

Queensland Family and Child Commission

Submission

To: Queensland Law Reform Commission

Date: 30 January 2017

Topic: Domestic Violence Disclosure Scheme

Submission summary:

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Queensland Law Reform Council (QLRC) in response to the *Review about whether a domestic violence disclosure scheme should be introduced in Queensland*.

The QFCC would like to take this opportunity to recognise the extensive research and consultation undertaken by the QLRC, identifying the design of schemes in operation internationally and assessing the potential risks associated with implementing a DVDS in Queensland.

The QFCC is committed to promoting the safety, wellbeing and best interests of children and young people. We also promote and advocate the responsibility of families and communities to protect and care for children and young people. In this context, it is important to consider the effect of a DVDS on children and young people in families experiencing domestic and family violence.

The QFCC is committed to preventing domestic and family violence, and supporting survivors of violence. We recommend Queensland wait to see evaluations of schemes currently in place in the United Kingdom, New Zealand and New South Wales, before deciding whether to introduce a DVDS in this state.

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Domestic Violence Disclosure Scheme

Recommendation

The QFCC recommends waiting for a full evaluation of Domestic Violence Disclosure Schemes in place in the United Kingdom, New Zealand and New South Wales before deciding whether to pilot a similar scheme in Queensland.

The QFCC does not support the introduction of a Domestic Violence Disclosure Scheme (DVDS) in Queensland at this time. While initial assessments of schemes introduced in the United Kingdom and New Zealand show there may be some potential benefits, there are also a number of risks associated with this approach. The QFCC is committed to preventing domestic and family violence in Queensland, and supporting survivors in our communities. We recommend waiting until a more complete analysis is available in jurisdictions where this approach has been introduced – the United Kingdom, New Zealand, and New South Wales – before trialling a scheme in Queensland.

The QFCC would also welcome more information about the impact of a DVDS on children and young people in families experiencing domestic and family violence. This issue has not been considered in evaluations of the DVDS introduced in the United Kingdom. Evaluations of schemes in New South Wales and New Zealand have not yet been made available.

Domestic and family violence provisions in Queensland

In 2015, the Queensland Government accepted all 140 recommendations of the *Not Now, Not Ever* report, handed down by Special Taskforce on Domestic and Family Violence.¹ These recommendations included provisions to improve information sharing processes between government and non-government agencies.²

The report also recommended a trial of three integrated service responses, empowering agencies to work together to support people who have experienced, or are at risk of, domestic violence. Integrated service responses are currently being developed at Logan/Beenleigh, Mount Isa and Cherbourg.³

In late 2016, the Queensland Parliament passed the Domestic and Family Violence and Other Legislation Bill 2016, which amended the *Domestic and Family Violence Protection Act 2012* with enhanced information sharing provisions. The Bill introduced enabling legislation to allow information sharing between government and non-government agencies, including police, for specific purposes.

¹ Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*, Brisbane: State of Queensland, 2015; Queensland Government, *Queensland Government Response to the Report of the Special Taskforce on Domestic and Family Violence*, Brisbane: State of Queensland, 2015.

² Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever*, p. 32.

³ Department of Communities, Child Safety and Disability Services, *Building an integrated service response*, <https://www.communities.qld.gov.au/gateway/reform-renewal/domestic-family-violence/building-integrated-service-response>, accessed 19 January 2017.

This includes, in s. 169F, enabling a police officer

to give referral information about a person to a specialist DFV service provider if the police officer reasonably believes–

- a) the person fears or is experiencing domestic violence and there is a threat to the person's life, health or safety because of domestic violence; or
- b) the person has committed domestic violence against another person.⁴

Section 169G permits a prescribed entity or specialist domestic and family violence service to use this information to contact a person 'involved in the domestic violence', to provide 'assistance or a service' to that person.

However, the powers in the Bill do not specifically enable police or other services to provide information to an individual about their partner's history of violence.

One benefit of the integrated service response model is it ensures that people assessed to be at risk of experiencing domestic violence are given clear and immediate access to support services. Under the DVDS model, a person at risk is given information, but not required to seek further support.

