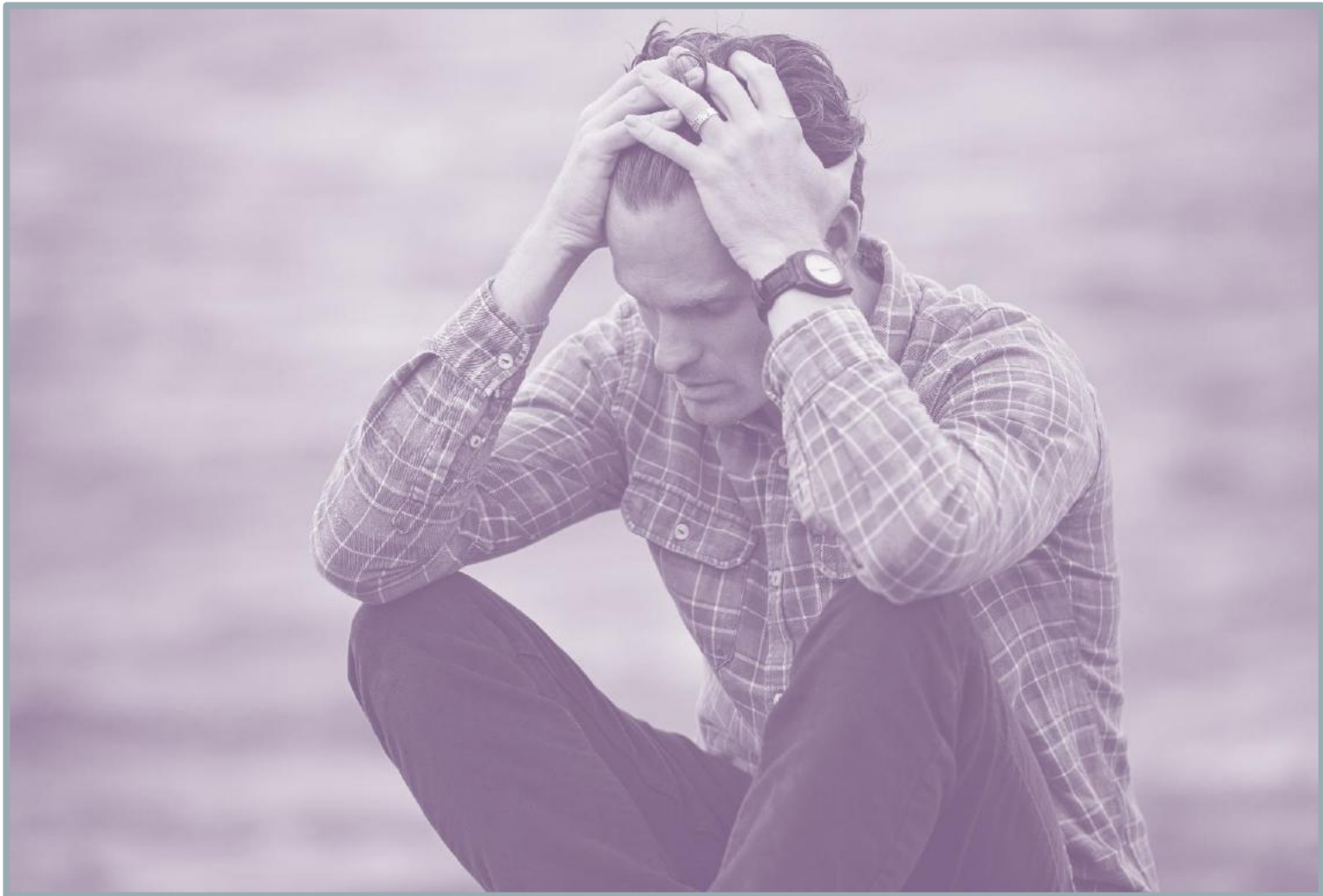


No to Violence feedback

Justice Legislation Amendment (Domestic and Family Violence) Exposure Draft Bill 2023



Acknowledgment of Country

No to Violence acknowledges First Nations Peoples across these lands; the Traditional Custodians of the lands and waters. We pay respect to all Elders, past, present, and emerging. We acknowledge a deep connection with country which has existed over 60,000 years. We acknowledge that sovereignty was never ceded, and this was and always will be First Nation's land.



