



Domestic Violence Disclosure Scheme

Report

**Queensland
Law Reform Commission**

Domestic Violence Disclosure Scheme

Report

Report No 75
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To: The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice and Minister for Training and Skills

In accordance with section 15 of the *Law Reform Commission Act 1968*, the Commission is pleased to present its Report, *Domestic Violence Disclosure Scheme*.

[original signed]

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Previous Queensland Law Reform Commission publication in this reference:

Queensland Law Reform Commission, *Review about whether a domestic violence disclosure scheme should be introduced in Queensland*, Consultation Paper, WP No 75 (2016)

Abbreviations

ACT Domestic Violence Prevention Council Report (2016)	Domestic Violence Prevention Council (ACT), <i>Findings and Recommendations from the Review of Domestic and Family Violence Deaths in the Australian Capital Territory</i> , Public Report (May 2016)
ANROWS	Australia's National Research Organisation for Women's Safety Limited
DVDS	Domestic violence disclosure scheme
LRCWA Discussion Paper (2013)	Law Reform Commission of Western Australia, <i>Enhancing Family and Domestic Violence Laws</i> , Discussion Paper, Project No 104 (December 2013)
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)
National Plan (2011)	Commonwealth of Australia, <i>National Plan to Reduce Violence against Women and their Children 2010–2022</i>
NSW Consultation Report (2015)	NSW Government, 'NSW Domestic Violence Disclosure Scheme' (Consultation Report, 2015)
NSW Discussion Paper (2015)	NSW Government, 'NSW Domestic Violence Disclosure Scheme' (Discussion Paper, May 2015)
NSW Factsheet (2016)	NSW Government, <i>NSW Domestic Violence Disclosure Scheme Factsheet</i> (2016)
NT Consultation Report (2016)	Department of the Attorney-General and Justice (NT), 'Review of the <i>Domestic and Family Violence Act</i> ' (Report on Consultation, July 2016)
NT Issues Paper (2015)	Department of the Attorney-General and Justice (NT), 'Domestic and Family Violence Proposals' (Issues Paper, September 2015)
NZ Police Policy (2015)	New Zealand Police, <i>Police Manual</i> , Family Violence Information Disclosure Scheme v 1 (December 2015)
Police Scotland Factsheets	Police Scotland, <i>Disclosure Scheme for Domestic Abuse Scotland: Making an Application about Your Partner</i> Police Scotland, <i>Disclosure Scheme for Domestic Abuse Scotland: Asking on Behalf of Someone Else</i>
Prevention Strategy	Queensland Government, <i>Domestic and Family Violence Prevention Strategy 2016–2026</i> (December 2016)
QLRC Consultation Paper No 74 (2016)	Queensland Law Reform Commission, <i>Review about whether a domestic violence disclosure scheme should be introduced in Queensland</i> , Consultation Paper, WP No 75 (December 2016)
QPS Operational Procedures Manual (2017)	Queensland Police Service, <i>Operational Procedures Manual</i> , Issue 58.1 (June 2017)
SA Discussion Paper (2016)	Government of South Australia, 'Domestic Violence' (Discussion Paper, July 2016)
Tas Consultation Paper (2016)	Department of Justice (Tas), 'Family Violence: Strengthening Our Legal Responses' (Consultation Paper, October 2016)

Taskforce Report (2015) vol 1	Special Taskforce on Domestic and Family Violence in Queensland, <i>Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland</i> , Final Report (2015) vol 1
Taskforce Report: Government Response (2015)	Queensland Government, <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 Coroner's Report (2011)	<i>Inquest into the death of Clare Wood: Report under Rule 43 of the Coroner's Rules 1984</i> (MJ Leeming, HM Coroner for Greater Manchester West, 6 June 2011)
UK Guidance (2016)	Home Office (UK), 'Domestic Violence Disclosure Scheme (DVDS): Guidance' (December 2016, revised)
UK Impact Assessment (2013)	Home Office (UK), 'Domestic Violence Disclosure Scheme Impact Assessment' (October 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 Pilot Assessment (2013)	Home Office (UK), 'Domestic Violence Disclosure Scheme (DVDS): Pilot Assessment' (November 2013)
Vic Royal Commission Report (2016) vol 1	Victoria, Royal Commission into Family Violence, <i>Report and Recommendations</i> (March 2016) vol 1
Vic Royal Commission Report Summary (2016)	Victoria, Royal Commission into Family Violence, <i>Summary and Recommendations</i> (March 2016)

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

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Executive Summary

UNDERSTANDING DOMESTIC AND FAMILY VIOLENCE

[1] Domestic and family violence¹ can involve a broad range of physical, sexual and non-physical behaviours. It is a complex social problem with no single or simple solution. It tends to be under-reported.

[2] Many persons who are at risk of domestic and family violence do not want the relationship to end, but just want the violence to stop.² Barriers to leaving an abusive relationship include fear, shame, isolation or lack of support, emotional or financial dependence, and pressures from family or community.³

LEGISLATIVE AND OTHER RESPONSES TO DOMESTIC AND FAMILY VIOLENCE

[3] In recent years, there have been significant legislative and non-legislative reforms at national and State levels to address and reduce domestic and family violence, including looking at new ways to better protect persons at risk of domestic and family violence.

[4] One new approach adopted in a number of jurisdictions⁴ which aims to better protect persons at risk is the introduction of a 'domestic violence disclosure scheme' ('DVDS'). Such a scheme provides a formal mechanism for disclosing to a person at risk information about the relevant criminal or domestic violence history of their current (or, in some cases, former) partner. The aim of the disclosure is to enable the person at risk to make informed decisions about the relationship and their personal safety.⁵

TERMS OF REFERENCE

[5] The Attorney-General asked the Commission to review and investigate whether or not to introduce a DVDS in Queensland and, if so, to consider a number of specific matters relevant to any proposed scheme.⁶

¹ See [2.1]–[2.4] below.

² See [2.12] below.

³ See [2.13] below.

⁴ See [5.1]–[5.10] and Appendix C below.

⁵ See [5.3]–[5.10] below.

⁶ See Appendix A below.

DISCLOSURE OF CRIMINAL HISTORY AND OTHER INFORMATION BY POLICE

[6] Generally, an individual's criminal or domestic violence history will not be disclosed to another person (including a person at risk) by police or government agencies, except in very limited circumstances.⁷

[7] Recent legislative reforms include a new domestic and family violence information sharing framework. This permits the sharing of personal information among certain entities (including police, particular government agencies and specialist domestic and family violence or other support services) without the consent of the person to whom the information relates, for the purpose of assessing or responding to a serious threat to a person's life, health or safety.⁸

CONSULTATION OUTCOMES

[8] The Commission has consulted widely on this review.⁹

[9] It received 45 written submissions, many of which were from specialist domestic and family violence or other support services.

[10] The Commission also held numerous consultation meetings in different locations throughout the State with more than 130 individuals and representatives of organisations who work or have a working interest in the domestic and family violence sector in Queensland.

[11] Most respondents opposed the introduction of a DVDS in Queensland.¹⁰ Those respondents included specialist domestic and family violence and other support services, community legal centres, academics with an interest in the domestic and family violence sector, the Queensland Law Society and the Bar Association of Queensland.

[12] A number of key themes emerged from the consultation, including:

- whether a DVDS would complement Queensland's domestic and family violence reform strategy;
- the current lack of evidence about the effectiveness of such schemes in reducing the incidence of domestic and family violence, strengthening protections and support for persons at risk, or improving perpetrator accountability;
- the importance of linking persons at risk with adequate and appropriate support services;

⁷ See Chapter 4 below, particularly [4.13]–[4.15].

⁸ See [3.92]–[3.97] below.

⁹ See Chapter 6 below, which summarises the outcomes of the Commission's consultation.

¹⁰ See [6.5] below.

- the risk of diverting resources from existing and new domestic and family violence programs;
- safety concerns arising from inaccurate disclosure or non-disclosure, which might give rise to a false sense of safety; and
- the challenges of meeting the different needs of particular high risk groups.

[13] Respondents identified some benefits of a DVDS. Overall, however, many considered that the potential risks of introducing such a scheme in Queensland outweighed any potential benefits, and that those risks could not be mitigated sufficiently to justify the introduction of a scheme.¹¹

[14] Several respondents referred to the ‘low take-up rate’ of the DVDS pilot in New South Wales and the scheme in New Zealand. Further, respondents also suggested that, of those who would receive a disclosure, only a small number would find the disclosure useful, especially given that there are many barriers to leaving a relationship and to seeking support.¹²

THE COMMISSION’S VIEWS

[15] The Commission does not recommend the introduction of a DVDS in Queensland.

[16] The Commission is not persuaded that the allocation of substantial funding and other resources that would likely be required to implement a DVDS consistently across Queensland would be justified. It considers that funds and other resources would be better directed to frontline services and continued implementation of the current reforms to address domestic and family violence.¹³

[17] The Commission is concerned that a DVDS would not meet the different needs of particular high risk groups, including Aboriginal and Torres Strait Islander people and others living in regional and remote areas of Queensland, and could have an inconsistent and inequitable effect across the State.¹⁴

[18] The disclosure of information to a person at risk about their partner’s criminal or domestic violence history under a DVDS would not in itself lead to an increase in the person’s safety. The dynamics of domestic and family violence mean that there are many barriers to leaving an abusive relationship and reasons why a person might stay in such a relationship.¹⁵

[19] The provision of specialist domestic and family violence or other support services is more likely to increase the safety of a person at risk than the disclosure of information under a DVDS. The Commission also notes from its consultation that there are current gaps and unmet needs for support services, particularly in rural,

¹¹ See [6.8]–[6.9] below.

¹² See [6.10]–[6.11] below.

¹³ See [7.6]–[7.11] below.

¹⁴ See [7.12]–[7.17] below.

¹⁵ See [7.18]–[7.22] below.

regional and remote areas, and barriers that impede willingness to use such services.¹⁶

[20] The possible utility of a DVDS is limited by the fact that domestic and family violence is under-reported, with the result that there may not be any complaint, domestic violence order, conviction or other relevant information to disclose. As a corollary, the Commission notes that a limited disclosure or a non-disclosure under a DVDS might give rise to a false sense of safety.¹⁷

[21] The Commission is of the view that a DVDS would not address the underlying causes of domestic and family violence or community attitudes about it. It is possible that some people might treat a DVDS as shifting responsibility for the actions of a perpetrator to the person at risk to take action to ensure their own safety, and might view as somehow 'blameworthy' a person who does not seek to leave their relationship or otherwise act 'appropriately' in response to a disclosure under a DVDS. In this way, a DVDS has the potential to undermine an aim of the current reforms under the Prevention Strategy, namely to 'recognise the victim's perspective, prioritise their safety *and reduce the onus on them to take action or to leave*'.¹⁸

[22] A DVDS is unlikely to make perpetrators more accountable either at an individual or systemic level.¹⁹

[23] Overall, a DVDS is unlikely to strengthen Queensland's response to domestic and family violence. Any potential benefits of a DVDS in Queensland are limited, and are outweighed by the potential risks and disadvantages of such a scheme.²⁰

[24] Further, there is currently a lack of evidence that such schemes are effective in reducing the incidence of domestic and family violence, strengthening protections and support for persons at risk or improving perpetrator accountability.²¹

[25] In the Commission's view, the objective of strengthening Queensland's response to domestic and family violence is likely to be better achieved through focussing on the implementation of the current reforms, which aim to provide a comprehensive, inclusive and integrated systemic response to domestic and family violence.²²

¹⁶ See [7.22]–[7.23] below. See also [6.164]–[6.167] below.

¹⁷ See [7.26]–[7.29] below.

¹⁸ See [7.31]–[7.34] below.

¹⁹ See [7.37] below.

²⁰ See [7.38]–[7.39] below.

²¹ See [7.40] below.

²² See [7.41] below.

RECOMMENDATION

[26] The Commission recommends that Queensland should not introduce a domestic violence disclosure scheme.²³

[27] Accordingly, it has not been necessary for the Commission to make any recommendations in relation to the specific matters raised in paragraph five of the terms of reference.²⁴

²³ See [7.42] and Rec 7-1 below.

²⁴ See [7.43] below.

Chapter 1

Introduction

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BACKGROUND

1.1 There has been significant recent attention in Queensland, nationally, and internationally to legislative and non-legislative reforms to address and reduce domestic and family violence, including looking at new ways to better protect persons at risk of domestic and family violence.

1.2 One new approach which aims to better protect persons at risk is a domestic violence disclosure scheme ('DVDS'). The purpose of such a scheme is to allow a person at risk to find out (usually from police) if their current (or, in some cases, former) partner has a history of domestic or other violence. This information could then enable the person at risk to make informed choices about whether to continue the relationship and to seek help and support.

1.3 A number of jurisdictions have introduced a DVDS.¹

1.4 England and Wales were the first Commonwealth jurisdictions to introduce a DVDS.² 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, George Appleton, described as follows:³

Wood met Appleton on Facebook and was allegedly unaware of the extent of his violent criminal history.⁴ Wood separated from Appleton in October 2008 and in the five months leading up to her death she contacted the Greater Manchester Police on several occasions to complain about harassment, threats to kill, sexual

¹ See [5.1]–[5.10] and Appendix C below, in relation to the schemes in other jurisdictions.

² In England and Wales, the domestic violence disclosure scheme is also known as 'Clare's Law'.

³ K Fitz-Gibbon and S Walklate, 'The efficacy of Clare's Law in domestic violence law reform in England and Wales' (2016) *Criminology & Criminal Justice* 1, 3. See also Independent Police Complaints Commission (IPCC), 'IPCC Independent Investigation: Greater Manchester Police contact with Clare Wood prior to her death', (Commissioner's Report, 2010); *UK Coroner's Report* (2011).

⁴ See *UK Coroner's Report* (2011) 1, in which the Coroner noted that Wood, in a conversation with the Greater Manchester Police on 7 October 2008, (after the relationship had ended), said 'she was aware [Appleton] had convictions for harassing former girlfriends and she was concerned that she might become the victim of similar behaviour. The Coroner went on to report that '[i]n fact [Appleton's] convictions included matters even more serious than [Wood] described and it is at the very least, therefore, probable that she was unaware of their true extent'.

assault and criminal damage perpetrated by Appleton. It is also evident ... that the relationship had continued, if intermittently. In the week prior to her death, Appleton was given a non-harassment order after he smashed the front door of Wood's home. Wood never told her parents about the abuse. Appleton committed suicide six days after the killing, however, a Coroner's investigation into Wood's death returned a finding of unlawful killing by strangulation. (notes omitted; note added)

1.5 The Coroner 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.⁵ The murder of Ms Wood had followed a review of police powers to deal with perpetrators of domestic violence, which recommended a policy that those at risk of violence have the 'right to know' about the relevant information in the possession of the state.⁶

1.6 The scheme was implemented across England and Wales in 2014 following a 14 month pilot. It has three main objectives, which are to:⁷

- reduce incidents of domestic violence and abuse;
- reduce the health and criminal justice related costs of domestic violence and abuse; and
- 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.

1.7 Similar schemes were introduced in Scotland in October 2015, and in New Zealand in December 2015.

1.8 New South Wales commenced a two year DVDS pilot in April 2016. The pilot was introduced in four NSW Police Force Local Area Commands, with a view to its evaluation throughout the duration of the pilot.

⁵ Ibid 5.

⁶ Ibid, referring to Association of Chief Police Officers (ACPO), *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: HMIC (Her Majesty's Inspectorate of Constabulary), *Everyone's Business: Improving the Police Response to Domestic Abuse* (2014) 6–7.

⁷ *UK Impact Assessment* (2013) 1, 10.

1.9 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.⁸

1.10 Some of the schemes in other jurisdictions have been or are being reviewed in relation to operational matters and processes; however, to date, none of the schemes have been fully evaluated to determine their effectiveness in reducing the incidence of domestic and family violence or strengthening protections and support for persons at risk.⁹

1.11 In Queensland, the Special Taskforce on Domestic and Family Violence in Queensland (the 'Taskforce') made 140 recommendations¹⁰ but did not consider whether there should be a DVDS.

1.12 Western Australia¹¹ and Victoria¹² have recently considered, but not introduced, a DVDS. Each of those jurisdictions has focussed on implementing a range of other measures to address domestic and family violence.

1.13 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'.¹³

1.14 In considering whether Queensland should introduce a DVDS, the terms of reference require the Commission to consider:

- whether a DVDS would:
 - strengthen Queensland's response to domestic and family violence by:
 - reducing the incidence of domestic and family violence;
 - strengthening the protections and support for persons at risk of domestic violence; and

⁸ See, eg, *UK Consultation Paper* (2011) 5, citing the *UK Coroner's Report* (2011), in which it was 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 one 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 See [5.11]–[5.13] and [3]–[10], [37], [42] and [63] in Appendix C below, in relation to the schemes in other jurisdictions.

¹⁰ See *Taskforce Report: Government Response* (2015), which was tabled in Parliament on 18 August 2015. The Queensland Government accepted all 121 recommendations directed to the government.

¹¹ *LRCWA Final Report* (2014). See [5.15]–[5.20] below.

¹² *Vic Royal Commission Report* (2016) vol 1, 1, 145. See [5.21]–[5.28] below.

¹³ The terms of reference are set out in full in Appendix A below.

- improving perpetrator accountability; and
- complement Queensland's current domestic and family violence reform strategy;
- the experience and evaluations of DVDSs in other Australian and international jurisdictions; and
- the current legislative and policy environment regarding access to and disclosure of a person's criminal history and other information.

1.15 If the Commission recommends the introduction of a DVDS, the terms of reference also require it to consider how the scheme should operate.

METHODOLOGY OF THIS REVIEW

The Consultation Paper

1.16 In December 2016, the Commission released a Consultation Paper outlining the issues raised by the review, and inviting submissions on a number of specific questions set out in the Paper and on any other issues relevant to the terms of reference.¹⁴

Consultation process

1.17 Following the release of the Consultation Paper, the Commission wrote to more than 150 organisations and individuals inviting submissions. They included members of the judiciary, the Queensland Law Society and the Bar Association of Queensland, community legal centres, specialist domestic and family violence and other support services, academics and government departments.

1.18 A media statement to publicise the release of the Consultation Paper and call for submissions was issued to the print and electronic media on 12 December 2017.

1.19 An advertisement calling for submissions in response to the Consultation Paper was placed in *The Courier Mail* newspaper¹⁵ and 14 Queensland regional newspapers.¹⁶

1.20 Notices calling for submissions were also placed on the Commission's website and on the Queensland Government websites 'qld.gov.au', 'Get Involved' and 'End Domestic and Family Violence'.

1.21 The closing date for submissions was 3 February 2017.

¹⁴ QLRC Consultation Paper No 74 (2016).

¹⁵ The advertisement appeared on Saturday, 17 December 2016.

¹⁶ The advertisement appeared in the *Bundaberg News Mail*, *Cairns Post*, *Fraser Coast Chronicle*, *Gladstone Observer*, *Gold Coast Bulletin*, *Gympie Times*, *Mackay Daily Mercury*, *Queensland Times* (Ipswich), *Rockhampton Bulletin*, *Sunshine Coast Daily*, *Toowoomba Chronicle*, and *Townsville Bulletin* on Saturday 17 December 2016, in the *North West Star* (Mt Isa) on Thursday, 22 December 2016 and in the *Central Queensland News* on Friday, 23 December 2016.

1.22 The Commission received 45 written or oral submissions.

1.23 Prior to the close of submissions, the Commission held consultation meetings in Townsville, Mt Isa, Cairns, Rockhampton, the Sunshine Coast, Toowoomba, the Gold Coast and Brisbane. The participants included representatives from specialist domestic and family violence and other support services (including perpetrator intervention programs), community legal services and academics with an interest in the domestic and family violence sector. At each of those locations, the Commission also provided an opportunity for members of the community to consult face-to-face with Commission staff.¹⁷

1.24 The Commission also met separately with the Queensland Domestic and Family Violence Support Network and the Queensland Police Service.

1.25 During the course of the review, the Commission received information and assistance from several organisations and individuals, including the Courts Performance and Reporting Unit, Queensland Courts Service (Department of Justice and Attorney-General), the Queensland Police Service and policy and police officers involved with the development and operation of the schemes in Scotland and New Zealand and the pilot in New South Wales.

1.26 A list of respondents and consultation meetings is set out in Appendix B.

1.27 The Commission would like to thank all those organisations and individuals who participated in the review for their contribution to this Report. As well as providing views on the issues raised, a number of consultees provided factual information and data that has assisted in the review.

STRUCTURE OF THIS REPORT

1.28 Chapter 2 gives an overview of the nature and incidence of domestic and family violence.

1.29 Chapter 3 outlines legislative and other responses to domestic and family violence in Queensland, including the role of police and domestic and family violence support services in preventing and responding to domestic violence, the operation of the *Domestic and Family Violence Act 2012* (Qld) and recent domestic and family violence reforms.

1.30 Chapter 4 discusses Queensland's laws regulating access to and disclosure of information about an individual's criminal or domestic violence history.

1.31 Chapter 5 examines the position in other jurisdictions, notably the jurisdictions which have implemented a DVDS, the jurisdictions which have considered but not introduced a DVDS, and the jurisdictions in which a DVDS or other disclosure mechanism is being considered.

¹⁷ Information about the availability of community consultation meetings was published on the Commission's website and through specialist domestic and family violence and other support services in each location. Arrangements were made for specialist domestic and family support services to provide support for individual consultees if required.

1.32 Chapter 6 summarises the outcomes of the Commission's consultation.

1.33 Chapter 7 sets out the Commission's views and recommendation.

TERMINOLOGY

1.34 A list of Abbreviations used in this Report is set out at the beginning of the Report.

Chapter 2

The nature and incidence of domestic and family violence in Queensland

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DEFINING DOMESTIC AND FAMILY VIOLENCE

2.1 Except as otherwise required by the context, the term 'domestic and family violence' is used throughout this Report to reflect the broad range of relationships in which such violence can occur, including cultural kinship relationships.

2.2 Domestic and family violence 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.¹

2.3 In Queensland law, 'domestic violence' is defined as behaviour:²

- 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 spouses³ 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

¹ See generally, *Taskforce Report* (2015) vol 1, 68–71.

² *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. The Act uses the term 'domestic violence' but encompasses both domestic and family violence.

³ Including de facto partners and civil partners: *Acts Interpretation Act 1954* (Qld) s 36 sch (definition of 'spouse').

- that is physically or sexually abusive, emotionally or psychologically abusive,⁴ economically abusive,⁵ 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.

2.4 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 counselling or procuring someone else to commit domestic violence.⁶ Domestic violence will not always be criminal behaviour.

UNDERSTANDING DOMESTIC AND FAMILY VIOLENCE

Dynamics of domestic and family violence

2.5 The experience of domestic and family violence is not uniform. However, a number of common characteristics and patterns of behaviour have been identified.⁷ For example, two common characteristics are emotional involvement and economic dependence.⁸ Further, domestic and family violence is overwhelmingly perpetrated by men against women.⁹

2.6 Contemporary understandings of domestic and family violence emphasise its ongoing nature, in contrast to one-off events.¹⁰ In some cases, intimate partner

⁴ '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, or 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.

⁵ '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.

⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s 8(2), (3).

⁷ Domestic and family violence can occur within a wide range of relationships. Much of the research focuses, however, on intimate partner violence, including violence between spouses and cohabiting couples, as well as dating relationships and heterosexual and LGBTI couples.

⁸ See, eg, World Health Organisation, 'Violence by Intimate Partners' in *World Report on Violence and Health* (2002) 89.

⁹ P Cox, 'Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Horizons Research Report No 1, ANROWS, 2015) 2–4, 20 ff. In contrast, men are more likely to experience violence from a stranger.

¹⁰ *Taskforce Report* (2015) vol 1, 69. See further at 70–71.

violence can be viewed as a continuum of different forms of abuse, escalating in severity over time:¹¹

Different forms of violence perpetrated by males against their female partners are generally conceptualised as part of a continuum, beginning with the establishment of power and control through emotional and psychological abuse tactics. Uninterrupted patterns of power and control are likely to escalate to sexual and other physical abuse and domestic homicide represents the extreme end of the continuum.

2.7 Particularly between intimate partners, a common pattern is a repeating 'cycle of violence' that is said to consist of three main phases: a build-up phase, which involves increasing tension and escalating abuse; an explosion phase, which marks the peak of violence; and a reconciliation phase, characterised by remorse, denial and increased intimacy.¹² However, not all domestic and family violence fits within this cycle.¹³

2.8 This has been distinguished from other types of intimate partner violence in which, for example, frustration and anger occasionally erupt, or where a victim of abuse retaliates or acts in self-defence against a violent partner.¹⁴

2.9 There is no single cause that leads to domestic or family violence. The associated factors are 'complex and multi-faceted', involving the interaction of individual, relationship, community and social issues.¹⁵ Risk factors associated with perpetrators include alcohol or drug dependency, financial or personal stress and lack of social support. Risk factors associated with victims include past exposure to

11 H Nancarrow et al, 'Intimate partner abuse of women in Queensland' (Report, Queensland Centre for Domestic and Family Violence Research, CQ University Australia, 2011) 7. See also G Kaufman Kantor and JL Jasinski, 'Dynamics and Risk Factors in Partner Violence' in JL Jasinski and LM Williams (eds), *Partner Violence: A Comprehensive Review of 20 Years of Research* (Sage, 1998) 1, 3–4; and, for example, Micah Projects Inc, *The Power and Control Wheel*, Brisbane Domestic Violence Service <http://www.bdvs.org.au/resource_files/bdvas/IR_3_PowerandControl.pdf> which refers to common tactics such as coercion and threats, intimidation, emotional abuse, isolation, denying and blaming, using children and economic abuse. The widely used 'power and control wheel' was developed in the 1980s by staff at the Domestic Abuse Intervention Project in Duluth, Minnesota: Domestic Abuse Intervention Programs, *FAQs About the Wheels* (2017) <<https://www.theduluthmodel.org/wheels/faqs-about-the-wheels/>>.

12 The cycle of violence theory was developed in LE Walker, *The Battered Woman* (Harper, 1979), which referred to the three phases of 'tension-building', 'acute battering incident' and 'kindness and contrite loving behaviour'. The three phases have been further broken down to include: a 'stand-over phase' immediately preceding the explosion, which is characterised by increased control and fear; and 'remorse' and 'pursuit' phases leading to the reconciliation phase, which involve guilt minimisation and promises to change. See generally, for example, Micah Projects Inc, *The Cycle of Violence*, Brisbane Domestic Violence Service <http://www.bdvs.org.au/resource_files/bdvas/IR_5_Cycle-of-violence-factsheet.pdf>.

13 See, eg, DomesticShelters.org, *Is the 'Cycle of Violence' Outdated?* (18 May 2015) <<https://www.domesticshelters.org/domestic-violence-articles-information/is-the-cycle-of-violence-outdated#.WTXxDnl-9oJ>>; Kaufman Kantor and Jasinski, above n 11, 1, 3.

14 See MP Johnson and KJ Ferraro, 'Research on Domestic Violence in the 1990s: Making Distinctions' (2000) 62 *Journal of Marriage and the Family* 948, 949–50; MP Johnson, 'Patriarchal terrorism and common couple violence: two forms of violence against women' (1995) 57(2) *Journal of Marriage and the Family* 283, in which the researchers distinguish 'intimate terrorism' or 'patriarchal terrorism' on the one hand from 'common couple violence' and 'violent resistance', respectively, on the other. See also World Health Organisation, above n 8, 93.

15 Nancarrow et al, above n 11, 9.

abuse or violence, pregnancy and separation.¹⁶ Some people are also at higher risk, including Aboriginal and Torres Strait Islander people, people in rural and remote areas and people from culturally and linguistically diverse backgrounds.¹⁷ Cultural factors may also play a part. It has been explained, for example, that in some societies, violence is sometimes regarded ‘as a consequence of [a] man’s right to inflict physical punishment on his wife’.¹⁸ Whilst multiple factors are associated with domestic and family violence, it is unclear which have a significant causal impact.

Victims’ responses to domestic and family violence

2.10 Victims of domestic and family violence may experience reduced self-esteem, find it hard to make sense of what is happening, blame themselves for the violence, deny what is happening or ignore the abuse and hope that it will change.¹⁹

2.11 The responses of victims to domestic and family violence — including decisions to stay or leave a relationship — are complex and diverse:²⁰

Some women resist, others flee, while still others attempt to keep the peace by giving in to their [partners’] demands. What may seem to an outside observer to be a lack of positive response by the woman may in fact be a calculated assessment of what is needed to survive in the [relationship] and to protect herself and her children.

2.12 There are many reasons why a person might stay in a relationship that involves domestic or family violence (an ‘abusive relationship’), including love, commitment to the relationship, concern for children, the resolution of problems and the hope or belief that the partner will change.²¹ Many do not want the relationship to end, but just want the violence to stop.²²

2.13 Barriers to leaving an abusive relationship include fear, shame, isolation or lack of support, emotional or financial dependence and pressures from family or

¹⁶ See World Health Organisation, above n 8, 97–8; J Phillips and P Vandenbroek, ‘Domestic, family and sexual violence in Australia: an overview of the issues (Research Paper Series 2014–15, Australian Parliamentary Library, 14 October 2014) 6–13. See also, 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).

¹⁷ See [2.25], [2.27] and [3.9]–[3.13] below.

¹⁸ World Health Organisation, above n 8, 94, stating that this is ‘something indicated by studies from countries as diverse as Bangladesh, Cambodia, India, Mexico, Nigeria, Pakistan, Papua New Guinea, the United Republic of Tanzania and Zimbabwe’: 94–5. ‘Cultural justifications for violence usually follow from ... notions of the ... roles of men and women’, where men are perceived as the owners of their wives: 95.

¹⁹ See, for example, Relationships Australia Victoria, *Safe from Violence: A guide for women leaving or separating* (2007) 9 <<http://www.relationshipsvictoria.com.au/resources/publications/booklets/#safefromviolence>>.

²⁰ World Health Organisation, above n 8, 95. Different strategies may have different effects; some studies have found that direct confrontation may increase the risk of further abuse: see, eg, L Goodman et al, ‘Women’s Resources and Use of Strategies as Risk and Protective Factors for Reabuse Over Time’ (2005) 11(3) *Violence Against Women* 311.

²¹ Nancarrow et al, above n 11, 3–4, 56. See also World Health Organisation, above n 8, 96; DK Anderson and DG Saunders, ‘Leaving an Abusive Partner: An Empirical Review of Predictors, the Process of Leaving, and Psychological Well-Being’ (2003) 4(2) *Trauma, Violence and Abuse* 163.

²² Relationships Australia Victoria, *Safe from Violence: A guide for women leaving or separating* (2007) 13 <<http://www.relationshipsvictoria.com.au/resources/publications/booklets/#safefromviolence>>.

community.²³ A person's response to domestic and family violence will also often be limited by the options that are, or are perceived to be, available.²⁴

2.14 Leaving an abusive relationship is usually a process, not an isolated event. It may involve multiple attempts and may be more difficult when children are involved. It has been described in the following general terms:²⁵

Usually [leaving] occurs when the violence becomes severe enough to trigger the realization that the partner is not going to change, or when the situation starts noticeably to affect the children. Women have also mentioned emotional and logistical support from family or friends as being pivotal in their decision to end the relationship.

... Most women leave and return several times before finally deciding to end the relationship. The process includes periods of denial, self-blame and suffering before women come to recognize the reality of the abuse and to identify with other women in similar situations. At this point, disengagement and recovery from the abusive relationship begin. (notes omitted)

2.15 It has been theorised that the process of leaving involves the victim's progression through different stages of 'readiness' and that supports and interventions need to align with the person's current 'stage of change'.²⁶

2.16 Leaving a relationship does not necessarily ensure safety. There is evidence that separation from an abusive partner can increase the risk of more severe violence.²⁷ As mentioned at [2.31] below, a significant proportion of intimate partner homicides in Queensland occur around the time of separation.

2.17 The complexities of victims' responses to domestic and family violence are not always understood:²⁸

²³ See *Taskforce Report* (2015) vol 1, 83–5; World Health Organisation, above n 8, 96; Domestic Violence Prevention Centre Gold Coast Inc, *Barriers to Leaving an Abusive Relationship* (2017) <<http://www.domesticviolence.com.au/pages/barriers-to-leaving-an-abusive-relationship.php>>.

²⁴ See, eg, World Health Organisation, above n 8, 96.

²⁵ Ibid.

²⁶ See, eg, LA Shurman and CM Rodriguez, 'Cognitive-Affective Predictors of Women's Readiness to End Domestic Violence Relationships' (2006) 21(1) *Journal of Interpersonal Violence* 1417, 1419–21. The 'stages of change' theory posits five cyclical, and not always linear, stages of pre-contemplation, contemplation, preparation, action and maintenance. It has been applied in the context of domestic violence in Australia: see, eg, S Patton, 'Pathways: How women leave violent men' (Women Tasmania, Department of Premier and Cabinet, 2003) 41–2. See also Submission 26.

²⁷ 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). In this context, it has also been observed that a victim's fear of retaliation will be stronger if they know their partner has engaged in violent behaviour prior to their relationship: MA Dutton, 'Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome' (1993) 21(4) *Hofstra Law Review* 1, 43.

²⁸ Dutton, above n 27, 36. See also L Irving and B Chi-pun Liu, 'Beaten Into Submissiveness? An Investigation Into the Protective Strategies Used by Survivors of Domestic Abuse' (2016) *Journal of Interpersonal Violence* 1, 2–3; and Walker, above n 12, 20–21, 29–30.

Perhaps the most commonly asked question about the battered woman ... is, Why didn't she leave? The question, to some extent, suggests that the [victim], by remaining in (or returning to) an abusive relationship, is deviant, odd, or blameworthy in some way. Further, the question assumes not only that there are viable options for alternative behaviour, but that she should have employed them, and that doing so would have led to her safety. (note omitted)

2.18 Community attitude surveys in Australia have found that, whilst there is, for example, a greater recognition of what constitutes domestic and family violence, there remains a lack of understanding about why people stay in, or feel unable to leave, abusive relationships (and a significant proportion of people who believe violence against women is excusable in certain circumstances).²⁹ Community attitudes influence the reporting of and intervention in domestic and family violence.³⁰ The tendency to focus on the victim's actions, rather than the perpetrator's behaviour, has been identified as a significant barrier.³¹

THE INCIDENCE AND PREVALANCE OF DOMESTIC AND FAMILY VIOLENCE

Under-reported

2.19 Domestic and family violence has tended to be under-reported.³² This was highlighted by the Australian Bureau of Statistics 2012 Personal Safety Survey which estimated that, of those who had experienced violence from their current partner, 80% of women and 95% of men had never contacted the police and 54% of men and 26% of women had never told anyone. People were more likely to tell someone about violence from a previous (rather than a current) partner, although an estimated 80% of men and 58% of women had never contacted police.³³ Under-reporting has been

²⁹ See VicHealth, *Australians' attitudes to violence against women: Findings from the 2013 National Community Attitudes towards Violence Against Women Survey (NCAS)* (Victoria Health and Promotion Foundation, 2014); and Phillips and Vandenbroek, above n 16, 13–14; J Phillips et al, 'Domestic violence: issues and policy challenges' (Research Paper Series 2015–16, Australian Parliamentary Library, 24 November 2015) 6.

³⁰ See VicHealth, above n 29; and Phillips and Vandenbroek, above n 16, 13–14; Phillips et al, above n 29, 6.

³¹ See, eg, R Batty, 'Rosie Batty on Victim-Blaming and Changing Attitudes to Family Violence' on *The Wheeler Centre* (8 July 2015) <<https://www.wheelercentre.com/notes/rosie-batty-on-victim-blaming-and-changing-attitudes-to-family-violence>>. See also *Taskforce Report* (2015) vol 1, 8, 50 on the need for cultural change. 'Victim blaming narratives', which in some way suggest that a victim is (partially) responsible for the violence, have been criticised more widely, for example, in the context of the partial defence to homicide of provocation: see, eg, K Fitz-Gibbon, *Homicide Law Reform, Gender and the Provocation Defence: A Comparative Perspective* (Palgrave Macmillan, 2014) especially at 56–7, 73, 190–91, 267.

³² *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.

³³ Australian Bureau of Statistics, above n 32.

identified, in particular, for vulnerable groups, including Aboriginal and Torres Strait Islander women,³⁴ and immigrant and refugee women.³⁵

High incidence

2.20 Even so, it is apparent that the incidence of domestic and family violence is high. Key sources of information include surveys and police data:

Across Australia in 2012	In Queensland in 2011	In Queensland in 2015-16
<ul style="list-style-type: none"> • One in six women and one in 19 men experienced physical or sexual violence from a current or former cohabiting partner since the age of 15 years • Estimated one in four women and one in seven men experienced emotional abuse by a current or former cohabiting partner since the age of 15 	<ul style="list-style-type: none"> • 13.1% of surveyed women experienced physical or sexual abuse by their current spousal partner • 33% of surveyed women experienced non-physical abuse by their current intimate partner, including: <ul style="list-style-type: none"> • psychological abuse (25.2%) • social-psychological abuse (18.5%) • economic abuse (5.4%) 	<ul style="list-style-type: none"> • 87 100 domestic and family violence related matters were reported to police, equating to about 238 matters each day. This included: <ul style="list-style-type: none"> • 22 853 breaches of domestic violence protection orders • 21 780 police initiated protection order applications • 8158 private protection order applications • 21 393 unspecified 'other' actions

Figure 2-1: Incidence of domestic and family violence³⁶

Reports to Queensland Police

2.21 The number of domestic and family violence related matters reported to the Queensland Police Service has increased in recent years:³⁷

³⁴ Australian Government, Steering Committee for the Review of Government Service Provision, 'Overcoming Indigenous Disadvantage: Key Indicators 2016' (Report, Productivity Commission, 2016) 4.100–02, in which it was noted that 'studies indicat[e] that around 90 per cent of violence against Aboriginal and Torres Strait Islander women is not disclosed', citing M Willis, 'Non-disclosure of violence in Australian Indigenous communities' (Trends and Issues in Crime and Criminal Justice No 405, Australian Institute of Criminology, 2011).

³⁵ C Vaughan et al, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project' (Horizons Research Report No 7, ANROWS, 2016) 6, 17.

³⁶ See, respectively, ANROWS, *Violence against women: Key statistics* (14 May 2014) <<http://anrows.org.au/publications/fast-facts/violence-against-women-key-statistics>> and Australian Bureau of Statistics, *Personal Safety, Australia, 2012* Cat No 4906.0; Nancarrow et al, above n 11, 2; Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 6, 25. As to the 2012 survey data, see further Cox, above n 9, 31, 78 ff.

³⁷ Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 25; *Taskforce Report* (2015) vol 1, 75. See also the following information provided by the Queensland Police Service, 15 November 2016:

	Total DFV related matters	Protection order breaches
2012–13	64 258	12 828
2011–12	57 963	10 997

	Total DFV related matters	Protection order breaches
2015–16	87 100	22 853
2014–15	70 735	16 388
2013–14	66 016	14 579

Figure 2-2: Domestic and family violence matters reported to police

2.22 This increase may be attributable, at least in part, to higher reporting as a result of targeted awareness-raising campaigns.³⁸

Regional and other differences

2.23 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.³⁹ The Northern region also had the highest number and rate of reported breaches of domestic violence orders (1087 per 100 000 persons).⁴⁰ This is consistent with the previous year.⁴¹

³⁸ Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 5; Domestic and Family Violence Implementation Council, *12 Month Report Dec 2015–Nov 2016* (2017) 62–3.

³⁹ Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 25–36:

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.

⁴⁰ Ibid.

⁴¹ Ibid.

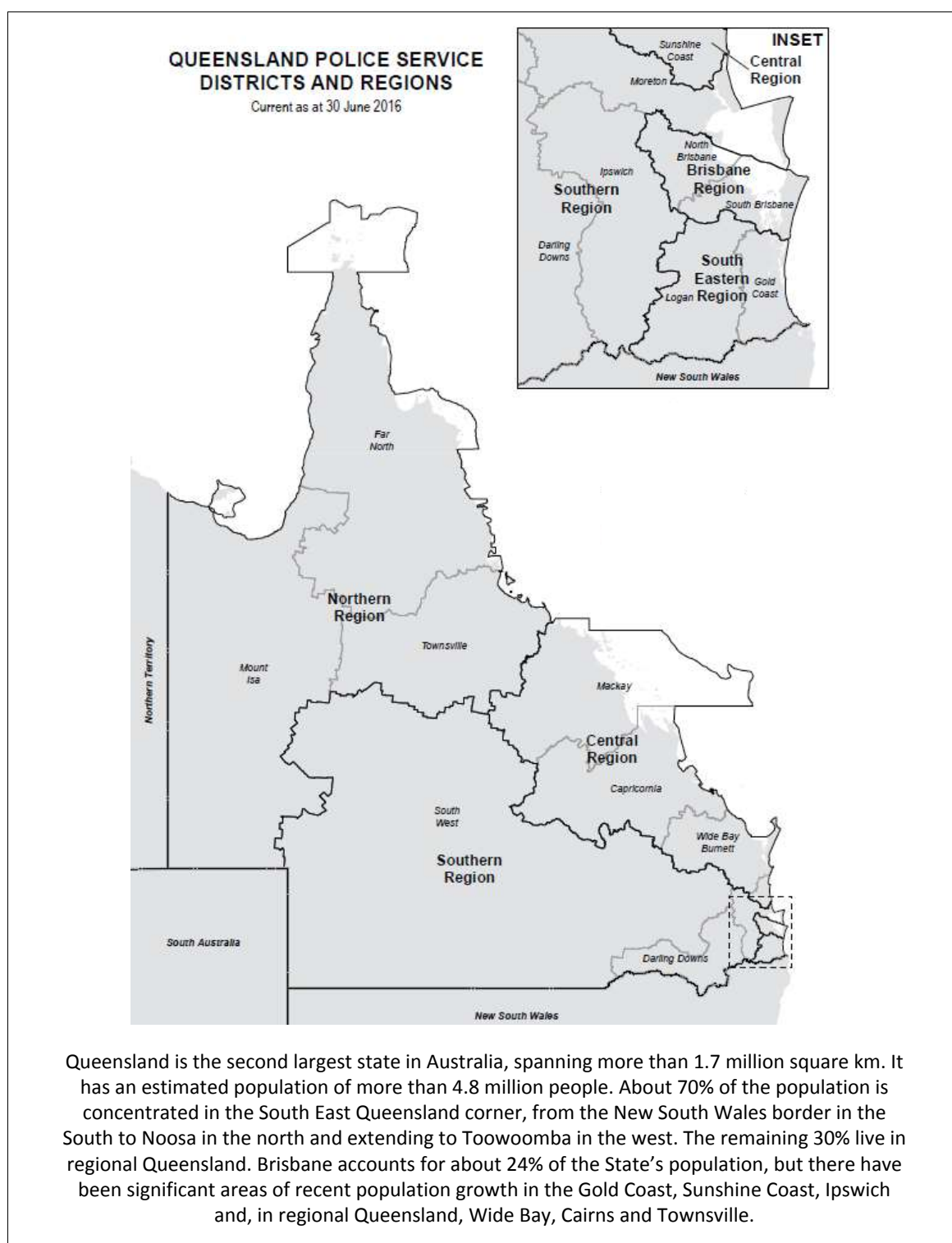


Figure 2-3: Queensland Police Service districts and regions⁴²

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Map image from Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 177, produced by GIS Team, Public Safety Business Agency, State of Queensland. Data from Queensland Government, *About Queensland: Statistics and facts* (29 January 2014) <<https://www.qld.gov.au/about/about-queensland/statistics-facts/>>; Queensland Government Statistician's Office, *Population growth highlights and trends, Queensland regions, 2015 edition* (2015) 2–3.

2.24 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.⁴³

2.25 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 are at higher risk of domestic and family violence and can face additional challenges in seeking help and accessing support.⁴⁴ Domestic and family violence also affects children.⁴⁵

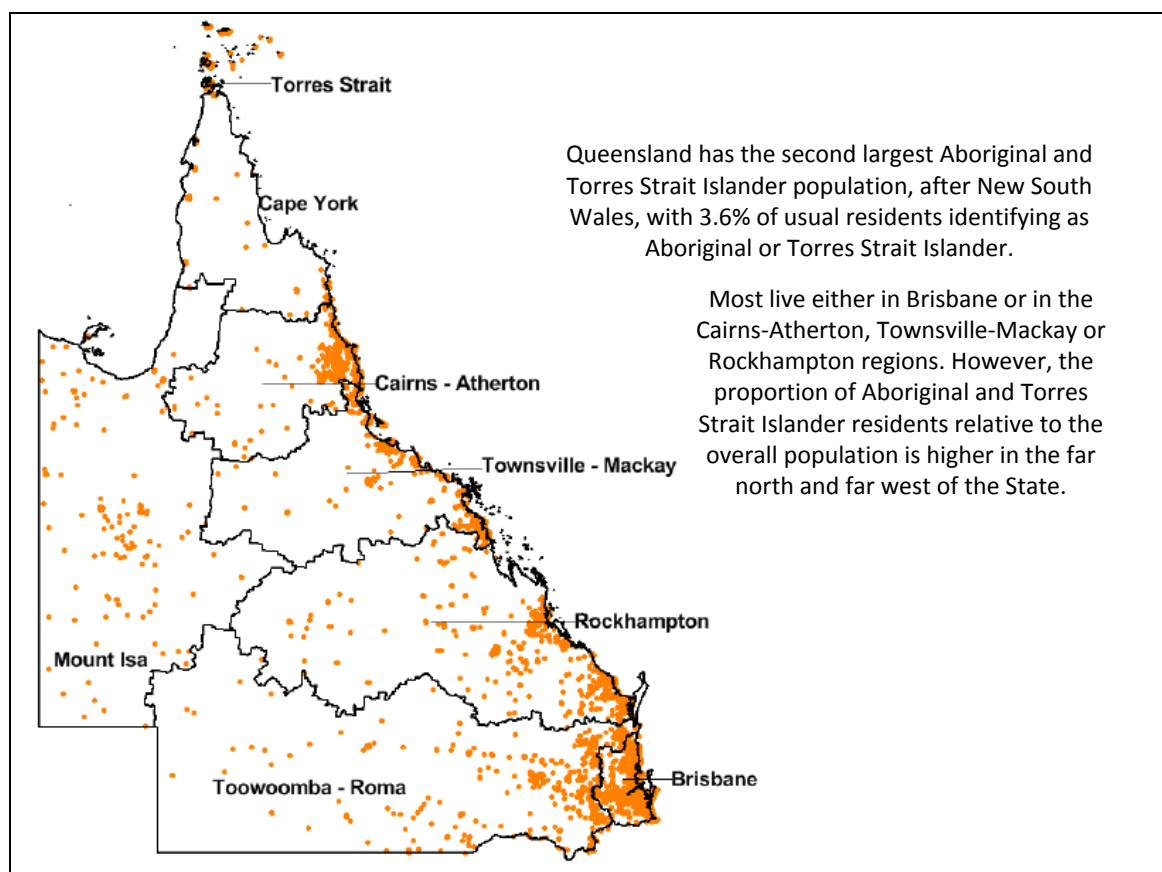


Figure 2-4: Aboriginal and Torres Strait Islander population, Queensland⁴⁶

⁴³ *Taskforce Report* (2015) vol 1, 72, 119.

