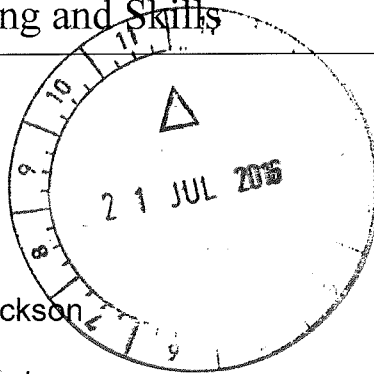




Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice
Minister for Training and Skills

In reply please quote: 3314168

20 JUL 2016



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The Honourable Justice David Jackson
Chairperson
Queensland Law Reform Commission
PO Box 13312
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BRISBANE QLD 4003

Dear Judge

I ask that the Queensland Law Reform Commission (the Commission), in accordance with its functions under section 10 of the *Law Reform Commission Act 1968* (the Act), conduct a review and investigation into the introduction of a domestic violence disclosure scheme in Queensland (Clare's Law scheme).

I enclose the terms of reference for this review.

I look forward to receipt of the Commission's final report pursuant to the Act by 30 June 2017.

Yours sincerely

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Minister for Training and Skills

Enc.

Terms of Reference for the Queensland Law Reform Commission 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 and End to Domestic and Family Violence in Queensland* (the Taskforce Report) to the Honourable Annastacia 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 (e.g. 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**.