



**NSW Police Force**

# **NSW Domestic Violence Disclosure Scheme Pilot**



# PRACTITIONER'S GUIDE

Version: 1.5



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Operational Programs, MEIG

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If you note any inaccuracies or have any recommendations for change please advise the Domestic & Family Violence Team, Operational Programs.

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## INTRODUCTION

### Foreword:

*Domestic Violence, as well as being the highest volume crime type that police deal with, is also a crime type that is the hardest to prevent considering the complex social and psychological factors that impact the majority of domestic violence victims.*

*The introduction of a NSW Domestic Violence Disclosure Scheme (DVDS) pilot will allow for someone who has concerns about their partner and wishes to find out if he has an abusive past, to go to police and ask for any relevant convictions to be disclosed. The disclosure of this information will allow them to make an informed decision about their safety and/or the safety of their children, seek assistance, undertake safety planning, and/or decide whether or not to remain in the relationship.*

*The DVDS relies on research that demonstrates that domestic violence is rarely a once off incident and is usually a pattern of abusive and controlling behaviour with the highest rate of repeat victimisation of any crime.*

*The success of the DVDS is reliant on the effective, existing partnerships between government and non-government agencies. It will operate within existing service systems where agencies work together to provide accessible pathways to support services to help people address their safety concerns and make plans for their future safety.*

*The requirement to apply the DVDSAT to a primary person will allow police to accurately and consistently record the level of threat to a person and where necessary, refer the person to support services under the 'It Stops Here Domestic and Family Violence Framework'. The necessity for police to support primary persons and work alongside designated support agencies or advocates throughout the application and disclosure processes is critical to the effectiveness of the DVDS.*

*The NSW DVDS model is a result of research and consultation with stakeholders to achieve a balance between a model that is simple and accessible with the necessary safeguards to protect people from future harm, as well as protecting a subject's right to privacy.*

*To assist Domestic Violence Liaison Officers and Senior Police Officers, the Domestic & Family Violence Team has produced this 'Domestic Violence Disclosure Scheme Practitioners Guide' which offers a plain English interpretation of the DVDS pilot scheme and a practical guide to its effective application.*

*I commend these procedures to you and encourage all police to acquaint themselves with the contents of the Guide. A proper understanding of the scheme will help police to better care, protect and support those in our community who have fears for their safety and would benefit from the disclosure of information that will enable them to make better and more informed decisions about their private lives.*



Assistant Commissioner Michael Fuller  
Corporate Sponsor – Domestic Violence

## BACKGROUND

Clare Wood was murdered in the United Kingdom (UK) in February 2009 by her former partner, George Appleton. He had convictions for harassment and assault of former partners, which included two prison terms. Ms Wood's father argued that, had they known about the offender's criminal history, they might have been able to take action to keep Clare safe and prevent her murder. He went on to campaign for a law that would allow victims, or people close to potential victims, to have access to police records of domestic violence complaints against their partner. The case brought to national attention in the UK the issue of police disclosure of information on previous violent behaviour against different partners. The Domestic Violence Disclosure Scheme (DVDS) known as 'Clare's Law' was introduced in the United Kingdom in 2012 with the intention of improving information sharing between police and potential victims of domestic and family violence.

In February 2014, the Ministerial Taskforce on Violent Domestic Crime was established by the NSW Government to examine the effectiveness of current laws relating to domestic and family violence. The Taskforce made a series of recommendations including proposing the establishment of a domestic violence register for convicted offenders.

On 6 March 2015, the Premier Mike Baird and Minister for Women Pru Goward announced NSW would pilot a DVDS, similar to Clare's Law in the UK. The Department of Justice and Women NSW are leading the implementation of the NSW DVDS pilot and the NSW Police Force (NSWPF) is hosting the scheme's operation in partnership with local support services in the four pilot Local Area Commands of Shoalhaven, Sutherland, St George & Oxley from 1 March 2016 to 1 March 2018.

A DVDS has the potential to improve the safety of people in domestic relationships with partners who have a history of domestic violence. It allows people to make informed decisions about their safety, to seek assistance or undertake safety planning, or decide whether to remain in the relationship.

Under the DVDS pilot, a person who has concerns about their partner is able to make an application to the NSWPF to check if their partner has a history of domestic violence. A third party can also ask for a disclosure to be made to the primary person where they have concerns for their safety and some form of contact with the primary person.

## Definitions

**Primary Person:** is a person over the age of 16 who is in an intimate relationship (or was in an intimate relationship) with the subject and who has concerns - or someone holds concerns for - their safety in the relationship.

**Subject:** is the person who is in an intimate relationship (or was in an intimate relationship) with the primary person and, where there is a relevant conviction, whose history of domestic violence and other related offences may be disclosed.

**Primary Application:** is an application made by the primary person in relation to the subject.

**Third Party Application:** is an application made by a third party about a primary person in relation to the subject, for a disclosure to the primary person.

**Pilot Local Area Commands (LACs):** are the four LACs that have been selected to host the NSW DVDS pilot for two years from 1 March 2016 to 1 March 2018, and consist of St George, Sutherland, Shoalhaven and Oxley LACs.

**Senior Police Officer:** means a police officer of or above the rank of sergeant and includes an officer who is relieving in a sergeant's position.

**Third Party:** is someone who has some form of contact with the primary person, such as family and friends or professionals (including agencies, services and individuals working in a professional capacity with the primary person, subject and/or dependent child), and who has concerns about the primary person's safety and partner.

## OBJECTIVES OF A DVDS

### Summary

The objective of the DVDS, like any other domestic violence (DV) initiative, is to prevent and reduce the incidence of domestic violence. DV is generally characterised by a pattern of abusive and controlling behaviour, and perpetrators often repeat these patterns in successive relationships. The DVDS is aimed at preventing further incidences of domestic violence from occurring by informing potential victims about their current or former partner's history and by putting them in contact with appropriate support services.

### Anticipated Benefits

#### Prevention of domestic violence through informed decision making

The primary objective of the DVDS is to help prevent domestic violence by informing people of their partner's history of domestic violence offending which allows them to make informed decisions about their safety and the future of the relationship.

A detailed assessment report of the UK pilot was completed to examine how participants felt the process worked in practice. It was found that most respondents who received a disclosure felt that the information helped them make a more informed choice about their relationship. Most stated they would keep a closer eye out for warning signs of domestic abuse in their relationship following the disclosure.

#### Determination of threat level through the application of DVSAT

A NSW police officer will complete the Domestic Violence Safety Assessment Tool (DVSAT) with all primary person applicants in order to identify imminent threats and to refer them to support services. For third party applications, the DVSAT must be

completed with the third party and if possible also with the primary person at the time a disclosure is made (which will update the previous DVSAT). The application of the DVSAT will allow police to identify the threat level of future harm to a primary person, allows for increased information exchange and improved accountability between government agencies to assist that person, and can reduce re-victimisation and improve the safety of a victim/primary person.

### **Victim support**

It is critical that members of the public can receive assistance to complete applications if required, and ensure equal access to the DVDS. A number of services and agencies, government and non-government are able to support the applicant to complete and lodge an application and a specialist support agency provides support and safety planning to a primary person during and following a disclosure. Access to and information on specialist services includes case management, safety planning and counselling services to both adult and child victims. Regardless of whether a disclosure is made or not, the primary person must be put in contact with support services.

### **The subject**

In order to ensure the safety of the primary person and other persons, the subject will never be informed of any application or disclosure made about them.

### **Risks**

As with all new initiatives there are a number of risks inherent both with the scheme and any mistakes that could be made in the practical application of the scheme. These include:

#### **Applicants providing false information**

There is a risk, albeit a small one, that persons will attempt to use the DVDS to find out information about a subject that they have no intimate relationship with or no ongoing contact with. They may be seeking information to embarrass the subject or for other non-related purposes. Therefore it is important that the application form is filled out in full, that the applicant's identity is checked, the subject's identity is as much as possible confirmed, and that police clarify any vague or ambiguous responses in the application form.

#### **Misuse of information provided following a disclosure**

There is a risk that the disclosed information could be used for a non intended purpose such as embarrassing or humiliating a subject on social media, through family or friendship networks or by another means. Primary persons and support persons will be required to sign a DVDS Undertaking form undertaking to not publish or spread



information disclosed under the scheme and informing them they may be committing a criminal offence if they publish, spread or misuse information provided to them through a disclosure.

