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Consultation Paper

Proposed legislative model for Child Safety and Wellbeing Information Sharing

30 November 2016

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Contents

Executive Summary 3
1 Introduction 5
2 Challenges with the current legislative system highlight the case for change 8
2.1 The laws governing information sharing are complex and confusing 8
2.2 A current approach creates information bottlenecks 8
3 A new child safety and wellbeing information sharing regime for Victoria 10
3.1 Broad permissions to share information are clearly established 10
3.2 Principles limit inappropriate sharing of information 11
3.3 Organisations that can share information are clearly prescribed 12
3.4 An appropriate balance is struck between voluntary and mandatory sharing of information 13
4 The role of consent and sharing information beyond the 'trusted circle' 15
4.1 The role consent should play in limiting the sharing of information is unclear 15
4.2 The ability to share information with a child, parent or carer must also be settled 16
5 Parallel reforms will influence the scope of the information sharing scheme for children and young people 17
5.1 Impact of proposed Family Violence Information Sharing Legislation 17
5.2 Information sharing must be enabled to meet the purposes intended by the proposed legislative reforms 18

Executive Summary

Key reforms are proposed to child safety and wellbeing information sharing in Victoria

In its final report delivered in March 2016, the Royal Commission into Family Violence (**RCFV**) identified information sharing as a fundamental component of an effective family violence system that keeps victims safe and makes perpetrators accountable for their actions. The RCFV recommended that Victoria create a specific family violence information sharing regime in legislation.

On 24 November 2016, the Victorian Government's launched its ten year plan, *Ending Family Violence: Victoria's Plan for Change*. A key component of the plan will be the creation of a specific family violence information sharing regime which will mean a person's safety will trump a perpetrator's right to privacy.

Further to this work, the Victorian government is looking at whether reforms are needed to improve the system of information sharing that supports child safety and wellbeing in Victoria for children at risk of violence and other forms of harm.

Inquiries have highlighted the need for better information sharing to support improved child safety and wellbeing outcomes. Victoria's current legislative frameworks for information sharing in a child safety and wellbeing context could be improved. This would help to address issues of complexity, silo-isation, narrow circumstances for sharing and a lack of systematic sharing of information.

A national and international best practice review of child safety and wellbeing information sharing systems has been undertaken. This review established that any new legislative regime for information sharing in a child safety and wellbeing context should be based on best practice principles. New South Wales offers a model which could be adapted in Victoria to drive change. The system established in Chapter 16A of the *Children and Young Persons (Care and Protection) Act* (1998) NSW (Chapter 16A) incorporates a range of features identified as critical to effective information sharing systems relating to children.

The system established under Section 16A in NSW has several key features which could be used as a base for the reforms in Victoria. In particular Chapter 16A:

- clearly establishes what information can be shared, and when, without using complex tests or threshold questions
- expressly clarifies which organisations are able to share information and when they must share information
- places appropriate restrictions on information sharing by reference to best practice principles.

Chapter 16A does not represent a complete solution for Victoria. Any system adopted in Victoria will need to be modified to make it relevant and adapted to the context of the jurisdiction. These modifications must include agreement on the role consent. They must also establish when information about the safety or wellbeing of a child can be shared with the child, parent or carer.

Further, the introduction of a new legislative system for child safety and wellbeing information sharing in Victoria must be supported by appropriate links with other legislation and enablers. Any new legislation in Victoria must take into account the substantial recent reforms to family violence legislation in order to ensure a consistent experience for stakeholders and practitioners. New legislation could also be supported by an appropriate platform to enable the exchanges of information required.

Stakeholder input is required to test proposed reforms

In order to test the conclusions outlined above, the response of your organisation is sought in respect of the following questions:

a. Based on your experience, do you agree with the legislative challenges identified above? Why or why not?

b. Based on your experience, are there other legislative barriers to information sharing in the context of child safety and wellbeing?

c. Which approach to the issue of a "threshold" for information sharing should Victoria's proposed regime adopt:

   - a "concern" threshold prior to information being shared; OR
   - a system with "no" threshold similar to NSW's Chapter 16A (i.e. information only has to be related to a child's safety or wellbeing prior to information being shared)?

   Why or why not?

d. Do you think that the list of principles is appropriate? Should any principles be added to or removed from the list?

e. Do you think there are any specific organisations or workforces that should be included or excluded from Victoria's proposed information sharing scheme? If so, please identify and provide rationale.

f. Are there any grounds for refusal on the excluded information list that should be added or removed? If so, please identify and provide rationale.

g. Do you think consent model 1 or consent model 2 is preferable for the child information sharing regime? Why?

h. Are there other models of consent that should be considered?

i. Should a prescribed organisation be able to share information with a child, parent or carer to manage a threat to the child's safety? Should this list be narrowed or expanded?

j. Is "managing a threat to the child's safety" an appropriate test for the sharing of information outside the trusted circle of prescribed organisations? Should the test be expanded to managing a threat to a child's safety or wellbeing?

k. Would a systematic and proactive approach to sharing key information (e.g. service participation) assist prescribed organisations in forming an overall assessment of the cumulative risk factors associated with a child?

l. Would this approach also assist prescribed organisations to identify when vulnerable children are participating in key services?

m. Should data and de-identified information be linked to more effectively evaluate programs, design and plan services for children?

n. Are there any additional risks associated with implementing a child information link as a means for facilitating information sharing as intended by the new legislation?

