



## DVConnect Submission

Stage 2 of the review of the Model Defamation Provisions (MDPs)  
Part A: liability of internet intermediaries for third party content

9 September 2022



## Acknowledgement

DVConnect respectfully acknowledges and celebrates the Traditional Owners/Custodians throughout Australia and pays its respects to Elders, children and young people of past, current and future generations. We are committed to helping anyone experiencing domestic, family and/or sexual violence. This includes the LGBTIQ+ community, people of all ethnicities, religions, ages, abilities and pets.

### **DVConnect 2022**

You may cite, distribute and build upon this work. However, you must attribute DVConnect as the copyright holder of the work. All enquiries regarding DVConnect, including copyright, should be directed to:

Chief Executive Officer  
DVConnect  
PO Box 10575 Adelaide Street  
Brisbane QLD 4000

██████████ ████████████████████  
██████████ ████████████████████  
Website: [www.dvconnect.org](http://www.dvconnect.org)

*DVConnect receive funding from the Queensland Government.*

For information about this Submission, please contact:

██████████ ██████████ Head of Clinical Practice. ████████████████████



## Table of Contents

1. ABOUT DVCONNECT .....	3
2. OPENING STATEMENT .....	5
3. PART A OF THE STAGE 2 REVIEW FEEDBACK .....	5
4. RECOGNISING AND PROTECTING THE RIGHTS OF INDIVIDUALS IMPACTED BY DFSV .	7
5. RECOMMENDATIONS FEEDBACK .....	8
6. CLOSING STATEMENT.....	11
7. REFERENCES.....	12



## 1. About DVConnect

### Our support services

#### **Domestic, family and sexual violence specialist support:**

DVConnect is the state-wide domestic, family and sexual violence crisis service for all people in Queensland. Our services include:

- DVConnect Womensline 1800 811 811
- DVConnect Mensline 1800 600 636
- Queensland's Sexual Assault Helpline 1800 010 120
- Pets in Crisis Program with the RSPCA QLD
- Bella's Sanctuary; a safe place for women and their children to heal and rebuild after violence, providing independent, medium-term accommodation for up to five families at a time

Nationally, DVConnect are clinical lead and specialist counselling provider for the federally funded Sexual Assault, Domestic and Family Violence Counselling Service:

- 1800RESPECT 1800 737 732

#### **Victims of violent crime specialist support:**

DVConnect is the state-wide helpline for victims of violent crime in Queensland:

- VictimConnect 1300 318 940.

### Who we are

DVConnect was established in 1980 and is Queensland's state-wide crisis response service for domestic, family and sexual violence. DVConnect helps Queenslanders find pathways to safety 24 hours a day, 7 days per week. Annually, DVConnect takes in excess of 100,000 calls across all lines and provides crisis intervention across a number of key services. Womensline receives one call for help every five minutes (across a 24 hour period). Crisis support is provided in the form of emergency telephone support, emergency crisis accommodation placement and transport for families affected by abusive relationship, counselling for men, women and victims of sexual assault, education and support for men, community education, and care for pets of families experiencing domestic and family violence. DVConnect also operates Bella's Sanctuary a 5-unit medium-term accommodation residence that exists to provide women and children with a safe housing option after leaving a shelter/refuge. We are a not-for-profit organisation, predominantly funded by the Department of Justice and Attorney General, Office for Women and Violence Prevention.

DVConnect are a partner agency and clinical lead for Australia's national sexual assault, domestic and family violence support service, 1800RESPECT. This service provides information, referral and counselling 24 hours a day, 7 days per week. DVConnect's 1800RESPECT services are delivered in partnership with Telstra Health on behalf of the Australian Government as part of the National Plan to Reduce Violence against Women and their Children, 2010-2022.



DVConnect provide the state-wide response counselling and support service for victims of violent crime that fall under the *Victim Of Crime Act 2019*. This service provides free and confidential specialist counselling and case management to assist with the practical impacts of violence crime.

DVConnect operates from an intersectional feminist framework, acknowledging that domestic, family and sexual violence (DFSV) is gender-based violence. This gendered analysis is supported by research, evidence and data, and indicates that DFSV is most often perpetrated by men against women, and that perpetrators of this violence are fully responsible for their actions. This framework acknowledges and responds to the intersectional experience of DFSV.

While the experience of those impacted by violent and personal crime is more broad reaching than DFSV, we build upon our intersectional, trauma informed expertise to offer recovery-based counselling and case management.

The clinical services provided by DVConnect are inclusive and trauma-informed. We are guided by the diverse voices of survivors and recognise our clients as the expert in their own lives. The abilities, strengths, goals and needs of people living with disability are respected, as are individuals from culturally and linguistically diverse backgrounds. DVConnect acknowledge that Aboriginal and Torres Strait Islander people know best what their communities need and want. Importantly, the intersectional approach of DVConnect considers and responds to how overlapping forms of discrimination may impact a client's experience of DFSV and other violent and personal crime.



