



# Top End Women's Legal Service Inc.

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Director  
Legal Policy  
Department of the Attorney General and Justice  
GPO Box 1722  
Darwin NT 0801

Via email: [Policy.AGD@NT.gov.au](mailto:Policy.AGD@NT.gov.au)

Dear Director,

## **RE: Domestic Violence Proposals Issues Paper (NT)**

Thank you for providing TEWLS with the opportunity to make a submission in relation to the Domestic Violence Proposals Issues Paper.

### **Who we are**

Top End Women's Legal Service ('TEWLS') is a community legal centre focused on the advancement of the rights of all women. We are funded by the Commonwealth Attorney General's Department and the Department of Prime Minister and Cabinet to provide legal advice, casework and community legal education to women living in the Top End of the Northern Territory ('NT'). We provide advice, information and assistance to women in a number of areas of law including family law, domestic and family violence, housing and tenancy, debts, sexual assault, discrimination and compensation for victims of crime. We provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and women in prison.

We note that approximately 40% of TEWLS clients report domestic and family violence.

### **Our submission**

We have had the opportunity to consider the issues paper provided by the Department of the Attorney-General (NT) ('the Department'), and provide the following submissions and recommendations;

## **Clare's Law**

### Issue 1

TEWLS does not support the introduction of a law similar to Clare's Law to the NT.

Clare's Law has been used in the UK on a very small scale. In the first year of operation, 3,760 applications were made to police, representing just 0.01% of the population, and resulting in 1,335 disclosures. If similar rates of application were expected in the NT, approximately 23 applications would be made per year, with around eight disclosures.

Having further information about their partner's prior violence-related criminal history may allow some individuals to make informed decisions about their ongoing relationships. However, it does not guarantee safety, and the benefits must be weighed against the potential for misuse and for discrimination against previous offenders who have served sentences and successfully undergone rehabilitation.

TEWLS is particularly concerned with the operation of Clare's Law to allow third parties to make applications for information, to inform third parties that 'are in a better position to help' potential victims, and to allow individuals to receive information that they have not asked for. These measures do not support the aims of empowering individuals to make decisions about their own relationships.

### Issue 2

In order to address the specific challenges of domestic and family violence in the NT context, Clare's Law would require significant modification. The UK has a much higher population density than the NT and has very different population demographics. Specific factors that TEWLS believes would create barriers to the operation of Clare's Law in the NT include:

1. Many clients assisted by TEWLS through outreach services to remote communities and the Darwin Correctional Precinct report that they do not have good relationships with and may not be willing to seek assistance from NT Police;
2. Many clients assisted by TEWLS are from culturally and linguistically diverse or low socio-economic backgrounds. They require services which are mindful of their experiences and able to engage with them on a personal level not practicable for a general police officer;

3. Remote NT communities have extremely limited police presence, and limited or no services which could provide information and education about the use of Clare's Law. Female police officers may also not be available to attend in remote locations, and women facing domestic and family violence may not be comfortable making applications through a male officer; and
4. Small and remote communities tend to know the backgrounds and histories of their residents and do not require further specific information from police

### Issue 3

Services are currently in place in the NT to protect people at risk of domestic and family violence. TEWLS believes that adequate funding and resources for existing services should be a priority before limited resources are diverted to Clare's Law.

Further, an individual making an application for information about their partner under Clare's Law will likely have already been the victim of violent behaviour which has triggered concern. Education, counselling and legal advice are more appropriate responses to empower individuals to make decisions about their situations.

### Recommendation 1

TEWLS recommends increased funding for existing services already providing support for those at risk of domestic and family violence, in order to provide support for greater numbers of victims. Education, counselling, family mediation and legal advice should be funded to ensure that they can be accessed by any person who has reason to believe they may be at risk of domestic or family violence.

## **Domestic violence offender programs and parole**

### Issue 4

Incarceration offers an opportunity for offenders to engage in therapeutic and rehabilitative programs while they are sober and mentally available. TEWLS supports consideration by the Parole Board of any rehabilitation measures or demonstrated behavioural changes.

