

DOMESTIC VIOLENCE ORDERS

*Information for people
in need of protection*

CAWLS
Women's Legal Service

DOMESTIC VIOLENCE LAW

The object of the Domestic and Family Violence Act is to keep people safe and protected from domestic and family violence. The law aims to reduce and prevent violence and to make people who commit domestic and family violence take responsibility for their behaviour and actions.

DISCLAIMER

This publication contains information regarding domestic and family violence but it is not legal advice. It is important to speak to a lawyer if you need legal advice about domestic or family violence.

This publication includes information about some of your rights and obligations under the *Domestic and Family Violence Act 2007 (NT)*. It may refer to legislation that has been amended or repealed. When reading this publication you should always refer to the latest legislation.

SOME LEGAL WORDS EXPLAINED

Adjourn Move a court matter to a later day decided by the court.

Applicant The person who is applying for a DVO. This is usually the person seeking protection, but can sometimes be the Police or a different person making an application on the protected person's behalf.

Breach an order Disobeys or does not follow the conditions of the order.
Breaks the rules of the DVO

Confirms an order Approves/finalises an order.

Contempt of court Disrespect for the rules of a court or disobeying a court order

Consent to an order Agree to an order.

Defendant The person who the application/DVO is made against.

Domestic Violence Orders (DVO) An order made by the Local Court or the police to protect a person, their property, and in some cases their children from domestic/family violence.

Expire Run out. The DVO has reached the end of its specified period.

Interim Temporary, not yet permanent.

Matter An issue being considered by the court.

Protected person The person who the order protects.

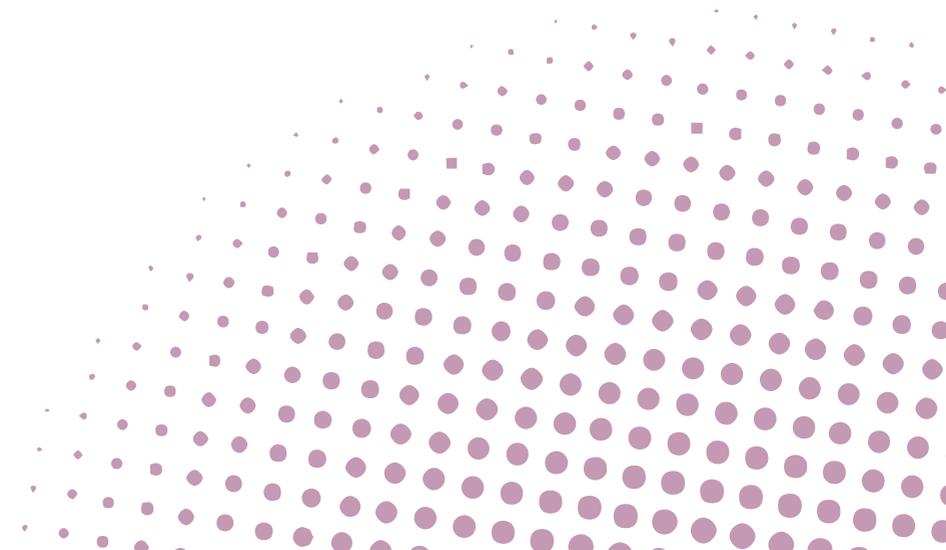
Reasonable Belief More than a suspicion; it may involve personal knowledge from observing or having direct knowledge about something.

Revoke Stop or get rid of the order.

Summons A notice requiring a person to go to court.

Undertaking Promise to the court.

Vary Change the condition or the order.



DOMESTIC AND FAMILY VIOLENCE – MANDATORY REPORTING

In the Northern Territory all adults are required by to report domestic and family violence to the police if they believe someone has been seriously harmed or is in danger of being seriously harmed because of domestic and family violence.

What type of harm do you need to report?

