

16 November 2015

Jenni Daniel-Yee
Acting Director
Department of Attorney General and Justice
PO Box 1722
DARWIN NT 0801

Via email policy.agd@nt.gov.au

Dear Madam

RE: DOMESTIC AND FAMILY VIOLENCE PROPOSALS – ISSUE PAPER

The Central Australian Women's Legal Service (CAWLS) is a not for profit organisation funded by the Commonwealth Attorney-General's Department, the Department of Prime Minister and Cabinet and the Northern Territory Government. CAWLS provides free legal advice and assistance to all Central Australian women in the areas of domestic and family violence, family Law and children, family Law and property, discrimination, victims of crime, child protection and housing. CAWLS is based in Alice Springs, in the Northern Territory, and services women across Central Australia and the Barkly Region.

CAWLS provides a drop-in domestic violence advice clinic five days a week for women who are seeking legal advice or support in relation to domestic violence. We also provide a duty service for women with applications listed in the domestic violence list at Court every Monday. CAWLS provides assistance in obtaining Domestic Violence Orders (DVO's), and varying existing DVO's. We also assist with crisis intervention and referrals, support and practical assistance in relation to accommodation. Where needed, advice is also provided about urgent and related Family Law or Department of Children and Families matters. CAWLS also provides community legal education and professional development in relation to domestic and family violence, seeking to raise awareness about the issue, how the law works in this area, and the assistance available.

CAWLS would like to provide the following comments in relation to the questions raised in this discussion paper.

QUESTION 1

Do you think that the introduction of a law similar to Clare's Law in the Northern Territory 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?

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Introduction of a law similar to Clare's Law and providing victims of domestic violence with information regarding their partners past domestic violence behavior may be a useful tool in encouraging the person to leave their relationship and/or in developing a safety plan. Knowledge that the offenders violent behavior has occurred in previous relationships may encourage the victim not to excuse the behavior or blame themselves for the behavior.

QUESTION 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?

CAWLS has no comment in relation to this question.

QUESTION 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?

CAWLS would like to see s19(2) of the Domestic Violence Act amended so that the defendant's criminal and domestic violence history is automatically made available to the court at the time when an application for a domestic violence has been brought before the court. This information would assist in supporting and providing advice to victims who are undecided about whether to pursue a domestic violence application and/or when a defendant is attempting to negotiate the terms of the order sought. While s19 states that the Court must consider the criminal record and past conduct of the defendant when making an order, in reality, this information is only provided to the court when an order is contested and has been listed for hearing. The criminal history of the defendant is obtained by the protected person's lawyer through the process of a subpoena. This record will not contain information regarding past domestic violence orders unless the defendant has been charged with breaches of this order.

DOMESTIC VIOLENCE OFFENDER PROGRAMS AND PAROLE & SERIOUS SEX OFFENDER ACT FOR VIOLENT OFFENDERS

QUESTIONS 4 – 7

- 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 consideration of the completion, or non completion, of domestic violence offender programs by prisoners?**
- 5. If you think a more direct link should be made between the completion of domestic violence programs and parole, what methods do you think would best achieve this? For example, some jurisdictions include a statutory test to capture**

the key aspects of the parole decision, such as a 'public interest' or 'safety of the community' test and/or list matters to be considered.

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

Issues relating to criminal matters are not within the expertise of CAWLS. We welcome discussion around domestic violence offenders being held accountable for their violent behavior. We also acknowledge the need for Domestic Violence offenders to be provided with adequate programs which support them in changing their behavior and in preventing this behaviour from reoccurring.

FLASH INCARCERATION

Whilst CAWLS does not have expertise in areas relating to parole and Community Custody Orders we welcome any changes which hold perpetrators accountable and keep women and children safe.

QUESTION 8

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

Yes. By providing mechanisms under the Sentencing Act to allow Court's to impose specific conditions on a perpetrator under a Community Custody Order and mandated terms of imprisonment for breaches in relation to domestic violence offending. This would hold perpetrators accountable for breaches of Community Custody Orders that impose specific requirements on them to complete a particular behaviour change program or other program the court finds appropriate for them to complete.

QUESTION 9

Do you think that 'flash incarceration' would provide an effective deterrent to breaching court orders?

CAWLS has concerns regarding the effectiveness of 'flash incarcerations' in keeping women and children safe long term. This will hold a perpetrator accountable for 48 hours at the most and will offer the victim relief but for a very short period of time only. We have concerns that this concept would not be an effective deterrent and is likely to cause greater congestion within the prison system and only catch those perpetrators who come in direct contact with police following a breach. We suggest that a specialised Domestic Violence

Court with specialised prosecutors, magistrates and court staff would be better placed to deal with breaches of orders and offer a holistic approach to sentencing a perpetrator for this type of offending.

QUESTION 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?

CAWLS has no comment in relation to this question.

ELECTRONIC MONITORING

QUESTION 11

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

CAWLS has no comment in relation to this question.

PROXIMITY ALARMS

QUESTIONS 12 – 13

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?

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

CAWLS questions the effectiveness of this proposed measure and how the decision would be made for a device to be used. Would it be used in all domestic violence matters or in extreme cases only? What would be the test for applying such an order?

