



**Review about whether a
domestic violence disclosure
scheme should be introduced in
Queensland**

Consultation Paper

Queensland
Law Reform Commission

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violence disclosure scheme should
be introduced in Queensland**

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WP No 75
December 2016

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ISBN: 978-0-9874889-8-5

SUBMISSIONS

You are invited to make submissions on the issues raised in this Consultation Paper. Submissions should be sent to:

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Closing date: 3 February 2017

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Abbreviations

DVDS	Domestic violence disclosure scheme
NSW Discussion Paper (2015)	NSW Government, 'NSW Domestic Violence Disclosure Scheme' (Discussion Paper, May 2015)
NSW Consultation Report (2015)	NSW Government, 'NSW Domestic Violence Disclosure Scheme' (Consultation Report, 2015)
NSW Factsheet	NSW Government, <i>NSW Domestic Violence Disclosure Scheme Factsheet</i>
NZ Police Policy (2016)	New Zealand Police, <i>Family Violence Information Disclosure Scheme Policy</i> (3 September 2016)
Police Scotland Factsheets	Police Scotland, <i>Disclosure Scheme for Domestic Abuse Scotland: Making an Application about Your Partner</i> , and Police Scotland, <i>Disclosure Scheme for Domestic Abuse Scotland: Asking on Behalf of Someone Else</i>
Taskforce Report	Special Taskforce on Domestic and Family Violence, <i>Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland</i> , Final Report (2015)
Taskforce Report: Government Response (2015)	<i>Queensland Government Response to the report of the Special Taskforce on Domestic and Family Violence, Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland</i> , tabled in Parliament on 18 August 2015
UK Consultation Paper (2011)	Home Office (UK), 'Domestic Violence Disclosure Scheme: A Consultation' (October 2011)
UK Consultation Summary (2012)	Home Office (UK), 'Domestic Violence Disclosure Scheme — A Consultation: Summary of Responses' (March 2012)
UK Pilot Assessment (2013)	Home Office (UK), 'Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment' (November 2013)
UK National Roll-Out Assessment (2016)	Home Office (UK), 'Domestic Violence Disclosure Scheme (DVDS): One year on — Home Office assessment of national roll-out' (March 2016)
UK Home Office Guidance (2013)	Home Office (UK), 'Domestic Violence Disclosure Scheme: Guidance' (March 2013, revised)
Vic Royal Commission Report (2016)	Victoria, Royal Commission into Family Violence, <i>Report and Recommendations</i> (March 2016)
LRCWA Final Report (2014)	Law Reform Commission of Western Australia, <i>Enhancing Family and Domestic Violence Laws</i> , Final Report Project No 104 (June 2014)

* Except where otherwise indicated, references to legislation in this Paper are references to Queensland legislation.

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Introduction

[1] There has been significant recent attention in Queensland, and nationally, to legislative and non-legislative reforms to address and reduce domestic and family violence, including looking at new ways to better protect victims and potential victims.

[2] One new approach which aims to better protect potential victims is a domestic violence disclosure scheme ('DVDS'). The purpose of such a scheme is to permit disclosure of an individual's history of domestic or other violence to a person who may be at risk of domestic and family violence. This information could then enable the person who may be at risk to make informed choices about whether to continue that relationship and/or to seek help and support.

[3] England and Wales were the first Commonwealth jurisdictions to introduce a DVDS.¹ On 8 March 2014, the scheme was implemented across England and Wales following a 14 month pilot.

[4] The DVDS in England and Wales has three main objectives:²

1. reduce incidents of domestic violence and abuse;
2. reduce the health and criminal justice related costs to domestic violence and abuse;
3. strengthen the ability of the police and other multi-agency partnerships to provide appropriate protection and support to victims at risk of domestic violence and abuse.

[5] On 1 October 2015, the Disclosure Scheme for Domestic Abuse (Scotland), based on the scheme in England and Wales, was implemented in all police forces in Scotland.

[6] In December 2015, New Zealand introduced a Family Violence Information Disclosure Scheme, which is also based on the scheme in England and Wales.

[7] In Australia, in April 2016, New South Wales implemented a similar DVDS as a two year pilot in four NSW Police Force Local Area Commands.

[8] The schemes in England and Wales and New South Wales are stated to be based on research that domestic and family violence is rarely a one-off incident, but tends to be behaviour that is often repeated and may escalate over time.³

¹ In England and Wales, the domestic violence disclosure scheme is colloquially known as 'Clare's Law'.

² Home Office, *Domestic Violence Disclosure Scheme Impact Assessment* (31 October 2013) 1.

³ See, eg, *UK Consultation Paper* (2011) 5, citing the Coroner's report published in July 2011, which reported that, in the Wiltshire Police Force area between 2006–09, of 126 serial perpetrators identified, 115 serial perpetrators committed domestic abuse against two unrelated victims, 10 committed domestic violence offences against three unrelated victims, and 1 committed domestic violence offences against four unrelated victims; and *NSW Discussion Paper* (2015) 2, which noted that 'the disclosure scheme is based on research that demonstrates domestic violence is rarely a one off incident but is more commonly a pattern of abusive and controlling behaviour with the highest recidivism rate of any crime. In Australia, 65.1% of victims of current partner violence have experienced more than one incident of violence'.

[9] In England and Wales, neither the DVDS pilot assessment report in 2013⁴ nor the subsequent March 2016 DVDS assessment report (on the operation of the DVDS one year after the national roll-out)⁵ examined what, if any, impact the DVDS may have had on victims of domestic and family violence, or the ‘value for money’ of the scheme.

[10] The NSW DVDS will be evaluated over the course of the pilot period, which ends in April 2018.⁶

[11] In Queensland, the Special Taskforce on Domestic and Family Violence in Queensland (the ‘Taskforce’) made 140 recommendations⁷ but did not consider whether there should be a DVDS.

[12] Western Australia⁸ (in 2014) and Victoria⁹ (in 2016) have both considered, but have not introduced a DVDS.

[13] On 20 July 2016, the Attorney-General referred to the Commission, ‘for review and investigation the issue of whether Queensland’s response to domestic and family violence would be strengthened by introducing a domestic violence disclosure scheme in Queensland’;¹⁰ and ‘if a domestic violence disclosure scheme is recommended’, how such a scheme might operate.

[14] This Consultation Paper asks a number of specific questions. Part A of the questions deals with the threshold question of whether or not Queensland should introduce a DVDS. Part B of the questions covers, if such a scheme is introduced in Queensland, how it should operate. The Commission welcomes submissions on the questions asked, as well as any other issues relevant to the terms of reference. Details on how to make a submission, including a confidential submission, are set out at the front of this Paper.

[15] The closing date for submissions is **3 February 2017**.

[16] The Commission is required to provide its final report to the Attorney-General by 30 June 2017.

⁴ *UK Pilot Assessment* (2013). The assessment was designed to understand how the process was working in practice. It drew on pilot police force monitoring data, focus groups with practitioners, and 38 questionnaires completed by those who had applied for and/or received a disclosure.

⁵ *UK National Roll-Out Assessment* (2016).

⁶ *NSW Factsheet 3*. Consulting firm, Urbis, has been engaged to ‘review and evaluate the Scheme over the two-year pilot period’. It will consider the scheme’s implementation, level of demand, impacts and outcomes for people applying for and receiving disclosures, impacts on the service sector, strengths and limitations of the model and ‘lessons learned for rollout of the scheme’.

⁷ See *Taskforce Report: Governance Response* (2015), which was tabled in Parliament on 18 August 2015. The Government accepted all 121 recommendations directed to the government.

⁸ *LRCWA Final Report* (2014). The Law Reform Commission of Western Australia expressed doubt about whether a DVDS would presently be appropriate in Western Australia, without further evidence about whether such schemes provide victims of family and domestic violence with enhanced safety.

⁹ *Vic Royal Commission Report* (2016) vol 1, 1, 145. The primary concern of the Victorian Royal Commission into family violence was that ‘having such a scheme could give women a false sense of security if a perpetrator’s name does not appear on the register, simply because he has never had contact with the police’.

¹⁰ The terms of reference are set out in full in Appendix A to this Paper.

Domestic and family violence in Queensland

DEFINING DOMESTIC AND FAMILY VIOLENCE

[17] Domestic and family violence¹¹ can involve a broad range of physical, sexual and non-physical behaviours. It is often characterised by an ongoing pattern of violent, abusive, threatening or other behaviour by an intimate partner or family member that is motivated by a desire to maintain power and control over, and which creates fear in, the other person.¹²

[18] In Queensland law, ‘domestic violence’ is defined as behaviour:¹³

- by one person towards another person with whom they are in a ‘relevant relationship’ — either an intimate personal relationship (such as between current or former spouses¹⁴ or couples), a family relationship (between persons related by blood or marriage or who reasonably regard themselves as relatives), or an informal care relationship (where one person is or was dependent on the other for help in an activity of daily living); and
- that is physically or sexually abusive, emotionally or psychologically abusive,¹⁵ economically abusive,¹⁶ threatening, coercive, or in ‘any other way controls or dominates’ the other person and causes them to fear for their safety or wellbeing or that of someone else.

[19] Examples of ‘domestic violence’ behaviour include causing or threatening to cause personal injury, damaging or threatening to damage a person’s property, depriving or threatening to deprive a person of their liberty, threatening self-harm so as to intimidate or frighten, unauthorised surveillance, unlawful stalking, and

11 The term ‘domestic and family violence’ is used throughout this Paper to reflect the broad range of relationships in which such violence can occur, including cultural kinship relationships.

12 See generally, *Taskforce Report* (2015) vol 1, 68–71. See also Department of Communities, Child Safety and Disability Services (Qld), *Fact Sheet: Definition of domestic violence* (22 August 2016) Queensland Government <<https://publications.qld.gov.au/dataset/domestic-and-family-violence-resources>>.

13 *Domestic and Family Violence Protection Act 2012* (Qld) s 8(1). See also the definitions of the ‘relevant relationships’ and forms of ‘abuse’ covered by that definition: ss 8(5), 11–12, 13–20. The Act also applies to ‘associated domestic violence’, being domestic violence behaviour towards a child, relative or associate of the aggrieved or a child who usually lives with the aggrieved: s 9.

14 Including de facto partners and civil partners: *Acts Interpretation Act 1954* (Qld) s 36 sch (definition of ‘spouse’).

15 ‘Emotional or psychological abuse’ means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person; for example, following a person when the person is out in public, remaining outside a person’s residence or place of work, preventing a person from making or keeping connections with the person’s family, friends or culture: *Domestic and Family Violence Protection Act 2012* (Qld) s 11.

16 ‘Economic abuse’ means behaviour by a person that is coercive, deceptive or unreasonably controls another person without their consent either in a way that denies their economic or financial autonomy, or by withholding necessary financial support; for example, removing or keeping a person’s property without their consent, preventing a person from seeking or keeping employment, or coercing a person to sign a power of attorney that would enable their finances to be managed by another person: *Domestic and Family Violence Protection Act 2012* (Qld) s 12.

counselling or procuring someone else to commit domestic violence.¹⁷ Domestic violence will sometimes, but not always, be criminal behaviour.

THE INCIDENCE AND PREVALENCE OF DOMESTIC AND FAMILY VIOLENCE

[20] Domestic and family violence has tended to be under-reported.¹⁸ Even so, it is apparent that its incidence is high. Key sources of information include surveys and police data.



Figure 1: Incidence of domestic and family violence¹⁹

[21] The number of domestic and family violence related matters reported to the Queensland Police Service (the 'QPS') has increased in recent years.²⁰ This may be

¹⁷ *Domestic and Family Violence Protection Act 2012* (Qld) s 8(2), (3).

¹⁸ *Taskforce Report* (2015) vol 1, 74–5; Australian Bureau of Statistics, 'Actions taken in response to partner violence', *Personal Safety, Australia, 2012* Cat No 4906.0. Accurate measures are also made difficult by the often private nature of violence and the nature of the relationships and range of behaviours involved: *Taskforce Report* (2015) vol 1, 74.

¹⁹ See, respectively, ANROWS, *Violence against women: Key statistics* (14 May 2014) <<http://anrows.org.au/publications/fast-facts/violence-against-women-key-statistics%20>> and Australian Bureau of Statistics, *Personal Safety, Australia, 2012* Cat No 4906.0; H Nancarrow et al, 'Intimate partner abuse of women in Queensland' (Report, Queensland Centre for Domestic and Family Violence Research, CQ University Australia, 2011) 2; Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 6, 25. As to the 2012 survey data, see further P Cox, 'Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Research Report, ANROWS, October 2015) 31, 78 ff.

²⁰ Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 25; *Taskforce Report* (2015) vol 1, 75:

	Total DFV related matters	Protection order breaches	Protection order applications
2015–16	87 100	22 853	29 938
2014–15	70 735	16 388	25 143
2013–14	66 016	14 579	24 000 (approx)

attributable, at least in part, to higher reporting as a result of targeted awareness-raising campaigns.²¹

[22] There are also regional differences in the number of domestic and family violence related matters reported to the QPS. In 2015–16, the highest rate of reported matters (3156 per 100 000 persons) was in the Northern region which covers the Far North, Mount Isa and Townsville districts, compared with the lowest rate (of 955 per 100 000 persons) in Brisbane.²² The Northern region also had the highest number and rate of reported breaches of domestic violence orders (1087 per 100 000 persons).²³ This is consistent with the previous year.²⁴

[23] Domestic and family violence ‘can affect any person regardless of gender, age, socio-economic status, or cultural background’ but experiences of such violence differ across the community.²⁵

[24] Domestic and family violence is overwhelmingly perpetrated by men against women.²⁶

[25] Aboriginal and Torres Strait Islander people, people in rural and remote areas, people with disabilities, people from culturally and linguistically diverse backgrounds, older people, and LGBTI people may be more vulnerable to domestic and family violence and/or face additional challenges in accessing support.²⁷ Domestic and family violence also affects children.²⁸

²¹ Queensland Police Service, ‘Annual Statistical Review 2015/16’ (2016) 5.

²² Queensland Police Service, ‘Annual Statistical Review 2015/16’ (2016) 25–6:

2015–16	Total DFV related matters (per 100 000 persons)	Protection order breaches (per 100 000 persons)	Police protection order applications (per 100 000 persons)	Private protection order applications (per 100 000 persons)
Brisbane	14 531 (955)	3398 (223)	3765 (247)	1563 (103)
Central	22 693 (2220)	5219 (511)	5136 (502)	1741 (170)
Northern	17 522 (3156)	6037 (1087)	4829 (870)	1103 (199)
South Eastern	14 102 (1556)	3858 (426)	4155 (458)	1985 (219)
Southern	18 251 (2193)	4340 (521)	3895 (468)	1766 (212)
Total	87 100 (1800)	22 853 (472)	21 780 (450)	8158 (169)

For this purpose, the Brisbane region comprises the North Brisbane and South Brisbane districts; the Central region captures the Capricornia, Mackay, Sunshine Coast and Wide Bay Burnett districts; the Northern region covers the Far North, Mount Isa and Townsville districts; the South Eastern region comprises the Gold Coast and Logan districts; and the Southern region covers the Darling Downs, Ipswich, Moreton and South West districts.

²³ Ibid.

²⁴ Ibid.

²⁵ *Taskforce Report* (2015) vol 1, 72, 119.

²⁶ Cox, above n 19, 2–4, 20 ff. In contrast, men are more likely to experience violence from a stranger.

²⁷ See *Taskforce Report* (2015) vol 1, ch 5 and 215–17.

²⁸ See *Taskforce Report* (2015) vol 1, 142–7, and the studies cited there.

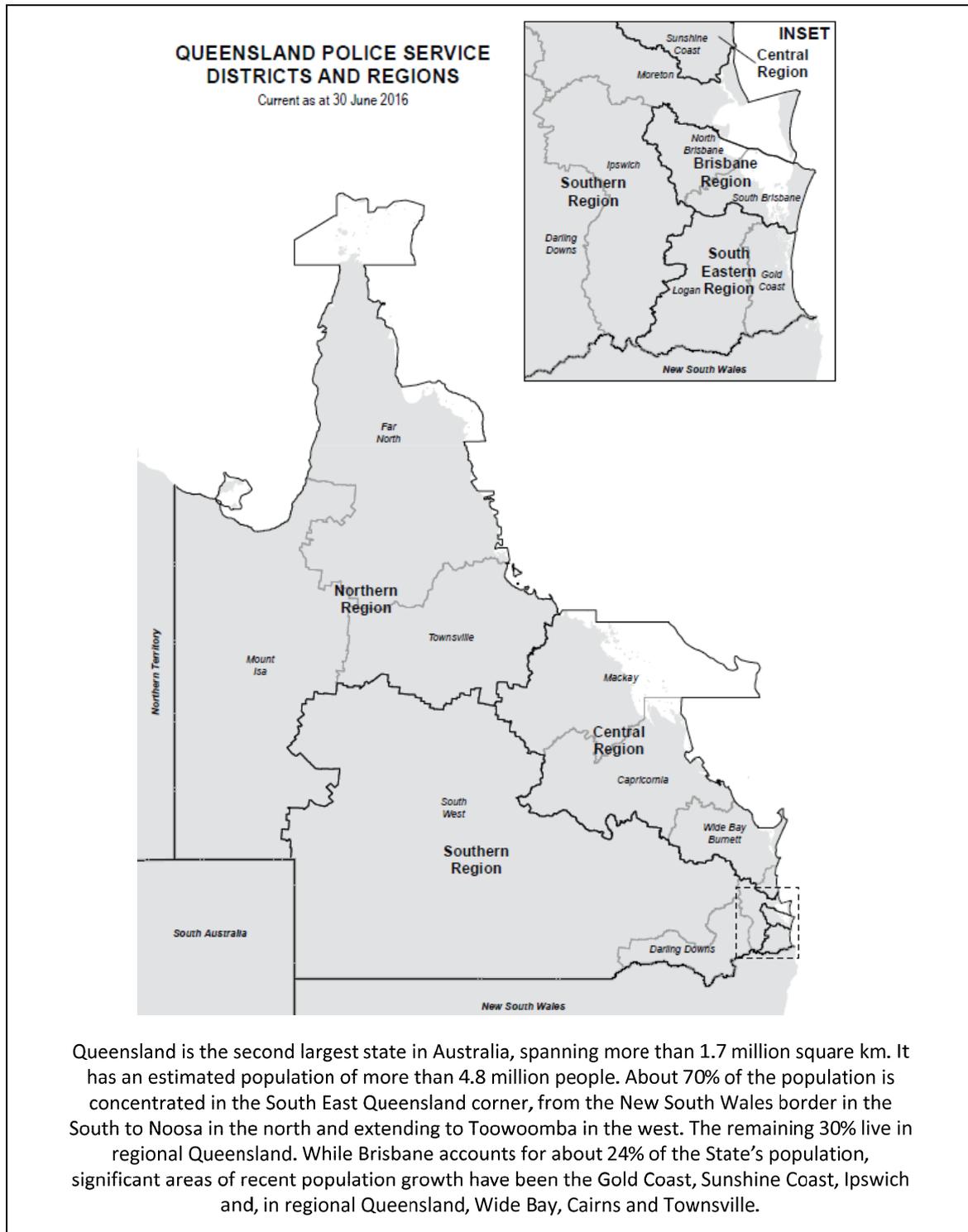


Figure 2: Queensland Police Service districts and regions²⁹

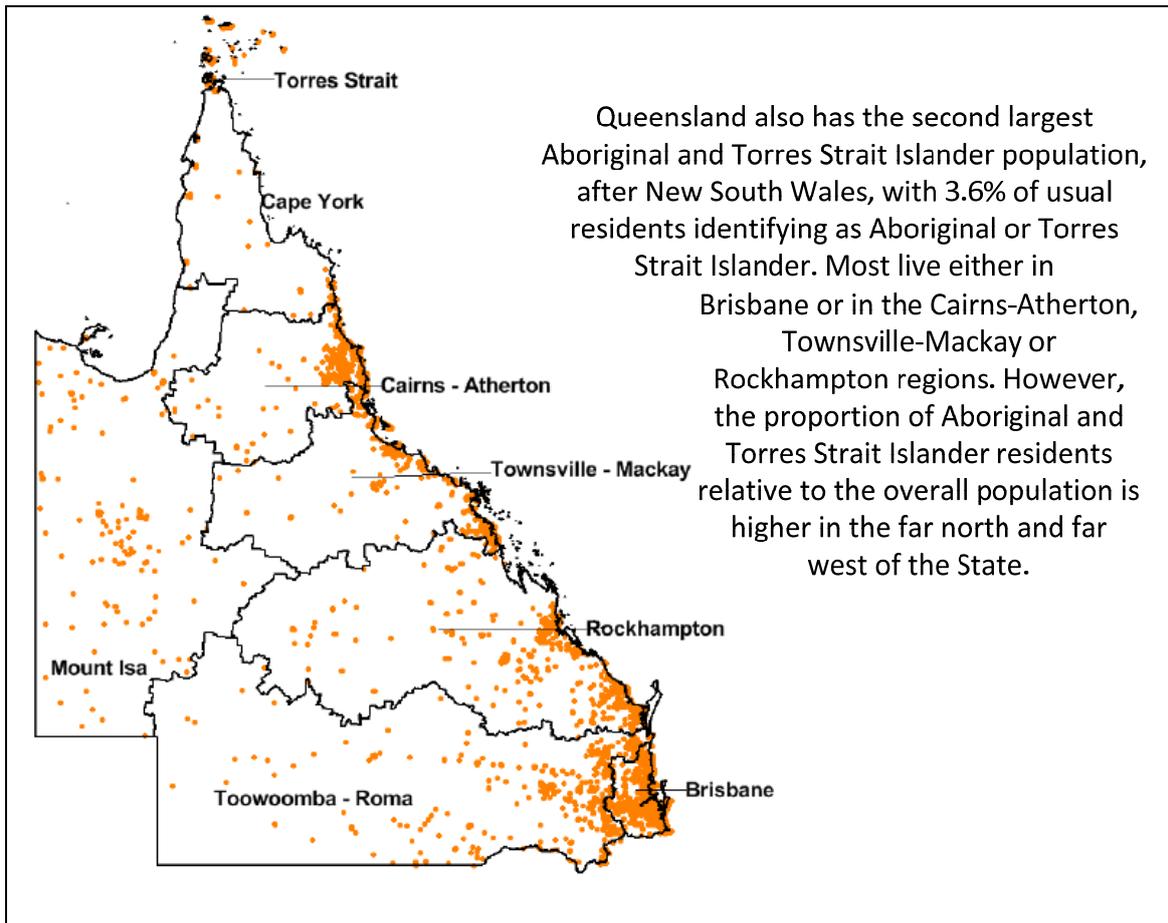


Figure 3: Aboriginal and Torres Strait Islander population, Queensland³⁰

[26] The regional differences in the number of reported domestic and family violence matters also reflect that Aboriginal and Torres Strait Islander people experience disproportionately high levels of domestic and family violence, the prevalence and severity of which increases with geographical remoteness.³¹ Such violence also occurs in broader family and kinship relationships, distinguishing it from general understandings that focus on intimate partner violence.³²

³⁰ Map image and statistics from Queensland Treasury and Trade, Office of Economic and Statistical Research, *Census 2011: Aboriginal and Torres Strait Islander Population in Queensland: 2nd edition* (2013) 2, citing Australian Bureau of Statistics 2011 Census of Population and Housing and Australian Statistical Geography Standard, 2011 edition.

