



NSW Domestic Violence Disclosure Scheme

Consultation report



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Introduction

In February 2014, the Violent Domestic Crimes Taskforce (the Taskforce) was established by the NSW Government to examine the effectiveness of current laws relating to domestic and family violence. One of the Taskforce's recommendations was the establishment of a domestic violence 'register' for convicted offenders, based on a similar scheme introduced in the United Kingdom (UK) in 2012 known as Clare's Law.

On 6 March 2015, the Premier, the Hon. Mike Baird, MP and the Minister for Women, the Hon. Pru Goward, MP announced that NSW would pilot a Domestic Violence Disclosure Scheme (DVDS), similar to Clare's Law.

Consultation process

The NSW Government developed a discussion paper that asked for responses to guided questions on Clare's Law and provided options for a NSW DVDS model. The discussion paper was released on the NSW Government *Have Your Say* website for public comment from 21 May to 19 June 2015. The number of responses received during the consultation period was 75.

Ministerial roundtable discussions were also convened with government and non-government experts on 28 May 2015 to discuss some of the social and legal considerations of a DVDS. The Minister for Women and the Prevention of Domestic Violence and Sexual Assault and the Attorney General, with the support of the Premier and Deputy Premier, convened the roundtable discussion.

A further four consultation workshops were held with government stakeholders, representatives of Aboriginal communities, representatives of culturally and linguistically diverse communities and advocates of people with disabilities.

Overview of responses

A total of 75 written submissions were received to the discussion paper from a range of organisations, groups and individuals.

- 38 individuals, including five people who identified as survivors of domestic and family violence;
- 20 service providers including domestic violence specialists;
- 11 peak organisation or political groups (includes social and legal policy groups); and
- 6 government agencies.

These responses to the consultation included 36 submissions made in direct response to the discussion paper. The remainder (39) provided general feedback and did not respond to the consultation questions.

This report is inclusive of the responses to both written submissions and discussions held at the consultation workshops listed above. A summary of all responses is provided at Appendix A.

The submissions indicate broad support for the introduction of a pilot DVDS in NSW.

- 69% are generally supportive of NSW establishing a DVDS pilot.
 - Half of supportive submissions were received from individuals, and the other half from key sector organisations, both government and non-government.
- 9% are not supportive.
 - These submissions were received from both individuals and non-government organisations.

- 11% did not provide a position.
 - Most of these submissions were from individuals providing general statements.
- 11% recommended DVDS implementation is not a current priority for NSW due to current gaps in service provision and/or lack of evidence supporting the UK model.

These submissions were received from peak non-government organisations who work within the domestic and family violence sector.

A list of stakeholders who attended roundtables, workshops, or provided written submissions during the consultation process is provided at Appendix B.

Overall consultation outcomes

Three significant themes were identified from the responses to the discussion paper on the development of a DVDS model pilot:

- The DVDS pilot should be simple and accessible, including to people who at the time of application prefer not to engage a police response.
- A pilot DVDS implemented in partnership between government and non-government agencies has the potential for early intervention with people affected by domestic and family violence. The early intervention should ensure all applicants to the DVDS are provided access to specialist support to assist them to plan for their future safety.
- The DVDS pilot will afford NSW public and private sector agencies with the power to disclose sensitive information about a person to third party. Careful planning and scrutiny is required to ensure any benefits of the scheme outweigh the risks associated with its implementation.

Some submissions raised the following risks:

- There is a risk that the limitations in information regarding a person's offending history could be misleading to applicants, as they are at risk of developing a false assurance and subsequently minimise their own experience of domestic violence.
- Applications under a DVDS are likely to be made by people who already have some emotional connection to their partner, but have concerns that they could be at risk. Even if equipped with information gained through the DVDS, there is a risk that the emotional attachment will have greater influence than safety concerns.
- It is a risk to assume that a disclosure under a DVDS will lead to action; this places the responsibility and pressure on a potential victim.
- Domestic violence should be addressed in a holistic, preventative, and systematic way and the DVDS should not be implemented in isolation of the service system.
- A DVDS has the potential to compromise the NSW Governments' goal of rehabilitation of offenders because it uses their criminal history as a gauge of future risk to applicants.
- There is a risk to establishing a NSW DVDS before evaluation results from the UK DVDS (the scheme on which the model is based on) have been released.
- Some stakeholders reflect a view that resources for the DVDS could be better directed toward addressing the current service delivery gaps in domestic and family violence responses in NSW,

and there is a risk that there may be limited support for the scheme, potentially compromising its success.

