ISSUES PAPER: INFORMATION SHARING TO IMPROVE THE RESPONSE TO FAMILY VIOLENCE IN THE ACT

JUSTICE AND COMMUNITY SAFETY DIRECTORATE
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I. INFORMATION ABOUT MAKING A SUBMISSION

1.1. Any interested person is invited to lodge a written submission via post or online. Please contact Legislation, Policy and Programs, Justice and Community Safety Directorate, at jacsllpp@act.gov.au if you would like assistance to make a submission.

1.2. Generally, submissions will be made public. In the absence of any clear indication that a submission is intended to be confidential, the submission will be treated as non-confidential.

1.3. Non-confidential submissions may be made available to any person or organisation on request.

1.4. Any request for access to a confidential submission is determined in accordance with the Freedom of Information Act 1989 (ACT), which has provisions designed to protect sensitive information given in confidence.

1.5. Anonymous submissions will be accepted, but the Justice and Community Safety Directorate reserves the right not to publish or refer to a submission whose author is not reliably identified.

1.6. How to lodge a submission

1.6.1. Submissions in electronic format are preferred.

1.6.2. To make a submission email to: jacsllpp@act.gov.au or write to:

   Information Sharing
   Legislation Policy and Programs Branch
   Justice and Community Safety Directorate
   GPO Box 158
   Canberra ACT 2601

1.6.3. The closing date for submissions is 16 December 2016.

1.7. Questions and proposals

1.7.1. The Justice and Community Safety Directorate welcomes comments on any aspect of this issues paper as well as specific comments responding to the questions posed by the paper.
2. EXECUTIVE SUMMARY

2.1 Preventing domestic and family violence is, and continues to be, a high priority for Government. Several recent reviews into the ACT family violence system have emphasised the importance of addressing the issue:

2.1.1 Report of the Inquiry: Review into the System level responses to family violence in the ACT by Laurie Glanfield AM (Glanfield Inquiry);

2.1.2 Review of Domestic and Family Violence Deaths in the ACT by the Domestic Violence Prevention Council (Death Review);

2.1.3 Domestic Violence Service System Gap Analysis Project Final Report by the Community Services Directorate (Gap Analysis Report); and

2.1.4 DVPC Extraordinary Meeting Report to Attorney-General by the Domestic Violence Prevention Council.

2.2 Each of the reviews identified improving information sharing as a key to improving system collaboration and integration in order to keep victims of family violence safe. This echoes recommendations made at a national level by the Australian and NSW Law Reform Commissions in their 2010 report Family Violence: A National Legal Response and the COAG Advisory Panel on Reducing Violence against Women and their Children – Final Report.

2.3 Privacy laws operate in all Australian jurisdictions to ensure that individuals control their personal information, subject to limited exceptions. Commonwealth, state and territory laws prescribe the circumstances under which information can be shared, who it can be shared with and when it can be shared without consent. In the ACT, the right to privacy is further protected under the Human Rights Act 2004.

2.4 In the context of family violence however, the right to privacy must be balanced with the right to safety. Information sharing is critical in ensuring that agencies in the ACT are able to make disclosures about individuals where appropriate. This is particularly important where there may be a threat to the life, health and safety of a person, or public safety. It is important to note, however, that a threat may not become apparent until after the information has already been shared.

2.5 The purpose of this issues paper is to outline the current information sharing arrangements in place in the ACT, and explore the privacy issues facing both government and non-government agencies in the context of family violence. Input is sought from stakeholders on any particular issues they face and suggestions for reform.

2.6 The literature informing this paper uses various definitions of domestic, intimate partner, family and sexual violence. This paper uses the term ‘family violence’ as defined in the Family Violence Act 2016 which encompasses these various terms and definitions. The definition includes a broad range of physical, emotional and psychological abuse by family members, intimate partners, and other relatives.

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6. Family Violence Act 2016 (ACT), ss. 8-9. This Act was passed by the ACT Legislative Assembly on 2 August 2016 and will commence on 1 May 2017.
3. QUESTIONS

3.1. This paper outlines the current information sharing arrangements in the ACT and the issues highlighted by various recent reports. The key questions for consideration are:
   
   i. What scope of information needs to be shared in order to protect actual and prospective victims of family violence?
   
   ii. Who does this information need to be shared with?
   
   iii. In what circumstances should the information be shared?
   
   iv. What are the particular circumstances that illustrate when information needs to be shared, but cannot lawfully be shared under the current legislative framework?
   
   v. Does the complexity of privacy law and a risk-averse culture prevent information sharing?
   
   vi. Would a tiered approach to information sharing be preferred, with greater capacity to share information available in a ‘hub’ arrangement?
   
   vii. What is the appropriate balance between the right to privacy and the right to safety?

4. BACKGROUND

4.1. Current information sharing arrangements in the ACT are governed by legislation, as well as other measures that facilitate and support information sharing. Recent reviews into family violence have made recommendations to improve current information sharing arrangements in the context of family violence.