³¹ See *Taskforce Report* (2015) vol 1, 120–21, and the sources cited there.

³² *Ibid* 121.

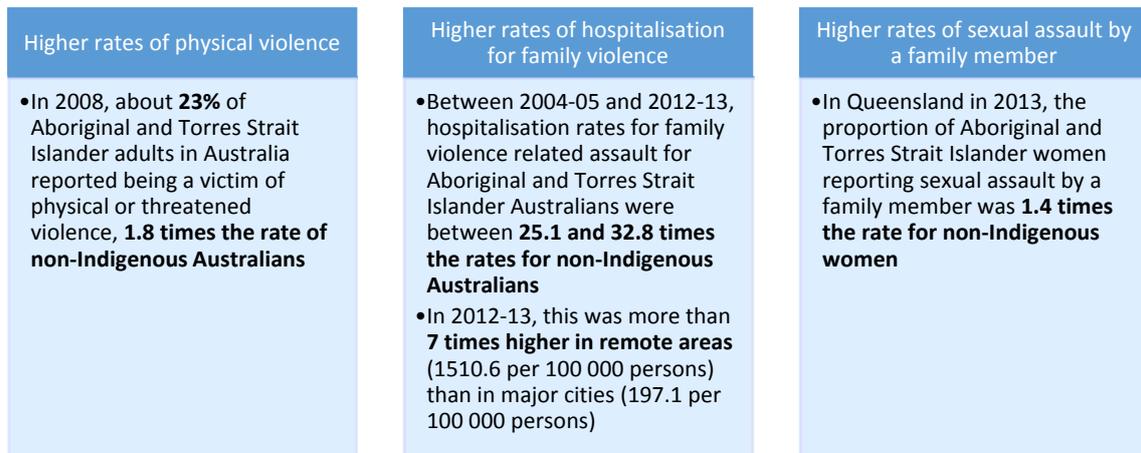


Figure 4: Incidence of domestic and family violence, Aboriginal and Torres Strait Islander people³³

[27] A high proportion of homicides in Queensland, and Australia, occur within a domestic or family relationship. Most are intimate partner homicides committed by men against women.³⁴

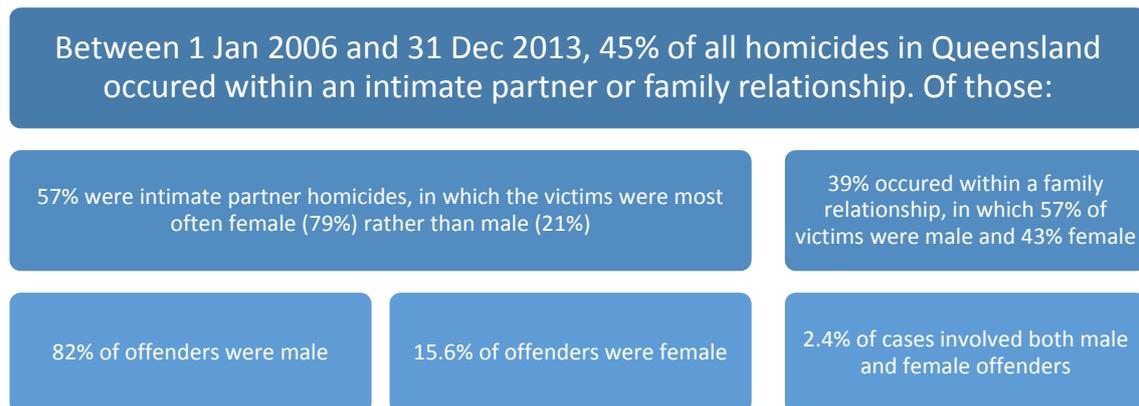


Figure 5: Domestic homicides, Queensland³⁵

³³ Ibid; Australian Government, Steering Committee for the Review of Government Service Provision, 'Overcoming Indigenous Disadvantage: Key Indicators 2014' (Report, 2014) [4.11].

³⁴ Between 2010–11 and 2011–12, 39% (187) of all homicides in Australia and 49% (47) of all homicides in Queensland were domestic homicides. Of the 187 domestic homicides in Australia in that period, the majority (58%, 109) were intimate partner homicides where the victim and offender had been in a current or former intimate relationship: see *Taskforce Report* (2015) vol 1, 76; W Bryant and T Cussen, 'Homicide in Australia 2010–11 to 2011–12: National Homicide Monitoring Program report' (Monitoring Report No 23, Australian Institute of Criminology, 2015) 5–6.

³⁵ Office of the State Coroner, *Annual Report 2013–14* (2014) 13–14. In 2014–15, there were 30 domestic homicides in Queensland including 12 intimate partner homicides, 16 family homicides, and two bystander deaths: Office of the State Coroner, *Annual Report 2014–15* (2015) 18.

[28] Common risk factors have been identified for domestic and family violence related homicides:³⁶

in a significant proportion of the deaths that occurred within an intimate partner relationship, in which a female deceased was killed by a male partner, the deaths occurred after the couple had separated, or when they were in the midst of a separation, and in situations where there were prior threats to kill, stalking, harassment and other non-physical controlling behaviour.

[29] In 57.3% of intimate partner homicides, and 48.4% of homicides within family relationships, the offender had a previous criminal justice system history.³⁷ A history of domestic and family violence, and an escalation in its prevalence or incidence, was also present in many domestic homicides;³⁸ of the 131 intimate partner homicides in Queensland between 1 January 2006 and 30 June 2016, '[a]ll female deceased ... had a previous history of being a victim of intimate partner violence'.³⁹ It has been observed that domestic and family violence deaths 'are almost never without warning' in that '[i]n most cases there have been repeated incidents of violence and indicators of risk, as well as opportunities for agencies and individuals to intervene before the death'.⁴⁰

Most homicides are preceded by multiple efforts by the victim to get help and multiple opportunities for the legal system and community to hold the abuser accountable for their violence.

[30] The factors associated with domestic and family violence are 'complex and multi-faceted', involving the interaction of individual, relationship, community and social issues.⁴¹ Risk factors include exposure to abuse or violence as a child, alcohol or drug dependency, financial or personal stress, and lack of social support. There is also some evidence that separation from a violent partner may increase the risk of more severe violence.⁴²

[31] There are many reasons people stay in an abusive relationship, including love, commitment to the relationship, concern for children, the resolution of problems,

³⁶ Office of the State Coroner, *Annual Report 2014–15* (2015) 18.

³⁷ Office of the State Coroner, *Annual Report 2013–14* (2014) 15, for the period 1 Jan 2006 to 31 Dec 2012.

³⁸ Ibid.

³⁹ Coroners Court of Queensland, *Statistical overview of Queensland domestic and family homicide data* (24 October 2016) Queensland Courts <<http://www.courts.qld.gov.au/courts/coroners-court/domestic-and-family-violence-death-review-and-advisory-board>>.

⁴⁰ Domestic and Family Violence Death Review Panel (Qld), *Final Report* (2010) 14–15; B Taylor, 'Dying to be Heard: Domestic and Family Violence Death Reviews' (Discussion Paper, Domestic Violence Death Review Action Group, 2008) 21. See also, for example, *Inquest into the death of Beutel* (Coroners Court of Queensland, Coroner Hutton, Brisbane, 17 November 2014); PW Sharps et al, 'Health Care Providers' Missed Opportunities for Preventing Femicide' (2001) 33(5) *Preventive Medicine* 373.

⁴¹ Nancarrow et al, above n 19, 9.

⁴² See, eg, L Laing, *Risk Assessment in Domestic Violence* (Topic Paper, Australian Domestic and Family Violence Clearinghouse, 2004); T Hotton, 'Spousal Violence After Marital Separation' (Juristat Vol 21 No 7, Canadian Centre for Justice Statistics, June 2001).

and the partner's promise to change.⁴³ Barriers to leaving also include fear, isolation, financial dependence, and shame.⁴⁴

[32] There is evidence that victims of domestic and family violence may be reluctant to seek support from formal agencies, with many women relying on the support of family, friends or their doctor.⁴⁵

DOMESTIC AND FAMILY VIOLENCE LEGISLATION

The *Domestic and Family Violence Protection Act 2012*

[33] The *Domestic and Family Violence Protection Act 2012* (the 'Act') establishes a specific civil law scheme for domestic violence orders and police protection notices to protect people within relevant relationships from future violence. Similar legislation applies in the other Australian States and Territories.⁴⁶

[34] As noted at [18] above, the Act applies to a wide range of relevant relationships, including not only spousal and couple relationships, but also parental, family and informal care relationships. It also captures a wide range of 'domestic violence' behaviours, including physical, sexual, and non-physical forms of abuse.⁴⁷

[35] The preamble to the Act recognises that domestic violence 'is a violation of human rights that is not acceptable in any community or culture'.

[36] The Act has three main objects and is to be administered according to stated principles, as follows:⁴⁸

3 Main objects

(1) The main objects of this Act are—

- (a) to maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives; and

⁴³ Nancarrow et al, above n 19, 3–4, 56.

⁴⁴ See *Taskforce Report* (2015) vol 1, 83–5.

⁴⁵ See Nancarrow et al, above n 19, 4–5, 48–9 and the studies cited at 10 of that report. In that 2011 Queensland study of 1857 women, 62% of women who had experienced some form of intimate partner abuse were aware of counselling or support services in their locality, but only 31% of them sought assistance from one of these services: 48. The most common reason given was that they did not need the service, some adding that they talk with family, friends, a doctor or psychologist, and some responding that the abuse was not serious enough: 49.

⁴⁶ See the *Domestic Violence and Protection Orders Act 2008* (ACT) ('domestic violence orders'); *Crimes (Domestic and Personal Violence) Act 2007* (NSW) ('apprehended domestic violence orders'); *Domestic and Family Violence Act* (NT) ('domestic violence orders'); *Intervention Orders (Prevention of Abuse) Act 2009* (SA) ('intervention orders'); *Family Violence Act 2004* (Tas) ('family violence orders'); *Family Violence Protection Act 2008* (Vic) ('family violence intervention orders'); *Restraining Orders Act 1997* (WA) ('violence restraining orders').

⁴⁷ The *Domestic and Family Violence Protection Act 2012* (Qld) replaced the earlier *Domestic Violence (Family Protection) Act 1989* (Qld) which, when first enacted, had dealt specifically with domestic violence between spouses. More recent amendments are made by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) (awaiting commencement).

⁴⁸ *Domestic and Family Violence Protection Act 2012* (Qld) ss 3–4.

- (b) to prevent or reduce domestic violence and the exposure of children to domestic violence; and
 - (c) to ensure that people who commit domestic violence are held accountable for their actions.
- (2) The objects are to be achieved mainly by—
- (a) allowing a court to make a domestic violence order to provide protection against further domestic violence; and
 - (b) giving police particular powers to respond to domestic violence, including the power to issue a police protection notice; and
 - (c) imposing consequences for contravening a domestic violence order or police protection notice, in particular, liability for the commission of an offence.

4 Principles for administering Act

- (1) This Act is to be administered under the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.
- (2) Subject to subsection (1), this Act is also to be administered under the following principles—
- (a) people who fear or experience domestic violence, including children, should be treated with respect and disruption to their lives should be minimised;
 - (b) to the extent that it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under this Act;
 - (c) perpetrators of domestic violence should be held accountable for their use of violence and its impact on other people and, if possible, provided with an opportunity to change;
 - (d) if people have characteristics that may make them particularly vulnerable to domestic violence, any response to the domestic violence should take account of those characteristics;

Examples of people who may be particularly vulnerable to domestic violence—

- women
 - children
 - Aboriginal people and Torres Strait Islanders
 - people from a culturally or linguistically diverse background
 - people with a disability
 - people who are lesbian, gay, bisexual, transgender or intersex
 - elderly people
- (e) in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their

self-protection, the person who is most in need of protection should be identified;

- (f) a civil response under this Act should operate in conjunction with, not instead of, the criminal law.

[37] Accordingly, the Act provides for a court to make a civil ‘domestic violence order’ (a protection order or temporary protection order) requiring the respondent to be of good behaviour towards, and not commit domestic violence against, the aggrieved; for the police to investigate and take particular steps such as applying for a protection order, issuing a police protection notice, or taking the respondent into custody for a limited time;⁴⁹ and for breach of an order, notice, or the conditions of release from custody to be a criminal offence.⁵⁰ In this respect, the Act has been described as a ‘hybrid remedy’, combining civil and criminal remedies.⁵¹

[38] A protection order can be made against a respondent, on application by or on behalf of an aggrieved, if a court is satisfied that a relevant relationship exists between the aggrieved and the respondent, the respondent has committed domestic violence against the aggrieved, and the order is necessary or desirable to protect the aggrieved from domestic violence.⁵²

[39] Similarly, a police protection notice can be issued if the police reasonably believe the respondent has committed domestic violence and that the notice is necessary or desirable to protect the aggrieved from domestic violence.⁵³ Such a notice is taken to be an application for a protection order, and continues until either the application is dismissed, the application is adjourned without an order being made, or a domestic violence order is made and served on the respondent.⁵⁴

⁴⁹ A police protection notice is taken to be an application for a protection order. The police must also make such an application if they take the respondent into custody: *Domestic and Family Violence Protection Act 2012* (Qld) ss 112, 118.

⁵⁰ The maximum penalties are: for breach of a domestic violence order, 120 penalty units or 3 years imprisonment (or up to 240 penalty units or 5 years imprisonment if, within the five years before the offence, the respondent has been previously convicted of a domestic violence offence); and for breach of a police protection notice or condition of release, 60 penalty units or 2 years imprisonment: *Domestic and Family Violence Protection Act 2012* (Qld) ss 177–179.

⁵¹ A Harland et al, *Family Law Principles* (Lawbook, 2015) 195.

⁵² *Domestic and Family Violence Protection Act 2012* (Qld) ss 32(1), 37. An application may be made on behalf of an aggrieved by a police officer, an authorised person, or a person acting under another Act for the aggrieved: ss 25, 32(1). A court may hear and decide an application in the respondent’s absence in certain circumstances: ss 39–40. A court may make a domestic violence order by consent of both parties if satisfied a relevant relationship exists between the aggrieved and respondent but without being satisfied that the respondent committed domestic violence against the aggrieved or that the order is necessary or desirable to protect the aggrieved from domestic violence, and whether or not the respondent admits to any or all of the particulars of the application: s 51(1). A protection order continues for up to two years, unless the court orders otherwise: s 97. A court may make a temporary protection order, for example, if an application is adjourned; such order need only be supported by evidence the court considers sufficient and appropriate having regard to the temporary nature of the order: ss 44–50.

⁵³ *Domestic and Family Violence Protection Act 2012* (Qld) s 101. A police protection notice may be issued if the police officer is at the same location as the respondent and if the police have a reasonable belief that no domestic violence order or police protection notice has already been made or issued and that the respondent should not be taken into custody.

⁵⁴ *Domestic and Family Violence Protection Act 2012* (Qld) ss 112, 113.

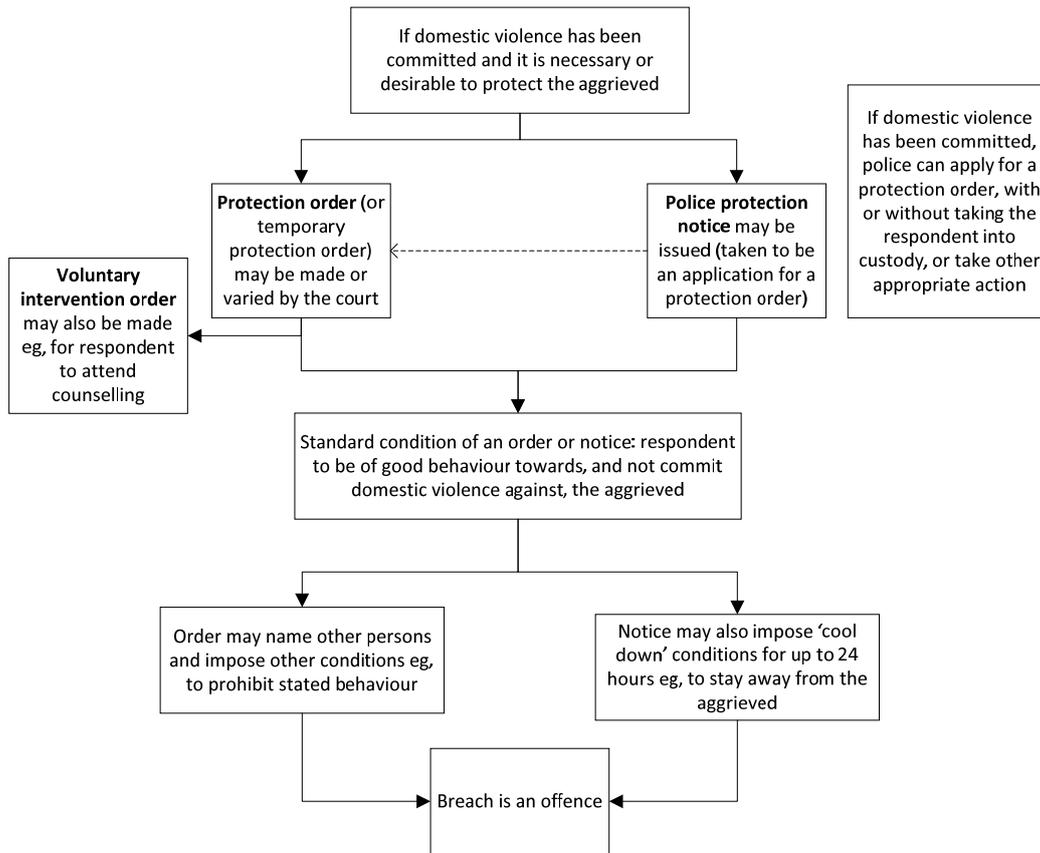


Figure 6: Domestic and Family Violence Protection Act 2012, main remedies

[40] Proceedings under the Act are civil, and not criminal, in nature.⁵⁵ A court is not bound by the rules of evidence but may inform itself in the way it considers appropriate, and need only be satisfied on the balance of probabilities.⁵⁶

[41] Ordinarily, a proceeding is not to be open to the public. There are also prohibitions against access to records of and documents used in a proceeding, and against the publication of information given in evidence or that identifies or is likely to lead to the identification of a person as a party to, witness in, or child concerned in a proceeding.⁵⁷ The effect of these privacy provisions and prohibitions is that a member of the public cannot obtain information about domestic violence proceedings in which their current or former partner may have been involved.⁵⁸

⁵⁵ Breach of a domestic violence order or police protection notice is, however, a criminal offence: see n 50 above.

⁵⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s 145.

⁵⁷ *Domestic and Family Violence Protection Act 2012* (Qld) pt 5 div 4. There are exceptions to this, for example, for access to copies of documents by a party to the proceeding, a person named in an order, or a person expressly authorised by the court or by the chief executive (magistrates court): s 160(2).

⁵⁸ This restriction would not apply if the member of the public was a party to the proceeding: see n 57 above.

CURRENT DOMESTIC AND FAMILY VIOLENCE REFORMS

The Taskforce Report and the Prevention Strategy

[42] There has been significant recent attention in Queensland, and nationally, to reforms relating to domestic and family violence. In Queensland, this has been driven by the recommendations of the Taskforce.

[43] The Taskforce was established in 2014 and asked to define the domestic and family violence landscape in Queensland and make recommendations to inform a long term vision and strategy for reducing domestic and family violence. The Taskforce Report, published in 2015, made 140 recommendations across three themes:⁵⁹

- changing culture and attitudes — a central theme of the report is the recognition that community beliefs and attitudes are directly related to the ongoing cycle of domestic and family violence and that fundamental attitudinal change is required;
- implementing integrated service responses — there is also a strong emphasis in the report on the importance of coordinated and streamlined services for victims and perpetrators; and
- improving the law and justice system — the report emphasises the need for fair and safe justice outcomes and victim support, holding perpetrators accountable, and providing opportunities for change including through specialist courts and rehabilitation programs.

[44] The Government Response to the Taskforce Report was to accept all 121 recommendations directed to the government, and support the others.⁶⁰ In early 2016, a ten year Domestic and Family Violence Prevention Strategy (the 'Prevention Strategy') was adopted to guide a staged approach to implementation. The key elements of the Prevention Strategy are as follows:⁶¹

⁵⁹ See *Taskforce Report* (2015) vol 1, 10–15.

⁶⁰ *Taskforce Report: Government Response* (2015).

⁶¹ See the information and documents at Queensland Government, *Domestic and Family Violence Prevention Strategy* (5 December 2016) <<https://www.communities.qld.gov.au/gateway/end-domestic-and-family-violence/dfvp-strategy>>.

