



THE LAW SOCIETY  
OF NEW SOUTH WALES

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Ms Melinda Norton  
Director Women NSW  
Department of Family and Community Services  
Level 4  
219-241 Cleveland Street  
Strawberry Hills NSW 2012

By email: [Pier.Robinson-Tafft@facfs.nsw.gov.au](mailto:Pier.Robinson-Tafft@facfs.nsw.gov.au)

Dear Ms Norton,

### **Redesign of the Domestic Violence Disclosure Scheme**

Thank you for the opportunity to comment on a consultation paper that outlines the proposed redesign of the Domestic Violence Disclosure Scheme (DVDS).

The Law Society supports measures which contribute towards reducing the incidence of domestic violence in the community. We note, however, that domestic violence is a complex issue that is not amenable to simple solutions.

We are of the view that the goal of preventing domestic violence and keeping victims safe would be better served through directing resources at outreach, awareness and the provision of specialist services that are appropriate to the needs of specific groups, rather than continuing the DVDS.

Our view is supported by the Queensland Law Reform Commission, which recommended in its 2017 report that Queensland should not introduce a domestic violence disclosure scheme. The Law Reform Commission provided the following reasons for its recommendation:

- funds and other resources would be better directed to frontline services and continued implementation of the current reforms to address domestic and family violence;
- a DVDS would not meet the different needs of particular high-risk groups;
- 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 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;
- a DVDS would not address the underlying causes of domestic and family violence or community attitudes about it;

- 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, and
- the low level of uptake of the schemes in NSW and in New Zealand.<sup>1</sup>

We note that during the pilot period there was a very low uptake rate and the average cost per DVDS application was \$3,959.<sup>2</sup> The evaluation found that unless demand for the DVDS is increased, it does not represent a cost-effective proposition.<sup>3</sup>

We share the concerns of the Queensland Law Reform Commission in relation to the lack of evidence that a DVDS is effective, as shown by both the experience in the United Kingdom and the recent NSW Pilot evaluation.

Researchers into the efficacy of Clare's Law in the United Kingdom have raised concerns about the introduction of a DVDS in other jurisdictions given the lack of evidence demonstrating its effectiveness and/or evidencing its impact in practice.<sup>4</sup> The researchers found that:

A critical examination of the justification for, and merits for the introduction of a domestic violence disclosure scheme in England and Wales raises key concerns surrounding the operation of Clare's Law and indeed its potential to exacerbate the situation for women living with violence. Clare's Law is not able to provide a timely and risk-sensitive frontline response to women who fear violence from an intimate partner nor is it able to address the wider nature and extent of violence against women (and men) most of which is unlikely to come to the attention of criminal justice agencies.<sup>5</sup>

In NSW a total of 42 applications were processed by the DVDS across all four pilot areas in the seven-month research period from April to October 2017. Of the 24 participants who signed consents to take part in the evaluation, only 12 were subsequently interviewed. This represents 11% of all DVDS applicants from April 2016 to October 2017.<sup>6</sup> This is a very small sample size on which to be basing a proposal to expand the scheme state-wide. Should the scheme continue in NSW we submit that it should be on an interim basis only pending a further comprehensive evaluation.

While we do not support the continuation of the DVDS, we understand the proposed redesign elements aimed at addressing the demand and cost efficiency issues, such as increasing awareness of the scheme and changing the application process. However, we are strongly opposed to the proposal to expand the disclosure threshold and query how this proposal would address a primary shortfall of the pilot i.e. participation.

The proposed additional areas go beyond disclosing convictions for relevant offences to include provisional, interim and final Apprehended Domestic Violence Orders (ADVOs), proved domestic and family violence related offences where no conviction has been recorded, and a refusal of a firearms licence or permit.

ADVOs are civil orders, made on the balance of probabilities, a much lower threshold than is set for criminal convictions. A majority of final ADVOs are made by mutual consent, but without admissions on the part of the respondent. If disclosure of ADVOs is included in the DVDS the number of contested hearings is likely to increase substantially. We do not

<sup>1</sup> Queensland Law Reform Commission, *Domestic Violence Disclosure Scheme*, 2017, piii-iv.

<sup>2</sup> Urbis, *Final Evaluation Report DVDS and CAS*, 2018, pvi.

<sup>3</sup> Ibid.

<sup>4</sup> Fitz-Gibbon and Walklate, *The efficacy of Clare's Law in Domestic Violence Law Reform in England and Wales*, 2016, p10.

<sup>5</sup> Ibid. p17.

<sup>6</sup> Urbis, *Final Evaluation Report DVDS and CAS*, 2018. p7.

consider it appropriate to disclose an offence for which a court, having considered all of the relevant circumstances of the case, does not consider warrants the recording of a conviction. The disclosure of a refusal of a firearms licence or permit goes beyond the disclosure of convictions for relevant offences, with grounds for refusal including that the applicant is not a 'fit and proper person'.

We trust these comments are of assistance.

The Law Society contact for this matter is Rachel Geare, Senior Policy Lawyer, who can be reached on (02) 9926 0310 or at [rachel.geare@lawsociety.com.au](mailto:rachel.geare@lawsociety.com.au).

Yours sincerely,

A handwritten signature in green ink that reads "Doug Humphreys". The signature is written in a cursive style with a large initial 'D'.

Doug Humphreys OAM  
**President**