DOMESTIC AND FAMILY VIOLENCE PROPOSALS

ISSUES PAPER

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1) Introduction

This paper provides a brief overview of some possible options for improving the response to domestic and family violence in the Northern Territory.

We are seeking your comments and views about these options and would like to hear which options you do and do not support and how they might be improved. To assist with your consideration of the options, some questions have been asked at the end of each section.

Submissions can be provided on or before 20 November 2015 at policy.agd@nt.gov.au or to the following address:

Legal Policy
GPO Box 1722
Darwin NT 0801

2) Clare's Law

Clare's Law, or the Domestic Violence Disclosure Scheme, requires the English Police Force to disclose the prior violence-related criminal history of a person if:

a) they receive a request for disclosure from a person who believes they may be at risk of harm; or

b) they receive a request for disclosure from any person who believes another person may be at risk of harm.

The scheme was enacted after 'Clare' was murdered by her partner. Her partner had numerous prior convictions for assaulting women and had previously been convicted of manslaughter of a former partner.

The aim of this scheme is to give people a formal mechanism to make inquiries about their partner, or for concerned parties to make inquiries, if they are worried that they may have been abusive in the past.

The scheme is also intended to empower individuals by enabling them to make a more informed decision on whether to continue a relationship, and provide further help and support to assist people in making that choice.The scheme requires police to undertake a risk assessment and, if they believe the person is at risk of harm, disclose the prior violent offending (if applicable). Where disclosure occurs, police must also enact a safety plan to protect the at-risk party.

The scheme was initially a pilot program in the greater Manchester area and was implemented across England in March 2014. In the first year the scheme was operational in England, 3,760 applications for disclosure were made and police made 1,335 disclosures.

Clare's Law has been structured with strict protocols over who can ask for and receive the information, and what they are allowed to do with it. Anyone can apply for the information, but they must provide proof of identity, they must provide police with convincing evidence that they have grounds to ask for the information, they must show they are in a position to help the potential victim and they are warned that anyone who misuses the information could face charges.

If introduced, this scheme would have finance and resource implications for NT Police. Attached to this issues paper are two information booklets, produced by New Scotland Yard, on how Clare's Law operates in England (refer Appendices A and B).

1. Do you think that the introduction of a law similar to Clare's Law in the Northern Territory would succeed in its aim of protecting people who are at risk of domestic and family violence from someone with a history of violent behaviour?
2. Do you think that there are there are any specific factors that should be considered or modifications to Clare's Law that would be required in the Northern Territory context?
3. Do you consider that there are other alternatives which would better achieve the aim of protecting people at risk of domestic and family violence from someone with a history of violent behaviour?

3) Domestic violence offender programs and parole

It has been suggested that there should be a more direct link between the completion or non-completion of domestic violence offender programs by prisoners and the granting of parole.

The Parole Board already has the ability to take rehabilitation measures into account when deciding whether parole should be granted. The *Parole Act* also provides a specific ability to attach conditions to the parole order, which could include conditions requiring participation in rehabilitation programs. The participation of an offender in rehabilitation programs, either while in prison, or when on parole, is subject to adequate service availability.

The overarching framework for parole decisions in the NT is provided by the *Parole Act*. The Department of Correctional Services has responsibility for the *Parole Act* and all programs available in custodial correctional facilities and youth justice facilities.

The *Parole Act* does not provide a statutory test to be applied when making a parole decision, except in the case of offenders serving life imprisonment for murder. In this instance, a 'public interest' test is applied.

In some other Australian jurisdictions, a statutory test is provided to capture the key aspects of the parole decision in all cases; for example, a 'public interest' or 'community safety' test. Legislation in some jurisdictions also sets out a number of specific matters that must be considered. In the Northern Territory, a statutory 'public interest' test is required in the case of offenders serving life imprisonment for murder.[1]

The Policy and Procedures Manual, which provides information to members of the Parole Board, advises that the primary consideration should be given to 'the risk or likelihood of the prisoner re-offending while on parole and the level of danger created by the prisoner being granted parole'.[2]

There are a number of programs currently available which are outlined at Appendix C.