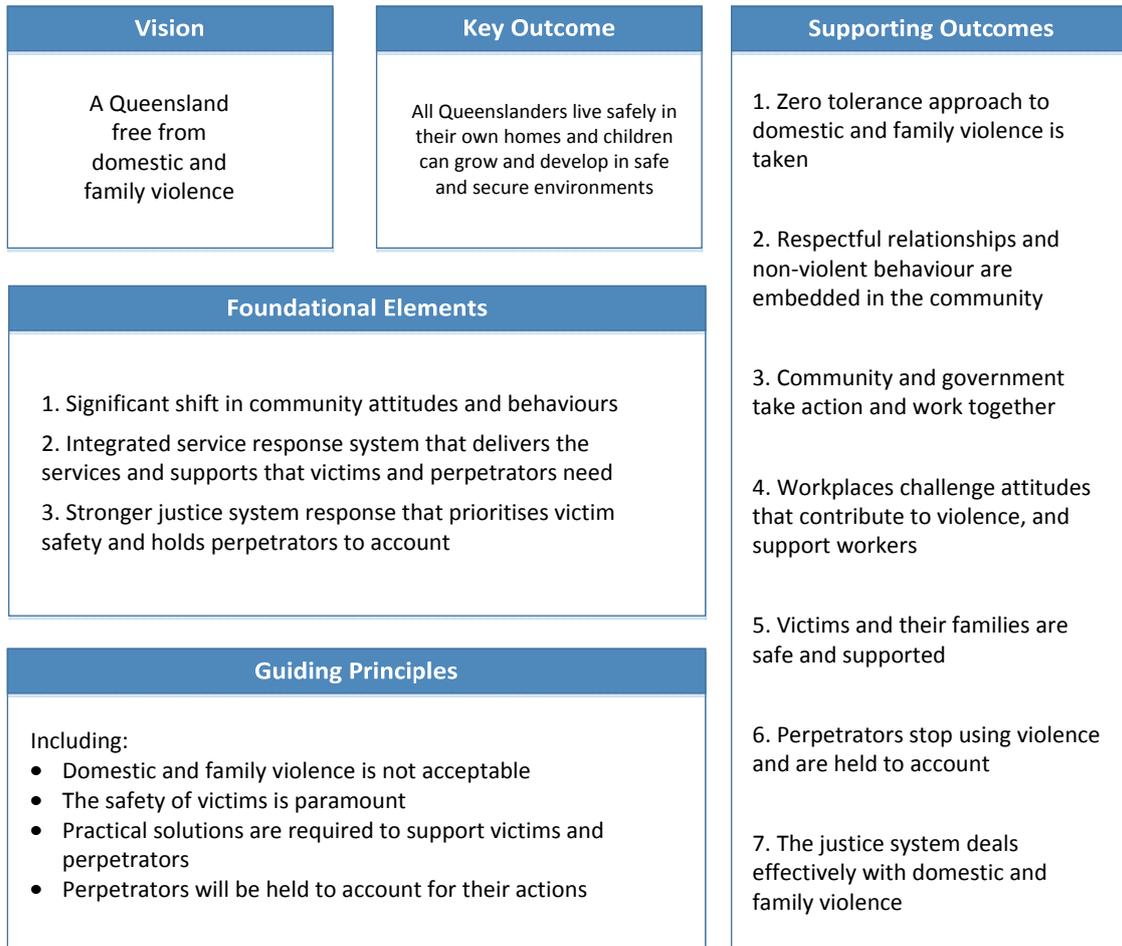


Figure 7: Prevention Strategy, key elements

[45] The Prevention Strategy is supported by the First Action Plan 2015–16, which established the foundations and framework for the strategy, and the Second Action Plan 2016–19, which builds upon those foundations and focuses on specific initiatives (with further action plans to follow).⁶²

[46] Since the 2015–16 State Budget, the Government has committed \$198.2 million over five years to the reforms.⁶³

[47] Implementation of the reforms has commenced.⁶⁴ Relevantly, this includes reforms about the identification of ‘domestic violence offences’ on criminal histories, and inter-agency information sharing reforms. It also includes initial steps towards an integrated service response.

62 Ibid.

63 Queensland Government, *Budget Measures 2016–17*, 1, 6.

64 See generally Domestic and Family Violence Implementation Council, *Six Month Report Dec 2015–May 2016* (2016); and Queensland Government, *Second Action Plan of the Domestic and Family Violence Prevention Strategy 2016–17 to 2018–19* (2016), 23–38.

Identifying offences on criminal histories as ‘domestic violence offences’

[48] Legislative amendments were made in December 2015 to enable notations to be made on a person’s criminal history to identify relevant convictions as convictions for offences that occurred in the context of domestic and family violence.⁶⁵

[49] Under the amendments, a ‘domestic violence offence’ means an offence against any Act — other than the *Domestic and Family Violence Protection Act 2012* — where the behaviour constituting the offence would also amount to domestic violence, associated domestic violence, or a breach of a domestic violence order.⁶⁶ An example is an assault committed against the offender’s current or former spouse.

[50] A complaint or an indictment for a charge for an offence may state that the offence is a domestic violence offence. If the person is convicted of the offence, and the court is satisfied it is a domestic violence offence, the court must order that the subsequent recording of the conviction, or entry made on the person’s criminal history, identifies the offence as a ‘domestic violence offence’.⁶⁷

[51] In that event, if the court is satisfied a previous conviction was for a domestic violence offence, the court must order that it also be identified on the person’s criminal history as a ‘domestic violence offence’.⁶⁸

[52] As well as informing future sentencing of offenders, these reforms are intended to assist in more timely identification of escalating violence and appropriate intervention.⁶⁹

Information sharing reforms

[53] Legislative amendments have also been made — but not yet commenced — to introduce a new domestic and family violence information sharing framework.⁷⁰ The framework has three main purposes, and is underpinned by a number of principles:⁷¹

⁶⁵ See *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) ss 3, 16–19, amending the Criminal Code (Qld) and the *Domestic and Family Violence Protection Act 2012* (Qld). See also *Taskforce Report* (2015), Rec 119. These reforms relate to supporting outcomes six and seven of the Prevention Strategy: see [44] above.

⁶⁶ Criminal Code (Qld) s 1 (definition of ‘domestic violence offence’).

⁶⁷ *Penalties and Sentences Act 1992* (Qld) s 12A(1)–(2).

⁶⁸ This also applies if a person is convicted of a breach offence under the *Domestic and Family Violence Protection Act 2012* (Qld) pt 7, and arises on application by the prosecution. See *Penalties and Sentences Act 1992* (Qld) s 12A(3)–(6).

⁶⁹ See Queensland, *Parliamentary Debates*, Legislative Assembly, 15 September 2015, 1740 (YM D’Ath, Attorney-General and Minister for Justice and Minister for Training and Skills); Explanatory Memorandum, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 3.

⁷⁰ See *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 44, inserting a new pt 5A in the *Domestic and Family Violence Protection Act 2012* (Qld). The Act was assented to on 20 October 2016 and will commence on a date to be proclaimed. See also *Taskforce Report* (2015), Rec 78. These reforms relate particularly to supporting outcome five of the Prevention Strategy: see [44] above.

⁷¹ *Domestic and Family Violence Protection Act 2012* (Qld) ss 169A, 169B, inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 44 (not yet commenced).

169A Purpose of part

The purpose of this part is to enable particular entities to share information, while protecting the confidentiality of the information, to—

- (a) assess whether there is a serious threat to the life, health or safety of people because of domestic violence; and
- (b) respond to serious threats to the life, health or safety of people because of domestic violence; and
- (c) refer people who fear or experience domestic violence, or who commit domestic violence, to specialist DFV service providers.

169B Principles for sharing information

The principles underlying this part are—

- (a) whenever safe, possible and practical, a person's consent should be obtained before—
 - (i) providing, or planning to provide, a service to the person; or
 - (ii) disclosing personal information about the person to someone else; and
- (b) because the safety, protection and wellbeing of people who fear or experience domestic violence are paramount, their safety and protection take precedence over the principle mentioned in paragraph (a); and
- (c) before disclosing information about a person to someone else, an entity should consider whether disclosing the information is likely to adversely affect the safety of the person or another person.

[54] The information⁷² sharing framework applies to 'prescribed entities' (including the police commissioner and the chief executive of several government departments such as those mainly responsible for adult corrective services, child protection services, court services, and youth justice services), government funded 'specialist DFV service providers', and other non-government 'support service providers'.⁷³ Police are also empowered to share limited information for the purpose of referral to a specialist DFV service provider.

⁷² For the framework, 'information' includes documents, and may be comprised of facts or opinion: *Domestic and Family Violence Protection Act 2012* (Qld) ss 169C(1), 169I, inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 44 (not yet commenced).

⁷³ See the definitions of 'prescribed entity', 'specialist DFV service provider' and 'support service provider' in *Domestic and Family Violence Protection Act 2012* (Qld) ss 169C(1), inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 44 (not yet commenced).

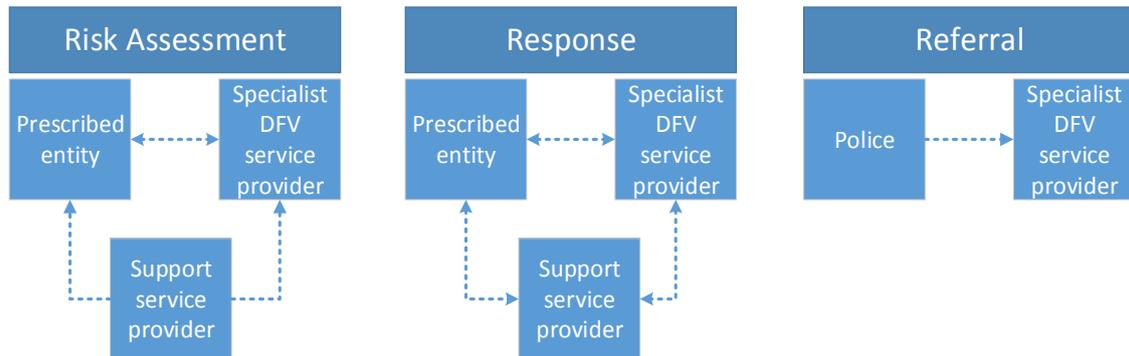


Figure 8: Information sharing framework, permitted lines of disclosure⁷⁴

[55] Certain types of confidential information cannot be shared.⁷⁵ Ordinarily, this includes spent convictions. However, a spent conviction for a ‘domestic violence offence’ may be disclosed (including a breach offence under the *Domestic and Family Violence Protection Act 2012* or an offence against another Act for behaviour that would also be domestic violence, associated domestic violence, or a breach of a domestic violence order).⁷⁶

[56] Information disclosed under the framework is to be used only to the extent necessary to assess whether there is a serious threat, or to lessen or prevent a serious threat,⁷⁷ to a person’s life, health or safety. The receiver must otherwise keep the information confidential, unless disclosure is permitted under the Information Privacy Principles or is required or permitted by another law.⁷⁸

Integrated service response

[57] The information sharing reforms are a ‘critical element of an integrated [service] response’ to domestic and family violence.⁷⁹

The ability for different agencies to discuss cases and share relevant details on an ongoing basis is at the core of coordinating a tailored response to a person’s individual circumstances. Effective and efficient information sharing ensures that victims of domestic and family violence do not have to re-tell their stories

⁷⁴ See *Domestic and Family Violence Protection Act 2012* (Qld) ss 169D, 169E, 169F, inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 44 (not yet commenced).

⁷⁵ See *Domestic and Family Violence Protection Act 2012* (Qld) s 169J, inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 44 (not yet commenced).

⁷⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s 169J(a), sch 1 Dictionary (definition of ‘domestic violence offence’), inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) ss 44, 50 (not yet commenced).

⁷⁷ Including by contacting or attempting to contact, or offering to provide assistance or a service to, the person or another person involved in the domestic violence: *Domestic and Family Violence Protection Act 2012* (Qld) s 169G(1)(b), (2), inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 44 (not yet commenced).

⁷⁸ See *Domestic and Family Violence Protection Act 2012* (Qld) s 169G, 169K, inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 44 (not yet commenced). There are more limited permitted uses for information received under the framework by support service providers: s 169G(2). There are also specific provisions applying to the use of information by police: s 169L.

⁷⁹ *Taskforce Report* (2015) vol 1, 230.

repeatedly to different service providers and enables service providers to provide timely responses, particularly in high-risk cases.

[58] An integrated service response refers to community, government and non-government agencies and services:⁸⁰

working in a coordinated and collaborative manner to provide holistic, safe and accountable responses to victims and perpetrators of family and domestic violence; streamlined pathways through the service sector and seamless service delivery between agencies.

[59] A number of reforms in response to the Taskforce Report relate to the design and implementation of an integrated service response, including the following:

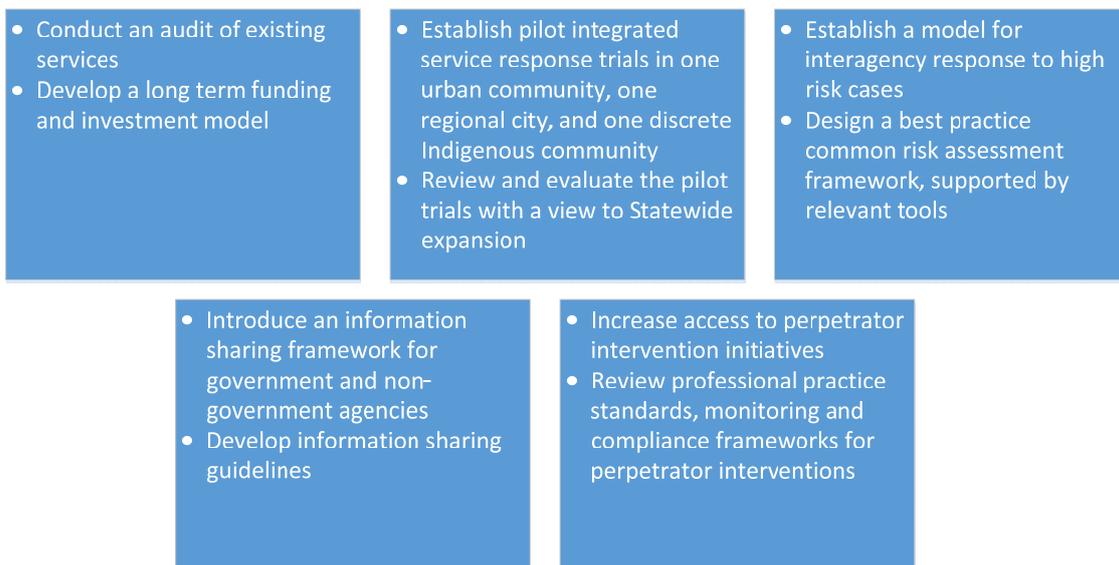


Figure 9: Integrated service response reforms⁸¹

[60] In recommending an integrated service response, the Taskforce explained that, although some degree of complexity is inevitable, unnecessary complication and fragmentation creates barriers, confusion and difficulties in getting the help required. As an illustration of this, it referred to the circumstances of an intimate partner homicide that occurred in 2011 in Queensland:⁸²

In the six months prior to her death, [the victim] had been in contact with her doctor, a hospital, police, and domestic violence support services. All these service providers knew that she was suffering from domestic violence at the hands of her partner, but each one had different information. They were holding different pieces of the puzzle and providing a response based on what they knew. The coronial investigation identified lack of information-sharing, lack of a coordinated response, and lack of a common risk assessment tool as key deficiencies in the service system response.

⁸⁰ Ibid 220, quoting Department for Child Protection and Family Support (WA), *Responding to high risk cases of family and domestic violence: Guidelines for multi-agency case management* (December 2013) 3.

⁸¹ See *Taskforce Report* (2015), Recs 71–83. See generally Queensland Government, above n 61 and n 64.

⁸² *Taskforce Report* (2015) vol 1, 207.

[61] Most of the reforms identified above have commenced, but are still in development. An audit of services has been conducted; the pilot trials have been announced for Logan/Beenleigh, Mount Isa, and Cherbourg; legislation for an information sharing framework has been introduced; and access to therapeutic interventions in prisons has been extended to a wider range of perpetrators.⁸³

[62] The Second Action Plan 2016–19 identifies the need to finalise the foundational work for the implementation of the pilots, including development of a common risk assessment framework, information sharing guidelines, and a process for managing high risk cases.⁸⁴

[63] As part of the total amount committed to implementing the Taskforce reforms, Government funding of \$89.5 million over five years from 2015–16 has been provided to the Department of Communities, Child Safety and Disability Services, including:⁸⁵

- \$3.4 million over five years for the integrated service response pilot in Logan/Beenleigh;
- \$8.2 million over four years to establish new ‘High Risk Teams’ to support the development of integrated service responses, including establishment and expansion of integrated service response trials in other areas;
- \$43.1 million over four years for new and enhanced domestic and family violence services, prioritising High Risk Team areas;
- \$10.3 million over four years for new or enhanced perpetrator interventions, review of practice standards, and development of monitoring tools;
- \$6.8 million over four years to develop training for frontline professionals; and
- \$10.8 million over four years for information and communication technology solutions.

⁸³ See Domestic and Family Violence Implementation Council, above n 64, 29–31; Department of Communities, Child Safety and Disability Services, *Building an integrated service response* (11 September 2016) <<https://www.communities.qld.gov.au/gateway/reform-renewal/domestic-family-violence/building-integrated-service-response>>.

⁸⁴ Queensland Government, above n 64, 14.

⁸⁵ Queensland Government, *Service Delivery Statements of Department of Communities, Child Safety and Disability Services*, Queensland Budget 2016–17, 8–9. This is part of the overall funding of \$198.2 million: see n 63 above. Most of the funding listed at [63] above is to commence from 2016–17.

Access to and disclosure of a person's criminal history information in Queensland

[64] If implemented, a DVDS would, in appropriate circumstances, enable the disclosure of a person's relevant criminal history to another person who may be at risk of domestic and family violence.

[65] There are a number of relevant provisions under current Queensland legislation that affect the ability of Queensland government agencies to disclose a person's criminal history or other information to another person.

[66] The key laws that govern the ability to disclose, and the entitlement to access, personal information (including criminal histories) include the *Information Privacy Act 2009* (the 'IP Act'), the *Right to Information Act 2009* (the 'RTI Act') and the *Criminal Law (Rehabilitation of Offenders) Act 1986*. There are also specific provisions dealing with a person's entitlement to access information on court files.

[67] As explained above, new information sharing provisions will also enable information sharing between certain agencies for the purpose of assessing a threat, or to lessen or prevent a serious threat, to a person's life, health and safety.⁸⁶

OVERVIEW OF RELEVANT QUEENSLAND LAW

Information privacy

[68] The IP Act imposes restrictions on the collection, storage, access, use and disclosure of an individual's 'personal information'⁸⁷ (including criminal history and/or domestic violence information) held by Queensland Government agencies.⁸⁸ It also provides for a person to be given access to their own personal information.⁸⁹

⁸⁶ See [53]–[56] above under the heading 'Information sharing reforms'. These provisions have not yet commenced.

⁸⁷ 'Personal information' is defined in the *Information Privacy Act 2009* (Qld) s 12 as:

information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

⁸⁸ Relevantly, an 'agency' is defined to mean a Minister, department, local government or public authority, and includes a body comprised within the agency: s 18(1), (3). However, particular agencies are excluded, including: the Assembly and members and committees thereof; commissions of inquiry; government owned corporations; and courts and tribunals, and officers or members of a court or tribunal or its registry, in relation to the court's or tribunal's judicial functions: ss 18(2), 19, sch 2.

⁸⁹ This right of access is subject to limitations, including grounds for refusal of access which are set out in s 47 of the *Right to Information Act 2009* (Qld). Section 67(1) of the *Information Privacy Act 2009* (Qld) provides that access to information may be refused under the IP Act on the same grounds as in s 47 of the *Right to Information Act 2009* (Qld).

[69] The IP Act obliges Queensland Government agencies⁹⁰ to comply with the Information Privacy Principles ('IPPs').⁹¹ Among other things,⁹² the IPPs provide that:

- an agency must not use personal information for a purpose other than for which it was obtained (IPP 10); and
- an agency must not disclose personal information to an entity, other than the individual the subject of the personal information (IPP 11).

[70] However, IPPs 10 and 11 contain a number of exceptions to these general rules, including if:⁹³

- the individual the subject of the information has agreed to the use or disclosure;
- the use or disclosure is authorised or required under another law;
- the use or disclosure is necessary for the prevention of crimes;⁹⁴ or
- the use or disclosure is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual, or to public health, safety or welfare.⁹⁵

⁹⁰ In certain circumstances, a service provider which has a service arrangement with an agency (for example, a non-government organisation that delivers domestic violence support services) must also comply with the IPPs in relation to the discharge of its obligations under the arrangement as if it were the entity that is the contracting agency. If these arrangements involve an exchange of personal information, the agency must take all reasonable steps to bind the contracted service provider to the IPPs and the National Privacy Principles ('NPPs'). As a result, the bound contracted service provider assumes privacy obligations as if they were a government agency: ss 34–37, sch 5 (definition of 'bound contracted service provider').

⁹¹ *Information Privacy Act 2009* (Qld) s 27. The IPPs are set out in sch 3 of the Act. All agencies, except Queensland Health, must comply with the IPPs. Queensland Health must comply with the NPPs, which are set out in sch 4 of the Act.

⁹² See, eg, IPP 5, which requires an agency to take all reasonable steps to ensure that a person can find out whether the agency holds documents containing personal information, the type of information held, the purposes for which the information is used and what an individual should do to obtain access to a document containing their personal information, and IPP 6, which requires an agency to give an individual the subject of personal information access to document, if the individual asks for access: *Information Privacy Act 2009* (Qld) sch 3 IPP 5, 6.

⁹³ *Information Privacy Act 2009* (Qld) sch 3 IPP 10(1)(a)–(c), (d)(i), 11(1)(b)–(d), (e)(i). If an agency discloses personal information under these exceptions, it must take all reasonable steps to ensure that the entity to which it is disclosed will not use or disclose the information for a purpose other than the purpose for which the information was disclosed: sch 3 IPP 11(3).

⁹⁴ *Information Privacy Act 2009* (Qld) sch 3 IPP 10(1)(d), 11(1)(e). The Office of the Information Commissioner (OIC) has issued guidelines for Government which explain that: ordinarily, this exception should be used in exceptional circumstances, and not for ongoing or regular uses and disclosures, and the agency must be satisfied there is a sufficient link between the use or disclosure and the enforcement activities such that the use or disclosure is reasonably necessary (that is, it must be more than 'just helpful or expedient'): Office of the Information Commissioner Queensland, *Understanding the Information Privacy Principles—Use and Disclosure to Prevent Harm* (19 July 2013) <<https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/use-and-disclosure/use-or-disclosure-for-law-enforcement-or-revenue-protection>>.

