A CHILD

SECTION 81 - APPEARING AT HEARING

Issue: The Act does not clearly provide that Police/Child Protection Officer as applicant have standing as a party to appear at hearing or in proceedings generally initiated under section 28 or 29

A gap in the current legislative scheme is that there is no clear power that provides that Police or a Child Protection Officer are a party during the hearing of an application for a DVO under section 28 or 29 respectively.

As a matter of routine and practice, Police regularly take a role as a party in proceedings under section 28 and in applications to vary/revoke Police-initiated CSJ DVOs.

The concern is that without a clear power for Police do so, their role in the proceedings is open to challenge. A successful challenge could lead to a protected person being left without a DVO and vulnerable to further domestic violence.

Section 28 provides that police may **apply** for a CSJ DVO.

Section 29 provides Police or child protection officer (CPO) must apply for a DVO in certain circumstances.

However, it is not clear under Act that Police or a CPO are a party in the proceedings that follow an application under section 28 or 29.

Section 4 provides as follows:

Party, for a DVO means:

- (a) the protected person or person acting for the protected person; or
- (b) the defendant

Section 81 provides as follows:

81 Appearing at hearing

- (1) Subject to applicable procedural directions, a protected person may appear at the hearing of the proceeding.
- (2) If the defendant has been summoned under section 44 or 71, the Commissioner is a party to the proceeding.

In a hearing for a DVO initiated under section 28 or 29, the defendant will not be summonsed under section 44 or 71, and, therefore, the Act does not provide that the Commissioner is party where the hearing follows an application under section 28 or 29.

Further, and putting aside what a definition of “acting” may or may not entail, if the protected person engages a solicitor to act on their behalf, it cannot be accepted that Police also act for that protected person.

It is also arguable that where an unrepresented protected person communicates to the Court that the Commissioner is not acting on their behalf (foreseeable in circumstances where the protected person does not agree with the Police/CPO application), the Court may face a difficulty in accepting that the Commissioner/CPO nevertheless is “acting for the protected person”.

The structure of the legislation appears to intend that the Court will have the power to make DVO even in circumstances where the protected person does not want the protection of DVO.

For example, the note to section 18(1) states “because of the objective nature of test in subsection (1), the issuing authority may be satisfied on the balance of probabilities as to the reasonable grounds, ***even if the protected person denies, or does not give evidence about, fearing the commission of domestic violence***”.

This note complements the power for Police to make an application in respect of protected person and by inference envisions there will times when a protected person will not seek protection for themselves but will be seen to be need of protection. This may include where where the protected person is an unwilling participant, or lacks capacity to participate because of a disability, or is unable to participate or due to fear, threats or duress against them by the defendant.

In addition, section 116 provides that “in making, confirming, varying or revoking a DVO the Court or Magistrate may admit and act on hearsay evidence”, which further facilitates proceedings for a DVO in which the protected person is an unwilling participant or is unable to participate.

Finally, we note that similar concerns in relation to standing will apply in relation to applications to vary orders originally initiated by Police or CPO, under Part 2.8. We do note there is provision here however for “a person who, in [the Court’s] opinion, have a direct interest in the outcome”. It is hard to predict in what circumstances the Court would determine if the Police or a CPO have direct interest in the outcome. In circumstances where Police or Child Protection have made the application, it would be preferable that they have a clear right of appearance throughout the proceedings.

Recommendation:

Section 81 should be amended to include that if a police officer has applied for a DVO under s 28, the Commissioner is a party to the proceeding/ if a police officer or child protection officer has applied for a DVO under section 29, the police officer or child protection officer is a party to proceedings. An amendment to similar effect to section 52 should also be considered.

SECTION 48: WHO MAY APPLY FOR VARIATION OR REVOCATION

Issue: No requirement for a young person to be granted leave prior to making an application to vary.

A 'young person' is defined under s 4 as 'an individual who is between 15 and 18 years old'.

Section 28(3) allows a young person to apply for a domestic violence order, but only with leave of the Court.

Under s 28(4), the Court may grant leave only if satisfied:

- (a) the young person understands:
 - (i) the nature, purpose and legal effect of the application; and
 - (ii) the legal effect of the making of a DVO; and
- (b) the young person has the capacity to make the application.

Section 48(1) "Who may apply for variation or revocation" provides a young person may to the Court for an order to vary or revoke a DVO.

However, there is no requirement for a young person to seek leave of the Court when applying to vary or revoke an order under section 48.

