



No To Violence
Men's Referral Service

Submission: Sharing Information about Child Safety and Wellbeing

25 January 2017

No To Violence Incorporating the Men's Referral Service (NTV/MRS) and Domestic Violence Victoria (DV Vic) submit the following comments in response to the *Consultation Paper: Proposed legislative model for Child Safety and Wellbeing Information Sharing* released by the Nous Group on 30 November 2016. We welcome the opportunity to contribute to this process.

As the peak representative bodies for specialist family violence services in Victoria, we support the Victorian Government's commitment to implement the recommendations of the Royal Commission into Family Violence in full. The Royal Commission highlighted the need for a range of reforms for Victoria to respond comprehensively to family violence, and crafted its recommendations to promote system-wide cohesion and collaboration.

Given this context, we are concerned by the proposed legislative changes to enable information sharing in relation to children's safety and wellbeing, which overlap with and contradict key features of reforms proposed by the Royal Commission. In highlighting these concerns, we reaffirm the importance of children's safety and wellbeing. We agree that service systems responding to children must be strengthened to collaborate more effectively. It is our shared view that the changes proposed in the consultation paper do not address the issues emphasised by the Royal Commission, and the paper does not sufficiently address the potential implications of the proposals.

For these reasons, based on the available information, DV Vic and NTV/MRS have serious concerns that the proposed changes will actively undermine the recommendations of the Royal Commission into Family Violence, and potentially the Government's commitment to the full implementation of those important and transformative recommendations. In that context, as the peak representative bodies for specialist family violence services, we recommend that the proposed information sharing regime for child safety and wellbeing is rejected.

With these overarching considerations this submission makes specific comments on the proposals in the consultation paper, and makes recommendations before any changes, both legislative and mechanisms for data collection and sharing, proceed.

Yours sincerely



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About Domestic Violence Victoria

As the peak body for family violence services in Victoria, DV Vic has a broad membership of more than 80 state-wide and regional family violence organisations across Victoria that provide a variety of responses to women and children who have experienced family violence. Our members include every specialist family violence service, community health and women's health agencies, 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.

Our vision is for a world where women and children can live fulfilled lives, free from fear and violence. To achieve this we:

- advocate and provide advice to government with and on behalf of our members
- lead innovation and influence policy, legislation and community attitudes
- work with our members to strengthen specialist family violence practice and build the capacity of human services to respond to family violence
- work respectfully and collaboratively with all our partners, and
- are informed by the experiences of women and children affected by family violence.

About No To Violence Incorporating the Men's Referral Service

No To Violence incorporating the Men's Referral Service (NTV/MRS) is the Victorian peak body for organisations and individuals working with men to end their violence and abuse against family members.

NTV/MRS oversees the minimum standards of practice for men's behaviour change programs delivered by more than 100 members, delivers the Graduate Certificate in Male Family Violence which is the core required qualification for facilitators of Men's Behaviour Change Programs in Victoria, provides professional development training to organisations in the family violence sector, welfare and community sectors and is currently exploring training relationships with workplaces in both the public and private sectors. NTV/MRS undertakes practice and policy development work to ensure men who use violence are held accountable for their behaviour.

The Men's Referral Service has had over 150,000 conversations with men about their use of violence over the last 23 years. MRS currently engages with more than 10,000 men who use violence per year in Victoria, New South Wales, Tasmania and across Australia. MRS provides the follow up to all weekend police incidents in Victoria – more than 17,000 per year – and provides follow up to all 40,000 men assessed to be victims in family and domestic violence incidents in NSW. In total, NTV/MRS provides support for more than 70,000 men affected by family violence each year.

A legislative basis for a child safety and wellbeing information sharing regime

Interaction with recommended Family Violence Information Sharing Regime - Context

DV Vic and NTV/MRS concerns about how the proposed child safety and wellbeing legislative model for information sharing integrates with the Family Violence Information Sharing legislation and system reforms. This was not clarified in the brief paragraph in the consultation paper, or in responses to our questions at the consultation workshop on 12 January 2017.