4.2. This paper provides a summary of the current arrangements, outlines the information sharing regimes of other jurisdictions, and explores the key issues identified in recent reviews.

CURRENT LEGISLATIVE FRAMEWORK

4.3. Information sharing in the ACT is regulated by Commonwealth and ACT laws.

4.4. The Privacy Act 1988 (Cth) (Commonwealth Privacy Act) provides Australian Privacy Principles (APPs) for the handling of personal information. The APPs apply to Australian public sector agencies, health providers, and organisations as defined in the Commonwealth Privacy Act. The APPs do not apply to State and Territory government agencies.

4.5. The Information Privacy Act 2014 (ACT) (Information Privacy Act) regulates how personal information is handled by ACT public sector agencies. This Act includes a set of Territory Privacy Principles (TPPs), which cover the collection, use, storage and disclosure of personal information, and an individual’s access to and correction of that information. The TPPs largely mirror the APPs, although there are certain differences.
4.6. The Human Rights Act 2004 (ACT) (Human Rights Act) grants all individuals the right to privacy. However, the right to privacy is not absolute. The Human Rights Act provides that all human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. ⁷ In determining whether a limitation on human rights is reasonable, a number of considerations must be taken into account, including the nature of the right affected, the importance, purpose, nature and extent of the limitation, and whether there are any less restrictive means of achieving the purpose the limitation seeks to achieve. ⁸ One individual’s rights may also need to be weighed against another individual’s rights.⁹

4.7. These broader privacy schemes are complemented by sector specific regimes around privacy and information management:

4.7.1 The Health Privacy Principles set out in the Health Records (Privacy and Access) Act 1997 (ACT) (Health Records Act) regulate how ACT agencies can collect, use and disclose health information about an individual.

4.7.2 The Children and Young People Act 2008 (ACT) (CYP Act) sets out requirements in relation to the use of certain types of information in relation to children and young people.

4.7.3 The Domestic Violence Agencies Act 1986 (ACT) regulates the sharing of information about victims of domestic violence by ACT Policing where family violence has, or is likely to, occur.

4.7.4 The Crimes (Sentencing) Act 2005 (ACT) provides lawful mechanisms for ‘criminal justice entities’ to share information about an offence (including an alleged offence) with each other, including information about the person charged, the victim and a person convicted or found guilty of the offence. ‘Criminal justice entities’ include the courts, the Director-Generals of the Justice and Community Safety Directorate and Community Services Directorate, ACT Policing, the Director of Public Prosecutions, the Victims of Crime Commissioner, the Sentence Administration Board, Aboriginal Legal Service and the Domestic Violence Crisis Service. ¹⁰

CONSENT

4.8. ACT privacy legislation provides a framework in which information can generally only be shared with individual’s consent, subject to limited exceptions.

4.9. Consent can be either express or implied, and be given orally or in writing. Common forms of express consent include signing a consent form, consenting via email, or consenting over the phone.¹¹

4.10. There are significant risks attached to relying on either implied or oral consent. It is best-practice to obtain express consent in a recorded format.¹²

4.11. The Health Records (Privacy and Access) Act 1997 specifically requires consent to be in writing and signed.¹³

4.12. Consent must have the following four elements:¹⁴

1) The individual is adequately informed before giving consent
   □ In collecting personal information, organisations have an obligation to fully and clearly inform individuals about how their information will be handled.

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¹ Human Rights Act 2004 (ACT), Preamble 6.
² Human Rights Act 2004 (ACT), s. 28(2).
⁴ Crimes (Sentencing) Act 2005 (ACT), s. 136.
⁶ Ibid.
⁷ Health Records (Privacy and Access) Act 1997 (ACT), Schedule 1, Principle 10.
⁸ Ibid.
2) **The individual gives consent voluntarily**
   - An individual must have a genuine opportunity to deny consent, free from any pressure or coercion.

3) **The consent is current and specific**
   - Consent cannot be indefinite. Individuals should be informed of how long the consent will be in effect for, and consent should be renewed after that time, or if there is a material change in circumstances.
   - Consent cannot be given for undefined future uses, or for ‘all legitimate uses or disclosures.’ An organisation must specifically describe the circumstance to which consent relates.
   - In some situations, organisations may ‘bundle’ consent by requesting consent for multiple uses in a single form. If an organisation uses bundled consent, they should make sure that the individual has been informed of each specific purpose, and has the opportunity to refuse consent to any of the stated purposes.

4) **The individual has the capacity to understand and communicate their consent**
   - Capacity to consent can generally be assumed, unless there is something to indicate that the individual may lack capacity.
   - Factors that may impact an individual’s capacity to consent include:
     - Age;
     - Physical or mental disability;
     - Temporary incapacity, for example, due to a temporary mental or physical illness; or
     - Language barriers.

