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Discussion Paper 1 – Options for legislating against coercive control and the creation of a standalone domestic violence offence

The Queensland Office of the Information Commissioner (**OIC**) appreciates the opportunity to provide a brief submission in response to Discussion Paper 1 Options for legislating against coercive control and the creation of a standalone domestic violence offence (**Discussion Paper**).

A register of serious domestic violence offenders contains highly sensitive personal information and has the potential to infringe not only on the privacy of the registered domestic violence offender but may also extend to any previous complainants or victims whose personal information may be captured.

While the right to privacy is not absolute, an appropriate balance must be struck with other competing rights such as the safety of current victims of domestic and family violence and people in an intimate personal relationship with the offender that are believed to be in danger of serious harm.

About the OIC

The OIC is an independent statutory body that reports to the Queensland Parliament. We have a statutory role under the *Right to Information Act 2009* (**RTI Act**) and the *Information Privacy Act 2009* (**IP Act**) to facilitate greater and easier access to information held by government agencies. We also assist agencies to understand their obligations under the IP Act to safeguard personal information they hold.

OIC's statutory functions include mediating privacy complaints against Queensland government agencies, issuing guidelines on privacy best practice, initiating privacy education and training, and conducting audits and reviews to monitor agency performance and compliance with the RTI Act and the IP Act. Our office also reviews agency decisions about access and amendment to information.

OIC's submission

OIC's comments focus on Option 11 in the Discussion Paper – Creating a legislative vehicle to establish a register of serious domestic violence offenders.

As outlined in the Discussion Paper, Queensland's only register of offenders is the child sex offender register established under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (**CPOROPO Act**). The Discussion Paper notes that the introduction of a register of serious domestic

violence offenders could be designed to work in a similar way to the scheme in the CPOROPO Act.

An Australian Child Protection Offender Reporting scheme was established in each Australian State and Territory requiring persons who have been found guilty of certain offences against children to be entered on a register of offenders. Offenders listed on the register must keep police informed of their whereabouts and other personal details for a period of time after they are released into the community.

The register of offenders in Queensland is managed by the Queensland Police Service. The information contained in the register is confidential, with access restricted to authorised persons and as such information cannot be disclosed to any other person other than authorised persons. Penalty provisions apply for unauthorised disclosures. Once a person's name is on the register it can only be removed with the consent of the police.

Option 11 of the Discussion Paper contemplates a register of serious domestic violence offenders to potentially allow for lawful disclosure, outside of police and government departments, to additionally provide for:

- disclosure to a person in an intimate personal relationship with the consent of the registered offender about their registration as an offender; and
- disclosure without consent to a person in an intimate personal relationship (second person) with the registered offender (first person), their children, the court or specified service providers, if a registered offender engaged in behaviour that caused a police officer to reasonably believe that a second person was in danger of serious harm.

OIC notes that the purpose of the child sex offender scheme and register is to protect the community by reducing the risk of re-offending by making information about child sex offenders more readily available to investigating officers and prosecution. For this reason, lawful disclosures under the CPOROPO Act are largely restricted to police and government entities for the purposes of police being kept informed of a registered offender's whereabouts. This differs from the intent of the proposal contained in Option 11 of the Discussion Paper which contemplates broader disclosure of serious domestic violence offenders' criminal history outside police and government entities to potential victims, including their children and the courts.

Information Sharing and the Privacy Principles

Under the IP Act¹ a government agency can use or disclose personal information where an exception to relevant privacy principles apply including; where it is reasonably necessary for health, safety or welfare reasons;² the individual has consented to the use or disclosure;³ or it is authorised or required by law,⁴ providing significant flexibilities for the sharing of personal information by government agencies to assist in the prevention of domestic and family violence.

¹ The primary objectives of the IP Act are to provide for the fair collection and handling of personal information in the Queensland public sector and to provide access and amendment rights for that personal information (section 3). The privacy principles set out in the IP Act establish the framework for dealing with personal information so that the objectives of the Act can be met.

² IPP10(1)(b); 11(1)(c) and NPP2(1)(d).

³ IPP 10(1)(a) IPP (11)(1)(b) and NPP2(1)(b).

⁴ IPP10(1)(c); IPP 11(1)(d) and NPP2(1)(f).

OIC further notes that amendments to the *Domestic and Family Violence Protection Act 2012*⁵ (**DV Act**) provide for an expanded information sharing framework to permit the sharing of personal information among prescribed entities, such as police, and specialist domestic and family violence or other support services, without the consent of the person to whom the information relates, for the purposes of assessing or responding to a serious threat to a person's life, health or safety. The information sharing framework would fall within the authorised or required by law exception in the privacy principles under the IP Act.

It is important to note however, that the IP Act operates subject to the provisions of other Acts and does not override confidentiality provisions contained in Queensland statutes which may prohibit the sharing of personal information. For example, a legislated prohibition on the sharing of a person's criminal history.