### Issue 5

The *Corrections Act 1997* (TAS) has five 'guiding principles' that are to be regarded when exercising powers under the Act, including parole decisions. Those principles are:<sup>1</sup>

- (a) The community is entitled to an appropriate level of protection from illegal behaviour by people subject to this Act;
- (b) People who are subject to this Act retain their normal rights and responsibilities as citizens, except as these are limited in accordance with law;
- (c) Services and procedures should be fair, equitable and have due regard to personal dignity and individuality, as far as is consistent with the need for appropriate levels of security and control;
- (d) Individuals are capable of change; and
- (e) People subject to this Act continue to be members of the community and should be assisted to become socially responsible. Whilst their liberty is restricted to various degrees, demonstrated social responsibility should lead to less intrusive control and intervention.

These principles allow greater discretion to parole decisions than a statutory test, and consider both the rights of the offender and the safety of the community. They encourage a link between parole and demonstrated social responsibility - which could include completion of domestic violence programs - and also make explicit the responsibility of correctional services to assist in rehabilitation by providing programs. TEWLS would prefer that this approach, rather than a statutory test, be considered in the NT.

### **Serious Sex Offenders Act for violence offenders**

### Issue 6

The *Sentencing Act* (NT) already allows for the Supreme Court to impose an indefinite sentence on an offender convicted of a serious violent offence. TEWLS does not provide legal advice in criminal matters and at this time has no submissions on the adequacy of the *Sentencing Act* (NT).

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<sup>1</sup> *Corrections Act 1997* (TAS) s 4.

### Issue 7

Allowing the Attorney-General to make applications for orders continuing the detention of an offender is not consistent with a clear separation of powers. TEWLS does not support any scheme similar to the *Serious Sex Offenders Act* (NT) being made available for the continuing detention of offenders convicted of violent offences.

### **'Flash incarceration'**

### Issue 8

Incarceration rates in the NT are already unacceptably high, particularly for Aboriginal and Torres Strait Islander peoples. The economic and psychological repercussions of incarceration are felt keenly by individuals, families and communities.

TEWLS supports clear and predictable sanctions for breaching Community Custody Orders, however, this should not be considered support for flash incarceration. Incarceration should be reserved for serious offences where the offender poses a continuing risk to the community, and should be imposed only after exercise of appropriate judicial discretion.

### Issue 9

TEWLS does not support 'flash incarceration'.

### Issue 10

The HOPE model has been developed in Hawaii, a much smaller land area with higher population density than the NT. TEWLS is concerned that behaviour change programs similar to those available under the HOPE model would not be effective in the NT. Many regional and remote communities currently have limited or no access to already existing programs and services related to behaviour change. Language barriers may also limit access to programs, as the NT has a high rate of language diversity. Increasing access to existing support services should be a priority before requiring mandatory participation of offenders in behaviour change programs.

Additionally, TEWLS strongly supports voluntary participation in behaviour change programs, and recommends that limited resources should be used to increasing education and facilitate genuine desire for behavioural change.

## Recommendation 2

During outreach services to remote communities, TEWLS has discussed with Aboriginal clients the penalties for breaches of domestic violence orders ('DVOs'). Our clients have raised concerns that police attendance is not reliable, and not effective at keeping protected persons safe.

TEWLS recommends that short-term safe houses in remote communities would be effective at removing victims of domestic violence from situations of immediate danger. Safe houses could be associated with existing Women's Centres, and would provide secure accommodation for women until violent situations resolve, or until transport to crisis accommodation could be arranged.

## **Electronic monitoring**

### Issue 11

TEWLS does not at this time have any submissions to make regarding the use of electronic monitoring. In general terms, we support evidence-based approaches.