4. Do you think that the ability of the Parole Board to consider rehabilitation measures as well as conditions that should be attached to the parole order provides appropriately for consideration of the completion, or non-completion, of domestic violence offender programs by prisoners?

5. If you think a more direct link should be made between the completion of domestic violence programs and parole, what methods do you think would best achieve this? For example, some jurisdictions include a statutory test to capture the key aspects of the parole decision, such as a 'public interest' or 'safety of the community' test and/or list matters to be considered.

4) Serious Sex Offenders Act for violent offenders

The *Serious Sex Offenders Act* allows the Attorney-General to apply for a continuing detention order or a supervision order for a qualifying serious sexual offender. The primary object of the scheme is to enhance the protection and safety of victims of serious sex offences and the community generally by allowing for the control, by continued detention or supervised release, of offenders who have committed serious sex offences and pose a serious danger to the community.[3]

[1] See, for example, *Sentence Administration Act* (WA), ss 5A and 5B; *Crimes (Sentence Administration) Act 2005* (ACT),s 120.
[2] Parole Board of the Northern Territory, *Policy and Procedures Manual,*14.
[3] *Serious Sex Offenders Act* (NT), s 3(1).

Some people have suggested that a similar scheme allowing the Attorney-General to apply to the Supreme Court for a continuing detention order, or for a supervision order for a qualifying offender who is in the last 12 months of their sentence, should be available for serious violent offenders.

The *Sentencing Act* already allows the Supreme Court to impose an indefinite sentence on an offender convicted of a violent offence.[4] Violent offences are defined to include a crime where: some form of violence was used or was attempted to be used and for which an offender may be sentenced to life imprisonment. The Supreme Court may not impose an indefinite sentence unless it is satisfied that the offender is a serious danger to the community.[5]

6. Do you think that the *Sentencing Act* provides adequately for the continuing detention of serious violent offenders by providing the Supreme Court with the ability to sentence an offender convicted of a violent offence to an indefinite term of imprisonment?

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

5) 'Flash incarceration'

'Flash incarceration' relates to a policy operational under the HOPE program in the United States. The program is also under consideration in the United Kingdom. The policy has two main elements:

(a) a new type of sentence order called a Behaviour Change Order. This order would be available for offences including unlawful entry, robbery, vandalism, shoplifting, car theft, breach of a domestic violence order and minor drug possession. The order would have a number of mandatory conditions such as electronic monitoring and drug and/or alcohol testing; and

(b) mandatory incarceration for a period not exceeding 48 hours for any breach of a condition of a Behaviour Change Order.

[4] *Sentencing Act* (NT), pt 3 div 5 sub-div 4.
[5] Indefinite sentences may also be imposed by the Supreme Court in some other circumstances involving serious harm, or sexual penetration or gross indecency involving a child under 16, or a child over 16 if the child is under special care and sexual penetration or gross indecency without consent. See *Sentencing Act* (NT), s 65.

Evaluations of the Hawaii HOPE program indicated that probationers participating in the HOPE program had large decreases in positive drug tests and rearrests. [6]

The aim of the HOPE program and similar programs that use 'flash incarceration' is to address some of the problems with probation supervision, in particular that probation officers lack the capacity to detect violations of the rules as well as the ability to ensure a quick and consistent response to the violations detected. It tries to address the idea that deferred and low-probability threats of severe punishment are less effective than immediate and high-probability threats of mild punishment.[7]

A report released in March 2015 by RMIT University on effective ways to intervene to prevent family violence recommended that courts provide clear advice to perpetrators about the escalation of sanctions they should expect should they fail to comply with relevant orders and that this should include developing protocols for 'swift and certain' sanctioning, such as consideration of 'flash incarceration' for 24 hours upon non-compliance.[8]

The Behaviour Change Order appears to be similar to Community Custody Orders.[9] Community Custody Orders are applicable in the NT where a person is convicted of a prescribed offence and sentenced to a term of imprisonment of 12 months or less. In such a case, the court can order the term of imprisonment to be served by way of a Community Custody Order and there is broad discretion regarding the type of conditions that can be prescribed. The *Sentencing Act* does not mandate terms of imprisonment for breaching an order and it is not an offence to breach the order.