⁹⁵ *Information Privacy Act 2009* (Qld) sch 3 IPP 10(1)(b), 11(1)(c). The OIC guidelines explain that there must be a sufficient link between the use or disclosure of the information and the prevention or lessening of the threat, the agency must believe the use or disclosure is 'necessary' (that is, it involves more than a 'mere chance' of reducing the threat) and the disclosure would normally be to another agency or body with the capacity and authority to intervene to reduce the threat: Office of the Information Commissioner Queensland, *Understanding the Information Privacy Principles—Use and Disclosure to Prevent Harm* (19 July 2013) <<https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/use-and-disclosure>>.

[71] There are also some exceptions to the obligation for agencies to comply with the IPPs, particularly for law enforcement agencies.⁹⁶ The QPS⁹⁷ is not required to comply with IPP 10 or 11 if satisfied on reasonable grounds that non-compliance is necessary for the performance of its activities related to the enforcement of laws.⁹⁸

[72] In limited circumstances, the Information Commissioner may give a 'public interest approval'⁹⁹ that waives or modifies an agency's obligation to comply with the privacy principles¹⁰⁰ when undertaking specific functions or activities. Such an approval may be given only if the Information Commissioner is satisfied that the public interest in the agency's compliance with the privacy principles is outweighed by the public interest in waiving or modifying the agency's compliance.¹⁰¹ While an approval is in force, the affected agency does not contravene the privacy principles if it acts in accordance with the approval.

[73] If a DVDS is introduced in Queensland, it may be necessary, depending on its nature and scope, to enact new legislative provisions to facilitate, among other things, the lawful disclosure of personal information under the scheme.

⁹⁶ See *Information Privacy Act 2012* (Qld) s 29. See also s 28 under which compliance with IPP 10 or 11 is not required in relation to personal information that is related to or connected with personal information of the same individual that has previously been published, or given for the purpose of publication, by the individual. A 'law enforcement agency' is defined to include the Queensland Police Service under the *Police Service Administration Act 1990* (Qld): s 11 sch 5.

⁹⁷ The QPS is established under the *Police Service Administration Act 1990* (Qld) s 2.1. Under s 2.3 of that Act, the functions of the QPS include: (a) the preservation of peace and good order; (b) the protection of the community from unlawful disruption of peace and good order that results, or is likely to result, from commission of offences against the law; (c) the prevention of crime; (d) the detection of offenders; and (e) the upholding of the law generally.

⁹⁸ *Information Privacy Act 2009* (Qld) s 29(1)(a).

⁹⁹ *Information Privacy Act 2009* (Qld) s 157. The OIC guidelines explain that s 157 provides flexibility to waive or modify the privacy principles in unusual or unforeseen situations in which there are competing public interests: Office of the Information Commissioner Queensland, *Power of the Information Commissioner to waive or modify the privacy principles* (19 July 2013) <<https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/privacy-compliance/power-of-the-information-commissioner-to-waive-or-modify-the-privacy-principles>>. They also explain that an application under s 157 should not seek to detract from the privacy rights and protections afforded to individuals, nor should a public interest approval be sought in order to overcome a perceived hindrance caused by the privacy principles. If an agency is seeking an indefinite (rather than a temporary) approval, it must make a strong case for why an approval for a set amount of time will not be sufficient. See also [177] below, in relation to public interest directions granted by the New South Wales Privacy Commissioner for the duration of the two year pilot of the NSW DVDS.

¹⁰⁰ See *Information Privacy Act 2009* (Qld) sch 5 (definition of 'privacy principles'), which includes the IPPs, the NPPs and the obligations imposed on contracted service providers under the IP Act ch 2 pt 4. While the Information Commissioner may give a public interest approval waiving or modifying the privacy principles, there is no power under s 157 to waive or modify ch 3 of the IP Act (which deals with access to and amendment of an individual's personal information).

¹⁰¹ *Information Privacy Act 2009* (Qld) s 157(4). See also Office of the Information Commissioner Queensland, *Power of the Information Commissioner to waive or modify the privacy principles* (19 July 2013) <<https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/privacy-compliance/power-of-the-information-commissioner-to-waive-or-modify-the-privacy-principles>>.

Right to information

[74] The RTI Act gives members of the public a right to apply for access¹⁰² to documents held by Queensland government agencies (whether or not the documents contain the person's personal information),¹⁰³ unless, on balance, it is contrary to the public interest to give access.¹⁰⁴

[75] In determining whether access should be given, the decision-maker must apply the public interest balancing test and weigh up a number of competing interests,¹⁰⁵ one of which is the protection of an individual's right to privacy.¹⁰⁶

Spent convictions

[76] If certain conditions are met, a conviction may become 'spent' under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.¹⁰⁷ This means that the conviction will no longer be disclosable as part of the person's criminal history, unless:¹⁰⁸

- the convicted person wishes to disclose the conviction; or
- the convicted person is expressly required by law to disclose his or her criminal history.

¹⁰² A person who wishes to be given access to a document must make an application to the agency or Minister: *Right to Information Act 2009* (Qld) s 24.

¹⁰³ *Right to Information Act 2009* (Qld) ss 8, 23(1). The RTI Act applies to documents of Ministers (including assistant Ministers), Queensland government departments, local governments, public authorities, government owned corporations and subsidiaries of government owned corporations: ch 1 pt 2.

¹⁰⁴ *Right to Information Act 2009* (Qld) ss 3(1), 23(1). Exclusions of the right are provided for under ch 3 pt 4 (which provides particular circumstances where an entity may refuse to deal with an application) and s 47 (which provides grounds on which an entity may refuse access). For example, an agency may refuse an application if the applicant can reasonably access the documents under another Act or another arrangement made by an agency: ss 47(3)(f), 53.

¹⁰⁵ *Right to Information Act 2009* (Qld) ch 3 pt 5, sch 4.

¹⁰⁶ *Right to Information Act 2009* (Qld) s 49, sch 4 pt 3 item 3.

¹⁰⁷ The *Criminal Law (Rehabilitation of Offenders) Act* applies if: in relation to the conviction, the offender was not ordered to serve any period in custody or was ordered to serve a period in custody not exceeding 30 months; the 'rehabilitation period' for the conviction (10 years for a person convicted on indictment as an adult, or otherwise five years) has expired; and the conviction has not been 'revived' (by the person's conviction for another offence).

¹⁰⁸ *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) s 6. See also s 8(1)(a). There are also provisions in the Act requiring the disclosure of a person's criminal history and convictions (by the person or by the Police Commissioner) if the convicted person is an applicant for a position, office or status specified in the Act, and authorising the disclosure of convictions by another person if, upon application to the Minister, the Minister considers the person has a legitimate and sufficient purpose for the disclosure: ss 9A, 10. These apply in relation to convictions recorded against a person that have become spent convictions. See also s 4(1) which provides that the Act 'shall be construed so as not to prejudice any provision of law or rule of legal practice that requires, or is to be construed to require, disclosure of the criminal history of any person'.

DISCLOSURE OF CRIMINAL HISTORIES BY POLICE

[77] The QPS keeps criminal records for all offenders including, but not limited to, details of arrests, court appearances and convictions.

[78] Generally, a person's criminal history¹⁰⁹ is a written record detailing their past criminal convictions.¹¹⁰

[79] Consistent with its obligations under the IP Act, the QPS will usually release a person's criminal history only to the person to whom the history relates.¹¹¹ However, the QPS may also disclose this information to a third party if the person to whom the history relates has given their consent, or if the disclosure is otherwise authorised by law.¹¹²

ACCESS TO INFORMATION AVAILABLE ON COURT FILES

[80] Any person may apply to access documents which are held by a court in relation to criminal proceedings in Queensland. The registry will require particular information to enable it to locate the relevant court file, such as the file or indictment number, the defendant or party names and information about the documents which are the subject of the request.¹¹³

[81] Different fees will apply depending on which court holds the documents and whether the person is a party to the proceeding.¹¹⁴

Criminal proceedings

[82] There are specific legislative provisions and court rules pursuant to which a person may apply for access to court files in criminal proceedings, subject to certain limitations. In particular:

¹⁰⁹ The meaning of 'criminal history' may vary depending on the legislative context in which it is used.

¹¹⁰ 'Conviction means a finding of guilt, or the acceptance of a plea of guilty, by a court': *Penalties and Sentences Act 1992* (Qld) s 4. When a person is convicted of an offence, the relevant court has a discretion under s 12 of that Act to record or not record a conviction for that offence. Where a conviction is not recorded, it is generally taken not to be a conviction for any purpose and is not entered into any records. However, a conviction that is not recorded may be entered into the person's criminal history for the limited purposes of an appeal against the sentence imposed for the conviction, subsequent sentencing or other proceedings for the same offence, and proceedings against the person for a subsequent offence: s 12(3)(b)(ii), (4)(b).

¹¹¹ A person can apply at any police station for a copy of their criminal history: see Queensland Police, *Documents for purchase* (1 November 2016) <<https://www.police.qld.gov.au/corporatedocs/purchase/>>. It is an offence for members of the police service to improperly disclose or misuse personal information: *Police Service Administration Act 1990* (Qld) ss 10.1.

¹¹² For example, the Police Commissioner may authorise the disclosure of a person's criminal history to a third party for employment screening purposes with the person's consent: *Police Service Administration Act 1990* (Qld) s 10.2A. In addition, the Police Commissioner may authorise the disclosure of a person's criminal history, without their consent, to police and approved agencies for particular law enforcement and policing purposes: s 10.2 ff; *Police Service Administration Regulation 2016* (Qld) pt 15.

¹¹³ The registry may also ask the applicant to provide the reason for the request: see Queensland Government, 'Search and copy court documents' (15 November 2016) <<https://www.qld.gov.au/law/court/court-services/access-court-records-files-and-services/search-and-copy-court-documents/>>.

¹¹⁴ Ibid.

- Any person may ask the proper officer of the court of trial¹¹⁵ before which a person was convicted of an indictable offence to give them a certificate of the conviction.¹¹⁶
- A person, on payment of a prescribed fee,¹¹⁷ may search for or inspect a court file or document in a criminal proceeding in the Supreme or District Court (other than an exhibit or indictment) and/or obtain a certified copy of details noted on an indictment (other than details about the jury), subject to any court order restricting access to the file, and unless the proper officer considers that giving the details may risk a person's safety.¹¹⁸
- A person may, on payment of a prescribed fee,¹¹⁹ inspect an exhibit tendered at trial, unless the proper officer of the court or the trial judge considers it may risk the exhibit's security or a person's safety.¹²⁰
- A person who is not a party to a trial may, on payment of a prescribed fee,¹²¹ apply to the trial judge during or after the trial for an order permitting the copying for publication of an exhibit tendered at the trial.¹²²

115 'Court of trial' means any court from whose finding, sentence, or other decision a person is entitled, under the Criminal Code, to appeal or to apply for leave to appeal: *Criminal Practice Rules 1999* (Qld) r 3 sch 6 (definition of 'court of trial').

116 *Criminal Practice Rules 1999* (Qld) r 72. This will include a copy of the verdict and judgment record (which details the charges on the indictment and the outcomes/orders made in the matter). The proper officer can give the certificate only if no appeal or notification for leave to appeal has been made and the appeal period has ended, or the final decision on the appeal or application has been given, or the appeal or application has been abandoned.

117 The fee is \$17.20: *Criminal Practice (Fees) Regulation 2010* (Qld) s 2, sch item 2.

118 *Criminal Practice Rules 1999* (Qld) r 57. A 'proper officer', of the court, means for the Supreme Court—the sheriff, the deputy sheriff or the registrar; for the District Court—the court's registrar; or for the Magistrates Court—the clerk of the court: *Criminal Law Practice Rules 1999* (Qld) sch 6 (definition of 'proper officer').

119 The fee is \$17.20: *Criminal Practice (Fees) Regulation 2010* (Qld) s 2, sch item 1.

120 *Criminal Practice Rules 1999* (Qld) r 56.

121 The fee for filing an application is \$889.30 in the Supreme Court and \$803.40 in the District Court (a higher fee applies if at least 1 applicant is a corporation), or \$100.90 in the Magistrates Court: *Criminal Practice (Fees) Regulation 2010* (Qld) s 2, sch item 6. Fees also apply for copying an exhibit: *Criminal Practice (Fees) Regulation 2010* (Qld) s 2, sch item 7.

122 *Criminal Practice Rules 1999* (Qld) r 56A. In deciding whether to make the order, the judge or magistrate may have regard to the matters listed in r 56A(4), including whether the copying for publication is in the public interest or another legitimate interest, the nature of the proposed publication, the nature of the exhibit and whether it contains information that is private, confidential or personally or commercially sensitive.

- A person may apply, in writing, to the registrar for a copy of a record in a criminal file in the Magistrates Court,¹²³ subject to particular exemptions¹²⁴ and restrictions.¹²⁵
- Any person may apply to purchase a transcript of a recording of a court proceeding,¹²⁶ subject to any restrictions in an Act or orders of the court.¹²⁷

Domestic and family violence proceedings

[83] Domestic violence proceedings are usually confidential,¹²⁸ and a non-party to the proceeding cannot ordinarily access records or documents.¹²⁹

123 *Justices Act 1886* (Qld) s 154. The applicant must pay the prescribed fee of \$14.30: *Justices Regulation 2014* (Qld) s 20, sch 3, item 5.

124 *Justices Act 1886* (Qld) s 154(3). For example, a person is not entitled to obtain a copy of sensitive evidence, criminal statements made by a child, or a video taped recording of the evidence of an affected child or a special witness.

125 *Justices Act 1886* (Qld) s 154(2). For example, unless the copy is needed to commence an appeal, ministerial approval is required for a copy of any part of a record or transcript of a proceeding that is in a closed court, that is subject to a non-disclosure or non-publication order, where the registrar considers giving an exhibit may risk a person's safety, or where an exhibit contains confidential or sensitive information (including, for example, personal identifying information or information about a person's criminal history).

126 *Recording of Evidence Act 1962* (Qld) s 5B. Applications are made to Auscript: see Auscript, 'Queensland Courts' at <<https://www.auscript.com/justice/courts-and-tribunals/queensland-courts/>>. The applicable fee for a non-party to the proceeding varies depending on the turnaround time within which the transcript is required, the length of time of the matter and the number of folios (folio = 100 words). For example, the estimated fee for a transcript of a 30 min proceeding completed within 24 hours of order confirmation is between \$210 to \$235: see Auscript, 'Quick estimator' at <<https://auscript.secure.force.com/portal/transcriptestimator>>. Certain persons, are entitled to a free copy of the transcript, including the defendant, or the victim of a personal offence, in a criminal proceeding in the Supreme Court or District Court: *Recording of Evidence Regulation 2008* (Qld) pt 3 div 3.

127 *Recording of Evidence Act 1962* (Qld) s 5B(2). A person could not, therefore, obtain a copy of a transcript in relation to matters heard in closed court, or that is subject to a non-disclosure/non-publication order.

128 See at [41] above.

129 *Domestic and Family Violence Protection Act 2012* (Qld) s 160. A person who is a party to the proceeding, a person named in an order made in the proceeding, or an Australian Court may apply to obtain any part of a record, or copies of documents used or tendered in, a domestic violence proceeding. A non-party to the proceeding may seek authorisation by the court or from the registrar to access records or documents. A request to the registrar must be made in writing and addressed to the clerk of the Domestic and Family Violence Protection Court, and state the reason why the person is requesting to copy or use the record or document: s 160, *Domestic and Family Violence Protection Rules 2014* (Qld) r 47.

Repeat and serial perpetration of domestic and family violence

[84] There is some evidence that perpetrators of domestic and family violence not uncommonly engage in subsequent domestic and family violence behaviours. However, existing studies are limited, and specific to particular jurisdictions. They do not always distinguish between violence against the same person or in the same family ('repeat' perpetration) and subsequent violence against another, unconnected person ('serial' perpetration).¹³⁰ Nor do they use the same approach as to what constitutes subsequent domestic and family violence behaviour.¹³¹ Rates of repeat or serial perpetration vary considerably between studies, from less than 10% to more than 50%. It does appear, however, that those with a previous criminal history may be more likely to engage in subsequent serious domestic and family violence behaviours.

[85] A study of criminal court cases occurring in 2008 in Washington State found a slightly higher rate of subsequent convictions for criminal offences by domestic violence offenders (36%) than non-domestic violence offenders (30%). It also found that domestic violence offenders were more likely than non-domestic violence offenders to commit a domestic violence offence within 36 months of the original offence (18% compared to 4% respectively).¹³²

[86] In Burnaby, British Columbia, a random sample of offenders involved in a domestic violence incident in 2007 showed that one third had reoffended against the same person within a 24 month period. Of those, one third reoffended in the first month, and three quarters in the first six months. However, few of the repeat offenders committed a subsequent serious violent offence against the victim (2.5%), with the most common subsequent offences being breach of a no contact order (29%), assault (20%) and threats (18%). The study found that violent recidivists, compared to those who did not reoffend or did not reoffend violently, were more likely to have signs of mental illness (40% vs 22%), a prior criminal history (35% vs 17%), a history of violence in relationships (47% vs 29%), a history of violence (47% vs

¹³⁰ This distinction and terminology is drawn from Association of Chief Police Officers of England, Wales and Northern Ireland, 'Tackling Perpetrators of Violence Against Women and Girls' (ACPO Review for the Home Secretary, September 2009) 8.

¹³¹ Most focus on criminal offences, but different measures are used including complaints and allegations, criminal charges, convictions and sentences.

¹³² E Drake, L Harmon and M Miller, 'Recidivism Trends of Domestic Violence Offenders in Washington State' (Document No 13-08-1201, Washington State Institute for Public Policy, August 2013). This study analysed criminal history database information for the 155 380 offenders dealt with in Washington's criminal courts in 2008, comparing offenders charged with or convicted of a domestic violence related offence and other offenders, and examined recidivism rates over a 36 month follow up period. The study also found that, over the eight year period from 2001–08, domestic violence offenders had consistently higher rates of subsequent criminal charges.

35%), breaches of no contact orders (56% vs 28%) and continued contact with the victim (93% vs 59%).¹³³

[87] In a 2003–04 review of serious domestic violence allegations reported to the Metropolitan Police Service, Greater London, it was found that at least 70% of perpetrators had a previous criminal history (most for non-domestic violence offences) and at least one third subsequently reoffended, either against the same or a new partner. In four of those cases, the victim was murdered by the perpetrator.¹³⁴

[88] A 2006 analysis of data from the Northumbria Police, England found that half of the domestic violence perpetrators included in the sample were involved in at least one additional domestic violence incident within the following three years, and that 18% of those had reoffended against a different partner. It also found, however, that, on average, domestic violence perpetrators were subsequently arrested more often for non-domestic violence offences than domestic violence offences.¹³⁵

[89] A 2009 review by the Association of Chief Police Officers of England, Wales and Northern Ireland estimated, from available police data, that there may be some 25 000 serial perpetrators of intimate partner violence across those jurisdictions, with some involving three or more alleged victims.¹³⁶

[90] Researchers in Wales have more recently observed, however, that although there is evidence of repeat perpetration of domestic and family violence, ‘our understanding of the ways in which perpetrators may abuse subsequent partners once an initial abusive relationship is over is limited’.¹³⁷ Using a random sample of 100 domestic violence perpetrators convicted in Wales and information from police,

133 AV McCormick, IM Cohen and D Plecas, *Reducing Recidivism in Domestic Violence Cases* (University of the Fraser Valley, Centre for Public Safety and Criminal Justice Research, 2011) 9–10. This study examined a sample of 239 police reports of domestic and family violence occurring in 2007 from the police records for the Royal Canadian Mounted Police, Burnaby Detachment. Recidivism was defined as a reappearance of the offender as a subject of complaint against the same person, whether due to a new charge or a new complaint from the same victim, and included offences for non-compliance with no contact orders, threats, and physical violence.

134 L Richards, ‘“Getting away with it”: A Strategic Overview of Domestic Violence Sexual Assault and “Serious” Incident Analysis’ (Metropolitan Police, 16 March 2004) 22–3. This review involved analysis of 143 offences and 146 perpetrators for offences constituting serious domestic violence allegations recorded in January–February 2001, including actual bodily harm, grievous bodily harm, kidnapping, attempted murder and murder. It found that the victim had reported domestic violence allegations to police in 42% of cases and that, whilst many (44%) did not want to prosecute the perpetrator, all victims wanted the incident recorded for future reference: 24, 26. The researchers commented (at 23), without reference to a breakdown of specific data, that:

Once a violent abuser leaves the partner, it does not mean the violence ends. Evidence suggests that many find new partners to abuse. This is why they need to be risk-assessed and managed. Information about specific abusers needs to be shared amongst professionals.

135 M Hester and N Westmarland, ‘Domestic violence perpetrators’ (2006) 66(1) *Criminal Justice Matters* 34, 35. This study analysed perpetrator profiles of 692 individuals reported to police for a domestic violence incident in April 2001, June 2001, March 2002 and November 2004–July 2005, and included a three year follow up of 356 of those perpetrators.

136 Association of Chief Police Officers of England, Wales and Northern Ireland, above n 130, 19–28. This was extrapolated from initial research from the Wiltshire Police Force which identified 126 serial perpetrators in the period 2006–2009, and subsequent data collected from a sample of 26 of the 43 other Home Office police forces in England, Wales and Northern Ireland, including the Metropolitan Police Service. ‘Serial perpetrator’ was defined for this purpose as a perpetrator alleged to have used or threatened violence against two or more victims who are unconnected to each other and who are or were intimate partners of the perpetrator.