Discussion:

The leave requirements for young persons at section 28(4) are important in ensuring that a young person understands the nature and effect of the proceedings in which they engage and that they have the capacity to make the application.

Where the Court has regard to the requirement for leave, it may adjourn or stand-down a matter to enable a young person to obtain legal advice so as to gain the requisite understanding.

A similar requirement for leave to be granted at section 48 will provide consistency in the Court's approach to young persons who are protected persons seeking to vary orders.

A provision in relation to leave under section 48 is necessary because in many cases the young person will not be the original applicant for the DVO subject to the application to vary and therefore the Court will not previously have been satisfied as to the young person's understanding or capacity to make the application to vary or revoke.

Recommendation: Section 46 be amended to require that where a young person makes an application to vary/revoke, they must first apply for leave of the court, using the same considerations set out in s 28(4).

SECTION 104: DEFINITION OF A VULNERABLE WITNESS

Issue: An applicant/protected person for a DVO is not defined as a vulnerable witness unless a DVO is already in place

Part 4.1 of the Act relates to evidence in proceedings for DVOs.

Under Division 4, a vulnerable witness is entitled to certain protections and support, including the ability to give evidence out of court and to have a support person.

Under s 104:

vulnerable witness means:

- (a) an adult who is the protected person named in a DVO; or
- (b) an adult witness who suffers from an intellectual disability; or
- (c) an adult witness who, in the Court's opinion, is under a special disability.

Therefore, under s 104(a), the protections available for vulnerable witnesses only extend to persons named on a current DVO or an interim DVO, **not** a person listed as a protected person on the **application**.

Discussion:

The limited application of s 104 mean that the vulnerable witness provisions are only invoked when a protected person is seeking to vary or revoke an order, or where this an interim DVO in place.

This means that a protected person not named on a current or interim DVO who is frightened to give evidence in the presence of the defendant must have the knowledge, skill and foresight to make an application for a ruling that they are a vulnerable witness as provided at Part 3, *Evidence Act* (NT).

Even where the applicant/protected person does make such an application, the Evidence Act does not specifically address the circumstances of a victim of domestic violence giving evidence in the presence of a perpetrator.

The applicant/protected person must make out that they are under a "special disability". Without the legislation providing explicitly to domestic violence proceedings, such an application will necessarily be subject to a great deal of uncertainty in respect whether or not Court will form an opinion that they are or are not under a "special disability".

Giving evidence without recourse to the vulnerable witness protections may cause a protected party great distress, and may act as a disincentive to pursue an application to hearing based on concerns that they may have to provide evidence in the presence of the defendant.

It is our view the limited scope of the definition of vulnerable witness in the DFVA is an oversight. The explanation of the vulnerable witness provisions in the Second Reading Speech to the Act state as follows:

"Another major reform in the bill is the adoption of vulnerable witness provisions in domestic violence proceedings. Victims in court are often overwhelmed by appearing in court and potentially having to deal with the intimidating stare of their partner or husband. These measures will ensure that applicants will be protected from intimidation during proceedings."

The use of the term "proceedings" within the second reading speech is general and such that it implies that the vulnerable witness protections should be able to be invoked for persons **applying** for a DVO in addition to proceedings regarding a current or interim DVO.

Recommendation:

Section 104(a) of the Act be amended to define a vulnerable witness as "an adult who is the protected person named in a DVO or as a protected person in an application for a DVO".

SECTION 85: RETRIEVAL OF DEFENDANT'S PERSONAL PROPERTY

Issue: No provision for retrieval of protected person's property from premises of defendant.

Section 85 provides only for a defendant to retrieve their belongings, as follows:

85 Retrieval of defendant's personal property

- (1) This section applies if:
 - (a) a DVO includes a premises access order; and
 - (b) personal property of the defendant is located on the premises the subject of the order.
- (2) The defendant may, if accompanied by a police officer:
 - (a) enter the premises at any reasonable time; and
 - (b) retrieve the property.
- (3) The defendant is not in contravention of the DVO merely because of entry of the premises and retrieval of the property under subsection (2).
- (4) The police officer may use reasonable force or assistance for the entry of the premises and retrieval of the property.
- (5) In this section:

personal property includes clothes, tools of trade, personal documents and other items of personal effect.

It is of note that the section provides that police may use reasonable force to enter premises and retrieve belongings.

Discussion:

There is no provision under the Act for Police to assist a protected person to retrieve belongings from the premises of the defendant.