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

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

10. Do out think that there are particular modifications to the HOPE model that would be required for the NT context in order for it to be effective?

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[6] Philip Bulman, 'In Brief: Hawaii HOPE' (2010*)* 266 *National Institute of Justice* <http://www.nij.gov/journals/266/Pages/hope.aspx#note1>.

[7] Angela Hawken and Mark Kleiman, Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE (2009) 6-7 <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

[8] Centre for Innovative Justice, RMIT University, O*pportunities for Early Intervention: Bringing perpetrators of family violence into view* (March 2015) 92. See also Lorana Bartels, 'Swift and certain sanctions: Is it time for Australia to bring some HOPE into the criminal justice system?', (2015) 39 *Criminal Law Journal* 53.

[9] *Sentencing Act* (NT) prt 3 div 5 sub-div 2A.

6) Electronic monitoring

The *Correctional Services Act,* the *Parole Act* and the *Bail Act* contain very broad provisions relating to the use of approved monitoring devices.

The *Bail Act* will be amended to allow a Youth Justice Court to approve the use of the devices for youths granted bail by that court.

At this stage, it is envisaged that no further legislative amendments will be required, however a watching-brief will be kept to highlight any potential deficiencies.

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

7) Proximity alarms

This issue relates to victims of domestic violence related crime and protected persons under a domestic violence order having an alarm that warns them when a perpetrator is within a specified distance. This would require the perpetrator to be wearing a device and for that device to be linked with an alarm in the possession of the victim/protected person.

The Department of Correctional Services is currently looking into the viability of proximity alarms for victims of domestic violence. It is anticipated that this technology will be available for trial from December 2015. Any pilot or implementation of the use of proximity alarms would have financial implications.

An alternative option may be a personal safety device which enables an alarm to be triggered in a police station when a protected person is at risk.

12.	Do you think that the use of alarms would achieve the aim of protecting victims of domestic and family violence and deterring perpetrators from attempting to interact with them?
13.	Do you think that a proximity alarm of a personal safety device would be a more effective tool?
14.	Are there other methods that you consider would be more effective in achieving the aim of protecting victims of domestic and family violence and deterring perpetrators?

8) Additional counselling services to be provided in domestic violence matters

The Witness Assistance Service is a service provided through the Department of the Attorney-General and Justice. The main aim of the service is to provide assistance to victims and witnesses during the court process. The service is limited in the assistance it can provide and it is intended to broaden its scope to encompass a greater number of victims of domestic violence.

This will have resource and finance implications for the Department of the Attorney-General and Justice, but it is noted that provision of assistance to victims in the Court of Summary Jurisdiction is part of the Safety is Everyone's Right implementation plan.

15. Do you have any comments on the proposal to broaden the scope of the Witness Assistance Service to encompass a greater number of victims of domestic violence. In particular, how might this be achieved?

9) Streamlining the process for seeking protection orders

In order to ensure victim safety and wellbeing and to hold perpetrators accountable while addressing offending behaviour it is essential that the justice system operates as efficiently as possible. The Courts in Darwin and Alice Springs provide a dedicated list for seeking domestic violence protection orders on a nominated day per week. There is, however, no specialised court for criminal matters involving domestic violence, even where a protection order is also sought in the same case. Additionally, some applications for domestic violence protection orders are listed other than on the scheduled list day.

The Director of Public Prosecutions summary prosecutions section has carriage of all criminal matters in the Court of Summary Jurisdiction. The Solicitor for the Northern Territory has carriage of police applications for domestic violence orders and for confirmation of police domestic violence orders under the *Domestic and Family Violence Act*. The Director of Public Prosecutions is not involved in these proceedings, but is always involved in related (Darwin) matters when a criminal offence is charged. [10].

