

Direction for Domestic Violence Disclosure Scheme pilot

As Privacy Commissioner appointed under Part 4, Division 1 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (the PPIP Act) I, Elizabeth Coombs, hereby direct pursuant to Section 62 of the *Health Records and Information Privacy Act 2002 (NSW)* (the HRIP Act) that:

Overview

1. This is a direction made under section 62(1) of the HRIP Act. It should be read in conjunction with that Act.

Interpretation

2. In this Direction, the following words or acronyms have the respective meanings:
“**applicant**” means a primary person or a third party making an application under the DVDS;

“**ADVO**” means an Apprehended Domestic Violence Order;

“**contracted service provider**” means a business or NGO contracted by a public sector agency to perform functions related to the wider domestic violence support service system¹. It includes a DVDS support service provider;

“**DJ**” means the Department of Justice;

“**Direction**” means this direction and any Schedules and Appendices;

“**DVDS**” means the Domestic Violence Disclosure Scheme;

“**DVDS support service provider**” means a service provider contracted by the NSW Ministry of Health to perform functions related to the DVDS.

“**DVSAT**” means Domestic Violence Safety Assessment Tool;

“**health information**” has the same meaning as in section 6 of the HRIP Act;

“**HPPs**” means the Health Privacy Principles in Schedule 1 of the HRIP Act;

“**HRIP Act**” means the *Health Records and Information Privacy Act 2002 (NSW)*;

“**IPPs**” means the Information Protection Principles in Division 1, Part 2 of the PPIP Act;

“**NGO**” means a non-government organisation;

“**NSWPF**” means the New South Wales Police Force;

¹ A person or body that provides ‘data services’ to a public sector agency is already included within the definition of public sector agency in section 4 of the HRIP Act, but ‘contracted service provider’ has been defined separately for the purposes of this Direction to avoid confusion.

“**Organisation**” has the same meaning as in section 4 of the HRIP Act: i.e. a public sector agency or a private sector person;

“**participating agencies**” means the agencies in Schedule 1 to this Direction;

“**participating entity**” means an **organisation**, being a **public sector agency** or **contracted service provider** or **NGO** or business or individual necessarily involved in the operation of the DVDS;

“**personal information**” has the same meaning as in section 5 of the HRIP Act;

“**PIIP Act**” means the *Privacy and Personal Information Protection Act 1998 (NSW)*;

“**primary person**” means a person who is or has been in an intimate relationship with a subject and who has concerns, or for whom someone else holds concerns, about their relationship;

“**public sector agency**” has the same meaning as in section 4 of the HRIP Act;

“**relevant convictions**” means convictions in schedule 2 to this Direction;

“**subject**” means an individual named in an application under the DVDS as someone who is or has been in an intimate relationship with the primary person named in the application

“**third party applicant**” means a person who makes a DVDS application and who has some form of contact with and has concerns for the primary person. A third party applicant may be a family member, friend, or professional (including an agency, service or individual working in a professional capacity with the primary person, subject and/or dependent child)

“**WNSW**” means Women New South Wales, a unit of the Ministry of Health

Application

This Direction applies to any organisation subject to the HPPs in the HRIP Act defined in **Schedule 1** to this Direction.

Objectives of the DVDS

The DVDS is a scheme designed to provide information to a person who is potentially at risk of domestic violence where there are concerns about their current or former partner's behaviour, to help them consider their situation, make informed relationship choices, undertake safety planning and access support services. The DJ and WNSW are leading the implementation of a DVDS pilot which will commence in April 2016 for a period of two years. The NSWPF will host the DVDS operation in partnership with contracted service providers in four Police Local Area Commands (LAC) in NSW (Tamworth – Oxley LAC, Nowra – Shoalhaven LAC, Sutherland – Sutherland LAC, Kogarah/Hurstville – St George LAC).

Health information will not be routinely collected under the DVDS. However, applicants may include health information in their application as a justification for requesting disclosure of relevant information about a subject.