Balancing privacy considerations with the safety of domestic and family victims

While the right to privacy is not absolute, an appropriate balance must be struck with other competing rights such as the safety of the victims of domestic and family violence. As outlined in the Discussion Paper, a number of human rights beyond the right to privacy are potentially engaged by the option of establishing a register of serious domestic violence offenders which contemplates disclosure beyond government agencies of information contained on the register.

A register of serious domestic violence offenders contains highly sensitive personal information and has the potential to infringe not only on the privacy of the registered domestic violence offender but may also extend to any previous complainants or victims whose personal information may be captured. While names of previous complainants or victims will not be disclosed, a past victim's identity can be quickly identified as a former partner or a family member, which may be particularly relevant in small towns and communities. As a consequence, personal information can be revealed without that person's consent, leading to further disempowerment and contribution to the stigma attached to victims of domestic violence in the community.⁶

To date, a register of serious domestic violence offenders does not exist in Australia. The possible introduction of a Domestic Violence Disclosure Scheme (**DVDS**) in Queensland has previously been considered by the Queensland Law Reform Commission (**QLRC**)⁷ and piloted in New South Wales. Western Australia⁸ and Victoria⁹ considered introduction of a DVDS. The South Australian Government is also considering a register of domestic violence offenders following three alleged domestic violence murders, including the death of a nine-month old baby.¹⁰

OIC notes that the QLRC did not recommend the introduction of a DVDS in Queensland, finding overall a DVDS is unlikely to: strengthen Queensland's

⁵ passed in October 2016 and commenced on 30 May 2017.

⁶ UQ Pro Bono Centre submission to the QLRC at [6.136].

⁷ QLRC, Domestic Violence Disclosure Scheme, Report No 75, June 2017.

⁸ Law Reform Commission Western Australia Final Report (2014)

⁹ Vic Royal Commission Report (2016) vol 1, 1, 145

¹⁰ <https://www.adelaidenow.com.au/news/south-australia/nationleading-domestic-violence-register-similar-to-that-used-for-sex-offenders-proposed-by-sa-government/news-story/e61c4cd07aa94d9ec4cab43fd466e37c>

response to domestic and family violence by reducing the incidence of domestic and family violence; strengthen the protections and support for persons at risk of domestic violence; improve perpetrator accountability; or complement the current reforms.¹¹ Any potential benefits of a DVDS in Queensland were at the time considered by QLRC to be limited and outweighed by the potential risks and disadvantages of such a scheme.¹²

While the proposal, as outlined in the Discussion Paper, contained in Option 11 represents a narrowed scope of the DVDS examined by the QLRC in its report, it is critical that, should a scheme for registration of serious domestic violence offenders be introduced in Queensland that allows for lawful disclosures outside of police and government entities, a robust legislative framework is put in place expressly prescribing and limiting who can access information on the register and in what circumstances. Further, careful consideration needs to be given to the risks and unintended consequences of disclosure on the privacy and safety of the offender and any current or former domestic and family violence victims and their children, including the impacts of secondary use and disclosure.

Unauthorised use and disclosure of personal information contained on a register of serious domestic violence offenders can have devastating consequences for the offender and victims of family and domestic violence. For these reasons, it is OIC's view that unauthorised use and disclosure of information should constitute a criminal offence to reflect the sensitivity of the personal information contained on the register and the extent of harm that could eventuate through misuse of this information. The legislation should also include specific confidentiality requirements including offences for unlawful disclosure. It is important to recognise however that the ability to prevent secondary use of disclosure may not always be possible.

A robust legislative framework would need to be accompanied by strengthened privacy and security practices as recommended by the Crime and Corruption Commission's *Operation Impala Report on misuse of confidential information* in the Queensland public sector (**Report**).¹³ To date the Queensland Government has not responded to recommendations contained in the Report or progressed legislative reform suggestions to strengthen the *Criminal Code Act 1899* (Qld) and IP Act. These gaps remain and will heighten the privacy risks for introduction of a DVDS in Queensland.

While OIC does not have any information before it to indicate issues with unauthorised use and disclosure of information contained on the child sex offender register established under the CPOROPO Act, OIC notes that the Police Commissioner can exercise discretion under the Act regarding access to and disclosure of personal information contained on the register. In accordance with the CPOROPO Act, the Queensland Police Commissioner has developed guidelines about access to and disclosure of personal information in the register.¹⁴ Accompanying guidelines may also be required to ensure disclosure occurs strictly in accordance with the intent of the scheme and any legislative framework governing a register of serious domestic violence offenders in Queensland.

¹¹QLRC, Domestic Violence Disclosure Scheme, Report No 75, June 2017 at para [7.38].

¹²QLRC, Domestic Violence Disclosure Scheme, Report No 75, June 2017 at para [23].

¹³ Tabled in the Queensland Parliament in February 2020.

¹⁴ <https://www.police.qld.gov.au/reportable-offender-information/frequently-asked-questions>

OIC is willing to be further consulted on any issues raised in this submission or more generally regarding information privacy impacts and considerations.

Yours sincerely



Phil Green
Privacy Commissioner



Rachael Rangihaeata
Information Commissioner