

Summary:
***Domestic Violence
Discussion Paper***



Government of
South Australia

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Domestic Violence Discussion Paper

The *Domestic Violence Discussion Paper*, released by the South Australian Government in July 2016, shines a light on the extent of domestic violence in our state and encourages the community to provide its views, to inform our future responses to this important issue.

The Discussion Paper paints a picture of domestic violence in South Australia and the work we are currently doing to address it. The paper is seeking feedback on this, as well as on a Domestic Violence Disclosure Scheme for the state.

The paper also includes seven further topics for community consideration and discussion on potential areas for change.

This summary document provides a snapshot of domestic violence in South Australia and briefly describes the eight topics for community consideration.

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Topic 1: Domestic Violence Disclosure Scheme

For more detailed information, see page 51 of the Discussion Paper.

There is no system in South Australia that allows you to find out about a person's history of domestic violence offending. The South Australian Government has committed to considering the development and implementation of a Domestic Violence Disclosure Scheme (DVDS) to make this possible. A DVDS would aim to reduce the incidents of domestic violence and strengthen the ability of police and agencies to provide protection and support to victims of abuse.

Under a DVDS, you can ask for information about a partner's history as a domestic violence offender. A series of checks are then performed and a decision made about whether you are at risk and should be told about the person's history.

Who should be allowed to apply?

This is an important question open for community discussion. For example, should the scheme only be available to people in a current relationship, or should you be able to find out about a previous partner? We are also asking you to consider whether disclosure applications should be extended to include third parties, such as family, friends and colleagues.

The application process

A DVDS in South Australia must have a simple and accessible application process. In similar schemes in the UK and NSW, applications are made through the police. The police then determine whether a disclosure should be made based on whether it may prevent a future crime.

Disclosure of information

The question of what information should be disclosed requires careful consideration. For example, should information be limited to prior convictions for relevant criminal offences, or should the threshold be wider to include intervention orders or allegations?

Once a decision is made to disclose information, a clear process should be put in place for how the disclosure should occur. Under the NSW scheme, a disclosure is made in person at a police station or other agreed place

to the primary person (i.e. the person in the relationship). Support services are also present when a disclosure is made.

To ensure the person's safety, the 'subject' of the disclosure is not advised that an application or disclosure has been made about them.



Community and expert views are sought on a number of key issues. We are asking you to consider the parameters and processes that should apply to a DVDS in South Australia. This includes who should be able to apply for a disclosure, how someone should apply for a disclosure, whether age limits should be enforced and the factors that should be considered when determining whether a disclosure should be made.

Setting the scene

Intimate Relationship



Kate

James

Third Parties



Grant

Mary

Kate's brother

Kate's neighbour

Kate and James have been in a relationship for two years. Grant (Kate's brother) recently noticed changes in Kate's behaviour and is worried about her. Mary (Kate's neighbour) also has concerns about their relationship, having overheard loud voices.

We are asking you to consider who should be able to ask for information, and under what circumstances. Would it include Kate? Grant? Mary?

Topic 2: Expiry Dates on Intervention Orders

For more detailed information, see page 59 of the Discussion Paper.

Intervention orders provide protection by preventing a perpetrator of abuse from having contact with a victim. For example, an intervention order may prohibit them from being near a victim's home or workplace.

In South Australia, unlike other jurisdictions, intervention orders do not have an end date. For an intervention order to be removed, a defendant must complete an application process and demonstrate that they no longer pose a risk to the victim.

It has been suggested that the law should be changed in South Australia, so that courts can set an expiry date on intervention orders.

Main reason **for** an expiry date:

- If intervention orders do not expire, over time there will be a build-up of orders that are no longer necessary. This means that the defendant may do something that is technically still criminal, when it shouldn't be.

Main reasons **against** an expiry date:

- Due to the nature of domestic violence, there may never be a point in time where a victim would feel safe from an abuser. It is argued that the onus should not be on the victim to prove that they are still at risk in court, which may expose them to unwanted contact with their abuser.
- No court can predict what may happen when a defendant is no longer subject to the restraint of an intervention order. This may put the victim at risk.

We are asking you to consider whether intervention orders should expire after a certain period of time or whether courts should be given the discretion to impose a time limit. If a time limit is supported, what is an appropriate expiry term?



Topic 3: Comprehensive Collection of Data

For more detailed information, see page 60 of the Discussion Paper.

There are limitations to the way domestic violence data is currently collected in South Australia. In particular, people are concerned that offences are not accurately identified as being domestic violence, meaning that we cannot easily track and report on domestic violence statistics and the characteristics of perpetrators.