⁴⁴ See *Taskforce Report* (2015) vol 1, ch 5 and 215–17. See further [3.9]–[3.13] below. As to older people, and the related issue of elder abuse, see Australian Law Reform Commission, *Elder Abuse—A National Legal Response*, Final Report No 131 (2017) ch 2.

⁴⁵ See *Taskforce Report* (2015) vol 1, 142–7, and the studies cited there.

⁴⁶ 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) 1, citing Australian Bureau of Statistics 2011 Census of Population and Housing and Australian Statistical Geography Standard, 2011 edition.

2.26 The population distribution shown above is consistent with general trends in Australia. As the Productivity Commission has observed:⁴⁷

Aboriginal and Torres Strait Islander Australians are gradually becoming more urbanised, with a noticeable decrease in the number living in remote towns and settlements, and increasing numbers living in larger regional towns. At the same time, the non-Indigenous population of some of these regional towns is declining, and so, Aboriginal and Torres Strait Islander Australians are becoming a larger proportion of the populations of those towns. (note omitted)

2.27 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.⁴⁸ Such violence occurs in broader family and kinship relationships, distinguishing it from general understandings that focus on intimate partner violence.⁴⁹

Higher rates of physical violence	Higher rates of hospitalisation for family violence	Higher rates of sexual assault by a family member
<ul style="list-style-type: none"> • In 2014-15, around one in five Aboriginal and Torres Strait Islander adults in Australia reported experiencing physical or threatened violence, 2.5 times the rate of non-Indigenous Australians 	<ul style="list-style-type: none"> • In 2014-15, hospitalisation rates for family violence related assault for Aboriginal and Torres Strait Islander Australians were between 23 and 32 times the rates for non-Indigenous Australians, similar to previous years • In 2012-13, the hospitalisation rate was more than 7 times higher in remote areas (1510.6 per 100 000 persons) than in major cities (197.1 per 100 000 persons) 	<ul style="list-style-type: none"> • In Queensland in 2015, the proportion of Aboriginal and Torres Strait Islander women reporting sexual assault by a family member was 1.2 times the rate for non-Indigenous women

Figure 2-5: Incidence of domestic and family violence, Aboriginal and Torres Strait Islander people⁵⁰

2.28 Despite the high prevalence of violence in some Indigenous communities, 'violence is not normal or customary in Aboriginal and Torres Strait Islander communities'.⁵¹ It is also important to recognise that, just as Indigenous Australians are diverse peoples with differences in language, culture and history, 'not all Indigenous women are subjected to violence and not all Indigenous communities have high rates of violence'.⁵²

⁴⁷ Australian Government, above n 34, [3.11]–[3.12].

⁴⁸ See *Taskforce Report* (2015) vol 1, 120–21, and the sources cited there.

⁴⁹ Ibid 121.

⁵⁰ Ibid; Australian Government, above n 34, [4.12].

⁵¹ A Olsen and R Lovett, 'Existing knowledge, practice and responses to violence against women in Australian Indigenous communities' (Landscapes State of Knowledge Paper No 2, ANROWS, 2016) 4.

⁵² Ibid. See also Australian Government, above n 34, [4.100] in which it is explained that '[t]here is no single factor, but rather a multitude of interrelated factors that contribute to the occurrence of family and community violence in Aboriginal and Torres Strait Islander populations'.

Domestic homicides

2.29 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.⁵³

2.30 Between 1 January 2006 and 31 December 2013, 45% of all homicides in Queensland occurred within an intimate partner or family relationship. Of those:⁵⁴

- 57% were intimate partner homicides, in which the victims were most often female (79%) rather than male (21%);
- 39% occurred within a family relationship, in which 57% of victims were male and 43% female; and
- The majority (82%) involved male offenders.

2.31 Common risk factors have been identified for domestic and family violence related homicides, including separation:⁵⁵

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.

2.32 In 57.3% of intimate partner homicides, and 48.4% of homicides within family relationships, the offender had a previous criminal justice system history.⁵⁶ A history of domestic and family violence, and an escalation in its prevalence or incidence, was also present in many domestic homicides: there was evidence of domestic and family violence between the deceased and the offender in 67% of intimate partner homicides and in 47% of homicides within family relationships.⁵⁷ Further, of the 138 intimate partner homicides in Queensland between 1 January

⁵³ 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.

⁵⁴ 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.

⁵⁵ Office of the State Coroner, *Annual Report 2014–15* (2015) 18. Of the 71 female deceased who were killed by a male intimate partner between 1 January 2006 to 31 December 2012, 43% of the deaths occurred during a period of actual or intended separation: Office of the State Coroner, *Annual Report 2013–14* (2014) 16. Separation has been identified as a significant factor in domestic homicides across Australia: see J Mouzos, 'Femicide: The Killing of Women in Australia 1989–1998 (Research and Public Policy Series No 18, Australian Institute of Criminology, 1999) 12, drawing on data from the National Homicide Monitoring Program.

⁵⁶ Office of the State Coroner, *Annual Report 2013–14* (2014) 15, for the period 1 January 2006 to 31 December 2012.

⁵⁷ Ibid.

2006 and 31 December 2017, '[a]lmost all (96.5%) females killed ... had a previous history of being a victim of intimate partner violence'.⁵⁸

2.33 It has been observed that domestic and family violence deaths 'are almost never without warning' in that in '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'.⁵⁹

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.

2.34 However, it has also been observed that an offender's past behaviours and 'underlying pattern of coercive control' are 'often not recognised as acts of domestic and family violence'.⁶⁰

REPEAT AND SERIAL PERPETRATION OF DOMESTIC AND FAMILY VIOLENCE

2.35 There is evidence that perpetrators of domestic and family violence not uncommonly engage in subsequent domestic and family violence behaviours.⁶¹ 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).⁶² Nor do they use the same approach as to what constitutes subsequent domestic and family violence behaviour.⁶³

2.36 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

⁵⁸ Coroners Court of Queensland, *Statistical overview of Queensland domestic and family homicide data* (8 May 2017) Queensland Courts <<http://www.courts.qld.gov.au/courts/coroners-court/domestic-and-family-violence-death-review-and-advisory-board>>.

⁵⁹ 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.

⁶⁰ Office of the State Coroner, *Annual Report 2014–15* (2015) 18. A number of respondents to this review noted that domestic and family violence is often 'hidden' and may not be known to police or have resulted in a criminal record: see, eg, Submissions 8, 21, 33, 35, 36, 40, 41. See further [6.124]–[6.130] below; K Fitz-Gibbon and S Walklate, 'The efficacy of Clare's Law in domestic violence law reform in England and Wales' (2016) *Criminology & Criminal Justice* 1, 9.

⁶¹ It has been observed, in general terms, that individuals 'who were violent in previous relationships may also be violent in subsequent relationships because of the patterned nature of behaviour': Kaufman Kantor and Jasinski, above n 11, 1, 33.

⁶² 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.

⁶³ Most focus on criminal offences, but different measures are used including complaints and allegations, criminal charges, convictions and sentences.

previous criminal history may be more likely to engage in subsequent serious domestic and family violence behaviours.⁶⁴

2.37 Recent research in New South Wales shows that 8% of adults who had been found guilty of a 'domestic violence' related offence were convicted of a 'violent' domestic violence related offence within two years of the finalisation of the original offence; with both criminal history and other factors, such as socio-economic disadvantage, being associated with reoffending.⁶⁵

2.38 In contrast, sentencing research in Victoria shows that 52.5% of offenders who had been sentenced for a breach of a family violence intervention order or safety notice were sentenced for a new offence within five years; a sentencing rate higher than that for the general offender population (of 37%). It is not known how many of the subsequent offences occurred in the context of domestic and family violence. Subsequent offending covered a wide range of offence types, including contravention or breach offences, assault offences, driving offences and criminal damage.⁶⁶

2.39 Available information in Queensland shows that, in 2015–16, most respondents to a protection order application 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.⁶⁷

2.40 In risk assessments carried out by support services and other professionals, a past history of domestic or other violence is one of several indicators of risk; there are also many other relevant factors.⁶⁸

⁶⁴ See further *QLRC Consultation Paper No 75* (2016) [85]–[96].

⁶⁵ 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) 4–5, 9. The 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. It 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. '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.

⁶⁶ Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (August 2016) 33–6, 45–8, 53. This study 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. It was limited to an analysis of subsequent sentence events and so does not capture all reoffending.

⁶⁷ Queensland Police Service, 'Annual Statistical Review 2015/16' (2016) 24, referring to protection orders made under the *Domestic and Family Violence Protection Act 2012* (Qld).

⁶⁸ See [3.91] below.

Chapter 3

Legislative and other responses to domestic and family violence

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DOMESTIC AND FAMILY VIOLENCE SUPPORT SERVICES

3.1 A critical component of the domestic and family violence landscape in Queensland is the role of support services in preventing and responding to domestic and family violence.¹

Support services

3.2 Support services in Queensland include specialist domestic and family violence services funded by the State Government, national services funded by the Federal Government,² non-government funded community support groups and service providers, and mainstream generalist services that sometimes work with clients affected by domestic and family violence.³

3.3 The services funded by the Queensland Government include:⁴

- counselling and support services, both for adult victims and children affected by domestic and family violence, as well as specialist sexual assault

¹ See generally the discussion of Queensland's service response landscape in *Taskforce Report* (2015) vol 1, 207–219.

² For example, the national family violence and sexual assault counselling service, 1800 RESPECT.

³ For example, homelessness services, health services and childcare services.

⁴ See *Taskforce Report* (2015) vol 1, 210–11; Queensland Government, *Domestic and family violence: getting help* (2017) <<https://www.qld.gov.au/community/getting-support-health-social-issue/domestic-family-violence-getting-help/>>.

counselling and support services and Aboriginal and Torres Strait Islander family services;

- refuges that provide specialist homelessness services for women and children escaping domestic and family violence;
- court support services that provide support to people with Magistrates Court proceedings relating to domestic and family violence;
- legal support services, including through Legal Aid Queensland and community legal centres; and
- perpetrator intervention initiatives, generally provided on a group basis and which aim to address the abusive behaviour of those who commit domestic and family violence.

3.4 The extent of support services differs among and within the regional areas of the State, depending on the allocation of funding. Some areas are better supported or serviced than others.⁵

3.5 In the context of leaving an abusive relationship, it has been observed that support services need to extend beyond the initial leaving to assist with ongoing challenges, including relocation and dealing with post-separation abuse.⁶

Challenges to delivery of services

3.6 The Taskforce identified a number of challenges to the effective and equitable delivery of support services in Queensland and noted that there are currently many unmet needs and gaps.⁷

3.7 Much of this is a consequence of Queensland's geographical size and its decentralised and diverse population, as well as other factors.

3.8 Victims of domestic and family violence may be reluctant to seek support from formal agencies, with many relying on the support of family, friends or their

⁵ See [6.164]–[6.167] below; and generally The National Council, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009–2021* (Commonwealth of Australia, 2009) 75. As to reforms to enhance support services in Queensland, see [3.71]–[3.74] below.

⁶ N Sharp-Jeffs, L Kelly and R Klein, 'Long Journeys Toward Freedom: The Relationship Between Coercive Control and Space for Action—Measurement and Emerging Evidence' (2017) *Violence Against Women* 1, 18, 20–21.

⁷ *Taskforce Report* (2015) vol 1, 214. And see 209, 215–18. See also, in the wider Australian context, The National Council, above n 5, 75–6 which discusses the impact of under-resourcing.

doctor.⁸ For some, denial and fear of being socially ostracised may contribute to this reluctance.⁹

3.9 For people in rural and remote communities, relevant issues include physical, geographical and social isolation, lack of privacy or anonymity, transport costs and unavailability of local support services due to conflicts of interest.¹⁰

3.10 For people from culturally and linguistically diverse backgrounds, including migrants and refugees, relevant issues include having a non-English speaking background, social and cultural isolation and community pressure.¹¹ Women in some migrant communities may also feel pressure from their cultural or religious community to deal with concerns about domestic and family violence privately.¹²

3.11 Many Aboriginal and Torres Strait Islander communities also face a range of barriers, especially in remote areas. Practical issues associated with geographical remoteness include lack of privacy, distance from services, conflicts of interest and difficulties recruiting suitably qualified and culturally appropriate staff.¹³ In addition, for some Indigenous communities, the 'complex and cumulative nature of violence and victimisation including colonisation and the breakdown of culture, intergenerational patterns of violence, alcohol and other drugs, and socio-economic stressors' mean that mainstream responses may not be effective.¹⁴

Mainstream responses to family violence are focused on removing women from the domestic situation and legal repercussions for perpetrators. While these components of a response to family violence can help to provide options for Indigenous people, they are not regarded as the most effective way of responding to Indigenous family violence.

3.12 It has been explained, for example, that solutions developed by Indigenous people 'are likely to focus on community healing, restoration of family cohesion and

⁸ See H Nancarrow et al, 'Intimate partner abuse of women in Queensland' (Report, Queensland Centre for Domestic and Family Violence Research, CQ University Australia, 2011), 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.

⁹ World Health Organisation, 'Violence by Intimate Partners' in *World Report on Violence and Health* (2002) 96.

¹⁰ *Taskforce Report* (2015) vol 1, 216. See also S Wendt et al, 'Seeking help for domestic violence: Exploring rural women's coping experiences' (Landscapes State of Knowledge Paper No 4, ANROWS, 2015) 1.

¹¹ *Taskforce Report* (2015) vol 1, 128. See also C Vaughan et al, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project' (Landscapes State of Knowledge Paper No 12, ANROWS, 2015).

¹² Vaughan et al, above n 11, 25.

¹³ *Taskforce Report* (2015) vol 1, 121–22.

¹⁴ A Olsen and R Lovett, 'Existing knowledge, practice and responses to violence against women in Australian Indigenous communities: Key findings and future directions' (Compass Research to Policy and Practice Paper No 1, ANROWS, 2016) 2, 5. See also *Taskforce Report* (2015) vol 1, 123.

processes that aim to let both the victim and perpetrator deal with their pain and suffering'.¹⁵

3.13 Further, in some communities, Aboriginal and Torres Strait Islander women are reluctant to engage with police or other formal services in part because of a sense of mistrust.¹⁶

DOMESTIC AND FAMILY VIOLENCE LEGISLATION

The *Domestic and Family Violence Protection Act 2012*

3.14 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.¹⁷

3.15 As noted at [2.3] 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.¹⁸ It also captures a wide range of 'domestic violence' behaviours, including physical, sexual and non-physical forms of abuse.¹⁹

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

3.17 The Act has three main objects and is to be administered according to stated principles, as follows:²⁰

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
- (b) to prevent or reduce domestic violence and the exposure of children to domestic violence; and

¹⁵ Olsen and Lovett, above n 14, 5. Those researchers also note that 'ongoing planned and consistent funding for service provision is considered a major issue' for Indigenous communities.

¹⁶ See, eg, the submissions discussed at [6.174], n 153 in Chapter 6 below.

¹⁷ See the *Family Violence Act 2016* (ACT) ('family 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').

¹⁸ The Act uses the term 'domestic violence' but encompasses both domestic and family violence: see [2.2]–[2.3] above.

¹⁹ 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.

²⁰ *Domestic and Family Violence Protection Act 2012* (Qld) ss 3–4.

- (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.

3.18 Accordingly, the Act provides both for police and court powers. The main remedies under the Act are outlined below.

3.19 The Act has recently been amended by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016*. The amendments were introduced, in part, in response to the recommendation of the Taskforce for a review of the Act to ensure a cohesive legislative framework for domestic and family violence in Queensland and are relevantly intended to strengthen the police and court responses.²¹

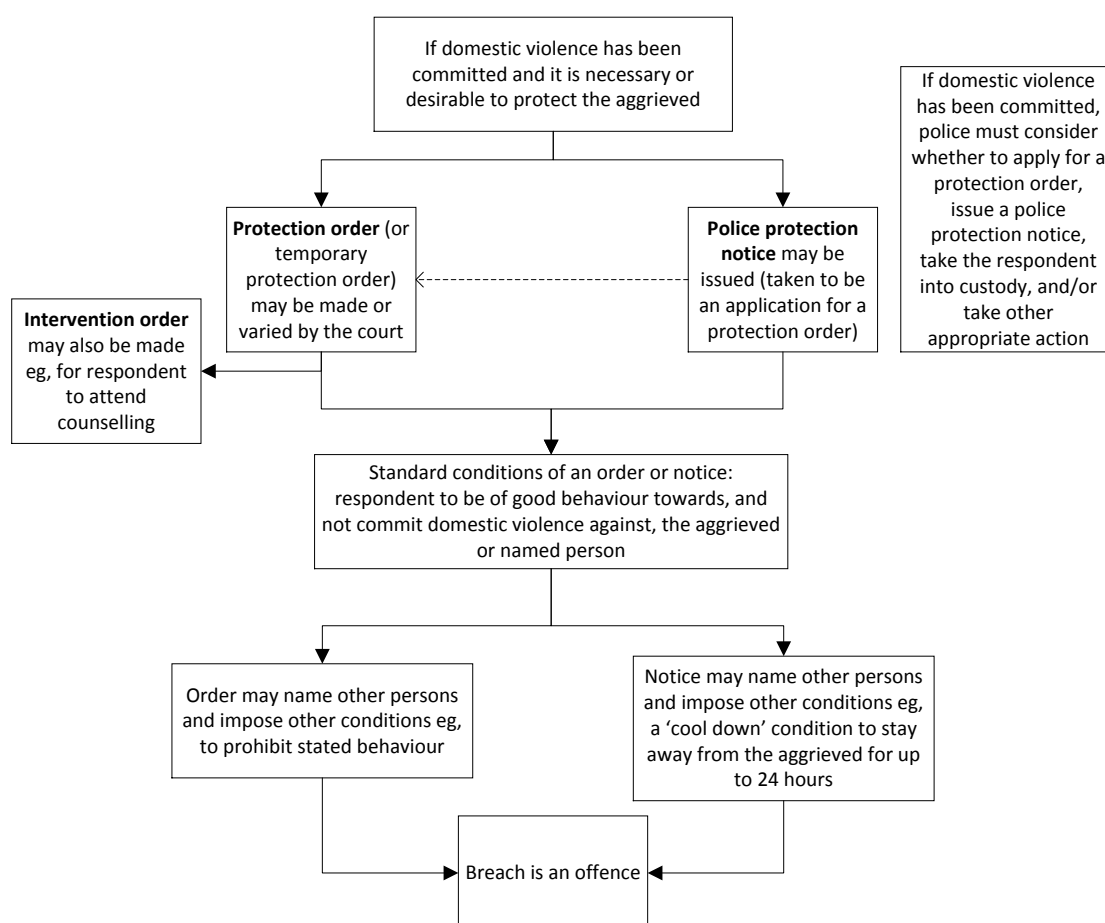


Figure 3-1: Domestic and Family Violence Protection Act 2012, main remedies

²¹

See *Taskforce Report* (2015) vol 1, Rec 140; Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016 (Qld) 1–2, 3–6, 8. The *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) commenced, relevantly, on 30 May 2017. The amending Act also provides for the Act to be reviewed in a further five years: s 48.

Police functions and powers

3.20 Part 4 of the Act deals with police functions and powers. It obliges police officers to investigate complaints or reports of domestic violence if they reasonably suspect that domestic violence has been committed.²²

3.21 If, after investigation, a police officer reasonably believes domestic violence has been committed, they must consider whether it is necessary or desirable to take certain actions to protect the person (the 'aggrieved') from further domestic violence, including whether action is required and, if so, what the most effective action is, to provide immediate protection.²³ The actions police are empowered to take include applying to court for a 'protection order' (or a variation of a domestic violence order), issuing a 'police protection notice', taking the perpetrator (the 'respondent') into custody or 'taking any other action appropriate in the circumstances' (for example, taking the respondent to another place).²⁴

3.22 Those provisions do not limit the responsibility of police officers to investigate whether a criminal offence has been committed.²⁵

3.23 A police protection notice may be issued against a respondent if a police officer reasonably believes the respondent has committed domestic violence and that the notice is necessary or desirable to protect the aggrieved from domestic violence.²⁶ The notice includes a standard condition that the respondent 'must be of good behaviour towards,' and 'not commit domestic violence against, the aggrieved' or any named person or child.²⁷ It may also include a 'cool-down' condition prohibiting

²² *Domestic and Family Violence Protection Act 2012* (Qld) s 100(1), which provides that:

if a police officer reasonably suspects that domestic violence has been committed, the police officer must investigate or cause to be investigated the complaint, report or circumstance on which the officer's reasonable suspicion is based.

²³ *Domestic and Family Violence Protection Act 2012* (Qld) s 100(2), as inserted by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 18. For most provisions, the Act uses the term 'aggrieved' rather than victim. An 'aggrieved' is a person for whose benefit a domestic violence order or police protection notice is in force or may be made: s 21(1).

²⁴ *Domestic and Family Violence Protection Act 2012* (Qld) s 100(3). The respondent could be taken to another place such as a hospital to receive treatment: s 100(3)(f), example. The police officer may also apply to a magistrate for an urgent temporary protection order: s 100(3)(e), pt 4 div 4. For most provisions, the Act uses the term 'respondent' rather than perpetrator. A 'respondent' is a person against whom a domestic violence order or police protection notice is in force or may be made: s 21(3).

²⁵ *Domestic and Family Violence Protection Act 2012* (Qld) s 100(6). If the police officer decides not to take any action after investigating a report or complaint about domestic violence, a written record of the reasons is to be made by the officer and kept by the police commissioner: s 100(4)–(5).

²⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s 101. A police protection notice may be issued if the police officer reasonably believes 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. Section 101 was amended by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 19 to remove the previous requirement that the respondent must be at the same location as the police officer and instead provide that, if the respondent is not at the same location, the notice may be issued if the officer has made a reasonable attempt to locate and talk to the respondent and afford the respondent natural justice: s 101(1)(b). See also *Domestic and Family Violence Protection Act 2012* (Qld) s 101B, in relation to naming a child, relative or associate of the aggrieved in a police protection notice.

²⁷ *Domestic and Family Violence Protection Act 2012* (Qld) ss 105(1)(g), 106, as amended by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) ss 23(3), 24 to enable a police protection notice to be issued to protect a relative or associate of the aggrieved, or a child of or who usually lives with the aggrieved, from associated domestic violence (and to protect a child from being exposed to domestic violence).

the respondent, for up to 24 hours, from entering or approaching stated premises or approaching or contacting the aggrieved or a named person.²⁸ Additionally, a notice may include a 'no-contact' condition (prohibiting the respondent from approaching, contacting or locating the aggrieved or a named person), an 'ouster' condition (prohibiting the respondent from entering or approaching a stated premises) and a 'return' condition (relating to the recovery of personal property from stated premises).²⁹ A police protection notice is taken to be an application for a protection order.³⁰

3.24 Police also have power to take a respondent into custody for a limited time if, while investigating domestic violence, police reasonably suspect the respondent has committed domestic violence and another person is in danger of personal injury by the respondent or property is in danger of being damaged by the respondent.³¹ In that case, police must prepare an application for a protection order and arrange for the respondent to be brought to court for the hearing or inform the respondent of the hearing date.³² If it is not reasonably practicable to bring the respondent before the court while they are still in lawful custody, the respondent must be released from custody on conditions, including the standard conditions for a police protection notice and any other condition the police officer considers is necessary or desirable in the circumstances.³³

3.25 In addition to the functions and powers provided in the Act, the *Operational Procedures Manual* ('OPM') sets out policy, orders and procedures in relation to many operational policing issues.³⁴

²⁸ *Domestic and Family Violence Protection Act 2012* (Qld) ss 105(1)(h), 106A(1)(a), 107.

²⁹ *Domestic and Family Violence Protection Act 2012* (Qld) ss 105(1)(h), 106A(1)(b)–(d), 107A–107C, inserted by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) ss 24, 26.

³⁰ *Domestic and Family Violence Protection Act 2012* (Qld) s 112. The notice continues in force 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 or otherwise becomes enforceable: s 113(3).

³¹ *Domestic and Family Violence Protection Act 2012* (Qld) s 116. Generally, a person may be taken into custody pending the hearing of an application for a protection order: see s 118. The person may also be held in custody while arrangements are made for the safety of the aggrieved or a child, if the person is intoxicated and incapable of understanding the application, order or release conditions, or while the person poses a continuing danger of personal injury or property damage: s 119(2). The maximum allowable time in custody is eight hours: see ss 119(3), 121–123.

³² *Domestic and Family Violence Protection Act 2012* (Qld) s 118(1)–(3). The date for the hearing must be given in the application for the protection order if it is not reasonably practicable to bring the person before the court for the hearing while the person is still in lawful custody. Generally, the date given must be within five business days: s 118(4).

³³ *Domestic and Family Violence Protection Act 2012* (Qld) s 125(2), (3), as amended by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 34. The police officer must release the person from custody on the conditions they consider necessary or desirable to protect the aggrieved from domestic violence, protect a named person from associated domestic violence or protect a named child from being exposed to domestic violence committed by the respondent: s 125(2). This may include a no-contact, ouster or return condition: s 125(3), and see [3.23] above.

³⁴ See *QPS Operational Procedures Manual* (2017), which is issued by the commissioner of the police service pursuant to the *Police Service Administration Act 1990* (Qld) s 4.9.

3.26 Consistently with the Act, the OPM requires officers to investigate complaints or reports if they reasonably suspect that domestic violence has been committed.³⁵

3.27 Further, the OPM recognises that ‘an integrated approach to domestic violence across government and the community is necessary for the effective application of legislation’ and police ‘should be aware of the vital roles carried out by government and non-government agencies in addressing domestic violence’.³⁶

3.28 In certain circumstances, if a police officer reasonably believes that domestic violence has been committed, the OPM requires the officer to offer the parties involved a police referral to a support service.³⁷

Court responses

3.29 Part 3 of the Act deals with court powers to make protection orders and temporary protection orders (collectively referred to as ‘domestic violence orders’). It allows a court to make a protection order upon application, or if the court convicts a person of a domestic violence offence or is hearing a child protection proceeding.³⁸

3.30 A protection order may be made against a respondent if the court is satisfied that a relevant relationship exists between the aggrieved and the respondent, the respondent has committed domestic violence against the aggrieved and (having regard to the principles in section 4 of the Act)³⁹ the order is necessary or desirable to protect the aggrieved from domestic violence.⁴⁰ A temporary protection order may also be made in some circumstances, including if the application is adjourned or if an urgent temporary order is sought by police.⁴¹

³⁵ QPS *Operational Procedures Manual* (2017) [9.6.1]. See further [9.6.2] in relation to the initial action an investigating officer should take where a report of domestic violence is received.

³⁶ Ibid [9.6.10]. This policy reflects the focus on integrated service responses in the Prevention Strategy: see [3.77] ff below.

³⁷ QPS *Operational Procedures Manual* (2017) [9.6.10]. See also *Domestic and Family Violence Protection Act 2012* (Qld) s 169F, which authorises the release of referral information by police (including without consent of the person to whom the information relates) for the purpose of referral to a specialist domestic and family violence service provider. More generally, police referrals may be made, with the person’s consent, to external service providers in a range of circumstances including if the person is vulnerable to repeat victimisation or harm: see QPS *Operational Procedures Manual* (2017) [6.3.14].

³⁸ *Domestic and Family Violence Protection Act 2012* (Qld) ss 26, 32, 42, 43. Accordingly, ‘court’ is defined in s 6 to mean the Magistrates Court or a magistrate (where an application is made to the Court or a magistrate), the court that convicts a person of a domestic violence offence or the Childrens Court hearing a child protection proceeding.

³⁹ The principles in s 4 of the Act are set out in full at [3.17] above. The court must also consider a respondent’s non-compliance with an intervention order: see [3.40] below.

⁴⁰ *Domestic and Family Violence Protection Act 2012* (Qld) s 37. A court may hear and decide an application in the respondent’s absence in certain circumstances: ss 39–40. A protection order continues for the period stated in the order or five years; the court may order a period less than five years only if satisfied there are reasons for doing so: s 97, as amended the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 17 to extend the maximum period of two years.

⁴¹ *Domestic and Family Violence Protection Act 2012* (Qld) ss 44–50, pt 4 div 4. A temporary protection order need only be supported by evidence the court considers sufficient and appropriate having regard to the temporary nature of the order: s 46.

3.31 Domestic violence orders include standard conditions that the respondent must be of good behaviour towards, and must not commit domestic violence (or associated domestic violence) against, the aggrieved or any child or other named person.⁴² The court must also consider whether imposing other conditions is necessary or desirable to protect the aggrieved from domestic violence, protect a named person from associated domestic violence or protect a child from being exposed to domestic violence.⁴³ For example, the court may impose conditions prohibiting stated behaviour of the respondent that would constitute or is likely to lead to domestic violence against the aggrieved, prohibiting the respondent from approaching, contacting or locating the aggrieved, prohibiting the respondent from entering or remaining at the aggrieved's usual place of residence, limiting contact with a child or relating to the recovery of personal property.⁴⁴

3.32 An application for a protection order may be made by an aggrieved, or on behalf of an aggrieved by a police officer, an authorised person or a person acting under another Act for the aggrieved.⁴⁵

3.33 The number of applications for domestic violence orders has been increasing. The majority of those applications are made by police. The number of applications made by police has also marginally increased over time compared with the number of privately made applications.⁴⁶

	2011–12	2012–13	2013–14	2014–15
Applications, Police	12 845 (63% of total)	14 659 (64% of total)	15 608 (65% of total)	16 936 (66% of total)
Applications, Private	7444 (37% of total)	8241 (36% of total)	8552 (35.4% of total)	8725 (34% of total)
Total	20 289	22 900	24 160	25 661

Figure 3-2: Domestic violence order applications

⁴² *Domestic and Family Violence Protection Act 2012* (Qld) s 56. In addition to these conditions, domestic violence orders are to include a condition that the respondent must not expose a child named in the order to domestic violence.

⁴³ *Domestic and Family Violence Protection Act 2012* (Qld) s 57(1), as substituted by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 7.

⁴⁴ See *Domestic and Family Violence Protection Act 2012* (Qld) ss 57, 58–67. See, for example, the orders affirmed in *ADH v ALH & Commissioner of Police* [2017] QDC 103, [8].

⁴⁵ *Domestic and Family Violence Protection Act 2012* (Qld) ss 25, 32(1).

⁴⁶ Information provided by the Queensland Police Service, 15 November 2016.

Cross-applications

3.34 A court may also hear and decide cross-applications for protection orders under the Act.⁴⁷ Generally, this applies where the person named as the respondent in an original application that is before a court is named as the aggrieved in a second application that is also before a court, and the person named as the aggrieved in the original application is named as the respondent in the second application.⁴⁸

3.35 There is some evidence that the number of cross-applications in Queensland has increased.⁴⁹ This has led to concern about the use of cross-applications against primary victims:⁵⁰

While some cross-applications may be genuine, in that each party faces a threat of continued violence and both parties are equally in need of protection from each other, concerns have been raised that this may not be the case in a significant proportion of incidents. Wangmann has suggested that respondents to a DVPO application might make their own application (a cross-application) as a form of intimidation and as an extension of their abusive behaviour. Support workers in the domestic violence field have argued that reactive cross-applications may disproportionately affect female DV victims whose earlier claims for protection can be trivialised or even silenced. (notes omitted)

Domestic violence orders made by consent

3.36 A domestic violence order may be made by consent of both parties if the court is satisfied a relevant relationship exists between the aggrieved and respondent but:⁵¹

- 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.

⁴⁷ See *Domestic and Family Violence Protection Act 2012* (Qld) pt 3 div 1A.

⁴⁸ *Domestic and Family Violence Protection Act 2012* (Qld) s 41A(1). It also applies in similar situations involving applications to vary protection orders: s 41A(2)–(4).

⁴⁹ H Douglas and R Fitzgerald, 'Legal Processes and Gendered Violence: Cross-Applications for Domestic Violence Protection Orders' (2013) 36(1) *University of New South Wales Law Journal* 56, 61.

⁵⁰ Ibid; Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, Final Report No 114 (2010) vol 1, 877–80; J Wangmann, 'Gender and Intimate Partner Violence: A Case Study from NSW' (2010) 33(3) *University of New South Wales Law Journal* 945, 967.

⁵¹ *Domestic and Family Violence Protection Act 2012* (Qld) s 51(1).

3.37 A significant proportion (approximately 40%) of domestic violence orders made in Queensland are made by consent.⁵² Respondents often consent to orders without admissions and do so for a range of reasons, including convenience.⁵³ Domestic violence orders are also often made without an appearance in court by the respondent.⁵⁴

3.38 Consent orders provide advantages both to the parties and to the courts by reducing the time, stress and resources that would otherwise be incurred in contested cases.⁵⁵

Intervention orders

3.39 A court that makes or varies a domestic violence order may also make an 'intervention order' requiring the respondent to attend an approved intervention program or counselling (depending on the availability of an approved provider). Such an order may be made only if the respondent is present in court, agrees to the order being made and agrees to comply with the order.⁵⁶

⁵² Information provided by Courts Performance and Reporting Unit, Queensland Courts Service (Department of Justice and Attorney-General), 9 December 2016:

Protection orders (Magistrates Courts)	2014–15	2015–16
Protection orders, by consent	8506	10 827
Protection orders, not by consent	13 021	15 842
Protection orders, total	21 527	26 669
Respondent appearances on DV application events (Magistrates Courts)	2014–15	2015–16
Respondent appeared	7219	9354
Respondent did not appear	11 992	14 207
Not recorded	68	109
Total	19 279	23 670

⁵³ See also [6.241] below.

⁵⁴ See n 40 and n 52 above.

⁵⁵ See generally, J Willis, 'Consent intervention orders and the decision in *Stephens v Melis* and the Magistrates Court at Moe' (2002) 2(6) *Criminal Law News Victoria* 39, in which it is explained (in relation to the experience in Victoria) that contested cases often expend considerable court resources, with difficulties arising from incomplete evidence, lack of legal representation and heightened emotion. 'Furthermore, in a number of cases, the airing of grievances in open court does not promote any resolution of the issues, but may serve to inflame already tense situations'. See also [6.243]–[6.245] below.

⁵⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s 69, as amended by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 9 to change the name 'voluntary intervention order' to 'intervention order'. That amendment is intended to reflect that, whilst a respondent must agree to such an order, 'once made, it is not voluntary' for the respondent to comply with it: Explanatory Notes, *Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016* (Qld) 3.

3.40 Failure to comply with an intervention order must be taken into account, and compliance may be taken into account, when deciding in future proceedings whether a protection order against the respondent should be made or varied.⁵⁷

Civil proceedings, with criminal penalties for breach

3.41 Court proceedings under the Act are civil, not criminal, in nature. 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.⁵⁸

3.42 However, breach of a police protection notice, the conditions of release from custody or a domestic violence order is a criminal offence.⁵⁹

3.43 In this respect, the Act has been described as a 'hybrid remedy' combining civil and criminal remedies.⁶⁰

Private nature of court proceedings

3.44 Ordinarily, a court proceeding under the Act 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.⁶¹ There are exceptions to this, for example, for access to records and copies of documents by a party to the proceeding, a person named in an order, a person expressly authorised by the court or by the chief executive (magistrates court), or, if relevant to the investigation or prosecution of an offence, a police officer or police prosecutor.⁶²

⁵⁷ *Domestic and Family Violence Protection Act 2012* (Qld) ss 37(2)(a)(ii), (b), 91(3), as amended by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) ss 4(2), 15(3). However, the court must not refuse to make a protection order merely because the respondent has complied with an intervention order previously made against them: s 37(3), inserted by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 4(4).

⁵⁸ *Domestic and Family Violence Protection Act 2012* (Qld) s 145.

⁵⁹ The maximum penalty for breach of a domestic violence order is 120 penalty units or three years imprisonment (or up to 240 penalty units or five years imprisonment if, within the five years before the offence, the respondent has been previously convicted of a domestic violence offence): *Domestic and Family Violence Protection Act 2012* (Qld) s 177, as amended by the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 7 (which increased the maximum penalties from 60 penalty units or two years imprisonment, and 120 penalty units or three years imprisonment, respectively).

The maximum penalty for breach of a police protection notice or condition of release is 120 penalty units or three years imprisonment: ss 178–179, as amended by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) ss 45–46 which increased the maximum penalty from 60 penalty units or two years imprisonment.

⁶⁰ A Harland et al, *Family Law Principles* (Lawbook, 2nd ed, 2015) 195.

⁶¹ *Domestic and Family Violence Protection Act 2012* (Qld) pt 5 div 4.

⁶² *Domestic and Family Violence Protection Act 2012* (Qld) s 160(2), as amended by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) s 43. See also ss 158(2) (which allows the court to open the proceeding or part of the proceeding to the public or specific persons), 158(3) (which entitles an aggrieved to have an adult support person present throughout the proceeding), 159(2) (which provides exceptions for publication of information, for example, if the court expressly authorises or each person to whom the information relates consents to the publication) and 161 (which allows the chief executive (magistrates court) to authorise use of a document for research purposes). See also [4.19], n 45 below.

3.45 The effect of these privacy provisions and prohibitions is that a member of the public cannot ordinarily obtain information about domestic violence proceedings in which their current or former partner may have been involved.⁶³

CURRENT DOMESTIC AND FAMILY VIOLENCE REFORMS

3.46 There has been significant recent attention in Queensland, and nationally, to reforms relating to domestic and family violence.

The National Plan

3.47 In February 2011, the National Plan to Reduce Violence against Women and their Children 2010–2022 ('National Plan'), endorsed by the Council of Australian Governments, was released. It provides a framework for action over 12 years for Commonwealth, state and territory governments, in conjunction with the non-government sector, to target domestic and family violence and sexual assault.⁶⁴

3.48 The National Plan aims for a 'significant and sustained reduction in violence against women and their children' from 2010 to 2022.⁶⁵ It is underpinned by a number of principles which recognise that 'policy solutions to address domestic violence and sexual assault must take into account the diverse backgrounds and needs of women and their children', including that:⁶⁶

- domestic and family violence crosses all ages, races and cultures, socioeconomic and demographic barriers, although some women are at higher risk;
- governments and other organisations are to provide holistic services and supports that prioritise the needs of victims and survivors of violence; and
- sustainable change must be built on community participation by men and women taking responsibility for the problems and solutions.

3.49 The National Plan sets out the following six National Outcomes:⁶⁷

1. Communities are safe and free from violence.
2. Relationships are respectful.
3. Indigenous communities are strengthened.

⁶³ This restriction would not apply if the member of the public was a party to the proceeding: see n 62 above.

⁶⁴ See the information and documents at Department of Social Services, Australian Government, *The National Plan to Reduce Violence against Women and their Children 2010–2022* (2 November 2016) <<https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>>.

⁶⁵ *National Plan* (2011) 10.

⁶⁶ *Ibid* 11.

⁶⁷ Commonwealth of Australia (Department of Social Services), *Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children 2010–2022* (2016) (the 'Third Action Plan of the National Plan (2016)') 6; *National Plan* (2011) 14–31.

4. Services meet the needs of women and their children experiencing violence.
5. Justice responses are effective.
6. Perpetrators stop their violence and are held to account.

3.50 The first of those outcomes focuses on the importance of promoting community involvement and working to change the underlying causes of violence. In particular, the National Plan recognises that ‘social norms, attitudes and beliefs contribute to all forms of violence against women’ and that such violence ‘is a community problem that requires a community-wide response’.⁶⁸

3.51 The National Outcomes are supported by a number of three-year Action Plans. The current, Third Action Plan 2016–2019 identifies six National Priority Areas:⁶⁹

1. Prevention and early intervention.
2. Aboriginal and Torres Strait Islander women and their children.
3. Greater support and choice.
4. Sexual violence.
5. Responding to children living with violence.
6. Keeping perpetrators accountable across all systems.

3.52 Relevantly, those areas encompass:⁷⁰

- working for change in the culture, behaviours and attitudes that lead to violence against women and their children (Priority Area 1);
- the development of community-driven and place-based initiatives that respond to local needs and conditions (Priority Area 2);
- the development and implementation of national principles for evidence based risk assessment for victims and perpetrators, strengthening accommodation options and supports for women escaping violence and improving the quality and accessibility of services for women from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander women (Priority Area 3); and
- improving targeted perpetrator interventions and mechanisms to refer perpetrators to appropriate interventions early based on individual risk factors (Priority Area 6).

⁶⁸ *National Plan* (2011) 14.

⁶⁹ *Third Action Plan of the National Plan* (2016), above n 67, 8.

⁷⁰ *Ibid* 9, 14, 18–19, 33–4.

3.53 The National Plan was developed in response to recommendations of the National Council to Reduce Violence against Women and their Children and was based on extensive research and community consultation.⁷¹

3.54 The importance of building an evidence base is a continuing priority under the National Plan, with the establishment of Australia's National Research Organisation for Women's Safety Limited ('ANROWS') as a national centre of research excellence, the continued conduct of national surveys on the experience of and community attitudes to violence and the evaluation of reforms.⁷²

3.55 The need for tailored strategies for different communities, rather than 'one-size-fits-all' approaches, is also recognised.⁷³ It has been observed that effort and resources should be prioritised for high risk groups affected by multiple forms of disadvantage.⁷⁴ The National Plan specifically recognises the disproportionately high rates of domestic and family violence experienced by Aboriginal and Torres Strait Islander people and prioritises culturally appropriate strategies delivered in partnership with those communities.⁷⁵

The Taskforce Report and the Prevention Strategy

3.56 In Queensland, reform has been driven by the recommendations of the Taskforce.

3.57 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:⁷⁶

⁷¹ *National Plan* (2011) 3. See also The National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009–2021* (Commonwealth of Australia, 2009) 12–13. The National Council's recommendations were developed by 'validating emerging trends, repeatedly testing ideas and solutions against the best available evidence, and building on the experience and wisdom grown from practice': 12.

⁷² See *Third Action Plan of the National Plan* (2016), above n 67, 38–9. This builds on work identified in: Commonwealth of Australia (Department of Social Services), *First Action Plan 2010–2013* (2012) (the '*First Action Plan of the National Plan 2010–2013*' (2012')).

⁷³ See *National Plan* (2011) 2, 11; Our Watch, ANROWS and VicHealth, 'Change the story: A shared framework for the primary prevention of violence against women and their children in Australia' (Our Watch, 2015) 36.

⁷⁴ Our Watch, ANROWS and VicHealth, 'Change the story: A shared framework for the primary prevention of violence against women and their children in Australia' (Our Watch, 2015) 36.

⁷⁵ *National Plan* (2011) 20–22; *Third Action Plan of the National Plan* (2016), above n 67, 14–17. The Third Action Plan explains (at 14) that:

This includes activities that are trauma-informed and aligned with culture and community. It also includes activities that provide wraparound, case-managed support for families and encourage behaviour change without resorting to police or courts, such as family dispute resolution.

⁷⁶ See *Taskforce Report* (2015) vol 1, 6, 10–15.

- 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.

3.58 The recommendations were informed by extensive community consultation, research, expert advice and initiatives in other Australian jurisdictions.⁷⁷ The need for ongoing evaluation and research was also a key recommendation of the Taskforce Report.⁷⁸

3.59 The Government Response to the Taskforce Report was to accept all 121 recommendations directed to government and support the others.⁷⁹ 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:⁸⁰

⁷⁷ Ibid 6, 51–61.

⁷⁸ Ibid 108–9, Rec 2, in which it is observed (at 108) that '[e]ffective implementation is critical: ad hoc, misinformed, and/or ill-resourced implementation arrangements will not achieve effective reform'.

⁷⁹ *Taskforce Report: Government Response* (2015).

⁸⁰ See the information and documents at Queensland Government, *Domestic and Family Violence Prevention Strategy* (14 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-and-family-violence/dfvp-strategy>>.

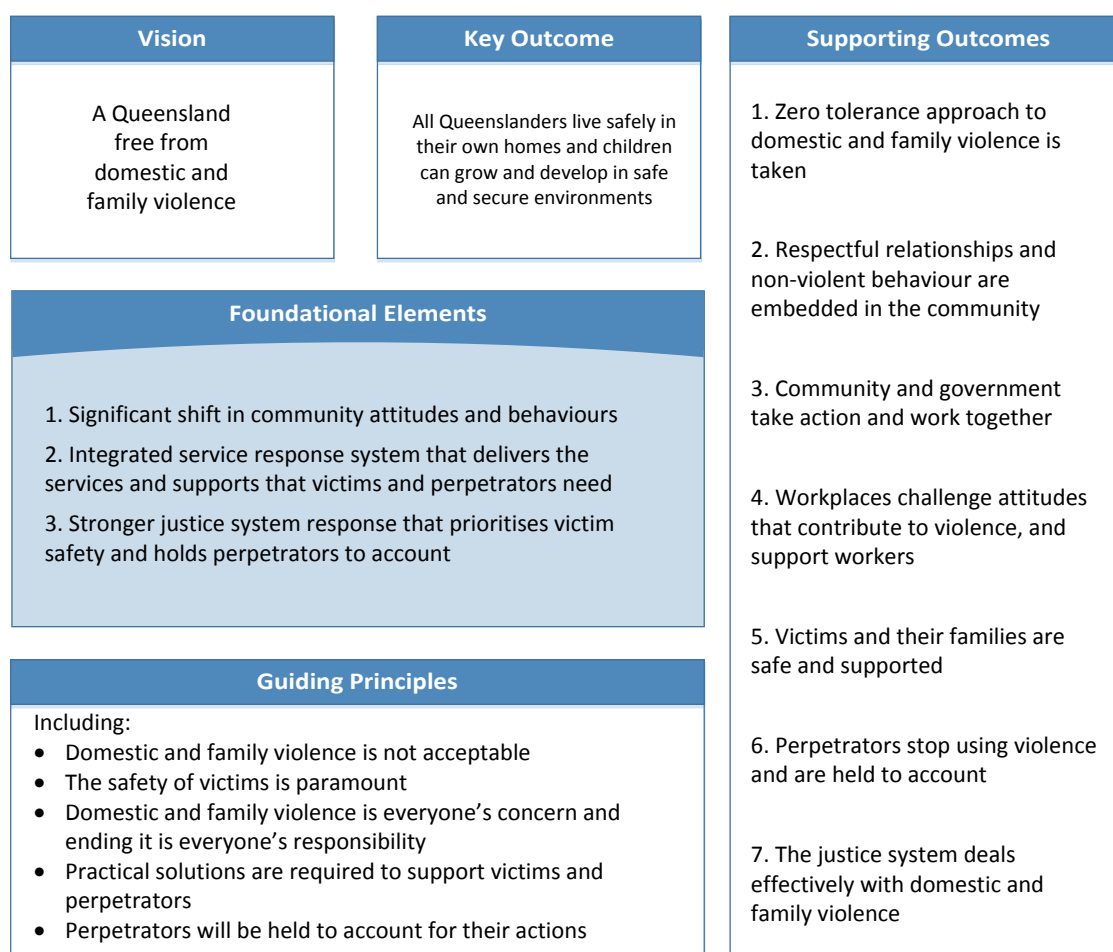


Figure 3-3: Prevention Strategy, key elements

3.60 The Prevention Strategy is aligned with the National Plan. It 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).⁸¹

3.61 Implementation of the reforms intended to give effect to the Prevention Strategy has commenced.⁸² Relevantly, this includes initial steps towards improved support services and perpetrator interventions, an integrated service response, high risk case management, inter-agency information sharing reforms, reforms allowing the identification of 'domestic violence offences' on criminal histories and reforms relating to bail.

