

# Sharing information to promote safety and protect women and children

VCOSS submission on the  
Family Violence Information Sharing  
Regulations and Guidelines

16 October 2017



## About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

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VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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# Introduction

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to provide input into the draft *Family Violence Protection (Information Sharing) Regulations 2017* and the family violence information sharing guidelines. VCOSS has consistently advocated for better information sharing between services, sectors and government departments to protect women and children at risk of family violence.

The Royal Commission into Family Violence said “Effective and appropriate sharing of information is crucial, playing a significant role in keeping victims safe and holding perpetrators to account. The consequences when information is not shared can be catastrophic.”<sup>1</sup>

VCOSS members work with vulnerable Victorians in many different types of services. Work in community services requires trust between practitioner and client. In some professions confidentiality is at the core of practice and helps build a positive working relationship. Organisations work hard to protect the privacy and confidentiality of people they work with, especially those experiencing violence, alcohol and other drug issues, mental illness, or interacting with the justice system. In these contexts, confidentiality is an essential component of the therapeutic relationship.

However, confidentiality that puts safety at risk can't be supported in law or practice. Although it has been lawful for some time to share information where people's safety is at risk, practitioners have had to grapple with existing practice, complex and confusing legislative schemes, guidelines and memoranda of understanding.<sup>2</sup>

VCOSS members have expressed strong support for better information sharing to protect women and children. The Family Violence Information Sharing Scheme is designed to protect women and children, but information sharing without appropriate safeguards can place them in further danger.

Empowerment and promotion of self-determination should be at the core of working with women and children experiencing family violence, but sharing information without consent can further disempower them and inhibit their capacity for self-determination.

In preparing our submission, VCOSS consulted with many of our members, including peak bodies, specialist and mainstream services with frontline experience working with women and children in different services. These include family violence, childhood education and care, child and family services, youth services, justice, disability, drug and alcohol, and other mainstream services providing support to women, men, children, young people and families.

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<sup>1</sup> State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol 1 Parl Paper No 132 (2014-16) p. 155

<sup>2</sup> *Ibid.* p. 170

This submission details the issues raised by our members and outlines how better Guidelines and further training is needed to support effective information sharing that promotes safety.

## Recommendations

### Share information with consent

- Include information in the Guidelines about seeking consent as standard practice, including for women with children
- Improve information in the Guidelines about seeking the consent of children and young people

### Prepare the workforce

- Simplify the Guidelines for readability, and include step-by-step guidance
- Consult specialist agencies to develop guidance for seeking the consent of vulnerable women
- Add information to the Guidelines for better communication with vulnerable women
- Ensure the Guidelines align with the Child Information Sharing Scheme
- Ensure training provided reaches all relevant staff

### Support organisations to comply with the scheme

- Provide template organisational policies on information sharing
- Strengthen verification measures for information sharing requests
- Support organisations to share information quickly
- Ensure IT based case management systems are aligned to support and facilitate information sharing

# Share information with consent

The *Family Violence Protection Amendment (Information Sharing) Act 2017* (the Act) has been drafted to allow information sharing about children without their consent, and without the consent of the non-offending parent, for the purposes of family violence risk assessment and protection. This is in line with the proposed Child Information Sharing Scheme which allows information sharing without consent if it promotes the child's wellbeing and safety. Three issues arise from this:

1. It allows information sharing about women *with* children without their consent, in contrast to women *without* children, creating two "classes" of adult victim,
2. It undermines the right to self-determination of women with children who have experienced family violence, further disempowering them, and
3. It undermines children's and young people's right to make decisions about issues that affect them.

VCOSS proposes these issues can be corrected by redrafting relevant sections of the "Family violence information sharing guidelines: Guidance for information sharing entities" (the Guidelines).

## Seek consent as standard practice

### Recommendation

- Include information in the Guidelines about seeking consent as standard practice, including for women with children

It is unfair to treat women differently according to their status as parents. The Act gives women without children the right to consent to their information being shared. However, information about a child may be shared without consent, regardless of the child's capacity to give consent. At times, this will mean divulging information about the non-offending parent without her consent.

Given the legislation has already passed in this form, VCOSS suggests rewriting the relevant section of the Guidelines to specify seeking consent for information sharing is standard practice in *all* cases.

Women with children can face additional barriers when seeking help for family violence. Women fear they will be blamed for "failure to protect" their children, leading to child protection intervention. The barriers for women with children seeking support may be exacerbated by the legislation, as it allows for information sharing without their consent. It could deter women from seeking help and have a "chilling" effect on the therapeutic relationship. In the absence of a good relationship

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between client and practitioner, it can be hard to build and maintain the trust needed to deliver effective services – especially for victim survivors of family violence.

Giving women who have experienced family violence agency and control is central to recovery. Removing their right to determine what information about them can be shared, as in the Act, undermines a central tenet of the therapeutic relationship.

