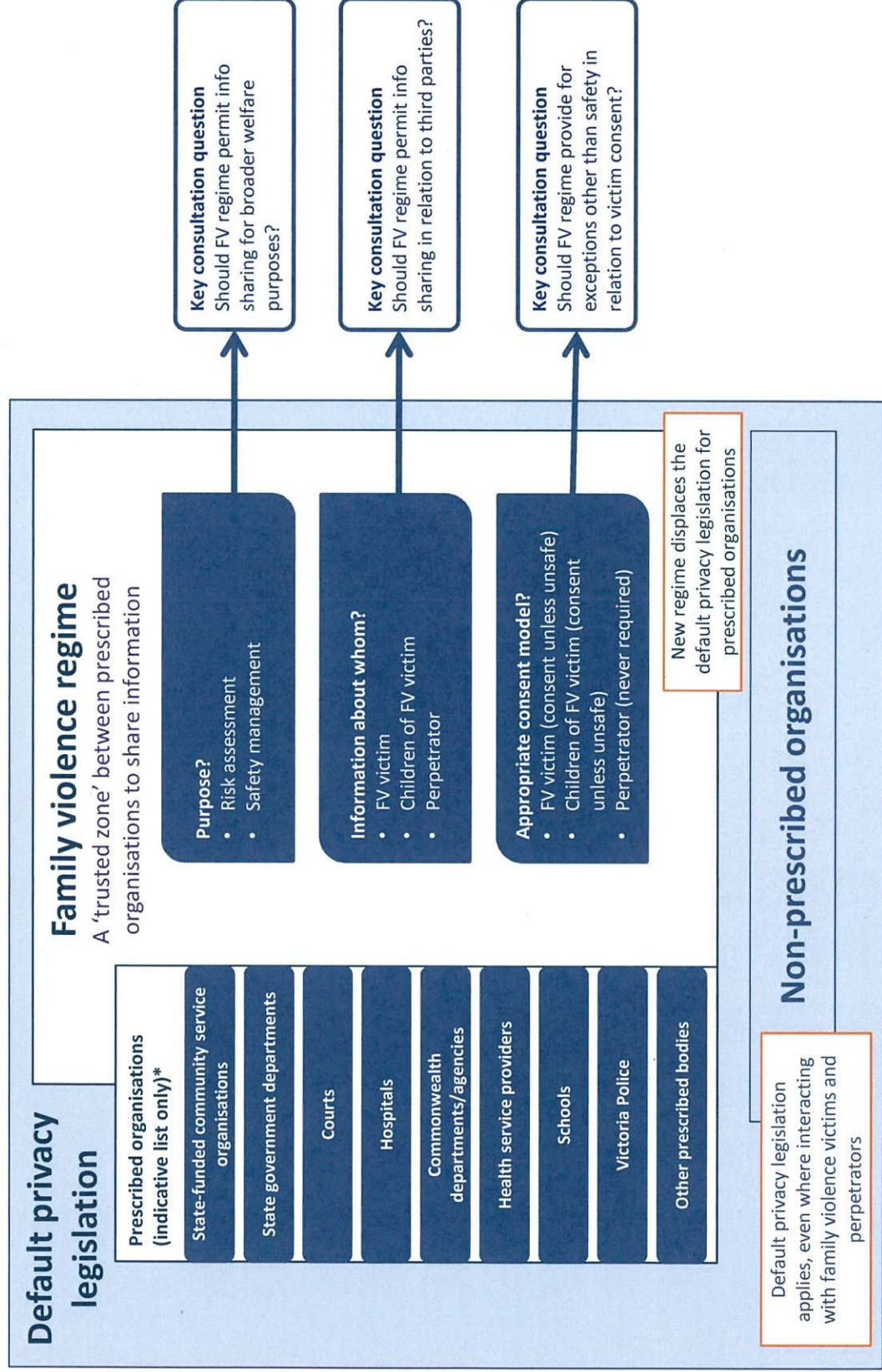


Proposed family violence information sharing model



* Based on the Royal Commission's report

Family violence information sharing legislation

Consultation questions

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Executive summary

The Victorian Government has committed to implementing the recommendations of the Royal Commission into Family Violence (Royal Commission), which includes recommending the creation of a specific family violence information sharing regime.

