

4 April 2025

Legislation Scrutiny Committee
Attention: Julia Knight, Committee Secretary
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DARWIN NT 0801
By email: Julia.Knight@nt.gov.au
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Dear Committee Members,

SUBMISSION – DOMESTIC AND FAMILY VIOLENCE AND VICTIMS LEGISLATION AMENDMENT BILL 2025

We wish to provide a submission in relation to the Committee's consideration of the Domestic and Family Violence and Victims Legislation Amendment Bill 2025 (the **Bill**).

1 - OUR PERSPECTIVE

The submission puts forward the joint view of the Northern Territory Women's Legal Services (**NTWLS**), comprising the Top End Women's Legal Service (**TEWLS**), Katherine Women's Information and Legal Service (**KWILS**), and Central Australia Women's Legal Service (**CAWLS**).

Collectively, the NTWLS deliver legal services for women across the entire Northern Territory, with a significant focus on domestic, family and sexual violence (**DFS****V**). We operate in a holistic, trauma-informed and culturally-appropriate manner, recognising our client's legal needs as one small part of their complex lived reality. On a daily basis, we help women navigate a variety of challenges to keep themselves and their children safe. This experience gives us deep insight into the needs and experiences of victim-survivors of DFSV, which has informed our submission with respect to the Bill.

RECOMMENDATION

*The Scrutiny Committee should recommend to the Assembly that the Bill **not** be passed.*

We recommend that the Bill be withdrawn to allow for best practice consultation with the sector and to ensure that there will be appropriate infrastructure and resources in place to enable the intended improvements to operate effectively in all parts of the Northern Territory.

*Alternatively, we submit that the Assembly **should not pass** ss 5 Div 1 Pt 2 (Mandatory sentencing for contravention of DVO) of the Bill.*

We recognise the broad intent of these legislative amendments as being to improve victim-survivor safety and improve the accountability of people using violence. This is central to the work of Women's Legal Services, and we are committed to working with this Government to furthering that aim.

However, we are concerned that the measures in the proposed Bill may not only be ineffective in achieving that objective, but may cause some unintended adverse consequences in relation to victim-survivor safety. Accordingly, noting the Committee's Terms of Reference, we submit that the Assembly should not pass ss 5 Div 1 Pt 2 (Mandatory sentencing for contravention of DVO) of the Bill.

2 - MANDATORY SENTENCING

We understand that the proposed changes are not intended to be broad-ranging but are intended to target repeat or significant breaches of domestic violence orders. However, mandatory sentencing is a blunt instrument that is inconsistent with the value our legal system places on judicial discretion in order to operate in a fair and just manner and is unlikely to achieve the desired outcomes of improved victim-safety and increased accountability, particularly in isolation.

We are aware that there are multiple submissions that will be received from the DV sector opposing the introduction of mandatory sentencing and referring to the evidence of potential adverse risks of mandatory sentencing including increasing risk of multiple forms of violence, failure to address drivers and reinforcing factors of offending behaviour, expense and the disproportionate impact on minority groups, particularly Aboriginal and Torres Strait Islander people. NTWLS broadly agrees with and acknowledges the evidence base referred to in the bulk of submissions from the DV sector.

NTWLS strongly supports the principle of informed exercises of judicial discretion as a fundamental underpinning principle of a justice system within a democratic system that relies on the separation of judicial and executive power. However, we also acknowledge that many of the submissions from the sector may not be well-informed by a clear understanding of likely scope of impact of this particular reform due to the convoluted nature of the legislative instruments and the lack of time to digest and understand the proposal. Rather than introducing a mandatory sentencing regime which is prone to public misunderstanding and misinformation and infringes on the separation of powers, we urge the Government instead invest in supporting appropriate exercise of judicial discretion with investment in training and support for judicial officers. Supporting judicial officers to better identify the gravity and risk associated with repeat and significant breaches of DVOs may lead to greater terms of actual imprisonment, than mandatory sentencing.

Addressing victim-survivor safety

On 26 March 2025 the Hon Boothby said in response to questions about the legislative amendments;

“(it) is important because victims need to be kept safe. Some of the deaths we have seen in the Northern Territory is because the perpetrator has been out on bail in the community to revisit their victim time and again”

NTWLS support this statement. However, the mandatory sentencing regime proposed would not have impacted the decision-making around bail. Remand and actual imprisonment can, at times, assist in safety planning, and can provide an opportunity for people who have used violence to access supports and rehabilitation services, *if* these are available and adequately funded. Supporting judicial officers to understand the nature and dynamics of domestic, family and sexual violence whilst contemporaneously funding the service sector to gather and present that information to the Court will have a more impactful effect in terms of victim-survivor safety than the proposed mandatory sentencing regime.

