IN THE MATTER OF THE ROYAL COMMISSION INTO FAMILY VIOLENCE

STATEMENT OF SCOTT JAMES WIDMER

Date of Document: 31 July 2015 Filed on behalf of: State of Victoria Prepared by: Victorian Government Solicitor's Office Level 33 80 Collins Street Melbourne VIC 3000	[redacted]

I, SCOTT JAMES WIDMER, Executive Director, Service Design & Operations, Department of Health and Human Services, of 50 Lonsdale Street, Melbourne, SAY:

1. I am an Executive Director of Service Design & Operations in the Department of Health and Human Services (**DHHS**).

2. This is the second statement I have made to the Royal Commission into Family Violence. My professional experience and qualifications are set out in my first statement dated 21 July 2015 (**my module 9 statement**).

3. I have received a notice from the Royal Commission into Family Violence pursuant to section 17(1)(d) of the *Inquiries Act 2014* requiring me to attend to give evidence at the Royal Commission and to provide a written witness statement prior to attending.

4. I understand that the Royal Commission has sought my evidence on the topic of information sharing. This statement will cover:

   4.1 Information sharing in the context of family violence;

   4.2 How information is currently shared;

   4.3 The challenges to effective sharing information; and

   4.4 Potential options to improve information sharing.

INFORMATION SHARING IN THE CONTEXT OF FAMILY VIOLENCE

5. There are two key reasons that organisations involved in responding to family violence share information. First, it is necessary to assess and manage the risk to a victim's safety and, in particular, to prevent or reduce the risk of further harm. This includes

sharing information about perpetrators to hold them accountable for their behaviour. Secondly, information sharing through case management and the co-ordination of services assists victims to recover from family violence and perpetrators to change their behaviour.

6. In the last decade, there has been an increasing focus on improving information sharing between victim's services and justice services, including the police. This recognises that increasing the understanding and accountability of the perpetrator strengthens the management of risk to victims of family violence..

7. Importantly, as highlighted in Victoria's Family Violence Risk Assessment and Risk Management Framework (**CRAF**) (Attachment SW-2 to my module 9 statement):

> "sharing information helps people to feel confident that their situation is understood and is being managed across a range of service providers; it also means they do not have to repeat personal and sensitive information and possibly be subjected to further trauma" (page 47).

Family violence information sharing - health and human services

8. People experiencing or perpetrating family violence may receive a wide range of health and human services. This may require services provided or funded by DHHS, as well as other key agencies such as Victoria Police, to share information. Services funded or provided by DHHS that might be provided to victims or perpetrators of family violence include:

   8.1 risk assessment and management, which will most likely be delivered by specialist family violence services, or in the case of men perpetrating violence, by men's family violence services;

   8.2 child protection or Child FIRST/integrated family services;

   8.3 case management services, either by a specialist family violence service, men's family violence service or another service;

   8.4 mental health services;

   8.5 alcohol and drug treatment services;

   8.6 housing and homelessness services;

   8.7 healthcare either through a hospital or community health service;

8.8 services for older persons;

8.9 sexual assault support services; and

8.10 disability services.

9. In addition to receiving health and human services, the victim and perpetrator of family violence may interact with police, the courts and legal services.

HOW INFORMATION IS CURRENTLY SHARED

Legislation

10. DHHS and its predecessor departments have, like much of the public sector, traditionally funded and arranged their services based on discrete programmatic lines (for example, child protection; hospitals; housing; homelessness; disability; mental health; alcohol and drug treatment and so on).

11. This reflects the largely programmatic focus of the key Acts that govern DHHS functions and service delivery such as the *Children, Youth and Families Act 2005* (**the CYF Act**); the *Disability Act 2006*; the *Mental Health Act 2014* (**Mental Health Act**); the *Public Health and Wellbeing Act 2008*; the *Health Services Act 1988*; and the *Housing Act 1983*. The summary table at **Attachment SW-25** provides a brief overview of the key Acts that set out the core service delivery functions of DHHS.

12. These Acts set out the objectives, functions and powers of DHHS and other relevant agencies in delivering these services.

