Review of Legislation and the Justice Response to Domestic and Family Violence in the Northern Territory

Proposals for consultation

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| Acronyms / Abbreviations | |
| AGD | Department of the Attorney-General and Justice |
| AJU | Aboriginal Justice Agreement |
| ANROWS | Australian National Research Organisation on Women’s Safety |
| DFSV | Domestic, Family and Sexual Violence |
| DFSV-ICRO | Domestic, Family and Sexual Violence Inter-agency Co-ordination and Reform Office |
| DFV | Domestic and Family Violence |
| DFV Act | *Domestic and Family Violence Act 2007* (NT) |
| DVO | Domestic Violence Order |
| LGBTIQ+ | Lesbian, Gay, Bisexual, Transgender, Intersex, Queer |
| NTPFES | Northern Territory Police, Fire and Emergency Services |
| RAMF | The NT’s DFV Risk Assessment and Management Framework |
| TFHC | Department of Territory Families, Housing and Communities |
| WLSV | Women’s Legal Service Victoria |

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**Aboriginal acknowledgement**

The Northern Territory Government respectfully acknowledges First Nations People of this country and recognises their continuing connection to their lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures and to their leaders past, present and emerging.

While this review largely uses the term ‘Aboriginal’ we respectfully acknowledge that Torres Strait Islander peoples are First Nations people living in the Territory. References to ‘Aboriginal’ Territorians should be read to include both Aboriginal and Torres Strait Islander Territorians.

**Victim-survivor acknowledgement**

In this paper, we respectfully acknowledge the courage and dignity of people who are victim-survivors of domestic and family violence (DFV). We acknowledge the disproportionate impact of DFV on women in the NT, particularly Aboriginal women.

We respectfully acknowledge the people who have died as a result of DFV in the NT. This document has been informed by the experiences of people who have died as a result of DFV. We are committed to honouring the lives of those killed, learning from those tragedies and translating those learnings into law and action to prevent future harm.

**The courage to say no to domestic violence**

We acknowledge people who have taken responsibility for their actions and stopped using violence against their partners, ex-partners and family members. We remain optimistic that Territorians can choose to live without using violence. We acknowledge all those who stand up and say no to DFV.

# Introduction

The majority of violent crime in the NT is caused by domestic and family violence (DFV).

Sixty-three per cent of assaults are DFV-related and 63 per cent of prisoners are held for DFV‑related offences.

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

DFV causes serious physical and psychological harm to many Territorians. While DFV affects people across all population groups, it has a disproportionate impact on women, particularly Aboriginal women. The Territory Coroner has identified that from August 2000 through to August 2019 there were 65 Aboriginal women killed by a current or former partner in the NT. [[1]](#footnote-2)

Between 2000 and 2020, there were 160 DFV-related homicides in the NT (101 homicides by former or current partners and 59 homicides by other family members).[[2]](#footnote-3)

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

DFV has a high rate of reoffending which must be addressed. Over three quarters of defendants found guilty of a DFV-related offence have a prior violent offence and 72 per cent have a prior DFV offence.[[4]](#footnote-5)

The Department of the Attorney-General and Justice (AGD) is undertaking a review of legislation and the justice response to DFV[[5]](#footnote-6) in the Northern Territory (NT). One of the elements being considered in the review is whether coercive control should be criminalised in the Northern Territory as it is a high-risk factor for serious harm and death.

This paper sets out proposals for consultation.

## Purpose and scope of the review

This review identifies proposed legislative and systems reforms to:

1. improve the responsiveness of the justice system to victim-survivors and people who commit DFV;
2. prioritise the safety and well-being of DFV victim-survivors, including children who are exposed to, and impacted by, DFV;
3. increase the accountability of offenders for their conduct, and increase opportunities and motivation for them to change their behaviour;
4. take into account the high percentage of Aboriginal families affected by DFV in the NT and ensure responses are culturally safe and appropriate and informed by the principles in the Aboriginal Justice Agreement (AJA); and
5. consider whether criminalising coercive control is likely to contribute to improved responses to DFV in the NT.

The review is an initiative under the NT’s *Domestic, Family and Sexual Violence Reduction Framework 2018-2028: Safe, Respected and Free of Violence* (see below).

The review acknowledges that sexual violence is a form of DFV if the victim-survivor and the offender are in a domestic relationship, including a sexual offence committed by a partner, ex‑partner or family member. However, legislative reform in relation to sexual offences is being considered by the Government separately, and is not included in this review.

## Structure of this paper

This paper is structured in the following way:

Part 1 Introduction

Part 2 Overview of DFV in the NT

Part 3 Coercive control reforms

Part 4 Legislative proposals to address DFV

Part 4.1 sets out proposed amendments to the *Domestic and Family Violence Act 2007* (DFV Act). The majority of the proposals relate to this Act.

Part 4.2 sets out proposed amendments to the *Bail Act 1982*

Part 4.3 sets out proposed amendments to the *Sentencing Act 1995*

Part 4.4 sets out proposed amendments to the Criminal Code

Part 4.5 sets out proposed amendments to the *Evidence Act 1939*

Part 4.6 sets out proposed amendments to *Evidence (National Uniform Law) Act 2011*

Part 4.7 sets out proposed amendments to the *Local Court (Criminal Procedure) Act 1928*

Part 5 Systemic reforms to address DFV

## Terminology

Consistent with the title of the DFVA, this paper uses the term ‘domestic and family violence’, abbreviated to DFV (noting that ‘domestic violence’ is the key term used within the DFV Act and defined in section 5).[[6]](#footnote-7)

DFV includes sexual violence, where it occurs between persons in a domestic relationship, such as a sexual offence committed by a partner, ex-partner or family member.

Statistics show that DFV is highly gendered, and is predominantly, but not exclusively, perpetrated by men against women and children. It is important to note that people who are LGBTIQ+[[7]](#footnote-8) or identify as gender diverse or non-binary may also experience DFV. It is recognised that persons of all ages (including children and older people), all cultures, and all abilities may experience DFV.

This paper avoids gendered language. However, there are occasions when she/he, her/him, woman/man is used relating to a particular context or gendered services.

The term ‘victim-survivor’ has been used to respectfully refer to people with lived experience of DFV, although it is recognised that not all stakeholders agree with this terminology, including because some people do not survive DFV.[[8]](#footnote-9) Specific legal terms like protected person, victim, alleged victim, complainant or vulnerable witness are used where appropriate.

It is acknowledged that children may be victim-survivors of DFV when they are directly targeted by violence and also when they see, hear or are otherwise exposed to DFV between adults in their family. Being exposed to DFV is inherently harmful to children.

Persons who commit DFV are referred to as people who use DFV, perpetrators, offenders, defendants, depending on the context.

## Policy context

This review is one of the initiatives in Action Plan 1 of the Northern Territory’s *Domestic, Family and Sexual Violence Reduction Framework 2018-2028 ‘Safe, Respected and Free from Violence’* (the Framework). [[9]](#footnote-10)

It contributes to Outcome 5 of the Framework which is to develop legislation, policy and funding models to ensure the system is responsive to victim-survivors of DFV and prioritises their safety and that offenders are accountable for their actions and have an opportunity to change their behaviour.

The review is aligned with the principles in the Framework, particularly the principle that women and children’s safety and well-being must be central to responses to DFV.

In April 2022, the NT Government appointed the Hon Kate Worden MLA as the NT’s first Minister for the Prevention of Domestic, Family and Sexual Violence.[[10]](#footnote-11) This marked a significant strengthening of the NT’s whole-of-government response to domestic, family and sexual violence (DFSV).

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

Given the number of Aboriginal families affected by DFV, the review is also informed by the NT’s AJA.

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

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

The AJA Action Plan 2021-2022 includes a commitment to reduce DFV offending, particularly through the development of a non-custodial facility in Alice Springs to help DFV offenders to change their behaviour and the further development of culturally-appropriate evidence-based programs which are more accessible to offenders.

The review is informed by work occurring at the National level. It builds on progress made during the *National Plan to Reduce Violence against Women and their Children 2010-2022.* It acknowledges the work that occurred in 2021 and 2022 to develop a new National Plan. A Draft National Plan to End Violence Against Women and Children 2022-2032 was released for consultation in January 2022.

## Methodology

This review has been informed by:

1. the Journey Mapping Workshop Report: *Exploring the voices and experiences of victim-survivors of Domestic and Family Violence in the NT Justice System[[11]](#footnote-12)* released in 2019 (DFV Victim Journey Mapping Report);
2. advice from the NT’s Domestic Violence Justice Reform Network (DVJRN) and the working group which replaced it in June 2021, the Domestic and Family Violence Justice Reform Working Group (DFVJRWG);
3. AGD’s *Report on Consultation: Review of the Domestic and Family Violence Act*[[12]](#footnote-13)released in August 2016 which summarises the submissions received at that time (referred to as the 2016 Consultation Report);
4. input from the NT’s Domestic, Family and Sexual Violence Cross-Agency Working Group, convened by the Department of Territory Families, Housing and Communities (TFHC), including the workshops on the development of Action Plan 2;
5. *NT Council of Social Service (NTCOSS) Action Plan 2 Non-Government Organisations Consultation Report 2021;*
6. suggestions and proposals provided to AGD by other Government agencies and non-government organisations;
7. research conducted by Legal Policy, AGD;
8. the AJA and associated documents;
9. Coroner’s reports related to DFV, including:

Inquest into the Roberta Judy Curry (10 June 2022);

Inquest into the death of HD (name suppressed) (9 November 2021);

Inquest into the deaths of Fionica James, Katurah Mamarika, Layla Leering (18 August 2021); and

Inquest into the deaths of Wendy Murphy and Natalie McCormack (21 September 2016); and

1. the inquiries, taskforces and consultations that have occurred in other jurisdictions on DFV and coercive control (see below in Part 2.6).

## Work in other jurisdictions

In the past 15 years since the DFV Act commenced, significant inquiries and legislative reforms have occurred in other jurisdictions around Australia and internationally.

This represents a substantial body of work that can be drawn on to assist the Northern Territory Government to modernise its legislation and improve its response to DFV. These inquiries and reforms have to varying extents been considered in the present review.

It is important to particularly acknowledge some substantial pieces of work as follows:

* In 2010, there was the landmark inquiry and report by the Australian Law Reform Commission and the New South Wales Law Reform Commission: *Family Violence – A National Legal Response* (2010).
* Significant work was undertaken by the Commonwealth Government on the *National Plan to Reduce Violence against Women and their Children 2010-2022 (*and the associated Action Plans).
* The Victorian Royal Commission into Family Violence (2016) and the Victorian Government’s response. It is also noted that Victoria has a Family Violence Reform Implementation Monitor providing a useful guide to progress in implementing the Royal Commission’s recommendations.[[13]](#footnote-14)
* The Queensland Special Taskforce on Domestic and Family Violence Report *Not now, Not ever: Putting an End to Domestic and Family Violence* (2015) and the Queensland Government response.

More recently the Commonwealth Parliament House of Representatives Standing Committee on Social Policy and Legal Affairs conducted an *Inquiry into Family, Domestic and Sexual Violence* (2021). This is informing the next iteration of the *National Plan to End Violence Against Women and Children*, a draft of which was released for consultation in January 2022.

Recent work has also occurred in a number of jurisdictions on the issue of whether coercive control should be criminalised:

* The NSW Parliament Joint Select Committee Inquiry into Coercive Control released its report entitled *Coercive Control in Domestic Relationships*. The Committee received 156 submissions and heard evidence from numerous witnesses. The NSW Government responded in December 2021 supporting the recommendation to criminalise coercive control.[[14]](#footnote-15)
* The Queensland Women’s Safety and Justice Taskforce released its report, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland*. The report recommended criminalising coercive control, and a four-phase process to set the foundations for reform. The Taskforce received 700 submissions, and more than 500 of those were from people with lived experience of DFV, including coercive control.[[15]](#footnote-16) The Queensland Government has announced that it is supportive or supportive-in-principle of all 89 of the Taskforce’s recommendations, including to criminalise coercive control. It has made clear that system-wide reform is necessary before any new offences come into effect.
* Discussion papers on coercive control have also been released by the Western Australian Government[[16]](#footnote-17) and South Australian Government.[[17]](#footnote-18)
* A research paper was released by the Parliament of Victoria.[[18]](#footnote-19)

The Australian Government is working with the states and territories to develop National Principles on Addressing Coercive Control. This is intended to create a shared understanding of coercive control and a strong foundation on which states and territories can consider legal reforms that may be necessary in relation to coercive control.[[19]](#footnote-20)

Papers on coercive control were prepared by numerous non-government organisations in 2020 and 2021, including by the Australian National Research Organisation on Women’s Safety (ANROWS).

There has also been an opportunity to learn from the experience of criminalising coercive control, particularly in England[[20]](#footnote-21) and Scotland.[[21]](#footnote-22)

## Consultation process

AGD is seeking submissions on the proposals outlined in this paper by **12 October 2022.**

Consultation meetings will also be held.

Questions for consideration have been included at the end of each section. However, submissions are welcome on any issue relevant to the prevention and response to DFV, and are not required to address all, or any, of the questions.

Submissions and queries should be sent electronically to [Policy.AGD@nt.gov.au](mailto:Policy.AGD@nt.gov.au).

**Non-confidentiality of submissions**

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

The Department may draw upon the contents of submissions made and quote from them or refer to them in reports, which may also be made publically available.

# Overview of domestic and family violence

## What is domestic and family violence?

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

* 1. is physically or sexually abusive; or
  2. is emotionally or psychologically abusive; or
  3. is economically abusive; or
  4. is threatening; or
  5. is coercive; or
  6. in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person.[[22]](#footnote-23)

In addition, behaviour that causes a child to hear, witness or be otherwise exposed to DFV constitutes DFV against the child. This is because it is inherently abusive and harmful for a child to be exposed to an adult family member using violence against another family member.[[23]](#footnote-24)

DFV is a highly gendered behaviour. Statistics show that in the NT and elsewhere, DFV is predominantly, but not exclusively, perpetrated by men against women and children.[[24]](#footnote-25)

However, people who are LGBTIQ+ or identify as gender diverse or non-binary also experience DFV. People of all ages (including children and older people), all cultural groups, and all abilities experience DFV.

An important feature of DFV is that it is often a pattern of abuse[[25]](#footnote-26) over time in which a person aims to control and dominate an intimate partner, ex-partner or family member. This control and dominance is central to understanding what DFV is, and how to address it. The power and dominance contributes to keeping people trapped in violent relationships.

The definition of DFV set out above differs from the definition in the DFV Act*.*

Section 5 of the DFV Act defines domestic violence as conduct – by a person against someone with whom they are in a domestic relationship – causing harm; damaging property, including the injury or death of an animal; intimidation; stalking; economic abuse; or attempting or threatening to commit such conduct.

It is one of the proposals in this review that the definition in section 5 is modernised so that it is more closely aligned with the above understanding of DFV (see Part 4.1.1 of this paper).

## The data in the NT

The paper recognises the significant concerns of many in the community about DFV-related harm and death, recently described by Her Honour Justice Kelly as an ‘epidemic of violence’[[26]](#footnote-27) and by the Coroner as ‘contagion’ that ‘rages unabated.’ [[27]](#footnote-28)

The Northern Territory has a higher rate of DFV than any Australian state or territory.

The victimisation rate for DFV related assault in the NT is more than double the rate of the next closest jurisdiction (WA) and more than three times as high as the rates in all other jurisdictions for which data is available.[[28]](#footnote-29)

For females, the victimisation rate is even more disparate. The female victimisation rate for DFV related assault in the NT is more than double the rate of the next closest jurisdiction (WA), four times as high as the rate in SA, and more than five times as high as the rates in other jurisdictions for which data is available, ie. NSW, Tasmania or the Australian Capital Territory.

The rate of DFV-related assault in the NT increased by 27 per cent in 2020, compared with 2019.[[29]](#footnote-30)

**Reported assaults**

In 2020, almost two thirds (63 per cent) of assaults in the NT were DFV-related (5,131 victims). [[30]](#footnote-31)

A weapon was used in over two in five assaults (42 per cent), which is the highest proportion in any state or territory where assault data was available.

The offences that are likely to be committed in DFV circumstances are listed in Part 2.4.

It is noted that a significant proportion of DFV is not reported to police. It is not possible to gauge unreported DFV with accuracy in the NT. However, estimates suggest that up to 90 per cent of incidents of violence perpetrated against Aboriginal women across Australia remain undisclosed to authorities.[[31]](#footnote-32)

**Reported sexual offending**

In 2020, the number of reported sexual assault victims in the NT was 370.[[32]](#footnote-33)

Most victims of sexual assault were female (90 per cent or 331 victims) and knew the offender (55 per cent or 204 victims). Almost a quarter (24 per cent) were aged under 15 years at the date of incident (90 victims).

Nearly one third (30 per cent) of sexual assaults were DFV-related (111 victims).

It is noted that sexual offending is significantly under-reported (especially when committed by a partner or family member) and the actual level of offending is expected to greatly exceed these figures.

**Domestic homicide**

The Territory Coroner has identified that from August 2000 through to August 2019 there were 65 Aboriginal women in the NT killed by a current or former partner.

In the period 2000-2020, there were 160 DFV-related homicides in the NT (101 homicides by former or current partners and 59 homicides by other family members).[[33]](#footnote-34)

**Disproportionate impact of violent crime**

The chart below shows data on all assault victims in the NT. The group of people most affected by violent crime in the NT is Aboriginal women.

Aboriginal women living in the NT are:

* over eight times more likely to be assaulted than non-Indigenous women or men; and
* over three times more likely to be assaulted than Aboriginal men.[[34]](#footnote-35)

The data only includes assaults reported to police so it is likely to under-estimate the actual level of offending.

**The response of justice agencies**

Responding to DFV requires a sizeable proportion of the NT’s police, court and corrections resources.

**Policing**

* 63 per cent of all assaults in the NT are DFV-related.[[35]](#footnote-36)
* For the year ending August 2021 there were 5,638 recorded DFV-related assaults – on average 108 per week.
* 3,138 or around 56 per cent of the DFV-related assaults involved alcohol.

**Courts[[36]](#footnote-37)**

* DFV matters represented 35 per cent of the total criminal matters finalised in NT courts in 2020/21.
* In 2020/21, there were 3606 DFV-related criminal matters finalised in NT courts – on average 69 a week.
  + 81 per cent resolved with a plea of guilty and 5 per cent were proven guilt, 3 per cent were acquitted and 8 per cent withdrawn by the prosecution, with the remaining matters transferred to other courts.
* In 2020/21, there were 4280 civil applications for a Domestic Violence Order (DVO) – on average 82 applications per week.
  + 87 per cent were police applications/orders and 13 per cent were private applications.
  + 77 per cent of applications resulted in a final DVO being issued, 13 per cent resulted in an Interim DVO, 5 per cent of applications were dismissed, 1.5 per cent withdrawn and the remaining were pending.

**Corrections**

* The prison census shows that 63 per cent of NT prisoners were held for DFV related offences (on 30 June 2021). [[37]](#footnote-38)
* Of the 1139 prisoners held for DFV on census night:
  + 74 were female (6.5 per cent), and of those 72 were Aboriginal women.
  + 1065 were male (93.5 per cent), and of those 1004 were Aboriginal men.

**Reoffending**

DFV has a particularly high rate of reoffending – 77 per cent of defendants found guilty of a DFV-related offence have a prior violent offence and 72 per cent have a prior DFV offence.[[38]](#footnote-39)

## Lived experience

The lived experience of DFV victim-survivors has been taken into account in this review, through the DFV Journey Mapping Project, conducted by Alex Richmond then from Dawn House for the Domestic Violence Justice Reform Network.[[39]](#footnote-40)

In depth interviews were conducted in 2018 with 45 people with direct experience of the NT justice system (mostly victim-survivors and some professionals). The interviews included Aboriginal and non‑Aboriginal victim-survivors. Subsequently a workshop was held in November 2018 with 23 leaders in the justice system to consider the victim-survivors’ perspectives and to discuss ways to improve the justice response to DFV.

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

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

The vision put forward in the report was to create a justice system:

* that prioritises the safety of victim-survivors, including children;
* that provides respect, information and support for victim-survivors from very early in the process to ensure that they fully understand what is occurring and how to exercise their rights;
* that is understandable from the perspectives of victim-survivors and defendants who are involved in the system;
* that ensures that court and police provide a safe place to come and be heard;
* in which people who use violence are held to account and have opportunities to change their behaviour;
* in which there is a clear focus on reducing repeat offending;
* where the whole system works in an integrated and co-ordinated way and send out clear messages that violence will not be tolerated;
* that is underpinned by strong community education;
* that provides proper evidence-based and continuing training for all professionals;
* that is trauma informed;
* in which technology and audio-visual links are used to keep victim-survivors, including children, safer; and
* in which men and women of all ages and cultures across the Territory, and all professional groups have a strong and shared commitment to ending violence.

Some specific suggestions identified in the workshop have been taken into account prior to this review. For example, in 2020, the NT Government introduced a new offence of non-lethal choking, suffocation and strangulation in a domestic relationship with a maximum penalty of five years.[[40]](#footnote-41) There has also been legislative reform to provide for court-ordered attendance at DFV behaviour change programs as part of a DVO.[[41]](#footnote-42) This is currently being trialled in Alice Springs as part of a Specialist Approach to DFV at the Local Court in Alice Springs.

Other suggestions are being considered as part of this review.

The findings of the DFV victim journey mapping report are confirmed by studies conducted in other states and territories.

Research by Professor Heather Douglas on women’s experiences of the justice system has also informed this review. [[42]](#footnote-43) Although Professor Douglas’s interviews with victim-survivors were conducted between 2014 and 2017 in Queensland, the learnings from her research are relevant for Territorian women in 2022 and are consistent with the DFV Victim Journey Mapping Report.

Research led by Professor Marcia Langton with others for ANROWS investigated the experience of Aboriginal women victim-survivors of DFV in regional and cross-border areas of Victoria and NSW (specifically Albury-Wodonga and Mildura). [[43]](#footnote-44) The report found many systems barriers to women reporting or seeking help for DFV, including fear of having their children removed, homelessness and financial insecurity, and fear of isolation from family and community. The report found that for Aboriginal woman reporting DFV can be especially problematic because they may be ostracised and persecuted by other members of the Aboriginal community for reporting, including from their own, or the perpetrator’s, family. In addition:

“Participants also explained that turning to the police – who are perceived as a source of harm for Aboriginal and Torres Strait Islander people, especially in relation to the incarceration of men at extreme rates – can feel problematic.” [[44]](#footnote-45)

Amongst the solutions proposed in the report are access to culturally safe and culturally relevant services and the availability of Aboriginal service providers, as well as increased availability of housing and support.

In the NT, the majority of victim-survivors of reported DFV are Aboriginal. [[45]](#footnote-46)

Taking into account lived experience of DFV means listening to Aboriginal women.

A priority for the DFSV-ICRO is ensuring that Aboriginal Territorians have an opportunity to contribute to the work of the DFSV-ICRO and other efforts to prevent and respond to DFSV. This includes considering the establishment of an Aboriginal Advisory Group, for which the role, selection and authority will be considered as a priority.

AGD invites input from all victim-survivors about the proposals in this paper, and particularly from Aboriginal women, communities and organisations. This is consistent with the Government’s commitment in the Aboriginal Justice Agreement to improve the responsiveness of the justice system to Aboriginal people.

## DFV and the law

There is no criminal offence of DFV in the NT. However, DFV encompasses many acts that are criminal offences, for example, assault, aggravated assault, choking in a domestic relationship, sexual intercourse without consent, stalking and murder. DFV also includes some behaviour that has not been criminalised in legislation, for example, some forms of psychological abuse.

Justice responses to DFV may involve civil law, or criminal law, or both.

**Civil law – Domestic Violence Orders**

Police and courts can issue a domestic violence order (DVO) under the DFV Act if satisfied that there are reasonable grounds for a person to fear the commission of domestic violence against them by the defendant. This is a civil order restraining the defendant from certain conduct, such as contacting, approaching or harming the protected person. Although it is a civil order, contravention of the conditions in the DVO is a criminal offence (section 120 of the DFV Act).

**Criminal law and offences**

Criminal charges may be laid if a criminal offence is committed in the NT, including if a person commits an offence against a family member or current or former partner (that is, in circumstances of DFV). The Criminal Code provides for most criminal offences in the NT.

Criminal charges that may occur in DFV circumstances are listed below.

|  |  |
| --- | --- |
| Offence or offence category | Number of persons charged with this as the principal offence in 2021 in DFV circumstances [[46]](#footnote-47) |
| Aggravated assault | 2206 |
| Contravention of a DVO | 1210 |
| Non-lethal choking in a domestic relationship | 146 |
| Unlawfully causing serious harm | 129 |
| Damage to property | 96 |
| Depriving a person of liberty | 44 |
| Sexual intercourse without consent | 24 |
| Other sexual offences | 23 |
| Making a threat to kill | 13 |
| Unlawful stalking | 6 |
| Homicide related offences, such as murder or attempted murder | 6 |

Criminal proceedings also involve other legislation, such as the *Bail Act 1982*, the *Sentencing Act 1995*, the *Evidence Act 1939,* the *Evidence (National Uniform Legislation) Act 2011*, the *Victims of Crime Assistance Act 2006*, the *Victims of Crime Rights and Services Act 2006,* and the *Local Court (Criminal Procedure) Act 1928*. Amendments to some of this legislation are proposed in this paper.

## High risk factors

The proposals in this paper have endeavoured to take into account the high-risk factors for serious harm and death in DFV circumstances.

These have been identified during the development of the NT’s *DFV Risk Assessment and Management Framework* (RAMF).[[47]](#footnote-48) This Framework was informed by extensive research and coroner’s findings and recommendations. It builds on the *National Risk Assessment Principles for Family and Domestic Violence* published by ANROWS in 2018*.*[[48]](#footnote-49)

The high-risk factors for serious harm or death in DFV circumstances include: [[49]](#footnote-50)

1. the perpetrator has a previous history of violence;
2. alcohol or drug misuse or intoxication;
3. early onset of DFV in the relationship, or early possessiveness or jealousy;
4. separation (actual or pending) – Women victims are at high risk from male partners immediately after separation;
5. intimate partner sexual violence;
6. non-lethal choking, strangulation or suffocation;
7. the perpetrator has stalked the family members;
8. the perpetrator has threatened to kill a family member;
9. access to, or past use of, weapons or objects to injure, kill or destroy property;
10. escalation in the frequency and/or severity of violence over time;
11. the presence of coercive control;
12. the perpetrator threatened or attempted to self-harm or suicide;
13. upcoming or recent release from prison;
14. previous or current breach of court orders/DVO;
15. the victim-survivor is pregnant or has a new baby.

The above factors must be considered to identify and manage the risk of DFV and have been incorporated into the RAMF.

This is important because the assessment of the future risk of DFV should not be based on the nature and severity of the presenting injury alone (although that is one important factor to be taken into account). Rather assessment of the above factors and dynamics are critical in efforts to identify and manage future risk of DFV.

These factors have informed the RAMF and must also be built in to each agencies response to DFV.

## Misidentification

One of the challenges in effectively responding to DFV is how to reduce the misidentification of the victim and the perpetrator in DFV proceedings. Misidentification is a significant impediment to the safety of victim-survivors and is a theme throughout this paper. It is important for law, procedure and training to minimise misidentification as far as possible.

Specialist DFV services have expressed concern about the growing number of women who are both (1) long term victim-survivors of DFV and (2) named as defendants in DVO applications or orders.[[50]](#footnote-51) This has been identified in the NT and in other jurisdictions.[[51]](#footnote-52) It is often referred to as the misidentification of the victim/perpetrator or the ‘misidentification of the person most in need of protection.’

Police and courts face significant challenges in effectively responding to situations in which:

* there are cross-allegations of violence; or
* it is unclear who committed violence against whom; or
* it may appear that both parties have committed violence against each other.

A common response from police and courts is to make mutual DVOs, that is, a corresponding DVO against both parties. In some cases, a DVO protecting both parties may genuinely be required. However, DFV is an abuse of power and as a result is usually not symmetrical. In other words, experts are clear that it is only rarely perpetrated equally by both parties. Typically the violence by one party is more severe, has a long history or involves significant coercive control, causing the other party to have justifiably greater fear of the commission of domestic violence.

It is particularly concerning that there are high numbers of Aboriginal and Torres Strait Islander women who are both victims of DFV and named as defendants in DVO applications or criminal matters.[[52]](#footnote-53)

There are various reasons for misidentification of a DFV victim-survivor. One reason may be that a long-term victim-survivor of violence, actually uses violence themselves in self-defence or retaliation. However, in other cases the victim may have used no or little violence. There is a growing number of cases in which a long-term offender uses the legal system as a vehicle to continue to harass, intimidate or control the victim (often referred to ‘systems abuse’). For example, some long-term offenders contact the police first (or apply for their own DVO) alleging they are the victim of violence, as a tactic to gain the upper hand, or to deflect attention away from their own offending. [[53]](#footnote-54)

In these circumstances, police or courts may issue a DVO protecting a person who is actually the predominant aggressor. Police may also issue mutual DVOs against both parties because they are uncertain who is the victim and the offender. Without the full history of the relationship the police make a judgment that the parties are equally at fault and are equally in need of protection. Often the initial view formed by police is perpetuated by the Court which is relying, to a large extent, on evidence and submissions made by the police. [[54]](#footnote-55)

Women’s Legal Service Victoria (WLSV) prepared a paper on misidentification in 2018. A review of 600 client intake forms suggested that women were misidentified in as many as 1 in 10 police applications for family violence intervention orders.[[55]](#footnote-56)

WLSV identified four key drivers of police misidentification:

* aggressors ‘gaming the system’ (for example, ringing police to report the violence first because whoever calls the police is likely to be considered the victim);
* police forming an early view that there is mutual and equal violence between the parties, without understanding the history of domestic violence and coercive control between the parties;
* police and courts focussing on single incidents of violence, without looking at the pattern of abuse over the course of the relationship;
* police failure to interview both parties, or a failure to interview the parties separately. [[56]](#footnote-57)

WLSV acknowledge that police members attending a DFV incident can arrive at a ‘chaotic and overwhelming scene’.[[57]](#footnote-58) However, their research showed that where the primary aggressor is wrongly identified it often occurred because police were not familiar with duties required of them in DFV situations as outlined in Victoria Police’s *Code of Practice for the Investigation of Family Violence.*

Australia’s National Research Organisation for Women's Safety (ANROWS) conducted important research on this topic in Queensland, which was released in 2020 and is relevant nationally. [[58]](#footnote-59) The ANROWS research found that:

* Women – especially Aboriginal and Torres Strait Islander women – are being misidentified as defendants on DVOs and the effects of this on their safety and well-being is far reaching.
* Police practice is guided by a focus on single incidents of visible or physical violence. This focus does not always support the appropriate application of DFV legislation where violence should be considered in context in order to assess the need for protection from future harm.
* Police are responding to specific incidents and often defer to magistrates as to whether an order is needed but magistrates may rely on the initial assessment by police, which can lead to misidentification.

ANROWS recommended creating guidance for police on identifying patterns of coercive control in order to reduce misidentification.

Good practice in determining DVO applications involves not just taking the current incident on face value but seeking to identify who needs protection from future harm (ie. ‘the person most in need of protection’). This involves looking at the evidence to identify:

* the nature of any physical injuries or coercive control present at, or immediately prior to, the current incident;
* the history of the relationship (and possibly prior relationships) to identify signs of DFV and coercive control.

Often first responders see this as a challenging task. However, with training and the correct tools and procedures it can be achieved. It requires:

* an informed understanding of the dynamics of DFV and coercive control and guidance on how to identify DFV and coercive control;
* investigation – that is looking into the history of the relationship/s beyond the particular incident that has come to police attention – for signs of a pattern of DFV and coercive control; and
* the use of an evidence-based DFV RAMF. TFHC has developed and authorised such a multi-disciplinary tool for use in the Northern Territory.[[59]](#footnote-60) However, it needs to be translated into a tool that police can readily and efficiently use when attending an incident.

The implications of misidentification are extremely significant for the victim-survivor as the ANROWS and WLSV research highlights. When police or courts incorrectly identify a long-term victim-survivor as a defendant in a DVO application, it causes the victim-survivor to lose confidence in the system and dissuades them from reporting further incidents to the police. An initial erroneous assessment about who is the victim and who is the perpetrator can also follow the victim-survivor through the system to create doubt that they have been subjected to violence which allows the abuse to continue. In this way, mutual orders can result in families being *less safe* because victim-survivors named as defendants will be reluctant to call police for help.

By contrast, when police correctly identify the person most in need of protection and take action to keep that person (and children) safe while holding the perpetrator to account, change for that family may start to happen. It is very common for victim-survivors to return to violent partners. However, each time the system (especially authorities such as police/courts) respond in a supportive manner to the victim-survivor, it builds confidence in reporting future incidents to police. It creates a possibility of building a future free of violence.

## Drivers of DFV

The causes of DFV (often called ‘drivers’) are complex. It is beyond the scope of this paper to analyse the drivers or to canvass the best options for the primary prevention of DFV. However, the justice system operates in the context of broader society. Societal attitudes and behaviour about DFV influence, and are influenced by, the way the justice system responds to DFV.

Research shows that DFV is more prevalent and severe where there are high levels of gender inequality.[[60]](#footnote-61)

Other forms of inequality and oppression also influence the prevalence and dynamics of DFV. This includes racism, discrimination against people with disabilities, aged-based discrimination, discrimination against people who are LGBTIQ+, and class-based discrimination. For Aboriginal women this includes the ongoing impact of colonisation, racism and discriminatory policies and practices. Intergenerational trauma also plays a significant role in DFV.

The gendered drivers of DFV[[61]](#footnote-62) include:

* DFV is more common in societies, institutions or communities that condone DFV (including where DFV is justified or trivialised or the blame is shifted to the victim);
* DFV is more common when men’s control of decision-making limits women’s autonomy (including where men have a sense of ownership or entitlement over women, hold rigid ideas about women’s behaviour, or women are treated of lower social value or less worthy of respect);
* DFV is more common where rigid gender stereotyping and hierarchies prevail;
* DFV is more common where there is a culture of masculinity characterised by aggression, dominance and control.

Other factors also reinforce violence including:

* condoning violence so that it becomes normalised;
* witnessing, hearing and being exposed to violence as children;
* excessive alcohol use, drug use, stress, and crisis situations. While these do not cause DFV they often weaken people’s capacity for positive prosocial behaviour, thereby contributing to the likelihood of DFV.

Other factors like high levels of homelessness and insecure housing, financial insecurity, disadvantage, and fear of losing your children do not cause DFV but they make it harder for victim-survivors to report DFV or seek help.[[62]](#footnote-63) These factors contribute to a situation where women have less autonomy and offenders can continue the use of violence.

For many people in the NT, multiple forms of inequality and discrimination may make them vulnerable to DFV. This is often referred to as ‘intersectionality’.

Addressing this inequality and discrimination is an important part of keeping people safer. The NT Government is taking action to address gender inequality, racism and other forms of discrimination, for example, through:

* the NT Gender Equality Action Plan 2022-2025[[63]](#footnote-64); and
* the AJA.[[64]](#footnote-65)

**The role of the justice response**

To effectively reduce DFV, it is important that all agencies respond in a way that sends a clear, consistent message that DFV is taken seriously in the NT and will not be condoned.

If DFV is not perceived to be taken seriously or the above drivers of DFV are evident – in the community or in justice responses, agencies and institutions – then DFV is likely to continue at current levels, or escalate. This means that generations of children will grow up thinking DFSV is a normal part of life.

This review seeks to strengthen the role the justice response plays in increasing the safety of victim-survivors and holding offenders to account, as part of an inter-agency effort to reduce DFSV.

