Family violence information sharing legislation

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Executive summary

Women's Health West welcomes the opportunity to provide input into the family violence information sharing legislation consultations. The Royal Commission into Family Violence recommendations outline why intervention and response to family violence must be a shared responsibility between Commonwealth and state governments, the specialist family violence service sector, community services, the judicial system and Victoria Police.

Changes to the family violence information sharing legislation provide sustainable system-wide improvements that support the safety of women and children affected by family violence, hold perpetrators to account, and reduce the incidence of family violence in Victoria. Women's Health West supports legislation that is clear and concise and enables front-line practitioners to effectively apply it in practice. We strongly maintain that women and children's right to safety is given precedence over perpetrators' right to privacy, and that legislative reform must preserve women's right to control and consent to the sharing of their information. We provide the following recommendations to further strengthen the proposed family violence information sharing regime.

- **Recommendation one**: The family violence information sharing legislation should not be broadened to include information sharing for welfare purposes
- **Recommendation two**: The proposed legislation must allow prescribing organisations, as named in the discussion paper's appendix one, to share family violence information to enhance victim safety and perpetrator accountability
- **Recommendation three**: Specialist family violence services must be included in the legislative regime as prescribed intake services
- **Recommendation four**: Law enforcement data must be shared with intake organisations, including specialist family violence services, for the purposes of risk assessment and safety management
- **Recommendation five:** The *Family Violence Protection Act 2008 (Vic)* is amended to create a specific family violence information-sharing regime, and that this legislative regime interact with the Standards for Law Enforcement Data Security via the Act
- **Recommendation six**: The information sharing model is expanded to include information sharing provisions for third parties
- **Recommendation seven**: The information sharing model pertaining to third parties must require victim consent unless the risk threshold for serious or imminent has been met, while in instances where the third party is an associate respondent consent should not be required
- **Recommendation eight**: Consent for sharing children's information is provided by the victim. Young people over the age of 16 years should provide consent for the sharing of their information, unless they are not deemed competent or the threshold for 'serious or imminent threat' has been met
- **Recommendation nine**: The reforms must legislate that perpetrator consent is not required to share their information

- **Recommendation ten**: In conjunction with this legislative reform, the comprehensive review of the Family Violence Risk Assessment and Risk Management Framework needs to inform the definition of 'serious or imminent threat', and workforce development training is rolled out to support specialist and mainstream practitioners understand the threshold
- **Recommendation eleven**: Victim consent to share family violence information is paramount and must be the cornerstone of the reform agenda, unless when there is a serious or imminent threat to the life, health, safety or welfare of the victim
- **Recommendation twelve**: Significant government investment is required to upgrade integrated information technology systems, and a suite of initiatives across settings and sectors to establish a pro-active information sharing culture to support the family violence reform agenda

About Women's Health West

Since 1988, Women's Health West has actively contributed to the health, safety and wellbeing of women and their children in the western metropolitan region of Melbourne, which encompasses the local government areas of Brimbank, Hobsons Bay, Maribyrnong, Melbourne, Melton, Moonee Valley and Wyndham. Our core business includes the development and implementation of strategies to prevent, intervene and respond to the homelessness, ill-health, dislocation and trauma facing women and children who experience family violence. Women's Health West is a leader in the development of regional strategies to further this work, seeing partnership within and beyond the sectors in which we work as crucial for bringing about effective and sustainable outcomes for women and their children.

Our health promotion, research and development team offers a range of programs and projects targeted to prevention and early intervention strategies to improve outcomes for women, young people's and communities health, safety and wellbeing. A major organisational achievement has been the development of *Preventing Violence Together: Western region action plan to prevent violence against women* (2010). This coordinated, action-based collaboration between women's and community health, local government and primary care partnerships is designed to build sustainable environments through local initiatives for the primary prevention of violence against women and their children.

