

Consultation response

Domestic Violence Discussion Paper
September 2017



Government of
South Australia

Contents

Introduction	2
Responses – at a glance	3
Whole of government response	4
Aboriginal women and girls.....	4
Topic 1: Domestic violence disclosure scheme	4
Topic 2: Expiry dates on intervention orders	5
Topic 3: Comprehensive collection of data.....	5
Data collection and information sharing	5
Flagging domestic and family violence offences.....	6
Serious repeat domestic violence offenders	7
Topic 4: Allowing video evidence	7
Topic 5: Confidentiality	8
Topic 6: Drug and alcohol treatment	9
Perpetrators of domestic violence – response and imprisonment.....	9
Topic 7: Domestic violence and housing and homelessness services priorities	9
Topic 8: Fostering supportive environments	10

Introduction

In July 2016, the Government of South Australia shone a light on the extent of domestic and family violence in our state and sought input from the community on a number of initiatives to address this scourge.

The '**Domestic Violence Discussion Paper**' received welcome attention from the sector and the broader community, highlighting our unified desire to protect victims and further social change. The conversations generated throughout the consultation period were considered, robust and informative, reflecting the community's commitment to addressing domestic and family violence at a local level. The government thanks those who contributed to this important discussion and for their valuable feedback.

The discussion paper presented an unprecedented amount of data collected by South Australia Police (SAPOL) on domestic violence in our community, together with data sourced from the Australia Bureau of Statistics (ABS). The government will continue to bring the facts about domestic and family violence to the attention of the community by publishing the ABS data, ensuring it is more accessible and informs the discussion about this serious problem.

The discussion paper also provided the community with detailed information about current government initiatives in preventing and responding to domestic and family violence. South Australia leads the nation with the Multi-Agency Protection Service, which is becoming a model for services around the country. In November 2016, the Premier announced the 'Women's Safety Services South Australia' – an amalgamation of the Central Domestic Violence Service, Migrant Women's Support Service and the Domestic Violence and Aboriginal Family Violence Gateway Service, to streamline and strengthen service delivery. The Family Safety Framework continues to ensure that, across the state, a coordinated and integrated approach is taken to address the safety of victims, also ensuring perpetrators are held accountable for their use of violence. Our system of intervention orders is strong, and will continue to be improved including through the reform proposed in this response.

Government agencies have been accredited as White Ribbon workplaces and have introduced domestic violence workplace policies. The South Australian government has taken the lead and introduced 15 days special leave for public servants experiencing domestic and family violence. Digital solutions were explored through the D3 Digital Challenge, child protection laws strengthened and legislation has been passed to enhance information sharing across the government. The Domestic Violence Serial Offender Database is a resource available to domestic and family violence service providers in South Australia to enable the identification of serial offenders, enhancing the safety of their victims. Recently, the government announced that the Department for Correctional Services will be monitoring 90 domestic violence offenders who will be fitted with GPS ankle bracelets, funded through a federal grant of approximately \$500,000, as part of a three-year trial.

South Australia provides a range of legal and court services to support victims of domestic and family violence, such as the Women's Domestic Violence Court Assistance Service, which received additional funding of \$353,000 in October 2016. South Australia also has some of the strongest laws to protect vulnerable witnesses in the justice system. These laws will continue to be enhanced, including by reform proposed in this response.

We have programs designed to keep victims of domestic and family violence safe in their homes, as well as services to assist those who are homeless or at risk of homelessness. Tenancy laws have been improved and the Domestic Violence Response Review ensures the government remains accountable for the services it provides.

Perpetrators can be forced to undertake treatment programs through the courts and programs are available in our corrections system.

South Australia has passed, and in 2017 will commence, legislation to establish the national domestic violence order scheme so that domestic violence orders issued in one state will be automatically recognised in all others.

The government will continue to be strong and innovative in its approach to domestic and family violence.

The discussion paper asked the sector and community to consider eight consultation topics, and to provide their feedback:



This report outlines the government's next steps in light of that feedback.

Responses – at a glance

75 written submissions	510 community survey responses	119 sector survey responses
----------------------------------	--	---------------------------------------

Feedback was received through a number of engagement channels over 6 weeks:

- community survey (accessed via yourSAy)
- sector survey, targeted at people working or involved in domestic and family violence services (accessed via yourSAy)
- two-day meeting of key partners from within the sector
- written submissions.