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**SHARING INFORMATION WITHOUT CONSENT**

4.13. Whilst information sharing occurs predominantly with individuals’ consent, there are exceptions to the requirement of consent. These include:

- the use or disclosure of personal information that is required or authorised by or under an Australian law or a court or tribunal order; 15
- the use or disclosure of personal information where reasonably necessary for preventing, detecting, investigating or punishing a criminal offence; 16
- the use or disclosure of personal information where necessary to lessen or prevent a serious threat to life, health or safety of any individual, or to public health and safety; 17
- the use or disclosure of personal health information in a health record where the disclosure is necessary to prevent or lessen a serious or imminent risk to the life, or physical, mental or emotional health of a consumer or another person; 18
- the use or disclosure of personal information in relation to an offence, including information about the person charged, the victim or a person convicted of the offence, where shared by one criminal justice entity with another for the purpose of the receiving agency; 19
- the use or disclosure of personal information by ACT Policing to an approved crisis support agency where ACT Policing suspect on reasonable grounds that there has been, or is likely to be, a domestic violence offence committed against a person. Currently the Domestic Violence Crisis Service is the only approved agency. 20

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16. Privacy Act 1988 (Cth), s. 16A; Information Privacy Act 2014 (ACT), s. 19.
17. Ibid.
4.14. In addition to the above, there are specific provisions in Chapter 25 of the CYP Act which allow information relating to children or young people to be shared without consent. The provisions of the CYP Act are complex. 21 Information is grouped into several different categories, and each of these categories of information has different circumstances in which the information can be shared. Appendix A provides a summary of the different categories of information. The circumstances in which information can be shared are wide and varied, and it is beyond the scope of this paper to list them all. Some of the main types of permissible information sharing are:

- the sharing of information about a child or young person by the Director-General where doing so is in the best interests of the child or young person; 22
- mandatory reporting of child abuse and neglect under the CYP Act for people working in certain professions and jobs; 23
- the use or disclosure of protected information, other than information associated with a child protection process (known as ‘sensitive information’), collected or divulged under the CYP Act for a purpose under the Act or pursuant to another territory law. 24
- the sharing of safety and wellbeing information about a child or young person with members of a Declared Care Team 25 or with an ‘information sharing entity’ under the CYP Act (including parents, out of home carers, kinship carers, education providers, Ministers and specific health facilities); 26

4.15. The Health Records (Privacy and Access) Act 1997 (ACT) stipulates the circumstances in which personal health information can be disclosed without consent. In addition to the exceptions outlined above, personal health information can be shared without consent in the following circumstances: 27

- Between members of a treating team to the extent required to improve or maintain a consumer’s health, or manage a disability;
- Where the consumer is reasonably likely to have been aware that information of the kind disclosed is usually disclosed to the entity;
- Where disclosure is necessary for the purposes of management, funding or maintaining the quality of the health service received by the consumer;
- Information can be shared with carers in particular circumstances; and
- Information can be shared for research purposes in particular circumstances.

4.16. Appendix B provides a flowchart of the circumstances in which information can be shared.

**Exception: disclosure of personal information to lessen or prevent a serious threat**

4.17. Of the above exceptions, one of the most relevant in situations of family violence is the use or disclosure of personal information where reasonably necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health and safety. This exception only applies where it is unreasonable or impracticable to obtain the individual’s consent. 28

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21. Note the Glanfield Report at page 81 describes the CYP Act provisions as “an impenetrable labyrinth.”
22. Children and Young People Act 2008 (ACT), s. 851.
23. Ibid, s. 356.
24. Ibid, s. 847-848.
25. A ‘Declared Care Team’ may be declared by authorised delegates in Child and Youth Protection Services or Youth Justice. Care Teams may include people or entities responsible for delivering or coordinating services for a child or young person. The objective of the Care Team is to promote coordinated and planned services for the child or young person and their families, and to facilitate the sharing of information among its members.
28. Privacy Act 1988 (Cth), s. 16A; Information Privacy Act 2014 (ACT), s. 19.
4.18. The exception has changed significantly in recent years. Prior to 2014, the requirement was that a threat be both serious and imminent, setting a very high bar to the use and disclosure of personal information. A 2008 Australian Law Reform Commission report highlighted that the requirement of imminence was preventing important information sharing in certain circumstances, including in circumstances of progressive abuse. This led to amendment of the exception in both Commonwealth and ACT legislation to reflect its current form.

4.19. Despite the expansion of the exception, there remains a general reluctance to rely on the provision, and this may be linked to uncertainty around the precise situations in which it is appropriate to rely on the exception. The legislation does not define what is meant by a ‘serious threat,’ explain when it might be ‘reasonably necessary’ to share information, or identify the circumstances in which it is ‘unreasonable or impracticable to obtain the individual’s consent.’