⁸¹ Ibid. See Queensland Government, *First Action Plan of the Domestic and Family Violence Prevention Strategy 2015–2016* (2015) (the 'First Action Plan 2015–16'); and Queensland Government, *Second Action Plan of the Domestic and Family Violence Prevention Strategy 2016–17 to 2018–19* (2016) (the 'Second Action Plan 2016–19').

⁸² See generally Domestic and Family Violence Implementation Council, *12 Month Report Dec 2015–Nov 2016* (2017); and Second Action Plan 2016–19, above n 81, 23–38.

3.62 Successive State Budgets have allocated funds to implement the reforms. The 2015-16 State Budget allocated \$31.3 million over four years;⁸³ the 2016-17 State Budget allocated \$198.2 million over five years;⁸⁴ and the 2017-18 State Budget allocated \$74.9 million over four years.⁸⁵

Reforms addressing community attitudes and behaviours

3.63 A core component of the Prevention Strategy is the collaboration between government, schools, businesses and religious and sporting organisations to shift community attitudes and behaviours.⁸⁶

3.64 The Taskforce recognised that reducing and eliminating domestic and family violence is possible only with ‘systemic cultural change in all sectors of the community’ including initiatives to address the social and cultural causes of violence.⁸⁷ It made several recommendations directed toward this end, including for the development of a consistent and comprehensive communication strategy, school-based education programs, awareness and education programs in the workplace and training programs for medical practitioners and other professionals.⁸⁸

3.65 As well as referring to the results of national community attitude surveys,⁸⁹ the Taskforce referred to Queensland research commissioned for its Report which found that, ‘while many people think domestic violence is an important social issue in Queensland, there is also a general attitude of “minding one’s own business”’.⁹⁰

There appears to be a significant gap between an individual’s belief that the violence is wrong, and the willingness to talk about the violence or take action to do something about it.

⁸³ Queensland Government, *Budget Measures 2015–16*, 21–22, ‘as an initial response by Government to implement high priority recommendations of the [Taskforce Report]’.

⁸⁴ Queensland Government, *Budget Measures 2016–17*, 1, 6–8, which noted that since the 2015–16 State Budget ‘total funding to date to implement the [Taskforce Report] was \$233.8 million over five years’.

⁸⁵ Queensland Government, *Budget Measures 2017–18*, 15, 17–19, 22. This funding includes almost \$70 million for the specialist domestic and family violence courts and \$3.3 million for domestic and family violence shelters.

⁸⁶ Queensland Government, ‘Domestic and Family Violence Prevention Strategy 2016–2026’ (2016) 15, 17 <<https://www.communities.qld.gov.au/resources/gateway/campaigns/end-violence/dfv-prevention-strategy.pdf>> (the ‘Prevention Strategy (2016)’). Implementation of the Prevention Strategy is intended to ‘challenge and change cultural attitudes and behaviours that contribute to the cycle of violence and keep domestic and family violence behind closed doors’: Queensland Government, *Shifting community attitudes and behaviours* (14 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/shifting-community-attitudes-behaviours>>.

⁸⁷ *Taskforce Report* (2015) vol 1, 151, 171.

⁸⁸ See *Taskforce Report* (2015) vol 1, ch 6 and Recs 18–70.

⁸⁹ Ibid 151; and see [2.18] above. The Taskforce also noted that ‘there is an apathy or lack of empathy for what is seen as “just a domestic”’: 159. (emphasis in original)

⁹⁰ *Taskforce Report* (2015) vol 1, 156.

3.66 It was observed that there is often an assumption by people that ‘someone else will help the person in need or that it is none of their business’ and the Taskforce emphasised the importance of changing ‘bystander’ behaviour.⁹¹

3.67 In making its recommendations, the Taskforce explained that:⁹²

Long-term, generational change will not be easy, but we ... must create a society where fewer people will find excuses for domestic violence, fewer people will blame victims, and more people will know how to take action against domestic violence.

3.68 The Taskforce also emphasised the need to ensure that cultural change underpins ‘every other part’ of the Prevention Strategy, observing that ‘contradiction’ between cultural change initiatives and service and justice response initiatives ‘will simply undermine’ the change that is required.⁹³

3.69 Some of the reforms made in this area to date include the development of the Department of Education’s ‘Respectful relationships education program’ for Prep to Year 12 students,⁹⁴ increased funding for the Domestic and Family Violence Prevention Month community grants program,⁹⁵ and the introduction of paid leave entitlements for State and local government employees affected by domestic and family violence.⁹⁶ Other reforms to be implemented include the development of a communication and engagement program and a media guide.⁹⁷

Integrated service response reforms

3.70 A number of reforms in response to the Taskforce Report are directed to ‘transforming the service system response’ to domestic and family violence, including through adequate resourcing, improved services and the design and implementation of an integrated service response.⁹⁸

⁹¹ Ibid 162. See also the Domestic and Family Violence Implementation Council, above n 82, 44–5 as to supplemental research confirming the need for continuing education about bystander intervention.

⁹² Ibid 152.

⁹³ Ibid 159.

⁹⁴ See Queensland Government, Department of Education and Training, *Respectful relationships education program* (25 February 2016) <<http://education.qld.gov.au/parents/information/respectful-relationships/index.html>>.

⁹⁵ See Queensland Government, *Domestic and Family Violence Prevention Month community grants* (28 May 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/shifting-community-attitudes-behaviours/domestic-family-violence-prevention-month-community-grants>>.

⁹⁶ See *Industrial Relations Act 2016* (Qld) ch 2 pt 3 div 7, commenced 1 March 2017.

⁹⁷ See the Domestic and Family Violence Implementation Council, above n 82, 42, 68–9. As part of the overall funding of \$198.2 million, \$9.3 million has been allocated to the communication and engagement program: Queensland Government, *Budget Measures 2016–17*, 7; and see [3.62] above.

⁹⁸ *Taskforce Report* (2015) vol 1, 214 ff.

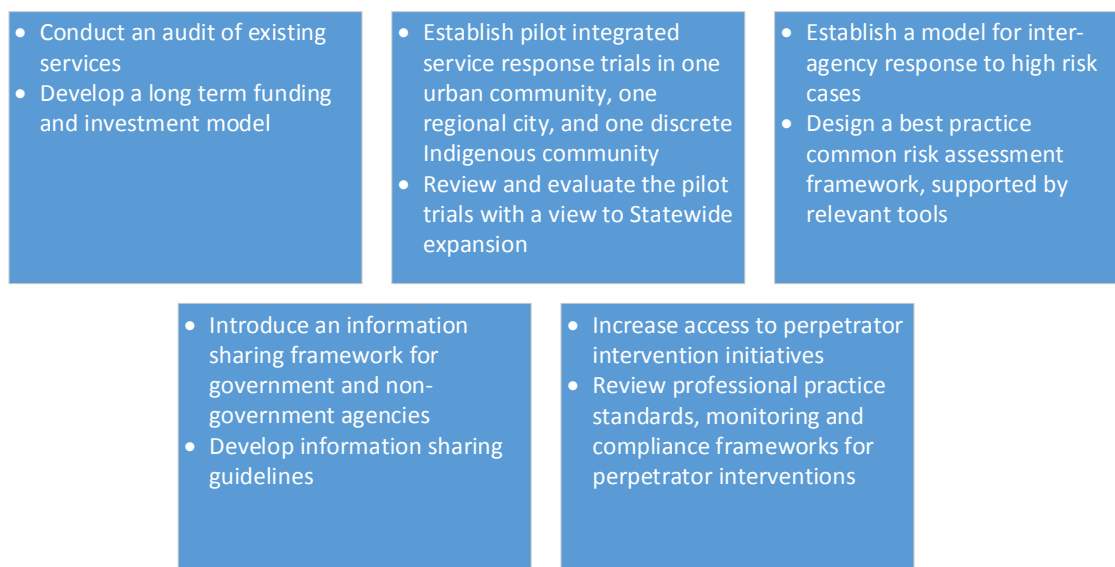


Figure 3-4: Service response reforms⁹⁹

Increased support services

3.71 The Taskforce identified that there are unmet needs and gaps in service provision, especially for high risk groups.¹⁰⁰ As an initial step it recommended an audit of existing services and a long term funding and investment model:¹⁰¹

[This] is intended to ensure that a strategic, sustainable, effective, and properly resourced service reform model is adopted across Queensland. The complexity of this piece of work ... should not be under-estimated. It is also envisaged that the funding and investment model would adopt a staged approach over a period of time, in order to transition existing service arrangements to an optimal model in an appropriate manner.

3.72 It also made a range of recommendations for improvements in support service funding, including in relation to crisis accommodation.¹⁰²

3.73 In response, the audit of services has been conducted,¹⁰³ and new specialist services are being established and piloted in several locations, including new and

⁹⁹ See *Taskforce Report* (2015), Recs 71–83. See generally Queensland Government, *Domestic and Family Violence Prevention Strategy* (14 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence-and-family-violence/dfvp-strategy>>; and Second Action Plan 2016–19, above n 81.

¹⁰⁰ See [3.6]–[3.13] above.

¹⁰¹ *Taskforce Report* (2015) vol 1, 214–215.

¹⁰² Ibid 241–48.

¹⁰³ See Domestic and Family Violence Implementation Council, above n 82, 48; Queensland Government, *DFV Services Audit* (14 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/dfv-services-audit>>. A long term funding and investment model is being developed: see the Domestic and Family Violence Implementation Council, above n 82, 70.

enhanced counselling services, court-based support services, safety upgrade services to enhance home security measures¹⁰⁴ and new crisis shelters.¹⁰⁵

3.74 The Department of Communities, Child Safety and Disability Services has funding of:¹⁰⁶

- \$1 million in 2015–16 for domestic and family violence counselling initiatives;
- \$4.4 million over five years, commencing 2015–16, for five new services located in Mackay, Moreton Bay, Inala, Ipswich and the Redlands for sexual assault counselling;
- \$846 000 over five years, commencing 2015–16, for home safety upgrades; and
- \$43.1 million over four years, commencing 2016–17, for new and enhanced domestic and family violence services to be directed to existing service gaps.

Tailored and integrated service responses

3.75 The Taskforce stated that a ‘one-size-fits-all’ approach to service responses across the State ‘will not work’:¹⁰⁷

Challenges faced by victims and service providers in rural and remote communities are significantly different from those faced by victims in metropolitan communities, which in turn differ from those in Indigenous communities and culturally and linguistically diverse communities. Integrated, holistic and timely responses to domestic and family violence are needed, tailored to the specific needs of each of these communities.

3.76 The Taskforce considered that the ‘best practice’ approach is through ‘integrated service responses’ that are ‘tailored to, and flexible enough to meet, the needs of victims ... across all areas of the State’.¹⁰⁸

3.77 The Prevention Strategy recognises this need for ‘targeted strategies’, especially in response to the needs of high risk groups, including Aboriginal and Torres Strait Islander people.¹⁰⁹

¹⁰⁴ Queensland Government, *Specialist support services* (16 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/specialist-support-services>>.

¹⁰⁵ For example, in Townsville, Charters Towers and Roma: Queensland Government, *Crisis accommodation services* (28 May 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/crisis-accommodation-services>>.

¹⁰⁶ 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 [3.62] above.

¹⁰⁷ *Taskforce Report* (2015) vol 1, 12. See also the Domestic and Family Violence Implementation Council, above n 82, 31, 70.

¹⁰⁸ *Taskforce Report* (2015) vol 1, 11.

¹⁰⁹ *Prevention Strategy* (2016) 16. See also the Domestic and Family Violence Implementation Council, above n 82, 3, 10–11, 52–3, 70 as to the importance of ‘culturally competent’ support.

3.78 An integrated service response refers to community, government and non-government agencies and services:¹¹⁰

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.

3.79 The Taskforce explained that, although some degree of complexity in service provision 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:¹¹¹

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.

3.80 The Taskforce recognised that, in some areas, services have already started to work towards more collaborative responses.¹¹² It suggested that an immediate expansion of integrated service models is necessary, and recommended immediate pilot trials of integrated responses in three areas (one urban, one regional and one discrete Indigenous community) which should be reviewed and evaluated with a view to their expansion and transition State-wide over a defined period of time.¹¹³

3.81 The pilot trials are to be undertaken in Logan/Beenleigh, Mount Isa and Cherbourg.¹¹⁴

3.82 The pilot trial in Cherbourg, including the use of high risk teams, is identified as a key example under the National Plan of the development of a culturally integrated response to domestic and family violence tailored to the needs of discrete Aboriginal and Torres Strait Islander communities.¹¹⁵

¹¹⁰ *Taskforce Report* (2015) vol 1, 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.

¹¹¹ *Taskforce Report* (2015) vol 1, 207.

¹¹² Examples include the Gold Coast Domestic Violence Integrated Response established in 1996 and the Partnership Response at Domestic Violence Occurrences in Caboolture and the North Coast: see *Taskforce Report* (2015) vol 1, 225, 227.

¹¹³ *Taskforce Report* (2015) vol 1, 207, 223–4, 226, Recs 74, 75.

¹¹⁴ Queensland Government, *Integrated service response trials* (11 June 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/integrated-service-response-trials>>.

¹¹⁵ *Third Action Plan of the National Plan* (2016), above n 67, 17.

3.83 As part of the total amount committed to implementing the Taskforce reforms, the Department of Communities, Child Safety and Disability Services has funding of \$89.5 million over five years from 2015–16. This includes \$3.4 million over five years for the integrated service response pilot in Logan/Beenleigh, including funding to enhance the capacity of support services.¹¹⁶

3.84 The Department of Communities, Child Safety and Disability Services has also commissioned research into the prevalence and characteristics of elder abuse and the impacts of domestic and family violence on people with disability to inform tailored responses.¹¹⁷

High risk cases

3.85 The Taskforce recommended the establishment of a model for inter-agency responses to high risk cases. It recognised that integrated responses ‘are an ideal mechanism to enable action based on the assessed level of risk and the individual circumstances presented’ and are ‘particularly suited to responding quickly and appropriately to high risk cases’.¹¹⁸

3.86 Multi-agency high risk teams are to begin operating in the pilot integrated response trial sites during 2017. The teams are to include police, health, corrections and domestic and family violence services. Five additional high risk teams are to join the trial sites from 2017–18.¹¹⁹

3.87 The Department of Communities, Child Safety and Disability Services has funding of \$8.2 million over four years, commencing 2016–17, for the establishment of high risk teams. This is intended to support the development of integrated responses in seven catchment areas:¹²⁰

This includes the establishment of integrated response trials in Mount Isa and Cherbourg along with the expanding integrated response trial in Logan-Beenleigh, with integrated responses to commence from 2017–18 in Cairns/Mossman, Brisbane, Ipswich, Mackay/Whitsunday and Moreton Bay areas. Total funding provided for this initiative across Government is \$24.2 million over four years.

¹¹⁶ 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 [3.62] above.

¹¹⁷ Queensland Government, ‘Tailoring responses to meet the needs of vulnerable Queenslanders’ (16 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/tailoring-responses-meet-needs-vulnerable-queenslanders>>; Domestic and Family Violence Implementation Council, above n 82, 31.

¹¹⁸ *Taskforce Report* (2015) vol 1, 225–6, Rec 76.

¹¹⁹ Queensland Government, *Integrated service response trials* (11 June 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/integrated-service-response-trials>>.

¹²⁰ 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 [3.62] above.

Common risk assessment and management framework

3.88 The Taskforce recommended that a best practice common risk assessment framework be designed to support service provision in an integrated response. It identified that a common risk assessment framework assists in:¹²¹

- Establishing a shared understanding and language for risk
- The triaging process
- Helping to identify high risk cases
- Identifying whether thresholds of risk for information sharing have been met and developing the appropriate response in each case.

3.89 In response to this recommendation, ANROWS has been commissioned to develop an evidence based common risk assessment and management framework for high risk cases, drawing on relevant research and consultation.¹²²

3.90 Common risk assessment frameworks have already been introduced in some other jurisdictions, including Victoria and Western Australia.¹²³ As well as providing consistency in understanding, assessing and responding to risk, they involve consideration of the presence of evidence based risk indicators, the victim's own view of their level of risk and the practitioner's professional judgment.

3.91 Commonly identified risk indicators in these assessment tools include those relating to the victim (such as pregnancy); those relating to the perpetrator (including access to weapons, threats to harm or kill the victim or other family members, children or pets, stalking, jealous or controlling behaviour, sexual assault, breach of protection orders, drug or alcohol misuse, unemployment, depression or mental health issues and history of non-family violence); and those relating to the relationship (such as a planned or recent separation).¹²⁴

Information sharing

3.92 The Taskforce also identified inter-agency information sharing as a 'critical element' of an integrated service response:¹²⁵

¹²¹ Taskforce Report (2015) vol 1, 227, 230, Rec 77.

¹²² Queensland Government, *Integrated service response trials* (11 June 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/integrated-service-response-trials>>; Domestic and Family Violence Implementation Council, above n 82, 47, 52. Mercy Community Services also referred to this in their submission to this review.

¹²³ See Department of Human Services, Victoria, *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1–3* (2nd ed, 2012); Department for Child Protection and Family Support, Western Australia, *Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework* (2nd ed, 2015). See also New South Wales Government, *Domestic Violence Safety Assessment Tool* (June 2015).

¹²⁴ Ibid. A similarly broad range of factors is identified in the *QPS Operational Procedures Manual* (2017) app 9.1.

¹²⁵ Taskforce Report (2015) vol 1, 230.

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

3.93 Legislative amendments have recently been made to introduce a new domestic and family violence information sharing framework.¹²⁶ The framework has three main purposes and is underpinned by a number of principles:¹²⁷

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.

¹²⁶ 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 amendments commenced on 30 May 2017. See also *Taskforce Report* (2015) vol 1, Rec 78. These reforms relate particularly to supporting outcome five of the Prevention Strategy: see [3.59] above.

¹²⁷ *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.

3.94 The information sharing framework¹²⁸ 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’.¹²⁹ Police are also empowered to share limited information for the purpose of referral to a specialist DFV service provider.¹³⁰

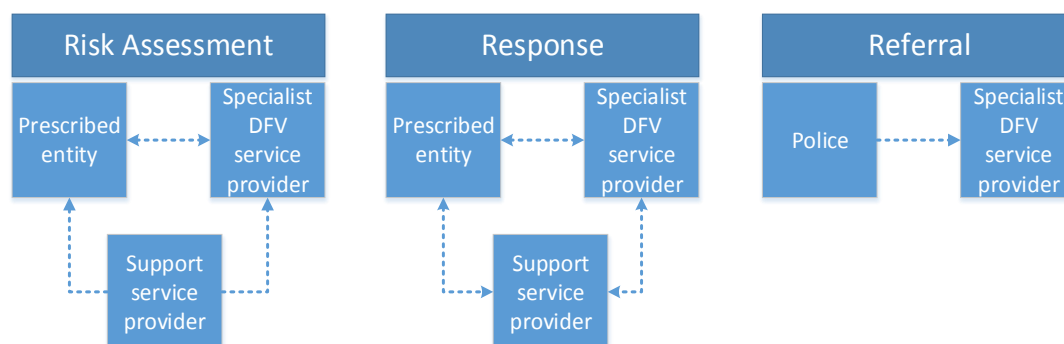


Figure 3-5: Information sharing framework, permitted lines of disclosure¹³¹

3.95 Certain types of information cannot be shared.¹³² 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).¹³³

3.96 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,¹³⁴ to a person’s life, health or safety because of domestic violence. The receiver must otherwise keep the information confidential, unless disclosure is

¹²⁸ 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.

¹²⁹ 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.

¹³⁰ *Domestic and Family Violence Protection Act 2012* (Qld) s 169F.

¹³¹ 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.

¹³² 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.

¹³³ *Domestic and Family Violence Protection Act 2012* (Qld) s 169J(a), sch Dictionary (definition of ‘domestic violence offence’), inserted by *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) ss 44, 50; Criminal Code (Qld) s 1 (definition of ‘domestic violence offence’). As to spent convictions in general, see [4.12] below.

¹³⁴ 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.

permitted under the Information Privacy Principles or is required or permitted by another law.¹³⁵

3.97 ANROWS has been commissioned to develop information sharing guidelines, along with the common risk assessment and management framework.¹³⁶

Perpetrator interventions

3.98 The Taskforce observed that '[a]n effective integrated response to domestic and family violence is incomplete without an appropriate range of services to address and change the violent behaviour of perpetrators'.¹³⁷ It identified the very small number of existing initiatives and recommended increased access to perpetrator intervention initiatives, as well as review of professional practice standards for perpetrator interventions and a process of ongoing monitoring of compliance with those standards.¹³⁸

3.99 The Department of Communities, Child Safety and Disability Services has funding of \$10.3 million over four years, commencing 2016–17, for new and enhanced perpetrator interventions, review of practice standards and development of monitoring tools.¹³⁹

3.100 To date, access to therapeutic interventions in prisons has been extended to a wider range of perpetrators,¹⁴⁰ and funding has been provided to a number of organisations for perpetrator intervention programs.¹⁴¹

¹³⁵ 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. 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. As to the Information Privacy Principles, see [4.3]–[4.9] below.

¹³⁶ Queensland Government, *Integrated service response trials* (11 June 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/integrated-service-response-trials>>; Domestic and Family Violence Implementation Council, above n 82, 47.

¹³⁷ *Taskforce Report* (2015) vol 1, 234.

¹³⁸ Ibid 234–8, Recs 80, 81, 82.

¹³⁹ 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 [3.62] above.

¹⁴⁰ See Domestic and Family Violence Implementation Council, *6 Month Report Dec 2015–May 2016* (2016), 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>>.

¹⁴¹ Including in Brisbane, Bundaberg, Gladstone, Ipswich, Mackay, Maryborough/Hervey Bay, Moreton Bay, Redlands and Sunshine Coast: Queensland Government, *Specialist support services* (16 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/enhancing-service-responses/specialist-support-services>>.

Justice system reforms

3.101 Several reforms in response to the Taskforce Report focus on strengthening the justice system response.¹⁴²

3.102 The Taskforce Report included a broad range of recommendations in this context.¹⁴³ This included recommendations directed toward improving police and court responses, such as broadening the scope of police protection notices¹⁴⁴ and establishing specialist domestic and family violence courts. It also included many recommendations related to perpetrator accountability, including higher penalties for breach offences,¹⁴⁵ the identification of domestic and family violence related convictions on criminal histories,¹⁴⁶ trials of GPS monitoring for high risk perpetrators and increasing perpetrators' participation in intervention programs.¹⁴⁷

Specialist court

3.103 The Taskforce identified that many victims experience difficulties in navigating the justice system, arising from factors such as the complexity of the legal process, lack of legal representation and support, and inconsistent approaches among different magistrates and courts.¹⁴⁸

3.104 It recommended the establishment of a specialist domestic and family violence court with jurisdiction to deal with all related domestic and family violence and criminal proceedings and involving specialist magistrates, perpetrator interventions, court support workers, duty lawyers and streamlined access to interpreters.¹⁴⁹

¹⁴² See Queensland Government, *Strengthening justice system responses* (14 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/strengthening-justice-system-responses>>. See also supporting outcome seven of the Prevention Strategy at [3.59] above.

¹⁴³ See generally *Taskforce Report* (2015) vol 1, ch 8, Recs 90–140.

¹⁴⁴ See *Taskforce Report* (2015) vol 1, 331–33 and (in general terms) Rec 140. As discussed at [3.23] above, amendments have been made by the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) to increase the scope of police protection notices.

¹⁴⁵ See *Taskforce Report* (2015) vol 1, 305, Rec 121. As discussed at [3.42] above, amendments have been made by the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) and the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) to increase the maximum penalty for breach of a domestic violence order, a police protection notice or the conditions of release from custody.

¹⁴⁶ See *Taskforce Report* (2015) vol 1, 303–4, Rec 119.

¹⁴⁷ As to perpetrator interventions, see *Taskforce Report* (2015) vol 1, 306–9, Recs 122 and 123; and [3.98]–[3.100] above.

¹⁴⁸ *Taskforce Report* (2015) vol 1, 268–73.

¹⁴⁹ *Ibid* 284, Recs 96–97. See also Recs 80, 100, 116, 124 and 126.

3.105 The 2016–17 State Budget allocated \$54.6 million over four years to support a range of domestic and family violence initiatives, including the development of a specialist domestic and family violence court.¹⁵⁰

3.106 A specialist domestic and family violence court was established at Southport as a trial from 1 September 2015 to 30 June 2017,¹⁵¹ the outcomes of which were intended to inform future developments.¹⁵² The trial incorporated dedicated magistrates and police prosecutors, duty lawyers, access to support and referral for victims, specialist staff training and access to perpetrator interventions.¹⁵³ It was initially established for six months with one dedicated magistrate, but was extended to meet the significant increase in the number of domestic and family violence applications.¹⁵⁴

3.107 The Southport trial is identified under the National Plan as an example of innovative and collaborative service delivery.¹⁵⁵

3.108 The Final Evaluation Report of the Southport trial¹⁵⁶ made 16 recommendations, including that the Southport specialist domestic and family violence court should continue and a tiered specialisation approach should be rolled out across the State.¹⁵⁷ The Final Evaluation Report noted that the application of a specialist domestic and family violence approach needs to be adapted to the local needs and circumstances in each location. This may mean a specialist court in some locations, but different strategies in other locations.¹⁵⁸

¹⁵⁰ Queensland Government, *Service Delivery Statements of Department of Justice and Attorney-General*, Queensland Budget 2016–17, 5. Government funding of \$508 000 over two years, commencing 2015–16 has also been provided to the Department of Communities, Child Safety and Disability Services to increase the capacity of domestic violence services to support the Southport Domestic Violence Court trial: Queensland Government, *Service Delivery Statements of Department of Communities, Child Safety and Disability Services*, Queensland Budget 2016–17, 9. These allocations are part of the overall funding of \$198.2 million: see [3.62] above.

¹⁵¹ See Queensland Courts, *Specialist Domestic and Family Violence Court* (13 June 2017) <<http://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>>.

¹⁵² Including the extension of specialist domestic and family violence courts to other locations: Domestic and Family Violence Implementation Council, above n 82, 56–7, 71.

¹⁵³ See Queensland Courts, above n 151.

¹⁵⁴ See *Third Action Plan of the National Plan* (2016), above n 67, 23.

¹⁵⁵ Ibid.

¹⁵⁶ See C Bond et al, 'Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport: Summary and Final Reports' (Griffith University, Griffith Criminology Institute, 2017); Queensland Government, *Interim evaluation of the trial specialist domestic and family violence court in Southport* (May 2016).

¹⁵⁷ See C Bond et al, above n 156, viii–xi, 114–117, particularly Rec 15.

¹⁵⁸ Ibid ii.

3.109 A specialist domestic and family violence court is to be established at Beenleigh,¹⁵⁹ Townsville, Mount Isa and Palm Island between 2017 and 2020.¹⁶⁰ The 2017–18 State Budget allocated increased funding of \$35.1 million over four years and ongoing funding of \$8.5 million per year to continue the specialist domestic and family violence court in Southport and the extension to Beenleigh and Townsville, including circuit courts to Mount Isa and Palm Island.¹⁶¹

Identifying offences on criminal histories as ‘domestic violence offences’

3.110 A series of legislative amendments made since October 2015 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.¹⁶²

3.111 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.¹⁶³ An example is an assault committed against the offender’s current or former spouse.

3.112 A complaint or an indictment for a charge for an offence may state that the offence is a domestic violence offence.¹⁶⁴ If the person is convicted of the offence, any recording of the conviction, or entry made in the person’s criminal history, must identify the offence as a ‘domestic violence offence’,¹⁶⁵ unless the court makes an order to the effect it is not satisfied the offence is also a domestic violence offence.¹⁶⁶

3.113 Further, if, on application by the prosecution in the same proceeding, the court is satisfied that a previous conviction was for a domestic violence offence, the

¹⁵⁹ See Queensland Government, ‘Domestic and Family Violence Court extended to Beenleigh’ (Media Statement, 21 June 2017).

¹⁶⁰ See Department of Justice and Attorney-General, Domestic and family violence reform (13 June 2017) <<http://www.justice.qld.gov.au/corporate/justice-initiatives/domestic-and-family-violence-reform>>; Queensland Government, ‘Attorney-General to appoint six new magistrates for Queensland’ (Media Statement, 20 June 2017).

¹⁶¹ See Queensland Government, *Budget Measures 2017–18*, 59 (see also 2, 15, 17, 19, 22). This forms part of a total funding package of \$69.5 million over four years to rollout Specialist Domestic and Family Violence Courts.

¹⁶² See *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) ss 3 and 4–5 (commencing 22 October 2015 and 1 December 2015, respectively, and amending the Criminal Code (Qld) ss 1, 564 and 572), 7–8 (commencing 22 October 2015 and amending *Domestic and Family Violence Protection Act 2012* (Qld) ss 177 and 182), 13–15 (commencing 1 December 2015 and amending the *Justices Act 1886* (Qld) ss 4, 47, 48), 17–18 (commencing 1 December 2015 and amending the *Penalties and Sentences Act 2012* (Qld) ss 4, 12A). See also *Court and Civil Legislation Amendment Act 2017* (Qld) s 189, commencing on 5 June 2017 and amending *Penalties and Sentences Act 1992* (Qld) s 12A. See also Taskforce Report (2015) vol 1, Rec 119. These reforms relate to supporting outcomes six and seven of the Prevention Strategy: see [3.59] above.

¹⁶³ Criminal Code (Qld) s 1 (definition of ‘domestic violence offence’).

¹⁶⁴ *Justices Act 1886* (Qld) s 47(9); Criminal Code (Qld) s 564(3A). See also Criminal Code (Qld) ss 48(2) and 572(1A), in relation to amendment of a complaint or an indictment, respectively, to include a similar statement.

¹⁶⁵ *Penalties and Sentences Act 1992* (Qld) s 12A(1)–(3).

¹⁶⁶ *Penalties and Sentences Act 1992* (Qld) s 12A(4). Proof that an offence is a domestic violence offence lies on the prosecutor: s 12A(11).

court must order that it also be identified on the person's criminal history as a 'domestic violence offence'.¹⁶⁷

3.114 As well as informing future sentencing of offenders, these reforms are intended to assist in more timely identification of escalating violence and appropriate intervention.¹⁶⁸

Bail and GPS monitoring of high risk perpetrators

3.115 The Taskforce considered that technologies such as GPS tracking have the potential to increase perpetrator accountability and improve the protection of victims, especially if linked to high risk cases.¹⁶⁹

3.116 Recent amendments to the *Bail Act 1980* have been made to allow for the use of tracking devices as a condition of bail at the discretion of the court. Whilst not specific to domestic and family violence offences, the amendments provide that a court may impose a condition that the defendant wear a 'tracking device' while released on bail and any other condition the court considers necessary to facilitate the operation of the tracking device.¹⁷⁰

3.117 In addition, amendments have been made in relation to the refusal of bail to domestic and family violence offenders, to the effect that:

- if the defendant is charged with a 'domestic violence offence',¹⁷¹ the court must consider the 'risk of further domestic violence or associated domestic violence' being committed by the defendant in assessing whether there is an unacceptable risk (and therefore, whether bail should be refused);¹⁷² and

¹⁶⁷ *Penalties and Sentences Act 1992* (Qld) s 12A(5)–(8). This also applies if a person is convicted of a breach offence under the *Domestic and Family Violence Protection Act 2012* (Qld) pt 7. Proof that an offence is a domestic violence offence lies on the prosecutor: s 12A(11). If the previous conviction was recorded, it must also be recorded as a conviction for a domestic violence offence: s 12A(5)(d).

¹⁶⁸ 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. See also *Taskforce Report* (2015) vol 1, 303–4, Rec 119.

¹⁶⁹ *Taskforce Report* (2015) vol 1, 308. The Taskforce recommended that GPS monitoring of high risk perpetrators be trialled, noting a lack of evidence to inform effective design of such a program: Rec 123.

¹⁷⁰ *Bail Act 1980* (Qld) s 11(9B), (9C), to be inserted by the *Bail (Domestic Violence) and Another Act Amendment Act 2017* (Qld) s 4(1). A 'tracking device' is to be defined in s 11(10) to mean:

an electronic device capable of being worn, and not removed, by a person for the purpose of the Queensland police service, or the chief executive of the department in which the *Corrective Services Act 2006* is administered, finding or monitoring the geographical location of the person.

These amendments, which are to commence on a date to be proclaimed, arose from a private members' bill introduced by Mr T Nicholls MP on 14 February 2017. That Bill was debated as a cognate Bill with the Victims of Crime Assistance and Other Legislation Amendment Bill 2016 (Qld) which was introduced by the Attorney-General on 1 December 2016.

¹⁷¹ A 'domestic violence offence' has the meaning given in Criminal Code (Qld) s 1: *Bail Act 1980* (Qld) s 16(7). See [3.111] above.

¹⁷² *Bail Act 1980* (Qld) s 16(2)(f), inserted by the *Bail (Domestic Violence) and Another Act Amendment Act 2017* (Qld) s 6(1).

- if the defendant is charged with a ‘relevant offence’ involving domestic violence,¹⁷³ bail is to be refused unless the defendant shows cause why their detention in custody is not justified.¹⁷⁴

National domestic violence order scheme

3.118 The Taskforce recommended the continuation of existing work to develop and implement a National Domestic Violence Order Scheme for automatic mutual recognition and enforcement of domestic and family violence orders across jurisdictions.¹⁷⁵

3.119 Work on such a scheme was initially agreed at a national level in 2011 and incorporated as part of the National Plan.¹⁷⁶

3.120 Recent amendments made to the *Domestic and Family Violence Protection Act 2012* will, upon commencement, give effect to the model laws in Queensland.¹⁷⁷

Ongoing implementation

3.121 Reforms under the Prevention Strategy, including many of those highlighted in this chapter, are the subject of ongoing implementation.¹⁷⁸ For example, the Second Action Plan 2016–19 identifies the need to finalise foundational work and begin building upon the integrated service response pilot trials and development of the common risk assessment and management framework, information sharing guidelines and the process for managing high risk cases.¹⁷⁹

¹⁷³ A ‘relevant offence’ is defined to mean: an offence against Criminal Code (Qld) s 315A (choking, suffocation or strangulation in domestic setting); an offence punishable by a maximum penalty of at least seven years imprisonment if the offence is also a domestic violence offence; an offence against Criminal Code (Qld) ss 75 (threatening violence), 328A (dangerous operation of a vehicle), 355 (deprivation of liberty), 359E (unlawful stalking) or 468 (injuring animals) if the offence is also a domestic violence offence; and, in certain circumstances, an offence for breach of a domestic violence order: *Bail Act 1980* (Qld) s 16(7), amended by the *Bail (Domestic Violence) and Another Act Amendment Act 2017* (Qld) s 6(4).

¹⁷⁴ *Bail Act 1980* (Qld) s 16(3)(g), inserted by the *Bail (Domestic Violence) and Another Act Amendment Act 2017* (Qld) s 6(3). If bail is granted or the defendant is released under s 11A, the order must include a statement of the reasons: s 16(3).

¹⁷⁵ *Taskforce Report* (2015) vol 1, 259–60, Rec 90.

¹⁷⁶ See *First Action Plan of the National Plan 2010–2013* (2012), above n 72, 24–5; *Second Action Plan 2013–2016 of the National Plan to Reduce Violence against Women and their Children 2010–2022* (2013) 38.

¹⁷⁷ *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* (Qld) pt 2, div 3, replacing the *Domestic and Family Violence Protection Act 2012* (Qld) pt 6. Those amendments are to commence on a date to be proclaimed. See Queensland Government, *Legislative changes* (6 June 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/strengthening-justice-system-responses/legislative-changes>>.

¹⁷⁸ See Domestic and Family Violence Implementation Council, above n 82, 2, 68–72; Queensland Government, *Our progress* (14 February 2017) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress>>.

¹⁷⁹ Second Action Plan 2016–19, above n 81, 14.

Chapter 4

Access to and disclosure of criminal history and other information in Queensland

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INTRODUCTION

4.1 As previously discussed, Queensland has recently enacted a new domestic and family violence information sharing framework. This will permit the sharing of information among certain agencies (including police, particular government agencies and specialist support providers), without the consent of the person to whom the information relates, for the purposes of assessing or responding to a serious threat to a person's life, health or safety, or making a referral to a specialist domestic and family violence support service.¹

4.2 In addition, there is a broader legislative and policy framework in Queensland that, among other things, regulates access to and the disclosure of criminal history and other personal information held by Queensland Government agencies.

OVERVIEW OF KEY QUEENSLAND PROVISIONS

Information privacy

4.3 The *Information Privacy Act 2009* (the 'IP Act') recognises the importance of protecting the privacy of an individual's 'personal information' (including any criminal or domestic violence history).² The IP Act does this by imposing restrictions on the collection, storage, access, use and disclosure of personal information held

¹ See [3.92]–[3.97] above.

² '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.

by Queensland Government agencies.³ It also provides for a person to be given access to their own personal information.⁴

4.4 In particular, the IP Act obliges Queensland Government agencies to comply with the Information Privacy Principles ('IPPs').⁵ Among other things, 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).⁶

4.5 However, IPPs 10 and 11 contain a number of exceptions to these general rules, including if:⁷

- 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 criminal offences (by or for a law enforcement agency);⁸ or

³ 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.

⁴ 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 s 47 of the *Right to Information Act 2009* (Qld).

⁵ *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.

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: *Information Privacy Act 2009* (Qld) ss 34–37, sch 5 (definition of 'bound contracted service provider').

⁶ Under the *Acts Interpretation Act 1954* (Qld), sch 1, 'entity' includes a person and an unincorporated body.

⁷ *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 to the agency: sch 3 IPP 11(3).

⁸ *Information Privacy Act 2009* (Qld) sch 3 IPP 10(1)(d)(i), 11(1)(e)(i). A 'law enforcement agency' is defined to include the Queensland Police Service under the *Police Service Administration Act 1990* (Qld): s 11 sch 5.

- 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.⁹

4.6 There are also some exceptions to the obligation for agencies to comply with the IPPs,¹⁰ particularly for law enforcement agencies.¹¹ In particular, the Queensland Police Service¹² 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.¹³

4.7 The Office of the Information Commissioner ('OIC') has issued guidelines on the application of the Information Privacy Principles.¹⁴

4.8 The guidelines state that the exception in IPP 10 and 11 which permits the use or disclosure of personal information if it is necessary for the prevention of criminal offences,¹⁵ should only be used in exceptional circumstances, and not for ongoing or regular uses and disclosures. The agency must also be satisfied that 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').¹⁶

4.9 In relation to the exception in IPP 10 and 11 which permits the use or disclosure of personal information if it is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual,¹⁷ the 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 be satisfied that the

⁹ *Information Privacy Act 2009* (Qld) sch 3 IPP 10(1)(b), 11(1)(c).

¹⁰ See *Information Privacy Act 2012* (Qld) 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.

In addition, the Information Commissioner may, in limited circumstances, give a 'public interest approval' that waives or modifies an agency's obligation to comply with the privacy principles when undertaking specific functions or activities: *Information Privacy Act 2009* (Qld) s 157(4), sch 5 (definition of privacy principles). See further 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>>.

¹¹ See *Information Privacy Act 2012* (Qld) s 29. A 'law enforcement agency' is defined to include the QPS under the *Police Service Administration Act 1990* (Qld): s 11, sch 5.

¹² The Queensland Police Service is established under the *Police Service Administration Act 1990* (Qld) s 2.1. Under s 2.3 of that Act, the functions of the Queensland Police Service 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.

¹³ *Information Privacy Act 2009* (Qld) s 29(1)(a).

¹⁴ See *Information Privacy Act 2009* (Qld) s 135(1)(c).

¹⁵ *Information Privacy Act 2009* (Qld) sch 3 IPP 10(1)(d)(i), 11(1)(e)(i).

¹⁶ Office of the Information Commissioner Queensland, *Understanding the Information Privacy Principles—Use and disclosure for law enforcement or revenue protection* (5 June 2017) <<https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/use-and-disclosure/use-or-disclosure-for-law-enforcement-or-revenue-protection>>.

¹⁷ *Information Privacy Act 2009* (Qld) sch 3 IPP 10(1)(b), 11(1)(c).

use or disclosure is 'necessary' (that is, it involves more than a 'mere chance' of reducing the threat). Whilst, ordinarily, the disclosure would be to another agency or body with the capacity and authority to intervene to reduce the threat,¹⁸ neither the legislation nor the guidelines expressly preclude disclosure to an individual. Accordingly, a disclosure might be made to an individual in appropriate circumstances.

Right to information

4.10 The *Right to Information Act 2009* gives members of the public a right to apply for access¹⁹ to documents held by Queensland Government agencies (whether or not the documents contain the applicant's personal information),²⁰ unless, on balance, it is contrary to the public interest to give access.²¹

4.11 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,²² one of which is the protection of an individual's right to privacy.²³

Spent convictions

4.12 To enable the rehabilitation of offenders, a conviction becomes 'spent' under the *Criminal Law (Rehabilitation of Offenders) Act 1986* when certain conditions are met.²⁴ A spent conviction is no longer disclosable as part of the person's criminal history, unless:²⁵

¹⁸ 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-to-prevent-harm>>.

¹⁹ 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.

²⁰ *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.

²¹ *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 access to a document if the applicant can reasonably access the document under another Act or another arrangement made by an agency: ss 47(3)(f), 53.

²² *Right to Information Act 2009* (Qld) ch 3 pt 5, sch 4.

²³ *Right to Information Act 2009* (Qld) s 49, sch 4 pt 3 item 3.

²⁴ Namely, 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): *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) ss 3(1) (definitions of 'rehabilitation period' and 'revived'), (2), 6.

²⁵ *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'.

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

DISCLOSURE OF CRIMINAL HISTORY AND OTHER INFORMATION BY POLICE

4.13 The QPS keeps criminal records for all offenders including, but not limited to, details of charges, court appearances and convictions.

4.14 A person's criminal history²⁶ is a written record detailing the person's past criminal convictions (and, in some cases, charges).²⁷

4.15 Consistently 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.²⁸ 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.²⁹

ACCESS TO INFORMATION AVAILABLE ON COURT FILES

4.16 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 that are the subject of the request.

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

Criminal proceedings

4.18 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:

²⁶ The meaning of 'criminal history' may vary depending on the legislative context in which it is used.

²⁷ '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).

²⁸ 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.

²⁹ 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 the person's 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.

- Any person may ask the proper officer (such as the registrar)³⁰ of the court of trial³¹ before which a person was convicted of an indictable offence to give them a certificate of the conviction.³²
- A person, on payment of a prescribed fee,³³ may search for or inspect a court file or document in a criminal proceeding in the Supreme Court or District Court (other than an exhibit or indictment) and 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.³⁴
- A person may, on payment of a prescribed fee,³⁵ 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.³⁶
- A person who is not a party to a trial may, on payment of a prescribed fee,³⁷ 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.³⁸

³⁰ 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').

³¹ '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').

³² *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.

³³ The fee is \$17.20: *Criminal Practice (Fees) Regulation 2010* (Qld) s 2, sch 1 item 2.

³⁴ *Criminal Practice Rules 1999* (Qld) r 57.

³⁵ The fee is \$17.20: *Criminal Practice (Fees) Regulation 2010* (Qld) s 2, sch 1 item 1.

³⁶ *Criminal Practice Rules 1999* (Qld) r 56.

³⁷ 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 1 item 6. Fees also apply for copying an exhibit: *Criminal Practice (Fees) Regulation 2010* (Qld) s 2, sch 1 item 7.

³⁸ *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,³⁹ subject to particular exemptions⁴⁰ and restrictions.⁴¹
- Any person may apply to purchase a transcript of a recording of a court proceeding,⁴² subject to any restrictions in an Act or orders of the court.⁴³

Domestic and family violence proceedings

4.19 Domestic violence proceedings are usually confidential,⁴⁴ and a non-party to the proceeding cannot ordinarily access records or documents.⁴⁵

³⁹ *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.

⁴⁰ *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.

⁴¹ *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).

⁴² *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 minute 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.

⁴³ *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 or non-publication order.

⁴⁴ See [3.44]–[3.45] above.

⁴⁵ *Domestic and Family Violence Protection Act 2012* (Qld) s 160. A party to a proceeding under the Act, a person named in an order made in the proceeding, or an Australian Court may apply to obtain a copy of any part of the record of the proceeding or document used or tendered in the 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 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.