13. As the delivery of these services involves the collection or disclosure of personal information, some of which can be highly sensitive, many of these Acts seek to balance an individual's right to information privacy and confidentiality with the need to share information to provide effective and safe services and prevent harm to others. For example, section 346(1) of the Mental Health Act provides a general prohibition on the disclosure of health information about a consumer by a mental health service provider, subject to a number of exceptions listed in section 346(2). These include where the disclosure is permitted under an Act other than the *Health Records Act 2001* (**Health Records Act**) or under certain specified Health Privacy Principles in the Health Records Act. These include Health Privacy Principle 2.2(h), which permits disclosure where an organisation reasonably believes that disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health safety or welfare.

14. In addition to the specific confidentiality provisions in these Acts, DHHS and its funded services must comply with the overarching privacy frameworks and principles in the *Privacy and Data Protection Act 2014* (**the PDP Act**), the Health Records Act, the *Privacy Act 1988* (Cth). The Information Privacy Principles (**IPPs**) in the PDP Act and the Health Privacy Principles (**HPPs**) in the Health Records Act permit disclosure of information for the primary purpose for which it was collected. Information can also be disclosed for a secondary purpose, other than the primary purpose of collection, in certain circumstances, with the consent of the individual concerned. The IPPs and HPPs also allow disclosure of, respectively, personal information and health information where an organisation reasonably believes that disclosure is necessary to lessen or prevent a serious and imminent threat to the life, health, safety or welfare of any individual ("**serious and imminent threat exception**").

15. In some cases, information sharing is not only allowed, but required. Section 184 of the CYF Act requires mandated professionals to make a report to Child Protection if they form a belief on reasonable grounds that a child is in need of protection from physical injury (section 162(c), CYF Act) or sexual abuse (section 162(d), CYF Act). In the justice context, section 327 of the *Crimes Act 1958* requires any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 has an obligation to report that information to police.

16. Interagency collaboration and information exchange, in particular within and between health and human services and justice services, is a necessary part of assessment and management of the risk posed by family violence.

17. This means that information sharing in the family violence context must therefore take into account the multiple Acts and privacy frameworks that may be relevant. A factsheet prepared in 2009 by the then Office of Women's Policy in consultation with the then Office of the Victorian Privacy Commissioner, summarises information sharing for family violence risk assessment and management (**Attachment SW-26**). It stresses the importance of agencies understanding their functions and the reasons for collection of information, as this impacts on whether disclosure is permitted.

18. The factsheet advises that, under privacy legislation, information can be used and disclosed for the primary purpose it was collected. Information can also be disclosed for a secondary purpose, other than the primary purpose of collection, in certain circumstances, with the consent of the individual concerned. The factsheet advises agencies to adopt a rights-based best practice approach premised on seeking consent for information disclosure. Additionally, information can be disclosed, without consent, in certain limited circumstances, including:

18.1 where the purpose of disclosure is related to the primary purpose and the individual would reasonably expect the disclosure;

18.2 where the serious and imminent threat exception applies; and

18.3 in circumstances where there is a suspicion of unlawful activity and the information is used or disclosed as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities.

19. For all other instances of information sharing without consent, agencies must consider the legal grounds for doing so by referring to their governing legislation. They must make decisions about the amount of information to share, how and with whom and only to the extent that it is necessary for the other agency to perform their role or function.

Protocols and relationships

20. DHHS has developed a range of information sharing protocols and memoranda of understanding with different government and non-government stakeholders. These agreements provide a high level commitment between agencies about what and how information should be shared.

21. I have identified at least 18 protocols or memoranda of understanding that have direct or indirect relevance for information sharing in a family violence context. These are listed in **Attachment SW-27**.

22. DHHS has 13 protocols with Victoria Police alone, of which three are included in the policies identified in the list in Attachment SW-27, above. The 2014 overarching Memorandum of Understanding between the then Department of Human Services and Victoria Police (**Attachment SW-28**) sets out guiding principles for the establishment of a "constructive and consistent relationship" through co-operation and collaboration. It recognises that the "active and transparent sharing of information" is necessary for the discharge of each organisation's respective functions (section 6).

23. Two protocols with Victoria Police of particular relevance to family violence are the *Family Violence Referral Protocol 2015* (**FV Referral Protocol**) (**Attachment SW-29**) and the *Protecting Children – Protocol between DHS Child Protection and Victoria Police* (**Protecting Children Protocol**) (**Attachment SW-30**).