## 2. Opening Statement

DFSV is one the most prevalent, pervasive, and serious human rights violations that exists on a spectrum of behaviours. The current legal framework in Australia does not adequately meet the needs of responding to defamation in the context of DFSV in an era of internet publication and social media<sup>1</sup>. As such, we welcome the review of the Model Defamation Provisions (MDPs) by the Meeting of Attorneys-General (MAG).

Whilst the law is in place to protect the rights and safety of all equally, it must also consider the inequities that exist within society, and how the law (and the internet) can be weaponised by those who choose to use violence. Defamation is a tactic commonly used in DFSV to harm the reputation, honour, dignity, and safety of others. This can extend beyond the victim with threats and occurrences to their loved ones and associates as a form of coercive control and barrier to leaving an abusive relationship.

We acknowledge that our submission is largely informed by our role as a subject matter expert in DFSV. Our submission does not purport to represent legal expertise. We argue our insights articulate how internet defamation reform could impact individuals experiencing DFSV, as well as how legal reform can help prevent and eradicate DFSV in our country. DVConnect are experts in understanding the intersect of DFSV with structural influences such as the law and are therefore well-placed to question and comment on proposed recommendations as they may apply to an already vulnerable group.

## 3. Part A of the Stage 2 Review feedback

The MDP Consultation Draft is predominantly centred on the premise that individuals impacted by defamatory internet content are able to participate in the avenues proposed for resolution with the originator.

**In the context of DFSV, the originator is the person using violence.**

Our submission aims to highlight an underrepresented perspective about the unintended consequences of defamation legal reform for complainants who are impacted by DFSV. These perspectives are relevant to individuals with direct and indirect associations with DFSV. We also seek to highlight the expectations people experiencing DFSV, and the broader community, should be able to have of internet intermediaries in the prevention of DFSV and mitigating further harm.

We pose the following concerns to the MAG for consideration:

### Direct DFSV association

*Where the originator is the person using DFSV against the complainant:*

- The ethical, legal and safety implications of a reform that puts the onus of resolution on the person impacted by DFSV to request consent from the person using violence to remove defamatory internet content



- The likelihood of such reform preventing or excluding a complainant from pursuing their legal rights to have defamatory internet content removed in a timely manner due to their experience of DFSV (historical or current)
- Reform that enables a position of power for a person using DFSV

### Indirect DFSV association

*Where the originator has published any DFSV-related defamatory content:*

- The broader social implications of defamatory DFSV content being accessible to anyone on the internet without timely resolution (due to need for Originator's consent in resolution process)
  - Impact on DFSV victims being exposed to this content
  - Normalisation of DFSV through accessibility and perception of acceptance/legitimacy as content is not restricted from publication, or removed in a timely manner once identified

### Expectations and role of internet intermediaries

*Where internet intermediaries participate in the facilitation of publishing DFSV content other than the originator.*

- Corporate responsibility to have mechanisms in place to identify and remove DFSV content in a timely manner
- Acceptability of being protected from liability on grounds of:
  - Not having surveillance and responses in place to identify and respond to risk of DFSV harm (or other harms), thereby exempting themselves from liability
  - Placing responsibility of responding to identified DFSV content on to the DFSV victim/complainant
  - Putting the person using violence/originator in a position of power over the complainant by facilitating publication of third-party content
- Perception and reality of Government standards and commitment to a whole-of-system, whole of community approach to DFSV prevention
- The equity, representation and inclusion of DFSV lived experience in Stakeholder views. For example, *“Many (stakeholders) were of the view that any reform should focus the dispute between the complainant and the originator”*.

### Stakeholder consultation

Stakeholder views are referenced heavily throughout the Stage 2 Review Background Paper. There is a lack of information about who was involved in the roundtable consultations which raises questions about the breadth and inclusion of views represented. A review of DFSV legal specialists involved in this consultation would be prudent to ensure that the experience of people impacted by DFSV have been considered. The inclusion of priority populations, such as Aboriginal and Torres Strait



Islander, LGBTIQ+, CALD, and people with disability, and specialised priority populations legal experts is also necessary to note and include to ensure transparent and robust consideration of impacts on vulnerable people occurred. Similarly, were people with a lived experience of DFSV and defamation included in the consultation. Without stakeholders such as these fully engaged in the process, the consultation process remains incomplete.

#### 4. Recognising and protecting the rights of individuals impacted by DFSV

The comment below from the MDP Consultation Draft exemplifies how concepts of risk, protection and rights do not align between the intent of the reform, and the needs and rights of people experiencing DFSV.

