

**Comments on NSW Domestic Violence Disclosure Scheme
October 2018**

1. Women's Legal Service NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
2. These comments reflect on the NSW Domestic Violence Disclosure Scheme and the value or otherwise of such a scheme
3. In summary, we recommend:
 - 3.1 Further consideration of whether or not the NSW Domestic Violence Disclosure Scheme (DVDS) should continue at all.
 - 3.2 If the DVDS is to continue, further and ongoing evaluation is required before a state-wide roll out.

Limited evidence of the effectiveness of the DVDS

4. We are concerned if the DVDS continues after the evaluation of the DVDS pilot by Urbis, commissioned by Women NSW, stated *"there is limited evidence upon which to recommend continuation or expansion of the DVDS."*¹
5. Although it was expected that the number of applications would increase over time as awareness of the pilot scheme increased, this did not occur.² 105 applications were made over a 19 month period with 92% of these having a decision made at the time of the Urbis review of which 42% resulted in a disclosure.³
6. The Urbis evaluation states *"the NSW Police Force were not required to report any data for the purpose of monitoring the DVDS pilot"*. This left a number of data gaps, including the number

¹ Urbis, *NSW Domestic Violence Disclosure Scheme Evaluation Final Report*, February 2018 at p50

² Ibid at p16.

³ Ibid at p26



of enquiries made to police about the DVDS and the number of rejected applications.⁴ Thus, the actual disclosure rate may have been lower.

7. Only 12 in-depth interviews were conducted with applicants in the DVDS pilot, all over the six-month period from June to December 2017.⁵ While it is important to listen to the voices of applicants, Urbis acknowledges *"the interviews conducted cannot be considered to be representative of DVDS applicants"*.⁶
8. The Urbis evaluation states: *"all applicants interviewed indicated they would recommend the scheme to others"*.⁷ Some applicants commented positively on the information disclosed providing *"clarity"* and that *"I'm not to blame"*.⁸
9. However, some applicants questioned the usefulness of the scheme when it did not include offences from other states and territories.⁹ Urbis notes there was *"considerable support for including interstate convictions in the threshold"* with all four pilot sites indicating the applicants and person of interest had lived interstate for some time.¹⁰ The danger in providing incomplete information is this may give applicants a false sense of security as we raised in our [2015 submission](#) and discuss further below.
10. Urbis reports some applicants found the disclosure meeting *"confusing"*.¹¹ This may have been in circumstances where the police indicated there was nothing they could disclose (for example, it did not meet the threshold criteria, such as a violent non-domestic violence offence that was not murder, a sexual offence or a child abuse offence) but also tried to convey the message this did not mean the person was not at risk.
11. Further, support services noted some applicants were *"reportedly not happy with the disclosure"* and some were *"afraid to take any action following the disclosure as the person of interest continued to harass, intimidate or stalk them"*.¹²
12. The Urbis evaluation acknowledges *"there is no information to indicate whether applicants are safer as a result of using the DVDS"*.¹³ This is because the number of people accessing the scheme is *"too low to make this judgement"* and contact through the DVDS process is *"at a point in time"* rather than ongoing.¹⁴

⁴ Ibid at p8

⁵ Ibid at p5

⁶ Ibid at p8.

⁷ Ibid at p30

⁸ Ibid at p29.

⁹ Ibid at p30.

¹⁰ Ibid at p43.

¹¹ Ibid at p vi

¹² Ibid at p27.

¹³ Ibid at p vi

¹⁴ Ibid.

13. Urbis asserts *"there are early indications that the Scheme is proving of value to individual applicants who are taking safety actions"*.¹⁵ However, there is little detail about this.
14. Urbis notes a benefit of the DVDS is that people accessing the scheme are linked to a range of supports they might not have otherwise accessed.¹⁶ We believe it is important that those who have experienced violence are able to easily access specialist sexual and domestic and family violence services and that these services be adequately funded. We believe encouraging early access to such services can be done in ways other than through a DVDS which places the responsibility on the victim-survivor to take action to ensure their safety, rather than holding the perpetrator accountable; can promote victim-blaming; and can create a false sense of security as outlined below.
15. The Urbis evaluation of the pilot found there was a need for further guidance to police, support services and applicants about the level and type of evidence required to demonstrate concern to meet the eligibility criteria in accessing the DVDS.¹⁷ This raises questions about whether it would be more efficient and effective to focus on engaging with a person who raises concerns about their experiences of violence, including risk assessment and safety planning and referral to services rather than focusing on the possible disclosure of information to confirm other examples of violence perpetrated by the person of interest.
16. We note a criticism of the DVDS pilot was the barriers to accessing the DVDS, including having to go to a police station to apply for a DVDS. However, even if accessibility is improved and additional material disclosed, we agree with the Queensland Law Reform Commission (QLRC) who conducted an extensive inquiry of a proposed DVDS in Queensland and recommended against such a scheme. The QLRC found *"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"*.¹⁸
17. If a state-wide roll out of the DVDS is to occur, further and ongoing evaluation is first required, with greater input from applicants accessing the scheme. We believe there is currently insufficient evidence to suggest a level of effectiveness that would justify a state-wide roll out.