You can respond to these questions by following the link set out in the email in which you received this document. If you have any questions about this paper, the consultation process or the online response to the questions please contact Mark Schultz by email at mark.schultz@nousgroup.com.au or by phone on 03 8638 4114.

1 Introduction

The RCFV and numerous inquiries have highlighted the need for better information sharing to support improved child safety and wellbeing outcomes. As part of the Coronial inquest into the death of Luke Batty, Judge Gray stated:

> *Real time updated information sharing between agencies … is a key element in in a fully integrated system, and … is a necessary pre-cursor to interventions which can be taken to promote safety and save lives.*[1]

In his 2014 annual report[2], the then Commissioner for Children and Young People found that of the 27 death inquiry reports reviewed, there were 16 that highlighted issues relating to service coordination, collaboration, communication, information sharing and lack of case conferences. One example was baby "Aaron" where:

> *The planning surrounding Aaron's discharge from his birth hospital appeared to lack the communication necessary to ensure that the vulnerabilities within the family were understood by the services that were to become involved post discharge and that adequate supports were in place for the family in the community.*

Efforts to improve information sharing must be multi-faceted to be truly successful. Legislation is only one aspect that must be addressed alongside other reforms including upgrades to information technology systems, bolstering effective leadership and investment and development of workforce capabilities. **Note that this consultation paper only relates to legislative reform.**

Victoria's current legislative frameworks for information sharing in a child safety and wellbeing context could be improved. An analysis of the current laws governing information sharing for child safety and wellbeing identified four key challenges that highlight the need for change.

These are as follows:

- **The laws governing information sharing are complex and confusing** – The provisions relating to information sharing are spread out across a range of acts including the *Children, Youth and Families Act 2005* (CYFA), the *Privacy and Data Protection Act 2014* (PDPA) and the *Health Records Act 2001* (HRA). The RCFV found that complex, confusing and restrictive legislation and policy poses real barriers to information sharing. This has the effect of creating confusion and a risk-averse culture to information sharing, which means that perceptions of privacy barriers are often deeply entrenched even where privacy legislation permits otherwise. The information sharing reforms for family violence and child safety and wellbeing will be clear and succinct so it can be effectively applied by front-line workers.
- **The current approach creates information silos and bottlenecks** – Under the current legislative system, information relating to child safety and wellbeing can be provided to DHHS (e.g. Child Protection and to a more limited extent, Child FIRST) with relative ease. However, it is substantially more difficult for information to be shared out from DHHS to stakeholders who may require it. Further, information cannot easily be shared between organisations outside of DHHS who work with children and young people in a safety and wellbeing context. To better identify and protect children at risk, information from a number of sources needs to be shared to ascertain an accurate picture of risk to the child.
- **The circumstances in which information can be shared are narrowly defined** – The current legislative regime focuses on care and protection rather than early intervention. This places significant limits on when Child Protection can share information with others to in a prevention and early intervention context. For example, information sharing is often only permitted in relation to a child who is the subject matter of a protective intervention report where the child is in need of protection (which is a relatively high threshold), rather than children more broadly where there are concerns for their safety or wellbeing.

[1] Victorian State Coroner (2015) Finding Inquest Into the Death of Luke Geoffrey Batty, 77
[2] Commission for Children and Young People Annual Report 2013–2014

- **The ability to systematically share information is limited** – Government and service providers are unable to form an aggregate picture of risk to facilitate early intervention and prevention of harm to a child. The lack of reliable information about participation in services means we cannot confidently identify and respond to cases of serious non-participation in services, and some families go ‘off the radar’. There is an inability to know whether vulnerable children are engaged in the services they are entitled to and the impact of interventions requires more timely and accurate data for effective program and policy evaluation, design and planning.

Best practice models for change

There is a lack of international or Australian consensus how to approach information sharing in a child safety and wellbeing context. New South Wales, the United Kingdom and Scotland are each recognised as having effective systems of child safety and wellbeing information sharing. Despite being recognised for their respective successful systems, each state takes a significantly different approach:

- **New South Wales:** New South Wales has adopted a regime which permits information sharing between prescribed entities for broad purposes relating to child protection. The act compels the sharing of information relating to the safety, welfare or wellbeing of a child or young person between bodies including NSW Police, public service agencies or authorities, schools, public health organisations and private health facilities upon request. This Act overrides other legislation to the extent that it is inconsistent with it, creating a clear hierarchy which can be easily followed.
- **United Kingdom:** In the United Kingdom, the *Children Act 2004* (UK) imposes a broad responsibility for child welfare and requires a prescribed list of state bodies to “safeguard and promote the welfare of children”. In carrying out this duty, the Act creates specific permissions for information sharing amongst specified state actors[3]. Where the Children Act 2004 (UK) does not explicitly allow information sharing, the Data Protection Act 1998 (UK) creates a framework for sharing additional information.
- **Scotland:** In Scotland, the *Child and Young Persons (Scotland) Act 2014* (UK) has a clear standard which balances both benefits and risks. Under the Scottish system information can be shared only “if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so”[4]. A statutory “named person” is responsible for supporting children and young persons and coordinating services (including information sharing) around them. The legislation covers young persons where they attain the age of 18 and remain enrolled in school[5].