It is not uncommon that a protected person flee premises in which he or she has previously resided with the protected person either leaving behind certain personal property or having certain personal property withheld by the defendant. Such property can include not only personal items and clothes, but also important documents such as passport or birth certificates.

An amendment to the Act to also provide for the retrieval of the protected person's property from the premises of the defendant with the assistance of police would be of benefit.

Recommendation:

Inclusion of clause to provide police assistance to allow a protected person to collect personal belongings from the residence of a defendant

SECTION 106: CLOSURE OF COURT IN CERTAIN CIRCUMSTANCES

Issue: Court need not be closed when defendant a young person

Under section 106, the Court must be closed when the only protected person on a DVO or application for a DVO is a child, or while a vulnerable witness gives evidence, unless the court orders a proceeding, or part of it, to be open to the public if it is in the interests of justice to do so.

The following scenario illustrates why it is appropriate for the court to consider closing the court where the defendant is a young person (ie in accordance with the s 4 definition, where the defendant is aged 15 to 18 years old).

Example:

Karen and Philip are the parents of a troubled youth, Stephen, aged 15 years old. Stephen is exhibiting emotional and behavioural developmental issues, and it is suspected that he has borderline autism. At times, Stephen lashes out at his parents. On the most recent occasion he has assaulted his father and damaged property in the home. Police take out s 41 DVO against Stephen, for the protection of his parents, Karen and Philip.

In these circumstances it is clear that having an open court would cause immense distress to all parties involved and could not be seen as appropriate that a defendant youth and their parents should face open court in such circumstances.

Recommendation:

That section 106 be amended to provide for the court to be closed where a young person is named as a defendant in a DVO or DVO application.

SECTION 19 – MATTERS TO BE CONSIDERED IN MAKING A DVO**SECTION 82 – DECISION AT HEARING****Issue: No provision to ensure protected person's views to be considered in revocation of a DVO**

Section 19 sets out the matters the Court must consider when making a DV. These are primarily the safety of the protected person, and also include regard to be had to any family law orders or proceedings; the accommodation needs of the protection person, the defendant's criminal record, the defendant's previous conduct, and "other matters the authority considers relevant". The section does not specifically require the Court to have regard to views of the protected person.

Section 52 provides that the Court may only vary or revoke a DVO if "persons who, in its opinion, have a direct interest in the outcome" have had an opportunity to be heard on the matter". This provision is beneficial from a protected person perspective, but the section does not apply to a Police DVO or an interim DVO.

Section 82 provides a power to the court to confirm with or revoke a DVO, before it on summons under sections 37, 44, 59, 71 or 79 (essentially relating either to a Police DVO or a DVO made ex-parte).

Section 82(2) mandates the Court must not **confirm** a DVO unless it is satisfied the defendant has been given a copy of the DVO and it has "considered any evidence before it and submissions of the parties". The section does not require the Court to consider the views of the protected person if a DVO is **revoked**.

The section does not require the Court to have regard to views of the protected person if there is no evidence from protected person before the Court.

Discussion:

DVLS have been involved in matters and observed matters where police DVOs have been made, revoked or varied a DVO without fresh regard to the wishes of the protected person.

Decisions made about DVOs without reference to the wishes of the protected person can result in a range of potentially adverse outcomes, including a protected person in need of protection being left unprotected.

Recommendation:

That section 82(2) be amended to include reference to revocation as well as confirmation, and consideration of inclusion of sub section requiring the Court be satisfied the protected person has been given notice of the Court's intention to revoke the order.

SECTION 43: WHAT A POLICE OFFICER MUST DO AFTER DVO IS MADE

Issue: No requirement to provide information about DVO to protected person

Section 43(1) requires Police to give a copy of the DVO to the parties.

In relation to s 41 police DVOs, under s 43(2), police are under an obligation when giving a copy of the DVO to the defendant personally to explain to the defendant in terms likely to be readily understood by the defendant:

- (a) the effect of the DVO, including any restrictions and obligations imposed by the DVO; and
- (b) the consequences that may follow if the defendant contravenes the DVO; and
- (c) the defendant has a right to apply for a review of the DVO under Part 2.9.

The section does require this information to be given to protected persons.

Many DVLS clients who are protected persons do not properly understand the DVO protecting them, the Court process or what they can do if they disagree with the orders sought.

This lack of knowledge can result in appropriate orders being made, which are then subject to an application to vary, and a concomitant burden on the Court system. It sometimes even results in protected persons coming to our office to apply for a DVO unaware they already have one in place or to vary or extend a DVO they mistakenly believe is in place when in fact it may have expired long ago or may never have been confirmed by the Court.