[10] This is because of the civilianization of police prosecutions in Darwin in December 2013, which shifted from a model of a shared division of prosecution responsibilities between Police and the DPP was changed to one which gives the DPP complete prosecution responsibility for all charges which are laid by members of the Police within the summary prosecutions Darwin geographical area.

A specialised court list would reduce trauma and maximise support to victims. The list would be managed by a magistrate or magistrates with interest and experience in the area and lawyers appearing would receive appropriate training in domestic violence responses. All matters involving domestic violence protection orders and/or criminal charges involving domestic violence should be listed in a specialised list. This would enable efficient disposal of matters and ensure legal and support services can structure their availability to be available to victims. The list may need to run in Darwin and Alice Springs on more than one day, depending upon volume.

In terms of both expertise and efficient allocation of resources, it may be necessary to establish a group of dedicated lawyers within the summary prosecutions section of the Director of Public Prosecutions to undertake prosecutions where criminal charges involve domestic violence and to act for police in applications for domestic violence orders. This approach would enable an holistic approach for victims, particularly where applications are co-extensive with criminal matters relating to the same facts.

A specialist list for all domestic violence matters would enable a better court experience for victims because:

- terms of protection orders will be compatible with bail conditions without having to liaise with two sets of lawyers acting for police;
- Lawyers and magistrates will be familiar with issues surrounding domestic violence victims including matters relevant to giving of evidence and the like;
- Lawyers in criminal matters will understand the full details of each matter and the different circumstances, including original assault charges and failure to comply with DVO matters;
- Support and legal services will be available to victims at the specified times;
- Lawyers in criminal matters will not enter into ‘plea bargaining’ or other arrangements without considering the effect upon victim safety, including the effect upon the likelihood of successfully obtaining a protection order.

There may be a need for amendment to the *Director of Public Prosecutions Act.* Establishing a specialist prosecution group will also require additional resources be directed to the Director of Public Prosecutions.

16. Should there be a separate specialised list for criminal prosecutions involving domestic violence in the Court of Summary Jurisdictions?

17. Do you think it would be preferable for a group of specialist prosecutors to conduct criminal prosecutions involving domestic violence and to appear for Police in applications for domestic violence orders?

10) Increasing bail programs for domestic violence offenders

The Family Violence Program accepts referrals for offenders on bail.[11] The *Bail Act* contains provisions relating to conditions that can be imposed on a bail undertaking.[12] These provisions are very broad and conditions must be imposed 'that appear necessary to minimise risks to the safety or welfare of others, or to the proper administration of justice, that may result from releasing the accused person on bail'. Some stakeholders have suggested that expanding the behavioural change programs and programs that target domestic and family violence would be beneficial and may assist in reducing re-offending. The expansion of programs to cover offenders who are on remand would also be advantageous.

This policy would have resource and finance implications for the Department of Correctional Services.

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

19. Do you think the expansion of these programs to prisoners on remand would be likely to achieve the aim of reducing domestic and family violence?

20. Are there any particular programs that you consider are particularly effective in changing violent behaviour?

11) Mutual recognition of domestic violence orders

This matter is on the Law, Crime and Community Safety Council (LCCSC) agenda and will be further discussed at the Council's next meeting in late 2015. This matter is also a COAG priority agenda item. All jurisdictions are assisting in the drafting of a Bill to allow for the automatic mutual recognition and enforcement of domestic violence orders from all jurisdictions. The scheme will allow a domestic violence order taken out in the Northern Territory to be enforceable in all jurisdictions. Currently, a domestic violence order is only enforceable in the jurisdiction in which it is taken out, unless the protected party registers that order in another jurisdiction.

[11] For a description of the Family Violence Program see Appendix C.
[12] *Bail Act* (NT), ss 27, 27A and 28

There are often costs associated with registration, and registering an order in another jurisdiction is likely to alert the defendant to the protected person's new location. CrimTrac is also currently developing a National Domestic Violence Order Information Sharing System prototype that aims to improve the lack of national coordination and information sharing of domestic violence orders and related court orders across Australia. This technology will be trialled in Queensland, New South Wales and Tasmania. CrimTrac will report back to the LCCSC on the results of the trial in 2017.