VCOSS acknowledges that the safety of children is paramount, and there will be circumstances when information about a child's family violence risk needs to be shared without consent. However this must be carefully managed to ensure trust is not lost and women and children are put at further risk.

## Hear the voices of children and young people

### Recommendation

- Improve information in the Guidelines about seeking the consent of children and young people

Part 5A of the Act says information can be shared about a child to assess or manage a family violence risk in relation to the child, without their consent. This is to protect the child from harm and to emphasise that a person's right to privacy can't override a child's safety. We agree with this approach.

The Guidelines suggest a child's views should be sought in certain circumstances. VCOSS suggests that wherever possible, children and young people should have their voices heard and respected in relation to the information shared about them, and, if they are developmentally capable, be asked to provide their views in decisions made about them.

However, VCOSS members identify complexities associated with obtaining consent from children and young people to share information. Members refer to:

- The practicalities of talking about information sharing with children and young people,
- Concerns that telling a child or young person that you are going to share information about them will undermine the professional relationship and reduce young people's confidence to access services,
- Making children feel conflicted about sharing information, especially if it involves information about a parent, and
- Problems identifying whether a child or young person is old enough to have a view.

Giving children the opportunity to provide informed consent for sharing their information provides them with decision-making power. Article 12 of the United Nations Convention on the Rights of the Child, to which Australia is a signatory, says "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters  
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affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.” VCOSS members provide insight into this, saying removing children and young people’s decision-making powers risks disengagement. They acknowledge the complexities associated with assessing the maturity of a child and their capacity to form and express a view.

Although Article 12 has existed for some time, there is still reluctance to acknowledge the importance of giving children and young people a say in decisions affecting them. Children are no longer considered to be ‘unformed’ adults: vulnerable, dependent and immature. Rather, their competence and agency is increasingly highlighted, leading to more emphasis on listening to their views.<sup>3</sup>

Recent Victorian government policy acknowledges child participation in decision-making. For example, Victoria’s Child Safe Standard number 7 requires organisations to enable and promote the participation of children, including through promoting and encouraging their decision-making, valuing and respecting their opinions, and seeking their views about what makes them feel safe and unsafe.<sup>4</sup>

Similarly, the principles guiding the Roadmap for Reform include “building personal capacity (of young people) to make choices where appropriate and input to their care, guided by professional support” and “ensuring opportunities are available (for children and young people) to develop executive function and self-regulation skills – skills crucial for enabling positive behavior and healthy decision making.”<sup>5</sup> Not only is it empowering for children and young people to be involved in decision making, it has a therapeutic function.

In “Implementing Article 12 of the United Nations Convention on the Rights of the Child in Child Protection Decision-Making: a Critical Analysis of the Challenges and Opportunities for Social Work”, Paul McCafferty wrote about the importance of including children in decision making, while acknowledging the practical difficulties for professionals in the community services sector of achieving this goal.

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<sup>3</sup> <https://aifs.gov.au/publications/family-matters/issue-96/ethical-research-involving-children> citing (James & Prout, 1990; Pufall & Unsworth, 2004; Woodhead, 2009).

<sup>4</sup> Commissioner for Children and Young People <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards/standard-7-empowering-children/> Accessed 26 September 2017

<sup>5</sup> Roadmap for Reform <http://www.strongfamiliesafechildren.vic.gov.au/roadmap-for-reform-strong-families-safe-children> pages 11 & 12

*... Involving children in decision-making contributes to their personal development; empowering and enhancing self-esteem and social skills. Involving children has the potential to improve decision-making processes and outcomes by ensuring decisions are more inclusive and responsive to explicit and stated need. Decisions made in this more enlightened manner thus have the potential to increase the efficacy of protective services. In principle, services can now be designed and evaluated based on a more tailored, informed, inclusive and democratic constituency. Service delivery therefore becomes more child centric based on what children state they need, as opposed to adult centric based on what adults think children need. As a further consequence of this type of involvement, accountability and transparency can improve with children given the right to hold decision-makers to account. Finally, involvement can also prepare children for civil society and teaches tolerance and respect for others.<sup>6</sup>*

Recent surveys indicate support for children and young people to be consulted on policies and programs, with 71 per cent of Australians surveyed supporting opportunities for 15 to 18 year-olds to influence government decisions.<sup>7</sup>

VCOSS members generally favour giving children and young people a say about whether agencies could share their information and this is at the heart of child-centred practice.

VCOSS members suggest the “voice” of children is not limited to their words, but can include other means of expression, particularly for very young children, such as observations of them, data about them and their expression through physical or social engagement with other people.