Victims of crime

4.20 The *Victims of Crime Assistance Act 2009* recognises fundamental principles of justice for victims of crime.⁴⁶ Relevantly, it provides that a victim⁴⁷ is entitled to information about the investigation of the crime and the prosecution of a person accused of committing the crime,⁴⁸ including the following:⁴⁹

- the charges laid for the crime and the name of the person charged;
- the issue of a warrant for the arrest of the person accused of committing the crime;
- the outcome of an application for bail made by the charged person and any arrangements made for the person's release;⁵⁰
- details about relevant court processes, when the victim may attend a court proceeding and, if the victim is a witness in the trial, information about the trial process and the victim's role as a witness;
- the availability of diversionary programs in relation to the crime; and
- the outcome of a proceeding relating to the crime, including any sentence imposed and the outcome of any appeal.

⁴⁶ Among other things, the Act provides that a victim's personal information is not to be disclosed other than as authorised under an Act or law: *Victims of Crime Assistance Act 2009* (Qld) s 9, to be replaced in similar terms by s 6B sch 1AA pt 1 div 1 item 2, to be inserted by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld) s 93 (commencing on a date to be proclaimed).

⁴⁷ 'Victim' is defined to mean a person who has suffered harm: because a crime is committed against the person; because the person is a family member or dependant of a person who has died or suffered harm because a crime is committed against that person; or as a direct result of intervening to help a person who has died or suffered harm because a crime is committed against the person: *Victims of Crime Assistance Act 2009* (Qld) s 5(1).

Under new amendments, 'victim' will also relevantly include a person who has suffered harm: because domestic violence is committed against the person; because the person is a family member or dependent of a person who has domestic violence committed against them; or as a direct result of intervening to help a victim of domestic violence: *Victims of Crime Assistance Act 2009* (Qld) s 5(3), to be inserted by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld) s 19 (commencing on a date to be proclaimed).

⁴⁸ *Victims of Crime Assistance Act 2009* (Qld) ss 11(1)(a)–(b), 12, which provide for such information to be given '[s]o far as is reasonably practicable' and 'if asked by a victim'. Those provisions are to be replaced by new s 6B sch 1AA pt 1 div 2 items 1 and 2, to be inserted by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld) (commencing on a date to be proclaimed). The new provisions are in similar terms, but will remove the 'reasonably practicable' qualification and the requirement for the victim to ask for the information before it is provided.

⁴⁹ See *Victims of Crime Assistance Act 2009* (Qld) ss 11(1)(c)–(h), (2), 12–13, to be replaced in similar terms by s 6B sch 1AA pt 1 div 2 items 3–5, to be inserted by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld) s 93 (commencing on a date to be proclaimed).

⁵⁰ Including any special bail conditions imposed that may affect the victim's safety or welfare: *Victims of Crime Assistance Act 2009* (Qld) s 6B sch 1AA pt 1 div 2 item 4, to be inserted by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld) s 93 (commencing on a date to be proclaimed).

Chapter 5

The position in other jurisdictions

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JURISDICTIONS IN WHICH A DVDS HAS BEEN INTRODUCED

England and Wales, Scotland, New Zealand and New South Wales

5.1 A number of jurisdictions have introduced a DVDS. England and Wales introduced a DVDS in 2014. Scotland and New Zealand commenced similar schemes in October and December 2015, respectively. A DVDS is currently being piloted in New South Wales.

5.2 A detailed overview of each of those schemes was included in the Consultation Paper.¹ This information has been updated and reproduced in Appendix C.

5.3 The stated aim of those schemes is to enable a person at risk of domestic and family violence to find out if their partner has a relevant criminal or domestic violence history, so that the person can make informed choices about the relationship and about their safety. Another stated aim is to assist in preventing or reducing the incidence of domestic and family violence and to strengthen protections for persons at risk.²

5.4 The details of the schemes vary, but they have a number of common features. Generally, they:

- are administered by the police in partnership with, or assisted by, specialist domestic and family violence support services (and, in some cases, other agencies);

¹ QLRC Consultation Paper No 75 (2016) 33–53.

² See, eg, *NSW Factsheet* (2016) 1 and *UK Impact Assessment* (2013) 1.

- enable a person to make an application to police to request disclosure (a ‘right to ask’ pathway) and, in some cases, enable police to initiate disclosure without an application, if they obtain indirect information indicating that a person might be at risk (a ‘right to know’ pathway);³ and
- apply to a person who has concerns about the behaviour of their current (or, in some cases, former) partner.⁴

5.5 When an application for disclosure is received by police (under a right to ask pathway), or when police initiate a matter (under a right to know pathway), police will carry out criminal history and other relevant checks and conduct a risk assessment to evaluate the safety of the person at risk. The police, or alternatively a multi-agency panel including the police, will consider the matter and make a decision about whether information should be disclosed.

5.6 At any time during that process, if police identify that a matter is urgent, they may take immediate action, including making an urgent disclosure.

5.7 A disclosure consists of information about relevant convictions and, in some cases, other relevant information (for example, charges that were not finalised or police intelligence). If an application does not result in a disclosure, the applicant is to be advised that there is no relevant information to disclose (a ‘non-disclosure’).

5.8 Generally, a disclosure is to be made to the person at risk; but in some circumstances it may be made to another individual best placed to protect that person.

5.9 Disclosures and non-disclosures are to be made in person and not given in writing. In either case, the recipient is to be offered safety advice and support. In the case of a non-disclosure, the recipient is also to be advised that the fact that no information has been disclosed does not mean that the person is not at risk of domestic and family violence.

5.10 Any disclosure must be kept confidential.

Evaluations of the schemes in other jurisdictions

5.11 The schemes in England and Wales⁵ and Scotland⁶ have been the subject of limited review in relation to operational matters and processes. The pilot scheme in New South Wales is currently under review and a review of the scheme in New Zealand has been proposed.⁷

³ See, eg, the discussion of how these pathways operate in England and Wales in [12]–[15] in Appendix C below.

⁴ Third parties, such as a family member, may also apply if they have concerns about the person’s partner.

⁵ *UK Pilot Assessment* (2013); *UK National Roll-Out Assessment* (2016). Information about the DVDS in England and Wales is available at: Home Office, *Domestic Violence Disclosure Scheme*, Gov.uk (8 March 2016) <<https://www.gov.uk/guidance/domestic-violence-and-abuse#domestic-violence-disclosure-scheme>>. See also [3]–[10] in Appendix C below.

⁶ Information provided by Police Scotland, Domestic Abuse Coordination Unit, 17 October 2016. The review of the Scottish scheme is not publicly available. See also [37] in Appendix C below.

⁷ See further [63] and [42], respectively, in Appendix C below.

5.12 In response to the review in England and Wales, practitioners highlighted the importance of including safety planning within the DVDS process and of the need to provide each person with adequate and appropriate support, whether or not a disclosure is made.⁸ To provide this level of support, practitioners stated that it is essential to have sufficient support service capacity in all areas.⁹

5.13 The need for support and safety planning as part of a DVDS is recognised in the policy documents supporting the schemes in other jurisdictions. In its pilot scheme, New South Wales has provided additional funding to engage three specialist domestic and family violence services to work with police, providing support during and after the disclosure process.¹⁰

JURISDICTIONS IN WHICH A DVDS HAS BEEN CONSIDERED BUT NOT INTRODUCED

5.14 The introduction of a DVDS was recently considered in Western Australia and Victoria as one of several possible reforms relating to domestic and family violence.

Western Australia

5.15 In July 2013, the Law Reform Commission of Western Australia (the 'LRCWA') was asked to undertake a review of Western Australian laws concerning domestic and family violence.¹¹

5.16 One of the matters referred to in the review was the DVDS in England and Wales. The LRCWA sought submissions about whether consideration should be given to the development of a DVDS in Western Australia, and, if so, in what circumstances a disclosure should be available.¹²

5.17 In the absence of evidence about whether such schemes provide victims of domestic and family violence with enhanced safety, the LRCWA expressed initial reservations about the establishment of a DVDS. It observed that the potential benefits of such a scheme would need to be balanced against the potential detriments. In particular, the LRCWA expressed concerns that:¹³

⁸ *UK Pilot Assessment* (2013) 4–5, 14–15, 20–21.

⁹ *Ibid* 4, 15.

¹⁰ *NSW Factsheet* (2016) 3. The services offered by these specialists include being present at the time of disclosure, providing victim intake and assessment, crisis support and referrals to other relevant services (such as counselling, legal and court support, accommodation and housing, parenting support and financial support). The specialist services offer 24/7 crisis assistance for victims following a domestic violence incident, by assessing their needs and enabling access to crisis services such as emergency accommodation, trauma counselling, financial and other support.

¹¹ *LRCWA Final Report* (2014) 3. In particular, the terms of reference required the LRCWA to '[i]nvestigate and consider the benefits (or otherwise) of having separate family and domestic violence legislation' and to provide advice on what should be included in that legislation if it were to be developed.

¹² *LRCWA Discussion Paper* (2013) 158–60, Q 29.

¹³ *Ibid* 159.

- there is a real risk that the disclosure process would provide a false sense of security to the applicant in cases where there is no information to disclose;
- disclosure might itself increase risk if, for example, it is raised with the perpetrator; and
- problems might arise if disclosed information is passed on to other persons.

5.18 The LRCWA also observed that the usefulness of any disclosure would depend on the nature of the information disclosed; for example, disclosure of the bare fact of a conviction may be misleading. It also noted that disclosure raises privacy concerns. It stated that:¹⁴

Disclosure of prior offences upon request is a significant infringement on privacy and should only be contemplated if there is an identifiable benefit in terms of reduced domestic and family violence.

5.19 In its 2014 report, the LRCWA did not make any recommendation about the introduction of a DVDS. It reiterated the cautions and considerations raised in its discussion paper, and noted that whilst some submissions supported a scheme, there was ‘also notable opposition’.¹⁵ It concluded that:¹⁶

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 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.

5.20 The LRCWA made 73 recommendations for reform of domestic and family violence laws, many of which have been, or are in the process of being, implemented. In addition, the Western Australian Government has developed an action plan, which is focussed on responding more effectively to perpetrators of violence.¹⁷

Victoria

5.21 The Victorian Royal Commission into Family Violence (the ‘Commission’) was established in 2015 and given terms of reference ‘to inquire into and report on

¹⁴ Ibid.

¹⁵ *LRCWA Final Report* (2014) 179.

¹⁶ Ibid 180.

¹⁷ See further Department for Child Protection and Family Support (WA), ‘Freedom from Fear: Working towards the elimination of family and domestic violence in Western Australia’, *Action Plan 2015* (Government of Western Australia, 2015) 9–14; *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* (WA) (commencing, relevantly, on 7 February and 1 July 2017); M Mischin, Attorney-General and Minister for Commerce (WA) and L Harvey, Deputy Premier, Minister for Police, Minister for Road Safety, Minister for Training and Workforce Development, Minister for Women’s Interests (WA), ‘Family violence reform for Western Australia’ (Media Release, 8 March 2015).

how Victoria's response to family violence can be improved by providing practical recommendations to stop family violence'.¹⁸

5.22 In the context of examining risk assessment and management practices, the Commission referred to the New South Wales DVDS pilot, which is based on the scheme in England and Wales.¹⁹ It also noted that Victoria Police had suggested that consideration be given to introducing a similar scheme in Victoria.²⁰

5.23 In its 2016 report, the Commission did not recommend the introduction of a DVDS in Victoria.²¹

5.24 The Commission's primary concern was that 'having such a scheme could give women a false sense of security', for example, if there is no information to disclose because the person has never had contact with the police.²²

5.25 Additional reasons given by the Commission about why a DVDS should not proceed in Victoria included that:²³

- the effect of such a scheme on increasing safety has not been demonstrated;
- other similar schemes have undergone limited evaluation;
- under such schemes, the onus remains on persons at risk to keep themselves safe;
- such schemes are potentially costly; and
- such schemes are usually limited to perpetrators who have a criminal history (although the Commission noted that this could be changed).

5.26 The Commission proposed that any future consideration of a scheme should take these concerns into account and consider the results of the New South Wales DVDS pilot.²⁴

5.27 In its report, the Commission prioritised a number of other measures, including information sharing between relevant agencies, adequately resourcing

¹⁸ *Vic Royal Commission Report* (2016) vol 1, 1 and app A. Broadly, the terms of reference required the Commission to identify the most effective ways to: prevent family violence; improve early intervention so as to identify and protect those at risk; support victims; make perpetrators accountable; develop and refine systemic responses to family violence; better coordinate community and government responses to family violence; and evaluate and measure the success of strategies, frameworks, policies, programs and services introduced.

¹⁹ *Vic Royal Commission Report* (2016) vol 1, 114–15.

²⁰ *Ibid.*

²¹ *Ibid* 145.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

programs and placing a greater emphasis on the effective monitoring of perpetrators by the police, courts and corrections agencies.²⁵

5.28 The Victorian Government has committed to implement all of the Commission's recommendations.²⁶

JURISDICTIONS IN WHICH A DVDS OR OTHER DISCLOSURE MECHANISM IS BEING CONSIDERED

5.29 The introduction of a DVDS or other mechanism for disclosing a history of domestic or other violence is presently being considered in the Northern Territory, South Australia and Tasmania.²⁷

Northern Territory

5.30 The Northern Territory Department of the Attorney-General and Justice released an issues paper in 2015 seeking stakeholders' views on a number of possible options for improving the response to domestic and family violence, including the implementation of a DVDS.²⁸

5.31 The Department of Attorney-General and Justice subsequently released a report on its consultation.²⁹

5.32 The report stated that stakeholders held mixed views about whether a DVDS would succeed in the aim of protecting persons at risk of domestic and family violence. Specific concerns raised by stakeholders about the introduction of a DVDS in the Northern Territory included that:³⁰

²⁵ Ibid. See generally *Vic Royal Commission Report Summary* (2016) vol 1, 19–21.

²⁶ Dr Andrews, Premier, 'It's time to fix our broken family violence system' (Ministerial Media Statement, 30 March 2016); Victorian Government, *Our Immediate Response*, Family Violence the Plan for Change <<http://www.vic.gov.au/familyviolence/our-10-year-plan/our-immediate-response.html>>; Victorian Government, *Ending Family Violence: Victoria's Plan for Change* (Department of Premier and Cabinet, 2016).

²⁷ In its 2016 report on a review of domestic and family violence deaths in the ACT, the Domestic Violence Prevention Council made a number of recommendations designed to inform future decisions about violence prevention and detection mechanisms, but did not consider whether the ACT should introduce a DVDS: *ACT Domestic Violence Prevention Council Report* (2016). On 8 May 2017, the Standing Committee on Justice and Community Safety of the ACT Legislative Assembly commenced an inquiry into policy approaches and responses to domestic and family violence. The Inquiry's terms of reference include 'best practice policy approaches and responses being undertaken in other jurisdictions to prevent and/or respond to domestic and family violence': Standing Committee on Justice and Community Safety, ACT Legislative Assembly, *Inquiry into Domestic and Family Violence—Policy approaches and responses* (15 June 2017) <<http://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety/inquiry-into-domestic-and-family-violencepolicy-approaches-and-responses>>.

²⁸ *NT Issues Paper* (2015) 3–4. This was the second of two issues papers on domestic and family violence in the Northern Territory. See also Department of Attorney-General and Justice (NT), *Domestic and Family Violence Act* (Issues Paper, April 2015).

²⁹ *NT Consultation Report* (2016). Non-confidential submissions can be viewed in full at: <<https://justice.nt.gov.au/attorney-general-and-justice/law/report-on-consultation-outcomes-domestic-and-family-violence-act-review>>.

³⁰ Ibid 97–9.

- the benefits of a DVDS are unclear;³¹
- the introduction of a DVDS would place greater responsibility on persons at risk and could 'lead to "victim blaming" of persons who maintain relationships with partners who they are aware have a history of violence';
- allowing third parties to access information has privacy implications, could result in the misuse of information and is inconsistent with empowering individuals to make decisions about their own relationships;³²
- the introduction of a DVDS could have implications in other legal matters;³³
- where an application under a DVDS does not disclose a history of violence, 'people might be lulled into a false sense of security'; and
- a DVDS would require significant resources that may be better directed to other services and initiatives.³⁴

5.33 Stakeholders considered that, if a DVDS were to be implemented in the Northern Territory, two particular factors would require consideration. First, the operation of a DVDS may be impeded by various cultural, linguistic and geographical factors, including a limited police presence, limited numbers of female police officers and the difficulty encountered by some Aboriginal and Torres Strait Islander people in obtaining or providing identity documents. Second, many people in remote communities do not have good relationships with police and may be unwilling to seek their assistance.³⁵

5.34 Stakeholders considered alternatives to a DVDS to better achieve the protection of persons at risk. It was submitted that many of those who would apply under a DVDS are likely already victims of domestic and family violence and therefore that education, counselling and legal advice are more appropriate and empowering responses. Similarly, it was suggested that resources should be directed toward specialist domestic and family violence services, including legal

³¹ It was noted that, in many remote communities, backgrounds and histories would be known and people would not require further information from police. Further, whilst having information might enable informed decisions to be made, a DVDS would not guarantee the safety of a person who chooses to remain with a violent partner. However, it was also stated that a DVDS may encourage people to make safety plans and leave violent relationships and that knowledge of previous violence may encourage victims not to blame themselves or excuse violent behaviour. One respondent stated that a DVDS would 'most likely benefit people entering new relationships, not repeat victims in longstanding relationships': *ibid* 97–8.

³² It was also noted that the 'expansive nature of family connections' in Indigenous relationships may lead to potential issues, such as 'sensitive information being sought by a large range of people': *ibid* 98.

³³ For example, it was stated that persons at risk who fail to act on disclosed information could be prejudiced in protection proceedings, and that knowledge that a domestic violence order could be disclosed to future partners could impact on a perpetrator's decision to consent to the making of an order: *ibid* 98–9.

³⁴ It was noted that the Domestic and Family Violence Reduction Strategy ('DFVRS') may obviate the need for a DVDS and that, if a DVDS were introduced, it should be undertaken within the DFVRS framework: *ibid* 98, 100. Broadly, the DFVRS seeks to achieve an integrated response by government and non-government agencies. The five key action areas for change are prevention, early intervention, protection (safety for victims), rebuilding the lives of victims and survivors, and perpetrators taking responsibility for their actions: Northern Territory Government, *Domestic and Family Violence Reduction Strategy*, Territory Families <<https://territoryfamilies.nt.gov.au/domestic-violence/domestic-and-family-violence-reduction-strategy>>.

³⁵ *NT Consultation Report* (2016) 99.

services and shelters, as well as the continuation of the Domestic and Family Violence Reduction Strategy.³⁶

5.35 To date, the Northern Territory Government has not made any public statement about the outcome of its consideration of a DVDS.

South Australia

5.36 On 25 November 2015, the South Australian Government announced that:³⁷

South Australia is taking steps towards introducing a scheme to allow a person's history of domestic violence to be disclosed to a new partner ... [and] will release a discussion paper on a [domestic violence disclosure scheme] similar to 'Clare's Law' in the UK ... [and] seeking community views on an appropriate model for a domestic violence disclosure scheme in South Australia and also identify other potential areas of reform.

5.37 In July 2016, the South Australian Government released a discussion paper that, among other things, raised the introduction of a DVDS as a topic for community consideration and discussion.³⁸

5.38 The South Australian Government is considering the feedback from the discussion paper.³⁹ To date, there has been no further public statement about the outcome of the discussion paper in relation to a DVDS.

Tasmania

5.39 In October 2016, the Tasmanian Department of Justice released a consultation paper on a number of potential responses to strengthen the legal frameworks addressing family violence.⁴⁰

5.40 Among other things, it sought feedback on whether courts should have the ability to declare that a person is a 'persistent perpetrator of family violence'. Such a declaration would be an order made on sentencing a person for contravention of a protection order and would 'target perpetrators who continually ignore' such orders.⁴¹ In relation to the consequences of such a declaration, the consultation paper asked whether there should be a 'persistent perpetrator of family violence register' and, if so, whether the register should be available to the public for persons at risk of family

³⁶ Ibid 100 and see n 34 above.

³⁷ J Weatherill, Premier (SA), 'South Australia investigates new domestic violence prevention measures' (News Release, 25 November 2015).

³⁸ *SA Discussion Paper* (2016) 51–8. The paper stated that the 'South Australian Government has committed to considering the development and implementation of a DVDS. In developing a DVDS for our state, we can draw upon what has been learnt from a similar scheme operating in the UK, and a new scheme in NSW': 51.

³⁹ J Rau, Attorney-General (SA), 'Strong response to discussion on domestic violence initiatives' (News Release, 8 September 2016).

⁴⁰ *Tas Consultation Paper* (2016). The paper responds to action 12 of Tasmania's Family Violence Action Plan 2015–2020 to strengthen the legislative framework to address family violence: see Tasmanian Government, *Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015–2020*, 10.

⁴¹ *Tas Consultation Paper* (2016) 25–6.

violence to find out if their current (or former) partner has a history of violent criminal offences.⁴²

5.41 To date, the Tasmanian Government has not made any public statement about the outcome of this consultation paper.⁴³

⁴² Ibid 27–8. The paper also discusses the NSW DVDS pilot. The Premier noted during the debate of the Domestic Violence Orders (National Recognition) Bill 2016 (Tas) that the Government is watching the NSW DVDS pilot with interest: Tasmania, *Parliamentary Debates*, House of Assembly, 16 August 2016, 76 (WEF Hodgman, Premier).

⁴³ Submissions to the paper were due by 6 February 2017.

Chapter 6

Consultation outcomes

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INTRODUCTION

6.1 As mentioned in Chapter 1, the Commission received 45 submissions to the Consultation Paper. Of these, 32 were from organisations, including government and non-government domestic and family violence service providers, and 15 were from individuals.

6.2 Prior to the close of submissions, the Commission held 10 consultation meetings in different locations throughout the State with more than 130 individuals and representatives of organisations who work or have a working interest in the domestic and family violence sector in Queensland.¹

6.3 The aim of the meetings was to enable the participants to develop and exchange ideas about the issues raised in the review, and to inform the development of submissions to the Consultation Paper. They also provided the Commission with valuable information about the experience of individuals affected by domestic and family violence as well as key issues and challenges in the delivery of State-wide services for, and reforms relating to, the domestic and family violence sector. Many of the organisations or individuals involved subsequently made written submissions.

6.4 This chapter summarises the outcomes and key themes of the consultation meetings and submissions. In the interests of brevity, it does not include separate references to the consultation meetings, as they canvassed the same key themes and issues set out in the submissions.

¹

A list of the consultation meetings is set out in Appendix B below.

GENERAL OUTCOMES

6.5 Most respondents opposed the introduction of a DVDS in Queensland.² Those respondents included specialist domestic violence and other support services, community legal centres, academics with an interest in the domestic and family violence sector, the Queensland Law Society and the Bar Association of Queensland.

6.6 The minority of respondents who supported the introduction of a DVDS included an advocacy service for people with disability, a group of service providers who work in men's domestic and family violence intervention programs and several members of the public.³

6.7 A number of themes emerged from the respondents' views. Those of particular significance include:

- the extent to which a DVDS would complement Queensland's domestic and family violence reform strategy;
- the current lack of evidence about whether such schemes are effective in reducing the incidence of domestic and family violence, strengthening protections and support for persons at risk, or improving perpetrator accountability;
- the critical importance of linking persons at risk with adequate and appropriate support services;
- the potential diversion of resources from existing and new programs;
- safety concerns arising from the potential for inaccurate disclosures, which might give rise to a false sense of safety; and
- the challenges of meeting the specific needs of high risk groups.

6.8 Respondents identified some benefits of a DVDS, including its potential to link persons at risk to support services.⁴ Overall, however, many considered that the potential risks of introducing such a scheme in Queensland outweighed any potential benefits, and that those risks could not be mitigated sufficiently to justify the introduction of a scheme.⁵

6.9 The Legal Aid Commission of New South Wales ('Legal Aid NSW') argued in this regard that:

² Submissions 4, 6, 7, 8, 9, 11, 13, 14, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44.

³ Submissions 1, 2, 3, 5, 10, 15, 16, 18, 30, 45. One respondent, Queensland Advocacy Incorporated, limited its support to a 'strictly regulated DVDS' with 'appropriate safeguards' in place for people with disability.

⁴ See [6.19] ff below. Some respondents suggested other benefits such as the potential for early intervention and informed decision-making: see [6.86] ff and [6.90] ff below.

⁵ Eg, Submissions 4, 8, 21, 22, 23, 32, 31, 34, 36, 40, 40A, 43.

To date, the only effective component of the DVDS pilot [in NSW] has been to connect victims with support services. However, consistent access to support is being achieved through a variety of other reforms ... and therefore does not warrant continued investment in the DVDS. Moreover, the DVDS support services have added an extra layer of complexity to an already crowded service landscape to little advantage.

6.10 Several respondents referred to the 'low take-up rate' of both the New South Wales DVDS pilot (the 'NSW DVDS pilot') and the New Zealand DVDS (the 'NZ DVDS'),⁶ and many concluded that a DVDS would be of benefit to only a small number of people.⁷ As one respondent observed, a DVDS:⁸

would only strengthen protections and support for people [at risk of domestic and family violence] who are drawn to the attention of the relevant entities through an application [for disclosure] or through direct reporting of domestic violence incidents to a third party. There will still be at risk people who may not come to the attention of relevant persons because they fear for their safety if they make an application or report domestic violence to a third party.

6.11 Further, many respondents suggested that, of those who would receive a disclosure, only a small number would find the disclosure useful, especially given that there are many barriers to leaving a relationship and seeking support.⁹

KEY THEMES

The extent to which a DVDS would complement Queensland's domestic and family violence reform strategy

6.12 The Director-General, Department of the Premier and Cabinet observed that:

The operational environment in Queensland continues to rapidly evolve as the changes recommended in the [Taskforce] Report take effect. The need for a domestic violence disclosure scheme in Queensland should be considered in the context of the cumulative effect of these recent legislative changes as well as the staged implementation of significant new operating models for Queensland, for example, the integrated service response.

6.13 Some respondents noted that a DVDS could potentially be used as an additional early intervention measure to assist victims or potential victims of domestic and family violence.¹⁰

6.14 In contrast, other respondents considered that there is no real need for a DVDS at present, given the range of existing measures to prevent and respond to domestic and family violence (including the new inter-agency information sharing framework and the monitoring of high risk offenders through integrated service

⁶ Eg, Submissions 4, 40, 40A, citing J Collins, 'Police Family Violence Disclosure Scheme Helping Victims' (6 July 2016) <<https://www.beehive.govt.nz/release/police-family-violence-disclosure-scheme-helping-victims>>.

⁷ Eg, Submissions 4, 23, 31, 34, 36, 43.

⁸ Submission 23.

⁹ Eg, Submissions 4, 31, 34, 36. See further [6.93] ff below.

¹⁰ Eg, Submissions 15, 21.

models), and existing Queensland laws regulating the disclosure of information (including criminal history information).¹¹

Current lack of evidence about the effectiveness of a DVDS

6.15 Many respondents commented on the lack of evidence to date that a DVDS is effective as a measure to prevent and respond to domestic and family violence.¹²

6.16 ANROWS observed that:

To date, domestic violence disclosure schemes have been implemented in England and Wales, Scotland, New Zealand and New South Wales, Australia. All have been implemented since 2011. The only evaluation of these programs to date is the assessment of the impacts of the England and Wales pilot program conducted by the Home Office in 2011. Whilst the general satisfaction of police and other agencies [was] noted, no formal assessment of the impacts of the scheme on strengthening the protections and support for people at risk of domestic and family violence was conducted.

6.17 A number of respondents, including the Chief Magistrate, shared the view that it would be appropriate to wait for, and consider, the results of the evaluations of disclosure schemes in other jurisdictions before deciding whether to introduce a DVDS in Queensland.¹³

6.18 Several respondents, including the Queensland Centre for Domestic and Family Violence Research and the Queensland Council for Civil Liberties, cautioned against introducing a DVDS in the absence of clear evidence of the effectiveness of such a scheme.¹⁴ A legal academic from the Queensland Centre for Domestic and Family Violence Research commented that the introduction of a DVDS in the absence of such evidence might have the effect of 'diverting resources from other [domestic and family violence] responses that are potentially more meritorious'.¹⁵

The critical role of support services

6.19 One of the main potential benefits of a DVDS identified by respondents is that it could link victims, or potential victims, to domestic and family violence support services.¹⁶

6.20 The UQ Pro Bono Centre considered that, 'if appropriately designed and implemented', a DVDS 'may help individuals gain access to support services along with information about processes and available protections that they may not be aware of'.

¹¹ Eg, Submissions 7, 8, 17, 31, 34, 36, 38, 44.

¹² Submissions 4, 6, 7, 8, 9, 11, 12, 13, 14, 20, 21, 22, 23, 25, 26, 27, 28, 31, 34, 35, 39, 40, 41, 42, 43, 44.

¹³ Submissions 7, 8, 13, 25, 27, 30, 33, 34, 36, 37, 42.

¹⁴ Eg, Submissions 25, 41, 44.

¹⁵ Referring to K Fitz-Gibbon and S Walklate, 'The efficacy of Clare's Law in domestic violence law reform in England and Wales' (2016) *Criminology & Criminal Justice* 1.

¹⁶ Eg, Submissions 19, 21, 23, 29, 34, 45.

6.21 TASC National similarly observed that:

Perhaps, most importantly, use of the scheme provides an opportunity for engagement with people at risk where safety planning and advice can be provided and where people can be linked into existing services.

6.22 Some respondents noted that, if a person decides to leave their relationship, support is essential to overcome any barriers to leaving, and to provide safety planning at a time that is known to be of heightened risk.¹⁷ Two gender and family violence research academics from Monash University stated that:¹⁸

It is important to recognise that for many women leaving a relationship will only be possible if the necessary supports are available and engaged and risk management and referral pathways effectively mobilised through these supports.

6.23 The Capricorn Community Development Association considered that there is a risk:

that a DVDS is seen as a 'solution' to a domestic violence threat, when wrap around support and resourcing to support a person's choice to leave, and make it possible and practical, is also essential.

Information disclosure alone insufficient

6.24 A number of respondents expressed the view that the disclosure of information under a DVDS would not of itself be sufficient to increase safety or reduce the incidence of domestic and family violence.¹⁹

6.25 Respondents considered that, if a DVDS were to be introduced in Queensland, it would be critical for it to link the person at risk (including in the case of non-disclosure) to appropriate support services, for example, to provide risk assessment, safety planning and counselling.²⁰

6.26 Mercy Community Services observed that, in their professional experience, 'information alone is rarely an effective means of intervention'. This respondent considered that, to be effective, a DVDS must be linked with '[s]trong support systems'.

6.27 Legal Aid Queensland similarly considered that:

Disclosure of previous DV offences does not of itself strengthen the protections and support for people at risk of domestic and family violence in Queensland. To increase protection and support for people at risk, a DVDS needs to be integrated within a greater system which provides support and protection.

6.28 Cairns Collective Impact on Domestic and Family Violence submitted that, if a DVDS were to be implemented:

¹⁷ Eg, Submissions 2, 8, 12.

¹⁸ Referring to S Meyer, 'Still blaming the victim of intimate partner violence? Women's narratives of victim desistance and redemption when seeking support' (2016) 20(1) *Theoretical Criminology* 75.

¹⁹ Eg, Submissions 14, 24, 25, 26, 27, 34, 39, 43, 44, 45.

²⁰ Eg, Submissions 2, 8, 12, 13, 15, 16, 19, 21, 23, 25, 26, 34, 36, 43, 44, 45.

the focus should not just be the provision of information, but the support provided to a person ... so that they can manage risk and safely consider their options in an informed way. ... [i]t is critical the disclosing person work collaboratively with a specialised domestic violence support service ... **before, during and after** any disclosure to a victim. (emphasis in original)

6.29 That respondent also noted that risk in the context of domestic and family violence 'is not static', and that it is therefore important for risk assessment and safety planning to be 'carried out at each critical step of the application and decision-making process'.

6.30 The Queensland Council for Civil Liberties observed that:

It is common in our society to think that the most effective way to solve social problems is to supply information to those adversely affected. ... Whilst it is undeniable that information is essential to people taking action in any circumstance, it is not often sufficient. The focus on the delivery of information ignores other factors affecting people's capacity to take action including power relationships, lack of resources and inequality. In other words, the disclosure cannot possibly work if it is not done in the context of other arrangements to allow people access to the resources and support necessary to act on the information they are given.

6.31 In a joint submission, the Services and Practitioners for the Elimination of Abuse Queensland and the No to Violence Incorporating the Men's Referral Service similarly noted that:

There is no automatic connection between providing or receiving information about past history of domestic and family violence leading to a reduction in the incidence of domestic and family violence. Unless other measures to address domestic and family violence are linked to the scheme, it may not have significant effects on the incidence of domestic and family violence.

6.32 A number of respondents emphasised that the most effective way to increase safety and reduce the incidence of domestic and family violence is by providing greater support for persons at risk, undertaking more effective risk assessment and management, and strengthening law enforcement and monitoring.²¹

6.33 The Suncoast Community Legal Service Inc. noted that disclosure of information alone 'cannot provide a timely, risk-sensitive response from frontline services'. They considered that:

the greater impact on DV prevention is reached through better risk assessment and management by frontline policing, and greater access to support services for victims at their most vulnerable time — when they are trying to leave the relationship.

6.34 Micah Projects Inc expressed the view that:

the new information sharing regimes and multi-agency management and monitoring of high risk offenders through the integrated service models in Queensland, will provide the most effective protections to those aggrieved by domestic violence.

²¹ Eg, Submissions 8, 14, 20, 33, 39.

6.35 That respondent noted that ‘the evidence base supporting these models is well developed internationally and in Australia’.

6.36 The Queensland Family and Child Commission pointed out that an integrated service response model ‘ensures that people assessed to be at risk of domestic violence are given clear and immediate access to support services’. In contrast, ‘[u]nder the DVDS model, a person at risk is given information, but not required to seek further support’.

6.37 That respondent noted that, in the pilot DVDS in England and Wales, follow-up support for applicants was inconsistent and only a small number of those who received a disclosure reported that they were likely to seek support after a disclosure.²²

6.38 The Queensland Family and Child Commission therefore considered that an ‘integrated service response model may be better placed to provide specialist support to people at risk’ and that:

There may be scope to deliver some of the intent of the DVDS — that is, providing information and support to people assessed to be at risk of domestic violence — through the integrated service response mechanism.

6.39 Mercy Community Services submitted that a ‘DVDS offers primarily a backward looking lens’ and that, in their practice experience, ‘a forward-focus, client-centric approach focussed on safety provides greater benefit’.

6.40 The Queensland Indigenous Family Violence Legal Service expressed the view that ‘a DVDS does not address the reasons behind the commission of the act of domestic violence’. They considered that:

The overall reduction of the incidence of domestic and family violence in Queensland will come from legislative reform and policy driven initiatives addressing the core social problems ...

6.41 The Aboriginal and Torres Strait Islander Women’s Legal Services NQ Inc similarly considered that:

a DVDS will not provide greater safety for victims of violence. ... It would not address societal attitude[s] towards domestic violence or address the issue of inadequate financial and infrastructure resourcing for outreach, community awareness and refuges and it will not provide a protective mechanism ...

6.42 The Queensland Law Society commented that domestic and family violence is ‘a complex issue which requires complex solutions’, including community education to shift social attitudes and help persons at risk identify early warning signs, and measures that provide persons at risk with immediate access to safety.

²²

This respondent noted that ‘[o]f the 386 people who applied for disclosures during the pilot period, only 38 completed a subsequent survey. Of these, only four reported they were likely to seek support after a disclosure’, referring to the *UK Pilot Assessment* (2013). A group of legal academics from Bond University also noted that only a small number of people sought support from specialist services following disclosure of information under the pilot scheme in England and Wales. See further the discussion of the DVDS in England and Wales in Appendix C below.

The potential diversion of resources from other services and reforms

6.43 The majority of respondents commented on the potential resource implications of a DVDS.²³

6.44 Many respondents stated that a DVDS would require additional or substantial resources to be effective,²⁴ including for police services,²⁵ specialist training and personnel²⁶ and specialist support services.²⁷

6.45 Two gender and family violence research academics from Monash University commented that:

the introduction of a domestic violence disclosure scheme would require additional [and recurrent] funding to support frontline policing and allow for the management of the additional administrative workload ...

...

In the event that a domestic violence disclosure scheme is introduced in Queensland it will [also] need to be accompanied by a well resourced and considered program of training on the specifics of the scheme, associated risk assessment and disclosure practices. Failure to accompany the introduction of the scheme with effective training could result in inconsistent practice in the application of the Scheme across Queensland.

6.46 The Suncoast Community Legal Service Inc. identified both direct and indirect costs that would be associated with a DVDS:²⁸

In the first instance, there is a direct material cost: using the UK scheme as an example, a disclosure application costs on average £750. ... Additionally, the scheme creates an unmeasured indirect material cost — each disclosure creates actions for a number of frontline victim support services, such as emergency accommodation, social worker/counselling support, and legal advice etc.

In the second instance, a DVDS creates a greater administrative burden on the police service, potentially undermining police effectiveness.

²³ Eg, Submissions 4, 6, 7, 8, 9, 12, 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36, 39, 40 and 40A, 41, 43, 44, 45.

²⁴ Eg, Submissions 4, 8, 9, 12, 13, 16, 17, 19, 20, 23, 24, 25, 27, 31, 32, 33, 34, 36, 40A, 45. For example, it was commented that sufficient resources would be needed to meet the demands of applications and minimum timeframes, and to ensure consistency in risk assessment and support: Submissions 36, 43, respectively. Some respondents also cautioned that a DVDS could increase the number of contested domestic violence order applications, with a consequent increase in demand on court resources: see [6.239]–[6.245] below.

²⁵ Eg, Submissions 8, 19, 24, 25, 33.

²⁶ Eg, Submissions 19, 25, 30, 31, 32, 33. It was also suggested that resources would be needed for access to other relevant supports, such as interpreters: Submissions 16, 19.

²⁷ Eg, Submissions 9, 24, 25, 27, 36, 43 and 41 J Wangmann, 'Violent offenders registers sound good, but are a costly, unproven distraction', *The Conversation* (online), 8 June 2015, referring to the estimated costs of the DVDS in England and Wales. Particular importance was accorded by respondents to the need for adequate resourcing for specialist support, including for 'the down-stream impact' of a scheme: Submission 36, referring, for example, to funding for safety planning and counselling.

²⁸ Some other respondents similarly expressed concern that a DVDS would involve additional administrative burdens and complexities for the agencies involved, including police: eg, Submissions 4, 7, 14, 22, 34, 36, 39. A member of the public commented that a DVDS would waste significant police time that can be better spent elsewhere: Submission 32.

6.47 A group of legal academics from Bond University cautioned that an ‘under-resourced DVDS would potentially expose victims to a greater risk of violence’:

Without ... funding [for police training and specially trained support services personnel] there is a significant danger that women who make an application are placed at increased risk, especially if, upon discovering their partner is listed in the register, the victim (or potential victim) leaves the relationship, and ... acts of domestic violence [are initiated or escalated] as a result.

6.48 A few respondents suggested that the investment of resources in a DVDS might benefit, or involve savings in, other areas.²⁹ The Capricorn Community Development Association submitted that:³⁰

much of the support required [for a DVDS] would strengthen the system as a whole with many of these areas already recommended for improvement under current strategies and recommendations ...

...

[In addition] the prevention of a crime would be far less draining on time and resources of police than addressing the aftermath of a tragic domestic violence incident or fatality.

6.49 More generally, TASC National and the UQ Pro Bono Centre, whilst not supporting a DVDS, recognised that if a DVDS has the potential to reduce incidents of domestic and family violence, it also has the potential to reduce the costs associated with domestic and family violence in the community and justice system.³¹ Another respondent commented, however, that the evaluation of the DVDS in England and Wales ‘estimated that in order to have an impact on the overall average costs of domestic violence to society ..., then disclosures would have to prevent “domestic violence ... in around one third of cases” in which a disclosure is made’.³²

²⁹ Eg, Submissions 16, 34. In addition, Legal Aid NSW observed in relation to the NSW pilot that, given the potential resource implications, a DVDS should build on already established infrastructure. Similar comment was made by the UQ Pro Bono Centre. Queensland Corrective Services also suggested that, if a DVDS is intended to bring together multiple agencies to consider and address risks, implementation could expand and enhance existing practices in this regard.

³⁰ Mercy Community Services also expressed the view that investment in a DVDS could create ‘synergy’ with other reforms and ‘promote economies of scale’, for example, in the training of personnel. This respondent also suggested that additional resources for police for a DVDS could contribute to improved police responses to domestic and family violence.

³¹ Submissions 21, 23.

³² Submission 41 Wangmann (2015), above n 27.

6.50 Most respondents agreed that the introduction of a DVDS would divert resources from current domestic and family violence reforms³³ and crucial frontline services, including support services and police responses.³⁴

6.51 PeakCare Queensland Inc. commented that:

it is inevitable that resources and efforts would be diverted to establishing such a function and from the Queensland Police Service's locally based general and domestic violence policing positions, and from specialist domestic and family violence services and other non-government services, particularly in rural, regional and remote locations where specialist services do not have outreach capacity or footprint.

6.52 Legal Aid Queensland similarly submitted that:³⁵

Unless additional resources were made available, resources would need to be diverted to support the scheme. If resources were diverted from other domestic violence work, that work would inevitably be adversely affected. Even if additional resources were able to be made available, before those resources are made available, it should be ascertained that a disclosure scheme would be the best use of those resources, rather than investing them in existing services.

6.53 Several respondents expressed the view that resources would be better directed to frontline services or other reforms that are more effective in addressing domestic and family violence;³⁶ many observing that there are already unmet needs and high demands for services,³⁷ especially in rural, regional and remote areas.³⁸

6.54 PeakCare Queensland Inc. commented that:³⁹

Efforts and resources are better placed, as is currently occurring in Queensland, in multi-pronged, cross-sector, multi-level strategies to shift community attitudes and behaviours, deliver integrated service responses and support, and stronger justice responses.

³³ Eg, Submissions 7, 8, 13, 17, 19, 20, 21, 23, 25, 26, 29, 31, 33, 34, 36, 39, 40. Cf Submission 45, in which it was stated that, '[i]f effective, these resources would not be being unreasonably diverted, as the scheme would be responsive to domestic and family violence risk'.

³⁴ Eg, Submissions 8, 9, 13, 14, 17, 19, 20, 21, 23, 26, 27, 29, 31, 33, 34, 36, 39, 43. The Queensland Council for Civil Liberties also expressed 'a general concern' about police resources. The Domestic Violence Prevention Centre (Gold Coast) suggested that this could be mitigated by administering the scheme through specialist domestic violence services embedded within the police service.

³⁵ The Queensland Indigenous Family Violence Legal Service expressed a similar view stating that, '[w]ith respect, if a DVDS could not be separately resourced, then it should not proceed'. The Queensland Centre for Domestic and Family Violence Research also cautioned against 'simply using current services to provide what would be an additional service. This is already a service system where demand is outstripping supply'.

³⁶ Eg, Submissions 6, 7, 8, 9, 13, 14, 17, 19, 20, 21, 22, 23, 25, 26, 27, 32, 33, 35, 39, 40, 43 and 41 Wangmann (2015), above n 27.

³⁷ Eg, Submissions 9, 12, 14, 16, 17, 19, 20, 22, 23, 25, 26, 27, 31, 33, 35, 39, 40, 43 and 41 Wangmann (2015), above n 27, and J Wangmann, 'Has He Been Violent Before? Domestic Violence Disclosure Schemes' (2016) 41(4) *Alternative Law Journal* 230, 233.

³⁸ Eg, Submissions 17, 19, 23, 26, 27, 30, 34, 43, and the discussion at [6.163] ff below.

³⁹ Micah Projects Inc similarly submitted that '[o]ur effort and resources in Queensland need to be directed at making these current reforms work well', and observed that 'the existing initiatives are not adequately resourced'.

6.55 Two gender and family violence research academics from Monash University made a similar argument:⁴⁰

A close examination of the *Wood* case [that was the catalyst for a DVDS in England and Wales] ... concluded that what was needed in that case was greater support for women seeking to leave an abusive relationship and more effective risk assessment and case management by frontline policing. Neither of which are addressed by the introduction of a disclosure scheme and both of which may be potentially exacerbated if police resources are diverted away from frontline case management to administer such a scheme.

...

We would argue that the financial and resource implications of introducing and administering a domestic violence disclosure scheme would be more effectively diverted to support the introduction and implementation of key reforms currently in development — namely, the design of the common risk assessment and management framework, model for inter-agency responses to high risk cases, and introduction of the information sharing framework. As the Taskforce review documented, and the findings of similar reviews in other Australian and international jurisdictions support, these are reforms grounded in evidence and supported by wide consultation by those working within the family violence sector. The introduction of a domestic violence disclosure scheme would be a distraction from this important reform agenda.

6.56 The North Queensland Women's Legal Service pointed to frontline service needs:⁴¹

funding priorities should be directed towards ensuring police are adequately trained in dealing with domestic violence matters, support services are sufficiently resourced to assist *all* victims affected by domestic violence and communities are educated on what healthy relationships are.

...

Legal and support services are already experiencing unprecedented demand by those at risk or experiencing domestic violence. By way of example, NQWLS operates a 1800 free legal advice line ... Our data ... has recently shown that for every one (1) phone call to our 1800 line, another eight (8) calls go unanswered ... (emphasis in original)

⁴⁰ Referring to Fitz-Gibbon and Walklate, above n 15, 7–8. The UQ Pro Bono Centre made a similar submission, suggesting that the 'resources that would be injected into a DVDS may be more effective and beneficial in achieving the objectives through schemes focusing on frontline responses, outreach, awareness and refuges, particularly in regional and remote areas'.

⁴¹ Women's Legal Service Queensland expressed similar concerns explaining that they had experienced a 33% increase in calls for help through their Helpline within the first two weeks of its operation in 2017 and were able to respond to only 50% of demand. They also commented on the similar experience of DV Connect, referring to M Wordsworth, 'Domestic violence: Women's refuges appeal for more funds in open letter to Queensland Government', *ABC News* (online), 20 October 2015 <<http://www.abc.net.au/news/2015-10-20/south-east-queensland-refuges-appeal-state-government-more-funds/6870908>>.

6.57 The Queensland Law Society similarly submitted that ‘resources should be directed toward measures that provide people at risk with immediate access to safety’.⁴²

This includes supporting prompt police action and properly funding and resourcing support services. We note that a DVDS is proposed in a context where the legal assistance sector is already considerably under-resourced and is facing significant funding cuts. These services are critical in assisting people at risk of family violence and the Society strongly recommends additional funding and resources be made available to the legal assistance sector and to other support services.