A review of the information sharing systems operating in New South Wales, the United Kingdom and Scotland did, however, highlight consistent elements of practice and behaviour that supported safe and effective information sharing. This review identified five elements of ‘best practice’ which could underpin legislative reform.

A new legislative regime should provide for:

1. **Clear thresholds for sharing information** responsive to the volatility of child protection cases and capable of being applied by frontline workers with limited legal knowledge
2. **Obligatory sharing principles** which remove the need for negotiations about the sharing of information between organisations
3. **Regulations which prescribe the individuals, organisations and agencies** permitted to share information, which are uniform across the legislation with clearly marked exceptions.
4. **A clear legislative hierarchy** which gives child safety primacy over privacy protection in situations relating to the safety and wellbeing of children

[3] *Children Act 2004* (UK) ss2F, 12D, 14B, 41.
[4] The information sharing provision in the Scottish Act will be amended before it comes into force due to an appeal to the Supreme Court of the United Kingdom which ruled that it is in breach of the right to privacy (Article 8) of the *European Convention on Human Rights.* This approach has been included despite the ruling because Victoria has a different legal human rights framework.
[5] *Child and Young Persons (Scotland) Act 2014* (UK), s22

5. **Stewardship,** whereby organisations are encouraged to cooperate to promote the safety and wellbeing of children and young people (and in particular where one entity is responsible for coordinating services around a particular child).

The application of each of these key features in each jurisdiction is out lined in Figure 1 below:

Figure 1: Jurisdictional comparison

	NSW	UK	Scotland
Clear thresholds	Reasonable belief that this would assist the recipient to make any decision, initiate any investigation or provide any service, relating to the safety, welfare or wellbeing of a child or young person	*Children Act*: need to safeguard and promote the welfare of children	*CYPA*: If the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so
Obligatory sharing	Permissive	Obligatory	Obligatory
Prescribed organisations	NSW Police, public service agencies or authorities, schools, public health organisations and private health facilities	*Children Act 2004*: local authorities, health authorities, police, prison officials, college principals	CYPA: service provider in relation to a child or young person
Hierarchy	Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* overrides other legislation	The *Data Protection Act 1998* is explicitly overridden, the legislation is silent on overriding other Acts	The *Data Protection Act 1998* is explicitly overridden, the legislation is silent on overriding other Acts
Stewardship	Formal stewardship is not present, however guidelines encourage cooperation.	'Data controllers' defined in *Data Protection Act* Local Safeguarding Children Board	'Named person' to coordinate services

The NSW system, set out in Chapter 16A of the *Children and Young Persons (Care and Protection) Act* (1998) (Chapter 16A) incorporates each of the features set out above. This regime, adopted in 2009, permits information sharing between prescribed entities for specified purposes relating to the safety and wellbeing of children and young people. The NSW system has been the subject of a review conducted by the University of New South Wales[6] which provided a favourable account of its operation since its introduction.

[6] Matthew Keely et al, *Opportunities for Information Sharing: Case Studies - Report Prepared for: NSW Department of Premier and Cabinet,* April 2015 < https://www.sprc.unsw.edu.au/media/SPRCFile/SPRC_Report__Opportunities_for_Information_Sharing.pdf >

2 Challenges with the current legislative system highlight the case for change

2.1 The laws governing information sharing are complex and confusing

The RCFV found that complex, confusing and restrictive legislation and policy poses real barriers to information sharing in a family violence context. Similarly, information sharing in a broader context of child safety and wellbeing is supported by a complex set of provisions. These provisions are spread out across three key Acts – the CYFA, the PDPA and the HRA. The CYFA itself is a complex act – it contains over 100 sections related to information sharing that are dispersed throughout the Act. It can be difficult for individuals and organisations to correctly interpret and apply this legislation. This has led to confusion for practitioners and entrenched a culture of risk aversion in relation to information sharing. A lack of consistency in how different situations are treated under the CYFA is a particular challenge. In certain circumstances Child FIRST can consult with 'Information Holders' (including medical practitioners and teachers) for risk assessment, but not for service planning.[7]

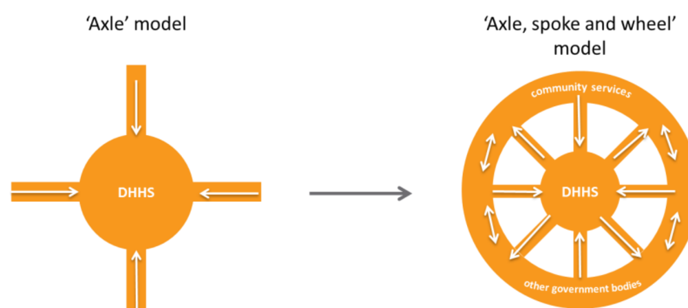
Privacy legislation adds additional complications to the interpretation and application of the legislation in Victoria. Privacy legislation (i.e. the PDPA and HRA) operates in parallel to the CYFA, governing the sharing of information where the CYFA is silent. These acts require organisations to understand different tests and standards to those found in the CYFA to determine whether information can be shared. To further complicate matters, organisations may also be subject to Commonwealth privacy law.