Serious physical harm means a person is being hurt in a way that puts their life in danger or could leave them with serious injuries that could last for a long time. If you hold a reasonable belief that this kind of harm is happening, has happened or is likely to happen, you need to make a report.

How to report?

The law requires that reports be made to police. If it is an emergency you should call **000**; for all other reports call **131 444**. These numbers work across the Northern Territory. Police will make a decision about how they respond based on the information provided. You can ask someone you trust to make a report for you or help you to make a report, for example a health worker, nurse or someone from your local school.

What if it's not safe to report?

People are not expected to put themselves or anyone else in danger to make a report. The law allows you to delay reporting until it is safe for you to do so. You can delay making a report if you are helping the victim leave a dangerous situation or hold a reasonable belief that someone will be placed in danger if the report is made now. However, you are still required to make a report to police when it is practical and safe to do so.

What if someone else has already made a report?

You do not need to make a report if you hold a reasonable belief that someone else has reported the harm or belief about the circumstances.

What happens if I do not report domestic or family violence?

If the police have sufficient evidence of a person not reporting domestic or family violence, they may charge them under the mandatory reporting provisions (section 124A) of the *Domestic and Family Violence Act 2007 (NT)*. If a person is convicted of this offence, they may be fined. The maximum penalty is 200 penalty units (\$31,600 as at 30 June 2021).

What about client confidentiality?

The legal obligation to make a report overrides client confidentiality. If you are talking to someone about domestic or family violence you should be aware that they must make a report if they believe serious physical harm has happened, is happening or is likely to happen.

Do I have to report domestic/family violence every time it occurs?

You must report your concerns on each separate occasion you believe that serious physical harm has happened or someone is under a serious or imminent threat because of domestic/family violence.

What happens if children are involved?

The Care and Protection of Children Act 2007 also includes mandatory reporting if someone believes, on reasonable grounds, that a child has suffered or is likely to suffer harm. Witnessing domestic/family violence has an impact on children and could be a child protection concern which has to be reported to the police (**000** for emergencies, **131 444** for other reports) or Territory Families Child Protection Hotline on **1800 700 250**.

000: For Emergencies
131 444: Police (Other Reports)
1800 700 250: Territory Families Child Protection Hotline

DOMESTIC VIOLENCE ORDERS (DVO)

Domestic/family violence includes any of the following behaviours:

- **Conduct causing harm:** this could include hitting with an object, punching, slapping, and pulling hair, biting, throwing things at you, sexual or other assault.
- **Damaging property:** this includes causing the injury or death of an animal.
- **Intimidation:** this includes the person causing you to fear that violence will be committed against you, your property or animals or causing your mental harm.
- **Harassment:** this includes the person regularly contacting you by email, phone, letters, text messages, social media, or in person when they have been asked to stop, giving or sending offensive materials to you.
- **Stalking:** this includes deliberately following, watching or waiting for you on at least two separate occasions with the intention of causing harm or causing you to fear harm.
- **Economic:** (financial abuse). This includes things such as pressuring you to hand over your bank card, not letting you have access to money, or unreasonably selling your property without consent.

Domestic/family violence also includes attempting or threatening to do any of these things, or getting another person, e.g. family member or friend to do any of these things.

What is a DVO?

A DVO is made by the Local Court, or in some cases, the police. The order is made to try and protect a person, their property and in some cases, their children and other relatives from domestic/family violence. A DVO does this by setting out rules, restraints or conditions that the defendant has to follow.

What conditions can a DVO contain?

The court can make different types of DVOs depending on the situation. It is important that you ask the police, your lawyer, or the court for the type of order you think will keep you safe.

Some examples of the types of conditions you can ask for are:

- That the defendant must not contact or approach you. This includes through text messages, email, letters, social media (e.g. Facebook), or through family members.
- That the defendant must not contact or approach you when he/she has been

drinking alcohol or taking drugs but can still have contact with you when they are sober.