To increase the likelihood of protected persons better understanding the process, their DVO, obtaining appropriate orders and linking with support services, as well as change to the Act to provide for an explanation of the DVO to be given to the protected person, we also recommend that a plain English guide of relevant key points about the DVO and parties' options be provided to both defendant and protected parties along with the copy of the DVO.

Recommendation:

1. That section 43 should be amended to include that an explanation of the DVO be given to the protected person as well as the defendant.
2. That a plain English guide on relevant legal options and contacts for legal services be provided to defendants/protected persons on service of DVO

SECTION 30 – HOW APPLICATION IS MADE

Issue: No protection for applicant's in relation to disclosure of their address in application for a DVO

(Note this issue also addressed in Section 3 below)

Form 2 “**Application for Domestic Violence Order**”, Form 3 “**Application for Domestic Violence Order by Young Person**” and Form 8 “**Application to Vary/Revoke Domestic Violence Order**” are forms approved under section 126.

All three forms provide for an applicant/protected person to specify their address on the covering page of the application, both in the “applicant” and “protected person” fields.

In addition, the standard affidavit form provides for the deponent's address be specified.

Where an applicant prepares their application without legal assistance, they often do not realize the application is to be served on the defendant and that if they have stated their address it will then be known to the defendant.

Thus the structure of the forms can lead an applicant into erroneously disclosing their address to the defendant.

On some occasions, this has resulted in the defendant being provided with the applicant's address, and on one occasion, the address of a women's shelter where the applicant was residing.

Clearly, this is highly problematic, as revealing the address of the applicant has the potential to compromise further the applicant's safety and clearly, in some instances, disclosure of a victim's previously unknown address could have disastrous consequences.

Further, unfortunately, we have had two examples in the last year where clients have reported that Registry staff have insisted they put their address on the front of the application despite the applicant telling Court staff they feared the defendant learning their address. These matters were raised with the Court and we hope this will lead to a better understanding and training of Registry staff.

However, to ensure protected person's safety is paramount in terms of processes and procedures relating to an application for a DVO, amendment to the legislation may also be required at section 30 “How application is made” to effect that the clerk will not require inclusion on the application of the address of the applicant where to do so may compromise the applicant's safety. Such an amendment would be consistent with the prohibitions on publication at section 123 “Publication of names and identifying information about children” and section 124 “Publication of personal details”.

Recommendation:

Amend section 30 to make clear that the applicant's address must not be stated on an application where to do so would compromise the safety of the applicant and/or a protected person named on the application.

REGULATION 12: DOMESTIC AND FAMILY VIOLENCE REGULATIONS

Regulation 12(1)(a)-(f) of the *Domestic and Family Violence Regulations* ('the Regulations') makes reference to regulation numbers for breath tests, breath analysis, saliva tests and urine tests. However, as the regulation currently stands, the regulation numbers referred to appear incorrect.

For example, regulation 12(1)(a) currently states that the defendant is required to submit to a breath test under **regulation 9**, when in fact the provision in relation to submitting to a breath test is found in **regulation 6**.

Recommendation: Regulation 12(1)(a)-(f) be reviewed and corrected as necessary to ensure the numbering is correct.

SECTION 3: OPERATIONAL ISSUES

Service of orders and notices on protected persons

The Act contains numerous provisions for service of orders, notices and documents on protected persons.

For convenience, these are consolidated in the table below.

The provisions below need to be read having regard to:

Section 4 ...

party, for a DVO, means:

- (a) the protected person or person acting for the protected person; or
- (b) the defendant.

RELEVANT SECTION/S OF THE ACT	SITUATION	AUTHORITY RESPONSIBLE FOR SERVICE ON PROTECTED PERSON
28, 29, 30, 31	Application for CSJ DVO filed.	Under s 31, clerk of the Court must as soon as practicable after the application is filed give written notice to the parties to the DVO of the time and place for the hearing of the application.
36	CSJ DVO or interim DVO made.	Under s 36, as soon as practicable after a CSJ DVO or interim DVO is made, clerk of the Court must give a copy of it to: (a) the parties to the DVO; and (b) the Commissioner.
38, 39, 40	Consent DVO made.	Under s 40, as soon as practicable after a consent DVO is made, a clerk must give a copy of it to: (a) the parties to the DVO; and (b) the Commissioner.
41, 42, 43	Police DVO made.	Under s 43(1), as soon as practicable