Since 1994, Women's Health West has delivered a wide range of effective high quality family violence services for women and children ranging from crisis outreach and court support, to housing establishment and crisis accommodation options, to counselling and group work programs. Women's Health West has been an active and strong supporter of family violence reform at a regional and statewide level, integrating and coordinating family violence services in our region, and ensuring the integration of those services with a range of related sectors, including housing, employment, health, and child and family support. Women's Health West is one of Victoria's only services that provide services and programs across the continuum of responses from primary prevention to early intervention to tertiary response. Our strategic plan sets out our approach to partnership and our client-centred approach to service delivery and outcomes that support women to take control over their decisions and their lives.

Response to the consultation questions

Women's Health West's response to family violence information sharing legislation is informed by the guiding design elements and principles as outlined by the Royal Commission into Family Violence. We support the Commission's recommendation that the *Family Violence Protection Act 2008* (Vic) be amended to create a specific family violence information sharing regime. This reform must also:

- Authorise specific organisations within the family violence service system to share information for the purposes of risk assessment and management that promotes the safety of women and children and holds perpetrators to account

- Support women's right to privacy and to provide informed consent to information sharing must be prioritised wherever possible, and ensure that information is gathered and used for its primary purpose of effective and timely response of risk assessment and safety management
- Mandate organisations to coordinate and integrate services and share information in line with the intent of the Family Violence Protection Act.

Women's Health West strongly support the design of legislation that is clear and concise and enables front-line practitioners to effectively apply it in practice. We also strongly support the legislative reform principle that women and children's right to safety is given precedence over perpetrators' right to privacy, and that legislation preserves women's right to control and consent to the sharing of their information. In line with Women's Health West's expertise as a specialist family violence service, this submission will respond to the consultation questions a, c, d, f, g, h, i, and m.

A). In addition to risk assessment and safety management, should the regime provide for information sharing for a broader purpose that includes welfare? Why or why not?

Information sharing about risk assessment and safety management within the integrated family violence service system is critical to the safety and protection of women and children and to hold perpetrators to account for their violent behaviour. Information sharing within this service system allows for intervention strategies that enhance case management support, coordination of safety planning, and provides increased clarity about the roles and responsibilities of the respective organisations and practitioners within the service system. Information sharing also ensures that women and children aren't required to repeat sensitive, personal and traumatic information to each service they access for safety and support.

Women's Health West welcomes the state government's commitment to removing barriers to information sharing within the family violence service system. However, we do not support changes to information sharing for the broader purpose of welfare. The Children, Youth and Family Act has welfare provisions for the sharing of information for children that ensure their health, safety and wellbeing. Women's Health West is strongly committed to a rights based approach when working with women and children who experience violence. Such an approach promotes social justice and women's right to respect, culturally-informed practice, to make informed decisions, and wherever possible, to provide consent to their information being shared among providers. Women's right to privacy must be prioritised during a time when their right to safety and respect has been violated.

In line with the Royal Commission's findings, appropriate information sharing must only occur for the purposes of risk assessment and risk management and effective referral to services that are best-placed and have a mandate to respond, such as, Victoria police, specialist services for women and children, perpetrator programs and other regional and statewide specialist services. The Commission also highlighted that expanding information sharing for the purposes of welfare may impede women's full disclosure of information that is essential for appropriate risk

assessment and management. This is particularly true for Aboriginal and Torres Strait Islander women, refugee and migrant women, women with a disability and women who have been incarcerated, who have often experienced a violation of their rights by welfare and government agencies. Information sharing for the purposes of welfare also increases the possibility of inappropriate information sharing, which in effect can heighten women and children's risk of further harm; for example, if their personal information was disclosed to a perpetrator, his family or a third party.

The risk experienced by women and children, particularly those at risk of death or serious injury due to family violence, is complex and dynamic. It requires organisations within the specialist family violence service system to have current up-to-date information that enables them to effectively monitor risk and enact their duty of care. The influx of additional welfare information for victims and perpetrators has the potential to make the system unwieldy, hard to define for purpose and unresponsive to the risks associated with family violence.

Recommendation one: The family violence information sharing legislation should not be broadened to include information sharing for welfare purposes.

> 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 one? If not, why and what alterative approach do you suggest?