137 A Robinson, A Clancy and S Hanks, ‘Prevalence and Characteristics of Serial Domestic Abuse Perpetrators: Multi-Agency Evidence from Wales’ (Final Report, November 2014) 9.

probation and support service agencies, the researchers examined estimates of the prevalence of serial perpetration. The study found that prevalence estimates varied considerably between agencies, ranging from 4% to 20%, with police data yielding the highest estimates. It also found that different agencies identified different individuals within the sample as serial perpetrators.¹³⁸

[91] The researchers concluded that, whilst serial perpetrators differ to some extent in terms of risk factors — for example, they are more likely than other domestic violence perpetrators to have past assault of family and stranger/acquaintance violence, recent escalation in violence, past use of weapons, and denial of spousal assault — the evidence does not suggest that serial perpetrators represent a qualitatively different group that is distinctive and can be reliably identified:¹³⁹

Establishing conclusively who is or who is not a domestic abuse perpetrator, let alone whether their offending can be considered to be repeat, serial and/or high risk, is indeed a very tenuous exercise. This must be borne in mind when considering the feasibility of developing shared definitions and practices around the identification and management of serial perpetrators. The objective of reliably distinguishing ‘serial domestic abuse perpetrators’ from those who are not *might* represent an exercise in futility, and one that *might* distract busy practitioners from responding effectively to the most prolific and dangerous perpetrators. (emphasis in original)

[92] A recent New South Wales study looked at reoffending data for 14 660 adults who had been found guilty of a ‘domestic violence’ related offence in a New South Wales Local Court or District Court between 1 January 2011 and 30 June 2012 and who had received a non-custodial penalty.¹⁴⁰ It found that roughly 8% (1109) of those offenders were convicted of a ‘violent’ domestic violence related offence within two years of the finalisation of the original offence. It also found that both criminal history and other factors were associated with such reoffending (see figure 10 below).¹⁴¹

¹³⁸ Ibid 11–22, 37. The difference in results between agencies was attributed mainly to the different definitions and information being used.

¹³⁹ Ibid 22, 36. The study also found that serial perpetrators are likely to be repeat offenders, but not vice versa: 30.

¹⁴⁰ R Fitzgerald and T Graham, ‘Assessing the risk of domestic violence recidivism’ (Crime and Justice Bulletin: Contemporary Issues in Crime and Criminal Justice No 189, NSW Bureau of Crime Statistics and Research, May 2016). The study used existing administrative data from the NSW Bureau of Crime Statistics and Research Reoffending Database, and accordingly did not measure other situational or social factors that contribute to domestic and family violence. It was also limited to convictions and so does not capture all incidents of domestic and family violence. The reference to ‘domestic violence’ in that study is a reference to violence between current or former intimate partners.

¹⁴¹ Ibid 4–5, 9. ‘Violent’ domestic violence related offences included murder, attempted murder and manslaughter, serious assault, common assault, sexual assault, abduction and kidnapping and deprivation of liberty/false imprisonment, stalking, harassment and private nuisance and threatening behaviour: 3.

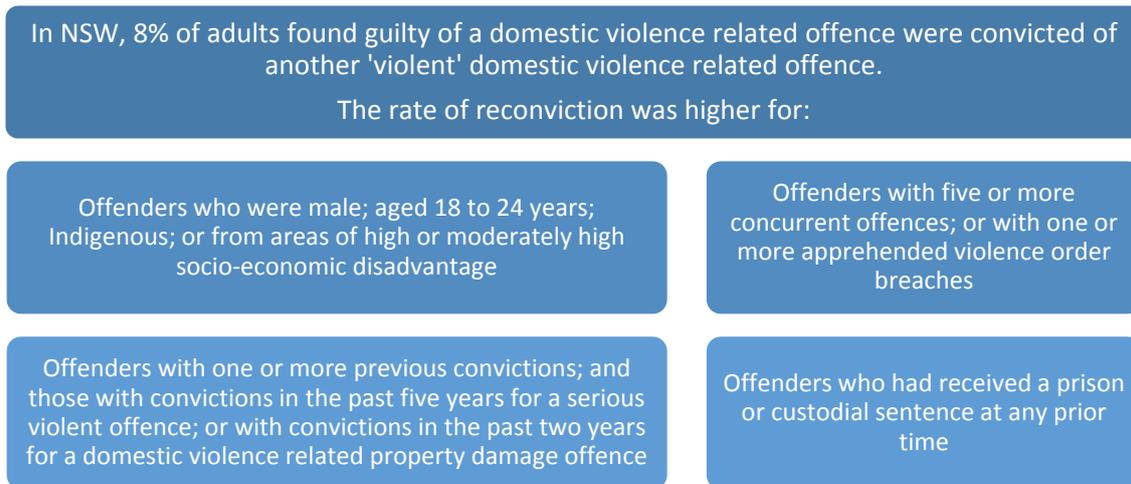


Figure 10: NSW study of domestic violence reoffending¹⁴²

[93] A 2016 study in Victoria found a potentially higher level of reoffending. It looked at a total of 1898 offenders who had been sentenced in the Victorian Magistrates' Court in 2009–10 for contravention of a family violence intervention order or family violence safety notice.¹⁴³ The study found that 52.5% (997) of those offenders were sentenced for a new offence at some time in the subsequent five years. This rate was higher than that for the general offender population sentenced in 2004–5 (37%).¹⁴⁴

[94] The study also found that, whilst subsequent offending covered a wide range of offence types, the most common were contravention/breach (24%) and assault/cause injury (22%). Other subsequent offences included general driving offences (17.7%), unauthorised driving (16.4%), criminal damage (14%), threats to kill/injure (7.8%) and stalking/harassment (3.8%). Homicide featured in 0.1% of subsequent cases.¹⁴⁵

[95] The study was unable to determine how many of the subsequent offences occurred in the context of domestic and family violence. However, an analysis of 31 cases in which sentencing remarks were available showed that 17 involved offences against a current or former intimate partner, another family member, or someone connected to a current or former intimate relationship.¹⁴⁶

[96] The study also identified factors associated with reoffending, including previous convictions (see figure 11 below).

¹⁴² Ibid 4–5.

¹⁴³ Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (August 2016). This study was limited to an analysis of subsequent sentence events, and so does not capture all reoffending.

¹⁴⁴ Ibid 33.

¹⁴⁵ Ibid 35–6.

¹⁴⁶ Ibid 35.

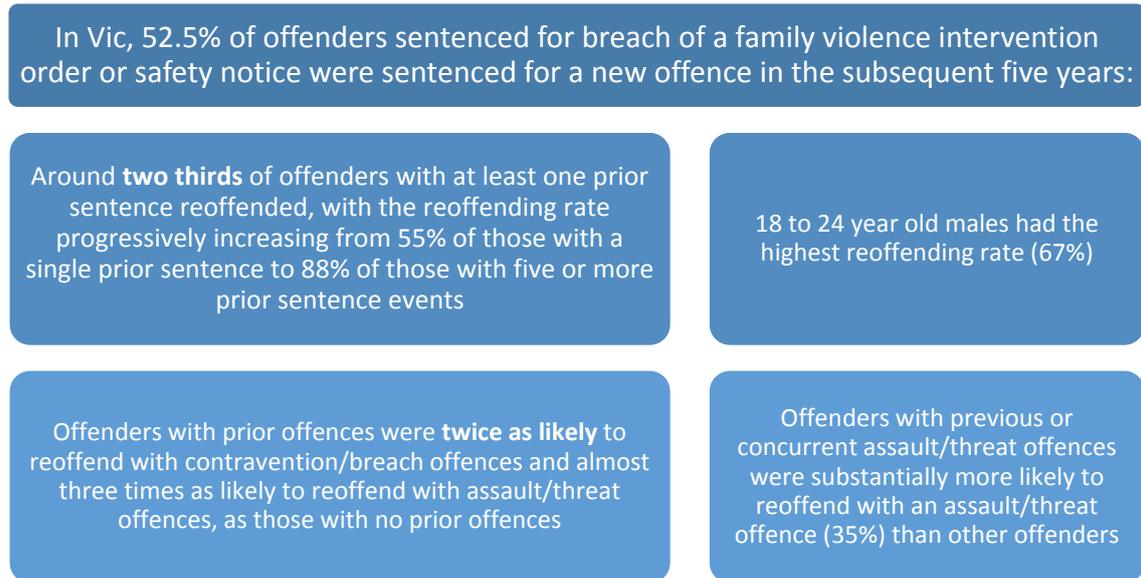


Figure 11: Victorian study, factors associated with domestic violence reoffending¹⁴⁷

[97] In Queensland, there is an absence of reported data on recidivism in this context. However, available information shows that most respondents to a protection order application in 2015–16 had only one application made against them in the previous five years (75% of male respondents and 81% of female respondents). In the same period, fewer than one in four (23%) male respondents had two or three applications linked to them, and less than 1% of respondents had more than five applications linked to them.¹⁴⁸

¹⁴⁷ Ibid 45–8, 53.

¹⁴⁸ Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 24.

Domestic violence disclosure schemes in other jurisdictions

INTRODUCTION

[98] Several other jurisdictions have recently introduced a DVDS. Their stated aim is to increase the safety of a person who may be at risk of domestic violence by enabling the person to find out if their current (or, in some cases, former partner) has a previous history of domestic violence and/or certain criminal offences, so that the person can make informed choices about their relationship and access support services.

[99] England and Wales introduced a national DVDS in 2014. Scotland and New Zealand commenced similar schemes in October and December 2015, respectively.

[100] A DVDS is also currently being piloted in New South Wales, and is being considered in the context of wider reviews relating to domestic violence currently underway in South Australia¹⁴⁹ and the Northern Territory.¹⁵⁰

[101] In each of the jurisdictions in which a DVDS is operating, the relevant DVDS has been designed to operate within the existing legal frameworks that govern the disclosure of information associated with a person's criminal history and other personal information. Accordingly, the laws of each jurisdiction inform the nature and scope of their particular scheme, including the legal tests that must be met before a disclosure can be made, and the type of information that can be disclosed.

[102] Western Australia and Victoria have also recently considered whether to introduce a DVDS in the context of wider reviews relating to domestic and family violence.

[103] In June 2014, the Law Reform Commission of Western Australia completed a review entitled 'Enhancing Family and Domestic Violence Laws', which considered, in part, whether Western Australia should introduce a DVDS.¹⁵¹ The Commission did not make any recommendation about the introduction of a DVDS in Western Australia, stating in its final report:¹⁵²

Given the significant unease about the introduction of a public disclosure scheme for family and domestic violence and the Commission's view that [such a scheme] is fraught with potential difficulties, it has not made a recommendation in this regard. The Commission notes that the United Kingdom scheme has only been

¹⁴⁹ Government of South Australia, *Domestic Violence Discussion Paper* (July 2016) 51–8.

¹⁵⁰ Department of Attorney-General and Justice (NT), *Domestic and Family Violence Proposals Issues Paper* (September 2015) 2–3. The Tasmanian Government has commented that it is 'watching' the approaches taken by other jurisdictions, including the pilot program introduced in New South Wales: Tasmania, *Parliamentary Debates*, House of Assembly, 16 August 2016, 76 (Hodgman, Premier).

¹⁵¹ *LRCWA Final Report* (2014).

¹⁵² *Ibid* 180. The Commission considered that domestic and family violence sector reforms in Western Australia should focus on improved service integration and coordination between agencies (including information sharing) 'to ensure appropriate decision-making in order to enhance victim safety and increase perpetrator accountability': 19.

rolled out nationally since March 2014 and suggests that the Western Australian government continue to monitor and review the effectiveness of the United Kingdom scheme in terms of reducing family and domestic violence and improving safety for victims (and potential victims) to ensure that any future proposal for a scheme in Western Australia is evidence-based.

[104] In March 2016, the Victorian Royal Commission into Family Violence released its report and recommendations, which included a consideration of risk assessment and management approaches, including ‘family violence disclosure schemes’.¹⁵³ The Commission recommended against the introduction of a DVDS in Victoria, stating that:¹⁵⁴

Managing the dangers posed by perpetrators is also achieved through effective monitoring by the police, the courts and corrections agencies. A perpetrator register scheme is being considered by other jurisdictions in Australia but, because of concerns about the effectiveness of such schemes in ensuring victim safety, and pending the results of a trial in New South Wales, the Commission does not recommend the introduction of such a register.

ENGLAND AND WALES

[105] The DVDS in England and Wales was introduced as a national scheme in 2014. The scheme — also known as ‘Clare’s law’ — provides a framework for police to disclose information about a person’s history of domestic violence to a new or existing partner.

[106] The introduction of the scheme was prompted by public demand for improved responses to domestic violence following the 2009 murder of Clare Wood by her former partner (who, unknown to Ms Wood, had a previous history of domestic violence). The Coroner’s report into Ms Wood’s death recommended that, subject to appropriate risk assessment and safeguards, consideration be given to the disclosure of such convictions and their circumstances to potential victims, in order that they can make informed choices about matters affecting their safety and that of their children.¹⁵⁵ The murder of Ms Wood had followed a review of police powers to deal with perpetrators of domestic violence, which recommended a policy that persons at risk of violence have the ‘right to know’ about the relevant information in the possession of the State.¹⁵⁶

¹⁵³ *Vic Royal Commission Report* (2016).

¹⁵⁴ *Ibid* vol 1, 20; see also 145. The Royal Commission recommended the establishment of risk assessment and management panels to provide a coordinated multi-agency approach and dedicated case management service for persons at highest risk, as well as the introduction of a family violence information-sharing regime: vol 1, 147, Rec 4; vol 1 ch 7, Rec 5.

¹⁵⁵ *UK Consultation Paper* (2011) 5, citing the Coroner’s report published in July 2011.

¹⁵⁶ *Ibid*, referring to Association of Chief Police Officers, *Tackling perpetrators of violence against women and girls: ACPO review for the Home Secretary* (2009). A 2014 report on improving the police response to domestic abuse also found that the police response to domestic violence in England and Wales was inadequate and that a range of changes was needed to improve policy responses to ensure victims were not subject to unnecessary risk: Her Majesty’s Inspectorate of Constabulary, *Everyone’s Business: Improving the Police Response to Domestic Abuse* (2014) 6–7.

[107] The introduction of the national DVDS followed a 12 week public consultation process¹⁵⁷ and a 14 month pilot.¹⁵⁸ The DVDS in England and Wales operates pursuant to existing common law and legislative powers.¹⁵⁹

[108] The Home Office published a review of the pilot and a 12 month review of the national DVDS.¹⁶⁰ Those reviews were limited to assessments of how the processes built into the scheme were working in practice; they did not consider the impact of the scheme on victims or perpetrators, nor did they analyse the economic impact of the scheme.¹⁶¹

[109] The report on the pilot assessment found that the majority of respondents who had received a disclosure felt that the information 'had helped them to make more informed choices about their relationship', and that they would be more likely to keep a closer look out for signs of domestic abuse and/or seek support from family and friends or support services.¹⁶² Practitioners highlighted the importance of having a safety plan in place, and of the need for sufficient support services to provide the potential victim with follow up support, whether or not a disclosure is made.¹⁶³

[110] The report on the assessment of the national DVDS noted that, between 8 March 2014 and 31 December 2014, a total of 4724 applications were made under the scheme. Of these, 1938 (approximately 40%) resulted in a disclosure.¹⁶⁴

[111] The report also included feedback from workshops with a small number of practitioners who delivered the scheme, in which it was found that police and partner agencies were 'largely positive' about the DVDS, but that there was a need for better consistency in the provision of the DVDS, and in providing follow up support, regardless of whether a disclosure is made.¹⁶⁵

157 See further *UK Consultation Summary* (2012).

158 From July 2012 to September 2013, a pilot to test a DVDS took place across four police force areas (Wiltshire, Greater Manchester and Nottinghamshire in England, and Gwent in Wales). During the pilot, 386 applications for disclosure were made. Of these, 231 were 'right to ask' requests and 155 were 'right to know' requests. In total, 111 requests resulted in disclosure: *UK Pilot Assessment* (2013).

159 See *UK Home Office Guidance* (2013) 3, 11, which notes that any disclosure must, in particular, have due regard to the common law (police powers to share information for policing purposes and the common law duty of confidence), the *Data Protection Act 1998* (UK), the *Human Rights Act 1998* (UK) and art 8 of the European Convention on Human Rights.

160 *UK Pilot Assessment* (2013); *UK National Roll-Out Assessment* (2016).

161 *UK Pilot Assessment* (2013) 2; *UK National Roll-Out Assessment* (2016) 3. Costs were absorbed within existing local budgets: *UK Pilot Assessment* (2013) 9.

162 *UK Pilot Assessment* (2013) 4, 14. The pilot assessment drew on pilot police force monitoring data, focus groups with practitioners, and 38 questionnaires completed by those who had applied for and/or received a disclosure.

163 *Ibid* 4–5.

164 *UK National Roll-Out Assessment* (2016) 4.

165 *Ibid* 4–5.

Overview and key features of the DVDS in England and Wales

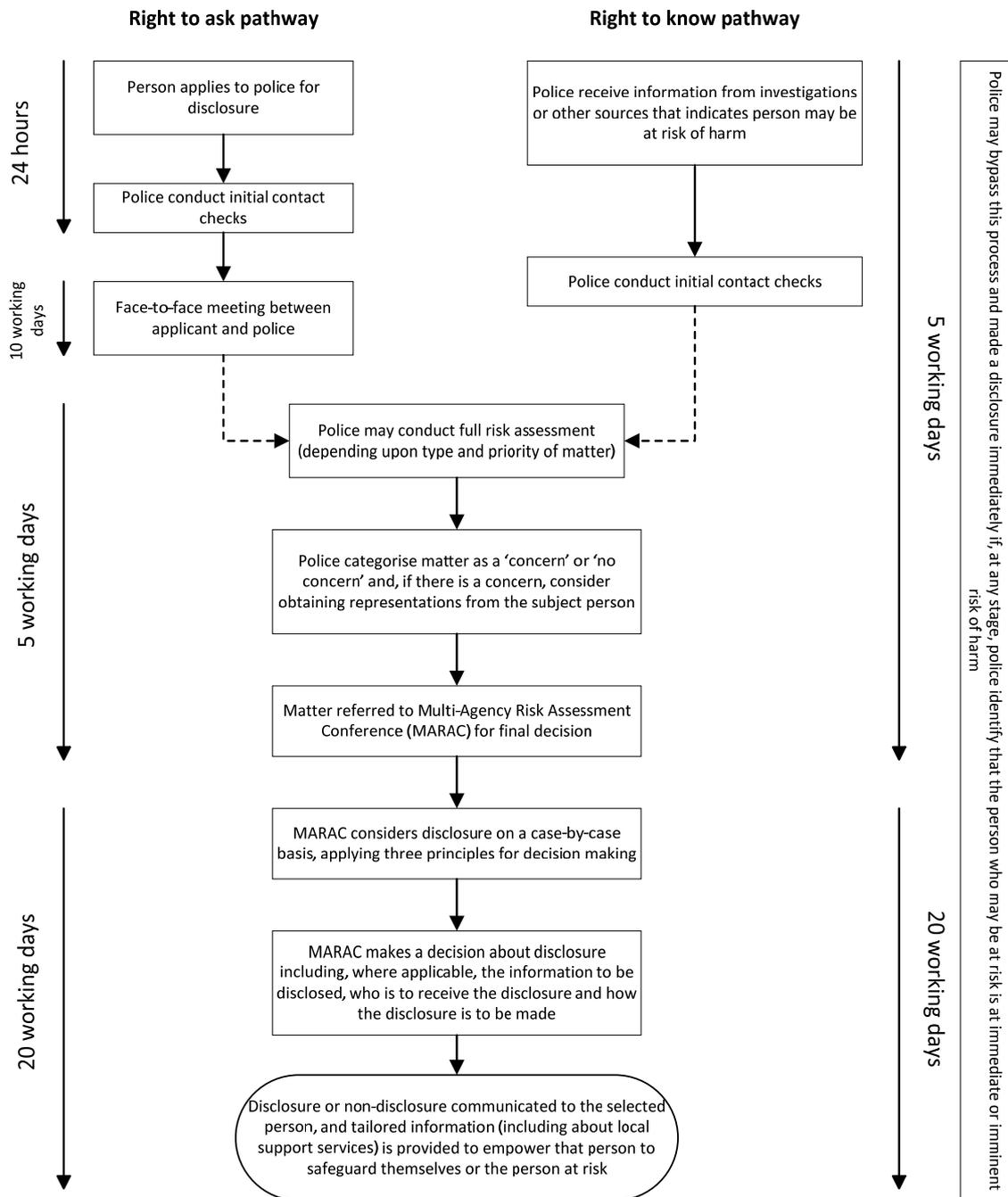


Figure 12: Overview of DVDS in England and Wales

[112] The DVDS in England and Wales has two distinct pathways for disclosing information — the 'right to ask' pathway and the 'right to know' pathway.¹⁶⁶

166 Ibid.

[113] The right to ask pathway is triggered when a member of the public contacts the police directly to request a disclosure.¹⁶⁷ The applicant may be a person ('the person who may be at risk') who is in a relationship with a potentially violent partner ('the subject'), or a third party who has concerns for the person's safety.¹⁶⁸ The police complete initial police checks and an initial risk assessment to establish if there are any immediate concerns, and attend a face-to-face meeting with the applicant to verify their identity and obtain additional information about the application.¹⁶⁹

[114] The right to know pathway is triggered by the police, acting on indirect information or intelligence from police or partner agencies that indicates that a person may be at risk of harm from their partner.¹⁷⁰

[115] If, at any stage of the process under either pathway, the police identify that the person who may be at risk is at immediate or imminent risk of harm, they may bypass the decision-making forum stage and make a disclosure immediately. For non-urgent matters, the process will generally be completed within 35 days.¹⁷¹

[116] For both the right to ask and right to know pathways, the police conduct checks and risk assessments for the person who may be at risk and the subject.¹⁷²

[117] On the basis of these checks and assessments, the police categorise the case as a 'concern' or 'no concern'¹⁷³ and refer the case to a local multi-agency forum, called a Multi-Agency Risk Assessment Conference ('MARAC')¹⁷⁴ (or, if that

¹⁶⁷ *UK Home Office Guidance* (2013) 14. The applicant must provide information about the relationship between the person who may be at risk and the subject, and explain their concerns or reasons for the application. They must also indicate whether the subject is aware of the application and if they have (or would have) concerns about the subject knowing of the application: 15, 35.

¹⁶⁸ *Ibid* 14.

¹⁶⁹ *Ibid* 16, 18–19.

¹⁷⁰ *Ibid* 21.

¹⁷¹ *Ibid* 16–17, 23. For urgent matters, police must also take immediate action to safeguard those at risk.

¹⁷² *Ibid* 19–20, 21.

¹⁷³ *Ibid* 22. A disclosure application is categorised as a 'concern' if the person is at risk from the subject based on a profile of the subject that takes into account whether the subject has convictions for an offence related to domestic violence, is a serial perpetrator of domestic violence or has demonstrated concerning behaviour toward the person who may be at risk, or there is intelligence about the subject's previous violent offending (for example, cases not proceeded with). A disclosure application is categorised as 'no concern' where the subject has no disclosable convictions for an offence related to domestic violence, there is no intelligence indicating that the subject's behaviour may cause harm to the person who may be at risk, or there is insufficient information or intelligence to register a concern: 22–3. Where there is a concern, police must consider if representations should be sought from the subject to ensure that they have all the necessary information to make a disclosure decision. In doing so, police must consider if there is good reason not to seek representations, for example, if there is a need for disclosure in an emergency or if doing so could put the person at risk: 22.