The Department of Premier and Cabinet (the Department) is developing a proposal for legislation consistent with the principles and design elements outlined in the Royal Commission's report. Importantly, the proposed regime will re-calibrate the balance of a victim's right to safety and a perpetrator's right to privacy in favour of the victim.

The purpose of this consultation is to determine the approach to issues where:

- the legislative model proposed by the Royal Commission requires further detail, or
- the Royal Commission model could be enhanced to cover a broader range of information or circumstances.

The Department is seeking responses to consultation questions on issues including the purpose of the regime; who is covered; the type of information being shared, and about whom; consent; and the implications of the regime.

The specific consultation questions are as follows:

Part 1 - Purpose of the information sharing regime	
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? Please provide relevant examples.
b.	If a broader purpose is adopted, should information sharing be restricted in any way?
Part 2 - Organisations covered by the information sharing regime	
c.	Is prescribing organisations by regulation a sensible approach? If so, are there organisations that should be added or removed from the proposed list in Appendix 1? If not, why and what alternative approach do you suggest?
d.	Is prescribing 'intake' organisations by regulation a sensible approach? If so, are there 'intake' organisations that should be added or removed from the proposed list in Appendix 1? If not, why and what alternative approaches do you suggest?
Part 3 - Types of information exempt from being shared	
e.	Are there any exceptions to information sharing outlined in section 3 that should be added or removed? If so, please outline.
f.	Should law enforcement data be shared for the purposes of risk assessment and safety management? If so, how should the proposed legislative regime interact with the Standards for Law Enforcement Data Security?

Part 4 - Information sharing about whom	
g.	Should the information sharing model cover information sharing about third parties? Why or why not?
h.	Are there any protections that should be incorporated into the new legislative regime to protect privacy or safety rights of third parties?
Part 5 - Consent	
i.	What is the most appropriate consent model under the new legislative regime for victims, children, third parties and perpetrators?
Part 6 - Interaction of the family violence information sharing regime with other laws	
j.	Are there any secrecy and confidentiality provisions in other laws that need to be explicitly overridden by the new family violence legislation? Why?
k.	Are there any secrecy and confidentiality provisions in other laws that need to be explicitly preserved by the new family violence legislation? Why?
Part 7 - Other design elements of the Royal Commission's proposed regime	
l.	<p>Do you have any comments on the other design elements of the information sharing regime proposed by the Royal Commission?</p> <ul style="list-style-type: none"> - access to shared information - protection for people sharing information - penalties for inappropriate information sharing - complaints about information sharing - data quality and data security.
Part 8 - Implications of the proposed information sharing regime	
m.	<p>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:</p> <ul style="list-style-type: none"> - act as practical impediments to information sharing? - give rise to undesirable consequences?
Part 9 - Extending the information sharing regime beyond family violence	
n.	Are you broadly supportive of legislative reform to support information sharing in contexts beyond family violence? Why or why not?

Background

"[I]nformation sharing between agencies ... is a key element in a fully integrated [family violence] system, and... a necessary precursor to interventions which can be taken to promote safety and save lives".¹

"Effective and appropriate information sharing is crucial... [for] keeping victims safe and holding perpetrators to account ... Improving information sharing is a vital next step in the development of Victoria's family violence system".²

Both the Coronial inquest into the death of Luke Batty and the Royal Commission highlighted critical shortcomings in information sharing and recommended action.

The Victorian Government has committed to implementing all recommendations from both the inquest and the Royal Commission. As part of this work, the Department engaged KPMG to identify and analyse legislative and policy impediments to sharing relevant information in the family violence context.

Consistent with the findings of the Royal Commission, KPMG found that complex, confusing and restrictive legislation and policy poses real barriers to information sharing in family violence cases. 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.