A detailed summary of the survey responses and a report from the key partner meeting are available at www.agd.sa.gov.au/dvdiscussion

Whole of government response

Set out below is the government's response to the feedback received from experts and the South Australian community. A number of matters are being referred to the "A Right to Safety" Women's Safety Strategy Chief Executives Group (the CE Group). The CE Group is chaired by the Minister for the Status of Women and is a high level committee responsible for achieving the *Women's Safety Strategy*. The CE Group comprises the Commissioner for Police, together with the Executive Director, Aboriginal Affairs and Reconciliation (Department for State Development) and the Chief Executives of the Department of the Premier and Cabinet, the Attorney-General's Department, the Department for Health and Ageing, the Department for Correctional Services, the Department for Education and Child Development and the Department for Child Protection. The CE Group provides the perfect forum to ensure that the response is whole of government.

Aboriginal women and girls

The discussion paper clearly articulated that Aboriginal* women and girls are more likely to be victims of domestic and family violence than other women and girls in Australia. We know that domestic and family violence disproportionately impacts Aboriginal communities. There is a focus on high Aboriginal incarceration rates, but there must also be a strong focus on Aboriginal women and children who are the victims of family and domestic violence. Working with the entire community, the government is committed to exploring ways of addressing this over-representation. Through consultation and engagement, the CE Group will be seeking further input from across the community, and government agencies, as to the next steps that we need to take to tackle the high rates of domestic and family violence occurring in Aboriginal communities.

Topic 1: Domestic violence disclosure scheme

The discussion paper sought community views on an appropriate model for a domestic violence disclosure scheme (DVDS) in South Australia.

Feedback indicated both community and sector support for a DVDS.

The consultation raised a number of issues that must be resolved before a DVDS is implemented in South Australia. In particular, for a DVDS to be successful in minimising the risk of domestic and family violence, ongoing resources must be committed to processing applications. Resources must also be allocated to ensure support services are present when information is provided to the persons who are at risk, to provide them with support, safety planning and referrals.

Following consideration of the feedback, the government is committed to exploring a state-wide DVDS trial by SAPOL. Protocols for this trial DVDS are now being developed by SAPOL and the Attorney-General's Department (AGD) and will be the subject of further targeted consultation, including with the Office for Women, domestic and family violence services and services that provide support to Aboriginal victims of domestic and family violence.

** References in this response to Aboriginal people represents a reference to both Aboriginal and Torres Strait Islander people.*

Topic 2: Expiry dates on intervention orders

An intervention order (IO) made under the current *Intervention Orders (Prevention of Abuse) Act 2009* (IOPA Act) will continue without an end date. The discussion paper asked the sector and the community to consider whether the court should be given the power to impose an expiry date on IOs.

The community expressed concern that victim safety might be compromised if an IO has an expiry date. Based on this feedback, the government maintains its current policy position and courts will not be able to place expiry dates on IOs.

Concerns were raised about the indefinite nature of IOs that could result in otherwise lawful behaviour being criminalised, particularly if parties reconcile and resume their relationship, or if a protected person instigates the contact with the defendant, for example, due to parenting demands. The government maintains that the IOPA Act strikes the right balance in ensuring that victims of domestic and family violence are protected, noting that section 17 of the IOPA Act ensures that a defendant is informed that a protected person cannot consent to an IO being breached.

However, in response to concerns raised about otherwise lawful behaviour being criminalised, a bill will be drafted for public consultation that inserts a new provision that will apply in cases where a protected person has been involved in the breach of an IO made to protect them. Under this proposal, when someone is being sentenced for an offence of breaching an IO, if the court is satisfied that a protected person contributed to the proven breach of the IO, the court would be able, on its own initiative, to either vary or revoke the IO so that the relevant conduct of the defendant is no longer considered a breach. The bill will provide that, in the court exercising such discretion, victim safety is to remain the paramount consideration.

Topic 3: Comprehensive collection of data

Topic 3 focused on the way domestic and family violence data is collected and whether domestic and family violence related criminal offending is being accurately identified. In addition, consultation occurred in response to the Parliament of South Australia Social Development Committee Report into Domestic and Family Violence (SDC Report). The SDC Report recommended that the Attorney-General conduct an extensive public consultation process to explore whether the crime of domestic and family violence should be included in the *Criminal Law Consolidation Act 1935* (CLC Act) (recommendation 30).