---

*“...model laws to strike a better balance between **protecting reputations** and not **unreasonably limiting freedom of expression** in the various circumstances where third parties publish defamatory matter via internet intermediaries.”*

---

The juxtaposition of applying the reform to DFSV victims “*protecting reputations*”, and “*unreasonably limiting freedom of expression*” of a person using violence markedly demonstrates the risk, limitations, and unacceptableness of how the reform could translate in such cases. It does not recognise the inherent characteristics and impacts of DFSV.

The stated concern from *Stakeholder views on Part A* below is irrelevant if a society recognises family, domestic and sexual violence (DFSV) as breaches of fundamental human rights. A society where internet publishing liability cannot be questioned because the content, and the use of such content, are contrary to societal standards that prohibit their publication and weaponisation in the first place. The prevalence of DFSV in this country requires a collective lens for recognising how all forms of violence can be prevented. Appropriate responses, including accountability at individual and corporate levels are needed.

---

*“...the potential chilling effect on free speech of defences that require internet intermediaries to remove content to avoid liability. A number of stakeholders submitted that it is not fair to hold an internet intermediary liable for third-party content of which they are unaware.”*

---

Until this standard becomes universally recognised and upheld, there is need to consider where liability begins and ends. Each party subject to internet liability is dependent on each other’s role in the facilitation and publication of content. For example, an originator or third-party cannot publish defamatory content without an internet intermediary such as a service provider or media platform. Accountability is therefore shared in terms of enabling content to be published and accessible.





The argument that “...it is not fair to hold an internet intermediary liable for third-party content of which they are unaware” is devoid of any corporate governance, namely accountability and social responsibility.

Internet capabilities and usage continue to become embedded in our daily lives and interactions. This extends to data that is subject to privacy and confidentiality laws and community expectations such as police and health information. By recognising that content originators, third parties, and internet intermediaries have the potential to reach and influence an almost limitless audience, we consider they should have a role in providing structural accountability as a minimum, if not the same internet defamation standards and accountabilities as other parties who use the internet. That is, an internet intermediary may have different responsibilities to the creator of defamatory content but it is reasonable to expect such intermediaries have responsible governance processes that prioritise the full scope of human rights, including to safety, otherwise these intermediaries are complicit in defamation. **While the responsibility to hold the person who uses abuse and violence to only the person experiencing violence, DFSV will continue. Ending violence requires a consistent and full system of accountability were all components see their active role.**

The Australian Government acknowledge that it is challenging for individuals to pursue defamation proceedings against a perpetrator “*especially for ordinary Australians*”, as demonstrated in High Court’s *Voller* decision. The use of ‘perpetrator’ in this context relates to the crime of defamation. The added complexity of a perpetrator also using DFSV means the reality of pursuing defamation proceedings can be impossible. This may be for a multitude of reasons including safety, not having the freedom, choice or resources to do so, or being in a situation where they have to prioritise their physical safety over legal action.

**For a person experiencing DFSV, resolution is not solely aimed at protecting their reputation, it is about needing resolution for how defamatory internet content is used as a weapon that is typically not the only form of abuse being used against them.**

## 5. Recommendations Feedback

**Recommendation 1** reflects no commitment to promote or uphold accountability for one of the essential cogs in the internet publication wheel. “*Passivity*”, “*Mere*”, and ‘*A statutory exemption would apply irrespective of whether the intermediary is made aware of the defamatory content*’ effectively endorses systemic enabling and negligence.

If it is known that “*the remedy most sought after by complainants is for the matter to be removed expeditiously, without the need for litigation.*”, buy-in from internet intermediaries that is reinforced by legislation is fundamental for achieving timely resolution and reduce risk of harm.



Recommendation 1 Limitations	DFSV Implications
1. Exempting internet intermediary functions from defamation liability, even if they are made aware of defamatory content	<ul style="list-style-type: none"> <li>• Undermines government's commitment to DFSV prevention being everyone's business</li> <li>• Removes accountability and corporate motivation for responding to content that facilitates and/or promotes DFSV</li> </ul>
2. Diminishing the role of internet intermediary function as 'passive' in publication of defamatory content	<ul style="list-style-type: none"> <li>• Endorses passivity of parties involved in the publication of defamatory content used to harm people through DFSV</li> </ul>

**Recommendation 3A** The statement that *“the purpose of Recommendation 3A is to focus the dispute between the complainant and the originator”* does not acknowledge or consider that it may not be safe or possible for a complainant to engage with an originator of defamatory content (originator or third party). This would result in increased risk of harm for people impacted by DFSV, as well as essentially forcing some victims of DFSV to choose between availing themselves of their legal rights, or protecting their own safety (and children, pets etc.)