### **Applicants may be left with a false sense of security where no disclosure is made**

The DVDS sets limits on what may be disclosed and more importantly what cannot be disclosed. The latter includes interstate convictions, 'spent' convictions, section 10(1) findings and juvenile convictions. It is also recognised that the majority of DV offences are never reported to police. This means that applicants who are told that there are no convictions to disclose may be given a false sense of security despite the fact that a subject may have a history of DV offending that has not been brought to police attention. Therefore, it is essential that police manage applicants' expectations and be clear about the limitations of the information they are providing.

### **Unlawful or incorrect disclosures**

Reading a criminal record and determining what may and may not be disclosed can be difficult for a number of reasons:

- DV offences were largely only recorded as such since 2008 after the introduction of the *Crimes (Domestic & Personal Violence) Act 2007* (NSW). Prior to this a DV assault was recorded in the same way as an assault between two strangers in a hotel.
- The current charge management system was introduced in 1997 and immediately prior to this NSWPF used macros to populate charge and facts sheets. Most of this data is not available on WebCops and is only obtainable by seeking access to data stored on micro fiche. This can be quite time consuming.
- Disclosure of information that identifies a child victim or a victim of a prescribed sexual offence is unlawful.

It is therefore vital that police carefully review a criminal record and the details they intend to disclose prior to any decision or disclosure. Procedures are available to police to minimise this risk.

### **Why might a person seek a disclosure?**

Police may wonder why a person would seek a disclosure about their current or former partner. Typically persons who approach police may be doing so because of one or more reasons:

#### **The applicant is an actual victim of domestic violence**

Victims of domestic violence are often reluctant to report violence to police for a number of reasons; fear of the offender, feelings of shame or embarrassment or an expectation that police will not listen to them or understand their predicament. Such persons may use the DVDS as a way of broaching the subject with police or seeing what the police response may be.

### **The victim may be unsure of what to do about the violence**

This is especially so where the offender has apologised and promised that the behaviour will not happen again. The application may be a way for the victim to find out if there is a history of behavior like this.

### **Unusual pattern of behaviour**

The applicant may not be a victim of actual violence or other offences but has noticed a pattern of behaviour based on control or extreme jealousy. The application may reflect a need to address their concerns about their partner's behaviour.

### **Pressure from family/friends**

Family or friends of the applicant may have expressed concerns about the behaviour of the offender towards the applicant. These third parties may have noticed controlling behaviour or behaviour intended to isolate the applicant from them.

### **Post separation behavior**

Many DV incidents, especially serious ones, occur in the time immediately after the end of the relationship and it is a time where behaviours of potential offenders can suddenly change or escalate. A person noticing this change may be prompted to make an application to gauge any potential threats to their safety.

### **New relationships**

Some applicants may be motivated by a fear of a reoccurrence of violence that occurred in previous relationships and may attempt to be proactive with new relationships.

## **WHO CAN MAKE AN APPLICATION FOR A DISCLOSURE UNDER THE DVDS?**

There are several conditions that must be met before a person can make an application:

### **Age & Residence**

An applicant must be an Australian 'resident' and be over 16 years of age, and the application must be made in relation to a primary person who resides within the four participating Local Area Commands that are undertaking the DVDS pilot.

If a person under the age of 16 years attempts to make an application, police should investigate the reasons behind the attempt and create a relevant report along with a 'child at risk' notification if necessary.

**Note:** If a person from a non-pilot Local Area Command approaches a pilot site seeking a disclosure, police must make relevant enquiries to ascertain any concerns held by the person. An Information Report must be completed as per the Domestic and Family Violence SOPS and disseminated to the relevant DVLO/Command to conduct the appropriate follow-up. If an offence is alleged an investigation must commence.

### Signed application form

An applicant must submit a completed application form. The form includes a signed acknowledgment that it is an offence to supply false or misleading information to police in the application form.

### Relationship Type

A primary person applicant must meet the relationship criteria between the primary person and the subject. Applications for the DVDS are restricted to current or former relationships that involve or have involved an **intimate relationship**. In the context of the DVDS any former intimate relationship must involve ongoing contact. Applications may also be made by third parties concerning a current or former intimate relationship between a primary person and a subject.

### What is an 'intimate relationship'?

The relationship type is confined to the domestic relationships definition contained in section 5(a) to (c) inclusive of the *Crimes (Domestic & Personal Violence) Act 2007* (NSW).

#### 5 Meaning of "domestic relationship"

For the purposes of this Act, a person has a **domestic relationship** with another person if the person:

- (a) is or has been married to the other person, or
- (b) is or has been a defacto 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.

It **excludes** other domestic relationship types such as carers, long term residents in a residential facility, flat mates, kinship relationships, siblings and parent & child relationships.

### Indicators/circumstances of an intimate relationship:

1. Married or defacto relationships
2. Having children together.
3. Boyfriend/girlfriend relationships.
4. Same sex relationships.
5. An ongoing sexual relationship.
6. Couples who are promised to each other under a cultural or religious tradition.

7. Behaviour that is consistent with an intimate relationship or an intention to form an intimate relationship.
8. Persons who have been introduced or who have met through a dating agency or website whose use and membership is premised on forming relationships with other members.
9. Persons who have formed an online relationship where the correspondence is such that **both** parties have given an indication that they consider themselves to be in an intimate relationship.

The question of whether the primary person is or was in an intimate relationship should not be judged solely on the applicant's bare assertion that in their mind they are/were in an intimate relationship. Rather assess the applicant's response objectively on the basis of the circumstances and history of the relationship. The DVDS is not meant to be used for the selection of potential intimate partners or as a fishing exercise.

**Former intimate relationships** that warrant a disclosure under the DVDS require ongoing contact that is consistent or planned due to the specific circumstances. Such contact includes (but is not limited to) circumstances that involve:

1. Family Court proceedings
2. Child care arrangements
3. Family functions
4. Mutual friends or social networks
5. Common dealing in private property or business
6. Common dealing or use of a residence
7. Work or a common employer
8. Kinship relationships in ATSI communities

### THIRD PARTY APPLICATIONS

As well as primary persons having the right to make an application for a disclosure, specific third parties also have the right to make an application for a disclosure about a subject. These are individuals who have some form of contact with the primary person, such as family members, friends or professionals.

Professionals include private practitioners, such as GPs and psychologists, and can also include staff from agencies and services, such as:

1. FACS (DOCS).
2. WDVCS.
3. NGOs- DV support services, family support services, etc
4. Community mental health services
5. Department of Health.
6. Department of Education.
7. Drug and Alcohol counsellors.
8. Department of Corrective Services (including Probation & Parole Officers).
9. Guardians.
10. Ministers of religion/church/faith groups.
11. Juvenile Justice

## 12. Department of Justice

It includes professionals working with any member of the family – the primary person, subject or a dependent child of either the primary person and/or subject.

### Who can receive the disclosure?

Disclosures should ordinarily be made directly to the primary person, irrespective of who initiates the application, unless there are exceptional circumstances.

The primary person should they wish to can nominate a support person, including a friend or family member, to be present at the disclosure. In addition, where the primary person is from an ATSI or CALD background, a member of the LGBTI community, a person with a disability, an independent support person that represents their community or interest may attend the disclosure.

In exceptional circumstances, police may disclose to a third party without the primary person if it would assist in preventing or reducing a threat to the safety of the primary person. Such circumstances would be largely confined to situations where the primary person:

- Suffers from a disability or is dependent on a third party for direct care.
- Has refused to accept/listen to the disclosure from police but is likely to accept/listen to the disclosure from a friend, family member or a professional.

Any decision for a third party to hear the disclosure in the absence of the primary person must be clearly outlined and recorded, including the exceptional nature of the circumstances.

Naturally other police officers and support services who are present at the time of the disclosure may hear the disclosure.

### Undertaking not to misuse the information

All persons present at the disclosure - with the exception of police officers- are required to sign an undertaking that they will not misuse any information disclosed.

### Can police disclose information?

Police already can disclose information, including criminal history, to an individual or an agency if the disclosure would assist with the protection of persons from injury or death or preventing a crime- see the following section for more details. The DVDS pilot does not change this situation. An example of this would be the following:

*A female victim of a domestic violence attends court and expresses reluctance to proceed with an application for an ADVO. The prosecutor, who is aware of the history of the defendant, could disclose to the victim the fact that the defendant has offended against previous female partners of his. The disclosure could be made to convince her that the behaviour of the defendant was not an isolated case and that she requires the protection of the ADVO. This would assist in protecting that victim from future injury or harm.*

For the purpose of this pilot there is no onus on police to become a third party and they are not 'mandatory' third party applicants.