# Coercive control reforms

## What is coercive control?

Although coercive control can occur in other contexts,[[65]](#footnote-66) this paper focuses on coercive control as a form of DFV. [[66]](#footnote-67)

Coercive control is a pattern of abusive behaviour that dominates and controls a partner, ex-partner or family member. It may include physical, sexual, emotional, psychological or financial abuse, with the perpetrator typically deploying multiple forms of abuse to make the victim-survivor fearful, isolated and subordinate. The behaviours often build up slowly over time and can be difficult to identify. The cumulative effect of this behaviour is that the perpetrator comes to control and dominate the victim-survivor to such an extent that it diminishes their autonomy and independence, and damages their sense of self and self-worth.[[67]](#footnote-68) The effect can be so all-encompassing that ANROWS has described it as effectively removing the victim-survivor’s ‘personhood’.[[68]](#footnote-69)

Coercive control is a highly gendered behaviour, with evidence showing it is predominantly, but not exclusively, perpetrated by men against women and children.[[69]](#footnote-70)

The tactics used to control the partner are often interrelated. Examples of coercive control include but are not limited to the following:

1. isolating a victim-survivor from their family, friends, supporters, services, traditional country and culture;
2. restricting the victim-survivor’s freedom and autonomy, for example, controlling what she eats, wears, does, and who she talks to;
3. restricting the victim-survivor’s access to resources, including money, use of a vehicle, telephone and communication devices;
4. psychological control and manipulation, including threatening, frightening, humiliating, degrading or punishing the victim-survivor or making her feel worthless;
5. monitoring or regulating the day-to-day activities of the victim-survivor or keeping her under surveillance, including through tracking devices on mobile phones and hidden cameras;
6. physical violence and threats;
7. sexual violence and threats, including forced sexual activity;
8. sharing information or images about the victim-survivor (or threatening to share them) without her consent to control or humiliate her, including material of a confidential or sexual nature;
9. forcing the victim to get pregnant or have an abortion or denying birth control;
10. threatening the victim-survivor’s relationship with her children, for example:
    1. undermining the victim-survivor’s parenting;
    2. threatening to have the children removed from the victim-survivor’s care;
    3. kidnapping the children;
    4. preventing the victim-survivor from seeing the children; or
    5. forcing children to participate in abuse or denigration of the victim-survivor;
11. using, or threatening to use, the legal system against the victim-survivor (sometimes called ‘systems abuse’).[[70]](#footnote-71)

Physical violence is often used as part of coercive control. However, physical violence may be rare or not present at all. [[71]](#footnote-72) As a result coercive control is under-recognised as a form of DFV, even though victim-survivors commonly describe it as ‘the worst part of the abuse’ and it has been described as ‘intimate terrorism.’[[72]](#footnote-73)

A study by the Australian Institute of Criminology (AIC) of women who had experienced coercive control found that the most frequently reported behaviours were jealousy and suspicion of friends (73 per cent), constant insults (67 per cent), monitoring of movements (65 per cent) and financial abuse (56 per cent). The study found that only 54 per cent of the women experienced physical abuse (notably 27 per cent of these had experienced non-fatal strangulation) and 30 per cent reported sexual abuse. Coercive control occurred in the absence of physical or sexual abuse in 42 per cent of cases.[[73]](#footnote-74)

For some victim-survivors, the absence of physical violence makes it hard to identify what is happening to them as abusive, and it may be harder for family and friends to recognise the abuse as well. The AIC study found that women were much more likely to seek help if they had experienced physical or sexual forms of abuse in addition to coercive control. [[74]](#footnote-75)

The tactics used to control the victim can be hard to identify because they are often nuanced and highly personal or context-specific. Some tactics are specific to the particular relationship, and have meaning only in the context of that relationship. What controls and intimidates one person in one relationship, may not control and intimidate another person. The abuser may exploit the vulnerabilities of a victim in an attempt to control her. Particular fears and anxieties, unemployment, disabilities, alcohol use or misuse, immigration status, mental health issues and concerns about children can all be used in this way. It is often the case that one incident viewed in isolation, or out of the context of the relationship, may be so subtle that it is not recognisable as abusive.

“One of the challenges in defining coercive control is that the relevant behaviours are deeply contextual. The triggers of fear and intimidation that enable control may be so frequent and subtle they are not evident from outside the relationship.” [[75]](#footnote-76)

However, the tactics have a cumulative effect over time to create significant harm to the victim‑survivor.

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

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

The NSW Parliament Joint Select Committee on Coercive Control found:

“The pandemic of domestic abuse evidenced through statistics cannot be ignored. It is clear that coercive control is a factor and red flag for the horrific and preventable murder deaths of Australian women and children – some 29 murders in 2020 alone in NSW.[[76]](#footnote-77)

“It is not the role of government to intervene in the daily lives of ordinary, consensual, healthy domestic relationships. However, it is incumbent on government, police, frontline services, family law and the criminal justice system to intervene where criminal behaviour exists that breaches human rights and is known to be a factor in potentially preventable domestic abuse related homicide deaths.”[[77]](#footnote-78)

The factors that present a compelling case for addressing coercive control are:

### Coercive control significantly breaches a person’s human rights

The Queensland Women’s Safety and Justice Taskforce received around 500 submissions on coercive controlfrom women and girls with lived experience. The Taskforce’s report highlighted:

“Coercive control represents a violation of some of the most important human rights protected under the *Human Rights Act 2019* (Qld) and international law. These violations of human rights not only justify the Queensland Government taking action to address coercive control — they compel it.”[[78]](#footnote-79)

The Taskforce identified that coercive control contravenes the following human rights:

* **The right to life** – As was found in NSW, the Queensland Domestic and Family Violence Death Review Advisory Board found that in the ‘vast majority’ of DFV-related deaths reviewed in Queensland there was evidence of coercive control.
* **The right to be protected from torture and cruel, inhuman and degrading treatment** – Punishment and degrading treatment is a common feature of coercive control.
* **The right to privacy** – Coercive control frequently involves monitoring, surveillance and stalking, sometimes to an extreme level, that interferes with the right to privacy.
* **The rights of children** – Children are frequently harmed through exposure to coercive control and other forms of DFV against their mothers, step-mothers and other family members.[[79]](#footnote-80)

### Coercive control is extremely harmful to persons subjected to it

People with lived experience of DFV commonly describe coercive control and psychological abuse as the ‘worst part’ of the abuse, and more harmful than physical violence.[[80]](#footnote-81) The psychological effects can be long-lasting and insidious.

In addition to any injuries or health issues arising from physical or sexual violence, the long-term harms resulting from coercive control may include:

* elevated substance use or abuse;
* depression;
* post-traumatic stress disorder (PTSD);
* homelessness;
* chronic stress;
* hypertension and a range of physical ailments.[[81]](#footnote-82)

Some studies have reported that psychological abuse is a stronger contributor to the development of some of these problems than physical abuse.[[82]](#footnote-83)

This has been documented in multiple submissions to the NSW Parliamentary Inquiry on Coercive Control and the Queensland Women’s Safety and Justice Taskforce,[[83]](#footnote-84) and a significant number of papers on coercive control prepared by non-government organisations.[[84]](#footnote-85)

This is because coercive control is an attack on a person’s ‘autonomy, liberty, equality’[[85]](#footnote-86) and ‘sense of self’.[[86]](#footnote-87) ANROWS has described it is an attack on ‘personhood’.[[87]](#footnote-88) Coercive control prevents people from making their own decisions and living their lives. It takes away their agency, and causes them to live in fear.

### Coercive control traps people in violent relationships

Despite changes in attitudes about DFV in recent years, nearly one in three Australians (32 per cent) believe that women who do not escape a relationship in which violence is occurring hold some responsibility for the abuse continuing.[[88]](#footnote-89) Police, lawyers and other responders often feel frustrated that, despite police and legal interventions women stay in, or return to, violent relationships.

There are many complex reasons why women remain in, or return to, abusive relationships.[[89]](#footnote-90) This includes love for their partner, trying to provide a home for their children, fear of the consequences of reporting the violence, fear that their children will be removed if they report DFV, lack of formal or informal supports, pressure from family and community to stay in the relationship, financial insecurity, lack of housing and income options and because they are afraid to leave.

Research shows that violence often escalates when victim-survivors try to separate from their partners, or express an intention to separate.[[90]](#footnote-91) The *National Risk Assessment Principles for Domestic and Family Violence* emphasise that “Women are most at risk of being killed or seriously harmed during and/or immediately after separation” and that “Children are also at heightened risk of harm during and post-separation”.[[91]](#footnote-92)

Coercive control is an important factor that keeps people in violent relationships.

“Coercive control diminishes the woman’s ability to exercise her agency and autonomy—the very things that would enable her to leave the relationship—resulting in entrapment. Entrapment is described by Buzawa et al. as “the most devastating outcome of partner abuse”, sitting alongside significant impacts to the victim’s perception, personality, sense of self, sense of worth, autonomy and feeling of security (2017, p. 106).[[92]](#footnote-93)

Tolmie and colleagues[[93]](#footnote-94) have argued that violence between intimate partners operates as a form of social entrapment to constrain a victim-survivor’s agency. There are three inter-related dimensions to the entrapment:

1. “The social isolation, fear and coercion that the predominant aggressor’s coercive and controlling behaviour creates in the victim’s life;
2. The indifference of powerful institutions to the victim’s suffering; and
3. The exacerbation of coercive control by the structural inequities associated with gender, class, race and disability.

This definition, originally developed by James Ptacek, asks us to render visible the predominant aggressor’s pattern of abusive behaviour and understand how it constrains the primary victim’s resistance and ability to escape the abuse while simultaneously considering the wider operation of power in her life.”

If coercive control is enshrined in law, and the police and other first responders recognise coercive control at play in abusive relationships, they will have greater appreciation of the role entrapment plays in constraining victim-survivor’s agency. This will lead to more realistic and effective responses to DFV that avoid blaming the victim, and appropriately place the responsibility on the person committing the offence.

### Coercive control is a risk factor for domestic homicide

Coercive control is a recognised risk factor for domestic homicide.[[94]](#footnote-95)

The NSW Domestic Violence Death Review Team reported that 99 per cent of domestic violence homicides that occurred in NSW between 2008 and 2016 (111 out of 112) were preceded by coercive control.[[95]](#footnote-96)

“Almost all of these cases involved persistent verbal abuse, over half involved social abuse (such as preventing the victim from seeing friends and family), and 43 per cent involved financial abuse (such as withholding access to bank accounts, or preventing the victim from working). Eighty per cent involved physical abuse before the homicide.

“However, many domestic violence homicides are not preceded by a history of physical abuse at all – but by a pattern of other forms of coercive and controlling behaviour. In a number of cases, perpetrators deliberately refrained from using physical violence to avoid police intervention. In such situations, victims of coercive control did not always realise that they were experiencing domestic abuse, and the relationship may have appeared ‘normal’ from the outside.

“The role of coercive control is even more stark in intimate partner murder-suicide cases in NSW. The Domestic Violence Death Review Team found that there was evidence of physical violence before the fatal assault in less than half of all domestic violence murder-suicides in the past 18 years. Coercive and controlling behaviours 'were the most common domestic violence behaviours used by the perpetrator towards the victim prior to the fatal event.'”[[96]](#footnote-97)

Improved responses to coercive control may prevent future domestic homicides from occurring.

### Responses to DFV cannot be improved unless we address coercive control

Coercive control is such a predominant feature of DFV[[97]](#footnote-98) that there is little prospect of improving responses to DFV unless first responders understand and address coercive control.

Experts have long recognised that DFV is characterised by a perpetrator exercising power, control and dominance over a victim. However, legal responses focus on individual incidents of physical violence. Similarly, the harms associated with DFV have largely been viewed in physical terms, without considering the psychological impact or the cumulative harm that results from a repeated pattern of abuse.

By making coercive control more visible and clearly defined in the justice system, DFV victim-survivors may feel more confident to report abuse.

Proponents of criminalising coercive control, believe that it is an important step towards realigning the justice response with people’s lived experience of this type of offending.

The Central Australian Women’s Legal Service (CAWLS) have argued that addressing coercive control has “the potential to make a significant different in reshaping how our institutions identify and respond to family violence.”[[98]](#footnote-99)

### Understanding coercive control may reduce misidentification

Specialist DFV services have observed there is a growing number of women who are both (1) long term victim-survivors of DFV and (2) named as defendants in DVO applications or orders.[[99]](#footnote-100) The misidentification of the person most in need of protection is a major challenge for improving responses to DFV as outlined in Part 3.6 above.

Some commentators have expressed concern that the criminalisation of coercive control may result in more long term victim-survivors of DFV being misidentified as defendants, particularly Aboriginal victim-survivors.[[100]](#footnote-101)

However, CAWLS and others have argued that understanding the centrality of coercive control in DFV can play a role in *reducing* the misidentification of long-term victim-survivors of DFV as the primary aggressor. It allows retaliation or physical resistance by women to be seen in the context of a pattern of abuse, rather than as isolated one-off incidents of physical violence. [[101]](#footnote-102) As ANROWs has argued, victim-survivors of DFV sometimes do physically retaliate or resist violence against them, but they rarely use coercive control.[[102]](#footnote-103) Nancarrow and others have recommending providing guidance to police on identifying patterns of coercive control to reduce misidentification.[[103]](#footnote-104)

In cases where there are cross allegations of violence or evidence of violence by both parties, seeing DFV through the lens of coercive control may enable police and courts to more accurately identify the person most in need of protection and avoid misidentification.

## The criminalisation of coercive control

One of the questions considered in this review is whether coercive control should be criminalised in the Northern Territory.

Debate over whether coercive control should be criminalised came to prominence after the murder of Hannah Clarke and her three children in Queensland in February 2020 by her former partner. Although in the lead up to her death Hannah Clarke did not experience physical violence, she did experience significant coercive and controlling behaviour from her former partner during their relationship and after their separation. This was set out by Queensland’s Deputy State Coroner in the findings of inquest into the death of Hannah Clarke and her children which was handed down on 29 June 2022.[[104]](#footnote-105) The coercive control that Hannah Clarke experienced was summarised in the NSW Government’s discussion paper on coercive control in these terms:

“…the perpetrator used recording devices to monitor Hannah’s conversations, controlled what she wore (for example by preventing her from wearing shorts or bikini off the beach), and isolated her from her family. Reporting also noted that this was coupled with sexual violence, in which Baxter forced Hannah to have sex with him every night, and made threats if she did not comply. Even when they separated, Baxter continued to track and monitor Hannah’s actions and movements and sought to control her through their children, including kidnapping one of them, which he claimed was punishment for her leaving him.” [[105]](#footnote-106)

There has been significant public and academic debate about whether coercive control should be criminalised. Some argue that criminalising coercive control is a key element of improving responses to DFV,[[106]](#footnote-107) while others argue that a criminal offence would be counter-productive and have unintended consequences.

Tasmania has had offences which criminalise aspects of coercive control since 2004. The *Family Violence Act 2004* (Tas) has an offence of economic abuse (section 8), and an offence of emotional abuse and intimidation (section 9), each with a maximum penalty 40 penalty units or two years in prison and a 12 month limitation period. However, these offences have not been well utilised and commentators have identified limitations compared to the approaches in Scotland and England for example.[[107]](#footnote-108)

The criminalisation of coercive control is currently being considered by states and territories across Australia:

* In 2021, the NSW Parliament Joint Select Committee Inquiry into Coercive Control released its report entitled *Coercive Control in Domestic Relationships*. The Committee received 156 submissions and heard evidence from numerous witnesses. The NSW Government responded in December 2021 supporting the recommendation to criminalise coercive control.[[108]](#footnote-109)
* In 2021, the Queensland Women’s Safety and Justice Taskforce released its report, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland*. The report recommended criminalising coercive control, with a four-phase implementation process to set the foundations for reform. The Taskforce received 700 submissions, and more than 500 of those were from people with lived experience of DFV.[[109]](#footnote-110) The Queensland Government has announced that it is supportive or supportive-in-principle of all 89 of the Taskforce’s recommendations, including to criminalise coercive control. It has made clear that system-wide reform is necessary before any new offences come into effect.
* In October 2021, the South Australian Government introduced a bill to criminalise coercive controlling behaviour[[110]](#footnote-111) but it was not passed prior to the March 2022 state election. The South Australian Government has released a discussion paper: *Implementation considerations should coercive control be criminalised in South Australia*.[[111]](#footnote-112)
* In March 2022, the Western Australian Government released a discussion paper: *Legislative Responses to Coercive Control in Western Australia.[[112]](#footnote-113)*

The Commonwealth Government is working with state and territory governments to develop National Principles on Coercive Control. While criminalising coercive control or introducing other legislative reforms is a matter for state and territory governments there is agreement that legislative efforts would be enhanced by a shared national understanding of coercive control. [[113]](#footnote-114)

While criminalisation is an important consideration, there are other legislative and systems changes other than the introduction of a new criminal offence that may improve responses to coercive control and DFV (see below).

## Where has coercive control been criminalised?

Coercive control has been criminalised in:

* England and Wales[[114]](#footnote-115) since December 2015;
* Ireland[[115]](#footnote-116) since January 2019;
* Scotland[[116]](#footnote-117) since April 2019;
* Northern Ireland[[117]](#footnote-118) since March 2021.

As indicated previously, economic abuse and emotional abuse are criminalised in Tasmania’s *Family Violence Act 2004* which is the only state or territory in Australia to have done so.[[118]](#footnote-119)

### The Scottish legislation

Scotland is considered to have the ‘gold standard’ legislation criminalising coercive control.[[119]](#footnote-120) The *Domestic Abuse (Scotland) Act 2018* was designed to reflect victims’ lived experience of domestic abuse[[120]](#footnote-121), while still ensuring fairness for the accused. Scotland has invested in a significant cross‑agency response to fully implement the legislative reforms and give them the best opportunity to succeed.

As set out in section 1 of the *Domestic Abuse (Scotland) Act 2018* it is an offence for a person (a) to engage in a course of behaviour which is abusive of A’s partner or ex-partner (b) if two further conditions are met:

1. That a reasonable person would consider this course of behaviour is likely to cause B to suffer physical or psychological harm, and
2. That either –
   1. A intends by the course of behaviour B to suffer physical or psychological harm, or
   2. A is reckless as to whether it will cause physical or psychological harm.

Psychological harm is defined to include fear, alarm and distress. A course of behaviour is defined as involving behaviour on at least two occasions.

The legislation provides an illustrative definition of ‘abusive behaviour’ in section 2 as follows:

(2) Behaviour which is abusive of B includes (in particular)—

(a) behaviour directed at B that is violent, threatening or intimidating,

(b) behaviour directed at B, at a child of B or at another person that either—

(i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

(3) The relevant effects are of—

(a) making B dependent on, or subordinate to, A,

(b) isolating B from friends, relatives or other sources of support,

(c) controlling, regulating or monitoring B’s day-to-day activities,

(d) depriving B of, or restricting B’s, freedom of action,

(e) frightening, humiliating, degrading or punishing B.

(4 ) In subsection (2)—

(a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,

(b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

The notable features of the *Domestic Abuse (Scotland) Act 2018* is that:

* The Scottish legislation can be distinguished from the legislation in the England and Wales[[121]](#footnote-122) in that it covers both physical and non-physical forms of domestic abuse in the one offence. In contrast, the legislation in England and Wales only covers non-physical abuse.
* It is not necessary to prove actual harm. Rather, the test is would the behaviour be considered by a reasonable person to have one or more of these effects? The offence in England and Wales requires proof that the behaviour had a serious effect on B and that A knew, or ought to have known, that that the behaviour would have a serious effect on B.
* It only applies to partners and ex-partners, not to other family relationships. The offence in England and Wales applies to intimate partners and to ex-partners and family members who live together.[[122]](#footnote-123)
* It is an aggravating factor if the abuse involves a child.
* It is a defence for A to show that the course of behaviour was “reasonable in the particular circumstances” (the prosecution must then prove it was not reasonable). Examples might include withholding money from someone who has a gambling addiction, or isolating someone with an alcohol problem from friends who drink.
* The legislation is written in plain language to aid it being understood by non-lawyers.
* The maximum penalty is 14 years imprisonment for an indictable offence and 12 months imprisonment for a summary offence. By contrast the English offence has a maximum penalty of 5 years imprisonment on indictment or 12 months for a summary conviction.

Key provisions of the *Domestic Abuse (Scotland) Act 2018* are set out in Attachment 7.2.

Section 76 of the *Serious Crime Act 2015* (England and Wales) is set out in Attachment 7.3.

### The strengths of the Scottish approach

The *Domestic Abuse (Scotland) Act 2018* was co-designed with victim advocates, to ensure it reflected the lived experience of domestic abuse. It uses the reasonable person test, rather than having to prove actual harm to the victim. The listing of the ‘relevant effects’ also mirrors victim-survivors’ experience of coercive control.

A significant strength of the Scottish approach lies in the investment made in the comprehensive and timely implementation of the Act:

* implementation of the bill occurred as a collaboration between police, prosecutors, courts, department, and domestic violence service;
* significant preparation and training occurred prior to commencement of the Act;[[123]](#footnote-124)
* there was face-to-face training for 14,000 police members;
* there was online training of 21,000 of the total 22,000 police members;
* 700 police were identified as ‘champions’ of the reforms, that is, key enablers to lead good practice and imbed legislative change (this was considered a development opportunity for police);
* all judges received training; and
* there was a significant public awareness campaign.[[124]](#footnote-125)

The implementation process occurred prior to commencement and was so thorough that the first charges for domestic abuse were laid immediately (in the first week) after the commencement of the Act.[[125]](#footnote-126)

Scottish officials identified the benefits of the new offence as follows:

* effective enforcement and prosecution is critical to prevention efforts;
* prosecution disrupts abuse and separates parties for a time (and provides breathing space for victims);
* conviction provides a marker of the behaviour, and an opportunity for intervention;
* this can prevent abuse;
* it educates the public and responders about what abuse is;
* the offence is better aligned with the lived experience of victims so they don’t feel so alienated by the justice system; and
* it sends a clear message: This conduct is not acceptable.

Scottish officials have indicated that the new offence is not a panacea and doesn’t immediately solve the challenges in prosecuting DFV offences. Those challenges remain, including:

* There are difficulties for police and prosecutors in obtaining and presenting evidence to prove the new offence (and accompanying trauma for complainants in providing evidence).
* The new offence does not on its own address the challenges of encouraging disengaged and reluctant victims to give evidence. Although the reasonable person test means that there could theoretically be a conviction without evidence from the complainant but most complainants do have to provide evidence to secure a conviction.
* The new offence does not overcome the challenges in identifying the person most in need of protection where there are counter-allegations of violence. [[126]](#footnote-127)

## Arguments for and against criminalisation

### Arguments in favour of criminalisation

There are significant arguments in favour of criminalising coercive control summarised below.

* Coercive control is conduct that is wrong and harmful and should be denounced by society through a criminal sanction. Criminalisation will make coercive control more visible and send a clear message to the community that it is wrong.
* In criminal law and policing, DFV is treated as individual incidents of physical violence, with coercive control often remaining invisible and sometimes irrelevant to proceedings. This does not accord with the lived experience of victim-survivors of DFV, who often experience a pattern of abuse that may include physical, sexual, emotional, psychological and economic abuse in an attempt to control and dominate. By criminalising coercive control it may bring the criminal law into greater alignment with the lived experience of victims-survivors. This may increase the confidence of victim-survivors to report DFV to police and to attend Court. It may also provide greater recognition in law of the cumulative harm caused by coercive control.
* The creation of a criminal offence (along with effective community education and professional training) will reduce confusion about the nature and dynamics of DFV and support efforts to prevent and reduce violence. It will create greater clarity about what DFV is.
* Coercive control is a high-risk factor for domestic homicide. The creation of a criminal offence will increase opportunities to intervene in non-physical abuse and this may help reduce domestic homicide.
* Criminalisation (along with effective police training and procedures) is likely to improve the policing of DFV. The creation of a new offence will prompt police to look for evidence of a pattern of coercive control in the history of the relationship, rather than just focussing on the current incident of physical violence that they have been called to attend. Criminalisation will make coercive control relevant to day-to-day police work and help change the culture of how police respond to DFV. An understanding of coercive control is likely to reduce the tendency by some people to blame victim-survivors of DFV for offending against them.

Proponents of criminalisation believe that criminalising coercive control has the potential to change the way DFV is policed, prosecuted and prevented if it is properly implemented. The criminalisation of coercive control has become emblematic: If we improve our responses to coercive control, our responses to all forms of DFV will improve.

### Arguments against criminalisation

Those who are opposed to criminalisation usually agree that governments should improve responses to coercive control but that the creation of a criminal offence goes too far. They are concerned that criminalisation will not address the current limitations in the criminal justice response to DFV, and that it may result in increased trauma for victim-survivors in giving evidence at Court. They are also concerned about the potential for unintended consequences, particularly for Aboriginal people and other vulnerable groups who may experience trauma and discrimination in their engagement with the justice system or be misidentified as defendants.

Arguments against the creation of a criminal offence are summarised below, although it is important to acknowledge that opponents of criminalisation may have different rationales and views:

* Criminalisation will extend the reach of the criminal law too far into private lives.[[127]](#footnote-128)
* It will be too difficult to effectively define coercive control in legislation because it involves nuanced behaviour that is deeply contextualised and relationship-specific.
* Excessive control is a common feature of many relationships, and it will be difficult to appropriately draw the line between coercive control which warrants criminal sanction and controlling behaviours which, although unhealthy, are not sufficiently egregious to warrant a criminal charge.
* It will be difficult for police to obtain evidence of coercive control offences, because it is a pattern of abuse over time, and it is nuanced and context-specific. Evidence gathering will be more time consuming, and will necessarily go beyond types of evidence currently relied upon in criminal DFV proceedings (for example, a photographs of injuries, medical reports). Police may be required, for example, to examine the history of the relationship and phone records, bank statements, and witness statements.
* It may be harder to prosecute coercive control offences and hearings may be more traumatising for victim-survivors. Proving a coercive controlling offence may require more detailed and contested evidence, and may be more reliant on victim-survivors to give evidence. This may be particularly traumatising for Aboriginal women, women from culturally and linguistically diverse backgrounds, women with disabilities and people who are LGBTQI+ or gender diverse or non-binary.
* It is well documented that victim-survivors of DFV experience the criminal justice system as re-traumatising and difficult to navigate.[[128]](#footnote-129) Some opponents of criminalisation argue that the creation of a new offence won’t change these fundamental limitations of our adversarial justice system, and may exacerbate them.
* Many long-term victim-survivors are misidentified as defendants in DFV proceedings, either because they use physical violence themselves (in self-defence or retaliation) or because the offender has used the justice system to inflict more harm on victims-survivors (often termed ‘systems abuse’.)[[129]](#footnote-130) Some argue that the criminalisation of coercive control – which would require psychological abuse to be proved beyond reasonable doubt in an adversarial system – may provide more opportunity for systems abuse. This may particularly affect Aboriginal women, who are already reluctant to engage with the justice system due to past policies and practices, and discrimination.[[130]](#footnote-131)

In response to these concerns, it is worth noting that the coercive control offence in Scotland uses the reasonable person test, and so theoretically a conviction could be secured without the victim-survivor giving evidence about actual harm experienced. In practice, however, evidence from a victim-survivor is likely to be required for a successful prosecution. ANROWS has argued that coercive control, properly defined, may reduce the risk of victim-survivors being misidentified as defendants because victim-survivors typically do not use coercive control, although they may sometimes retaliate or react with physical violence.[[131]](#footnote-132)

**The impact on Aboriginal people**

A further argument raised by opponents of criminalisation is that the creation of a criminal offence of coercive control may increase incarceration rates, particularly for Aboriginal people.

The NT Government and Aboriginal leaders and organisations are working in partnership to reduce the incarceration rates of Aboriginal people, through the Aboriginal Justice Agreement.

Data shows that:

* The NT has the highest imprisonment rate in any state or territory of Australia, that is, 955 prisoners per 100,000 adult population, compared to a national average of 221;[[132]](#footnote-133)
  + 63 per cent of prisoners in the NT are held for DFV-related offences;[[133]](#footnote-134)
  + Over 90 per cent of defendants in DFV related criminal matters are Aboriginal;[[134]](#footnote-135)
  + 84 per cent of adult prisoners in the NT are Aboriginal.[[135]](#footnote-136)

The Victorian Aboriginal Legal Service (VALS) has considered the question of whether coercive control should be criminalised in Victoria and formed the view that:

“VALS recognises the unique and pervasive harm caused by coercive control, and the need for an improved response to it. We do not, however, support criminalising coercive control as a necessary or appropriate step in Victoria. Like Aboriginal Community Controlled Organisations which have made submissions to reform processes in other states, VALS recognises the particular risks that a criminal offence of coercive control would pose to Aboriginal people. Creating a new criminal offence is unlikely to protect women at risk of violence, particularly Aboriginal and Torres Strait Islander women, and risks becoming a new source of harm to victim-survivors of abuse and to the Aboriginal community in Victoria.”[[136]](#footnote-137)

The VALS paper argues that a criminal offence of coercive control would make no difference to the ability of victim-survivors to call police and have someone removed from a dangerous scene. However, it is likely to have the following harmful unintended consequences for Aboriginal people:

* “A new offence would expand the ways in which people can become entangled in the criminal legal system, with disproportionate impacts on Aboriginal people in Victoria.
* Expanded criminal sanctions may reduce reporting of domestic abuse, especially among Aboriginal people, for those who fear that trying to seek help will mean sending their partner to prison and exposing them to the dangers Aboriginal people face in custody.
* Victim-survivors of domestic abuse are frequently misidentified as having committed abuse by police and courts – both unintentionally, and due to deliberate manipulation by the person who has actually offended. A coercive control offence expands opportunities for this to occur.
* A coercive control offence would have significant ambiguity and room for interpretation, likely to lead to disproportionate enforcement against Aboriginal people...” [[137]](#footnote-138)

VALS’ recommends against criminalising, and in support of alternative approaches to dealing with coercive control, including strengthening of culturally safe support services to make it easier for victim-survivors to leave a dangerous situation.

**Limited evidence about the impact of a new offence in other jurisdictions**

There is not yet sufficient evidence from other jurisdictions about the positive or negative impact a new offence of coercive control may be having in the community. It may be premature to introduce a coercive control offence in the NT until there is more evidence of how it is working in other jurisdictions, particularly given the impact of the Covid-19 pandemic from 2020 to 2022.

## Should coercive control be criminalised in the NT?

There is a need for legislative and non-legislative reforms to improve responses to coercive control and DFV in the NT. However, there are good reasons to not criminalise coercive control prematurely in the NT.

### Low awareness of coercive control in the NT

While there is no survey evidence to draw on, anecdotal evidence suggests that many Territorians do not know what coercive control is. Even in families where coercive control is occurring, the victim-survivor, the perpetrator, or both, may be unaware that it is a form of domestic violence. Evidence from other jurisdictions shows that many victim-survivors, in the absence of physical violence, have not recognised coercive control as a form of domestic violence or sought assistance for it.[[138]](#footnote-139)

There is also insufficient understanding of how coercive controlling behaviour manifests in Aboriginal families and communities. Even if the conduct is similar in Indigenous and non-Indigenous families, there may be different terminology and a different context for the behaviour that ought to be taken into account.

Similarly there is anecdotal evidence that professionals like police, doctors, nurses, psychologists have low understanding of coercive control and how to respond.

Before coercive control is criminalised in the NT, there must be extensive efforts to raise community awareness about this conduct and to train professionals in how to respond.

### Comprehensive implementation needs to precede criminalisation

The Scottish experiences suggests that legislative reform to criminalise coercive control needs to be preceded by significant preparation and change management. There was a need to raise public awareness of what coercive control is, co-design legislation, train police, prosecutors, lawyers, judges and other front-line responders, develop procedures and tools, and set up systems for good collaboration. This helped avoid the risks associated with criminalising coercive control and created greater alignment between the justice system and specialist domestic violence services in responding to coercive control.[[139]](#footnote-140)

The inquiries on coercive control that have been conducted in Australia have also emphasised the importance of implementation. This is considered detail in Part 6 of this paper.

The Queensland Women’s Safety and Justice Taskforce recommended that:

“… no new offences to criminalise domestic and family violence commence until service and justice system responses are improved. The Taskforce is satisfied that to do so would involve an unacceptable risk of unintended consequences, which could cause more harm to those whom the reforms are intended to protect, particularly First Nations peoples.

“The Taskforce has mapped a four-phase plan for the implementation of its recommendations within the current term of the Queensland Government, which will allow the government to deliver its election commitment to the people of Queensland to introduce legislation criminalising coercive control.” [[140]](#footnote-141)

The four-phase implementation plan was set out in the report with immediate legislative reforms occurring in phase 2 and the criminalisation of coercive control in phase 4 as follows:

Phase 1 (2021-2022) Setting the foundations for reform

Phase 2 (2022-2023) First stage legislative and systems reforms against coercive control

Phase 3 (2023-2024) Preparing for the criminalisation of coercive control

Phase 4 (2024-beyond) Criminalising coercive control and monitoring impacts and outcomes

The NSW Parliament’s Joint Select Committee on Coercive Control recommended that coercive control be criminalised:

“However commencement of a criminal offence should not occur without a considerable prior program of education, training and consultation with police, stakeholders and the frontline sector. Following drafting and legislation of such an offence, and prior to commencement, implementation should be assisted through a multi- agency taskforce.”[[141]](#footnote-142)

The NSW Government has supported the Inquiry’s recommendation to criminalise coercive control, and is giving further consideration to the formation of a multi-agency implementation Taskforce.[[142]](#footnote-143) It has affirmed its commitment to a whole-of-government approach to addressing coercive control. In October 2021, it announced an additional $484.3 million, the single biggest investment in tackling domestic violence in the state’s history.

In recognition of the importance of implementation to the effectiveness of a coercive control offence, the SA Government has recently released a discussion paper titled: *Implementation considerations should coercive control be criminalised in South Australia.*

It is worth emphasising that many of the implementation tasks in relation to coercive control need to occur whether it is criminalised or not. Raising public awareness, training police, judges and first responders about coercive control, imbedding coercive control in law, policy and risk assessment tools, are all an important part of the response to coercive control (and DFV more generally) irrespective of criminalisation.

### Criminalisation as a last resort

Arguably the criminalisation of conduct should be a last resort.

Calls to criminalise coercive control have been made because current responses to coercive control and DFV – in the NT and elsewhere – are not sufficient to prioritise the safety of victim-survivors and hold offenders to account. They are not sufficient to reduce the high levels of DFV and coercive control across all jurisdictions.

However, there are many changes to law, policy and procedure that could be made in the NT to improve responses to coercive control short of creating a new criminal offence. These have been identified as part of the present review.

Jane Wangmann has emphasised that reforms in relation to coercive control must extend beyond the creation of a single new offence of coercive control. [[143]](#footnote-144) She suggests:

“…simply legislating a new offence will not achieve a great dealt if it is done in the absence of changing the practice of law in addressing IPV (intimate partner violence).

While Stark does seek to criminalise coercive control how this might be achieved is multi-pronged – it should not be merely seen in terms of whether there is a ‘law on the books’ but ***rather how all the laws that respond to IPV understand and recognise coercive control in implementation and practice***.” (emphasis added)

This suggests that in the NT it may be important to consider other ways to imbed coercive control into law and procedure prior to creating a criminal offence.

## NT proposals to improve responses to coercive control

### Options in relation to criminalisation

Coercive control is egregious conduct, as discussed above. However, there are steps that can be taken to incorporate coercive control into law and procedure short of the creation of a new criminal offence.

**The legislative reforms listed below in part 3.7.2 and the systemic reforms listed in part 3.7.3 are necessary to improve responses to DFV and coercive control regardless of whether coercive control is criminalised or not.**

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

**Option 1**

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

**Option 2**

Alternatively, commit to criminalising coercive control in the NT but ensure a long (four year) implementation phase prior to commencement, to enable the implementation of a raft of legislative and systemic improvements to the justice response to DFV and coercive control.

Both Options 1 and 2 require a long lead time (four years) for preparation and implementation to occur, before either a coercive control offence is commenced or an evaluation of the initial reforms takes place. There is agreement across jurisdictions that implementation is critical to improve responses to DFV and coercive control, regardless of whether coercive control is criminalised.

This paper invites input about whether Option 1 or Option 2 is preferred in the NT.

### Legislative proposals in relation to coercive control

The following legislative amendments are proposed to improve responses to coercive control. These are integrated into the legislative reform (LR) proposals set out in Part 5 of this paper. It is proposed that these reforms are important regardless of whether coercive control is criminalised or not.