If the complexity of the legislation is reduced, and the thresholds for sharing information made clear, individuals and organisations will be able to determine when they can share information. This is likely to improve outcomes for children as it will improve the speed with which an organisation can determine if they are able to share information relevant to the safety and wellbeing of a child.

2.2 A current approach creates information bottlenecks

The current information sharing regime in Victoria centralises information in DHHS and creates limited opportunities for it to be exchanged. The CYFA establishes an 'axle' model where 'inward' flows of information to DHHS from other organisations are permitted, but 'outward' flows are quite limited. There is also no practical ability for other organisations to directly exchange information with each other outside the 'axle' occupied by DHHS. By contrast the approach taken in NSW allows for 'spokes' and a 'wheel' to be added to the 'axle'. As is illustrated by Figure 2 below, moving from the 'axle' approach in Victoria to a system similar to NSW would allow greater scope for the sharing of information.

Figure 2: 'Axle, spoke and wheel' model



[7] CYFA, ss 36(2) and 36(3)

The current system makes virtually no provision for direct exchange of information between the organisations that are best placed to identify risks to the safety and welfare of children. Lateral sharing of information between organisations is generally prohibited unless the organisation sharing information obtains consent or there is a serious or imminent threat to a child, which is a high threshold.

The circumstances in which information can be shared are narrowly defined

The highly prescriptive nature of the current regime limits the range of situations in which information regarding the safety and wellbeing of a child can be shared The CYFA contains detailed and very specific limitations on the circumstances in which information can be shared. In certain circumstances these limitations may be counterproductive. A more permissive information sharing system would help to avoid uncertainty in respect of sharing vital information regarding the safety and wellbeing of children. It would also help to prevent situations in which information is not shared – despite sharing being important and warranted – because it is specifically prohibited by the Act.

For example, under the CYFA, at an investigation stage, Child Protection can only share information with an individual if it is reasonably necessary to investigate the subject matter of a protective intervention report about a child (s 205). The key limitation is that this information sharing is only permitted in relation to a child who is the subject matter of a protective intervention report, rather than children more broadly where there is a concern for their safety or wellbeing. It also doesn't allow proactive information sharing in circumstances where it is not necessary to further a Child Protection investigation but may otherwise promote the safety and welfare of a child.

More flexible information sharing will result in better outcomes for children

There is strong evidence that the limitations in the current system negatively affect the safety and wellbeing of children. This structural arrangement, not only leads to delays in information sharing, but more problematically, the silo-isation of information. This in turn reduces the likelihood that necessary early intervention services can be provided to children and their families. In practical terms, this may prevent an accurate picture of 'cumulative harm' where single pieces of information held by each organisation may not in themselves trigger the relevant risk threshold for action, but when taken together may represent a very different risk profile.

A system which allows for more free exchanges of information between organisations can better promote the safety and wellbeing of children. For example, research commissioned by the national Royal Commission into Institutional Responses to Child Sexual Abuse found evidence to suggest that circumstances in which one agency (i.e. child protection) controls information without the ability for information to flow between external sources:

> *….is not the most effective mechanism for sharing information… Regimes that allow front-line professionals in government agencies and non-government organisations to exercise their judgment and to share information laterally appear to be a more effective approach.*

A move to an 'axle, spoke and wheel' system similar to that implemented in NSW is therefore justified by the likely positive impact it will have on the safety and wellbeing of children.

Consultation questions

a. Based on your experience, do you agree with the legislative challenges identified above? Why or why not?
b. Based on your experience, are there other legislative barriers to information sharing in the context of child safety and wellbeing?

3 A new child safety and wellbeing information sharing regime for Victoria

3.1 Broad permissions to share information are clearly established

Broad and clear permissions for sharing information will allow practitioners to share information confidently and avoid a risk-averse culture when it comes to information sharing.

Chapter 16A in NSW establishes clear broad permissions for information sharing. It provides that an organisation that is a prescribed body is permitted to share information relating to the safety, welfare or wellbeing of a particular child or a class of child to assist another organisation. This permission arises provided the recipient organisation will use the information to undertake one a range of activities relating to the safety, welfare or wellbeing of a child or class of children. Provided that purpose is satisfied, information can be shared to help an organisation:

- make a decision, assessment or plan
- initiate or conduct any investigation
- provide any service relating to the safety, welfare or wellbeing of the child or class of children
- manage any risk to the child (or class of children) that might arise.

There is no minimum risk threshold that needs to be established, prior to information being shared under 16A in NSW. This has clear benefits as it enables information to be shared quickly and without the need for substantial legal expertise. It also avoids situations where a group of organisations cannot share information – that would demonstrate a risk to a child if aggregated – because no single piece of information held by any of the organisations demonstrates a risk by itself.