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<sup>6</sup> Paul McCafferty “Implementing Article 12 of the United Nations Convention on the Rights of the Child in Child Protection Decision-Making: a Critical Analysis of the Challenges and Opportunities for Social Work” *Child Care in Practice* Vol. 23, Iss. 4, 2017

<sup>7</sup> <https://theconversation.com/giving-voice-to-the-young-survey-shows-people-want-under-18s-involved-in-politics-83101>

# Prepare the workforce

## Simplify language in the Guidelines

### Recommendation

- Simplify the Guidelines for readability, and include step-by-step guidance

VCOSS members expressed concern about the complexity of the Family Violence Information Sharing Scheme and its potential to cause confusion. The Guidelines are necessarily extensive, as clear guidance is required in order to build confidence and trust in sharing information. However, they are often dense, full of jargon, complicated and not easily read or digestible. VCOSS members suggested the Guidelines need to be simplified to be a more effective tool for information sharing

VCOSS members suggested simplifying the Guidelines by using plain English, including step-by-step instructions and “decision trees” and undertaking a thorough review of the document to remove inconsistencies and improve readability.

## Provide information on seeking consent from vulnerable clients

### Recommendations

- Consult specialist agencies to develop guidance for seeking the consent of vulnerable women
- Add information to the Guidelines for better communication with vulnerable women

Clearer guidance for seeking consent for information sharing should be included in the Guidelines. Our members consider it good practice to always seek consent to share information, especially from women who are likely to be further disempowered by the experience of having their, or their children's, information shared without consent. Seeking consent to share information is a complex and nuanced issue.

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The Guidelines would benefit from further consultation with organisations representing diverse communities to ensure they provide effective guidance to professionals. An example is the “model conversation” on page 68. This would not be an appropriate approach for most women experiencing family violence, especially women who might also be experiencing mental illness or have a cognitive impairment.

Special care is needed when seeking the consent of vulnerable women to share their information. Poor practice can result in women disengaging from the service, which can increase their risk of harm. VCROSS members said this is especially the case when working with Aboriginal and Torres Strait Islander women and women with disabilities.

In relation to working with Aboriginal and Torres Strait Islander women, the Aboriginal Family Violence Prevention and Legal Service, in their submission to the Family Violence Royal Commission<sup>8</sup> detailed the barriers faced by Aboriginal women victim survivors of family violence. These barriers are compounded by the “threat” of information sharing. Guidance to support self-determination in this context must be developed in close consultation with Aboriginal women and Aboriginal Community Controlled Organisations that specialise in working with victims of violence.

The Law Institute of Victoria’s resource the *Capacity Guidelines and Toolkit*<sup>9</sup> detail the ways a lawyer can determine if a client has capacity to make decisions and provides additional assistance for lawyers working with clients that lack capacity. The Toolkit recognises that capacity is fluid and capacity in relation to one issue may be different in relation to another issue. Guidance of this kind should be considered for professionals working with victim survivors of family violence with cognitive impairment or mental illness. VCROSS members also said guidance on supported decision making on information sharing must also be available to those who require it.

## Eliminate inconsistencies with the Child Information Sharing Scheme

### Recommendations

- Ensure the Guidelines align with the Child Information Sharing Scheme

Both the Protecting Victoria’s Vulnerable Children inquiry report (PVVCI) and the Royal Commission into Family Violence endorsed a combined approach to family violence and child

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<sup>8</sup> Aboriginal Family Violence Prevention and Legal Service *Submission to the Victorian Royal Commission into Family Violence* June 2015 p. 23 <http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf> (accessed 11 October 2017)

<sup>9</sup> Law Institute of Victoria, *LIV Capacity Guidelines and Toolkit: Taking instructions when a client’s capacity is in doubt*, October 2016 [https://www.liv.asn.au/PDF/For-Lawyers/Submissions-and-LIV-Projects/2054\\_LPP\\_CapacityGuidelines\\_FINAL\\_WEB](https://www.liv.asn.au/PDF/For-Lawyers/Submissions-and-LIV-Projects/2054_LPP_CapacityGuidelines_FINAL_WEB) (accessed 11 October 2017)

abuse and neglect. Both reports recognised the traditional child protection approaches unfairly blamed women for child abuse by failing to act “protectively” when faced with family violence.<sup>10</sup> Perpetrators have historically been invisible in the child protection system, even though the PVVCI noted witnessing family violence amounts to child abuse and the experience of family violence negatively affects parenting capacity.<sup>11</sup> For these reasons, alignment across the information sharing schemes is essential.

The Guidelines must include guidance about the proposed Child Information Sharing Scheme. VCOSS understands the two schemes are supposed to work together, but as the Guidelines are currently drafted they are misleading about what information can be shared about children without consent. Examples of this are contained in the case studies “victim survivor gives implied consent” on pages 46-47 and “information not relevant to a family violence assessment or protection purpose” on page 13. Consent to share information in these cases is not needed because they relate to the wellbeing and safety of children. As they are currently drafted the Guidelines do not make it clear that information about children, and, by virtue of that, the non-offending parent can be always shared without consent.