## Legal Basis for Disclosure

The privacy laws applicable to the operation of the DVDS are the *Privacy and Personal Information Protection Act 1998* (the PPIP Act) and the *Health Records and Information Privacy Act 2002* (the HRIP Act), which govern the handling of personal (and health) information by most NSW public sector agencies (there are also Regulations, Codes of Practice and Public Interest Directions modifying the effect of the privacy laws, but none of these are directly applicable to the DVDS).

However, the NSW Police Force (NSWPF) has a wide statutory exemption from all of the privacy principles (IPPs under the PPIP Act and HPPs under the HRIP Act) in relation to its all its functions other than those which are administrative or educative (PPIP Act s.27(1)), and HRIP Act s.17).

The **functions** and provision of police services of the NSW Police Force are set out in section 6 of the *Police Act 1990* and include:

- (a) Services by way of prevention and detection of crime, and
- (b) The protection of persons from injury or death, and property from damage whether arising from criminal acts or in any other way

The DVDS is premised on a victim being able to make an informed decision about their future safety and as such the disclosure would assist to prevent a crime and/or protecting potential victims from harm. It follows that the use and disclosure of DV criminal history by police in the context of the DVDS is not prohibited under privacy laws.

In relation to the involvement of other participating agencies (ie NGOs/support services) the Privacy Commissioner has issued specific 'Directions' that will effectively allow for these agencies to collect, use and disclose personal information for the purposes of the operation of the DVDS pilot. In addition, the directions state that NSW Police are also covered to the extent of any potential gap between our existing powers to disclose information and any disclosures made under the DVDS.

### What does this mean for operational police in the pilot LACs?

Police can lawfully make disclosures to primary persons and third parties. It also means that support services who are present can also hear the disclosures.

## WHAT CONVICTIONS CAN BE DISCLOSED?

### Convictions for domestic violence offences

A domestic violence offence is defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* as a personal violence offence committed against another person whom they have a domestic relationship with.

### 11 Meaning of "domestic violence offence"

In this Act, **domestic violence offence** means a personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship.

A personal violence offence is defined in section 4 of the *Crimes (Domestic and Personal Violence) Act 2007*.

### 4 Meaning of "personal violence offence"

In this Act, **personal violence offence** means:

an offence under, or mentioned in, section 19A, 24, 25, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66EA, 80A, 80D, 86, 87, 93G, 93GA, 195, 196, 198, 199, 200, 562I (as in force before its substitution by the *Crimes Amendment (Apprehended Violence) Act 2006*) or 562ZG of the *Crimes Act 1900*, or  
 an offence under section 13 or 14 of this Act, or  
 an offence of attempting to commit an offence referred to in paragraph (a) or (b).

### What is a domestic relationship?

Where both primary person and subject is or has been married, is or has been a defacto partner, has or has had an intimate personal relationship, is living or has lived in same household, is living or has lived as a long term resident in the same residential facility, has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care, is or has been a relative, is or has been part of the extended Aboriginal or Torres Strait Islander family or kinship system. See sections 5 and 6 *Crimes (Domestic and Personal Violence) Act 2007* for full details of the definition.

### 5 Meaning of "domestic relationship"

For the purposes of this Act, a person has a **domestic relationship** with another person if the person:

- (a) is or has been married to the other person, or
- (b) is or has been a defacto 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, or
- (d) is living or has lived in the same household as the other person, or
- (e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*), or
- (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
- (g) is or has been a relative of the other person, or
- (h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

**Note:** "De facto partner" is defined in section 21C of the *Interpretations Act 1987*.

### Convictions for specific sexual offences

Regardless of whether they occurred in a domestic relationship or not and whether they were committed against children or adults.

Sexual offences are contained in Part 3 – Divisions 10, 10A and 10B of the *Crimes Act 1900* (NSW). The offences include:

- Sexual assault
- Aggravated sexual assault
- Indecent assault
- Acts of indecency
- Sexual intercourse with children under 16 years of age
- Procuring or grooming children under 16 years of age for unlawful sexual activity
- Sexual servitude
- Incitement to commit sexual offences

or an offence that, at the time it was committed, was a prescribed sexual offence for the purposes of this Act or the *Crimes Act 1900*.

NB: In relation to historical sexual offences, it is essential that the full facts sheet is analysed before any disclosure is made. Some historical offences that are now repealed relate to activities that occurred in the context of consensual sexual intercourse between persons 16yrs and over and may not be relevant and do not constitute a risk to the safety of the primary person. The disclosure of such offences would only embarrass the subject if it became known and for this reason the police/DVLO should not make a disclosure. Police and the DVLO have an overriding discretion in relation to these historical offences.

### Convictions for child abuse offences

Child abuse offences regardless of whether they occurred in a domestic relationship or not.

Child abuse offences include:

- Offences involving child prostitution contained within Division 15 of the *Crimes Act 1900*.
- Offences involving child abuse material contained within Division 15 A of the *Crimes Act 1900*.
- Offences under the *Children and Young Persons (Care and Protection) Act 1998*: section 227 'Child and young person abuse', section 228 'Neglect of children and young persons'.



## Convictions for murder, manslaughter or attempted murder

Regardless of whether they occurred in a domestic relationship or not.

In relation to non domestic violence 'manslaughter' convictions, it is essential that the full facts sheet is analysed before any disclosure is made. 'Manslaughter' can apply to situations of negligence and situations that would not warrant a disclosure being made on the basis that there would be no apprehension of an increased risk to the primary person. Police and the DVLO have an overriding discretion in relation to these sort of matters.

**For a full list of offences that can be disclosed regardless of the existence of a domestic relationship please see page 33 of this guide**

## What is a conviction?

The High Court Justices Dawson and McHugh in *Maxwell v The Queen* (1996) 184 CLR stated that:

*A conviction is a determination of guilt, and a determination of guilt must be the act of the court or the arm of the court charged with deciding the guilt of the accused. It may be that even a determination of guilt will not in all cases amount to a "conviction", for the latter term may be used in a particular context as meaning not merely conviction by verdict where no judgment is given but conviction by judgment.*

However, a court can find a person guilty of an offence but decline to record a conviction. In NSW this takes the form of either a dismissal of a charge or a conditional discharge of the defendant under section 10(1) of the *Crimes (Sentencing Procedure) Act 1999*.

### **10 Dismissal of charges and conditional discharge of offender**

*Without proceeding to conviction, a court that finds a person guilty of an offence may make any one of the following orders:*

*an order directing that the relevant charge be dismissed,*

*an order discharging the person on condition that the person enter into a good behaviour bond for a term not exceeding 2 years,*

*an order discharging the person on condition that the person enter into an agreement to participate in an intervention program and to comply with any intervention plan arising out of the program.*

This is to be contrasted with a **conviction** recorded under **section 10A** of the *Crimes (Sentencing Procedure) Act 1999*

### **10A Conviction with no other penalty**

*(1) A court that convicts an offender may dispose of the proceedings without imposing any other penalty.*

*Any such action is taken, for the purposes of the Crimes (Appeal and Review) Act 2001 and the Criminal Appeal Act 1912, to be a sentence passed by the court on the conviction of the offender.*

## WHAT MATTERS CAN'T BE DISCLOSED UNDER THE DVDS?

### Non convictions

Matters which were withdrawn, dismissed or where a court declined to record a conviction pursuant to section 10(1) of the *Crimes (Sentencing Procedure) Act* cannot be disclosed under the DVDS.

### 'Spent' convictions

Most convictions will become "spent" after a certain period of time and so, for most purposes, the conviction is no longer officially part of a criminal record. This means that, in general, a person doesn't have to disclose it and the police can't disclose it to anyone.

### What convictions can become spent?

A conviction imposed for a NSW offence can become spent *unless*:

- it involved a prison sentence of more than six months (this does not include a juvenile control order or periodic detention);
- it was for a sexual offence;
- it was imposed against bodies corporate (eg a company); or
- it is a conviction prescribed by the regulations (as far as we know, there are none prescribed).

(See section 7 of the *Criminal Records Act 1991 (NSW)*)

### When is a conviction spent?

A conviction is said to be "spent":

- straight away if the court dismisses the matter without recording a conviction;
- at the end of any bond or probation if a person is released on a bond or probation without a conviction (ie under section 10 *Crimes (Sentencing Procedure) Act*);
- after a 3 year crime-free period from the date of a Children's Court conviction;
- after a 10 year crime-free period from the date of a conviction by any other court;
- if the conviction was for an offence which is no longer an offence (See sections 8, 9 and 10 of the *Criminal Records Act 1991 (NSW)*).