Women's Health West supports the Commission and state government recommendation that the family violence information sharing regime should apply to prescribed organisations that include government and non-government sectors. We support state funded community services, courts, Commonwealth and state government agencies, intake organisations, hospitals, schools, the Victoria Police and register health professionals becoming prescribed organisations within the remit of sharing information for the strict purposes of family violence risk assessment and management. This will assist to remove legislative barriers that impede the effective and timely sharing of information for risk assessment and management and ensure that perpetrators are held to account for their violent behaviour. We also deem the introduction of prescribing organisations as a positive step forward in ensuring that these organisations better understand the risk associated with family violence and their obligations within the service system.

Defining these agencies as prescribing organisations also brings the legislation in line with, and legitimises, current family violence practice. A case in point is the implementation of the Strengthening Risk Management Program. This program provides a strengthened response to women and children at imminent risk of serious harm, including homicide, as an outcome of family violence. Central to the model are the multi-agency Risk Assessment and Management Panels or RAMPs. These formally and regularly-convened meetings enable rapid coordinated risk mitigation responses between agencies, through the sharing of critical information and the allocation of agreed actions that ensure the safety of the women and children concerned. In Melbourne's west, the RAMPs are coordinated by Women's Health West who is the specialist family violence service for women and children, and attended by members that include men's

family violence services, Child Protection, Child FIRST, community corrections, Victoria Police, mental health services, hospitals, housing services, and drug and alcohol services. The RAMP program has a memorandum of understanding between member core and non-core agencies, and at each meeting practitioners are required to sign an 'Individual RAMP Confidentiality Deem' on behalf of their organisation. This program is informed by a strong evidence-base and is a key example of how timely and effective information sharing about risk management supports victim safety and perpetrator accountability. The program provides a case study for how changes to the legislation to enable prescribing organisations to effectively share information will further strengthen the family violence service system reforms. Indeed, the proposed information sharing legislation should closely mirror and extend information sharing, as has occurred with the RAMPS.

Recommendation two: The proposed legislation must allow prescribing organisations, as named in the discussion paper's appendix one, to share family violence information to enhance victim safety and perpetrator accountability.

> D). Is prescribing 'intake' organisations by regulation a sensible approach (i.e. prescribing certain organisations as 'intake' organisations that can access a wider range of information for risk assessment purposes)? If so, are there intake organisations that should be added or removed from the proposed list in appendix one? If not, why and what alterative approach do you suggest?

Women's Health West supports the introduction of 'intake' organisations who would have legislative authority to request and access a wider range of information for risk assessment purposes than prescribing organisations. Appendix one outlines three organisations – the Men's Referral Service, Safe Steps Family Violence Response Centre, and the Safety and Support Hubs – to be prescribed as intake organisations. Women's Health West strongly recommends that in addition, all organisations within the family violence service system who are mandated to undertake comprehensive risk assessment be prescribed intake organisations who are able to access a wider range of information to inform risk assessment and management. Hence, the inclusion of specialist women's and men's family violence services, specialist family violence accommodation services such as refuges, and specialist family violence courts must be added to the information regime as intake organisations.

In line with best-practice, specialist family violence services must be able to consult with a wide range of organisations for the purposes of assessing women and children's risk and determining which other services are required to support effective referral and integration. Specialist family violence services have advanced skills, training and capacity to undertake comprehensive risk assessment (Department of Human Services, 2012). Comprehensive risk assessment has three interconnected components that include the victims' own assessment of her and her children's risk, evidence-based risk factors and the specialist practitioner's professional judgement (Department of Human Services, 2012). Its purpose is to determine the risk posed by the perpetrator that will affect the likelihood and severity of future violence in order to enhance the safety and recovery of victims. A core component of comprehensive risk assessment is to 'identify all of the possibly wide-ranging factors that impact on the victim's wellbeing, paying particular

attention to those that might make her or her children more vulnerable to the effects of violence or continued violence' (Department of Human Services 2012: 79). Specialist family violence services' core business is to undertake comprehensive risk assessment and management and hence they must be prescribed as intake organisations if they are to effectively increase safety, and prevent and reduce the risk of further harm to women and children.