- That the defendant must not assault you, but can still have contact with you.
- That the defendant vacates the premises where you live. The court can order the return of personal property, or allow the defendant to attend the property for the sole purpose of collecting belongings.
- That the defendant will attend counselling or rehabilitation. This order will only be made if the defendant agrees.

Who can apply for a DVO?

Any of the following people can apply to the court for a DVO:

- An adult or young person who is in a domestic/family relationship with the defendant.
- An adult acting on behalf and with the consent of another adult or a child who is in a domestic/family relationship with the defendant.
- A police officer.

A young person is someone between the ages of 15 and 18. The court will only allow a young person to apply for a DVO on their own behalf if the court is satisfied the young person understands what the order means, why they are applying for it and its effect.

What is a domestic/family relationship?

The meaning of domestic/family relationship is broad and includes the following types of relationships:

- People who are, or have been married, including traditional marriage in accordance with Aboriginal or Torres Strait Islander custom.
- People who are, or have been in a de facto relationship including same-sex relationships.
- Relatives, including mothers, fathers, sisters and brothers, aunts and uncles, cousins, step-parents and in-laws.
- People who are, or have been in a guardianship/custody or similar parental relationship with a child; examples may include step-parents or people in a de facto relationship where there is a child from a previous marriage or relationship.
- Relatives according to Aboriginal tradition or contemporary social practice.
- People who are, or have been, dating, including short term or casual relationships, or are engaged to each other. They do not have to have a sexual relationship and can be of the same or opposite sex.

- People who live together or have lived together in the past. This includes housemates and former housemates. A person can also apply for a DVO against someone in a family relationship with a person they have lived with, for example, the mother of a former housemate.
- People who are or have been in a carer's relationship. This means that one of the people is dependent on the ongoing care – whether it is paid or unpaid – of the other person.

What if there is no domestic/family relationship between me and the other person?

If you need protection from someone who is not in a domestic/family relationship with you but who is acting in a violent, threatening or abusive way towards you, you can apply to the Local Court for a Personal Violence Restraining Order. For more information about Personal Violence Restraining Orders please contact CAWLS or one of the other legal services listed at the end of this booklet.

What are the reasons for getting a DVO?

The court or a police officer can only make a DVO if there are reasonable grounds for you to fear that the defendant will commit domestic violence against you. This does not need to be physical violence. It includes intimidation, stalking and harassment.

In the application you need to explain to the court why you believe the defendant will commit violence against you. You will need to give examples of things the defendant has said or done that make you fear domestic violence.

What should I tell the police or my lawyer?

It is important to give your lawyer or the police as much useful information as possible. You should tell your lawyer or the police:

- If you and the defendant have any children together.
- If you have any Family Law Orders, or any current applications for Family Law Orders.
- If the defendant has been violent to you or anyone else in the past
- If the defendant has a criminal record.
- Whether you live with the defendant and where you or the defendant can move to if someone needs to leave.
- If the defendant has access to any weapons (e.g. guns).

HOW DO I GET A DVO?

There are different ways to get a DVO

Urgent – Police DVO

If your matter is urgent for example there is an immediate risk the defendant may hurt you, your children or your property, you should call the police immediately.

The police can make an order without having to apply to the court. They can do this when it is necessary to ensure your safety because of urgent circumstances (e.g. a threat to your life) or because it is not otherwise practical to obtain an order by applying to the court (e.g. over the weekend or because the defendant has no fixed address).

The police DVO acts as a summons for the matter to be heard by the court, and it is enforceable once it has been served on the defendant and until the court confirms, revokes, or makes further orders.

Not urgent – Court application

In some cases it may not be urgent to get a DVO, but it will still be important. You, your lawyer, or the police can apply to the Local Court for a DVO.

Your application must be in writing. There is a form available at the court or on the Local Court website at www.localcourt.nt.gov.au. You do not have to include your address on the application if you do not want the defendant to know where you live.

You will need to lodge your application and a statement supporting your application, called an affidavit, at the Local Court. CAWLS may be able to assist you with this.



