

**NSW DOMESTIC VIOLENCE DISCLOSURE SCHEME  
DISCUSSION PAPER  
MAY 2015**

**Legal Aid NSW submission  
to  
Family and Community Services**

**June 2015**

## **Introduction**

The NSW Domestic Violence Disclosure Scheme Discussion Paper, May 2015 (Discussion Paper) makes it clear that the broad objective of this legislative initiative is to introduce a framework with recognised and consistent procedures to facilitate police disclosure of information about previous violent offending by a new or existing partner where this may help protect the person from criminal abuse or serious harm.<sup>1</sup> The primary concept underlying this initiative is that it is a useful way of providing individuals with information to help them make a more informed choice about their relationship.

Legal Aid NSW is of the view that all aspects of the model design should stem from this primary concept, namely, that it is a mechanism to help protect a person from criminal abuse or serious harm by providing them with information to help them make a more informed choice about their relationship.

It therefore follows that this initiative should be directed to potential victims of domestic violence who are in a position to make a relatively free and informed choice about the future of their relationship. Some people cannot make an informed choice about the future of a domestic relationship for a variety of reasons including lack capacity or control, such as children below a certain age or people with an intellectual disability.

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<sup>1</sup> Discussion Paper, p 5

While Legal Aid NSW sees benefits of this legislative initiative to certain groups within the community, we also note that this would be one of a number of mechanisms which may help protect the person from criminal abuse or serious harm. This initiative would be a preventative mechanism to help protect the person protect themselves from criminal abuse or serious harm. It would sit alongside and not be a substitute for mechanisms in response to domestic violence, namely an application for an apprehended domestic violence order, or charging where a person has committed a domestic violence offence.

For a number of reasons, Legal Aid NSW supports a minimalist approach to this legislative initiative:

- First, this scheme could have considerable resource implications. It would therefore be appropriate to limit its application to those individuals who may benefit from it consistent with the policy objective.
- Second, while the legislative scheme is based on Clare's Law UK (the UK model), which has been the subject of a process evaluation, no outcome evaluation of the UK model has been completed.
- Third, the reach of the scheme must be balanced with the right to privacy and the criminal justice policy goal of rehabilitation.

The NSW Domestic Violence Disclosure Scheme (NSW DVDS) could always be extended if that were recommended following an evaluation of the NSW DVDS Pilot.

Noting the scheme has significant potential to link a person at risk of criminal abuse or serious harm to services and given the potential resource implications, Legal Aid NSW is of the view that the model should build on the infrastructure already established under the NSW Government Domestic and Family Violence Framework for Reform which has resulted in significant improvements in a multi government agency and non-government organisation service response to domestic violence abuse.

In addition, consistent with the UK model, Legal Aid NSW is of the view that the model for NSW should not provide for an arbitrary "one size fits all" approach. Rather there should be sufficient flexibility in the NSW model to provide disclosure of information about previous violent offending by a new or existing partner which is appropriate and relevant to helping an individual make a more informed choice about the future of their relationship. There will need to be sufficient time for a comprehensive investigation of previous violent offending by a new or existing partner to ensure the disclosure decision is accurate.

Legal Aid NSW welcomes the opportunity to respond to the Discussion Paper. This submission draws on the considerable experience Legal Aid NSW has in providing services to people who are victims of domestic violence as outlined at [Attachment A](#).

Should you require further information, please contact: Annmarie Lumsden, Director Strategic Planning and Policy on 9219 6324 or at [Annmarie.Lumsden@legalaid.nsw.gov.au](mailto:Annmarie.Lumsden@legalaid.nsw.gov.au).

This submission has maintained the numbering format in the Discussion Paper for ease of reference.

## 4. Right to Ask and/or Right to Know

### 4.1 Right to Ask

Do you support adopting a Right to Ask in NSW?