### What is a "crime-free period"?

A "crime-free period" is a period of time when you have not been:

- convicted of an offence punishable by imprisonment (this includes if you are found guilty but no conviction has been recorded, but would not include a police caution or youth justice conference);
- subject to a control order (ie a sentence in a juvenile detention centre) or in prison because of a conviction for an offence; or unlawfully at large (on the run). Traffic offences are treated separately from non-traffic offences. Traffic offences are to be disregarded in calculating the crime-free period for a non-traffic offence (and vice

versa). There are some exceptions for serious traffic offences such as dangerous driving causing grievous bodily harm or death, culpable driving, manslaughter and furious driving causing injury. (See section 11 of the *Criminal Records Act 1991* (NSW)). If such an offence is committed, it can be used to determine the crime-free period for *any* offence.

### **Convictions subject to section 579 of the Crimes Act 1900 (NSW) :**

This section applies to matters finalised prior to 1999 whereby a defendant had a matter proved against them, but where a sentence was suspended or deferred upon the defendant entering into a recognisance. If such a defendant was not convicted of another indictable offence (or an offence that carried a potential term of imprisonment as punishment) and did not have their recognisance forfeited within 15 years of the original finding of guilt; then the original conviction/finding of guilt can not be disclosed. Note: Criminal Records section will screen this category for applicant officers.

### **Convictions when person is a juvenile:**

A Children's Court magistrate has no power to record a conviction against a person *under* 16 years of age. The magistrate can choose whether or not to record a conviction against a person aged 16 or over. This is true regardless of what penalty the young person gets.

A child of any age who is being dealt with for a more serious offence by a higher court (e.g. the District Court) may have a conviction recorded against them (see section 14 of the *Children (Criminal Proceedings) Act 1987* (NSW)).

For the purpose of the DVDS pilot, police must not disclose any convictions or findings of guilt recorded when the defendant was dealt with as a child i.e. convictions for offences when committed under the age of 18 years.

### **Interstate convictions**

Interstate criminal histories can be difficult to source, it is resource intensive and there are problems with the quality of those records. In addition there are no uniform criminal convictions across jurisdictions and it can be difficult to identify all interstate offences that are broadly equivalent to relevant offences in NSW. Given the problems inherent with sourcing interstate convictions they are excluded under the DVDS. It must be fully explained at the time of disclosure or non-disclosure that interstate convictions could exist and that if a DV history does not exist in NSW, it DOES NOT mean the subject does not have DV history elsewhere.

## **WHAT DETAILS CAN BE DISCLOSED IF THERE ARE RELEVANT CONVICTIONS?**

### **The nature of the offence**

Police can disclose the offence type (ie) 'common assault, stalking, breach of ADVO, assault occasioning actual bodily harm etc.

### **The year the subject was convicted**

Of the offence (as opposed to the year of the charge).

### **The relationship type**

If known, between the subject and the victim of the offence, except as below. The name of the victim should never be supplied.

#### **Important:**

If the disclosure of the date of the offence and the relationship type would identify the identity of the victim in a sexual offence or identify a child as being a victim, those details should not be disclosed. Instead the nature of the offence should only be disclosed. See *Children (Criminal Proceedings) Act 1987* No 55-section 15A: Publishing and broadcasting of names prohibited. & *Crimes Act 1900*, s 578A: A person is prohibited from publishing any matter which identifies the complainant in prescribed sexual offence proceedings or any matter which is likely to lead to the identification of the complainant, even where the proceedings have been finally disposed of.

## **Limitations of Criminal Records and how to overcome**

### **1. Pre Crimes (Domestic & Personal Violence) Act 2007**

This Act came into force 10 March 2008. Section 12 of this Act allowed police and courts to record charges and convictions as domestic violence related. However, prior to this date, no such arrangement existed. As a result, a 'common assault' was recorded as just that. Therefore, police need to drill down and find out if the common assault was a domestic violence offence. This involves looking at who the victim was in the indictment and then looking at the charge facts sheet to confirm the nature of the relationship between the parties.

### **2. Pre 1997 Charge Management WebCops**

T1(h)

T1(h)

## Application Process

### SUMMARY

The primary location for receiving applications under the DVDS will be a police station. This enables identity checks to be completed immediately by NSWPF and reinforces the significance of the scheme and the importance of being truthful in the application. In some circumstances police can receive applications in other locations and later process them at the police station.

NSWPF must record all applications, disclosures and cases where no disclosures are made, or where the primary person refuses to hear a disclosure, on WebCOPS. This ensures an accurate record is kept of what information is disclosed to who and when, and for data collection purposes.

Only NSW criminal record checks are undertaken, not national history checks. When making a disclosure it must be made clear that if no NSW history is found, a disclosure of "no History" should make it expressly clear that this relates to a NSW police DV history only. This DOES NOT mean the subject has no DV history in other states or territories.

### Primary applicant applications

#### 1. Police receive application

An applicant should, with the information provided in information pack or with the assistance of support services, submit a completed application to an officer at a police station located within the pilot LACs. Applicants should be referred to the assigned support service if they require assistance in completing the form.

The officer should invite the applicant to a part of the station where they have privacy and can speak openly; the public foyer of the police station should be avoided. The officer should review the completed application and check that all relevant fields have been completed, and clarify any areas that are unclear with the applicant. The information assists police to identify the subject correctly, and other fields are designed to capture information to verify the nature of the relationship, and other relevant factors. Should the officer not be able to identify the subject the application cannot proceed and this should be recorded in the event.

Whilst it is highly preferable that the DVLO is the officer who receives the application and makes the disclosure, applications can and will be made at all hours and days of the week so any officer can receive and process an application.

*Note: whilst it is expected that most applications are made at a police station, police can take applications in the field if there are circumstances that prevent a primary applicant from attending the station.*

T1(h), T2(d)

T1(h), T2(d)

T1(h)

### **10. Update WebCops Event**

The officer should update the event outlining the result of the application and if there are relevant convictions to be disclosed or whether the application means there is no information to disclose. The update should include what should be disclosed; conviction offence type, date of conviction and relationship between the subject and the victim.

### **11. Senior Police Officer verification**

The event must be verified by a senior police officer who by verification will approve or disapprove the intended disclosure. The Senior Police Officer must ensure the relevant email notification to the nominated NGO and DVLO is complete prior to verifying an event.

### **12. DVLO & Support Service**

Once it is established that a disclosure will be made, or there is no disclosure to be made, the DVLO must liaise with the support service and plan the approach to be taken with the applicant on the date set for the meeting. The DVLO must keep a record of ALL Disclosure Application and details received by their LAC in a spreadsheet for evaluation purposes.

### **13. Disclosure**

The DVLO, in the presence of the support service, must ensure that the applicant (and any other persons present) signs an undertaking not to misuse the information to be disclosed. The applicant should be given the disclosure orally. With the exception of support/information packs, the applicant should not be given anything in writing. With any disclosure, the DVLO should emphasise the limitations of the information and that a resulting sense of security may be misplaced.

In some cases there may be a need to be flexible about the location of the disclosure and a disclosure may occur at a local support service or other location.

Suggest more information about what is likely to happen, answering questions, safety planning, etc

### **14. Complete Web Cops Event**

The DVLO should complete the event by updating the narrative of what was disclosed, the reaction of the applicant to the disclosure, and any other relevant information. The event title should be amended to indicate if a disclosure was made or not.



## Third Party Applications

Third party applications are managed in the same way as primary person applications, but there are some differences.

### 1. Police receive application

Applications must be completed before they can be accepted. This includes sufficient details of the names and details of the primary person and the subject, and other information fields required.

T1(h), T2(d)

T1(h), T2(d)

### **10. Update WebCops Event**

The officer should update the event outlining the result of the application and if there are relevant convictions to be disclosed or whether the application means there is no information to disclose. The update should include what should be disclosed; conviction offence type, date of conviction and relationship between the subject and the victim.

### **11. Senior Police Officer verification**

The event must be verified by a senior police officer who by verification will approve or disapprove the intended disclosure. The Senior Police Officer must ensure the relevant email notification to the nominated NGO and DVLO is complete prior to verifying an event.

## **12. DVLO & Support Service**

Once it is established that a disclosure or non-disclosure will be made, the DVLO should liaise with the support service and plan how a disclosure can be made to the primary person.

For third party applications, the primary person may not be aware that an application has been made and may not be expecting to be contacted by the NSWPF in relation to a disclosure. All applications made without the knowledge of the primary person should be marked, and careful consideration should be given to the language used when contacting the primary person to invite them to hear a disclosure, and to give them the opportunity to identify and bring a support person(s).