Contact NTV:

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Men's Referral Service – for men concerned about their behaviour

1300 766 491

About No to Violence

No to Violence (NTV) is Australia's largest national peak body representing organisations and individuals working with men to end family violence. We are guided by the values of accountability, gender equity, leadership, and change.

NTV provides support and advocacy for the work of specialist men's family violence interventions carried out by organisations and individuals. The work undertaken by specialist men's family violence services is diverse and includes but is not limited to Men's Behaviour Change Programs (MBCP), case management, individual counselling, policy development and advocacy, research and evaluation, training, workforce development and capability building.

NTV also provides a range of training for the specialist men's family violence workforce including a Graduate Certificate in partnership with Swinburne University, as well as professional development for workforces who come into contact, directly and indirectly, with men using family violence. NTV is a leading national voice and plays a central role in the development of evidence, policy, and advocacy to support the work of specialist men's family violence nationally.

About Our Members

NTV represents over 160 members Australia-wide. Our membership structure is inclusive of individuals and organisations ranging from specialist services to individuals and others who have an interest in preventing and responding to men's family violence.

Summary

No to Violence welcomes the opportunity to provide feedback on the *Justice Legislation Amendment (Domestic and Family Violence) Bill 2023* and the five key reform areas contained within the Bill.

As the peak body for organisations and individuals working with men to end their use of family violence, we pay special attention to the reform potential for this Bill as it relates to the perpetrator intervention sector. The sector that we represent work to improve accountability and opportunities for perpetrators of family violence to address and end their use of violence. We, the sector, undertake this work to support and uphold the safety and dignity of victim-survivors of domestic, family and sexual violence.

No to Violence has previously represented the work and views of the perpetrator intervention sector to the Northern Territory government through advice on the Territory's Domestic, Family and Sexual Violence Action Plan (June 2023), participation in the co-design of programs for domestic and family violence perpetrators (April 2023) and in the Review of Legislation and the Justice Response to Domestic and Family Violence in the Northern Territory (November 2022). No to Violence represents three member organisations working in the NT and more than 160 individuals and organisations nationwide.

Our review of the *Justice Legislation Amendment (Domestic and Family Violence) Bill 2023* spotlights three key concerns that No to Violence foresees will arise during the implementation of the Bill as it stands, as well as specific feedback on the contents of the Bill itself.

The concerns explained in the following section relate to issues that we feel would hinder the successful implementation of reforms. We seek to reduce the potential for perpetrators of systems abuse to weaponise inconsistencies in definitions of domestic violence, build the capacity of the family violence sector to reduce an overreliance on police responses to domestic and family violence, and to ensure Police and Courts have access to training and guidelines that will support them to strengthen perpetrator accountability and provide greater access to justice, safety and dignity for victim-survivors.

Potential for inconsistencies in definitions of domestic violence to create loopholes that allow for systems abuse

No to Violence strongly recommends that Police and Courts have a robust understanding of systems abuse tactics employed by perpetrators. Police and Courts, as well as Child Protection, processes and systems are exploited by some perpetrators of domestic, family and sexual violence. It is essential that these government service systems do not inadvertently do perpetrators' bidding.

We note that there are amended sections on definitions (ie section 5 amendments on domestic violence; section 5A amendments on emotional or psychological abuse; section 5B amendments on coercive control; section 8 amendments on economic abuse; section 9 amendments on domestic relationship; section 10 amendments on family relationship; section 11 amendments on intimate personal relationship).

However, Police and Courts must utilise consistent definitions of all forms of domestic violence covered under this legislation and these definitions should, as far as is practicable, also match definitions used by the broader family violence sector. The specific feedback provided in the table at the end of this document highlights instances within the Bill where definitions are not consistent. For example, consistent understandings and approaches to identifying coercive control and avoiding misidentification of the predominant aggressor are a particularly pertinent concern for the broader family violence sector and are especially urgent in the context of Aboriginal and Torres Strait Islander peoples' experiences with Police, Courts and Child Protection agencies.¹

Another important example of inconsistencies that could be used to facilitate systems abuse is descriptions of children as victim-survivors of domestic and family violence through *either or both* direct experience and exposure. Parts of the Bill include both aspects as criteria for assessing risk to children and as a factor for escalation of violence while other parts refer only to children's exposure to domestic and family violence. Policy and legislative efforts to recognise children as victim-survivors of DFV in their own right remains a burgeoning area. However, research on this subject posits that police urgently need training on effectively and sensitively responding to children in the context of DFV.² It will be prudent for this Bill to consider how it approaches children's experiences of DFV as more attention is increasingly being paid to the issue.