- There is a risk that the implementation of DVDS could further add to the current stress on domestic violence response agencies and services, including men's behaviour change programs. Submissions noted that DVDS applicants must be supported by case workers, counsellors and accommodation options for adult and child victims; otherwise it simply gives people information regarding potential risk factors that they are unable to safely act upon.

The Domestic Violence Disclosure Scheme Model

The DVDS model has been informed by the consultation process, and has been designed to fit within existing NSW legislative and service system frameworks. The NSW Government recognises a holistic approach is necessary to prevent domestic and family violence, and the Scheme will complement other government reforms currently being implemented.

The pilot of the DVDS will commence in March 2016 in four Local Area Commands in NSW:

- Oxley LAC (Tamworth area);
- Shoalhaven LAC (Nowra area);
- Sutherland LAC (Engadine/Menai area); and
- St George LAC (Kogarah/Hurstville area).

The NSW Police Force will receive and review all applications made by a person who is concerned about their partner, or a concerned third party, to find out if their partner has a history of domestic violence. Under the DVDS, a third party includes someone who has some form of contact with the primary person, e.g. family, friends or legal guardians. It also includes professionals working with a member of the family.

On receipt of an application, the NSW Police Force check whether a relevant conviction exists that leads to a disclosure being made to the primary person. Support services will be present regardless of whether a disclosure is made or where a primary person is advised that no relevant conviction exists. This ensures that the primary person will have immediate access to the necessary support that is required when making a decision about their safety.

Appendix A: Summary of responses

ISSUE	SUMMARY OF CONSULTATION
Right to Ask and Right to Know	
	<ul style="list-style-type: none"> • Most respondents support introducing a Right to Ask and Right to Know. • Broad support for third party applications, but suggest limiting third parties to direct family members or carers.
Eligibility	
Primary person	<ul style="list-style-type: none"> • Under a Right to Ask, the consultation suggested that applications should be limited to current and former (where ongoing contact) intimate partner relationships. • A significant proportion of responses indicated the time of separation is a time of high risk for people experiencing domestic and family violence and therefore allowing applications by people with ongoing contact with a former partner is considered essential. • Advocates of people with disabilities and CALD communities suggested that relationships experienced by these communities could be outside these relationship definitions, e.g. carers in residential facilities; people who are courting before marrying under arrangement.
Age limits – primary person and subject	<ul style="list-style-type: none"> • Most submissions support setting the DVDS age limit to 16 years so it is consistent with the age of consent.
Third party	<ul style="list-style-type: none"> • The consultation showed that there was some confusion between third party applications under ‘Right to Ask’ and the separate ‘Right to Know’ process, but most were supportive of third parties being able to make applications, but acknowledged that there are some risks.
Application process	
Right to Ask (as per UK scheme)	<ul style="list-style-type: none"> • Generally a police station is not the first point of contact when a person is concerned. • Some respondents to the discussion paper (30%) argued applications should be able to be lodged in locations other than a police station or in multiple venues, which are inconspicuous and broadly accessible to the public.
Right to Know (as per UK scheme)	<ul style="list-style-type: none"> • Most respondents are supportive of a Right to Know, noting that applications are most likely to come from agencies that respond to domestic and family violence incidents. • If the application was successful, submissions argued that the primary person should have a choice to receive the disclosure or not.
Approval process	
Tests	<ul style="list-style-type: none"> • Various positions and ideas were submitted however no particular option was recommended.
Decision making	<ul style="list-style-type: none"> • Most respondents indicated support for decisions to be made by a decision-making body, such as Safety Action Meeting participants.
Threshold for disclosure	
When information should be	<ul style="list-style-type: none"> • A two-step process where prior domestic violence offences and