It is important that the two information sharing schemes, and the Guidelines that support them, work in concert with each other to ensure women and children remain safe.

## Provide training for all relevant staff

### Recommendation

- Ensure training provided reaches all relevant staff

The Regulations specify the range of organisations that will be prescribed as information sharing entities (ISEs). In most cases, these organisations have experience working with families experiencing family violence. However, there are some VCOSS members that will be classified as ISEs and included in the first stage of the Family Violence Information Sharing Scheme roll out, but their primary focus is not family violence response.

Some VCOSS members highlighted that although they do not primarily provide family violence services, they participate in Risk Assessment and Risk Management Panel meetings (RAMPs). VCOSS members said access to training should be extended to ensure all ISE workforces are in scope (for example, alcohol and other drug services and mental health services).

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<sup>10</sup> State of Victoria, Royal Commission into family violence: Report and recommendations Vol II p. 170  
Our Watch et al., op cit p. 24

<sup>11</sup> P Cummins, D Scott and B Scales, PVVCI p. 35

Staff have varying capacity and experience in assessing and managing family violence risks and responding to information requests, and judging when they should proactively share information. Providing comprehensive face-to-face training can build the capacity and confidence of practitioners so they understand when and how to share information safely and effectively. This training should be promoted and made available to all information sharing entities, including organisations that are included in RAMPs. VCOSS members raised concerns there will be inadequate support for organisations that are involved in RAMPs. While these organisations may be required to provide information under the scheme, they are less likely to be aware of the reforms or their responsibilities under the scheme.

Periodic training should be available to train new workers who enter the sector and to maintain awareness among workers, particularly those who do not regularly share information.

VCOSS members raised concerns some women will disengage from services if they lack trust in services or feel their information is being shared against their wishes under the scheme. In particular, this is likely to affect Aboriginal women, women from CALD backgrounds, women with disability, LGBTI Victorians, and those experiencing poverty. To help prevent negative unintended consequences arising from the Scheme, it is crucial services engage respectfully and sensitively with women and their families. VCOSS members strongly call for information sharing entities to undergo comprehensive cultural safety training, gender responsive training and disability awareness training. Training would help organisations share information appropriately, develop their understanding of different practices, and help foster trusting relationships with women who have experienced family violence.

Training should cover when and how staff should seek consent from women, children and young people. As VCOSS members noted, discussing information sharing or gaining consent from women experiencing family violence can be challenging for staff. In relation to children and young people, determining the developmental maturity of children and empowering them to make decisions requires specialist knowledge and skills.

VCOSS members advocated for training to support the implementation of the Guidelines and to help organisations develop a common language for risk assessment across sectors.

Organisations with volunteer reliance identified that they will also need training, and training a volunteer workforce presents particular challenges. VCOSS recommends a staged approach to training, to ensure key personnel in the first tranche of information sharing entities are trained first.

# Support organisations to comply

To operationalise the family violence information sharing scheme, VCOSS members made suggestions about organisational policies to support consistent practice, classifying a broader range of organisations as ISEs, improved verification measures and mechanisms to allow for swift information sharing, including via compatible case management systems.

## Provide template organisational policies

### Recommendation

- Provide template organisational policies on information sharing

As the recent shifts in information sharing represent a change in practice for many organisations, VCOSS members told us that template organisational policies would help to ensure organisational compliance with Part 5A.

This includes organisations providing support to perpetrators who may be more protective of privacy, especially for people who have ongoing involvement with the justice system.

This will also help to ensure consistent approaches across the sector to information sharing and help to build trust between information sharing entities. If agencies are on “the same page” it will increase their confidence to share information.

## Strengthen verification measures

### Recommendations

- Strengthen verification measures for information sharing requests

Concerns were raised by VCOSS members about the lack of verification required to respond to an information request. Verification by way of an email from a work address is inadequate. VCOSS members pointed to phishing email “scams” that appear to come from a known business but are fake. VCOSS members thought that information requests about victims and their children could easily be sent from a fake email account, putting their safety in danger. VCOSS suggests investigating other technology options, for example security tokens with “live” codes.

## Facilitate fast information sharing

### Recommendations

- Support organisations to share information quickly
- Ensure IT based case management systems are aligned to support and facilitate information sharing

Concerns were raised by VCOSS members about the need for swift information sharing. This will be influenced to a large degree by organisational capacity. Organisations will require support to ensure they have enough staff trained to use Part 5A to cover staff leave. This will have an impact on certain types of organisations, including smaller and regionally-based service providers.

VCOSS members raised a number of concerns about lack of alignment between different IT based case management systems, suggesting information sharing could be enhanced by having systems that “speak” to each other. IT functionality that also prompts users to record and dispose of records in accordance with the law would also be welcomed.

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