GOING TO COURT

When you apply for a DVO

When your application has been lodged at the court, the court bailiff or the police will give a copy to the defendant. The application will have a date written on it. That is the date when your application will come before the court for the first time. You or your lawyer must attend court on this date. If the defendant has been given a copy of the application, but does not come to the court, the Local Court Judge may make the order without the defendant being there.

If you have a lawyer representing you in court you should make sure they have a clearly explained the process to you. If there is something you do not understand it is very important you ask your lawyer about it. Your lawyer will do the talking for you in the court. It is important that you have given your lawyer your side of the story.

If you do not have a lawyer representing you, you should speak to a duty lawyer from the NT Legal Aid Commission or an Aboriginal or Community Legal Aid Service such as NAAJA, CAAFLU or CAWLS. The lawyer may be able to give you some information or advice, but they may not be able to represent you in court.

If your matter is in court for the first time, and you have not had a chance to speak to a lawyer you can ask for your matter to be adjourned for one or two weeks so you can get some legal advice.

You should wait in or near the court room for your matter to be called. It is a good idea to tell court staff who you are.

If you do not have a lawyer, you should seek legal advice before court or speak to a duty lawyer at court. You might not need to go to court if you have spoken to your lawyer. If you want to attend, or are required to attend, you may be able to access a safe waiting area. If you don't have a lawyer and can't go to court, contact the court as soon as possible to ask for an adjournment.

If the defendant does come to court he/she can:

- Consent to the order being made.
- Negotiate with you, your lawyer, or the Police to see if you will agree to an order with different conditions than those you asked for in your application. For example,

the defendant might want to include a condition in the order that allows them to contact you through a family member to make arrangements for your children. If you want help to negotiate with the defendant you can ask for your matter to be adjourned so you can speak to a lawyer.

- Disagree or object to the order. If the defendant doesn't agree to the order the Local Court Judge will adjourn the matter to another day for a hearing. You and the defendant will need to come back to court on this day and each tell your story to the Local Court Judge. It is best to get legal advice if your application for a DVO is adjourned for a hearing.

If your matter gets adjourned for a hearing, the court may make an interim or temporary DVO to be in place until the hearing date. An interim DVO will only be made if all parties agree or the court believes your safety may be at risk before the hearing.

How does the hearing work?

It is a good idea to get legal advice and assistance if your matter is listed for a hearing. You will need to attend the court on the hearing date and explain to the court why you think the DVO should be made.

The defendant will also have to attend to explain to the court why the order should not be made.

You may be required to file written statements or affidavits with the court before the hearing date. These documents are called evidence. At the hearing you may be asked questions about the evidence you give to the court. If the defendant is representing themselves, they may have to ask the questions through the Local Court Judge instead of asking you directly.

At the end of the hearing the Local Court Judge will decide whether or not to make the DVO.

Undertaking

Instead of consenting to a DVO, the defendant may wish to make a promise to the court, called an undertaking, about their behaviour towards the protected person in the future. This promise is usually in writing and for a period of 12 months, but it can be for a longer or shorter period of time. If the applicant and the court agrees to an undertaking, the undertaking is placed on the court file and the application for a DVO is withdrawn.

If the defendant does not follow the undertaking, the applicant may reapply for a DVO. The defendant may also be found in contempt of court.

POLICE DVO

When can the police make a DVOs?

Domestic/family violence does not just happen during business hours. Courts are not always open and in some communities there is no court or only a visiting court. For these reasons the police may make DVOs

A Police DVO can be made:

- If it is necessary to ensure a person's safety because it is urgent and/or not practical to make the application to the court; and
- If it is likely that the court would make the order.

Can any police officer make a DVO?

No. Only a police officer who is the rank of senior sergeant or above, or who is the officer in charge of a Police station at the time can make a Police DVO.

What will the Police DVO say?