Building on the findings of the Royal Commission and KPMG, the Department is preparing legislation to respond to Recommendation 5 of the Royal Commission that Victoria create a specific family violence information sharing regime in legislation.³

The Royal Commission made a number of findings pertaining to information sharing that clearly demonstrate the need for a program of related reforms to facilitate better information sharing in family violence situations (see Figure 1). **Note that this consultation only relates to the legislative components set out in Recommendation 5.**

Figure 1 Information sharing related reforms



Legislative and policy review including:

- Legislating for specific family violence information sharing regime (Rec 5)



Leadership and culture change including:

- Creation of a Working Group overseen by the Victorian Secretaries Family Violence Sub-Committee to assist with development of an information sharing culture (Rec 6)



Service and system re-design including:

- Creation of a Central Information Point (Rec 7)
- Creation of 17 Support and Safety Hubs (Rec 37)



Upgrades to IT and improvements to data collection including:

- Equipping IT systems to use system data for performance evaluation (Rec 8)
- Develop single case-management system (Rec 9)

¹ Victorian State Coroner (2015) *Finding Inquest Into the Death of Luke Geoffrey Batty*, 77.

² Royal Commission into Family Violence (2016) *Volume I Report and Recommendations*, 155.

³ See Chapter 6 of the Royal Commission into Family Violence (2016) *Volume I Report and Recommendations*.

Guiding principles for legislative reform

In developing the new information sharing regime, the Department will be guided by the following principles set out by the Royal Commission:

- **simplicity and clarity** – the legislation will be clear and succinct so it can be effectively applied by front-line workers
- **safety first** – the legislation will re-calibrate the balance of a victim's right to safety and a perpetrator's right to privacy in favour of the victim
- **appropriate protections** – notwithstanding this recalibration, the legislation will displace existing privacy protections only to the extent necessary and also preserve victims' control over sharing of their information.

Summary of the Royal Commission's model

Currently, there is no legislation that specifically authorises information sharing in the family violence context. The Royal Commission therefore recommended the creation of an information sharing regime specific to family violence, which would explicitly displace default privacy legislation that generally governs when personal or health information can be shared.

The Royal Commission's proposed model creates a trusted circle of prescribed organisations who are permitted to share information to assess risk and manage safety. The Royal Commission recommends an obligatory, rather than mandatory model of information sharing.

The Royal Commission's proposed regime would permit prescribed organisations to request information for risk assessment and safety management purposes. Prescribed organisations would be obliged to respond to these requests unless legitimate grounds for refusal existed (see proposed grounds set out in section 3).

Significantly, under the Royal Commission's model, perpetrator consent is not required for information sharing to occur. The Royal Commission's model, however, makes clear that victim consent should be paramount in the new regime and information sharing without victim consent can only occur if there is a serious or imminent threat to the life, health, safety or welfare of an individual (see related discussion at section 9).

Summary of the Royal Commission's model – key issues for consideration

1. What should the purpose of a family violence information sharing regime be?

The Royal Commission proposes that the new information sharing regime should serve two key purposes – namely, authorising prescribed organisations to share information when this is necessary for:

- risk assessment and service referrals
- managing risks to safety.

Risk assessment (including service referrals)

The Royal Commission's model specifically authorises a sub-set of prescribed organisations known as intake organisations to collect information from any other prescribed organisation when it is necessary for them to do the following:

- conduct a family violence risk assessment
- determine which service(s) are appropriate to help a victim or perpetrator
- refer a victim or perpetrator to the appropriate service(s).

No specific or identifiable risk, or magnitude of risk, needs to exist for information sharing to occur for the purposes of risk assessment and service referral. This means that neither those organisations seeking information nor those responding to requests for information need to be satisfied that a risk exists prior to sharing information.

More detail on intake organisations is set out under section 2.

Safety management

Under the Royal Commission's model, information about a victim and perpetrator can be shared by prescribed organisations if the organisation **reasonably believes that sharing the information is necessary to manage a risk to safety of the victim.**

In contrast to risk assessment, both the organisation requesting information and the organisation responding to requests need to be satisfied that sharing the information is necessary to manage a risk to safety.

Additionally, the Royal Commission's model envisages that if it is necessary to share information about the perpetrator with the victim in order to manage a risk to safety, this would be permissible under legislation.

Note that the test as to whether information sharing is permissible is linked to the purpose of information sharing (i.e. is it necessary to manage risk to safety?), rather than any potential magnitude of the risk.

Building on the Royal Commission model?