4.20. The APP Guidelines produced by the Office of the Australian Information Commissioner (OAIC) provide detailed guidance on the use of the exception. The guidelines, which explain how to interpret the key elements and provide examples of appropriate circumstances, may assist organisations in exercising the exception to its full extent. Appendix C summarises the interpretation of the exception according to the APP Guidelines.

4.21. In its submissions to the Victorian Royal Commission, the OAIC stated that there is scope to use the exception where a significant degree of physical or psychological harm is being caused through a series of incidents occurring over time, and accordingly:

“...the exceptions to the use and disclosure principles provide the necessary flexibility to enable agencies to disclose information for the purposes of ensuring safety in family violence situations.”

4.22. However, there remains a risk that a single entity may not be aware of the severity of the harm or the nature of the incidents and their longevity over time without having first shared information with other organisations.

**NATIONAL DOMESTIC VIOLENCE ORDER SCHEME**

4.23. In addition to the legislative framework outlined above, the *Family Violence Act 2016* which was passed by the ACT Legislative Assembly on 2 August 2016, implements the National Domestic Violence Order Scheme agreed by the Council of Australian Governments (COAG). This means that if an order is in effect anywhere in Australia, and the parties to the order relocate, information can be exchanged between authorities to ensure compliance with the order continues in the new jurisdiction of residence.


4.25. The scheme facilitates sharing between jurisdictions where the situation has reached a point where an order has been obtained. It does not assist sharing by organisations within a jurisdiction and at an early intervention stage.

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31. Ibid, pp. 82-83.
INFORMATION SHARING IN RELATION TO CHILDREN AND YOUNG PEOPLE

4.26. In response to the findings of the Glanfield Inquiry and other recent reports, the ACT has adopted provisions similar, but much more restricted, to Chapter 16A of the NSW Children and Young Persons (Care and Protection) Act 1998 described in detail below.

4.27. The amendments allow designated entities and their employees to share information relevant to the protection of a child or young person (reportable conduct information) with other designated entities. Designated entities include government agencies dealing with children, health service providers, schools, other education providers, childcare services, entities that exercise supervision and care for children and young people, and other entities as prescribed by regulation. 32

4.28. Designated entities may make written requests for information where the information is required for service provision, investigation or decision making, and the responding entity must provide the information subject to limited exceptions. 33

4.29. The provisions expressly prohibit the sharing of information other than for the purposes of promoting the safety, welfare or wellbeing of a child or class of children.

4.30. The new regime recognises that privacy restrictions should not prevent designated entities taking reasonable steps to coordinate information that may identify risks to the safety, welfare or wellbeing of children and young people. 34

NON-LEGISLATIVE FRAMEWORK FOR INFORMATION SHARING

4.31. The legislative framework described above provides an environment in which ACT agencies can establish practical information sharing initiatives that facilitate cooperation on a day-to-day basis. The Family Violence Intervention Program and the Better Services Information Sharing Protocol are two such initiatives.

4.32. Family Violence Intervention Program

4.32.1 The Family Violence Intervention Program includes a weekly interagency case tracking meeting that seeks to provide coordinated responses to family violence matters that come to the attention of police and proceed to prosecution. The agencies are authorised to share information with each other at the meetings through the Crimes (Sentencing) Act 2005 (ACT) as described above. Agencies involved in the meetings include ACT Policing, Office of the Director of Public Prosecutions, ACT Law Courts and Tribunal, ACT Corrective Services, the Health Directorate, Care and Protection Services, Victims of Crime Commissioner, Domestic Violence Crisis Service, and Legal Aid ACT. It is important to note that cases currently only proceed to the FVIP once a criminal charge has been laid.

4.33. Better Services Information Sharing Protocol

4.33.1 The Community Services Directorate under Better Services has developed an Information Sharing Protocol focused on improving workforce practice in sharing information on common clients. The protocol provides practice principles aligned to the Information Privacy Act 2014, and guidelines for sharing information with and without consent when required. 35 A training package has been developed to support the implementation of the protocols.

32. Children and Young People Act 2008 (ACT), division 25.3.3.
33. Ibid.
34. Explanatory Memorandum, Reportable Conduct and Information Sharing Legislation Amendment Bill 2016 (ACT).
INITIATIVES IN RESPONSE TO RECENT REVIEWS

4.34. The recent reviews conducted into the ACT family violence system (discussed in detail below) made a number of suggestions to increase collaboration in the sector. The ACT government has committed to implementing the Family Safety Hub and scoping a common risk assessment tool, as recommended by the Glanfield Inquiry. Importantly, these initiatives would benefit from an enhanced information sharing environment.

4.35. Family Safety Hub

4.35.1 The Glanfield Inquiry, the Death Review and the Gap Analysis all made findings about the critical importance of services working together to provide an effective response to family violence.