A further consideration and potential unintended consequence of not including specialist family violence services as intake organisations is that victims who enter the service system via a state-wide referral service or a Safety and Support Hub will receive a more comprehensive initial risk assessment than victims who use a different entry point. For example, Women's Health West as Melbourne's western region's specialist family violence service, receives the L17 referrals from Victoria Police, as well as women who self-refer or are referred to our service by other agencies. There is a large cohort of victims (thousands per year in Melbourne's west alone) who will access the family violence service system and not have contact with Safe Steps or most likely the forthcoming Safety and Support Hubs. If specialist family violence services are not prescribed as intake organisations they will not be able to provide high quality integrated services to women and children, including those at greatest risk of harm and homicide. Indeed, there is a need to recognise the multiple service entry points for women and children, and therefore the definition of an intake organisation must be broadened to specialist family violence services to take this into account.

A further limitation of only prescribing services that provide an initial entry point to the service system as intake organisations – such as the Men's Referral Service, Safe Steps Family Violence Response Centre, and the Safety and Support Hubs - is that it ignores the dynamic and ever changing risk associated with men's violence against women and children, which is monitored over time by specialist family violence services. The Common Risk Assessment Framework outlined that:

> *Because risk levels can change quickly, risk must be continually reviewed via a process of ongoing monitoring and assessment. Victims of family violence must be linked with services that can provide ongoing risk assessment and case management, that is, specialist family violence service providers. These providers must build an ongoing review process into any case coordination or case management process, or as part of any regular client contact with counsellors or other health professionals.*
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> (Department of Human Services 2012:50)

Risk management strategies are integral to intake, ongoing assessment and case management and therefore it is essential that specialist family violence services are included as prescribed intake services.

Recommendation three: Specialist family violence services must be included in the legislative regime as prescribed intake services.

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?

Women's Health West strongly supports the sharing of perpetrator law enforcement data within the family violence service system for the purposes of risk assessment and safety management. The Royal Commission into Family Violence outlined how Victoria Police's inability to adequately share information about perpetrators with specialist family violence services and through the system was a dominant theme, the consequences of which can be catastrophic. Victoria's privacy legislation impedes Victoria Police and other government departments from providing information to specialist family violence services relating to perpetrators' criminal record, outstanding warrants, prior police contact in relation to family violence, contact with Child Protection or Child FIRST and whether they have deemed him as a recidivist violent offender responsible of harm, with a history of drug and alcohol and mental health conditions, and court orders. Specialist services and practitioners working with women and children require this information for comprehensive risk assessment that includes determining the presence of evidence-based risk factors and to inform their professional judgment regarding the level of risk posed by the perpetrator.

Law enforcement data provides information relating to perpetrator's violent and criminal behaviour, which supports comprehensive risk assessment and a greater understanding of the real risk posed by men who use violence against women and children. Victoria Police collect and use information that relates to perpetrator's criminal record, existing bail conditions, court orders, intervention order conditions, information about men's propensity for violence, access to weapons, and drug and alcohol abuse (Royal Commission, 2016: 157). The specialist family violence service system must be able to share this information routinely and quickly to monitor risk levels and ensure wraparound services to women, children and men in order to prevent and minimise further violence.

The Standards of Law Enforcement Data Security (Standards) are designed to ensure the security and integrity of law enforcement data. In line with the Commission's findings, Women's Health West supports an amendment to the Family Violence Protection Act to create and enable a specific family violence information-sharing regime, similar to that which is outlined for children in the Children, Youth and Families Act. We recommend that the proposed legislative regime interact with the Standards via the Act, and that prescribed 'intake' organisations that include specialist family violence services are able to access law enforcement data quickly and readily for the purpose of risk assessment and safety management. This will require significant investment to update information technology systems so that organisations within the specialist family violence service system can access integrated information that is available in real time.