The assessment of initial DVDS pilots in the UK identified inconsistency in follow-up support given to applicants.⁵ In 99 of the 111 disclosures, a support worker was present to provide immediate support to the person at risk. There was little follow-up support offered where no information was available to be disclosed. Of 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.⁶ An integrated service response model may be better placed to provide specialist support to people at risk.

Information sharing has been a concern for the child protection system in Queensland. The QFCC report, *When a child is missing*, highlights the complex issue of information sharing between government agencies, and non-government agencies, to improve agency decision-making and support the best interests of children.⁷ A holistic approach to information sharing and service provision, whether or not this includes a disclosure scheme, may have a strong positive impact on preventing harm.

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.

United Kingdom

As detailed in the QLRC review, the UK DVDS process allows disclosures to be made across two pathways. The first, 'right to ask', allows a member of the public to contact the police directly to ask for information about a person's history of domestic or other violence. That person may be in a

⁴ Domestic and Family Violence and Other Legislation Bill 2016, s. 169F.

⁵ Home Office (UK), *Domestic Violence Disclosure Scheme Pilot Assessment*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260894/DVDS_assessment_report.pdf, 2014, accessed 19 January 2017, p. 5.

⁶ Ibid., p. 14.

⁷ Queensland Family and Child Commission, *When a child is missing: Remembering Tiahleigh – a report into Queensland's children missing from out-of-home care*, Brisbane: The State of Queensland, 2016.

relationship with a potentially violent partner, or may be concerned about another person's safety in a relationship.

The second pathway, 'right to know', allows police to proactively disclose information to a person they believe may be at risk of harm from their partner. In each case, a disclosure is made verbally. In most cases, disclosures are made by a police officer to the person at risk, even if the original applicant was a concerned third party.

As stated above, there have been some concerns about the lack of support services available to applicants where there was no information to disclose, and a follow-up survey found little interest in support services among those who did receive disclosures through the scheme.⁸

The majority of applications do not result in disclosures, either because there is no relevant information to disclose, or because the police do not deem disclosure to be appropriate in the circumstance. During the pilot, 29 per cent of applications across both pathways resulted in a disclosure.⁹ During the first 12 months of national operation of the DVDS, the disclosure rate rose to 41 per cent.¹⁰ The disclosure rate from 'right to know' applications during the pilot was slightly higher than 'right to ask' applications – the breakdown of these pathways is not currently available for the national scheme.¹¹

However, some police officers surveyed during the pilot questioned the validity of the 'right to know' process, given police already had 'common law' powers to disclose information to people assessed as being at risk. The impact of the DVDS was therefore to increase the bureaucratic burden of the existing process of warning people of potential risk to their safety. It was also difficult to make disclosures under 'right to know' provisions, as these require speaking to a person at risk without the perpetrator present, while the person at risk may not be actively aware of any concerns.¹²

Following a 2013 ruling from the UK High Court regarding the Child Sex Offender Disclosure Scheme, the DVDS guidance was amended to include that consideration be given to seeking representations from the subject of a disclosure request before a disclosure is made. Consideration should also be given as to whether there are good reasons not to seek representations, such as where the safety of a person is at risk.¹³ There are clear concerns arising from this ruling. A person making an application under 'right to ask' provisions may be placed at risk if authorities seek the consent of the potential perpetrator, informing them an application has been made. As such, the ruling may discourage people from making applications.

At present, to ensure victim safety, neither the New Zealand nor New South Wales schemes enable police to seek the consent of a person before disclosing information about that person's history of violence.

There are two assessments available for the UK scheme. The first is an assessment of the 14-month trial period, the second an assessment of the first 12 months of the national scheme. Each assesses the process but neither aims to identify whether the DVDS has reduced domestic violence in the UK.

⁸ Ibid.

⁹ Ibid, p. 3.

