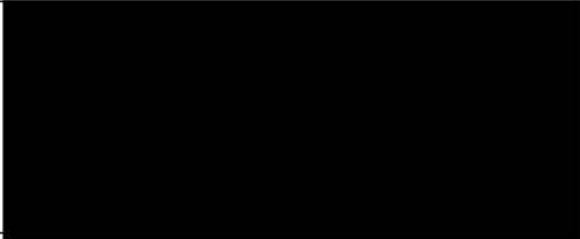


**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

ATTACHMENT SW-26 TO STATEMENT OF SCOTT JAMES WIDMER

Date of document: 31 July 2015
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This is the attachment marked '**SW-26**' produced and shown to **SCOTT JAMES WIDMER** at the time of signing his Statement on 31 July 2015.

Before me:



...



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

SW-26

Family violence

Risk assessment and Risk management

This information was prepared in consultation with the Office of the Victorian Privacy Commissioner

Information Sharing in the Context of Family Violence

This fact sheet has been prepared to assist all types of agencies working together as part of the integrated family violence system in making decisions about information sharing in the context of responding to family violence.

Information sharing is a central component of effective risk management, as identified in the Victorian Family Violence Risk Assessment and Risk Management Framework (2007). This fact sheet should be read in conjunction with the Framework, alongside specific sector Standards and Codes of Practice and relevant legislation.

Further work will be undertaken in 2009 in relation to information sharing and family violence at a statewide and local level.

Why share information?

Information sharing in an integrated family violence system is a critical mechanism to ensure the support and assistance that increases the safety of victims and accountability of perpetrators¹ is provided in a timely and effective manner.

Sharing information between services helps to enhance the protection for vulnerable women and children. It also enables earlier intervention and prevention strategies to be implemented by enhancing case management and coordination as well as providing services with clearer roles and expectations for service provision.

Importantly, the person you are working with, whether they are the victim or perpetrator, is more likely to gain a sense of confidence that their situation is understood and is being managed across a range of service providers, without having to repeat personal and sensitive information. To maximise the support relationships, this should be done in a way that respects privacy and confidentiality.

Objectives of information sharing within an integrated family violence system

This fact sheet is based on current objectives of information sharing, which are:

- Information is shared within the Integrated Family Violence System in ways that comply with relevant legislation and codes of practice
- The safety of victims is central to any decision about whether and how information is to be shared
- Perpetrators are held accountable for their use of violence.

Information sharing and privacy

Professionals working with victims and perpetrators of family violence understand the importance of building trust. When working with victims, all agencies responding to family violence should adopt a rights based approach that demonstrates respect, non-judgmental communication, culturally informed and sensitive practice, informing victims of their options, service delivery accountability and promotion of social justice.

In the context of information sharing, seeking consent before disclosing information with other agencies is best practice for upholding the rights based approach.

Victims and perpetrators own the information which is shared with you.

In practice, it is important that victims are given the opportunity to make an informed decision about consent. This means you should explain the reasons for collecting and sharing information, how the information will be used or shared and possible consequences for the victim. Reference to sector and professional guidelines is attached for more information.

1. Family violence primarily occurs between intimate partners and is usually perpetrated by men towards women and children. As such, the terms 'victim' and 'perpetrator' are used in this fact sheet to refer to women and children, and men respectively. This terminology is in line with the Family Violence Risk Assessment and Risk Management Framework.

However, in all circumstances, as articulated in the *Information Privacy Act 2000*, information can be shared or disclosed when the disclosure is for the **primary purpose** for which it was collected, **regardless** of whether you have explicit consent from the victim or perpetrator. In addition, information can be disclosed for a purpose related to the primary purpose, where the individual would reasonably expect the disclosure.

This means that agencies working with victims and perpetrators of family violence which collect information for the purposes of support, protection, prevention of violence and/or accountability for violence can disclose the information for these purposes. When working with victims or perpetrators, you need to be clear with them about the function of your agency, the reasons you are collecting information from them and what it will be used for. It can then be disclosed so long as it is related to the primary purpose for which it was collected.

On this basis, Victoria Police do not require consent to make a referral and provide case specific information provided it is relevant and needed by a specialist family violence service, but must inform the victim or perpetrator that a referral is being made.

Some additional circumstances in which you can share information without consent² are:

- a serious and imminent threat to an individual's life, health, safety or welfare; **or**
- a serious threat to public health, public safety or public welfare; **or**
- 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.³

Professional judgment is also an important guide.