¹⁷⁴ *Ibid* 23. A MARAC includes representatives from criminal justice agencies, health, child protection and housing practitioners, independent domestic violence advocates and other specialised personnel. A MARAC convenes locally at least once a month to share information and assess the highest risk cases of domestic abuse, and to create safety plans for people at risk: Home Office Violent and Youth Crime Prevention Unit (VCYU) and Research and Analysis Unit (RAU), *Research into Multi-Agency Risk Assessment Conferences (MARACs)* (June 2011) 5–6, 28.

is not available, another suitable multi-agency forum).¹⁷⁵ The forum makes the decision about whether a disclosure should be made, and who should receive the disclosure. The forum also decides which agency is the most suitable to make the disclosure.¹⁷⁶ All disclosure decisions are made on a case-by-case basis.¹⁷⁷

[118] The forum's decision-making process requires a consideration of the following three 'principles'.¹⁷⁸

[119] First, the forum must be satisfied that there is a pressing need for the disclosure to prevent criminal abuse or harm, and that the disclosure is:¹⁷⁹

- lawful (that is, necessary to prevent the person from becoming a victim of a crime related to domestic violence); and
- necessary and proportionate to protect the person from harm.¹⁸⁰

[120] The 'proportionality aspect' of the test requires the forum to also consider whether the person whose information may be disclosed should be invited to make representations,¹⁸¹ as well as the extent of the information that needs to be disclosed.¹⁸²

[121] Second, the forum must ensure that the disclosure complies with the eight data protection principles in the *Data Protection Act 1988* (UK).¹⁸³

[122] Third, the forum must consider whether the subject should be notified that their personal information may be disclosed to the person who may be at risk under the scheme. This consideration must be balanced against an assessment of the potential to escalate the risk of harm to the person who may be at risk.¹⁸⁴

¹⁷⁵ Ibid 23. The guidance states that a suitable multi-agency forum should consist of the police, the Independent Domestic Violence Advocate and the probation service, as well as representatives from some or all of the following agencies: the prison service, social services, health, housing and education services, the women support service, victim support service, male support service and the perpetrator programme.

¹⁷⁶ Ibid 25. The guidance states that it is 'good practice' to consider a joint agency approach to disclosure.

¹⁷⁷ Ibid 24–5.

¹⁷⁸ Ibid 23–4.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid 24. The disclosure must be consistent with the requirements of the *Human Rights Act 1998* (UK) sch 1 pt 1 art 8(2) and the *Data Protection Act 1998* (UK) schs 2, 3.

¹⁸¹ Ibid. In relation to this requirement, see *X (South Yorkshire) v Secretary of State for the Home Department* [2012] EWHC 2954 (Admin) (24 October 2012), in which it was held that the guidance for the Child Sex Offender Disclosure Scheme ('CSODS') ought to have set out a requirement that the decision-maker consider, in the case of any person about whom disclosure might be made, whether that person should be asked to make representations. It was stated that the person should generally be given such an opportunity, unless there is an emergency or the seeking of representations might itself put the child at risk. Changes were subsequently made to both the CSODS and the *UK Home Office Guidance* to reflect this ruling: *UK Pilot Assessment* (2013) 7.

¹⁸² *UK Home Office Guidance* (2013) 24.

¹⁸³ Ibid. Schedule 1 to the *Data Protection Act 1988* (UK) lists eight data protection principles. The principles require, among other things, that personal data is processed fairly and lawfully and in accordance with the rights of data subjects, is obtained only for one or more specified and lawful purposes, and is not further processed in any manner incompatible with that purpose or those purposes.

¹⁸⁴ *UK Home Office Guidance* (2013) 24.

[123] Information that may be disclosed includes information about:¹⁸⁵

- convictions (including cautions, reprimands and final warnings) for ‘violent offences’ (for example, battery, common assault, murder, manslaughter, kidnapping, false imprisonment, harassment and putting people in fear of violence); and
- other relevant intelligence (for example, cases not proceeded with, intelligence concerning violent offences, or concerning behaviour toward former partners) where it is considered that the person is at risk of harm from the subject.¹⁸⁶

[124] Spent convictions, as defined under the *Rehabilitation of Offenders Act 1974* (UK), cannot be disclosed.¹⁸⁷

[125] If a decision is made to disclose information, the disclosure must contain sufficient information to allow the person who may be at risk to make an informed choice about the relationship. The disclosure must be accompanied by a safety plan tailored to the needs of the person who may be at risk and based on all relevant information, and which identifies the service provision and the agency leads who will deliver ongoing support to the person.¹⁸⁸

[126] The disclosure is to be made by way of a verbal disclosure to the person the forum has identified as best placed to safeguard the person who may be at risk from harm (in most cases, this will be the person who may be at risk).¹⁸⁹ There is to be no written correspondence about the disclosure.

[127] The disclosure may be used only for the purpose for which it is shared (that is, to safeguard the person who may be at risk). The person receiving the disclosure must sign an undertaking that they agree the information is confidential and they will not disclose it further, and acknowledge that legal proceedings could result if confidentiality is breached.¹⁹⁰

[128] If a decision is made not to disclose information and the request was triggered by a ‘right to ask’ application, the forum is required to advise the applicant in person that there is no information to disclose. The applicant is to be advised that a lack of disclosable information does not mean that they are not at risk of harm, and be offered support if they have concerns about their partner. If a decision has been

¹⁸⁵ Ibid 4, 12, 22.

¹⁸⁶ See *UK Home Office Guidance Annex A* for a non-exhaustive list of the types of offences or allegations that may be disclosed under the DVDS scheme. A ‘violent offence’ is defined in the *UK Home Office Guidance* to mean an offence which leads, or is intended or likely to lead, to a person’s death or to physical injury to a person: 8.

¹⁸⁷ *UK Home Office Guidance* (2013) 12. However, police may consider the impact of a spent conviction when conducting a risk assessment, regardless of the fact that the conviction cannot be disclosed.

¹⁸⁸ Ibid 24–5.

¹⁸⁹ Ibid 25.

¹⁹⁰ Ibid. If a person is unwilling to sign a confidentiality undertaking, then police must consider if a disclosure should still be made. The outcome of that decision is required to be recorded and considered in the relevant risk assessment, the decision-making process and the safety plan.

made not to disclose information and the request was triggered by a ‘right to know’ application, the decision and the reasons are to be recorded.¹⁹¹

SCOTLAND

[129] In 2014, a multi-agency group led by Police Scotland was tasked with ‘exploring the potential benefits and issues associated with introducing an equivalent to Clare’s Law in Scotland’.¹⁹² This group developed a Standard Operating Procedure for a domestic violence disclosure scheme in Scotland.¹⁹³

[130] Between late November 2014 and 31 May 2015, the Disclosure Scheme for Domestic Abuse Scotland (‘the Scottish DVDS’) was piloted in two locations. The Scottish DVDS was introduced nationally from 1 October 2015.

[131] The aim of the Scottish DVDS is to prevent domestic abuse by enabling a person who may be at risk (or a concerned third party) to make enquiries about another person, where that other person is in a relationship and there are concerns that he or she may be abusive. The scheme also aims to enable potential victims to make informed choices about the continuation of a relationship, and to access help and support in making that choice.¹⁹⁴

[132] The Scottish DVDS is broadly equivalent to the DVDS in England and Wales. It is administered by Police Scotland and is designed to operate within Scotland’s existing legislative framework, particularly the *Police and Fire Reform (Scotland) Act 2012 (Scot)*,¹⁹⁵ the *Human Rights Act 1998 (UK)* and the *Data Protection Act 1998 (UK)*.¹⁹⁶

[133] Like the DVDS in England and Wales, the Scottish scheme has two disclosure pathways. The ‘right to ask’ pathway permits concerned persons to apply for a disclosure, and the ‘power to tell’ pathway applies where police receive information which may indicate that a person is at risk.¹⁹⁷

[134] Under the scheme, police are to conduct a series of checks and risk assessments. A multi-agency meeting will make a recommendation to Police Scotland regarding whether there should be a disclosure, in particular by considering

191 Ibid 25–6.

192 Scottish Government, *Equally safe: Scotland’s Strategy for Preventing and Eradicating Violence Against Women and Girls*, Strategy (June 2014) 42.

193 Information provided by Police Scotland, Domestic Abuse Coordination Unit, 17 October 2016. The Standard Operating Procedure is currently under review, and is not publicly available.

194 Police Scotland, *Disclosure Scheme for Domestic Abuse Scotland* (2016) <<http://www.scotland.police.uk/contact-us/disclosure-scheme-for-domestic-abuse-scotland>>; *Police Scotland Factsheets*.

195 See, in particular, *Police and Fire Reform (Scotland) Act 2012 (Scot)* s 32: Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

196 Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

197 Ibid; *Police Scotland Factsheets*.

if the disclosure is lawful,¹⁹⁸ necessary and proportionate.¹⁹⁹ Police Scotland will make the final decision regarding disclosure of information. The information that may be disclosed includes relevant convictions and other relevant information.²⁰⁰

[135] If the police form the view that a person is at risk and requires protection from harm, they are to take immediate action. Otherwise the process, including any disclosure of information, is to be completed within 45 days.²⁰¹

[136] During the pilot period, there were 59 applications for disclosure.²⁰² Subsequently, between 1 October 2015 and 29 September 2016, 1044 requests for disclosure were made under the national scheme. Of those requests, 443 disclosures (approximately 40%) were made.²⁰³

[137] There was a pilot evaluation conducted, which focussed upon process and the accurate recording and management of information.²⁰⁴ A further evaluation of the Scottish DVDS is planned, and is intended to engage with victims and measure the impact of the scheme.²⁰⁵

NEW ZEALAND

[138] In December 2015, New Zealand introduced a Family Violence Information Disclosure Scheme (the 'NZ DVDS') to facilitate the disclosure of relevant information to a person about previous violence committed by the person's intimate partner. The NZ DVDS is based on the DVDS in England and Wales.

[139] The NZ DVDS is designed to operate within the framework of the *Official Information Act 1982* (NZ) and the *Privacy Act 1993* (NZ) and is administered by the New Zealand Police.

¹⁹⁸ Referring to *Police and Fire Reform (Scotland) Act 2012* (Scot) s 32: Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

¹⁹⁹ *Police Scotland Factsheets*. If it is decided to disclose information, the multi-agency meeting will also decide to whom that disclosure will be made and develop a tailored safety plan.

²⁰⁰ *Ibid*; Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

²⁰¹ *Police Scotland Factsheets*; Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

²⁰² Information provided by Police Scotland, Domestic Abuse Coordination Unit, 17 October 2016.

²⁰³ Police Scotland, *First Anniversary of Disclosure Scheme for Domestic Abuse* (1 October 2016) <<http://www.scotland.police.uk/whats-happening/news/2016/october/first-anniversary-of-disclosure-scheme-for-domestic-abuse-scotland>>; see also Scotland, *Parliamentary Debates*, 21 September 2016, 3 (M Matheson).

²⁰⁴ Information provided by Police Scotland, Domestic Abuse Coordination Unit, 17 October 2016.

²⁰⁵ *Ibid*.

[140] The NZ DVDS has two disclosure pathways: the 'reactive disclosure' pathway (similar to the 'right to ask' pathway in England and Wales) and the 'proactive disclosure' pathway (similar to the 'right to know' pathway in England and Wales).

[141] As at 28 November 2016, 102 applications had been made under the scheme. Of these, 29 were made under the reactive disclosure pathway and 73 were made under the proactive disclosure pathway. Overall, 79 disclosures (approximately 77%) had been made. Fourteen of the applications were dealt with as urgent cases.²⁰⁶

[142] An evaluation of the NZ DVDS is scheduled for late 2017.²⁰⁷

206 Information provided by New Zealand Police, 30 November 2016.

207 Information provided by New Zealand Police, 25 October 2016.

Overview and key features of the NZ DVDS

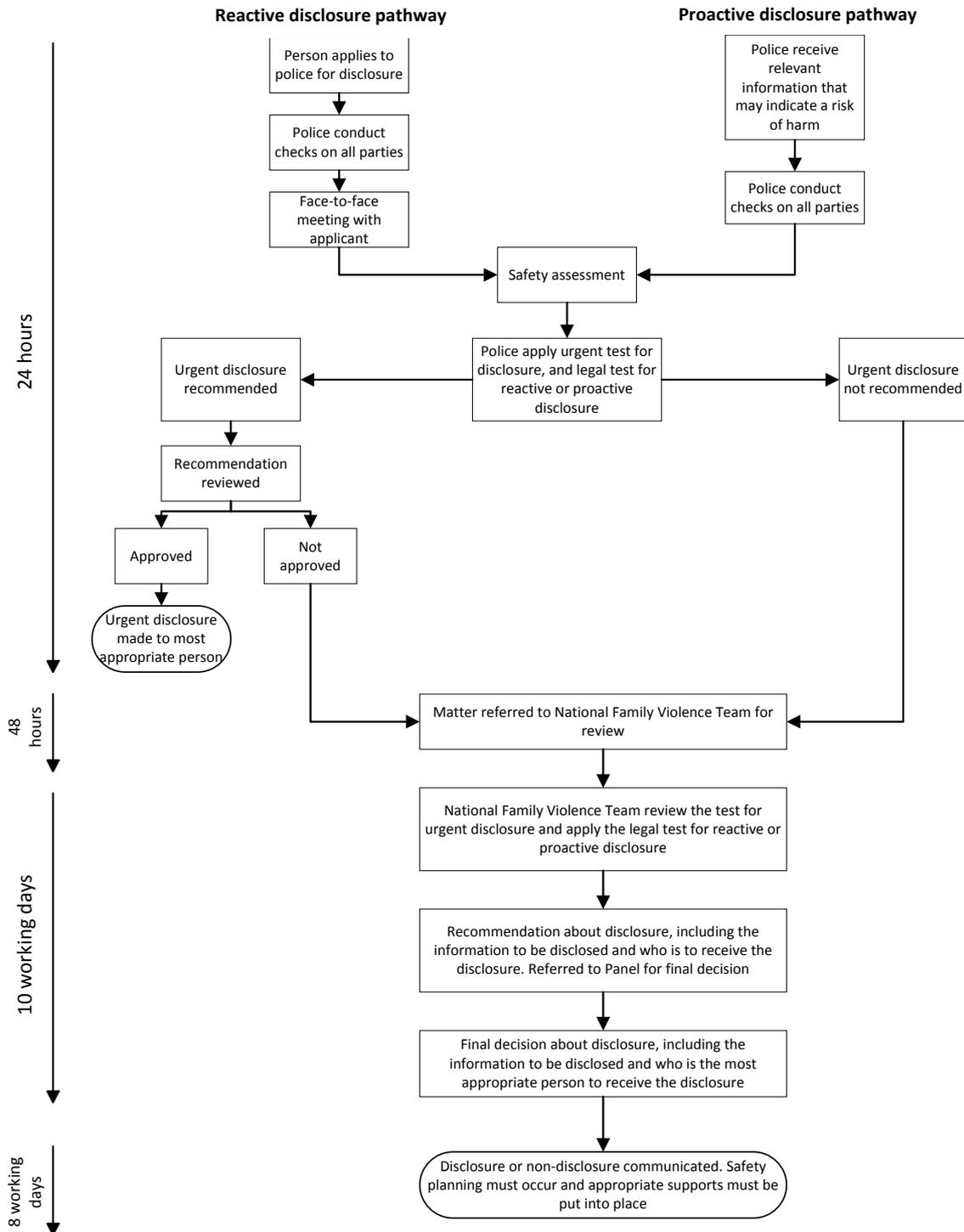


Figure 13: Overview of NZ DVDS

[143] Under the NZ DVDS, the reactive disclosure pathway applies when the police receive a request from a person who may be at risk for the disclosure of information about the violence history of the person’s intimate partner (‘the

subject’).²⁰⁸ A reactive disclosure request may also be made by a third party who is connected to a person who may be at risk and has concerns for the safety of the person or the person’s children.²⁰⁹

[144] The proactive disclosure pathway is used when the police initiate a request for the disclosure of information about the violence history of a person’s intimate partner (that is, the subject), where that information may indicate a risk of harm to the person or the person’s children.²¹⁰

[145] The processes for considering whether a disclosure should be made are generally similar for both pathways (although different legal tests for disclosure apply for a reactive disclosure and a proactive disclosure).²¹¹ Urgent disclosures are to be made within 24 hours of the initial request and non-urgent disclosures within 20 working days.²¹²

[146] On receipt or initiation of a request for disclosure, the police record the basic details of the parties involved and carry out police checks.²¹³ If a request for reactive disclosure has been made, the police area family violence coordinator is to hold a face-to-face meeting with the applicant to verify the person’s identity and eligibility details, and to obtain safe contact details. The police area family violence coordinator must also undertake a safety assessment of the person who may be at risk and their children.²¹⁴ If a serious threat to the safety of the person and/or their children is identified, the police must take immediate action to protect them.²¹⁵

[147] Once these steps have been taken, the police area family violence coordinator is to assess whether an urgent disclosure should be made.²¹⁶ If an urgent disclosure is required, the legal test for reactive disclosure or proactive disclosure (as the case may be) is to be applied and the matter referred to the police district family violence coordinator (or the police district command centre) to review the

208 NZ Police Policy (2016) 3. For the purposes of the NZ DVDS, an ‘intimate relationship’ is defined as ‘a relationship between two people which may be reasonably characterised as being physically and/or emotionally intimate’.

209 Ibid 4. Examples of a third party include a parent, neighbour or friend of the person who may be at risk.

210 Ibid 3.

211 Reactive disclosure requests are recorded as a request made under the *Official Information Act 1982* (NZ); Ibid. The information required by the request forms includes details of relevant relationships, an explanation of any information or behaviour that has led to the request, and details of any family violence experienced by the applicant in the preceding 12 months. The applicant must also indicate whether the subject and/or person who may be at risk (as applicable) is aware of the application, and whether the applicant is concerned about the subject knowing of the application: New Zealand Police, *Family Violence Information Disclosure Scheme Request Form Parts A–B* (as at 26 October 2016) 2–4, 6.

212 NZ Police Policy (2016) 10.

213 Ibid 5.

214 Ibid 5–6.

215 Ibid 10.

216 Ibid 6.

urgency test, apply the relevant legal test and make a decision as to whether urgent disclosure is required.²¹⁷

[148] The legal test for reactive disclosure is based on the provisions of the *Official Information Act 1982* (NZ).²¹⁸ That Act requires information to be made available unless there is good reason for withholding it, such as to protect a person's privacy. However, that reason may be outweighed by other considerations in the public interest. In the context of the NZ DVDS, the legal test for reactive disclosure requires a consideration of:²¹⁹

- whether there is a privacy interest that requires protection;²²⁰
- whether it is in public interest to disclose the information;²²¹ and
- the minimum amount of information that is necessary to achieve the purpose of preventing harm while still protecting the privacy of any other person involved ('proportionality').²²²

[149] The legal test for proactive disclosure reflects Principle 11(f)(ii) of the *Privacy Act 1993* (NZ). It allows a disclosure if police believe on reasonable grounds that a disclosure is necessary to prevent or lessen a serious threat to the life or health of the individual concerned or another individual.²²³ It also requires consideration of proportionality.²²⁴

[150] If the police area family violence coordinator does not consider that urgent disclosure is necessary, or if the police district family violence coordinator does not give approval for an urgent disclosure, the matter is referred to the police national family violence team to review the urgency test, apply the relevant legal test, make

²¹⁷ Ibid 6–7.

²¹⁸ See *Official Information Act 1982* (NZ) ss 5, 9.

²¹⁹ *NZ Police Policy* (2016) 12–13.

²²⁰ Relevant considerations include: the relevance of the information to the request; if the information is highly personal or sensitive (for example, if it contains personal information about former partners); if a conviction has been through open court and whether or not it is spent; and if the person requesting information may already know some information (for example, knowledge that there is a conviction, but not the details of the offence): Ibid 12.

²²¹ Relevant considerations include: if the public interest in protecting the public or individuals from harm applies, other relevant public interests and the strength or weight of all public interests; whether the public interest in disclosure outweighs privacy interests; and if the public interest could be met by a means other than disclosure: Ibid.

²²² Relevant considerations include: whether it is necessary to release all relevant information and if the purpose of keeping the person who may be risk safe from harm could be achieved through a limited disclosure: Ibid 14.

²²³ Ibid 13–14. In deciding if there are reasonable grounds for a disclosure, police may consider the relevance and accuracy of information; what factors about the existing information indicate that there is a safety risk (for example, whether previous offences occurred in a domestic context, demonstrate a pattern of coercive behaviour, or demonstrate escalating violence); and any other relevant factors that should be checked: 13. In deciding if a disclosure is necessary, relevant matters include if the partner is likely to have previous knowledge of the information; if there are other available options (for example, approaching the subject to obtain their consent for disclosure, or making a disclosure to a third person who may be better-placed to prevent harm); and if there are prohibitions on disclosure such as the conviction being spent (in which case risk may require reassessment and a limited disclosure may suffice): 13.

²²⁴ Ibid 14.

a recommendation about disclosure and refer the matter to the FVIDS panel for a final decision.²²⁵

[151] If a decision to disclose is made, the police district family violence coordinator (in the case of an urgent disclosure) or the panel (in the case of a non-urgent disclosure) is to determine what information is to be disclosed (in the form of a disclosure script) and who should receive the disclosure.²²⁶

[152] Only relevant information which indicates a risk to a person's safety may be provided in a disclosure.²²⁷ The factors to be taken into account when considering whether information is relevant to a disclosure include whether the subject has previous convictions²²⁸ for 'violence offences'²²⁹ that indicate a serious threat to the safety of the person who may be at risk or their children²³⁰ and police intelligence about the subject's history of previous violent behaviour (including 'concerning behaviour' towards the person who may be at risk or former partners and cases not proceeded with).²³¹ The information provided in the disclosure is limited to the minimum amount of information necessary to achieve the purpose of preventing harm while still protecting the privacy of any other person involved.²³²

225 Ibid 6, 8. The FVIDS (Family Violence Information Disclosure Scheme) panel makes non-urgent decisions about disclosure under the NZ DVDS. The panel includes members of the police national family violence team and police legal staff: 3.