24. The FV Referral Protocol outlines the approach for:

    24.1 formal and informal referral pathways by police for victims of family violence to family violence services;

    24.2 assessing the risk to any child or children or young person present at a family violence incident and referring that child to appropriate support services;

    24.3 formal and informal referrals by police of perpetrators of family violence to services and emergency accommodation if required; and

    24.4 referral by family violence support agencies for police assistance.

25. The Protecting Children Protocol has a specific section on information exchange between Victoria Police, Child FIRST and Child Protection and makes clear the IPPs that govern the use or disclosure of information. The Protocol advises that there will be few instances when information exchange is not permitted between Child Protection and Victoria Police, as they are both "protective interveners" under the CYF Act.

Culture and practice

26. There are also various guidelines, practice guides and codes of conduct that translate the high level protocols or obligations into operational practice by staff supporting or delivering services. For example, the CRAF and the Code of Practice for Specialist Family Violence Services for Women and Children, produced by Domestic Violence Victoria (Attachment SW-5 to my module 9 statement) (**Code**) seek to provide guidance about how agencies should collaborate and share information in delivering family violence services.

27. The Code sets out the way family violence professionals are expected to collaborate with other agencies. It identifies a range of strategies to facilitate collaborative practice and integration including:

    27.1 active participation in regional or sub-regional family violence networks or committees;

    27.2 negotiation of local and regional referral pathways and protocols, among a range of services such as police, courts, child protection;

    27.3 development of formal agreements to define relationships;

    27.4 development of specific partnerships for particular cohort groups, including Aboriginal Victorians; and

27.5 collaborative work with services for men.

28. There is also a range of other practice guidance and codes that govern various DHHS funded services, including those delivering men's behaviour change programs, such as the *No to Violence Minimum Standards* (**Attachment SW-31**). These standards contain provisions around administration and record keeping that are designed to ensure personal information is handled securely and confidentially.

29. "Protecting Victoria's Children" is the practice manual for statutory child protection in Victoria. It is available at http://www.dhs.vic.gov.au/cpmanual/home and is the primary point of reference for child protection practitioners and managers employed by DHHS and other stakeholders, regarding the practice requirements to promote the safety, stability and development of children at risk of harm in Victoria. The manual contains a number of resources guiding practitioners on the collection, recording and sharing of information through child protection intake and investigation phases.

Information technology systems and databases

30. Effective information technology systems and databases for the delivery of government services can facilitate the sharing of information at both:

30.1 an individual client or family level to support risk assessment, risk management and service delivery; and

30.2 a systems level by using aggregated data to enable an improved understanding of trends and issues. This enables the system to learn what is working and what is not; forecast and respond to demand; and improve policy and service design.

31. Information technology systems and databases in health and human services have largely developed over time to support particular services, in line with the way departmental structures have developed to mirror the programmatic focus of enabling legislation. This has resulted in the development of numerous and separate client information systems. There are currently at least 14 discrete systems that record and store client information, collate data or provide information on targets and services across the human services output groups. In addition, relevant records may be kept in at least 12 related health information systems (see **Attachment SW-32** for an overview of the main systems). For example, child protection, Child FIRST/Family services, family violence, housing, homelessness, mental health, alcohol and drug, disability, hospitals each have separate databases. Additional systems operate in the funded non-government sector, often as case management systems.

32. DHHS family violence services are currently funded by two discrete output groups which each use different information technology systems. For example, family violence services such as case management/outreach (transition support) that is funded out of the housing assistance output group, are required to input into the Specialist Homelessness Collection information system, usually through the Specialist Homelessness Information Platform (**SHIP**) (described in Attachment SW-32, above). A family violence counselling service, funded through the child protection and family services output group will use the Integrated Reports and Information System (**IRIS**), (also described in Attachment SW-32). A service that is funded for both of these activities will use both of these systems.