Careful planning is important given that an unwanted disclosure may place a victim at greater risk of harm. Prior to any disclosure, a discussion with the support service should occur. Planning may involve the following points:

- The nature of the information that they will be told
- How they might feel after hearing this information
- What they might do as a consequence of knowing this information
- Information on different support services and how to access them
- Disclosures should be made in person and should be oral disclosures only
- The safety of police and support service workers who will make the disclosure
- The safety of the primary person

## **13. Disclosure**

When the disclosure has been planned with the support service, the disclosure should be made to the primary person with appropriate support present.

In order to ensure the safety of the primary person and other persons, the subject will never be informed of any application or disclosure made about them. Police should attempt to conduct a DVSAT with the primary person and update the existing DVSAT if the primary person answers the DVSAT questions.

## **14. Primary person does not want to hear the disclosure**

A primary person does not have to hear a disclosure under the DVDS. A record must be made outlining that the primary person refused to hear a disclosure and that information was given to them explaining that if they change their mind they are able to hear it at another time in the future.

Consideration should be given to disclosing the information to the third party if it is likely that the primary person will accept or listen to the disclosure from them.

## 15. Complete WebCops Event

The DVLO should complete the event by updating the narrative of what was disclosed, the reaction of the applicant to the disclosure, the conduct of the DVSAT and any other relevant information. The event title should be amended to indicate if the threshold was made or not.

## WHAT ARE THE ROLES OF SUPPORT SERVICES?

### SUMMARY

Linking a primary person with support services and providing adequate support and safety planning is critical to the effectiveness of the DVDS. A primary person should be referred to support services, where appropriate, which could include: counselling, psychiatric support, legal and/or court support, parenting support, accommodation, housing, financial support, amongst others.

Where relevant, the support service should work with the primary person to develop a safety plan and offer a range of options to protect the applicant and any children.

### What is the role of police?

Any officer who receives an application should process the application, complete the WebCops event, make the requisite WebCOPS/IASK enquiries and ascertain if there are convictions to disclose. Any reports of children being at risk must be actioned as per existing SOPs regardless of the source of information.

### What is the role of the DVLO?

The DVLO is the preferred point of contact for a DVDS application; however applications are not limited to the availability of a DVLO. It is expected that all police in the pilot LACs receive and process applications. The DVLO's role will be best used in liaising with support services and being the person who makes the disclosure/advises there is no disclosure. General arrangements are subject to the discretion of the individual LAC who is best placed to make operational decisions.

The DVLO's role is key to provide a primary person with support throughout the application and disclosure processes. They will arrange for any necessary counselling and support services and provide information and support pack.

### What is the role of a Senior Police Officer?

A senior police officer is responsible for the verification of DVDS events which trigger a disclosure if there is a relevant conviction.

Section 3 of the *Crimes (Domestic and Personal Violence) Act 2007* defines a senior police officer as a police officer of or above the rank of sergeant. Pursuant to section 48 of the *Interpretation Act 1987*, a relieving sergeant is a senior police officer for the purposes of the legislation. The officer must be actually relieving in a Sergeant SAP position and cannot just be given a relieving title for the purpose of making a provisional ADVO. This fact would normally be recorded on the daily roster.

### **What is the role of Support Agencies?**

Although the primary point for applications under the DVDS is a police station, both government and non-government organisations are able to assist a primary person to lodge an application. This is to enable the primary person to complete the application and overcome any barriers due to, among other reasons, physical or intellectual disability, or the historical distrust of NSWPF held by a number of specific community groups, such as people from ATSI, CALD and LGBTI communities, or for people living in small and remote communities.

The support that an applicant may require could include:

- Assistance completing the form due to poor literacy, or other reason
- Interpreting/translating services
- Physical access
- Designated support person or advocate
- Other additional, specific support relating to their culture, community or trauma

### **Police officers who are subject of an application**

If an application concerns a serving police officer, the application must be referred to an officer who is of the rank of Inspector or above. This officer will examine the application and where appropriate will refer the matter to Professional Standards Command for assistance.

## DVDS LIST OF RELEVANT OFFENCES

Relevant offences may include the offences defined as personal violence offences in section 4 of the *Crimes (Domestic and Personal Violence) Act 2007*. These are 'domestic violence offences' for the purposes of that Act when they are committed in particular relationships.

Certain of those personal violence offences set out in the *Crimes (Domestic and Personal Violence) Act 2007* and other offences should also be included as relevant offences regardless of who they were committed against, specifically:

- Sexual offences
- Child abuse offences
- Murder

Considerations of whether disclosure will, or may tend to, identify a child or a victim of sexual assault may impact on decisions as to what to disclose.

**In addition the below offences marked with an asterisk may be disclosed irrespective of whether committed in a domestic relationship or not.**

<b><i>Crimes Act 1900</i></b>
19A
Murder*
24
Manslaughter*
25
Repealed: geographical nexus provision for murder. NB: new 25A assault causing death; 25B assault causing death when intoxicated not included in definition.
26
Conspiring to commit murder*
27
Acts done with intent to commit murder*
28
Acts done to property with intent to murder*
29
Certain other attempts to murder*
30

Attempts to murder by other means*
<b>SEX OFFENCES</b>
61B*
Repealed: maliciously inflict GBH with intent to have sexual intercourse with child or adult
61C*
Repealed: maliciously inflict or threaten ABH with intent to have sexual intercourse with child or adult, simpliciter/in company
61D*
Repealed: sexual intercourse without consent <16 yrs, simpliciter/aggravated
61E*
Repealed: indecent assault/act of indecency
61I*
Sexual assault
61J*
Aggravated sexual assault
61JA*
Aggravated sexual assault in company
61K*
Assault with intent to have sexual intercourse
61L*
Indecent assault
61M*
Aggravated indecent assault (adult and child)
61N*
Act of indecency
61O*
Aggravated act of indecency (adult and child)
65A
Repealed: procure sexual intercourse by non-violent threat
66A*
Sexual intercourse with child < 10
66B*

Attempt sexual intercourse child < 10
66C*
Sexual intercourse with child between 10 and 16 (1: between 10 and 14, 2: aggravated between 10 and 14, 3: between 14 and 16, 4: aggravated between 14 and 16)
66D*
Attempt sexual intercourse with child between 10 and 16 (particularised as above)
66EA*
Persistent sexual abuse of child
66EB*
Procuring or grooming child under 16 for unlawful sexual activity
80A*
Sexual assault by forced self-manipulation
80D*
Causing sexual servitude
80G*
Incitement to commit sexual offence
87*
Child abduction
91G*
Use child for production of child abuse material (<14 and > 14)
91H*
Production, dissemination or possession of child pornography
91D*
Promoting or engaging in acts of child prostitution
91E*
Obtaining benefit from child prostitution
91F*
Premises not be used for child prostitution



562I (as in force before its substitution by the <i>Crimes Amendment (Apprehended Violence) Act 2006</i> ) or 562ZG of the <i>Crimes Act 1900</i>
Repealed: stalking or intimidation offence prior to removal to the <i>Crimes (Domestic and Personal Violence) Act 2007</i>
<b><i>Crimes (Domestic and Personal Violence) Act 2007</i></b>
13 *
Stalking or intimidation with intent to cause fear of physical or mental harm
<b>Plus</b>
An offence of attempting to commit any of the above offences.
<b><i>Children &amp; Young Persons (Care &amp; Protection) Act 1998</i></b>
Section 227*
Child and young person abuse
228*
Neglect of children and young persons
<b>Other SEX OFFENCES-NOW REPEALED</b>
(b) an <u>offence</u> that, at the time it was committed, was a <u>prescribed sexual offence</u> for the purposes of the <i>Criminal Procedure Act 1986</i> or the <i>Crimes Act 1900</i> ,

## FURTHER INFORMATION

### Resources

T2(d)





**NSW Police Force**

## **OXLEY LOCAL AREA COMMAND**

### **DOMESTIC VIOLENCE DISCLOSURE SCHEME (Trial project)**

# **STATION REFERENCE GUIDE**

*Information correct as of 11 April 2016.*

*This guide should be used for reference only. More detailed information in relation to the pilot of the Domestic Violence Disclosure Scheme can be sourced from (1) Operational Programs – Domestic Violence Disclosure Scheme (Local Area Command Copy) or (2)*

*[http://intranet.police.nsw.gov.au/strategy and knowledge maps/domestic violence](http://intranet.police.nsw.gov.au/strategy_and_knowledge_maps/domestic_violence)*

*Advice should be obtained from a Senior Police Officer (Sergeant or above) where issues are identified or further clarification on the scheme is needed.*

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### Purpose of Domestic Violence Disclosure Scheme (DVDS)

The DVDS will allow someone who has concerns about their partner and who wishes to learn about any abusive past, to attend a police station and ask for any relevant convictions to be disclosed to them. The disclosure of the information is done to allow the individual to make informed decisions for their own safety and / or that of their children, to seek assistance and to decide whether or not they will stay in the relationship.