- If yes, should it be limited to people who are in a current intimate relationship? Or, should it be extended to someone who was previously in a relationship with a person, and who continues to have ongoing contact with that person?
- How should current and/or former intimate relationships be defined? Are the relationships set out in [section 5\(a\)-\(c\) of the Crimes \(DPV\) Act](#) relevant?
- Do you support a third party being able to apply under a Right to Ask?
- If yes, in what circumstances? What nexus should there be with the primary person?
- What other broad eligibility criteria/parameters would need to be put in place?

Legal Aid NSW supports adopting a Right to Ask in NSW on the basis that it is limited to intimate partner relationships as defined in section 5 (a) to (c) of the *Crimes (Domestic and Personal Violence) Act 2007* (Crimes (DVP) Act), as follows:

- a) is or has been married to the other person, or
- b) is or has been a de facto partner of that other person, or
- c) 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.

This would include people who are in a current intimate relationship, and people who were previously in an intimate partner relationship. Evidence indicates that the time of separation is a time when people can be most vulnerable to domestic violence by a former intimate partner.

For people who were previously in an intimate partner relationship with a person, a parameter for the Right to Ask should be the requirement that they continue to have ongoing contact.

#### Third party applicants

There is considerable danger in a third party being able to apply under a Right to Ask. A significant strategy of perpetrators of domestic violence in maintaining power and control is isolation of their partner from friends and family. While it is important to promote community and family awareness of domestic violence, the attempt by family or friends to disclose information about previous offending by their partner to the person they are concerned about, may increase the potential isolation and marginalisation of that person, and thereby increasing the risk of violence to that person.

In addition, a third party being able to apply under a Right to Ask would impinge upon the autonomy of the person in the relationship, specifically, their Right to Ask and their right to make a decision about the future of their relationship.

If a third party has concerns it would be reasonable for them to raise their concerns with the person in the relationship and suggest that they might choose to apply under a Right to Ask.

## 4.2 Right to Know

Do you support adopting a Right to Know in NSW?

- If yes, what broad criteria/parameters would need to be put in place?

Legal Aid NSW would support a Right to Know which reflects the powers in section 98M in Part 13A of the Crimes (DVP) Act and allows the police to disclose information about a person without their consent where:

- it is necessary to prevent or lessen a domestic violence threat to another person, and
- the threat is a serious threat, and
- it is unreasonable or impracticable to obtain the person's consent.

## 5. Thresholds for disclosure

### 5.1 When information should be disclosed

Do you support the Option 1 threshold: Prior convictions for domestic violence offences as the relevant threshold for disclosure?

- If yes, should prior convictions include any sexual offences that are not domestic violence offences under the Crimes (DPV) Act?
- Should prior convictions include a section 10 bond where no conviction has been recorded?
- Should prior convictions include crimes committed in other states and territories?

No, prior convictions for domestic violence offences should not of themselves be the threshold for disclosure. See response to Option 3 below.

Do you support the Option 2 threshold: Prior convictions for domestic violence offences and current and/or previous final ADVOs as the relevant threshold for disclosure?

- If yes, should it include current final ADVOs? Or current and expired final ADVOs?

No, see response to Option 3 below.

Do you support the Option 3 two staged process as the threshold for disclosure: Prior convictions for domestic violence offences and/or current or previous final ADVO trigger further enquiries?

- If yes, should the first step be limited to prior offences? Or should it include ADVOs?
- What considerations would need to be taken into account to meet the threshold for disclosure?

Legal Aid NSW supports the Option 3 two staged process as the threshold for disclosure but only where the first step is limited to prior convictions for domestic violence offences and this is the trigger for further inquiries.

## Two staged process

As indicated above, Legal Aid NSW is of the view that the NSW model should not provide for an arbitrary “one size fits all” approach. Rather there should be sufficient flexibility in the NSW model to provide disclosure of information about previous violent offending by a partner which is appropriate and relevant to helping an individual make an informed choice about the future of their relationship. There will need to be sufficient time for investigation of previous violent offending by the partner to ensure the disclosure decision is made on the basis of comprehensive and accurate information.