226 Ibid 7, 9. Before any disclosure is made under either pathway, the police must take reasonable steps to ensure that the information disclosed is 'accurate, up to date, complete, relevant, and not misleading': 14, referring to *Privacy Act 1993* (NZ) s 6, principle 8.

227 The term 'disclosure' is defined as 'the release to a third party of information about a person's convictions for violent offences or any other relevant information considered necessary and proportionate to protect that person's intimate partner from harm': *ibid*. The application form for the NZ DVDS states that 'only relevant information which indicates a serious threat ... to a person's safety will be provided': New Zealand Police, *Family Violence Information Disclosure Scheme Request Form Part B* (as at 26 October 2016) 7.

228 Convictions that may be disclosed under the NZ DVDS include convictions in other jurisdictions, if relevant and recorded on the NZ Police database. The disclosure of convictions will not include spent convictions under the *Criminal Records (Clean Slate) Act 2004* (NZ) or convictions of a person as a juvenile arising from Youth Court outcomes, but may include juvenile convictions from the District Court or higher if the conviction is considered relevant and the disclosure shows a pattern of behaviour of cumulative harm and/or violence: Information provided by New Zealand Police, 25 October 2016.

229 For the purposes of the NZ DVDS, a 'violence offence' includes any type of violence within the meaning of section 3 of the *Domestic Violence Act 1995* (NZ), assaults, sexual offences, attempted acts of physical violence, threats or fear of violence, intimidation, harassment or neglect: *Ibid*.

The *Domestic Violence Act 1995* (NZ) s 3(1) defines 'domestic violence' as violence committed against a person by another person with whom he or she is or was in a domestic relationship. 'Violence' includes physical, sexual and psychological abuse; and 'psychological abuse' includes intimidation, harassment, damage to property, threats of abuse, and financial or economic abuse: s 3(2). A 'domestic relationship' exists between two people who are spouses or partners, are family members, ordinarily share a household, or have a close personal relationship: s 4(1).

230 *NZ Police Policy* (2016) 11.

231 *Ibid*. 'Concerning behaviour' may include a pattern of behaviours indicating that the subject has exercised coercive control over former partners, or is exercising coercive control over the person who may be at risk. Police may also disclose information indicating that the subject is the respondent of a protection order or has been issued with a police safety order. For cases not proceeded with, police may indicate that the matter was alleged or not proceeded with: Information provided by New Zealand Police, 25 October 2016.

232 *NZ Police Policy* (2016) 11. The information disclosed includes some sentencing details to give weight and perspective to the conviction; for example, that the subject was sentenced to community work or to imprisonment: Information provided by New Zealand Police, 25 October 2016.

[153] The outcome of the application and any disclosure is to be provided orally by the police in a face-to-face meeting with the person who may be at risk or, if relevant, another person identified as best able to safeguard the person.²³³ The person can read the disclosure or have it read to them, but cannot keep the disclosure script.²³⁴

[154] There must be appropriate supports in place at and after the meeting regardless of whether a disclosure or non-disclosure is made.²³⁵

[155] If a disclosure is to be provided, police must consider taking a support agency representative to the meeting. If a representative does not attend, the reasons for this must be recorded.²³⁶ Before the disclosure is made, the person receiving it must sign a confidentiality undertaking.²³⁷ If the person is not willing to sign the confidentiality undertaking, the police must consider whether the disclosure should be made.²³⁸

[156] If no disclosure is made, either because no information has been found or because the information does not indicate a threat to the safety of the partner and/or their children, then the person making the request must be advised that no disclosure will be provided.²³⁹ However, this 'must be accompanied by safety advice and a warning ... that the lack of disclosure does not ensure ongoing safety'.²⁴⁰

[157] Due to the potential safety implications for a person who may be at risk, the subject of an application is not to be informed about the application, or any subsequent disclosure.²⁴¹

233 Ibid 15. A third party applicant will not necessarily receive a disclosure or non-disclosure. As determined by a risk assessment, disclosures are to be made to the person who may be at risk, or, due to the person's vulnerabilities, such other person who has been identified as best-placed to safeguard the person. (This may or may not be a third party applicant). If a third party applicant does not receive a disclosure or non-disclosure, the third party is to be notified that action has been taken.

234 Ibid. The script cannot be left with the person receiving the disclosure in any format, as this 'prevents onward transmission of the information in its original format and avoids safety issues that may arise if the subject becomes aware of the request'.

235 Ibid 9.

236 Ibid.

237 New Zealand Police, *Family Violence Information Disclosure Scheme Request Form Part E* (as at 26 October 2016) 1. The confidentiality undertaking states that the information is being disclosed only for the purpose of keeping the person who may be at risk (and other associated persons) safe. The information can be used to seek advice and make decisions about safety, and to obtain support, but should not be shared for any other purpose. The undertaking provides that if the information is disclosed other than for this purpose, it may be a breach of the *Privacy Act 1993* (NZ).

238 Ibid. Whether or not a disclosure will be made in circumstances where a person refuses to sign an undertaking is to be considered prior to the meeting, and should be included in the risk assessment/decision making stage.

239 *NZ Police Policy* (2016) 10. There is a template for giving such advice.

240 Ibid.

241 Ibid 15. Any query from an individual as to whether they have been the subject of an application under the NZ DVDS is to be processed as a request for information under either the *Official Information Act 1982* (NZ) or the *Privacy Act 1993* (NZ).

NEW SOUTH WALES

[158] In April 2016, following an extensive public consultation process,²⁴² the New South Wales Government commenced a two year pilot of a domestic violence disclosure scheme (the 'NSW DVDS'). The pilot was developed in response to the recommendation of the New South Wales Violent Domestic Crimes Taskforce to introduce a DVDS in New South Wales, based on the scheme in England and Wales.²⁴³

[159] The primary aim of the scheme is to increase the safety of people potentially at risk of domestic violence by enabling them to find out if their current or former partner has a history of violent criminal offences so that they can make informed decisions about their relationship and their safety, access support services and/or make a safety plan.²⁴⁴ The NSW scheme is intended to complement other NSW Government domestic violence reforms.²⁴⁵

[160] The pilot has been designed to fit within the existing legislative and domestic violence service system frameworks in New South Wales.²⁴⁶

[161] The NSW Police Force is hosting the pilot in partnership with contracted service providers in four Police Local Area Commands.²⁴⁷ The NSW Government has also committed to providing \$2.3 million in funding over the duration of the pilot for expert domestic and family violence support services in the pilot areas.²⁴⁸

[162] Since commencement of the pilot in April 2016, to 30 September 2016, 34 applications had been received under the disclosure scheme. Twenty-six applications were made by persons who considered that they may be at risk, with nine applications resulting in a disclosure. Eight applications were made by third parties, with six applications resulting in a disclosure. Overall, the disclosure rate was 44%. The difference in the number of disclosures requested and subsequently made is due to circumstances such as: the applicant did not meet the threshold criteria for an application; there were no relevant convictions to disclose; a victim may choose to not hear a disclosure requested by a third party; or a victim may change their mind after making an application.²⁴⁹

242 See *NSW Discussion Paper* (2015).

243 NSW Ministry of Health, *Violent Domestic Crimes Taskforce Report* (October 2015) 7, 9, Rec 1.

244 See *NSW Discussion Paper* (2015) 2.

245 *NSW Discussion Paper* (2015) 2, referring to the *It Stops Here Domestic and Family Violence Framework for Reform* and the *Domestic Violence Justice Strategy*.

246 *NSW Consultation Report* (2015) 5.

247 *NSW Factsheet* 1, 3. See also NSW Privacy Commissioner, *Direction for Domestic Violence Disclosure Scheme Pilot* (13 April 2016) at http://www.ipc.nsw.gov.au/sites/default/files/file_manager/2016_DVDS_PPIPA_Direction_ACC.pdf. The four pilot Police Local Area Commands are: Oxley (Tamworth region), Shoalhaven (Nowra region), Sutherland (Menai/Engadine/Sutherland region) and St George (Kogarah/Hurstville region).

248 New South Wales Government, 'New scheme reveals domestic violence perpetrators' (Media Release, 14 April 2016).

249 Information provided by the New South Wales Department of Justice, identifying Women NSW as the data source, 7 December 2016.

[163] The pilot will be evaluated throughout its duration. The evaluation is to consider the implementation of the scheme, the level of demand, impacts and outcomes for persons applying for and receiving disclosures, impacts on the service sector, strengths and limitations of the model used and lessons learned for rollout of the scheme.²⁵⁰

Overview and key features of the NSW DVDS pilot

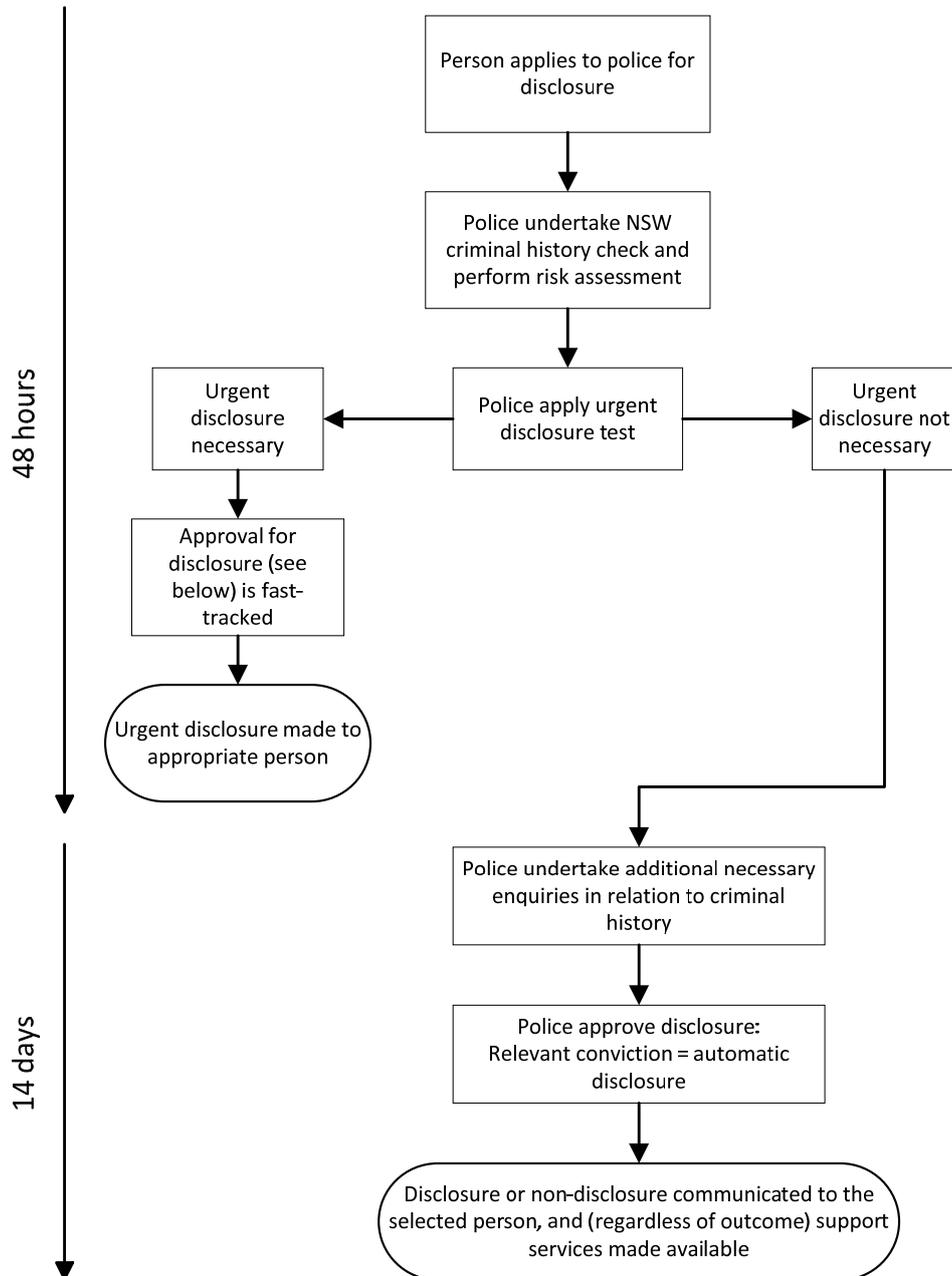


Figure 14: Overview of NSW DVDS

[164] The NSW DVDS is modelled on the ‘right to ask’ pathway of the DVDS in England and Wales. It does not include the equivalent of a ‘right to know’ pathway.

[165] An application for disclosure²⁵¹ may be made to police by a person who has concerns about their safety (‘a person who may be at risk’) and who is, or was formerly, in an ‘intimate relationship’ with another person (‘the subject’). If the application relates to a former intimate relationship, the person must also have ongoing contact with the subject.²⁵²

[166] An application for disclosure may also be made by a ‘concerned third party’ who has an ongoing relationship with the person who may be at risk (for example, a friend, relative or professional working with the family).²⁵³

[167] Generally, an applicant must provide information about the relevant intimate relationship (including, for former relationships, the nature of ongoing contact) and must explain their concerns and reasons for the application.²⁵⁴

[168] On receiving an application, the police are to carry out a risk assessment (using the Domestic Violence Safety Assessment Tool) to identify whether there is a serious threat to the life, health or safety of the person who may be at risk, and conduct a criminal record check of the subject.²⁵⁵

251 A person must be at least 16 years to apply. The person who may be at risk must also reside in a relevant local area for the NSW DVDS pilot. Applications are made by submitting an application form at a police station in the pilot region where the person who may be at risk lives: *NSW Factsheet 2*. In relation to the application form, see NSW Government, *NSW Domestic Violence Disclosure Scheme Application to receive information about my current or former partner* <http://www.domesticviolence.nsw.gov.au/data/assets/pdf_file/0005/371192/dvds-application-form-primary-person.pdf>.

252 *NSW Factsheet 2*.

253 *Ibid.* In relation to the application form, see NSW Government, *NSW Domestic Violence Disclosure Scheme Application for someone I am concerned about to receive information* <http://www.domesticviolence.nsw.gov.au/data/assets/pdf_file/0006/371193/dvds-application-form-third-party.pdf>.

254 NSW Government, *NSW Domestic Violence Disclosure Scheme Application to receive information about my current or former partner* <http://www.domesticviolence.nsw.gov.au/data/assets/pdf_file/0005/371192/dvds-application-form-primary-person.pdf>; NSW Government, *NSW Domestic Violence Disclosure Scheme Application for someone I am concerned about to receive information* <http://www.domesticviolence.nsw.gov.au/data/assets/pdf_file/0006/371193/dvds-application-form-third-party.pdf>.

Where an application is made by a third party, there is also a requirement for that person to explain why they are making the application on behalf of the person who may be at risk and, if applicable, why the person who may be a risk is unaware of the application: NSW Government, *NSW Domestic Violence Disclosure Scheme Application for someone I am concerned about to receive information* <http://www.domesticviolence.nsw.gov.au/data/assets/pdf_file/0006/371193/dvds-application-form-third-party.pdf> 4.

255 *NSW Factsheet 1–2*. The Domestic Violence Safety Assessment Tool (‘DVSAT’) consists of a series of questions that ‘relate to recurring factors or behaviours that are recognised as indicators of threat to victims of domestic violence’. The DVSAT provides a score of the seriousness of the threat to a victim. The victim’s responses to the questions provide a score that is then considered against a set threshold. The score suggests one of three assessment outcomes: that there is not sufficient evidence of a threat to the victim; evidence of a threat to the victim; or evidence of a serious threat to the victim. The DVSAT was developed to achieve consistent identification of threat to victims: NSW Department of Justice, *Domestic Violence Information Sharing Protocol 26–7*.

[169] If a serious threat is identified, an urgent disclosure (within 48 hours) may be made. The scheme otherwise anticipates a processing period of 14 days for an application.²⁵⁶

[170] The threshold for a disclosure under the NSW DVDS is a 'relevant conviction', which is a conviction as an adult for:²⁵⁷

- a 'personal violence offence'²⁵⁸ committed within a 'domestic relationship',²⁵⁹ or
- specific personal violence offences committed outside of a domestic relationship namely, murder, sexual offences and child abuse offences.

[171] Consequently, if the subject has a relevant conviction, the conviction will be automatically disclosed. However, a conviction is not to be disclosed if it has become a spent conviction,²⁶⁰ was not recorded by a court, is a juvenile conviction, or relates to an offence committed outside New South Wales. Additionally, apprehended domestic violence orders are not disclosable under the scheme.²⁶¹

[172] If the criminal record check reveals that the subject has a relevant conviction, the police may disclose the type of offence and the date of the conviction.

²⁵⁶ NSW Factsheet 2.

²⁵⁷ Ibid.

²⁵⁸ Ibid. A 'personal violence offence' is defined in s 4 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to mean:

- (a) an offence under, or mentioned in, ss 19A, 24, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66EA, 80A, 80D, 86, 87, 93G, 93GA, 195, 196, 198, 199, 200, 562I (as in force before its substitution by the *Crimes Amendment (Apprehended Violence) Act 2006* (NSW)) or 562ZG of the *Crimes Act 1900* (NSW);
- (b) an offence under s 13 or 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW); or
- (c) an offence of attempting to commit an offence referred to in (a) or (b).

Practically, the term 'personal violence offence' includes offences such as murder, manslaughter, physical and sexual assaults, offences against children, property damage, stalking and contravening an apprehended domestic violence order.

²⁵⁹ Personal violence offences are taken to be 'domestic violence offences' for the purposes of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) when they are committed within a domestic relationship: *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 11.

For the purposes of the Act, a person has a 'domestic relationship' with another person if the person is or has been married to the other person, is or has been a de facto partner of that other person, or has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature: s 5(a)–(c).

A domestic relationship also exists between two people who are or were: living in the same household, living as long-term residents in the same residential facility at the same time, in a relationship where one person was dependent on the ongoing paid or unpaid care of the other, relatives, or, for Aboriginal and Torres Strait Islander people, extended family or kin: s 5(d)–(h).

²⁶⁰ See *Criminal Records Act 19991* (NSW).

²⁶¹ NSW Factsheet 2. Apprehended Domestic Violence Orders are not disclosable on the basis that they are 'civil orders designed to protect against future violence, and are not a criminal conviction'. However, any breach of such an order is a criminal offence that will be disclosed under the NSW DVDS.

Police may also disclose additional relevant information, for example, the relationship between the subject and the victim of the offence.²⁶²

[173] A disclosure is to be made orally to the person who may be at risk, in a face-to-face meeting at a police station or another agreed safe place.²⁶³ Ordinarily, a worker from a specialist domestic violence support service is also present at the disclosure to provide support and help plan for the person's safety.²⁶⁴ The person who may be at risk may also bring their own support person(s), such as a friend, relative or professional working with the person or their family.²⁶⁵

[174] Before the disclosure is made, the person who is at risk must sign a confidentiality undertaking that they will not share, publish or misuse the information disclosed. (The undertaking permits the person to use the information disclosed for the purposes of accessing domestic violence support services and safety planning).²⁶⁶ If the person does not provide an undertaking, the police may still make the disclosure if it would be otherwise allowed under the existing law. A support person who is present at a disclosure must also sign a similar undertaking, without which they will not receive a disclosure.²⁶⁷

[175] If there is no relevant conviction to disclose, the police are to tell the person who may be at risk in a face-to-face meeting. A support service worker is to be available to offer support and to further discuss any relationship concerns.²⁶⁸

[176] To protect the safety of a person who may be at risk, the subject is not to be informed at any stage of the application or any disclosure.²⁶⁹

262 Ibid. The disclosure of additional information is considered by police on a case-by-case basis, as they must not identify the victims of the disclosed offences.

263 Ibid 1–2. For third party applications, the disclosure is made to the person who may be at risk, unless the police consider there are exceptional circumstances.

264 Ibid 3. The support service may also arrange other help such as translation services, trauma counselling and other specialist support as required.

265 Ibid 1.

266 NSW Government, *NSW Domestic Violence Disclosure Scheme Undertaking form: Person at risk*, *NSW Domestic Violence Disclosure Scheme Undertaking form: Support persons*. See also NSW Privacy Commissioner, *Direction for Domestic Violence Disclosure Scheme Pilot* (13 April 2016) <http://www.ipc.nsw.gov.au/sites/default/files/file_manager/2016_DVDS_PPIPA_Direction_ACC.pdf>.

267 NSW Privacy Commissioner, *Direction for Domestic Violence Disclosure Scheme Pilot* (13 April 2016) <http://www.ipc.nsw.gov.au/sites/default/files/file_manager/2016_DVDS_PPIPA_Direction_ACC.pdf>.

268 *NSW Factsheet 3*.

269 Ibid 1.

[177] To facilitate the operation of the pilot scheme, the New South Wales Privacy Commissioner has made public interest directions under that State's privacy legislation. The directions permit the collection, use and disclosure of personal or health information by New South Wales public sector agencies, contracted service providers or other relevant non-government organisations for the purposes of the pilot without requiring authorisation from some of the individuals involved. They also allow those entities to abstain from acknowledging that they hold personal or health information about a subject, and, in certain circumstances, about a person who may be at risk or another person named in an application for disclosure under the scheme.²⁷⁰

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Under s 41 of the *Privacy and Personal Information Protection Act 1998* (NSW) ('PIPP Act'), the NSW Privacy Commissioner, with the approval of the Attorney General, may make a 'public interest direction' to waive or make changes to the requirements for a public sector agency to comply with an information protection principle. To make a direction, the NSW Privacy Commissioner must be satisfied that the public interest in requiring the public sector agency to comply with the principle is outweighed by the public interest in the Privacy Commissioner making the direction: s 41(3). See NSW Privacy Commissioner, *Direction for Domestic Violence Disclosure Scheme Pilot* (13 April 2016) <http://www.ipc.nsw.gov.au/sites/default/files/file_manager/2016_DVDS_PPIPA_Direction_ACC.pdf>. The direction was made on 13 April 2016 and expires on 12 April 2018 or until either the termination of the DVDS pilot or the provision and commencement of the required authorities and exemptions by other means, such as legislative amendments or a code of practice under the PIPP Act, whichever is the earlier.

