



Criminal Lawyers Association of the Northern Territory (CLANT)

Patron: The Hon Justice Virginia Bell • President: Russell Goldflam (telephone: 040 1119020) •
Secretary: Isabella Maxwell-Williams (PO 969, ALICE SPRINGS NT 0871) • www.clant.org.au

CLANT Submission to Domestic and Family Violence Proposals Issues Paper

25 November 2015

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

Possibly, but further information is needed before adopting such a scheme.

The pilot of the UK Domestic Violence Disclosure Scheme (DVDS) was undertaken over four of the 48 police force areas in England and Wales. The ensuing evaluation was limited: it did not report on outcomes, and in particular on whether the DVDS reduced domestic violence. No evaluation of the national scheme has been conducted. It is difficult therefore to predict the success of such a law in the NT.

The NSW government has conducted consultations with the community and stakeholders in that jurisdiction with a view to establishing a DVDS. The NT should closely observe the outcome of that initiative, and be guided by the NSW experience.

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

All decisions to develop, trial, implement and evaluate a DVDS, as with any major new legal initiative in relation to domestic violence in the NT, should be undertaken within the DFVRS framework, which is both robust and designed to be responsive to local circumstances and needs across the Territory.

CLANT has strongly opposed the passage of “Daniel’s Law”,¹ which on its face bears some similarities to “Clare’s Law”. Both schemes appear at first blush to offer increased protection to victims, because they expose offenders. However, if the evidence (as has been proven to be the case with the US schemes on which Daniel’s Law has been modelled) does not support a conclusion that such protection is in fact conferred, such schemes can do more harm than good, by distracting attention from the need to put in place more effective methods to protect victims. Placing a perpetrator’s name on a list does not necessarily reduce the risk of re-offending, and is no substitute for more practical measures to protect victims.

As an aside, CLANT cautions against the apparent trend to memorialise victims of crime by naming enactments after them. This practice injects an unhelpful and gratuitously subjective element into what should be a rigorously objective examination and debate regarding the risks, costs and benefits of the proposed legislation.

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

See previous response.

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

See previous response.

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

¹ CLANT, *Ten Reasons Why Daniel’s Law is Bad for Victims* (2015), accessed at: http://www.clant.org.au/images/images/Daniels_Law_121115.pdf

The Parole Board already generally has regard to offenders' participation in rehabilitation programs. The introduction of a statutory requirement that such matters be considered would unduly fetter the discretion of the Parole Board.

The Parole Board should be able to take into account that the failure of a person to undertake a rehabilitation course may have been solely because it was not available to him or her, as indeed is often the case. For example, the Violent Offenders Program and Sex Offenders Program have both been discontinued at the Alice Springs Correctional Centre, and are currently only available to prisoners in the Darwin Correctional Centre.

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

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

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

CLANT has reservations regarding the justice and wisdom of the existing indefinite sentencing provisions: preventative detention is a principle not known to the common law, and similar statutory schemes in other parts of the world, including England, have been found to infringe offenders' human rights.

Nevertheless, the current scheme is well established, and the Court of Criminal Appeal has carefully considered and applied Division 5 Subdivision 4 of the *Sentencing Act* in cases such as *Murray v R* [2006] NTCCA 9, without suggesting that these provisions are in need of reform.

CLANT submits that the current scheme of indefinite imprisonment should not be extended.

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

No. The principles of the *Sentencing Act*, coupled with judicial discretion and the role of the Parole Board, provide sufficient checks and balances. CLANT

opposes “civil detention” imposed after the completion of a sentence of imprisonment, whether for violent offenders or sex offenders. CLANT consistently and strongly opposed the enactment of the *Serious Sex Offenders Act*,² and would be similarly opposed to its extension to cover non-sexual offences.

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

The CCO scheme provides magistrates (and occasionally, judges) with a useful sentencing option. However, CLANT is concerned that the resources required to enable CCOs to be implemented are unavailable in some remote communities in which offenders reside who would otherwise be eligible for this sentencing disposition.

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

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

Possibly. CLANT acknowledges and commends the impressive outcomes of the HOPE Program, and would welcome a trial of a similar initiative in the NT. However, “flash incarceration” is only one element of HOPE. In particular, if a version of the HOPE program were to be introduced in the NT, it is essential that sufficient resources be provided to enable the intensive case management by specially trained probation officers which is an essential feature of the program.³

CLANT has watched on with frustration as previous therapeutic justice programs – the CREDIT Court, the SMART Court, the Alcohol Court – have been successively introduced and then abandoned. If HOPE is trialled in the Territory, then CLANT urges that, unlike its predecessors, it be given a fair go, and adequate support.

² CLANT’s submission accessed at http://www.clant.org.au/images/images/Serious_Sex_Offenders_Act_2013.pdf

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

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

Probably. If a decision is made to establish HOPE in the NT, then it should be commenced on a pilot basis in a single location, supported and guided by a reference group or steering committee to enable appropriate modifications to be made to meet local circumstances and needs.

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

CLANT generally supports the use of electronic monitoring, which provides an effective – and cost-effective – alternative to custodial measures for defendants and offenders who would otherwise be assessed as posing an unacceptable risk of re-offending and/or absconding. CLANT does have reservations, however, about its extension to youths, and the risk that its increasing use will result in the general “ratcheting up” of intrusive surveillance measures.

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

Possibly. This measure has been utilised in NSW since 2012, and is currently being trialled in Victoria. Before committing to the introduction of proximity alarms, the NT should closely observe the experience of using them in other jurisdictions.

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

See previous answer

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

As stated above, CLANT supports the DFVRS. In addition, CLANT supports the establishment of a Domestic and Family Violence Death Review Unit.⁴

⁴ R Goldflam, letter to Chief Minister Giles, 22 August 2013, accessed at: http://clant.org.au/images/images/Letter_CM_23_August_2013.pdf

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

CLANT supports the extension of the Witness Assistance Service by providing more counsellors, and more officers at court to support victims.

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

Yes, at least in Darwin and Alice Springs. This proposal would clearly be unworkable in bush courts. This reform could be accomplished by way of Practice Direction by the Chief Magistrate. The power conferred on the Director of Public Prosecutions by section 21 of the *Director of Public Prosecutions Act* is broadly expressed, and it is not apparent to CLANT why an amendment to this legislation would be required. However, this measure would not be effective unless additional resources are provided to the ODPP to enable the establishment and maintenance of specialist domestic violence prosecution positions.

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

CLANT supports this proposal (see above).

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

Perpetrator programs are an essential component of the DFVRS, and should be supported and expanded, to reach offenders both in the community and in prison. That said, it should also be recognized that the evidence that such programs are effective in reducing domestic violence is patchy, and it would be unrealistic and unfair to burden such programs with a requirement that to continue to attract funding they demonstrate that domestic violence in their community has been significantly reduced. At best, perpetrator programs can only be expected to change the behaviour of a small number of offenders, and even amongst program participants, it is inevitable that many will re-offend.

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

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

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

To effect behaviour change is a complex generational challenge which will require broad strategies including social marketing, early childhood education, reduction in substance abuse and substantial improvement in education, employment, housing and health for disadvantaged Territorians, particularly in remote areas.

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

CLANT supports mutual recognition of domestic violence orders. The lack of progress in this area despite the long-standing commitment of COAG to implement a national scheme is a matter of serious concern.

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

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

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

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