For this reason, Legal Aid NSW does not support a model which envisages an applicant attending a police station, a police officer on duty doing an immediate check on WebCOPS, and if there is a record of previous violent offending by the partner, the police officer making a disclosure of that information then and there. There could be no guarantee that the information is comprehensive or accurate. Defendants use alias and it would be important to do a fingerprint record check to know a full criminal history. There could be considerable danger in advising an applicant that the person they named had no record of previous violent offending when a more comprehensive fingerprint check could reveal they did. This would give an applicant a false sense of security and undermine the policy objective of the scheme. It could also expose police to liability.

In addition, advising applicants about previous offending, no matter how old or irrelevant, could not only infringe the right to privacy and the criminal justice policy goal of rehabilitation when there is no justification to do so, but could cause the applicant unnecessary alarm. The response must be more nuanced and disclosure decisions made in a context which allows appropriate consideration by people with expertise in domestic violence.

## Stage 1 – Trigger offences

Legal Aid NSW is of the view that prior convictions for domestic violence offences should be limited to those committed by the offender against an intimate partner and committed as an adult. Relevant domestic violence offences could include crimes committed in other states and territories.

Relevant domestic violence offences should not include offences committed as a juvenile. The power imbalance which exists between the perpetrator and victim in an intimate domestic violence relationship does not apply in the majority of circumstances involving child defendants. Child defendants are particularly vulnerable. They have frequently been the victim of domestic violence themselves and many have been in out-of-home care. Most domestic violence offences committed by juveniles are against parents, carers or co-residents in share houses and are not indicative of a pattern of violence towards intimate partners.

## Not current or previous final ADVOs

The threshold for disclosure should not include current or previous final ADVOs for the reasons set out in the Discussion Paper. Specifically, the standard of proof for an ADVO is the balance of probabilities, a lower onus than for a criminal offence, and these orders may be made by consent and without admissions. Including ADVOs as a threshold for disclosure could result in less ADVOs being made by consent and an increase in defended hearings, carrying with it the additional trauma of prolonged court proceedings for persons in need of protection.

Do you support the adoption of a test:

- similar to that in the UK: *a pressing need to make a disclosure to prevent further criminal abuse or serious harm*
- under Part 13A: *where disclosure is necessary to prevent or lessen a serious threat to the life, health or safety of a person, or*
- used by Centrelink: *where disclosure is necessary to prevent or lessen a threat to the life, health or welfare of a person or*
- some other threshold?

When the threshold for disclosure is reached the test for the second step should be consistent with section 98M in Part 13A of the Crimes (DVP) Act. Legal Aid NSW is of the view that introducing a completely different test in the context of domestic violence in NSW could give rise to unnecessary complexity in administration of the scheme.

However, it is noted that this initiative would be a preventative mechanism to help protect the person protect themselves from criminal abuse or serious harm. For this reason there is some justification in the adoption of a test with a slightly lower bar. While section 98M requires a 'serious threat to the life, health or safety of a person', the test for disclosure could be: if it is believed on reasonable grounds that disclosure is necessary to prevent or lessen a threat to the life, health or safety of a person. .

What principles should underlie any disclosure decision? Should they reflect the UK principles of the disclosure being lawful, proportionate and necessary to an assessed need or threat?

Legal Aid NSW is of the view that each application should be assessed on a case by case basis.

The principles underling any disclosure decision should reflect the test for disclosure discussed above and the UK principles: specifically, the disclosure must be lawful, proportionate and necessary to prevent or lessen a threat to the life, health or safety of a person.

The principles should take into account the right to privacy and the criminal justice policy goal of rehabilitation.

The paramount concern should be the safety of the applicant.

## 5.2 Spent convictions

Should spent convictions be disclosed? If yes, in what circumstances?

Legal Aid NSW is of the view that spent convictions should not be disclosed.

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.

For adults, the reason why spent convictions should not be disclosed under the scheme is clearly set out in the Discussion Paper, namely findings of recidivism studies carried out in the UK and NSW show that the risk of an individual reoffending after 10 years of crime free behaviour is negligible.

### 5.3 Age limit for subject and applicant/person identified

Age of subject:

Do you support Option 1: Subject's adult and juvenile criminal convictions included in disclosure information?

