

LEGAL GUIDE TO DOMESTIC VIOLENCE ORDERS IN THE NORTHERN TERRITORY

Introduction

Technology-facilitated stalking and abuse is the use of technology (such as the internet, social media, mobile phones, computers, and surveillance devices) to stalk and perpetrate abuse on a person.

Such behaviour includes:

- Making numerous and unwanted calls to a person's mobile phone
- Sending threatening and/or abusive messages (text messaging, WhatsApp, Snapchat, Facebook messaging, Twitter)
- Hacking into a person's email or social media account to discover information about them
- Hacking into a person's email or social media account to impersonate them and send abusive messages to family/friends of that person
- Using surveillance devices to spy on a person
- Using tracking devices to follow a person
- Sharing, or threatening to share, intimate pictures of a person

This legal guide is one of a set of four guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Domestic Violence Orders in the NT

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In the Northern Territory, these protection orders are called **Domestic Violence Orders (DVOs)**.

For information on other areas of law see:

Legal Guide to Surveillance Legislation in the NT

This guide looks at what the law says about **surveillance devices** – when it is an offence to use them and what the restrictions are on sharing information/videos/pictures obtained through the use of surveillance devices.

Legal Guide to Relevant Criminal Offences in the NT

This guide looks at the various **criminal offences** that may apply to a person who is perpetrating technology-facilitated stalking and abuse.

Legal Guide to Image-Based Abuse Legislation in the NT

This guide looks at what the law says about image-based abuse – when it is an offence to record or distribute intimate images and what legal options exist for victims of image-based abuse.

Language

‘Victim’ vs ‘Survivor’

Some women who are experiencing, or who have experienced, domestic violence use the term ‘victim’ of domestic violence to describe themselves. Others believe the term ‘survivor’ of domestic violence more accurately reflects their experience. Whilst acknowledging that each woman’s experience is unique and individual to her circumstances, for consistency, these guides will refer to women who are experiencing, or who have experienced, domestic violence as ‘victims’ of domestic violence.

Gender

While domestic violence can happen in many circumstances (including in non-heterosexual relationships), in the vast majority of reported domestic violence cases men are the perpetrators and women the victims. For this reason these guides use ‘he’ to refer to perpetrators and ‘she’ to refer to victims. This is not intended to exclude other situations.

Terminology

Criminal Offence (or offence)

A criminal offence is an offence against the State. It is commonly referred to as ‘breaking the law’.

Summary offence

Less serious offences (such as obscenity or threatening violence), are known as summary offences. Summary offences are dealt with by the Court of Summary Jurisdiction.

Indictable offence

More serious offences (such as murder, manslaughter, sexual assault) are known as indictable offences and are usually dealt with by the Supreme Court.

Charge

When a person is charged with an offence, it means that the police have formally accused that person of committing an offence.

Conviction

When a person is convicted of an offence, it means that person has either pleaded guilty to committing the offence, or a court has found that person guilty of committing the offence.

Penalty unit

Criminal legislation usually describes the amount payable for a fine in a “penalty unit”. Penalty units are used instead of dollar amounts because the rate for penalty units is indexed for inflation and may change from time to time. The Department of the Attorney-General and Justice sets the amount for one penalty unit for each year in accordance with the Penalty Units Act. For 2018 to 2019 a single unit = \$155.

DOMESTIC VIOLENCE ORDERS

The *Domestic and Family Violence Act 2007* (NT) (the 'Act') is the piece of legislation in the Northern Territory that allows the courts to make orders protecting people from domestic and family violence.

A person who is experiencing domestic violence ('protected person') may apply to the Magistrates Court for a Domestic violence order ('DVO') or have a DVO made by the police. A DVO can protect a person by ordering the person against whom the DVO is made ('defendant') not to commit further acts of domestic violence against the protected person.

It is important to note that a DVO is a *civil* order, meaning it is not a criminal charge. However, an application for a DVO may be accompanied by related criminal charges and criminal penalties may apply if a DVO is breached.

The police or the Magistrates Court may make a DVO against the defendant for the protection of the protected person if it is satisfied that there are *reasonable grounds* for the protected person to *fear* the defendant committing a domestic violence offence against them. It does not matter whether the protected person denies having fear, so long as a reasonable person would be fearful in the circumstances.

