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Ms Gabrielle Upton MP
NSW Attorney General
GPO Box 5341
SYDNEY NSW 2001

By email: dvds@facfs.nsw.gov.au

Dear Attorney,

NSW Domestic Violence Disclosure Scheme Discussion Paper, May 2015

The purpose of this letter is to provide comments on the proposed NSW Domestic Violence Disclosure Scheme (DVDS).

The DVDS aims to increase the safety of people potentially at risk of domestic violence. Central to the design of the DVDS is the intention that informed disclosures are only made where appropriate.

I strongly support a model of sound, structured decision-making that is focused on the purposeful release of information.

The *Government Information (Public Access) Act 2009* (the GIPA Act) uses a public interest decision-making model to support the public's right to access to government information. The model requires decision-makers to identify and weigh public interest considerations in favour of disclosure with public interest considerations against disclosure. This balancing enables decision-makers in government agencies to weigh up factors in favour of disclosure, such as public safety and the likelihood or threat of harm, against factors against disclosure, such as a person's right to privacy. The decision making process is conducted on a case-by-case basis and considered on its merits.

In my view, the decision-making approach in the proposed DVDS model is consistent with the aim and approach of the GIPA Act; in particular, the GIPA Act's philosophy of 'proactive' release of information. The discussion paper sets out a model with the objective of purposely releasing information to protect the safety of members of the community and to prevent potential criminal acts. To support this model, a clearly articulated decision-making process should be developed for decision-makers to apply in determining whether and what to disclose through the Right to Ask and Right to Know pathways. This will assist in ensuring there is consistency in how decisions are made and what information is provided, for the benefit of both members of the public and decisions-makers.

A key question that the discussion paper poses is – what level of information is required to prevent a person at risk of harm from being abused?

I note that the DVDS would allow information to be disclosed to a third party in the absence of an offence having occurred. I further note that the discussion paper sets out options for the threshold for disclosure. These options appear to escalate in response to the gravity of the information that is available on a person's prior convictions. You may wish to consider the value of developing an escalation or de-escalation model for the threshold rather than adopting a single option. This

threshold could be informed by a risk-based assessment of the likelihood of harm to a person (that is, the person at risk of abuse) and be linked to the appropriate decision-making forum. For example, the Right to Know could be at one end of the spectrum while the other end could be applications that require a multi-agency decision-making body. If such a model was adopted, consideration may be required for a sliding scale of the kind and volume of information that could be released (for example, a lower threshold could be accompanied by the release of less information; a higher threshold could be accompanied by the release of more comprehensive information).

Finally, I would be pleased to consider opportunities to participate in the scheme's further development, including contributing to the evaluation of the program. I understand that this evaluation may be through the engagement of external reviewers. Evaluation of a program such as this provides a clear opportunity to measure the impact of information release and better establish the public value of information release.

I have written in similar terms to the Minister for Women, Minister for Prevention of Domestic Violence and Sexual Assault, Minister for Mental Health, Minister for Medical Research and Assistant Minister for Health, Ms Pru Goward MP.

I hope these comments will be of assistance to you. Please do not hesitate to contact me if you require anything further. Alternatively, your officers may contact David Marcus, Manager Performance Reporting and Projects, on (02) 8071 7041, or by email at david.marcus@ipc.nsw.gov.au.

Yours sincerely

 19 June 2015
Ms Elizabeth Tydd
CEO, NSW Information Commissioner