The police can include different conditions in DVO's depending on the situation and the needs of the person the order is intended to protect. For more information on the types of conditions that can be made refer to

What conditions can a DVO contain? (Page 6)

How are Police DVOs made and how long will they last?

The Police DVO is in place as soon as it is made and a copy is given to the defendant.

A Police DVO is temporary. The order will have a date and time written on it; the order is a summons to court. This is the date the matter will be dealt with by the court. A local judge will decide whether or not to make the order final. The defendant and protected person can attend court on this date to have his or her say about the order.

A party to a Police DVO may apply to a Local Court Judge for a review of the Police DVO before it goes to court.

If the defendant consents to the order being made final at court, the DVO will be in place for a set period of time.

At court both the defendant and the protected person can ask for the matter to be adjourned to another day so they can get legal advice, or for a hearing if they do not agree with the final order being made (**see How does the hearing work? Page 11**). The Police DVO will continue to remain in place during this time. At the hearing the Local Court Judge will hear evidence from the police, the protected person and the defendant.

Do I have any say about whether or not the Police DVO is made?

The police will listen to your view, but they can make an order to protect you if they believe it is necessary.

You should get some legal advice about your rights in relation to the order. If you are unable to speak to a lawyer before your matter goes to court, you can ask the court to adjourn your matter for one or two weeks to get some legal advice. You may also wish to speak to a duty lawyer on the day.

If you want to have your say about the Police DVO, you or your lawyer should go to the court on the date and time stated in the order. You or your lawyer can explain to the Local Court Judge how you feel about the DVO and whether or not you want it to be made final. If you cannot make it to court on the listed date, you should let the court know in writing and provide reasons why you cannot attend, and ask that the matter be listed on a date that you are available to attend.

Can I get my Police DVO reviewed before my set court date?

If you live in a place where the court does not sit very often, or if you want a Local Court Judge to look at the order before the court date, you can go to the Police station and apply for a review of the DVO.

The police must help you by phoning, faxing or contacting a Local Court Judge so that the Local Court Judge can review the order. You can also ask a lawyer to help you with this.

DVO now enforced nationally

From 25 November 2017, a DVO issued in the Northern Territory or in any other state or territory will be automatically recognised and enforced anywhere in Australia. If you have applied for a DVO and travel or move to another state or territory, you do not need to get another order unless you want to change the current conditions of the order.

If a DVO has been issued against you, the conditions will apply in any other state or territory and you can be punished by a court if you breach an order. If your DVO was issued before 25 November 2017, you can apply to have it declared at any time through a local court so that you are protected anywhere in Australia.

NOW THAT YOU HAVE A DVO

You should keep a copy of the DVO with you or in a safe place. If you lose your order, you can get another copy by contacting the nearest Local Court.

If there is no court, ask the police at your nearest police station.

If you have applied for a DVO you should also think about what you will do if there is a breach of the order, and put in place a safety plan for yourself and your family. For more information on safety plans or for help preparing one, contact your local domestic violence service listed at the back of this pamphlet.

When does the order start?

A DVO starts when it has been made by the Local Court judge, or a police officer, and a copy is given to the defendant.

If the defendant is in court when the order is made he or she will be given a copy of the order. Otherwise if the defendant is not present, the court bailiff or the police will give a copy of the order to the defendant.

Do I need to follow the order?

Yes. If you have a DVO that says the defendant is not allowed to have any contact with you it is important you follow it too. If you contact the defendant they can still be charged with breaching the order despite you making the contact. It is even possible you could be charged as well for aiding and abetting the breach by the defendant.

You need to think carefully about what sort of orders are suitable in your circumstances and whether you will be able to follow them. Only the court, or in some circumstances a Police officer, can change the DVO. If you do not think you can follow the order you should talk to a lawyer about getting the order changed.

Remember you cannot change the DVO just by coming to a personal agreement with the defendant.

How long does the order last?