¹⁰ Home Office (UK), *Domestic Violence Disclosure Scheme (DVDS): One Year On – Home Office Assessment of Roll-out*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505434/2016-03-08_DVDS_report_final.pdf, 2016, accessed 19 January 2017, p. 7.

¹¹ Home Office (UK), *Domestic Violence Disclosure Scheme Pilot Assessment*, p. 3.

¹² Ibid., p. 9.

¹³ Ibid, p. 7

New Zealand

The New Zealand DVDS scheme was introduced in December 2015, with a model similar to that of the UK. It is interesting to note the NZ scheme has received a lower number of applications (102), but a substantially higher disclosure rate (77 per cent).¹⁴ An evaluation is scheduled for late 2017, which could help inform Queensland as to whether to introduce a DVDS.

New South Wales

New South Wales introduced a two-year DVDS pilot in April 2016 covering four regions: Oxley, Shoalhaven, Sutherland and St George.¹⁵ The NSW model only includes a 'right to ask' pathway, although a majority of respondents to the *NSW Domestic Violence Disclosure Scheme Discussion Paper* supported both pathways.¹⁶ The NSW Government will employ a consultant to conduct evaluations of the scheme over the two-year pilot.¹⁷ These evaluations could also help inform Queensland as to whether to introduce a DVDS.

Victoria and Western Australia

A DVDS has also been proposed in Victoria and Western Australia. In each state, various agencies and organisations – including some who supported the introduction of a scheme – expressed reservations about the potential effectiveness, and possible risks, of a DVDS. Western Australia and Victoria have not opted to introduce a DVDS to date.

The Law Reform Commission of Western Australia noted some support for a DVDS in WA, along with notable opposition, including from the Western Australian police. That Commission recommended the WA Government continue to monitor international schemes before committing to a trial.¹⁸ The Victorian Royal Commission into Family Violence reported in March 2016 its concerns about the effectiveness of a scheme, and also recommended Victoria wait until an evaluation of the NSW scheme is available.¹⁹

Benefits and risks of a DVDS

Domestic Violence Disclosure Schemes are intended to help prevent domestic and family violence, by allowing authorities to disclose information that would normally be kept private. Where these schemes operate, a person deemed to be at risk can be informed by the police service about their partner's history of domestic or other violence. That person can then access support services, and make an informed choice as to whether to continue the relationship.

¹⁴ Queensland Law Reform Commission, *Review about whether a domestic violence disclosure scheme should be introduced in Queensland*, http://www qlrc.qld.gov.au/_data/assets/pdf_file/0004/496741/qlrc-wp75-web-copy.pdf, accessed 19 January 2017, p. 42.

¹⁵ NSW Government, *Factsheet: NSW Domestic Violence Disclosure Scheme*, http://www.domesticviolence.nsw.gov.au/_data/assets/pdf_file/0008/371195/dvds-fact-sheet.pdf, accessed 19 January 2017.

¹⁶ NSW Government, *NSW Domestic Violence Disclosure Scheme: Consultation Report*, http://www.women.nsw.gov.au/_data/assets/file/0010/335386/Abridged-DVDS-Consultation-Summary-FINAL.pdf, accessed 19 January 2017, p. 6.

¹⁷ NSW Government, *Factsheet*, p. 3.

¹⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, http://www.lrc.justice.wa.gov.au/files/p104_fdv_finalreport.pdf, 2014, accessed 19 January 2017, p. 179.

¹⁹ Royal Commission into Family Violence (Victoria), *Volume 1: Report and Recommendations*, Melbourne: Victorian Government Printer, 2016, p. 145.

As the QLRC consultation paper shows, there is a large body of evidence suggesting perpetrators of domestic and family violence tend to repeat violent behaviours.²⁰ People at risk of violence may be able to make clearer choices about their relationship, or may be better able to access services, if they are given information about their partner's history of violence.

However, there are considerable risks associated with a DVDS, as indicated in the QLRC review. 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. Where information is disclosed, the details may be limited, giving an incomplete account of an incident of past violence may be misleading.

