



Northern
Territory
Government

DEPARTMENT OF CHILDREN AND FAMILIES

Chief Executive Officer
Level 7 Darwin Plaza
Smith Street Mall
Darwin NT 0800
Postal Address: PO Box 40596
CASUARINA NT 0811
Tel: 08 8999 2750
Fax: 08 8999 2833
eMail: anne.bradford@nt.gov.au

Our Ref: DCFD2015/1092
Your Ref: 201325721
PCD15/2587

Ms Jenni Daniel-Yee
Acting Director Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722
DARWIN NT 0801

Dear Ms ~~Daniel-Yee~~ *Jenni*

RE: REVIEW OF THE DOMESTIC AND FAMILY VIOLENCE ACT

Thank you for your letter dated 8 April 2015 enclosing a copy of the Review of the *Domestic and Family Violence Act* Issues Paper and associated attachments.

The Department of Children and Families welcomes the opportunity to provide a submission regarding possible improvements to the *Domestic and Family Violence Act*, its operation, and its interaction with related Northern Territory legislation.

Please find enclosed a submission from the Department of Children and Families. I understand and agree that this submission may be published on the Department of the Attorney-General and Justice website.

Yours sincerely

Anne Bradford

15 / 7 / 15

Encl. Submission to the Review of the *Domestic and Family Violence Act*.

SUBMISSION TO THE REVIEW OF THE DOMESTIC AND FAMILY VIOLENCE ACT

JULY 2015

The Northern Territory Government's Domestic and Family Violence Reduction Strategy: Safety is Everybody's Right (the Strategy), the National Plan to Reduce Violence Against Women and their Children (the National Plan), and the National Framework to Protect Australia's Children (the Framework), aim to promote more integrated and holistic responses to domestic and family violence and child abuse and neglect. An integrated approach is intended to address the negative impact of service fragmentation on vulnerable children, adults, families and communities.

Domestic and family violence is a major issue for the children, young people, parents and families who come to the attention of the Department of Children and Families (DCF) as a statutory child protection agency. The scope and nature of DCF's current domestic and family violence data collection is limited, but anecdotally DCF child protection practitioners consistently cite domestic and family violence as a major feature when children, young people and families are brought to the attention of DCF, in addition to the abuse of alcohol and other substances. This is consistent with the experience of statutory child protection workers nationally and internationally.

A growing body of research from multiple jurisdictions highlights the many and varied ways that children may be exposed to DFV¹, the harmful short-term and longer-term impacts of domestic and family violence on children², the high co-occurrence of child abuse and domestic and family violence in the same family^{3,4} and the critical importance of interventions that reduce 'inter-generational cycles of violence'⁵.

¹ See K. Richards (2011) "Children's exposure to domestic violence in Australia" Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice accessed 26.05.15 from <http://aic.gov.au/publications/current%20series/tandi/401-420/tandi419.html>

² See Australian Domestic Violence Clearinghouse & University of New South Wales Report to the Benevolent Society (2011) "The Impact of Domestic Violence on Children: A Literature Review" accessed 26.05.15 from <http://www.adfvc.unsw.edu.au/documents/ImpactofDVonChildren.pdf>

³ See L.Laing (2003) "Domestic Violence in the Context of Child Abuse and Neglect", Australian Domestic and Family Violence Clearinghouse Topic Paper, accessed 26.05.15 from http://www.madew.adfvc.unsw.edu.au/PDF%20files/child_protection.pdf

⁴ See Australian Institute of Family Studies (2014) CFCR Resource Sheet, accessed 17.06.15 2015 from <https://aifs.gov.au/cfca/publications/who-abuses-children>

⁵ Eriksson, L. & Mazerolle, P. (2015), "A Cycle of Violence? Examining Family-of-Origin Violence, Attitudes, and Intimate Partner Violence Perpetration", *Journal of Interpersonal Violence*, vol. 30: 6, pp. 945-964.