A DVO is in place until it runs out, is stopped or changed by the court. The date when the DVO runs out is written on the order.

Usually a DVO will be in place for 12 months, but it can be in place for a longer or shorter period of time than this.

What should I do if the defendant breaches the order?

Breaching a DVO is a criminal offence. If the Police charge the defendant with breaching the order, the defendant will have to go to court.

If the defendant breaches the order, you should contact the police. If you want the defendant to be charged with breaching the DVO you should make that clear to the police. The police may ask you to make a written statement. You will need to tell the police if anyone else saw or heard the defendant breach the order.

The police must investigate the breach once the complaint has been made.

Once you complain to the police, it becomes the responsibility of the police and the prosecutor to decide whether to prosecute the defendant. If you change your mind and decide you do not want the prosecution to go ahead, you can let the police and the prosecutor know this, but the final decision about whether to continue the prosecution is up to the police.

You should keep in touch with the police and the prosecutor to find out if you need to go to court, or what is happening in the case. The police can organise for people to support you at court if you need to tell your story.

Once the order is in place, can I change or stop it?

Maybe, you would need to apply to the court, or contact the police to request a change or stop the DVO. It is very important to remember that until the order has been changed or stopped by the court it is still in place, even if both you and the defendant do not want it anymore.

If the police originally made the DVO the court will want to know what their views are about the order being changed or stopped. If the police do not consent to the order being changed or stopped, the matter will be listed for a hearing. You may be required to give evidence at the hearing about why the order should be changed.

You can apply for changes to:

- Add more conditions, for example that the defendant cannot contact you at all.
- Remove conditions, for example allow the defendant to have contact with you, but keep conditions that say they can't assault or threaten you.
- Extend the order so that it is in place for longer.

It is a good idea to talk to a lawyer before making an application to change or stop a DVO.

The defendant can also apply to have the order changed or stopped if there has been a substantial change in circumstances, for example, if they have successfully completed counselling or rehabilitation. You will be given a copy of their application and you will be able to tell the court whether or not you agree with the defendant's application. If you receive an application like this, and you are not sure what to do, ask a lawyer for advice.

CHILDREN, YOUNG PEOPLE AND DVOs

If you have children with the defendant, you need to think about how the DVO will affect the children. When you make your application for a DVO, you need to tell the court about the children and provide a copy of any Family Law Order in place. It is best to get legal advice about this before making your application

The defendant has been violent to me, but not the children.

In some cases, the defendant may have been violent to you but not to the children. Even if violence is not directed at the children, it can negatively affect them in different ways.

If you need a DVO, but the behaviour is not directed towards the children, you can include conditions in your order that allow the defendant to contact you to make arrangements about the children. If you do not want to have any direct contact with the defendant, you can make these arrangements through a friend, lawyer, family member or family contact centre.

It is important to always consider what sort of orders you think will help keep you safe.

The children have witnessed or been exposed to the violence.

If your children have witnessed or been exposed to domestic/family violence, or if the defendant has been violent towards them, you can include them on the application for a DVO. You will have to tell the court about why the children need to be included in the DVO.

If the police are called to a domestic/family violence incident and children are present, the police must take action to protect the children. This means that the police should:

- Check if you already have a DVO in place that covers the children;
- Make an application for a DVO on behalf of the children, if their wellbeing is or could be affected;
- Contact the Territory Families Child Protection Hotline so the department can make an assessment.

What about Family Law Orders?

DVOs are not Family Law Orders. They are intended to protect you and your children from domestic/family violence. If you need help to make arrangements about your children or you are concerned about the removal of your children, you should contact a family lawyer for help.

If you already have a Family Law Order you need to lodge a copy of this with the Local Court with your application for a DVO. The court will take the Family Law Orders into consideration when making a DVO.

Remember that before you take any action in relation to Domestic Violence or Family Law Orders it is best to get legal advice.

Will I be able to stay in my home?

If you apply for a DVO, you can also apply for an order that the defendant has to leave the property and can no longer live there.