A broader formulation of the purpose of an information sharing regime could be adopted that potentially allows for earlier intervention and welfare-based preventative action in the family violence context. This could be modelled on Chapter 16A of the NSW child protection legislative scheme that currently applies to children and young people.⁴

Adapted to a family violence context, the model could, for example, permit information sharing where it would reasonably assist the information recipient make any decision, initiate any investigation or provide any service related to managing threats to life, health, safety or welfare of an actual or potential victim of family violence. Legislation that enables information sharing across this full spectrum might assist family violence victims to not only keep safe but also recover and rebuild their lives.

⁴ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C.

There may, however, be some potential risks of broadening information sharing in this way – in particular, information sharing for welfare may lead to victims being reluctant to disclose information if they felt their information might be used for the more nebulous purposes (other than safety). Information sharing based on welfare concerns might also introduce irrelevant information that makes the system unresponsive – for example, information that is relevant to safety might not be sufficiently identified and prioritised due to the increased flow of information.

If the information sharing regime is broadened to welfare, differentiated approaches to information sharing might need to be introduced in recognition of the fact that information sharing about victim, perpetrator and third parties could be more necessary for the purposes of risk assessment and safety management, but less necessary for the purposes of ensuring victim welfare (for example, the legislation might limit the sharing of information to victim information only where it is related to welfare purposes). Another approach could be to require a minimum risk threshold to be met (for example, serious risk), prior to permitting information sharing for broader welfare purposes.

While adopting differentiated approaches to information sharing based on purpose may better balance privacy protections, it will be important to continue to strive for a straightforward scheme that meets the Royal Commission's guiding principles of simplicity and clarity.

Consultation questions:

- 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? Please provide relevant examples.
- b. If a broader purpose is adopted, should information sharing be restricted in any way?

2. Which organisations should be included in the information sharing regime?

The Royal Commission recommends that the information sharing regime should apply to prescribed organisations spanning across the government and non-government sector.

The Royal Commission recommends that organisations be prescribed by regulation so that:

- organisations that can share information under the regime can be easily identified
- organisations can be added and removed as necessary
- information sharing will be limited to a discrete number of organisations relevant to family violence.

The Royal Commission recommends that prescribed organisations should be similar to those currently able to share information under the *Children, Youth and Families Act 2005*. A list of proposed prescribed organisations based on the Royal Commission's model is included in Appendix 1.

Notably, the Royal Commission proposes that Commonwealth agencies be prescribed so that Victorian agencies can consult them. This would allow Victorian organisations to request and receive information from Commonwealth agencies. The legislation will need to make clear that

Commonwealth agencies are not required by Victorian law to share information. The Royal Commission also proposes that courts should be prescribed organisations but that they should have an ability to refuse to share information in certain circumstances (see proposed exceptions set out in section 3).

This list also notes that some organisations that undertake comprehensive family violence risk assessments would be prescribed as 'intake' organisations. These intake organisations would be able to request information for risk assessment purposes, even where no identifiable or specific risk exists. The Royal Commission suggests that intake organisations might include: the Men's Referral Service, the Safe Steps Family Violence Response Centre and the Support and Safety Hubs (when created).

Consultation questions:

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

3. What types of information should be exempt from being shared?

The Royal Commission notes that it might be necessary to share a wide variety of information in order to assess the risk of family violence and to manage that risk. The Royal Commission states that this will include personal information and could include health information and other sensitive information. The Royal Commission therefore proposes that the definition of 'information' in the new regime should not be restricted. For an overview of the breadth of information that is useful in the family violence context, please refer to Appendix 2.

The Royal Commission also considers that that the expression 'information sharing' should be defined to include the separate concepts of 'collection', 'use' and 'disclosure' currently in privacy legislation (namely, the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*).

The Royal Commission acknowledges that there may be a number of situations where a prescribed organisation should have the ability to refuse to share information.

Some exceptions include where sharing information could:

- prejudice the investigation of a contravention (or possible contravention) of a law in any particular case
- prejudice a coronial inquest or inquiry
- contravene any legal professional privilege or other privilege such as the sexual assault communications privilege

- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained
- endanger a person's life or physical safety
- prejudice the effectiveness of a court proceeding (for example, suppression orders)
- be contrary to public interest.