		after the police DVO is made, a police officer must: (a) give a copy of it to the parties to the DVO; and (b) send the original of it to the Court.
45, 46	DVO made by court following criminal proceedings.	Under s 46, as soon as practicable after the DVO is made, the court must give a copy of it to: (a) the parties to the DVO; and (b) the Commissioner.
48, 49, 50	Application for variation or revocation of court DVO (other than interim DVO).	Under s 50, as soon as practicable after an application to vary or revoke a DVO is filed, a clerk of the Court must give written notice of the time and place for the hearing of the application to: (a) the parties to the DVO; and (b) for a court DVO that is a police DVO confirmed by the Court under Part 2.10 – the Commissioner.
51, 52, 52A, 53, 54	Interim variation order made or DVO varied or revoked.	Under s 54, as soon as practicable after the Court makes an interim variation order or order varying or revoking the DVO, a clerk must give a copy of the DVO as varied or written notice of the revocation to: (a) the parties to the DVO; and (b) the Commissioner.
55, 56, 5, 58	Ex parte variation of DVO made.	Under s 58, as soon as practicable after a decision is made on the application, a clerk of the Court must give a copy of the DVO as varied or, if the application is refused, written notice of the decision and the reasons for it, to: (a) the parties to the DVO; and (b) the Commissioner.
60, 61, 62, 63	Variation and revocation of DVO with consent of parties.	Under s 63, as soon as practicable after the Court or clerk makes an order varying or revoking the DVO, a clerk of the Court must give copy of the DVO as varied or written notice of the revocation to: (a) the parties to the DVO; and (b) the Commissioner.
64, 65, 66, 67, 68, 69, 70	Variation of court DVO (other than interim DVO) or police DVO in urgent circumstances.	Under s 70, as soon as practicable after the completion of the form of order, a police officer must: (a) give a copy of it to the parties to the DVO; and (b) send the original of it to the Court.
72, 73, 74, 75	Review of police domestic violence order where DVO revoked.	Under s 75, if the magistrate makes an order revoking the DVO, a police officer must inform the parties to the DVO of: (a) the order; and

		(b) the reasons for it.
72, 73, 74, 76	Review of police domestic violence order where DVO confirmed without variations.	Under s 76, if the magistrate makes an order confirming the DVO without variations, the police officer must inform the parties to the DVO of: (a) the order; and (b) the reasons for it.
72, 73, 74, 77, 78	Review of police domestic violence order where DVO confirmed with variations	Under s 78, as soon as practicable after the form of order is completed, a police officer must: (a) give a copy of it to the parties to the DVO; and (b) send the original of it to the Court.
37, 44, 59, 71, 79, 80, 81, 82, 83	Confirmation of domestic violence orders.	Under s 83, as soon as practicable after the Court makes its order, a clerk of the Court must give to the parties to the parties to the DVO and the Commissioner: (a) if it confirms the DVO without variations or revokes it – written notice of the order; or (b) if it confirms the DVO with variations – a copy of the DVO as varied.
4, 89	Explanation of court DVO.	Under s 89, if a protected person who is an adult or young person is present when a court DVO is made, confirmed or varied, then the issuing authority must explain: (a) the effect of the DVO, including: (i) any restrictions and obligations imposed by the DVO; and (ii) the DVO may be registered and enforced, without notice to the defendant, in a State, another Territory or New Zealand under a corresponding law; and (b) the consequences that may follow if the defendant contravenes the DVO; and (c) the way the DVO may be varied or revoked. (3) As far as it is reasonably practicable to do so, the explanation must be given in a language or in terms that are likely to be readily understood by the person being given the explanation. Under s 4, issuing authority means: (a) for a CSJ DVO: (i) the Court; or

		(ii) the clerk deciding the application for the DVO; or (b) for a police DVO – the authorised police officer considering making the DVO; or (c) for a court DVO made under Part 2.7n (ie where DVO made following criminal proceedings) – the court considering making the DVO.
93, 94, 95, 96, 97	Registration of external orders.	On registering an order under Part 3.2, the clerk of the Court must give notice of registration of the order or modified order to the protected person.

Discussion:

Despite numerous provisions through the Act requiring service of orders and notices on the protected person (see table above) it is the experience of our service that many are seldom complied with, especially in relation to Police section 41 and section 28 matters.