While child abuse and domestic and family violence are both predominantly about violence and abuse within the family home, societal responses to both issues have developed independently, with community awareness, legislation, policies and practices, and treatment and support programs developed separately, and with different organisations often tasked to respond to either child abuse or to domestic violence.⁶

In relation to the *Domestic and Family Violence Act*, DCF notes that section 3 (1) (a), 'to ensure the safety and protection of all persons, including children who experience or are exposed to domestic violence', is broadly consistent with the objects of the *Care and Protection of Children Act*, section 4 (a), namely '...promoting the well-being of children, including to protect children from harm...and to maximise the opportunities for children to achieve their full potential...' and (b) 'to assist families to achieve the object in paragraph (a)'.

However, it could be argued that the *Domestic and Family Violence Act*, the *Care and Protection of Children Act* and DCF's current strategic frameworks and policies do not sufficiently recognise domestic and family violence as a child protection, parenting and family support issue, and do not sufficiently focus DCF policy and practice responses on domestic and family violence. Increasing the number and substance of references to children in the *Domestic and Family Violence Act* could be one means to bridge this gap.

For the purposes of the 2015 Review of the *Domestic and Family Violence Act* (the Review), the Department of the Attorney-General and Justice has identified 52 recommendations that are most relevant to the Northern Territory context from the total 187 recommendations of the joint Australian and New South Wales Law Reform Commissions' inquiry into domestic and family violence, and their 2010 Report 'Family Violence – A National Legal Response' (ALRC Report 114). Implementing some recommendations may improve the operation of the *Domestic and Family Violence Act* and its interaction with the *Care and Protection of Children Act*, to better guide DCF practice.

DCF believes the following 36 recommendations from ALRC Report 114 are of particular relevance to the statutory child protection system in the Northern Territory and, if implementation is feasible, could provide opportunities to strengthen the Northern Territory's response to domestic and family violence. DCF's comment against the selected recommendations follow.

⁶ Queensland Department of Communities, Child Safety and Disability Services (2012) "Domestic and family violence and its relationship to child protection: practice paper", p 4; accessed 26.05.15 from <https://www.communities.qld.gov.au/resources/childsafety/practice-manual/prac-paper-domestic-violence.pdf>

COMMENTS ON SELECTED RECOMMENDATIONS MADE BY THE AUSTRALIAN AND NEW SOUTH WALES LAW REFORM COMMISSIONS' FAMILY VIOLENCE - A NATIONAL LEGAL RESPONSE REPORT

ALRC Report 114 Section	ALRC Recommendation	DCF Comments
<p>5. Common Interpretive Framework – Definitions in Family Violence Legislation</p>	<p>5-2 State and Territory family violence legislation should include examples of emotional and psychological abuse or intimidation and harassment that illustrate conduct that would affect—although not necessarily exclusively—certain vulnerable groups including: Indigenous persons; those from a culturally and linguistically diverse background; the aged; those with a disability; and those from the gay, lesbian, bisexual, transgender and intersex communities. In each case, State and Territory family violence legislation should make it clear that such examples are illustrative and not exhaustive of the prohibited conduct.</p>	<p>The <i>Domestic and Family Violence Act</i> could include more specific references to the emotional and psychological effects on children of witnessing or being exposed to domestic and family violence, including cumulative harm. References to the detrimental impact of being subjected to domestic and family violence on parenting capacity, or using domestic and family violence, could also be included.</p>
<p>7. Other Aspects of a Common Interpretive Framework</p>	<p>7-1 State and Territory family violence legislation should contain guiding principles, which should include express reference to a human rights framework, drawing upon applicable international conventions.</p>	<p>The <i>Domestic and Family Violence Act</i> could refer specifically to the United Nations Convention on the Rights of the Child.</p>