Given that the consultation paper presents the proposed family violence information sharing regime as the basis of these changes, it is concerning that the paper does not accurately reflect the status of the family violence legislation as we understand it. The legislation is still in development (following consultations, submissions and follow up meetings on the consultation paper in 2016) and it is expected there will be further stakeholder input into a final draft. We anticipate extensive consultation on an exposure draft of the legislation will take place in early 2017. We are therefore concerned that the assumptions made about the family violence legislation in the consultation paper are misleading for stakeholders within, and outside, the family violence sector.

Furthermore, the consultation paper does not articulate the broader context and rationale for changes in which the family violence information sharing legislation sits as one element of the 227 system-wide reforms recommended by the Royal Commission.

The Family Violence Information Sharing Regime

The purpose of Royal Commission's comprehensive reforms is the safety and wellbeing of women and children affected by family violence and the accountability of perpetrators. The family violence information sharing legislation is only one important element of the system-wide reforms. The specialist family violence sector and practitioners working in family violence recognise that this purpose will not be achieved without improved practice, stronger relationships between services, and a well-resourced system. The effectiveness of the legislation will be contingent on broad-based practice development across all sectors in: family violence risk identification and assessment; system and service integration; professional collaboration; training and professional development; and policy development.

The Royal Commission into Family Violence recommended that "the Victorian Government amend the *Family Violence Protection Act 2008* (Vic) to create a specific family violence information-sharing regime [within 12 months]. The new regime should be consistent with the guiding principles and design elements described in this report."

The family violence information sharing regime is explicitly about addressing the safety risks for women and children affected by family violence. The parameters, the purpose and the thresholds for information sharing will be clearly articulated, as will be the requirements for consent, to achieve this purpose.

Specifically, the purpose for the information sharing reforms recommended by the Royal Commission is to overcome the current siloing of information about perpetrators of family violence and to keep perpetrators 'in view'. The associated information technology systems are therefore being developed in a way that centres the cause of the risk – the perpetrator of violence.

The family violence information sharing regime would involve the following parameters:

- A clear threshold to establish that there is risk from family violence before information can be shared
- Consent from victims to their information being disclosed to another party, unless there is a serious threat of harm
- Consent is not required to disclose information about a perpetrator of family violence
- Consent is required to disclose information about third parties
- Clear roles and responsibilities for agencies who determine whether there is a risk of family violence.

Concerns with the proposed model for child safety and wellbeing information sharing

Based on information in the consultation paper and at the consultation workshop, the proposed regime will be applied in a much broader and less prescribed way, with a purpose of early intervention and prevention in relation to an undefined concept of child safety and wellbeing. While this is clearly important work, the lack of clear definitions, risk thresholds and other practice safeguards makes this proposed model substantially different to the proposed family violence information regime.

The regime proposed in the consultation paper is not specific about the risks involved. This regime would provide a broader scope for sharing information and a larger number of organisations and individuals would be able to access information about families. This also increases the risk of intentional misuse of information, discrimination, and deterrence from seeking help.

Key design principles of the proposed child safety and wellbeing information sharing regime could potentially undermine the family violence information sharing scheme, particularly safeguards against perpetrators accessing information about women and children affected by family violence. The proposed 'principles to guide information sharing in the family violence context' would not be sufficient to safeguard against misuse of personal information under the proposed child safety and wellbeing information sharing regime. These implications have not been considered in the consultation paper.

With the two schemes operating simultaneously, many organisations are likely to be confused as to their obligations under each scheme. There are likely to be many organisations that will be authorised to disclose information under the child safety and wellbeing information sharing regime, while being restricted from doing so under the family violence information sharing regime. We are concerned that this may lead to information relating to people affected by family violence being disclosed where it should not be, and further adverse consequences as a result of this occurring.

A significant risk is that a large number of women are incorrectly identified by police as the perpetrator of family violence when police attend family violence incidents. This occurs for a range of reasons in which police are not sufficiently informed and skilled in family violence perpetrator assessment. This problem would be compounded with the proposed child safety and wellbeing regime in operation, potentially leading to many women's information being disclosed to a range of agencies, with further adverse consequences that may follow for these women. There are no safeguards for these situations within the legislative changes proposed in the consultation paper.