The perpetrator intervention sector, in conjunction with the broader family violence sector, can support Police and Courts to identify inconsistencies within domestic and family violence legislation that have the potential to be exploited by perpetrators of systems abuse. Working in collaboration with the sector would also proactively communicate changes in the legislation and therefore maximise the potential positive impact of these reforms.

As the peak body for organisations and individuals working with men who use domestic and family violence, No to Violence is well positioned to support the systemic reform needed to effectively implement changes to the domestic violence legislation. We would welcome the opportunity to use

¹ Hobson, Salter and Stephenson (2023) '[The Contributions of First Nations Voices to the Australian Public Debate over the Criminalisation of Coercive Control](#)'. *British Journal of Social Work*, 00: pp. 1-19.

² See for example [Millar et al. \(2022\)](#).

our knowledge of the behaviours, tools and tactics applied by men who use violence as part of a working group or similar body.

No to Violence has also previously recommended that the Northern Territory government work with Aboriginal communities, Aboriginal Controlled Community Organisations (ACCOs), and services that work with Aboriginal and Torres Strait Islander peoples, including North Australia Aboriginal Family Legal Service (NAAFLS) to ensure the cultural safety of reform agenda. We reiterate this recommendation here, noting the ongoing consultation and NT government commitment to working alongside Aboriginal and Torres Strait Islander people on domestic and family violence.

No to Violence reiterates here that the Northern Territory government should establish a working group (or similar body) to support police and the broader criminal justice system to maximise the potential positive impact of reforms and reduce the likelihood and impacts of systems abuse, including misidentification of the predominant aggressor.³

Recommendations

1. Maximise the reform potential of this legislation by consulting with the family violence sector on the elements that must be included for definitions of different forms of domestic violence to be understood and effective and utilising definitions that are consistent with those used by the family violence sector.
2. Establish a working group or taskforce in collaboration with the Domestic, Sexual, and Family Violence Interagency Coordination and Reform Office to support the implementation of reforms, with particular attention to systems abuse and reducing the likelihood of misidentification of the predominant aggressor. This process should include work with Aboriginal communities, organisations and services working with Aboriginal and Torres Strait Islander peoples, and Aboriginal and Torres Strait Islander victim-survivors to ensure that any reform agenda is culturally safe.
3. Conduct a thorough assessment of potential loopholes in collaboration with the perpetrator intervention sector to minimise the likelihood of systems abuse.

Overreliance on police responses to domestic violence and a missed opportunity to build the capacity of the family violence sector

No to Violence is concerned that proposed reforms under this Bill would further entrench an overreliance on police responses to domestic violence. The legislation appears to increase police powers through reliance on Police DVOs and Police Certificates as key responses to domestic and family violence without paying sufficient attention to issues with police misconduct that have been implicated in previous and ongoing Coronial Inquests.⁴ The family violence service sector should be resourced to support police responses to minimise potential negative impacts of increased police powers.

³ [No to Violence submission](#) to the *Review of Legislation and the Justice Response to Domestic and Family Violence in the Northern Territory, 2022*.

⁴ For example, [recommendations made by police](#) that were implicated in the death of Kumanjayi Dixon.

We feel that the family violence service sector is not sufficiently resourced to meet demand and that reforms will, at least in the interim, significantly draw on their resources. It will be a missed opportunity if legislative and systemic reforms fail to emphasise the role that the sector plays to hold perpetrators of domestic and family violence accountable and supporting them to change their behaviour and working with victim-survivors to access the safety and dignity that they deserve.

In particular, NTV highlights the need for greater investment in Men's Behaviour Change Program (MBCPs) and development of a specialist family violence workforce. We note that participation in an MBCP is named in this draft legislation as a condition for varying a DVO, however we are concerned that these services will not be adequately supported to manage the increased demand for programs. NTV previously recommended new and additional funding for perpetrator interventions, including MBCPs, with a focus on expanding the availability of culturally appropriate programming for Aboriginal and Torres Strait Islander peoples and other Territorians.⁵

It is essential that MBCPs are resourced to meet increases in demand, including for culturally appropriate and in-language offerings. The role that MBCPs play to keep the perpetrator in view of the system and keep victim-survivors safe relies on collaboration and coordination. These two functions require resourcing for core business, case management, monitoring and improvement, and for staff development. The interconnected services working in collaboration with perpetrator interventions, including for example in mental health, alcohol and other drugs and disability, must also be adequately and sustainably resourced.

