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Final Submission re DV Disclosure.docx

Jodie O'Leary

Elizabeth Greene, *Bond University*

Rachael Field, *Queensland University of Technology*



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The Secretary
Queensland Law Reform Commission
PO Box 13312
George Street Post Shop
Brisbane QLD 4003

By email: lawreform.commission@justice.qld.gov.au

Dear Secretary,

Domestic Violence Disclosure Scheme Review

We appreciate the opportunity to contribute to the Queensland Law Reform Commission's Review about 'whether a domestic violence disclosure scheme should be introduced in Queensland.' Our ultimate submission is that:

At this time, particularly given the lack of evidence regarding the effectiveness of Domestic Violence Disclosure Schemes ('DVDSs') and the potential for harm, we oppose the introduction of a DVDS, in any incarnation, in Queensland.

Introduction

The premises upon which we have based our submissions are:

1. Domestic and family violence is indeed prevalent in Australia, including Queensland.¹ Neither victims nor perpetrators of domestic and family violence can be described as a homogenous group. However, while not exclusive, the majority of perpetrators of intimate partner violence are male and the majority of victims are female.² In some cases the progress of intimate partner violence can be charted, as a pattern of behaviour that escalates from non-violent abuse to physical abuse, sometimes leading to

¹ Queensland Law Reform Commission, *Review about whether a Domestic Violence Disclosure Scheme should be Introduced in Queensland: Consultation Paper* (December 2016) WP No 75, 4-10; Domestic and Family Violence Taskforce, Queensland Government, *Not Now, Not Ever – Putting an End to Domestic and Family Violence in Queensland* (2015) 47-49; Heather Nancarrow et al, *Intimate Partner Abuse of Women in Queensland* (December 2011) Queensland Centre for Domestic and Family Violence Research.

² Domestic and Family Violence Taskforce, Queensland Government, *Not Now, Not Ever – Putting an End to Domestic and Family Violence in Queensland* (2015) 44- 50.9

death or serious injury.³ The time of separation (or attempted separation) provides a heightened risk for violence.⁴

2. It is necessary to address the prevalence of domestic and family violence in Queensland. However, as the Domestic Violence Taskforce noted in its 'Not Now, Not Ever' report, '[e]ffective implementation is critical: adhoc, misinformed, and/or ill-resourced implementation arrangements will not achieve effective reform.'⁵
3. Victims of domestic violence, and the community, would benefit from reforms that effectively prevent domestic and family violence. However, any reform should avoid causing further harm to victims, alleged perpetrators or the community.

The Benefits and/or Disadvantages of DVDSs

A DVDS aims to provide potential victims of domestic violence (and sometimes others) with details of their partner's history of domestic violence. This arguably allows potential victims to make more informed decisions about the relationship moving forward. This type of disclosure is unusual, as this information can be subject to confidentiality rights, and may not be disclosed to third parties without the perpetrator's consent.

As indicated in the Consultation Paper, DVDSs exist in England and Wales, Scotland and New Zealand.⁶ However, as yet, given their short life span, there have not been comprehensive reviews as to the impact of such schemes upon victims and perpetrators.⁷ Further, although New South Wales is piloting a DVDS, a full evaluation as to the success or otherwise of the pilot is still forthcoming.⁸

In 2015 Dr Kate Fitz-Gibbon examined innovative legal responses to intimate homicide in the UK, USA and Canada.⁹ She reported that

[t]here is an urgent need for research to critically examine and document the impact of [DVDSs] from a system and victim perspective.¹⁰

She opposed the introduction of DVDSs in Australian states and territories.¹¹ In an article, with Sandra Walklate, she questioned how effective the English DVDS

³ Nancarrow et al, above n1; and *Royal Commission into Family Violence* (March 2016) Vol 1, 20.

⁴ *Royal Commission into Family Violence* (March 2016) Vol 1, 21.

⁵ Domestic and Family Violence, Queensland Government, *Not Now, Not Ever – Putting an End to Domestic and Family Violence in Taskforce Queensland* (2015) 108.

⁶ Queensland Law Reform Commission, *Review about whether a Domestic Violence Disclosure Scheme should be Introduced in Queensland: Consultation Paper* (December 2016) WP No 75, 33.

⁷ Ibid 35, 41, 42.

⁸ Ibid 49.

⁹ Dr Kate Fitz-Gibbon, *2015 Churchill Fellowship Report* (August 2016) available at https://www.churchilltrust.com.au/media/fellows/Fitz-Gibbon_K_2015_Innovative_legal_reponses_to_intimate_homicide.pdf.

¹⁰ Ibid 51.

¹¹ Ibid 54: Recommendation 18.