disclosed	<p>ADVOs trigger further inquiries was the most supported option.</p> <ul style="list-style-type: none"> • Submissions varied significantly in their view of the inclusion of apprehended domestic violence orders (ADVOs) in the decision-making and disclosure process, particularly due to their complex nature.
What information should be disclosed	<ul style="list-style-type: none"> • The majority of stakeholders recommended that in situations where an applicant is found to be at serious or imminent risk, a timely disclosure should be made.
How much contextual information disclosed	<ul style="list-style-type: none"> • Just under half of submissions were supportive of disclosing contextual information, citing that it allows for more informed decisions. • Submissions supportive of contextual disclosure acknowledge safeguards are required in order to prevent use of the disclosure information in the family law court. A multi-agency decision making body could act as a safeguard to ensuring the context is always considered when deciding the information to be disclosed.
Disclosing juvenile offences	<ul style="list-style-type: none"> • A range of stakeholders raised concern regarding the disclosure of juvenile offences because generally a range of environmental factors may have contributed to or influenced a juvenile offence. • When making a disclosure to an applicant it should be stated clearly that the information provided does not include information on the subject prior to the age of 16.
Disclosure process	
Who should the disclosure be made to?	<ul style="list-style-type: none"> • A significant proportion of consultation workshop participants and submissions to the consultation questions recommended disclosures should not be made to third parties. • Overall stakeholder feedback supports disclosures being made to the primary person and only including a third party at the request of the primary person.
Who should disclose the information?	<ul style="list-style-type: none"> • Questions regarding who should make a disclosure were largely unanswered in submissions made to the discussion paper. • Of those that responded to the question indicated support for disclosures by a Domestic Violence Liaison Officer (DVDS) and a support service. • In relation to vulnerable groups, submissions generally indicated support for offering additional services. For example, consideration could be given to including a Gay and Lesbian Liaison Officer, Aboriginal Community Liaison Officer, Youth Liaison Officer or a Multicultural Community Liaison Officer in the application and disclosure process.
Victim support	<ul style="list-style-type: none"> • The majority of submissions indicated the DVDS pilot's success is reliant on the applicant being offered access to support services to meet her/his safety needs. The provision of a disclosure in the absence of access to support may lead to victim isolation and risk. • Disclosure by both police and support workers was considered particularly important for immigrant and CALD communities to ensure the person understands the risks and so that disclosures are made in a culturally sensitive and appropriate way. • Consultation workshop participants suggest support workers assisting with disclosures should include workers that the individual is already working with, or a local specialist domestic

	violence service that has experience in undertaking these types of client meetings.
Subject informed of disclosure	<ul style="list-style-type: none"> Most stakeholders disagree with the notion of informing the subject, due to potential risk to personal safety of the applicant and former partners/victims.
Oral disclosure	<ul style="list-style-type: none"> Few respondents to the consultation questions provided a position on whether an oral disclosure should be made to applicants. On the basis of consultation workshops and the nature of submissions it can be presumed there is overwhelming support for oral disclosures only.
Process where no disclosure	<ul style="list-style-type: none"> Most stakeholders agree that under a Right to Ask, applicants where no disclosure is made should receive the same support services as those where a disclosure is made. Given the person had fears and there may be a risk despite no record, stakeholders advise the disclosure should be made with a support service present.
Appeals	<ul style="list-style-type: none"> The vast majority of respondents did not provide feedback regarding allowing an appeals process for applicants. Of those that responded, many submissions claim that no right of appeal or review of a disclosure determination can be granted if the subject of the disclosure is not advised of the disclosure being made.
Other issues/safeguards	
Risk assessment	<ul style="list-style-type: none"> The use of the Domestic Violence Safety Assessment Tool was supported by the majority of respondents.
False information and misuse of disclosed information	<ul style="list-style-type: none"> Stakeholders raised concern in relation to information disclosed that may reveal the identity of previous victims. Some submissions argue the previous victim should be notified when a disclosure that relates to them is being made. Some stakeholders hold the view that the DVDS could compromise the subject's rights to privacy, right of judicial review, and the right to be aware of how their personal information is being used by government. The DVDS would ideally impose a test to ensure the risk to the subject's privacy is weighed up against the applicants' right to be informed about the potential risk of harm to them. Stakeholders recommend police and decision-makers take into account the privacy of the subject as much as possible and some suggest decisions could be reviewable by a tribunal, magistrate or other independent party.
False information and misuse of disclosed information	<ul style="list-style-type: none"> Stakeholders acknowledged that making it a criminal offence to provide false information and to disseminate disclosure information could act as a safeguard against frivolous or vexatious applications and the misuse of information. Most respondents advised information disclosed to an applicant should not be openly shared further, and therefore agreements, declarations or undertaking given to this affect at the point of application will be required. Most stakeholders agree that making only oral disclosures is a safeguard to further unintended disclosure of the information.
Monitoring and evaluation	
	<ul style="list-style-type: none"> Numerous respondents to the discussion paper identify the UK DVDS as relatively new and there is no evaluation or data to