6.58 On balance, many respondents considered that the financial investment required to implement a DVDS would not be justified, having regard to effectiveness and value for money.⁴³ TASC National expressed the view that:

Given the uncertainty of the effectiveness of a DVDS and likely diversion of resources from current reform priorities and frontline responders, expenditure on a DVDS at this point may be considered premature and uneconomical.

6.59 More generally, a legal academic from the University of Technology Sydney argued that:⁴⁴

Whilst cost alone is not a reason to not pursue a measure that may serve to reduce or prevent domestic violence — the lack of evidence about what a DVDS achieves raises questions about the benefits gained from that expenditure, particularly when the sector is underfunded.

The extent to which a DVDS would enhance safety

6.60 Many respondents identified the safety and protection of victims, or potential victims, of domestic and family violence as a paramount consideration.⁴⁵

⁴² Caxton Legal Centre Inc. also explained that community legal centres, crisis accommodation and housing and counselling services ‘are severely underfunded’ and ‘[c]ommunity legal centres imminently face further funding cuts’. ANROWS similarly highlighted ‘concerns about the potential for a domestic violence disclosure scheme to create additional demand on already under-resourced crisis services’, observing the particular challenges of access to services by people with disabilities, immigrants and refugees, and people in rural and remote areas. See further [6.163] ff and [6.183] ff below. Sisters Inside Inc also commented that there is a ‘chronic lack of safe, affordable and long-term housing’ and that, instead of a DVDS, they ‘would prefer to see ... additional resources for housing, health care and independent services that can support women and their children to live in safety in the community’.

⁴³ Eg, Submissions 4, 21, 22, 23, 27, 31, 39, and see further [6.8]–[6.11] above and [6.46]–[6.43] below. Cf the Capricorn Community Development Association, who argued that, if it could save even one life, the expense is warranted. Mercy Community Services commented that a concern about negative resource implications ‘would not be enough on its own to negate the introduction of a scheme if all other indicators suggested that a DVDS would benefit Queensland’.

⁴⁴ Submission 41 Wangmann (2016), above n 37, 234.

⁴⁵ Eg, Submissions 13, 15, 16, 19, 23, 29, 36, 45.

Potential to increase safety or reduce the incidence of domestic and family violence

6.61 Respondents identified that one potential benefit of a DVDS is that it could increase safety or reduce the incidence of domestic and family violence.⁴⁶

6.62 A woman who had experienced domestic and family violence stated that:⁴⁷

[a] DVDS will prevent significant long term harm as it's my view the majority of women, who are notified of significant safety risks, will plan to leave a lot earlier than if they were never notified.

6.63 The Capricorn Community Development Association considered that 'a DVDS may be a catalyst in breaking a pattern of abusive and controlling behaviours'.

6.64 Another respondent supported the introduction of a DVDS on the basis that it 'would be another tool people can use to keep safe'.⁴⁸

6.65 The majority of respondents, however, noted that there has been no comprehensive evaluation about the effectiveness of existing disclosure schemes and there is a lack of evidence that a DVDS would increase safety or reduce domestic and family violence.⁴⁹

6.66 In addition, a number of respondents expressed the view that the disclosure of information alone would not increase the safety of persons at risk or reduce the incidence of domestic and family violence.⁵⁰

Potential to increase the risk of harm

6.67 Many respondents considered that a DVDS could increase a person's risk of harm (especially if the subject of a potential disclosure discovers that disclosure has been sought or is proposed, or if the person at risk decides to leave the relationship following a disclosure).⁵¹

6.68 Cairns Collective Impact on Domestic and Family Violence noted that '[r]esearch tells us that for many victims their danger/risk increases at the point where they either begin to seek help or indeed attempt to leave the relationship'.

6.69 The Domestic Violence Prevention Centre (Gold Coast) also considered that the level of risk could increase when the subject 'has an inkling, or knows about the application'. In their view:⁵²

⁴⁶ Eg, Submissions 1, 2, 3, 10, 13, 15, 16, 21, 23, 34, 45.

⁴⁷ Submission 2.

⁴⁸ Submission 1.

⁴⁹ Eg, Submissions 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 20, 21, 22, 23, 25, 26, 27, 28, 31, 34, 35, 37, 39, 40, 41, 42, 43, 44.

⁵⁰ See [6.24] ff above.

⁵¹ Eg, Submissions 7, 8, 12, 15, 16, 20, 22, 23, 26, 27, 29, 31, 34, 36.

⁵² Another respondent observed that a subject person, if he or she became aware of a disclosure, could become 'furious' and react to that disclosure: Submission 24.

If perpetrators are challenged by the receipt of information or aware of the application in any way, ... this poses a much greater risk to the victim, given that offenders will escalate to enormous levels when their power and control is challenged or about to be taken away.

6.70 In particular, respondents — including ANROWS, several domestic and family violence support services, the UQ Pro Bono Centre and legal academics — pointed to the heightened risk of violence during separation.⁵³

6.71 ANROWS explained that:⁵⁴

Forty percent of women in violent relationships experienced violence from their partner while they were temporarily separated, and six out of ten of these women reported that the violence increased during the temporary separation. Additionally, a quarter of women who had experienced violence in their relationship reported that the violence increased after their final separation from their partner. Other research ... has identified that the risk of homicide perpetrated by a partner is highest during the period of relationship separation.

6.72 Because of the potential risk of increased violence, a number of respondents submitted that, if a DVDS were to be introduced in Queensland, the subject of disclosure should not be informed that a disclosure has been sought or made.⁵⁵

6.73 In addition, several respondents emphasised the importance under a DVDS of linking the person at risk to domestic and family violence support services.⁵⁶ Two gender and family violence research academics from Monash University stated that:

It is essential that clear post-disclosure support protocols and responsibilities for frontline police and specialist services, working in partnership, should be established to ensure that women provided with information (or where a disclosure is not made) are well supported during a period of likely heightened risk. Without the establishment of clear protocols, roles and responsibility in the event of non-disclosure there is a real risk that women who seek information under the scheme will be at greater risk having done so (particularly in the event that their current or former partner becomes aware of this request) and will have no greater access to the necessary services or supports.

False sense of safety

6.74 Most respondents expressed concern that the non-disclosure (or disclosure) of information about a partner's criminal history under a DVDS could result in giving the person at risk a false sense of safety (or in a misrepresentation of risk).⁵⁷

⁵³ Eg, Submissions 12, 16, 20, 21, 23, 26, 30, 31, 34, 36, 41.

⁵⁴ Using data from Australian Bureau of Statistics, *Personal Safety, Australia, 2012* Cat No 4906.0.

⁵⁵ Eg, Submissions 8, 15, 21, 22, 23, 30, 43.

⁵⁶ Eg, Submissions 2, 8, 12, 13, 15, 16, 19, 21, 23, 25, 26, 30, 34, 36, 43. See [6.19] ff above.

⁵⁷ Eg, Submissions 4, 6, 7, 8, 9, 12, 13, 15, 16, 17, 19, 21, 22, 23, 25, 27, 28, 30, 31, 33, 34, 36, 39, 40, 41, 43, 44, 45.

6.75 In particular, respondents expressed concern that a false sense of safety could arise due to limitations on the scope and nature of information disclosable under a DVDS.⁵⁸

6.76 TASC National considered that there would likely be ‘gaps and holes in information available in a disclosure scheme’, and stated that an ‘assumption that information available to be supplied under a disclosure scheme is comprehensive is a dangerous and flawed assumption’.

6.77 The UQ Pro Bono Centre considered that:

The effectiveness of a DVDS will rely on the capacity to give accurate information. ... [a] DVDS that operates with incomplete information risks providing individuals with inaccurate and ambiguous advice, thereby exacerbating the false sense of security that an individual may have.

6.78 Respondents expressed concern that, if a person is told that their partner has no, or no disclosable, history under a DVDS, it could undermine their legitimate safety concerns.⁵⁹

6.79 The UQ Pro Bono Centre explained that:

A decision to not disclose or to confirm that there are no prior recorded convictions to disclose may give rise to the inference that the applicant is not at risk. This may cause the applicant to believe they are relieved of any concern and they may be more inclined to stay with their partner and potentially ignore signs of risk. ... A DVDS may therefore undermine an applicant's legitimate concern of being at risk of domestic violence and abuse, and give individuals a reason to stay in an unhealthy and dangerous relationship when they are possibly looking for a reason to leave. Consequently, applicants may also believe that their concerns are imagined, exaggerated or a product of their own paranoia. (notes omitted)

6.80 Similarly, UnitingCare Queensland expressed concern that a non-disclosure:

may raise unrealistic expectations of safety and inadvertently encourage individuals to ignore early signs of domestic violence, and to question their own judgment and response to the actions of a partner who is perpetuating abuse.

6.81 Mercy Community Services considered that a DVDS should be ‘underpinned by a victim empowerment framework’ and expressed concern that a non-disclosure might:⁶⁰

⁵⁸ Eg, Submissions 9, 12, 15, 17, 21, 22, 23, 27, 31, 33, 35, 40, 41, 43, 45. See further [6.107] ff below. Two gender and family violence research academics from Monash University observed that the risk of giving a false sense of safety ‘is directly tied to the data impediments of a domestic violence disclosure scheme which are difficult to minimise given the private nature of domestic violence’.

⁵⁹ Eg, Submissions 21, 22, 27, 28, 33, 34, 35, 40, 41 Wangmann (2016), above n 37, 231.

⁶⁰ The Domestic Violence Prevention Centre (Gold Coast) provided feedback from a focus group they conducted with their clients who have experienced domestic and family violence to the effect that ‘[w]hen others interfere in a way which compromises their path of empowerment and self-determination, this has greater risks’.

make an applicant feel that [their] concerns are not based in fact (an extension of manipulation by the abuser), or [their] experience is not significant enough to warrant utilising resources and services. This may result in the applicant's level of risk increasing.

6.82 To assist in mitigating the risk of a false sense of safety, a number of respondents considered that, if a DVDS were to be implemented in Queensland, the person at risk should be provided with specialist domestic and family violence support, regardless of whether a disclosure is made.⁶¹ The Queensland Centre for Domestic and Family Violence Research submitted that:

This ensures that the potential victim will have immediate access to the necessary support that is required when making a decision about their safety. Skilled risk assessment, safety planning and education about [domestic and family violence] and options for women who have applied for a ... disclosure should be undertaken regardless of what the disclosure reveals, with a support person available at the time of the application, and during and after disclosure.

6.83 The UQ Pro Bono Centre considered that a support person should attend the disclosure meeting to provide immediate support, and that there should be a follow-up after disclosure where independent domestic and family violence advisors 'offer ongoing contact and support to ensure the applicant's safety'. They argued that a 'DVDS should therefore rest heavily on post-disclosure support protocols and the ability to adequately connect persons with support services'.⁶²

6.84 Legal Aid NSW noted that the NSW DVDS pilot includes a support service with the role of explaining the limited information that can be disclosed. Despite this, they considered that 'the risk of misleading victims remains serious'.

6.85 PeakCare Queensland Inc. similarly expressed concern that 'despite emphasising safety planning and information provision', there could be a perception that 'no history or a non-disclosure equates to the applicant being safe or the subject not being violent'.⁶³

Early intervention and prevention

6.86 A few respondents noted that a potential benefit of a DVDS is that it could enable early intervention to prevent domestic and family violence.⁶⁴

6.87 The UQ Pro Bono Centre noted that 'a DVDS has the potential to reduce incidents of domestic violence and abuse in Queensland through early intervention' and that:

⁶¹ Eg, Submissions 8, 12, 15, 17, 18, 19, 21, 25, 27, 33, 34, 45. See also [6.25] above. ANROWS cautioned that the 'false sense of safety, if not managed effectively, has the potential to be both dangerous and lethal'.

⁶² This respondent also suggested that, in the event of non-disclosure, the person should be informed of the statistics of domestic and family violence under-reporting.

⁶³ A legal academic similarly observed that, despite procedures to inform the person that the absence of disclosable information does not necessarily mean the absence of risk, 'it seems unavoidable that this absence would not provide some sense of security': Submission 41 Wangmann (2016), above n 37, 231.

⁶⁴ Eg, Submissions 15, 19, 21.

For some individuals [the provision of information] may encourage them to leave an unhealthy and dangerous relationship before an incident involving domestic violence and abuse can arise or before a pattern of coercive and controlling behaviour develops. (note omitted)

6.88 However, Mercy Community Services commented that, whether a DVDS enables early intervention will ‘depend on the eligibility criteria for [an] application and how early in the commencement of a relationship’ an application could be made. This respondent did not consider that a DVDS could be seen as a prevention strategy.

6.89 The Queensland Indigenous Family Violence Legal Service also noted that a DVDS could operate as an early intervention mechanism only if the category of eligible applicants were ‘broad enough to capture a boyfriend/girlfriend relationship or a relationship in its fledgling stages’. However, this respondent considered that any objective of increasing safety by early intervention would need to be carefully balanced ‘with a person’s right to privacy as well as the ability to rehabilitate’.⁶⁵

Informed and empowered decision-making

6.90 A number of respondents submitted that one of the main potential benefits of enabling information about a partner’s relevant criminal or domestic violence history to be disclosed under a DVDS is that it could empower a person at risk and enable them to make informed decisions about their relationship and to seek help and support.⁶⁶

6.91 The UQ Pro Bono Centre acknowledged that a DVDS might ‘empower individuals’:

by providing them with information to help them make a more informed choice about their relationship and give them a greater ability to exercise control over decisions in their own lives. (note omitted)

6.92 However, a number of respondents considered that these arguments about empowerment and informed decision-making are simplistic, and do not recognise the complex nature and dynamics of domestic and family violence.⁶⁷

Assumptions about action following disclosure

6.93 A number of respondents identified that a DVDS is underpinned by the assumption that a victim or potential victim who is informed of a partner’s past criminal history will have both the desire and the ability to leave the relationship. However, they considered that this fails to acknowledge the various reasons why a person might stay in a relationship and the barriers to leaving, and that a person will

⁶⁵ These issues are discussed at [6.131] ff and [6.142] ff below.

⁶⁶ Eg, Submissions 1, 2, 7, 15, 16, 19, 21, 23, 27, 29, 31, 34.

⁶⁷ Eg, Submissions 4, 12, 20, 21, 23, 24, 25, 26, 31, 34, 36, 39, 40, 43, 41 Wangmann (2016), above n 37, 232.

not necessarily act on a disclosure as expected by deciding to end the relationship or by seeking support.⁶⁸

6.94 Cairns Collective Impact on Domestic and Family Violence stated that ‘the premise of any DVDS is the rather naïve notion that, if you tell a victim she is in danger, she will be able or willing to do something about it’.⁶⁹

6.95 The Queensland Law Society commented that:

A DVDS appears to be premised on the understanding that accessing information about a partner or ex-partner’s criminal history will allow a person at risk to make an informed decision about the relationship and their safety. In the Society’s view, this understanding is flawed and fails to acknowledge the dynamics of disempowerment and control present in relationships involving family violence. Victims of family violence do not remain in violent relationships because they are unaware of the presence or risk of violence. Rather, this decision is often underpinned by a variety of complex factors, including fear for their safety, fear of homelessness, a lack of access to appropriate support services, fear of children being removed and shame associated with culture or religion.

6.96 The UQ Pro Bono Centre similarly observed that:

Underpinning the scheme is an inaccurate assumption that an applicant at risk will take action to leave the relationship after being informed of a partner’s history of violence. However, there is a lack of evidence to show that individuals who have knowledge of previous offending will choose to leave a relationship. Many individuals cannot leave a violent relationship due to ‘the dynamics of disempowerment, power and control’ involved. (notes omitted)

6.97 The Domestic Violence Prevention Centre (Gold Coast) provided feedback from a focus group of their clients who stated that a DVDS ‘falsely assumes that information is power’ and ‘fails to recognise the complexity and reasons why a woman may not be able to end a relationship’.

6.98 The Suncoast Community Legal Service Inc. commented that the ‘suggestion that receiving a DVDS disclosure would result in the potential victim leaving the relationship’ is anecdotal, and that such retrospective statements ‘are not supported by current DV statistics’. They commented that the idea that a person who is informed by a disclosure will choose to leave the relationship:

does not accord with the experience of frontline DV support service workers. Their experience shows that in reality, there are many reasons why victims choose to stay with abusive partners: potential victims don’t think DV will happen to them; victims don’t think it will happen again; they wish the violence would stop — but do not wish to end the relationship; staying with a violent partner seems

⁶⁸ Eg, Submissions 4, 8, 9, 20, 21, 23, 27, 39, 43, 45, 41 Wangmann (2016), above n 37. In addition, a group of legal academics from Bond University suggested that low take-up of post-disclosure support under the DVDS in England and Wales could be explained by the fact that ‘the motivations of domestic violence victims may be impacted by their lack of control or lack of choice in their unique situations’. ANROWS referred to the ‘stages of change’ theory (see [2.15] above) and observed that it ‘is currently unknown whether access to information about a partner’s past domestic violence offences would interact positively or negatively with the person at risk’s psychological readiness to take action to establish safety in their life’. The Queensland Centre for Domestic and Family Violence Research queried whether a disclosure could ‘counteract the coercion and control of the perpetrator’.

⁶⁹ This respondent also referred to the ‘stages of change’ theory: see [2.15] above.

like the least worst option; they feel they don't deserve better treatment; leaving feels like an insurmountable hurdle; they fear that leaving will result in their death or the death of their children. A DVDS does not contribute to resolving any of these issues.

6.99 Micah Projects Inc observed that:

In our experience, women and children are often terrorised and threatened with death if they leave a violent partner. There are numerous financial, emotional and other reasons why they may stay or return to the partner with a record of violence.

6.100 Some respondents noted that victims of domestic and family violence often already have knowledge of their partner's past or present violence.⁷⁰

6.101 TASC National considered that:

The ability of survivors of lived domestic violence to take action is hampered to a far greater extent by a lack of support services [and] an unwillingness to engage with support services, rather than a complete unawareness of the respondent's propensity for violence.

6.102 Some respondents expressed concern that, if a person did not act as expected following disclosure, it could adversely impact their ability to access support services in the future or cause them to 'be blamed should they be subsequently victimised'.⁷¹

6.103 The Queensland Domestic Violence Services Network observed that:

There is often an expectation that women will act on a disclosure by leaving the relationship or by taking measures that police or others expect. This can result in judgments around women's behaviour which are unjustified and show ignorance of the dynamics of [domestic and family violence].

6.104 A legal academic submitted that a DVDS 'continues the dichotomous understanding of women's responses to domestic violence as either staying or leaving' and noted that:⁷²

This fails to appreciate the multiplicity of ways in which a woman may respond to a disclosure (for example, monitoring or managing their partner's behaviour, negotiating with him or ending the relationship).

6.105 A number of respondents also challenged the idea that, if the person chooses to leave the relationship, this will necessarily increase their safety.⁷³

6.106 As noted by Women's Legal Service Queensland:

⁷⁰ Eg, Submissions 14, 23, 29, 33, 36. See also Wangmann (2015), above n 27; and (2016) above n 37, 233, in relation to the case of Clare Wood, discussed at [1.4]–[1.5] above. Two gender and family violence research academics from Monash University also referred to this case.

⁷¹ Submission 31. See further [6.191] ff below.

⁷² Submission 41 Wangmann (2016), above n 37, 232.

⁷³ Eg, Submissions 8, 12, 23, 27, 33, 35, 39, 45. See also [6.70] above as to the heightened risk of violence during separation.

A DVDS in itself does nothing to intervene or respond to a perpetrator's violence, [but] merely equips a victim with potential confirmation of what her experience may already have shown her. Such information does not make a victim safer, or equip her with support to act. ... A DVDS may in fact contribute to existing myths that a woman is safer once she leaves a violent relationship, and that a violent relationship is easy to leave or end.

The scope and nature of disclosable information

6.107 As noted above, a number of respondents expressed concern that, because of limitations on the scope and nature of information disclosable under a DVDS, a person at risk might adopt a false sense of safety.⁷⁴

6.108 Respondents observed that the scope and nature of disclosable information under a DVDS would be limited depending on the specific features of such a scheme, for example:⁷⁵

- which particular offences would be permitted to be disclosed under the scheme;
- whether disclosure would be limited to convictions (or certain types of convictions) only or would also permit disclosure of charges that did not result in a conviction, or other circumstances (for example, complaints, arrests, or police investigations);
- whether a DVDS would permit the disclosure of convictions imposed other than under Queensland law; and
- any legal tests required to be met before a disclosure could be made.

6.109 A number of respondents considered that, if the information disclosable under a DVDS were too narrow (for example, by being limited to particular criminal convictions in Queensland), the scheme would be of limited benefit and could give an inaccurate or incomplete picture of risk.⁷⁶

6.110 A group of legal academics from Bond University observed that, if a DVDS were restricted to convictions (or convictions for certain serious offences) in a particular jurisdiction, then 'much domestic violence will be excluded from [a] disclosure's ambit'.⁷⁷

6.111 PeakCare Queensland Inc. noted that relevant domestic violence offences, such as the offence of choking, suffocation or strangulation in a domestic setting, have only recently been introduced in Queensland.⁷⁸

⁷⁴ See [6.74] ff above.

⁷⁵ Eg, Submissions 15, 23, 33, 35, 41.

⁷⁶ Eg, Submissions 7, 8, 9, 16, 23, 25, 29, 31, 33, 41 Wangmann (2016), above n 37, 231.

⁷⁷ These respondents noted that the NSW DVDS pilot scheme is limited to criminal convictions imposed in that jurisdiction. Another legal academic criticised the limited ambit of the NSW DVDS pilot scheme: Submission 41 Wangmann (2016), above n 37, 231.

⁷⁸ See the Criminal Code (Qld) s 315A, inserted by the *Criminal Law (Domestic Violence) Amendment Act 2016* (Qld) s 3 (commenced on 5 May 2016). See also [3.110] ff above.

6.112 Women's Legal Service Queensland noted that domestic and family violence potentially encompasses a wide range of offending as '[t]actics of control and abuse in violent relationships are varied'. They therefore considered that '[a]ny criteria to include a domestic violence offender on a DVDS will never capture all perpetrators'.

6.113 A legal academic from the University of Technology Sydney similarly observed that:⁷⁹

convictions only reflect those acts and behaviours that have been defined as criminal offences and not the full range of acts and behaviours that women may experience as domestic violence (such as, sexual coercion, economic abuse, psychological abuse and controlling behaviours).

6.114 Conversely, respondents considered that, if the information disclosable under a DVDS were too broad, it could unduly impinge on privacy and other important justice principles (such as the rehabilitation of offenders).⁸⁰ Other respondents considered that a broader scheme would be open to misuse and carry a greater risk of unintended consequences.⁸¹

6.115 Respondents generally considered that, if a DVDS were to be implemented in Queensland, it should permit the disclosure of domestic violence offences and offences against the person (such as assaults and violence to the person, including stalking, murder and manslaughter, rape, sexual assaults and abuse), irrespective of whether they occurred in the context of domestic and family violence.⁸²

⁷⁹ Submission 41 Wangmann (2016), above n 37, 231. This respondent considered that, because convictions 'reveal a limited picture of domestic violence offending', it is critical that any DVDS operates in conjunction with 'more comprehensive assessments of a person's risk of victimisation beyond what a prior conviction reveals'.

⁸⁰ See further [6.131] ff and [6.142] ff below. A group of legal academics from Bond University stated that, if a DVDS were structured to be more inclusive, 'such as to include, in addition to convictions, information about charges and arrests as well as the existence of previous orders, this would raise further concerns as to the rights of alleged perpetrators'. ANROWS noted that '[e]nsuring that a DVDS provides at risk individuals with pertinent information only about people who pose a genuine risk to them, and conversely that the potential detriments of a non-disclosure to individuals who are at risk is well managed presents a difficult challenge'.

⁸¹ Eg, Submission 34. See further [6.228] ff below.

⁸² Eg, Submissions 3, 15, 16, 21, 23, 26, 33, 36, 45. The Capricorn Community Development Association noted that other offences, such as for property damage, could be relevant. In contrast, some respondents considered that a DVDS should be limited to the disclosure of convictions that occurred in the context of domestic and family violence: eg, Submissions 27, 34, 43. The Aboriginal & Torres Strait Islander Women's Legal Service NQ Inc stated that a person's domestic and family violence related criminal history 'is the information that relates to actual findings by the Court and provides a basis on which the applicant can make an informed choice about the future of their relationship, even though there is a risk that it may not disclose the full extent of the domestic violence and consequent risk to the applicant [or] victim'. In addition, the Queensland Council for Civil Liberties considered that a DVDS should be further limited to '[s]pecific serious violent offences', where an offender was liable to imprisonment for five years or more. The Queensland Indigenous Family Violence Legal Service considered that disclosure should be limited to convictions in the context of domestic and family violence, provided it was wide enough to cover early boyfriend or girlfriend relationships.

6.116 In addition, respondents considered that a DVDS should permit the disclosure of convictions that were imposed other than under Queensland law.⁸³

6.117 However, a number of respondents considered that a DVDS should not permit the disclosure of charges or other circumstances that did not result in a conviction (such as complaints, arrests or police investigations),⁸⁴ or convictions that have become spent or that were imposed on a person as a child.⁸⁵

6.118 Respondents also expressed concern about the disclosure of civil orders, notices or other actions made or taken under the *Domestic and Family Violence Protection Act 2012*. In particular, it was noted that domestic violence orders are often made by consent and without admissions, and that for such matters the court is not bound by the rules of evidence and need only be satisfied on the balance of probabilities (compared to the higher standard of proof required in criminal trials).⁸⁶

6.119 Despite these concerns, some respondents considered that, if a DVDS were to be implemented in Queensland, it should permit the disclosure of domestic violence orders.⁸⁷

6.120 The North Queensland Women's Legal Service stated that a DVDS:

could only operate effectively where current and previous protection orders are disclosed. A criminal history will not show whether any protection orders have been made against a perpetrator unless those convictions have been breached. Disclosing current and previous protection orders will ensure that potential victims receive the 'whole picture' regarding a perpetrator's past.

6.121 The UQ Pro Bono Centre emphasised the importance of disclosing relevant contextual information, so that a disclosure is not 'incorrectly interpreted by the applicant, giving applicants a false sense of security and unfairly prejudicing the perpetrator'.

6.122 Generally, respondents who expressed some support for a broad approach to disclosable information under a DVDS considered that it would be necessary for an assessment to be made on a case by case basis to determine precisely what

⁸³ Eg, Submissions 16, 19, 21, 26, 29, 34, 36, 44, 45. Micah Projects Inc, whilst not supporting a DVDS, observed that the exclusion of convictions imposed in other jurisdictions would 'severely' limit the range of disclosable information under any scheme. The Queensland Law Society made a similar comment. However, a number of respondents recognised that there may be difficulties in obtaining information from other jurisdictions, and assessing its relevance, because of a lack of uniform laws and current absence of a national register of domestic violence protection orders: eg, Submissions 8, 9, 13, 17, 21.

⁸⁴ Eg, Submissions 19, 21, 34, 42, 44. In addition, TASC National considered that a DVDS should permit the disclosure of charges resulting in a conviction (whether a conviction was recorded or not) but not complaints, arrests or investigations as they have not been afforded judicial scrutiny and therefore carry the risk of being 'unsubstantiated and unreliable'. Some respondents submitted that disclosure should be limited to convictions only: eg, Submissions 21, 34, 44, 45.

⁸⁵ Eg, Submissions 17, 19, 21, 23, 26, 29, 34, 44, 45.

⁸⁶ Eg, Submissions 13, 21, 23, 32, 34, 37, 42, 44. For these reasons, some respondents submitted that domestic violence orders should not be disclosable under a DVDS: eg, Submissions 23, 32, 34.

⁸⁷ Eg, Submissions 4, 6, 16, 19, 24, 27, 29, 36, 45.

information is relevant, whether it indicates that the person is at risk of harm, and the extent to which it should be disclosed.⁸⁸

6.123 The Domestic Violence Prevention Centre (Gold Coast) considered that a DVDS:

should apply broadly, and part of the assessment process of the application should consider the relevance [of offences]. Any offences which provide indication of a pattern of domestic violence, personal harm offences and those where a relationship existed with the victim should be considered for disclosure. [The Centre] is regularly aware of reports from women of offending which is not directly considered [domestic and family violence], therefore a review of context is extremely important.

Under-reporting of domestic and family violence

6.124 Irrespective of which offences or other matters would be included in a DVDS, respondents generally considered that disclosable information would necessarily be limited, given that domestic and family violence is under-reported and does not always result in complaint, prosecution or conviction.⁸⁹

6.125 A group of legal academics from Bond University stated that:

the effectiveness of a DVDS assumes that where conduct constituting domestic violence has occurred in the past there has been a complaint made and pursued, which may not be the case.

6.126 ANROWS reported that:⁹⁰

Fifty-four percent of Australian women who experience [intimate partner violence] never report this violence to police. Such high levels of under-reporting are compounded by [domestic violence] order applications that do not result in the granting of orders, and charges relating to violence that do not result in convictions. It can therefore be assumed that a significant percentage of perpetrators of domestic violence would not be the subject of any police records in relation to such violence. (note omitted)

6.127 In light of research showing that domestic and family violence is under-reported, the Queensland Law Society considered that:

The outcome of an application is unlikely to be an accurate representation of the risk. Police will not always have a record of an individual's violent behaviour and a lack of convictions provides no assurance that a person has not previously committed domestic violence.

6.128 The Queensland Family and Child Commission similarly noted that:

⁸⁸ Eg, Submissions 4, 13, 16, 23, 24, 29, 36. Other respondents expressed concern about having a broad scheme with a discretion to disclose: eg, Submissions 42, 43. The Bar Association of Queensland preferred that disclosure should be limited to convictions for certain identified offences, as otherwise 'the potential breadth of what would be disclosed (which includes police intelligence) and the discretionary nature of their operation are matters that concern the Association'.

⁸⁹ Eg, Submissions 6, 7, 15, 21, 23, 31, 33, 35, 39, 40, 43.

⁹⁰ Drawing on data from Australian Bureau of Statistics, *Personal Safety, Australia*, 2012, Cat No 4906.0.

There is strong evidence that domestic and family violence is under-reported, meaning many perpetrators may not have a recorded history of offending. Furthermore, the absence of a record may not indicate that a person is not capable of future violence.

6.129 Sisters Inside Inc expressed concern that, because of under-reporting, very few perpetrators will have a relevant criminal history (even if disclosable information under a scheme were broadly defined). They also noted that:

Domestic violence has only very recently become an issue of widespread public concern. Historically, many women have not complained to police about domestic violence or their complaints have not been taken seriously.

6.130 Women's Legal Service Queensland similarly expressed concern that, even if the information disclosable under a DVDS were broad, such information would 'not [give] an accurate picture of domestic violence risk or intimate partner homicide risk due to the extensive forms that coercive control can take, many of which are not physically violent'.

The impact of a DVDS on privacy

6.131 The impact of a DVDS on privacy was identified by several respondents as an important consideration.⁹¹

6.132 It was observed that breach of privacy is one of the risks of a DVDS,⁹² and that the paramount principle of safety must be balanced with the protection of privacy.⁹³

6.133 The UQ Pro Bono Centre identified two relevant aspects of a right to privacy:⁹⁴

Laws relating to privacy and confidentiality stand to protect human autonomy and dignity and the individual's right to control the dissemination of information about one's private life. A DVDS directly interferes with both the perpetrator's right to control their personal information and right to form relationships. (notes omitted)

6.134 The Queensland Council for Civil Liberties focused on information privacy, and explained that:⁹⁵

First, it is important to appreciate that the right to privacy does not simply apply to information that is not in the public domain. In contemporary times one of the most critical aspects of privacy is information privacy.

⁹¹ Eg, Submissions 4, 8, 9, 13, 15, 16, 19, 20, 21, 23, 25, 28, 30, 31, 32, 34, 36, 39, 40, 43, 44.

⁹² Eg, Submissions 4, 9, 15, 16, 20, 21, 23, 28, 30, 31, 32, 34, 36, 39, 40, 43, 44.

⁹³ Eg, Submissions 4, 8, 13, 19, 21, 23, 25, 34, 43. A member of the public expressed the view that 'another person's safety should trump that person's right to privacy regarding that history [of violent actions or domestic violence]': Submission 3.

⁹⁴ Referring to *Information Privacy Act 2009* (Qld) sch 3 IPPs 10, 11; and J Grace, 'Clare's Law, or the national Domestic Violence Disclosure Scheme: the contested legalities of criminality information sharing' (2015) 79(1) *Journal of Criminal Law* 36. Freedom from arbitrary interference with 'privacy, family, home or correspondence' is recognised under the *International Covenant on Civil and Political Rights*, art 17 and the *Universal Declaration of Human Rights*, art 12.

⁹⁵ Referring to R Gavison, 'Privacy and the Limits of the Law' (1980) 89(3) *Yale Law Journal* 421, 429–33, 465.

... what we are considering here is some information which is not in the public domain — such as the records of domestic violence order applications.⁹⁶ On the other hand there will be the records of convictions, most of which will be in the public domain.⁹⁷

Information privacy comes into play because it is proposed to collect this information and make it more easily accessible. ... it might be possible currently to get access to some of this information but doing so would be difficult and expensive.

... under current [information privacy] legislation personal information can be accessed where the disclosure 'is necessary to prevent a serious threat to the life, health, safety and welfare of an individual'.

Our preferred formulation of that principle is a 'serious and *imminent* threat to an individual's welfare'.

QCCL submits this privacy principle provides an appropriate basis for assessing this proposal [to introduce a DVDS].

...

It is [also] a fundamental principle that a person is entitled to know when their personal information is disclosed. However, in this case we would accept that can [be] *deferred* while it is considered that disclosure would expose the subject [of a disclosure] to imminent danger. (notes omitted; notes added; emphasis in original)

6.135 Legal Aid Queensland suggested that any DVDS would need to be underpinned by a number of principles, including that:⁹⁸

the Queensland Government is committed to safeguarding the privacy of individuals and confidential criminal history information will only be disclosed under the scheme when disclosure may reduce the risk of an individual to domestic violence.

6.136 Concerns about privacy were raised principally in relation to the person whose criminal (or other) history would be disclosed. However, respondents also identified the potential of a DVDS to infringe the privacy of other individuals, such as previous complainants or victims, whose personal information might also form part of a disclosure.⁹⁹ The UQ Pro Bono Centre explained that:¹⁰⁰

⁹⁶ Proceedings under the *Domestic and Family Violence Protection Act 2012* (Qld) are ordinarily kept private: see [3.44]–[3.45] above.

⁹⁷ See [4.16]–[4.19] above.

⁹⁸ Similarly, the Capricorn Community Development Association suggested that one of the principles that should underpin any DVDS should be the 'protection of the privacy of all parties involved with high disclosure thresholds'.

⁹⁹ Eg, Submissions 4, 21, 33, 40. See further [6.253] below. Micah Projects Inc also cautioned that, 'despite safeguards', a DVDS could compromise the privacy of other parties to domestic violence order cross-applications. The Queensland Council for Civil Liberties made a similar point. See further [6.248]–[6.251] below as to concerns raised about cross-orders.

¹⁰⁰ Referring to J Grace, 'Privacy, stigma and public protection: A socio-legal analysis of criminality information practices in the UK' (2013) 41(4) *International Journal of Law, Crime and Justice* 318.

While there is an argument that perpetrators lose their right to privacy and confidentiality once they are convicted of domestic violence offences, of greater concern is the risk that the personal information of other victims in past offences might be revealed in a DVDS process. While names are not disclosed, a past victim's identity can be quickly identified as a former partner or a family member, which may be particularly relevant in small towns and communities. As a consequence, personal information can be revealed without that person's consent, leading to further disempowerment and contribution to the stigma attached to victims of domestic violence in the community. (notes omitted)

6.137 The Queensland Law Society made a similar observation, stating that, in their view, 'this constitutes an unacceptable breach of a past victim's privacy'.

6.138 The protection of privacy also informed many respondents' views that, if a DVDS were to be introduced, it would need to be given a legislative basis¹⁰¹ and be 'narrowly tailored',¹⁰² for example, by limiting the information capable of being disclosed,¹⁰³ imposing a high threshold for disclosure,¹⁰⁴ or limiting disclosures to those given verbally.¹⁰⁵ (As noted at [6.109] above, however, respondents observed that the more narrow a scheme, the less beneficial it would likely be.)

6.139 Respondents also observed that the subject person of a disclosure would ordinarily be entitled to be informed when their personal information is to be disclosed. However, many respondents considered that informing the subject person would pose a risk to the applicant's safety and that, accordingly, this privacy principle would need to be overridden or compromised.¹⁰⁶ The Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc submitted that:

A DVDS raises a number of privacy concerns for the subject (eg, whether a subject should have a right to be notified of and to object to information being disclosed). Such a right exists in relation to disclosure of personal information by government agencies, such as Right to Information applications by third parties.¹⁰⁷ These concerns must be balanced against the potential to place the victim/applicant at heightened risk of victimisation and to defeat the protection purposes of the DVDS. Not disclosing the applicant's name to the subject is unlikely to lessen the risk. We are, therefore, of the view that no disclosure should

¹⁰¹ Submissions 23, 30. In addition, Legal Aid Queensland observed that 'an administratively based scheme would not have the strengthened privacy protections that a legislatively based scheme could provide'. PeakCare Queensland Inc. suggested that amendments to the *Information Privacy Act 2009* (Qld) might be necessary.

¹⁰² Submission 44. Other respondents observed that a broad DVDS could infringe on the rights of alleged perpetrators: Submissions 31, 32.

¹⁰³ Eg, Submissions 13, 15, 21, 23, 32. Legal Aid Queensland expressed the view that, 'given that the scheme has significant adverse impacts on individual privacy', the extent of information disclosed 'should be assessed on a case by case basis'. The UQ Pro Bono Centre made a similar comment, and further suggested that the 'identity of the victim or involved parties of other convictions should never be disclosed'. Legal Aid NSW made a submission in similar terms.

¹⁰⁴ Eg, Submissions 15, 16, 23.

¹⁰⁵ Eg, Submissions 4, 17, 21, 23, 25, 34.

¹⁰⁶ Eg, Submissions 13, 15, 19, 21, 23, 26, 43, 44 (quoted at [6.134] above). In addition, the Queensland Centre for Domestic and Family Violence Research observed that the DVDS in England and Wales has been criticised for compromising the perpetrator's rights to be consulted before, or informed of, a disclosure: referring to Grace (2015), above n 94. Legal Aid NSW suggested there should be discretion to seek representations from, and to inform, the subject person about a disclosure.

¹⁰⁷ See, eg, *Right to Information Act 2009* (Qld) s 37. See also [4.10]–[4.11] above.

be made to the subject if there is any concern that this may put the applicant at risk. (note added)

6.140 If a DVDS were to be implemented, many respondents expressed the view that specific confidentiality requirements or offences for unlawful disclosure of information would be required.¹⁰⁸ However, some expressed concern that, even with such provisions, it would be difficult in practice to prevent secondary use or disclosure of information and further privacy infringements.¹⁰⁹

6.141 For example, it was suggested that disclosure could have unintended impacts on a person's employment prospects¹¹⁰ and ability to form and maintain social relationships,¹¹¹ or could lead to the stigmatisation of victims, perpetrators and their families.¹¹²

The potential impact of a DVDS on rehabilitation and other justice principles

6.142 Respondents raised concerns about the potential of a DVDS to impact on the subject person's other rights and interests and to undermine important justice principles.

6.143 The Queensland Council for Civil Liberties commented that:¹¹³

In taking action to protect members of the community from harm, the State has to have regard to the rights and liberties of other individuals. In particular, before interfering with the rights and liberties of others it is fundamental that the State demonstrates that the proposed measure will be effective at protecting the members of the community it is intended to protect.

6.144 That respondent went on to state that, whilst the relevant rights and interests of the subject person in this context (namely, privacy, rehabilitation and the presumption of harmlessness), 'do not rise to the same level as a liberty interest, they are in our submission significant rights and interests which need to be weighed in this process'.

¹⁰⁸ Eg, Submissions 4, 13, 16, 17, 19, 21, 23, 25, 26, 27, 29, 32, 34, 40, 43, 44, 45. In some cases, this was underpinned not (or not just) by the right to privacy but by concerns for the safety of the applicant if the subject person learned of the disclosure.

¹⁰⁹ Eg, Submissions 9, 32, 34, 40, 43. See further [6.228] ff below as to potential for misuse of disclosed information. Some respondents also observed that there would need to be legitimate exceptions to any confidentiality provisions for disclosure to support services and networks: eg, Submissions 4, 36, 40.

¹¹⁰ Eg, Submissions 20, 25, 32, 39.

¹¹¹ Eg, Submission 39.

¹¹² Eg, Submissions 15, 28, 32. UnitingCare Queensland explained that this 'may see domestic violence once again becoming a "shameful secret" or "private family matter" which would be a retrograde step'. See further [6.142] ff, [6.228] ff and [6.259] below.

¹¹³ The Queensland Centre for Domestic and Family Violence Research also commented that, '[a]t the same time as reflecting on the needs of victims, resource implications and current DFV reforms, the impact on the rights of the subject of the application must be considered'.

Rehabilitation of offenders

6.145 Many respondents identified that a DVDS has the potential to undermine, and should take into account, the principle of rehabilitation of offenders.¹¹⁴

6.146 The Queensland Indigenous Family Violence Legal Service pointed to the principle, in section 4 of the *Domestic and Family Violence Protection Act 2012*, that perpetrators should, if possible, be ‘provided with an opportunity to change’, and observed that a ‘subject person, like any other citizen, once punishment for offences [has] been determined by a court of competent jurisdiction, has the right to rehabilitate within their community’.¹¹⁵

6.147 Concern was expressed, however, that disclosure under a DVDS could have a significant impact on the subject person and their ability to rehabilitate.¹¹⁶ The Suncoast Community Legal Service Inc. submitted that:¹¹⁷

Regardless of what information a disclosure application returns, the suspicions that prompted the application may be without substance. For obvious reasons, a DVDS typically operates a policy that the subject of the application is not advised an application has been made, or if the request results in a disclosure. And yet the information disclosed could have a severe impact on the subject’s life: their ability to form and maintain social relationships, seek employment or even rehabilitate after previous offences. David Burnie (from the NSW Council for Civil Liberties) succinctly notes:

Judging people on past convictions ... undermines the concept of rehabilitation. How do you determine if something is [part of] a history of violence or a one-off event? It does really raise these questions about people wanting to put their past behind them not being able to do so.

6.148 The UQ Pro Bono Centre similarly commented that:¹¹⁸

Another risk that a DVDS poses is the potential to undermine the policy goal of rehabilitation. A DVDS may stigmatise those who may have already taken steps

¹¹⁴ Eg, Submissions 4, 19, 20, 21, 23, 25, 30, 39, 40, 44. As to rehabilitation as a sentencing principle, see generally *Penalties and Sentences Act 1992* (Qld) s 9(1)(b); *Youth Justice Act 1992* (Qld) s 150(1)(a), (b), 2(b), (c), sch 1 item 8.

¹¹⁵ *Domestic and Family Violence Protection Act 2012* (Qld) s 4 is set out in full at [3.17] above.

¹¹⁶ The Queensland Centre for Domestic and Family Violence Research expressed concern about the labelling effect of disclosures: referring to M Duggan, ‘Using Victims’ Voices to Prevent Violence Against Women: A Critique’ (2012) 10(2) *British Journal of Community Justice* 25, in which it is argued (at 31) that ‘there is a danger in allowing past conduct to label a person’s future’. Legal Aid NSW also commented that ‘advising applicants about previous offending, no matter how old or irrelevant, could ... infringe ... the criminal justice policy goal of rehabilitation when there is no justification to do so’. Other respondents observed that one of the risks of a DVDS is the potential to ‘inadvertently misrepresent a person as a perpetrator’: See [6.187] below.

¹¹⁷ Quoting from A McDonald, ‘Clare’s Law: should abuse history be revealed to new partners?’, *Sydney Morning Herald* (online) 21 July 2011 <<http://www.smh.com.au/national/clares-law-should-abuse-history-be-revealed-to-new-partners-20110721-1hgqc.html>>.

¹¹⁸ Referring to R Kelly and S Farthing, ‘Liberty’s Response to the Home Office Consultation on the Domestic Violence Disclosure Scheme’ (2012), in which it is stated (at 12) that:

it may be tempting to mandatorily require disclosure in as many cases as possible ... [However,] [g]iven the severe impact such disclosure could have on the subject’s ability to form social relationships and seek employment, and generally rehabilitate after punishment, it is essential that information released is in the most extreme case where the prospect of violence is not speculative but a real and foreseeable threat.

to address their past behaviour unfairly interfering with their capacity to form social relationships.

6.149 The principle of rehabilitation also informed many respondents' views that any DVDS should exclude the disclosure of spent convictions¹¹⁹ and juvenile convictions.¹²⁰

6.150 Legal Aid NSW explained that:¹²¹

The spent convictions scheme reflects the criminal justice policy goal of rehabilitation and the long standing legal principle that prevents disclosure of criminal offending by a child.

6.151 The Queensland Indigenous Family Violence Legal Service expressed the view that '[s]pecific care needs to be taken in relation to convictions imposed on a child because the aim of sentencing juvenile offenders is to structure a sentence that allows for rehabilitation as well as serving as a deterrent'.¹²²

6.152 Mercy Community Services commented on children's capacity to change:

MCS does extensive work with children and young people, specifically those who have experienced trauma and exhibit pain-based behaviours. MCS work is embedded in the belief that children have extensive capacity for growth and change especially in supportive environments. Therefore MCS believes that convictions imposed on a person as a child should not be disclosed to support this capacity for young people not to be re-victimised by their past.

6.153 The Queensland Council for Civil Liberties further commented that, in the case of spent convictions and convictions imposed on a person as a child, the law says 'in general terms' that 'those convictions need not be disclosed. We oppose the continual whittling away of that position'.¹²³

Presumption of innocence and harmlessness

6.154 Some respondents raised concerns about the potential conflict between a DVDS and the presumption of innocence.¹²⁴ The Bar Association of Queensland submitted that:

¹¹⁹ Eg, Submissions 17, 19, 21, 23, 26, 34, 44. Cairns Collective Impact on Domestic and Family Violence did not support the disclosure of spent convictions as 'this may act as a disincentive for perpetrators of DFV to change their behaviours and attitudes towards victims'. Mercy Community Services expressed a similar view. Cf other respondents who considered disclosure of spent convictions would be important: eg, Submissions 8, 36. See further [6.107] ff above.