In deciding whether to make the order, the police or court will consider the safety and protection of the protected person to be of paramount importance.

Where can I find this information in the Act?

Please see sections 18 and 19 of the Act.

Can technology-facilitated stalking and abuse be a form of domestic violence?

Yes, technology-facilitated stalking and abuse can be a form of domestic violence.

Technology-facilitated stalking and abuse can be a form of domestic violence where a person who is in a *domestic relationship* with the person does, attempts or threatens to do any of the following:

- Conduct causing harm
 - **For example:** emailing a sex-tape of the victim to her family
- Damages property
 - **For example:** infecting a person's computer or device with spyware or malware

- Intimidation

This includes harassment, conduct that causes a reasonable apprehension of violence or property damage, any conduct that is unreasonably controlling or conduct that causes a person mental harm.

For example:

- Regular and unwanted contacting of the person, including by mail, phone, text messages, fax, the internet or another form of electronic communication
- Giving or sending offensive material to the person, such as sending emails with pictures of torture attached
- Putting a person under surveillance in a way that is unreasonably controlling
- Being unreasonably controlling by demanding access to a person's emails and text messages and demanding that all phone calls be on speaker phone so they can be monitored

Stalking is also prohibited in the Act, however, the definition is narrow and does not appear to cover technology-facilitated stalking (e.g. tracking a person through GPS on their phone). It is more focused on physical stalking such as following a person or watching, loitering around or approaching where a person lives, works or frequents. Digital stalking should, however, be captured by the wide definition of *intimidate*.

A DVO can also be sought against a person if they *counsel or procure* another person to do any of the above things *for them*.

- **For example:** a person pays a service to covertly install surveillance devices in the other person's house. The person who paid for the installation then monitors the other person and uses private information about her movements and activities to intimidate and harass her

Where can I find this information in the Act?

Please see sections 5, 6, 7 & 17 of the Act.

What is considered a domestic relationship?

Technology-facilitated domestic violence can happen to anyone who was in a *domestic relationship*. *Domestic relationship* is defined broadly to include:

- People who are/were related e.g. mothers, fathers, siblings, aunts, uncles, grandparents, cousins, children, step-children, step-parents, in-laws and those considered related according to Aboriginal traditions or practices
- People who are/were married or in a de facto relationship (including same-sex couples)
- People who are/were engaged or betrothed
- People who are /were dating, even if casually and even if the relationship is/was not sexual
- People who are/were in a carer relationship, regardless of whether they live together
- Where a person has/had custody or guardianship of the other
- Where a person ordinarily or regularly lives or has lived with the other person e.g. housemates and ex-housemates
- Where a person ordinarily or regularly lives or has lived with a relative of the other person e.g. a housemate's relative.

Note: If there is technology-facilitated stalking and abuse, but there was no 'domestic relationship', a person may still be able to apply for a *personal violence restraining order* under the *Personal Violence Restraining Orders Act 2016*.

Where can I find this information in the Act?

Please see sections 9 - 12 of the Act.

Who can apply for a DVO?

An application for a DVO may be made by:

- The police
- A person seeking protection (if over 15 years old)
- An adult acting on behalf of and with the consent of the person or child seeking protection (e.g. their legal representative or social worker)

The police can make a DVO where it is needed urgently to ensure a person's safety, and where it is not practicable to obtain a DVO from the Court but where the Court might reasonably have made the DVO had an application been made. This DVO is called an *interim DVO*. This is a temporary order that lasts until the matter goes to court to be decided.

A "young person" (i.e. a person aged between 15 and 18) may apply for a DVO only with the leave of the Court. The Court may grant leave only if it is satisfied that the young person has capacity to make the application and understands the nature, purpose and legal effect of the application, and the legal effect of the making of a DVO.

Applying for a DVO

To apply for a DVO for their (or their child's) protection, they can go to the police and make a statement. The police can make an interim DVO in some circumstances.

If the police refuse to act or a person feels uncomfortable going to the police, they can apply to the Court for a DVO (Forms are available online at http://www.localcourt.nt.gov.au/local_court.shtml#domestic) It is recommended that an applicant include a Statutory Declaration or Affidavit with their application (a statement declared to be true that sets out information including the nature of the relationship and why they are seeking protection).

