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Submission of the Women's Electoral Lobby NSW

to the

NSW Domestic Violence Disclosure Scheme Discussion Paper

June 2015

THE WOMEN'S ELECTORAL LOBBY NSW

The Women's Electoral Lobby NSW (**WEL**) is an independent, feminist lobby group dedicated to creating a society where women's participation and their ability to fulfil their potential are supported and respected. Founded in 1972, WEL is an advocacy group for issues that continue to disadvantage women.

WEL promotes equality between men and women and seeks to change attitudes and practices that discriminate against women, particularly those relating to women's health, safety, economic security, and participation in public life.

GENERAL OBSERVATIONS

WEL sees merit in a Domestic Violence Disclosure Scheme (**DVDS**) if it is complemented by increased funding for specialist training and frontline services, including women's refuges run by women, domestic violence training for police, specialist legal services, and domestic violence courts.

Recommendation 1: WEL recommends that the NSW Government provide services to ensure the safety and security of victims of family violence, including women's refuges run by women, counselling and rehabilitation programs.

Currently there are only 20 refuges run by women for women, whereas prior to the NSW Government's *Going Home Staying Home* reforms, there were over 100 refuges run by women for women.¹ In WEL's experience, when a generalist homelessness shelter is the only option for women and children fleeing violence, they are less likely to leave their homes. Specialist domestic violence refuges are a crucial part of the range of responses required to address the complex issues and needs that often accompany women fleeing domestic violence.²

¹ SOS Women's Services, at: <http://www.soswomensservices.com/theproblem>

² Leichhardt Women's Community Health Centre, at: <http://www.lwchc.org.au/index.php/2014/04/concerns-many-womens-refuges-close/>; Jane Bullen, "The evidence supports specialist refuges for domestic violence", *The Conversation*, 18 February 2015, at: <https://theconversation.com/the-evidence-supports-specialist-refuges-for-domestic-violence-37066>

Women's Aid in the United Kingdom (**UK**) responded to reported low responses to the introduction of 'Clare's Law' in the UK – the model on which the NSW DVDS is based – by raising concerns that the law may not be the most effective way of supporting women experiencing abuse.

The UK Home Office assessed the potential cost of a "Right to Ask" scheme at £0.39m, and the potential cost of a "Right to Know" scheme at £1.57m.³ Throughout the UK pilot, which ran from July 2012 to September 2013, there were 386 applications for disclosure (231 Right to Ask applications and 155 Right to Know applications) with information disclosed in 111 (29%) cases.⁴

Recommendation 2: Before the NSW Government endorses a DVDS pilot, WEL recommends a fully costed regulation impact statement and interest assessment be undertaken in consultation with key stakeholders, including women's organisations.

Recommendation 3: WEL does not support trialling and implementing a DVDS in NSW with unproven efficacy while frontline services are perilously underfunded. WEL therefore recommends that any pilot scheme be based on best UK practice and knowledge derived from experience with demonstrably positive outcomes.

DISCUSSION QUESTIONS

RIGHT TO ASK / RIGHT TO KNOW

A) WEL is concerned that the proposed DVDS appears to lay responsibility on women for ending men's violence against women by creating an expectation that a woman should check her partner's background or should leave if he has a history of violence. An unintended outcome of this expectation is that women, who remain with men who are named by the DVDS, may not receive full police or legal support for failing to act on available DVDS information.⁵ This unintended outcome needs to be addressed by explicit statements of support irrespective of a woman's decision.

³ Home Office, *Domestic violence disclosure pilots: Impact assessment*, October 2011

⁴ Home Office, *Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment*, November 2013

⁵ Refuge, *Response to Domestic Violence Disclosures Consultation Paper, UK*, January 2012

B) WEL is also concerned that women may be falsely assured that their partner is not abusive if he is not named by the DVDS, unaware that many perpetrators are never arrested or convicted of domestic assault.⁶

Recommendation 4: WEL recommends a complementary tool accompany the DVDS to collect statistical information on domestic violence arrest and conviction numbers compared to presentation to services⁷ numbers.

DISCLOSURE OF INFORMATION

Specialist domestic violence services are best placed to provide Right to Ask and Right to Know information, both for assistance to complete the application, and for support to receive the disclosure.

WEL notes in the UK a case-by-case approach determines whether there is a “pressing need to make a disclosure to prevent further criminal abuse or harm.”⁸

Recommendation 5: WEL endorses the point made by the Women’s Legal Services NSW that once a Right to Ask and a Right to Know is triggered the information should be disclosed as a matter of right and this should not be discretionary.

Recommendation 6: WEL further endorses the Women’s Legal Services NSW position that the proposed DVDS, should it go ahead, is best placed within existing Safer Pathways mechanisms (which includes Local Coordination Points and Safety Action Meetings) to potentially improve information sharing among agencies.

Recommendation 7: WEL recommends that where disclosures are made, they should be made in writing – not verbally as is the case in the UK – with appropriate safeguards for the confidentiality of the information.

⁶ Women’s Aid, ‘Low pick-up for Clare’s Law suggests other services might be more effective’, 24 June 2013, at: <http://www.womensaid.org.uk/domestic-violence-press-information.asp?itemid=3129&itemTitle=Low+pick-up+for+Clare%C2%92s+Law+suggests+other+services+might+be+more+effective§ion=0001000100150001&preview=1>

⁷ Services include, but are not limited to, accommodation, health care and refuge providers.

⁸ NSW Government, *NSW Domestic Violence Disclosure Scheme: Discussion Paper*, May 2015, p.12.

Recommendation 8: WEL does not support an “offence to tell”, especially where the person disclosing information is the subject of domestic violence.

RISK ASSESSMENT

WEL agrees with the assessment of the Women’s Legal Services NSW that determining the threshold at which a disclosure is made requires expert risk assessment.

Recommendation 9: WEL recommends a risk assessment be required at both the application and the disclosure stage and undertaken by a specialist domestic violence service.

PILOT LOCATIONS

Recommendation 10: WEL recommends that locations be selected in areas that are:

- Supported by women-run refuges;
- Representative of Indigenous, and Culturally and Linguistically Diverse communities; and
- In both regional and urban NSW.

EVALUATION AND OUTCOMES

WEL shares the concerns raised by Professor Julie Stubbs (University of NSW) in her submission to this Discussion Paper, namely that there is no evidence available that the objectives of the DVDS – to help prevent domestic violence by informing people of their partner’s history of domestic violence, increasing the safety of people at risk of domestic violence, and holding perpetrators to account – are achievable or measurable.

Recommendation 11: Consultation with key stakeholders, including women’s organisations, is critical to ensuring effective oversight of the proposed DVDS, and should be undertaken prior to piloting the DVDS to assess the regulatory cost of the scheme and the project benefits.

Recommendation 12: WEL, with other relevant women’s organisations, would be pleased to be involved in a working party designing evaluation. Ongoing monitoring and evaluation should involve key stakeholders, including women’s organisations.