	<p>7-2 State and Territory family violence legislation should contain a provision that explains the nature, features and dynamics of family violence including: while anyone may be a victim of family violence, or may use family violence, it is predominantly committed by men; it can occur in all sectors of society; it can involve exploitation of power imbalances; its incidence is under-reported; and it has a detrimental impact on children. In addition, family violence legislation should refer to the particular impact of family violence on: Indigenous persons; those from a culturally and linguistically diverse background; those from the gay, lesbian, bisexual, transgender and intersex communities; older persons; and people with disabilities.</p>	<p>Additional examples of the detrimental impact of domestic and family violence on children could be included in the <i>Domestic and Family Violence Act</i>. Consistent with the broad definitions of 'domestic' and 'family' already contained in the <i>Domestic and Family Violence Act</i>, wording examples of the detrimental impact of 'lateral violence' amongst families and communities, and third-party threats and pressure (that is, 'payback') on adults and children in need of domestic and family violence protection could also be included.</p>
<p>11. Protection Orders and the Criminal Law</p>	<p>11-6 State and Territory family violence legislation should provide expressly that one of the conditions that may be imposed by a court making a protection order is to prohibit the person against whom the order is made from locating or attempting to locate the victim of family violence.</p>	<p>It may be relevant for a Domestic Violence Order that prevents defendants from locating victims to include the children of victims.</p>
<p>16. Family Law Interactions – Jurisdiction and Practice of State and Territory Courts</p>	<p>16-1 Family violence legislation in each State and Territory should require judicial officers making or carrying a protection order to consider, under a s68R of the Family Law Act 1975 (Cth), reviving, varying, discharging or suspend a parenting order.</p>	<p>DCF believes that this aspect of the <i>Family Law Act</i> is not necessarily well understood or used by Northern Territory judicial officers. Significant training of judicial officers, police and domestic and family violence prosecutors would be required if applicants for Domestic Violence Order were to seek orders under the <i>Family Law Act</i>.</p>

	<p>16-6 State and Territory family violence legislation should provide that courts do not significantly diminish the standard of protection afforded by a protection order for the purpose of facilitating consistency with a parenting order.</p> <p>16-7 Application forms for protection orders under State and Territory family violence legislation should include an option for applicants to indicate their preference that there should be no exception in the protection order for contact required or authorized by a parenting order made under the Family Law Act 1975 (Cth).</p>	<p>DCF believes that this series of recommendations could assist in ensuring that domestic and family violence victims are not required to negotiate two legal systems and could better support domestic and family violence victims who are parents to protect their children.</p> <p>DCF believes that this series of recommendations could assist in ensuring that domestic and family violence victims are not required to negotiate two legal systems and could better support domestic and family violence victims who are parents to protect their children.</p>
<p>18. Evidence of Family Violence</p>	<p>18-1 State and Territory courts should ensure that application forms for protection orders include information about the kinds of conduct that constitute family violence.</p> <p>18-2 Application forms for protection orders under State and Territory family violence legislation should require that applicants swear or affirm a statement incorporated in, or attached to, the application form, setting out the basis of the application. Where the applicant is a police officer, the application form should require the police officer to certify the form.</p> <p>18-3 State and Territory family violence legislation should prohibit the respondent in protection order proceedings from personally cross-examining any person against whom the respondent is alleged to have used family violence.</p>	<p>Provisions of the <i>Domestic and Family Violence Act</i> which ensure children do not need to be cross-examined in domestic violence proceedings (section 107-109) should not be lost if any of these recommendations are introduced.</p>

<p>19. The Intersection of the Child Protection and Family Laws</p>	<p>18-4 State and Territory courts should require that undertakings by a person against whom a protection order is sought should be in writing on a standard form. The form should require each party to sign an acknowledgment that he or she understands that:</p> <ul style="list-style-type: none"> • breach of an undertaking is not a criminal offence nor can it be otherwise enforced; • the court's acceptance of an undertaking does not preclude further action by the applicant to address family violence; and • evidence of breach of an undertaking may be used in later proceedings. <p>18-5 State and Territory family violence legislation should provide that:</p> <ul style="list-style-type: none"> • mutual protection orders should not be made by consent; and • a court may only make mutual protection orders where it is satisfied that there are grounds for making a protection order against each party. 	<p>19-1 Federal, State and Territory governments should, as a matter of priority, make arrangements for child protection agencies to provide investigatory and reporting services to family courts in cases involving children's safety. Where such services are not already provided by agreement, urgent consideration should be given to establishing specialists</p> <p>19-5 Federal, State and Territory governments should ensure the immediate and regular review of protocols between family courts, children's courts and child protection agencies for the exchange of information to avoid duplication in the hearing of cases, and that a decision is made as early as possible about the appropriate court.</p>	<p>DCF believes the recommendations above have some demonstrated effectiveness in other jurisdictions, however, the Northern Territory appears to lack similar arrangements. The recommended actions could be beneficial and allow more integrated response for families with matters before the Family Law Court, where child protection concerns are identified, however, DCF notes that the recommending implications for the Northern Territory.</p>
--	---	--	--