However, a very broad permission to share information may present risks to privacy or be subject to misuse. The formulation of Chapter 16A places very few limitations on the sharing of information. In certain circumstances this may impinge on the privacy rights of individuals whose information might be shared under the scheme. A Chapter 16A style provision also allows for information sharing even in circumstances where no risk to the safety or wellbeing of a child is perceived, so long as the information *relates* to the safety and wellbeing of that child. This may result in 'over sharing' of information. To address these risks, a possible threshold could be introduced in Victoria so that information sharing is permitted where there is a "*concern in respect of the safety or wellbeing of a child or class of children*".

Consultation questions

c. Which approach to the issue of a "threshold" for information sharing should Victoria's proposed regime adopt:

- a "concern" threshold prior to information being shared; OR
- a system with "no" threshold similar to NSW's Chapter 16A (i.e. information only has to be related to a child's safety or wellbeing prior to information being shared)?

Why or why not?

3.2 Principles limit inappropriate sharing of information

A broad system of information sharing can be safely and effectively managed provided its implementation and operation is governed by appropriate principles. The operation of the Chapter 16A system in NSW is moderated by a set of principles that guide information sharing. This principles-based approach helps to moderate the impact of Chapter 16A, despite is very broad formulation in legislation[8]. It is proposed that a similar approach is taken in Victoria and incorporate some of the "*best interest principles*" set out in the CYFA and in the principles for children included in the *Child Wellbeing and Safety Act* 2005.

In recognition of the recommendations from the RCFV, it is proposed that any guiding principles established for information sharing in Victoria should be informed by the approach taken in the family violence context. This will ensure that individuals and organisations have a consistent experience when using and interacting with these related systems of information sharing and management.

General principles

A set of general principles to guide information sharing under the proposed scheme could include the following:

- Sharing information in the best interests of children, to protect and promote their safety or wellbeing is paramount. This takes precedence over the protection of confidentiality or of an individual's privacy.
- Prescribed organisations should only share information that abrogates another person's right to privacy and confidentiality to the extent necessary to protect and promote the safety or wellbeing of children.
- When sharing information, prescribed organisations should take steps to recognise the wishes and identity of the child and their family wherever appropriate. This means taking into account:
  - the desirability of strengthening, preserving and promoting positive relationships between the child and the child's parent, family members and persons significant to the child;
  - factors like the child's social, individual and cultural identity and religious faith; and
  - the child's age, maturity, sex and sexual identity.
- Where sharing information in relation to children from an Aboriginal background, prescribed organisations should take into account the need to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community.

Additional principles to guide information sharing for children in a family violence context

Any guiding principles established for information sharing in Victoria should also be informed by the approach taken in the family violence context. This will ensure that the system that governs information sharing for children also incorporates the recommendations from the Victorian Royal Commission into Family Violence. As a result, individuals and organisations have a consistent experience when using and interacting with these related regimes for information sharing.

In particular, the principles will be framed to ensure prescribed organisations are mindful of the specific dynamics and impacts family violence can have on children and their non-violent parent and exercise particular care when sharing information. This set of principles could be formulated to include the following:

- When sharing child safety and wellbeing information in the context of family violence, prescribed organisations should recognise that family violence is an attack not just on an individual, but on their whole family and any parent-child relationships that exist within it.

[8] s 245A of the *Children and Young Person (Care and Protection) Act 1998 (NSW)*

- In these situations, prescribed organisations should share information in a way that maximises the safety of both the child and the non-violent parent. Wherever possible, this should include:
  - sharing information that keeps the perpetrator accountable and avoids victim blaming;
  - sharing information, with a view to strengthening and validating the non-violent parent-child relationship;
  - assisting the child or young person and non-violent parent to understand the degree of any risk to the safety and wellbeing of the child posed by family violence;
  - being honest about the fact that, even in the absence of consent, the prescribed organisation may share information about the child (and about anyone else, where that information is inextricably linked with information about the child) with another prescribed organisation to promote and protect the safety or wellbeing of the child.

Consultation questions

d. Do you think that the list of principles is appropriate? Should any principles be added to or removed from the list?

3.3 Organisations that can share information are clearly prescribed

It is important for an effective information sharing system that it is immediately obvious who can share, and who can receive, information under that system. This ensures that participants in the system can quickly identify their right to share information even in high pressure, time critical, scenarios. The required level of clarity is best achieved through setting out a list of 'prescribed organisations' who are permitted to share information under the scheme.

Similar to the approach in NSW, it is proposed that the categories of prescribed bodies will be set out in both legislation and by regulation. One of the benefits of this combined approach is that it provides sufficient flexibility to add or remove organisations as appropriate. In Victoria, the following broad categories of organisations could be prescribed to share information under the scheme:

- Victoria Police
- State government departments
- community services that are state funded (aged care services, child and family services, childcare services, preschool, maternal child health services, supported playgroups, disability services, drug and alcohol services, family violence services, health care services, homelessness services, mental health services, out of home care services, sexual assault services)
- Courts (Magistrates' Court, Children's Court, County Court, Supreme Court, Victorian Civil and Administrative Appeals Tribunal)
- Relevant Commonwealth agencies (noting this would allow Victorian organisations to consult with Commonwealth agencies, but the legislation would make clear that Commonwealth agencies are not required by Victorian law to comply)
- Schools (public and private), TAFE or other entities that provide educational services to children and young people (e.g. pre-schools, child care centres and early childhood learning services)
- Hospitals (public and private)
- Support and Safety Hubs (when established)
- Certain workforces including registered health professionals (e.g. nurses, medical practitioners, psychologists) and registered school teachers and principals.

