

DOMESTIC  
VIOLENCE  
VICTORIA

Submission to the Family Violence  
Information Sharing Legislation  
Consultation Paper

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August 2016

## Introduction

Domestic Violence Victoria (DV Vic) welcomes the opportunity to make a submission on the family violence information sharing legislation. With many other submissions from the family violence sector, DV Vic's submission to the Royal Commission into Family Violence on specialist family violence practice highlighted the critical importance of appropriate and timely sharing of information to managing risk and safety of women and children. To enable the full and proper assessment of risks posed by the perpetrator and to build useful perpetrator profiles, DV Vic recommended that legislation pertinent to the family violence sector be reviewed to ensure that information sharing meets best practice standards, is consistent, and conforms to legislated privacy provisions within a family violence risk context.

DV Vic commends the Victorian Government on implementing all recommendations of the Royal Commission, and its commitment to prioritising information sharing legislation. The family violence information sharing legislative regime proposed by the Royal Commission will provide a clear framework to support the sharing of critical risk-pertinent information where it is currently not occurring due to concerns or confusion about breaching privacy laws. It will also legitimise the informal information sharing that currently occurs across agencies as part of the risk management process. To be effective, culture-changing and publicly acceptable, the information-sharing functions of the key organisations must necessarily be specific and highly prescribed through the legislation, regulations and protocols that guide its use.

DV Vic supports the need for this legislative reform but argues that it will only be effective in a clearly prescribed and regulated environment that pertains to family violence and the purpose of women and children's safety. We strongly emphasise the need for well-articulated guidelines and protocols to ensure best practice in the interpretation and implementation of this legislation to prevent its misuse beyond its original intention.

Drawing non-specialist or generalist/universal organisations into the family violence information sharing regime will enhance the capacity for the family violence system to keep women and children safe and hold perpetrators to account, however this increased access to personal information necessitates a significantly greater knowledge and understanding of the nature and dynamics of family violence and workforce development to identify, respond and refer. DV Vic believes that appropriate training from family violence experts should underpin the family violence information sharing legislation, precede its introduction and be built into its ongoing implementation.

## Part 1 – Purpose of the information sharing regime

*a. In addition to the risk assessment and safety management, should the regime provide for information sharing for a broader purpose that includes welfare? Why or Why not? Please provide relevant examples.*

The legislative model proposed by the Royal Commission was developed with the aim of keeping victims safe and holding perpetrators to account. DV Vic strongly argues that the information sharing legislative regime should refer to this specific purpose only. Broadening the scope of the legislation beyond this specific purpose would potentially result in a dilution of its powers, leave it open to misuse, misinterpretation and loss of public support.

The consultation paper posits that extending the scope of the information sharing regime to a “broader purpose that includes welfare” would enable it to be used to meet the victim’s health and welfare in recovery and rebuilding their lives. In consultation with our members, we could not identify any advantages to the safety of women and children in broadening the scope. In exploring this possible purpose, DV Vic could not envisage a scenario where anything other than a risk to safety would be the reason for sharing information at any point in their lives. For example, where the trauma caused by the experience of family violence continues to impact on a victim’s recovery beyond the conclusion of a violent relationship, any triggers for information sharing should only occur in the context of managing risk and ensuring safety.

While we believe there is a case for more thorough investigation and follow up of family violence perpetrators who use non-payment of child support as a tactic of post-separation financial abuse, this should be addressed through improved guidelines and family violence protocols within the Child Support Agency and Centrelink.

DV Vic members identified several disadvantages and risks with expanding the scope of the legislation:

- Concern or fear that their information and information about the perpetrator would be widely shared may act as disincentive for women to disclose family violence and seek help. This would be a particular barrier to Aboriginal women who have strong reasons to distrust authorities with information about their families.
- The potential misuse of the regime to gather information by a range of agencies that may not be related to risk and safety in a family violence context, even if those agencies are prescribed under the legislation.

DV Vic therefore strongly recommends that the original purpose of the information sharing regime proposed by the Royal Commission be maintained: risk assessment and safety management and service referrals.

## Part 2 – Organisations covered by the regime

*c. Is prescribing organisations by regulation a sensible approach? If so, are there organisations that should be added or removed from the proposed list in Appendix 1? If not, why and what alternative approach would you suggest?*

The consultation paper outlines a wide-ranging list of organisations to be prescribed under the information sharing regime. The attempt to develop a comprehensive list has inherent risks – that some relevant organisations will inevitably be excluded and that trying to include everyone will create, at least, the perception of a regime in which information is shared so widely that women are disinclined to disclose and the public is distrustful of its purpose.