We are concerned that no details are provided on how participation and risk to victim-survivors will be assessed by Courts in deliberations on varying a DVO. No to Violence can support Courts' assessment of risk through the development of a perpetrator risk assessment tool for the Northern Territory (as discussed in the preceding section).⁶ However, this assessment must take into account the opinion of the victim-survivor who is best placed to assess threats to their safety and dignity and assessments conducted by the specialist family violence sector. A plan to resource these functions should be developed.

Recommendations

4. Provide more detail and clarification on how the family violence sector will be resourced to meet increase in demands, including in reference to variations of DVOs due to participation in Men's Behaviour Change and rehabilitation programs.
5. Provide detail on how risk will be assessed when varying a DVO due to participation in a Men's Behaviour Change or rehabilitation program.
6. Consider developing a Perpetrator Risk Assessment Tool designed specifically for the Northern Territory context.
7. Pursue new and additional funding streams to improve the availability of perpetrator interventions, including MBCPs, with attention to culturally appropriate interventions.

⁵ [No to Violence submission](#) to the *Review of Legislation and the Justice Response to Domestic and Family Violence in the Northern Territory, 2022*.

⁶ Note: A recent co-design workshop on perpetrator programs in the NT discussed the lack of perpetrator risk assessment tools and frameworks.

The need for training and support for Police and Courts for the successful implementation of Police and Courts DVOs and Police Certificates

No to Violence feels that there is room to strengthen the potential for this Bill to improving victim-survivor safety and accountability for perpetrators of domestic violence, despite these elements being specified as key areas for consultation. As the key reforms contained in this Bill relate to introducing and implementing Police Certificates and Police and Courts DVOs, it is essential that a robust plan is developed to rollout training and support for Police and Courts.⁷

Tailored training focused on police responses to domestic violence is required to support outstanding issues that may arise in the implementation of this Bill, including improving police understanding of consistent definitions of all forms of domestic violence, systems abuse tactics employed by perpetrators, and avoiding misidentification of the predominant aggressor. This training should be paired with internal processes and support to assist police to understand the impact of misconduct on victim-survivors' access to justice as well as their safety and dignity.

Courts (including the Judiciary and Magistrates) must also have access to guidelines and supporting training to ensure a consistent understanding of coercive control, misidentification of the predominant aggressor, all forms of domestic violence and systems abuse tactics and risk assessment. Courts should also receive training and resources on the role that MBCPs play to keep the perpetrator in view of the system and keep victim-survivors safe, including information on how the sector assesses engagement, risk and behaviour change. No to Violence welcomes the opportunity to be involved in the development of resources and delivery of training in conjunction with the NT perpetrator intervention sector.

No to Violence also sees great potential in exploring the introduction of an automatic referral pathway for Northern Territory Police to refer perpetrators to an NT-based Men's Referral Service. Police engagement with perpetrator services and access to the sector's knowledge and resources could play a part in improving police responses and understanding of domestic, family and sexual violence.

Recommendations

8. Implement a robust training program focused on improving police responses to domestic, family and sexual violence, designed and delivered in partnership with No to Violence, including training on understanding coercive control, misidentification of the predominant aggressor, all forms of domestic violence and systems abuse tactics and risk assessment.
9. Provide training and clear guidelines for the Judiciary, Courts staff and the legal profession on the key elements of the Bill, including on all forms of domestic violence, along with training on understanding coercive control, misidentification of the predominant aggressor, all forms of domestic violence, systems abuse tactics and risk assessment.
10. Support the perpetrator intervention sector to provide training and resources to Courts that explain the role of Men's Behaviour Change Programs, including how engagement, risk and behaviour change are assessed.

⁷ [The National Plan to End Violence against Women and Children \(2022-2032\)](#) identifies this as a significant barrier to addressing the drivers of gender-based violence.

11. Consider exploring the introduction of an automatic referral pathway for NT Police to automatically refer people who use family violence to an NT-based Men's Referral Service (MRS).