### Pilot Locations:

- St George;
- Sutherland;
- Shoalhaven;
- Oxley.

### Who can apply for a disclosure under the DVDS?

There are two types of applications for disclosure, possible under DVDS;

- Primary Person Applicant
- Third Party Applicant.

### Mandatory Criteria for a *Primary Person application* under the DVDS.

- Applicant must be an Australian resident and over age of 16 years.
- Primary Person must reside in a suburb listed as being in one of the four pilot Local Area Commands.
- Involved in a current or former relationship that is or was an **intimate relationship**.
- Applicant must submit a completed application form and meet the 100 point identification requirement.
- Applicant must sign an acknowledgement that they are aware it is an offence to provide false or misleading information.

### What is an Intimate Relationship?

The following are **examples** of an intimate relationship;

- Married or defacto
- Have children together
- Boyfriend / Girlfriend relationships
- Same sex relationships
- Ongoing sexual relationship
- Couples promised to each other under cultural or religious custom
- Behaviour consistent with an intimate relationship or intent to commence one
- Persons meeting through a dating agency or social website
- Persons who have formed an online relationship where communication is of a nature where both parties give an indication they believe they are in an intimate relationship.

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The following **are not** examples of an intimate relationship;

- Carers
- Flat mates
- Long term residents in a residential facility
- Siblings
- Parent and child.

### What is a former intimate relationship?

The circumstances of what the applicant considers to be a former intimate relationship should be assessed on a case by case basis. A disclosure under the DVDS **would be warranted** for former relationships under the following situations;

- Involved in ongoing Family Law Court proceedings
- Child Care arrangements lead to ongoing contact
- Ongoing contact through attendance at Family Functions
- Ongoing contact through mutual friends or social groups
- Ongoing contact through common use or dealing of a residence
- Common dealing with each other through business or other private interests
- Working together or for same employer
- Shared kinship relationships in Aboriginal & Torres Strait Islander (ATSI) communities.

This list does not limit scenarios where a DVDS would be warranted and advice should be sought in other situations to ensure that applications are properly assessed.

### Third Party Applications

Specific third parties have the right to make an application for disclosure under the DVDS. The third party **must have** some form of contact with the primary person on a family, friendship or professional basis.

Professional contacts who may submit a third party application include;

- Doctors, psychologists, solicitors
- Family and Community Services (FACS)
- Domestic Violence / Family Support groups
- Health including community mental health services
- Department of Education
- Drug and Alcohol counsellors
- Corrective Services / Probation and Parole.
- Religious or faith group ministers
- Justice / Juvenile Justice.

Professional contact stemming from involvement with the primary person, subject or dependent children of either may all be considered in assessing Third Party Applications.

### Disclosure of Information under DVDS

Disclosures should in *almost all cases* be made directly to the primary person in both Primary Person and Third Person applications. On call support services will be used by

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police to provide support to the primary person in all disclosures to them. A Primary Person may wish to have another support person with them which would be acceptable.

Exceptional circumstances where a disclosure may be made to a third party include;

- Where a credible threat exists to the safety of the Primary Person and disclosure to a third person may prevent or reduce the threat.
- The Primary Person is disabled or dependent on the third person for direct care
- Primary Person refuses to accept or listen to the disclosure but may accept or listen to the information if provided by a family member, friend or professional associate.

### Convictions that can be disclosed under DVDS

- Personal Violence offences committed within a domestic relationship as defined in the *Crimes (Domestic and Personal Violence) Act 2007* such as;
  - Murder, manslaughter, physical / sexual assault, property damage, Stalking, Intimidation, Breaches of Apprehended Domestic Violence Orders (ADVO).

- Personal Violence offences committed *irrespective of whether committed* in a domestic relationship including;

#### Crimes Act

- Sec 19A Murder
- Sec 24 Manslaughter
- Sec 25A 25B Assault causing death / causing death when intoxicated
- Sec 26 Conspiring to commit murder
- Sec 27 28 Acts done (including to property) with intent to commit murder
- Sec 29 30 Other attempts to murder
- Sec 61 I Sexual Assault
- Sec 61J 61JA Aggravated Sexual Assault (including in company)
- Sec 61K Assault with intent to have sexual intercourse
- Sec 61L Indecent Assault
- Sec 61M Aggravated Indecent Assault (adult and child)
- Sec 61N Act of Indecency
- Sec 61O Aggravated Act of Indecency (adult and child)
- Sec 66A Sexual Intercourse with child <10 (including attempt)
- Sec 66B,C Sexual Intercourse with child bet. 10 and 16 (including between 10 and 14, aggravated between 10 and 14, aggravated between 14 and 16)
- Sec 66D Attempt Sexual Intercourse with child between 10 and 16
- Sec 66EA Persistent Sexual Abuse of Child
- Sec 66EB Procuring or grooming child under 16 for unlawful sexual activity
- Sec 80A Sexual Assault by self manipulation
- Sec 80D Causing Sexual Servitude
- Sec 80G Incitement to commit sexual offence
- Sec 87 Child Abduction
- Sec 91G Use child for production of child abuse material
- Sec 91H Production, dissemination or possession of child pornography
- Sec 91D Promoting or engaging in acts of child prostitution
- Sec 91E Obtaining benefit from child prostitution
- Sec 91F Premises not be used for child prostitution

#### Crimes (Domestic and Personal Violence) Act

- Sec 13 Stalking with intent to cause fear of physical or mental harm

#### Children and Young Persons (Care and Protection) Act

- Sec 227 Child and Young Person Abuse
- Sec 228 Neglect of children and young persons.

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- Repealed personal violence offences committed **irrespective of whether committed** in a domestic relationship including;
  - Section 25 of *Crimes Act 40/1900*
  - Section 61B,61C,61D,61E,65A (Sex Offences) of *Crimes Act 40/1900*
  - Section 562I and 562ZG of *Crimes Act 40/1900*
- An offence of attempting to commit any of the above offences
- An offence that was a prescribed sexual offence for the purposes of the *Criminal Procedure Act 1986* or the *Crimes Act 1900*.

### Matters that CANNOT be disclosed under the DVDS

- Non Convictions – where the charge matters were withdrawn or dismissed
- Non Convictions – where a court declined to record a conviction pursuant to Section 10(1) of the *Crimes(Sentencing Procedure) Act*
- Spent convictions – see Section 7 of the *Criminal Records Act* or refer to the *Operational Programs – Domestic Violence Disclosure Scheme (Local Area Command Copy)* manual for more information
- Convictions when the subject was a juvenile (less than 18 years of age)
- Interstate and overseas convictions involving the subject.

### Situations that warrant an Urgent Disclosure

As the primary objective of the DVDS is reducing the incidence of domestic violence and implementing measures to prevent further incidences and maintaining partners safety, certain offences and situations will warrant an urgent disclosure being made. The following are circumstances where an urgent disclosure would be made;

- Inquiries on COPS reveal the subject has been convicted of the offences of **Murder, Attempted Murder or Manslaughter** (DV related or otherwise)
- Inquiries on COPS reveal the subject has been convicted of serious domestic violence offence of **Section 33 - Wounding or inflicting GBH with intent, or Section 37 - Choking, suffocation or strangulation, or serious sexual offences.**
- When asking the initial 25 Domestic Violence Safety Assessment (DVSAT) questions of the primary person result in **12 or more 'YES'** answers and the initial inquiries by the police officer identify a conviction of the subject that warrant disclosure under DVDS.

Approval must be obtained from a senior Police Officer or officer in charge of the Police Station prior to making an urgent disclosure. An on call support service must be contacted to attend the station to support the primary person when an urgent disclosure is approved.

### No information to be provided to the subject about DVDS applications

The subject will never be informed of any applications that are made by a primary or third party under the DVDS. If approached by a subject in relation to whether an application under DVDS has made against them a police officer will inform such person that it is NSW Police Force Policy that an application under DVDS will not be disclosed and the position is that the officer cannot confirm or deny such an application has been made.

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### Privacy Provisions under DVDS

NSW Police Force has a widespread statutory exemption from *Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002* which deal with the handling of personal information by NSW public sector agencies. The DVDS relies on the release of the information being done to assist in the prevention of crime and protect potential victims from harm which is in keeping with the functions of the NSW Police Force which is legislated under Section 6 of the *Police Act 1990*.

The use of information under DVDS and which may be used by support agencies is not prohibited under privacy laws.