* 1. Modernise the definition of domestic violence in the *Domestic and Family Violence Act 2007* (DFV Act) to include behaviour that is emotionally or psychologically abusive, coercive, or in any other way controls or dominates a family member (see proposal LR 4).
  2. Incorporate a definition of coercive control into the DFV Act (see proposal LR 6).
  3. Develop a statutory guidance framework on DFV and coercive control to provide more detailed guidance on applying the DFV Act (see proposal LR 7).
  4. Amend the principles in the preamble of the DFV Act to include coercive control and misidentification of the person most in need of protection (see proposal LR 1).
  5. Amend section 19 of DFV Act so that where there are cross allegations of violence the concepts of coercive control and a pattern of abuse can be used to assist police and courts to correctly identify ‘the person most in need of protection’ (see proposal LR 6).
  6. Amend the DFV Act to require police to provide criminal history and a list of current and prior DVOs against a defendant at the first mention in all applications for DVOs, so that patterns of abuse can be more readily detected early in the proceedings (see proposal LR 12).
  7. Amend the DFV Act to mandate attendance at behaviour change programs along the lines of counselling orders provided for in Part 5 of the *Family Violence Protection Act 2008 (Vic)* to provide greater impetus and opportunity for DFV offenders to address coercive controlling behaviour (see proposal LR 18).
  8. Amend section 6A of the *Sentencing Act 1995* so that it is an aggravating factor for the purposes of sentencing if the offence was committed as part of a pattern of coercive controlling behaviour (see proposal LR 47).
  9. Conduct further research into whether coercive control should be a mitigating factor in sentencing (see section 5(2)(f) of the *Sentencing Act 1995*) (see proposal LR 48).
  10. Amend the definition of harm in the Criminal Code to avoid any doubt that coercive control may result in significant psychological harm (see proposal LR 51).
  11. Amend the *Evidence Act 1939* along the lines of section 39 of the *Evidence Act 1906 (WA)* to allow expert evidence of family violence to be admissible where evidence of family violence is relevant to a fact in issue (see proposal LR 54).
  12. Amend the *Evidence Act 1939* to adopt mandatory jury directions in relation to DFV, and establish a working group to advise on the content of the directions for the NT (see proposal LR 55).

### Systemic reforms in relation to coercive control

The following systemic reforms are proposed to improve responses to coercive control. These are integrated into the systemic reform (SR) proposals set out in Part 5. It is proposed that these are important regardless of whether coercive control is criminalised or not.

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

It is noted that some of the proposals can be implemented within the existing resources of agencies and some require further investment and will be considered by the DFSV-ICRO in the next 12 months as part of the DFV reform agenda. All of them will benefit from inter-agency co‑ordination and alignment.

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

### Questions – Coercive control

The NT Government is seeking feedback from the community on how to improve responses to coercive control in the NT:

1. Which of following options do you prefer in NT:

**Option 1:** Not criminalise coercive control but immediately prioritise a raft of other legislative and systemic reforms (over four years) to improve the justice response to DFV and coercive control (as set out above). This option provides an opportunity to evaluate how effective these reforms have been, and for any future decisions about whether coercive control should be criminalised in the NT to be informed by that evaluation, along with the experience in other jurisdictions**.**

**Option 2:** Commit to criminalising coercive control in the NT but ensure a long (four year) implementation phase prior to commencement, to enable the implementation of a raft of legislative and systemic improvements to the justice response to DFV and coercive control (as set out above).

Aside from the question of criminalisation, which of the law reform proposals outlined in Part 3.7.2 above do you support? Which do you not support?

1. Which systemic reforms outlined in Part 3.7.3 above do you think are most important in the NT?

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

# Legislative proposals to address DFV

This section sets out proposed legislative amendments to improve responses to DFV in the NT.

It includes proposals to incorporate coercive control into legislation (as listed above in Part 3.7.2) along with other proposals that have been identified to improve responses to DFV. It does not include a proposal to create a new criminal offence of coercive control at this stage for the reasons outlined in Part 3 of this paper.

Questions to guide responses are set out at the end of this section. However, the Department welcomes submissions on any aspects of the proposed reforms.

## Proposed amendments to the *Domestic and Family Violence Act 2007*

The DFV Act provides for the making of DVOs. DVOs are civil orders that impose restraints on the defendant to prevent the commission of domestic violence against the protected person. For example, the defendant might be restrained from having contact with the protected person, drinking alcohol in the presence of the protected person or harming the protected person. If a DVO in force is contravened, it is a criminal offence (section 120).

The DFV Act has been amended since its introduction to establish (in conjunction with corresponding laws in other states and territories) a national recognition scheme for DVOs made in other jurisdictions. This enables DVOs made in other states and territories and New Zealand to be recognised or enforced in the NT.

The DFV Act has also been amended to introduce a domestic violence information sharing scheme that enables certain entities to share information to assess, lessen or prevent a serious threat to a person’s life, health, safety or welfare because of domestic violence.

In the past 15 years since theDFV Act commenced, significant inquiries[[144]](#footnote-145) and legislative reforms have occurred in other Australian states and territories and internationally. Knowledge about DFV and how to address it has substantially increased.[[145]](#footnote-146)

There is now a body of work about how to increase (1) victim safety and (2) offender accountability which are considered the fundamental premises on which responses to DFV must be built. In addition, there is a growing body of work about the impact on children exposed to DFV and the importance of responses explicitly addressing children’s safety and well-being.

There is a need to modernise the DFV Act to bring it into line with best practice in other jurisdictions. An example of this is the need to overhaul the definition of domestic violence that underpins the DFV Act, to better capture coercive control.[[146]](#footnote-147)

In addition, there are procedural shortcomings in the DFV Act that need to be addressed, for example, the need for explicit provisions relating to varying a police DVO before it is confirmed by the court.

AGD is of the view that it is not necessary to undertake a complete rewrite of the DFV Act but rather to make targeted changes as summarised below.

### Preliminaries and definitions

#### Preamble containing principles

A preamble in an Act does not have a separate legislative effect, but may be used for clarification if the meaning of a section is unclear. In interpreting a provision of an Act, an interpretation that would best achieve the purpose or object of the Act, whether expressly stated in the Act or not, is to be preferred (section 62A of the *Interpretation Act 1978*.) The purpose may be ascertained from the objects and also the preamble if one exists.

With the exception of Tasmania, all state and territory DFV legislation in Australia now either contains a preamble setting out principles about DFV or sets outs principles for making orders elsewhere in the legislation (for example, section 10 of the SA *Intervention Orders (Prevention and Abuse) Act 2009*.) The inclusion of principles with express reference to human rights frameworks was recommended in the 2010 ALRC Report.[[147]](#footnote-148)

While the NT DFV Act contains a short preamble in the following terms, it is limited compared to the preambles in other jurisdictions:

PREAMBLE:

The Legislative Assembly enacts this Act because it recognises:

(a) domestic violence is unacceptable behaviour that society does not condone; and

(b) domestic violence has:

(i) negative and long-lasting consequences for victims and others exposed to it; and

(ii) negative consequences for the community, the workplace and the economy.

The benefits of an expanded preamble may include drawing attention to features of domestic violence that are sometimes overlooked by authorities (such as psychological abuse and coercive control), making clear that they fall within the scope of the Act. It also provides an opportunity to articulate some of the issues the DFV Act is intended to address, for example, to reduce the exposure of children to DFV.

An expanded preamble performs an educative role in relation to the nature of DFV and how to address it as well as aiding in the interpretation of the DFV Act.

It is proposed that the preamble in the DFV Act be expanded along the lines of the preamble in the Victorian *Family Violence Protection Act 2008*, with additional paragraphs adapted from Western Australia’s *Restraining Orders Act 1997* and Queensland’s *Domestic and Family Violence Protection Act 2012.*

PROPOSED PREAMBLE (along the lines of)

In enacting this Act, the Parliament recognises the following principles [[148]](#footnote-149)—

(a) that non-violence is a fundamental social value that must be promoted;

(b) that domestic violence is a fundamental violation of human rights and is unacceptable in any form;

(c) that domestic violence is not acceptable in any community or culture;

(d) that in responding to domestic violence and promoting the safety of persons who have experienced domestic violence, the justice system should:

1. treat the views of victims of domestic violence with respect and dignity, and
2. seek to reduce the degree to which victims might be subject to re‑traumatisation during those proceedings; [[149]](#footnote-150)and
3. seek to reduce disruption to the lives of victims as far as possible.[[150]](#footnote-151)

In enacting this Act, the Parliament also recognises the following features of domestic violence—

* 1. that while anyone can be a victim-survivor or perpetrator of domestic violence, domestic violence is predominantly committed by men against women, children and other vulnerable persons;
  2. that children who are exposed to the effects of domestic violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing;
  3. that domestic violence—
     1. affects the entire community; and
     2. occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender identity, sexual identity, ability, ethnicity or religion;
     3. traditional or cultural practices cannot be relied upon to minimise or excuse domestic violence;[[151]](#footnote-152)
  4. that domestic violence extends beyond physical and sexual violence and may involve emotional or psychological abuse, economic abuse and coercive control;
  5. that domestic violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time;
  6. that coercive control is a particularly harmful form of domestic violence that involves violent, threatening or intimidating behaviour that has the effect of isolating, controlling, monitoring, frightening, humiliating, degrading, punishing, or restricting the freedom of a person; [[152]](#footnote-153)
  7. that complex emotional factors arising from coercion, control and fear often make it difficult for victims of family violence to report the violence or leave a domestic relationship in which family violence is being committed;[[153]](#footnote-154)
  8. that in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified;[[154]](#footnote-155)
  9. that there is a need to recognise that perpetrators of domestic violence might seek to misuse the protections available under this Act to further their violence, and the need to prevent that misuse.[[155]](#footnote-156)

#### PROPOSAL LR 1

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

#### Objects of the DFV Act

The objects of the DFV Act are set out in section 3(1) as follows:

1. To ensure the safety and protection of all persons, including children, who experience or are exposed to domestic violence, and
2. To ensure people who commit domestic violence accept responsibility for their conduct, and
3. To reduce and prevent domestic violence.

Section 3(2) articulates how the objects are to be achieved.

These are broadly consistent with recommendation 7-4 of the ALRC Report.

However, a number of minor changes would bring the objects further into line with the ALRC recommendation and the objectives of domestic violence legislation in other jurisdictions, particularly in relation to:

* reducing the exposure of children to domestic violence; and
* acknowledging that legislation cannot ‘ensure’ a person’s safety but it can ‘increase’ safety and it cannot ‘ensure’ someone is accountable and responsible for their actions but it can increase accountability and encourage a person to accept responsibility for their actions.

#### PROPOSAL LR 2

**It is proposed that the objects be amended along the lines:**

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

#### Definition of a party

The term ‘party’ for a DVO is defined in section 4 of the DFV Act to mean:

1. the protected person or person acting for the protected person; or
2. the defendant.

However, concerns have been raised that the wording of the legislation leaves some doubt about:

* what standing a protected person has when the police issue a police DVO, and
* whether police are a party to a police DVO or merely facilitate the application.

This lack of clarity is undesirable.

#### PROPOSAL LR 3

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

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

**It is further proposed to provide that:**

* **to avoid any doubt, the protected person is a party to any proceedings arising from a DVO application, even if the protected person not the applicant; and**
* **to avoid any doubt, the police are a party to any proceedings arising from an application made by police under section 28 or section 29 or a DVO made by police under section 41, and any applications to vary or revoke a DVO related to those proceedings and any confirmation hearing under Part 2.10.**

#### Definition of Court DVO, Police DVO and external order and structure of the Act

In the DFV Act, a court DVO is defined in section 4 as:

(a) a Local Court DVO; or

(b) an interim court DVO; or

(c) a consent DVO; or

(d) a DVO made by a court under Part 2.7; or

(e) a DVO confirmed by the Court under Part 2.10.

Stakeholders have indicated there is some confusion arising from structure of the DFV Act and it would be helpful to clarify the structure and how the types of DVOs relate to each other.

The table below sets out how Chapter 2 of the DFV Act operates.

#### PROPOSAL LR 4

**It is proposed to amend the definitions of court DVO, police DVO and external order in the DFV Act and clarify the structure of the DFV Act.**

**Table 1: Summary of the structure of Chapter 2 of the DFV Act**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| How it is initiated | Interim protection | How it is varied | How order is finalised | Final DVO | How final order is varied or revoked |
| Police DVO  Authorised police officer in urgent circumstances (s41) | Police DVO continues in the same terms  Or the terms varied under Part 2.9 | Part 2.9 | Part 2.10 – Confirmation hearing  Part 2.7 – After a finding/plea of guilt  Part 2.5 – With consent | Final DVO | Part 2.8  (Note: Court can make an interim variation order under s52A until the application is decided) |
| Court DVO  Application (s28 or 29) | Interim Court DVO is made under s35 | Part 2.8  (Note: Court can make an interim variation order under s52A until the application is decided) | Part 2.10 – Confirmation hearing  Part 2.7 – After a finding/plea of guilt  Part 2.5 – With consent |

#### Definition of domestic violence

Domestic violence is defined in section 5 of the DFV Act as any of the following conduct committed by a person against someone with whom the person is in a domestic relationship:

1. conduct causing harm;
2. damaging property, including the injury or death of an animal;
3. intimidation;
4. stalking;
5. economic abuse;
6. attempting or threatening to commit conduct mentioned in paragraphs (a) to (e).

This definition is outdated and needs to be modernised. It does not accord with current understanding about the nature of DFV, and particularly the central role played by coercive control and non-physical forms of abuse. It also relies on the concept of harm as defined in the Criminal Code which does not explicitly include the types of cumulative harms which are common in DFV.

The ALRC Report recommended a definition along the lines of the definition in Victoria’s *Family Violence Protection Act 2008* (see ALRC Recommendation 6-1).[[156]](#footnote-157) The Law Council of Australia has recently adopted a model definition along the lines of the Victorian definition, with some additional examples.[[157]](#footnote-158)

It is proposed to provide a clear modern definition of DFV that accords with current understanding of the nature of DFV, and incorporates coercive control.[[158]](#footnote-159)

#### PROPOSAL LR 5

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

The Law Council of Australia’s definition is provided in Attachment 7.4.

It is important to note that amongst the examples provided in the Law Council Model Definition is that the following behaviour may constitute DFV:

* using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage;
* using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive dowry, either before or after a marriage.

#### Definition of coercive control

The issues in relation to coercive control are set out in Part 4 of this paper.

To ensure that the concept of coercive control underpins the application of the DFV Act, it would be helpful to have a legislative definition of coercive control and some guidance for first responders in applying the concept of coercive control in DFVA proceedings.

The United Kingdom has a statutory guidance framework on coercive control.[[159]](#footnote-160) While the UK framework is for the purpose of investigating a criminal offence of coercive controlling behaviour, a statutory guidance framework may be useful in the NT to guide the application of the DFV Act in the absence of a criminal offence. This is because there are a large number of professionals who fail to identify coercive control as a central element of DFV or appreciate the severity of its impact on victim-survivors.

The definition of coercive control is required for proposed changes to section 19 outlined below.

#### PROPOSAL LR 6

**It is proposed to insert a definition of coercive control in the DFV Act along the lines:**

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

1. **It makes the protected person dependent on, or subordinate to the defendant,**
2. **It isolates the protected person from friends, relatives or other sources of support**
3. **It controls, regulates or monitors the protected person’s day to day activities**
4. **It deprives the protected person of, or restricts the protected person’s, freedom of action**
5. **It frightens, humiliates, degrades or punishes the protected person.[[160]](#footnote-161)**

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

#### PROPOSAL LR 7

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

#### Definition of domestic relationship

The 2016 Consultation Report[[161]](#footnote-162) identified a number of relationships that are not captured by the current definition of domestic relationship in the DFV Act but arguably should be. Examples provided included:

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 section 9(d)(ii) and thus cannot establish a domestic relationship. They are unable to seek relief under the DFV Act.

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 DFV Act.

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 text messages to Naomi. Naomi (the ‘other woman’) has no avenue of obtaining relief under the DFV Act because Marie and Naomi have not been in a domestic relationship.[[162]](#footnote-163)

In addition, it was proposed that persons who have had a casual or one‑off sexual incident, whether consensual or non‑consensual, should be included in the definition. This is because it is more appropriate for persons who experience abuse in the aftermath of a casual or one-off sexual encounter or abuse to be dealt with under the DFV Act than the *Personal Violence Restraining Orders Act 2016.* The nature of the abuse is more akin to DFV and the applicant is likely to need some of the protections of the DFV Act.

AGD proposes that these relationships be covered by the DFV Act.

#### PROPOSAL LR 8

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

**Domestic relationship (section 9)**

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

**Family relationship (section 10)**

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

**Intimate personal relationship (section 11)**

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

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

#### Objects of the chapter

#### PROPOSAL LR 9

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

**The objects of this Chapter are to provide for:**

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

#### When may a DVO be made

Section 18 of the DFV Act outlines the test for when a DVO may be made as follows:

(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.

Note

Because of the objective nature of the 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.

(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.

It is not proposed to change these tests.

It is proposed to provide further guidance to the court in cases where there are cross-allegations of violence or cross-applications for a DVO, and in relation to the protection of children (see below).

### Matters that must be considered in making a DVO

Section 19 of the DFV Act sets out the matters that must be considered in making a DVO:

(1) In deciding whether to make a DVO, the issuing authority must consider the safety and protection of the protected person to be of paramount importance.

(2) In addition, the issuing authority must consider the following:

(a) any family law orders in force in relation to the defendant, or any pending applications for family law orders in relation to the defendant, of which the issuing authority has been informed;

(b) the accommodation needs of the protected person;

(c) the defendant's criminal record as defined in the *Criminal Records (Spent Convictions) Act 1992*;

(d) the defendant's previous conduct whether in relation to the protected person or someone else;

(e) other matters the authority considers relevant.

Stakeholders have raised a number of concerns with section 19, in particular:

* Despite section 19(2)(d), there is no requirement for the court to consider, or the police to provide, information in relation to DVOs made against the defendant, whether or not they are in force.
* Section 19(2)(a) provides that the court must consider any family law orders and applications yet there is no similar requirement for the court to consider orders and applications under *Care and Protection of Children Act 2007*.

Stakeholders and members of the judiciary have indicated that this means that orders are being made without important information being before the court.

In addition, stakeholders have raised concerns that despite section 18(2) which provides a specific test in relation to making DVOs for children, the needs of children in the care of the protected person or the defendant are frequently not fully considered when the court is considering orders for an adult protected person.

Section 80 of the *Family Violence Protection Act 2008 (Vic)* provides that the safety of the protected person and children must be the paramount consideration in deciding on the conditions in a DVO.

#### PROPOSAL LR 10

**It is proposed to:**

* **Amend section 19(1) along the lines:**

**“In deciding whether to make a DVO, and in deciding the terms of a DVO, the issuing authority must consider the safety and protection of the protected person and any children to be of paramount importance.”**

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

#### PROPOSAL LR 11

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

This will provide the court with information relevant to the requirements of section 19 about what must be considered in making a DVO. It is proposed to create a standard form to minimise the administration involved in providing the certificate.

### Misidentification of the ‘person most in need of protection’

The misidentification of the person most in need of protection has been discussed in Part 3.6 above. It refers to the growing number of women who are both (1) victim-survivors of DFV and (2) named as defendants in DVO applications or orders. [[163]](#footnote-164)

There are various reasons for misidentification of a victim-survivor as a defendant. One reason may be that a long-term victim of violence, uses violence themselves in self-defence or retaliation. However, in other cases the victim may have used no or little violence. There is a growing number of cases in which a long-term offender uses the legal system as a vehicle to continue to harass, intimidate or control the victim (often referred to ‘systems abuse’). For example, some long-term offenders contact the police first (or apply for their own DVO) alleging they are the victim of violence, as a tactic to gain the upper hand, or to deflect attention away from their own offending. [[164]](#footnote-165)

In these circumstances, police or courts may issue a DVO protecting a person who is actually the predominant aggressor. Police may also issue mutual DVOs against both parties because they are uncertain who is the victim and the offender. Without the full history of the relationship, the police make a judgment that the parties are equally at fault and are equally in need of protection. However, DFV experts argue that DFV is rarely symmetrical in this way.

Often the initial view formed by police is perpetuated by the court which is relying, to a large extent, on evidence and submissions made by the police. Misidentification can follow the victim-survivor through the system without being properly scrutinised or challenged. This has been found to be particularly true for Aboriginal victim-survivors.[[165]](#footnote-166)

In cases where there are cross-allegations of violence or it appears that both parties have used violence, it has been proposed that police and courts should seek to identify ‘the person most in need of protection’.

This concept has been incorporated into law in Queensland and Western Australia.

In the *Domestic and Family Violence Protection Act 2012* (Qld) the principles for administering the Act include a principle stating that ‘in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person most in need of protection should be identified’ (section 4(2)(e)).

In addition, Queensland has provisions to ensure that cross applications are disclosed by the parties, and are heard before the same court unless the court considers it necessary to hear the applications separately for the safety, protection and well-being of the protected person. In hearing the applications, the court must consider the principle in section 4(2)(e), that is, the person most in need of protection should be identified.

However, despite this principle there have been cases in which Queensland courts have identified a person as ‘the person most in need of protection’ but still made an order against that person because the test for making an order was met for each party.[[166]](#footnote-167)

The Western Australian *Restraining Orders Act 1997* (WA) also makes use of the concept of ‘the person most in need of protection’ in the principles to be observed in performing functions in relation to family violence restraining orders. The relevant principles are set out in section 10B as follows:

(h) the need to identify, to the extent possible, the person or persons in a family relationship most in need of protection from family violence, including in situations where 2 or more family members are committing that violence;

(i) the need to recognise that perpetrators of family violence might seek to misuse the protections available under this Act to further their violence, and the need to prevent that misuse;

(j) that in order to encourage victims of family violence to report that violence and seek help, proceedings under this Act should be conducted in a way that treats victims with respect and dignity and endeavours to reduce the degree to which victims might be subject to re‑traumatisation during those proceedings.

Research suggests that the following will help reduce misidentification:

* WLSV suggested that one factor in misidentification is police forming an early view that there is mutual and equal violence between the parties, without understanding the history of domestic violence and coercive control between the parties. Ensuring police understand coercive control and consider the history of DFV and coercive control in the relationship will help reduce misidentification.
* WLSV research showed that where the primary aggressor is wrongly identified it often occurred because police were not familiar with duties required of them in DFV situations as outlined in Victoria Police’s *Code of Practice for the Investigation of Family Violence.* WLSV suggest that police failure to interview both parties, or to interview the parties separately is a significant factor in misidentification because in the presence of the perpetrator victim-survivors are not safe to communicate what has occurred. [[167]](#footnote-168) Ensuring that both parties are interviewed and are interviewed separately is important to reduce misidentification.
* Police usually focus on single incidents of visible or physical violence. Nancarrow and others[[168]](#footnote-169) have argued that his focus does not always support the appropriate application of DFV legislation where violence should be considered in context in order to assess the need for protection from future harm. Obtaining the history of violence of the defendant is important to correctly identify which party is most in need of protection. This should include the history of physical violence and coercive control.
* Police often make an order in the immediate circumstances, but defer to magistrates as to whether a final order is needed. However, magistrates often rely on the initial assessment by police, which can lead to misidentification that travels through the system and is difficult to correct. It is important for courts to have the power to not proceed with an application where they believe that misidentification has occurred. [[169]](#footnote-170)
* The use of an evidence-based DFV Risk Assessment and Management Tool and Framework may assist in reducing misidentification. The TFHC has developed and authorised such a multi-disciplinary tool for use in the NT.[[170]](#footnote-171) However, it needs to be translated into a tool that police can readily and efficiently use when called to an incident.

The implications of misidentification are extremely significant for the victim as the ANROWS and WLSV research highlights. When police or courts incorrectly identify a long-term victim as a defendant in a DVO application, it causes the victim to lose confidence in the system and dissuades them from reporting further incidents to the police. An initial erroneous assessment about who is the victim and who is the perpetrator can also follow the victim through the system to create doubt that they have been subjected to violence which allows the abuse to continue. In this way, mutual orders can result in families being *less safe* because victim-survivors named as defendants will be reluctant to call police for help.

#### PROPOSAL LR 12

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

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

This test is not in use elsewhere and careful consideration needs to be given to whether it is likely to be helpful in practice. There are also questions to be resolved, for example, how does the court obtain the evidence to make this risk assessment as to who is most in need of protection. Proposal LR 11 above to require police to provide a history of current and past DVOs and the defendant’s criminal history to the court at the first mention of a DVO application is expected to assist.

Submissions on whether this test could assist in reducing misidentification are welcome, including whether there may be unintended consequences of this proposal.

Proposal 7 to issue a statutory guidance framework on coercive control is also expected to guide courts, police and first responders to correctly identify the person most in need of protection.

#### PROPOSAL LR 13

**It is proposed to amend section 41 along the lines:**

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

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

### Premises access orders

Section 20 provides a presumption in favour of a protected person with a child remaining at home.

Section 22 provides that a DVO may include a premises access order:

1. requiring the defendant to vacate stated premises where the defendant and protected person live together or have previously lived together; or
2. restraining the defendant from entering such premises except on stated conditions.

Before making a premises access order, the issuing authority must consider the effect of making the order on the accommodation of persons affected by it (section 22(2)).

The order applies regardless of whether the defendant has a legal or equitable interest in the premises (section 22(3)).

Stakeholders have suggested that these provisions require amendment, to spell out the matters that the court should take into account in making these orders, and particularly to ensure that the safety of the protected person and any children in the care of the protected person is the paramount consideration.

Sections 63 and 64 of the *Domestic and Family Violence Protection Act 2012* (Qld) have some relevant provisions and it is proposed that these be used in the NT.

See also section 82 of the Victorian *Family Violence Protection Act 2008* which provides that the court to must consider an exclusion condition if it is making a DVO, and if the court decides that an exclusion condition is appropriate against an adult defendant, and the protected person does not oppose it, the order must include the exclusion condition in the order.

#### PROPOSAL LR 14

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

Under the Queensland Act, this is called an ‘ouster condition’. While it is not proposed to adopt the term ‘ouster condition’ in the NT, it is proposed to use the term ‘exclusion condition’ to avoid some of the confusion which has arisen in relation to ‘premises access order.’

**An order excluding the defendant from the premises**

A DVO may include an order (an exclusion condition) on the defendant that prohibits the defendant from doing all or any of the following in relation to the stated premises –

1. remaining at the premises;
2. entering or attempting to enter the premises;
3. approaching within a stated distance of the premises.

To remove any doubt, it is declared that the premises that may be stated in the exclusion condition include:

1. premises in which the defendant has a legal or equitable interest; and
2. premises where the protected person and the defendant live together or previously lived together; and
3. premises where the defendant lives, works or frequents.

Before making an exclusion condition with respect to the defendant’s usual place of residence, the issuing authority must consider the effect of making the order on:

1. the safety of the protected person and any children in the care of the protection person – and this must be the paramount consideration;
2. the continuity and stability in the care of any children living with the protected person;
3. the desirability of minimising disruption to the life of the protected person and any children in the care of the protected person, including in education, training, employment, family and social networks;
4. the views of the protected person if they wish to express a view;
5. the accommodation needs of the defendant, the protected person, any children, and any other person affected by the order.

It is proposed that there remains a presumption in favour of the protected person remaining in the premises.

Along the lines of section 64(2) of the Queensland Act, it is proposed to provide that the fact that the protected person does not express any views or wishes about the condition does not of itself give rise to an inference that the protected person does not have views or wishes about the condition being imposed and that the court must give reasons for imposing or not imposing the condition (section 64(3)).

The proposed repeal of section 22 will also remove the need for the protected person and defendant to have lived in the property together before an exclusion condition can be made.

### What a DVO may provide

Section 21 of the DFV Act sets out that a DVO can provide:

* an order imposing the restraints on the defendant stated in the DVO that are considered necessary or desirable to prevent the commission of domestic violence against the protected person;
* an order imposing obligations on the defendant stated in the DVO as considered necessary to ensure the defendant accepts responsibility for the violence committed and to encourage the defendant to change his or her behaviour;
* other orders that are just or desirable to make in the circumstances of the particular case;
* an ancillary order that aims to ensure compliance by the defendant.

Section 21(1A) also sets out that an ancillary order may prohibit the defendant from engaging in specified conduct or require the defendant to take specified action. The regulations may make a provision about a matter relating to an ancillary order and section 21 is not limited by the specific orders provided in Part 2.3 of Chapter 2.

Stakeholders have raised some limitations with section 21. While most DVOs include an order that the defendant not harm the protected person, it was suggested that this should be mandatory condition of all DVOs. While section 21 is broad enough to encompass an order prohibiting the defendant from attempting to locate a victim, it was suggested that it would be helpful for this to be expressly stated in the legislation.

In *AB v Hayes and Anor* [[171]](#footnote-172)the Supreme Court held that the Local Court did not have the power to order a person to destroy property (in this case digital images of a sexually explicit nature). The Supreme Court held that section 21 as currently worded did not grant the Local Court power to order the destruction of property as clear unambiguous words would be required for a court to interfere with a proprietary interest.

It has been proposed that section 21 be amended to provide that a DVO can include an order that the defendant destroy intimate images, documents or files of a sexual nature. The existence of images or files of this kind, and threats to disseminated them, can be used for the purposes of domestic violence to harass or intimidate a victim.

#### PROPOSAL LR 15

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

**A DVO must include a condition that the defendant must be of good behaviour towards the protected person/s and is restrained from committing all forms of domestic violence against the protected person/s.**

**If the court does not exercise its power to impose this condition, the court is taken to have done so.**

**It is further proposed to add a note beneath this provision referring to the definition of domestic violence in section 5.**

#### PROPOSAL LR 16

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

#### PROPOSAL LR 17

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

### Orders to attend rehabilitation

Section 24 provides that the court may include in a DVO an order requiring the defendant to take part in a rehabilitation program when making or varying a DVO. The safety and protection of the protected person must be the paramount consideration.

The order may only be made if the court is satisfied that the defendant is a suitable person to take part in the program and there is a place available in the program for the defendant. The order may only be made if the defendant consents to the order.

A program may be declared by the Minister if the primary objective of the program is to change the behaviour of a person who commits domestic violence to:

1. reduce and prevent the person committing domestic violence; and
2. increase the safety and protection of persons with whom the person is or may be in a domestic relationship; and
3. ensure the person accepts responsibility for the person’s behaviour.

If the court makes an order under section 24(1) for the defendant to attend a domestic violence program, it can also order the defendant to take part in another program the court considers appropriate (for example, an alcohol rehabilitation program).

Amendments to the DFV Act that were passed in 2020 introduced a new Part 2.11A to the DFV Act to provide for rehabilitation programs, including:

* powers for the court to require a defendant who is ordered to attend a program to appear before the court for a review of the defendants’ progress;
* the obligations of program facilitators, including circumstances in which program facilitators must provide notices to the court;
* when a defendant is considered to have satisfactorily completed the program;
* when an order to attend rehabilitation may be revoked.

Stakeholders have suggested that the NT mandate attendance at behaviour changes programs along the lines of counselling orders provided for in Part 5 of the *Family Violence Protection Act 2008 (Vic)*.

Part 5 of the *Family Violence Protection Act 2008 (Vic)* provides that if the court makes a final Family Violence Intervention Order (equivalent to a DVO in the NT) it must make an order requiring that the defendant be assessed for counselling and that the assessor provide a report to the court about the defendant’s eligibility for counselling (unless there is already an order in force or there is no approved counselling available, or in all the circumstances of the case it is not appropriate to make the order).

If the court is provided with a report and is satisfied that the defendant is eligible to attend counselling, it must make an order requiring the respondent to attend counselling unless the respondent doesn’t have the ability or capacity to participate in the counselling.

#### PROPOSAL LR 18

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

It is noted that there are currently insufficient programs in the NT for a provision of this kind to take effect. However:

* In the DFV Act an order to attend a rehabilitation program may only be made if the court is satisfied there is a place available in the program for the defendant.
* Similarly, under the Victorian provisions, the court is not required to make an order if the court is satisfied that there is no approved counselling that is reasonably practicable for the respondent to attend (section 130(2)(b)(i).

The availability of programs is considered in Part 5 of this paper.

### Prohibition on publication

Section 26 of the DFV Act provides that a court DVO can prohibit the publication of personal details of a protected person or witness in a proceeding if satisfied the publication would expose the person to a risk of harm.

Section 124 makes it an offence if a person publishes a person’s personal details in breach of an order made under section 26.

Section 123 of the DFV Act provides that it is an offence for a person to publish the name of a child who is a protected person named in a domestic violence order or who is or may be a witness in a domestic violence order matter or who is or is likely to be mentioned in a DVO. This does not apply to publication made in an official report of the proceeding or if the court consents to the publication of the child’s name.

Stakeholders have suggested that section 26 should be expanded to include defendants as a number of protected persons have expressed reluctance to proceed with a DVO application against a high profile defendant, especially in regional areas.

#### PROPOSAL LR 19

**It is proposed to amend section 26 so that a court DVO can prohibit the publication of personal details of a party or witness in a proceeding if satisfied the publication would expose the protected person or witness to a risk of harm or if satisfied it is appropriate in the circumstances.**

**It is further proposed to amend sections 123 and 124 to clarify that these provisions do not apply to information shared with another entity under a recognised information sharing scheme (including Chapter 5A of the DFV Act or Chapter 5.1A of the *Care and Protection of Children Act 2007*).**

### Duration and extension of DVOs

The duration of a DVO is set out in section 27 as follows:

A DVO (other than an interim court DVO) is in force for the period stated in it.

Note

For the duration of an interim court DVO, see section 35(3)

However, the provision does not set out what the court should consider in determining the duration of a DVO or the test that should apply.

This is not the case in other jurisdictions. Sections 97, 98 and 99 of the *Family Violence Protection Act 2008 (Vic)*, provide that a final order remains in force for the period specified in the order unless it is sooner revoked by the court or set side on appeal. If no period is specified in the order it continues indefinitely until it is revoked or set aside on appeal (section 99).

Section 97(2) of the *Family Violence Protection Act 2008 (Vic)*, provides that the court must take into account:

1. that the safety of the protected person is paramount, and
2. any assessment by the applicant of the level and duration of the risk from the respondent; and
3. if the applicant is not the protected person, the protected person’s views, including the protected person’s assessment of the level and duration of risk from the respondent.

Section 97(3) provides that the court may also take into account any matters raised by the respondent that are relevant to duration of the order.

The duration of a police DVO is not specified in the DFV Act, however, the Supreme Court held that ‘A police domestic violence order continues in force until it is revoked either in accordance with Part 2.9 of the Act following a review, or under s82 of the Act following a show cause hearing.’[[172]](#footnote-173)

The DFV Act does not include a provision to extend a DVO that is about to expire if it is still necessary for the safety and protection of the protected person. Other jurisdictions do have provisions to extend a DVO, see for example, section 106 of the *Family Violence Protection Act 2008* (Vic).

#### PROPOSAL LR 20

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

* **A DVO (other than an interim court DVO) is in force for the period stated in it.**
* **If the court fails to specify a period for an order against an adult the order continues for five years or until it is revoked or set aside on appeal. [[173]](#footnote-174)**
* **If the court fails to specify a period for an order against a child, the order continues for 12 months.**
* **The duration of the DVO should be the period that the court considers necessary and desirable for the safety and protection of the protected person.**
* **In determining the period for which the DVO is in force, the court must take into account:**
  + **that the safety and protection of the protected person is paramount;**
  + **any assessment by the applicant of the level and duration of the risk from the defendant;**
  + **if the applicant is not the protected person, the protected person’s views, including the protected person’s assessment of the level and duration of risk from the defendant.**
* **In determining the period for which the DVO is in force the court may take into account the length of a prison term to which the defendant has been, or is likely to be, sentenced to provide a period of protection for the protected person upon the defendant’s release.**
* **The court may also take into account any matters raised by the defendant that are relevant to the duration of the order.**

**It is further proposed that there be a specific provision for making a DVO of indefinite duration where there is significant and ongoing risk that cannot be adequately mitigated by an order of limited duration, along the lines of section 79B of the *Crimes (Domestic and Personal Violence) Act 2007 (NSW).* This provision is set out in full in Attachment 7.7.**

#### PROPOSAL LR 21

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

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

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

#### PROPOSAL LR 22

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

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

### Venue

The DFV Act is silent about which venue proceedings are to be heard in. Rule 5.01 of the Local Court (Civil Jurisdiction) Rules therefore applies to determine the proper venue. Under rule 5.01(2) a proper venue is the venue closest to the defendant. This can cause significant stress and disruption to protected persons. The protected person applicant may be disadvantaged, or may perceive themselves to be at a disadvantage as the venue in the NT may hundreds of kilometres away. Many legal services provide local service delivery only. The protected person’s legal service may not be able to maintain their continuity of legal representation if the matter proceeds to a hearing. Stakeholders have argued that the application of this rule to DFV matters is inconsistent with the objects of the DFV Act to ensure the safety and protection of all persons, including children, who experience or are exposed to domestic violence (section 3(1)(a)) and the paramountcy of the safety and protection of the protected person in section 19(1).

#### PROPOSAL LR 23

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

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

### DVO applications

Section 30 of the DFV Act provides that an application for a DVO must be made on an approved form and be filed in the court.