DV Vic is concerned that the ‘reasonable belief that sharing information is necessary to manage a risk to safety of the victim’ is too broad if it applies to all the prescribed organisations equally, potentially resulting in either the refusal to share information or the inappropriate or unnecessary access to information. One potential problem arising from this definition is the risk that a perpetrator, who has been incorrectly identified by police as the Affected Family Member in an L17 form (a common occurrence), can present as a victim to a prescribed organisation without specialist family violence knowledge or practice, and access information that could put women and children at risk.

These concerns also raise the need for the clearly articulated regulation and oversight of this regime. There is evidence that without this prescribed organisations fail to participate, for example, there is anecdotal evidence from New South Wales that some schools continually refuse to share information under Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007* because they do not consider they are prescribed under the Act, without penalty. In addition to an effective regulatory and reporting regime, the New South Wales experience indicates that the most difficult part of the process is changing the culture of information sharing. Implementation of the new regime requires a comprehensive and ongoing information and change management strategy to be successful.

Clearly there is an important role for generalist/universal (i.e. non-family violence specialist services) in identifying family violence, both in terms of disclosures in medium and high risk cases and recognising the early signs and responding to prevent escalation of risks. DV Vic is currently completing a project which sets out the framework for generalist/universal services early intervention in family violence. The findings from this project strongly indicate that generalist/universal services want their role and responsibilities to be clearly defined. They need training, support and resources to identify family violence, to respond supportively and ask the right questions, to access key information, including referral pathways and secondary consultation sources.

Generalist/universal services have specialised skills, but not the skills and practice required for comprehensive risk assessment and case management of medium and high risk family violence cases. This is the work of specialist family violence services. For this reason DV Vic considers that it is critically important that the family violence information sharing regime does not in any way promote the extension of the role of generalist/universal services into the specialised work of family violence services.

Nonetheless, DV Vic believes that it is critical that the information sharing regime for organisations currently involved in the operations of the statewide Risk Assessment and Management Panels (RAMPs), the Information Usage Arrangement (IUA), is explicitly incorporated into the proposed regime in regard to women at assessed at high risk of violence. The core membership of each RAMP includes a range of generalist/universal services, such as mental health and drug and alcohol services, and our intention is that all the information sharing powers that currently exist for these organisations within the RAMPs are maintained.

DV Vic believes that the legislated information sharing can only be effective if it operates within a highly prescribed and regulated regime. This should include prescribing organisations covered by the regime, and reflect the operations of the current system as well as the reformed system envisaged by the Royal Commission. We strongly emphasise the need for a well-articulated guidelines and protocols to ensure best practice in the interpretation and implementation of this legislation to prevent its misuse beyond its original intention.

Drawing non-specialist or generalist/universal organisations into the family violence information sharing regime will enhance the capacity for the family violence system to keep women and children safe and hold perpetrators to account, however this increased access to personal information necessitates a significantly greater knowledge and understanding of the nature and dynamics of family violence. DV Vic believes that appropriate training and workforce development from family violence experts should underpin the family violence information sharing legislation, precede its introduction and be built into its ongoing implementation.

*d. Is prescribing 'intake' organisations by regulation a sensible approach? If so, are there 'intake' organisations that should be added or removed from the proposed list in Appendix 1? If not, why and what alternative approaches do you suggest?*

The model proposed in the consultation paper identifies three 'intake organisations' that can request information for the purpose of risk assessment. DV Vic strongly supports the proposal that there is no threshold for risk as a requirement for requesting information for this purpose as it reflects the specialist practice of risk assessment. DV Vic agrees with the premise of identifying a specific group of organisations within the prescribed organisations, but suggests describing them as 'intake' organisations misunderstands the role of risk assessment in supporting women and children experiencing violence, and may leave out organisations performing this function.

For this reason, we consider that the proposal to specifically prescribe 'intake organisations' and limit this to the three listed in the paper: Men's Referral Service, Safe Steps Family Violence Response Centre and the Support and Safety Hubs (when created) is overly restrictive. Comprehensive risk assessment is conducted routinely and regularly by specialist family violence services as family violence risk is dynamic and effective safety management must be responsive. It is therefore critical that all specialist family violence services (i.e. services that are funded to provide family violence responses) are prescribed to access information for the purposes of risk assessment and safety management. While the Support and Safety Hubs will be prescribed for this purpose once they are established, this will not obviate the need for specialist family violence services to continue to need timely access to critical information in their case management and continuous assessment of risk.