Recommendation four: Law enforcement data must be shared with intake organisations, including specialist family violence services, for the purposes of risk assessment and safety management.
Recommendation five: The Family Violence Protection Act is amended to create a specific

family violence information-sharing regime, and that this legislative regime interact with the Standards for Law Enforcement Data Security via the Act.

> G). Should the information sharing model cover information sharing about third parties? Why or why not?

Women's Health West supports a new family violence information sharing model that enables information sharing about third parties, which includes information about 'protected persons', 'associated respondents', as well as criminal associates of the perpetrator. Understanding the risk the perpetrator poses to a third party (i.e. a member of the victim's extended family), as well as the risk posed to the victim by a third party (i.e. a criminal associate) contributes to risk assessment and management that includes effective safety planning for women and children. This enables greater rigour, consistency and effectiveness of the risk assessment process across the integrated family violence system.

We deem such a change to be important as it reflects the reality and complexity of high risk family violence cases. Women's Health West, for example, works to support high risk clients who are threatened and intimidated by the perpetrator, his family, friends and/or his criminal associates (particularly the case for perpetrators who engage in gang and drug related criminality), women who are escaping multiple violent ex-partners, as well as multiple victims of the same perpetrator. We also note that it is highly common for perpetrators to terrorise women, children, and their extended social support networks, which include family and friends. These interconnected relationships and associated risk factors interact in many complex ways, which need to be considered and actioned by organisations who are mandated to undertake risk assessment and management.

Recommendation six: The information sharing model is expanded to include information sharing provisions for third parties.

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

Women's Health West recommends that there is a distinction in the information sharing legislation between information sharing protocols and practices for protected persons, and associated respondents and criminal associates. Unless the risk threshold for serious or imminent risk has been met, Women's Health West recommends that seeking consent from a third party who is a victim of violence is paramount. This is important for a number of reasons that include ensuring victims provide informed consent, understand how their information will be used and for what purposes, as well as any possible direct or indirect consequences of sharing their information to inform risk assessment and management. However, in instances where the third party is a perpetrator of family violence or criminal associate we recommend that consent not be required.

Recommendation seven: The information sharing model pertaining to third parties must require victim consent unless the risk threshold for serious or imminent has been met, while in instances where the third party is an associate respondent consent should not be required.

> I). What is the most appropriate consent model under the new information sharing regime for victims, children, third parties and perpetrators?

Women's Health West strongly supports the Royal Commission's recommendation that victim consent to share family violence information must be the cornerstone of legislative reform. Privacy, confidentiality and gaining victim's informed consent is an ethical and critical component of working with women and children within a rights-based framework. Wherever possible, women must provide consent to their and their children's information being shared, understand why information is being collected, how they can access it, and the boundaries of privacy and confidentiality within a framework of duty of care (Domestic Violence Victoria, 2006:53). Women's Health West supports the recommendation that consent for sharing children's information must be provided by the victim. We also support the reform that perpetrator consent not be required to share their information. Women's Health West believes that this model appropriately balances the interests of all parties, and prioritises women and children's right to safety and respect over the perpetrator's right to privacy.

Women's Health West's preferred model of consent, as detailed in the consultation paper, is model two. We recommend that model two reflects the Commission's intent by outlining in the legislation that victim's consent must be obtained unless 'serious or imminent threat to life, health, safety or welfare of an individual because of family violence' (Department of Premier and Cabinet, 2016: 12). We therefore recommend that the wording in consent model two be amended to ensure that victim consent is required 'except where there is a serious or imminent threat' and ''obtaining consent is unreasonable or impractical. We would also like to bring attention to the Commission's report and our practice experience with comprehensive risk assessment, including the implementation of the RAMPs, that meeting the current threshold of 'serious and imminent' is difficult within the dynamic context of risk associated with family violence. This has subsequently prohibited efficient, appropriate and timely information sharing and service system response. The new legislation must therefore be clear about what risk factors are required to reasonably prove that the threshold of 'serious or imminent threat' has been met.