No, see response to Option 3 below.

Do you support Option 2: Subject's adult criminal convictions and juvenile criminal convictions committed 16 years or over included in disclosure information?

No, see response to Option 3 below.

Do you support Option 3: Subject's adult history only included (exempting all juvenile history) in disclosure information?

Legal Aid NSW supports Option 3.

As noted in the Discussion Paper there is a long standing legal principle that prevents disclosure of any criminal offending by a child. The reasons for this legal principle are well summarised in the Discussion Paper.

Age of applicant / person identified:

Do you support restricting the age of primary applicants/persons concerned to 16 years and over, which is the age of consent?

Legal Aid NSW supports restricting the age of primary applicants/persons concerned to 16 years and over.

Children at risk of harm should be dealt with under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

It is important to ensure that the DVDS does not create any confusion about the fact that this is the appropriate mechanism to respond to children at risk.

Should there be an age restriction for third party applicants

- If yes, what should be the age limit?
- If no, what supports/considerations should be in place?

Legal Aid NSW does not support third parties being able to apply under a Right to Ask for the reasons set out at 4.1 above, including a child as a third party applicant.

Assuming the scheme only applies to intimate relationships, a typical example of a child as third party might be the child applying under a Right to Ask about their parent's partner. In this situation, a disclosure would most likely have little effect because the child would have no authority to make a choice about the future of that relationship, or control to do anything about it. The most appropriate course, consistent with the policy objective of the legislative initiative, would be to allow the parent to make the application themselves.

What considerations should be taken in matters where there is a potential risk of harm to a child?

Where there is a potential risk of harm to a child current child protection arrangements under Chapter 6A of the *Children and Young Person's (Care and Protection) Act 1998* should apply.

#### 5.4 What information should be disclosed?

What convictions are disclosed:

Do you support Option 1: Disclosure of a person's domestic violence related criminal history only?

Legal Aid NSW supports Option 1: Disclosure of a person's domestic violence related criminal history only. This is the information that is most relevant to allowing the applicant to make an informed choice about the future of their relationship.

However, as stated above, the extent of this disclosure should reflect the test for disclosure and the UK principles that the disclosure must be lawful, proportionate and necessary to prevent or lessen a serious threat to the life, health or safety of a person, as discussed above at 5.1.

Do you support Option 2: Disclosure of a person's domestic violence related criminal history and any other violent conviction?

No, see repose to Option 1.

How much contextual information is disclosed:

Do you support Option 1: Limited disclosure (for example, the existence of a relevant offence in subject's criminal and/or civil history only)?

Legal Aid NSW supports Option 1: Limited disclosure of criminal history only, including the nature of the offence, date of conviction and nature of the sentence imposed, to the extent that this information is recorded in NSW Police data base records.

Especially during the pilot period it would be particularly important to monitor the accuracy of the information recorded in NSW Police data base records and disclosed.

In addition to data quality issues, it is important to bear in mind that in most cases it would be a very difficult task to provide any further accurate contextual information. Even where a person enters a plea of guilty it can be to an amended Police Facts Sheet, which remains on the court file and is not recorded on the NSW Police data base. Where a person enters a plea of not guilty and there is a defended hearing, the finding of guilt may be on facts inconsistent with the Police Facts Sheet.

Do you support Option 2: Broader disclosure of contextual information? If yes, what considerations should be taken into account when deciding what information should be disclosed?

No, see repose to Option 1.

What restrictions/safeguards would need to be put in place to ensure the confidentiality and privacy of the subject and any third party is maintained?

The issue of what restrictions/safeguards would need to be put in place to ensure the confidentiality and privacy of the subject and any third party would primarily arise in the context of broader disclosure of information. Clearly the identity of victims should never be disclosed and nor should information about the subject or any third party that would not assist the applicant in making a decision about the future of her relationship on the basis of a risk of serious harm.

## **6. Application process – Right to Ask**

What should be the process for making an application?