33. In light of the disparate information technology systems, information sharing currently occurs largely through manual arrangements, with limited information sharing electronically through the various information technology systems outlined at Attachment SW-32. Funded services that deliver multiple programs or services might have an organisational case management system that allows them to extract information at an aggregate client level. Further, services may extract the information from their own electronic system or case records and share the information with other agencies over the telephone, during face-to-face meetings or case conferences, or via secure email or fax in line with client consent or information sharing legislation. Worker access to this information will vary according to their roles and the type of information being shared.

34. For example, Organisation A may be providing counselling and outreach support to a victim of family violence and her children. Organisation A will enter the family's details on IRIS in order to provide the counselling services. In order to provide outreach services to the victim, Organisation A will also record the family's details and their case plan in the SHIP system. As part of the outreach support, Organisation A is helping the family with their long term housing needs. However, Organisation A will not have access to the victim's public housing application information in the Housing Integrated Information Program system. A worker from Organisation A, with the victim's consent, will need to telephone the local housing office to track progress of this application. Workers typically navigate these arrangements by maintaining regular contact with each other throughout these processes.

WHAT ARE THE CURRENT CHALLENGES TO EFFECTIVE INFORMATION SHARING

35. There are a number of challenges to sharing information in Victoria that can impact on people who experience family violence.

Availability of information to enable family violence agencies to undertake effective risk assessment for all cases of family violence

36. Family violence agencies play a key role in the assessment and management of risk for victims of family violence. The effectiveness of a risk assessment to a large part depends on the comprehensiveness of information available to that agency.

37. As set out in my module 9 statement, family violence risk assessment in Victoria is guided by the CRAF. This approach relies heavily on the information able to be provided by the victim to the agency conducting the assessment. In addition, an agency may also receive an L17 referral from Victoria Police about a particular incident involving that victim. An agency may also be familiar with the perpetrator of violence.

38. The CRAF promotes information sharing as a necessary approach to supporting risk assessment and management. The CRAF notes that "risk levels can change quickly" and must be continually reviewed by a process of ongoing monitoring and assessment (page 50). Comprehensive and timely information sharing when risk is being managed is important to make sure that services who provide support to victims are aware of changing threat levels and can nimbly respond to a victim's needs.

39. There are no legislative powers that specifically support family violence agencies to obtain information for the purpose of assessing the risk family violence poses to a person. Some agencies that conduct risk assessments do have legislative powers that enable them to obtain information that may otherwise be unlawful to disclose. For example, the CYF Act empowers Child Protection workers to request necessary information from other agencies. For example, under section 192 of the CYF Act, Child Protection can seek information from an Information Holder (defined to include a wide range of agencies and organisations, including a body funded to provide family violence services). Section 206 of the CYF Act provides protections from legal consequences to people who provide Child Protection with information in good faith. Section 209 allows people to provide information to Child Protection on a confidential basis.

40. The primary basis for information sharing under the CRAF is consent. The CRAF states (page 47):

> "Individuals, including victims and perpetrators, own all information about themselves, including any that has been provided to or shared with you by another party. It is therefore their right to be asked for their informed consent before information about them is disclosed to other agencies."

41. However, in most cases seeking consent from the perpetrator is either unsafe or unfeasible, given that it may result in the escalation of risk to the victim. As a result, a family violence agency conducting a risk assessment is typically not in a position to obtain consent (particularly from the perpetrator) that would enable it to access information about a perpetrator's history to form a more comprehensive and informed view of the level of risk.

42. In addition, the information provided by the victim may be limited by the level of trust and confidence the victim has in disclosing information during a risk assessment. This may be particularly relevant where the victim has no prior relationship with the family violence service. Further, the victim may not be aware of, or have complete information about, a perpetrator's history.

43. This means a family violence agency would not routinely obtain:

    43.1 the perpetrator's criminal record and whether there are any outstanding warrants for his arrest;

    43.2 details of any prior contact the perpetrator has had with police in relation to family violence (eg previous L17 referrals);

    43.3 details of any contact the perpetrator has had with child protection or ChildFIRST/family services, including whether he had been determined to be a person responsible for harm;

    43.4 any history of drug and alcohol or mental health conditions that the perpetrator may have that is relevant to his risk of violence;

    43.5 details of any relevant court orders (such as intervention orders) that the perpetrator may be subject to or have breached in the past;

    43.6 advice from Corrections Victoria about the perpetrator if he is receiving a corrections service; and

    43.7 details of previous family violence risk assessments that have been conducted by other agencies in respect of the perpetrator.