A similar provision in NSW legislation requires a written explanation where an organisation does not share information on the basis of one of these reasons.⁵

Consultation questions:

- e. Are there any exceptions to information sharing outlined above that should be added or removed? If so, please outline.

Law enforcement data

The Standards for Law Enforcement Data Security (Standards) establish 43 mandatory standards that are applicable to Victoria Police and any of their external stakeholders that access or receive law enforcement data.⁶ The Standards apply to law enforcement data, which is any information that is obtained, received or held by Victoria Police for the purpose of performing law enforcement and community policing functions, for enforcement of laws relating to proceeds of crime, and/or in connection with court or tribunal proceedings.

The underlying policy objectives of the Standards are to maintain the security and integrity of law enforcement data. The relevant standards that are applicable or operate in relation to Victoria Police's information sharing arrangements with external agencies or organisations are broadly concerned with how Victoria Police and any external body with whom it shares law enforcement data securely manages and controls that data. The Standards prescribe in some detail provisions relating to the management and handling of law enforcement data that must be included in any information sharing agreement between Victoria Police and an approved third party, including the establishment by the third party of formal disciplinary processes for breach of law enforcement data security and the requirement that third parties encrypt law enforcement data in accordance with Australian Government protective security standards.

It is likely that law enforcement data could prove useful for assessing risk and managing safety in the family violence context. However, there will be many instances where external agencies or organisations working with family violence victims are unable to meet the mandatory requirements set out in the Standards.

⁵ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245D(4).

⁶ The Standards are issued by the Commissioner for Privacy and Data Protection under s 92 of the *Privacy and Data Protection Act 2014*.

Consultation questions:

- 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?

4. Whose information should be shared?

The Royal Commission has proposed an information sharing model that enables information sharing about two main categories of people:

- people who are the victim of or are at risk of family violence (victims) - defined as 'protected persons'⁷ who have a family violence intervention order or family violence safety notice in place or 'person at risk' of family violence
- perpetrators – defined as an 'associated respondent' against whom a family violence intervention order or safety notice has been issued or person who is the source of family violence risk.

There will be instances where information sharing about third parties (who are neither victim nor perpetrator) may be necessary to better understand risk and manage victim safety. For example, information in relation to criminal associates of the perpetrator may be relevant to understand or mitigate risk for the victim. Other than to acknowledge that the new information sharing regime must be capable of applying to information relating to multiple victims of the same perpetrator, the Royal Commission's model does not explicitly provide for information sharing about associated third parties.

Building on the Royal Commission model?

Given that sharing information about third parties can play an important role in risk assessment and safety management, the new information sharing model could make explicit provision to enable this to occur.

However, appropriate safeguards may need to be built in to ensure rights to privacy or safety of third parties are not disproportionately impacted. This could take multiple forms – for example:

- seeking consent from third parties to share information unless it would be unsafe, unreasonable or impractical to do so (see detail set out in section 5)
- permitting the sharing of information about third parties only where a certain risk threshold has been met - for example, in NSW's family violence information sharing regime, information sharing about third parties without their consent can only occur where there is a serious risk.⁸

In considering the appropriate protections that might be incorporated into legislation, it will be important to properly balance the rights to privacy of third parties with the rights of victims to safety, as well as the need for a clear and simple legislative framework.

⁷ Definition derived from the *Family Violence Protection Act 2008*.

⁸ Division 3 of Part 13A in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) allows dealing with information about any person in cases of serious threat. Division 2 of Part 13A only permits dealing with information about the 'threatened person' and 'threatening person' in cases of threat.

Consultation questions:

- g. Should the information sharing model cover information sharing about third parties? Why or why not?
- h. Are there any protections that should be incorporated into the new legislative regime to protect privacy or safety rights of third parties?

5. How should consent work?

Consent from the victim

Under the Royal Commission's model, obtaining consent from the victim should be the default starting point. However, the Royal Commission envisages that information can be shared without consent where there is a **serious or imminent threat to the life, health, safety or welfare of an individual** because of family violence (see related discussion at section 9).

Consent to sharing information about children

When the victim and perpetrator have children, the Royal Commission recommends that consent for sharing of the children's information should be provided by the victim.