4.35.2 In recognition of the importance of service integration and the need for a focal point in the ACT service system for family violence responses, the ACT Government will establish a Family Safety Hub. The Hub will facilitate the integration of services across government and the community sector to address family violence in the ACT. Facilitating information sharing among co-located agencies will be critical to the success of the Family Safety Hub. 36

4.36 Common Risk Assessment Tool

4.36.1 To improve the service response to family violence across the service system, the reports recommend the development of a screening, risk assessment and risk management framework across all ACT services, rather than a service by service approach. 37 In light of this recommendation, the ACT government has committed to scoping a common risk assessment tool for use by service providers in the ACT. Timely access to and sharing of information will also be critical to the effective use of the risk assessment tool. 38

36. Ibid, p. 11.
5. INFORMATION SHARING MODELS IN OTHER JURISDICTIONS

5.1. The issue of information sharing is not unique to the ACT, but rather a problem faced by family violence sectors across Australia and internationally. This section will outline measures implemented across several Australian jurisdictions to address the issue. The NSW regime will be discussed in detail as it is the most comprehensive set of provisions in Australia for sharing information in family violence situations.

NEW SOUTH WALES

5.2. NSW operates an information sharing framework for family violence situations, and a separate framework for children and young people. The two sets of provisions are detailed below.

5.3. Part 13A of the Crimes (Domestic and Personal Violence) Act 2007

5.3.1 Part 13A of the Crimes (Domestic and Personal Violence) Act 2007 (NSW) facilitates the collection, use and disclosure of personal and health information in cases involving family violence. It is accompanied by a 108 page Protocol containing detailed arrangements for information sharing. 39

5.3.2 Under the protocol, information can be shared without consent under any of the following circumstances: 40
- where there is a family violence threat;
- where there are Apprehended Domestic Violence Order proceedings;
- if it is disclosed by the NSW Police Force for contact purposes;
- where there is a serious and imminent threat to the life, health or safety of a person; or
- it is reasonably necessary for the NSW Police Force to carry out its functions, and there are reasonable grounds to believe that an offence may have been committed.

5.4. Chapter 16A of the NSW Children and Young Persons (Care and Protection) Act 1998

5.4.1 Chapter 16A of the NSW Children and Young Persons (Care and Protection) Act 1998 allows government agencies and non-government bodies that are prescribed bodies to exchange information that relates to a child or a young person’s safety or wellbeing without the child’s consent.

5.4.2 Under the provisions, a ‘prescribed body’ may provide information relating to the safety, welfare or well-being of a child or young person for a broad set of purposes, including service provision, assessment, safety planning, decision making, and risk management.

5.4.3 In its analysis of Chapter 16A the University of New South Wales Social Policy Research Centre found that the introduction of specific legislative authority was useful in developing a culture of information sharing. A NSW government evaluation mirrored this finding, but also noted some issues with the regime. Gaps were identified in the scope of ‘prescribed bodies’ as chapter 16A did not apply to private health providers such as General Practitioners and Paediatricians. The evaluation also noted there was little evidence of service providers routinely seeking the consent of parents and children, despite this being best practice. 41

40. Ibid.
OTHER AUSTRALIAN JURISDICTIONS

5.5 As mentioned above, NSW has the most comprehensive information sharing regime in relation to family violence. Regimes in other Australian jurisdictions have limitations which may hinder the effectiveness of information sharing. It is useful to note these limitations as they provide important insights for the ACT in formulating its own information sharing policy.

WESTERN AUSTRALIA

5.6 The Family and Domestic Violence Response Team (FDVRT) is a partnership between the Department for Child Protection and Family Support, Western Australia Police, and community sector family and domestic violence services. The team has a shared database and uses a collaborative approach to respond to family violence situations. A key limitation is that the FDVRT only commences work with a family following police action, omitting those cases where the police have not been involved. 42

SOUTH AUSTRALIA

5.7 The South Australian Family Safety Framework establishes an integrated service response across SA government departments and agencies. Importantly, while the framework includes government health services, the local domestic violence service and victims support service, it excludes other organisations which may hold relevant information, including other community organisations and private health providers. 43

TASMANIA

5.8 Tasmanian information sharing provisions in the Family Violence Act 2004 only apply to government agencies, therefore excluding non-government organisations which possess a wealth of relevant information. 44

6. RECENT REVIEWS

6.1 The following recent reviews into the ACT family violence system identified information sharing as a key issue:

6.1.1 Report of the Inquiry: Review into the System level responses to family violence in the ACT by Laurie Glanfield AM (Glanfield Inquiry);

6.1.2 Review of Domestic and Family Violence Deaths in the ACT by the Domestic Violence Prevention Council (Death Review);

6.1.3 Domestic Violence Service System Gap Analysis Project Final Report by the Community Services Directorate (Gap Analysis Report); and

6.1.4 DVPC Extraordinary Meeting Report to Attorney-General by the Domestic Violence Prevention Council.

6.2. The findings of these reviews are mirrored in similar reviews conducted nationally and in other Australian jurisdictions. These include:

6.2.1 Family Violence – a National Legal Response by the Australian and NSW Law Reform Commissions;

6.2.2 COAG Advisory Panel on Reducing Violence against Women and their Children – Final Report; and

6.2.3 Royal Commission into Family Violence Report (Victorian RCFV).

42. Ibid, p. 86.
43. Ibid.
44. Ibid, p. 85.
6.3. Each of these reports highlighted that privacy restrictions can operate as a significant barrier to effective service provision and safety planning. 45 Service providers working with victims of family violence need access to all the relevant pieces of information in order to accurately assess the full extent of the risk and recommend appropriate safety measures. 46

6.4. The Glanfield Inquiry noted that a great deal of information relevant to assisting an individual or family facing family violence is often held across numerous agencies but not known by one agency in its entirety. Victims of family violence will often be in touch with a range of organisations in relation to different aspects of their lives. Each organisation may hold different pieces of information about the individual and often it is only when this information is viewed together that an accurate assessment of risk can be made.47

6.5. Moreover, without a full and accurate picture of the client’s situation, service providers cannot adopt the holistic approach required in family violence situations. The ACT Domestic Violence System: Final Gap Analysis Report (the Gap Analysis Report) identified the lack of a coordinated case management approach as a key issue in the ACT.48 Appropriate information sharing is a significant step towards empowering service providers to provide holistic and coordinated solutions to family violence victims.

6.6. Two main barriers were identified in the Glanfield Inquiry—legislative impediments, and the lack of an appropriate culture of information sharing and collaboration. 49

6.7. Stakeholders that participated in the Inquiry emphasised privacy laws as a key reason for the lack of information sharing in the system. 50 The Glanfield Inquiry found that providing clearer legislative authority to share information in family violence cases may help to overcome these concerns. 51 In particular, it was recommended that the ACT adopt legislative provisions similar to Chapter 16A of the NSW Children and Young Persons (Care and Protection) Act 1998.

6.8. The Inquiry also noted that even where there were legal avenues available for the sharing of information, there was a reluctance to do so. Accordingly, efforts to create an information sharing culture in the ACT are needed, including open, consultative and transparent decision-making processes. 52 The Death Review, the Gap Analysis and the DVPC Extraordinary Meeting Report to the Attorney General, all echo these findings and recommendations. 53

6.9. There are a number of risks to be considered and mitigated in developing an information sharing regime. The Royal Commission into Family Violence Report (Victoria) (Victorian RCFV) noted that although information sharing is important, it must also be done appropriately because victims have a right to privacy, especially at a time when they are vulnerable. 54

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47. Ibid, p. 4.
50. Ibid.
51. Ibid, p. 87.
6.10. The Victorian RCFV Report further noted that “a failure to share information properly or to protect the security of information can actually increase the risk of family violence – for example, if information is disclosed to a perpetrator or to someone who might tell a perpetrator.” 55

6.11. The Australian Law Reform Commission similarly notes concerns that “increased information sharing could result in a reluctance to report family violence due to concerns about how information would be used.” 56 This risk is of particular concern in relation to Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse communities, as research has shown there already exists within these communities a reluctance to share personal information due to various privacy concerns. For example, concerns that information will be relayed to child protection agencies or immigration authorities. 57

6.12. The literature on information sharing consistently emphasises that best practice is to obtain consent where possible, and there is a risk that this principle may be undermined by allowing information to be shared without consent. This was demonstrated by a review of NSW information sharing provisions which showed there was little evidence that individuals were being routinely consulted. 58

**REVIEW RECOMMENDATIONS**

6.13 The Glanfield Inquiry and the Victorian RCFV each made proposals for an improved information sharing framework. Both reports recognised the value of Chapter 16A of the NSW *Children and Young Persons (Care and Protection) Act 1998*, and proposed models based on those provisions.

**RECOMMENDATION OF THE GLANFIELD INQUIRY**

6.13. The Glanfield Inquiry recommends the implementation of legislation similar to Chapter 16A of the NSW *Children and Young Persons (Care and Protection) Act 1998* in relation to family violence more broadly not just in relation to children. It is the Inquiry’s view that this would clearly authorise and foster a culture of appropriate information sharing and collaboration across all aspects of family violence. 59

6.14. To ensure that information is shared appropriately and in line with its legislative intent, the Inquiry recommends that legislative amendments to facilitate information sharing are accompanied by a penalty provision for the disclosure of information under the provision for purposes other than the protection of a person(s) or the prevention of harm. 60

6.15. The report further recommends that the legislative provisions are accompanied by an awareness campaign about how the information can be shared and simple, easy to use guideline material to support the ongoing use of the provisions. 61

55. Ibid.
56. Ibid.
60. Ibid.
61. Ibid.
RECOMMENDATION OF THE VICTORIAN RCFV

6.16. The Victorian RCFV agrees with the Glanfield Inquiry in relation to the adoption of a penalty provision, and encourages extensive guideline material, training and an awareness campaign.