Stakeholders have raised concerns that the approved form includes the applicant/protected person’s address. The disclosure of the applicant/protected person’s previously unknown address to the defendant can create a significant safety risk for the protected person and must be avoided. Often applicants are not aware that this form, along with their address, will be served on the defendant.

Section 25 of the DFV Act provides that a protected person’s address, or intended residential address, must not be stated in a DVO unless the issuing authority is satisfied that defendant knows the address or it is necessary to achieve compliance with the order and will not seriously threaten the safety of the protected person.

Other jurisdictions have provisions that prevent a protected person’s address being included on the application. Section 43 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) provides that ‘the address at which a protected person resides or intends to reside must not be stated in an application for a [DVO] or an order’, unless the protected person consents, the defendant already knows the address or where it is necessary to state the address in order to achieve compliance with the order.

Section 31 of the DFVA provides that as soon as practicable after the application is filed, a registrar must give written notice to the parties to the DVO of the time and place for the hearing of the application.

It is common practice in the NT for an application to be served on the defendant with the supporting affidavit. Although section 31 of the DFV Act does not require service of the affidavit, Practice Direction 30 of the NT Local Court requires the filing of an affidavit in support of a DVO application and rule 6.01 of the *Local Court (Civil Jurisdiction) Rules 1998.* Local Court Rules require all documents filed in relation to a proceeding must be served on the other party.

Some stakeholders argue that service of the supporting affidavit is necessary to provide procedural fairness for the accused.

However, in the 2016 Consultation Report a number of stakeholders expressed the strong view that for safety reasons, amendments are needed to clarify that the defendant should only be served with a copy of the DVO application, with a copy of the supporting affidavit to be provided once the defendant attends court or at the request of their legal representative.

The stakeholders expressed the following concerns about the defendant being served with a copy of the supporting affidavit before the matter reaches court:

* The particulars contained in the supporting affidavit may aggravate the defendant (and potentially the families of the defendant and the protected person) and escalate conflict.
* These documents may be served through being left with another resident of the defendant’s home. There is a significant risk that sensitive information could be circulated within the community, causing the victim shame.
* It is especially concerning if the matters set out in the affidavit involve sexual activity or abuse or other private and sensitive information.

For safety reasons, it is preferred that the defendant receive the affidavit once the proceedings are under way and legal advice and support is available to the defendant.

Jurisdictions around Australia (other than SA and NT) do not require an affidavit to be filed in support of a DFV application. Their application forms are more comprehensive than the application forms in NT and the content of the application form itself contains sufficient information to provide procedural fairness for the defendant.

#### PROPOSAL LR 24

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

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

#### PROPOSAL LR 25

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

### Number of protected persons listed on a DVO

In the NT, section 13(3) allows for more than one protected person to be named in a DVO application and order. This is utilised so that child in the care of the protected person can be on the protected person’s order. However, it poses difficulties for multiple adult protected persons to be on one application and order and is generally not encouraged. An exception might be helpful in relation to children of an adult protected person who are themselves young adults.

It is noted that section 76 of the *Family Violence Protection Act 2008* (Vic) provides for the court to make a final order against an additional person (who is an associate of the respondent) and make a final order to protect an additional person (who is an associate of the protected person).

#### LR PROPOSAL 26

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

### Court may refuse to make a DVO

ANROWS Research on the misidentification of a person most in need of protection recommended that an important way to prevent misidentification was to provide an explicit option for the court to refuse to make a DVO if it believes a person who is a victim-survivor of DFV has been misidentified as a defendant in a DVO application. [[174]](#footnote-175)

#### PROPOSAL LR 27

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

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

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

### Interim Court DVOs

Section 35 provides for the making of Interim court DVOs. The court may make the interim court DVO:

1. even if the defendant does not appear at the hearing; or
2. if the defendant appears at the hearing:
   1. before hearing the defendant’s evidence; or
   2. even if the defendant objects to the order being made.

There is a need to clarify that an interim court DVO can be made or varied at any stage in the proceedings.

Following the decision in *Atkinson v Bardon*[[175]](#footnote-176) it has also been proposed that there is a need to clarify that an interim order can be made even if the defendant has not been able to be served with the initiating documents or provided with the time, date and place of the hearing.

The order cannot be enforced until the defendant has been given a copy (see section 120(2)(a).

#### PROPOSAL LR 28

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

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

### DVOs with the consent of the parties

Part 2.5 of the DFV Act provides for the making of a DVOs with the consent of the parties. Reciprocal DVOs are sometimes made under this section with the consent of both parties.

Stakeholders have advised that sometimes there is a genuine need for both parties to be protected from each other, and reciprocal orders are justified. However, sometimes cross applications are a tactic or a way for a perpetrator of DFV to place some of the blame on the victim by only consenting to an orders if the victim-survivor also consents to an order.

#### PROPOSAL LR 29

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

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

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

### Police DVOs

Section 41(1) provides for the making of a DVO by authorised police officers if the police officer is satisfied:

1. it is necessary to ensure a person’s safety:
   1. because of urgent circumstances; or
   2. because it is not otherwise practicable in the circumstances to obtain a Local Court DVO; and
2. a Local Court DVO might reasonably have been made had it been practicable to apply for one.

Section 41(2) provides that: ‘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.’

The police DVO is a summons to the defendant to appear before court to show cause why the DVO should not be confirmed by the court (section 44).

Once a police DVO is made, only the court has the power to revoke or vary a police DVO.[[176]](#footnote-177)

#### PROPOSAL LR 30

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

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

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

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

**It is further proposed to amend Part 2.6 to:**

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

This is consistent with the proposed amendments to the *Bail Act 1982*, outlined in Part 5.2 below.

### DVOs made by courts in criminal proceedings

Often DVO applications travel with related criminal proceedings, and after a person has been found guilty of the criminal offence, or entered a plea of guilt, the court makes a DVO. If a DVO is already in place, the court may vary the existing DVO. This prevents the need for additional civil proceedings which may add to the stress and trauma of the victim. Section 45 provides:

Power of court if person guilty of related offence

(1) A court before which a person pleads guilty to, or is found guilty of, an offence that involves domestic violence may make a domestic violence order under this Part against the person if it is satisfied a Local Court DVO could be made against the person.

(2) The court may make the order on its own initiative or on application by the prosecutor.

(3) If a DVO is already in force against the person, the court:

(a) must consider the DVO and whether, in the circumstances, the DVO needs to be varied, including, for example, by varying the date the DVO ends; and

(b) may vary the DVO if the court considers it needs to be varied.

(4) This section applies whether or not the court makes another order in relation to the person.

In *Arnott v Beams and Anor,* the NT Supreme Court held that a court can vary a police DVO under section 45 but cannot confirm the police DVO making it a final DVO unless the requirements of Part 2.10 have been met, that is, the defendant has been given a copy of the DVO and the court has considered any evidence or submissions from the parties.[[177]](#footnote-178)

Stakeholders have suggested that section 45 requires urgent amendment, as this decision creates practical difficulties and inconsistences and may create added stress for victims.

An implication of the decision in *Arnott v Beams and Anor* is that the court can make a DVO under section 45:

* where a police DVO has already had a confirmation hearing under Part 2.10 and become a final DVO;
* where there is a final court DVO already in place; and
* where there is no DVO in place.

However, it cannot confirm a police DVO to make it a final order without meeting the requirements in Part 2.10. This is likely to require a separate hearing.

In the NT, approximately 85 per cent of DVOs are made by Police under section 41 and so this decision may impact on a significant number of matters.

Stakeholders have also observed that the Supreme Court seems reluctant to make a DVO under Part 2.7.

#### PROPOSAL LR 31

**It is proposed to amend Part 2.7 along the lines:**

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

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

### Variation and confirmation of DVOs (Parts 2.8, 2.9 and 2.10)

The provisions for the variation and confirmation of DVOs are structured in the following way in the DFV Act.

**Part 2.8** provides for the variation and revocation of DVOs:

* Division 1 provides for the variation and revocation of DVOs, and special provisions for variation ex parte and variation by consent. Division 1 only applies to a court DVO, other than an interim court DVO. It does not apply to police DVOs (section 47).
* Division 2 provides for variation of DVOs in urgent circumstances. Division 2 applies to both court and police DVOs, other than an interim court DVO (section 64).

**Part 2.9** provides for the review of police DVOs. It must be facilitated by a police officer. The DVO may be confirmed with or without variations or revoked. If the order is confirmed, it is taken to be a summons for the defendant to appear before the court, to show cause as to why the DVO as varied should not be confirmed by the court.

**Part 2.10** provides for the confirmation of DVOs. It applies if the defendant is summoned to appear before court to show cause why a DVO should not be confirmed (section 80).

**Table 1: Summary of the structure of Chapter 2 of the *Domestic and Family Violence Act 2007***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| How it is initiated | Interim protection | How it is varied | How order is finalised | Final DVO | How final order is varied or revoked |
| Police DVO  Authorised police officer in urgent circumstances (s41) | Police DVO continues in the same terms  Or the terms varied under Part 2.9 | Part 2.9 | Part 2.10 – Confirmation hearing  Part 2.7 – After a finding/plea of guilt  Part 2.5 – With consent | Final DVO | Part 2.8  (Note: Court can make an interim variation order under s52A until the application is decided) |
| Court DVO  Application (s28 or 29) | Interim Court DVO is made under s35 | Part 2.8  (Note: Court can make an interim variation order under s52A until the application is decided) | Part 2.10 – Confirmation hearing  Part 2.7 – After a finding/plea of guilt  Part 2.5 – With consent |

**Variation of unconfirmed police DVOs**

The DFV Act is structured on an assumption that police DVOs are brought to the court quickly to be “confirmed” by the court (under Part 2.10) when they become a court DVO. In practice, many police DVOs remain as unconfirmed police DVOs for a period of time whilst parties prepare for the hearing by the court. Often initial police DVOs are made by police as a matter of urgency when parties are in immediate crisis. They are made before all the facts and circumstances are known. This means they may need to be varied in order to be workable for the parties (for example, to make arrangements for the children where it is safe to do so).

There is no express power in the DFV Act for the variation of unconfirmed police DVOs other than in urgent circumstances (under Part 2.8, Division 2) where there is a substantial change in relevant circumstances (section 65).[[178]](#footnote-179) Parties have found it is difficult to meet this criteria although sensible variations to the orders are clearly required. This creates practical difficulties for all parties.

In addition, stakeholders have been concerned that the provisions in Part 2.9 allow the court to vary or revoke a DVO on oral application of the defendant, in the absence of the protected person, and without the protected person being made aware of the application or having an opportunity to be heard on the matter.

It is therefore proposed to amend Part 2.9 to enable the judge to vary the DVO on an interim basis without confirming it. It is also proposed to provide that the DVO must not be revoked or significantly varied to make it less restrictive without the protected person, being made aware of the application and having an opportunity to be heard. To make an order less restrictive without considering the protected person’s point of view may jeopardise the protected person’s safety.

As outlined in proposal LR 3 above, it is proposed to clarify the definition of ‘party’ in section 4, so that it includes:

1. the protected person; and
2. the defendant; and
3. if the police apply for a DVO under section 28 or section 29 or make a police DVO under section 41, the police are also a party and
4. if a person acting for an adult or a child in a domestic relationship with the defendant applies for a DVO on behalf of an adult or a child under section 28 or section 29 they are also a party.

It is also proposed to amend Part 2.8 to clarify that once an application to vary or revoke has been filed, the existing order continues in force until the DVO has been varied, revoked, confirmed or set aside on appeal.

It is important that protected persons who attend court can make an oral application for a DVO to be varied, and the court may vary the order, even in the defendant’s absence, with procedures in place to ensure the defendant receives notice of the variation (and the right to object).

For safety reasons, it is particularly important that a DVO is not varied down on the oral application of the defendant without the protected person having an opportunity to be heard, and that any ex parte changes are not made without considering the protected person’s point of view if they wish to express a view.

#### PROPOSAL LR 32

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

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

The amendments to Part 2.8, 2.9 and 2.10 proposed above (proposal LR 32) will require various associated amendments. These are set out below to avoid the wording of the proposal being too lengthy.

**Part 2.8 Variation and revocation of DVOs’ –** Detailed amendments proposed along the lines:

1. Where a young person makes an application to vary/revoke under section 48, they must first apply for leave of the court, using the same considerations set out in section 28(4).
2. Amend section 52 to ensure that all parties have a right to be heard and any other person, who in the court’s opinion may has a direct interest in the outcome (note clarification of the definition of party in proposal LR 3 above).
3. Amend to provide that once an application to vary or revoke has been filed, the order continues in force until varied or revoked or confirmed or set aside on appeal.
4. Add to the note for section 53 along the lines: Under section 19(1) in deciding whether to make a DVO, and in deciding the terms of a DVO, the issuing authority must consider the safety and protection of the protected person to be of paramount importance.
5. Amend section 56 to add ‘or revoking a DVO’.
6. Amend section 56 along the lines: The order must not be revoked or significantly varied to make it less restrictive without the protected person, being made aware of the application and having an opportunity to be heard. Add note along the lines, that this is required to ensure the safety and protection of the protected person is the paramount consideration.
7. Amend section 57(1)(b) so it applies if any party does not consent to the order being made, not just the defendant.
8. Amend sub-division 5 along the lines that mutual orders cannot be made by consent of the parties unless the court has considered the matters in section 19 and is satisfied that the requirements of section 18(1) are met for both parties and determined that given the objects of the DFV Act it is appropriate to make an order against both parties.

**Amend Part 2.9** **‘Review of police DVOs’** - Amendments as outlined in proposal LR 32b above.

**Amend Part 2.10** **‘Confirmation of DVOs’ –** Detailed amendments proposed along the lines:

1. Amend section 82(1) to avoid any doubt that the Court may:
   1. confirm the DVO (with or without variations);
   2. vary the DVO without confirming it;
   3. revoke the DVO.
2. Amend to provide for the procedure if the defendant does not attend the confirmation hearing and there are variations to the DVO along the lines:
   1. If the DVO is confirmed with variations that put greater restraint on the defendant than that provided for in the summons and the defendant is not present at the hearing, the defendant has 21 days to object to the DVO in its varied terms.
   2. The objection must be in writing on a standard form and request a new confirmation hearing to enable the defendant to be heard.
   3. Amend to avoid any doubt, the DVO with variations remains in force, from the time the defendant receives a copy of the varied order, notwithstanding his right to object.
   4. If the defendant does not attend the confirmation hearing after being served with the DVO with varied terms, the DVO as varied is final.
3. Amend Part 2.10 to provide an explicit requirement that the matters in Part 2.2 and 2.3 are taken into account. Add to the note along the lines: Under section 19(1) In deciding whether to make a DVO, and in deciding the terms of a DVO[[179]](#footnote-180), the issuing authority must consider the safety and protection of the protected person to be of paramount importance.

### Retrieval of property

Section 85 of the DFV Act permits a defendant if accompanied by a police officer to enter premises subject to a premises access order to retrieve his or her personal property. However, there is no mechanism which enables protected persons who have had to flee their homes due to domestic violence to be accompanied by police to retrieve their property.

#### PROPOSAL LR 33

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

### Vulnerable witness provisions

Vulnerable witness provisions have recently been amended in the NT by the *Evidence and Other Legislation Act 2020* which commenced on 29 July 2020.

The effect of these amendments was to:

* allow a ‘recorded statement’ of complainants to be used in DVO proceedings;
* introduce a new model of cross examination by vulnerable witnesses where defendants are unrepresented;
* create a statutory presumption that the evidence of vulnerable witnesses is to be given via video conferencing;
* clarify the general power of courts to order the use of video conferencing and provided a list of factors to guide the court in the use of that power; and
* CREATE a statutory presumption that the evidence of vulnerable witnesses and experts and the corroborative evidence of a member of the police force is to be given via audio-visual link.

It is not proposed to make further amendments to vulnerable witness provisions as part of this review, except for the proposal below.

Section 110 of the DFV Act provides that a vulnerable witness is entitled to give evidence using an audio-visual link. It also provides that if an audio-visual link is not available, or the witness chooses to give evidence in the courtroom a screen or partition or one-way glass must be placed so that the witness’ view of the defendant is obscured but not the view of the witness by the judge. Although these safeguards for vulnerable witnesses are extremely important and well-utilised, it has been suggested that some witnesses may wish to face and see the defendant in the courtroom and, if so, they should be entitled to do so.

#### PROPOSAL LR 34

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

### Evidentiary matters

It has been suggested that for DFV proceedings where parties may be vulnerable and under stress and where it is particularly important that parties understand the proceedings, it is appropriate for the court proceedings to be conducted with as little formality and legal technicality as possible.

It is proposed to retain section 116 as currently worded:

In making, confirming varying or revoking a DVO the issuing authority may admit and act on hearsay evidence.

#### PROPOSAL LR 35

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

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

### Mandatory Reporting

Under section 124A of the DFV Act, all adults in the NT are required by law to report certain incidents of DFV to the police. The mandatory reporting provision commenced in March 2009 and was considered to be a world first.[[180]](#footnote-181) The rationale was to challenge the culture of silence and inaction in relation to DFV so that families are safer.

An adult commits an offence if they believe on reasonable grounds that either, or both, of the following circumstances exist and they do not report it to police as soon as practicable:

1. another person has caused, or is likely to cause, harm to someone else (the victim) with whom they are in a domestic or family relationship, and/or
2. the life or safety of another person (also the victim) is under serious or imminent threat because domestic violence has been, is being or is about to be committed.

The maximum penalty is 200 penalty units.

Harm means physical harm that is serious harm as defined in the Criminal Code.

Physical harm as defined in section 1A of the Criminal Code means:

* temporary or permanent harm;
* physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that a person might reasonably object to in the circumstances, whether or not the person was aware of it at the time;
* harm does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

Serious harm is defined in section 1 of the Criminal Code to mean any harm (including the cumulative effect of more than one harm):

* that endangers, or is likely to endanger, a person’s life;
* that is or is likely to be significant and longstanding.

It is a defence to a prosecution if the defendant has a reasonable excuse. Without limiting what may be a reasonable excuse, it is a reasonable excuse if the defendant establishes one or more of the following:

* The defendant reasonably believed someone else had reported the DFV.
* The defendant was engaged in planning the removal of the victim survivor from DFV and intended to report the matter as soon as practical after the removal.
* The defendant believed a serious or imminent threat to the life or safety of any person may result.

The ALRC and NSWLRC considered the NT’s mandatory reporting laws in its 2010 Report, *Family Violence – A National Legal Response*.[[181]](#footnote-182)

The Commissions considered the views of stakeholders and academics who expressed the view that mandatory reporting laws can undermine the autonomy of the victims to decide when to call the police. Some stakeholders believed that safety and welfare was not always best secured by calling the police.

The Commissions acknowledge that whether, and under what circumstances, the state should defer to the wishes of victims and not investigate or act upon family violence remains a contested issue. Victims may wish their injuries to be treated confidentially by a doctor but not to have police involved.

The Commissions found that the potential for mandatory reporting to isolate victims of family violence by acting as a disincentive for victims to seek assistance, guidance or medical care. The Commissions found that mandatory reporting may disempower victims, and take from them some of the tools with which, in their judgement, they are best able to use to combat or escape from violence.

The Commissions believed that children are more vulnerable and less capable of judging how to respond, to and escape from family violence so mandatory reporting of child abuse is appropriate. However, for adult DFV victims mandatory reporting may remove the victim’s autonomy and have potential negative consequences. The Commissions suggested that the operation of the NT’s mandatory report laws be monitored and evaluated.

Some stakeholders in the NT have suggested that mandatory reporting laws provide a disincentive for Aboriginal women, in particular, to seek the assistance of medical and other services when they have experienced DFV. Moreover when they do seek help they may withhold information about how the injuries arose. Mandatory reporting may prevent full and frank conversations arising about DFV which can inhibit referral to specialist services or safety planning.

They have suggested that mandatory reporting be abolished, or alternatively, that an exception is provided for health professionals, for example, that an additional reasonable excuse is added to section 124A(3) along the lines:

Health professionals and other helping professionals are not required to report to police if they reasonably believe that both:

* + there is no imminent or serious risk to the victim of further violence, and
  + reporting is likely to provide a disincentive or barrier to the victim seeking or consenting to the provision of support, assistance or medical care, now or in the future.

Other stakeholders, including NT Police, are opposed to the provision of an exception for health professionals. They are that of the view that the NT has a higher rate of DFV than other jurisdictions, and DFV has become normalised in many communities. Assault in the NT disproportionately impacts on Aboriginal women, who are eight times more likely to be assaulted than non-Indigenous men or women, and three times more likely to be assaulted than Aboriginal men.[[182]](#footnote-183)

Many bystanders, including professionals in universal services, fail to identify and report signs of DFV. The compulsory nature of the mandatory reporting requirement sends a clear message to everyone in the NT that there is a shared obligation for all adults to report DFV to authorities. The mandatory reporting provision may be especially important in a jurisdiction like the NT where there is a high turnover of residents and workers.

#### PROPOSAL LR 36

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

### Penalties for contravention of a DVO

If an adult is found guilty of contravening a DVO, the person is liable to a penalty of 400 penalty units or imprisonment for two years (section 121(1)).

However, mandatory sentencing provisions apply. If an adult has been previously found guilty of a DVO contravention offence, the court must record a conviction and sentence the person to imprisonment for at least seven days (section 121(2)). This does not apply if the offence does not result in harm to the protected person and the court is satisfied that it is not appropriate in the circumstances of the case, or it was a breach of an unconfirmed police DVO.

Under section 121(5), the court must not make an order for a person previously found guilty of a DVO contravention offence if the order would result in the release of the person from the requirement to actually serve the term of imprisonment imposed.

There are different views amongst the case law[[183]](#footnote-184) as to whether section 121(5) only applies to imprisonment imposed under section 121(2) or whether it applies to all terms of imprisonment. This raises the question of whether the court can suspend a prison sentence imposed on an adult who has previously been found guilty of a DVO contravention offence.

However, in its March 2021 final report on *Mandatory Sentencing and Community-Based Sentencing Options* the Northern Territory Law Reform Committee recommended that the Government repeal the mandatory sentencing provisions in section 121 and section 122 of the DFV Act.

Many jurisdictions have a tiered approach to penalties for contravening a DVO which allows for the seriousness of the conduct and repeat offending to be taking into account in sentencing.

For example, Victoria has penalties of:

* two years imprisonment of 240 penalty units for contravening a family violence intervention order (section 123);
* five years imprisonment or 600 penalty for contravening an order intending to cause harm or fear for safety (section 123A);
* five years imprisonment or 600 penalty for persistent contravention ie. three breaches in 28 days.

Queensland has two offences increasing in severity for repeat offending:

* 120 penalty units of three years imprisonment if no prior convictions; and
* 240 penalty units and five years imprisonment if prior convictions for a domestic violence offence.

In South Australia, the penalty increases from two years imprisonment to four years imprisonment if there is a second or subsequent contravention or the contravention involved physical violence or a threat of physical violence.

Tasmania has a gradation of penalties from a maximum of 12 months for a first offence to 18 months for a second offence to two years for a third offence to five years for a fourth and subsequent offence.

It is proposed that a tiered approach to sentencing for a contravention of a DVO be adopted in the NT. The mandatory sentence provision would therefore no longer be required.

#### PROPOSAL LR 38

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

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

### Chapter 5A Information Sharing Scheme

In October 2018, amendments were made to the DFV Act to introduce a new DFV Information Sharing Scheme. The provisions are set out in Chapter 5A and commenced on 30 August 2019.

The Information Sharing Scheme and Chapter 5A sit within the responsibility of TFHC.

Section 124E provides that an information sharing entity may give information to another information sharing entity if the entity that holds the information believes on reasonable grounds that:

1. a person fears or is experiencing domestic violence; and
2. the information may help the entity receiving the information to:
   1. assess whether there is a serious threat to a person’s life, health, safety or welfare because of domestic violence; or
   2. lessen or prevent a serious threat to a person’s life, health, safety or welfare because of domestic violence, including by providing or arranging a domestic violence related service to or for a person.

Information sharing entities are as provided for in the definition of an information sharing entity (ISE) in section 124B. The definition includes the CEO of Government agencies who provide specified services and the principal of non-government schools. Other persons or entities that provide a DFV‑related service (for example, non-government organisations) may be prescribed by regulation. Before prescribing a person or body as an ISE, the Minister must consult the person or body, and be satisfied that the person or body would comply with the information sharing guidelines (section 127(3)(b)). A number of non-government organisations have been prescribed as ISEs to date, and this occurs through application to THFC.

It has been noted that the requirement that ISEs be prescribed in regulation means there is some months delay between when the application is submitted and when the organisation is prescribed as an ISE. It is proposed that publishing ISEs in the Gazette rather than prescribing them in regulation might be preferable.

Stakeholders also have raised some limitations in relation to the operation of Chapter 5A, particularly about how it interacts with the obligations in the *Information Act 2002.* This has impacted for example, on case management meetings occurring as part of the Specialist Approach to DFV at the Local Court in Alice Springs, and has meant that some matters are not currently included in the case management meetings.

The DFV Act provides that the Information Commissioner must review the operation of Chapter 5A after the first two years of operation (section 124U). This review is currently under way. It is proposed that any further amendments to Chapter 5A that may be required are considered once the findings of the review are available.

However, preliminary input from stakeholders suggest that a number of amendments should be considered:

#### PROPOSAL LR 39

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

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

#### PROPOSAL LR 40

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

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

### Service of Applications and DVOs

The service of applications and DVOs is an important consideration in relation to the justice response to DFV. Concerns about service have been raised during the course of this review. Service can present particular challenges in the NT, particularly in remote locations, and also may have safety implications arising from the DFV. This issue has not been resolved prior to the release of this paper but requires further consideration as part of a co-ordinated inter-agency response to DFV and may require legislative amendment.

#### PROPOSAL 41

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

### Other proposed changes

Other amendments to the DFV Act are proposed as outlined below.

#### PROPOSAL LR 42

**Other proposed changes to the DFVA are to:**

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

## Proposed amendments to the *Bail Act 1982*

### Requirement for bail decision makers to consider DFV

*The Bail Act* 1982 requires bail decision-makers to consider various matters when making a decision about whether to grant a person bail (see section 24). This includes the risk of interference with evidence and witnesses, the risk of the accused committing an offence or breach of the peace or breach of bail, and risk to safety and welfare of the alleged victim, close relatives of the alleged victim, the carer of a child victim, or any other person whose safety or welfare could in the circumstances of the case be at risk if the accused person were released on bail.

Section 24(3) provides that:

In assessing risks to others that could result from the release of an accused person on bail, the authorised member or court must have regard to risks of the following kinds:

(a) a risk of violence or intimidation;

(b) a risk of property damage;

(c) a risk of harassment;

(d) any other risk to safety or welfare.

There is no explicit requirement to consider the risk of domestic violence if the accused is released on bail or to tailor bail conditions or make a DVO to mitigate that risk. Domestic violence services report that the risk of DFV is oftentimes not given sufficient weight by bail decision-makers, notwithstanding the requirements to assess risk set out in section 24.

The safety of alleged victim-survivor of DFV may be improved by requiring bail decision makers to consider the risk of DFV. This gives legislative expression to the right in the NT Charter of Victims’ Rights that victims are entitled to have their personal protection and welfare considered by the police and courts when deciding applications for bail.

#### PROPOSAL LR 43

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

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

### Allow adjournment to enable the prosecutor to obtain the victim’s view

Section 24(4) of the *Bail Act 1982* provides that if the alleged victim of an offence is a child, or the alleged offence is a serious sexual offence or a serious violence offence, the safety and welfare of the alleged victim must be considered with particular care.

Section 24(6) provides that if an alleged victim expressed concern to the prosecutor that the release of the accused person on bail could lead to a risk to the alleged victim’s safety or welfare, the prosecutor must, wherever practicable, inform the authorised member or court about that concern and the reasons for it.

However, bail applications are often listed with short notice. Sometimes the prosecutor has not had prior notice of the bail hearing and does not know the alleged victim’s views. It can be especially important to know the victim’s views in DFV and sexual offence matters. The National Risk Assessment Principles for DFV state that ‘A (victim) survivor’s knowledge of their own risk is central to any risk assessment’ (principle 3).[[184]](#footnote-185) Stakeholders have suggested that the *Bail Act* 1982 should allow an adjournment if necessary for the prosecutor to seek the alleged victim’s view so it can be provided to the court.

#### PROPOSAL LR 44

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

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

### DFV complainants to be notified of bail decisions and conditions

The NT Charter of Victims’ Rights 2019 [[185]](#footnote-186) outlines the rights of victims of crime in the NT, including the right for victims to receive information in a timely manner about the prosecution of the accused person. This includes the outcome of any application for bail by the accused, and any bail conditions imposed to protect the victim and their family members from the accused.

However, DFV services report that complainants in DFV matters often are not informed about whether or not bail has been granted to an accused and the nature of any bail conditions that might be relevant to their safety.

The Guidelines of the Director of Public Prosecutions (DPP) provide a clear indication at paragraph 11.6 that victims of crime should be informed in a timely manner about whether or not bail has been granted and any bail conditions relating to protecting witnesses from the offender. This is easier to implement in Supreme Court matters where the DPP’s Witness Assistance Service is involved. It is more challenging in Local Court matters where there are a high volume of prosecutions occurring largely without the assistance of the Witness Assistance Service.

The Victims’ Register is a database that enables the Crime Victims Services Unit to provide registered victims and concerned persons with certain information about offenders, including the outcome for any application for bail by the accused and the any bail conditions to protect the victim from the accused. However, it only applies to victims registered under the scheme and many victims do not register.

In the Australian Capital Territory, section 16 of the *Bail Act 1992* (ACT) requires bail decision makers in family violence matters to take reasonable steps to tell each complainant, as soon as practicable, about the decision to grant or refuse bail and any bail conditions. This operates irrespective of registration under a Victims’ Register or similar scheme.

Although it can be difficult for police to make contact with alleged victim-survivors in some circumstances, it is important that they have an obligation to try to inform victim-survivors about relevant bail considerations as it can significantly impact on their safety. Victim-survivors need an opportunity to develop or amend their safety plan, and take other steps to protect their safety if an alleged offender is released. This proposal gives legislative effect to the rights contained in the NT Charter of Victims’ Rights 2019.

#### PROPOSAL LR 45

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

## Proposed amendments to the *Sentencing Act 1995*

### The purposes of sentencing

Sentencing guidelines are set out in section 5 of the *Sentencing Act 1995* as follows:

(1) The only purposes for which sentences may be imposed on an offender are the following:

(a) to punish the offender to an extent or in a way that is just in all the circumstances;

(b) to provide conditions in the court's order that will help the offender to be rehabilitated;

(c) to discourage the offender or other persons from committing the same or a similar offence;

(d) to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved;

(e) to protect the Territory community from the offender;

(f) a combination of two or more of the purposes referred to in this subsection.

Some stakeholders have expressed concerns about the light sentences provided for DFV-related offending and suggest that the protection of the offender’s family, partner or ex-partner is not given sufficient weight in sentencing decisions, despite section 5(1)(e) which provides that it is a purpose of sentencing ‘to protect the Territory community from the offender.’ This may reflect the historical privileging of crimes which occur ‘out in the community between strangers’ versus crimes that occur ‘in a private home against family members.’

It is proposed to include a note to avoid any doubt that the phrase ‘to protect the Territory community from the offender’ in section 5(1)(e) includes the protection of the offender’s family members, partner and ex-partner.

#### PROPOSAL LR 46

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

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

### Aggravating factor

In sentencing an offender, the court must have regard to the factors in section 5(2).

Section 5(2)(f) requires the court to have regard to the presence of any aggravating or mitigating circumstances.

Section 6A of *Sentencing Act* 1995 sets out the circumstances in relation to the commission of an offence that may be regarded as an aggravating factor for the purposes of section 5(2)(f).

The NSW Parliamentary Inquiry on Coercive Control[[186]](#footnote-187) recommended that the NSW Government should amend section 21A of the *Crimes (Sentencing Procedure) Act* 1995 (NSW) to include as an aggravating factor in sentencing, that the offender was in an intimate personal relationship with the victim, and the offender was previously engaged in coercive and controlling behaviour towards the victim (recommendation 5).

The Queensland Women’s Safety and Justice Taskforce[[187]](#footnote-188) noted that the *Penalties and Sentences Act* 1992 (Qld) already provides for domestic violence as an aggravating factor. Section 9 (10A) provides:

In determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the fact that it is a domestic violence offence as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

Examples of exceptional circumstances—

1. the victim of the offence has previously committed an act of serious domestic violence, or several acts of domestic violence, against the offender

2. the offence is manslaughter under the Criminal Code, section 304B

Stakeholders have suggested that consideration should be given to ensuring that domestic violence, including coercive control, is an aggravating factor for the purposes of sentencing.

The submission of His Honour Justice Southwood, then Chair of the Parole Board, was quoted at length in the 2016 Consultation Report on this issue which is worth repeating here:[[188]](#footnote-189)

“As the gravamen of the more serious cases of domestic violence involves a deliberate strategy to engage in and the perpetration of a pattern of violent behaviour over an extended period of time for their advantage, it may be that the applicability of a number of important sentencing principles needs to be reconsidered when sentencing offenders for these kinds of crimes. Those principles include:

* + - * + The objective circumstances of the offence do not include the antecedent criminal history of the offender except where legislation prescribes prior criminality as an aggravating component of the offence. Proportionate sentencing prohibits enlarging the punishment of the current offence beyond what its gravity requires because of previous convictions.192
        + The principle of loss of entitlement to leniency does not resolve the issue because the loss of entitlement occurs within the outer limits of the objective seriousness of a single episode of the offending, not the objective seriousness of the course of conduct which occurs over a number of years.
        + The weight given to the principle of community protection or protection of the victim cannot be such as to result in the imposition of a sentence which exceeds the outer limits of the objective seriousness of the single episode of offending which is before the court.
        + Deterrence must give way to proportion in respect of the single episode of offending which is before the Court.
        + While specific deterrence may operate to reduce the effect of factors which would otherwise lead to greater leniency, the sentence imposed cannot exceed the objective seriousness of the single episode of offending which is before the court. There is also a limit to how far a court can negative legitimate mitigating factors by reference to the need to achieve a deterrent effect.’

Strictly applied, these sentencing principles may preclude some perpetrators of domestic violence from being sentenced for their true crime (engaging in a persistent and deliberate pattern of violent behaviour over an extended period of time for the purpose of totally controlling the victim’s life).”

#### PROPOSAL LR 47

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

**The offender and the victim are in a domestic relationship, and**

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

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

### Mitigating factor

Section 5(2)(f) of the *Sentencing Act* 1995 requires the Court to have regard to the presence of any mitigating circumstances.

There are situations in which being subjected to DFV (including coercive control) may be a mitigating factor in offending. For example, where a victim-survivor of DFV acts in self-defence or retaliates against a perpetrator of DFV and is then charged with a criminal offence. There may also be situations in which a victim-survivor of DFV may commit an unrelated offence due to fear of the DFV perpetrator or coercive control by the DFV perpetrator.

The Queensland Women’s Safety and Justice Taskforce recommended that the Minister immediately progress amendments to the *Penalties and Sentencing Act* 1992 (Qld) to require a court, when sentencing an offender to consider whether the impact of being a victim of DFV, including coercive control, on their offending behaviour is a mitigating factor.

#### PROPOSAL LR 48

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

### Requirement to consider the risk of DFV

A cross-agency Sentencing Reform Implementation Group has been established by the NT Government to develop proposals for reform of mandatory sentencing provisions, and community‑based sentencing options and offender programs.

As part of this reform, evidence-based rehabilitation and behaviour change programs and alternative to custody facilities will be established to deliver appropriate community-based sentencing options.

This reform progresses the Government’s commitments under the AJA and will be informed by the NT Law Reform Committee’s report on Mandatory Sentencing and Community-Based Sentencing Options.

While these reforms are still in development, it is important that DFV reforms and Sentencing reforms are aligned. When the court is considering making a community-based sentencing order for a domestic violence offender, it is important that the court consider the risk of domestic violence to the victim and how this can be mitigated.

#### PROPOSAL LR 49

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

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

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

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

### Cross examination of DFV and sexual offence victims on the content of victim impact statements

Victim impact statements and reports are provided for in section 106B of the *Sentencing Act* 1995.

Section 106B(9) provides that a legal practitioner representing the offender, or with the leave of the court, the offender may cross examine the victim about the content of the victim impact statement.

This is likely to be an unnecessary stress for the victim, at the end of lengthy criminal proceedings.