Legal Aid NSW is of the view that applications should be lodged at a police station, and submitted to Domestic Violence Liaison Officers (DVLOs).

Who would be the most appropriate first point of contact for applicants?

While selected government and non-government agency workers could assist an applicant to complete the application form, if required, the applicant should meet with the DVLO at a police station. This may require a scheduled appointment.

Meeting with the DVLO at the police station would enable the DVLO to make the necessary assessments of the nature of the relationship of the applicant with their partner, including an assessment of whether the applicant is at serious threat and requires immediate assistance under section 98M in Part 13A of the Crimes (DVP) Act, that is, whether there should be a Right to Know.

What assistance, if any, are people likely to need to complete their application?

As indicated in the Discussion Paper, people who are not literate or proficient in English may require assistance to fill out the form.

Who is best placed to assist applicants to complete the application?

Selected government and non-government agency workers could assist an applicant to complete the application. WDV CAS trained workers would be well placed to provide this assistance.

What supports/checks/referrals need to be in place at the point at which a person makes the application?

An applicant who attends a police station should be referred to the closest WDV CAS.

Should DVLOs manage the receipt of the application and make initial enquiries/checks?

Legal Aid NSW is of the view that DVLOs should manage the receipt of the application.

Other NSW Police officers or staff members could conduct administrative checks, and they or a selected government and non-government agency workers could conduct a Domestic Violence Safety Assessment.

However, armed with all relevant information, the DVLO who is the dedicated police specialist in dealing in family and violence issues, should make the assessment of the nature of the relationship of the applicant with their partner, and whether the applicant is at serious threat and requires immediate assistance.

Do you support the need for a DVDS Review Checklist, used by agencies reviewing applications? If yes, what should this checklist include?

Legal Aid NSW supports the need for a DVDS Review Checklist including:

- previous criminal history
- current and prior ADVOs, and
- the result of a Domestic Violence Safety Assessment Tool.

## **7. Identification process – Right to Know**

What should be the process for managing a Right to Know process? Should DVLOs manage the receipt of the information and make initial enquiries/checks?

DVLOs should manage the receipt of information that indicates a person may be at risk and then seek approval to disclose, unless the DVLO is of the view that immediate disclosure is necessary to prevent or lessen a serious threat to the life, health or safety under section 98M in Part 13A of the Crimes (DVP) Act.

## **8. Approval process**

Do you support Option 1: Determination of disclosure by NSWPF? If yes, what level of seniority in NSWPF should approve disclosure requests?

No, see response to Options 2 and 3 below.

Do you support Option 2: Determination of disclosure by a local decision-making body? If yes, which key agencies would need to be included in the local decision-making body?

Legal Aid NSW supports Option 2, Determination of disclosure by a local decision-making body. As stated in the Discussion Paper, this process could be adopted through an *It Stops Here Safer Pathway* Safety Action Meeting (SAM).

Legal Aid NSW is of the view that it need not be comprised of all the agency representatives at the SAM but rather could be a sub group of representatives from NSW Police, Corrective Services and the WDVCS. This may allow more frequent meetings to be convened as required.

Do you support Option 3: Determination of disclosure by a centralised decision-making body? If yes, which key agencies would need to be included in the centralised decision-making body?

Where there is no local SAM, determination of disclosure could be made by a centralised decision-making body with representatives from NSW Police, Corrective Services and the WDVCS. This would allow more frequent meetings to be convened as required. It may be an alternative to Option 2 where a meeting of the sub group of a SAM cannot be convened at short notice.

## 9. Disclosure process

### 9.1 Disclosure to the applicant/person identified

Do you support DVLOs being the primary contact point for people about disclosures?

Yes, Legal Aid NSW supports the DVLOs being the primary contact point for people about disclosures as discussed in response to 6. Application Process – Right to Ask, above.

Do you support DVLOs making the disclosure?

Legal Aid NSW supports DVLOs making the disclosure.

Should someone from a support service be present when a disclosure is made? If yes, should a disclosure be made by a DVLO even where someone from a support service cannot be present?