### **Guide for Oxley LAC officers accepting and processing an application for a Domestic Violence Disclosure.**

#### Primary Applicant applications

On being aware of an application being made under DVDS by the primary applicant, the police officer should speak with the applicant away from the front counter or foyer area. An applicant should not have to wait for extended periods of time in order to progress their application, an officer should immediately inform their supervisor of a DVDS application being made in order that a suitable officer can be allocated in the shortest period of time.

On being allocated to the process of the application, an officer should complete the following;

T1(h), T2(d)



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T1(h), T2(d)

### Third Party applications

Third party applications should be managed in the same way as Primary person applications with the following differences;

T1(h), T2(d)

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T1(h), T2(d)

*In the case of a third party application, the primary person may not be aware of the application being made and may not be expecting a police officer to contact them. Care should be taken in how this information is provided to them so as to alleviate the potential risk of further harm being caused to them.*

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**NSW Police Force**

**St George LOCAL AREA COMMAND**

**DOMESTIC VIOLENCE DISCLOSURE SCHEME  
(Trial project)**

# **STATION REFERENCE GUIDE**

*Information correct as of 4 April 2016.*

*This guide should be used for reference only. More detailed information in relation to the pilot of the Domestic Violence Disclosure Scheme can be sourced from (1) Operational Programs – Domestic Violence Disclosure Scheme (Local Area Command Copy) or (2)*

*[http://intranet.police.nsw.gov.au/strategy and knowledge maps/domestic violence](http://intranet.police.nsw.gov.au/strategy_and_knowledge_maps/domestic_violence)*

*Advice should be obtained from a Senior Police Officer (Sergeant or above) where issues are identified or further clarification on the scheme is needed.*

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### Purpose of Domestic Violence Disclosure Scheme (DVDS)

The DVDS will allow someone who has concerns about their partner and who wishes to learn about any abusive past, to attend a police station and ask for any relevant convictions to be disclosed to them. The disclosure of the information is done to allow the individual to make informed decisions for their own safety and / or that of their children, to seek assistance and to decide whether or not they will stay in the relationship.

### Who can apply for a disclosure under the DVDS?

There are two types of applications for disclosure possible under DVDS;

- Primary Person applicant
- Third Party Applicant.

### Mandatory Criteria for a *Primary Person application* under the DVDS.

- Applicant must be an Australian resident and over age of 16 years, (***meaning of resident for this scheme includes all persons except those on a tourist visa***)
- Primary person must reside in a suburb listed as being in one of the four trial Local Area Commands.
- Involved in a current or former relationship that is or was an **intimate relationship**
- Applicant must submit a completed application form and meet the 100 point identification requirement.
- Applicant must sign an acknowledgement that they are aware it is an offence to provide false or misleading information.

### What is an Intimate Relationship?

The following are **examples** of an intimate relationship;

- Married or defacto
- Have children together
- Boyfriend / Girlfriend relationships
- Same sex relationships
- Ongoing sexual relationship
- Couples promised to each other under cultural or religious custom
- Behaviour consistent with an intimate relationship or intent to commence one
- Persons meeting through a dating agency or social website
- Persons who have formed an online relationship where communication is of a nature where both parties give an indication they believe they are in an intimate relationship.

The following are **not** examples of an intimate relationship;

- Carers
- Flat mates
- Long term residents in a residential facility
- Siblings
- Parent and child.

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### What is a former intimate relationship?

The circumstances of what the applicant considers to be a former intimate relationship should be assessed on a case by case basis. A disclosure under the DVDS **would be warranted** for former relationships under the following situations;

- Involved in ongoing Family Law Court proceedings
- Child Care arrangements lead to ongoing contact
- Ongoing contact through attendance at Family Functions
- Ongoing contact through mutual friends or social groups
- Ongoing contact through common use or dealing of a residence
- Common dealing with each other through business or other private interests
- Working together or for same employer
- Shared kinship relationships in Aboriginal & Torres Strait Islander (ATSI) communities.

This list does not limit scenarios where a DVDS would be warranted and advice should be sought in other situations to ensure that applications are properly assessed.

### Third Party Applications

Specific third parties have the right to make an application for disclosure under the DVDS. The third party **must have** some form of contact with the primary person on a family, friendship or professional basis.

Professional contacts who may submit a third party application include;

- Doctors, psychologists, solicitors
- Family and Community Services (FACS)
- Domestic Violence / Family Support groups
- Health including community mental health services
- Department of Education
- Drug and Alcohol counsellors
- Corrective Services / Probation and Parole.
- Religious or faith group ministers
- Justice / Juvenile Justice.

Professional contact stemming from involvement with the primary person, subject or dependent children of either may all be considered in assessing Third Party Applications.

### Disclosure of Information under DVDS

Disclosures should in *almost all cases* be **made directly to the primary person** in both Primary Person and Third Person applications. On call support services will be used by police to provide support to the primary person in all disclosures to them. A Primary Person may wish to have another support person with them which would be acceptable.

Exceptional circumstances where a disclosure may be made to a third party include;

- Where a credible threat exists to the safety of the Primary Person and disclosure to a third person may prevent or reduce the threat.
- The Primary Person is disabled or dependent on the third person for direct care
- Primary Person refuses to accept or listen to the disclosure but may accept or listen to the information if provided by a family member, friend or professional associate.

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### Convictions that can be disclosed under DVDS

- Personal Violence offences committed within a domestic relationship as defined in the *Crimes (Domestic and Personal Violence) Act 2007* such as;
  - Murder, manslaughter, physical / sexual assault, property damage, Stalking, Intimidation, Breaches of Apprehended Domestic Violence Orders (ADVO).
- Personal Violence offences committed ***irrespective of whether committed*** in a domestic relationship including;
  - Crimes Act**
    - Sec 19A Murder
    - Sec 24 Manslaughter
    - Sec 25A 25B Assault causing death / causing death when intoxicated
    - Sec 26 Conspiring to commit murder
    - Sec 27 28 Acts done (including to property) with intent to commit murder
    - Sec 29 30 Other attempts to murder
    - Sec 61 I Sexual Assault
    - Sec 61J 61JA Aggravated Sexual Assault (including in company)
    - Sec 61K Assault with intent to have sexual intercourse
    - Sec 61L Indecent Assault
    - Sec 61M Aggravated Indecent Assault (adult and child)
    - Sec 61N Act of Indecency
    - Sec 61O Aggravated Act of Indecency (adult and child)
    - Sec 66A Sexual Intercourse with child <10 (including attempt)
    - Sec 66B,C Sexual Intercourse with child bet. 10 and 16 (including between 10 and 14, aggravated between 10 and 14, aggravated between 14 and 16)
    - Sec 66D Attempt Sexual Intercourse with child between 10 and 16
    - Sec 66EA Persistent Sexual Abuse of Child
    - Sec 66EB Procuring or grooming child under 16 for unlawful sexual activity
    - Sec 80A Sexual Assault by self manipulation
    - Sec 80D Causing Sexual Servitude
    - Sec 80G Incitement to commit sexual offence
    - Sec 87 Child Abduction
    - Sec 91G Use child for production of child abuse material
    - Sec 91H Production, dissemination or possession of child pornography
    - Sec 91D Promoting or engaging in acts of child prostitution
    - Sec 91E Obtaining benefit from child prostitution
    - Sec 91F Premises not be used for child prostitution
  - Crimes (Domestic and Personal Violence) Act**
    - Sec 13 Stalking with intent to cause fear of physical or mental harm
  - Children and Young Persons (Care and Protection) Act**
    - Sec 227 Child and Young Person Abuse
    - Sec 228 Neglect of children and young persons.
- Repealed personal violence offences committed ***irrespective of whether committed*** in a domestic relationship including;
  - Section 25 of *Crimes Act 40/1900*
  - Section 61B,61C,61D,61E,65A (Sex Offences) of *Crimes Act 40/1900*
  - Section 562I and 562ZG of *Crimes Act 40/1900*
- An offence of attempting to commit any of the above offences

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- An offence that was a prescribed sexual offence for the purposes of the *Criminal Procedure Act 1986* or the *Crimes Act 1900*.

### Matters that CANNOT be disclosed under the DVDS

- Non Convictions – where the charge matters were withdrawn or dismissed
- Non Convictions – where a court declined to record a conviction pursuant to Section 10(1) of the *Crimes (Sentencing Procedure) Act*
- Spent convictions – see Section 7 of the *Criminal Records Act* or refer to the *Operational Programs – Domestic Violence Disclosure Scheme (Local Area Command Copy)* manual for more information
- Convictions when the subject was a juvenile (less than 18 years of age)
- Interstate and overseas convictions involving the subject.