The use of such a device assumes that a full no contact order would be in place. In CAWLS' experience, this applies to a very small number of domestic violence matters. Even where a no contact order is obtained there are usually exceptions allowing for parties to have contact and ongoing negotiations in relation to family law property and parenting matters.

QUESTION 14

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

More effective measures in achieving the aim of protecting victims of domestic and family violence and deterring perpetrators would be to ensure that police are adequately resourced

so that domestic violence incidents can be responded to quickly and perpetrators are charged with breaches of their domestic violence order.

Greater onus and accountability on perpetrators to change their behavior and court ordered behavioural change programs.

Better victim support through the criminal process from statement taking, laying charges to providing evidence in court and through the sentencing process. Victims who are empowered to go through this process with the assistance of a victims advocate will potentially result in better outcomes in court matters and victims who often feel powerless having a larger say in outcomes that they see as justice for what was done. Guidelines to be used by the courts when sentencing perpetrators who have breached domestic violence orders and the ability for victims to be fully informed through this process with the support of a victim's advocate.

ADDITIONAL COUNSELLING FOR DOMESTIC VIOLENCE MATTERS

QUESTION 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 this might be achieved?

CAWLS supports protected persons being provided with ongoing counselling and support through the court process. CAWLS believes that this aim could be achieved by having a victim's advocate position with the Witness Assistance service whose role is to provide duty services at court and on-going case work through the court process.

STREAMLINING THE PROCESS FOR SEEKING PROTECTION ORDERS

QUESTION 16 - 17

- 16. Should there be a separate specialized list for criminal prosecutions involving domestic violence in the Court of summary Jurisdictions?**
- 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?**

CAWLS supports the proposal for a specialist domestic violence court and the introduction of a specialised list for criminal prosecutions involving domestic violence in the Court of Summary Jurisdiction.

In saying this we believe that the distinction between a perpetrators criminal matter and domestic violence and the differences in the onus of proof for both matters needs to be maintained. In criminal matters the onus of proof is beyond reasonable doubt while in DV matters the onus of establishing a victim's fear of future domestic violence is based on the

balance of probabilities. We are concerned that the perpetrators defense lawyer may argue that a domestic violence order should not be made if/when the perpetrator has been found not guilty of the criminal charges.

We are also concerned that victims voice may get lost in this process and that a specialized domestic violence court could unintentionally operate to the detriment of victims. Protected persons are generally not required to attend court unless their criminal or domestic violence matters are contested and will in most cases not be present when a defendant enters a plea or when negotiations take place between the prosecutor and the defendant's lawyer. It is essential that victim legal processes are tailored and resourced to ensure that responses afforded to victims are appropriate, respectful and informed. In this regard CAWLS recommends that consideration be given to separate legal representation and support being provided to the protected person through this process.

INCREASING BAIL PROGRAMS FOR DOMESTIC VIOLENCE OFFENDERS

QUESTION 18 and 19

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

CAWLS supports the expansion of behavioral change programs. We would like to see programs created which involve long term and systematic change and which are able to address behaviors which has often been occurring over an extensive period of time. We also applaud the suggestion of providing these programs to offenders on remand.

MUTUAL RECOGNITION OF DOMESTIC VIOLENCE ORDERS

QUESTION 20

- (1) - Are there any particular programs that you consider are particularly effective in changing violent behavior?**

CAWLS would like to see the introduction of compulsory respectful relationship programs for all NT children in middle primary and high school.

- (2) - Do you have any comments on the mutual recognition of domestic violence orders?**

CAWLS applauds the steps being taken to allow for the mutual recognition of domestic violence orders across all jurisdictions. Our client base in Central Australia is transient and it is not uncommon for a client to seek to have their order registered in other jurisdictions or

for them to seek to have their interstate domestic violence order registered in the Northern Territory. This process would allow for a more streamlined approach to accessing information regarding interstate court orders and would also assist victims advocates in providing legal information regarding domestic violence orders and allow victims to feel safer knowing that an order is in place in every jurisdiction.

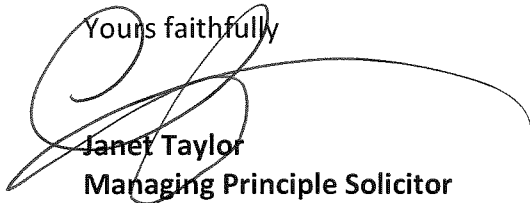
AMMENDMENTS TO THE CRIMINAL CODE

QUESTION 21

Do you have any comments on the proposed amendments to the Criminal Code to prescribe offending that occurs ‘in the presence of a child’ or ‘in a domestic or family relationship’ as a circumstance of aggravation for assault?

CAWLS believes that this does need to be address given well documented evidence in relation to the effects of children witnessing domestic and family violence. We would welcome the opportunity to discuss this in more detail with other victims’ advocacy services. We would require further information in relation to what penalties may apply under the Criminal Code and how the circumstances of aggravation will effect sentencing to provided a detailed response to any proposed amendments.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Janet Taylor', with a long horizontal flourish extending to the right.

Janet Taylor

Managing Principle Solicitor

On behalf of the Central Australian Womens Legal Service