

# Chapter 12

## Domestic Violence Guidelines

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### 1. Background

- 1.1 In 2003 with the support of a wide range of community agencies the Northern Territory Legal Aid Commission (“NTLAC”) successfully tendered to the Northern Territory Government and was awarded the contract for the provision of legal assistance to victims of domestic and family violence.
- 1.2 The NTLAC Domestic Violence Legal Service (“NTLAC DVLS”) was established and commenced operating on 1 August 2003.
- 1.3 These DVLS Legal Assistance Guidelines deal with the legal help which is provided by NTLAC DVLS to victims and those at risk of domestic and family violence.
- 1.4 These Guidelines form part of NTLAC Guidelines and all relevant NTLAC Guidelines also apply.

### 2. Service Provided

- 2.1 NTLAC DVLS provides the following legal help to assist and support victims of domestic and family violence:
  - telephone advice
  - face to face advice in Darwin
  - legal representation in Darwin
  - referral services

2.2 NTLAC DVLS is actively involved in:

- community legal education; and
- monitoring, evaluating and advocating for improvements to relevant law, policies, procedures and services.

### 3. Principles

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The Principles which guide the operation of NTLAC DVLS are:

- 3.1 The primary objective of NTLAC DVLS is to reduce and prevent domestic family violence;
- 3.2 Where there is a risk to safety as a result of domestic and family violence, NTLAC DVLS policy is that the personal safety of the person at risk is paramount.
- 3.3 NTLAC DVLS provides legal advice, representation, assistance and support to victims and those at risk of domestic and family violence.
- 3.4 NTLAC DVLS actively supports all other agencies with a role and responsibility under the Territory's coordinated response to domestic and family violence.
- 3.5 NTLAC DVLS acknowledges that the primary responsibility for legal intervention including laying criminal charges and ensuring urgent legal protection for victims of domestic and family violence lies with Police.
- 3.6 NTLAC DVLS meets the legal needs of victims and those at risk of domestic or family violence from the time after an effective initial police response has occurred and while an effective police response is continuing. However the NTLAC DVLS will advise and support victims and assist them to liaise with police to achieve an appropriate and effective police response.
- 3.7 NTLAC DVLS is committed to working to ensure that the Territory's coordinated response to domestic and family violence is continually improved, in particular by contributing in the areas of the law, legal process, and policy.

- 3.8 NTLAC DVLS is committed to providing community legal education for victims and those at risk of family violence, those involved in providing support and assistance and the wider community.
- 3.9 NTLAC DVLS values the input and feedback of a wide range of stakeholders and is committed to evaluating its effectiveness on an ongoing basis.

## 4. Priorities

NTLAC DVLS gives priority to victims and those who are at risk of domestic and family violence including particularly those who face additional difficulties due to language culture disability or other factors.

## 5. Role of Police

- 5.1 When domestic or family violence occurs Police are the primary agency and depending on the circumstances their response might be:
- arrest for a criminal matter such as criminal damage or assault
  - taking a person into custody for the purpose of obtaining an urgent DV Restraining Order (DVO) for the victim.
  - referral to community support services such as emergency accommodation, counselling or legal help
- 5.2 In circumstances where the victim is unable to make a decision in relation to a DVO and Police have concerns for the victim's safety they may take steps to obtain a DVO without the consent of the victim.
- 5.3 Where a person is taken into custody Police have the power to hold that person for a period of 4 hours and during that time to apply to a Magistrate for an urgent DVO by phone. This will generally occur outside of normal working hours.

Police may also apply for an urgent DVO during normal business hours.

In some circumstances a person may be arrested in relation to criminal offences and later bailed to appear in court. During this process Police may seek an urgent DVO.

- 5.4 Where Police take steps to obtain a DVO victims are usually advised by the Police DV Advocate of the outcome of Court procedures and in some circumstances any relevant bail conditions.
- 5.5 As it is the role of the Police to seek urgent restraining orders NTLAC DVLS will normally not provide urgent assistance of this kind.
- 5.6 Where a victim or a person at risk of domestic or family violence has not sought assistance from Police where this is appropriate and Police have responsibility, NTLAC DVLS will offer support to the person at risk to seek assistance from Police.
- 5.7 Where Police have commenced proceedings for a restraining order they will normally retain carriage of the matter to completion. If difficulties arise NTLAC DVLS will assist the person at risk to liaise with Police. If exceptional circumstances arise these will be considered on an individual basis and an appropriate course of action developed by NTLAC DVLS in consultation with Police.
- 5.8 Where a victim or person at risk of domestic or family violence has previously made a complaint to Police and would like further assistance or information in relation to their complaint and/or where the person feels that Police have not helped them sufficiently NTLAC DVLS will offer support to the client advocate and liaise with the Police Domestic Violence Unit or the Office of Director of Public Prosecutions.
- 5.9 A protocol between Police and the NTLAC DVLS has been negotiated and governs the existing relationship between them.

## 6. Initial Contact with NTLAC DVLS

The NTLAC DVLS provides free initial legal advice and assistance and offers support information and referral services to victims and those at risk of domestic or family violence. This assistance is provided in the following ways:

- by phone during normal business hours;
- at a consultation by appointment on Mondays and Thursdays at the NTLAC DVLS advice clinic in Darwin;
- at a consultation by appointment arranged on an urgent basis
- by specialist duty solicitor services provided at the Darwin Magistrates Court during sittings of the Domestic Violence Court on Wednesdays and Fridays each week

## 7. Matters Covered by Free Initial Legal Advice and Minor Assistance

NTLAC DVLS provides initial legal advice and assistance in relation to all legal issues raised by a client's situation including referral to more appropriate agencies. These include:

- police powers (arrest, DVOs, laying charges for assault, property damage, bail etc)
- family law
- protection and well-being of children
- breaches of domestic violence orders and trespass notices
- housing
- rights and access to government services and other agencies
- letters of support where appropriate
- referral to places of safety

## 8. Duty Lawyer Representation

- 8.1 Where a person at risk of domestic or family violence needs legal assistance that is not likely to exceed one hour in court or three hours of other legal work NTLAC DVLS provides assistance by way of a duty lawyer service. NTLAC DVLS will provide representation if there are reasonable prospects of success.
- 8.2 The following are examples of situations where representation is provided.
- seeking a restraining order on a non-urgent basis ( in circumstances that are not covered by the Police General Order G7)
  - defending an application for a restraining order brought by the perpetrator of domestic or family violence,
  - to vary or revoke a restraining order
  - to register an interstate or New Zealand restraining order

## 9. Ongoing Legal Representation

- 9.1 Where a person at risk of domestic or family violence requires legal representation and assistance that is likely to exceed one hour in court or three hours of other legal work, NTLAC DVLS will provide the additional assistance if the person completes an application for legal aid is assessed as eligible for legal aid and NTLAC DVLS has sufficient resources to provide the assistance.
- 9.2 Where a person needs to qualify for legal aid to receive ongoing legal representation NTLAC Act and Guidelines apply in assessing the application. These include the requirements that the person must:
- have reasonable prospects of success and
  - be eligible for assistance on financial grounds

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## When Ongoing Legal Representation is not Provided

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When an application for legal aid is made but it is not approved, the NTLAC DVLS will:

- ensure that the client is aware of rights to seek a reconsideration of the decision, and
- actively provide support and assistance to refer the person to other appropriate services.