6.17. However, the Victorian RCFV recommendations differ to those proposed by the Glanfield Inquiry in some key respects. The Victorian RCFV suggests that prescribed agencies should be authorised to share information where it is necessary to manage a risk to the safety of a person. 62 This is in contrast to the broader set of purposes outlined above in the Glanfield proposal.

6.18. It also recommends that victims’ consent be required as a general rule, unless there is a serious or imminent threat to a victim’s life, health, safety or welfare, or that of their children because of family violence. 63 In contrast, the Glanfield proposal does not necessarily see information sharing without consent as only a last resort.

6.19. The Victorian RCFV proposes that a lower standard for information sharing be applied to intake organisations, such as hubs. Permission should be given to share information with hubs, without consent, for the purposes of conducting a risk assessment. This is in recognition of the fact that a risk to safety may not become apparent until after the information has been shared.

6.20. This represents a more limited information sharing power than that proposed by the Glanfield Inquiry.

63. Ibid, p191.
7. CONCLUSION

7.1. Commonwealth and ACT privacy laws are based on the premise that individuals have a right to privacy. There are however, exceptions within the current legal framework which allow for the disclosure of personal information in circumstances where there is an overriding interest. There is some existing capacity within those laws to share information in the context of family violence.

7.2. Several recent reports have identified that there is insufficient information sharing among organisations within the family violence sector. To some extent, this may be attributable to concerns and misunderstandings of how privacy laws operate, rather than actual legal barriers.

7.3. However, the reports have also suggested that there is insufficient legal provision for information sharing in family violence cases. The reports have made suggestions as to how the balance between the right to safety and the right to privacy can be recalibrated in order to better safeguard the safety of victims of family violence and improve service delivery.

REQUEST FOR SUBMISSIONS

7.4. The Justice and Community Safety Directorate is interested in the community’s view with respect to the current system, and how it might be improved.

7.5. In particular the key questions for consideration are:
   i. What scope of information needs to be shared in order to protect actual and prospective victims of family violence?
   ii. Who does this information need to be shared with?
   iii. In what circumstances should the information be shared?
   iv. What are the particular circumstances that illustrate when information needs to be shared, but cannot lawfully be shared under the current legislative framework?
   v. Does the complexity of privacy law and a risk-averse culture prevent information sharing?
   vi. Would a tiered approach to information sharing be preferred, with greater capacity to share information available in a ‘hub’ arrangement?
   vii. What is the appropriate balance between the right to privacy and the right to safety?

7.6. More information on making a submission is available at page 1.

7.7. Submissions should be made by 16 December 2016.
## 8. APPENDIX A: CATEGORIES OF INFORMATION

<table>
<thead>
<tr>
<th>LEGISLATION</th>
<th>CATEGORY OF INFORMATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privacy Act 1988 (Cth), and Information Privacy Act 2014 (ACT)</td>
<td>Personal information</td>
<td>Information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is readily identifiable.</td>
</tr>
<tr>
<td></td>
<td>Sensitive Information</td>
<td>Personal information that includes information about a person's:</td>
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<td>• health (including predictive genetic information);</td>
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<td>• racial or ethnic origin;</td>
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<td>• political opinions;</td>
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<td>• membership of a political association, professional or trade association or trade union;</td>
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<td>• religious beliefs or affiliations;</td>
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<td>• philosophical beliefs;</td>
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<td>• sexual orientation or practices;</td>
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<td>• criminal record;</td>
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<td>• biometric information that is to be used for certain purposes; or</td>
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<td></td>
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<td>• biometric templates.</td>
</tr>
<tr>
<td>Health Records (Privacy and Access) Act 1997 (ACT)</td>
<td>Personal Health Information</td>
<td>Any personal information:</td>
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<td>• relating to the health, an illness or disability of the consumer; or</td>
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<tr>
<td></td>
<td></td>
<td>• collected by a health service provider in relation to the health, an illness or a disability of the consumer.</td>
</tr>
<tr>
<td>Children and Young People Act 2008 (ACT)</td>
<td>Protected information</td>
<td>Information about a person that is disclosed to, or obtained by a person exercising a function under the Act, by virtue of their position in that function.</td>
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<tr>
<td></td>
<td>Sensitive information</td>
<td>Sensitive information includes:</td>
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<td>• care and protection report information;</td>
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<td>• care and protection appraisal information;</td>
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<td>• interstate care and protection information;</td>
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<td>• family group conference information;</td>
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<td>• contravention report information; and</td>
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<td>• prenatal report information.</td>
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<tr>
<td></td>
<td>Safety and wellbeing information</td>
<td>Information that is relevant to the health, safety or wellbeing of the child or young person.</td>
</tr>
</tbody>
</table>
9. APPENDIX B: FLOWCHART OF WHEN INFORMATION CAN BE SHARED