Recommendation 1:

There should be careful consideration of whether or not the NSW Domestic Violence Disclosure Scheme (DVDS) should continue at all.

¹⁵ Ibid

¹⁶ Ibid at p46.

¹⁷ Ibid at p47.

¹⁸ Queensland Law Reform Commission, *Domestic Violence Disclosure Scheme Report*, June 2017 at p iii accessed at: https://www.qlrc.qld.gov.au/_data/assets/pdf_file/0010/541189/qlrc-report-no-75.pdf

Placement of responsibility on the victim-survivor and the potential for victim-blaming

18. Our 2015 submission in response to the Domestic Violence Disclosure Scheme Discussion Paper and the Queensland Law Reform Commission's report both expressed concern that the DVDS shifts responsibility for the violence from the perpetrator to the victim-survivor. The responsibility falls to the victim-survivor to make the application and then to take action to ensure their safety. There seems to be an underlying expectation that a victim-survivor will leave the relationship once a history of violence is disclosed which does not recognise *"the dynamics of domestic and family violence mean that there are many barriers to leaving an abusive relationship and reasons why a person may stay in such a relationship"*.¹⁹
19. Further, there is a high-risk of victim blaming if the victim-survivor does not leave the relationship.²⁰ We remain concerned of the risk that a failure to exercise a right to ask or to take action in response to what is learnt through a right to ask process may be used in other proceedings, including care and protection or family law proceedings. We note the Urbis evaluation states there was Department of Family and Community Services involvement in 9% of cases where a DVDS application was made with no further information included.²¹

Creation of a false sense of security

20. The under-reporting of domestic and family violence, and the threshold for what information is disclosed, can lead applicants into a false sense of security regarding their partner's behaviour.
21. The Australian Bureau of Statistics 2016 Personal Safety Survey found that 82% of women who experienced violence from their current partner, and 65% of women who experienced violence from a previous partner, never reported this to the police.²²
22. Under reporting of violence is a particular issue of concern for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with disability, LGBTIQ communities and women in regional, rural and remote areas.
23. The Urbis evaluation found the threshold for disclosure was too high.

¹⁹ Ibid. See also at p10-11.

²⁰ Women's Legal Service NSW, *Submission to the NSW Domestic Violence Disclosure Scheme Discussion Paper*, June 2015 at 2; Queensland Law Reform Commission, *Domestic Violence Disclosure Scheme Report*, June 2017 at 112-113 accessed on 4 October 2018 at:

[https://www.qlrc.qld.gov.au/_data/assets/pdf_file/0010/541189/qlrc-report-no-75.pdf](https://www qlrc.qld.gov.au/_data/assets/pdf_file/0010/541189/qlrc-report-no-75.pdf)

²¹ Urbis Evaluation at p18.

²² Australian Bureau of Statistics, *Personal Safety, Australia, 2016, Actions taken in response to partner violence*, accessed on 4 October 2018 at

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Action%20taken%20in%20response%20to%20partner%20violence~23>

24. There was strong support from stakeholders involved in the pilot to include convictions in other Australian jurisdictions. To not do so leaves a gap in information which can continue to provide a false sense of security.

Concerns regarding third-party right to ask

25. 19% of applications in the DVDS pilot were made by third parties.²³ There were 8 disclosures. Urbis notes that in some of the third party application cases the primary person *“did not want any contact with the support service and did not want to be involved in the disclosure, usually because they viewed the third party applicant as interfering.”*²⁴
26. Concerns have also been expressed that third party applications take away the agency of the person who has experienced violence.
27. We continue to hold the view that we do not support a third party right to ask.²⁵

Expense of administering the scheme

28. Over the period from mid-April 2016 to 31 October 2017, a total of 105 applications for a disclosure were made at a cost of \$3959 per application.²⁶
29. These figures do not include the costs of administering the program by Women NSW, or the cost to the NSW Police Force for administering the scheme.²⁷ If these costs are included, it is likely that the per-application cost will be substantially higher.
30. As in 2015 and for the reasons above, we are not persuaded that the substantial funding required for the administering of the scheme across NSW and the training of police and support services across NSW to deliver the scheme are justified.
31. Instead, the funds could be directed to frontline services responding to sexual, domestic and family violence without being tied to the scheme.

See also: [Women's Legal Service NSW Submission to the NSW Domestic Violence Disclosure Scheme Discussion Paper, June 2015](#)

²³ Urbis evaluation at p18.

²⁴ Ibid at p27

²⁵ Women's Legal Service NSW, *Submission to the NSW Domestic Violence Disclosure Scheme Discussion Paper*, June 2015 at p4.

²⁶ Urbis Evaluation at p44.

²⁷ Ibid