The following actions by participating entities are necessary to allow the DVDS to operate as designed to meet its objectives:

EC

- Collection, in some cases, of health information about applicants, subjects and in some cases other individuals living with, or in the care of, the primary person, and/or previous victims.
- Disclosure of limited health information about a subject and, in some cases, about previous victims, to a primary person.
- Use and disclosure to other participating entities of any health information collected under the DVDS, in the context of disclosures to a primary person.
- Ability to neither confirm nor deny whether health information about a subject is held for the purposes of the DVDS, in response to an enquiry from that individual.
- Ability to deny access to health information held about a subject for the purposes of the DVDS, in response to an application for access from that individual.

Public Interest

This Direction has been made to permit the collection, use and disclosure of health information by participating entities for the purposes of the operation of the DVDS without requiring authorisation from some of the individuals involved, and to allow those entities to cite an exemption to some HPPs allowing them to abstain from acknowledging that they hold health information about a subject, and, in certain circumstances, about a primary person or another person named in a DVDS application.

The design, and policy objectives, of the DVDS require, in the interests of the safety of potential victims of domestic violence, that subjects not become aware that they have been the subject of an application under the DVDS. Under the normal application of the HRIP Act, at least some of the participating entities would have to seek the authority of the subject to disclose health information about them, would have to inform them if health information about them was held in the DVDS, and would have to at least receive and process any requests for access by subjects. Compliance with these requirements of the HPPs would be incompatible with the policy objectives of the DVDS.

I acknowledge the detailed explanation of the need for a Direction in the *Privacy Impact Assessment Report* commissioned by the DJ and dated 2 February 2016.

I am satisfied that in the context of a pilot of the DVDS, the public interest in making this Direction is greater than the public interest in requiring the participating entities to comply with some of the Health Privacy Principles contained in Schedule 1 of the HRIP Act.

A corresponding direction under the *Privacy and Personal Information Protection Act 1998 (NSW)* applies in respect of personal information collected and held for the purposes of the DVDS.

Process of information flow

The DVDS potentially involves health information about five separate categories of individual:

- The **primary person**,
- In some cases, a **third party applicant** making an application on behalf of a primary person,
- In some cases, other **persons** (children or other adults) living with or in the care of the primary person,
- The **subject**,
- In some cases, **previous victims** (not deliberately identified, but whose identity may be inferred by the disclosure of a conviction and its date, and in some cases by the relationship between subject and victim) of domestic violence by a subject.



The flowchart at **Appendix 1** illustrates the flows of information associated with the DVDS.

The DVDS will provide for applications to be made by a primary person or third party for information about a specified subject. Applications will need to be lodged with NSWPF.

Where the applicant is eligible, appropriately trained NSWPF personnel will apply the DVSAT (already in use) to the primary person in a face to face meeting either with that person or with a third party applicant and will conduct a bail check on the subject of the application. NSWPF will also complete a full criminal record check of the subject, which will ordinarily take place after the initial application meeting.

Where the criminal record check reveals relevant convictions NSWPF will arrange a face to face meeting with the primary person and DVDS support service provider personnel. The primary person may bring another person (s) of their choosing for support, who may be from another agency; NGO or business, such as a lawyer, or an individual (e.g. friend or relative). At the meeting, the following will be disclosed orally:

- The subject's relevant conviction(s) ,
- The date of the relevant conviction(s), and
- The relationship with the victim (as long as revealing the nature of any relationship does not identify a victim of sexual assault that was a child at the time of the offence).

The disclosure will occur in the context of explanation and appropriate counselling by the DVDS support service provider.

In exceptional cases where a serious threat to the life, health or safety of any individual is immediately identified from the outcome of the bail check or information provided through the application of the DVSAT, a disclosure may be made within 24-48 hours. This is known as a 'fast track' process.

Where a criminal record check reveals no relevant conviction(s), the primary person will be informed in a face to face meeting. An explanation and advice may be given that includes appropriate cautions about the limitations of the DVDS (i.e. that only relevant convictions and not all domestic violence related information such as ADVOs will be disclosed) to avoid creating a false sense of security.

There may be circumstances in which it is desirable that a primary person is never made aware that an application has been made by a third party on their behalf. In some circumstances information may alternatively be disclosed to the third party applicant.