<p>20. Family Violence, Child Protection and the Criminal Law</p>	<p>20-7 State and Territory child protection legislation should:</p> <ul style="list-style-type: none"> • specify that judicial officers and court staff are mandatory reporters; and • require child protection agencies to provide timely feedback to mandatory reporters, including an acknowledgement that the report was received and information as to the outcome of the child protection agency's initial investigation. 	<p>Section 26 of the <i>Care and Protection of Children Act</i> already imposes a 'universal' mandatory reporting obligation on all people in the Northern Territory, so this recommendation is not deemed essential.</p>
<p>23. Intersections and Inconsistencies</p>	<p>23-1 Where State and Territory family violence legislation permits the use of alternative dispute resolution in family violence protection order proceedings, such legislation should provide that violence cannot be negotiated or mediated.</p> <p>23-2 State and Territory legislation and policies for alternative dispute resolution in family violence protection order proceedings should provide for comprehensive screening and risk assessment mechanisms.</p> <p>23-3 State and Territory governments, courts, and alternative dispute resolution service providers should ensure that, where alternative dispute resolution is permitted in relation to family violence protection order proceedings, education and training is provided to judicial and court officers and alternative dispute resolution practitioners on:</p> <ul style="list-style-type: none"> • the nature and dynamics of family violence; and • the conduct of alternative dispute resolution processes in the context of family violence. <p>23-4 State and Territory courts should ensure that the terms of a family violence protection order indicate that participation in family dispute resolution, as ordered or directed by a family court, or provided under the <i>Family Law Act 1975 (Cth)</i>, is not precluded by a family violence protection order.</p>	<p>DCF notes that alternative dispute resolution services are not currently available for domestic and family violence or child protection matters and notes that the establishment of such services would require significant initial and ongoing resourcing.</p>

23-5 State and Territory courts should ensure that parties to family violence protection order proceedings are informed that, if involved in proceedings or family dispute resolution under the *Family Law Act 1975* (Cth):

- they may be exempt from requirements to participate in family dispute *resolution* under the *Family Law Act 1975* (Cth);
- they should inform a family dispute resolution practitioner about any family violence protection orders or proceedings; and
- they should inform family courts about any family violence protection orders or proceedings, where family court proceedings are initiated.

23-6 The Australian Government Attorney-General's Department and State and Territory governments should ensure that family violence screening and risk assessment frameworks indicate the importance of including questions in screening and risk assessment tools about:

- (a) past or current applications for protection orders;
- (b) past or current protection orders; and
- (c) any breaches of protection orders.

23-7 Family dispute resolution service providers should ensure that:

- tools used for family violence screening and risk assessment include questions about past and current protection orders and applications, and any breaches of protection orders; and
- parties are asked for copies of protection orders.

23-8 State and Territory legislation and policies for alternative dispute resolution in child protection matters should provide that violence cannot be negotiated or mediated within alternative dispute resolution processes.

23-9 State and Territory legislation and policies for alternative dispute resolution in child protection matters should provide for comprehensive screening and risk assessment mechanisms.

23-10 State and Territory child protection agencies and alternative dispute resolution service providers should ensure that child protection staff and alternative dispute resolution practitioners undertake training on:

- the nature and dynamics of family violence; and
- the need for parents, as well as children, who are victims of family violence to have access to appropriate support.