Specific feedback and recommendations

SECTION	PAGE(S)	COMMENTS AND/OR CHANGES REQUESTED	RATIONALE FOR AMENDMENT
Preamble	2	The legislation should reflect that children are victims of domestic violence in their own right through exposure and/or direct experience of victimisation.	<p>Children can be victim-survivors of domestic violence through exposure to violence committed against someone else in their home or because they themselves are being victimised through one or more forms of domestic violence.</p> <p>It is important to reflect this reality to inform police and courts understanding of domestic violence, especially elements such as coercive control which will be newly reflected in the legislation.</p> <p>Section 3, Part 1a refers to children who experience or are exposed to domestic violence (or at risk of being exposed to or experiencing). Where possible this wording should be reflected through the legislation.</p>
Preamble	2	Demonstrate support from Aboriginal and Torres Strait Islander women and victim-survivors on the intention and impact of the inclusion of “traditional and cultural practices cannot be relied upon to minimise or excuse domestic violence”.	<p>We support consultation and feedback from Aboriginal and Torres Strait Islander women and victim-survivors that “traditional and cultural practices cannot be relied upon to minimise or excuse domestic violence”.</p> <p>It is of utmost importance that Aboriginal and Torres Strait Islander peoples are not further disadvantaged through the introduction of this legislation.</p>
Preamble	3	Use specific and consistent definitions of domestic violence and coercive control to reduce the potential for ‘loopholes’ that perpetrators may	<p>Section g) iv refers to domestic violence extending beyond physical and sexual violence and then goes on to list other forms of domestic violence that may be involved.</p> <p>This wording is unclear and inadvertently sets up a hierarchy</p>

		exploit and/or which may facilitate misunderstandings by police and courts.	<p>between physical and sexual violence and all other forms of domestic violence.</p> <p>To this point, it is also necessary to ensure that police, child protection staff, and courts staff, including judges receive requisite training on identifying coercive control and other forms of domestic violence as well as patterns in perpetrator behaviour.</p>
Preamble	3	Clarify consistency in definition of coercive control as being more than a form of domestic violence as it is an underlying dynamic or tactic involving a pattern of behaviour or acts.	<p>Preamble’s language is inconsistent with the amended definition in section 5B (p 9).</p> <p>Coercive control is an underlying dynamic and tactic involving a pattern of behaviour or acts which may include verbal abuse, economic or financial abuse, psychological abuse, emotional control, sexual violence and/or physical violence.</p>
Section 91C	55	Any coercive control guidelines made by the CEO of the Department of the Attorney General and Justice should be consistent with the National Principles of Coercive Control and be consulted on with the family violence sector, paying particular attention to the needs of Aboriginal and Torres Strait Islander women.	See preceding sections for more detail on rationale.
Preamble Part 2.6 Division 2	3, 41	Further clarification is needed as to how perpetrators of domestic violence will be encouraged to accept responsibility for their use of violence, how these avenues will be funded, and how the existing perpetrator intervention sector will be consulted on the appropriateness of these avenues.	<p>Sections 1b and 1c refer to ensuring persons who commit domestic violence are both held accountable and are encouraged to accept responsibility for their conduct.</p> <p>This Bill does not set out how perpetrators will be encouraged to accept responsibility other than to refer to participation in a</p>

			<p>perpetrator behaviour change or rehabilitation program as a condition for a DVO being varied (Part 2.6 Division 2).</p> <p>Further clarity is needed about the risk management processes in place when a DVO is varied due to the completion of rehabilitation or perpetrator programs. Risk management should always consider the opinion of the victim-survivor in addition to risk management frameworks conducted by specialist family violence staff.</p> <p>It is necessary to identify which programs are considered acceptable, guarantee adequate and sustainable funding to them, and ensure that court staff involved in deliberations, including judges, are provided with training on the suitability of different programs.</p> <p>No to Violence is the national peak body for those working with men who use violence and is well placed to assist the Department of the Attorney General and Justice with this work, in consultation with the NT perpetrator intervention sector.</p>
Preamble Part 2.6 Division 2	3, 41	Further clarity is needed about the risk management processes in place when a DVO is varied due to a change in circumstances regarding children and their care arrangements.	<p>No details are provided on the circumstances and considerations that will inform a DVO being varied due to children and care arrangements.</p> <p>Clear risk management processes are necessary to ensure the safety of children.</p>
Section 4	4	Further clarification requested on consultation with the First Nations unit of the eSafety Commissioner and Aboriginal communities regarding the necessary scope of an 'intimate image'.	The eSafety Commissioner includes a more expansive definition of an intimate image that captures the private nature of intimate images with consideration of culturally appropriate nuances.