## **Proximity alarms**

### Issue 12

Proximity alarms will not be appropriate in every instance of domestic and family violence. TEWLS supports the use proximity alarms where individual victims will gain a sense of security from their use. However, they will not be useful to many victims of domestic violence such as young children, those who may forget to carry their alarms, or those who value privacy over participation in an alarm program.

TEWLS is also concerned that although proximity alarms would alert protected persons to a potential attack, there is no way to then direct them to guaranteed safety.

### Issue 13

Personal safety devices offer more functions to protect victims of domestic and family violence, such as GPS tracking, but these functions are limited to areas which have 4G/3G coverage. Many NT communities have limited or no coverage, and would not be able to use such devices.

Additionally, personal safety devices are more expensive than proximity alarms and their functions can be replicated with smartphone apps. TEWLS believes that funding would be better used to offer more support services to victims of domestic and family violence.

#### Issue 14

TEWLS believes that increased funding for existing services would be effective in achieving the aims of protecting victims of domestic and family violence and deterring perpetrators. Counselling, legal advice, behaviour change programs, medical treatment and crisis accommodation are all essential to reduce rates of domestic and family violence.

#### **Additional counselling services to be provided in domestic violence matters**

#### Issue 15

TEWLS supports the proposal to broaden the scope of the Witness Assistance Service to encompass a greater number of victims. In particular, we recommend:

1. Increased engagement with NGO support services providing counselling, legal and financial assistance;
2. Greater support for Culturally and Linguistically Diverse victims and witnesses, beyond simply assisting with booking interpreters;
3. Increasing outreach programs to remote and regional communities; and
4. Allocation of an officer to every case before court.

#### **Streamlining the process for seeking protection orders**

#### Issue 16

TEWLS supports a separate specialised list for criminal prosecutions involving domestic violence in the Court of Summary Jurisdiction, provided that magistrates presiding over the list are specifically trained in issues surrounding domestic and family violence.

### Issue 17

TEWLS supports the establishment of a group of specialist prosecutors to conduct criminal prosecutions involving domestic violence and to appear for Police in applications for domestic violence orders.

### **Increasing bail programs for domestic violence offenders**

#### Issue 18

The NT has high rates of recidivism amongst domestic violence offenders. TEWLS believes that expanding behavioural change programs that target domestic and family violence would be beneficial in reducing domestic and family violence.

#### Issue 19

TEWLS supports expanding the availability of behavioural change programs to as many prisoners as possible. This includes prisoners on remand, and also those serving short sentences of less than three months who may not currently be able to access programs.

#### Issue 20

Behavioural change programs which are targeted at Aboriginal and Torres Strait Islander offenders are essential to reduce high rates of recidivism and ongoing incarceration. TEWLS supports expanding culturally appropriate programs as a priority.

### **Mutual recognition of DVOs**

#### Issue 21

TEWLS supports the mutual recognition of DVOs. We would also support extending the recognition to jurisdictions outside of Australia, such as New Zealand.

**Amendments to the Criminal Code to prescribe offending which occurs 'in the presence of a child' or 'in a domestic or family relationship' as a circumstance of aggravation for assault.**

#### Issue 22

The meaning of 'in the presence of a child' is not sufficiently clear. We consider this to be because:

1. "Children" could mean any child under the age of 16 who is in a public place while an assault occurs, and who has no connection to the victim or offender; and
2. "In the presence of" could include children who are infants, asleep, or otherwise unaware of the assault despite being in proximity

Aggravation carries an increase of four years to a maximum incarceration sentence. It should be limited to circumstances over which the offender has some control.

The circumstances of an assault taking place in a domestic or family relationship will already be before the court, and will be considered in sentencing. TEWLS does not support expanding the circumstances of aggravated assaults.

### **Conclusion**

TEWLS appreciates the opportunity to make this submission. We support ongoing improvements to services and responses targeting domestic and family violence in the Northern Territory and would be glad to be consulted regarding any proposed changes.

Yours faithfully,  
**TOP END WOMEN'S LEGAL SERVICE**



Vanessa Lethlean  
Managing Solicitor