20. Do you have any comments on the mutual recognition of domestic violence orders?

12) Amendments to the Criminal Code to prescribe offending that occurs 'in the presence of a child' or 'in a domestic or family relationship' as a circumstance of aggravation for assault

The Department of the Attorney-General and Justice is currently reviewing the assault offences in the Criminal Code. Section 188(2) of the Criminal Code sets out the circumstances in which a common assault (maximum penalty of 12 months imprisonment) becomes an aggravated assault (maximum penalty of 5 years imprisonment).

While the majority of assaults that occur in a domestic violence context are captured by current circumstances of aggravation, assaults that occur 'in the presence of a child under the age of 16 years' and assaults that occur 'in a domestic and family relationship' are not specifically covered. It is intended to amend section 188(2) to incorporate these two matters.

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

Appendices

Appendix-C

Domestic and family violence programs in the Northern Territory

Family Violence Program

‘Family Violence Programs’ for clients referred by courts, probation and parole officers as well as for individuals referred from other agencies within the community. The programs target offenders with convictions for violence against any family member. Programs are delivered to urban and remote communities across the Northern Territory and are also delivered to offenders in a custodial setting. Referrals are also accepted for offenders on bail.

The current community based men’s program addressing family violence has been operating for over 10 years and the women’s program was developed approximately 18 months ago. In 2014, there were only 6 women’s community based programs delivered.

In future, the Department of Correctional Services (NTDCS) plans to identify interested community members and corporations to be trained in delivering a Family Violence Program in their communities. Training would be provided by the NTDCS Family Violence Program team and would commence in the remote community of Yuendumu as a pilot program. The Family Violence Program manual will also be translated into local languages such as Yolngu Matha, Kriol and Warlpiri. The program will incorporate community Elders involvement and will be offered in conjunction with local programs and services, such as support networks and referral agencies.

Violent Offender Treatment Program

The Violent Offender Treatment Program is a self-management program based on principles of Cognitive Behavioural Therapy designed to help offenders reduce, or more effectively manage, their risk of violent re-offending. The Violent Offender Treatment Program is offered in a custodial setting and participants are not necessarily perpetrators of domestic and family violence offences.

Offender Services and Programs, and Indigenous Affairs (NTDCS) have established two Violent Offender Treatment Programs. The first is a moderate intensity program for the duration of three months. The second is a high intensity program for the duration of six months. Neither program is available to offenders sentenced to less than 30 months in prison.

Individual Treatment Program for Youth Detainees

Young people who have been convicted of a sexual offence, and who are deemed to be at a moderate to high risk of sexual re-offending are referred to the newly recruited Forensic Psychologist for assessment and treatment.

In June 2015, the Forensic Psychologist, Youth Justice, designed and implemented an individual treatment program aimed at addressing and reducing harmful sexualised behaviour in young detainees within Department of Correctional Services' youth detention centres. The program is an evidence-based intervention designed to target sexual offending behaviour. It is provided to young people with a history of sexual offending and harmful sexual behaviour, and is delivered in an individual format. Wherever possible, the young person's parent or guardian is informed about the treatment process and their permission is obtained to proceed.

The Department of Correctional Services aims to extend this program to youth offenders who receive a community-based order, and who are deemed suitable for the program.

Step-Up Youth Violence Program

Step-Up is a psycho-educational program modified in consultation with Elders from the Elders Visiting Program for Northern Territory youth who have been involved in violent behaviour, including domestic and family violence. It deals with general principles related to offending. The program provides participants the opportunity to address problem areas that underpin violence and practice strategies to deal with these issues in a pro-social manner.

Fourteen detainees have participated in the pilot of the Step-Up Youth Violence Program (Step-Up) in the Don Dale Youth Detention Centre. The Department of Correctional Services aims to roll the program out in the Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre within the first quarter of the 2015/16 financial year, contingent on the recruitment of the requisite staff.