	<p>support outcomes or changes for women at risk as a result of the scheme.</p> <ul style="list-style-type: none"> • Consequently, the majority of respondents indicate the importance of monitoring and evaluation. • General feedback indicates the DVDS evaluation should provide a robust evidence-base for the program's continuation.
Pilot implementation	
	<ul style="list-style-type: none"> • Respondents indicate promotion of the DVDS can be achieved through the community and should include ethnic press, radio, schools, community centres, community clubs, medical centres and other venues accessible to the public. • Numerous submissions suggested adequate training for people implementing the DVDS will act as a safeguard to protecting the privacy of applicants and subjects, as it will encourage consistent application of the scheme across NSW.

Appendix B: List of stakeholders

The following list of stakeholders attended roundtables, workshops, or provided written submissions during the consultation process.

- 37 Individuals
- Aboriginal Affairs, Department of Education and Communities
- Association of Children's Welfare Agencies
- Salvation Army, Auburn
- BaptistCare Relationship Services
- Barnardos Australia
- Binaal Billa Family Violence Prevention Legal Service
- Blue Mountains Coalition Against Violence And Abuse
- Council of Social Service of NSW (NCOSS)
- Criminal Law, Juvenile Justice, Indigenous Issues and Human Rights Committees of the Law Society of NSW
- Cumberland Women's Health Service
- Department of Family and Community Services
- Department of Justice
- Department of Premier and Cabinet
- Domestic and Family Violence Council members
- Domestic Violence NSW
- Eastern Suburbs Domestic Violence Network
- Education, Families & Communities Division, NSW Treasury
- Fairfield City Council
- Family Support Newcastle - Staying Home Leaving Violence Program team
- Fathers 4 Justice
- Greens NSW
- Hunter Community Legal Centre
- Illawarra Forum
- Illawarra Women's Domestic Violence Court Advocacy Service
- Immigrant Women's Health Service
- Immigrant Women's Speakout Association
- Information & Privacy Commission NSW
- Information Commissioner
- Intellectual Disability Rights Service Inc
- Justice for Children Australia
- Kempsey Family Support Service Inc
- Kingsford Legal Centre
- Law Society of NSW
- Legal Aid NSW
- Manly Warringah Women's Resource Centre
- Men's Referral Service
- Ministry for Police and Emergency Services
- Ministry of Health
- Multicultural Disability Advocacy Association
- Northern Sydney Sexual Assault Service
- NSW Council for Civil Liberties

- NSW Kids and Families, Ministry of Health
- NSW Police Force
- NSW Rape Crisis and Domestic Violence Services Australia
- NSW State Coroners Court
- NSW Treasury
- NSW Ombudsman
- People with Disability Australia
- Police Association of NSW
- Privacy Commissioner NSW
- Red Cross
- Redfern Legal Centre
- Relationships Australia NSW
- School of Social Sciences, UNSW
- Shakti Australia Inc. & Shakti Community Council
- South Coast Women's Health & Welfare Aboriginal Corporation (WAMINDA)
- South West Sydney Community Legal Centre
- South Western Sydney Legal Centre Domestic Violence Services
- Sydney Women's Domestic Violence Court Advocacy Service
- Sydney Women's Homelessness Alliance
- The Benevolent Society
- The Shopfront Youth Legal Centre
- Triple BL Legal
- United Muslim Women's Association
- United Services Union (New South Wales Local Government, Clerical, Administrative, Energy, Airlines, and Utilities branch of the Australian Services Union)
- White Ribbon Foundation
- Wirringa Baiya and Aboriginal Women's Legal Centre
- Women's Legal Services NSW
- Women's Domestic Violence Court Advocacy Service NSW Inc.
- Women's Electoral Lobby NSW
- Women's Health NSW
- Women's Legal Services