(‘Clare’s Law’) would have been had it existed in the case of its namesake.¹² Scholar, Jane Wangmann, has also expressed her opposition to the rollout of DVDSs given the lack of ‘evidence that indicates they enhance women’s safety.’¹³

It is this lack of evidence base that was one of the main reasons for the Law Reform Commission of Western Australia failing to recommend the introduction of a DVDS.¹⁴ The Victorian Royal Commission into Family Violence was similarly concerned by the lack of evidence and recommended against a DVDS.¹⁵

DVDSs, or domestic violence registers, are not the only type of offender register to be proposed or adopted in Australia. Sex offender registers exist in every Australian State and Territory. However, there are important differences between the form of sex offender registers and domestic violence registers. Particularly, domestic violence registers usually restrict the disclosure of information to persons who are in a relevant relationship with the concerned person.¹⁶ Some sex offender registers, such as those in the US under ‘Megan’s Law’, are publically available and provide for community notification. Others, such as ‘Sarah’s Law’ in the UK, are more restricted, providing for disclosure of information to only those with a concern about the welfare of a particular child or children for whom they have caretaking responsibilities.

However, some important aims are the same for both domestic violence registers and sex offender registers. That is, both forms of register look to disclose information so that victims/potential victims can take protective measures, and both forms of register aim to reduce recidivism. Therefore, the evidence as to the impact of sex offender registers may be informative in this review. As to recidivism, the evidence indicates that sex offender registers have no demonstrable effect on reoffending or on reducing the number of victims.¹⁷

¹² Kate Fitz-Gibbon and Sandra Walklate, ‘The Efficacy of Clare’s Law in Domestic Violence Law Reform in England and Wales’ (2016) *Criminology and Criminal Justice* 1, 7-8.

¹³ Jane Wangmann, ‘Has he been Violent Before: Domestic Violence Disclosure Scheme’ (2016) 41(1) *Alternative Law Review* 230, 234; see also Jane Wangmann, ‘Violent Offenders Registers Sound Good, but are a Costly, Unproven Distraction’ (8 July 2015) *The Conversation*.

¹⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Law: Final Report*, Project No. 104 (June 2014).

¹⁵ *Royal Commission into Family Violence* (March 2016) Vol 1, 145.

¹⁶ An exception to this is the privately-run National Domestic Violence Registry in the US, which allows anyone to search online. See: National Domestic Violence Registry, (US) 2015

<http://www.domesticviolencedatabase.net>

¹⁷ See Laura Whitting et al, ‘The Impact of Community Notification on the Management of Sex Offenders in the Community: An Australian Perspective’, (2014) 47(2) *Australian & New Zealand Journal of Criminology* 240; and Kristen Zgoba, et al, ‘Megan’s Law: Assessing the Practical and Monetary Efficacy’ (December 2008) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf>.

Further, evidence thus far indicates that ‘community members simply are not motivated by notification to change their personal safety habits.’¹⁸

Adding to this predicament, as Wangmann notes, the motivations of domestic violence victims may be impacted by their lack of control or lack of choice in their unique situations.¹⁹ This may explain the small number of potential/actual victims who sought support from domestic violence support and prevention services following receipt of information under the UK’s pilot DVDS.²⁰ If such persons do not take action following disclosure, there is a related concern that they will be blamed should they be subsequently victimised.²¹

In addition to the lack of evidence available as to the effectiveness of DVDSs, scholars, practitioners and law reform bodies have raised the following potential disadvantages of a DVDS:

- An individual who makes an application may be instilled with a false sense of security if they are told there is nothing to disclose.²² Depending upon how the DVDS is structured, the amount of information available to disclose to victims may be limited. That is, it may be restricted to convictions in a particular jurisdiction (like the NSW scheme) or it may be restricted even further to convictions only for more serious offences. As such, much domestic violence will be excluded from disclosure’s ambit. Further, 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. Evidence shows that a staggering number of victims of abuse do not report these offences to the police for a variety of reasons.²³ The community too may have a misconception that a DVDS provides protection, not realizing that there is no provision for monitoring perpetrators.
- Should a DVDS be 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.²⁴ As Kelly and Farthing note:

¹⁸ Rachel Bandy, ‘Measuring the Impact of Sex Offender Notification on Community Adoption of Protective Behaviors’ (2011) 10(2) *Criminology and Public Policy* 237, 255.

¹⁹ Wangmann, ‘Has he been Violent Before: Domestic Violence Disclosure Scheme’, above n 13, 232.

²⁰ Jamie Grace, ‘Clare’s Law, or the National Domestic Violence Disclosure Scheme: the Contested Legalities of Criminality Information Sharing’ (2015) 79(1) *The Journal of Criminal Law* 36, 38-39.

²¹ Wangmann, ‘Has he been Violent Before: Domestic Violence Disclosure Scheme’, above n 13, 232; Fitz-Gibbon and Walklate, above n 12, 11.

²² Fitz-Gibbon and Walklate, *ibid*, 9; Wangmann, ‘Has he been Violent Before: Domestic Violence Disclosure Scheme’, above n 13, 231; *Royal Commission into Family Violence* (March 2016) Vol 1, 21, 145.

²³ Janet Phillips and Penny Vandenbroek, ‘Domestic, Family and Sexual Violence in Australia: An Overview of the Issues’, *Parliamentary Library Research Paper*, 14 October 2014, 13.

²⁴ Grace, above n 20.

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 by a real and foreseeable threat.²⁵

And of course such restrictions on disclosure lead to the problems identified in (1) above.