44. Family violence agencies may be able to obtain some of this information if they are able to establish to the satisfaction of the organisation that holds the information that sufficient risk exists to use the "serious and imminent threat" exemption as set out in relevant privacy principles.

45. However, many family violence cases will not meet this threshold. This is because requiring the threat to be both "serious" *and* "imminent" sets a high bar. In particular, whether a threat is "imminent" can be uncertain and difficult to establish in the dynamic context of family violence. In addition, while the evidence of "imminence" may be unclear, the threat can nevertheless be serious and a victim placed at real risk.

46. Practically, this threshold can prevent information sharing that would facilitate early intervention in family violence situations. Greater sharing of information about a perpetrator may allow earlier identification of risk and an appropriate service response to be put into place before serious violence becomes imminent. Further, this threshold creates a practical dilemma for practitioners – without information about the perpetrator, it can be difficult to establish whether there is a 'serious and imminent threat'.

47. Privacy legislation is only one part of the complex legislative environment that family violence professionals have to navigate when seeking to share information. For example, secrecy and confidentiality provisions in other legislation, which govern the collection of information for prescribed purposes for various program specific portfolios, introduce an additional layer of complexity. These include:

47.1 The Mental Health Act – as described above, the Mental Health Act contains a general prohibition on the sharing of health information about a consumer by a mental health service provider. While a "serious and imminent threat exception" applies to permit disclosure, the same practical challenges outlined above apply.

47.2 There are around 50 provisions concerning the sharing of information dispersed throughout the CYF Act, according to the phases of child protection intervention. A list of key provisions is attached at **Attachment SW-33**. For example, section 35 empowers Child Protection to disclose information for the purpose of (a) seeking advice on or assessing risk to a child or (b) seeking advice on or determining which service agency (which includes a body contracted to provide family violence services) is an appropriate body to provide assistance for the child or the family of the child. However, section 205(2)(b) restricts the disclosure of information arising from a Child Protection investigation. The provision contains an exception allowing Child Protection to share information in certain circumstances where it will assist a Child Protection investigation. This may allow information to be shared with a family violence agency but necessitates an

examination of the particular information in a particular factual circumstance. A diagram summarising information sharing for Child Protection, Child FIRST and family service workers is attached at **Attachment SW-34**. The complexity of information sharing provisions in the CYF Act can lead to confusion and difficulty for practitioners in complying with the legislation.

Information sharing for victims at highest risk

48. For victims at highest risk, the Risk Assessment Management Panels (**RAMPs**) are a multi-agency initiative that bring together a range of services at monthly meetings to share information about women and children at serious and imminent threat to keep them safe. My module 9 statement outlines the intent, operation, trialling and Statewide rollout of RAMPs.

49. Information sharing at a RAMP is also based on the consent of the victim and the serious and imminent threat exception. This aligns with the target group for RAMPs, which is women and children for whom there is a serious and imminent threat to their life, health, safety or welfare from family violence.

50. However, even at the highest risk levels, there are limits to this information-sharing model. These include the following:

    50.1 The consent requirements around the collection of sensitive information as set out under IPP 10 pose some challenges for the way RAMPs operate. IPP 10 permits the collection of sensitive information (such as criminal records) without consent, for example, where the collection is required by law or it is necessary to prevent or lessen a serious and imminent threat to life or health, **but only** where the individual about whom the information is concerned is incapable of giving consent. While this does not prevent the *disclosure* of the information, this threshold prevents the *recording* of sensitive information like criminality discussed at RAMPs (for example, recording a person's criminal record in minutes or action plans).

    50.2 The serious and imminent threat exception for the use and disclosure of information must be for the purpose of preventing or lessening the serious and imminent risk to the woman and child. This makes it important to ensure that tangential information that does not meet this purpose is not shared at a RAMP or with RAMP members where it is not relevant to them. For example, Child Protection workers do not participate in a RAMP case that does not involve children.

50.3 This highlights the dissonance between the RAMP model, which contemplates multilateral information sharing, and the PDP Act that is focused on bilateral information sharing. For each instance of sharing at a RAMP meeting, the IPPs and exceptions may apply differently to different organisations depending on their function and purpose.