What if the defendant and I are renting?

If you are renting the property and the defendant is listed as a tenant on the lease, the court has the power to make a replacement tenancy agreement and remove the defendant's name. The court also has the power to remove your name from the tenancy agreement or terminate the tenancy, if you do not wish to remain living at the

property. If you apply for an order changing the tenancy agreement and you wish to remain in the property, you will have to show the court that your relationship with the defendant has broken down permanently and you can no longer live together in the same property free from violence.

You will also have to show the court you can take over the responsibility for the tenancy agreement which includes being able to pay the rent. The landlord has a right to be heard in these matters.

You should get legal advice before making an application for an order that means the defendant has to leave the property or if you wish to change a tenancy agreement.

I am under 18 – Can I apply for a DVO?

Yes. If you are aged between 15 and 18 you can make your own application for a DVO. The court will need to be sure you understand the application, why you need the order and what the consequences of the order will be. You will have to complete an application for DVO by a young person.

If you are under 15 or aged between 15 and 18 and the court does not think you understand the application, someone else such as a family member, adult friend, police officer or Territory Families worker can apply to the court for you. The important thing to remember is to speak to someone you trust if you need help.

USEFUL CONTACTS

Always call 000 if you are in danger

Crisis Line: 1800 019 116

Crisis Line is a free, 24 hour service that you may call for counselling or for information about services in your area such as crisis accommodation, sexual assault services and legal advice.

1800 RESPECT: 1800 737 732

1800RESPECT is a confidential service available 24 hours a day, seven days a week, who provide support for:

- *People experiencing, or at risk of experiencing, sexual assault, domestic or family violence*
- *Their friends and family*
- *Workers and professionals supporting someone experiencing, or at risk of experiencing sexual assault, domestic or family violence*

Police

Emergency: 000 / 131 444

Alice Springs Police Station: 8951 8823

Darwin Police Station: 8901 0208

Legal Advice and Advocacy

Central Australian Women's Legal Service (CAWLS): 1800 684 055

NT Legal Aid Commission Legal Information Line (NTLAC): 1800 019 343

Central Australian Aboriginal Family Legal Unit (CAAFLU): 1800 088 884

Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation, Domestic Violence Service (NPY): 1800 180 840

North Australian Aboriginal Family Legal Service (NAAFLS):

1800 041 998 (Darwin)

1800 184 868 (Katherine)

North Australian Aboriginal Justice Agency (NAAJA):

1800 636 079 (Alice Springs)

08 8962 1332 (Tennant Creek)

1800 898 251 (Darwin)

1800 897 728 (Katherine)

Crisis Support

Women's Safety Services of Central Australia (WoSSCA): 08 8952 6075

Tennant Creek Women's Refuge: 08 8962 1940

Domestic Violence Counselling Services

08 8952 6048 (Alice Springs)

08 8962 1011 (Tennant Creek)

08 8945 6200 (Darwin)

08 8972 1733 (Katherine)

Other Contacts

CatholicCare NT:

8958 2400 (Alice Springs)

8962 3065 (Tennant Creek)

8944 2000 (Darwin)

8971 0777 (Katherine)

Sexual Assault Referral Centre:

08 8922 6472 (Darwin)

08 8951 5880 (Alice Springs)

Relationships Australia NT:

8950 4100 (Alice Springs)

8923 4999 (Darwin)

1800 634 405 (Counselling for Remote Areas)

Amity Community Services (Drug, Alcohol and Anger Management Counselling):

1800 684 372

Northern Territory Interpreting and Translating Services (NTITS):

1800 676 254

NT Mental Health Line (24 Hour Mental Health Support):

1800 682 288

Parentline Counselling Service (7 Days, 8am – 10pm):

1300 301 300

Pregnancy, Birth & Baby Helpline (7 Days, 7am – Midnight):

1800 882 436

Salvation Army:

08 8951 0200