- Do you have consent to disclose the information?
  - NO
  - Is disclosure necessary to lessen or prevent a serious threat to the life, health or safety of a person?
    - NO
    - Is disclosure necessary to lessen or prevent a serious threat to public health or safety?
      - NO
      - Is disclosure necessary for preventing, detecting, investigating or punishing a criminal offence?
        - NO
        - Are you a ‘criminal justice entity’ under section 136 of the Crimes (Sentencing) Act 2005?
          - NO
          - Are you a police officer who suspects that there has been, or is likely to be, a domestic violence offence committed against a person?
            - NO
            - Is the information "personal health information"?
              - NO
              - Does the information relate to children or young people?
                - NO
                - You cannot disclose the information
              - YES
              - Refer to the Children and Young People Act 2008 (ACT)
            - YES
            - Refer to the Health Privacy Principles under the Health Records (Privacy and Access Act) 1997 (ACT)
          - YES
          - Does the information relate to an offence?
            - YES
            - You can share the information with the Domestic Violence Crisis Service?
              - YES
              - Disclosure to other Criminal Justice Entities is permitted
            - NO
            - Disclosure is permitted
          - NO
          - Is it unreasonable or impractical to obtain the individual’s consent to disclosure?
            - NO
            - Disclosure is permitted
            - YES
            - Disclosure is permitted
        - YES
        - Is it unreasonable or impractical to obtain the individual’s consent to disclosure?
          - NO
          - Disclosure is permitted
          - YES
          - Disclosure is permitted
      - YES
      - Disclosure is permitted
  - YES
  - Disclosure is permitted
- Refer to the Health Privacy Principles under the Health Records (Privacy and Access Act) 1997 (ACT)
### 10. APPENDIX C: LESSENING OR PREVENTING A SERIOUS THREAT TO LIFE, HEALTH OR SAFETY


#### Section 16A, Privacy Act 1988: Exception in relation to lessening or preventing a serious threat to life, health or safety.

This exception applies in the following circumstances:

- It unreasonable or impracticable to obtain the individual’s consent to the collection, use or disclosure; and
- The entity reasonably believes that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

<table>
<thead>
<tr>
<th>Element of the exception</th>
<th>Interpretation</th>
</tr>
</thead>
</table>
| **Unreasonable or impracticable to obtain consent** | The entity should be able to identify at least one clear reason that makes it unreasonable or impracticable to obtain an individual’s consent. Examples include where:  
  - The urgency of the situation and level of threatened harm requires action before it is possible to seek consent;  
  - Consent is required from the source of the threat;  
  - The individual is uncontactable – for example, their location may be unknown;  
  - There is an excessive burden involved in obtaining consent; and  
  - Consent is required from a very large number of individuals. |
| **Reasonably believes collection, use or disclosure is necessary** | There must be a reasonable basis for the belief, and not merely a genuine or subjective belief. It is the responsibility of the entity to be able to justify its reasonable belief.  
A collection, use or disclosure would not be necessary where it is merely helpful, desirable, or convenient. |
| **Lessen or prevent a serious threat** | A ‘serious’ threat is one that poses a significant danger to an individual or individuals. The likelihood of a threat occurring as well as the consequences if the threat materialises are both relevant. A threat that may have dire consequences but is highly unlikely to occur would not normally constitute a serious threat. On the other hand, a potentially harmful threat that is likely to occur, but at an uncertain time, may be a serious threat, such as a threatened outbreak of infectious disease. |
APPENDIX D: LIST OF RELEVANT REPORTS

ACT REPORTS


> Domestic Violence Prevention Council (2016), Findings and Recommendations from the Review of Domestic and Family Violence Deaths in the Australian Capital Territory.

> Domestic Violence Prevention Council (2015), DVPC Extraordinary Meeting Report to Attorney-General.

OTHER REPORTS


> Carolyn Adams (2016), A study into the legislative – and related key policy and operational frameworks for sharing information relating to child sexual abuse in institutional contexts.


> Family Law Council (2009), Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues.


12. APPENDIX E: LIST OF PRIVACY LEGISLATION

ACT PRIVACY LEGISLATION

> Information Privacy Act 2014 (ACT)
> Health Records (Privacy and Access) Act 1997 (ACT)
> Children and Young People Act 2008 (ACT)
> Domestic Violence Agencies Act 1986 (ACT)
> Crimes (Sentencing) Act 2005 (ACT)

COMMONWEALTH PRIVACY LEGISLATION

> Privacy Act 1988 (Cth)
> Telecommunications Act 1997 (Cth)
> Telecommunications (Interception and Access) Act 1979 (Cth)
> Data-matching Program (Assistance and Tax) Act 1990 (Cth)
> Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)
> Anti-Money Laundering and Counter-Terrorism Financing Rules (Cth)
> Personal Property Securities Act 2009 (Cth)