#### PROPOSAL LR 50

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

## Proposed amendments to the Criminal Code

### Definition of harm

This review has identified significant ways in which criminal law and practice in the NT can be reformed to better respond to DFV and coercive control, and to recognise the cumulative nature of the harm arising from DFV. One important way this can occur is recognition that significant psychological harm may result from coercive control, even in the absence of physical harm.

Section 1A of the Criminal Code provides the definition of harm in the following terms:

(1) Harm is physical harm or harm to a person's mental health, whether temporary or permanent.

(2) Physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that a person might reasonably object to in the circumstances, whether or not the person was aware of it at the time.

(3) Harm to a person's mental health includes significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

(4) Harm does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

#### PROPOSAL LR 51

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

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

**It is proposed that domestic violence, domestic relationship and coercive control is defined in accordance with the DFV Act. This review proposes that a definition of coercive control be added to the DFV Act (see proposal LR 6).**

### Assault with aggravating features

The *Justice Legislation Amendment (Domestic and Family Violence) Act 2020* passed in the Northern Territory Legislative Assembly on 25 June 2020 and commenced on 29 July 2020.

That Act introduced a new Criminal Code offence of choking, suffocation and strangulation in a domestic relationship (section 188AA). The new offence was created in recognition that, if choking occurs as part of domestic violence, it is a high risk factor for future harm and lethal outcomes. The offence requires the prosecution to prove that the person subjected to the choking did not consent and that the defendant was reckless to that circumstance. The offence has a maximum penalty of five years imprisonment.

In 2020, 64 persons were charged with new offence as the principal offence, and this rose to 146 persons in 2021.

However, stakeholders have indicated that some defendants appear reluctant to plead guilty to the choking offence and plea negotiations often result in the withdrawal of the choking charge in exchange for a guilty plea for assault.

It is proposed that – in addition to the new choking offence – it would be useful to include choking, suffocation and strangulation as an aggravating feature for assault in section 188(2) of the Criminal Code.

#### PROPOSAL LR 52

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

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

## Proposed amendments to the *Evidence Act 1939*

### Recorded statements

The *Justice Legislation Amendment (Body Worn Video and Domestic Violence Evidence) Act 201*7 commenced on 25 November 2017. The Act amended the *Evidence Act 1939* to allow born worn camera recordings to be used as evidence for complainants of DFV related offences in criminal court proceedings (see Part 3A of the *Evidence Act 1939)*.

The *Evidence and Other Legislation Amendment Act 2020,* which commenced on 29 July 2020, allowed a ‘recorded statement’ to also be used in DVO proceedings under the DFVA (see section 113C of the DFV Act).

The use of recorded statements from body worn cameras was intended to reduce the trauma experienced by victims of DFV related offences in providing evidence.

However, feedback from stakeholders indicates that recorded statements are used inconsistently across the NT, depending on police practice in particular regions.

There is also feedback that the informed consent process required in Part 3A is of the *Evidence Act 1939* is onerous and provides a barrier to alleged victim-survivors of DFV-related criminal offences providing consent. The police must inform the alleged victim-survivor that the recorded statement may be used in evidence, that they may be required to give further evidence in the proceeding and that they may refuse consent.

This is onerous, in part, because the recorded statement is made close in time to the offending when it may be difficult for the alleged victim-survivor to think through their views and emotions about the matter proceeding to court. In addition, some victim-survivors may be afraid to consent to have their evidence recorded because for fear they may be blamed by the defendant or the defendant’s family if the defendant is charged or ends up in prison.

The requirements for consent are set out in section 21J of the *Evidence Act 1939* as follows:

**21J. Requirements for recorded statement**

(1) To be admissible, a recorded statement must be made:

(a) as soon as practicable after the events mentioned in the statement occurred; and

(b) with the informed consent of the complainant.

(2) For subsection (1)(b), a recorded statement is made with informed consent if:

(a) the police officer informs the complainant that:

(i) the recorded statement may be used in evidence in a domestic violence offence proceeding; and

(ii) the complainant may be required to give further evidence in the proceeding; and

(iii) the complainant may refuse consent; and

(b) the complainant indicates in the recorded statement that the complainant consents.

(3) A recorded statement:

(a) must include a statement by the complainant as to the complainant's age; and

(b) must be made as a statutory declaration in compliance with section 20 of the *Oaths, Affidavits and Declarations Act 2010*.

(4) If any part of a recorded statement is in a language other than English:

(a) the recorded statement must contain an English translation of the part; or

(b) a separate written English translation of the part must accompany the recorded statement.

Section 20 of the *Oaths, Affidavits and Declarations Act 2010* provides:

**20. Recorded statutory declaration**

(1) A statutory declaration may be made as an audio or audiovisual recording of any kind.

(3) The person making the declaration must make a statement at the end of the recording:

(a) that the declaration is true; and

(b) to the effect that the person knows it is an offence to make a statutory declaration that is false in any material particular; and

(c) setting out the place where, and the date when, the statement required by this subsection is recorded.

(4) The statement required by subsection (3) must be recorded in the presence, whether physically or by audiovisual link, of an adult witness.

Note for subsection (4)

The witness does not have to be present for the making of the rest of the declaration recording.

(5) After the person making the declaration has recorded the statement required by subsection (3), the witness must make a statement, at the end of the recording, stating:

(a) the witness's full name and address or telephone number; and

(b) that the witness witnessed the recording of the statement required by subsection (3).

Informed consent is not required for recorded statements admitted under Part 3 of the *Evidence Act 1939* (provisions on vulnerable witnesses). Section 21B provides that in cases of sexual or serious violence offences the court may admit a recorded statement:

(2) If a vulnerable witness is to give evidence in proceedings to which this section applies, the court may exercise one or both of the following powers:

(a) the court may admit a recorded statement in evidence as the witness's evidence in chief or as part of the witness's evidence in chief;

(b) the court may:

(i) hold a special sitting in relation to the witness; and

(ii) have an audiovisual recording made of the examination of the witness at the special sitting and admit the recording in evidence; and

(iii) re-play the recording to the jury as the witness's evidence or as part of the witness's evidence (as the case requires).

(3) If the prosecutor asks the court to admit a recorded statement in evidence or to hold a special sitting under subsection (2), the court must accede to the request unless there is good reason for not doing so.

A serious violence offence is defined in section 21AA of the *Evidence Act 193*:

*serious violence offence* means an offence against any of the following provisions of the Criminal Code that is punishable by imprisonment for 5 or more years:

(a) Part V, Division 2;

(b) Part VI, Divisions 3 to 6A;

(c) section 211 or 212;

(d) another provision prescribed by regulation.

#### PROPOSAL LR 53

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

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

### Expert evidence on DFV

Myths and misconceptions about DFV and coercive control frequently form part of the evidence and submissions in criminal proceedings and influence the deliberations of judges and jury members. This reflects misconceptions that persist in the broader community. For example, nearly one in three Australians (32 per cent) believe that women who do not leave a relationship in which violence is occurring hold some responsibility for the abuse continuing.[[189]](#footnote-190)

Stakeholders have argued that the increased use of expert evidence on DFV and coercive control could make a valuable contribution to countering these myths and misconceptions.

Section 79(1) of the *Evidence (National Uniform Legislation) Act 2011* provides for expert evidence in criminal proceedings in the NT. Section 79(1) provides:

If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

The Queensland Women’s Safety and Justice Taskforce recommended amendments to the *Evidence Act 1977 (Qld)* to allow relevant expert evidence to be admitted in criminal proceedings about the nature and effects of DFV including coercive control:

* generally, on any person; and
* on a particular person who has been the subject of domestic violence.[[190]](#footnote-191)

The Taskforce recommended that the provision be modelled on section 39 of the *Evidence Act 1906 (WA)* which provides:

**Expert evidence of family violence**

(1) This section applies to any criminal proceedings where evidence of family violence is relevant to a fact in issue.

(2) The evidence of an expert on the subject of family violence is admissible in relation to any matter that may constitute evidence of family violence.

(3) Evidence given by the expert may include —

(a) evidence about the nature and effects of family violence on any person; and

(b) evidence about the effect of family violence on a particular person who has been the subject of family violence.

(4) For the purposes of this section, an expert on the subject of family violence includes a person who can demonstrate specialised knowledge, gained by training, study or experience, of any matter that may constitute evidence of family violence.

#### PROPOSAL 54

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

### Jury directions on DFV

Directions to the jury provides another way to counter the myths and misconceptions associated with DFV that find their way into criminal proceedings and may potentially lead to unjust outcomes.

The Queensland Women’s Safety and Justice Taskforce recommended that the Minister:

“…immediately progress amendments to the to the *Evidence Act 1997* modelled on section 38, 39C-39F of the *Evidence Act 1906* (WA) to provide for jury directions to be made in proceedings for domestic violence related offences and where domestic violence has been raised in evidence during a trial to address stereotypes and misconceptions about family violence.

“This will enable juries to be better informed and able to consider the evidence that has been raised during the trial.” (recommendation 65)

The provisions in sections 38 and 39C-39F of the *Evidence Act 1906* (WA) are set out in Attachment 7.5.

Victoria also has mandatory jury directions on DFV set out in sections 55-59 and section 60 of the *Jury Directions Act 2015* (Vic). These are set out in Attachment 7.6.

#### PROPOSAL LR 55

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

## Proposed amendments to the *Evidence (National Uniform Legislation) Act 2011*

Section 18 of the *Evidence (National Uniform Legislation) Act* 2011 provides that a spouse, de facto partner, parent or child (a ‘family victim’) of the defendant may object to being required to give evidence against the defendant in criminal proceedings (but not for a contravention of a DVO).

Upon the witness making an objection under section 18, the presiding judge must determine whether the witness should be required to give evidence by considering:

1. the likelihood that harm would or might be caused (whether directly or indirectly) to the person, or to the relationship between the person and the defendant, if the person gives evidence; and
2. whether the nature and extent of the harm outweighs the desirability of having the evidence given.

Many stakeholders are of view that this provision is extremely confusing to complainants in DFV-related proceedings and poorly implemented (ie. the complainant has a right to object which they might not find out about until the day of the hearing and even if they opt to object, the court may decide to override their objection).

#### Arguments in favour of retaining the right to object for DFV matters

There are a number of arguments in favour of retaining the right to object for complainants in DFV related criminal proceedings. These have been raised in previous consultations and discussions.

1. When a complainant exercises a right to object pursuant to section 18, the current provisions allow the court to consider the likelihood of harm to the complainant (and the relationship) and for the court to weigh the nature and extent of harm against the desirability of having the evidence given. This weighing by the court in each individual case is considered appropriate by many stakeholders to ensure the interests of justice are met without unnecessary harm to the complainant. Section 18(7) provides for the factors that the court must consider. This allows the court to reach a decision in the circumstances of each case.
2. If the right to object is removed and complainants are required to give evidence they may experience repercussions, threats or violence from the defendant or his supporters or family members. This may increase the harm, injury, stress and trauma to victims of DFV.
3. If the right to object is removed and complainants are required to give evidence this may dissuade complainants of DFV from reporting further incidences of violence or seeking assistance. They may effectively ‘opt out’ of the legal system and place themselves at risk of further harm by avoiding contacting police or other services if they face future instances of violence.
4. The removal of the right to object may contribute to a range of undesirable legal consequences for complainants who remain determined not to provide evidence against the defendant (or if compelled to testify determined to give false or inconsistent evidence to avoid the defendant being convicted). For many complainants the fear of the defendant (or love for him and desire to retain a relationship with him) may be greater than their fear of legal consequences. Some stakeholders have described this as a ‘criminalisation of the victim’:
   * Complainants who fail to attend, or give evidence or answer questions in court may face charges of contempt of Court (see section 45 of the *Local Court Act 2015* with a maximum penalty of 6 months or a fine of 100 penalty units).
   * Complainants who provide false evidence may be charged with perjury (section 96 of the *Criminal Code Act 1983*, with a maximum penalty of 14 years).
5. Stakeholders have argued that compelling complainants in DFV-related criminal proceedings to give evidence against the defendant is inherently disempowering and takes agency away from the complainant. In this sense it can be said to further ‘victimise the victims’. However, the argument about which option is more empowering is not straight forward.
   * Some stakeholders argue that complainants are in the best position to assess the nature and extent of harm to them that may arise from giving evidence and will be the ones to suffer the consequences. Enabling complainants to object, and the court to then weigh up the issues, can therefore contribute to victim safety. The justice system should not place complainants at risk of harm, stress and trauma where there is other evidence that can be drawn on.
   * Other stakeholders argue that victim-survivors in domestic violence relationships are often already disempowered, and may be highly reliant on the defendant, emotionally enmeshed in the relationship and fearful of the consequences. The section 18 right to object is a double-edged sword. It may give the complainant the power in the legal system to choose whether to object or not, but on the other hand, by not giving evidence the complainant may be enabling the defendant to escape conviction and the legal consequences of their actions. In the long term this is disempowering, for this particular victim-survivor, and victim-survivors generally.
   * Some stakeholders argue that it is in the interests of justice and safety for domestic violence related offences to be prosecuted and for all evidence to be put before the court. In the long term this is fundamentally more empowering for victim-survivors, although individual complainants may lose the right to object. It sends a clear message that violence is unacceptable and it is not up to individuals to decide whether to give evidence or not. There is a society-wide interest in the justice system holding domestic violence offenders to account.

#### Arguments in favour of removing the right to object (ie. compelling DFV complainants to give evidence)

Arguments in favour of compelling complainants in DFV-related criminal proceedings to give evidence by removing the current right to object include:

1. It sends a strong message that DFV is unacceptable and that every effort will be made to prosecute matters and put evidence before the courts.
2. DFV often occurs behind closed doors with few witnesses outside the family. Prosecutions for DFV‑related crimes are therefore often heavily reliant on the complainant’s evidence in order to secure a conviction. If complainants successfully object to giving evidence under section 18 fewer guilty verdicts may be obtained and justice may not be served.
3. Pressure by the defendant and their family on complainants not to give evidence against the defendant is very common in DFV related matters. It is a continuation of the abuse and attempts to control the victim. It has been argued that compelling the complainant to give evidence removes the burden on the complainant to decide whether to give evidence or not (ie. whether to exercise the right under section 18 to object). Removing the right to object allows the complainant to incontrovertibly affirm to the defendant or the defendant’s family that the complainant has absolutely no choice but to give evidence. In doing so it removes any tactical benefit to the defendant of pressuring or bullying the complainant to prevent the complainant’s evidence being presented.
4. Complainants are currently compelled to give evidence in criminal proceedings for breach of a DVO due to the exemption in section 19(b). This creates an anomaly in that the complainant may object to giving evidence against the defendant for an assault charge but is compelled to give evidence against the defendant for a breach of a DVO charge, but both may arise on the same set of facts. It is arguable that there are good policy reasons for removing this anomaly which doesn’t serve any purpose. Some stakeholders have argued that the existence of section 19(b) is evidence that section 18 was never intended to apply in DFV‑related matters.
5. Many complainants find the right to object confusing. They may have reported the violence to police purely to secure their immediate safety without considering the legal proceedings that may follow. Many complainants find court proceedings stressful and will not want to give evidence for a host of reasons (including fear of the defendant, fear and stress related to the court process, a desire to maintain a relationship with the defendant and other factors). Explaining to the judge why they do not want to give evidence can be extremely stressful on complainants. In some cases, complainants have been denied access to the vulnerable witness facilities to do so. They may experience the prosecution’s desire to proceed with the case as pressure. They may exercise their right to object under section 18 but the court may nevertheless decide that they must give evidence, which adds to their confusion. All this might occur at the last minute, at the door of the courtroom, depending on when a prosecutor is allocated to the case.
6. It has been noted that the complainants’ views about giving evidence may change over time depending on which stage in the cycle of domestic violence the defendant and the complainant are in at a given time (ie. the cycle goes through stages of violence, remorse, reconciliation, honeymoon and tension mounting before a new episode of violence occurs).

The DPP Guidelines indicate that ‘Generally where there is a reasonable prospect of conviction, it is in the public interest to continue to with a domestic violence prosecution’ (paragraph 21.8).

Where a victim indicates that they do not wish to give evidence, the prosecutor must assess the ongoing risk to the victim taking into account factors set out in paragraph 21.9 of the guidelines. ‘Any decision to compel a victim to give evidence against his/her will require serious consideration and will be used infrequently’ (paragraph 21.10).

Having considered this issue over a number of years, and weighed up the complex considerations above, AGD is of the view that the right to object provided by section 18 should not apply to proceedings for DFV related offences.

#### PROPOSAL LR 56

**It is proposed to amend section 19 of the *Evidence (National Uniform Legislation) Act 2011* so that section 18 does not apply in a proceeding for a domestic violence related offence, just as it does not apply for a breach of a DVO.**

Domestic violence offence is defined in accordance with section 21G of the *Evidence Act 1939*.

Domestic violence is proposed to be defined in accordance with section 5 of the DFV Act.

## Proposed amendments to the *Local Court (Criminal Procedure) Act 1928*

Section 341(1) of the Criminal Code provides for separate trials where there are two or more charges against the same person in the following terms:

Where before a trial or at any time during a trial the court is of opinion that the accused person may be prejudiced or embarrassed in his defence by reason of his being charged with more than one offence in the same indictment or that for any other reason it is desirable to direct that the person should be tried separately for any offence or offences charged in an indictment the court may order a separate trial of any count or counts in the indictment.

However, this is subject to section 341A which provides a presumption for a joint trial of sexual offences:

(1) Despite any rule of law to the contrary, if an accused person is charged with more than one sexual offence in the same indictment, it is presumed that the charges are to be tried together.

(2) The presumption is not rebutted merely because:

(a) evidence on one charge is not admissible on another charge; or

(b) there is a possibility that evidence may be the result of collusion or suggestion.

(3) In this section:

*sexual offence*, see section 3 of the *Sexual Offences (Evidence and Procedure) Act 1983*.

The *Local Court (Criminal Procedure) Act* 1928 which provides for procedures in relation the Local Court’s criminal jurisdiction does not contain a similar presumption that charges for sexual offences will be heard together.

#### PROPOSAL LR 57

**It is proposed to amend the *Local Court (Criminal Procedure) Act 1928* to create a presumption that if an accused is charged with more than one sexual offence, it is presumed that the charges are heard together, along the lines of the presumption for indictable matters in section 341A of the Criminal Code.**

**In addition, it is proposed to give further consideration to whether there should also be a presumption that DFV-related offences are heard together.**

## Questions – Legislative reforms

The following questions are for consideration:

1. Which of the proposed legislative reforms do you support? Which do you consider to be a priority?
2. Which of the proposed legislative reforms do you not support?
3. Do you have suggestions to strengthen any of the proposals?
4. Have you identified any unintended consequences of any proposals?

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

# Systemic reforms to address DFV

Legislative change alone will not improve the justice response to DFV, or increase the safety of women and children in the NT. There is universal agreement that legislative change must be accompanied by a suite of non-legislative or systemic reforms. This includes greater alignment in the policies, procedures and practice to focus on victim safety and offender accountability, improved specialist training on DFV, effective programs, services and institutional responses, and strong education and prevention initiatives.

This section of the paper identifies specific systemic reforms (SR) to accompany the legislative reforms (LR) proposed in Part 4 of this paper.

This section focuses predominantly on the justice response and the justice system. However, it is acknowledged that the justice response overlaps with other responses and to some extent they must be considered together.

## The primacy of implementation

The importance of implementation has been emphasised in all inquiries into DFV and coercive control that have been undertaken in the past 15 years. Effective implementation is central to DFV reform, irrespective of whether coercive control is criminalised or not.

It was most succinctly put by the NSW Parliamentary Inquiry into Coercive Control:

During the inquiry, the Committee heard calls for a whole of government, whole of community focus on domestic abuse. Laws alone cannot stop violence against women, and it cannot be left to the police and criminal justice system to address.[[191]](#footnote-192)

The NSW Inquiry also emphasised that a comprehensive approach to implementation is what sets Scotland’s approach to coercive control apart from other jurisdictions as the ‘gold standard’:

… the Scottish domestic abuse law is underpinned by the four pillars of a system’s response … protection (legal remedies); provision (effective service delivery); prevention (strategies for stopping domestic violence and reducing reoffending); and participation (by those who have experienced domestic abuse).[[192]](#footnote-193)

The Queensland Women’s Safety and Justice Taskforce was so convinced of the necessity of implementation that it recommended ‘no new offences to criminalise DFV commence until justice and service responses are improved’. The Taskforce set out a four-phase implementation process over at least four years. [[193]](#footnote-194)

The SA Government released a discussion paper entirely devoted to the question of implementation titled: *Implementation considerations should coercive control be criminalised in South Australia.[[194]](#footnote-195)*

The Victorian Royal Commission into Family Violence observed that changing laws has only a symbolic effect on responses to DFV, and that changes in practice, training and education are essential.[[195]](#footnote-196)

## Inter-agency co-ordination and reform

This review has identified that changes to the justice response to DFV must occur as part of a co-ordinated inter-agency reform agenda (a whole-of-government, whole-of-community approach).

The Government is already acting in this regard.

In April 2022, the NT Government appointed the Hon Kate Worden MLA as the NT’s first Minister for the Prevention of Domestic, Family and Sexual Violence. This marked a significant strengthening of the whole-of-government inter-agency response to DFV in the NT.

### The Inter-agency Co-ordination and Reform Office (DFSV-ICRO)

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

The DFSV-ICRO is located in the Government’s Reform Management Office and staffed by representatives from police, health, education, territory families and justice to facilitate a more sophisticated approach to cross-agency engagement and reform than was previously possible.

The DFSV-ICRO will set out a whole-of-government reform agenda for DFSV, including:

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

The DFSV-ICRO will strengthen full and effective implementation of the NT’s whole-of-government response to DFV through the NT’s *Domestic Family and Sexual Violence Reduction Framework 2018‑2028: Safe, Respected and Free of Violence.*

The Framework aims to achieve five outcomes over the ten-year life of the plan:

* Outcome 1: Domestic, family and sexual violence (DFSV) is prevented and not tolerated.
* Outcome 2: Territorians at risk of experiencing violence are identified early and provided with effective interventions.
* Outcome 3: People experiencing DFSV are protected and helped to recover and thrive.
* Outcome 4: Perpetrators are held accountable and connected early to responses that change their behaviours and reduce violence.
* Outcome 5: Legislation, police and funding models enable a responsive, high quality and accountable DFSV service system.

The DFSV-ICRO will develop Action Plan 2 under the Framework. The DFSV-ICRO will not take over the work of other agencies in addressing DFV. Rather it is intended to ensure that DFSV activities undertaken by each agency as part of their normal functions are fully aligned and underpinned by a common policy framework, reform agenda and implementation plan that represents best practice. It will also provide a common approach to the identification of priorities for investment.

The proposals set out in this paper are aligned with the work of the DFSV-ICRO, and it is expected that priority proposals will be considered and further developed as part of DFSV-ICROs work.

The proposals for systems reforms (SR) are set out below.

#### PROPOSAL SR 1

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

### Aboriginal Justice Agreement (AJA)

DFV is a major reason why Aboriginal people come into contact with the justice system. To improve the justice response there is a need to ensure alignment between DFV reform and the AJA.

The majority of DFV victims in the NT are Aboriginal women. The Territory Coroner has identified that from August 2000 through to August 2019 there were 65 Aboriginal women killed by a current or former partner.[[196]](#footnote-197)

The majority of defendants in DFV-related criminal matters are also Aboriginal. The prison census shows that on 30 June 2021, 63 per cent of NT prisoners were held for DFV related offences[[197]](#footnote-198) and over 90 per cent of those were Aboriginal.[[198]](#footnote-199)

In 2021, the Government committed to a seven-year AJA[[199]](#footnote-200) after an extensive two-year community consultation process across the NT. The AJA aims to:

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

The AJA Action Plan 2021-2022 includes a commitment to reduce DFV offending, particularly through the development of a non-custodialfacility *in* Alice Springs to help DFV offenders to change their behaviour and the further development of culturally-appropriate evidence-based programs which are more accessible to offenders.

Perpetrator programs have remained the most under-developed part of the DFV response in the NT and there is a need to expand the number of programs, the number of places and the quality of programs to ensure the safety of victims and the accountability of offenders is prioritised. Programs that are not rigorously committed to victim safety and offender accountability, or do not create a culturally safe and competent learning environment for participants, may be doing more harm than good.

It is important that DFV reform and reforms under the AJA are properly aligned so that:

* DFV reforms are informed by the experiences of Aboriginal people in the NT, and that policies and actions to address DFV are culturally safety and competent; and
* reforms occurring through the AJA are informed by specialist expertise on DFV, so that the safety of Aboriginal victim-survivors can be prioritised and offenders are supported to take responsibility for their actions.

Reforms to reduce Aboriginal offending and imprisonment and reforms to reduce DFV need to occur in tandem and be properly aligned for the well-being of Territory families and communities. The prevention of DFV and healing from intergenerational trauma is a critical element of both reforms if they are to be successful.[[200]](#footnote-201)

A priority for the DFSV-ICRO is ensuring that Aboriginal Territorians have an opportunity to contribute to the work of the DFSV-ICRO and other efforts to prevent and respond to DFSV. This includes the establishment of an Aboriginal Advisory Group, for which the role, selection and authority will be considered as a priority.

#### PROPOSAL SR 2

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

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

### Mandatory Sentencing and Reform of Community Based Sentencing Options

The Government is committed to sentencing reform that improves community safety, puts victims first and breaks the cycle of crime. The Government wants sentences to be appropriate to the crime, and programs which address the root causes of crime.

A cross-agency Sentencing Reform Implementation Group has been established to develop proposals for reform of mandatory sentencing provisions, community-based sentences and offender programs.

As part of this reform, evidence-based rehabilitation and behaviour change programs and alternative to custody facilities will be established to deliver appropriate sentencing options.

Reform to community based sentencing options progresses the Government’s commitments under the Aboriginal Justice Agreement and will be informed by the NT Law Reform Committee’s report on Mandatory Sentencing and Community-Based Sentencing Options.

A majority of violent crime in the NT is DFV-related.

It is important that safety considerations for victim-survivors of DFV are built into this work.

#### PROPOSAL SR 3

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

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

### DFV analysis to inform Government initiatives

Some Government reforms may have unintended consequences that impact on the safety of victim‑survivors of DFV. It is important that a whole-of-government focus on DFV is maintained over time, and that specialist expertise on DFV informs new policies and projects of the Government to ensure the safety of victim-survivors is prioritised and to mitigate any risks which may arise.

#### PROPOSAL SR 4

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

## Building a more integrated system

### The experience of victim-survivors

The findings of the DFV victim journey mapping report are set out above in Part 2.3.[[201]](#footnote-202)

The DFV victim journey mapping report described the justice response to DFV as one that is confusing, disjointed and disconnected, without a proper emphasis on victim safety. Some participants in the journey mapping workshop considered that it was a misnomer to use the word ‘system’ at all, as the justice response ‘lacks the shared meanings, linkages and connections one would hope to see in a true system’.[[202]](#footnote-203)

It is notable that many of the views expressed by victim-survivors in the DFV victim journey mapping report do not require changes to the law, but to the operational policies and practices of justice agencies. Many suggestions related to attitudes, respect and communication, and had implications for staff training. Both legislative and systems reforms in relation to DFV must be complementary and informed by the lived experience of victim-survivors of DFV.

The DFV victim journey mapping report set out a vision for an improved justice response to DFV and this has been incorporated into the expectations below.

### Shared expectations of the justice responses

Building a more co-ordinated inter-agency response to DFV will require a shared vision of what the community can expect if the justice system is working effectively.

It is important that this be developed collaboratively with the involvement of justice agencies, victim-survivors and professionals with DFV expertise. It is particularly important than Aboriginal people lead, and are actively involved, in these discussions.[[203]](#footnote-204)

This review offers the following expectations as a starting point for discussion.

If the justice system is effectively responding to DFV in a way that is aligned with good practice the community could expect the following:

1. Legal proceedings will be decided fairly and impartially, and judicial officers, lawyers, police and court staff will be well-informed about DFV.
2. Professionals across all agencies will be able to identify DFV (and coercive control) and respond to it consistently and skilfully, and with respect and compassion.[[204]](#footnote-205)
3. Victim-survivors will be respected and well-supported by services, institutions and communities who believe their safety is a priority, and take action to make it a priority.
4. Victim-survivors will see their own safety as a priority and will have real options in their lives.
5. People who use violence will realise that they can no longer get away with it. There will be a web of accountability around them, whether they are in prison or the community. Some will seek help to change and some will remain in prison. More offenders will recognise that violence and controlling behaviour is their responsibility. More offenders will choose not to use violence.
6. There will be widespread Aboriginal leadership and co-design of efforts to end violence affecting Aboriginal people and communities.
7. Bystanders, community members and leaders will speak up against violence and promptly report it to authorities every single time.
8. Children will be supported to realise that violence is wrong and is not their fault. They will have help addressing the trauma associated with violence they have seen, heard or been exposed to.
9. Police and courts will provide a safe place where victim-survivors can come and be heard, and responses will be trauma-informed.
10. Fewer victim-survivors will be misidentified as perpetrators, and if they are misidentified it will be quickly detected and rectified.
11. Effective programs will be in place to support offenders to change, both within and outside of prison.
12. Responses will be culturally safe and culturally competent, with no place for racism or unconscious bias.
13. Victim-survivors will be less traumatised by their contact with the justice system and will feel respected, believed, informed and consulted.

#### Obligation to investigate and prosecute on behalf of the community

In considering community expectations of the justice system it is important to acknowledge that some victim-survivors:

* do not want to, or are unable to, report DFV; or
* have reported DFV but do not want to give evidence; or
* wish to ‘withdraw the charges’ against the defendant; or
* wish to have a DVO in force against the defendant revoked.

There may be complex reasons for victim-survivors not wanting to be involved in the justice system, including fear of the defendant and their family and supporters, fear and distrust of the justice system itself, shame and embarrassment, concern for children, and hopes to reunite with the defendant. Many defendants and their supporters harass and intimidate victim-survivors to pressure them to withdraw charges or to provide false evidence. This is not acceptable.

***While the wishes and views of victim-survivors must be respected and should inform responses to DFV, it is a strong principle underpinning this review that justice agencies have an obligation to investigate and prosecute DFV related offences irrespective of whether victim-survivors want that to occur.***

A DFV-related offence is not just a crime against an individual victim-survivor. It is a crime against the community as a whole. Police and prosecutors have an obligation to pursue criminal offending and to protect the safety of every member of the community, independently of the wishes of individual victim-survivors.

The burden of deciding whether criminal charges and prosecutions should be pursued should not fall on the shoulders of individual victim-survivors. The decision should be undertaken by justice agencies on behalf of the whole community.

Every effort should be made to empower the victim-survivor throughout the process, as there is likely to be a correlation between the empowerment of the victim-survivor and longer-term safety outcomes.

#### PROPOSAL SR 5

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

### An ‘integrated’ response to DFV

There is no easy solution to meet the challenges associated with responding to DFV. However, the most effective approaches across Australia and internationally involve ‘integrated’ and ‘specialist’ approaches. Both were identified as valuable by the ALRC and NSWLRC in their landmark report *Family Violence – A National Legal Response*[[205]](#footnote-206) and have been introduced to varying extents and with various models in other jurisdictions.

An ‘integrated response’ is one in which multiple agencies work together purposefully to provide a co-ordinated response that is directed towards:

* safety and protection of victim-survivors and any children; and
* the accountability of perpetrators, that is, perpetrators taking responsibility for their behaviour, rather than blaming the victim.

ANROWS has described the need for ‘a web of accountability’ in which police, courts, corrections, perpetrator program and services, child protection agencies and other DFV specialist agencies align their responses to ensure perpetrators of DFV are held to account. [[206]](#footnote-207)

To achieve a more integrated approach requires government agencies and non-government organisations being prepared to:

* be open to genuine collaboration, and prepared to act as part of a single co-ordinated system which prioritises victim safety and offender accountability;
* share policies and procedures with other agencies at an early planning stage (transparency) and commit to revising their own policies and procedures, in light of the policies and procedures of other agencies;
* commit to shared principles about DFV and an alignment of messages about DFV;
* be aware of the implicit messages that are conveyed through day-to-day action or inaction, and how that may impact on victim safety and offender accountability;
* when problems or complaints arise, seek to jointly solve problems through robust discussions; and
* the partnership must extend to non-government agencies who deliver many DFV services.

An integrated approach doesn’t mean blurring the boundaries of each agency. It simply means each agency does its job as part of a co-ordinated system.

If this occurs victim-survivors will feel safer and more supported by the system and offenders will start to realise that they will not be allowed to get away with it. The shared expectations listed in Part 5.3.2 will start to be manifested.

## Coercive Control Prevention and Reform

The issues in relation to coercive control have been dealt with in Part 4 of this paper and won’t be repeated here.

Coercive control is a predominant feature of DFV but is not adequately recognised in the justice response. Coercive control must be dealt with as an integrated element of DFV, not separate to DFV.

It is therefore proposed that the DFSV-ICRO be tasked with driving the implementation of reforms to combat coercive control to ensure this is imbedded into the work of each agency.

Many Territorians – both community members and professionals across health, justice, education, policing and related services – do not understand what coercive control is or recognise that power and control is fundamental to DFV.

It is particularly important to ensure there is two-way dialogue within Aboriginal communities about coercive control and DFV. This will empower Aboriginal people to identify coercive control and facilitate greater community action and leadership in relation DFV in a way that fosters safe and healthy relationships. This may be facilitated by Aboriginal controlled organisations, other non-government organisations or through the Law and Justice Groups under the AJA.

#### PROPOSAL SR 6

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

#### PROPOSAL SR 7

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

#### PROPOSAL SR 8

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

#### PROPOSAL SR 9

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

## Specialist DFV court approaches

### Features of specialist DFV courts

Specialist DFV courts operate in the USA, UK, Canada, and New Zealand as well as in Australian jurisdictions, including Victoria, Queensland, South Australia, Western Australia and the ACT.[[207]](#footnote-208)

While the models differ in different locations, the element of Specialist DFV Courts often include:[[208]](#footnote-209)

* **Specialist personnel with DFV expertise**, including judicial officers, but also registrars, lawyers, support workers and community corrections officers. Specialist personnel may be recruited for specialist DFV skills or given specialised training in DFV.
* **Specialised procedures,** including dedicated lists, intake procedures, information sharing procedures or case management procedures.
* **Specialised support services**, including legal advice and support, and non-legal support services. Specialist services may be for the victim-survivor or the defendant or both. Support staff may be employed by the court or by non-government specialist services working in partnership with the court (and sometimes co-located at the court on DFV list days).
* **Specialist arrangements and facilities for victim safety,** including vulnerable witness facilities, safe waiting areas and separate entrances.
* **Links to offender programs,** including soft referral procedures and court-ordered attendance at programs, with or without the offender’s consent. The purpose of this is to encourage offenders to change their behaviour and address their use of violence to prevent reoffending.
* **Problem-solving or a therapeutic approach**, for example, to address issues which are likely to improve safety and reduce reoffending.

Each jurisdiction needs to build its own integrated and specialist approach that suits is own context. This is particularly true in the NT which has very different characteristics to the Eastern states.

However, the critical element is how DFV expertise informs the day-to-day work of the court and other justice agencies to improve the experience of the victim-survivor, to improve safety and to provide impetus for offender behaviour change.

The ALRC and the NSWLRC identified the benefits as including:[[209]](#footnote-210)

* greater sensitivity and skill in handling DFV matters, including the tailoring of order to prioritise victim-survivor safety;
* greater integration, co-ordination and efficiency in the management of cases;
* greater consistency in handling cases;
* greater efficiency in court processes;
* development of best practice, and continuous improvement;
* improved, and more timely, communication and problem-solving across agencies;
* improved satisfaction of victim-survivors (and interestingly defendants in some cases) and improved confidence in the justice system and reduced trauma;
* greater alignment of responses to improve the safety of victim-survivors.

### The Alice Springs Specialist Approach to DFV

The Northern Territory Local Court in Alice Springs has been trialling a Specialist Approach to DFV related criminal and civil matters since mid-2020 (the Specialist Approach).

The Specialist Approach was developed in partnership with local service providers over a number of years and has now been operating for over 18 months.

An internal evaluation of the first 12-18 months of operation has been conducted. The internal evaluation has shown promising results which may provide the foundation for Specialist Approaches in other locations in the NT. An independent external evaluation will be conducted after the Specialist Approach has been operating for three years.

#### Elements of the Specialist Approach

The Specialist Approach aims to improve safety of persons who have experienced DFV and to minimise the re-traumatisation that can occur through involvement in the justice system. It also aims to ensure offenders are held to account and take responsibility for their actions, and increase opportunities for offenders to receive support to change their behaviour.