Some people believe the creation of separate domestic violence offences would be a solution to this problem. For example, instead of an offender being charged with 'aggravated assault', they would be charged with 'domestic violence'. It has been suggested that this would allow us to better record the prevalence of domestic violence in our community, based on labelling for statistical and sentencing purposes.

Recent inquiries into domestic and family violence in Queensland and Victoria considered this option and were not satisfied that new offences were necessary to keep victims safe and hold perpetrators to account.

A simple and more direct way would be to 'flag' or code relevant charges and convictions as being domestic violence. The use of such a flag would ensure a person's criminal record showed a pattern of behaviour, allowing sentencing to be tailored to the individual. It would also result in better statistical data being collected for the purposes of reporting and funding allocation.

In order to implement this, a definition of a 'domestic violence offence' would need to be developed to ensure it covers offences that involve non-physical behaviour, such as financial and emotional control, as well as offences of physical violence.

We are asking you to consider how domestic violence data should be collected and used. This includes which agencies should be expected to 'flag' domestic violence offending, and what behaviour should be included as domestic violence.



Topic 4: Allowing Video Evidence

For more detailed information, see page 61 of the Discussion Paper.

When police are investigating an incident of domestic violence, they can record evidence using body cameras. This can include physical evidence and victim statements at the time of the incident, when consent is given.

Currently, the recordings cannot be used in South Australian courts.

Police can issue an interim intervention order when they attend a domestic violence incident, providing protection to the victim until the matter goes to trial. However, by the time the case is dealt with by a court, the victim may refuse to give evidence and want to withdraw the charges. A range of issues can contribute to a victim wanting to withdraw charges, including pressure from the perpetrator and fear. Without the victim's evidence, there is little chance of the case being successful, and so the case goes nowhere.

We are asking you to consider whether the law should be changed to allow police video recordings to be admissible as evidence in a trial.



This could address complaints being withdrawn in domestic violence cases, and could also reduce the stress associated with the court process for victims.

Topic 5: Confidentiality

For more detailed information, see page 62 of the Discussion Paper.

In South Australia, counselling and medical records can be called upon as evidence during legal proceedings. This applies to domestic violence counselling.

There are two circumstances in which communications are protected under the law from being disclosed in legal proceedings:

1. communications that occur between a lawyer and their client
2. 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.

Setting the scene

An example of the current system

During a domestic violence counselling session, Steven admitted to assaulting his partner Jessica, but has pleaded not-guilty to the offence in court. Jessica's lawyers have subpoenaed Steven's counselling records, and have submitted them as evidence to the court. These records strengthen the prosecution's case.

Jessica also had counselling after the incident. Steven's lawyers are similarly allowed to subpoena Jessica's counselling records. By doing this, Steven will know what Jessica said in counselling.

Court discretion: Jessica's lawyers think that the disclosure of her counselling records could put her in danger. Therefore, they request that the records are not admitted as evidence. It is up to the court to determine whether or not the records should be admitted.

We are asking you to consider whether some form of client privilege should apply to domestic violence counselling records, similar to the privilege given to sexual assault counselling.



Topic 6: Drug and Alcohol Treatment

For more detailed information, see page 63 of the Discussion Paper.

When a perpetrator is issued with an intervention order, the court can require them to participate in an intervention program to address behavioural problems.

The Abuse Prevention Program is one such program, operated through the South Australian Magistrates Court via the Family Violence Court. The court can exercise discretion when deciding whether or not to require a defendant to participate.

However, some defendants may benefit from attending a different intervention program. Drug and alcohol treatment programs may be beneficial, for instance, when there is evidence to suggest that these have played a part in the defendant's domestic violence offending. The court can order an assessment to determine whether the defendant may benefit from an intervention program. However, this

assessment is not mandatory, meaning that not all eligible defendants end up being referred for assessment.

We are asking you to consider whether assessments for drug and alcohol abuse should be mandatory as part of the intervention order process.



We are asking you to consider the strengths and limitations in the way homelessness services are currently being delivered to women and children experiencing domestic violence, including how we can better provide support in Aboriginal communities.



Topic 7: Domestic Violence & Housing and Homelessness Service Priorities

For more detailed information, see page 64 of the Discussion Paper.

Statistics show that a large proportion of people who access homelessness services are experiencing domestic violence. Almost all of these are women or children, and a significant number identify as Aboriginal or Torres Strait Islander. This highlights the importance of homelessness services in supporting domestic violence victims.