Agencies will continue to be able to share information about children without the victim's consent where this is in the best interests of the child and consistent with the *Children, Youth and Families Act 2005*.

Consent from the perpetrator

Under the Royal Commission's model, consent from the perpetrator to share their information is not required.

Consent from third parties

While the Royal Commission model did not explicitly contemplate the issue of information sharing about third parties, if the model is extended to information about third parties, consideration should be given to the most appropriate consent model.

Consent models in other jurisdictions such as NSW provide exemptions from obtaining consent from victims and third parties in cases of serious threat where it would be unreasonable or impractical to do so.⁹

Building on the Royal Commission model?

The legislation could potentially build on the Royal Commission model. Victim consent would continue to be the default starting point, but there might be further exemptions to obtaining victim consent other than a serious or imminent threat to life, health, safety or welfare – for example, it might be useful to provide for exemptions where it is unreasonable or impractical to seek consent from victims or third parties.

Potential examples of unreasonableness or impracticality include where:

- the victim or third party is unconscious or in a coma

⁹ See *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 98M(2)

- the victim or third party has not answered their phone despite repeated attempts to contact them each day over the course of several days or weeks
- the victim can not be contacted independently of the perpetrator and is not in regular contact with services.

The table below outlines the different consent models that could be pursued under the regime, with pros and cons listed.

	Victim consent?	Children's consent?	Third party consent?	Perpetrator consent?
Model 1	Required except where there is a safety threat	Obtained from victim	Required except where unreasonable or impractical to do so	Not required
	Pros <ul style="list-style-type: none"> • Privacy protections for victims and third parties enshrined in legislation 		Cons <ul style="list-style-type: none"> • Different consent thresholds for different parties potentially makes scheme more complex to deliver 	
Model 2	Required except where there is a safety threat or obtaining consent is unreasonable or impractical	Obtained from victim	Required except where there is a safety threat or obtaining consent is unreasonable or impractical	Not required
	Pros <ul style="list-style-type: none"> • Privacy protections for victims and third parties enshrined in legislation • Relatively simple to administer with consistent consent thresholds for victims, children and third parties 		Cons <ul style="list-style-type: none"> • The addition of alternative exceptions to safety (i.e. unreasonable or impractical grounds) could dilute privacy protection for victims. However, this might be warranted if it enables speedier risk assessment and management. 	

Consultation questions:

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

6. How should the family violence information sharing regime interact with other laws?

Reflecting the Royal Commission's recommendations, the new legislation will clearly state that nothing in the new regime will limit or prevent the sharing of information that is currently authorised under any other law. This will ensure information sharing currently permitted by other legislation like the *Children Youth and Families Act 2005* will continue to operate.

The Royal Commission also recommended that the new legislation will specifically override aspects of Victoria's default privacy legislation – namely, the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*. This default privacy legislation will not apply to information that is handled in line with the new regime.

It is proposed that the new regime will generally displace any and all Acts that limit information handling that is relevant to achieving the purpose of the new legislation including to facilitate the assessment of family violence risks, and for ensuring the safety and support of family violence victims. It is not proposed that the legislation will explicitly list specific provisions to be overridden in other Acts unless this is necessary.

However, consistent with the Royal Commission's model, the regime will not displace secrecy or confidentiality schemes in other Acts where:

- sharing information would be inconsistent with the aims of the family violence information sharing regime (namely, the safety and support of family violence victims)
- sharing information would be inconsistent with other legitimate policy objectives as set out in section 3.

Other than provide for legitimate policy grounds for exempting prescribed organisations from sharing information, as set out in section 3, it is not proposed that the legislation will explicitly list specific secrecy or confidentiality provisions to be preserved in other Acts unless this is necessary.

Consultation questions:

- j. Are there any secrecy and confidentiality provisions in other laws that need to be explicitly overridden by the family violence information sharing regime? Why?
- k. Are there any secrecy and confidentiality provisions in other laws that should be explicitly preserved by the family violence information sharing regime? Why?

7. Other elements of the Royal Commission's proposed information sharing regime

The Royal Commission's information sharing regime also included a number of other design elements including:

Access to shared information

The Royal Commission's model proposes that victims should have access and be able to correct any information about them that is shared upon request.