### Situations that warrant an Urgent Disclosure

As the primary objective of the DVDS is reducing the incidence of domestic violence and implementing measures to prevent further incidences and maintaining partners safety, certain offences and situations will warrant an urgent disclosure being made. The following are circumstances where an urgent disclosure would be made;

- Inquiries on COPS reveal the subject has been convicted of the offences of **Murder, Attempted Murder or Manslaughter** (DV related or otherwise)
- Inquiries on COPS reveal the subject has been convicted of serious domestic violence offence of **Section 33 - Wounding or inflicting GBH with intent, or Section 37 - Choking, suffocation or strangulation, or serious sexual offences.**
- When asking the initial 25 Domestic Violence Safety Assessment (DVSAT) questions of the primary person result in **12 or more 'YES'** answers and the initial inquiries by the police officer identify a conviction of the subject that warrant disclosure under DVDS.

Approval must be obtained from a senior Police Officer or officer in charge of the Police Station prior to making an urgent disclosure. An on call support service must be contacted to attend the station to support the primary person when an urgent disclosure is approved.

### No information to be provided to the subject about DVDS applications

The subject will never be informed of any applications that are made by a primary or third party under the DVDS. If approached by a subject in relation to whether an application under DVDS has made against them a police officer will inform such person that it is NSW Police Force Policy that an application under DVDS will not be disclosed and the position is that the officer cannot confirm or deny such an application has been made.

### Privacy Provisions under DVDS

NSW Police Force has a widespread statutory exemption from *Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002* which deal with the handling of personal information by NSW public sector agencies. The DVDS relies on the release of the information being done to assist in the prevention of crime and protect potential victims from harm which is in keeping with the functions of the NSW Police Force which is legislated under Section 6 of the *Police Act 1990*.

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The use of information under DVDS and which may be used by support agencies is not prohibited under privacy laws.

### **Guide for St George LAC officers accepting and processing an application for a Domestic Violence Disclosure.**

#### **Primary Person applications**

On being aware of an application being made under DVDS by the primary applicant, the police officer should speak with the applicant away from the front counter or foyer area. An applicant should not have to wait for extended periods of time in order to progress their application, an officer should immediately inform their supervisor of a DVDS application being made in order that a suitable officer can be allocated in the shortest period of time.

On being allocated to the process the application an officer should complete the following;

T1(h), T2(d)

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T1(h), T2(d)

***Please note: Non urgent disclosures will be booked using the spread sheet and to be performed at Hurstville Police station. Urgent disclosures will be performed at the Police Station of where the Primary Person has attended. Eg Primary Person has attended Kogarah Police Station to make an application. If this application is deemed urgent, the disclosure is to be completed immediately at Kogarah Police Station.***

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### Third Party applications

Third party applications should be managed in the same way as Primary person applications with the following differences;

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T1(h), T2(d)

***Please note: Non urgent disclosures will be booked using the spread sheet and to be performed at Hurstville Police station. Urgent disclosures will be performed at the Police Station of where the Primary Person has attended. Eg Primary Person has attended Kogarah Police Station to make an application. If this application is deemed urgent, the disclosure is to be completed immediately at Kogarah Police Station.***

*In the case of a third party application, the primary person may not be aware of the application being made and may not be expecting a police officer to contact them. The St George Domestic Violence Liaison Officers will contact the Primary Person, unless the*

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*disclosure is urgent and there are no available Domestic Violence Liaison Officers. If no DVLO's are available, General Duties Police will contact the Primary Person. Care should be taken in how this information is provided to them so as to alleviate the potential risk of further harm being caused to them.*

T1(h), T2(d)

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**T1(h), T2(d)**

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**NSW Police Force**

**SUTHERLAND LOCAL AREA COMMAND**

**DOMESTIC VIOLENCE DISCLOSURE SCHEME  
(Trial project)**

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*Advice should be obtained from a Senior Police Officer (Sergeant or above) where issues are identified or further clarification on the scheme is needed.*

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### **Purpose of Domestic Violence Disclosure Scheme (DVDS)**

The DVDS will allow someone who has concerns about their partner and who wishes to learn about any abusive past, to attend a police station and ask for any relevant convictions to be disclosed to them. The disclosure of the information is done to allow the individual to make informed decisions for their own safety and / or that of their children, to seek assistance and to decide whether or not they will stay in the relationship.

### **Who can apply for a disclosure under the DVDS?**

There are two types of applications for disclosure possible under DVDS;

- Primary Person applicant
- Third Party Applicant.

### **Mandatory Criteria for a *Primary Person* application under the DVDS.**

- Applicant must be an Australian resident and over age of 16 years.
- Primary person must reside in a suburb listed as being in one of the four trial Local Area Commands (see Page \_)
- Involved in a current or former relationship that is or was an **intimate relationship**
- Applicant must submit a completed application form and meet the 100 point identification requirement.
- Applicant must sign an acknowledgement that they are aware it is an offence to provide false or misleading information.

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The following **are examples** of an intimate relationship;

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    - **Sec 66EA** Persistent Sexual Abuse of Child
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    - **Sec 80D** Causing Sexual Servitude
    - **Sec 80G** Incitement to commit sexual offence
    - **Sec 87** Child Abduction
    - **Sec 91G** Use child for production of child abuse material
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    - **Sec 91D** Promoting or engaging in acts of child prostitution
    - **Sec 91E** Obtaining benefit from child prostitution
    - **Sec 91F** Premises not be used for child prostitution
  - Crimes (Domestic and Personal Violence) Act**
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- An offence of attempting to commit any of the above offences
- An offence that was a prescribed sexual offence for the purposes of the *Criminal Procedure Act 1986* or the *Crimes Act 1900*.

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### Matters that CANNOT be disclosed under the DVDS

- Non Convictions – where the charge matters were withdrawn or dismissed
- Non Convictions – where a court declined to record a conviction pursuant to Section 10(1) of the *Crimes(Sentencing Procedure) Act*
- Spent convictions – see Section 7 of the Criminal Records Act or refer to the *Operational Programs – Domestic Violence Disclosure Scheme (Local Area Command Copy)* manual for more information
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- When asking the initial 25 Domestic Violence Safety Assessment (DVSAT) questions of the primary person result in **12 or more 'YES'** answers and the initial inquiries by the police officer identify a conviction of the subject that warrant disclosure under DVDS.

Approval must be obtained from a senior Police Officer or officer in charge of the Police Station prior to making an urgent disclosure. An on call support service must be contacted to attend the station to support the primary person when an urgent disclosure is approved.

### No information to be provided to the subject about DVDS applications

The subject will never be informed of any applications that are made by a primary or third party under the DVDS. If approached by a subject in relation to whether an application under DVDS has made against them a police officer will inform such person that it is NSW Police Force Policy that an application under DVDS will not be disclosed and the position is that the officer cannot confirm or deny such an application has been made.

### Privacy Provisions under DVDS

NSW Police Force has a widespread statutory exemption from *Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002* which deal with the handling of personal information by NSW public sector agencies. The DVDS relies on the release of the information being done to assist in the prevention of crime and protect potential victims from harm which is in keeping with the functions of the NSW Police Force which is legislated under Section 6 of the *Police Act 1990*.

The use of information under DVDS and which may be used by support agencies is not prohibited under privacy laws.

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### **Guide for Sutherland LAC officers accepting and processing an application for a Domestic Violence Disclosure.**

#### **Primary Applicant applications**

On being aware of an application being made under DVDS by the primary applicant, the police officer should speak with the applicant away from the front counter or foyer area. An applicant should not have to wait for extended periods of time in order to progress their application, an officer should immediately inform their supervisor of a DVDS application being made in order that a suitable officer can be allocated in the shortest period of time.

On being allocated to the process the application an officer should complete the following;

T1(h), T2(d)

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### Third Party applications

Third party applications should be managed in the same way as Primary person applications with the following differences;

T1(h), T2(d)

*In the case of a third party application, the primary person may not be aware of the application being made and may not be expecting a police officer to contact them. Care should be taken in how this information is provided to them so as to alleviate the potential risk of further harm being caused to them.*

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Applications and Disclosures Made under the Domestic Violence Disclosure Scheme from 13/4/2016 to 12/10/2016				
LAC	Applications by "At Risk Person"	Applications by 3rd Party	Total Applications	Total Disclosures
Oxley	10	1	11	9
Shoalhaven	16	5	21	13
St George	5	0	5	4
Sutherland	2	1	3	1
<b>Total</b>	<b>33</b>	<b>7</b>	<b>40</b>	<b>27</b>