¹²⁰ Eg, Submissions 4, 17, 19, 21, 23, 34, 44. Cf Submission 16 in which it is suggested that juvenile convictions should not be disclosed unless there is also evidence of violence by the person as an adult.

¹²¹ Referring to *NSW Discussion Paper* (2015) 14. Legal Aid NSW also commented that child defendants are particularly vulnerable and that 'there is a long standing principle that prevents disclosure of any criminal offending by a child': referring to *NSW Discussion Paper* (2015) 15. See generally [4.12] above as to spent convictions in Queensland.

¹²² As to rehabilitation as a sentencing principle, see generally *Penalties and Sentences Act 1992* (Qld) s 9(1)(b); *Youth Justice Act 1992* (Qld) s 150(1)(a), (b), 2(b), (c), sch 1 item 8.

¹²³ See generally [4.12] above as to spent convictions in Queensland.

¹²⁴ Eg, Submissions 19, 42, 44.

The Association is guided by the overriding principle that a person accused of a serious offence such as domestic violence is, under the law, entitled to the presumption of innocence until guilt, and the extent of guilt, based on the allegations is proven in an appropriate court or tribunal. For that reason, the Association is unlikely to support any scheme which promotes or encourages the disclosure of allegations until proven.

6.155 The Queensland Council for Civil Liberties referred to the related 'right' to be presumed harmless.¹²⁵

in our view, in a society committed to liberty, individuals must be presumed harmless. This presumption does not come to an end simply because a person has been convicted of an offence.

6.156 These concerns were reflected in some respondents' views that disclosure under any DVDS would need to be 'narrow'¹²⁶ or 'nuanced',¹²⁷ for example, by excluding the disclosure of allegations, arrests, or charges that did not result in a conviction.¹²⁸

6.157 The Queensland Indigenous Family Violence Legal Service commented that:

Our justice system is underpinned by the rule of law which recognises fundamentally that every person who comes before a criminal court is innocent until otherwise proven guilty. A conviction that is recorded on a person's criminal history indicates that the person was either found guilty after hearing/trial or entered a plea of guilty and was sentenced.

[A]llowing the disclosure of charges that did not result in a conviction, complaints, arrests or police investigations is contrary to one of the fundamental concepts of the rule of law.

¹²⁵ Referring to A Ashworth and L Zedner, *Preventive Justice* (Oxford University Press, 2014) 130–32, in which it is explained that '[o]ne reason given against universal risk assessment is that those who have yet to offend are said to enjoy the right "to be presumed free of harmful intentions"'. The authors go on to argue that, whilst others have suggested that this presumption does not extend to a convicted offender, 'since he has already manifested harmful intentions', such a claim is 'problematic':

[It] plays fast and loose with the concept of intention, which is not an enduring state of mind but specific to the time and circumstances in which it is formed. ... Although the two are not synonymous, loss of the presumption of harmlessness [also] has serious implications for the presumption of innocence, which is rightly considered to be a fundamental principle of criminal justice. ... [to] designate someone as posing a risk ahead of time is to undermine their right to be presumed innocent into the future. (note omitted)

¹²⁶ Submission 44.

¹²⁷ Submission 4.

¹²⁸ Eg, Submissions 19, 21, 23, 34, 43, 44. Mercy Community Services commented that 'the court process is in place to ensure people are protected from false accusations and misrepresentations'. Cf other respondents who thought it important for charges that did not result in a conviction to be included in any scheme: eg, Submissions 29, 36. See further [6.107] ff above as to the scope and nature of disclosures.

6.158 Some respondents also opposed the disclosure of domestic violence orders,¹²⁹ pointing to the fact that the ‘standard of proof for [such orders] is the balance of probabilities, a lower onus than for a criminal offence’.¹³⁰

6.159 The Aboriginal & Torres Strait Islander Women’s Legal Services NQ Inc identified the complexity of these issues:¹³¹

The issue of ‘disclosable information’ under a DVDS is problematic. While disclosure of untested allegations, such as appear in Domestic Violence applications and notifications to public agencies, may unreasonably prejudice the subject, a further problem is that domestic violence is often under-reported. Domestic violence which has resulted in charges and conviction[s] may inadequately reflect the extent of domestic violence ... [which] may give rise to the victim/applicant being misinformed as to the risk.

Natural justice

6.160 Some respondents commented on the importance of according natural justice to a person whose otherwise confidential information might be disclosed.¹³² This was reflected in respondents’ consideration of the extent to which, if at all, the subject person should be informed about a disclosure. As noted at [6.139] above, however, this is a complex question, taking into account the possible risk to the other person’s safety.

6.161 Cairns Collective Impact on Domestic and Family Violence commented in this regard that:¹³³

Disclosure to the subject [under a] DVDS is a sensitive issue. Disclosing that a victim has used their ‘Right to Ask’ places them at potentially greater risk from a disgruntled perpetrator. ... However, [the Cairns Collective Impact on Domestic and Family Violence] also supports principles of natural justice. This requires further consideration and might depend on the level of risk assessed towards the victim.

Meeting the specific needs of high risk groups

6.162 Respondents raised concerns about the ability of a DVDS to respond to the circumstances of those most at risk of domestic and family violence or with specific needs.

¹²⁹ Eg, Submissions 23, 32, 34, 44. Cf other respondents who thought it important for domestic violence orders to be included in any scheme: eg, Submissions 4, 6, 24, 27, 29, 36.

¹³⁰ Submission 4, which also noted that domestic violence orders may be made by consent and without admissions, and, eg, Submission 23. See further [6.118] above.

¹³¹ A group of legal academics from Bond University also raised concern that the wider the scope of disclosable information under a DVDS, for example, by including charges and arrests, the greater the impact on the rights of alleged perpetrators: referring to Liberty, above n 118, 12. Legal Aid Queensland referred to the competing priorities of safety and disclosure on the basis of ‘mere suspicion’. Mercy Community Services commented that these are ‘challenging’ questions.

¹³² Eg, Submissions 21, 23, 25, 26.

¹³³ See further [6.219]–[6.222] below.

Rural, regional and remote communities

6.163 Several respondents commented on issues relevant to the introduction of a DVDS in rural, regional and remote communities.¹³⁴

6.164 It was observed that the experience of domestic and family violence is not evenly distributed across the State,¹³⁵ and that there is a need for targeted responses.¹³⁶ It was noted that people in regional and remote areas are at higher risk of domestic and family violence and face greater barriers to seeking support or leaving abusive relationships.¹³⁷ It was also noted that domestic and family violence is significantly under-reported in such areas.¹³⁸

6.165 Respondents expressed concern that a lack of appropriate support services and infrastructure would undermine the effectiveness of a DVDS in regional and remote areas,¹³⁹ and could increase the risk of harm to people in such communities.¹⁴⁰ TASC National explained that:

The greater utility of a disclosure scheme is presupposed to be within a metropolitan environment, with ready (at least in a *physical* sense, putting to one side other more tacit barriers) access to support services. Queensland's population is less concentrated in capital cities than other states, however, it remains the case that population levels, and therefore available services, are lower in regional areas than in metropolitan centres. Services are sparse west of Toowoomba, and non-existent in some regions. The introduction of a disclosure scheme in areas where no support services are available may be quite high risk for applicants. (emphasis in original)

6.166 Respondents also identified other factors that would impact on the effectiveness and accessibility of a DVDS in these areas, including geographic isolation, social isolation, community interdependence and pressure, concerns about visibility or lack of privacy, reluctance to engage with police or other formal agencies, limited access to transport or other resources, and lack of awareness about a scheme.¹⁴¹

¹³⁴ Eg, Submissions 7, 8, 12, 13, 16, 17, 19, 21, 25, 26, 27, 29, 30, 31, 33, 34, 36, 43 and 41 Wangmann (2016), above n 37, 233.

¹³⁵ Eg, Submissions 12, 36.

¹³⁶ Eg, Submissions 12, 16. It was suggested by another respondent that a DVDS would be able to operate effectively in remote and regional areas by providing 'an individualised response' that considers the applicants' 'diverse needs': Submission 36.

¹³⁷ Eg, Submissions 12, 21.

¹³⁸ Eg, Submission 21.

¹³⁹ Eg, Submissions 12, 13, 17, 19, 23, 26, 27, 30, 31, 34, 43 and 41 Wangmann (2016), above n 37, 233. In addition, Women's Legal Service Queensland expressed concern that a DVDS 'may not be accessible, or may be overly onerous to access' especially for women in remote and regional areas. The Queensland Family and Child Commission suggested that the evaluation of the integrated service response pilot being developed in Cherbourg 'may provide insight into how domestic and family violence services can be designed to meet the needs of remote communities'.

¹⁴⁰ Eg, Submissions 8, 23, 26, 27.

¹⁴¹ Eg, Submissions 7, 8, 13, 16, 21, 23, 33, 34. Legal Aid Queensland suggested that the effectiveness of a DVDS for people in regional and remote areas would be enhanced by targeted awareness raising about the scheme.

6.167 Again, TASC National commented that:

a range of issues apply in regional areas which are not necessarily obvious to service providers in metropolitan areas. [For example] [i]n small country communities shared knowledge of local relationships and identities may require a discreet means of making the application, other than attendance at the local police station.

6.168 Consequently, some respondents considered that a DVDS would have reduced utility and low take-up in regional or remote areas.¹⁴² Some expressed concern about the potential for a DVDS to have an inconsistent effect across the State.¹⁴³ Cairns Collective Impact on Domestic and Family Violence commented that:

The difficulty is a paucity of relevant services for these ... communities. There is, therefore, the potential for a 'second-class' DVDS in these areas. This could lead to greater risk rather than harm reduction.

6.169 Mercy Community Services similarly observed that people living in rural and remote communities in Queensland have limited access to complementary support services and options that promote safety. It considered that this would give rise to an inconsistent experience across the State for users of a DVDS, thereby reducing the potential benefit of a scheme.

Aboriginal and Torres Strait Islander people and communities

6.170 Many respondents commented on issues relating to Aboriginal and Torres Strait Islander people and communities, especially in remote areas.¹⁴⁴

6.171 Respondents observed that the experience of domestic and family violence is different for many Aboriginal and Torres Strait Islander people: the rate of domestic and family violence is disproportionately high; the way domestic and family violence is understood is different (involving wider conceptions of family and kinship relationships);¹⁴⁵ and the experience of domestic and family violence is often complicated by other factors.¹⁴⁶

6.172 ANROWS explained that:¹⁴⁷

¹⁴² Eg, Submissions 12, 21, 23, 34, 43. The UQ Pro Bono Centre submitted that a DVDS would be of little benefit to many individuals in regional and remote areas without 'further outreach and public awareness strategies to break down the barriers that [such] communities face in recognising domestic violence and seeking help and support'. That respondent suggested that there are more effective means of addressing domestic and family violence in these areas than a DVDS, referring to frontline responses, outreach, awareness and refuges.

¹⁴³ Eg, Submissions 23, 26, 31, 34.

¹⁴⁴ Eg, Submissions 4, 7, 8, 12, 13, 16, 17, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 31, 33, 34, 35, 36, 40, 43.

¹⁴⁵ Eg, Submissions 7, 12, 19, 24, 34.

¹⁴⁶ Eg, Submissions 7, 12, 19, 21, 25, 29, 31, 34, 36, 43. Submission 4 also referred to *NSW Discussion Paper* (2015) 28. The Queensland Indigenous Family Violence Legal Service referred to 'the core social problems affecting Aboriginal and Torres Strait Islander people', including poverty, lack of housing, lower education and health outcomes, and need for employment and training. Another respondent explained that domestic and family violence 'in Indigenous communities is generational and trans-generational': Submission 29.

¹⁴⁷ Referring to A Olsen and R Lovett, 'Existing knowledge, practice and responses to violence against women in Australian Indigenous communities' (Landscapes State of Knowledge Paper No 2, ANROWS, February 2016). ANROWS observed that '[t]his conceptualisation may be somewhat at odds with a DVDS if that DVDS assumes that knowledge of one person's domestic violence history is sufficient information with which to achieve safety'.

In general, the term family violence, rather than domestic violence, is preferred by Indigenous communities as this reflects how violence against women in Indigenous communities more often occurs within extended families and the wider community than in non-Indigenous communities. ... Indigenous conceptualisations of domestic violence also differ somewhat to the western feminist explanations dominant in Australia, with family and community roles featuring more distinctly in explanations of domestic violence provided by Aboriginal and Torres Strait Islander peoples.

6.173 The Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc additionally explained that:¹⁴⁸

Aboriginal and Torres Strait Islander people continue to suffer the intergenerational effects of past welfare practices including the forced removal of their children and dislocation from their communities, country and culture, as well as experiencing higher levels of poverty and social disadvantage compared to other Australians. Studies show that these interrelated factors are correlated with family violence, making Aboriginal and Torres Strait Islander women particularly vulnerable.

6.174 Respondents also identified 'multiple and complex needs'¹⁴⁹ and barriers faced by many Aboriginal and Torres Strait Islander people in this context which would limit the effectiveness of a DVDS, including geographical remoteness,¹⁵⁰ cultural or family pressures,¹⁵¹ under-reporting of domestic and family violence,¹⁵² and reluctance to engage with police and other government agencies.¹⁵³ A domestic and family violence counsellor explained, in relation to under-reporting and reluctance to engage with police, that:¹⁵⁴

There are a myriad of reasons why this does not happen including fear of the perpetrator, family and kinship issues, fear of reprisal from [the] perpetrator's family, police not responding to calls (or arriving after the event), and empathy for the perpetrator, or that 'it is just not our way' to tell police. These norms and values appear to minimize and silence the experience of domestic and family violence. Further, many women I have spoken to believe prison does not help because when they come out they are good for a little while but then do the same or become more violent. There is also a fear of reporting domestic and family

¹⁴⁸ Referring to Australian Government, Steering Committee for the Review of Government Service Provision, 'Overcoming Indigenous Disadvantage: Key Indicators 2016' (Report, Productivity Commission, 2016).

¹⁴⁹ Submission 12.

¹⁵⁰ Eg, Submissions 7, 21.

¹⁵¹ Eg, Submissions 16, 29. Other factors that were identified included concerns about visibility and privacy, fear of prejudice and discrimination, and police practices that 'disproportionately penalise Aboriginal and Torres Strait Islander women': Submissions 13, 21, 35, respectively.

¹⁵² Eg, Submissions 21, 29, 43.

¹⁵³ Eg, Submissions 8, 16, 19, 25, 29, 33, 34, 40, 43. Two gender and family violence research academics from Monash University commented that a scheme 'predicated on a person seeking information from the police may be particularly unhelpful in Aboriginal and Torres Strait Islander communities': referring to C Cunneen and S Rowe, 'Decolonising indigenous victimisation' in D Wilson and S Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (London, Palgrave-MacMillan, 2016) 10–32 which discusses 'structural factors that continue to prevent mainstream criminal justice systems from responding appropriately to Indigenous victims': 21.

¹⁵⁴ Submission 29.

violence because they believe Child Safety will take the children away. ... In addition, many lack awareness of what domestic and family violence really is.

6.175 Some respondents also observed that domestic and family violence histories are often already known within families and communities.¹⁵⁵

6.176 Further, many respondents identified that there is a lack of, and need for, support services and responses that are culturally appropriate and specific to diverse needs.¹⁵⁶ The Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc submitted that:

There is a pressing need for Aboriginal and Torres Strait Islander women experiencing domestic violence or facing a family violence crisis, to have access to and sufficient support from culturally appropriate services for themselves and their children. In particular, there is a need for culturally appropriate information, counselling, support for applications to court, access to emergency housing and other measures that address the well documented needs of Aboriginal and Torres Strait Islander women and their children in crisis.

6.177 Several respondents considered that a DVDS would be unlikely to be effective in addressing the needs of many Aboriginal and Torres Strait Islander people (or would be unlikely to be used), particularly without additional appropriate support services.¹⁵⁷ The North Queensland Women's Legal Service commented that:

Without the provision of additional support services, a DVDS would not be able to operate effectively and could in fact leave victims more vulnerable than they might otherwise have been.

6.178 The Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc expressed the view that a DVDS would 'not provide a protective mechanism for Aboriginal and Torres Strait Islander women', and queried the 'utility' of a DVDS when 'there remains a gap in culturally appropriate services' for such women.

6.179 Mercy Community Services also expressed 'significant concern' that a DVDS would 'not respond well to the specific needs of Aboriginal and Torres Strait Islander people', referring to a range of issues in addition to a lack of resources:

- A focus on past events can contribute to the cycles of disadvantage. Childhood adversity and trauma can limit effective emotional regulation;

¹⁵⁵ Eg, Submissions 20, 29.

¹⁵⁶ Eg, Submissions 7, 12, 13, 19, 21, 26, 27, 33, 34, 40, 43. In addition, TASC National submitted that a DVDS would need to be 'easily accessible and culturally appropriate'. PeakCare Queensland Inc. also commented on the importance of 'cultural proficiency and understanding when working with Aboriginal and Torres Strait Islander families and communities'. ANROWS and the Capricorn Community Development Association referred to the importance of co-design of systems and programs with the communities in question.

¹⁵⁷ Eg, Submissions 4, 12, 19, 21, 25, 26, 27, 34, 40, 43. The Queensland Centre for Domestic and Family Violence Research referred to Law Society of NSW, Submission to New South Wales Department of Family and Community Services, *NSW Domestic Violence Disclosure Scheme*, 22 June 2015, in which it is stated (at 4–5) that a DVDS 'represents another information-sharing scheme, rather than addressing the issue of inadequate financial and infrastructure resourcing for outreach, awareness and refuges'.

Some respondents suggested that, to enhance accessibility and take-up, any scheme would need to be accompanied by targeted awareness raising: Submissions 13, 40. Cf Micah Projects Inc, which referred to National Alliance of Aboriginal and Torres Strait Islander Women, Submission to South Australia Government, *Domestic Violence*, 9 September 2016, in which it was suggested that, through accompanying policies and procedures, a DVDS could strengthen responses to domestic and family violence.

coupled with generalised disadvantage and increased rates of conviction for offences may find Aboriginal and Torres Strait Islander people who use violence having more disclosable history than a person from a different cultural background. This is an ineffective manner to address the cycle of violence.

- Lived experience in the community of distrust of formal systems would impede Aboriginal and Torres Strait Islander people reaching out to use such [a] scheme.
- Formality of the verification of eligibility has been noted as an unsettling aspect that may deter some Aboriginal and Torres Strait Islander people, particularly those from rural, remote and discrete communities.
- The individualist nature of the scheme is not congruent with the community focused culture of many Aboriginal and Torres Strait Islander people.
- Onus on the applicant to seek and manage disclosures is an overwhelming obligation for small, connected communities, and close family groups.

MCS also notes that barriers are increased for those who live in rural, remote and discrete communities where lack of resourcing, and interdependence of the community add challenges to this scheme being effectively used.

6.180 Some respondents suggested that a DVDS would not reduce domestic and family violence¹⁵⁸ nor increase perpetrator accountability¹⁵⁹ in Aboriginal and Torres Strait Islander families or communities. In this context, a domestic and family violence counsellor observed that a focus on restorative justice principles is preferred in many Aboriginal and Torres Strait Islander communities:¹⁶⁰

Women want healing/rehabilitation of the offender so that the offender understands what he/she has done and thus restoring all the relationships that have been damaged. Indigenous women want to see responses to domestic and family violence that involve restorative justice principles. They see the criminal justice system as making things worse.

6.181 Others expressed concern that a DVDS may increase the risk of harm in such communities.¹⁶¹ One respondent suggested that a DVDS could deter people from seeking support or advice.¹⁶² As noted at [6.233]–[6.236] below, some also

¹⁵⁸ Eg, Submissions 19, 43. The Queensland Indigenous Family Violence Legal Service commented that a DVDS 'does not address the reasons behind the commission of the act of domestic violence' and that reduction in the incidence of domestic and family violence will come from initiatives that address 'the core social problems affecting Aboriginal and Torres Strait Islander people who are overrepresented in the criminal justice system'. See also [6.65] above.

¹⁵⁹ Eg, Submission 19. See also [6.207] ff below.

¹⁶⁰ Submission 29.

¹⁶¹ Eg, Submissions 8, 21, 27, 28. Two gender and family violence research academics from Monash University commented that the general risks of a DVDS, including inaccurate or misrepresented information, shifting responsibility onto the victim, and encouraging victim blaming, may be exacerbated for Aboriginal and Torres Strait Islander people. The UQ Pro Bono Centre similarly suggested that individuals in Indigenous communities 'are more likely to be lured into a false sense of security' by a DVDS, given the under-reporting of domestic and family violence.

¹⁶² Submission 28, explaining that people may be deterred from reporting domestic and family violence 'because of a fear that the details of a family member or partner could be made public'.

suggested that a DVDS could have significant unintended consequences for child protection and parenting issues.¹⁶³ ANROWS explained that:¹⁶⁴

the identification of domestic violence in Aboriginal and Torres Strait Islander communities often precipitates assessment of children's welfare and parenting capacity within the family. Depending on the constraints imposed upon subsequent use of disclosed information, increases in children's welfare assessments and parenting capacity evaluations may result. While beneficial impacts on children's safety could ensue, care should be taken to ensure that a DVDS does not further alienate Indigenous victims of domestic and family violence from mainstream Australian services as a result.

6.182 Some respondents suggested that further research would be appropriate.¹⁶⁵ The Queensland Family and Child Commission observed that the integrated response pilot being developed in Cherbourg 'may provide insight into how domestic and family violence services can be designed to meet the needs of remote communities'.

Other people with specific needs

6.183 Many respondents commented on the need to consider the specific needs of other high risk groups, including people with disability, people from culturally and linguistically diverse backgrounds, people who identify as LGBTI, and older people.¹⁶⁶

6.184 Respondents noted that people from marginalised or diverse backgrounds are at higher risk of domestic and family violence,¹⁶⁷ and experience such violence across a wider range of personal relationships than intimate partner relationships.¹⁶⁸

6.185 ANROWS explained that immigrant and refugee women 'experience violence perpetrated by people other than their intimate partners at significant rates', including by 'other male family members'.¹⁶⁹ It was also explained, by Queensland

¹⁶³ Eg, Submissions 12, 16, 19, 29, 34, 35, 43.

¹⁶⁴ Referring to H Blagg, N Bluett-Boyd and E Williams, 'Innovative models in addressing violence against Indigenous women' (Landscapes State of Knowledge Paper No 8, ANROWS, 2015).

¹⁶⁵ Eg, Submissions 7, 25, 8. The Queensland Centre for Domestic and Family Violence Research explained that further research has been recommended to support responses to domestic and family violence in relation to diverse communities, including Aboriginal and Torres Strait Islander communities: referring to A Taylor et al, 'Domestic and family violence protection orders in Australia: An investigation of information sharing and enforcement' (Landscapes State of Knowledge Paper No 16, ANROWS, 2015). Two gender and family violence research academics from Monash University observed that there are presently no evaluations or evidence documenting what unique issues may arise in the operation of a DVDS for Aboriginal and Torres Strait Islander people.

¹⁶⁶ Eg, Submissions 4, 8, 12, 13, 15, 16, 17, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 36, 40, 43.

¹⁶⁷ Eg, Submissions 12, 21, 22, 34. Legal Aid NSW referred to *NSW Discussion Paper* (2015).

¹⁶⁸ Eg, Submissions 12, 15, 22, 23. A number of respondents suggested that, if a DVDS were to be introduced, it should extend beyond 'intimate partner' relationships to cover 'extended familial relationships that underpin a number of culturally and linguistically diverse ethnic groups', relationships with co-residents for people with disability, and carer relationships for people with disability, older people, or refugees and asylum seekers: Submissions 19, 21, 34, 43. TASC National observed with concern the 'significant increase in domestic violence by adult children against older parents', which is 'under recognised and under resourced'.

¹⁶⁹ Referring to C Vaughan et al, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project' (Horizons Research Report No 7, ANROWS, 2016).

Advocacy Incorporated, that people with disability can be exposed to violence or abuse from cohabitants or carers with whom they live in domestic relationships, 'often spanning many years or decades', but 'which are not recognised as ordinary domestic relationships'.¹⁷⁰

many of the situations in which a person with disability may be exposed to violence or abuse occur in a person's home, where they are forced to cohabit with another person for the purposes of sharing care provided by a service provider. The unique and often complex nature of these living arrangements [is] often not comprehended by providers of domestic violence support services, and these services are also often not readily known or accessible to people with disabilities who experience domestic violence.

...

While the de-institutionalisation movement has resulted in the closure of certain institutions in Queensland, many people with disability are still denied choice and control with respect to where and with whom they live and who provides their care. For many people, this can mean that they are forced to co-habit in situations where they can be at risk of violence, abuse and neglect.

6.186 Respondents identified a number of other factors that would impact on the effectiveness of a DVDS for such people, including the following:¹⁷¹

- People from marginalised or diverse backgrounds face greater barriers to leaving violent relationships or seeking help,¹⁷² such as cultural pressures, limited knowledge or understanding of their rights or services, language or communication barriers, and financial or other dependence on the perpetrator (including in relation to immigration status). People with disability may also lack choice and control about where and with whom they live and have limited alternative accommodation options.¹⁷³
- People from marginalised or diverse backgrounds face additional barriers to reporting domestic and family violence, including social isolation and fear of prejudice or discrimination,¹⁷⁴ and people with disability can face particular challenges in having domestic and family violence perpetrated against them

¹⁷⁰ Queensland Advocacy Incorporated further submitted that this 'gap' in coverage of the *Domestic and Family Violence Protection Act 2012* (Qld) should be addressed. People with Disability Australia Incorporated suggested that disclosure under a DVDS may be particularly important '[f]or those entering into a residential setting with others, or acquiring a new support worker'.

¹⁷¹ Two gender and family violence research academics from Monash University cautioned that there are presently 'no evaluations or evidence which document what unique issues may arise in the operation of domestic violence disclosure schemes' for 'people with a disability and people from culturally and linguistically diverse backgrounds'.

¹⁷² Eg, Submissions 12, 16, 21, 22, 34. ANROWS referred to C Vaughan et al, above n 169, in which it is explained (at 31–2) that, whilst immigrant and refugee women face the same barriers as other women to leaving abusive relationships or seeking help, these difficulties are compounded by problems they experience as new immigrants or refugees, including lack of familiarity with social and justice systems, limited knowledge of available services, immigration status, and language skills. UnitingCare Queensland expressed concern that a DVDS may deter reporting of elder abuse and discourage people from culturally and linguistically diverse backgrounds from seeking support and advice 'because of a fear that the details of a family member or partner could be made public'.

¹⁷³ Submission 15.

¹⁷⁴ Submission 15, 21.

recognised and successfully prosecuted, including challenges in accessing information and being regarded as credible witnesses.¹⁷⁵

- People from marginalised or diverse backgrounds can be reluctant to engage with police or government agencies,¹⁷⁶ and may perceive that services do not adequately respond to the diversity of their experiences.¹⁷⁷
- The general risks of a DVDS, including the risk of inaccurate or misleading disclosures or non-disclosures, shifting responsibility onto the victim and victim blaming, might be exacerbated for people from marginalised or diverse backgrounds.¹⁷⁸

6.187 In addition, concern was raised about the potential risk of a DVDS unfairly identifying people with disability as perpetrators.¹⁷⁹ Queensland Advocacy Incorporated explained that:

It is often reported that people with disability who have never been violent or aggressive in the home have exhibited these behaviours when they have moved into shared care and living arrangements. It is well documented that people who exhibit behaviours of concern are communicating in the only means available to them at that point in time. Because of this, some people with disability may acquire an undeserved reputation as a violent offender when it is the living [or] support arrangement that requires investigation and changes.

...

In Queensland, as in other Australian jurisdictions, it is well recognised that people with an intellectual or cognitive disability or a mental illness are significantly over-represented within the criminal justice system, as victims but also as alleged offenders or perpetrators of violence.

For all people with a disability that impacts on their ability to understand and respond to social norms and their ability to regulate their behaviour, it is important that they are not inappropriately labelled as a perpetrator, or subject to undue restrictions on their rights or freedoms, as a consequence of the scheme.

¹⁷⁵ Submission 15, 22.

¹⁷⁶ Eg, Submissions 8, 16, 22, 25, 33, 34, 40. People with Disability Australia Incorporated also observed that people with disability may fear that disclosing domestic and family violence to police 'will lead to unwanted outcomes such as the removal of children', noting that children are removed from parents with disability at a rate ten times that of other parents: referring to National Cross-Disability Disabled People's Organisations, Submission No 142 to Senate Finance and Public Administration References Committee, *Domestic Violence in Australia* (September 2014) 9, 21.

¹⁷⁷ Submissions 15, 22, 34 and 12, referring to P Frawley et al, 'What does it take? Developing informed and effective tertiary responses to violence and abuse of women and girls with disabilities in Australia' (Landscapes State of Knowledge Paper, ANROWS, 2015).

¹⁷⁸ Eg, Submissions 8, 21, 22, 34 and see generally [6.107] ff and [6.124] above and [6.191] ff below. People with Disability Australia Incorporated observed that people with disability 'may not understand the complexity and detail of differentiating between a conviction and notifications' and 'police may not have the necessary skills to convey this information to people with disability, especially those with psychosocial or intellectual disability'. Mercy Community Services also observed that 'culturally and linguistically diverse populations may have less accessible criminal justice history due to limited length of time in Queensland', undermining the value of any DVDS.

¹⁷⁹ Submission 15, 22. See also [6.246] ff below as to concerns about identifying a primary victim as a perpetrator.

6.188 People with Disability Australia Incorporated similarly observed that:

violence perpetrated by people with disability, particularly in institutional settings, is still frequently misunderstood to indicate a problem with the person as opposed to a legitimate response to a restrictive or problematic environment.

A person with a history of violence in institutional settings who is now living in the community with their partner does not necessarily indicate any likelihood of future violence.

6.189 Respondents pointed to the need for specific responses that take into account the different experiences of people in these high risk groups,¹⁸⁰ and observed that, if a DVDS were to be introduced, specific measures would be required to make it more accessible such as appropriate support services,¹⁸¹ education and information resources,¹⁸² access to interpreters and translators¹⁸³ and adequate emergency and alternative housing.¹⁸⁴

6.190 Other respondents considered that a DVDS would be of little benefit for, or would be unlikely to be used by, people with specific and complex needs, particularly in the absence of such additional supports.¹⁸⁵

The potential of a DVDS to shift responsibility to persons at risk

6.191 A number of respondents considered that a DVDS could have the result of 'shifting responsibility' for domestic and family violence to persons at risk.¹⁸⁶

6.192 Respondents expressed concern that a person at risk would be considered responsible for seeking disclosure about their partner or potential partner¹⁸⁷ and for acting on any disclosure to ensure they are safe from future domestic and family violence.¹⁸⁸ Respondents viewed this as a shift in responsibility from perpetrators¹⁸⁹

¹⁸⁰ Eg, Submissions 12, 15, 16, 33, 36. The Queensland Centre for Domestic and Family Violence Research suggested that further research may be needed to support responses to domestic and family violence in diverse communities.

¹⁸¹ Eg, Submissions 12, 15, 21, 22, 26, 33, 34, 40.

¹⁸² Eg, Submissions 12, 13, 16, 21. A number of respondents noted that the application process would need to be made more accessible by having alternative means to apply and providing documents in 'Easy English': eg, Submissions 15, 16, 22, 23, 34.

¹⁸³ Eg, Submissions 12, 16, 19, 23.

¹⁸⁴ Submission 15.

¹⁸⁵ Eg, Submissions 4, 12, 21, 34, 40, 43. In addition, Cairns Collective Impact on Domestic and Family Violence commented that the 'difficulty is a paucity of relevant services for these groups/communities'.

¹⁸⁶ Eg, Submissions 4, 6, 8, 9, 20, 21, 22, 23, 25, 26, 27, 33, 34, 36, 39, 40, 43, 44 and 41 Wangmann (2016), above n 37, 233. And, eg, Submission 16.

¹⁸⁷ Eg, Submissions 8, 25, 27, 39, 40.

¹⁸⁸ Eg, Submissions 4, 6, 8, 9, 20, 21, 23, 24, 25, 26, 27, 34, 39, 40 and 41 Wangmann (2016), above n 37, 233.

¹⁸⁹ Eg, Submissions 4, 8, 9, 20, 21, 23, 26, 27, 33, 34, 40, 43, 44 and 41 Wangmann (2016), above n 37, 233.

and the wider community (including law enforcement agencies and other domestic and family violence service providers)¹⁹⁰ to persons at risk.

6.193 This concern was summed up by two gender and family violence research academics from Monash University, who stated that:¹⁹¹

By requiring a person to request access to information and to act on that information once received, a [DVDS] places responsibility for action directly with the applicant, who may be experiencing domestic violence already or if not, is in a relationship where the behaviour of their partner has raised a level of concern. This shifts responsibility onto the individual to ensure their own safety and to 'vet' their partner. (notes omitted)

6.194 A legal academic further explained that:¹⁹²

The risk of DVDSs is that by placing responsibility on victims to act, this not only shifts attention away from potential offenders but potentially also shifts responsibility away from the various government agencies when 'arguably what needs to be improved is the State's response to domestic violence. More needs to be done to protect those who are at risk'. (notes omitted)

6.195 The risk of shifting responsibility gave rise to a number of other concerns. One service provider expressed concern that this would result in a diminishing focus on both systemic and cultural enablers of domestic and family violence, and on other criminal justice priorities such as police responses to domestic violence. They suggested that:¹⁹³

disclosures may promote subsequent police inaction, where police perceive that post-disclosure the situation is being managed by the victim themselves and they are not engaging in the risk management advised.

6.196 The Domestic Violence Prevention Centre (Gold Coast) provided feedback from a focus group of their clients who were of the view that a DVDS would cause them to feel pressured, by the system generally and by others viewing them as being accountable for the violence they had experienced. Another support service raised concerns that women might disengage from supports to avoid pressures or expectations of action, or could be forced into taking action that would increase their risk (such as leaving a relationship).¹⁹⁴

¹⁹⁰ Eg, Submissions 16, 20, 34 and 41 Wangmann (2016), above n 37, 233. Another respondent commented that 'there should be some attention to wider family and community responsibilities': Submission 25.

¹⁹¹ Citing Refuge, Submission to UK Home Office, *Domestic Violence Disclosure Scheme Consultation* (2012) and Duggan, above n 116, in which it is argued (at 31) that:

The focus is entirely detracted from the abusive (usually male) partner, whose responsibility in not abusing or harming others is not questioned. His decisions in allowing the relationship to develop are moot as it is she who must decide whether to stay or not. It could also be seen as deflecting potential abuse onto subsequent partners if the woman does leave the relationship.

¹⁹² Submission 41 Wangmann (2016), above n 37, 233, citing A Carline and P Eastel, *Shades of Grey – Domestic and Sexual Violence Against Women: Law Reform and Society* (Routledge, 2014) 80 and Fitz-Gibbon and Walklate, above n 15, 12.

¹⁹³ Submission 20, citing Fitz-Gibbon and Walklate, above n 15, 12.

¹⁹⁴ Submission 34. This respondent submitted that these risks 'can be mitigated by well resourced support services ... where empowerment, safety and respect are embedded'.

6.197 Some respondents referred to concerns that a DVDS would provide information but would ‘not make a victim safer, or equip her with support to act’,¹⁹⁵ and that a DVDS assumes that a person will leave a relationship (or take other action) after receiving a disclosure, which is not always realised in practice.¹⁹⁶

6.198 Respondents expressed concern that a shift in responsibility to the person at risk, combined with those other considerations, could give rise to ‘victim blaming’. Respondents explained that, if a person does not leave or take action after receiving a disclosure, that person might be viewed as not having taken appropriate action to protect themselves and therefore in some way be ‘blamed’ for any subsequent domestic or family violence.¹⁹⁷

6.199 One respondent suggested that a person might experience victim blaming if they did not seek a disclosure in order to ‘vet’ a potential partner.¹⁹⁸

6.200 A legal academic stated that:¹⁹⁹

A failure to ‘adopt what is considered to be an appropriate response’ may result in victims being ‘increasingly judged and consequently rendered more at risk, in a system which is already prone to victim blaming’. (notes omitted)

6.201 A number of respondents, including the Queensland Council for Civil Liberties and several domestic and family violence support services, expressed the view that victim blaming could negatively affect service delivery.²⁰⁰ In particular, several respondents raised concerns about police responses following a disclosure.²⁰¹ Sisters Inside Inc expressed concern that:

if a woman is not seen to take ‘appropriate’ protective action after relevant criminal history is disclosed, this may prejudice subsequent police responses to incidents of violence in a relationship.

6.202 A number of respondents suggested that a DVDS could contribute to some perceived inconsistencies in the responses of the criminal justice system to domestic

¹⁹⁵ Submission 33. See further [6.24] ff above.

¹⁹⁶ Submissions 8, 20, 21, 23, 34, 39, 40. See further [6.93] ff above.

¹⁹⁷ Eg, Submissions 8, 16, 20, 22, 23, 25, 27, 33, 34, 39, 43 and 41 Wangmann (2016), above n 37, 232. Comments in similar terms were made by other respondents: eg, Submissions 6, 21, 22, 24, 26, 31, 34, 36, 44.

¹⁹⁸ Submission 27.

¹⁹⁹ Submission 41 Wangmann (2016), above n 37, 232, citing Carline and Eastel, above n 192, 81 and Fitz-Gibbon and Walklate, above n 15, 12–13.

²⁰⁰ Eg, Submissions 6, 8, 20, 21, 22, 23, 25, 26, 27, 33, 35, 36, 39, 43, 44 and 41 Wangmann (2016), above n 37, 232.

²⁰¹ Eg, Submissions 6, 8, 20, 21, 26, 27, 35, 36, 39, 43, 44.

and family violence.²⁰² Two gender and family violence research academics from Monash University stated that:²⁰³

The criminal justice system, police and courts ... have a long history of victim blaming and denigration in responses to violence against women, particularly through the mobilisation of problematic gendered excuses for violence such as 'she asked for it'. Any scheme that could encourage the proliferation of such excuses should be avoided and failure to act on the part of the victim on information received opens the door to such victim blaming. (notes omitted)

6.203 Several respondents observed that victim blaming could also negatively affect other supports or services; for example, it was suggested that a person might receive poor service responses on the basis that he or she has not acted 'the right way'.²⁰⁴

6.204 Similarly, several respondents expressed the view that victim blaming could be of particular concern in child protection matters or family law proceedings; for example, because a person's decision not to leave a relationship might be 'judged negatively' or viewed as a 'failure to adequately protect' a child.²⁰⁵

6.205 Respondents also observed that victim blaming might cause people experiencing domestic and family violence to feel ostracised from or ashamed about seeking future assistance from police.²⁰⁶

6.206 Finally, some respondents observed that victim blaming could be of particular concern for people who often experience systemic barriers, such as

²⁰² Eg, Submissions 8, 36, 39 and 41 Wangmann (2016), above n 37, 233. The Suncoast Community Legal Service Inc. noted research that has 'categorised police responses to domestic violence as inadequate, biased and inconsistent': Trujillo and Ross, 'Police Response to Domestic Violence: Making Decisions about Risk and Risk Management' (2008) 23(4) *Journal of Interpersonal Violence* 454. They also noted research suggesting that police might view domestic and family violence as a matter of 'family dysfunction' or 'a social service concern' and observed that, if police take this view, 'there is a risk that dangerous coercive controlling violence is missed and approaches like cross-applications may be deemed appropriate by police': H Douglas and R Fitzgerald, 'Legal Processes and Gendered Violence: Cross-Applications for Domestic Violence Protection Orders' (2013) 36(1) *University of New South Wales Law Journal* 56, 70–71.

Another respondent, who was in favour of the introduction of a DVDS, stated that the scheme would 'need to ensure the willingness of police to still effectively engage where a person chooses to stay' and that 'following disclosure, support protocols and clear responsibilities for police and specialist services would need to be put in place': Submission 16.

²⁰³ Citing K Fitz-Gibbon, *Homicide Law Reform, Gender and the Provocation Defence: A Comparative Perspective* (Palgrave Macmillan, 2014) and K Fitz-Gibbon and JMM Maher 'Feminist Challenges to the Constraints of Law: Donning Uncomfortable Robes?' (2015) 23(3) *Feminist Legal Studies* 253.

²⁰⁴ Submission 26. See also, eg, Submissions 22, 27, 39 and 43.

²⁰⁵ Eg, Submissions 23, 19, 26, 43 and 41 Wangmann (2016), above n 37, 232. See also [6.233]–[6.236] below. TASC National stated that 'a failure to take action (after receiving a disclosure) on the victim's part may lead to further blame and isolation of the victim, particularly in the arenas of child protection and family law proceedings'. Cairns Collective Impact on Domestic and Family Violence explained that, if a person chooses not to act on a disclosure, child safety officers might take the view that a person has 'failed to protect' a child.

²⁰⁶ Submissions 26, 27. See also [6.257] ff below.

Aboriginal and Torres Strait Islander people and people with disability.²⁰⁷ A legal academic stated that:²⁰⁸

The 'failure' to act in a manner deemed appropriate may be judged more harshly for women from different backgrounds, particularly Indigenous women 'who are likely to face more serious structural inequities and impediments' to taking steps to ensure their own safety. (notes omitted)

The extent of any impact on perpetrator accountability

6.207 A few respondents stated that the introduction of a DVDS could increase the accountability of perpetrators of domestic and family violence,²⁰⁹ and several respondents suggested that one of the objectives of a DVDS should be that perpetrators be held accountable for their actions.²¹⁰

6.208 Some members of the public suggested that a DVDS could motivate change or make clear to perpetrators that their convictions for domestic and family violence will not be protected from future disclosure.²¹¹

6.209 TASC National submitted that:²¹²

If a disclosure is made under a DVDS it would certainly cause the perpetrator to be accountable in future relationships for his/her past actions. At present there is very little accountability for the past actions of perpetrators, unless their family members or former spouses come forward and make these actions known to any new partner. The lack of accountability leaves the perpetrator free to move onto a new relationship with little fear that their previous misdeeds will be made known to any future partners. A DVDS would remove the 'safety blanket' and put the [perpetrator] in a situation where they could be exposed. An improvement in accountability *may* at least make a perpetrator think twice before they take a certain course of action. (emphasis in original)

6.210 Legal Aid Queensland considered that the accountability of perpetrators or potential perpetrators might be improved if they were aware that information about their criminal history could be accessible by their future partners. However, this would

²⁰⁷ Eg, Submissions 22, 43 and 41 Wangmann (2016), above n 37, 232. See further [6.162] ff above.

²⁰⁸ Submission 41 Wangmann (2016), above n 37, 232 citing D Wilson et al, 'Becoming Better Helpers' (2015) 11(1) *Police Quarterly* 25, 28.

²⁰⁹ Eg, Submissions 2, 10, 21, 23.

²¹⁰ Eg, Submissions 19, 21, 27. The Queensland Indigenous Family Violence Legal Service commented that the principles of a DVDS (if implemented) should include holding perpetrators of domestic and family violence accountable for their use of violence and the impact of that on others and also, where possible, providing those perpetrators with opportunities for change.

²¹¹ Eg, Submissions 2, 10. Submission 10 stated that disclosure 'does not imply [that] a person could not change or has not matured in character'.

²¹² The UQ Pro Bono Centre stated that 'a DVDS may hold perpetrators accountable through deterrence. Individuals may think twice before engaging in domestic violence if they are aware of the repercussions of their actions'. However, this respondent also noted a lack of empirical evidence to demonstrate that a DVDS would improve perpetrator accountability. See further [6.15] ff above and [6.211] below as to the lack of evidence. Women's Legal Service Queensland explained that a DVDS may contribute to a 'culture of accountability' by acting as an additional punitive measure or as a message to perpetrators of violence, but ultimately submitted that a DVDS would not improve perpetrator accountability.

depend upon community awareness of the scheme.²¹³ A domestic and family violence support service observed that such awareness might be an incentive for change.²¹⁴

6.211 On the other hand, a number of respondents considered that a DVDS would not increase the accountability of perpetrators (or that it is unclear whether any such increase would occur).²¹⁵ Several respondents commented that there is presently a lack of evidence to show that a DVDS would improve perpetrator accountability.²¹⁶

6.212 Services and Practitioners for the Elimination of Abuse Queensland and No to Violence incorporating the Men's Referral Service jointly submitted that 'a DVDS would increase the exposure of some perpetrators of domestic and family violence, but the question of accountability is not so clear'.²¹⁷

6.213 Mercy Community Services explained that 'people who use violence are often least accountable to those that they impact' and therefore that disclosure of a person's history to their partner would 'be limited in its effectiveness' regarding perpetrator accountability. They further observed that the person receiving the disclosure must 'facilitate that accountability', which is 'a risky and ineffective expectation'.

6.214 The Aboriginal and Torres Strait Islander Women's Legal Service NQ Inc considered that a DVDS 'detracts from the accountability and responsibility of the perpetrator to abstain from using abusive behaviour'.

6.215 The Queensland Indigenous Family Violence Legal Service expressed the view that a DVDS would not improve perpetrator accountability because it would need to carefully balance an applicant's '*right to know*' against a subject person's right to privacy and right to rehabilitate.²¹⁸

6.216 Several respondents noted that a DVDS may unintentionally operate as a disincentive for change.²¹⁹ A member of the public observed that people may be less

213 The Suncoast Community Legal Service Inc. made a similar observation, noting that this could in turn encourage greater reporting, but ultimately raised concern about the impact on reoffending and the need for intervention. Legal Aid Queensland further observed that it is necessary to evaluate existing schemes in order to comment on these issues. See [6.15] ff above and [6.211] below as to the lack of evidence.

214 Submission 16. Specifically, this respondent expressed the view that a DVDS (if it involved disclosure of information only to those likely to be impacted, rather than in the form of a register) 'does not in itself appear to increase accountability'. However, they also stated that 'awareness of the potential for disclosure may act as an incentive for a person to undertake behaviour change programs'.

215 Eg, Submissions 4, 8, 16, 19, 20, 26, 27, 29, 33, 34, 36, 39, 43, 45.

216 Eg, Submissions 4, 8, 13, 20, 21, 26, 27. A group of legal academics from Bond University observed that similar schemes for disclosing certain types of sexual offences have not resulted in a reduction in reoffending: citing L Whitting et al, 'The Impact of Community Notification on the Management of Sex Offenders in the Community: An Australian perspective' (2014) 7(2) *Australian and New Zealand Journal of Criminology* 240 and K Zgoba et al, 'Megan's Law: Assessing the Practical and Monetary Efficacy' (December 2008).