We understand this lack of compliance occurs in part as a result of the Court administration having the belief that Police will attend to all service matters relating to the protected person, especially given the Police are more likely to have the protected person’s contact details, while Police of the view that as set out in the Act, it is the Court’s responsibility to ensure service of notices and orders on the protected person.

This impasse leads to the situation where the protected person often misses out on receiving orders and notices.

As a result our service sees:

- Clients unaware of the court dates for the DVO in which they are protected person, particularly when matters adjourned for mention or hearing; as a result, protected persons deprived of opportunity to be heard on the matter;
- Clients unaware of the terms and/or duration of the DVO protecting them ;
- Clients coming to us for help to apply for a DVO when they are already protected on a Police DVO;
- Clients not being served with copies of section 28 applications where they are the protected person and therefore in some cases being unaware of the terms of the orders sought, the date when the matter will be in Court, and if orders are made, not receiving a copy of the orders.

In our view, the various provisions providing for service on protected persons are important, are appropriate and ought be adhered to.

Recommendation:

1. The Act should be amended to include a new Schedule 2, containing a table consolidating the provisions in accordance with which a protected person must be served with orders, notices or documents (see table above).

2. At a practical level, that the Court administration, in cooperation with Police, ensure compliance with the various provisions providing for notice etc to protected persons.

COURT SITTINGS AND INVOLVEMENT OF PROTECTED PERSONS

Issue: Protected persons not called when defendant and Police represented

Following from the issue of service of protected persons is the issue that Court officials, Magistrates and Police representatives are not always alive to the importance of ensuring that protected persons are called when matters involving them are before the Court.

It is not uncommon that matters are dealt with by the Court without being called on if the defendant or their representative are at the bar table. Rarely will a Magistrate, Police lawyer or court official call the matter if Police and the defendant are already at the bar table.

This can result in protected person's missing out on the opportunity to be heard, especially if they are unrepresented. DVLS have been involved in and observed a number of matters where protected persons have been left distraught having missed the opportunity to be heard in their matters, at times ending up without the protection they needed or with orders confirmed against their wishes and without their having an opportunity to be heard.

However, calling of matters needs to be carried out sensitively and with regard for the safety of the protected person. Hence, calling of matters should (and usually is) done by calling the defendant's name.

Recommendation:

That the Court administration ensure matters are called using the defendant's name when protected person or their representative not present.

Domestic violence order application forms

Issue: Application forms *prima facie* require disclosure of applicant/protected person's address to defendant

Form 2 "**Application for Domestic Violence Order**", Form 3 "**Application for Domestic Violence Order by Young Person**" and Form 8 "**Application to Vary/Revoke Domestic Violence Order**" are forms approved under section 126.

All three forms provide for an applicant/protected person to specify their address on the covering page of the application, both in the "applicant" and "protected person" fields.

In addition, the standard affidavit form provides for the deponent's address be specified.

Where an applicant prepares their application without legal assistance, they often do not realize the application is to be served on the defendant and that if they have stated their address it will then be known to the defendant.

Thus the structure of the forms can lead an applicant into erroneously disclosing their address to the defendant.

On some occasions, this has resulted in the defendant being provided with the applicant's address, and on one occasion, the address of a women's shelter where the applicant was residing.

Clearly, this is highly problematic, as revealing the address of the applicant has the potential to compromise further the applicant's safety and clearly, in some instances, disclosure of a victim's previously unknown address could have disastrous consequences.

Further, unfortunately, we have had two examples in the last year where clients have reported that Registry staff have insisted they put their address on the front of the application despite the applicant telling Court staff they feared the defendant learning their address. These matters were raised with the Court and we hope this will lead to a better understanding and training of Registry staff.

However, to ensure protected person's safety is paramount in terms of processes and procedures relating to an application for a DVO, amendment to the legislation may also be required at section 30 "How application is made" to effect that the clerk will not require inclusion on the application of the address of the applicant where to do so may compromise the applicant's safety. Such an amendment would be consistent with the prohibitions on publication at section 123 "Publication of names and identifying information about children" and section 124 "Publication of personal details".