The regulations accompanying NSW's Chapter 16A include a broad category covering any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care,

welfare, education, education and care services, children's services, residential services, or law enforcement, wholly or partly to children. On its face, this would enable organisations such as sporting clubs and faith based youth groups to be included as part of the information sharing regime. Further consideration should be given to whether this would be appropriate in a Victorian context.

Consultation questions

e. Do you think there are any specific organisations or workforces that should be included or excluded from Victoria's proposed information sharing scheme? If so, please identify and provide rationale.

3.4 An appropriate balance is struck between voluntary and mandatory sharing of information

An effective system of information sharing must encourage organisations to share information in the ordinary course of their operations. This can be achieved through permitting prescribed organisations to share information with other prescribed organisations, at any time, of their own volition. It must, however, be supported by obligatory information sharing provisions, triggered when a prescribed organisations determines that they require information held by another prescribed organisation.

NSW's Chapter 16A operationalises this approach as it permits information sharing that is both voluntary and also obligatory:

- Chapter 16A permits a prescribed individual, organisation or agency (the provider) to provide information to another prescribed individual, organisation or agency (the recipient) if the provider reasonably believes that the provision of the information would assist the recipient with the purposes set out above in section 3.
- Chapter 16A also establishes an obligatory model of information sharing – triggered upon request. A prescribed individual, organisation or agency (the requesting entity) may request another prescribed individual, organisation or agency (the responding entity) to provide the requesting entity with any information they hold that relates to the safety or wellbeing of a particular child or class of children. The requested entity is then required to comply with the request if it reasonably believes, after being provided with sufficient information by the requesting entity to enable the other body to form that belief, that the information may assist the requesting entity for any of the purposes set out above.
- Information may only be withheld in response to a request unless the information is specifically excluded from the information sharing scheme (**excluded information**). Where a responding entity declines to provide information on the grounds that it is excluded, it must formally notify the requesting entity that it is refusing the request and reasons for refusal in writing.

It is proposed that the information sharing scheme in Victoria will adopt both the voluntary and obligatory elements reflected in Chapter 16A. Similar to the NSW's approach, it is also proposed that the legislation would set out a discrete list of excluded information. For example, responding entities could decline to provide information if it reasonably believes that to do so would:

- endanger a person's life or physical safety; or
- prejudice the investigation of a contravention (or possible contravention) of a law; or
- prejudice a coronial inquest or inquiry; or
- contravene legal professional privilege or client legal privilege; or
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained; or
- prejudice a court proceeding; or
- contravene a court order; or
- be contrary to the public interest.

In the Victorian context, there may need to be additional grounds available to Child Protection to withhold certain types of information from being shared. These would be justified due to the sensitivity of the information Child Protection holds; the extensive powers given to Child Protection to obtain information during the course of investigations; and, the specialist skills and training of Child Protection practitioners.

Consultation questions

f. Are there any grounds for refusal on the excluded information list that should be added or removed? If so, please identify and provide rationale.

4 The role of consent and sharing information beyond the 'trusted circle'

4.1 The role consent should play in limiting the sharing of information is unclear

There is no clearly agreed approach to consent with regard to information sharing in the context of child safety and wellbeing. Different domestic and international systems apply distinct approaches – however most of the best practice jurisdictions reviewed do not mandate consent under their equivalent legislation governing information sharing about children and young people.

NSW's Chapter 16A does not directly address the issue of consent in its legislation. However, the NSW Guidelines makes clear that:

> *"**Consent is not necessary for exchange of information under Chapter 16A**. However as it is a principle of the Act that a child or young person should be given an opportunity to express views on personal matters, consent should be sought where possible. Best practice also recommends that consent is sought from family members before information relating to them is exchanged.*
>
> *It is important that organisations providing a service to a child, young person or their family inform them early on what information may be provided to other organisations, if practicable."*

Consideration needs to be given as to the most appropriate consent model that should govern Victoria's child safety and wellbeing information sharing scheme. The table below outlines two consent models that could be pursued under Victoria's proposed child safety and wellbeing information sharing scheme, with pros and cons listed.

The issue of consent is particularly relevant given the breadth of information that is likely to be shared under the scheme proposed for Victoria. The type of information that is likely to be shared under the proposed scheme will not only be limited to the personal or health information of the child. It will also include information about the child's family and other third parties (where relevant).

<table>
<tr><td colspan="2">Model 1 – "no consent" model

Legislation does not require consent to be obtained for the exchange of information, but this expectation is set out as part of good practice in accompanying guidelines (as per NSW)</td></tr>
<tr><td>Pros</td><td>Cons</td></tr>
<tr><td>• Provides practitioners with a clear mandate that the safety or wellbeing of a child is paramount and takes precedence over an individual's right to privacy
• Sends strong signals to overcome cultural risk aversion issues
• Information can be shared more quickly and expeditiously</td><td>• Does not give due emphasis to the importance of an individual's capacity to consent (e.g. mature young person) or an individual's right to privacy, agency and choice
• Raises particular tensions in a family violence context where consent of adult victims (i.e. non-violent parent) might be by-passed. This goes against the consent model recommended by the Royal Commission into Family Violence, with its emphasis on victim empowerment and preservation of victim confidence in terms of how their information is shared.</td></tr>
</table>

<table>
<tr><td colspan="2">Model 2 – “consideration of consent” model

Legislation requires consideration be given to whether consent should be sought or not in the relevant circumstances, which is to be guided by the best interests of the child principles.