However, a prescribed organisation should not be required to take steps to make a perpetrator aware that information about them has been collected or provide access to such information. That said, the new regime should not prohibit information being provided to perpetrators if this does not increase the risk to the safety of a victim or a third party.

Protection for people sharing information

The Royal Commission proposes that the regime should include protections for organisations and individuals who share information in accordance with the new regime. The Royal Commission supports a model where information sharing in good faith does not amount to unprofessional conduct or a breach of professional ethics and should not expose the information sharer to any criminal or civil liability.

Penalties for inappropriate information sharing

The Royal Commission proposes a penalty regime, similar to provisions in section 36(5) of the *Children, Youth and Families Act 2005*, which could apply in cases of inappropriate information sharing. This provision provides a maximum penalty of 60 penalty units.

Complaints about information sharing

The Royal Commission proposes that an individual should be able to make complaints to the Privacy and Data Protection Commissioner or Health Services Commissioner if they believe information about them has been shared by a prescribed organisation other than in accordance with the new regime.

Data quality and data security

The Royal Commission proposes that the existing privacy principles in the default privacy legislation applicable to data quality and data security will continue to apply.

Consultation questions:

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

8. Implications of the proposed information sharing regime

Government is keen to ensure that the legislative model introduced is workable and effective in ensuring the right information is shared with the right people at the right time.

To this end, the Department is interested to understand any practical implications and unintended consequences that might flow from legislating for a family violence information sharing model consistent with the recommendations of the Royal Commission.

For example, we want to know whether there are any design elements of the legislative model proposed by the Royal Commission that might:

- prove to be impediments to the successful operation of information sharing
- have an undesirable impact on certain communities who are disproportionately vulnerable in a family violence context (for example, Aboriginal communities or people with disabilities)
- have unintended consequences in terms of deterring engagement with family violence services or other services.

Consultation questions:

- 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 impediments to information sharing?
 - ii. give rise to undesirable consequences?

9. An information sharing regime beyond family violence

Parallel amendments to default privacy legislation

Parallel reforms to the *Privacy and Data Protection Act 2014* (PDP Act) and *Health Records Act 2001* (HR Act) are also being considered by the Victorian Government to support better information sharing in contexts beyond family violence – in particular, in relation to the ‘serious and imminent’ threshold contained in these two Acts.

Currently, the PDP Act and HR Act provide that information can only be used and disclosed for the primary purpose it was collected for, unless consent is obtained or certain exceptions apply. One of these exceptions is where an organisation reasonably believes that the use or disclosure of information is necessary to lessen or prevent a ‘serious and imminent’ threat to an individual’s life, health, safety or welfare.

The ‘serious and imminent’ threshold has been criticised for a number of reasons:

- It is difficult to apply. Determining when a threat is ‘imminent’ can be particularly difficult.¹⁰
- The requirement that a threat be ‘imminent’ creates an unnecessary restriction on information sharing that can make early intervention difficult. Risks are more difficult to

¹⁰ Royal Commission into Family Violence (2016) *Volume I Report and Recommendations*, 173; KPMG (2016) *Review of legislative and policy impediments to sharing relevant information between agencies in relation to a person at risk of family violence*, 22.

identify and appropriate service responses cannot be implemented until the threat becomes imminent.¹¹

- Information should be able to be used and disclosed where there is a serious risk of harm in the medium to long term, not only where it is imminent.¹²

There are a number of ways that the 'serious and imminent' threshold could be reformulated. As the impacts of these amendments will extend further than family violence, a separate consultation paper and process is underway.

The proposed legislative model for family violence will adopt a formulation consistent with amendments to default privacy legislation wherever possible and applicable.

Complementary reform in child safety and welfare

The intersections between family violence and child welfare also present an opportunity for Government to pursue complementary legislative reform that covers information sharing pertaining to child safety and welfare. A separate consultation paper will be prepared on this issue.

Consultation questions:

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

Conclusion

The Department is interested in receiving your views on the family violence information sharing legislative regime.

Written comments should be provided as soon as possible but no later than **29 August 2016** to sudha.joseph@dpc.vic.gov.au.

For further information on this project please contact:

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¹¹ Royal Commission into Family Violence (2016) *Volume I Report and Recommendations*, 173.