It is critical that the relationship between these two proposed information sharing regimes is clearly articulated. Without this, we are concerned that the implementation and effectiveness of both will be undermined. We are particularly concerned to ensure that the implementation of the RCFV

recommendations is not derailed by this or any other concurrent processes. We believe that a well-developed discussion paper with a fully explicated background, rationale, evidence, details and options for the child safety and wellbeing information sharing should provide the basis for further consultations. This is essential for the proper integration of these pieces of legislation and their associated systemic and practice changes.

We recommend that

- a) More time, information, and further cross-sectoral consultation is required to ensure that this proposed legislation works with, and enhances, mechanisms to protect the safety and wellbeing of people affected by family violence and people at risk of other forms of abuse and neglect;
- b) that the time required for further consultation would allow the family violence information sharing regime to be introduced and its effectiveness monitored and evaluated. The information sharing for child safety and wellbeing, if necessary, could build upon, and integrate with that regime, strengthening outcomes for both;
- c) an analysis of the recommendations from the Child Death Reviews is undertaken within the context of the family violence information sharing regime to determine whether and in what ways the proposed child safety and wellbeing information sharing regime would improve outcomes.

A new child safety and wellbeing information sharing regime for Victoria

Family violence is a leading cause of risk to children. Over 71 per cent of substantiated cases reported to child protection have identified family violence as a factor and 50 per cent of families referred to ChildFIRST have had family violence identified.¹ Therefore the family violence context must be considered as a major factor in the design and implementation of reforms relating to child safety and wellbeing. We also know that children and their families come into contact with services that may not identify family violence as a risk factor. The existence of two incompatible information sharing regimes could potentially place both children and their mothers at greater risk.

NTV/MRS and DV Vic support simplifying and clarifying information sharing responsibilities under the *Children Youth and Families Act 2005* (Vic) to enable a more collaborative approach between child protection, family services and specialist family violence services to keep children safer. NTV/MRS members report frequent concerns and confusion regarding mandatory reporting requirements, and the scope of their authorisation to request information from the Department of Health and Human Services when working with a family with child protection contact. Similarly, as well documented by the Royal Commission into Family Violence, the intersection between specialist family violence services for women and children is a complex and sensitive area. However, NTV/MRS and DV Vic cannot identify a compelling rationale for the implementation of the changes proposed in the consultation paper. We therefore do not support the changes as proposed.

DV Vic and NTV/MRS do not agree with the proposed principle that sharing information is always in the best interests of children. Privacy and data protection are as important as information sharing to ensuring safety and wellbeing. In a family violence context, protecting privacy is a critical measure to

¹ Victorian Government (2016) *Roadmap for Reform: Strong Families, Safe Children*, Melbourne, p. 3.

ensure safety. For example, we are aware of cases where systems have resulted in a perpetrator accessing information about a child, enabling him to place the child at risk.

Furthermore, the risk of discrimination and deterring service use must be considered. Fears that information will not be confidential can often deter women experiencing family violence from accessing support and consequently reduce reporting. This is particular concern for Aboriginal and Torres Strait Islander women, with the risk increased where there are measures to share their information without their consent. This may undermine the intended benefits of the proposed information sharing scheme, particularly to those groups who experience additional family violence-related risks and barriers.

Changing practice and cultures

The provisions for sharing information relating to child wellbeing and safety in Chapter 16A of the *Children and Young Person (Care and Protection) Act 1998 (NSW)* are cited as the basis for the proposed changes. However, the evaluation of the Keep Them Safe reforms to child protection in NSW, which was the context for the introduction of Chapter 16A, describes the success of the information exchange legislation as being more mixed.² Overall, the reforms have not resulted in the intended outcome of reducing the numbers of children in out-of-home care, and reducing reports to the child protection Helpline.

From NTV/MRS' perspective of operating the Men's Referral Service telephone service in NSW, and delivering a response to men assessed by NSW police as victims of family violence, the Chapter 16A provisions are not as widely utilised as intended. Rather, it is structural changes such as the introduction of new services such as Child Wellbeing Units, and proactive promotion and training around the legislative changes, have been an important to enabling a collaborative approach to intervening early with children at risk.