There is more on this under "Deciding whether and what information to share with other agencies".

There are other exceptions:

Children

In circumstances where there are significant concerns for a child's wellbeing, any person can make a referral to Child FIRST or they can make a report to Child Protection if they believe that a child is at risk of significant harm.

The *Children, Youth and Families Act 2005* authorises certain professionals⁴ to share information with Child Protection and Child FIRST about vulnerable children and families.

Agencies may find these documents⁵ useful:

- Providing Support to Vulnerable Children and Families: Information Sharing Authorised by the Children, Youth and Families Act 2005: A guide for Family Violence Service Managers and Workers in Victoria.
- Providing support to vulnerable children and families: An information sharing guide for authorised Information Holders or professionals employed by Service Agencies in Victoria according to the *Children, Youth and Families Act 2005*.

Men

Men's Behaviour Change service providers funded by the Department of Human Services must adhere to the No To Violence Minimum Standards. Men who use violence have only limited confidentiality in all of their communications with men's behaviour change professionals, and should be advised of this before they are asked to disclose information.⁶

In Summary:

To comply with privacy legislation, a professional should inform a person of the purposes for which information is collected, and can share that information if this is related to the primary purpose for collection. This should occur as early as possible in the support relationship.

Further, a professional can make a referral or share information without consent in circumstances where there is a serious and imminent threat to life, health, safety or welfare of the victim.

In relation to children, if there are significant concerns for a child's wellbeing, a professional can contact Child FIRST. If a professional believes a child is at risk of significant harm, a report can be made to Child Protection.

Men who use violence have only limited confidentiality in all of their communications with men's behaviour change professionals, and should be advised of this before they are asked to disclose information.

2. For a full list of these, see Information Privacy Principle 2.1.

3. Unlawful activity might be a breach of criminal law, or other laws, including the range of behaviours defined as family violence in the Family Violence Protection Act.

4. These professionals are defined as "Information Holders" and include "a person in charge of a body that receives funding from the Secretary [of DHS] under a State contract to provide family violence services". According to the Regulations, a "person in charge" is the most senior staff member present at the service at the time the information is requested by Child FIRST or Child Protection.

5. These documents can be found at www.cyf.vic.gov.au/every-child-every-chance/library/publications/publications.

6. No To Violence, (2005) Men's Behaviour Change Group Work: Minimum Standards and Quality Practice.

Deciding whether and what information to share with other agencies⁷

The following points can be used as a guide when thinking about situations where it may be necessary or desirable to share information with other agencies. Information sharing typically occurs when a formal referral is made or when it is necessary to share information with others to provide an appropriate service to the women, children or men you are working with. Decision making should be done in consultation with other service providers. Decisions should be recorded, including the rationale for disclosure.

A Risk Assessment has been undertaken

Consider risk factors – using the Victorian Family Violence Risk Assessment and Risk Management Framework, basing your assessment of the level of risk on:

- the victim's view of their level of risk
- the presence of evidence based risk factors
- professional judgment that takes into account all other circumstances for the victim and the perpetrator.

With consent by the person who provided the information, personal information can be shared.

Without consent must make a professional judgment balancing the following considerations.

When you collected the information did you ensure that the individual was aware of the purposes for which the information was collected?

Information can be used or disclosed for the primary purpose it was collected. It can be used or disclosed for a secondary purpose, if the person would reasonably expect that it would also be used for that purpose. To assist in decision making, it is important that you understand the function of your agency and the reasons you collect information.

Do you have the legal authority to disclose?

See checklist "Legal Grounds When Considering Sharing Information Without Consent" (Appendix 1).

Make decision

If you decide to share information without consent

- Discuss your assessment with your manager, and/or other colleagues⁸
- Refer to your professional protocols, service standards or guidelines (a full list of these is at Appendix 2)
- Make decisions about the amount of information to share, how and with whom
- Discuss with victim or perpetrator, if appropriate

- Note when/whether the victim or perpetrator was informed and reasons why if not informed (for example, that it would increase risk)
- Consider your safety and the implications for your agency
- Share the information, but only sufficient information for the other agency to perform their role or function
- Record the decision, with whom the information was shared, how and why

If you decide not to share information:

- Consider ways to reduce risk to the victim/s
- Consider ways to help victim access help from other agencies herself
- Note a time to review
- Consider your safety and the implications for your agency
- Record the decision

Checklist Questions for use when sharing information without consent

In addition to the steps outlined above, the questions below are designed to assist you to make a defensible decision, if you are in a situation where you feel that you have to disclose information without the consent of the victim or perpetrator. These are always very difficult decisions and ones where you may be concerned about the impact they will have on the trust that a victim or perpetrator has placed in you. Remember, you need to take defensible not defensive decisions. The key focus is to ensure the safety of women and children you are supporting.