Recent service reforms within Housing SA have strengthened the delivery of social housing, private rental and bond assistance to women and their children seeking longer term housing options. The “no wrong door” approach provides women and children experiencing domestic violence with expanded services. Government and non-government providers embrace both “housing-first” and “safety-first” principles in their approach to service provision.

Current homelessness services are delivered in accordance with the National Partnership Agreement on Homelessness, which expires mid-2017. Ministers from all around Australia have agreed to produce a report on housing and homelessness funding options beyond this point, including a proposal for a five year funding arrangement. The report will also propose future policy reforms to meet the needs of vulnerable people.

Community feedback will be used to inform South Australia’s submission to the report, which will be considered by Commonwealth, state and territory Ministers.

Topic 8: Fostering Supportive Environments

For more detailed information, see page 65 of the Discussion Paper.

Domestic violence can have a significant impact on victims’ lives, including their ability to attend work or access services. There have been calls for domestic violence to be recognised as a ground of discrimination, similar to the grounds of age, race, gender, marital status or sexuality.

Discrimination in the workplace, for example, may include terminating a victim’s employment or ruling them out for a promotion because their work has been affected by their abuse. Discrimination may also include a landlord rejecting a tenant because they are a victim of domestic violence.

Introducing this new ground of discrimination raises several issues that require careful consideration. For instance, a victim may be unable to show that their treatment was a result of domestic violence discrimination, and not of some other cause. Furthermore, the potential costs to business must also be examined. Is it reasonable, for example, to expect a business to bear the costs of employing someone who is regularly absent from work without an explanation?

An alternative approach could be the expanded use of workplace policies, such as paid leave for victims and guidelines for appropriate responses when an employee is experiencing domestic violence.

These policies aim to empower victims to speak up and to provide employers and service providers with the tools to support victims.

We are asking you to consider how we can assist domestic violence victims to be more confident in seeking appropriate support and assistance in the workplace and other environments and what actions would be most effective.



Snap shot:

Domestic violence in South Australia 2015

8417 reported occasions* of domestic violence

77% of domestic violence victims were female.



12 females and 4 males

were victims of murder, manslaughter or attempted murder.

Distressing figures

Aboriginal people were **10x** more likely to experience domestic violence assault.



3 in 4

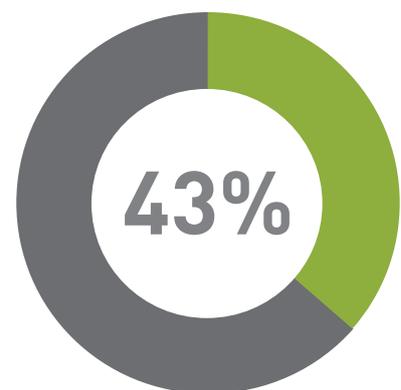
female victims of assault faced domestic violence from an intimate partner.

Domestic violence is a complex problem that affects a significant number of people in the community. In 2015 alone there were more than eight thousand reported occasions of domestic violence in South Australia.

Victims of domestic violence access government and non-government services, they go to work and they come from a variety of backgrounds. Data tells us that victims of domestic violence are predominantly women and their children.

The South Australian Government recognises gender inequality as a root cause of domestic violence. It is also recognised that Aboriginal women and girls are more likely to be victims of domestic and family violence than other women and girls in Australia.

Every member of our community can play a role in changing attitudes and breaking down the gender norms and stereotypes that lead to gender-based violence.



of assault victims were in the **20-34** age group.

*In a single occasion of domestic violence, a victim may be assaulted or abused more than once. These statistics represent domestic violence data held by SAPOL. They do not represent the total number of victims or individual offences that come to the attention of police. **Source:** Australian Bureau of Statistics (2016), *Recorded Crime – Victims, Australia, 2015* (Experimental Family and Domestic Violence data), Cat. no. 4510.0

A copy of the Discussion Paper and further information is available at:
www.yoursay.sa.gov.au/dvdiscussion

Feedback on the Discussion Paper can be provided via email to
dvdiscussion@sa.gov.au or by completing an online survey at
www.yoursay.sa.gov.au/dvdiscussion

Feedback must be lodged by Sunday 4 September 2016.

Data is available at: **www.agd.sa.gov.au/dvdiscussion**.

Important information about your submission:

If you do not want the public to read your answers, please write “confidential” on your submission. Please be aware that unless you write “confidential” on your submission it may be made public.

If someone asks for your answers through the Freedom of Information Act process, and if you have told us your answers are confidential, we will contact you and explain what is happening. However, we have to follow the law. Even if your answers are confidential, we may still have to let someone read your confidential answers, if they ask for them through the Freedom of Information Act process.