By placing the onus on the complainant, they are failed in two ways by requesting they seek *“internet intermediary to avail itself of the defence if, with the **consent of the originator**, it provides that information to the complainant. Otherwise the intermediary must **prevent access to the content within 14 days.**”*

Recommendation 3 Limitations	DFSV Implications
1. Places the originator in a position of power to provide consent to share defamatory content to the person it violates	<ul style="list-style-type: none"> <li>• Reinforces power of Person using violence (PUV) over victim</li> <li>• Places person experiencing DFSV in a perverse situation where they have to seek consent from the PUV who has violated their own consent</li> <li>• Increases risk of harm for victim from PUV</li> <li>• Prevents victim from pursuing their legal rights for fear of safety</li> </ul>
2. Allowing content to remain accessible for up to 14 days	<ul style="list-style-type: none"> <li>• Enables further weaponisation of internet content by the PUV</li> <li>• Misalignment with the time-critical nature of DFSV responses</li> <li>• Prohibits agency and control for the victim</li> </ul>



	<ul style="list-style-type: none"> <li>• Increases exposure to traumatic content for victim and others</li> <li>• Contributes to normalisation of DFSV content</li> </ul>
--	---

**Recommendation 5 and 6.** Recommendation 6 is the sole recommendation that makes explicit reference to domestic violence by highlighting *“it may be difficult to enforce a remedy”*.

It describes the role and accountabilities of internet intermediaries as discretionary and influenced by their ability to *“make submissions about whether the order should be made”*.

We acknowledge that enforcing a remedy because it may have gone viral or the originator *“simply refuses to do so (remove it)”* is challenging, however, this further validates the need for proactive surveillance and responses by internet intermediaries to act swiftly and have preventive measures in place to avoid the initial publication of defamatory content. The onus should be on internet intermediaries to have active and positive governance actions, rather than being able to be passive in the process.

Recommendation 5 & 6 Limitations	DFSV Implications
1. Discretion of internet intermediaries to assist in removing DFSV content i.e. <i>“...may be in a good position to assist”, and “internet intermediary has the opportunity to make submissions about whether the order should be made”</i>	<ul style="list-style-type: none"> <li>• Removes accountability from internet intermediaries and elevates their position of power through subjective decision-making</li> <li>• Increases the number of power structures a victim has to engage with for a response, while those with resources such as internet intermediaries can remain passive</li> <li>• Reinforces patriarchal dominance</li> </ul>
2. The risks of orders being abused or having a chilling effect appear to be weighted more heavily than the risk of harm to DFSV victims	<ul style="list-style-type: none"> <li>• Contributes to structural inequity for people impacted by DFSV</li> <li>• Devalues the impacts of DFSV</li> <li>• Fails to balance the impact of both risks, one being significant injury or death.</li> </ul>

### Language considerations

The term ‘chilling effect’ is used several times throughout the document. It is recommended that the legal context of this term is included in the Terminology Section as when coupled with ‘abuse’ in the same sentence/paragraph, it could be misinterpreted by a lay person to indicate an editorial sentiment about the impacts of violence.



## 6. Closing Statement

Law reform creates a positive opportunity to review and revisit how our laws protect rights within a dispute resolution framework. The law serves many purposes and the principal of protecting liberties and rights must underpin dispute resolution such as internet defamation. When a person is experiencing DFSV, their rights have already been violated. The act of defamation is an additional abuse that adds complexity and increased risk. The needs unique to the experiences of people impacted by DFSV must be protected and promoted in law to prevent further victimisation at interpersonal and structural levels.

If content in this submission reveals misinterpretations of DVConnect's assessment of the MDPs, then this is a positive outcome in and of itself. By questioning and challenging elements of the reform through a DFSV lens, we are providing feedback about what a person experiencing DFSV would want to know about their rights and options to have defamatory content removed from the internet, as well as seeing how the government is acting to influence real change and prevention of harm.

Overall, we ask that a positive and active approach is taken for accountability for defamation. While the context is different, affirmative consent legislations highlight how a positive onus can dramatically increase safety and accountability especially for the most vulnerable of our community.

We welcome the opportunity to respond to any queries about this submission and thank you for the priority the MAGs are placing on the MDPs.

Yours sincerely,



CEO – DVConnect



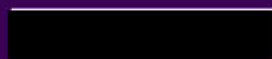
## 7. References

1. Macdonald, S., Defamation and Social Media In Australia"[2021] UNSWLawJISuS 19;(2021) UNSWLJ Student Series No 21-19.
2. [Social Media \(Anti-Trolling\) Bill | Attorney-General's Department \(ag.gov.au\)](#)

# DVCONNECT

*Be heard. Be safe.*

P.O. Box 10575  
Adelaide Street,  
Brisbane QLD 4000



[dvconnect.org](http://dvconnect.org)