In practice, depending on what is in the best interests of the child, this might mean consent is sought (where relevant) from the individual whose information is being shared (e.g. child, parent or third party).</td></tr>
<tr><td>Pros

• Requires that a more nuanced approach be taken to the issue of consent, which gives due emphasis to the importance of an individual’s capacity to consent (e.g. mature young person) or an individual’s right to privacy, agency and choice
• Better aligns with the directions of the Royal Commission into Family Violence</td><td>Cons

• Practitioners may find this consent model confusing to apply
• Unlikely to shift risk-averse cultures
• Information is unlikely to be shared as quickly or expeditiously given this consent model is less straightforward to apply</td></tr>
<tr><td colspan="2">Consultation questions
g. Do you think consent model 1 or consent model 2 is preferable for the child information sharing regime? Why?
h. Are there other models of consent that should be considered?</td></tr>
</table>

4.2 The ability to share information with a child, parent or carer must also be settled

In circumstances where there is a protective parent or carer, it may be vital for prescribed organisation to be able to share information with that person in order to assist them to protect or manage a risk to the child. It also may be important to share information with a child to assist the child to assess and manage their own risk. Provisions of this nature are not included in Chapter 16A in NSW but may be appropriate to include in the Victorian model.

A provision could be included in the Victorian equivalent of 16A which allows a prescribed organisation to share information with a child, a person with parental responsibility for a child or a person with whom the child is living if it is necessary to manage a threat to a child’s safety. For example, a prescribed organisation would be able to share information with a mother that the father (her ex-partner) has relapsed into illicit substance use. This information would enable the mother to act protectively to manage the risk should the father attempt to have contact with the child.

Conversely, there may be a risk of unintended consequences if information were to be provided beyond the ‘trusted’ circle of prescribed organisations, particularly given the breadth of information that has the capacity of being shared without consent. For this reason, it is proposed that information sharing directly be linked to managing a risk to safety of a child where it is being shared with a child, parent or carer.

Consultation questions
i. Should a prescribed organisation be able to share information with a child, parent or carer to manage a threat to the child’s safety? Should this list be narrowed or expanded? j. Is “managing a threat to the child’s safety” an appropriate test for the sharing of information outside the trusted circle of prescribed organisations? Should the test be expanded to managing a threat to a child’s safety *or wellbeing*?

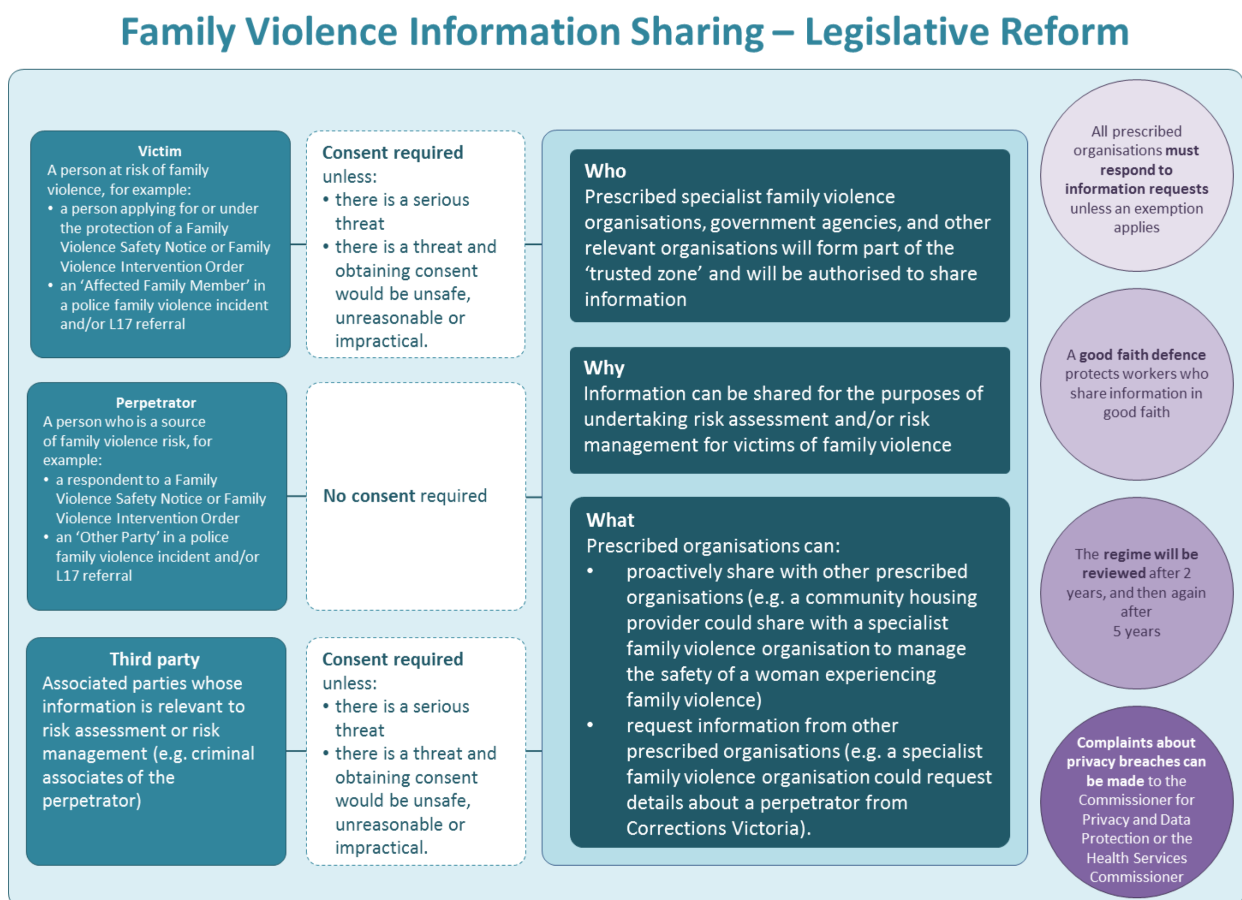
5 Parallel reforms will influence the scope of the information sharing scheme for children and young people