We recommend that in conjunction with this legislative reform, the comprehensive review of the *Family Violence Risk Assessment and Risk Management Framework* needs to inform what is defined as 'serious or imminent threat to life, health, safety or welfare of an individual because of family violence.' This review and supporting legislation requires additional government investment in workforce development training that is rolled out across the relevant government and non-government sectors to ensure that everyone (including support specialist and mainstream practitioners) supports and has a shared understanding of the threshold. Ensuring a standardised legislative framework that can be easily and consistently applied in practice is key to ensuring that women's right to provide consent is upheld and that organisations who have a mandate to act can do so in an efficient manner.

Women's Health West recommends that the legislation be underpinned by the principle that children have the right to privacy and to provide consent to their information being shared when they are competent to do so. A child's right to privacy also needs to be balanced with the reality that children exposed to family violence experience significant fear and distress, and are often coerced and threatened by the perpetrator to remain silent. The concept of a child being 'competent' to provide consent in relation to family violence information sharing must be clearly defined in the new legislative framework. The Health Records Act and Children, Youth and Families Act defines a child as 0 to 18 years. However, Victoria's new Child Safe Standards and Failure to Protect legislation defines a child as 0 to 16 years. In line with the Child Safe Standards, we recommend that the new legislation defines a child as 0 to 16 years. Therefore, consent for sharing a child's information will be obtained from the victim on their behalf, unless the young person is over the age of 16 years, in which case they will be required to provide consent to their information being shared within the context of family violence. This is unless they are not deemed competent or the threshold for 'serious or imminent threat to life, health, safety or welfare of an individual because of family violence' has been met.

Recommendation eight: Consent for sharing children's information is provided by the victim. Young people over the age of 16 years should provide consent for the sharing of their information, unless they are not deemed competent or the threshold for 'serious or imminent threat' has been met.
Recommendation nine: The reforms must legislate that perpetrator consent is not required to share their information.
Recommendation ten: In conjunction with this legislative reform, the comprehensive review of the Family Violence Risk Assessment and Risk Management Framework needs to inform the definition of 'serious or imminent threat', and workforce development training is rolled out to support specialist and mainstream practitioners understand the threshold.

> 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:
> i). act as practical impediment to information sharing?
> ii). give rise to undesirable consequences?

Women's Health West recommends, as outlined throughout this submission, that victim consent to share family violence information is paramount and must be the cornerstone of the reform agenda, unless the serious or imminent threat to life, health, safety or welfare threshold has been met. This design element is essential so that victims do not become reluctant or unwilling to disclose information relating to family violence. This is particularly important for women who experience high rates of discrimination, marginalisation and mistrust of government and welfare agencies, such as Aboriginal and Torres Strait Islander women, women who have had prior contact with the criminal justice system, refugee and migrant women, women with a disability, among others.

Legislative reform to enable information sharing throughout the family violence service system will reduce barriers to keeping victims safe and holding perpetrators to account. However, as outlined by the Royal Commission, 'the lack of information sharing culture and leadership in regards to sharing family violence risk information; and reliance on outdated IT systems' (2016: 155) also affects organisations ability and willing to effectively share family violence information. Significant resources must be allocated to upgrade information technology systems that support integration and access to timely information to assess and manage risk for all organisations who are mandated to undertake comprehensive risk assessment and management. Government and non-government leadership, workforce development, training and support, and appropriate policies, procedures and practice frameworks, are needed to develop an information sharing culture. This also requires significant investment, and a commitment to continuous quality improvement, monitoring and evaluation. Women's Health West recommends that the state government commit to review timelines in collaboration with the sector to evaluate and further refine the proposed legislative changes over time. Sector-wide cultural change is long-term work that requires a suite of initiatives and strategies across a range of settings and sectors to build a pro-active information sharing culture throughout the Victorian family violence service system.

Recommendation eleven: Victim consent to share family violence information is paramount and must be the cornerstone of the reform agenda, unless when there is a serious or imminent threat to life, health, safety or welfare.
Recommendation twelve: Significant government investment is required to upgrade integrated information technology systems, and a suite of initiatives across settings and sectors to establish a pro-active information sharing culture to support the family violence reform agenda.

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