In many cases, these cultural and practice changes would not require legislative change. A training and sector capacity building approach to promoting appropriate information sharing would yield significant benefits without the risks posed by the proposed scheme.

Information sharing must be enabled to meet the purposes intended by the proposed legislative reforms – 'Child Link'

DV Vic and NTV/MRS recognise the potential benefits of a systemic response to overcome service system complexity and fragmentation. The final section of the consultation paper refers to the development of a 'child information link', a universal database, as the best way to address this. Again the minimal information and lack of evidence provided in the paper and at the workshop raises more questions and concerns for our organisations than answers. Prompted by the lack of background in the paper we have sought further information from the Department of Education, resulting in a helpful

² Cassells, R. et. al. (2014), *Keep Them Safe Outcomes Evaluation Final Report*, Sydney: NSW Department of Premier and Cabinet, p. 86.

conversation and follow up information.³ However, NTV/MRS and DV Vic continue to have significant questions and concerns about the Child Link proposal.

Given the obvious human rights and privacy implications for a state wide database that uses an individual indicator to collect and monitor information from birth, we are particularly concerned that the proposed information system will be implemented without requiring parental consent. Best practice principles for information sharing are based on the premise that consent will always be sought and only over-ridden where clear thresholds around safety exist. Seeking consent allows those who are reluctant to voice their concerns and to enable a conversation about the purpose and benefits for the data collection and sharing. DV Vic and NTV/MRS believe this is an essential human rights first principle. Overturning it requires considerable evidence that there will be demonstrable benefits. In this case, we believe this has not been provided. Other questions about the types of information on the database remain unanswered, for example, whether Children's Court orders will include orders relating to youth justice as well as child protection, and how long the information on the database will be live and accessible.

We have joined with a number of the organisations consulted on this proposal in writing to the Department of Education calling for further information and consultation on the Child Link proposal.

We recommend that

- a) a detailed consultation paper is developed on the proposed Child Link database that includes background, rationale and demonstrable evidence of how the database will improve outcomes for vulnerable children and families in practice. It should include other examples where such a database is used and provide analysis of other options to overcome system complexity and fragmentation and
- b) time is allowed for further consultation before this model is progressed.

Process concerns

Finally, NTV/MRS and DV Vic wish to register our general concerns about the consultation process for this proposal. We believe that the safety and wellbeing of women and children is rightly a priority for government and our community. We are committed to the implementation of the recommendations of the Royal Commission into Family Violence to ensure better responses to those affected by family violence and we recognise that information sharing across services and systems is an important way to achieving this. We also understand that finding the balance between risk and privacy is a complex and nuanced process. Because of this, significant changes as proposed in this model require proper consultation with appropriate information.

In this case, we wish to note, as stakeholders, the consultation process has fallen well short of expectations. The timeframe for consideration, consultation and response was extremely, and impractically, short, especially given the holiday period. Our organisations were not advised on these proposed changes until we received the consultation paper in the final weeks of 2016, we attended a workshop on 12 January with submissions due one week later on the 20 January. The consultation

³ The Department of Education has been invited to present to the Statewide Family Violence Steering Committee on the 'Child Link' proposal.

paper itself provided little or no background, rationale or purpose for the changes. Rather it presumes the implementation of a legislative model (and the Child Link database) and seeks responses on largely technical questions. As outlined earlier, it does not articulate how the model would integrate with the family violence information sharing legislation or system reforms and the consultation workshop provided no further information.

We have had to independently seek information on the Child Link database, and we are very grateful for the information provided by the Department of Education, but believe, at a minimum, that information should have been in the consultation paper.

Given the concerns outlined in this submission, DV Vic and NTV/MRS strongly recommend that consultation on the proposed legislative model for Child Safety and Wellbeing Information Sharing is extended; and that substantially more information is provided to facilitate a proper informed consultation process. We also want to register our organisations' serious concerns that without this further work there is a very serious risk that this process will have a detrimental impact on the progress of the family violence information sharing reforms and result in potentially worse outcomes for women and children.

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