5.1 Impact of proposed Family Violence Information Sharing Legislation

In August and September this year, the government consulted widely with stakeholders on different facets of the proposed Family Violence Information Sharing Legislation (**FV Legislation**). In response to stakeholder feedback, the Victorian government is currently preparing legislation to respond to Recommendation 5 of the RCFV. Broadly speaking, the RCFV recommended model has design elements similar to NSW's Chapter 16A.

The FV Legislation will create a trusted circle of information sharing organisations who are permitted to handle information about a victim, a perpetrator and/or a third party in order to assess or manage risks of family violence related harm. It is intended that both the proposed children's legislation and the FV legislation will operate in a complementary and aligned manner. The FV Legislation will operate as illustrated in Figure 3 below.

Figure 3: Family Violence Information Sharing Legislative Model



5.2 Information sharing must be enabled to meet the purposes intended by the proposed legislative reforms

The fragmented nature of childhood service provision makes it difficult to share relevant information even where the legislation permits it

In addition to these legislative barriers outlined above, there are also a number of practical difficulties that limit the ability of practitioners to engage in appropriate information sharing.

For example, the provision of early childhood services to children in Victoria is complex and fragmented, including over 4,000 services, spanning three tiers of government, within a market of private providers, community services organisations. In this context, assessing a young child's vulnerability and relevant risks can be challenging from the perspective of an individual practitioner; it can be difficult to determine whether it is necessary to request or proactively share information, and to identify which organisations should share the information.

This means that even with the implementation of legislation in Victoria equivalent to NSW's Chapter 16A – which would permit voluntary, proactive and obligatory information sharing between prescribed organisations – barriers would still prevent the effective and timely sharing of information in the interests of a child's safety and wellbeing and to optimise their development. Systematised data collection and sharing is one mechanism for addressing this fragmentation and creating a cohesive, child centred service offering.

Information about a child's participation in the services they are entitled to can be an indicator of vulnerability in its own right, and will enable more effective follow up by practitioners to ensure the delivery of these services, particularly for vulnerable children. Not least, it will go a long way towards ensuring children do not 'fall off the radar'.

Without a systematised method to enable information sharing across prescribed organisations, the intended outcomes of the proposed legislative changes may not be realised to the extent required to effectively support and promote the safety and wellbeing of Victorian children. It is therefore proposed to enable information about children's participation in childhood services (such as maternal child health service, supported playgroups, kindergartens and school) to be shared between prescribed organisations without consent, so that organisations will be better able to identify vulnerable children earlier, to take action to protect them from harm, and to ensure they are participating in the services they are entitled to – a fundamental pillar of early intervention.

A child information link will automatically provide key information to authorised professionals about a child they are working with to inform a more accurate aggregate picture of risk, consistent with proposed 16A model.

It will also support the timely collaboration and connection of prescribed organisations who are working with, or have worked with the child, to facilitate the exchange of more detailed relevant information informed by their professional judgement. For example, child protection would be able to see whether a child is participating in kindergarten or the maternal child health service and vice versa, and would have ready access to the contact details for the relevant services. Professional's case notes and children's health records would not be shared proactively through the linked system. Only information about enrolment and participation in funded programs would be shared.

In addition it is proposed to use data and information sharing to understand the nature and impact of child interactions with government agencies and programs, i.e. to create de-identified longitudinal data for effective program and policy evaluation, design and planning.

Consultation Questions

k. Would a systematic and proactive approach to sharing key information (e.g. service participation) assist prescribed organisations in forming an overall assessment of the cumulative risk factors associated with a child?
l. Would this approach also assist prescribed organisations to identify when vulnerable children are participating in key services?

m. Should data and de-identified information be linked to more effectively evaluate programs, design and plan services for children?
n. Are there any risks associated with implementing a child information link as a means for facilitating information sharing as intended by the new legislation?