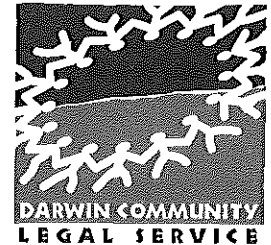


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1 June 2018

Ms. Alison Hanson  
Legal Policy Division  
Solicitor for the Northern Territory  
Department of the Attorney-General and Justice  
by email: [Alison.hanson@nt.gov.au](mailto:Alison.hanson@nt.gov.au)

Dear Ms. Hanson,

**RE: CONSULTATION: DRAFT GUIDING PRINCIPLES FOR PROTECTING VULNERABLE WITNESSES**

Thank you for the opportunity to provide comment in relation to the draft Guiding Principles for Protecting Vulnerable Witnesses (Guiding Principles).

**Background**

The Darwin Community Legal Service (DCLS) is a generalist legal practice that provides advice and legal assistance in many areas of law such as guardianship, credit and debt, employment, personal violence restraining orders, and Centrelink disputes. We also have a specialist Tenants' Advice Service and a Senior and Disability Rights Service with an Elder Abuse Prevention Project. We assist clients with casework services and representation in an effort to address barriers to justice faced by the marginalised and vulnerable members of the community. Many of our clients have multiple intersecting disadvantage, like language and literacy, health, housing and financial problems, and who are victims of domestic and family violence (DFV).

Darwin Community Legal Service (DCLS) has reviewed the Guiding Principles and support the proposed provisions with some additional protective measures. This is to ensure that a victim of domestic and family violence feels supported to participate in the court process, which is designed to provide access to justice for the harms caused to them, and the perpetrator is held accountable for the behaviour.

**About the Principles**

It is noted that the language used in the Guiding Principles refers to the victim of DFV as a 'victim' and the perpetrator as an 'alleged perpetrator.' Whilst we appreciate that the law recognises the principle of innocent until proven guilty, the language is important and we



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should be mindful of its use as it also suggests that the onus to prove the perpetrator's behaviour again rests with the victim, even when there has been a long-recorded history of DFV.

There should be recognition that victims are also survivors of DFV, which picks up the current discourse on this point.

### **Problem Statement**

In addition to recognising the dynamics of DFV the effect on the victim and the risks associated with their engagement in proceedings, the Guiding Principles should be expanded to include an acknowledgement of various emotional responses by a victim. For example, fear, anger, aggression, forgetfulness, distress and irrational or paranoid behaviour, are reasonable from a person in this situation. Recognition of responses that might not otherwise fit within our concept of a 'victim' is crucial to ensuring our response is appropriate.

### **Vulnerable witness protections**

Common to some victims of DFV, is the threat or intimidation posed by family and friends of the alleged perpetrator. We recommend that their security should be assured before, during and after proceedings to ensure protection from related or third-party threats. The potential for 'pay back' for reporting to the police or continuing to engage in a court process is real for many clients, especially those of Aboriginal and Torres Strait Islander backgrounds.

Jurisdictions should ensure that there are legislative provisions that impose sanctions and penalties against third-parties or parties who use threatening behaviour or intimidation against a vulnerable witness in all proceedings involving the perpetrator. This would include family law proceedings, where it is not uncommon for a perpetrator to use the system to delay, frustrate and otherwise prolong the proceedings as a form of controlling and coercive behaviour.

Education as to the law to remove blame from the victim and ensure accountability for the abusive and controlling behaviour to the alleged perpetrator is an essential step to ensuring that a victim can safely move on with and rebuild their lives. This education should be undertaken with the parties involved in the threatening behaviour and their communities to break the cycle of ongoing abuse and control of the victim.

### **Principles for each stage of the court process-**

#### **While giving evidence**

DCLS agrees that vulnerable witness provisions should extend to include family law and domestic violence order proceedings in addition to provisions that prevents the alleged perpetrator from directly cross-examining the victim during a proceeding. DCLS is of the view that so long as the alleged perpetrator has the right to cross-examine a victim, (albeit through a third party appointed through the court), then this balances the need to ensure the safety of the victim with the maintenance of procedural fairness for all parties (SA legislation and the Children and Special Witnesses Act 2001 (TAS)).

DCLS also agrees that these provisions extend to include protections for an unrepresented victim having to cross examine the alleged perpetrator.

### **Recruitment and training**

DCLS supports the principle for system design that includes recruitment and training for all court officials and staff who interact with court users that promotes contemporary and evidence-based understanding of DFV.

This training should extend to include lawyers operating in family and criminal law, and involved in domestic violence order proceedings. This training should be compulsory rather than voluntary. Lawyers representing an alleged perpetrator need to be trained to respond appropriately when communicating with a victim of DFV, even one who is unrepresented, and aware of their duty to third parties. Lawyers should also be mindful of their clients using the legal system as a tool to further abuse and control the victim.

#### **Case Study A**

Marnie (not her real name) was not eligible for legal aid and could not continue to pay a private lawyer to represent her in her family law matter. She was resigned to have to represent herself notwithstanding a long history of DFV that left her with ongoing anxiety and PTSD. Marnie had attempted to obtain full financial disclosure from the alleged perpetrator over a long period of time, despite having provided full disclosure herself. She was threatened with legal proceedings and costs by the lawyer, when she refused to provide additional information pressed for, until she was received the outstanding information she requested. She was also told that the lawyer would not communicate with her until she got a lawyer.

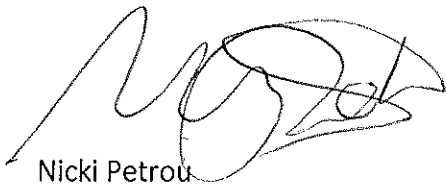
#### **Case Study B**

A victim of DFV, Carly (not her real name) was in proceedings for a domestic violence order both as a defendant and applicant, and a separate family law proceeding. Despite the alleged perpetrator having a long- recorded criminal history involving Carly and his former partner, the lawyer representing the alleged perpetrator declared to Carly's lawyer, that 'boys will be boys' and 'he may have grown out of it now,' trivialising the matter.

The Darwin Community Legal Service is pleased to provide our responses to the Draft Guidelines. We would be very happy to meet with your Department to further discuss the issues we have raised in our submission.

Yours sincerely

**DARWIN COMMUNITY LEGAL SERVICE INC.**



Nicki Petrou  
Principal Solicitor