Misidentification

Further, a vital reason that we must retain judicial discretion in relation to DV offences is due to the large number of women who are misidentified as users of violence, often by police, and named as a defendant on a DVO. Subsequent breaches can be controlled or initiated by the actual user of violence and coercive control. Under a mandatory sentencing regime, judicial officers would have no choice but to sentence victims of coercive control to a sentence of actual imprisonment, even in the face of clear evidence that they have been misidentified by the justice system.

DFSV-informed exercise of judicial discretion

Supporting DFSV-informed exercise of judicial discretion is far more likely to equip our justice system with the tools necessary to respond appropriately to the gravity of repeat DV offending and breaches of DVOs, and may indeed see an increase in sentences of actual imprisonment for domestic and family violence related offending. We point to the evidence associated with the outcomes of the specialist family violence courts in Victoria and Queensland to support the impact that ongoing professional development in this area can have on the appropriate exercise of judicial discretion.

Investment in victim-survivor safety supports and accountability mechanisms

At the same time, to pursue long-term victim-survivor safety and behaviour change, we call on the Government to invest in appropriate victim-survivor supports, particularly in relation to engaging with the legal system, as well as appropriate behaviour change and accountability programs for people who have used violence.

The collaborative safety planning required to keep a woman safe upon release of a person using violence cannot currently occur in every instance required due to the limited resources available across the whole DSFV sector and due to the siloing of DSFV response from the social determinants of safety; such as safe accommodation options, access to on-country healing, legal services for the users of violence so that they can understand the obligations of their DVO, food security etc.

In this regard, we take the opportunity to emphasise the importance and relevance of many of the recommendations made as a result of the Coronial Inquests into the deaths of *Miss Yunupinyu, Ngeyo Ragurrrk, Kumarn Rubuntja and Kumanjayi Haywood* [2024] NTLC 14. Recommendation 34 reflects the importance of ongoing appropriate investment in specialist legal service models, particularly women's legal services, to support their capacity to operate a daily drop-in, wrap around socio-legal service. There is a broad range of other recommendations that if implemented would likely achieve gains in victim-survivor safety and accountability for people using violence including appropriate and locally tailored co-responder models (Rec 7), further training, support and expansion of specialist court operating models (Rec 17), Alternatives to Custody with a focus on addressing domestic, family and sexual violence (Rec 20), changes to the Victims Register scheme to an opt-out scheme (Rec 21) as well as reforms to prison programs and further men's programs and prevention activities (Recs 23-25 & Rec 29).

Associated costs

We note that the operating cost of the Northern Territory adult prison system is \$122,496 per person in prison per year, or \$335.88 per day. We repeat our concern that actual imprisonment in isolation, without access to and engagement with supports and behaviour change programs, is not an effective tool in creating ongoing safety for victim-survivors. We argue that a more effective use of the funding that would

otherwise have been associated with implementing the proposed mandatory sentencing reform, is to fund frontline victim-survivor advocates and service providers.

3 - VICTIMS OF CRIME – ACCESS TO INFORMATION & SUPPORT

The proposed amendments expand the current requirements on the Crimes Victims Services Unit (CVSU) to notify victim-survivors who are registered on the Victims Register when an offender has failed to comply with an electronic monitoring condition under a community-based custodial order (parole order, suspended sentence, intensive community correction order or supervision order). NTWLS are supportive of victim-survivors having improved access to information they may need to assess and manage risks to their safety. To effectively implement this reform, victim-survivor services need to be appropriately funded to maintain contact and support to those on the Victim's Register. NTWLS has raised concerns with the Attorney-General regarding the current operations of the Victims Register, including resource limitations regarding contemporaneous information not being provided to registered victim-survivors, as well as the availability of information, advice, and representation to prospective victim-survivors from their local, specialist Women's Legal Service.¹

We know that victim-survivors already struggle to obtain the information they are entitled to receive under the Victims of Crime Charter, including information about bail, bail conditions, prosecution and sentencing. NTWLS and WAS assist many women through this process, but note that the DPP website acknowledges that an officer cannot be allocated to every case, and priority is given to vulnerable or special needs witnesses.² Further, WAS resources are not accessible to all victim-survivors, and critically, many victim-survivors are not aware of the Victims Register in the first place.