The key characteristic to be considered in defining organisations prescribed to access information is the organisations that ‘hold the family violence risk’. DV Vic therefore proposes that funded specialist family violence service organisations are all prescribed by regulation to collect information for the purpose of:

- Conducting a family violence risk assessment
- Ongoing case management and safety planning
- Determining appropriate referral services for victims or perpetrators of family violence
- Referring victim or perpetrators to appropriate services

### DV Vic proposed Family Violence Information Sharing Regime (Figure 1)

To best meet the specific purpose of this legislation, DV Vic proposes a three-tiered approach to all the prescribed organisations (broadly, specialist, non-specialist and information) covered within the family violence information sharing regime. Figure 1 sets out a table representing the three-tiered model, detailing the role of each tier and the flow of risk-relevant information.

Tier One includes the ‘Family Violence Risk Assessment Organisations’. These are the specialist organisations with expertise to conduct comprehensive risk assessment, case management and safety planning and other organisations such as Victoria Police, RAMPs and the Courts that require high level risk relevant information to make their decisions. Other Risk Assessment Organisations include: Men’s Referral Service, Safe Steps Family Violence Response Centre, funded specialist family violence services Support and Safety Hubs [when created] and potentially Maternal and Child Health Nurses. These organisations can request information from each other, and from Tier Two and Tier Three organisations. They can also share information with Tier Two organisations as required to best manage risk.

Tier Two includes the ‘Family Violence Identification Organisations’. These are all the generalist/universal (ie non family violence specialist) services, as well as public and private schools and early childhood education and childcare facilities. These organisations will provide information on request from Tier One organisations and in the course of referrals to specialist services, when they identify family violence. Tier One organisations can share information with Tier Two organisations as needed to manage risk. For example, a specialist family violence service, working with a woman experiencing family violence, can share relevant information with the school her children attend (with her consent) for safety planning and risk management. Tier Two organisations cannot share information between each other. DV Vic believes that this avoids the situation where services do not have the expertise to assess whether there is a ‘reasonable belief that sharing information is necessary to manage a risk to safety of the victim’, and this broad threshold could generate unnecessary and potentially dangerous information sharing.

Tier Three includes state and commonwealth agencies which may hold information relevant to the risk assessment and ongoing case management of women and children experiencing family violence. Only Tier One organisations can request this information.

## Figure 1 – DV Vic proposed Family Violence Information Sharing Regime <sup>1</sup>

### Prescribed Organisations

<p>Tier One</p> <p><b>Family Violence Risk Assessment Organisations</b></p> <p><i>Hold risk</i> <i>Request risk information (T1 &amp; T2)</i> <i>Share risk information for safety management (T2)</i></p>	<p>Tier Two</p> <p><b>Family Violence Identification organisations</b></p> <p><i>Identify risk</i> <i>Share information and Provide information on request and through referral to Risk Assessment Organisations (T1)</i> <i>Hold shared information as needed to manage risk</i></p>	<p>Tier Three</p> <p><b>Risk relevant information organisations</b></p> <p><i>Provide risk relevant information on request from Risk Assessment organisations (T1)</i></p>
<p>Safe Steps Family Violence Response Centre</p> <p>Funded specialist family violence services</p> <p>Men’s Referral Service</p> <p>Victoria Police</p> <p><i>Courts:</i> Magistrates, Children’s County, Supreme, VCAT (Family Court and Federal Circuit Court)</p> <p>Core RAMP members</p> <p>Support and Safety Hubs</p> <p>Maternal and child health nurses</p> <p>Corrections</p> <p>Child Protection</p>	<p><i>State funded community services:</i> Child and Family services; homelessness services; Health care services Sexual assault services Out of home care services child care and early childhood services</p> <p><i>State funded community services:</i> Alcohol and drug services Mental health services (unless they are core members of a RAMP)</p> <p><i>Commonwealth funded services:</i> Aged care services Disability services</p> <p><i>Education institutions:</i> Public and private schools Private early childhood education and child care providers</p>	<p>Commonwealth agencies</p> <p>State government departments</p>

<sup>1</sup> Revised 13 September 2016

## Part 3 – Types of information exempt from being shared

*e. Are there any exceptions to information sharing outlined in section 3 that should be added or removed? If so, please outline.*

In theory, DV Vic broadly agrees with the exceptions listed, however it is not clear that all the organisations prescribed under the regime would automatically be aware if the circumstances for exemption existed in any given case. So information could be wrongly provided or wrongly withheld. Similarly, the long list of exemptions could result in overly cautious interpretations of the restrictions, resulting in the entrenchment of the current culture of not sharing and the potential risks to women and children associated with that.