Consultation responses indicated a high level of support for enhanced data collection and sharing, as opposed to the creation of new offences.

Data collection and information sharing

The consultation process revealed strong support for an increase in the collection, sharing and use of information around domestic and family violence and recommended the creation of a centralised coordinating body for the comprehensive collection of data. The feedback supports the current direction that the government is taking to enhance information and data sharing via the Multi-Agency Protection Service (MAPS) and the *Public Sector (Data Sharing) Act 2016*.

In late 2013, SAPOL commenced work developing MAPS, which began operations in July 2014. Through MAPS, staff from SAPOL, the Department for Education and Child Development (DECD), the Department for Child Protection (DCP), SA Health, Housing SA (Department for Communities and Social Inclusion) (DCSI) and the Department for Correctional Services (DCS) are co-located under the one roof. Agencies share information from different sources about victims of domestic and family violence, consider how at risk these people are from harm, and come up with a plan as to how they can best be protected. Co-location promotes team work

and information sharing, ensuring a coordinated response from these agencies to high-risk domestic and family violence cases – staff working side-by-side, sharing information.

The aim of MAPS is to reduce the impact of domestic and family violence and child abuse in the community through information sharing and planning.

Taking information and data sharing a step further, the government has also commenced its *Public Sector (Data Sharing) Act 2016*. These laws enhance data sharing and enable the establishment of the Office for Data Analytics. The government will work collaboratively with non-government agencies to ensure that the collection, sharing and use of domestic and family violence data are enhanced by this reform.

The public and expert feedback to the discussion paper on this topic was robust and informative, with many suggestions for improvement made. This feedback will also be referred to the CE Group for further consideration, to inform further improvements in this area.

Flagging domestic and family violence offences

The discussion paper highlighted the existing gaps in data around the perpetrators of domestic and family violence. Feedback indicated that domestic and family violence offences should be flagged in the criminal justice system to capture patterns and render the history of perpetrators readily available.

A definition of domestic abuse for criminal offences that matches the current definition in the IOPA Act will mean that a person's criminal record will clearly show they are a domestic and family violence offender.

The IOPA Act defines domestic abuse to include a far broader range of relationships than in criminal legislation. Under the criminal law, certain offences are considered 'aggravated' if they occur in particular circumstances. In general, an aggravated offence is considered more serious and will attract harsher penalties than the basic offence. The circumstances that make an offence aggravated are listed in section 5AA of the CLC Act. Section 5AA(g) specifically lists circumstances where offending is against a spouse, former spouse, and certain children. The list in section 5AA(g) is not as far-reaching as the definition of domestic abuse in the IOPA Act. For example, section 5AA(g) does not include cases where the offending is against a grandchild or a sibling, where the offending involves a carer relationship or where the offending is between people related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group.

This inconsistency between the definition of domestic abuse in the IOPA Act and the definition of aggravated offences contained in section 5AA(g) of the CLC Act can be addressed.

An expanded section 5AA(g) would mean a person's criminal record would more clearly indicate that an offence was domestic abuse. This is because their conviction will be for an aggravated offence rather than a basic offence, and will therefore list the specific circumstances.

The government will draft and consult on legislation to expand the definition of an aggravated offence contained in section 5AA(g).

Whilst the above amendment is one means by which a person can be identified as a domestic and family violence offender and by which information can be collected and collated about domestic and family violence related criminal offending, more work needs to be done. The CE Group, in considering the feedback concerning data collection and information sharing, will be asked to work with agencies, such as the Director of Public Prosecutions, SAPOL and the Courts Administration Authority, to develop further proposals to enhance the collection of data and information about domestic and family violence in our community. This will include the exploration of the use of a universal 'flag' to identify situations and charges of domestic and family violence – a proposal that received strong support in the feedback to the discussion paper.

In response to feedback, legislation will also be drafted for public consultation to expand the definition of 'abuse' in the IOPA Act to ensure the following behaviour is captured as abuse in an application for an IO:

- forced marriage
- barring a person from entering their home (shared or otherwise)
- taking intimate/private photos of a victim without their consent and threatening to publish, distribute or share those photos without consent
- threatening to distribute, share or publish intimate or private photos that may have been taken consensually but there is no consent to share.