They can get legal advice from a community legal centre (e.g. Central Australia Women's Legal Services), NT Legal Aid or a private lawyer on applying for a DVO.

Where can I find this information in the Act?

See sections 28 & 41 of the Act.

How can a DVO protect a person from technology-facilitated stalking or abuse?

The conditions in a DVO depend on the particular circumstances of the matter.

A DVO can impose orders it considers necessary or desirable. These include:

- Restraints on the defendant
- Orders imposing obligations on the defendant that will ensure they accept responsibility for the violence and which encourages them to change their behaviour
- Orders the Court considers just or desirable in the circumstances

On the DVO application form, there are set conditions listed which may assist in prohibiting technology-facilitated domestic violence. These include, orders restraining the defendant from:

- Contacting or approaching the protected person/s (including via text messages, email, letters, social media or phone calls)
- Assaulting or threatening to assault the protected person/s
- Intimidating, harassing or verbally abusing the protected person/s
- Damaging or threatening to damage the property of the protected person/s
- Remaining at any place the protected person/persons may be living, working or visiting

The applicant can amend any of these orders, or apply for 'other' conditions that are specific to their situation and which will make the protected person feel safe. For example:

DVO "other" orders: suggested wording to cover image-based abuse situations

The defendant must not directly or indirectly publish, share or threaten to publish or share images or videos of the protected person that are of an intimate nature.

or

The defendant must, within 24 hours, destroy all intimate images and videos of the protected person.

or

The defendant must, within 72 hours, take all reasonable steps, including contacting third parties, to remove all intimate images and videos of the protected person that are currently available online.

DVO "other" order: suggested wording to cover 'tracking/surveillance device' situations

The defendant must not attempt to locate, ask someone else to locate, follow or keep the protected person under surveillance.

A defendant **must** follow the conditions of a DVO. If the defendant breaks any of the DVO conditions (called breaching or contravening the DVO), it is an offence and the police can lay charges against the defendant.

Where can I find this information in the Act?

See section 21 of the Act.

How long does a DVO last?

A DVO is in force for the period stated in it, there is no minimum or maximum duration. An interim DVO is in force until it is revoked by the Court, or the Court makes a DVO in that matter, or a later date specified by the Court.

Where can I find this information in the Act?

See sections 27 and 35 of the Act.

What if a person breaks the conditions of a DVO by engaging in technology-facilitated stalking or abuse?

When a person does not obey the conditions of a DVO, this is called a **breach** or **contravention** of the DVO.

It is an offence to contravene a DVO or an interim DVO.

All contraventions should be reported to the police so they can investigate (see 1.8 below for evidence gathering tips).

Maximum penalty: 400 penalty units or imprisonment for 2 years.

Note: where the defendant has previously been found guilty of breaching a DVO, the court *must* record a conviction and sentence the person to imprisonment for at least 7 days (see s 121).

Where can I find this information in the Act?

See sections 120 – 122 of the Act.

Effect of Domestic Violence Orders interstate

From 25 November 2017, a Domestic Violence Order made in any Australian state or territory is now automatically recognised and enforceable Australia-wide.

A Domestic Violence Order issued prior to 25 November 2017, can be “declared” a *nationally recognised Domestic Violence Order* by any local court in Australia. Find more information about the National Domestic Violence Order Scheme here: <https://www.ag.gov.au/ndvos>.

Gathering evidence to prove technology-facilitated stalking or abuse

Sometimes it can be difficult to prove technology-facilitated stalking or abuse. Some tips for gathering evidence to show a DVO is necessary or a DVO has been contravened include:

- Do not delete text messages, voicemail messages, photos
- Try and save any evidence to a computer/USB flash drive
- Use screenshots and save the image as the date & time it was taken. If taking screenshots of websites, always include the URL in the screenshot
- Keep a diary or voice notes of incidents including dates and times
- Consider giving police written permission to access your phone, computer, Facebook, email account etc. if a matter is being investigated

Note: certain conduct in relation to technology-facilitated stalking or abuse may constitute a criminal offence. Please see the *Legal Guide to Image-based Abuse in the NT*, *Legal Guide to Relevant Criminal Offences in the NT* and *Legal Guide to Surveillance Legislation in the NT* for further information.