¹² Australian Law Reform Commission and New South Wales Law Reform Commission (2010) *Family Violence: A National Legal Response*, 1430.

Appendix 1: Possible prescribed organisations derived from the Royal Commission's report

Community services that are state funded (aged care services, child and family services, childcare services, 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)

Commonwealth agencies

Intake organisations (Men's Referral Service, Safe Steps Family Violence Response Centre, Support and Safety Hubs [when created])

Hospitals (public and private)

Registered health professionals: nurse, medical practitioner, midwife, psychologist (if not part of a community service)

Schools (public and private)

State government departments

Victoria Police

Appendix 2: Types of information collected and used in the context of family violence+

Organisation		Information	
Department of Health and Human Services (including through contracted service providers)	Specialist family violence services	Women's services	Identifying information about victims, children and perpetrators, including names, dates of birth, genograms, places of residence, employment status, cultural identities, visa status and disabilities. In addition to identifying information, services will have information about risk factors recorded on risk assessments and safety plans (including behaviour of the perpetrator and other information communicated by the victim), and current and previous case management services provided to the victim or referrals made.
		Men's services	Identifying information and risk assessments. Information about perpetrators' participation, attendance and progress in behaviour change programs, previous partners and children from other relationships, parenting status and risk factors will be more detailed.
	Child protection, Child FIRST or Integrated Family Services	Identifying information and current and previous involvement of children in care of victims or perpetrators, including age, living arrangements, contact information and schools children attend. Details about reported concerns for safety and wellbeing of children, including in relation to family violence. Information collected during consultations and investigations. Current and previous involvement with victims or perpetrators as children or young people. Information about child protection orders.	
	Mental health services	Identifying information and current and previous mental health problems of victims (including children) and perpetrators and any treatment services provided.	
	Alcohol and drug treatment services	Identifying information and current and previous information about alcohol or drug use and treatment services provide to victims or perpetrators, or both.	
	Housing and homelessness services	Identifying information and residency information about victims (including children) and perpetrators. Current and previous housing services responses provided.	
	Health-care services (community health or hospitals)	Identifying information and health information about victims (including children) and perpetrators – for example, medical conditions, injuries, and hospital and emergency department admissions.	
	Sexual assault support services	Identifying information and information about previous and current sexual assaults, investigations, support services provided and referrals made.	

Organisation		Information
	Disability services	Identifying information and information about disability and current and previous disability services provided to victims (including children) or perpetrators.
Private health service providers (such as GPs)		Identifying information and health information about victims (including children) and perpetrators.
Victoria Police		Identifying information about victims, perpetrators and witnesses (including children); health information such as information about a person's mental health or use of drugs and alcohol; criminal record information, including existing commitments such as bail conditions or intervention order conditions; other information about perpetrators, including their propensity for violence, apparent drug or alcohol misuse or access to weapons, which can affect the level of risk posed by them; and information relating to court orders.
Corrections Victoria		Identifying information and what behaviour-management programs the offender has participated in while in prison or while subject to a community correction order; information relation to criminogenic risk factors for the offender, such as whether there has been an increase in substance use, unstable mental health, unemployment or homelessness, and the identify of people whom the offender is associating.
Department of Education and Training		Identifying information and information about children and their parents, including early childhood and school enrolment and attendance data, participation in school-based programs, incident reports and referrals to other services (such as Victoria Police or Child Protection) and information collected by the Victorian Maternal and Child Health Service.
Magistrates' Court of Victoria		Identifying information, intervention orders, information contained in evidence and court documents, transcripts and audio recordings of court proceedings, reports drafted for court proceedings, records of interactions with court staff, including risk assessments – for example, applicant and respondent support workers.
Children's Court		Identifying information and information from the Department of Health and Human Services in relation to protection applications, child protection orders, information contained in evidence and court documents, audio recordings of court proceedings, reports drafted for court proceedings, records of interactions with court staff.
Family Court or Federal Circuit Court		Identifying information and information related to family violence law proceedings, including parenting and financial orders, injunctions, transcripts and audio recordings of court proceedings, expert reports drafted for court proceedings, including by family consultants, and notice of risk forms.

+ Source: Royal Commission into Family Violence