Disclosure of relevant conviction(s), along with limited contextual information such as the date of the offence and the relationship to the victim (e.g. partner or sibling) may in some cases allow the primary person to indirectly identify the victim.

NSWPF may disclose other information about a subject to a primary person (or in some cases to a third party applicant) under other existing authorities outside the scope of the DVDS. In some cases, such wider disclosure may be 'triggered' by a DVDS application.

Subjects will not be informed of any application or disclosure.

Third parties present at a disclosure will be required to give confidentiality undertakings that they will not misuse the relevant convictions disclosed to them before the disclosure of relevant convictions can be made to the third party. If undertakings are not provided by a third party, no disclosure of relevant convictions will be made to the third party that did not provide the required undertaking.

EC

In relation to primary persons, confidentiality undertakings will be required from primary persons before relevant convictions can be disclosed to the primary person in the usual course of events. However, NSWPF may make a disclosure to the primary person where no undertaking is provided by that primary person if that disclosure of relevant convictions by NSWPF to the primary person is otherwise allowed by law.

Participating entities may collect or disclose health information in the course of ongoing support for a primary person, including as a result of a DVDS application. In many cases this will be subject to the normal application of the HRIP Act.

Exemption from some requirements of some Health Privacy Principles

The application of the HPPs to organisations is modified to the extent described below, for the purposes of the operation of the DVDS. In respect of the NSWPF, any application of the HPPs are varied as set out below to the extent that the activities necessarily connected with the operation of the DVDS may not be covered by the specific exemption from the application of the HPPs in section 17 of the HRIP Act.

Health Privacy Principles (HPPs)	Exemption or modification to the HPP
HPP 1 Collection of health information for lawful purposes	No exemption from or modification to HPP 1.
HPP 2 Other requirements relating to collection of health information	No exemption from or modification to HPP 2.
HPP 3 Collection of health information directly from individual	Notwithstanding HPP3, organisations may collect health information from DVDS application forms without specific authorisation of primary persons, of other individuals living with or in the care of the primary person, or of subjects - where that information is provided by another person.
HPP 4 Requirements when collecting health information	No exemption from or modification to HPP 4.
HPP 5 Retention and security of health information	No exemption from or modification to HPP 5.

EC

<p>HPP 6</p> <p>Information about health information held by organisations</p>	<p>HPP 6 does not apply to organisations in relation to:</p> <ul style="list-style-type: none"> • requests for information by an individual as to whether they hold personal information about that individual as a “subject” of a DVDS application. • requests from a primary person or another person named in a DVDS application, where the organisation forms a reasonable belief that it is in the overall interests of the primary person or of the individual concerned not to provide that information.
<p>HPP 7</p> <p>Access to health information held by organisations</p>	<p>HPP 7 does not apply to organisations in relation to:</p> <ul style="list-style-type: none"> • requests for information by an individual as to whether they hold personal information about that individual as a “subject” of a DVDS application. • requests from a primary person or another person named in a DVDS application, where the organisation forms a reasonable belief that it is in the overall interests of the primary person or of the individual concerned not to provide that information.
<p>HPP 8</p> <p>Alteration of health information</p>	<p>No exemption from or modification to HPP 8.</p>
<p>HPP 9</p> <p>Check accuracy of health information before use</p>	<p>No exemption from or modification to HPP 9.</p>
<p>HPP 10</p> <p>Limits on use of health information</p>	<p>No exemption from or modification to HPP 10.</p>
<p>HPP11</p> <p>Limits on disclosure of personal information</p>	<p>Notwithstanding HPP11, organisations may disclose health information to participating entities to the extent necessary for their participation, or for their provision of services to the primary person, in accordance with the DVDS.</p>

Ⓢ

HPP 12 Identifiers	No exemption from or modification to HPP 12.
HPP 13 Anonymity	No exemption from or modification to HPP 13.
HPP 14 Transborder data flows and data flow to Commonwealth agencies	No exemption from or modification to HPP 14.
HPP 15 Linkage of health records	No exemption from or modification to HPP 15.