There are also concerns about the potential impact of a person at risk confronting their partner about a history of violence.²¹ The QFCC is concerned this risk may also extend to children in relationships experiencing domestic and family violence.

Domestic and family violence is a risk factor for the safety of children. The need to care for children may also be a factor in a person's decision-making around staying in or leaving a violent relationship. Children's exposure to domestic violence is known to be a feature in families where other types of violence, including physical and sexual abuse, are present.²²

The QFCC maintains a register of all child deaths in Queensland based on notifications from the Registrar of Births, Deaths and Marriages and details of all child deaths reported to the Office of the State Coroner. Data from this register indicate, between July 2012 and June 2016, a total of 1730 child deaths were recorded. Of these, two per cent of all child deaths in Queensland occurred as a result of intrafamilial assault, half of which occurred in families where there was evidence of a history of domestic violence or neglect. Evidence of a history of domestic violence was present in 20 per cent of reportable child deaths, across all causes over this time. Domestic violence histories are not available for child deaths from natural causes.²³

It is not currently known what impact a DVDS may have on children in a family experiencing domestic and family violence. However, given the indicative data above, future evaluations of DVDS initiatives may help to examine whether these schemes operate in the best interests, safety and wellbeing of children.

The QLRC review states the risk that a DVDS might divert resources away from enhanced support services and integrated service responses. This is a particular concern, as the UK pilot assessment identified inconsistencies in the support services offered to applicants, particularly where no disclosure was made. Integrated service responses may be better able to direct support to people at risk, regardless of whether they are able to disclose information about a partner's history.

²⁰ Queensland Law Reform Commission, *Review about whether a domestic violence disclosure scheme should be introduced in Queensland: consultation paper*, http://www.qlrc.qld.gov.au/__data/assets/pdf_file/0004/496741/qlrc-wp75-web-copy.pdf, 2016, p. 9.

²¹ Law Reform Commission of Western Australia, 2014, p. 179.

²² Richards, K., 'Children's exposure to domestic violence in Australia', *Trends & Issues in Crime and Criminal Justice*, Australian Government, Australian Institute of Criminology, no. 419, June 2011.

²³ Data sourced from the Queensland Family and Child Commission, January 2017. A reportable death is a death that is reportable under the *Coroner's Act 2003* (QLD).

Furthermore, it is vital to consider the needs of Aboriginal and Torres Strait Islander peoples. As the QLRC review correctly reports, Aboriginal and Torres Strait Islander peoples experience disproportionately high levels of domestic and family violence.

Aboriginal and Torres Strait Islander hospitalisations for non-fatal family violence-related assaults for females were 34.2 times the rate for non-Indigenous females, and for Aboriginal and Torres Strait Islander males 28.3 times the rate for non-Indigenous males.²⁴ The hospitalisation rate is seven times higher in remote areas than in urban areas.²⁵

The development of a DVDS in Queensland would need to consider family and kinship relationships, availability of culturally appropriate support services and, in some cases, geographical remoteness which may impact on the scheme's effectiveness.

An evaluation of the integrated serviced response pilot currently being developed in Cherbourg may provide insight into how domestic and family violence services can be designed to meet the needs of remote communities.

The QFCC would also be interested in further research as to how the Queensland Police Service exercises existing common law powers to 'make all necessary inquiries to protect and preserve life'.²⁶ There may be no benefit to introducing a 'right to know' pathway, if this would bureaucratised a process already being undertaken.

Summary

Given little evidence on the DVDS approach is available at present, the QFCC does not support its implementation in Queensland until further evaluation takes place. Queensland is already undertaking considerable systemic reform to enhance the state's response to domestic and family violence, including legislative change and investment in new programs. The reforms already underway come in response to broad review undertaken by the Special Taskforce on Domestic and Family Violence in Queensland. The QFCC believes it is important to continue implementing and evaluating the current reforms before pursuing a DVDS model in Queensland.

²⁴ Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever*, p. 77.

²⁵ *Ibid.*, p. 121.

²⁶ Queensland Family and Child Commission, 2016, p. 64.