- In the Law Reform Commission of Western Australia's report the Western Australian police were noted as expressing concern that 'victims in remote communities are likely to be unwilling or unable to engage in the scheme'.²⁶ This was supported by submissions made to the Northern Territory's 'Review of the *Domestic and Family Violence Act*' that noted remote communities had limited police presence and a lack of services that would support the making of applications.²⁷ Further, if applications for disclosure are required to be made to police, this may restrict those who do not have a good relationship with police from making applications.²⁸ These issues of inconsistent impact in remote and indigenous communities are of particular significance in Queensland given, as noted in the Consultation Paper, indigenous persons 'experience disproportionately high levels of domestic and family violence, the prevalence and severity of which increases with geographical remoteness.'²⁹

The Diversion of Resources

In response to the Northern Territory's Issues Paper on the Review of the *Domestic and Family Violence Act* that asked about the introduction of a DVDS in that jurisdiction:

The majority of stakeholders noted that a DVDS would likely require significant resources which would be better spent on the expansion and continued operation of existing services and initiatives.³⁰

Similar concerns as to the cost of a DVDS and the potential of its introduction to divert resources from other domestic violence initiatives were raised in the Law

²⁵ R Kelly and S Farthing, 'Liberty's Response to the Home Office Consultation on the Domestic Violence Disclosure Scheme' (2012) cited in Fitz-Gibbon and Walklate, above n 12, 10.

²⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Law: Final Report*, Project No. 104 (June 2014) 179.

²⁷ Department of Attorney-General and Justice, *Report on Consultation: Review of the Domestic and Family Violence Act* (July 2016) 99.

²⁸ Ibid.

²⁹ Queensland Law Reform Commission, *Review about whether a Domestic Violence Disclosure Scheme should be Introduced in Queensland: Consultation Paper* (December 2016) WP No 75, 7.

³⁰ Department of Attorney-General and Justice, *Report on Consultation: Review of the Domestic and Family Violence Act* (July 2016) 99.

Reform Commission of Western Australia's report and the Victorian Royal Commission Report,³¹ as well as by scholars.³² Fitz-Gibbon quoted a Scottish professional discussing Scotland's DVDS:

I think it's a total waste ... I think the concerns are both safety for women and also the bureaucratic burden, with no money, on services is huge. It's diverting police resources.³³

A DVDS administered by police will necessarily include training of those officers who will be receiving and assessing the applications, and the formation of specially trained support services personnel. Without such funding there is 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 escalates or initiates acts of domestic violence as a result.³⁴

Conclusion

We oppose the introduction of a DVDS in Queensland as there is insufficient evidence available at this time of the effectiveness of such a scheme. A DVDS may infringe on the rights of alleged perpetrators of domestic violence, may impact victims differently in different areas and may at times provide victims and the community with a false sense of security. A DVDS is of limited need, especially given the expansion of information sharing measures proposed in Queensland. To implement a DVDS without evidence of its effectiveness in reducing recidivism and protecting potential victims would be a costly diversion of resources better used elsewhere. An under-resourced DVDS would potentially expose victims to a greater risk of violence. Although a DVDS aims at preventing domestic violence, it has not been shown to do so and it would cause further harm to victims, perpetrators and the community.

Following the recommendations made in the Not Now Not Ever report, integrated response services are being trialled in three sites across Queensland, and one of the goals of this integrated response is the ability to 'bring together local service providers and agencies to co-design and develop a model for a full

³¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Law: Final Report*, Project No. 104 (June 2014) 179; *Royal Commission into Family Violence* (March 2016) 145.

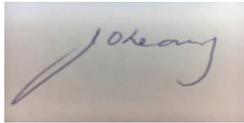
³² Wangmann, 'Violent Offenders Registers Sound Good, but are a Costly, Unproven Distraction' above n 13; Wangmann, 'Has he been Violent Before: Domestic Violence Disclosure Scheme', above n 13, 234; Fitz-Gibbon and Walklate, above n 12, 8.

³³ Fitz-Gibbon, above n 9, 51.

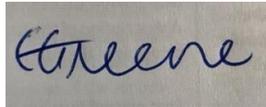
³⁴ National Network To End Domestic Violence, *Technology Safety: Thinking Critically About Domestic Violence Offender Registries* (May 2016), retrieved from <https://www.techsafety.org/blog/2016/5/4/thinking-critically-about-domestic-violence-offender-registries>.

integrated response to domestic and family violence'.³⁵ It is our submission that a roll out of this type of reform would be more beneficial to victims, perpetrators, support personnel and the Queensland community generally.

Yours faithfully,



Assistant Professor
Jodie O'Leary



Assistant Professor
Elizabeth Greene



Professor
Rachael Field

³⁵ The Queensland Cabinet and Ministerial Directory, *New Domestic Violence Integrated Response Services to be Trialed in Mount Isa* (January 2017) Media Release.
<http://statements.qld.gov.au/Statement/2016/4/29/new-domestic-violence-integrated-response-services-to-be-trialled-in-mount-isa>.