50.4 The seriousness and imminence of the risk from family violence to which an individual is exposed is volatile and may change rapidly. Indeed, the very purpose of RAMPs is to manage the risk of family violence in ways which will ultimately reduce that risk. This means that partners have to constantly be alert to monitoring risk levels for each case to ensure they remain within the scope of a RAMP.

51. To address these challenges, optimise the operation of the RAMPs and maximise the confidence of participants to share information, the department intends to apply under the PDP Act for an Information Usage Arrangement (**IUA**). This is a mechanism which permits modification of or noncompliance with specified IPPs where the public interest in handling the information in the manner proposed by the arrangement substantially outweighs the public interest in complying with the IPP. IUAs must be certified by the Commissioner for Privacy and Data Protection and approved by the relevant Ministers.

52. DHHS has commenced work on the privacy impact assessment required to support the application for an IUA in relation to RAMPs. We anticipate that a draft privacy impact assessment will be provided to the Commissioner for comment by the end of August 2015. I also expect that a proposed IUA will be drafted soon thereafter, pending the Commissioner's views on the draft Privacy Impact Assessment (**PIA**). DHHS will work with the Commissioner for Privacy and Data Protection on the application process.

Information technology systems and databases

53. As outlined above, there is limited transferability of information between the systems listed in Attachment SW-32. As previously discussed, workers need to navigate systems that do not talk to each other by transmitting information to support clients via manual arrangements. This inhibits information sharing across services that can assist in assessing and managing the risk of family violence to women and children.

54. These limitations also affect case management to assist women and children to recover from family violence, and to rehabilitate men who use violence. This can:

54.1 prevent workers from identifying and addressing the full range of an individual's or family's needs;

54.2 inhibit the development of complete, accurate, and timely plans and service responses for individuals or families; and

54.3 mean that the onus is on clients to navigate from service to service, sometimes telling their stories multiple times. This places further pressure on individuals and families, and time is wasted gathering information that already exists in separate client information systems. Individuals can have records in multiple systems, as well as multiple records within the one system.

55. There is also an inability to transmit information securely between DHHS funded agencies and the systems of Victoria Police and Corrections. A key example of this is that police referrals, or L17 forms, are still faxed to family violence agencies.

56. In addition, it is difficult to aggregate comparable data about family violence services to allow systemic and statewide data analysis. This limits the ability to monitor trends, forecast demand and plan for more effective service delivery, as well as evaluate the effectiveness of services and monitor outcomes for service users.

POTENTIAL OPTIONS TO IMPROVE INFORMATION SHARING

57. There are opportunities to improve information sharing in the context of family violence. These include:

57.1 consideration of legislative amendments to more explicitly support information sharing in the context of family violence;

57.2 an improved platform to enable more robust and nimble risk assessment and management; and

57.3 an improved ability to interface existing health and human services systems to support more effective case management.

Legislation to more explicitly support information sharing in the context of family violence

58. As highlighted above, current legislation presents some challenges to the ability to share information in the context of family violence. I am participating in ongoing discussions with relevant departments and agencies across government about the future legislative basis for information sharing in the context of family violence in light of the issues.

59. Further, as I have said above, DHHS intends to make an application for an IUA under the PDP Act to give greater certainty about the ability to share information in the context of RAMPs. However, the lead party must report annually to the Commissioner about the IUA and, although an IUA may be amended with the approval of the Commissioner, the ability of an IUA to keep pace with further policy development or innovation for RAMPs is untested. Further, seeking an IUA in the context of family violence services across government, beyond a discrete project such as RAMPs, appears unfeasible given the sheer number of programs, services, organisations and information pathways involved.

60. Other mechanisms under the PDP Act are also not capable of providing a solution to the information sharing challenges across the whole of the family violence system. The PDP Act provides for the approval of codes of practice and permits organisations to discharge their obligations under the IPPs by complying with an approved code that is at least as stringent as the IPPs. The PDP Act also permits the Commissioner to make public interest determinations that the public interest in an organisation doing an act or engaging in the practice that contravenes or may contravene an IPP substantially outweighs the public interest in complying with that IPP. However, these determinations are specific to individual organisations, not to a whole sector.