217 These respondents stated that a disclosure could lead to conversations with perpetrators regarding accountability, but that it would often not be safe to do so.

218 See further [6.131] ff above as to privacy, and [6.145] ff above as to rehabilitation.

219 Eg, Submissions 27, 28, 32, 33.

trusting of, or less likely to engage with, the system if they are of the view that matters could later be ‘used against them’ through a DVDS.²²⁰

6.217 As discussed at [6.191]–[6.206] above, a number of respondents expressed the view that a DVDS would shift responsibility away from perpetrators to persons at risk. The Queensland Law Society stated that ‘this transfer of responsibility to victims ... directly conflicts with policy objectives to hold perpetrators accountable for their actions’.²²¹

6.218 Some respondents considered that a DVDS could reduce perpetrator accountability because, if perpetrators were aware that information about them could be accessed in the future, they may be less likely to consent to domestic violence orders.²²² Another respondent observed that, if perpetrators were made aware of the potential for later disclosure under a DVDS, they might obstruct the progression of criminal or domestic and family violence matters.²²³

6.219 Some respondents noted that the potential impact of a DVDS on perpetrator accountability would be limited if the subject person of a disclosure were not informed about the disclosure.²²⁴

6.220 Mercy Community Services explained that not informing a subject ‘allows that subject ... to continue being silent ... [and] misses opportunities for intervention and support’, but concluded that the safety of the person at risk is ‘of greater importance’. Another respondent observed that ‘a well supported disclosure ... could lead to accountability conversations with [a] perpetrator’, but that it may often not be safe enough to do so.²²⁵

6.221 The Domestic Violence Prevention Centre (Gold Coast) suggested that, rather than advising the subject person of an application or disclosure, perpetrators should be provided with advice ‘at the point of conviction or protection order progression’ that an application for disclosure can be made at any time.

6.222 Cairns Collective Impact on Domestic and Family Violence stated that, if a subject person were to be informed about an application or disclosure, they should also be provided with appropriate support, including referral to specialist behaviour change services.²²⁶ Conversely, PeakCare Queensland Inc. (which expressed the view that the subject person should not be informed of applications or disclosures) suggested that the person at risk should be provided with information about early

220 Submission 32.

221 See further [3.17] above as to the objects and principles of the *Domestic and Family Violence Protection Act 2012* (Qld) and [3.56] ff above as to the Taskforce and the Prevention Strategy.

222 See further [6.239] ff below as to protection orders. One respondent also noted that the existence of a DVDS may place pressure on victims not to report breaches of protection orders to police: see further [6.257] ff below as to the reporting of domestic and family violence.

223 Submission 36.

224 Eg, Submissions 26, 34, 45. The question whether the subject person should be informed is also discussed at [6.139] and [6.160]–[6.161] above.

225 Submission 45.

226 A similar suggestion was made by Legal Aid NSW.

intervention pathways to perpetrator intervention programs and specialist family support services.²²⁷

6.223 A number of respondents observed that other existing or proposed responses to domestic and family violence are more likely to have an impact upon perpetrator accountability.²²⁸

6.224 Mercy Community Services observed that, where a person is convicted of an offence, the response of the criminal justice system could 'provide space for perpetrator accountability and behaviour change'.²²⁹

6.225 The Queensland Indigenous Family Violence Legal Service stated that perpetrators 'are already held to account by the increased penalties that now apply under the *Domestic and Family Violence Protection Act 2012* for breaches of domestic violence protection orders'.²³⁰ However, they observed that there is a 'gap' following sentencing for such breaches, because of limited access to, and availability of, perpetrator programs.

6.226 Mercy Community Services referred favourably to current initiatives regarding domestic and family violence in Queensland, stating that:

the presence of an integrated response ... and high risk teams would improve [perpetrator] accountability, as it may include information sharing with an applicant, but places a responsibility on the system to respond to the person using violence and the service system.

Other issues and unintended consequences

6.227 Respondents raised a number of other issues about the potential impact of a DVDS on other people and processes.

Misuse of a disclosure scheme

6.228 Several respondents expressed concern that a DVDS would be open to misuse.²³¹

6.229 The Queensland Council for Civil Liberties suggested that, when a relationship has ended, one party to that relationship might make allegations of

²²⁷ The Queensland Indigenous Family Violence Legal Service also expressed the view that a subject person should not be informed of an application or a disclosure. They further noted that, if a subject person were referred to a support service, this could 'alert' them to the fact that there had been an application or a disclosure. However, they suggested that a subject person should be referred to support services if (a) they are currently serving a community-based sentence as communications about and referral to an appropriate program could occur through those existing channels, or (b) where they have a history of domestic violence offences or a history of violence.

²²⁸ Eg, Submissions 19, 20, 34, 39.

²²⁹ This respondent considered that, if a DVDS were to be implemented in Queensland, it should not involve subjects in the application and disclosure process or refer them to appropriate supports. They stated that the focus of a DVDS should be 'applicant empowerment and safety'.

²³⁰ See [3.42], n 59 above.

²³¹ Eg, Submissions 3, 4, 9, 19, 21, 23, 26, 28, 29, 32, 40, 44.

domestic or family violence in order to affect the other person's prospective relationships.

6.230 The UQ Pro Bono Centre stated that 'a DVDS is susceptible to misuse through vexatious claims'. Cairns Collective Impact on Domestic and Family Violence observed that vexatious applications for disclosure could be made by a third party 'minded to cause harm or embarrassment' to the subject.²³² Another respondent noted that people could apply for a disclosure with the intent of using information for a purpose other than that intended by the scheme.²³³

6.231 Caxton Legal Centre Inc. observed that, following the disclosure of information under a DVDS, there would be no ability to control the use of that information for other purposes.²³⁴ A number of respondents submitted that disclosed information could be inappropriately shared (including on social media) or used by the recipient or other person with whom the recipient shares the information.²³⁵

6.232 The Queensland Law Society noted that a DVDS could include a requirement that a person receiving a disclosure undertake to not 'share, publish or misuse' the information. However, they raised a number of issues with this:

First, it is not reasonable nor helpful to expect a person to withhold this information from support services or their close support network from which they seek assistance, particularly if they decide to leave the relationship on the basis of that information. Secondly, any person to whom the information was disclosed by a person at risk to obtain support would not be bound by the undertaking. It is essential that any ... undertaking be carefully crafted to accommodate practical circumstances and prevent further disclosure and misuse of the information.

6.233 Respondents noted that disclosed information could be used to 'slander' the subject person,²³⁶ to 'intimidate, manipulate, threaten or blackmail' the subject

²³² Examples of third parties given by this respondent included disapproving parents, vindictive ex-partners, vigilantes, and disgruntled co-workers. The ability of such persons to seek disclosure would depend on the eligibility criteria of the scheme.

²³³ Submission 9.

²³⁴ Similar comment was made by a member of the public: Submission 32. In addition, the UQ Pro Bono Centre submitted that a third party, such as a person involved in family law proceedings or a meddling family member or employer, could use disclosed information for 'ulterior purposes'.

²³⁵ Eg, Submissions 21, 23, 28, 29, 32, 40. UnitingCare Queensland further noted the potential for this to have the result of stigmatising victims, perpetrators and their families and affecting attitudes toward domestic and family violence: see [6.259] below.

²³⁶ Submission 32.

person,²³⁷ impact on the subject person's employment,²³⁸ inform child protection proceedings,²³⁹ or inform family law proceedings.²⁴⁰

6.234 The potential misuse of information disclosed under a DVDS in family law proceedings was a particular concern for several respondents, including two community legal centres and a member of the public.²⁴¹

6.235 TASC National observed that, anecdotally and in their experience, domestic violence orders can be improperly encouraged or obtained by people involved in family law matters (particularly parenting matters) in order to discredit the other party. It expressed the view that, given the 'combative and adversarial environment' of those matters, there is potential for information available under a DVDS to be misused.

6.236 Several respondents suggested that, if a DVDS were to be implemented in Queensland, it should include a provision similar to section 121 of the *Family Law Act 1975* (Cth), which generally makes it an offence to publish information about a proceeding that identifies a party, witness or other person associated with the proceedings.²⁴² One respondent observed, however, that use of disclosed information would nonetheless be difficult to control and that such a provision would be difficult to enforce.²⁴³

6.237 A number of respondents suggested that, if a DVDS were to be introduced in Queensland, it should include 'criminal offences for the deliberate or reckless misuse of disclosed information by an applicant',²⁴⁴ including the publication or sharing of information generally and via social media.²⁴⁵

²³⁷ Submission 21.

²³⁸ Eg, Submissions 21, 32.

²³⁹ Submissions 12, 16, 19, 29, 34, 35, 43. The Queensland Indigenous Family Violence Legal Service stated that:
Limitations should also be built into the supporting legislation of a DVDS so that a third party, who may for example be a government department such as the Department of Communities and Child Safety, cannot use any disclosure made to it, to solely substantiate any intervention proceedings for a child deemed at risk of harm.

²⁴⁰ Eg, Submissions 6, 9, 21, 23, 26, 32.

²⁴¹ Eg, Submissions 9, 21, 23, 26, 32. Cairns Collective Impact on Domestic and Family Violence expressed concern that a DVDS could be used as a 'fishing expedition' for family law proceedings. Caxton Legal Centre Inc. similarly noted that 'parties may seek disclosure for reasons other than the protection of a person's safety, including in family law and other proceedings'.

²⁴² Submissions 32, 40. Legal Aid NSW supported an offence for publication of disclosed information in similar terms to the *Children (Criminal Proceedings) Act 1987* (NSW) s 15A, stating that 'this would cover publication in social media'.

²⁴³ Submission 32. In addition, Caxton Legal Centre Inc. commented on the general difficulty in controlling information following disclosure.

²⁴⁴ Submission 23. A member of the public made a similar observation: Submission 3. A number of respondents expressed the view that a DVDS should include offences for unlawfully disclosing or improperly obtaining information under the scheme: Submissions 4, 16, 19, 27, 29, 32, 40, 44, 45. Legal Aid NSW stated that 'it should not be an offence to disclose information to a confidant or a support service'.

²⁴⁵ Submission 23.

6.238 Two respondents expressed concern that the implementation of a DVDS could, over time, lead to the disclosure of similar information for other purposes, such as employment or participation in online dating.²⁴⁶

Domestic violence orders and the courts

6.239 A number of respondents expressed the view that a DVDS could unintentionally impact on the progress of domestic and family violence matters through the court system.²⁴⁷

6.240 The majority of respondents focussed specifically on the potential for a DVDS to impact adversely on the making of domestic violence orders under the *Domestic and Family Violence Act 2012*.

6.241 A domestic and family violence support service stated that, if perpetrators were aware that domestic violence orders or convictions could later be disclosed, a DVDS might 'be used [by perpetrators] as a tool of interference or obstruction to the progression of criminal or domestic violence matters'.²⁴⁸ Several respondents observed that a significant number of domestic violence orders are made 'by consent' and 'without admissions'.²⁴⁹ Respondents observed that this enables the early resolution of matters and enables persons at risk 'to receive the benefit of the order', without the need for a contested hearing.²⁵⁰

6.242 Respondents expressed the view that, if a DVDS were to permit the disclosure of domestic violence orders, people might be less willing to consent to those orders because they could later be disclosed. Respondents observed that this could lead to an increase in the number of contested applications.²⁵¹

6.243 Several respondents stated that contested applications can cause distress and uncertainty, prolong court proceedings and require the aggrieved to give evidence.²⁵² Respondents expressed the view that an increase in contested applications could result in additional barriers to a person at risk obtaining an order,²⁵³ or fewer orders being made.²⁵⁴ Women's Legal Service Queensland submitted that:

For private applicants, the process of preparing for and attending a hearing once an [a]pplication has been opposed can be onerous and detrimental to her safety. This can lead to [an applicant] choosing to withdraw her application, or enduring

²⁴⁶ Submissions 32, 44.

²⁴⁷ Eg, Submissions 4, 9, 13, 21, 27, 28, 32, 33, 36, 40, 42, 43, 44.

²⁴⁸ Submission 36.

²⁴⁹ Eg, Submissions 9, 21, 40, 44. See [3.36]–[3.38] above as to domestic violence orders made by consent.

²⁵⁰ Eg, Submissions 9, 21, 40.

²⁵¹ Eg, Submissions 4, 9, 13, 21, 27, 28, 32, 33, 40, 42, 43, 44 and 41 Wangmann (2016), above n 37, 231. The Queensland Law Society also observed that this could make an accused person reluctant to plead guilty to a breach of a protection order.

²⁵² Eg, Submissions 4, 9, 21, 28, 33, 40, 42.

²⁵³ Submission 33.

²⁵⁴ Submission 21.

financial hardship and stress in engaging a private lawyer. For many women, the absence of a protection order can be highly detrimental to her and her family's safety. WLS has concerns [about] any measure which may place further barriers for women to obtain domestic violence protection orders if and when they are needed for her safety.

6.244 A number of respondents also submitted that an increase in contested applications would have a commensurate impact on court resources, especially in regional areas, and could result in the hearing of matters that do not have merit.²⁵⁵

6.245 The Bar Association of Queensland argued that:

a DVDS that included the disclosure of such [previously confidential] information in applications could have the unforeseen consequence of reducing the effectiveness of the system of protection orders under the *Domestic and Family Violence Protection Act 2012*.

Victims of domestic and family violence

6.246 A number of respondents submitted that an unintended consequence of a DVDS is that victims of domestic and family violence could become the subject of a disclosure; that is, where an incident of domestic or family violence has resulted in a victim being accused of an offence or made the respondent to a domestic violence order.²⁵⁶

6.247 One respondent observed that 'many women are incorrectly identified as the aggressor[s] in domestic and family violence incidents'.²⁵⁷ A number of respondents observed that a person who is experiencing domestic or family violence may respond by using violence in self-defence, which could result in that person being cautioned, arrested, charged or convicted of an offence, or made the respondent to a domestic violence order.²⁵⁸

6.248 Respondents also observed that, in some instances, each party to a relationship applies for or is granted a protection order naming the other as the respondent, commonly referred to as 'cross-applications' and 'cross-orders'.²⁵⁹ Several respondents, including ANROWS and two gender and family violence research academics from Monash University, noted recent research about the

²⁵⁵ Eg, Submissions 9, 21, 40, 42, 43. The Queensland Council for Civil Liberties stated that 'this points to a general concern about whether this proposal will divert police resources from dealing directly with complaints of domestic violence'.

²⁵⁶ Eg, Submissions 6, 8, 12, 16, 20, 21, 25, 27, 33, 34, 35, 36, 39, 40, 43, 44, 45. The Queensland Domestic Violence Services Network stated that there are 'significant unintended consequences' for women who are wrongfully seen as respondents, and for people who have been wrongfully convicted of crimes related to domestic and family violence.

²⁵⁷ Submission 45.

²⁵⁸ Eg, Submissions 8, 20, 21, 25, 34, 35, 36, 39, 40, 43, 44. Sisters Inside Inc, citing data provided by Queensland Corrective Services on 16 December 2016, stated that:

women are frequently charged with breaches of the [*Domestic and Family Violence Protection Act 2012* (Qld)] or domestic violence related offences (eg assault). In 2014–15 and 2015–16, breach of the [*Domestic and Family Violence Protection Act 2012* (Qld)] was in the top ten offences for which women were in prison in Queensland.

²⁵⁹ Eg, Submissions 8, 12, 20, 21, 27, 33, 34, 35, 36, 39, 44. Cross-orders may be sought by the parties or may be made by police, for example, where one partner indicates that a relationship involves mutual violence.

increasing frequency of cross-applications and cross-orders and expressed concern about their use against victims of domestic and family violence.²⁶⁰

6.249 Respondents observed that cross-applications made by a perpetrator may be vexatious, malicious or on a ‘tit for tat’ basis.²⁶¹ One respondent described this action as a means of ‘secondary victimisation’ against women who, primarily for reasons of safety, cannot effectively advocate for themselves.²⁶² Another observed that ‘the rise of cross-applications has been interpreted as offenders exploiting the system that is meant to protect victims; to instead exact greater levels of control, harassment and intimidation on the victim’.²⁶³ A domestic and family violence support service stated that a cross-application or cross-order might arise due to ‘an act of self-defence or failure by law enforcement officers to fully investigate matters to determine which party is most at risk of harm’.²⁶⁴

6.250 Respondents observed that the potential for a victim to have some record in relation to an offence or to be the respondent in a cross-application may have the result that the victim becomes the subject of a disclosure under a DVDS.²⁶⁵ Respondents observed that this could result in the scheme providing inaccurate information about risk, or causing harm or disadvantage to those that it seeks to protect.²⁶⁶ ANROWS submitted, specifically in relation to research about cross-applications, that:²⁶⁷

The lack of clarity in differentiating between primary coercive aggression and retaliatory or situational violence illustrated by this data, raises questions about the potential for disclosure of history of violence relating to subjects who do not

²⁶⁰ Eg, Submissions 8, 12, 35, 39, citing Douglas and Fitzgerald, above n 202. See [3.34]–[3.35] above as to cross-applications.

ANROWS also noted research identifying that many immigrant and refugee women experiencing domestic or family violence were named as the respondent in a protection order obtained by the perpetrator of violence, which was considered by these women to be an ‘intimidation tactic’: citing C Vaughan et al, above n 169, 4.

Women’s Legal Service NSW also noted research on female defendants to apprehended domestic violence order (‘ADVO’) applications, which found that over two-thirds of those women reported they were the victim of domestic violence. Some women felt that they were not believed by police, and others were of the view that the perpetrator had initiated ADVO proceedings as a means of further controlling their behaviour by threatening to report them to police. Women’s Legal Service NSW recommended that the NSW police should ‘continue to strengthen their policies and procedures around identification of the ‘primary victim’’: citing Women’s Legal Service NSW, *Women Defendants to AVOs: What is Their Experience of the Justice System* (March 2014), 4.

²⁶¹ Eg, Submissions 25, 27, 33, 34.

²⁶² Submission 36 stating that, for this reason, it is important that any DVDS incorporate a ‘gendered response’ and that participating agencies have an understanding of power, control and coercion. Similarly, Sister’s Inside Inc observed that data about cross-orders and offences ‘highlights institutional problems with the policing of domestic violence and a systemic failure to understand how power operates in intimate relationships’, leading to concerns about police responses being affected following disclosure under a DVDS: see also [6.191] ff above as to shifting responsibility.

²⁶³ Submission 39, citing Douglas and Fitzgerald, above n 202. Similar comment was made by Mercy Community Services.

²⁶⁴ Submission 20. See also the comments of ANROWS at [6.250] below.

²⁶⁵ Eg, Submissions 8, 12, 20, 21, 27, 34, 40, 43.

²⁶⁶ Eg, Submissions 8, 12, 20, 21, 27, 33, 34, 39, 40, 43. The Suncoast Community Legal Service Inc. observed that victims about whom a disclosure is made under a DVDS would experience the consequences of disclosure, including impacts upon their right to privacy.

²⁶⁷ Citing Douglas and Fitzgerald, above n 202.

pose a danger to their partners. Caution regarding the potential for a DVDS to inadvertently penalise those it seeks to protect is therefore warranted.

6.251 Mercy Community Services noted that such persons ‘have already been victimised by the systemic response to domestic and family violence’. They observed that victims who attempt to protect themselves with violence are often the least resourced, and that those with access to fewer resources are more vulnerable to experiencing domestic and family violence. They submitted that a ‘DVDS may add to systemic victimisation rather than improving resourcing to these populations’.

6.252 Mercy Community Services further suggested that a DVDS could ‘extend opportunities’ to a perpetrator to manipulate or control a person who is at risk, and could expose that person to greater risk.²⁶⁸

Third parties

6.253 A number of respondents expressed concern that a disclosure about a perpetrator’s previous history might result in the disclosure of information about a third party, such as the previous victim of an offence or an aggrieved in a domestic violence order application.²⁶⁹ The Queensland Law Society stated that:²⁷⁰

the information disclosed could ... identify past victims, thereby breaching the privacy of those victims. While names are likely to be withheld, a past victim’s identity could be identified through other information, such as whether the victim was a former partner or family member. In our view, this constitutes an unacceptable breach of a past victim’s privacy.

6.254 The Queensland Council for Civil Liberties also expressed concern about the disclosure of information about third parties:

research from Queensland indicates that partners frequently seek protection orders against one another. The only way then to accurately inform the applicant would be to provide them with information about both parties. This would involve the disclosure of potentially deeply personal information about an entirely irrelevant individual.

6.255 Respondents noted that, if a DVDS were to be introduced, there would be a need to protect or prohibit disclosure of the identity of previous victims.²⁷¹ One respondent stated that any information collected from a support service about a victim or aggrieved person should not be disclosed without that person’s express consent.²⁷² That respondent also observed that, when disclosing information under a DVDS, there would be a need to consider the safety of other parties; for example,

²⁶⁸ This respondent also noted that, if a broader range of information were disclosable under a DVDS, the vulnerability of victims might be increased.

²⁶⁹ Eg, Submissions 20, 21, 36, 40, 44.

²⁷⁰ See also [6.136]–[6.137] above.

²⁷¹ Eg, Submissions 21, 33. The UQ Pro Bono Centre commented that other involved parties should also be protected.

²⁷² Submission 36. This respondent noted, however, that ‘risk indicators and lethality factors’ are important considerations when conducting a risk assessment.

whether the disclosure of information about a previous victim would place that earlier victim at risk.

6.256 Further, both the Queensland Family and Child Commission and the Queensland Domestic Violence Services Network observed that the impact of a DVDS on children and young people is presently unknown.²⁷³

Disincentive to reporting domestic and family violence

6.257 Respondents observed that a DVDS might discourage people from reporting domestic and family violence or obtaining a domestic violence order.²⁷⁴ Women's Legal Service Queensland expressed concern that a DVDS could contribute to a culture of victim blaming, and thereby affect victims' willingness to contact police.²⁷⁵ They also submitted that the risk of a perpetrator being subject to a disclosure under a DVDS could 'place further pressure on victims' to not report breaches of domestic violence orders.

6.258 UnitingCare Queensland expressed a similar concern, stating that:²⁷⁶

Reporting domestic violence can provide victims with access to immediate safety. Protection notices, with the recent provisions to enable police officers to issue notices when responding to incidents and for children to be included in them, are an important first response and can provide for the immediate safety of victims and their children. We are concerned that a DVDS could discourage people from reporting domestic violence because of a fear that the details of a family member or partner could be made public; in particular we believe a DVDS could deter reporting [of] elder abuse and discourage Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds from seeking support and advice.

6.259 UnitingCare Queensland went on to observe that, if information disclosed under a DVDS were to be shared more broadly, this could 'stigmatise victims, perpetrators and their families', which could in turn 'see domestic violence once again becoming a "shameful secret" or "private family matter"'.²⁷⁷

²⁷³ The Queensland Domestic Violence Services Network referred particularly to children interacting with the subject of a disclosure.

²⁷⁴ Eg, Submissions 33, 28.

²⁷⁵ See further [6.198] ff above as to victim blaming.

²⁷⁶ UnitingCare Queensland also observed that, in their experience, victims were more willing to pursue a domestic violence order (and perpetrators are less likely to contest the order) because it does not automatically lead to a criminal record. They expressed concern that a DVDS would result in an increased likelihood that protection orders will be challenged: see also [6.239] ff above.

²⁷⁷ See also [6.136] above as to information privacy concerns.

Chapter 7

The Commission's views

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INTRODUCTION

7.1 In recent years, several jurisdictions have introduced a DVDS as a new measure intended to enhance the safety of persons at risk of domestic and family violence.¹ Such schemes provide a formal mechanism for disclosing to a person at risk information about the relevant criminal or domestic violence history of the person's current (or, in some cases, former) partner. Generally stated, the aim of the disclosure is to enable the person to make informed decisions about their relationship and their personal safety.²

7.2 As mentioned in Chapter 3, Queensland's current domestic and family violence reform strategy — the Prevention Strategy — is focussed on three areas: enhancing and integrating the service response, shifting community attitudes and behaviour and strengthening the response of the justice system.³

7.3 In this chapter, the Commission considers whether Queensland should introduce a DVDS. In considering this threshold issue, particular consideration is given to whether a DVDS has the potential to strengthen Queensland's response to domestic and family violence and to complement the reforms that have been or are being implemented under the Prevention Strategy.⁴

7.4 Ultimately, the Commission does not recommend that Queensland should introduce a DVDS.

¹ See Chapter 5 and Appendix C, for a discussion of the schemes in other jurisdictions.

² See [5.3] above.

³ See [3.59], Fig 3-3 above.

⁴ See the terms of reference paras 2–4, set out in Appendix A below.

THE COMMISSION'S VIEWS

Resource implications

7.5 The Prevention Strategy includes reforms to transform Queensland's service system response to domestic and family violence through improved services and the design and implementation of an integrated service response. Considerable funds have been allocated to implementing those reforms.⁵

7.6 The implementation of a DVDS consistently across Queensland would likely require the allocation of substantial funding and other resources.⁶ The Commission is not persuaded that this would be justified.

7.7 A DVDS would be likely to benefit only a small number of people.⁷ Further, for the reasons outlined below, it is least likely to benefit high risk groups who need the most assistance.⁸

7.8 Even if well resourced and supported, a DVDS has an unproven capacity to reduce or prevent domestic and family violence. As explained below, it is unlikely that the disclosure of criminal or domestic violence history information in itself would increase safety.⁹

7.9 The high incidence of domestic and family violence in Queensland, increased reporting of domestic and family violence, and increasing numbers of applications for domestic violence orders point to the high demand for frontline

⁵ See [3.61]–[3.62] above.

⁶ The Commission has been unable to obtain specific information about the financial implications of introducing a DVDS in Queensland. Many respondents observed that, if implemented in Queensland, a DVDS would require additional or substantial resources to be effective (including for police services, specialist training and personnel and specialist support services): see [6.44] ff above. See also [6.165], [6.177] and [6.189]–[6.190] above.

There is limited information available about the financial implications and cost-effectiveness of such schemes in other jurisdictions. The assessment of the DVDS pilot in England and Wales estimated that the average cost of processing a right to ask application was £690 and a right to know application was £810: *UK Pilot Assessment* (2013) 4. The costs of the pilot were absorbed within existing local police budgets: 9. It was also estimated in a regulatory impact statement relating to the pilot that disclosure would have to prevent domestic abuse in 405 (33%) cases under the scheme to break even against the estimated costs of the scheme: *UK Impact Assessment* (2013) 16. In New South Wales, the State Government has allocated \$2.3 million over the duration of the two year pilot for domestic and family violence support services in the four pilot areas: P Goward, Minister for Mental Health, Minister for Medical Research, Assistant Minister for Health, Minister for Women, Minister for the Prevention of Domestic Violence and Sexual Assault, 'Domestic Violence Disclosure Scheme launched' (Media Release, 13 April 2016). Information about the costs of the schemes in Scotland and in New Zealand is not currently available.

⁷ See, eg, [41] and [64] in Appendix C below, in relation to the take-up rate for the NZ DVDS and NSW DVDS pilot. Many respondents concluded that a DVDS would be of benefit to only a small number of people: Submissions 4, 12, 23, 31, 34, 36, 43. For example, several respondents referred to the relatively low take-up rate for both the NZ DVDS and the NSW DVDS pilot: Submissions 4, 40, 40A. TASC National observed that some persons at risk might not come to the attention of [relevant entities in the domestic and family violence sector] because 'they fear for their safety if they make an application [under the DVDS] or report domestic violence to a third party'. Further, some respondents observed that, due to barriers to leaving a relationship and seeking support, only a small number of those who received a disclosure would find it useful: Submissions 4, 31, 36.

⁸ See [7.12]–[7.17] below.

⁹ See [7.18]–[7.24] below.

services and support in this sector.¹⁰ Consultation in this review has identified that those demands and the progress of the current reforms are critical and of greater importance than a DVDS.¹¹

7.10 The Commission considers that the introduction of a DVDS could detract from these measures, and their focus on managing high risk cases.

7.11 Given the limitations of a DVDS and the competing demands on Government funds and other resources, the Commission considers that funds and other resources would be better directed to frontline services and continuing implementation of the current reforms.

A DVDS would not meet the needs of high risk groups

7.12 Queensland covers a large geographical area and has a decentralised and diverse population. The Commission is concerned that a DVDS would not meet the different needs of particular high risk groups, including Aboriginal and Torres Strait Islander people and others living in regional and remote areas of Queensland.¹²

7.13 A DVDS is essentially a 'one-size-fits-all' approach that is not tailored to the different experiences and needs of diverse groups.¹³

7.14 A DVDS is likely to have a low take-up rate and a reduced effectiveness for particular high risk groups.¹⁴ For many within those groups, there is likely to be:

- an unwillingness to engage with police and other formal agencies;
- reduced access to (culturally) appropriate support services;
- greater barriers to seeking help, accessing support services and leaving abusive relationships;¹⁵
- localised knowledge, particularly in smaller communities, about an individual's criminal history and past behaviour;
- a higher incidence of family violence outside of intimate partner relationships; and
- for many Aboriginal and Torres Strait Islander people, a preference for community and family approaches to conflict that focus on restorative justice principles over individualised responses.

¹⁰ See [2.20]–[2.22] and [3.33] above.

¹¹ See, eg, [6.32]–[6.38] and [6.53]–[6.57] above.

¹² See [2.23]–[2.28] above. Other high risk groups of concern include people from culturally and linguistically diverse backgrounds and other people with specific needs such as people with disability, older people and people who may identify as LGBTI.

¹³ The need for tailored strategies for different communities, rather than one-size-fits-all approaches is recognised at both the national and State level: see [3.55] and [3.75]–[3.77] above.

¹⁴ See [6.162] ff above.

¹⁵ See [3.6] ff, [6.164]–[6.166], [6.174], [6.176] and [6.186] above.

7.15 Further, many high risk groups face multiple disadvantages and are overrepresented in the criminal justice system.¹⁶ Such persons could therefore be overrepresented in a DVDS as perpetrators, which could make it more difficult to ‘break the cycle’ of violence.¹⁷ There is a risk that the disclosure of criminal histories could interfere with rehabilitation pathways.

7.16 The Commission is concerned, therefore, that a DVDS is unlikely to be of benefit to high risk groups and could accordingly have an inconsistent and inequitable effect across the State.¹⁸

7.17 A DVDS would contrast with the current integrated service response reforms which are intended to take a holistic approach, with tailored and streamlined responses as well as targeted strategies to meet the specific needs of high risk groups, including Aboriginal and Torres Strait Islander people.¹⁹

Need for support

7.18 For a number of reasons, the Commission is of the view that the disclosure of information to a person at risk under a DVDS would not in itself lead to an increase in their safety.

7.19 The expectation underlying a DVDS is that a person who receives information about their partner’s criminal or domestic violence history will, because of that information, be empowered to take steps to protect themselves (and their children), including by seeking to end the relationship.

7.20 However, the dynamics of domestic and family violence and the responses of victims and potential victims are complex and do not necessarily accord with that expectation. As explained in Chapter 2, there are many barriers to leaving and reasons why a person might stay in an abusive relationship.²⁰

7.21 Further, there is evidence that separation heightens the risk of violence.²¹ A number of specialist domestic and family violence support services have voiced a concern that, based on their experience, there could also be an increased risk of harm if the partner were to discover the disclosure.²²

7.22 Bare disclosure (or a non-disclosure) of information under a DVDS would not address these issues. For a DVDS to meet its protective purpose, it would ordinarily need to link the person at risk to appropriate specialist support services. However, this poses several challenges; most notably, the current limited availability

¹⁶ See [2.25] ff, [6.171]–[6.174], [6.179] and [6.187] above.

¹⁷ See, eg, [6.179] above.

¹⁸ As Cairns Collective Impact on Domestic and Family Violence observed, there is ‘the potential for a “second-class” DVDS’ in the areas of highest need.

¹⁹ See [3.75] ff above.

²⁰ See [2.12]–[2.13] above.

²¹ See [2.16] above.

²² See [6.67] above.

and accessibility of appropriate services in many parts of Queensland²³ and other barriers that impede a person's willingness to use such services.²⁴

7.23 Where support services can be and are accessed, the provision of those services (including the provision of specialist advice, full risk assessment, safety planning, access to emergency accommodation and other support) is more likely to increase the safety of a person at risk than the disclosure of information under a DVDS.

7.24 Information about an individual's criminal or domestic violence history can be relevant to an assessment of risk. This information is accessible by relevant agencies, and can be disclosed in certain circumstances, under the new common risk assessment and inter-agency information sharing reforms, along with a full range of other relevant risk indicators.²⁵

Risk assessment and increasing safety

7.25 Reform measures under the Prevention Strategy focus on identifying and responding to high risk cases through the development and use of an evidence based common risk assessment and management framework that takes account of the full range of risk indicators including, but not limited to, a perpetrator's criminal or domestic violence history.²⁶

7.26 In contrast, a DVDS is focussed only on the disclosure to the person at risk of relevant criminal or domestic violence history information. Reliance on information about a single potential indicator of risk is unlikely to provide an accurate or complete picture of risk for that person.

7.27 Further, the possible utility of a DVDS is limited by the fact that domestic and family violence is under-reported,²⁷ with the result that there may not be any complaint, domestic violence order, conviction or other relevant information (as the case may be) to disclose.²⁸

7.28 Another limitation on the effectiveness of a DVDS is that the type and extent of the information that may be disclosed would depend on the breadth of the scheme (in particular, whether the disclosable information would be limited to specified

23 See [7.14] above. Many respondents, including a number of specialist domestic and family violence support services, observed that there are gaps and unmet needs for support services, particularly in rural, regional and remote areas: see [6.165] above. As TASC National commented, '[s]ervices are sparse west of Toowoomba, and non-existent in some regions'.

24 See [3.8]–[3.13] above.

25 See [3.88]–[3.97] above. Personal information can also be disclosed to a person (including a person at risk) by police or other government agencies under the *Information Privacy Act 2009* (Qld) if the 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: see [4.5] and [4.9] above.

26 Risk assessments are informed by a broad range of indicators and information: see [3.91].

27 See [2.19] above.

28 See [3.20] ff, in relation to police functions and powers. See also *QPS Operational Procedures Manual* (2017) [9.6] ff, which sets out the Queensland Police Service policy and procedures for police actions in managing domestic violence incidents and providing assistance to members of the community who may be affected by domestic violence.

criminal convictions only, or would include other information such as charges, juvenile convictions, spent convictions, domestic violence orders and other police intelligence).²⁹

7.29 A limited disclosure or a non-disclosure might give rise to a false sense of safety. Post-disclosure support and advice may not always be sufficient to address these risks.³⁰

7.30 The Commission is of the view that the objective of increasing safety is better achieved by the continued implementation of Queensland's current reform strategies. An integrated service response is intended to take account of the full range of risk indicators and a broad range of information about an individual's relevant history.³¹

Community attitudes and behaviours

7.31 The Commission considers that a DVDS would not address the underlying causes of domestic and family violence or community attitudes about it.

7.32 The Prevention Strategy seeks a significant shift in community attitudes and behaviours that contribute to the cycle of domestic and family violence and keep it 'behind closed doors'. This includes countering misunderstandings about why a person might stay in an abusive relationship and other attitudes that prevent the reporting of and intervention in domestic and family violence. Relevantly, the Prevention Strategy is guided by the principle that '[d]omestic and family violence is everyone's concern and ending it is everyone's responsibility'.³²

7.33 One of the stated aims of the current reforms under the Prevention Strategy is to 'recognise the victim's perspective, prioritise their safety and *reduce the onus on them to take action or to leave*'.³³

7.34 A DVDS has the potential to undermine this important aim. It is possible that some people might treat a DVDS as shifting responsibility for the actions of a perpetrator to the person at risk to take action to ensure their own safety, and might view as somehow 'blameworthy' a person who does not seek to leave their relationship or otherwise act 'appropriately' in response to a disclosure under a DVDS.³⁴

²⁹ The protective purpose of a DVDS favours fulsome disclosure of an individual's personal information; however, there is also a need to balance that purpose with existing important legal principles and rights (notably, the principle of rehabilitation and rights of privacy) that ordinarily restrict disclosure to another person. See [6.107]–[6.123] above.

³⁰ See [6.74] ff above.

³¹ See [3.70] ff.

³² Queensland Government, 'Domestic and Family Violence Prevention Strategy 2016–2026' (2016) 19 <<https://www.communities.qld.gov.au/resources/gateway/campaigns/end-violence/dfv-prevention-strategy.pdf>>. See also [3.59], Fig 3-3 and [3.63] ff above.

³³ Queensland Government, 'Domestic and Family Violence Prevention Strategy 2016–2026' (2016) 16 <<https://www.communities.qld.gov.au/resources/gateway/campaigns/end-violence/dfv-prevention-strategy.pdf>>. (emphasis added)

³⁴ See [2.17]–[2.18], [6.191] ff above, as to shifting responsibility for the perpetrator's actions to the victim.

7.35 A perceived shift in responsibility would also be counter to the goal of perpetrator accountability.³⁵

Perpetrator accountability

7.36 The Prevention Strategy also seeks to strengthen the justice system response to domestic and family violence, including by reforms directed toward perpetrator accountability³⁶ such as the identification of domestic violence offences on criminal histories and the reversal of the presumption of bail for an alleged offender charged with a relevant domestic violence offence.³⁷

7.37 The paramount need to ensure the safety of a person at risk and their children would usually militate against informing the subject of a potential disclosure that a disclosure has been sought or made under a DVDS.³⁸ It follows that a DVDS is unlikely to make perpetrators more accountable either at an individual or systemic level.

Conclusion

7.38 Overall, the Commission considers that a DVDS is unlikely to strengthen Queensland's response to domestic and family violence by reducing the incidence of domestic and family violence, strengthening the protections and support for persons at risk of domestic violence or improving perpetrator accountability, or to complement the current reforms.

7.39 In the Commission's view, any potential benefits of a DVDS in Queensland are limited and are outweighed by the potential risks and disadvantages of such a scheme.

7.40 Further, there is currently a lack of evidence that such schemes are effective in reducing the incidence of domestic and family violence, strengthening protections and support for persons at risk or improving perpetrator accountability.³⁹

7.41 In the Commission's view, the objective of strengthening Queensland's response to domestic and family violence is likely to be better achieved through focussing on the implementation of the current reforms, which aim to provide a comprehensive, inclusive and integrated system response to domestic and family violence.

7.42 The Commission recommends that Queensland should not introduce a DVDS.

³⁵ See [6.211] ff above.

³⁶ The Taskforce Report also included recommendations directed toward police and court responses, such as broadening the scope of police protection notices and establishing a specialist domestic and family violence court: see [3.19], [3.23] and [3.103]–[3.109] above.

³⁷ See [3.101] ff above.

³⁸ See, eg, [6.72] above and [21], [58] and [77] in Appendix C below.

³⁹ See [5.11] above and [3], [37], [42] and [63] in Appendix C below. The need for research and evidence to inform implementation decisions was expressly recognised in the Taskforce Report: see [3.58] and, in relation to the National Plan, [3.52] and [3.54] above.

7.43 Accordingly, it has not been necessary for the Commission to make any recommendations in relation to the specific matters raised in paragraph five of the terms of reference.

RECOMMENDATION

7.44 The Commission makes the following recommendation:

7-1 That Queensland should not introduce a domestic violence disclosure scheme.

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**.

Appendix B

Respondents and consultation meetings

SUBMISSIONS

Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc

Australia's National Research Organisation for Women's Safety (ANROWS)

Bar Association of Queensland

Cairns Collective Impact on Domestic and Family Violence

Capricorn Community Development Association

Caxton Legal Centre Inc.

Corbett, Debbie

Department of the Premier and Cabinet

Domestic Violence Prevention Centre (Gold Coast)

Field, Professor Rachael[†]

Fitz-Gibbon, Dr Kate^{††}

Gray, Andrew

Greene, Assistant Professor Elizabeth[†]

Handley, Samantha

Legal Aid Commission of New South Wales (Legal Aid NSW)

Legal Aid Queensland

Mair, John QGM

Mercy Community Services

Micah Projects Inc

No to Violence Incorporating the Men's Referral Service

North Queensland Women's Legal Service

O'Leary, Assistant Professor Jodie[†]

Paton, Lynette

PeakCare Queensland Inc.

People with Disability Australia Incorporated

Queensland Advocacy Incorporated

Queensland Centre for Domestic and Family Violence Research,
CQUniversity Australia

Queensland Corrective Services

Queensland Council for Civil Liberties

Queensland Domestic Violence Services Network

Queensland Family and Child Commission

Queensland Indigenous Family Violence Legal Service

Queensland Law Society

Rinaudo, Judge Orazio (Ray), Chief Magistrate

Services and Practitioners for the Elimination of Abuse Queensland

Sisters Inside Inc

Sullivan, Dr Brian

Suncoast Community Legal Service Inc.

TASC National (formerly Toowoomba Community Legal Service)

UnitingCare Queensland

UQ Pro Bono Centre, TC Beirne School of Law, University of Queensland

Walklate, Professor Sandra^{††}

Wangmann, Dr Jane

Women's Legal Service NSW

Women's Legal Service Queensland

Wyatte, Bill

The Commission also received three confidential submissions.

[†] Those respondents made a joint submission

^{††} Those respondents made a joint submission

CONSULTATION MEETINGS

Specialist domestic and family violence support services, community legal services, Legal Aid Queensland and other local services	Townsville	23 January 2017
Specialist domestic and family violence support services, community legal services and other local services	Mt Isa	24 January 2017
Specialist domestic and family violence support services, community legal services and other local services	Cairns	25 January 2017
Specialist domestic and family violence support services, community legal services, Queensland Centre for Domestic and Family Violence Research, CQUniversity Australia and other local services	Rockhampton	27 January 2017
Specialist domestic and family violence support services and community legal services	Gold Coast	30 January 2017
Specialist domestic and family violence support services and community legal services	Sunshine Coast	31 January 2017
Specialist domestic and family violence support services and community legal services	Toowoomba	1 February 2017
Specialist domestic and family violence support services, community legal services, Legal Aid Queensland, Queensland Law Society, an academic and others	Brisbane	2 February 2017
Queensland Police Service	Brisbane	6 February 2017
Queensland Domestic Violence Support Network	Brisbane	9 February 2017

The Commission also held five community consultation meetings with individuals who have an interest in the review.

* A number of the specialist domestic and family violence support services included perpetrator intervention programs

Appendix C

Domestic violence disclosure schemes in other jurisdictions

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ENGLAND AND WALES

[1] England and Wales introduced a DVDS in 2014.¹ The scheme — also known as ‘Clare’s Law’ — provides a framework for police to disclose information to a person about their current or former partner’s relevant criminal or domestic violence history.²

[2] The introduction of the DVDS followed a 12 week public consultation process³ and a 14 month pilot.⁴ It operates pursuant to existing common law powers and legislative requirements.⁵

[3] The Home Office published a review of the pilot and a review of the DVDS after its first year of operation.⁶ Those reviews were limited to assessments of how the scheme process was working in practice; they did not consider the impact of the

¹ Information about the DVDS in England and Wales is available at: Home Office, *Domestic Violence Disclosure Scheme*, Gov.uk (8 March 2016) <<https://www.gov.uk/guidance/domestic-violence-and-abuse#domestic-violence-disclosure-scheme>>.

² The scope of the DVDS in England and Wales was widened in 2016 to include previous partners: *UK Guidance* (2016) 4. The stated purpose of including current and previous relationships in the DVDS is to enable a person who is or was in a relationship with a previously violent or abusive partner ‘to make informed choices about continuing in that relationship or about their personal safety if no longer in the relationship’: *UK Guidance* (2016) 5.

³ See further *UK Consultation Summary* (2012).

⁴ The pilot took place from July 2012 in Wiltshire (England) and Gwent (Wales) and from September 2012 in Greater Manchester and Nottinghamshire (England) to September 2013. 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) 2–3.

⁵ See *UK Guidance* (2016) 5, 18–19, 44–5, which notes that any disclosure must have due regard to the common law (namely, the powers of police to disclose information where it is necessary to prevent crime, and the common law duty of confidence), the *Data Protection Act 1998* (UK), the *Human Rights Act 1998* (UK) and the *European Convention on Human Rights*, art 8.

⁶ *UK Pilot Assessment* (2013); *UK National Roll-Out Assessment* (2016).

scheme on the incidence of domestic and family violence, or analyse its 'value for money'.⁷

[4] The pilot assessment found that 'the majority of respondents who had received a disclosure felt that the information 'had helped them to make a more informed choice about their relationship', and that they 'would be more likely to keep a closer look out for signs' of domestic and family violence and to seek support from family and friends or, in a few cases, from support services.⁸

[5] It also found that police and partner agencies involved in the DVDS were 'positive' about the scheme, but cautioned that 'it should not be seen as a "catch-all" for domestic abuse prevention work'.⁹ They observed that the 'right to ask' pathway was beneficial, because, in some instances, police and other agencies were alerted to persons at risk for the first time.¹⁰

[6] Police and support workers highlighted the importance of including safety planning in the DVDS process, stating that this support was 'essential' for the success of the scheme. It was also considered 'crucial' to have an independent adviser or support worker present at disclosures, to provide a person with immediate support. People who had received a disclosure stated that the presence of a support worker was useful and that it assisted them in understanding the information and their options.¹¹

[7] The pilot assessment reported that, in the different pilot areas, there were inconsistencies in the support provided to people who received a non-disclosure. To ensure consistency within the scheme, police and support workers suggested that the scheme introduce 'minimum standards' for support following a non-disclosure.¹²

[8] Finally, the pilot assessment identified concern about the ability to ensure an 'appropriate level' of support for the scheme. Support workers suggested that the variable availability of support services throughout England and Wales might impact on the ability of support workers to attend disclosures and offer support. Police and support workers stated that it is 'essential' to have 'sufficient support service coverage in place' in all areas.¹³

⁷ See *UK Pilot Assessment* (2013) 2, 4 which found that the average cost of processing a right to ask application was £690 and a right to know application was £810. *UK National Roll-Out Assessment* (2016) 3. Costs were absorbed within existing local budgets: *UK Pilot Assessment* (2013) 9.

⁸ *UK Pilot Assessment* (2013) 4, 14. The pilot assessment drew on informal feedback, police data, focus groups with practitioners and questionnaires completed by 38 individuals who had applied for or received a disclosure.