Legal Aid NSW is of the view that it would be optimal if someone from a support service was present when a disclosure was made. However, if someone from a support service could not be present, the DVLO should have the discretion to decide whether or not a disclosure can be made, based on the circumstances of a particular case, including an assessment of the applicant and the nature of the risk.

What other safeguards/information/support might need to be in place for the person concerned when receiving the information in the disclosure?

Other safeguards/information/support which might need to be in place for the person concerned when receiving the information in the disclosure will depend upon the circumstances of a particular case, and should be determined by the DVLO.

What supports should be available to the applicant/person identified after a disclosure?

At the time of disclosure, the applicant should be asked whether they require any support. The DVLO should refer the person to appropriate support services, including the nearest WDVCS.

### 9.2 Disclosure to a third party

When would it be appropriate, if at all, to disclose information with a third party present?

It would be appropriate to disclose information with a third party present, only with the consent of the applicant.

When would it be appropriate, if at all, to make a disclosure to a third party only?

Legal Aid NSW is of the view that it would never be appropriate to make a disclosure to a third party only.

If you agree that disclose should be made with a third party present, or to a third party only, who should make the decision to approve this disclosure; the DVLO or the authority approving the decision?

Subject to the consent of the applicant (person concerned), the DVLO should ultimately determine whether a disclosure should be made with a third party present.

The decision-making body could make a recommendation to the DVLO that disclosure should be made with in the presence of a third party if it considered it was necessary and appropriate.

What supports should be available to the person identified, and the third party, after a disclosure resulting from a third party application?

The DVLO should refer the person to appropriate support services, including the nearest WDVCAS.

### 9.3 Informing the subject of the disclosure

Should consideration be given to seeking representations from the subject before a disclosure is made? If yes, what exceptions should apply to seeking such input?

Legal Aid NSW is of the view that, consistent with the UK model, the decision-making body should have the discretion to seek representations from the subject before a disclosure is made.

No disclosure should be made to the subject if there is any concern that this may put the applicant at risk.

Should the subject be informed of a disclosure? If yes, in what circumstances should the subject be informed?

- Who should make the decision to inform the subject of the disclosure? Would it be the authority approving the decision to disclose under Section 8?
- What processes or safeguards would need to be put in place if the subject is notified of an application?

The decision-making body should have the discretion to decide whether to inform the subject of the disclosure.

Again, no disclosure should be made to the subject if there is any concern that this may put the applicant at risk.

If the subject is informed of the disclosure, the subject should be advised of the implications of the disclosure and referred to appropriate services.

Should the subject have a right to appeal a decision where a disclosure is made?

- If yes, on what grounds could an appeal be lodged?
- Who should be able to decide an appeal?

The subject should not have a right to appeal. To provide one would have little practical effect as the disclosure would have been made and in most cases the subject will not know that a disclosure would has been made.

## 9.4 No disclosure to the applicant under a Right to Ask

Where there is no disclosure, should this also be done in person?

Ideally, if a decision is made not to disclose information, this information should be communicated by the DVLO in person. Consistent with the UK model, the applicant should be advised that while there is no disclosure, this does not mean there is no risk of harm.

The DVLO should refer the person to appropriate support services, including the nearest WDVCAS.

Should support services be present?

- Should these two (previous) questions be decided on a case by case basis?
- If yes, who should make the decision? The DVLO or the authority approving the decision to disclose under Section 8?

The DVLO should decide whether support services should be present on a case by case basis.

The decision-making body could make a recommendation to the DVLO that support services should be present if it considered it was necessary and appropriate.

What safeguards/information/support should be provided to an applicant where no disclosure is made? For how long should these supports be available?

The DVLO refer the person to appropriate support services, including the nearest WDVCAS, and should also provide advice about calling the police should a situation arise in the future where they feel at risk of criminal abuse or serious harm, including when and how an application can be made for an ADVO.

Should an applicant have a right to appeal a decision where no disclosure is made?

- If yes, on what grounds could an appeal be lodged?
- Who should be able to decide an appeal?

No, the applicant should not have a right to appeal. However, they should be able to make a fresh application if there is any cause for further concern.