Under s 62 of the *Health Records and Information Privacy Act 2002* (NSW) ('HRIP Act'), the New South Wales Privacy Commissioner, with the approval of the Attorney General, may make a 'public interest direction' to waive or make changes to the requirements for an organisation to comply with the health privacy principle. To make a direction, the NSW Privacy Commissioner must be satisfied that the public interest in requiring the organisation to comply with the principle is outweighed by the public interest in the Privacy Commissioner making the direction: s 62(3)(a). See NSW Privacy Commissioner, *Direction for Domestic Violence Disclosure Scheme pilot* (13 April 2016) <http://www.ipc.nsw.gov.au/sites/default/files/file_manager/2016_DVDS_HRIPA_Direction_ACC.pdf>. The direction was made on 13 April 2016 and expires on 12 April 2018, or until either the termination of the pilot or the provision and commencement of the required authorities and exemptions by other means, such as legislative amendments or a code of practice under the HRIP Act, whichever is the earlier. In the direction, the NSW Privacy Commissioner notes that 'Health information will not be routinely collected under the DVDS. However, applicants may include health information in their application as a justification for requesting disclosure of relevant information about a subject': 2.

Would Queensland's response to domestic and family violence be strengthened by introducing a domestic violence disclosure scheme

[178] Domestic and family violence is a complex issue. At present in Queensland, several legal and policy reforms aimed at preventing, and supporting victims of, domestic and family violence are being implemented as part of an extensive and coordinated 10 year Prevention Strategy. Similar reform agendas are being advanced nationally, in other Australian States and Territories, and in many other Commonwealth jurisdictions.²⁷¹

[179] The Prevention Strategy in Queensland focuses on changing community attitudes, providing an integrated service response, and ensuring stronger justice system responses.

[180] A key consideration in this review is whether a DVDS — which is one of several possible specific initiatives — would complement this approach by:

- reducing the incidence of domestic and family violence in Queensland;
- strengthening the protections and support for people at risk of domestic and family violence in Queensland; and
- improving the accountability of perpetrators of domestic and family violence in Queensland.

[181] Specific issues for consideration are outlined below.

ISSUES FOR CONSIDERATION

Whether existing powers to disclose information are sufficient

[182] An issue to consider is whether existing powers to disclose information are sufficient, without the need for a new or separate DVDS.

[183] Existing entitlements for a person to access information about convictions or orders, and existing powers of agencies to disclose criminal history and other information, are limited and fall under several different legislative regimes.

[184] Whilst much court information can be made available to members of the public, information about domestic violence proceedings is usually confidential. Similarly, public agencies are ordinarily required to keep personal information, including criminal history information, confidential. There are, however, existing

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See, eg, H Portillo-Castro, 'Domestic and family violence initiatives and funding across Australian jurisdictions in 2016–17: A quick guide' (Australian Parliamentary Library, Research Paper Series, 28 October 2016); J Phillips et al, 'Domestic violence: issues and policy challenges' (Australian Parliamentary Library, Research Paper Series, 24 November 2015).

powers to disclose such information, including where it is necessary to lessen or prevent a serious threat to a person's life, health or safety.

[185] It is also relevant to consider the extent to which existing legal frameworks might be adapted to give effect to a possible DVDS. The schemes in other jurisdictions have been introduced within, and consistently with, existing legal frameworks, without the introduction of new or separate legislation.

Objectives of a DVDS

[186] DVDSs have been developed in other jurisdictions as one type of early intervention and prevention strategy. The stated aim of these schemes is to prevent the commission and escalation of domestic and family violence (particularly between intimate partners) by disclosing a person's prior domestic violence convictions or other violent criminal history to their current or former partner. Depending on the scope of the scheme involved, this might include other information relevant to assessing the risk of harm to the relevant person.

Current reforms to prevent and respond to domestic violence

[187] Under Queensland's Prevention Strategy, the response to domestic and family violence is to be improved by enhanced support services, enhanced perpetrator interventions and the development of an integrated service response. Significantly, this is to include an inter-agency information sharing framework, a common risk assessment framework and tools, and the establishment of High Risk Teams.

[188] Those reforms are intended to ensure a streamlined, coordinated and tailored response, and to result in more timely and accurate risk assessments and interventions.

[189] Under the new information sharing framework (which has not yet commenced), relevant government departments, specialist service providers, other support services, and police will be able to share information for the purpose of assessing whether there is a serious threat, or lessening or preventing a serious threat, to a person's life, health or safety, including information about domestic violence offences.

[190] As well as strengthening protections and support for people at risk of domestic violence, the Prevention Strategy recognises the need for improving perpetrator accountability and rehabilitation.

Safety is a paramount consideration, balancing other competing interests

[191] The safety, protection and wellbeing of people who fear or experience domestic and family violence is a paramount consideration.²⁷² A central issue is whether a DVDS would improve the safety and protection of people who may be at risk of domestic and family violence.

²⁷²

Domestic and Family Violence Protection Act 2012 (Qld) s 4(1).

[192] A further issue is whether a DVDS could achieve an appropriate balance between:

- the safety and protection of people who might be at risk of domestic and family violence;
- the principle that an individual's personal information (including their criminal history) should not ordinarily be disclosed without their consent; and
- the criminal justice system goal of rehabilitation of offenders.

A DVDS is based on a number of assumptions

[193] Against the possible utility of a DVDS is the argument that it rests on a number of assumptions, including the following:

- Recidivism and risk — the idea that people who have committed domestic and family violence in the past are likely to commit domestic and family violence in subsequent relationships. There is some evidence that previous criminal history is associated with serious domestic and family violence behaviours, but studies are limited and rates of recidivism vary considerably.
- Information and action — the idea that, when a person is informed that their partner or family member has a relevant criminal history, the person will end the relationship or take other active steps to protect themselves from the possibility of future violence. There are many reasons why a person may choose to stay in a relationship, even if they are experiencing domestic and family violence. For example, a person who may be at risk may want the violence to stop, but may not necessarily want to end the relationship. There might also be other barriers to leaving a relationship.
- Safety and support — the idea that disclosure under a DVDS would be accompanied by access to necessary support services and safety planning to ensure that, if the person decides to end the relationship or take other steps on the basis of the information disclosed, they will be assisted to do so safely. This recognises that leaving a violent relationship is associated with a heightened risk of violence.

[194] There has not been any comprehensive evaluation of DVDSs in other jurisdictions against which to test some of these assumptions. Evaluations have been limited to processes, rather than effectiveness.

Potential benefits of a DVDS

[195] Proponents of DVDSs argue that such schemes empower the victim or person who may be at risk, by enabling them to make an informed choice about whether to remain in a relationship and/or to seek help and support.

[196] By engaging people at an early stage when they have concerns about their relationship, a DVDS might help alert people to warning signs of domestic and family violence. It might also provide a way to link them with support services and undertake safety planning to address their concerns.

[197] A DVDS would provide a formal mechanism, with consistent protocols, for disclosure of and access to information.

Potential risks of a DVDS

[198] There is a risk, on the other hand, that a disclosure or non-disclosure may mislead rather than inform. For example, if no disclosure is made (either because there is no relevant history of offending,²⁷³ or because a disclosure is not lawful or justified), the person might acquire a false sense of safety. Further, the information that is available to be disclosed, and its context, is likely to be limited; a disclosure might reveal a past conviction for assault, but might not reveal all the circumstances surrounding it.

[199] There is also a risk that a DVDS might unreasonably divert resources from the current reform priorities under the Prevention Strategy of providing enhanced support services and developing integrated service responses. A DVDS might also unreasonably divert police resources from crucial areas of domestic and family violence police services.

Service delivery challenges of a DVDS, including geographic and demographic issues

[200] To operate effectively, arguably a DVDS would need to include post-disclosure steps and be delivered with appropriate and adequate support services for people using the scheme, especially given the recognition of increased risk when attempting to leave a relationship. This would require additional resources.

[201] There might also need to be additional training or support for the persons administering or providing assistance through the scheme. An issue to consider is whether this might detract from the delivery of necessary frontline services.

[202] It is also necessary to consider whether a DVDS would be able to operate effectively in remote and regional areas, in which there is a higher reported incidence of domestic and family violence. A DVDS may present particular challenges in such areas, for example, because of smaller populations, shared community knowledge, and reduced access to support services.

[203] A DVDS would additionally need to be sufficiently flexible and tailored to take into account specific needs and circumstances, for example, of people with disabilities, people from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander people.

Timing

[204] It might be considered timely to introduce a DVDS in Queensland, given the current domestic and family violence reform agenda, as a measure to strengthen the protections and support for people at risk; if reforms are being made now, it is perhaps a good time to include an additional initiative.

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Either because the person has not, in fact, engaged in violent or abusive conduct in the past — as often occurs in the context of domestic and family violence — or because reports or complaints about such behaviour have not been made or have been withdrawn and not pursued.

[205] On the other hand, it might be considered too soon in the current reform process to make a decision about whether a DVDS would be a necessary and desirable reform in Queensland.

[206] If there is a concern about a person's safety (for example, because of threats of violence, or harassing or offensive behaviour), it might be argued that the focus should be on the assessment of the person's current risk, safety planning and access to appropriate support services and interventions within an integrated service response model, rather than on disclosure of a partner's previous domestic violence history.

Concluding comments

[207] The Commission welcomes submissions and views on these and other matters relevant to the question of whether a DVDS should be introduced in Queensland.

Consultation questions

PART A — WOULD QUEENSLAND’S RESPONSE TO DOMESTIC AND FAMILY VIOLENCE BE STRENGTHENED BY INTRODUCING A DOMESTIC VIOLENCE DISCLOSURE SCHEME?

- Q-1 *Should a DVDS be implemented in Queensland? Why or why not?*
- Q-2 *What objectives should a DVDS in Queensland have? What principles should underpin such a scheme?*
- Q-3 *What are the potential benefits and risks of a DVDS? How can any risks be minimised?*
- Q-4 *Would a DVDS reduce the incidence of domestic and family violence in Queensland and, if so, how?*
- Q-5 *Would a DVDS strengthen the protections and support for people at risk of domestic and family violence in Queensland and, if so, how?*
- Q-6 *Would a DVDS improve accountability of perpetrators of domestic and family violence in Queensland and, if so, how?*
- Q-7 *Would a DVDS be able to operate effectively in remote and regional areas and to respond to specific needs of, for example, Aboriginal and Torres Strait Islander people, people with a disability, and people from culturally and linguistically diverse backgrounds?*
- Q-8 *Would a DVDS unreasonably divert resources from:*
- (a) *the current reform priorities under the Domestic and Family Violence Prevention Strategy 2016–2026, and actions taken or being taken in implementing the recommendations made by the Taskforce Report;*
 - (b) *crucial areas of domestic and family violence police services?*

Responses to questions in *Part A* above might also be informed by responses to questions in *Part B* below. *Part B* asks what a DVDS, if implemented, should look like. You are encouraged to respond to these questions, even if your view is that a DVDS should not be established.

PART B — IF A DVDS IS INTRODUCED IN QUEENSLAND, HOW SHOULD IT OPERATE?

Basis and administration of a DVDS

- Q-9 *Is it necessary or desirable for a DVDS to be given a legislative basis?*
- Q-10 *What entity should administer a DVDS? If it is an existing entity, which entity is it? If it is a multi-agency entity, please outline which agencies should be included and how it might operate.*

Who should be eligible to apply for information under a DVDS?

- Q-11 *Should the eligible applicants under a DVDS be limited to people in an intimate personal relationship, or also include people in a family or informal care relationship?*
- Q-12 *Should a DVDS also be available to people who were in, but who are no longer in, an intimate personal relationship (or other relevant relationship for the scheme)?*
- Q-13 *Should a DVDS permit a third party to make an application on behalf of a person who may be at risk? In what circumstances should this occur?*

Entry into a DVDS

- Q-14 *What should be the process for applying for information under a DVDS (that is, for a 'right to ask' pathway)?*
- Q-15 *Should the process differ between an application made by a person who may be at risk and a third party applicant?*
- Q-16 *Should a DVDS provide for information to be disclosed, without an application, to a person who may be at risk (that is, a 'right to know' or 'power to tell' pathway)? In what circumstances should this occur?*

Disclosable information under a DVDS

- Q-17 *Which offences should be covered under a DVDS, and how should those offences be identified or defined? For example, a DVDS could apply broadly to 'domestic violence offences', or to certain types of offences (such as 'violent' offences) or to a defined list of specific offences.*
- Q-18 *Should disclosure under a DVDS be limited to events that occurred in the context of some or all of the relevant relationships to which the Domestic and Family Violence Protection Act 2012 applies (namely, intimate personal, family or informal care relationships)? How could this be achieved?*
- Q-19 *Should a DVDS permit disclosure of convictions only, or also permit disclosure of charges that did not result in a conviction, and/or other circumstances (for example, complaints, arrests or police investigations)?*
- Q-20 *Should a DVDS permit the disclosure of convictions:*
- (a) *where no conviction was formally recorded by a court?*
 - (b) *that have become spent convictions?*
 - (c) *that were imposed on a person as a child?*
 - (d) *that were imposed other than under Queensland law?*
- Q-21 *Should the information that can be disclosed under a DVDS be limited to the fact that a disclosable matter exists (for example, for a conviction, the offence and the date on which it occurred), or also include other relevant information*

about that matter (for example, the relationship between the subject person and victim, or details about the offence and sentencing details)? If the disclosure includes other relevant information, what particular information should be able to be disclosed? To what extent should this be determined on a case-by-case basis?

- Q-22 *Should a DVDS also permit disclosure of civil orders, notices or other actions made or taken under the Domestic and Family Violence Protection Act 2012?*

Criteria for a decision to make a disclosure under a DVDS

- Q-23 *What factors, principles or test should guide a decision about whether to make a disclosure under a DVDS?*

Procedural features and operation of a DVDS

- Q-24 *What information should be required in an application for disclosure? Should the requirements differ between an application made by a person who may be at risk, and a third party applicant?*
- Q-25 *When an application is received, or police become aware of information indicating a person may be at risk, what decision-making processes should apply? For example:*
- (a) who should be responsible for assessing and deciding an application?*
 - (b) what risk assessments should be undertaken (and at what stages)?*
 - (c) who should make a decision?*
- Q-26 *In deciding whether a disclosure should be made, what information and evidence should be taken into account? Should information be sought from other entities, such as relevant government departments, specialist domestic and family violence services or support services?*
- Q-27 *Should a DVDS set specific maximum timeframes within which processes should occur or a decision should be reached?*
- Q-28 *How, and by whom, should a disclosure or a non-disclosure be communicated to a person?*
- Q-29 *In what circumstances should a third party receive a disclosure or a non-disclosure?*
- Q-30 *When a disclosure or a non-disclosure is given, what support and services (such as safety planning) should be provided or offered to the person at risk and/or any third party?*
- Q-31 *When an application does not result in a disclosure, should an applicant:*
- (a) have access to review processes; and/or*
 - (b) be able to make a subsequent application about the subject?*

- Q-32 *When an application for disclosure is made, should the subject:*
- (a) *be advised of the application and given the opportunity to make submissions about whether a disclosure of their personal information should be made;*
 - (b) *be advised of a resultant disclosure of their personal information; and/or;*
 - (c) *be considered for referral to appropriate support, for example, a perpetrator intervention program?*
- Q-33 *What legal protections should be afforded to a decision-maker under a DVDS (for example, protection from civil liability for acts or omissions done honestly and without negligence)?*

Privacy and confidentiality

- Q-34 *Should a DVDS include specific confidentiality requirements that apply to a person to whom information is disclosed?*
- Q-35 *Should a DVDS include offences for unlawfully disclosing, or improperly obtaining, information under the scheme?*

Other matters

- Q-36 *Are there any issues particular to regional locations or specific populations in Queensland that may be relevant to the implementation and/or operation of a DVDS?*
- Q-37 *What financial and resource implications might be associated with a DVDS?*

Appendix A: Terms of Reference

Domestic Violence Disclosure Scheme

Background

On 28 February 2015, the Special Taskforce on Domestic and Family Violence in Queensland (the Taskforce) provided its report, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (the Taskforce Report) to the Honourable Anastacia Palaszczuk MP, Premier and Minister for the Arts.

The report contains 140 recommendations on how the government and the Queensland community can better address and reduce domestic and family violence.

On 18 August 2015, the Queensland Government released its response to the Taskforce Report accepting all 140 recommendations made by the Taskforce.

The Taskforce Report is silent on the issue of a domestic violence disclosure scheme, but did recommend the introduction of enabling legislation to allow information to support integrated service responses.

In 2016, the Queensland Government released its Domestic and Family Violence Prevention Strategy as a vehicle to drive change across all sectors of the Queensland community and achieve the vision of a Queensland free from domestic and family violence.

An issue for further consideration is whether or not Queensland's response to domestic and family violence could be further strengthened by introducing a domestic violence disclosure scheme.

The United Kingdom (UK) was the first Commonwealth jurisdiction to introduce a domestic violence disclosure scheme (known as 'Clare's Law'). Clare's Law was established following the 2009 murder of Clare Wood by her former partner who had convictions for harassment and assault of former partners. On 8 March 2014, the Clare's Law Scheme was rolled out across England and Wales following a 14 month pilot.

The UK Clare's Law Scheme enables police to disclose information about previous violent offending by a new or existing partner where this may help protect a person from violence by that partner. Disclosure may be made following a request by a person, the person's friend or the person's family member who has concerns about the person's partner ('Right to Ask'). Disclosure may also be made by the police where information indicates an individual is at risk of harm from their partner ('Right to Know'). The key objectives of the scheme are to strengthen protections and support to people at risk of domestic violence and reduce the incidents of domestic violence.

In Australia, New South Wales (NSW) is the only jurisdiction to have implemented a similar domestic violence disclosure scheme. Following public consultation, in April 2016, a two year pilot commenced in four NSW Police Force Local Area Commands, with an evaluation of the pilot completed by March 2018. The NSW scheme allows police to disclose a person's violent offending history based on a 'Right to Ask' model. The scheme is supported by Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007*, which allows information to be shared without the consent of a person if it is believed on reasonable grounds to be necessary to prevent or lessen a serious threat to the life, health or safety of a person caused by the commission or possible commission of a domestic violence offence.

On 25 November 2015, the South Australian government announced that a discussion paper on a domestic violence disclosure scheme similar to Clare's Law will be released in 2016. This paper has not been released to date.

Both the Western Australian Law Reform Commission in its *Enhancing Family and Domestic Violence Laws Report* of June 2014 and the Victorian Royal Commission into Family Violence in its *Final Report* of March 2016 did not recommend proceeding at, the time of the reports, with a

scheme based on Clare's Law. Both reports noted the potential detriments of the scheme and the lack of evidence to indicate the scheme leads to an improvement in victim safety.

Terms of Reference

1. I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for Training and Skills, refer to the Queensland Law Reform Commission (QLRC), for review and investigation the issue of whether Queensland's response to domestic and family violence would be strengthened by introducing a domestic violence disclosure scheme.

Scope

2. The QLRC is requested to recommend whether or not Queensland should introduce a domestic violence disclosure scheme.
3. In considering this issue, the QLRC should review and consider whether a domestic violence disclosure scheme may strengthen Queensland's response to domestic and family violence by: reducing the incidence of domestic and family violence, strengthening the protections and support for people at risk of domestic violence, and improving perpetrator accountability.
4. The QLRC should consider, but is not limited to, the following matters:
 - (a) the experience and any evaluations of domestic violence disclosure schemes in other Australian and international jurisdictions, particularly in relation to:
 - the nature of the schemes that have been implemented and how they are administered;
 - any relevant legislation that supports such schemes; and
 - the cost effectiveness of the schemes implemented and the impact, if any, of such schemes on the incidents of domestic and family violence, as well as the protection and support for people at risk of domestic violence;
 - (b) the current policy environment, and whether a domestic violence disclosure scheme would complement the Queensland Government's *Domestic and Family Violence Prevention Strategy 2016–2026* and specific actions taken or being taken by the Queensland Government in implementing the recommendations made by the Taskforce Report.
 - (c) the current legislative and policy environment regarding access to and disclosure of a person's criminal history and other information, and how a proposed domestic violence disclosure scheme would interact with and/or impact on the existing frameworks.
5. If a domestic and family violence disclosure scheme is recommended, the QLRC should consider, but is not limited to, the following issues:
 - (a) how the scheme should be administered (including the most appropriate existing entity to administer the scheme);
 - (b) whether the scheme must or should be given a legislative basis;
 - (c) what should be the process for applying for information under the scheme;
 - (d) who should be able to make an application for information under the scheme;
 - (e) who should be able to receive information under the scheme;
 - (f) whether disclosure should be made, without an application, to people who are at risk of domestic and family violence and when this should occur;

- (g) which types of criminal offences and other information should be disclosed under the scheme;
- (h) what information about criminal offences and other information should be disclosed under the scheme;
- (i) what information in relation to civil orders made under the *Domestic and Family Violence Protection Act 2012* should be disclosed under the scheme;
- (j) what information should be disclosed under the scheme in relation to offences and other information from other jurisdictions;
- (k) what should be the process for providing information under the scheme;
- (l) what factors should guide a decision to disclose information under the scheme;
- (m) who should be providing information to a person under the scheme;
- (n) what support should be provided to a person who receives information under the scheme;
- (o) whether an offence should be created to criminalise the unlawful disclosure of, or the improper obtaining of, information under the scheme;
- (p) whether the person the subject of the information should be informed of any disclosure made under the scheme;
- (q) how the scheme would interact with existing legislative provisions (eg. the *Criminal Law (Rehabilitation of Offenders) Act 1986*) regarding access to and disclosure of a person's criminal history; and
- (r) the financial implications associated with the scheme.

Consultation

- 6. The review is to include consultation with:
 - (a) domestic and family violence stakeholders (including, but not limited to, victims of domestic violence and domestic and family violence support services);
 - (b) legal stakeholders (including, but not limited to, the Queensland Law Society, Bar Association of Queensland, Queensland Council for Civil Liberties, Women's Legal Service and Queensland Association of Independent Legal Services);
 - (c) relevant government departments and agencies;
 - (d) the public generally; and
 - (e) any other body that the QLRC considers relevant having regard to the issues relating to the referral.

Timeframe

- 7. The QLRC is to provide a report on the outcomes of the review to the Attorney-General and Minister for Justice and Minister for Training and Skills by **30 June 2017**.