The elements include:

1. A major court refurbishment, to provide a separate waiting area and entrance for vulnerable witnesses and applicants and better facilities for vulnerable witnesses to give evidence.
2. A specialist domestic and family violence courtroom, to limit visual contact between the vulnerable witness/applicant and the defendant.
3. All protected persons and complainants in DFV proceedings are offered supports as vulnerable witnesses.
4. New practice directions and listing practices for DFV matters.
5. Strict adherence to timeframes for contested criminal and civil DFV proceedings.
6. The creation of a Specialist List in which the Court may order defendants (if they plead guilty and are assessed as suitable) to attend programs aimed at reducing DFV.
7. Recognition of the importance of legal representation for parties involved in DFV proceedings.
8. Specialist DFV support services (employed by non-government organisations) are co‑located at the Court at key times to:
9. increase access for people identified as being at high risk to risk assessment, safety planning and support;
10. enable defendants to be assessed for the Specialist List (ie. programs) and linked to support services.
11. Increased information sharing across agencies with a focus on improving safety.
12. Specialist DFV Leadership including:
13. judicial leadership through the appointment of a Lead Judge for DFV matters;
14. the DVO List is overseen by the Judicial Registrar with specialist DFV knowledge;
15. the appointment of a Domestic Violence Registrar to assist in the implementation, operation and review of the Specialist Approach.
16. Regular operational meetings with stakeholders to address systems and procedural issues relevant to the Specialist Approach, enhance collaboration between stakeholders, and promote continuous improvement of the Specialist Approach.
17. Increased DFV training for judges, court staff, lawyers and other professionals.
18. The monitoring and evaluation of DFV matters and continuous improvement over time.

Importantly, the Specialist Approach has an emphasis on continuous improvement of the responses to DFV. Specialist DFV expertise is imbedded in the Local Court through:

1. The appointment of a Lead Judge for DFV matters, who sits on the Specialist List and oversees the Specialist Approach,
2. A Judicial Registrar with DFV expertise sits on DFV list,
3. A Domestic Violence Registrar has been appointed to co-ordinate the Specialist Approach and liaise with partner organisations,
4. Partner organisations have specialist expertise in DFV and work in partnership with the Local Court to deliver the Specialist Approach, including:
   1. conduct risk assessment, support and safety planning to victims;
   2. conduct assessment, support and referral to defendants, with a particular focus on the Specialist List;
   3. share information about risk through case co-ordination meetings;
   4. provide oversight and advice in relation to the operation of the Specialist Approach through an operational working group.
5. DFV-specific training is provided to judges, court staff and other personnel working at the Court (and has often been provided in-kind by partner organisations as there is no training budget).

The Specialist List – in which the court makes a DVO ordering a defendant to attend a DFV program – has particular features designed to ensure victim safety and defendant accountability. The defendant is required to return to court for regular reviews of their progress in the program. While this approach is not suitable for all defendants in DFV matters, it can increase accountability and trigger change for some defendants.

As one defendant commented:

*“I feel good about myself. For completing it and sticking with it. I’m not ashamed now to talk up. I can express my feelings more. I don’t have to hide it away. Don’t have to let it eat me and make me feel like shit.”*

The benefits of the Specialist Approach identified in the internal evaluation include:

* continuous improvement of the Court’s response to DFV, including greater alignment with best practice in prioritising victim safety and defendant accountability;
* DFV victim-survivors receive a better, more trauma-informed service at Court, including:
  + safer facilities where victim-survivors and are less likely to be confronted by the defendant or their family;
  + increased access to assessment, safety planning and support services;
  + increased used of vulnerable witness facilities;
  + more co-ordinated and better prepared Court lists, resulting in better tailored orders were the safety of parties is prioritised;
* shared values and focus on accountability in the Specialist List:
  + Men on the Specialist List took more responsibility for their behaviour. They also received more consistent messages about their conduct from the Local Court and service providers. Some men were able to take steps towards change.
  + Of the 12 men ordered to attend the men’s behaviour change program (MBCP), 16 per cent (or 2 men) successfully completed the program and half (6 men) were still engaged in the program at the end of the period without having reoffended. There was a successful or pending outcome in 67 per cent of matters;
* improved data collection by the Court in relation to DFV;
* improved collaboration, joint action and problems solving between the Local Court and other service providers.

The internal evaluation identified a number of limitations with the model and identified areas that could be strengthened or that require additional resourcing.

However, the collaborative partnership approach between the Local Court and local service providers has provided an important foundation on which to ensure continuous improvement approach to justice responses to DFV over time.

The Specialist Approach has moved the Local Court closer towards the vision for the justice system identified in the DFV victim journey mapping report for:[[210]](#footnote-211)

* an integrated, understandable, trauma-informed system;
* that prioritises victim safety and supports and empowers victim-survivors; and
* that provides greater accountability and behaviour change for perpetrators of DFV.

The results of the 18-month evaluation are so promising that it would be worthwhile for discussions to commence between the Local Court and partner organisations in Darwin, Katherine and Tennant Creek about whether this model could be adapted for the Local Court in each area. Aspects of the approach could also be adapted to bush court settings.

One of the striking features of the Specialist Approach is that it grew from a local collaboration and commitment to improve responses to DFV in Alice Springs. Place-based responses can be effective because professionals in that location have a shared commitment to improve the system. This respect for the value of local collaboration is consistent with the ethos behind NT’s Local Decision Making Framework, and the commitment to Community Courts and Law and Justice Groups as part of the AJA.

#### PROPOSAL SR 10

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

**Southern Region**

* **continuation of the Specialist Approach in Alice Springs**
* **commence discussions in Tennant Creek**

**Northern Region**

* **commence discussions in Darwin**
* **commence discussions in Katherine**

**It is further proposed that:**

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

## Improved policing of DFV

Police in the NT are often the first responders to a DFV situation, and on many occasions meet a scene that is chaotic and where adults and children may be injured or distressed. The way that police handle their first contact with a victim-survivor and a perpetrator in a DFV situation can make a significant difference in victim-survivor safety and offender accountability and how the matter progresses through the justice system.

### The experience of victim-survivors

The DFV victim journey-mapping research found the police response to DFV was inconsistent. [[211]](#footnote-212) Some police responded in a supportive, respectful and helpful way, going to great lengths to keep victim-survivors safe. On other occasions police were dismissive of DFV and did not take the offending seriously or instigate action, causing victim-survivor dissatisfaction and distress.

For example, one victim-survivor said that her partner had choked her (a known high risk factor for domestic homicide) and the police advised that they could not assist and she should take out her own DVO. Victim-survivors expressed frustration at having to tell their stories over and over again to different police officers. There were cases of police misidentifying the victim and the perpetrator, and some victim-survivors believed police were siding with the defendant.[[212]](#footnote-213) One victim-survivor said:

“While he was assaulting me, he called them [Police]. They came and put a DVO on me. You can’t trust them, they’ll always believe him.” - Jenna [[213]](#footnote-214)

The attitudes and actions of police had a significant influence the level of trust and confidence in the justice system.

### Issues raised in this review

Issues raised during this review about the policing of DFV include:

1. Police responses to DFV are perceived as inconsistent, with responses ranging from extremely helpful and proactive to dismissive and failing to take DFV seriously. [[214]](#footnote-215)
2. Some police feel ill-equipped to deal with the complexity of intra-familial crimes like DFV, yet often police are the only service available at the scene.[[215]](#footnote-216)
3. Some police fail to understand the dynamics of DFV, and fail to recognise and manage the risk associated with DFV, especially the risk that accompanies non-physical forms of abuse such as coercive control. This hinders police in responding to DFV in a way that prioritises safety. For example, it contributes to police underestimating the severity of the abuse, or erroneously seeing the parties as equally abusive, or misidentifying the person most in need of protection.
4. In the NT the Police General Order on DFV does not reflect a contemporary understanding of DFV and does not provide guidance on how to identify and respond to coercive control and non‑physical abuse. NT Police are currently reviewing the General Order to bring it into line with a contemporary understanding of DFV.
5. Current law and policy prompts police to deal with DFV as a single incident, rather than recognising it is a pattern of behaviour over time. The cumulative harm of DFV and entrapment of the victim-survivor is under-recognised by some police.
6. Police sometimes view the issues as a general disturbance rather than a DFV situation, and fail to interview the parties, or fail to interview them separately. Given the extent to which coercive control may be operating within the relationship, this means that they are unable to accurately identify who is the victim and who is the perpetrator of DFV, or to gauge the level of risk.
7. A police officer may make a DVO under section 41 if satisfied that (a) it is necessary to ensure a person’s safety because of urgent circumstances or it is not otherwise practicable to obtain a Court DVO. Some police may not issue a Police DVO because they consider the circumstances are not urgent and advise a victim-survivor to make their own application. However, the victim-survivor and support services may consider that it is urgent. The current General Order requires police to issue a Police DVO if the victim-survivor has been ‘physically injured.’ However, this guidance does not take into account other risk factors, for example, the presence of coercive control or the heighten risk following separation, or pregnancy/new birth.
8. There is currently no suitable tool or guideline to help police effectively identify and manage the risk of DFV. The NT has a Common Risk Assessment Tool (CRAT) as part of the DFV RAMF and police policies and procedures are required to align with this RAMF under section 124R of the DFVA. However, the CRAT is perceived to be too lengthy and complex for use by general duties police attending a DFV incident. Police may benefit from a modified risk-assessment tool that is specific to policing that is aligned with the RAMF and informed by the same evidence about risk factors. The RAMF is informed by data and research on the risk factors for serious harm and domestic homicide (including the history of DFV between the parties, coercive control, choking, threats to kill, pregnancy or new birth, actual or pending separation, and victim’s own assessment of the risk). Yet this available information is typically not used by general duties police officers to prioritise or inform responses.
9. Recorded evidence from body worn cameras can be used to capture evidence of DFV but this form of evidence is underutilised in some areas of the NT.
10. While police refer victim-survivors of DFV (with their consent) to other services through SupportLink some stakeholders have expressed the view that these referral pathways need to be strengthened. In some jurisdictions there are mechanisms for compulsory police referral to DFV service providers to bridge that divide and make sure that all victim-survivors are offered assistance.
11. Some jurisdictions have considered a co-responder model in which police respond to DFV incidents in partnership with social workers or other professionals with expertise in DFV. In some jurisdictions police are co-located with workers who have DFV expertise to support the handling of DFV matters and provide informal education at the coalface. Regardless of whether models such as those described above are put in place in the Northern Territory, it is critical that all agencies work together to ensure that each victim and alleged offender, and any children, involved receive an appropriate evidence-based response.

### Experience in other jurisdictions

The challenges associated with the policing of DFV are evident in other jurisdictions.

Victoria Police have long been proactive in improving their response to DFV as part of an integrated approach,[[216]](#footnote-217) although some commentators have noted that there continues to be a bifurcation, with a cohort of police who respond well to DFV situations and a cohort of police who don’t.[[217]](#footnote-218)

The Auditor General for NSW released a review of NSW Police responses to domestic and family violence in April 2022, which identified significant improvements that could be made. For example, the Auditor-General for NSW found that NSW Police did not have a method to capture or analyse feedback from victim-survivors of DFV to improve its responses to them. The Auditor-General noted, ‘A poor experience with police can have a negative effect on victims and reduce the likelihood of reporting to police in future.’[[218]](#footnote-219)

The Queensland Women’s Safety and Justice Taskforce found that:

‘Every day, good police officers are changing and saving the lives of women and girls in Queensland….It is clear, however, that a widespread and negative culture within QPS continues to undermine the good work and intensions of QPS change leaders.’

The Taskforce recommended that the Queensland Government establish a wide-ranging independent commission of inquiry to examine the widespread cultural issues within Queensland Police Service relating to the investigation of DFV. Her Honour Judge Deborah Richards has been appointed by the Queensland Government to lead the Commission of Inquiry which has wide ranging terms of reference.[[219]](#footnote-220)

Some police services around Australia have their DFV procedures in a format that can be shared with other service providers to facilitate dialogue with other services, inter-agency co-ordination and continuous improvement.[[220]](#footnote-221) The NT Police General Order on DFV is internal and confidential and not available to inform discussions with other agencies about how to co-ordinate responses. This impedes the development of a collaborative or integrated with other agencies, or open and frank inter-agency communication to improve responses. NT Police are considering whether it would be useful to create a document summarising police procedures on DFV suitable for sharing with stakeholders.

### Police responses ‘change lives and save lives’

The policing of DFV is an important part of the justice response because if police respond in accordance with best practice it can ‘change lives and save lives’ as the Queensland Women’s Safety and Justice Taskforce described it.

During the course of this review a number of case studies of proactive police practice in responding to DFV were reviewed, including where NT Police had received positive feedback from DFV legal services about the way they had handled some challenging DFV situations. Those case studies are not being included in the review, to protect the privacy of the parties involved.

However, the case studies revealed the following features of good police practice in responding to DFV:

1. interviewing the parties separately to identify what happened;
2. the building of rapport and respectful communication with the victim-survivor to minimise stress and trauma;
3. recognition by police of high risk factors for serious harm, for example, choking, controlling behaviour, pregnancy and new birth, impending or actual separation, release from prison;
4. seeking the views of the victim-survivor about their own assessment of the risk presented by the defendant;
5. a full review of the relationship history by police;
6. a productive working relationship with other professionals supporting the victim-survivor, including lawyers and support workers;
7. ongoing communication so that the victim-survivor is kept informed throughout the process;
8. the taking of proactive steps by police to recognise the seriousness of the offending, including appealing inadequate sentences;
9. investigating (and where necessary challenging) the initial claims made at the scene about what happened, to accurately identify the person most in need of protection;
10. proactive referral of victim-survivors to services that may help them rebuild their lives;
11. using the service of documents as an opportunity to talk with defendants about their use of violence and hold them to account;
12. referral of complex matters to the Police Domestic and Family Violence Unit.

Police may handle multiple DFV situations on every shift. It is vital that they are well-trained, supported and supervised to undertaken this work and that what is expected of them as police is clear. The challenge is to ensure consistent practice given the multitude of challenges police face in their daily work.

### Police powers for proactive policing of DFV

Proactive policing can be extremely important in saving lives and preventing harm in DFV circumstances, particularly given the high rate of repeat offending (77 per cent of DFV offenders have a prior violent offence). Police have power under the section 126B of the *Police Administration Act 1978* to engage in proactive policing in DFV circumstances.

Power to enter and remain to protect a person

(1) For the purpose of protecting a person at a place, a member of the Police Force may enter the place if the member believes on reasonable grounds that:

(a) the person has suffered, is suffering or is in imminent danger of suffering personal injury at the hands of another person; or

(b) another person at the place has contravened, is contravening or is about to contravene an order under the *Domestic and Family Violence Act 2007*.

(2) For the purpose of protecting a child at a place, a member of the Police Force may enter the place if the member believes on reasonable grounds that there is a serious and imminent risk to the welfare of the child.

(3) No warrant is required to enter a place under this section.

(4) The member may remain at the place entered under this section for the time needed to take any reasonable action the member considers necessary to do any of the following:

(a) verify the grounds of the member's belief;

(b) ensure that, in the member's opinion, no one at the place is in danger or at risk;

(c) prevent a breach of the peace or a contravention of the order at the place;

(d) assist, or arrange assistance for, any injured person at the place.

The review has not identified a need to amend these existing powers. However, changes to the police General Order on DFV are proposed below to facilitate proactive policing of DFV and particularly to identify high risk factors for DFV.

### Coronial recommendations

This review supports recent Coroner’s recent recommendation that:

* The Commissioner of Police ensure that the General Order is updated so as to convey a contemporary understanding of domestic and family violence (including coercive control) and that all police officers have training in the identification of ‘red flags’ for coercive control. [[221]](#footnote-222)
* The Commissioner of Police give consideration to developing a risk assessment process/tool to support police in identifying both the physical and non-physical aspects of domestic and family violence. [[222]](#footnote-223)

### Proposals in relation to policing

#### PROPOSAL SR 11

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

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

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

#### PROPOSAL SR 12

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

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

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

#### PROPOSAL SR 13

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

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

#### PROPOSAL SR 14

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

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

## Police referral to 24-hour specialist referral service

One of the questions that has arisen in this review is how police attending a DFV incident can efficiently, effectively and promptly link victim-survivors to DFV services with minimal administrative burden. Police members attend many call-outs in each 24 period, including incidents of DFV. It is the view of both NT Police and DFV services that this referral link can be strengthened.

Currently police refer victim-survivors to DFV services via an intermediary IT system called Support-Link. While Support-Link is a useful tool, there are limitations with this model:

* It relies on the victim-survivor consenting to police passing on their information to services. Some victim-survivors are reluctant to provide consent to police.
* Police sometimes don’t seek the victim-survivor’s consent, and there is a missed opportunity for timely support for that victim-survivor.
* Sometimes police misidentify the person most in need of protection or misjudge the level of risk.
* Support-Link is automated so there is very limited DFV expertise available after hours for police or victim-survivors to talk to.
* Sometimes Support-Link referrals contain inadequate information, which impedes follow up by services.

It is proposed to provide a legislative power and requirement for police to refer the alleged victim-survivor to a 24-hour Specialist DFV Referral Service to create a more seamless experience for victim-survivors in obtaining help, support and safety planning. A fully funded and resourced Specialist DFV Referral Service would need to be established for this purpose and would fill a significant gap in the current DFV service mix in the NT.

Other jurisdictions have a service of this kind, although the model differs from jurisdiction to jurisdiction. The Safer Pathways Model in NSW provides a model which could be considered. [[223]](#footnote-224) The Safe Steps Family Violence Response Centre[[224]](#footnote-225) and Orange Door model[[225]](#footnote-226) in Victoria are also helpful models to consider.

The establishment of a 24 hour referral service in the NT would require consideration of the unique service delivery environment in the NT. In particular, Government would need to consider how the Specialist DFV Referral Service would operate across the regions of the NT and how it would provide effective services in both urban and remote community settings. It is likely that the service would predominantly be offered over the telephone and internet.

This model could include:

* The creation of a Specialist DFV Referral Service, staffed by specialists with expertise on DFV and operating 24 hours a day, 7 days a week.
* Amending Chapter 5A of the DFVA to provide for mandatory referral by police to the Specialist DFV Referral Service for all DFV incidents attended by police (see proposal LR 40).
* Police will be required by legislation to inform victim-survivors about this mandatory referral requirement along the following lines:

*DFV is a serious issue, and no one deserves to have violence used against them. The police are required by law to refer you to the DFV referral service so you can get assistance. You don’t have to talk to that service if you don’t want to but I am required to give them your details and they will contact you in the next two days to offer you assistance.*

* Police can put the victim-survivor on the phone to the service at the incident if that is considered helpful at the time.
* The Specialist DFV Referral Service would have the capacity to provide secondary consultation to police on the job about DFV matters. It is envisaged that police and the Specialist DFV Referral Service will work closely together and have a good rapport.
* The Specialist DFV Referral Service will have strong relationships with existing DFV specialist services in Darwin, Alice Springs, Katherine and Tennant Creek and safe houses in NT communities
* It will also accept voluntary referrals from a range of services as well as police referrals.
* The model will link nationally with 1800 Respect.

#### PROPOSAL SR 15

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

As outlined in proposal LR 40 it is proposed to amend Chapter 5A of the DFVA to require police to refer alleged victims of DFV to a 24 Hour Specialist DFSV Referral Service. It is proposed that police have the power to refer victim-survivors automatically without the victim-survivors consent but police will be required to explain the reason for the mandatory referral to the victim-survivor (see the proposed explanation above).

## Improved prosecution of DFV offences

The Director of Public Prosecutions (DPP) prosecutes criminal matters in the NT, including DFV matters.

Under section 25 of the *Director of Public Prosecutions Act (1990)* the DPP may issue guidelines intended to be followed in the performance of the Director’s functions.

The current guidelines consider a number of matters relevant to improving responses to DFV.

The guidelines cover the role and function of the Witness Assistance Service to provide support to witnesses, victims and their families in the criminal justice process.

Section 21 of the guidelines relates to domestic violence and includes:

* The need to provide special attention to the prosecution of DFV-related offences because of the vulnerability of victims to pressure not to proceed.
* Because the offending behaviour is often ongoing victim safety is the paramount objective, and prosecutions may need to proceed without the evidence of an unwilling victim.
* The need to ensure delays are minimised because they advantage an offender and disadvantage the victim.
* Support from the Witness Assistance Service from the commencement of the prosecution is practical and effective strategy to support a victim.
* Vulnerable witness supports should be pursued.
* Interpreters should be used where English is not the first language of the victim.
* Where there is a reasonable prospect of conviction it is in the public interest to continue with a domestic violence related prosecution. The victim’s view or attitude to giving evidence is also a relevant consideration.
* Any decision to compel a victim to give evidence against his/her will require serious consideration and will be used infrequently.
* There are procedures for the discontinuance of a prosecution, including that they be approved by the Director’s Chambers for indictable offences (or the Office in Charge of Summary Prosecutions for summary offences).

To improve the prosecution of DFV-related criminal offences and reduce the trauma for complainants in criminal matters, it is proposed to:

* review the resourcing of the Witness Assistance Service in light of the level of DFV offending in the NT;
* provide specialist DFV Training for prosecutors.

In addition, some of the legislative proposals outlined in Part 5 of this paper are expected to assist with the prosecution of DFV-related criminal offences.

#### PROPOSAL SR 16

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

#### PROPOSAL SR 17

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

## Legal assistance for parties in DFV proceedings

The provision of legal assistance to parties is an important element of the justice response to DFV.

In June 2020 Australia and NT Governments signed the National Legal Assistance Partnership 2020‑25 (NLAP). Under the NLAP the Australian Government will provide the NT just over $147 million over the five years to fund the legal assistance services sector, that is, legal services provided by the NT Legal Aid Commission, Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services (approximately $29 million per year). Under the NLAP the Australian Government has designated national priority client groups to ensure that states legal assistance services are focussed on people experiencing or at risk of disadvantage.

People experiencing, or at risk of, family violence are one of the eleven national priority client groups for legal assistance services. Aboriginal and Torres Strait Islander people are also a priority group.

The NT Government also provides some funding for legal assistance services. In 2021-22 the AGD are providing just over $8 million for legal assistance services with the majority of funding being provided to the NT Legal Aid Commission (NTLAC), which includes the Darwin Domestic Violence Legal Service (DVLS). The remainder of the funding is split between the Darwin Community Legal Service for the Tenants Advisory Service and Central Australian Women’s Legal Service (CAWLS) for an Alice Springs / Tennant Creek service for women experiencing domestic violence.

Legal assistance is a foundational issue in a justice system. However, it is particularly important in proceedings under the DFVA. DFV typically involves coercive control and an abuse of power, in which one party tries to control and dominate the other party. This control can continue through the legal process, with one party uses the legal process to bully, harass and dominate the other party (often called ‘systems abuse’). This is challenging to address because it is fundamental to the justice system that there is procedural fairness for both parties in a dispute.

Legal assistance in proceedings under the DFVA has important benefits, for example:

* It obviates the need for parties to directly negotiate with each other, which can enable tension and conflict to escalate and put the protected person at risk of further violence and abuse from the defendant;
* With good legal advice many matters can be resolved without a hearing, which can reduce trauma for the parties, be less costly for justice agencies and more efficient for the Court;
* Interim and final orders are likely to be better tailored to the needs of the parties, which can reduce the number of court appearances and improve the safety outcomes for protected persons;
* Good legal assistance can improve defendant accountability – For example, obtaining proper advice about how the law sees their conduct can help defendants to take responsibility for their actions, and avoid continuing blame of the protected person.

It is particularly important given many defendants in DFV matters are Aboriginal, whose first language is not English, or who have low literary levels, making the justice system extremely difficult to navigate.

For this reason legal assistance services have been a key partner in the development and implementation of the Specialist Approach to DFV at the Local Court in Alice Springs. Private solicitors, the Central Australian Aboriginal Family Legal Unit (CAAFLU), the Central Australian Women’s Legal Service (CAWLS), the North Australian Aboriginal Justice Agency (NAAJA) and the Northern Territory Legal Aid Commission (NTLAC), play a key role in the Specialist Approach by providing advice and representation to parties before the Court for DFV related matters. [[226]](#footnote-227)

One of the hallmarks of Specialist Approaches in other jurisdictions is the availability of legal and non-legal advice and support to both defendants and protected persons in DVO applications (see the Specialist DFV Courts in Victoria and Queensland).

The Internal Evaluation of the Specialist Approach to DFV at the Alice Springs Local Court identified limitations in legal assistance available at the Local Court as an impediment to the aims of the Specialist Approach to improve victim safety and defendant accountability:

* In Alice Springs there is no equivalent service to the NT Legal Aid Commission’s Respondent and Early Assistant Legal Service (REALS) which operates in Darwin and is funded by the Australian Government through the NLAP.
* For a period of 9 months (March 2021 to January 2022), the only service available to male defendants in stand-alone DVO matters (and female defendants where CAWLS were unable to assist) was the NTLAC helpline.
* The NTLAC currently provides duty lawyer assistance to male defendants in these matters and the CAWLS provide legal assistance to female defendants in these matters, however, these agencies report not being adequately funded for these services.
* CAWLS has reported that their funding is inadequate to meet the needs of female protected persons and defendants.

There may be limitations in services other than Alice Springs which also need to be addressed.

#### PROPOSAL SR 18

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

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

## Non-legal support and assistance at Court

Attendance at court for proceedings related to DFV can be very stressful for all parties and may result in heightened safety risks. It may also provide a window of engagement that can instigate change if helpful services are provided at the right time. It is therefore important that support and assistance other than legal services is readily accessible at court for the parties to proceedings under the DFV Act. This is critical for victim safety and defendant accountability, and may make a significant contribution to reducing reoffending and breaches of DVOs.

For victim-survivors, non-legal support may need to include:

* a thorough risk assessment, using the RAMF;
* support and referral, to a range of services (including health, housing and financial services);
* safety planning.

Some non-legal support services are available to victim-survivors through Specialist DFV Services and legal assistance services (and for serious criminal matters through the DPP’s Witness Assistance Service). However, as part of the DFSV-ICRO reform agenda it is necessary to consider the nature of the services provided, including demand and capacity questions. In 2020/21, there were 4280 applications for a DVO application in the NT which is on average 82 applications per week.

For defendants in DFV matters, non-legal support may need to include:

* assessment for programs;
* support and referral;
* addressing issues that co-exist with the DFV offending, for example, alcohol and drug use and mental health issues.

Services provided at Court may provide an impetus for defendants to take responsibility for their actions and to change their behaviour.

Existing services include:

* the Men’s Outreach and Referral Service (MOARs) Worker in Alice Springs funded by TFHC; and
* the Respondent Early Assistance Living (REALS) program in Darwin, funded through the NLAP.

#### PROPOSAL SR 19

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

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

## Access to quality DFV perpetrator programs and services

#### DFV Perpetrator Programs

DFV has a high rate of reoffending. NT data shows that 77 per cent of defendants found guilty of a DFV‑related offence have a prior violent offence, and 72 per cent have a prior DFV offence.[[227]](#footnote-228)

Given the level of reoffending, there is need for the justice response to DFV to give greater priority to providing impetus and support for offenders to change their behaviour.

In the NT there are some programs to help DFV perpetrators change their behaviour and some in development. These programs are available across three settings:

1. Correctional settings

(For example, the Family Violence Program and the RAGE Program run by NT Correctional Services (NTCS))

1. Residential facilities / alternatives to custody settings

(For example, the DFV ‘alternatives to custody’ facility being developed as part of the AJA in Alice Springs)

1. Community based settings

(For example, programs run by non-government agencies Tangentyere Council and Catholic Care both funded by TFHC).

However, there are limitations in programs and services that are available for DFV offenders.

Perpetrator programs remain the most under-developed part of the DFV response in the NT. There is a need to expand the number of programs, the number of places and the quality and oversight of programs to ensure the safety of victim-survivors and the accountability of offenders is prioritised. Programs that are not rigorously committed to victim safety and offender accountability may be doing more harm than good, and leave victim-survivors exposed to risk.

Programs need to be culturally-safe and culturally competent to provide assistance to Aboriginal offenders.

There are no overarching standards that programs are required to comply with, or monitoring and oversight of the programs.

Two Government initiatives are currently looking to strengthen DFV perpetrator programs in the NT:

* The AJA Action Plan 2021-2022 includes a commitment to reduce DFV offending, particularly through the development of a non-custodialfacility *in* Alice Springs to help DFV offenders to change their behaviour and the further development of cultural-appropriate evidence-based programs which are more accessible to offenders.
* The Government is committed to sentencing reform and has established a cross-agency Sentencing Reform Implementation Group to develop proposals for reform of mandatory sentencing provisions and strengthening of community-based sentences and offender programs. As part of this reform, evidence-based rehabilitation and behaviour change programs and alternative to custody facilities will be established to deliver appropriate sentencing options.

Responsibility for DFV perpetrator programs sits across two departments – TFHC and AGD – and multiple areas of responsibility:

* NTCS runs a number of programs for prisoners who are held for DFV;
* As part of the AJA, the AJU is undertaking activities to strengthen perpetrator programs;
* TFHC funds two non-government agencies Tangentyere Council in Alice Springs and Catholic Care in Darwin to provide men’s behaviour change programs.

In 2020 Tangentyere Council developed *Central Australian Minimum Standards for Men’s Behaviour Change Programs,*[[228]](#footnote-229)and TFHC proposes to build on this work to create standards that apply NT-wide as part of Action Plan 2. Are present, there are no existing accountability mechanism for DFV perpetrator programs in the NT to ensure an appropriate standard and quality of program, and particularly to ensure that programs are run in way that prioritises victim safety and allows no collusion with persons who use violence.

It is particularly important that programs offered in non-custodial settings have a funded partner contact service and procedures in place to ensure the safety and well-being of partners, ex-partners and family members while the perpetrator is engaged in the program. This is a fundamental safety mechanism that needs to be in place, to protect against the use or escalation of violence while the perpetrator is engaged in the program.

It is also important to recognise that effective DFV perpetrator programs must be gender-specific, that is, separate programs for men and women offenders. This is because the drivers of violence are different for men and women offenders.

At a recent workshop of the DFSV Cross Agency Working Group on the development of Action Plan 2, participants identified the following needs in relation to DFV perpetrator programs:

1. the need to develop NT-wide implementation standards;
2. the need to evaluate and strengthen existing programs;
3. the need to expand existing programs;
4. the need to ensure every program has:
   1. clear objectives to improve the safety of women and children;
   2. have a funded partner contact service;
5. the need for separate healing programs in recognition that people who use violence often have a history of trauma themselves which needs to be addressed.

#### The trial of a Specialist DFV List in Alice Springs

Accountability for DFV perpetrator programs is currently being trialled as part of the Specialist Approach to Domestic and Family Violence at the Local Court in Alice Springs (Specialist Approach).

The Court can make an order for a defendant to attend a DFV Rehabilitation Program as part of a DVO pursuant to section 24 of the DFVA. If this occurs the defendant is referred to a special court list called the ‘Specialist DFV List’.

The way that accountability occurs in relation to orders under section 24 is set out below. This is being trialled as part of the Specialist Approach.

**Accountability via declared programs**

For a section 24 order to be made, the DFV rehabilitation program must be declared by the Attorney-General and Minister for Justice under section 85A of the DFV Act. The Minister may declare a program if the primary objective is to change the behaviour of a person who commits domestic violence to:

1. reduce and prevent the person committing domestic violence;
2. increase the safety and protection of persons with whom the person is or may be in a domestic relationship; and
3. ensure the person accepts responsibility for the person’s behaviour.

AGD has an application process in place to advise the Minister about the suitability of programs prior to the Minister declaring a program under section 85A.

One program has been declared to date, for the purpose of the trial as part of the Specialist Approach.

**Accountability via Specialist DFV List**

The early results of the Specialist DFV List have been promising as indicated in the Internal Evaluation of the Specialist Approach conducted after 18 months of operation (see Part 6.2.2 above).[[229]](#footnote-230)

The Specialist List and the legislation which underpins it (Part 2.11A of the DFV  Act) has a number of important features to increase the accountability of the defendant. These include:

* The safety and protection of the protected person must be the paramount consideration in making an order to attend a program as part of a DVO. In addition, the court must be satisfied that the defendant is a suitable person to take part in the program.
* The practice direction sets out the procedures for the defendant to be assessed for his suitability to attend a program and also for a risk assessment to be conducted with the victim and for the victim’s views to be taken into account if they wish to express a view. Assessments with defendants and protected persons are carried out by professionals with considerable expertise in DFV, based in non-government agencies.
* While a defendant is attending the program, the court has the power to conduct reviews to monitor the defendant’s progress in the program. Reviews are conducted by the Lead Judge of the Specialist Approach.
* The duties of program facilitators are provided for in legislation, including a duty to notify the Court if a defendant has failed to comply with a program requirement and to notify the Police and the Court if the defendant commits further DFV, breaches a DVO, or presents an unacceptable risk to the safety or welfare of the protected person or any person. The program facilitator is also required to provide a notice summarising the defendant’s participation in the program if requested to do so by the Court prior to a review, and to provide a notice when the defendant completes the program requirements.
* The legislation provides for the court to issue a summons or warrant to bring the defendant before the court if the defendant fails to attend a review, fails to comply with a program requirement, or the court believes the defendant may present a risk to the safety of the protected person or any person;
* The legislation provides for the court to revoke the rehabilitation program order in certain circumstances.

The new Part 2.11A of the DFVA includes safeguards to ensure that minor non‑compliance by defendants does not unfairly prevent them from continuing with the program or satisfactorily completing it. For example, if a defendant fails to comply with a requirement of the program, it does not constitute a breach of the DVO but the defendant will be called before the court for a review.

Stakeholders found the Specialist List to be highly successful in supporting defendants to take responsibility for their use of violence. Positive feedback has been received from defendants in the Specialist List regarding both the approach adopted by the Judge and the MBCP. Commenting on their experience of completing the MBCP on the Specialist list, one defendant said:

*“I feel good about myself. For completing it and sticking with it. I’m not ashamed now to talk up. I can express my feelings more. I don’t have to hide it away. Don’t have to let it eat me and make me feel like shit”.*

It has been suggested that men who have been referred to the MBCP as part of the Specialist List, have additional levels of accountability available through the Specialist List compared to men who are referred through other pathways (for example, sentencing orders where the defendant is not required to regularly return to court for review of their progress in the MBCP).

*“Comparing the different referral pathways for men who engage in the MBCP, men from the Specialist List have additional levels of accountability”.*

The Specialist Approach is a limited trial in one location and has only been operating for 12-18 months to date. The Internal Evaluation found:

Of the 12 men ordered to attend the MBCP, 16 per cent (or 2 men) successfully completed the program and half (6 men) were still engaged in the program at the end of the period. As at 31 December 2021 there were 6 defendants on the Specialist List. That is a successful or pending outcome in 67 per cent of matters.

Three defendants did not complete the order to attend the MBCP or the order to attend was revoked following non-compliance. 1 defendant received a completion notice (indicating that he had met the requirements of the MBCP) but was found not to have successfully completed the program pursuant to section 85B of the DFV Act. That is 33 per cent of matters with an unsuccessful outcome.

However, the experience from the Specialist List provides an important opportunity to consider how to increase the accountability of perpetrators of DFV, particularly as the Government is currently considering reform of community-based sentencing options and programs.

The Internal Evaluation of the Specialist Approach recommended that AGD consider, as part of the DFV Legislative Review, mandating attendance at behaviour changes programs along the lines of counselling orders provided for in Part 5 of the *Family Violence Protection Act 2008 (Vic).*[[230]](#footnote-231)

This has been considered in this Review. In proposal LR 18 of this paper it is proposed that attendance at DFV behaviour changes programs be mandated along the lines of counselling orders provided for in Part 5 of the *Family Violence Protection Act 2008 (Vic)*.

#### Trauma informed counselling services for women offenders

Over half of women prisoners in the NT are held for DFV and over 74-80 per cent of women prisoners are victims of DFV and/or child abuse. There is no ongoing access to trauma informed DFV counselling for women prisoners, including Aboriginal prisoners. The need for trauma informed counselling was raised as part of the AJA and by women’s legal services who have been conducting ‘legal health checks’ for women prisoners. A unique service of this kind could play a key role in improving outcomes for women prisoners and reducing reoffending, and so is consistent with the aims of the Aboriginal Justice Agreement.