Serious repeat domestic violence offenders

The enhanced collection of data will enable high-risk repeat perpetrators of domestic and family violence to be identified. The government will explore a system of identifying adults who are proven to be high-risk repeat domestic and family violence offenders, notably those who offend repeatedly or against multiple victims. This will be done through the development of legislation for public consultation and builds on work already undertaken within domestic violence service agencies.

Once a person is proven to be a high-risk domestic and family violence offender, such information would form part of any information released under the DVDS.

In addition, once this type of offender can be defined and identified, the government will also consider a system such that an application could be made by government (either through the Crown or through SAPOL) for an order to be made that is specifically designed to address any behaviour that is linked to their offending. This may include placing constraints, restrictions or limitations on the offender, requiring the offender to take certain actions or requiring them to report certain information to a supervisory body.

Consideration will also be given to the ability to publically identify these people if they breach their orders, to reduce the risk they pose to women and children in our community.

These measures would be specifically designed to address behaviours common to serious domestic and family violence offenders and would be a world first. Such information may also have the potential to enhance data collected about common characteristics and behaviours of domestic and family violence perpetrators, to inform future policy.

Topic 4: Allowing video evidence

Consultation occurred on recommendation 29 of the SDC Report, which recommended that the Attorney-General amend the *Evidence Act 1929* (Evidence Act). The recommended amendments would enable evidence that is taken from a victim by police, using, for example, body cameras, at the time of the domestic abuse incident to be admissible as evidence at trial. The feedback to the discussion paper indicated overall support for such a proposal.

Under the current IOPA Act, a police officer can apply for an interim IO to protect a victim. When this happens, police video recordings are admissible under the exception to the hearsay rule (see section 21(4a)). The Chief Magistrate, amongst others, has suggested expanding this provision so that police video recordings are admissible during any application for an IO, not just when a police officer is the applicant.

In response, the government intends to draft and consult on legislation implementing this reform. This will include broadening the exception to the hearsay rule in the IOPA Act to all IO proceedings.

The Chief Magistrate has also expressed a desire that the Evidence Act be amended to allow police video recordings to be admissible as evidence when a criminal charge for a domestic and family violence incident comes to trial. This proposal also drew support from other parties, however various concerns were raised, such as the need to obtain a victim's consent.

In response, amendments to the Evidence Act will be developed for targeted consultation to allow recordings of a domestic and family violence victim's statement to be admissible as evidence. These will be drafted with consideration given to concerns raised in the feedback and will be based upon New South Wales provisions that allow police to take an audio or video statement from a domestic and family violence victim in the aftermath of an offence.

In New South Wales, this audio or video statement:

- needs to have been made as soon as practicable after the offence
- can only be taken with the informed consent of the victim
- is used as all or part of the witness's evidence-in-chief, and forms part of a witness's oral evidence.

The victim is still required to attend court and be available for cross-examination. Where a victim denies a statement made in the recording, the usual provisions concerning unfavourable witnesses continue to apply and the consent of the victim is not required to play the recording in court.

Topic 5: Confidentiality

Consultation occurred on recommendation 29 of the SDC Report, which recommended that the Attorney-General amend the Evidence Act to improve confidentiality of client records for victims of domestic and family violence. In South Australia, counselling and medical records can be called upon as evidence during legal proceedings. This applies to domestic and family violence counselling. There are two circumstances in which communications are protected under the law from being disclosed in legal proceedings, being communications that occur between a lawyer and their client, and communications that occur during counselling relating to sexual assault. This protection cannot be waived, even if both the victim and the counsellor agree to it being disclosed.

The government acknowledges community and sector support for improved record protection for domestic and family violence victims. However, concerns were raised regarding the impact of such reform on the prosecution and trial of domestic and family violence perpetrators.

The government is satisfied that the courts will only admit relevant material. To exclude this material would potentially cause injustice, quite possibly to victim

Topic 6: Drug and alcohol treatment

Perpetrators of domestic violence – response and imprisonment

Consultation occurred as to whether assessments for drug and alcohol abuse and for attendance at a treatment program should be mandatory as part of an IO. The community and sector were also asked whether a court should be required to refer a defendant to a program where certain factors exist, such as substance abuse, and whether the current intervention programs are sufficient to meet the needs of defendants.