DV Vic does strongly endorse the inclusion of the exception from sharing information where it may “endanger a person’s life or physical safety” to enable specialist family violence agencies to refuse an information request from another organisation that may put a woman or children at risk. However, we would also argue that it might not always be obvious or evident that sharing the information would have this effect, particularly if information is being shared between organisations that do not have a specialist understanding of family violence.

Similarly, DV Vic is concerned that the exception where sharing information would “prejudice the effectiveness of a court proceeding” could be applied in any situation in which a family violence matter is before a court and the woman seeks to use information about the perpetrator to make her case. If this is a condition for precluding the sharing of critical information, this exception could jeopardise the application of the legislation.

DV Vic also recommends that consideration is given to the exemption where it may “contravene any legal professional privilege or other privilege such as the sexual assault communications privilege”, as this may be misused by perpetrators to prevent information sharing from occurring.

*f. Should law enforcement data be shared for the purposes of risk assessment and safety management? If so, how should the proposed legislative regime interact with the Standards for Law Enforcement Data Security?*

DV Vic agrees that law enforcement data be shared for risk assessment and safety management, but acknowledges that they are currently highly restrictive, for example the standards currently prevent Victoria Police from sending information by email. The standards need to be reviewed to ensure they work effectively with this new legislation, and once the Support and Safety Hubs are established, systems are developed for the secure and electronic transmission of appropriate information.

It is not uncommon for staff across a range of agencies, including Victoria police members, to be unsure of their agency’s obligations and requirements under existing law. This inhibits information transfer and frustrates effective case management, as well as potentially placing women and children at risk. This highlights the critical importance for Victoria Police and all organisations prescribed under this information sharing regime to fully understand their obligations and responsibilities under the Act, as well as those of other organisations.

## Part 4 – Information sharing about whom

*g. Should the information sharing model cover information sharing about third parties? Why or why not?*

DV Vic believes that third parties should be included in the information sharing model. Information from third parties (family members, friends and associates) can be critical to risk assessment and safety planning but in the current privacy legislative framework obtaining information from third parties can be time consuming and resource intensive. A new information sharing model could improve this process.

It is important that the role of third parties is clearly described in the legislation, as the concept of third parties in the family violence context is complex. Third parties encompass a wide range of parties connected to a family violence case, including friends, family members and associates of the victim and/or the perpetrator. Third parties often come up in high risk cases assessed at RAMPs, including family-wide sexual assaults and assaults against or by multiple family members. It would be useful for the model to identify these categories of third parties, as well as clear frameworks for where a third party may be a victim or perpetrator (and require additional case management) themselves.

*h. Are there any protections that should be incorporated into the new legislative regime to protect privacy or safety rights of third parties?*

The new regime should be very prescriptive around protection for third parties, and should have a high threshold for seeking information about them. Information about third parties should only be shared for the purpose of family violence risk assessment and managing a victim's safety by funded specialist family violence services. Information about third parties should be de-identified where possible, acknowledging that the third party's relationship to a victim or perpetrator (which may be required) is an identifier.

## Part 5 – Consent

*i. What is the most appropriate consent model under the new legislative regime for victims, children, third parties and perpetrators?*

DV Vic believes that consent Model 2 is preferable with the following amendments:

- Victim consent: Required except where there is safety threat or reasonable grounds to believe there is a high risk of threat to safety **and** obtaining consent is unreasonable or impractical. It is critical that appropriate consideration is always given to victim's agency, not just where it is convenient to do so.
- Children's consent: Obtained from the victim (their mother) except where there is safety threat or reasonable grounds to believe there is a high risk of threat to safety and obtaining consent is unreasonable or impractical.

- Consideration could be given to whether direct consent should be sought from children over the age of 14. There is significant tension between the rights of children and recognition that they are victims of family violence in their own right and the potential risks posed to themselves, their mother and siblings if consent is sought for the purpose of information sharing. It should be noted that members who participated in the DV Vic consultation believed that the risks of seeking consent from children (which could include the child being pressured by the perpetrator to reveal information about their mother's activities or coercing the child not to allow information sharing or) outweigh the value of seeking direct consent.