#### PROPOSAL SR 20

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

#### PROPOSAL SR 21

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

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

#### PROPOSAL SR 22

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

## Identifying DFV and managing risk of DFV

TFHC has developed a DFV Risk Assessment and Management Framework (RAMF) for the NT.[[231]](#footnote-232)

The fundamental purpose of the RAMF is to provide a consistent, evidence-based way to identify, assess, respond to, and manage the risk of DFV in order to:

* increase the safety and well-being of children, young people and adults who are victim-survivors of DFV, and
* increase the accountability of people who commit DFV.

The RAMF provides a consistent framework across justice, health, education and human service sectors.

It is intended to guide:

* **Specialist DFV services** (eg DFV women’s refuges, DFV counselling services, DFV perpetrator programs)
* **Universal and generalist services** (eg hospitals, schools, health services mental health services, alcohol and drug services)
* **Statutory services** (eg police, correctional services, child protection).

Although each agency has a unique role in responding to DFV, the RAMF provides consistent language and understanding of DFV and outlines shared expectations about how DFV should be managed.

This enables victim-survivors and defendants to receive more consistent messages about DFV and, importantly, more consistent and complementary responses from different types of services. This alignment of responses helps create environment in which people who commit DFV are held more accountable and are less able to ‘get away with it.’

The RAMF is such an important part of the response to DFV because it creates a shared way of understanding and responding to DFV. This includes, for example, recognising that coercive control is a fundamental part of DFV that can cause significant cumulative harm and contributes to the entrapment of victim-survivors in abusive relationships.

The other reason the RAMF is important, it is that it is evidence-based. It contains a list of high risk factors for serious harm and death in DFV situations that has been informed by research and Coroner’s findings.

Coercive control is one of these high risk factors. Other high risk factors are set out in Part 3.5.

Consideration of these factors is essential to preventing domestic homicide and other forms of serious harm to victim-survivors.

The RAMF has been approved by the CEO of TFHC under section 124Q of the DFV Act. Under section 124R of the DFV Act all information sharing entities under Chapter 5A must ensure that their policies, procedures, practice guidance and tools relevant to the sharing of information align with the RAMF. Government agencies are information sharing entities (see section 124B definition of information sharing entity) along with any other person or entity that provides a domestic violence related services, and is prescribed by regulation.

However, regardless of whether an organisation is an information sharing entity under Chapter 5A, the RAMF provide critical guidance about what is best practice in responding to DFV.

TFHC have been providing training on the RAMF, which includes a component on coercive control, but there are still many more professionals in the NT who require RAMF training to improve responses to DFV. In addition, some agencies have not fully integrated the RAMF into their own policies and procedures which is critical for effective implementation.

#### PROPOSAL SR 23

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

## Family Safety Framework (FSF)

The Family Safety Framework (FSF) is the Northern Territory’s action-based, integrated, multi‑service response for people experiencing, or at risk of experiencing, serious harm or death because of domestic and family violence (DFV).

The FSF fosters collaboration with government and non-government agencies to identify and assess risk of serious harm or death because of DFV; share information; and agree and report on risk management actions to improve the safety of victim-survivors. Participating agencies in the FSF use the Common Risk Assessment Took in the RAMF to assess and manage risk.

The FSF currently operates in six locations across the Northern Territory: Darwin, Alice Springs, Tennant Creek, Nhulunbuy, Katherine and Yuendumu. NT Police are the operational lead for the FSF, with Territory Families, Housing and Communities leading the policy framework for the FSF.

In 2017 an internal review recommended a number of amendments to strengthen the operation of the FSF. The majority of these recommendations have been implemented, including the development of contemporary FSF Guidelines; development of the DFV Risk Assessment and Management Framework; adoption of the Common Risk Assessment Tool; provision of free risk assessment and management training across the Northern Territory for government and non-government workers, tailored to the level of skill and experience of participants and prioritised for FSF members; and strengthened accountability of Northern Territory Government agencies participating in the FSF.

Women identified as at risk of serious harm or death because of DFV are accepted onto the FSF by consensus by participating agencies and organisations, whether or not they are accompanied by children, and are monitored during and after their involvement in the FSF.

The primary focus of the FSF is the safety and wellbeing of the victim-survivors of DFV.

The Multi Agency Community and Child Safety Framework (MACCSF) focuses on improving child safety outcomes (see below). The FSF and the MACCSF are complementary mechanisms to keep families safer. Responses to DFV that occur under both the FSF and the MACCSF must be informed by the RAMF to ensure a consistent best practice response to DFV.

#### PROPOSAL SR 24

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

## Multi-Agency Children and Community Safety Teams / Framework

Multi-Agency Community and Child Safety Teams (MACCSTs) have been formed in the NT to deliver timely, co-ordinated responses to ensure children, young people and families are cared for, protected, safe and able to reach their full potential.

MACCTs were formed in response to a recommendation by the Coroner following an inquest into the deaths of three young women in remote communities.[[232]](#footnote-233) The circumstances in the lead up the young women’s deaths revealed DFV, sexual assault/abuse, trauma and coercive control.

Many of the children referred to MACCST will be victims of DFV and/or exposed to DFV against their mothers, step-mothers or other family members. Many of the families referred to MACCSTs are likely to have both victims and perpetrators within the family unit.

It is important that the teams respond to children exposed to DFV in a way that fosters victim safety, and offender accountability. Support of the non-offending parent can be instrumental in reducing children’s exposure to DFV. Managing the risk of DFV in accordance with the NT’s RAMF is part of a best practice response.

Many remote communities have a MACCST but not an FSF. In these communities, protocols are required to guide the MACCST in responding to referrals of women who are DFV victim survivors, whether or not they are accompanied by children.

#### PROPOSAL SR 25

**It is proposed that TFHC, in collaboration with DFSV-ICRO, give consideration to developing guidelines on how MACCST will deal with children exposed to, and affected by DFV, and their families, that is aligned with the NT’s DFV Risk Assessment and Management Framework (RAMF). The guidelines should prioritise victim safety and offender accountability and include:**

1. **responses to children who are primary victims or otherwise exposed to DFV;**
2. **responses to non-offending adults who are victims of DFV;**
3. **responses to DFV perpetrators; and**
4. **responses to the high risk factors outlined in the RAMF (these are summarised in Part 3.6 above).**

## Systems DFV Death Review Process

The implementation of a DFV Death Review Process in the NT was an initiative in Action Plan 1 under the *NT’s Domestic, Family and Sexual Violence Reduction Framework 2018-2028*.

It involves a part time research position in the Coroner’s office to provide support to the Coroner in relation to DFV-related Inquests and to contribute to the National database on DFV related homicides.

Unlike other jurisdictions, the process in the NT does not provide a framework or the necessary resources to facilitate cross-agency experts to jointly develop a co-ordinated systemic response to DFV-related issues identified by the Coroner.

It is proposed that the NT DFV Death Review Process be expanded to enable a more dynamic, proactive, cross-agency, systems-based response rather than agencies considering the Coroner’s recommendations largely in isolation. There needs to be multi-agency approach to learning from DFV-related deaths to prevent future deaths and ensure continuous improvement of the NT’s response to DFV.

Most jurisdictions have some form of death review process in place, and jurisdictions work together to regularly report on DFV related homicides.

It is proposed that the expanded NT death review process:

* identify deaths that occur in a DFV context;
* assist the Coroner in relation to DFV related matters being considered by the Coroner;
* provide a group of independent experts that the coroner can draw on in considering his or her findings, and particularly to inform recommendations for change (especially where there are cross agency implications);
* undertake independent research, investigations and case reviews of deaths that occur in a DFV context (either individually or as a group of cases with common features);
* source additional information to inform case reviews;
* identify fatality risk factors to inform risk assessment frameworks and for other purposes;
* develop recommendations for systems change across agencies and non-government agencies (including legislation, policies, practices and services and inform the NT’s DFV Risk Assessment and Management Framework);
* monitor the progress and uptake of recommendations;
* report to the public and parliament on its work and recommendations.

#### PROPOSAL SR 26

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

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

## Ongoing inter-agency leadership and governance

One of the tasks of the DFSV-ICRO in its 12 months of operation is to recommend an appropriate inter-agency leadership and governance structure for the NTG to prevent and respond to DFV going forward.

A mechanism or structure of this kind will be necessary to maintain the momentum for DFSV reform over time, and ensure that DFV reforms are implemented with an appropriate degree of inter-agency collaboration as part of an integrated system.

It is proposed that the systems reforms identified in this review (see part 5) be integrated into DFSV-ICROs reform agenda for the purpose of ensuring a co-ordinated inter-agency approach to DFV reform in the NT.

## Questions to consider – Systemic reforms

The following questions are for consideration:

1. Which of the proposed systemic reforms do you support? Which do you consider to be a priority?
2. Which of the proposed systemic reforms do you not support?
3. Do you have suggestions to strengthen any of the proposals or the approach to DFV overall?

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

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# Attachments

## Recent DFV related legislative reforms in the NT

There have been a number of DFV-related legislative reforms in the NT in the past five years.

• ***Justice Legislation Amendment (Domestic and Family Violence) Act 2020*** commenced on 29 July 2020. The Act made amendments in three distinct areas to improve responses to domestic and family violence.

1. The Act created a new Criminal Code offence of choking, suffocation and strangulation in a domestic relationship in recognition that if choking occurs as part of domestic violence it is a high risk factor for future harm and lethal outcomes.
2. The Act amended the *Domestic and Family Violence 2007* to clarify that, as part of a Domestic Violence Order **(**DVO), the Local Court may order a tenancy agreement to be terminated even if a replacement agreement is not made. The Act also removes the requirement that a relationship must be permanently broken down in order for a tenancy agreement to be terminated or replaced.
3. The Act amended the *Domestic and Family Violence 2007* to better regulate orders to attend rehabilitation programs made as part of a DVO. The Act amends section 24 of the *Domestic and Family Violence Act 2007* so that the safety and protection of the protected person is the paramount consideration for the Court in determining whether to make an order to attend a rehabilitation program.

The Act created a new Part 2.11A of the *Domestic and Family Violence Act 2007* to provide for rehabilitation programs. This includes provisions for the Minister to declare programs to be rehabilitation programs for the purposes of the Act if their primary objective is to help a person who commits domestic violence to change their behaviour. Part 2.11A also provided for the Court to conduct reviews to monitor the defendant’s progress.

The Act amended section 78DI of the *Sentencing Act 1995* to make clear that, if a defendant has satisfactorily completed a rehabilitation program ordered by the Court as part of a DVO, a Court may find that it constitutes exceptional circumstances for the purpose of mandatory sentencing. This is intended to create greater incentive for defendants to agree to attend programs to help them stop using domestic and family violence.

* ***Evidence and Other Legislation Amendment Act 2020*** commenced on 29 July 2020. The Act expanded the use of video conferencing and enhanced the protections for vulnerable witnesses in sexual and domestic violence proceedings.
* ***Domestic and Family Violence (Information Sharing) Act 2018*** commenced on 30 August 2019. The Act introduced a new Chapter 5A in the DFVA which provides for the sharing of information to assess, lessen and prevent serious threats due to domestic violence.
* ***Justice Legislation Amendment (Body Worn Video and Domestic Violence Evidence) Act 201*7** commenced on 25 November 2017. The Act amended legislation to allow born worn camera recordings to be used as evidence for complainants of DFV related offences in criminal court proceedings.
* ***Domestic and Family Violence (Recognition of Domestic Violence Orders) (National Uniform Law) Amendment Act 2017*** commenced on 25 November 2017 and provided for the national recognition of DVOs.

## *Domestic Abuse* (Scotland) *Act 2018* - Excerpts

Part 1 **Offence as to domestic abuse**

***Engaging in course of abusive behaviour***

**1 Abusive behaviour towards partner or ex-partner**

(1) A person commits an offence if—

(a) the person (“A”) engages in a course of behaviour which is abusive of A’s partner or ex-partner (“B”), and

(b) both of the further conditions are met.

(2) The further conditions are—

(a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,

(b) that either—

(i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or

(ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3 ) In the further conditions, the references to psychological harm include fear, alarm and distress.

**2 What constitutes abusive behaviour**

(1) Subsections (2) to (4) elaborate on section 1(1) as to A’s behaviour.

(2) Behaviour which is abusive of B includes (in particular)—

(a) behaviour directed at B that is violent, threatening or intimidating,

(b) behaviour directed at B, at a child of B or at another person that either—

(i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

(3) The relevant effects are of—

(a) making B dependent on, or subordinate to, A,

(b) isolating B from friends, relatives or other sources of support,

(c) controlling, regulating or monitoring B’s day-to-day activities,

(d) depriving B of, or restricting B’s, freedom of action,

(e) frightening, humiliating, degrading or punishing B.

(4) In subsection (2)—

(a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence

(b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

## *Serious Crime Act 2015* (England and Wales), section 76

**Section 76 Controlling or coercive behaviour in an intimate or family relationship**

(1) A person (A) commits an offence if—

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,

(b) at the time of the behaviour, A and B are personally connected,

(c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

(2) A and B are “personally connected” if—

(a) A is in an intimate personal relationship with B, or

(b) A and B live together and—

(i) they are members of the same family, or

(ii) they have previously been in an intimate personal relationship with each other. [[233]](#footnote-234)

(3) But A does not commit an offence under this section if at the time of the behaviour in question—

(a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and

(b) B is under 16.

(4) A’s behaviour has a “serious effect” on B if—

(a) it causes B to fear, on at least two occasions, that violence will be used against B, or

(b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities.

(5) For the purposes of subsection [(1)(d)](https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted#section-76-1-d) A “ought to know” that which a reasonable person in possession of the same information would know.

(6) For the purposes of subsection [(2)(b)(i)](https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted#section-76-2-b-i) A and B are members of the same family if—

(a) they are, or have been, married to each other;

(b) they are, or have been, civil partners of each other;

(c) they are relatives;

(d) they have agreed to marry one another (whether or not the agreement has been terminated);

(e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);

(f) they are both parents of the same child;

(g) they have, or have had, parental responsibility for the same child.

(7) In subsection [(6)](https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted#section-76-6)—

“civil partnership agreement” has the meaning given by section 73 of the Civil Partnership Act 2004;

“child” means a person under the age of 18 years;

“parental responsibility” has the same meaning as in the Children Act 1989;

“relative” has the meaning given by section 63(1) of the Family Law Act 1996.

(8) In proceedings for an offence under this section it is a defence for A to show that—

(a) in engaging in the behaviour in question, A believed that he or she was acting in B’s best interests, and

(b) the behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection [(8)](https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted#section-76-8) if—

(a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and

(b) the contrary is not proved beyond reasonable doubt.

(10) The defence in subsection [(8)](https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted#section-76-8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

(11) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

## Model definition of family violence – Law Council of Australia

This definition was adopted as a model definition by the Directors of the Law Council of Australia on 27 November 2021.

#### Meaning of family violence

1. For the purposes of this Act, family violence is—
   1. behaviour by a person towards a family member of that person if that behaviour—
      1. is physically or sexually abusive; or
      2. is emotionally or psychologically abusive; or
      3. is economically abusive; or
      4. is threatening; or
      5. is coercive; or
      6. in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
   2. behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

**Examples**

1. The following behaviour may constitute family violence under paragraph (a)—
   * using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage;
   * using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive dowry, either before or after a marriage.
2. The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)—
   * overhearing threats of physical abuse by one family member towards another family member;
   * seeing or hearing an assault of a family member by another family member;
   * comforting or providing assistance to a family member who has been physically abused by another family member;
   * cleaning up a site after a family member has intentionally damaged another family member's property;
   * being present when police officers attend an incident involving physical abuse of a family member by another family member.
3. Without limiting subsection (1), family violence includes the following behaviour—
   1. assaulting or causing personal injury to a family member or threatening to do so;
   2. sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;
   3. intentionally damaging a family member's property, or threatening to do so;
   4. i;
   5. unlawfully depriving a family member of the family member's liberty, or threatening to do so;
   6. causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member;
   7. threatening a person with the death or injury of the person, a child of the person, or someone else;
   8. unauthorised surveillance of a person;
   9. unlawfully stalking or cyber stalking a person;
   10. attaching a tracking device to a motor vehicle;
   11. using without consent an application or device to track a person’s phone usage (calls and text messages, location data, internet history, etc.); and
   12. taking without consent or distributing without consent an intimate image of the family member, or threatening to distribute the image.
4. To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.

#### Meaning of economic abuse

1. For the purposes of this Act, economic abuse is behaviour by a person (the first person) that is coercive, deceptive or unreasonably controls another person (the second person), without the second person's consent—
   1. in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or
   2. by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or the second person's child, if the second person is entirely or predominantly dependent on the first person for financial support to meet those living expenses.

**Examples include but are not limited to—**

* + - preventing a person from having access to financial assets, including but not limited to preventing a person from having control over income and assets
    - coercing a person to relinquish control over assets and income;
    - removing or keeping a family member's property without permission, or threatening to do so;
    - disposing of property owned by a person, or owned jointly with a person, against the person's wishes and without lawful excuse;
    - without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses;
    - preventing a person from seeking or keeping employment;
    - creating, or causing to be created, a debt in a person’s name without permission;
    - coercing a person to claim social security payments;
    - coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person;
    - coercing a person to sign a contract for the purchase of goods or services;
    - coercing a person to sign a contract for the provision of finance, a loan or credit;
    - coercing a person to sign a contract of guarantee;
    - coercing a person to sign any legal document for the establishment or operation of a business.

#### Meaning of emotional or psychological abuse

1. For the purposes of this Act, emotional or psychological abuse means behaviour by a person towards another person that torments, coerces, intimidates, harasses or is offensive to the other person.

**Examples include but are not limited to—**

* + repeated derogatory taunts, including racial taunts;
  + threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes;
  + threatening to disclose personal information to a person’s employer or at a person’s workplace;
  + threatening to withhold a person's medication;
  + preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity;
  + threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person;
  + following a person when the person is out in public, including by vehicle or on foot;
  + remaining outside a person’s residence or place of work;
  + repeatedly contacting a person by telephone, SMS message, email or online or social networking site without the person’s consent;
  + giving or sending offensive material to the person, or leaving offensive material where it will be found by, given to or brought to the attention of the person;
  + taking an invasive image of the person and threatening to distribute the image without the person's consent;
  + publishing or transmitting offensive material by means of the Internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the person;
  + driving a vehicle in a reckless or dangerous manner, or otherwise acting in a reckless or dangerous manner, while the person is a passenger in the vehicle;
  + threatening to institutionalise the person;
  + threatening to withdraw care on which the person is dependent;
  + preventing the person from entering the person's place of residence.

## *Evidence Act 1906* (WA) - Jury directions and expert evidence

##### **38. What may constitute evidence of family violence**

(1) For the purposes of sections 39 to 39G, evidence of family violence, in relation to a person, includes (but is not limited to) evidence of any of the following —

(a) the history of the relationship between the person and a family member, including violence by the family member towards the person, or by the person towards the family member, or by the family member of the person in relation to any other family member;

(b) the cumulative effect of family violence, including the psychological effect, on the person or a family member affected by that violence;

(c) social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;

(d) responses by family, community or agencies to family violence, including further violence that may be used by a family member to prevent, or in retaliation to, any help‑seeking behaviour or use of safety options by the person;

(e) ways in which social, cultural, economic or personal factors have affected any help‑seeking behaviour undertaken by the person, or the safety options realistically available to the person, in response to family violence;

(f) ways in which violence by the family member towards the person, or the lack of safety options, were exacerbated by inequities experienced by the person, including inequities associated with (but not limited to) race, poverty, gender, disability or age;

(g) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from a person who commits family violence;

(h) the psychological effect of family violence on people who are or have been in a relationship affected by family violence;

(i) social or economic factors that impact on people who are or have been in a relationship affected by family violence.

(2) Subsection (1) does not limit the operation of the *Restraining Orders Act 1997* section 5A(2).

[Section 38 inserted: No. 30 of 2020 s. 94.]

##### **39. Expert evidence of family violence**

(1) This section applies to any criminal proceedings where evidence of family violence is relevant to a fact in issue.

(2) The evidence of an expert on the subject of family violence is admissible in relation to any matter that may constitute evidence of family violence.

(3) Evidence given by the expert may include —

(a) evidence about the nature and effects of family violence on any person; and

(b) evidence about the effect of family violence on a particular person who has been the subject of family violence.

(4) For the purposes of this section, an expert on the subject of family violence includes a person who can demonstrate specialised knowledge, gained by training, study or experience, of any matter that may constitute evidence of family violence.

[Section 39 inserted: No. 30 of 2020 s. 94.]

##### **39A. Evidence of family violence — general provision**

In proceedings for an offence, evidence of family violence is admissible if family violence is relevant to a fact in issue.

[Section 39A inserted: No. 30 of 2020 s. 94.]

##### **39B. Evidence of family violence — self‑defence**

Without limiting any other evidence that may be adduced, in criminal proceedings in which self‑defence in response to family violence is an issue, evidence of family violence may be relevant to determining whether —

(a) a person has a belief that an act was necessary to defend the person or another person from a harmful act, including a harmful act that was not imminent; or

(b) a person’s act was a reasonable response by the person in the circumstances as the person believed them to be; or

(c) there are reasonable grounds for a particular belief by a person.

[Section 39B inserted: No. 30 of 2020 s. 94.]

##### **39C. Request for direction on family violence — self‑defence**

(1) In criminal proceedings in which self‑defence in response to family violence is an issue, defence counsel (or, if the accused is unrepresented, the accused) may request at any time that the trial judge direct the jury on family violence in accordance with section 39E and all or specified parts of section 39F.

(2) The trial judge must give the jury a requested direction on family violence, including all or specified parts of section 39F if so requested, unless there are good reasons for not doing so.

(3) If a direction on family violence is not requested, the trial judge may give the direction if the trial judge considers that it is in the interests of justice to do so.

(4) The trial judge —

(a) must give the direction as soon as practicable after the request is made; and

(b) may give the direction before any evidence is adduced in the trial.

(5) The trial judge may repeat a direction at any time in the trial.

(6) This section, and sections 39E and 39F, do not limit what the trial judge may include in any other direction to the jury, including in relation to evidence given by an expert witness.

[Section 39C inserted: No. 30 of 2020 s. 94.]

##### **39D. Request for direction on family violence — general provision**

(1) In criminal proceedings in which family violence is an issue, prosecution or defence counsel (or, if the accused is unrepresented, the accused) may request at any time that the trial judge direct the jury on family violence in accordance with all or specified parts of section 39F.

(2) The trial judge must give the jury a requested direction on family violence, including all or specified parts of section 39F if so requested, unless there are good reasons for not doing so.

(3) If a direction on family violence is not requested, the trial judge may give the direction if the trial judge considers that it is in the interests of justice to do so.

(4) The trial judge —

(a) must give the direction as soon as practicable after the request is made; and

(b) may give the direction before any evidence is adduced in the trial.

(5) The trial judge may repeat a direction at any time in the trial.

(6) This section, and section 39F, do not limit what the trial judge may include in any other direction to the jury, including in relation to evidence given by an expert witness.

[Section 39D inserted: No. 30 of 2020 s. 94.]

##### **39E. Content of direction on family violence**

In giving a direction under section 39C, the trial judge must inform the jury that —

(a) self‑defence is, or is likely to be, an issue in the trial; and

(b) as a matter of law, evidence of family violence may be relevant to determining whether the accused acted in self‑defence; and

(c) evidence in the trial is likely to include evidence of family violence committed by the victim against the accused or another person whom the accused was defending.

[Section 39E inserted: No. 30 of 2020 s. 94.]

##### **39F. Additional matters for direction on family violence**

(1) In giving a direction requested under section 39C or 39D, the trial judge may include any of the following matters in the direction —

(a) that family violence —

(i) is not limited to physical abuse and may, for example, include sexual abuse, psychological abuse or financial abuse;

(ii) may amount to violence against a person even though it is immediately directed at another person;

(iii) may consist of a single act;

(iv) may consist of separate acts that form part of a pattern of behaviour which can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial;

(b) if relevant, that experience shows that —

(i) people may react differently to family violence and there is no typical, proper or normal response to family violence;

(ii) it is not uncommon for a person who has been subjected to family violence to stay with an abusive partner after the onset of family violence, or to leave and then return to the partner;

(iii) it is not uncommon for a person who has been subjected to family violence not to report family violence to police or seek assistance to stop family violence;

(iv) decisions made by a person subjected to family violence about how to address, respond to or avoid family violence may be influenced by a variety of factors;

(v) it is not uncommon for a decision to leave an abusive partner, or to seek assistance, to increase apprehension about, or the actual risk of, harm;

(c) in the case of self‑defence, that, as a matter of law, evidence that the accused assaulted the victim on a previous occasion does not mean that the accused could not have been acting in self‑defence in relation to the offence charged.

(2) In making a direction under subsection (1), the trial judge may also indicate that behaviour, or patterns of behaviour, that may constitute family violence may include (but are not limited to) —

(a) placing or keeping a person in a dependent or subordinate relationship;

(b) isolating a person from family, friends or other sources of support;

(c) controlling, regulating or monitoring a person’s day‑to‑day activities;

(d) depriving or restricting a person’s freedom of movement or action;

(e) restricting a person’s ability to resist violence;

(f) frightening, humiliating, degrading or punishing a person, including punishing a person for resisting violence;

(g) compelling a person to engage in unlawful or harmful conduct.

(3) If the trial judge makes a direction that relates to subsection (1)(b)(iv), the trial judge may also indicate that decisions made by a person subjected to family violence about how to address, respond to or avoid family violence may be influenced by such things as the following —

(a) the family violence itself;

(b) social, cultural, economic or personal factors, or inequities experienced by the person, including inequities associated with (but not limited to) race, poverty, gender, disability or age;

(c) responses by family, community or agencies to the family violence or to any help‑seeking behaviour or use of safety options by the person;

(d) the provision of, or failure in the provision of, safety options that might realistically have provided ongoing safety to the person, and the person’s perceptions of how effective those safety options might have been to prevent further harm;

(e) further violence, or the threat of further violence, used by a family member to prevent, or in retaliation to, any help‑seeking behaviour or use of safety options by the person.

[Section 39F inserted: No. 30 of 2020 s. 94.]

##### **39G. Application of s. 39E and 39F to criminal proceedings without juries**

If a court is sitting without a jury, the court’s reasoning with respect to any matter in relation to which sections 39E and 39F make provision must, to such extent as the court thinks fit, be consistent with how a jury would be directed in accordance with those sections in the particular case.

[Section 39G inserted: No. 30 of 2020 s. 94.]

## *Juries Directions Act 2005 (Vic)* – Jury Directions

**Part 6—Family violence**

55 Application of Part

This Part applies to a criminal proceeding in which self-defence or duress in the context of family violence is in issue.

56 Part 3 does not apply

Part 3 does not apply to this Part.

57 Definition

In this Part—

***family violence*** has the same meaning as in section 322J(2) of the **Crimes Act 1958**.

58 Request for direction on family violence

(1) Defence counsel (or, if the accused is unrepresented, the accused) may request at any time that the trial judge direct the jury on family violence in accordance with section 59 and all or specified parts of section 60.

(2) The trial judge must give the jury a requested direction on family violence, including all or specified parts of section 60 if so requested, unless there are good reasons for not doing so.

(3) If the accused is unrepresented and does not request a direction on family violence, the trial judge may give the direction in accordance with this Part if the trial judge considers that it is in the interests of justice to do so.

(4) The trial judge—

(a) must give the direction as soon as practicable after the request is made; and

(b) may give the direction before any evidence is adduced in the trial.

(5) The trial judge may repeat a direction under this Part at any time in the trial.

(6) This Part does not limit what the trial judge may include in any other direction to the jury in relation to evidence given by an expert witness.

59 Content of direction on family violence

In giving a direction under section 58, the trial judge must inform the jury that—

(a) self-defence or duress (as the case requires) is, or is likely to be, in issue in the trial; and

(b) as a matter of law, evidence of family violence may be relevant to determining whether the accused acted in self-defence or under duress (as the case requires); and

(c) in the case of self-defence, evidence in the trial is likely to include evidence of family violence committed by the victim against the accused or another person whom the accused was defending; and

(d) in the case of duress, evidence in the trial is likely to include evidence of family violence committed by another person against the accused or a third person.

60 Additional matters for direction on family violence

In giving a direction requested under section 58, the trial judge may include any of the following matters in the direction—

(a) that family violence—

(i) is not limited to physical abuse and may include sexual abuse and psychological abuse;

(ii) may involve intimidation, harassment and threats of abuse;

(iii) may consist of a single act;

(iv) may consist of separate acts that form part of a pattern of behaviour which can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial;

(b) if relevant, that experience shows that—

(i) people may react differently to family violence and there is no typical, proper or normal response to family violence;

(ii) it is not uncommon for a person who has been subjected to family violence—

(A) to stay with an abusive partner after the onset of family violence, or to leave and then return to the partner;

(B) not to report family violence to police or seek assistance to stop family violence;

(iii) decisions made by a person subjected to family violence about how to address, respond to or avoid family violence may be influenced by—

(A) family violence itself;

(B) cultural, social, economic and personal factors;

(c) that, as a matter of law, evidence that the accused assaulted the victim on a previous occasion does not mean that the accused could not have been acting in self-defence or under duress (as the case requires) in relation to the offence charged.

## Orders of indefinite duration – Section 79B of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)

**79B   Apprehended domestic violence orders may be of indefinite duration**

(1)  A court, when determining the period of an apprehended domestic violence order under section 79A, may determine that the order remain in force for an indefinite period (an indefinite order) if the court is satisfied that—

(a)  the applicant has sought an indefinite order, and

(b)  the order relates to a defendant who was 18 years of age or older when the application for the order was first made, and

(c)  there are circumstances giving rise to a significant and ongoing risk of death or serious physical or psychological harm to the protected person or any dependants of the protected person, and

(d)  that risk cannot be adequately mitigated by an order of limited duration.

(2)  In determining whether there are circumstances giving rise to a significant and ongoing risk of death or serious physical or psychological harm to the protected person or any dependants of the protected person, the court must have regard to—

(a)  any prior conviction of the defendant for a domestic violence offence, including for a contravention of any other apprehended domestic violence order in relation to the protected person or any other person who was the protected person under that order, and

(b)  the conduct of the defendant in respect of the protected person that is relevant to the risk of death or serious physical or psychological harm, such as assaults, stalking, threats to kill or use of weapons, and

(c)  the nature, number and timing of the incidents involved in the conduct referred to in paragraphs (a) and (b).

(3)  If a court makes an indefinite order, the order remains in force until varied, revoked or set aside on appeal.

(4)  A person against whom an indefinite order is made may make an application for the variation or revocation of the order only by leave of the court.

(5)  The court may grant leave to make an application referred to in subsection (4) only if the court is satisfied that—

(a)  there has been a significant change in circumstances since the relevant order was made or last varied, or

(b)  it is otherwise in the interests of justice.

(6)  Subsections (4) and (5) do not apply in respect of a police-initiated order where the protected person, or 1 of the protected persons, is a child and leave must instead be sought under section 72B.

1. *Inquest into the death of Roberta Judy Curry [2022] NTLC 010*, at paragraph 65. [↑](#footnote-ref-2)
2. Personal communication with the Territory Coroner’s Officer 20 June 2022. Note these figures do not include deaths considered by the Coroner in which there was DFV in the circumstances leading up to the death but it was not identified as being a cause of the death (for example, where there was DFV in the lead up to a person’s death but a victim either took their own life or there was insufficient evidence to determine the cause of the injury that lead to the death). [↑](#footnote-ref-3)
3. Richmond, A (2019) *Journey Mapping Workshop Report: Exploring the Voices and Experiences of Victim Survivors in the NT Justice System*, published by Dawn House for the Domestic Violence Justice Reform Network, February 2019. [↑](#footnote-ref-4)
4. Data from the 2019/20 financial year provided by the Department of the Attorney-General and Justice Research and Statistics Unit. Extracted from IJIS on 31 July 2020. [↑](#footnote-ref-5)
5. The review includes sexual violence where the victim and the offender are in a domestic relationship (ie. in DFV circumstances, which is over a third of reported sexual offences). Legislative reforms in relation to sexual offences are being considered separately by the Government, and is a priority action in the NT’s *Sexual Violence Prevention and Response Framework 2020-2028*. [↑](#footnote-ref-6)
6. It is noted that some commentators prefer the term ‘domestic abuse’ to reflect the centrality of non-physical abuse in DFV offending. (See Jess Hill (2019), *See What You Made Me Do: Power Control and Domestic Abuse*, Black Inc). However, for the purposes of this review consistency with the terminology in the DFVA was considered important. [↑](#footnote-ref-7)
7. Lesbian, Gay, Bisexual, Transgender, Intersex, Queer (LGBTIQ+) [↑](#footnote-ref-8)
8. See the NT’s *Domestic and Family Violence Risk Assessment and Management Framework* (2020)*.*

   Between 2000 and 2020 there were 160 DFV-related homicides in the NT (101 homicides by former or current partners and 59 homicides by other family members). The Coroner has reported that 65 Aboriginal women were killed by their current or former partner during this period. [↑](#footnote-ref-9)
9. <https://tfhc.nt.gov.au/domestic,-family-and-sexual-violence-reduction/domestic-and-family-violence-reduction-strategy> [↑](#footnote-ref-10)
10. [↑](#footnote-ref-11)
11. Richmond (2019) [↑](#footnote-ref-12)
12. Northern Territory Government, Department of the Attorney-General and Justice (2016) *Report on Consultation: Review of the Domestic and Family Violence Act.* [↑](#footnote-ref-13)
13. Family Violence Reform Implementation Monitor [www.fvrim.vic.gov.au](http://www.fvrim.vic.gov.au) [↑](#footnote-ref-14)
14. Parliament of New South Wales, Joint Select Committee on Coercive Control (2021), *Coercive control in domestic relationships,* Report 1/57 – June 2021. [↑](#footnote-ref-15)
15. Women’s Safety and Justice Taskforce (2021), *Hear her voice: Addressing coercive control and domestic violence in Queensland* (Volume 1, 2 and 3). [↑](#footnote-ref-16)
16. Government of Western Australia, Office of the Commissioner for Victims of Crime (2022), *Legislative Responses to Coercive Control in Western Australia: Discussion Paper.* [↑](#footnote-ref-17)
17. Government of South Australia, Attorney-General’s Department (2022), *Discussion Paper: Implementation considerations should coercive control be criminalised in South Australia*. [↑](#footnote-ref-18)
18. Parliament of Victoria (2022) *Research Paper: What is coercive control?*, March 2022. [↑](#footnote-ref-19)
19. See the terms of reference at <https://www.ag.gov.au/families-and-marriage/publications/development-national-principles-addressing-coercive-control> [↑](#footnote-ref-20)
20. See for example, United Kingdom Home Office (2021), Review of Controlling or Coercive Behaviour Offence, Research Report 122, <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence> [↑](#footnote-ref-21)
21. Presentations on the *Domestic Abuse (Scotland) Act 2018* provided in 2021 by *Scottish Government Officials (Patrick Down), Police (Det Chief Supt Samantha McCluskey and Det Supt Debbie Forrester) and Prosecutors (Moira Price and Alisdair Macleod).* [↑](#footnote-ref-22)
22. This definition is along the lines of section 5 of the *Family Violence Protection Act 2008* (Vic), and has recently been adopted as a model definition of family violence by Law Council of Australia. [↑](#footnote-ref-23)
23. See section 5(1)(b) of the *Family Violence Protection Act 2008* (Vic). [↑](#footnote-ref-24)
24. In the NT in 2020/21 83% of defendants in DFV-related criminal proceedings are men and 17% are women. Extracted from IJIS on 19 July 2021. [↑](#footnote-ref-25)
25. This includes physical and non-physical abuse. [↑](#footnote-ref-26)
26. Her Honour Justice Kelly was quoted in *The Weekend Australian*, 4-5 June 2022, p. 1 and 2. [↑](#footnote-ref-27)
27. *Inquest into the death of Roberta Judy Curry* [2022] NTLC 101, at paragraph 65, page 20. [↑](#footnote-ref-28)
28. Australian Bureau of Statistics (ABS), Recorded Crime, Victimisation, Australia (Released 45100DO 005\_2019, Released date 9 July 2020). Data is not available for Queensland or Victoria. [↑](#footnote-ref-29)
29. Australian Bureau of Statistics Recorded Crime Victims 2020 (released on 24 June 2021) https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release#victims-of-family-and-domestic-violence-related-offences [↑](#footnote-ref-30)
30. Australian Bureau of Statistics (ABS) Recorded Crime – Victims for 2020 (released on 24 June 2021). https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020#northern-territory [↑](#footnote-ref-31)
31. Department of Social Services (2016) and Willis (2011) quoted in Langton, M, Smith, K., Eastman, T., O’Neill, L., Cheesman, E. and Rose, M. (2020) *Improving family violence legal and support services for Aboriginal and Torres Strait Islander Women* (Research report, 25/2020), Sydney: ANROWS. [↑](#footnote-ref-32)
32. Australian Bureau of Statistics (ABS) Recorded Crime – Victims for 2020 (released on 24 June 2021). https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020#northern-territory. [↑](#footnote-ref-33)
33. Personal communication with the Territory Coroner’s Officer 20 June 2022. Note these figures do not include deaths considered by the Coroner in which there was DFV in the circumstances leading up to the death but it was not identified as being a cause of the death (for example, where there was DFV in the lead up to a person’s death but a victim either took their own life or there was insufficient evidence to determine the cause of the injury that lead to the death). [↑](#footnote-ref-34)
34. <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020> [↑](#footnote-ref-35)
35. Australian Bureau of Statistics (2020). This is consistent with NT Crime Statistics which vary slightly around this figure. [↑](#footnote-ref-36)
36. Data extracted from Court’s Data Warehouse on 14 July 2021. [↑](#footnote-ref-37)
37. From CJRSU’s monthly prisoner census database. [↑](#footnote-ref-38)
38. Data from the 2019/20 financial year provided by the Department of the Attorney-General and Justice Research and Statistics Unit. Extracted from IJIS on 31 July 2020. [↑](#footnote-ref-39)
39. Richmond, A. (2019), *Journey Mapping Workshop Report: Exploring the Voices and Experiences of Victim-Survivors of Domestic and Family Violence in NT Justice System*, Prepared for the Domestic Violence Justice Reform Network and published by Dawn House, February 2019. [↑](#footnote-ref-40)
40. Section 186AA of the NT Criminal Code. [↑](#footnote-ref-41)
41. Section 24 and Part 2.11A of the *Domestic and Family Violence Act 2007.* [↑](#footnote-ref-42)
42. Douglas, H (2021), *Women, Intimate Partner Violence, and the Law*, Oxford University Press. [↑](#footnote-ref-43)
43. Langton, M, Smith, K., Eastman, T., O’Neill, L., Cheesman, E. and Rose, M. (2020) *Improving family violence legal and support services for Aboriginal and Torres Strait Islander Women* (Research report, 25/2020), Sydney: ANROWS. [↑](#footnote-ref-44)
44. ANROWS (2020) Improving family violence legal and support services for Aboriginal and Torres Strait Islander peoples: Key findings and future directions (Research to policy and practice, 25-26/2020. Sydney: ANROWS, at p. 6. [↑](#footnote-ref-45)
45. Australian Bureau of Statistics (ABS), Recorded Crime, Victimisation, Australia (Released 45100DO 005\_2019, Released date 9 July 2020) [↑](#footnote-ref-46)
46. Extracted from IJIS on 2 May 2022. [↑](#footnote-ref-47)
47. Department of Territory Families, Housing and Communities (2020), *Northern Territory Domestic and Family Violence Risk Assessment and Management Framewor*k. [↑](#footnote-ref-48)
48. Australian National Research Organisation on Women’s Safety (ANROWS) (2018), *National Risk Assessment Principles for Family and Domestic Violence: Quick Reference Guide for Practitioners.*  [↑](#footnote-ref-49)
49. These risk factors are not listed in order from highest risk to lowest risk. They are in the order listed in the *Northern Territory Domestic and Family Violence Risk Assessment and Management Framewor*k (Department of Territory Families, Housing and Communities, 2020). [↑](#footnote-ref-50)
50. This was also a key finding of ANROWS research: Nancarrow, H, Thomas, K., Ringland, V. and Modini, T. (2020), *Accurately identifying the “person most in need of protection” in domestic and family violence law.* Australian National Research Organisation on Women’s Safety (ANROWS) (Research Report 23/2020). [↑](#footnote-ref-51)
51. See for example research by Nancarrow et al. (2020); Also Women’s Legal Service Victoria (2018), *“Officer she’s psychotic and I need protection”: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria.* [↑](#footnote-ref-52)
52. Nancarrow et al. (2020) [↑](#footnote-ref-53)
53. Richmond (2019); Women’s Legal Service Victoria (2018) [↑](#footnote-ref-54)
54. Nancarrow et al. (2020) [↑](#footnote-ref-55)
55. Women’s Legal Service Victoria (2018) [↑](#footnote-ref-56)
56. Women’s Legal Service Victoria (2018) [↑](#footnote-ref-57)
57. Women’s Legal Service Victoria (2018) [↑](#footnote-ref-58)
58. Nancarrow, H, Thomas K, Ringland, V., and Modini, T. (2020) *Accurately identifying the ‘person most in need of protection’ in domestic and family violence law (Research report 23/2020).* Sydney: ANROWS.