Feedback from the consultation identified gaps in data provided in the discussion paper, including the rates of re-offending for participants in programs. It is clear that a substantial body of work needs to be undertaken across government to determine the most appropriate and impacting changes needed to the way treatment programs are provided to domestic and family violence offenders, including those under the IOPA Act.

This work will be led by the CE Group. The CE Group will be tasked with considering what barriers exist for perpetrators participating in programs, including those who may be held in custody on remand.

The CE Group will be asked to consider the best approach to the treatment of domestic and family violence offenders, working across government, and the requirements to achieve these outcomes.

As flagged in the discussion paper, consideration must also be given to targeted education and cultural change to prevent domestic and family violence within Aboriginal and culturally and linguistically diverse (CALD) communities. The CE Group will further be asked to consider tailored approaches for these communities and others.

Community and expert feedback was also sought on ways to more effectively deal with perpetrators of domestic and family violence.

It is noted that since the release of the discussion paper, DCS in South Australia has implemented their 'Reducing re-offending: 10% by 2020' strategy which targets a 10% reduction in the number of people who re-enter correctional services by 2020.

Feedback indicated support of the government's current policy on better sentencing options, including the expansion of non-custodial options such as home detention in appropriate circumstances and the introduction of intensive corrections orders. The government will continue to explore better sentencing options that provide a benefit to victims and the whole community by reducing re-offending. However, the government will also ensure that any program's effectiveness is also measured by reference to the increased safety and well-being of women and children.

The government will continue to support practices in relation to perpetrators of domestic and family violence. This will align with the National Outcome Standards for Perpetrator Intervention, developed through the Council of Australian Governments as part of the National Plan to Reduce Violence Against Women and their Children.

Topic 7: Domestic violence and housing and homelessness services priorities

Current homelessness services are delivered in accordance with the National Partnership Agreement on Homelessness and the National Affordable Housing Agreement. A transitional agreement providing funding until mid-2018 is in place. Ministers from all around Australia have agreed that current funding beyond this point will be rolled into one National Housing and Homelessness funding agreement. The terms of that agreement are currently being negotiated with the Commonwealth.

Topic 8: Fostering supportive environments

The discussion paper highlighted how the government of South Australia is leading the way by introducing domestic and family violence leave entitlements, workplace policies and seeking White Ribbon workplace accreditation across government.

Consultation occurred about how to foster a supportive environment for victims of domestic and family violence. Respondents were asked what actions would best encourage victims to be more confident in seeking support and assistance in the workplace and in other environments. A substantial amount of feedback focused on proactive ways of creating supportive environments.

Recommendation 31 of the SDC Report was noted, which recommended that the *Equal Opportunity Act 1984* (EO Act) be amended to make it illegal to discriminate against a person on the grounds of domestic or family violence. This recommendation will be adopted.

The CE Group will be tasked with developing a plan for how the government can foster supportive environments for victims of domestic and family violence across the entire community, including in workplaces. The CE Group will be asked to ensure that the experiences of persons with disability, Aboriginal people and people from CALD communities, are considered, together with the cultural competency of service providers and agencies in working in this space. Other effective ways to achieve this goal are outlined in the SDC Report, which the government has supported, specifically recommendations 7 and 8, that the Government of South Australia lobby the Australian Government to:

- amend the *Fair Work Act 2009* to define domestic and family violence as an industrial matter and provide a minimum statutory entitlement for leave;
- ensure that domestic and family violence clauses are included in enterprise agreements and awards to reflect additional paid leave; confidentiality of employee information; workplace strategies to ensure the safety of employees at risk of domestic and family violence; education and training for managers and supervisors and protection from discrimination following disclosure of domestic abuse.

The above aims to allow domestic and family violence leave to be accessed by all employees, and not just those in the public sector as is currently the case. The Premier addressed recommendations 7 and 8 by calling for the inclusion of domestic and family violence leave in the National Employment Standards at the COAG Domestic Violence summit held in Brisbane in October 2016, and the Attorney-General and Minister for Industrial Relations has written to the Australian Government Minister for Employment and the Fair Work Ombudsman about this issue.

The Attorney-General and Minister for Industrial Relations also agreed to request that SafeWork SA continue to work with the Office for the Public Sector to develop similar guidance and education around workplace rights and protections in the context of family violence.