As far as NTWLS are aware, the Victims Register operation is delivered through email and telephone services from Darwin. There is incredibly high potential for phone calls and emails, particular where they are unexpected, to be re-traumatising or triggering for victim-survivors. In our view, steps should be considered for making the operation of the Victims Register more trauma informed. This may be through the employment of regional, remote and very remote team members, or exploring options to fund existing trusted services (eg specialist legal services or other support services) who may have ongoing relationships with victim-survivors. NTWLS strongly recommends that this reform is implemented with designated funding for specialist DFSV legal services working with victim-survivors to assist them to access the information they are entitled to under the Charter and through the Victim's Register.

We also take the opportunity to suggest a further minor amendment. The ability to maintain contact with clients, particularly clients in the remote and very remote parts of the Territory is a significant challenge. It is very common in our experience for the contact details of the women we work with to change frequently. Often, they do not have their own telephone but will provide a contact number for a trusted relative. Phones are frequently shared, lost or damaged. It is, in our submission, not realistic to think that victim-survivors will be mindful of regularly updating their contact details with CVSU once they are placed on the Victims Register, as required by Reg 2 of the *Victims of Crime Rights and Services Regulations 2010* (NT). Recognising that there will be practical limitations on what CVSU itself can achieve with outdated contact information, it should be considered whether the victim-survivor could stay on the Register but

¹ Jack Hislop and Tilda Colling, 'NT government to reinstate mandatory sentences for repeat DVO breaches', *ABC News* (online at 25 March 2025) <<https://www.abc.net.au/news/2025-03-25/nt-government-to-reinstate-dvo-mandatory-sentencing-parliament/105093750>>.

² <https://dpp.nt.gov.au/witness-assistance-service/about-us>.

have CVSU be excused from further attempts at contact in such circumstances. This would enable the victim-survivor, when they do have an opportunity, to still reach out for the information they may require.

4 - MODERNISING MEASURES

Conversion of levy to revenue units

NTWLS supports the proposed amendment which is designed to keep this legislation in step with other fiscal penalty provisions, and to raise revenue for the Victims Assistance Fund. There are two peripheral considerations worth mentioning relevant to the experience of victim-survivors, both of which may be remedied through provision for exercise of judicial discretion:

- *A levy raised in DFSV contexts may increase the risk of further violence:* Research suggests that poverty is connected with increased rates of DFSV.³ It may be an unintended consequence of issuing a levy that there is retaliatory behaviour, lateral violence, impact on joint funds or shared assets, and consequently, a reluctance on the part of victim-survivors to seek help for future breaches. In recognition of this inadvertent risk of harm, it may be appropriate to consider whether judicial officers should be given the discretion to exclude breach DVO offences from the imposition of the levy in the *Victims of Crime Assistance Regulations* (Reg 26).
- *Trauma-behaviours or violent resistance by victim-survivors may be caught inadvertently:* The other way the levy may be relevant to victim-survivors may be the exacerbation of hardship and financial dependence of people who have escaped violence, or are continuing to live within a cycle of violence who may have been fined themselves. For example, victim-survivors may find themselves fined for public drinking where this behaviour has been caused by coercive control or alcoholism arising from unhealed DFSV history. Victim-survivors may be fined for public order offences if they are engaging in acts of violent resistance for their own protection. Section 61(9) of the *Victims of Crime Assistance Act 2006* (NT) (**VOCA Act**) prevents a Court from reducing the levy, or exonerating a person from paying it. Likewise, the Fines Recovery Unit has no power under its authorising legislation to waive the levy (which operates as a fine).⁴ It may be beneficial to introduce discretion on the grounds of experience of family violence and/or to consider whether unpaid fines (which frequently accumulate to significant levels due to public drinking or public order offences) could be used as a pathway to voluntary therapeutic treatment (such as healing programs for victim-survivors, or behaviour change programs) as a new form of enforcement order to discharge the liability.

Other amendments to the VOCA Act

With respect to the other amendments to the VOCA Act, we make the following brief comments:

- *Lodgement requirements:* From an accessibility and inclusion perspective, it is important that the “approved form” adopted by the Director retains a degree of flexibility. For many Territorians, especially those living in remote communities, access to digital technology is still a privilege that many live without or may not have the skills to use. The application process should be simple and convenient for all victim-survivors to navigate.

³ See, e.g. World Health Organisation. UN Women, *Respect: Preventing Violence Against Women - Strategy Summary: Poverty Reduced* (June 2020), accessed online.

⁴ *Fines and Penalties (Recovery) Act 2001* (NT), s 6(1)(b).