1. Have you considered the amount of information to be disclosed and the number of people/agencies to disclose to? This should be limited to what is judged as necessary in the circumstances, given the results of the risk assessment.
2. Has the victim or perpetrator been informed that the information will be disclosed and to whom, and why? Have details of next steps been explained? Has this been done in advance of the information being disclosed? If you have not spoken with the victim or perpetrator, have you recorded your reasons for this?

7. This information has been adapted from the Co-ordinated Action Against Domestic Abuse DV MARAC Implementation Guide, Third Edition, December 2007, pp 43-45, www.caada.org.uk.

8. Depending on the structure of your particular workplace, this may mean your immediate supervisor, a manager, a Magistrate or Family Violence Adviser.

How information is shared

Information must always be transferred securely. The recipient must be able to guarantee they have secure systems for storage and retrieval of the information. It is preferable that information is shared in written form, to reduce any risks of misunderstanding or misinterpretation of the information provided.

Important notes

1. If children are involved, you should always consider the child's safety in determining disclosure without consent refer to www.cyf.vic.gov.au/every-child-every-chance.
2. All decisions made using the Steps and Checklist outlined above should include a risk assessment which is undertaken in line with Victoria's Risk Assessment and Risk Management Framework.
3. Victoria Police policy states that police members do not need to obtain consent to share information or make a referral.
4. The Magistrates' Court is exempt from the Information Privacy Act when carrying out judicial or quasi-judicial functions. Magistrates' Court policy states that court staff may not make a referral to a support agency unless they have informed consent.
5. In relation to the Children's Court, information can only be shared by order of the President of the court.

What happens if a privacy complaint is made against my agency?

Clear guidelines, prepared by the Office of the Victorian Privacy Commissioner, are available on the process of making a complaint and responding to a complaint.

Agencies should be aware of their rights and responsibilities and should also ensure that they have clear policies on how they collect information, how it is stored and how it is shared. Usually, these policies are available to the public.

Further details are available in: Guide for Complainants under the Information Privacy Act 2000 and Guide for Respondents under the Information Privacy Act 2000.

These are available at www.privacy.vic.gov.au in the "Publications" section, under "General Information".

APPENDIX 1

Legal Grounds When Considering Sharing Information Without Consent

Privacy legislation exists to protect the personal or private information of all Victorians. These laws also recognise that there are some situations in which it may be necessary to share information without the consent of the person who provided the information. The following tables are intended to assist in locating relevant sections in the legislation.

Protection of private or personal information

| Source | Reason for protection |
|---|--|
| Information Privacy Act 2000 | Responsible collection, disclosure, storage and handling of personal information. |
| | Personal information must not be used or disclosed for a purpose (the secondary purpose), other than the primary purpose, of collection, unless the secondary purpose is related to the primary purpose of collection and the individual would reasonably expect the use or disclosure (IPP2.1(a)) or a specific exemption applies. (IPP2.1(a)). |
| Health Records Act 2001 | Promote fair and responsible collection, disclosure, storage and handling of health information. |
| Charter of Human Rights and Responsibilities 2006 | The right not to have privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have reputation unlawfully attacked (section 13). |
| Privacy Act (Cth) 1988 | To protect against unauthorised use of personal information. |