		Reference to threatening to distribute an intimate image is made on page 16 and should also b7e noted on page 4.	
Section 5, 8 and 9 and Part 4, 47	6, 7, 9, 65	Definitions should remain consistent and reflect features agreed upon by the broader family violence sector.	<p>The following definitions should be consistent with those currently used by the family violence sector and reflected in national documents including the National Plan to End Violence Against Women and Children and the National Principles to Address Coercive Control.</p> <p>“Domestic violence” (Section 5, p. 6)</p> <p>“Emotional and psychological abuse” (Section 5, p.7)</p> <p>“Coercive control” (Section 5B, p. 9)</p> <p>“Economic abuse” (Section 8, p. 9)</p> <p>“Domestic relationship” (Section 9, p. 10)</p> <p>“Family relationship” (Section 10, p. 11)</p> <p>“Intimate personal relationship” (Section 11, p. 11)</p> <p>“Common assault” inclusive of strangulation (Part 4, 47, p. 65)</p> <p>Differences between the definitions in the legislation and those used by the family violence sector should be clearly communicated to maximise the reform potential of this legislation. This might include consultation where appropriate.</p>

Section 5B	9	Include recognition that coercive control is an “underlying tactic of domestic and family violence” as well as a pattern of behaviour.	<p>It is important to send a strong message to all parties that coercive control is a form of family violence and is just as impactful as other forms of abuse.</p> <p>No to Violence previously recommended that the NT government recognise coercive control as an underlying tactic in legislation and in supporting guidelines.</p>
Section 5	6	Suggest widening the scope of parties included within the context of causing a victim-survivor to fear for the safety of others.	<p>Section 5 1f refers to instances where the victim-survivor is made to feel fear for the safety of others as a means to assert control over them. This section limits the scope of “fear for the safety of others” to the victim-survivor and those who are in domestic relationships with the perpetrator.</p> <p>This definition does not capture other people in the victim-survivor’s life whose safety may be threatened as a means to control the victim-survivor. This includes, but is not limited to, friends, family and colleagues. As an example, the perpetrator might threaten the safety of colleagues to prevent the victim-survivor from working.</p>
Section 5	8	Give more weight to perpetrators’ patterns of behaviour by consistently upholding that patterns of abuse are a key feature of domestic violence.	See preceding sections for more detail on rationale.
Part 2.4, Division 1	33	Provide more clarity on what safeguards will be in place to ensure the issuing authority understands how to engage with a victim-survivor in order to elicit an opinion and the consistency of directions that the “issuing authority must not draw an	

		inference that the protected person has no opinion”.	
Section 27, Part 2.7	19-20, 46	Provide more clarity on what supporting training and updates to practice directions will be provided to the Courts.	See preceding sections for more detail.
Section 27	20	Provide more clarity on what will be in place following the expiry of a DVO.	
Part 2.5	32	Further clarification is needed around the support provided to young people who apply for a court DVO including the directions and training provided to police when identifying if domestic violence is “likely to be committed” (52, 1a).	Ongoing training is required for police and child protection officers to avoid the misidentification of the predominant aggressor in domestic violence; so that young people or children are not to be adversely impacted by a DVO issued against their carer (or parent; family member; relative; or guardian).
Division 2, 62	36	Clarification is needed on how Courts will decide if applications are “frivolous, vexatious or an abuse of the process of the Court” as well as details on how Courts will be trained to recognise systems abuse.	No to Violence can provide training for Courts staff on identifying systems abuse. See also preceding sections for more detail.
Section 6A	70	Clarification needed on the consideration of sexual offences in domestic violence offences.	This is the first mention where a consideration is made of sexual offences in domestic violence offences. If it is necessary to make such a consideration, this may need to be reflected throughout the legislation.
Section 24B	64	Provide further details on what supports and information will be in place for victim-survivors when their opinion is sought regarding bail being granted and details of training and risk assessment management framework and training tools for	See preceding sections for more detail. Risk assessment management and training are required for Courts staff, Magistrates, police and others engaging with victim-survivors with regard to consideration of bail; with supports and

		Courts staff, Magistrates, police and others engaging with victim-survivors.	appropriate and accessible information for victim-survivors; otherwise it may become an overwhelming burden on victim-survivors.
Part 7, 60	70	Guidance and training are required for the Judiciary on sentencing and risk mitigation regarding aggravating factors.	See preceding sections for more detail.
Part 7, 60	70	Remain consistent in description of children as victim-survivors of domestic violence in their own right through both direct experience and exposure.	See preceding sections for more detail.