⁹ *UK Pilot Assessment* (2013) 14–15. See also *UK Consultation Summary* (2012) 4; *UK Impact Assessment* (2013) 8 in which similar comments were made.

¹⁰ *UK Pilot Assessment* (2013) 14.

¹¹ Ibid 15. See also *UK Consultation Paper* (2011) 11; *UK Consultation Summary* (2012) 4, 6, 8; *UK Impact Assessment* (2013) 8, 22–3 in which the importance of support and safety planning was highlighted. A number of other important factors for consideration were also referred to, including: the need for consistent police procedures for investigating domestic and family violence incidents; the importance of a multi-agency picture of risk; the safety of a person following a disclosure; and relevant privacy considerations: see *UK Consultation Summary* (2012) 4–5; *UK Impact Assessment* (2013) 8.

¹² *UK Pilot Assessment* (2013) 20–21.

¹³ Ibid 4, 15.

[9] The subsequent report on the operation of the DVDS noted that, between 8 March 2014 and 31 December 2014, a total of 4724 applications had been made. Of these, 1938 (approximately 40%) had resulted in a disclosure.¹⁴

[10] That report also included feedback from workshops with practitioners who delivered the scheme (25 representatives from the police and four support services), that police and partner agencies were 'largely positive' about the DVDS, but that there was a need for better consistency in the provision of information to those who receive a disclosure and in follow-up support in the case of a non-disclosure.¹⁵

¹⁴ *UK National Roll-Out Assessment* (2016) 4. These included applications under the 'right to ask' and 'right to know' pathways: 4.

¹⁵ Ibid 4–5. The workshops explored: the nature of cases going through the scheme including the nature and characteristics of applications and disclosures; perceptions of police officers and support services involved in implementing the scheme to capture lessons learnt; and insights into the experiences of those who requested or received a disclosure: 4.

See also Her Majesty's Inspectorate of Constabulary ('HMIC'), *PEEL: Police effectiveness 2016, A national overview* (March 2017) 86 in which it was noted that, in 2016, it appeared that many police forces had not been using their powers under the DVDS to full effect. The HMIC independently assesses and reports on the efficiency and effectiveness of police forces and policing.

Overview and key features of the DVDS in England and Wales

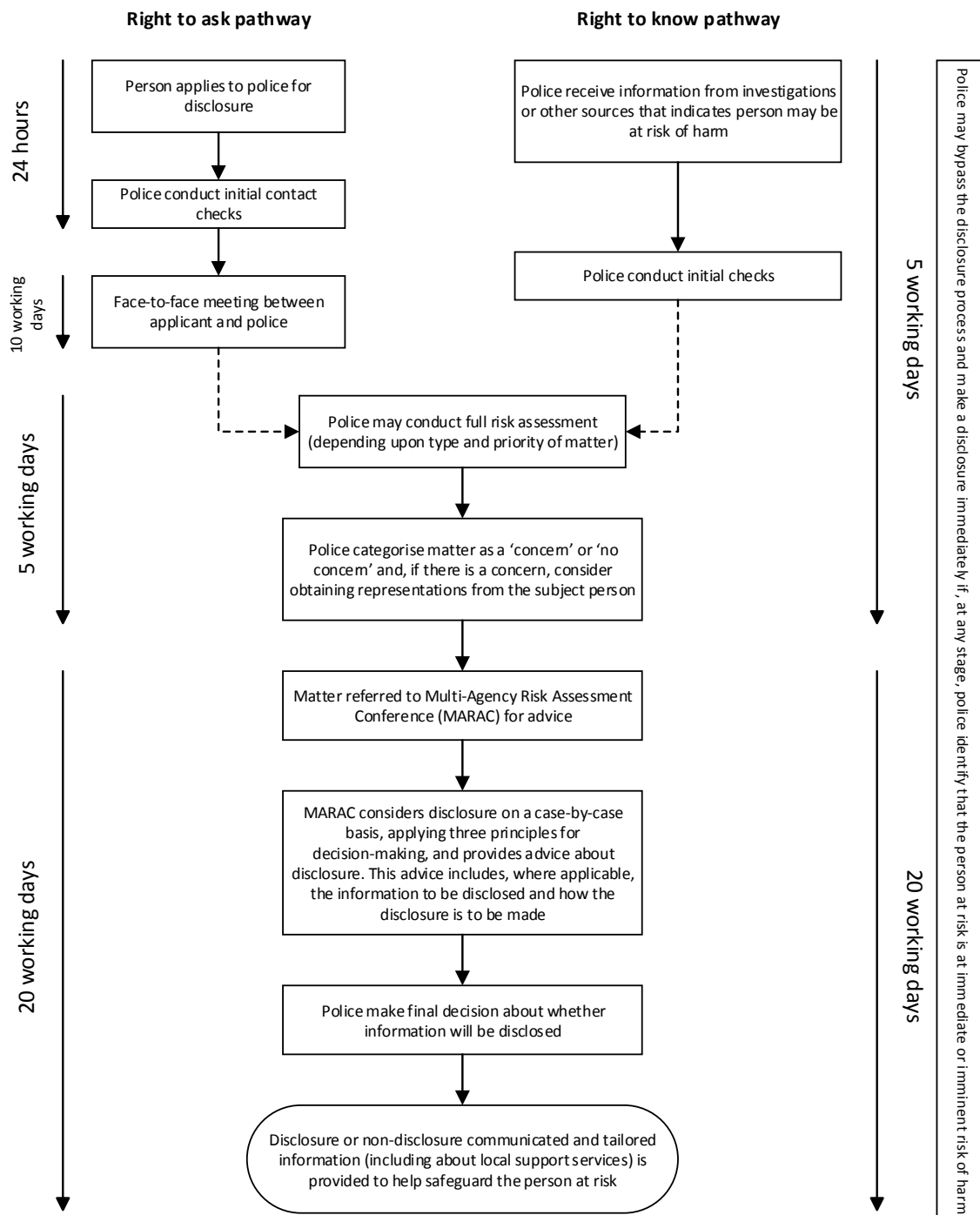


Figure 1: Overview of DVDS in England and Wales

[11] The DVDS in England and Wales has two distinct pathways for disclosing information — the ‘right to ask’ pathway and the ‘right to know’ pathway.¹⁶

[12] The right to ask pathway is triggered when a member of the public contacts the police directly to request a disclosure about a potentially violent or abusive partner (‘the subject’).¹⁷ The applicant may be a person who is, or was previously, in an intimate relationship with the subject (‘the person at risk’), or a third party who has some form of contact with the person at risk.¹⁸ The police are to conduct initial police checks and an initial risk assessment, before deciding whether the application for disclosure should be progressed.¹⁹ If the application is continued, police must hold a face-to-face meeting with the applicant to verify their identity and ensure the application is genuine and not malicious, obtain additional information about the application and provide interim safety information to the applicant.²⁰

[13] The right to know pathway is triggered by the police, acting on indirect information from police or partner agencies that may impact a person’s safety, for example, information arising as part of a criminal investigation that indicates a person may be at risk of harm from their partner.²¹

[14] At any stage of the process under either pathway, if it is identified that the person at risk is at ‘immediate’ or ‘imminent’ risk of harm, police must take immediate action to safeguard the person. Disclosures can also be made in urgent circumstances. For non-urgent matters, the process is generally to be completed within 35 days.²²

[15] For both the right to ask and right to know pathways, the police are to conduct checks for the person at risk and the subject and assess the risk of harm to the person from the subject.²³

¹⁶ *UK Guidance* (2016) 5, 8–14, 15–16.

¹⁷ Ibid 8. The applicant must provide information about the relationship between the person at risk and the subject, and explain their concerns. They must also indicate whether the subject is aware of the application and if they have concerns about the subject knowing of the application. During this initial contact stage, police must also establish a safe means of communication with the applicant: 8–9, annex C.

¹⁸ Ibid 8, annex A (definitions of ‘A’, ‘applicant’, ‘application’, ‘B’ and ‘C’). The guidance defines as ‘intimate relationship’ as ‘a relationship between two people, regardless of gender, which may be reasonably characterised as being physically and emotionally intimate’: annex A (definition of ‘intimate relationship’).

¹⁹ Ibid 10, annex D.

²⁰ Ibid 11–13, annex E. The additional information collected at the face-to-face meeting includes the applicant’s reasons for contacting police and making the application, and the history of the relationship between the person at risk and the subject: annex E.

²¹ Ibid 15–16, annex A (definition of ‘indirect information’). Similar to the right to ask pathway, police complete intelligence checks and then decide whether to progress a disclosure.

²² Ibid 9–10, 17, 23.

²³ Ibid 13–14, 15–16. Police may complete checks with external agencies where appropriate, including ‘local domestic abuse services’: 14.

[16] On the basis of these checks and assessments, the police are to categorise the matter as a 'concern' or 'no concern'²⁴ and refer the case to the local multi-agency forum, called a Multi-Agency Risk Assessment Conference ('MARAC')²⁵ or, if that is not possible, another suitable multi-agency forum.²⁶ The forum is to advise the police about whether a disclosure should be made.²⁷ A disclosure is to be delivered by police, but the forum will consider whether that delivery should also involve other agencies.²⁸ All disclosure decisions are made on a case by case basis.²⁹

[17] The forum's decision-making process requires a consideration of the following three 'principles'.³⁰

[18] First, the forum must be satisfied that disclosure is necessary and lawful. That is, they must be satisfied that:³¹

- the disclosure is necessary to protect the person at risk from being the victim of a crime;
- there is a pressing need for disclosure; and
- interfering with the subject's right to confidentiality is necessary and proportionate for the prevention of crime.³²

²⁴ Ibid 16–17. 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 disclosable convictions for an offence related to domestic violence, is a serial perpetrator of domestic violence, has demonstrated concerning behaviour toward the person at risk, or there is intelligence about the subject's previous violent and abusive offending (for example, cases not proceeded with or concerning behaviour towards previous partners). A disclosure application is categorised as 'no concern' where the subject has no disclosable convictions for an offence related to domestic violence and abuse (including spent convictions), there is no information or intelligence indicating that the subject's behaviour may cause harm to the person at risk, or there is insufficient information or intelligence to register a concern. Where there is a concern, police must consider if representations should be sought from the subject to ensure that they have all necessary information to make a disclosure decision. In doing so, police must consider if there are good reasons 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: 17.

²⁵ *UK Guidance* (2016) 17. 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 produce coordinated action plans to increase victim safety: Home Office Violent and Youth Crime Prevention Unit (VCYU) and Research and Analysis Unit (RAU), *Research into Multi-Agency Risk Assessment Conferences (MARACs)* (July 2011) 5–6, 9, 28.

²⁶ *UK Guidance* (2016) 17–18, annex A (definition of 'multi-agency forum'). 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.

²⁷ Ibid 16, 18, 20, annex A (definition of 'multi-agency forum'). The forum will also consider the specific wording of any disclosure: 20. See also [25] below.

²⁸ Ibid 20. The guidance states that it is 'good practice' to consider a joint agency approach to disclosure.

²⁹ Ibid. The guidance also provides that police should seek legal advice when necessary: 4.

³⁰ Ibid 18–19. See also annex H of the guidance, as to the template checklist for completion of the disclosure decision-making process by the forum.

³¹ Ibid 18–19.

³² Ibid. In this regard, see the *Human Rights Act 1998* (UK) 51 sch 1 pt 1 art 8(2) and the *Data Protection Act 1998* (UK) schs 2, 3.

[19] The 'proportionality' aspect of the test requires the forum to consider whether the subject should be invited to make representations,³³ as well as the extent of the information that needs to be disclosed.³⁴

[20] Second, the forum must ensure that the disclosure complies with the eight data protection principles in the *Data Protection Act 1988* (UK).³⁵

[21] Third, the forum must consider whether the subject should be notified that their personal information may be disclosed to the applicant. This consideration must be informed by an assessment of the potential to escalate the risk of harm to the person at risk.³⁶

[22] Following the receipt of advice from the forum, the police make the final decision as to whether information will be disclosed.³⁷

[23] Information that may be disclosed includes information about:³⁸

- convictions, cautions, reprimands and final warnings for 'violent or abusive offences' (for example, battery, common assault, murder, manslaughter, kidnapping, and false imprisonment), or for 'relevant non-violent offences' (for example, harassment, stalking and putting people in fear of violence); and

³³ *UK Guidance* (2016) 18–19. In relation to this requirement, see *R (X) v Secretary of State for the Home Department* [2013] 1 WLR 2638; [2012] EWHC 2954 (Admin), in which it was held (at [36], [38–[39], [41]–[43], [49]) 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. The court stated that 'it is difficult to foresee cases where it would be inappropriate to seek representations, unless there was an emergency or seeking the representations might itself put the child at risk'. Changes were subsequently made to the *UK Guidance* consistently with this ruling: *UK Pilot Assessment* (2013) 7.

³⁴ *UK Guidance* (2016) 18–19.

³⁵ *Ibid* 19, annex F. 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.

³⁶ *UK Guidance* (2016) 19. If the subject is notified, this should occur in person and be accompanied by information about the DVDS and relevant support services. Regardless of whether information is disclosed under the DVDS, the forum should consider whether the subject should be referred to an appropriate local framework for managing offenders, based on the risk of harm that the subject's offending behaviour poses to the local community: 22.

³⁷ *Ibid* 16–17, annex A (definition of 'multi-agency forum').

³⁸ *Ibid* 6, 16, annex A (definitions of 'disclosure', 'relevant non-violent offence' and 'violent offence'), annex B. A 'disclosure' is defined to mean the act of disclosing specific information, to the person at risk or another person, about the subject's convictions for violent and relevant non-violent offences, and any other relevant information 'deemed necessary and proportionate' to protect the person from harm.

Annex B provides a non-exhaustive list of the types of offences for which convictions or allegations may be disclosed under the DVDS. A 'violent offence' is defined to mean an offence which leads to, or is intended or is likely to lead to, a person's death or physical injury to a person. A 'relevant non-violent offence' is defined to mean an offence that does not involve the use of any force or injury to another person, but that may cause fear or distress or still put the victim at risk, for example, through threat of harm, controlling or coercive behaviour, or stalking.

- other relevant information deemed necessary and proportionate to protect the person at risk from harm (for example, cases not proceeded with, intelligence concerning violent offences, or concerning behaviour toward former partners).

[24] Spent convictions, as defined under the *Rehabilitation of Offenders Act 1974* (UK), may sometimes be disclosed. The disclosure of a spent conviction must be 'reasonable and proportionate', taking into account the age of the spent conviction.³⁹

[25] If a decision is made to disclose information, the disclosure should contain sufficient information to allow the person at risk to make an informed choice about their relationship or contact with the subject. The disclosure must be accompanied by a safety plan tailored to the needs of the person at risk, based on all relevant information and identifying the agencies who will deliver ongoing support to the person.⁴⁰

[26] The disclosure is to be made by police at a face-to-face meeting with the individual identified as best placed to safeguard the person at risk (in most cases, that person).⁴¹ No written correspondence about the information disclosed is to be left with the recipient of the disclosure.⁴²

[27] The disclosure may be used only for the purpose for which it is shared (that is, to safeguard the person at risk). The recipient must sign an undertaking to treat the information as confidential and not to disclose it, and acknowledge that legal proceedings could result if confidentiality is breached.⁴³

[28] If a decision is made not to disclose information and the request was made under a right to ask application, the applicant (who could be either the person at risk or a third party applicant) is to be notified in person that there is no information to disclose.⁴⁴ The applicant is to be advised that a lack of disclosable information does not mean that there is no risk of harm. This process also provides an opportunity to 'provide safeguarding information and sign-posting to relevant support services'. If a decision has been 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.⁴⁵

³⁹ Ibid 16–17. The guidance provides that legal advice should be sought where necessary: 17.

⁴⁰ Ibid 20.

⁴¹ Ibid, annex I. Disclosure must take place at a time and location that meets the needs of the person at risk: 20. See also [16] above, as to the involvement of other agencies in the delivery of a disclosure.

⁴² Ibid 21.

⁴³ Ibid 20. If the recipient is unwilling to sign a confidentiality undertaking, police must consider if a disclosure should still be made. The outcome of that decision is to be recorded and considered in the relevant risk assessment, decision-making process and safety plan: 21.

⁴⁴ Ibid 21. The applicant should be told in person, via a safe telephone number, if appropriate, because any written correspondence or a home visit has the potential to put the person at greater risk. Where an application does not result in a disclosure, the subject will not be notified: 22.

⁴⁵ Ibid, annex J.

SCOTLAND

[29] 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'.⁴⁶

[30] 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 2015.⁴⁷

[31] The stated aim of the Scottish DVDS is to prevent domestic abuse by enabling a person at risk (or a concerned third party) to make enquiries about the person's partner, where there are concerns the partner may be abusive. The scheme aims to enable a person at risk to make an informed choice about the continuation of their relationship and to access help and support in making that choice.⁴⁸

[32] The Scottish DVDS 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),⁴⁹ the *Human Rights Act 1998* (UK) and the *Data Protection Act 1998* (UK).⁵⁰

[33] 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.⁵¹

[34] Under the scheme, police are to conduct a series of checks and risk assessments. A local, multi-agency decision-making forum is to make a recommendation to Police Scotland regarding whether there should be a disclosure, in particular by considering if the disclosure is lawful,⁵² necessary and proportionate.⁵³ Police Scotland is to make the final decision regarding disclosure of

⁴⁶ Scottish Government and Convention of Scottish Local Authorities, *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls*, Strategy (June 2014) 42.

⁴⁷ Information provided by Police Scotland, Domestic Abuse Coordination Unit, 17 October 2016. The Scottish DVDS is supported by Police Scotland's Standard Operating Procedure for the scheme, developed following the work of the multi-agency group in considering the introduction of the scheme. The Standard Operating Procedure is under review and is not publicly available.

⁴⁸ Police Scotland, *Disclosure Scheme for Domestic Abuse Scotland* (2017) <<http://www.scotland.police.uk/contact-us/disclosure-scheme-for-domestic-abuse-scotland>>; *Police Scotland Factsheets*.

⁴⁹ See, in particular, the *Police and Fire Reform (Scotland) Act 2012* (Scot) asp 8 s 32, which provides that the 'policing principles' of Police Scotland are 'to improve the safety and well-being of persons, localities and communities in Scotland', including by 'policing in a way which ... promotes measures to prevent crime, harm and disorder'. See also Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

⁵⁰ Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

⁵¹ *Ibid*; *Police Scotland Factsheets*. The Scottish DVDS is applicable to persons who are 'in a relationship', and does not expressly contemplate the disclosure of information about a former partner.

⁵² Referring to the *Police and Fire Reform (Scotland) Act 2012* (Scot) asp 8 s 32: information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

⁵³ Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016; *Police Scotland Factsheets*. If it is decided to disclose information, the multi-agency forum is also to consider to whom that disclosure will be made and to develop a tailored safety plan.

information. The information that may be disclosed includes relevant convictions and other relevant information.⁵⁴

[35] If the police identify an 'imminent' risk of harm, they are to take immediate action to safeguard the person. Otherwise the process, including any disclosure of information, is to be completed within 45 days.⁵⁵

[36] During the pilot period, there were 59 applications for disclosure.⁵⁶ Subsequently, between 1 October 2015 and 30 March 2017, 1560 requests for disclosure were made under the national scheme. Of those requests, 785 disclosures (approximately 50%) were made.⁵⁷

[37] An evaluation of the pilot was conducted, which focussed upon process and the accurate recording and management of information. A further evaluation of the Scottish DVDS is planned, which is intended to engage with victims and measure the impact of the scheme.⁵⁸

NEW ZEALAND

[38] 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 their intimate partner. The NZ DVDS is based on the DVDS in England and Wales.⁵⁹

[39] 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.⁶⁰

⁵⁴ Ibid. Spent convictions cannot be disclosed. However, the impact of a spent conviction may be considered by Police Scotland when conducting a risk assessment. Disclosures and non-disclosures are to be delivered in person. A joint agency disclosure is considered to be best practice: information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

⁵⁵ *Police Scotland Factsheets*; Information provided by Police Scotland, Domestic Abuse Coordination Unit, 23 November 2016.

⁵⁶ Information provided by Police Scotland, Domestic Abuse Coordination Unit, 17 October 2016 and 22 June 2017.

⁵⁷ 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>>; Information provided by Police Scotland, Domestic Abuse Coordination Unit, 17 October 2016 and 22 June 2017; see also Scotland, *Parliamentary Debates*, 21 September 2016, 3 (M Matheson, Cabinet Secretary for Justice).

⁵⁸ Information provided by Police Scotland, Domestic Abuse Coordination Unit, 17 October 2016 and 22 June 2017.

⁵⁹ See, eg, New Zealand Family Violence Clearinghouse, *Police introduce family violence disclosure scheme* (15 December 2015) <<https://nzfvc.org.nz/news/police-introduce-family-violence-disclosure-scheme>>.

⁶⁰ Ibid; *NZ Police Policy* (2015) 3, 12–14.

[40] 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).⁶¹

[41] As at 19 May 2017, 190 applications had been made under the scheme. Of these, 43 applications were made under the reactive disclosure pathway (of which 17 resulted in a disclosure) and 147 applications were made under the proactive disclosure pathway (of which 126 resulted in a disclosure). Twenty-one of the applications were dealt with as urgent cases, all of which resulted in disclosure.⁶²

[42] An evaluation of the NZ DVDS is scheduled for late 2017.⁶³

⁶¹ NZ Police Policy (2015) 2, 5 ff.

⁶² Information provided by New Zealand Police, 19 May 2017.

⁶³ Ibid; Information provided by New Zealand Police, 25 October 2016.

Overview and key features of the NZ DVDS

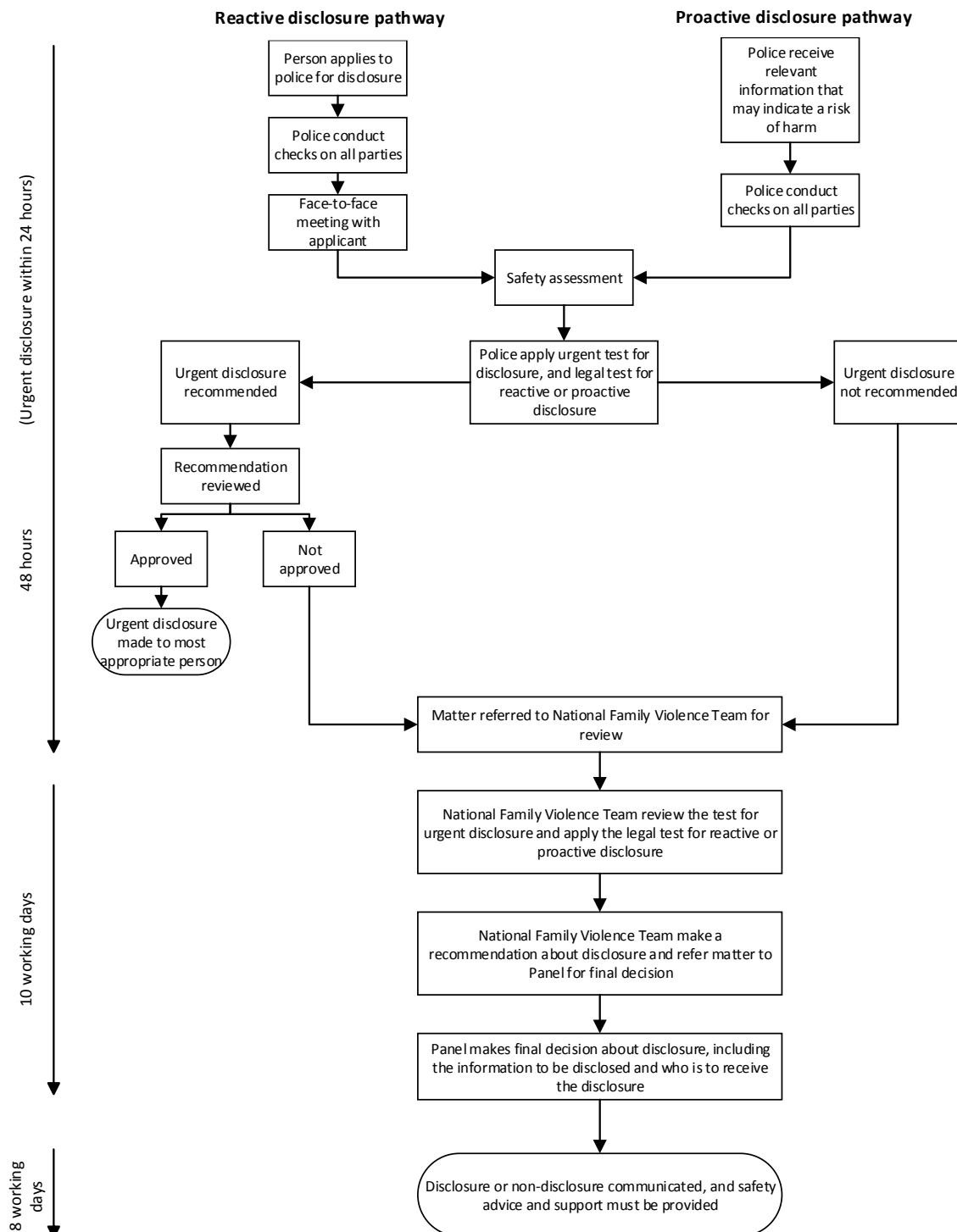


Figure 2: Overview of NZ DVDS

[43] Under the NZ DVDS, the reactive disclosure pathway applies when the police receive a request from a member of the public (the 'person at risk') for the disclosure of information about the violence history of their intimate partner ('the subject').⁶⁴ A reactive disclosure request may also be made by a third party who is connected to a person at risk and has concerns for the safety of the person or the person's children.⁶⁵

[44] The proactive disclosure pathway applies where police receive information about a person's previous violent behaviour that may indicate a risk of harm to the person's intimate partner or children.⁶⁶

[45] 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).⁶⁷ Urgent disclosures are to be made within 24 hours of the initial request and non-urgent disclosures within 20 working days.⁶⁸

[46] On receipt of a request or initiation of a proposal for disclosure, police are to record the basic details of the parties involved, obtain safe contact details and carry out police checks.⁶⁹ If a request for reactive disclosure has been made, the police area family violence coordinator ('PAFVC') (or the duty supervisor) is to hold a face-to-face meeting with the applicant to verify the applicant's identity and eligibility details and undertake a safety assessment of the person at risk and their children.⁷⁰ If a 'serious threat' to a person's safety is identified, police must take immediate action to safeguard the person.⁷¹

[47] Once these steps have been taken, the PAFVC is to assess whether an urgent disclosure should be made.⁷² If an urgent disclosure is indicated, the relevant legal test for disclosure is to be applied and the matter referred to the police district

⁶⁴ NZ Police Policy (2015) 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'.

⁶⁵ Ibid 4. Examples of a third party include a parent, neighbour or friend of the person at risk.

⁶⁶ Ibid 3.

⁶⁷ Ibid 5–9, 12–14. Reactive disclosure requests are to be recorded as requests made under the *Official Information Act 1982* (NZ); *ibid* 3. The information required by the request forms includes details of the person at risk and the subject information or behaviour that has led to the request, and any family violence experienced by the applicant in the preceding 12 months. The applicant must also indicate whether the subject and the person 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* (as at 26 October 2016) pts A–B, 2–4, 6.

⁶⁸ NZ Police Policy (2015) 10.

⁶⁹ Ibid 5.

⁷⁰ Ibid 5–6.

⁷¹ Ibid 10.

⁷² Ibid 6.

family violence coordinator (or the police district command centre) for review and final decision as to whether urgent disclosure is required.⁷³

[48] The legal test for reactive disclosure is based on the provisions of the *Official Information Act 1982* (NZ).⁷⁴ 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:⁷⁵

- whether there is a privacy interest that requires protection;⁷⁶
- whether it is in the public interest to disclose the information;⁷⁷ and
- what is the minimum amount of information that should be disclosed to achieve the purpose of preventing harm while still protecting the privacy of any other person involved (‘proportionality’).⁷⁸

[49] The legal test for proactive disclosure reflects section 6, 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.⁷⁹ It also requires consideration of proportionality.⁸⁰

[50] If the PAFVC 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 to be referred to the police national family violence team to

⁷³ Ibid 6–7.

⁷⁴ See *Official Information Act 1982* (NZ) ss 5, 9(1), (2)(a).

⁷⁵ *NZ Police Policy* (2015) 12–13.

⁷⁶ Relevant considerations include: the relevance of the information to the request; whether the information is highly personal or sensitive (for example, if it contains personal information about former partners); whether the information has been through an open court process; whether it is a spent conviction; and whether the applicant may already know some of the information (for example, knowledge that there is a conviction, but not the details of the offence): *ibid* 12.

⁷⁷ Relevant considerations include: whether the public interest in protecting the public or individuals from harm applies; whether other relevant public interests apply; the strength of the public interest; whether the public interest in disclosure outweighs the privacy interest; and whether the public interest could be met by a means other than disclosure: *ibid*.

⁷⁸ Relevant considerations include: whether it is necessary to release all relevant information and if the purpose of preventing harm could be achieved by a limited disclosure: *ibid* 13.

⁷⁹ *Ibid* 13. 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 violence offences occurred in a domestic context or a pattern of coercive behaviour or escalating violence is evident); and any other relevant factors that should be checked. In deciding if a disclosure is necessary, relevant matters include: whether the recipient is likely to have previous knowledge of the information; whether 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 whether there are prohibitions on disclosure such as the conviction being spent (in which case risk may require reassessment and a limited disclosure may suffice).

⁸⁰ *Ibid* 14.

review the urgency test, apply the relevant legal test, make a recommendation about disclosure and refer the matter to the NZ DVDS panel for a final decision.⁸¹

[51] 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 and who should receive the disclosure.⁸²

[52] 'Only relevant information which indicates a serious threat to a person's safety' is to be provided in a disclosure.⁸³ The factors to be taken into account when considering whether information is relevant to a disclosure include:⁸⁴

- whether the subject has previous convictions⁸⁵ for 'violence offences'⁸⁶ that indicate a serious threat to the safety of the person at risk or their children; and
- police intelligence about the subject's history of previous violent behaviour (including 'concerning behaviour' towards the person at risk or former partners and cases not proceeded with).⁸⁷

⁸¹ Ibid 6, 7, 8. The panel makes non-urgent decisions about disclosure under the NZ DVDS includes members of the police national family violence team and police legal staff: 3; Information provided by New Zealand Police, 25 October 2016.

⁸² 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.

⁸³ New Zealand Police, *Family Violence Information Disclosure Scheme Request Form* (as at 26 October 2016) pt B, 7. The term 'disclosure' is defined as '[t]he 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': *NZ Police Policy* (2015) 3.

⁸⁴ *NZ Police Policy* (2015) 11.

⁸⁵ 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 a higher court if it is relevant and shows a pattern of behaviour of cumulative harm or violence: information provided by New Zealand Police, 25 October 2016.

⁸⁶ 'Violence offences' include any type of violence within the meaning of the *Domestic Violence Act 1995* (NZ) s 3, 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).

⁸⁷ '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 at risk: *NZ Police Policy* (2015) 11. Police may also disclose information indicating that the subject is the respondent to 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.

[53] The information provided in the disclosure is to be 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.⁸⁸

[54] The outcome of the application and any disclosure is to be provided in person by the police to the person at risk or, if relevant, another person identified as best able to safeguard the person.⁸⁹ The person may read the disclosure or have it read to them, but may not keep the disclosure script.⁹⁰

[55] There must be appropriate supports in place at and after the meeting, whether a disclosure or non-disclosure is made.⁹¹

[56] 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.⁹² Before the disclosure is made, the person receiving it must sign a confidentiality undertaking.⁹³ If the person is not willing to sign the confidentiality undertaking, police must consider whether the disclosure should proceed.⁹⁴

[57] 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 person or their children, then the applicant must be advised that no disclosure will be provided. However, this 'must be accompanied by safety advice and a warning ... that the lack of disclosure does not ensure ongoing safety'.⁹⁵

88 *NZ Police Policy* (2015) 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.

89 *NZ Police Policy* (2015) 2, 9, 11, 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 at risk, or, due to that person's vulnerabilities, such other person as best placed to safeguard the person at risk. (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: 15.

90 *Ibid* 15. The script is not to be left with the recipient in any format, to 'prevent onward transmission of the information in its original format and avoid safety issues that may arise if the subject becomes aware of the request'.

91 *Ibid* 9.

92 *Ibid*.

93 New Zealand Police, *Family Violence Information Disclosure Scheme Request Form* (as at 26 October 2016) pt E, 1–2. The confidentiality undertaking states that the information is being disclosed only for the purpose of keeping the person 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).

94 *Ibid*. Whether a disclosure will be made in such circumstances is to be considered prior to the meeting, and included in the risk assessment and decision-making stage.

95 *NZ Police Policy* (2015) 10.

[58] Due to the potential safety implications for a person at risk, the subject of an application is not to be informed about the application, or any subsequent disclosure.⁹⁶

NEW SOUTH WALES

[59] In April 2016, the New South Wales Government commenced a two year pilot of a DVDS (the 'NSW DVDS pilot').⁹⁷ The pilot was developed in response to a recommendation of the New South Wales Violent Domestic Crimes Taskforce to introduce a 'domestic violence register' in New South Wales, based on the DVDS in England and Wales.⁹⁸

[60] The primary stated aim of the scheme is to 'help prevent domestic violence by informing people of their partner's history of domestic violence offending' so that they can 'make informed decisions about their relationship and safety' and seek assistance or undertake safety planning.⁹⁹ The NSW scheme is intended to complement other Government reforms.¹⁰⁰

[61] The pilot has been designed to fit within the existing legislative and domestic and family violence service system frameworks in New South Wales.¹⁰¹

[62] The New South Wales Police Force is leading the pilot, with support from specialist domestic and family violence service providers, in four Police Force Local Area Commands.¹⁰² The Government has committed \$2.3 million over the duration of the pilot for expert domestic and family violence support services in the pilot areas.¹⁰³

⁹⁶ Ibid 15–16. 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).

⁹⁷ See P Goward, Minister for Mental Health, Minister for Medical Research, Assistance Minister for Health, Minister for Women, Minister for Prevention of Domestic Violence and Sexual Assault, 'Domestic Violence Disclosure Scheme Launched' (Media Release, 13 April 2016).

⁹⁸ See *NSW Consultation Report* (2015) 3; NSW Ministry of Health, '*Violent Domestic Crimes Taskforce Report*' (Report, October 2015) 7, 9, Rec 1.

⁹⁹ *NSW Discussion Paper* (2015) 2. See also *NSW Factsheet* (2016) 1.

¹⁰⁰ *NSW Discussion Paper* (2015) 2, referring to the NSW Government, *It Stops Here: Standing together to end domestic and family violence in NSW – The NSW Government's domestic and family violence framework for reform* (2014) and the NSW Government, *Domestic violence justice strategy: Improving the NSW Criminal Justice System's Response to domestic violence 2013–2017* (2012). See NSW Government, *It Stops Here* <https://www.women.nsw.gov.au/violence_prevention/It_Stops_Here>.

¹⁰¹ *NSW Consultation Report* (2015) 5.

¹⁰² *NSW Factsheet* (2016) 1, 3. See also NSW Privacy Commissioner, *Direction for Domestic Violence Disclosure Scheme Pilot* (13 April 2016) at <<http://www.ipc.nsw.gov.au/direction-domestic-violence-disclosure-scheme-pilot-s411-ppip-act-pdf022mb>>. The four pilot Police Force Local Area Commands are Oxley (Tamworth region), Shoalhaven (Nowra region), Sutherland (Menai/Engadine/Sutherland region) and St George (Kogarah/Hurstville region).

¹⁰³ Goward, above n 97.

[63] The pilot is to be evaluated throughout its duration 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 roll-out of the scheme.¹⁰⁴

[64] Between 13 April 2016 (when the pilot commenced) and 30 April 2017, 67 applications were received under the scheme. Of those applications, 55 were made by a person at risk, with 21 resulting in disclosure. The remaining 12 applications were made by third party applicants and, of those that have been finalised, seven applications resulted in disclosure. Overall, the disclosure rate was 42%.¹⁰⁵

¹⁰⁴ *NSW Factsheet* (2016) 3. The NSW DVDS pilot is to be evaluated in two phases. An interim report on a process evaluation is due in July 2017. A final report (including an outcomes evaluation) is due in February 2018: Information provided by Women NSW, 10 February 2017.

¹⁰⁵ Information provided by Women NSW, 2 June 2017.

Overview and key features of the NSW DVDS pilot

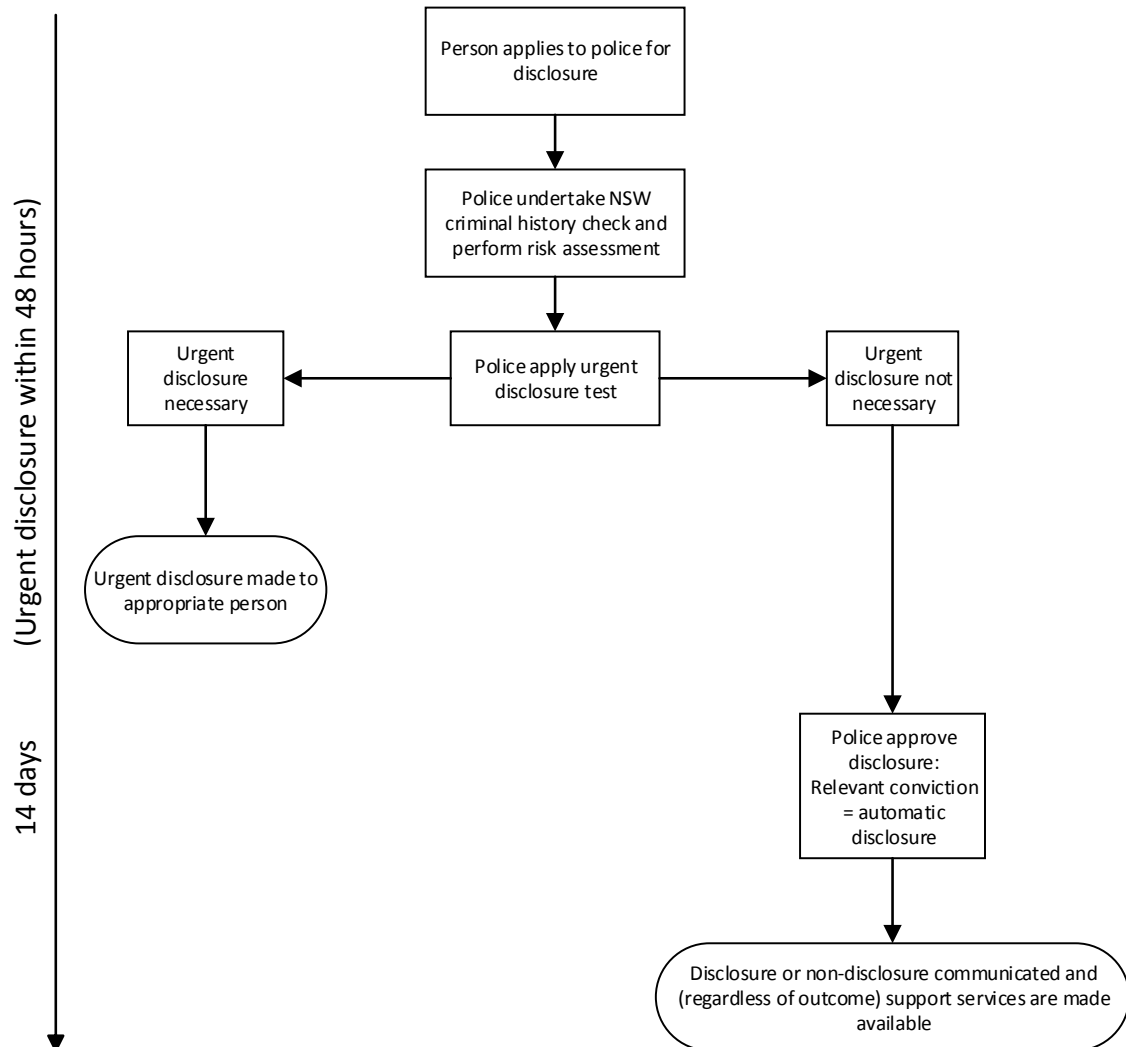


Figure 3: Overview of NSW DVDS pilot

[65] The NSW DVDS pilot is similar to the 'right to ask' pathway of the DVDS in England and Wales. It does not include the equivalent of a 'right to know' pathway.

[66] An application for disclosure may be made to police by a person who has concerns about their safety ('a person 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.¹⁰⁶

[67] An application for disclosure may also be made by a 'concerned third party' who has an ongoing relationship with the person at risk (for example, a friend, relative or professional working with the family).¹⁰⁷

[68] 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.¹⁰⁸

[69] On receiving an application, the police are to carry out a risk assessment (using the Domestic Violence Safety Assessment Tool) to identify any threat or serious threat to the life, health or safety of the person at risk, and conduct a criminal record check of the subject.¹⁰⁹

[70] 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.¹¹⁰

[71] The threshold for a disclosure under the NSW DVDS pilot is the existence of a 'relevant conviction' in the subject's criminal history. A 'relevant conviction' is a conviction as an adult for:¹¹¹

¹⁰⁶ NSW Factsheet (2016) 2. A person must be at least 16 years to apply. The person 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 at risk lives. See also 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 DVDS pilot Application Form: Primary Person').

¹⁰⁷ NSW Factsheet (2016) 2. Both the applicant and the person at risk must be at least 16 years. See also 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> ('NSW DVDS pilot Application Form: Third Party').

¹⁰⁸ NSW DVDS pilot Application Form: Primary Person; NSW DVDS pilot Application Form: Third Party. A third party applicant must also explain why they are making the application and, if applicable, why the person at risk is unaware of the application: NSW DVDS pilot Application Form: Third Party, 4.

¹⁰⁹ NSW Factsheet (2016) 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. Based on these indicators, 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 that there is: not sufficient evidence of a threat to the victim, evidence of a threat to the victim, 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* (2014) 26–7.

¹¹⁰ NSW Factsheet (2016) 2.

¹¹¹ Ibid.

- a ‘personal violence offence’¹¹² committed within a ‘domestic relationship’;¹¹³ or
- specific personal violence offences committed outside of a domestic relationship namely, murder, sexual offences and child abuse offences.

[72] Consequently, if the subject has a relevant conviction, the conviction is to be automatically disclosed. However, a conviction is not to be disclosed if it has become a spent conviction,¹¹⁴ was not recorded by a court, is a juvenile conviction, or relates to an offence committed outside New South Wales. Apprehended domestic violence orders are not disclosable under the scheme.¹¹⁵

[73] 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. Police may also disclose additional relevant information, for example, the relationship between the subject and the victim of the offence.¹¹⁶

¹¹² 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, 25, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 43, 43A, 44, 45, 45A, 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, 73, 78A, 80A, 80D, 86, 87, 93G, 93GA, 110, 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 sections 13 or 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW); or
- (b1) an offence under sections 109, 111, 112, 113, 114, 115 or 308C of the *Crimes Act 1900* (NSW), but only if the serious indictable offence or indictable offence referred to in those sections is an offence referred to in paragraph (a) or (b); or
- (c) an offence of attempting to commit an offence referred to in (a), (b) or (b1).

As such, the term ‘personal violence offence’ includes offences such as murder, manslaughter, physical and sexual assaults, certain types of offences against children, property damage, stalking and contravening an apprehended domestic violence order.

¹¹³ 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 that 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 persons 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).

¹¹⁴ See *Criminal Records Act 1991* (NSW) as to when a conviction is ‘spent’.

¹¹⁵ *NSW Factsheet* (2016) 2. Apprehended domestic violence orders are not disclosable on the basis that they are ‘civil orders designed to protect people from future violence, and are not a criminal conviction’. However, breach of such an order is a criminal offence that will be disclosed under the NSW DVDS pilot.

¹¹⁶ Ibid. The disclosure of additional information is considered by police on a case by case basis, to avoid identifying the victims of disclosed offences.

[74] A disclosure is to be made orally to the person at risk, in a face-to-face meeting at a police station or another agreed safe place.¹¹⁷ Ordinarily, a specialist domestic and family violence support service worker must be present at the disclosure to provide support.¹¹⁸ The person at risk may also bring their own support person, such as a friend, relative or professional working with the person or their family.¹¹⁹

[75] Before the disclosure is made, the person at risk must sign a confidentiality undertaking not to share, publish or misuse the information disclosed, including on social media. (The undertaking permits the person to use the information disclosed to access domestic violence support services and undertake safety planning).¹²⁰ 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. The support person present at the disclosure must sign a similar undertaking, without which they will not receive a disclosure.¹²¹

[76] If there is no relevant conviction to disclose, the police are to inform the person at risk through a verbal communication. A support service worker is to be available to offer support and further discuss any relationship concerns.¹²²

[77] To protect the safety of a person at risk, the subject is not to be informed of the application or any disclosure.¹²³

[78] To facilitate the operation of the pilot scheme, the New South Wales Privacy Commissioner has made public interest directions which 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. The directions also allow those entities to abstain from acknowledging that they hold personal or health information about a subject and, in

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

118 Ibid 1, 3. The support service may also arrange other help such as counselling, legal and court support, accommodation, and financial support: 3.

119 Ibid 1.

120 Ibid 2; NSW Government, *NSW Domestic Violence Disclosure Scheme Undertaking form: Person at risk and NSW Domestic Violence Disclosure Scheme Undertaking form: Support persons*, <<http://www.domesticviolence.nsw.gov.au/dvds/resources>>. See also NSW Privacy Commissioner, above n 102, 4.

121 NSW Privacy Commissioner, above n 102, 4.

122 *NSW Factsheet* (2016) 3.

123 Ibid 1.

certain circumstances, about a person at risk or another person named in an application under the scheme.¹²⁴

124

Under s 41 of the *Privacy and Personal Information Protection Act 1998* (NSW) ('PPIP 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 making the direction: s 41(3). See NSW Privacy Commissioner, above n 102.

Under s 62 of the *Health Records and Information Privacy Act 2002* (NSW) ('HRIP Act'), the NSW Privacy Commissioner, after consultation with the Attorney General and with approval of the Minister for Health, 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 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/direction-domestic-violence-disclosure-scheme-pilot-s621-hrip-act-22mb>>. In the direction, the NSW Privacy Commissioner notes that '[h]ealth 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.

These directions were made on 13 April 2016 and will expire on 12 April 2018, or upon either the termination of the NSW 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, relevantly, the PPIP Act or the HRIP Act, whichever is the earlier.