Main lawful grounds for sharing information without consent

| Legal authority | Purpose of information sharing |
|---|---|
| Children, Youth and Families Act 2005 | Significant concern for the wellbeing of a child (sections 28 and 31). |
| | In relation to a report prior to the birth of a child, significant concern for the wellbeing of a child after birth (sections 29 and 32). |
| | Reasonable grounds to believe that a child is in need of protection (section 183). |
| | If the Secretary believes on reasonable grounds that an information holder or a person in a registered community service has information that is relevant to the protection or development of a child ... the Secretary may ask that person to provide that information and the person who is asked to provide information to the Secretary may provide that information (section 192). |
| Information Privacy Act 2000 | An organisation must not collect personal information unless the information is necessary or one or more of its functions or activities (IPP 1.1). |
| | At or before the time an organisation collects personal information, the organisation must take reasonable steps to ensure that the individual is aware of the purposes for which the information is collected and to whom the organisation usually discloses information of the kind (IPP 1.3 (c) and (d)). |
| | An organisation must not use or disclose personal information about an individual for a purpose other than the primary purpose (IPP 2.1) |
| | ...unless the secondary purpose is related to the primary purpose and the individual would reasonably expect their use or disclosure (IPP 2.1(a)). |
| | ...unless a serious and imminent threat to an individuals life, health, safety or welfare (IPP 2.1(d)(i)). |
| | ...unless a serious threat to public health, public safety or public welfare (IPP 2.1(d)(ii)). |
| | ...unless the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities (IPP2.1(e)). |
| ...unless the use or disclosure is required or authorised by or under another law (IPP 2.1) | |
| Health Records Act 2001 | A serious and imminent threat to an individual's life, health, safety or welfare (HPP 2.2(h)(i)). |
| | A serious threat to public health, public safety or public welfare (HPP 2.2(h)(ii)). |
| | The organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities (HPP2.2(i)). |
| Charter of Human Rights and Responsibilities 2006 | Families are the fundamental group unit of society and are entitled to be protected by society and the State (section 17(1)). |
| | Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child (section 17(2)). |
| Privacy Act (Cth) 1988 | To prevent or lessen a serious and imminent threat to life or health of an individual concerned or another person (IPP10(1)(b)). |
| | Reasonably necessary for the enforcement of criminal law (a record of use must be kept) (IPP10(1)(d)). |
| | Reasonable grounds to believe the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person (IPP11(1)(c)). |
| | Disclosure is necessary for enforcement of criminal law (IPP11(e)). |
| | To lessen or prevent a serious and imminent threat to an individuals life health or safety (NPP2 (2.1)(e)(i)). |
| To lessen or prevent a serious and imminent threat to public safety (NPP2 (2.1)(e)(ii)). | |

APPENDIX 2

Sector Specific Guidance Materials, Including Codes Of Practice, Protocols, Service Standards And Privacy Policy

| Agency providing a response in the integrated family violence system | Guidance document |
|--|--|
| Department of Human Services funded agencies providing support to women and children | Practice Guidelines: Women's and children's family violence counselling and support services <input type="checkbox"/> Forms part of the service agreement for women's counselling and support services to have policies and practices that are relevant to the legislative context. |
| | Code of Practice for Specialist Family Violence Service for Women and Children – Domestic Violence Victoria 2008 |
| | Family Violence: Risk Assessment and Risk Management: Supporting an integrated family violence service system <input type="checkbox"/> A consistent state-wide risk assessment tool that addresses confidentiality and information sharing in the context of safety planning and risk management. |
| | Homelessness Assistance Service Standards Service standards in compliance with Information Privacy Act 2000 |
| | Homelessness Assistance Programs Guidelines 2006-2009 |
| | Providing Support to Vulnerable Children and Families: Information Sharing Authorised by the Children, Youth and Families Act 2005. <input type="checkbox"/> A Guide for Family Violence Service Managers and Workers in Victoria |
| | Providing support to vulnerable children and families <input type="checkbox"/> An information sharing guide for authorised Information Holders or professionals employed by Service Agencies in Victoria according to the Children, Youth and Families Act 2005. |
| Department of Human Services funded agencies providing support to men | Men's Behaviour Change Group Work: Minimum Standards and Quality Practice, No To Violence, 2005 <input type="checkbox"/> This includes information on limited confidentiality in relation to men (MS 27) and confidentiality in relation to women (MS 28). |
| Magistrates Court of Victoria | Induction Manual: Family Violence Court Division and Specialist Family Violence Service <input type="checkbox"/> This is designed for use by those working in the FVCD and SFVS. It contains information about roles including information sharing and referral. |
| | Privacy Policy |
| | Code of Practice for Family Violence Court Based (Applicant) Programs, Federation of Community Legal Centres, 2007 <input type="checkbox"/> This includes sections on information sharing and privacy (chapter 9) and referral (chapter 19). |
| Victoria Police | Code of Practice For the Investigation of Family Violence: Supporting an Integrated Response to Family Violence in Victoria <input type="checkbox"/> This includes information on making referrals to other agencies for support and compliance with privacy legislation (see Section 3). |
| | Victoria Police Information Privacy Statement <input type="checkbox"/> This explains Police responsibilities under the Information Privacy Act. |

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