61. A number of other jurisdictions have adopted specific legislation to support and create greater confidence in, sharing information in a family violence context.

National models – New South Wales

62. The New South Wales legislative framework for information sharing in the family violence context is governed by Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007* (**NSW Crimes Act**) and where children are involved, by Part 16A of the *Children and Young Persons (Care and Protection) Act 1998* (**CYPCP Act**).

Part 13A of the NSW Crimes Act

63. The NSW Crimes Act sets out that:

63.1 In the case of serious domestic violence threats, section 98M provides an exemption from privacy legislation for agencies to deal with information without consent. This can occur where the agency believes on reasonable grounds that:

(i) the particular dealing is necessary to prevent or lessen a domestic violence threat to a person; and

(ii) the threat is serious; and

(iii) the person has refused to give consent or it is unreasonable or impractical to obtain the person's consent.

63.2 Importantly, this section operates as a permissive information sharing gateway, making it explicit that privacy legislation is not a barrier to sharing information in the context of serious threats. It also does not require that a threat be 'imminent'. The NSW Domestic Violence Information Sharing Protocol (**Attachment SW-35**) states that this change was made because:

> "in domestic violence situations, a serious threat may exist but it might be hard to determine whether the threat is imminent. For example, in cases of long-term domestic violence where there have been repeated assaults, there may be no identifiable immediate threats to a victim's safety, but serious concerns about the victim's safety remain (page 48)."

63.3 By defining "dealing" as the collection, use or disclosure of information, the NSW Crimes Act also avoids concerns about the collection of sensitive information that may be posed by IPP 10 as detailed above.

Chapter 16A of the CYCP Act

64. The NSW approach in relation to family violence is supported by legislation that enables broad sharing of personal information for the purpose of promoting the safety, welfare or wellbeing of children or young persons.

65. Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* establishes a scheme for information exchange between prescribed bodies and requires organisations to take reasonable steps to co-ordinate the provision of services with other organisations. Chapter 16A allows information to be exchanged despite other laws that prohibit or restrict the disclosure of personal information, such as the *Privacy and Personal Information Protection Act 1998*, the *Health Records and Information Privacy Act 2002* and the Commonwealth *Privacy Act 1988.*

66. Previously this information exchange was generally only possible where the information was sent to or received from Community Services.

67. Evaluation of the New South Wales model suggests that these legislative changes have also had a positive impact on the culture of collaboration, coordination and information sharing relatively soon after their introduction (Attachment **SW-36**). The final evaluation concluded that, "Much of the workforce is involved in high levels of

information exchange. Stakeholders confirmed that this had been a real 'game changer'" (page 69).

International models – British Columbia

68. British Columbia's *Freedom of Information and Protection of Privacy Act 1996* (**FOIPP Act**) clarifies that it is appropriate to collect and disclose information for the specific purpose of reducing the risk that an individual will be a victim of domestic violence, if such violence is reasonably likely to occur (section 26(f) and section 33.1(1)(m.1) at **Attachment SW-37**). The regime does not require that a threat is "serious" or "imminent" to allow collection and disclosure of information.

69. Further, the FOIPP Act enables public bodies to share personal information for delivering or evaluating a common or integrated program or activity such as those addressing domestic violence (section 27(e) and 33.2(d)).

70. A Report of the Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence, *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems* (2013), at page 124 (**Attachment SW-38**), explains that these changes were brought about in part, due to the recognition that it was necessary to put in place a legislative basis for public bodies to *proactively* disclose personal information in appropriate circumstances. A proactive disclosure mechanism was considered useful to enable different providers across justice, social and health services to easily share information where there were risk concerns so that all parties could co-ordinate their actions in a timely fashion and have up-to-date knowledge of changing circumstances in each case based on all the available pooled information: see the British Columbia Government submission to the Special Committee to Review the Freedom of Information and Protection of Privacy Act (2010), at pages 18-19 (**Attachment SW-39**).

A platform to enable more robust and responsive risk assessment and management

71. Assessing and managing risk relies on the timely sharing of all relevant information about the victim, perpetrator and any relevant children. As outlined above, family violence agencies face challenges in obtaining a range information (particularly in relation to the perpetrator) relevant to this task.