Conditions

This Direction is subject to the following conditions:

1. Appropriate terms in contracts between the Ministry of Health and DVDS support service providers, requiring them to comply with the HPPs to the same extent as the NSW Ministry of Health would have had to if it was providing those services directly, and to comply with relevant provisions in the *Domestic Violence Information Sharing Protocol* issued under Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007* in September 2014.

Monitoring and Evaluation

As part of any monitoring and evaluation of the DVDS pilot, DJ and WNSW should ensure that records are kept of any requests from subjects, or other individuals, for health information held about them for the purposes of the DVDS, and where participating entities have declined to provide information pursuant to exemptions to HPP 6 and 7.

Duration

This Direction has effect for a period of up to 2 years from the date of signing of this Direction, or until either the termination of the DVDS pilot or the provision and commencement of the required authorities and exemptions by other means, such as Legislative amendments or a Code of Practice under the HRIP Act, whichever is the earlier.

Signed by me on **13 April 2016**.

Dr Elizabeth Coombs
NSW Privacy Commissioner



SCHEDULE 1

Participating Agencies:

The Department of Family and Community Services (FACS)

The Department of Justice (DJ)

The Ministry of Health

The Department of Education

Legal Aid NSW

Aboriginal Legal Services

The NSWPF

Any other organisation necessarily involved in the DVDS through a staff member acting in support of a primary person

Participating NGOs and businesses:

Any NGO or business necessarily involved in the DVDS through a staff member acting in support of a primary person, including:

Sutherland Shire Family Services (St George and Sutherland LACs)

Tamworth Family Support Service (Oatley LAC)

YWCA NSW (Shoalhaven LAC)

But not limited to a provider of:

A refuge

A family violence support service

A women's or other community legal service

A multicultural advisory service

An Aboriginal and Torres Strait Islander specific support service

An LGBTI support service

A disability support service

02

SCHEDULE 2

DVDS list of relevant convictions

Relevant convictions are convictions as an adult for personal violence offences defined 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.

Relevant convictions also includes convictions as an adult for personal violence offences set out in the *Crimes (Domestic and Personal Violence) Act 2007* regardless of who they were committed against, and specifically are:

- 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 to disclose relevant convictions.

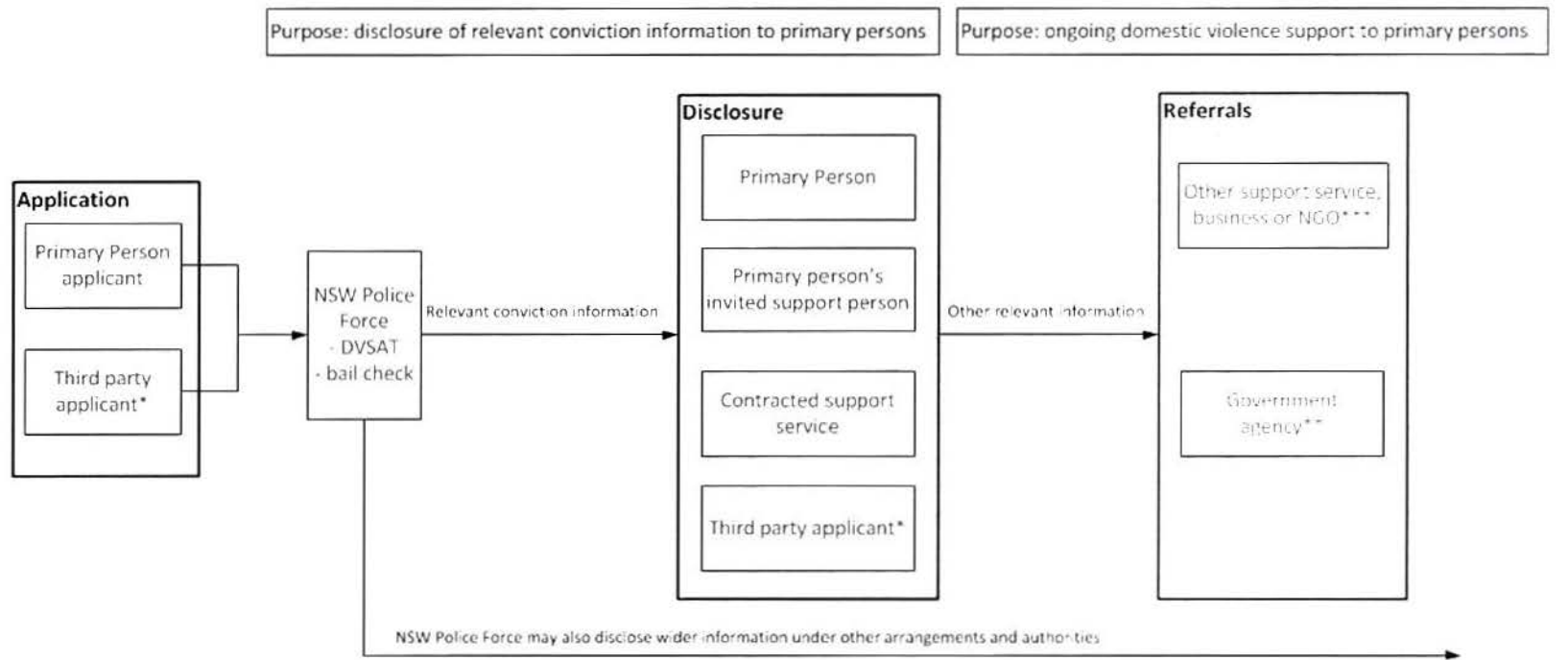
* Convictions as an adult for offences marked with an asterisk in the table below may be disclosed irrespective of whether committed while in a domestic relationship or not.