## Part 6 – Interaction of the family violence information sharing regime with other laws

*j. Are there any secrecy and confidentiality provisions in other laws that need to be explicitly overridden by the new family violence legislation? Why?*

DV Vic supports the comprehensive approach to information sharing recommended by the Royal Commission that the new regime will displace any and all Acts that limit sharing information that is relevant to the purpose of the family violence information sharing legislation. We endorse the proposal for the new regime to override the *Health Records Act 2001* as access to this information (especially information from alcohol and other drug services and mental health services) is critical to comprehensive risk assessment and safety management. There is evidence that reluctance to share this information, despite it being stipulated under the Information Usage Agreement for the RAMPs, is holding up the work of the panels and increasing the risks to women and children. A clear legislative framework that enabled the sharing of this information in the context of family violence will not only make its legality inarguable but also create the environment for cultural change. DV Vic believes that this should also apply to health information held under Commonwealth legislation.

## Part 7 – Other design elements of the Royal Commission's proposed regime

*i. Do you have any comments on the other design elements of the information sharing regime proposed by the Royal Commission?*

DV Vic recommends that in designing this legislation, careful consideration is given to:

- **Data quality and data security:** Once information has been shared (e.g. through the Central Information Point), is this information stored and/or accessible to other prescribed organisations? How will data security be assured? What mechanisms will be in place to ensure data quality across systems?
- **Protection for people sharing information:** What kind of protection is provided to people within prescribed organisations who share information?

- **Inappropriate information sharing:** What mechanism will identify and impose penalties for inappropriate information sharing? What will the penalties be? What will be the process for lodging complaints?
- **Refusal to share information:** What regulatory measures or penalties will apply to prescribed organisations that refuse to share information?
- **Transparency:** How will feedback on information sharing be provided without putting women in danger?
- **Clarity:** Emphasis should be given to making sure victims understand the purpose and parameters of the information sharing regime. Misunderstanding of the legislation could have profound consequences.

## Part 8 – Implications of the proposed regime

*m. Are there any other issues you wish to raise about the design elements of the legislative model proposed by the Royal Commission or potential enhancements that might: act as practice impediments to information sharing, or give rise to undesirable consequences?*

The proposed regime has the opportunity to formalise information sharing practices that help specialist services (and other organisations) keep women and children safe. However, if the regime is not focussed on sharing information for the specific purpose of family violence risk assessment or safety management, it has the potential to lead to undesirable consequences. In particular, this could result in women avoiding seeking help from the family violence system or disclosing family violence for fear of losing control of their personal information and having it shared widely. Other undesirable consequences that may result from poor design would include:

- attempting to create an exhaustive list of prescribed organisations could result in organisations and agencies having access to personal information that they don't need and leave the regime open to misuse and abuse
- without highly prescribed guidelines and protocols information could be collected, shared and used incorrectly putting women and children at risk.
- without appropriate frameworks for organisations to understand their obligations and responsibilities within the regime, and appropriate resourcing to facilitate this understanding, the regime may act as a practical impediment to information sharing.
- lack of a comprehensive implementation strategy which should be properly resourced and include extensive and expert family violence training would result in a failure to change information sharing culture, inappropriate or incorrect application of the law, and increased risks to women and children.

## Part 9 – Extending the information sharing regime beyond family violence

*n. Are you broadly supportive of legislative reform to support information sharing in context beyond family violence? Why or why not?*

As argued in response to Part 1 of this consultation paper, DV Vic is strongly opposed to extending the information sharing regime beyond the purpose of family violence. To do so would diminish its effectiveness to fulfil the purpose stated by the Royal Commission into Family Violence, to promote the safety and save the lives of women and children experiencing family violence.

### About Domestic Violence Victoria (DV Vic)

As the peak body for family violence services in Victoria, DV Vic has a broad membership of over 80 state-wide and regional family violence agencies across Victoria, which provide a variety of responses to women and children who have experienced family violence, including every specialist family violence service in Victoria. Our members also include community and women’s health agencies, some local governments and other community service agencies. DV Vic holds a central position in the Victorian integrated family violence system and its governance structures.

Since our establishment in 2002, DV Vic has been a leader in driving innovative policy to strengthen sectoral and system responses to family violence as well as building workforce capacity and representing the family violence sector at all levels of government. DV Vic provides policy advice and advocacy to the Victorian Government about family violence response and systems reform, and drives best practice through our role in the development and support of the statewide Risk Assessment and Management Panel (RAMPS).

DV Vic currently represents the Victorian family violence sector as Chair of the Statewide Family Violence Steering Committee and membership on the Family Violence Housing Assistance Implementation Taskforce as part of our key role in the implementation of recommendations of the Royal Commission in Family Violence.