Recommendation:

1. Redesign of application form so there is a prompt for applicant to consider if their address should be disclosed or withheld and/or option for address disclosed or withheld;
2. Introduction of Registry procedure when receiving applications to check with applicant if address can be safely disclosed to defendant and to redact if required, ensuring redaction covers application form and affidavit;

DOMESTIC VIOLENCE ORDER APPLICATION FORMS AND FORM OF ORDERS SOUGHT

Issue: Wording of form of orders sought – applicant's led into error, form not user friendly, form not consistent with section 41 Police DVO form

Form 2 "Application for Domestic Violence Order", Form 3 "Application for Domestic Violence Order by Young Person" and Form 6 "Application for a DVO by a Police Officer" provide a list of clauses to restrain the defendant from various forms of conduct as follows:

The defendant is restrained from:

- (a) contacting or approaching the protected person/persons directly or indirectly;
- (b) harassing, threatening or verbally abusing the protected person/persons;

- (c) assaulting or threatening to assault the protected person/persons;
- (d) damaging or threatening to damage the property of the protected person/persons;
- (e) remaining at any place the protected person/persons may be living, working or visiting.
- (f) contacting or approaching the protected person/persons directly or indirectly except via or in the presence of a solicitor, family dispute resolution practitioner or Centacare worker for the purposes of making arrangements for the children and/or property of the parties or in accordance with a Parenting Plan and/or Family Law Order.
- (g) contacting or approaching the protected person/persons directly or indirectly, except for the purposes of making parenting arrangements for the children of the parties.
- (h) Other

There is considerable room for improvement in the design and content of this section of the form.

Appropriate changes could make the forms more user friendly, especially for unrepresented applicants, avoid the making of inoperable or unenforceable orders and provide greater consistency in orders made, which may assist Police and Courts in dealing with breaches.

By way of example, some of the problems with form are set out here:

- 1) Clause 2 “harassing, threatening or verbally abusing the protected person” does not include “intimidating”.

This omission means orders are made lacking a significant protection, as “harassment” is only one aspect of “intimidation” under section 6.

- 2) Clause 5 “remaining at any place the protected person may living working or visiting” can render clauses 6 and 7 (the exceptions for contact) inoperable or at least raise a question as to whether contact can occur without risk of breach.

- 3) Clause 6 –To avoid doubt in terms of potential breach when the exception is exercised for the purpose of visits with the children, suggest add “for the purposes of having contact with or making arrangements for the children ... etc”

The forms also do not include common and important restraints that a protected person may require to ensure they are adequately protected. These include:

- the vacate premises clause
- the non-intoxication clauses
- stalking
- exposing children of the parties to domestic violence.

These clauses above are included on the section 41 Police Domestic Violence Order form, which has a check box format.

While noting there are some problems with the Police Domestic Violence Order form (discussed below), we believe amending the section 28 forms to align with an updated and improved Police DVO form will provide for a more effective and user friendly form.

Further, a check box format with all the common forms of order available for selection, and headings to assist users to identify the orders relevant to their circumstances will see improvements in the orders made, allow for increased enforceability of orders, provide greater consistency in orders made by the Court, and reduce the number of applications to vary orders that are inappropriate or ineffective.

Recommendation:

That Forms 2, 3 and 6 be amended to align where appropriate with the Police section 41 Domestic Violence order form, with the layout, headings and wording designed to make selecting appropriate and effective orders more user friendly, but noting that this recommendation relies on some important changes being made to the Police Domestic Violence Order primarily at clauses 3 and 5, which provides for exceptions to allow contact.

(Please note that DVLS would welcome the opportunity to review and have input into any redesign of the forms should this occur).

POLICE DOMESTIC VIOLENCE ORDER FORM

Issue: Insufficient prominence of summons to show cause and return date; problems with clause 3 and 5 re exceptions for contact

Summons to show cause and return date:

When police make a s 41 police DVO they must, under s 43, give a copy of it to the parties and send the original to the Court. The police currently use a form titled “Police Domestic Violence Order – Domestic and Family Violence Act of the Northern Territory”.

There are two major issues with the s 41 police DVO form currently in use.

The first is that the “summons to defendant” section on the form is too small and is written in inaccessible and overly complicated language.

Further, there is no indication on the form should the protected person wish to be heard on the matter, they will need to attend on return date.

Under s 44, the copy of the police DVO given to the defendant is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the DVO should not be confirmed by the Court.

Our experience at DVLS is that defendants and protected persons often overlook the “fine print” and do not see or do not understand the effect of the summons to show cause.

This often means that orders are confirmed in their absence of parties, without them having the opportunity to be heard. The result can be inappropriate orders made which are then subject to applications to vary, placing an unnecessary burden on Police, the parties, the Court and legal and support services.

