



Preliminary Submission to the NSW Law Reform  
Commission's Open Justice Review

Court and tribunal information: access, disclosure and  
publication.

Prepared by  
Domestic Violence NSW

## About Domestic Violence NSW

Domestic Violence NSW Inc (DVNSW) is the peak body for specialist domestic and family violence services in NSW. DVNSW provides a representative and advocacy function for specialist services and the women, families and communities they support.

DVNSW's mission is to eliminate domestic and family violence through leadership in policy, advocacy, partnerships and the promotion of best practice. We work with our members, state and federal government and communities to create a safer NSW for all.

DVNSW member services represent the diversity of specialist services working in NSW to support women, families and communities impacted by domestic and family violence including:

- Crisis and refuge services
- Transitional accommodation and community housing providers
- Family support services
- Neighbourhood centres and drop in centres
- Specialist homelessness service providers
- Men's behaviour change programs and networks
- Community organisations working with high risk communities
- Specialist women's legal support services
- Women and children's support services
- Safe at Home programs

DVNSW members are all non-government organisations, some entirely government funded, others supported through philanthropic donations or partnerships with industry or the corporate sector. Many of our members have multiple government and non-government funding streams.

DVNSW advocates for best practice, continuous system improvements and innovative policy responses to domestic and family violence including building workforce capacity and representation at all levels of government. We provide policy advice to multiple departments in the NSW Government on prevention and response. We work with communities and the media to increase awareness and represent the sector on a number of state and federal advisory bodies. We co-convene and provide a secretariat function for the NSW Women's Alliance with Rape and Domestic Violence Services Australia.

We acknowledge the work and practice wisdom of specialist women's services and domestic and family violence practitioners in the sector that underpin the recommendations in this submission. DVNSW thanks the specialist services that have developed best practice over decades of working with women and children and shared their expertise with us. We also pay tribute to those who have experienced domestic or family violence and to our advocates, colleagues and partners in government and non-government agencies.

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## Endorsement of submissions

DVNSW endorses the preliminary submissions of **Rape and Domestic Violence Services Australia (R&DVSA)** and **No to Violence (NTV)**.

## Domestic Violence NSW submission approach

As DVNSW's area of expertise is in sexual, family and domestic violence, this submission will particularly focus on the following areas of the Terms of Reference (ToR). We make broad recommendations related to each relevant area of the ToR, and look forward to providing more detailed information from our members as the consultation continues.

**b)** Whether the current arrangements strike the right balance between the proper administration of justice, the rights of victims and witnesses, privacy, confidentiality, public safety, the right to a fair trial, national security, commercial/business interests, and the public interest in open justice.

**d)** The appropriateness of legislative provisions prohibiting the identification of children and young people involved in civil and criminal proceedings, including prohibitions on the identification of adults convicted of offences committed as children and on the identification of deceased children associated with criminal proceedings.

**e)** Whether, and to what extent, suppression and non-publication orders can remain effective in the digital environment, and whether there are any appropriate alternatives.

**g)** Whether, and to what extent, technology can be used to facilitate access to court and tribunal information.

**h)** The findings of the Royal Commission into Institutional Responses to Child Sexual Abuse regarding the public interest in exposing child sexual abuse offending.

## Recommendations

**(b) Whether the current arrangements strike the right balance between the proper administration of justice, the rights of victims and witnesses, privacy, confidentiality, public safety, the right to a fair trial, national security, commercial/business interests, and the public interest in open justice.**

***DVNSW recommends that victim survivors should have autonomy and agency in the court process.***

Victim survivors of sexual, domestic and family violence is underreported and for the victim survivors who do make it to court, they often face further re-traumatisation, stigma and shame when entering the court process. We accept that in the proper administration of justice various factors such as privacy, confidentiality, public safety, the right to a fair trial, national security and the public interest need to be balanced, however, the rights, privacy, and confidentiality of the victim survivor should be paramount.

In our work, we regularly see the rights of the defendant in court processes undermine the agency, autonomy and dignity of women and children who experience sexual, domestic and family violence. We submit that domestic and family violence should be considered by NSW Law Reform Commission more broadly as part of their consultation, as too often only matters that involve serious sexual and physical violence are considered in the criminal justice system, and the rights, dignity and agency of victim survivors of domestic and family violence do not have access to the same protections as provided for in s578A Crimes Act NSW (name of a victim of a prescribed sexual offence is not to be published), in the civil justice and family law system.

**(d) The appropriateness of legislative provisions prohibiting the identification of children and young people involved in civil and criminal proceedings, including prohibitions on the identification of adults convicted of offences committed as children and on the identification of deceased children associated with criminal proceedings.**

**DVNSW recommends that children and young people involved in civil and criminal proceedings should not be identified.** The NSW Legislative Council's Inquiry into the Prohibition on the Publication of Names of Children involved in Criminal Proceedings already considered this issue in 2008. Australia's human rights obligations under the Convention on the Rights of the Child, and the International Covenant

on Civil and Political Rights mean that any identification of children and young people in civil and criminal proceedings would not be consistent with these obligations.<sup>1</sup>

**(e) Whether, and to what extent, suppression and non-publication orders can remain effective in the digital environment, and whether there are any appropriate alternatives.**

Concerns about whether and to what extent suppression and non-publication orders can remain effective in the digital environment are valid, there are many examples of victim survivors of sexual harassment or violence being exposed online, as well as defendants being named which could lead to a mistrial.

***DVNSW recommends that maintaining legislation which prohibits suppression and non-publication orders is critical for victims experiencing sexual, family or domestic violence, however enforcement of a suppression and non-publication order in the digital environment needs to be examined further, particularly where there are jurisdictional issues.***

This was apparent in the recent suppression order in Victoria with George Pell where the information relating to the trial was published overseas.

**(g) Whether, and to what extent, technology can be used to facilitate access to court and tribunal information.**

***DVNSW recommends that technology could be used to facilitate access to court and tribunal information.***

***DVNSW also recommends that any information access regime be accessible to victim survivors.***

Currently information for victim survivors in the courts is not always accessible to victim survivors and information sharing between the different Courts is a challenge. We recommend that access to information should be timely, accessible and culturally safe, especially for victim survivors who live in remote and regional areas, Aboriginal and Torres Strait Islander communities, CALD communities and those who may have experienced sexual, domestic and family violence from a community where their identity may be

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<sup>1</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 14 (1) available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 26 June 2019], UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 26 June 2019], and UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") : resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/33, available at: <https://www.refworld.org/docid/3b00f2203c.html> [accessed 26 June 2019].

easily identifiable. Technology such as remote hearings and sharing information on suppression orders through an online portal could ensure accessibility to court information for not only victim survivors but also the general public.

**(h) The findings of the Royal Commission into Institutional Responses to Child Sexual Abuse regarding the public interest in exposing child sexual abuse offending.**

DVNSW is pleased that the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (RC) regarding the public interest in exposing child sexual abuse offending have been included as part of the ToR.

***DVNSW recommends the Commission consider the Victorian approach through the recently passed Open Courts and Other Acts Amendment Act 2019 (Vic) as it centres victim survivors' experiences and is consistent with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.***