23-11 State and Territory governments should take a comprehensive and strategic approach to support culturally responsive alternative dispute resolution—including screening and risk assessment processes—in child protection matters.

23-12 Alternative dispute resolution service providers should ensure that, in intake procedures for child protection matters, parties are asked about relevant:

- orders, injunctions and applications under State and Territory family violence legislation and the Family Law Act 1975 (Cth);
- family dispute resolution agreements and processes; and
- alternative dispute resolution agreements and processes in family violence matters.

23-13 The Australian Government Attorney-General's Department and State and Territory governments should collaborate with Family Relationship Services Australia, legal aid commissions and other alternative dispute resolution service providers, to explore the potential of resolving family law parenting and child protection issues relating to the same family in one integrated process.

<p>29. Integrated response</p>	<p>29-2 The Australian, State and Territory governments, in establishing or further integrated responses to family violence, should ensure ongoing and responsive collaboration between agencies and organizations, supported by:</p> <ul style="list-style-type: none"> • Protocols and memorandums of understanding • Information sharing arrangements • Regular meetings, and • Where possible, designated liaison officer 	<p>A shared understanding of the impact of domestic and family violence on families, in addition to common frameworks and goals, allows agencies and organisations to address the negative impact of service fragmentation on vulnerable children, adults, families and communities. DCF notes that this as a key outcome sought under the Northern Territory Domestic and Family Violence Reduction Strategy 2014-17: <i>Safety is Everyone's Right</i>, and a feature of several initiatives being lead under the Strategy, for example, the Family Safety Framework.</p>
<p>30. Information sharing</p>	<p>30-4 State and Territory child protection legislation should not prevent child protection agencies from disclosing to federal family courts relevant information about children involved in federal family court proceedings in appropriate circumstances.</p> <p>30-5 Federal family courts and State and Territory child protection agencies should develop protocols for:</p> <ul style="list-style-type: none"> • Dealing with requests for documents and information under s69ZW of the Family Law Act 1975 (Cth); and • Responding to subpoenas issued by federal family courts <p>30-17 Federal family courts and State and Territory child protection agencies should develop protocols for the exchange of information in those jurisdictions that do not yet have such arrangements in place. Parties to such protocols should receive regular training to ensure that the arrangements are effectively implemented.</p>	<p>Northern Territory information guidelines were established under the <i>Care and Protection of Children Act</i> in 2012. Clarification may be required about whether the Family Law Court is included as an 'information sharing authority' in accordance with Northern Territory Information Sharing Administrative Guidelines 2012. Training to ensure professionals are aware of these provisions and feel confident using these would strengthen these provisions.</p>

30-9 The Australian, State and Territory governments should ensure that privacy principles regulating the handling of personal information in each jurisdiction expressly permit the use of disclosure of information where agencies and organizations reasonably believe it is necessary to lessen or prevent a serious threat to an individual's life, health or safety.

30-11 State and Territory family violence legislation should expressly authorize the use or disclosure of personal information for the purpose of ensuring the safety of a victim of family violence or an affected child

<p>31. Education and Data Collection</p>	<p>31-1 The Australian, State and Territory governments and educational, professional and service delivery bodies should ensure regular and consistent education and training for participants in the family law, family violence and child protection systems, in relation to the nature and dynamics of family violence, including its impact on victims, in particular those from high risk and vulnerable groups.</p> <p>31-6 State and Territory governments should undertake systemic and ongoing reviews into deaths resulting from family violence.</p>	<p>DCF notes that training and community education about the mandatory reporting provisions of the <i>Domestic and Family Violence Act</i> and the <i>Care and Protection of Children Act</i>, and intersections, may improve the relevance of child protection reports made to DCF.</p> <p>Domestic and family violence related deaths often occur following predictable patterns of violence and abuse and reviews of these cases can allow service systems and practitioners to address issues where practice, policy gaps or systemic issues and gaps arise. DCF notes that the establishment of such reviews, beyond existing coronial processes, may require significant initial and ongoing resourcing.</p>
---	---	--