Clause 3 and 5 exceptions to full non contact:

The second issue with the police DVO form currently in use relates to clause 3, which is reproduced below:

THE DEFENDANT IS NOT RESTRICTED FROM

- ¹ Approaching, contacting or remaining in the company of the Protected Person/s (contact includes by mail, phone, text messages, facsimile, email or other forms of communication).
- ² Approaching, entering or remaining at any place where the Protected Person/s is living, working, staying, visiting or located
- ³ Except via or in the presence of a solicitor, family dispute resolution practitioner or nominated third party:
_____ for the purpose of making arrangements for property and/or children of the parties namely: _____ (delete what is not applicable - property /children)
- ⁴ And must vacate the premises located at _____ forthwith.
- ⁵ Exceptions to (1) or (2): _____

Our experience is that Police often select clause 3 as part of the s 41 DVO but do not nominate a third party.

When the order is confirmed at Court, and as commonly occurs, this omission is not addressed, final orders are frequently produced that read as follows:

“Except via or in the presence of solicitor, family dispute resolution practitioner or nominated third party”.

This leaves open the possibility that a defendant could unilaterally “nominate” a third party without regard to the wishes of the protected person.

In this scenario the consequences could include the defendant unilaterally nominating a third person who the protected finds intimidating or frightening, or the defendant utilising a unilaterally nominated third party to make direct or indirect unwanted contact with protected person.

Recommendation: That the s 41 police DVO form currently in use be amended to:

- (1) Explain more clearly and in larger font the effect of the summons of the defendant to show cause; and
- (2) That where police or protected person do not nominate a third party as provided in clause 3, then the reference to a nominated third party be deleted from the order (for example, by striking through) so that it does not become a part of a confirmed order under s 82.

REGISTRATION OF INTERSTATE DVO FORMS

Issue: Forms 12, 13 and 14 not consistent with provisions in Act

Chapter 3 relates to external orders (ie DVOs made outside of the Northern Territory) and their registration and enforcement within the NT.

Approved Forms 12, 13 and 14 relate to applications, orders and notices concerning external orders.

Section 93 relates to applications for registration of an external order. It states that:

- (2) The application must:
 - (a) be made in the approved form; and
 - (b) be accompanied by:
 - (i) a copy of the order; and
 - (ii) evidence the order has been given to the defendant.

However, Form 12 only states that “a copy of the order is attached hereto” and does not mention that the application must include “evidence the order has been given to the defendant”.

Section 95 relates to notice of registration. It states that:

- (1) On registering the order, the clerk must:
 - (a) give notice of registration of the order or modified order to:
 - (i) the protected person; and
 - (ii) the applicant if the application was not made by the protected person or a police officer; and
 - (iii) the registrar of the court that made the order; and
 - (b) give the Commissioner a copy of the registered order.
- (2) The clerk must not give notice of the registration of the order or a copy of the registered order to the defendant without the consent of the applicant.

However, Form 14 does not make any reference to the prohibition against notice to the defendant under s 95 and in fact, includes at the top a section for the defendant’s details.

Recommendation:

1. That Approved Form 12 be amended to state that “a copy of the order and *evidence the order has been given to the defendant* is attached hereto”.
2. The Approved Form 14 be amended to state clearly that “*the clerk must not give notice of the registration of the order or a copy of the registered order to the defendant without the consent of the applicant*”.

SERVICE OF POLICE DVOS and CSJ DVO applications

Issue: Provision of legal information to defendants/protected persons on service of Police DVO or CSJ DVO application

When defendants and protected persons are given a Police DVO or served with a CSJ DVO application they are not provided with information on the nature and effect of the application, what may happen if they do not attend Court or their option to seek legal advice or contacts for relevant legal services.

This can lead to defendants having orders being made against them without them understanding they have an opportunity to be heard on the matter, or understanding the reasons for the application and the nature of the orders then made or the consequences of breach of a DVO.

Similar situations can arise when Police section 28 applications are served on a protected person or when Police or defendant-initiated applications to vary are served on protected persons.

Recommendation:

That a plain English guide containing relevant legal information and contacts for relevant legal services be attached to Police DVOs and CSJ DVO applications when served on the defendant AND protected person.

CONCLUSION

DVLS welcomes the opportunity to provide further comment in relation to any proposed amendments to the Act or practical aspects associated with the operation of the Act.

Should you wish to discuss this submission further, please do not hesitate to contact Annabel Pengilley on (08) 8999 7977 or via email: annabel.pengilley@dvls.nt.gov.au.

Yours sincerely
DOMESTIC VIOLENCE LEGAL SERVICE

[By email]

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