Crimes Act 1900	
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
31	Documents containing threats
33	Wounding or GBH with intent
33A	Discharge firearm with intent
35	Reckless wounding or GBH

35A	Causing dog to inflict wound or GBH
37	Choking, suffocation, strangulation
38	Using intoxicating substance to commit an indictable offence
39	Using poison to endanger life or inflict GBH
41	Using poison to injure or to cause distress or harm
44	Failure to provide necessities of life
46	Causing bodily injury by gunpowder etc
47	Use etc corrosive substance or explosive fluid etc
48	Causing explosives to be placed in or near building etc
49	Setting trap etc
58	Assault with intent to commit a serious indictable offence etc on certain officers
59	Assault occasioning actual bodily harm
61	Common assault
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 years, 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
80A*	Sexual assault by forced self-manipulation
80D*	Causing sexual servitude
86	Kidnapping
87*	Child abduction
93G*	Use child for production of child abuse material (<14 and > 14)
93GA	Fire at dwelling house or building
195	Intentionally or recklessly destroy or damage property
196	Destroy or damage property with intention of injuring person
198	Destroy or damage property with intention of endangering life
199	Threaten to destroy or damage property
200	Possession of explosion or other article with intention of destroying or damaging property
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>	
<i>Crimes (Domestic and Personal Violence) Act 2007</i>	
13	Stalking or intimidation with intent to cause fear of physical or mental harm
14	Offence of contravening an Apprehended Domestic Violence Order
Plus	
An offence of attempting to commit any of the above offences.	

Information flow associated with the DVDS



*** Third party applicant:**
 May be an individual, a commercial business (for example, a lawyer), an NGO*** or a government agency** that has contact with and has concerns for the safety of the primary person.
 May receive information in connection with the DVDS in certain circumstances without the primary person, or where the third party applicant is also the primary person's invited support person at disclosure.
 May be located outside of the pilot sites.

**** Government agency:**
 A government agency that may collect or disclose information in connection with the DVDS.
 May be a third party applicant, the primary person's invited support person at disclosure, or part of the wider domestic violence support system that may receive and disclose information to provide support to the primary person. For example, FACS, Department of Justice, Health, Legal Aid NSW, Aboriginal Legal Services, Department of Education.
 May be located outside of the pilot sites.

***** NGO:**
 Any non-government support service that may collect or share information in connection with the DVDS. May be a third party applicant, the primary person's invited support person at disclosure, or part of the wider domestic violence support system that receives and discloses information to support the primary person. For example, a refuge, family violence support service, women's legal service, multicultural advisory service, Aboriginal and Torres Strait Islander-specific service, LGBTIQ support service, disability support service, etc.
 May be located outside of the pilot sites.