## 10. Other issues/safeguards

### 10.1 Risk assessment for applicant/person identified

Do you support applying the DVSAT to applicants at the point when an application is made and make referrals as necessary?

Legal Aid NSW is of the view that the DVSAT should be administered for applicants at the point when an application is made and referrals made as necessary.

Do you support reapplying the DVSAT to applicants at the point of disclosure under a Right to Ask?

The DVSAT could be reappplied to applicants at the point of disclosure under a Right to Ask if the circumstances of the applicant have changed and/or the DVLO considers it necessary.

Do you support reapplying the DVSAT to applicants at the point of no disclosure?

The DVSAT could be reappplied to applicants at the point of no disclosure under a Right to Ask if the circumstances of the applicant have changed and/or the DVLO considers it necessary.

Do you support applying the DVSAT to persons identified at the point of disclosure under a Right to Know?

Legal Aid NSW supports applying the DVSAT to persons identified at the point of disclosure under a Right to Know.

What additional follow up would applicants/persons identified need once the disclosure process has been completed?

Given the person will be referred to appropriate support services at the point of disclosure or non-disclosure, any additional follow up will depend upon the circumstances of each case.

## 10.2 False information and misuse of disclosed information

Do you support making it a criminal offence to provide false information in an application?

Legal Aid NSW does not support a criminal offence of providing false information in an application. In our experience, there can be many reasons why people in domestic violence relationships recant a statement, and it may not be that the information provided is false. It is too easy to assume that information provided is false, and therefore malicious, if a person recants.

Do you support making it a criminal offence to disseminate information from a disclosure further? If yes, do you support including an exception where the disclosure is for the purpose of receiving domestic violence support services?

Legal Aid NSW supports a criminal offence of publishing a disclosure, in terms similar to section 15A of the *Children's (Criminal Proceedings) Act 1987*. This would cover publication in social media.

It should not be an offence to disclose information to a confident or to a support service.

Do you support asking the applicant/person identified to sign an undertaking not to further disseminate the information disclosed following a disclosure?

Legal Aid NSW supports asking the applicant/person identified to sign an undertaking not to publishing a disclosure, as discussed above.

Should a disclosure be oral only?

A disclosure should be oral only.

Do you support a record of the disclosure being made?

Legal Aid NSW supports a record of the disclosure being made.

Do you support having the applicant/person identified be asked to sign the record following the disclosure?

Legal Aid NSW supports the applicant/person identified being asked to sign the record following the disclosure.

What information should be recorded about an application, decision and a disclosure/no disclosure?

The DVLO should record details of the disclosure: to whom and when it was made, and what information was disclosed.

What other safeguards might need to be considered?

Legal Aid NSW has no further comments

### 10.3 Impact on people from specific communities

What other considerations should be taken into account for any of the above groups in designing a NSW DVDS?

What additional supports would be required?

The Discussion Paper sets out a number of relevant and complex considerations that would need to be taken into account for a number of groups in designing a NSW DVDS.

Legal Aid NSW is of the view that the majority of people from these vulnerable communities or with complex and specific needs are unlikely to avail themselves of this scheme.

## 11. Technology

Do you support using the NSWPF WebCOPS system for the DVDS?

Legal Aid NSW is concerned to ensure the accuracy of information on WebCOPS which will inform decisions under this scheme. This will need to be closely monitored during the pilot period.

Do you support applications and disclosures being recorded on the NSWPF WebCOPS system in the future?

Legal Aid NSW supports applications and disclosures being recorded on the NSWPF WebCOPS system in the future.

What information should be recorded in WebCOPS?

Legal Aid NSW is of the view that WebCOPS should record the fact and details of the disclosure: to whom and when it was made and what information was disclosed.

## 12. Pilot locations

What criteria should be taken into account in the selection of sites for the pilot?

The criteria set out in the Discussion Paper appear to be appropriate.

Noting there will be 4 pilot sites, 2 should be in locations where Safer Pathway has been rolled out and SAMS are established, and two should be in other locations. There should be a mix of metropolitan and rural pilot sites for both SAM and non SAM locations.