- *Qualifications of assessors:* Legal services who provide representation for financial assistance claims have observed an increasing trend over the last 3-5 years of assessor decisions applying incorrect interpretations of the law. It has been common within the sector to lodge appeals against a decision that a victim-survivor receives no award, which are then agreed or found by NTCAT to be incorrect, with a substantial sum being awarded (sometimes the maximum of \$40,000). Historically, we have also seen decisions which demonstrate a fundamental lack of understanding of the impact of trauma and DFSV theory (such as the cycles of violence, coercive control and violent resistance). This may be through judgments or comments being made regarding:
 - A victim-survivor “choosing” or somehow being personally responsible for placing themselves at risk (for instance, by drinking with the person using violence);
 - The “lack of evidence” of offending where the pattern of abuse was so frequent, or the cumulative trauma has been so significant, that individual incidents become blurred or memory is otherwise impacted.
 - The status of the relationship, which may fluctuate depending on the cycle of violence and the degree of coercive control and lateral violence within the broader family and community.

We support the intent of this provision being to draw upon a larger pool of assessors and consequently to improve processing times, which is in the best interests of victim-survivors. However, we are concerned that there may be an inadvertent risk of further trauma to victim-survivors by needing to undertake appeal processes, or having their experience invalidated by being incorrectly denied financial assistance but feeling unable to bear the burden of having that rectified. That burden should not be a victim-survivor’s load to carry in any event.

To mitigate this risk, it is essential for CVSU to develop strong assessment guidelines and an effective mandatory training program (including advanced DFSV and trauma theory) for any person who will undertake the duties of an assessor under proposed s 24, and to be adequately resourced by the NT Government to do so.

5 - REMAIN FOCUSED ON EVIDENCE-BASED RECOMMENDATIONS

As noted above, last year the NT Coroner gave extensive consideration to the measures required to address the devastating levels of DFSV in the Territory. The inquest considered not only the particular circumstances of the four women who murdered, but also the common experiences and factors of 67 other domestic violence deaths since 2000. The NT Government has already begun implementing some of those recommendations, which is applaudable. For example, NTWLS were impressed with the speed at which NT Police implemented the use of interpreters within the JESCC Call Centre (Recommendation 10), and are optimistic that this will make a significant difference for victims being able to seek police assistance more effectively.

However, we are concerned that these amendments, and the media campaign accompanying them, detract from what the evidence has told us **must** occur to create lasting and meaningful change for our families and communities – investing in programs, services and initiatives that address the drivers of ongoing violence against women.

We urge the NT Government to remain focussed on opportunities to improve victim-survivor safety that have been recommended through evidence-based processes, particularly this significant coronial decision.

6 - TIMELINE FOR CONSULTATION

Whilst NTWLS support victim-survivor safety being addressed as a matter of priority and urgency, the timeline for consultation in this instance significantly reduces the likelihood that sector knowledge and lived experience can effectively inform the proposed measures to achieve safety and wellbeing.

Over the past decade, NTWLS have been increasingly faced with short timeframes to provide vital feedback on significant law and policy reform relevant to our area of expertise. We collectively urge this Government to commit to the principles and practice outlined in the Commonwealth Government's Best Practice Consultation Guidance Note⁵ to ensure meaningful consultation in the context of proposed reform, including the Scrutiny Committee's review of the proposed bill. We are particularly concerned that the current six-day timeframe places excessive pressure on our frontline services, significantly limiting our ability to provide comprehensive input. Without adequate time and opportunity for meaningful engagement, there is a risk that the Bill may not fully account for operational realities, potentially leading to unintended consequences or the need for further amendments. We further note that our services are not funded for this vital work.

There has also been significant community interest in the proposed Bill, and misunderstandings of the implementation and operation of the legislative changes appear to be significant. Further consultation will provide more opportunities for discussion and socialisation with the sector that will be most significantly impacted.

7 - FURTHER COMMENTS

As outlined to the Attorney-General when she met with the NTWLS in January 2025, the NTWLS are deeply invested in creating strong and effective measures to respond to the current DFSV crisis in the NT. We share the Government's vision for a safer community, and wish to work alongside you to develop more comprehensive, evidence-based strategies to improve victim-survivor safety. Please do not hesitate to reach out to any one of our services if we can assist further.

Yours Sincerely



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Chief Executive Officer, CAWLS



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⁵ Department of Prime Minister and Cabinet, Office of Impact Analysis, *Best Practice Consultation*, July 2023 (accessed online at <https://oia.pmc.gov.au/sites/default/files/2023-08/best-practice-consultation.pdf>).