72. In addition to exploring legislation to permit wider information sharing, there is an opportunity to explore a platform to allow agencies to share information required for risk assessment. This should occur at the initial risk assessment stage, but is also needed in the ongoing management of risk, as risk is dynamic. For example, when

managing safety for family violence victims, there are clear points where risk heightens. These include court dates, release from correctional services and deterioration in the mental health of a perpetrator. Currently, family violence services rely heavily on the victim to identify these trigger points.

73. The statewide rollout of RAMPs presents a method of achieving this for women and children at the highest risk. However, it is a resource intensive model that can assist a limited number of families. Given the volume of family violence incidents, an efficient and effective information sharing processes would need to be identified for women and children not suitable for RAMPs.

74. The United Kingdom's multi-agency safeguarding hubs (**MASHs**) provide an example of how to share information and collectively assess risk across agencies. While there is no "one-size-fits-all" prescription for a MASH, some common features include:

74.1 a core group of professionals working collaboratively within an integrated unit - often through co-location although in some places (especially in country areas) these operate as virtual multi-agency arrangements;

74.2 the core group usually includes Police and Children's Services safeguarding leads, alongside representatives from Probation and the Youth Offending Service, and in many cases Health / Mental Health practitioners. This reflects the original operation set-up, which was designed to support multi-agency collaboration in safeguarding cases involving children and young people. While most early MASH models were set up to manage high-end safeguarding risks, the MASH model is increasingly now being used as early help intelligence sharing models for cases lower down the continuum of risk and in some boroughs, being used to build a coherent cases for integrated working in other areas such as tackling vulnerable adults/families and family violence/domestic abuse; and

74.3 the core group usually has access to many other services and agencies that might be able to paint a more detailed picture of an individual's criminal, social and family history.

75. Although still relatively new (the first MASHs were introduced in 2011), signs from early evaluations are promising (**Attachment SW-40**). These highlight:

75.1 a single point of access for referrals has helped partners to define thresholds and manage risk better.

75.2 a triage and assessment process has prevented cases escalating to the safeguarding level, and an integrated Early Support model has improved multi-agency responses to cases requiring multi-agency information sharing below the safeguarding level.

75.3 joining-up domestic abuse case conferencing arrangements has helped coordinate action and avoid duplication of effort, and a clear and agreed information sharing protocol between these arrangements can ensure information about domestic abuse perpetrators is stored and shared safely.

75.4 screening both children and adult cases of domestic abuse through the MASH has helped identify the most effective way to deal with domestic abuse cases, and linking perpetrator information to victim management processes has improved information sharing about domestic abuse cases.

75.5 placing specialist domestic abuse workers at the heart of the MASH has helped information to be shared about perpetrators quickly, and identifying one professional from the MASH to lead on working with victims/ perpetrators has helped to reduce violent offence rates.

76. A number of these MASHs have also harnessed the use of smart technology in the form of information sharing tools that help partnerships understand the responsibilities each service has. For example, Leicestershire's OneView system manually pulls information from a wider range of systems, making family data available to a wider range of agencies. A Family Summary Record, created from the various datasets, provides partners with a visual genogram of the families' history of statutory intervention and enables them to understand the bigger picture from these individual interventions. Nottinghamshire also assists their MASH partners to manage cases and access information quickly by using display screens that feature a Red, Amber or Green rating that makes clear who is involved and who needs to reply with relevant information within required timeframes (see Attachment SW-40, above, at page 8).

Improved ability to interface existing health and human services systems to support more effective case management

77. As outlined above, there is presently limited ability for information technology systems to support holistic case management around a person. Instead, systems are generally established along programmatic lines. Linking information across these systems would facilitate more seamless service provision to people and would reduce clients re-telling historical and traumatic information. It would enable workers to understand the

different services that are supporting a family and could underpin a more integrated approach to service delivery.

78. Further, improved connection of information systems at an aggregate level would allow for better systemic analysis of demand, efficiency and effectiveness. This type of analysis can facilitate improvements in service monitoring, service planning and policy design.

Signed by)
SCOTT JAMES WIDMER)
at Melbourne)
this 31st day of July 2015)

Before [redacted]

An Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)