Are there any other issues to be considered when setting up a pilot?

The evaluation criteria should be determined and imbedded in the implementation process from the outset. This may also inform the pilot locations.

How could we best communicate to the community the existence of the pilot in the local area and more broadly, including how to access the scheme?

The scheme should be publicised through local media outlets, and government and non government organisation which provide domestic violence services.

### **13. Evaluation and outcomes**

Do you support the evaluation approach?

Legal Aid NSW supports the evaluation approach. There should be both a process and outcome evaluation.

What measures need to be considered in the evaluation to assess whether the process is functioning as intended?

The process evaluation could be modelled on the UK DVDS Pilot Assessment.

What measures need to be considered to assess whether the DVDS is assisting applicants/persons identified to make informed decisions and receive support services?

Consistent with the model design for this legislative initiative, the outcome evaluation model should stem from this primary concept, namely, that it is a mechanism to help protect a person from criminal abuse or serious harm by providing them with information to help them make a more informed choice about their relationship.

As indicated by the criteria set out in the Discussion Paper there would need to be both qualitative and quantitative analysis. The outcome evaluation should focus on whether and how a disclosure influenced the decisions made by an applicant and the cost of the scheme for all relevant stakeholders.

What else should be considered when evaluating the DVDS?

The evaluation criteria should be determined and imbedded in the implementation process from the outset.

### **14. Further questions**

Is there anything else that you would like to add in relation to a model NSW DVDS?

Legal Aid NSW is of the view that the NSW DVDS will need to be properly resourced to achieve its objective. The level of funding to stakeholders will depend upon the design model. Under the model proposed by Legal Aid NSW resources would need to be directed to DVLOs and to support services, in particular the WVDCAS which will be central to providing necessary support services.

## About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged. Legal Aid NSW provides information, community legal education, advice, minor assistance and representation through in-house and private legal practitioners. Legal Aid NSW also administers funding for 36 community legal centres and 28 Women's Domestic Violence Court Advocacy Program (WDVCAP) services.

Legal Aid NSW shares the widely held view that domestic violence is different from other forms of personal violence in that it often involves issues of financial dependence, physical and emotional power and control and shared emotional history. By virtue of dynamics of the domestic relationship, the nature of the domestic violence is different and the consequences can be significant in terms of social exclusion of victims and people who commit domestic violence offences, and their children.

Domestic violence is behaviour that deprives or restricts another person from exercising their basic human rights. It is a complex form of violence which can include physical, sexual, psychological, social, economic, legal and cultural harm. It is violence that infringes another person's right to equality, security, liberty, integrity and dignity and to their physical safety and psychological health. To the extent that these rights are recognised in law, Legal Aid NSW plays a key role in ensuring that these rights are protected.

In NSW, the primary response to domestic violence and other forms of personal violence is through the criminal justice system – arrest, prosecution, punishment, and protection orders. The *Crimes (Domestic & Personal Violence) Act 2007* (NSW) (the Act) is the key legislative instrument governing protection orders in NSW.

Legal Aid NSW provides criminal law services to defendants charged with personal violence offences, including children and young people under 18 who are assisted by the Children's Legal Service, and to some applicants and defendants in ADVO and APVO applications. Under the Domestic Violence Practitioner Scheme private practitioners assist women and children to obtain legal protection through ADVOs at 32 Local Courts across NSW.

Legal Aid NSW also administers funding for domestic violence-specific services, including:

- the WDVCAP which provides court advocacy services to women and children in need of protection orders in 108 Local Courts across NSW, and
- specialist community legal centres, such as Women's Legal Services NSW and the Wirringa Baiya Aboriginal Women's Legal Service.

Consistent with a multi-pronged approach to service delivery, Legal Aid NSW also provides family law (divorce, relationships with children and property issues) and care and protection services to victims, children and people who commit domestic violence offences, and civil law services to victims in matters such as visa applications, victims' compensation, relationship debt, social security and housing.