    [Accurately identifying the ‘person most in need of protection’ in domestic and family violence law - ANROWS - Australia's National Research Organisation for Women's Safety](https://www.anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/) [↑](#footnote-ref-59)
59. The NT’s *DFV Risk Assessment and Management Tool and Framework*, has been authorised by the Minister in accordance with s124Q of the DFVA. All information sharing entities under Chapter 5A of the DFVA are required to ensure that their policies, procedures, practice guidance and tools relevant to the sharing of information align with the Framework (s124R) [↑](#footnote-ref-60)
60. See Our Watch resources on prevention and the drivers of DFV. <https://www.ourwatch.org.au/resource/change-the-story-summary/> [↑](#footnote-ref-61)
61. See Our Watch resources on prevention and the drivers of DFV. <https://www.ourwatch.org.au/resource/change-the-story-summary/> [↑](#footnote-ref-62)
62. ANROWS (2020) Improving family violence legal and support services for Aboriginal and Torres Strait Islander peoples: Key findings and future directions (Research to policy and practice, 25-26/2020. Sydney: ANROWS, at p. 6. [↑](#footnote-ref-63)
63. <https://tfhc.nt.gov.au/social-inclusion-and-interpreting-services/office-of-gender-equity-and-diversity/gender-equality> [↑](#footnote-ref-64)
64. <https://justice.nt.gov.au/attorney-general-and-justice/northern-territory-aboriginal-justice-agreement/the-agreement> [↑](#footnote-ref-65)
65. For example, Jess Hill has described the work of Albert Biderman who documented the use of coercive control techniques in North Korean Prisoner of War Camps, Hill (2019), pp 14-41. Hill has pointed out the similarity of these techniques with DFV. [↑](#footnote-ref-66)
66. The term was coined by Evan Stark in his book *How Men Entrap Women in Personal Life*, Oxford University Press, 2007, although controlling behaviour has long been recognised as predominant feature of DFV. [↑](#footnote-ref-67)
67. See New South Wales Government (2020) *Coercive control – discussion paper*, at p. 7*.* [↑](#footnote-ref-68)
68. ANROWS (2021), *Policy Brief: Defining and Responding to Coercive Control, at p. 1.* [↑](#footnote-ref-69)
69. ANROWS (2021) [↑](#footnote-ref-70)
70. NSW Government (2020), *Coercive Control: A Discussion Paper, October 2020.*Australian National Research Institute on Women’s Safety (ANROWS) (2021) *Defining and responding to coercive control: Policy Brief* (ANROWS Insights, 01/20-21. Sydney: ANROWS. [↑](#footnote-ref-71)
71. ANROWS (2021) [↑](#footnote-ref-72)
72. NSW Government (2020), *Coercive Control: A Discussion Paper, October 2020*, at p.8. [↑](#footnote-ref-73)
73. Boxall H & Morgan A 2021. Experiences of coercive control among Australian women. Statistical Bulletin no. 30. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/sb78108> [↑](#footnote-ref-74)
74. Boxall and Morgan (2021) [↑](#footnote-ref-75)
75. NSW Government (2020), *Coercive Control: A Discussion Paper, October 2020*, at p.8. [↑](#footnote-ref-76)
76. Finding 1 - Parliament of New South Wales, Joint Select Committee on Coercive Control (2021), *Coercive control in domestic relationships,* Report 1/57 – June 2021. (Hereafter NSW Parliamentary Inquiry on Coercive Control) [↑](#footnote-ref-77)
77. Finding 2 – NSW Parliamentary Inquiry on Coercive Control (2021). [↑](#footnote-ref-78)
78. Women’s Safety and Justice Taskforce (2021), *Hear her voice: Addressing coercive control and domestic violence in Queensland* (Volume 1, 2 and 3). (Hereafter Queensland Women’s Safety and Justice Taskforce (2021)) [↑](#footnote-ref-79)
79. Queensland Women’s Safety and Justice Taskforce (2021) [↑](#footnote-ref-80)
80. McMahon and McGorrery ‘Criminalising Coercive Control: An Introduction’, at p. 14, in McMahon, M. and McGorrery P. (Eds) (2020) *Criminalising Coercive Control: Family Violence and the Criminal Law*, Springer. [↑](#footnote-ref-81)
81. McMahon and McGorrery (2020), at p. 14. [↑](#footnote-ref-82)
82. McMahon and McGorrery (2020), at p. 14. [↑](#footnote-ref-83)
83. NSW Parliamentary Inquiry on Coercive Control (2021) and Queensland Women’s Safety and Justice Taskforce (2021) [↑](#footnote-ref-84)
84. See for example, ANROWS (2021). [↑](#footnote-ref-85)
85. Stark, E (2007), *Coercive control: The entrapment of women in personal life*. Oxford: Oxford University Press, in ANROWS (2021), at page 1. [↑](#footnote-ref-86)
86. Douglas, H. (2021), *Women, Intimate Partner Violence, and the Law*, Oxford University Press. [↑](#footnote-ref-87)
87. ANROWS (2021), at page 1. [↑](#footnote-ref-88)
88. Webster et al., 2018, in ANROWS (2021) at page 2. [↑](#footnote-ref-89)
89. Douglas, H. (2021), *Women, Intimate Partner Violence, and the Law*, Oxford University Press. [↑](#footnote-ref-90)
90. ANROWS (2018), *National Risk Assessment Principles for Family and Domestic Violence: Quick Reference Guide for Practitioners.*  [↑](#footnote-ref-91)
91. ANROWS (2018), *National Risk Assessment Principles for Family and Domestic Violence: Quick Reference Guide for Practitioners, at p.4.*  [↑](#footnote-ref-92)
92. ANROWS at pages 2. [↑](#footnote-ref-93)
93. Tolmie, J., Smith, R., Short, J, Wilson, D., and Sachl, J. (2018) ‘Social entrapment: A realistic understanding of the criminal offending of primary victims of intimate partner violence’, in *New Zealand Law Review* 2018, pp 181-217., at p.185. [↑](#footnote-ref-94)
94. ANROWS (2018), *National Risk Assessment Principles for Family and Domestic Violence: Quick Reference Guide for Practitioners.* [↑](#footnote-ref-95)
95. Submission 24, Domestic Violence Death Review Team, p 2; NSW Domestic Violence Death Review Team, [Report](https://www.coroners.nsw.gov.au/content/dam/dcj/ctsd/coronerscourt/documents/reports/2017-2019_DVDRT_Report.pdf) [2017-2019,](https://www.coroners.nsw.gov.au/content/dam/dcj/ctsd/coronerscourt/documents/reports/2017-2019_DVDRT_Report.pdf) p 154, cited in Parliament of New South Wales, Joint Select Committee on Coercive Control (2021), *Coercive control in domestic relationships,* Report 1/57 – June 2021. [↑](#footnote-ref-96)
96. From the *NSW Death Review Team Report 2017-2019* and Submission, as quoted in the Parliament of New South Wales, Joint Select Committee on Coercive Control (2021), *Coercive control in domestic relationships,* Report 1/57 – June 2021. [↑](#footnote-ref-97)
97. Some argue it is the defining feature of DFV, see ANROWS (2021) [↑](#footnote-ref-98)
98. Taylor, J. and Marshall, J. (2021), ‘Criminalisation of Coercive Control’, in Law Society NT *Balance*, edition 4/20, at p. 29. [↑](#footnote-ref-99)
99. See also Nancarrow et al. (2020); Women’s Legal Service Victoria (2018). [↑](#footnote-ref-100)
100. See for example, the Victorian Aboriginal Legal Service (2021), at p. 6 and 8. [↑](#footnote-ref-101)
101. Taylor, J. and Marshall, J. (2021), ‘Criminalisation of Coercive Control’, in Law Society NT *Balance*, edition 4/20, at p. 33. [↑](#footnote-ref-102)
102. Australian National Research Organisation on Women’s Safety (ANROWS) (2020), *Policy Brief: Defining and Responding to Coercive Control.* [↑](#footnote-ref-103)
103. Nancarrow et al. (2020) [↑](#footnote-ref-104)
104. The Queensland Coronial Inquest into the deaths of Hannah Clarke and her children was held in March 2022. The findings were delivered on 29 June 2022. See *Inquest into the deaths of Hannah Ashlie Clarke, Aaliyah Anne Baxter, Laianah Grace Baxter, Trey Rowan Charles Baxter, and Rowan Charles Baxter,* Coroners Court of Queensland, delivered on 29 June 2002 by Her Honour Deputy State Coroner Jane Bentley. In the findings of inquest the Coroner sets out the history of DFV and coercive control, at pp. 6-26. [↑](#footnote-ref-105)
105. NSW Government (2020), *Coercive Control: A Discussion Paper, October 2020*, at p. 7 and 8. It is noted that this quote is based on media reports. [↑](#footnote-ref-106)
106. See for example, arguments by journalist Jess Hill, author of *See What You Made Me Do: Power Control and Domestic Abuse*, Black Inc. [↑](#footnote-ref-107)
107. Wangmann, J. (2020) ‘Coercive Control as the Context for Intimate Partner Violence: The Challenge for the Legal System’, at p. 224 and 230; see also Barwick K, McGorrery P and McMahon M (2020) ‘Ahead of their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia’; see also Bettinson, V. (2020) ‘ A Comparative Evaluation of Offences: Criminalising Abusive Behaviour in England, Wales, Scotland, Ireland and Tasmania’; all articles are published in McMahon, M. and McGorrery, P. (Eds) (2020), *Criminalising Coercive Control:* *Family Violence and the Criminal Law*, Springer. [↑](#footnote-ref-108)
108. NSW Parliamentary Inquiry (2021) [↑](#footnote-ref-109)
109. Qld Women’s Safety and Justice Taskforce (2021) [↑](#footnote-ref-110)
110. Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021 (SA) was tabled in the SA Parliament and read a first time on 27 October 2021. [↑](#footnote-ref-111)
111. Government of South Australia Attorney-General’s Department (2022), *Discussion paper:* *Implementation considerations should coercive control be criminalised in South Australia*. [↑](#footnote-ref-112)
112. Government of Western Australia, Office of the Commissioner for Victims of Crime (2022), *Legislative Responses to Coercive Control in Western Australia: Discussion Paper.* [↑](#footnote-ref-113)
113. Terms of reference are available at <https://www.ag.gov.au/families-andmarriage/publications/development-national-principles-addressing-coercive-control> [↑](#footnote-ref-114)
114. *Serious Crime Act 2015* (England and Wales), section 76. This offence was reviewed in 2020, see United Kingdom Home Office (2021), Review of Controlling or Coercive Behaviour Offence, Research Report 122, <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence> [↑](#footnote-ref-115)
115. *Domestic Violence Act 2018* (Ireland), section 39 [↑](#footnote-ref-116)
116. *Domestic Abuse (Scotland) Act 2018* [↑](#footnote-ref-117)
117. *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021* [↑](#footnote-ref-118)
118. *Family Violence Act 2004 (Tas)*, sections 8 and 9. [↑](#footnote-ref-119)
119. Scott, M. (2020), ‘The making of the New ‘Gold Standard’: The *Domestic Abuse (Scotland) Act 2018’*, in McMahon and McGorrery (2020), at p. 177. Professor Evan Stark who coined the term coercive control described the Scottish legislation as the ‘gold standard’. [↑](#footnote-ref-120)
120. ‘Domestic abuse’ is the term used in Scotland in preference to DFV, to reflect the centrality of non-physical abuse. [↑](#footnote-ref-121)
121. *Serious Crime Act 2015* (England and Wales), section 76. [↑](#footnote-ref-122)
122. An amendment to section 76 was assented to in April 2021 (due to commence in the UK Summer/Autumn 2022)

     removing the requirement for A and B to live together if they are family members or former partners. It brings within the ambit of the offence coercive controlling behaviour by a former intimate partner that takes place post separation when A and B do not live together (see section 68 of the *Domestic Abuse Act 2021).* [↑](#footnote-ref-123)
123. This includes ‘Safe and Together’ training and implementation across the service system. [↑](#footnote-ref-124)
124. Presentation on the *Domestic Abuse (Scotland) Act 2018* provided in February 2021 by *Scottish Government Officials (Patrick Down), Police (Det Chief Supt Samantha McCluskey and Det Supt Debbie Forrester) and Prosecutors (Moira Price and Alisdair Macleod).* [↑](#footnote-ref-125)
125. Presentation on the *Domestic Abuse (Scotland) Act 2018* provided in February 2021 by *Scottish Government Officials (Patrick Down), Police (Det Chief Supt Samantha McCluskey and Det Supt Debbie Forrester) and Prosecutors (Moira Price and Alisdair Macleod).* [↑](#footnote-ref-126)
126. Presentation on the *Domestic Abuse (Scotland) Act 2018* provided in February 2021 by *Scottish Government Officials (Patrick Down), Police (Det Chief Supt Samantha McCluskey and Det Supt Debbie Forrester) and Prosecutors (Moira Price and Alisdair Macleod).* [↑](#footnote-ref-127)
127. It is worth noting that this argument has been used in the past to oppose important law reform in relation to DFV and sexual assault. For example, historically husbands had immunity from raping their wives in Britain and Australia. The core of the opposition to making marital rape unlawful was that the family home should not be controlled by the state. The South Australia Government was the first jurisdiction to make rape in marriage a criminal offence in 1976 and to remove the immunity formerly granted husbands.   
     <https://www.ojp.gov/ncjrs/virtual-library/abstracts/rape-marriage-legislation-south-australia-anatomy-reform> [↑](#footnote-ref-128)
128. Richmond (2018); Douglas (2020). [↑](#footnote-ref-129)
129. Nancarrow, H, Thomas, K., Ringland, V. and Modini, T. (2020), *Accurately identifying the “person most in need of protection” in domestic and family violence law.* Australian National Research Organisation on Women’s Safety (ANROWS) (Research Report 23/2020). [↑](#footnote-ref-130)
130. Richmond (2018); Douglas (2020). [↑](#footnote-ref-131)
131. Australia’s National Research Organisation for Women’s Safety. (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney: ANROWS [↑](#footnote-ref-132)
132. Department of the Attorney General and Justice (2021), *Pathways to the Aboriginal Justice Agreement*, at p 34. The figures are at 30 June 2018. [↑](#footnote-ref-133)
133. Derived from the CJRSU’s monthly prisoner census database. IOMS and IJIS in August 2021. [↑](#footnote-ref-134)
134. Extracted from IJIS July 2021, figures are for the 2020/21 financial year. [↑](#footnote-ref-135)
135. Department of the Attorney General and Justice (2021), *Pathways to the Aboriginal Justice Agreement*, at p 34. The figures are as at 30 June 2018. [↑](#footnote-ref-136)
136. Victorian Aboriginal Legal Service (VALS) (2020), *Addressing Coercive Control without Criminalisation: Avoiding Blunt Tools that Fail Victim-Survivors - VALS Policy Paper*, at p. 6. [↑](#footnote-ref-137)
137. Victorian Aboriginal Legal Service (VALS) (2020), *Addressing Coercive Control without Criminalisation: Avoiding Blunt Tools that Fail Victim-Survivors - VALS Policy Paper*, at p. 8. [↑](#footnote-ref-138)
138. Boxall and Morgan (2021) [↑](#footnote-ref-139)
139. Presentation on the *Domestic Abuse (Scotland) Act 2018* provided in February 2021 by *Scottish Government Officials (Patrick Down), Police (Det Chief Supt Samantha McCluskey and Det Supt Debbie Forrester) and Prosecutors (Moira Price and Alisdair Macleod).* [↑](#footnote-ref-140)
140. Qld Women’s Safety and Justice Taskforce (2021). The four phase implementation plan is set out in Chapter 2.3. [↑](#footnote-ref-141)
141. NSW Parliament Joint Select Committee on Coercive Control (2021), *Coercive Control in Domestic Relationships*, (Report 1/57) [↑](#footnote-ref-142)
142. See the NSW Government response to Report 1/57 of the Joint Select Committee on Coercive Control entitled ‘Coercive Control in Domestic Relationships’ at: https://www.parliament.nsw.gov.au/la/papers/Pages/tabled-paper-details.aspx?pk=81416 [↑](#footnote-ref-143)
143. Jane Wangmann, ‘Coercive Control as the Context for Intimate Partner Violence: The Challenge for the Legal System’, in McMahon, M. and McGorrery, P. (Eds) (2020), *Criminalising Coercive Control:* *Family Violence and the Criminal Law*, Springer, at p. 238 and 239. [↑](#footnote-ref-144)
144. For example, Victorian Royal Commission into Family Violence (2016); Queensland Special Taskforce on Domestic and Family Violence Report *Not now, Not ever: Putting an End to Domestic and Family Violence* (2015); Commonwealth Parliamentary Inquiry into Family, Domestic and Sexual Violence (2021); Queensland Women’s Safety and Justice Taskforce Report, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland* (2021); Parliament of NSW Joint Select Committee Inquiry into Coercive Control (2021). [↑](#footnote-ref-145)
145. Particularly research undertaken by the Australian National Research Organisation on Women’s Safety (ANROWS) [↑](#footnote-ref-146)
146. This was also one of the recommendations of the ALRC and NSWLRC Report (2010) *Family Violence: Improving Legal Frameworks.* The Law Council of Australia has adopted a model definition of family violence (2021). [↑](#footnote-ref-147)
147. Australian Law Reform Commission and NSW Law Reform Commission (2010) *Family Violence – A National Legal Response.* (ALRC Report) – See recommendation 7-1 and also Recommendation 7-2. [↑](#footnote-ref-148)
148. The principles are adapted from the *Family Violence Protection Act 2008* (Vic) Preamble, unless otherwise indicated in a footnote. [↑](#footnote-ref-149)
149. This wording is adapted from s10B(j) *Restraining Orders Act 1997* (WA). [↑](#footnote-ref-150)
150. Paragraph (d)(iii) is adapted from section 4(a) of the *Domestic and Family Violence Protection Act 2012 (Qld)* [↑](#footnote-ref-151)
151. Adapted from the Queensland *Domestic and Family Violence Protection Act 2012* not from the Victorian Act*.* [↑](#footnote-ref-152)
152. Adapted from the *Domestic Abuse (Scotland) Act 2018.* [↑](#footnote-ref-153)
153. Adapted from section 10B(e) of the *Restraining Orders Act 1997* (WA). [↑](#footnote-ref-154)
154. Adapted from section 4(2)(e) of the Queensland *Domestic and Family Violence Protection Act 2012* (Qld)*.* [↑](#footnote-ref-155)
155. Adapted from section 10B(i) of the *Restraining Orders Act 1997* (WA). [↑](#footnote-ref-156)
156. Australian Law Reform Commission and New South Wales Law Reform Commission (2010) *Family Violence: A National Legal Response, Final Report.* [↑](#footnote-ref-157)
157. Law Council of Australia (2021), *Model definition of family violence*, adopted by Directors, 27 November 2021. [↑](#footnote-ref-158)
158. In 2021 the Law Council of Australia adopted a model definition of family violence in substantially similar terms to the Victorian definition, with some additional examples. [↑](#footnote-ref-159)
159. United Kingdom Home Office (2015), *Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework.* [↑](#footnote-ref-160)
160. While these five illustrations of coercive control are adapted from the *Domestic Abuse (Scotland) Act 2018* in a criminal law context it is proposed that they also provide a useful legislative definition for the purposes of the civil law DFVA. [↑](#footnote-ref-161)
161. Northern Territory Government, Department of the Attorney-General and Justice (2016) *Report on Consultation: Review of the Domestic and Family Violence Act* (2016 Consultation Report). [↑](#footnote-ref-162)
162. Examples provided by the Domestic Violence Legal Service and quoted in the 2016 Consultation Report. [↑](#footnote-ref-163)
163. See for example research by Nancarrow et al. (2020); Also Women’s Legal Service Victoria (2018), *“Officer she’s psychotic and I need protection”: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria.* [↑](#footnote-ref-164)
164. Richmond (2019); Women’s Legal Service Victoria (2018) [↑](#footnote-ref-165)
165. See Nancarrow et al. (2020); Victorian Aboriginal Legal Service (2021) [↑](#footnote-ref-166)
166. See cases, *SRV v Commissioner of the Queensland Police Service & Anor* [2020] QDC 208;

     *GRP v ABQ* [2020] QDC 272. [↑](#footnote-ref-167)
167. Women’s Legal Service Victoria (2018) [↑](#footnote-ref-168)
168. Nancarrow et al (2020) [↑](#footnote-ref-169)
169. Nancarrow et al (2020) [↑](#footnote-ref-170)
170. The NT’s *DFV Risk Assessment and Management Tool and Framework*, has been authorised by the Minister in accordance with s124Q of the DFVA. All information sharing entities under Chapter 5A of the DFVA are required to ensure that their policies, procedures, practice guidance and tools relevant to the sharing of information align with the Framework (s124R) [↑](#footnote-ref-171)
171. AR v Hayes & Anor [2019] NTSC 13 [↑](#footnote-ref-172)
172. *Houseman v Higgins* [2015] NTSC 88, per Southwood J. [↑](#footnote-ref-173)
173. Section 99 of the *Family Violence Protection Act 2008 (Vic)* provides that if no period it specified in the order it continues until it is revoked or set aside on appeal (that is, indefinitely). It is proposed that in the NT if the period is not specified in the order it continues for 5 years with separate provisions for indefinite orders in certain circumstances along the lines of section 79B of the ***Crimes (Domestic and Personal Violence) Act 2007 (NSW) –* S**ee Attachment 7.7. [↑](#footnote-ref-174)
174. Nancarrow, H, Thomas, K., Ringland, V. and Modini, T. (2020), *Accurately identifying the “person most in need of protection” in domestic and family violence law.* Australian National Research Organisation on Women’s Safety (ANROWS) (Research Report 23/2020). [↑](#footnote-ref-175)
175. Atkinson v Bardon & Ors [2018] NTSC 9, at paragraph 51. [↑](#footnote-ref-176)
176. *Pizanias v Sultana [2020] NTLC 016*, at paragraphs 24 and 40. [↑](#footnote-ref-177)
177. *Arnott v Beams & Anor [2022]* NTSC 25 [↑](#footnote-ref-178)
178. However, see *Police v Panwar* (17 November 2017). Following an oral application by the defendant, a section 41 police DVO was varied on an interim basis in the terms sought by the defendant. Although the protected person was initially present in court, and indicated her consent to the proposed variations, the court orders were subsequently made in her absence. The court ruled that it was possible for a court to vary a police DVO on an interim basis (ie without first confirming the police DVO) pursuant to the powers under Part 2.9. [↑](#footnote-ref-179)
179. Note that Proposal 10 is to amend section 19 along the lines: ‘In deciding whether to make a DVO, and in deciding the terms of a DVO, the issuing authority must consider the safety and protection of the protected person and any children to be of paramount importance. [↑](#footnote-ref-180)
180. KPMG (2012) *Evaluation of the impact of mandatory reporting of domestic and family violence*, for the Northern Territory Department of Children and Families, August 2012. [↑](#footnote-ref-181)
181. Australian Law Reform Commission and NSW Law Reform Commission (2010), Family Violence – A National Legal Response, Final Report, October 2010. [↑](#footnote-ref-182)
182. https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020 [↑](#footnote-ref-183)
183. *Firth v Namarnyilk* – [2021] NTSC 75, Barr, J. [↑](#footnote-ref-184)
184. Australian National Research Organisation on Women’s Safety (ANROWS) (2018), *National Risk Assessment Principles for Family and Domestic Violence: Quick Reference Guide for Practitioners.*  [↑](#footnote-ref-185)
185. <https://justice.nt.gov.au/__data/assets/pdf_file/0010/718147/Charter-of-Victims-Rights-August-2019.pdf> [↑](#footnote-ref-186)
186. Parliament of New South Wales, Joint Select Committee on Coercive Control (2021), *Coercive control in domestic relationships,* Report 1/57 – June 2021. [↑](#footnote-ref-187)
187. Queensland Women’s Safety and Justice Taskforce (2021), *Hear her voice: Addressing coercive control and domestic violence in Queensland* (Volume 1, 2 and 3). [↑](#footnote-ref-188)
188. 2016 Consultation Report, at page 132 and 133. [↑](#footnote-ref-189)
189. Webster et al., 2018, in ANROWS (2021) at page 2. [↑](#footnote-ref-190)
190. Recommendation 64 of the Queensland Women’s Safety and Justice Taskforce Report, at p. 697. [↑](#footnote-ref-191)
191. NSW 2021, at p. 45. [↑](#footnote-ref-192)
192. ANROWS submission quoted by the NSW Inquiry (2021), at p.45 [↑](#footnote-ref-193)
193. Queensland Women’s Safety and Justice Taskforce (2021), *Hear her voice: Addressing coercive control and domestic violence in Queensland* (Volume 1, 2 and 3). [↑](#footnote-ref-194)
194. Government of South Australia, Attorney-General’s Department (2022), *Discussion Paper: Implementation considerations should coercive control be criminalised in South Australia*. [↑](#footnote-ref-195)
195. State of Victoria, *Royal Commission into Family Violence* (2016) at p.27. Also quoted in Douglas (2021). [↑](#footnote-ref-196)
196. *Inquest into the death of Roberta Judy Curry [2022] NTLC 010*, at paragraph 65. [↑](#footnote-ref-197)
197. Derived from the CJRSU’s monthly prisoner census database. IOMS and IJIS in August 2021. [↑](#footnote-ref-198)
198. From CJRSU’s monthly prisoner census database. [↑](#footnote-ref-199)
199. <https://justice.nt.gov.au/attorney-general-and-justice/northern-territory-aboriginal-justice-agreement> [↑](#footnote-ref-200)
200. See for example, Blagg, H, Tulich, T, Hovane, V, Raye, D, Worrigal, T, and May, S (2020) Understanding the role of Law and Culture in Aboriginal and Torres Strait Islander communities in responding to and preventing family violence, Ngarluma/Jaru/Gooniyandi (Hovane), Kimberly and Pilbara region, WA, Jabirr Jabirr/Bardi (Raye), Dampier Peninsula and Kimberly Region, WA, Gooniyandi/Gija (Worrigal), Kimberly region, WA (Research Report, 19/2020. Sydney: ANROWS. [↑](#footnote-ref-201)
201. Richmond (2019) [↑](#footnote-ref-202)
202. Richmond (2019), at p. 2. [↑](#footnote-ref-203)
203. This point was made at the National Women’s Safety Summit in 2021, and the NT DFV victim journey mapping workshop, and numerous publications, including ANROWS (2020) *Improving family violence legal and support services for Aboriginal and Torres Strait Islander peoples: Key findings and future directions* (Research to policy and practice, 25-26/2020.) [↑](#footnote-ref-204)
204. And responses will be aligned with the NT’s Risk Assessment and Management Framework. [↑](#footnote-ref-205)
205. Australian Law Reform Commission and New South Wales Law Reform Commission (2010) *Family Violence: A National Legal Response, Final Report,* See recommendations 29-1 to 29-5 on Integrated Responses, and recommendations 32-1 to 32-5 on Specialisation (focussing on specialist DFV courts). [↑](#footnote-ref-206)
206. Australia’s National Research Organisation for Women’s Safety (2021) *Interventions for perpetrators of domestic, family and sexual violence in Australia* (ANROWS Insights, 02/2021). ANROWS. [↑](#footnote-ref-207)
207. Australian Law Reform Commission and New South Wales Law Reform Commission (2010) *Family Violence: A National Legal Response, Final Report,* See Chapter 32. [↑](#footnote-ref-208)
208. Australian Law Reform Commission and New South Wales Law Reform Commission (2010) *Family Violence: A National Legal Response, Final Report,* adapted from paragraph 32.22. [↑](#footnote-ref-209)
209. Australian Law Reform Commission and New South Wales Law Reform Commission (2010) *Family Violence: A National Legal Response, Final Report,* at paragraph 32.23. [↑](#footnote-ref-210)
210. Richmond (2019) [↑](#footnote-ref-211)
211. Richmond (2019), see p.16-22. [↑](#footnote-ref-212)
212. This experienced has been reported in research in other jurisdictions, including in research by Douglas (2019) in Queensland. [↑](#footnote-ref-213)
213. Richmond (2019) at p. 17 [↑](#footnote-ref-214)
214. See also Douglas, H (2019) ‘Policing Domestic and Family Violence’, in International Journal for Crime, Justice and Social Democracy, 8 (2), at p. 43. [↑](#footnote-ref-215)
215. Hill, J. (2020), ‘Is Domestic-Abuse Policing Fit For Purpose?’, *Meanjin,* Summer 2020 [↑](#footnote-ref-216)
216. Australian and New Zealand School of Government (ANZSOG) (2009) *ANZSOG Case Study Program - Victoria Police and Family Violence* (Case Study 2009-94.1) – Written by Marinella Padula, with input from Christine Nixon, Leigh Gassner, Rhonda Cumberland and Wendy Steendam. [↑](#footnote-ref-217)
217. Hill, J. (2020), ‘Is Domestic-Abuse Policing Fit For Purpose?’, *Meanjin,* Summer 2020 [↑](#footnote-ref-218)
218. NSW Audit Office (2022) Police Responses to domestic and family violence: NSW Auditor-General’s Report, 4 April 2022 [↑](#footnote-ref-219)
219. <https://statements.qld.gov.au/statements/95126> [↑](#footnote-ref-220)
220. See for example, the Victoria Police Code of Practice on Investigating and Responding to Family Violence

     NSW DFV Domestic and Family Violence Booklet. [↑](#footnote-ref-221)
221. *Inquest into the death of HD (name suppressed) [2021] NTLC 029*, at p. 27. [↑](#footnote-ref-222)
222. *Inquest into the death of HD (name suppressed) [2021] NTLC 029*, at p. 27. [↑](#footnote-ref-223)
223. <https://www.dcj.nsw.gov.au/justice/safer-pathway/what-is-safer-pathway.html> [↑](#footnote-ref-224)
224. <https://safesteps.org.au/> [↑](#footnote-ref-225)
225. <https://www.orangedoor.vic.gov.au/> [↑](#footnote-ref-226)
226. It is noted for completeness that legal service providers in the NT relevant to DFV matters also include North Australian Aboriginal Family Legal Service (NAAFLS) and NPY Women’s Council. [↑](#footnote-ref-227)
227. Data from the 2019/20 financial year provided by the Department of the Attorney-General and Justice Research and Statistics Unit. Extracted from IJIS on 31 July 2020. [↑](#footnote-ref-228)
228. Brown, C. and Corbo, M. (2020), *Central Australian Minimum Standards for Men’s Behaviour Change Programs,* Tangentyere Council, August 2020. [↑](#footnote-ref-229)
229. Northern Territory Local Court (2022), *Internal Evaluation Report: Specialist Approach to Domestic and Family Violence at the Local Court in Alice Springs,* 12 April 2022. [↑](#footnote-ref-230)
230. Recommendation 11 of Northern Territory Local Court (2022), *Internal Evaluation Report: Specialist Approach to Domestic and Family Violence at the Local Court in Alice Springs,* 12 April 2022. [↑](#footnote-ref-231)
231. Department of Territory Families, Housing and Communities (2020), *Northern Territory Domestic and Family Violence Risk Assessment and Management Framewor*k. [↑](#footnote-ref-232)
232. *Inquest into the deaths of Fionica Yarranganlagi James, Keturah Cheralyn Mamarika and Layla Leering* [2020] NTLC 022. [↑](#footnote-ref-233)
233. An amendment to section 76 was made by section 68 of the *Domestic Abuse Act 2021* which received Royal Assent on 29 April 2021 and is due to commence in UK Summer/Autumn 2022. (Guidance Domestic Abuse Act 2021 Commencement Schedule: Updated 25 April 2022).

     The amendment removes section 76(2) and replaces section 76(6) with a new definition of ‘personally connected’. These amendments remove the requirement for A and B to live together if they are family members or former partners. It brings within the ambit of the offence coercive controlling behaviour by a former intimate partner that takes place post separation when A and B do not live together. [↑](#footnote-ref-234)