

## Written evidence from Professor Sandra Walklate (Liverpool and Monash Universities) and Dr. Kate Fitz-Gibbon (Monash University) (DVB0012)

### 1. Who we are.

**Professor Sandra Walklate** is Eleanor Rathbone Chair of Sociology, Liverpool University, conjoint Professor of Criminology at Monash University (Victoria, Australia) and **Dr Kate Fitz-Gibbon** is a Senior Lecturer in Criminology in School of Social Sciences at Monash University (Victoria, Australia) and Honorary Research Fellow in the School of Law and Social Justice at Liverpool University. We are both members of the [Monash Gender and Family Violence Prevention Centre](#) (MGFVPC).

### 2. Why this submission.

As members of the MGFVPC we have extensive research experience in developing prevention strategies on family violence (<https://arts.monash.edu/gender-and-family-violence>) and have published specifically on Clare's Law (Fitz-Gibbon and Walklate, 2017; Walklate and Fitz-Gibbon, 2018). This submission focuses on the human rights questions raised by the proposal to place Clare's Law on a statutory footing (clause 53 Domestic Violence and Abuse Bill 2019).

### 3. Executive Summary

- Human rights obligations place a responsibility on the state to protect its citizens when there is a reasonable possibility of preventing the violation of their rights. DVDS schemes in principle do not provide such reasonable possibilities (paras 4.1-4.6)
- The threat to women's security by DVDS schemes (paras 4.3. and 4.5.) and the information that may be disclosed, its accuracy, timeliness and longevity in respects of those individuals subjected to disclosure (para 4.4) are concerning.
- Much violence against women is hidden in nature and often unreported to the police (this is even more so for ethnic minority women and women with disability). The presumption that under Clare's Law women can make informed decisions misunderstands the realities of living with the controlling effects of violence, overestimates the accuracy of police data on previous offending, and potentially makes women experiencing violence responsible for their partner's behaviour should they choose to remain in the relationship post-disclosure (para 4.5)

## 4. Our Submission

4.1 Violence against women is a human rights issue and places positive responsibilities on the state to be diligent in preventing violations of their rights. In meeting these responsibilities there must be a reasonable possibility of prevention/intervention on the part of the state. There is no evidence to date that DVDS acts as a *preventive* strategy or an effective *intervention*.

4.2. Clare's Law was introduced in England and Wales In March 2014. Equivalent schemes have developed in Scotland (2014), New Zealand (2015), Northern Ireland (2018), Saskatchewan (2018) and have been differentially received across states in Australia. This is despite *any supporting evidence as to its efficacy* (see Fitz-Gibbon and Walklate 2016; Walklate and Fitz-Gibbon 2018). This lack of evidence raises a number of key issues.

4.3. The right to know and the right to privacy need to be carefully balanced (Bessant 2015; Grace 2015). These bring into conflict the rights to protection afforded to victims, the rights afforded to a perpetrator or suspect, and the need for information sharing to ensure public safety. Finding a balance is important when such data sharing can put the applicant at heightened risk of victimisation particularly *when they may not have sought the information for themselves*. Indeed some evidence suggests that when offered information about their partner's prior history of domestic abuse some women do not want it (Williams, 2018).

4.4. Much violence against women is hidden and has not been reported to the police. Of those incidents that are police reported, a substantial number do not result in a police charge and/or conviction. Those making a request as a 'Right to Ask' could be placed in a false sense of security when they are told their partner does not have a recorded history of violence (see also Refuge 2012). Equally, persons who may have been serially violent to their partners are never likely to be the subject of a 'right to know' disclosure when they do not have a prior arrest, conviction and/or caution on their record. The scheme can also inadvertently capture inaccurate records of domestic violence histories made as malicious allegations of violence by previous partners or in cases where police have misidentified the primary aggressor (Bessant 2015). All of this carries implications for the right to safety for victims along with their right to privacy and the right to privacy of their partners about whom such information may or may not be accurate.

4.5. Placing Clare's Law on a statutory footing will only add to the implementation problems already noted in England and Wales (HMICFRS, 2015, 2017). The Bureau of Investigative

Journalism (2018) reports an erratic and patchy take up of Clare's Law in different policing jurisdictions. For example, right to ask applications per 100,000 population peaked at 24.2 in Lancashire (39% of these resulted in disclosure) with the same applications standing at 1.6 per 100,000 population (with a 24% disclosure rate) in the Metropolitan Police area. Such 'justice by geography' contravenes the aspirations of public safety underpinning Clause 53. Moreover Duggan's (2018) work on practitioners illustrates the extent to which such schemes allow victim hierarchies to operate. Such practices contravene the right to safety and freedom from violence for all citizens. In addition the average time taken to disclose information (39 days: HMICRFS 2015, 2017) mitigates any preventive potential of the Scheme and heightens victim's risks.

4.6. A DVDS scheme does not take account of the hidden nature of much of men's violence(s) particularly for ethnic minority women and women with a disability. The presumption of women "making informed choices" about whether they continue their relationship (Bessant 2015: 118) is particularly problematic and risks making women responsible for their partner's violence (Duggan 2012) and could contribute to victim blaming in cases where the woman chooses to stay in the relationship post-disclosure and seeks help from the police at a later stage.

## **5. Recommendations.**

5.1. The efficacy of Clare's Law needs to be reconsidered in the round including a costs-benefit analysis of practitioner time devoted to its implementation, alongside a thorough investigation of its reception and evidenced *preventive* potential (rather than claimed preventive potential) amongst women living with violence (4.3; 4.5).

5.2. Any data shared needs to be accurate, appropriate, timely, and of good quality with suitable support in place to mitigate any adverse consequences of information sharing (4.3; 4.4)

5.3. Appropriate resourcing is required to overcome the evidenced implementation problems (4.5) which clearly mitigate any preventive and effective intervention capacity for this scheme.

5.4. The specific human rights implications of DVDS schemes for women in ethnic minorities and women with a disability living with violence demands closer scrutiny (4.6).

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## References

- Bessant C (2015) Protecting Victims of Domestic Violence- Have we got the balance right. *The Journal of Criminal Law* 79(2): 102-21.
- Duggan M (2012) Using Victims' Voices to Prevent Violence Against Women: A Critique. *British Journal of Community Justice* 10(2): 25-37.
- Duggan, M, (2018) Victim hierarchies in the domestic violence disclosure scheme. *International Review of Victimology* 24(3): 199-217.
- Fitz-Gibbon, K. and Walklate, S. (2017) The efficacy of Clare's Law in domestic violence law reform in England and Wales. *Criminology and Criminal Justice*. 17(3): 284-300.
- Grace J (2015) Clare's Law, or the national Domestic Violence Disclosure Scheme: the contested legalities of criminality information sharing. *The Journal of Criminal Law* 79 (1): 36-45.
- McClenagan, M. (2018) Huge disparity on how police use law to protect women from violent partners. *Bureau of Investigative Journalism*, January 9<sup>th</sup>.
- Refuge (2012) *Submission to the Domestic Violence Disclosure Scheme Consultation*. England: Refuge.
- Walklate, S. and Fitz-Gibbon, K. (2018) *Criminology and the violence(s) of Northern theorizing: A critical examination of policy transfer in relation to violence against women from the global North to the global South*. In Carrington K, Hogg R, Scott J and Sozzo M (eds) *Palgrave Handbook of Criminology and the Global South*. London: Palgrave.
- Williams, F. (2018) Clare's Law: The women who risk their lives by refusing information. 29th November <https://www.bbc.co.uk/news/uk-england-42920020>