

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

**JOINT STATEMENT OF  
ASSISTANT COMMISSIONER WENDY MAREE STEENDAM  
AND SENIOR SERGEANT AILSA CAROLINE HOWARD**

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I, WENDY MAREE STEENDAM, Assistant Commissioner of Victoria Police, Information, Systems and Security Command, and I, AILSA CAROLINE HOWARD, Senior Sergeant, Victoria Police, SAY AS FOLLOWS:

**INTRODUCTION**

1. This is a joint statement made by Assistant Commissioner Wendy Steendam and Senior Sergeant Ailsa Howard.

**Assistant Commissioner Steendam**

2. I am an Assistant Commissioner of Victoria Police. I have held the position of Assistant Commissioner since 2010. This is the second statement I have made in this Royal Commission. My professional background and qualifications are set out in my first statement dated 9 July 2015.

**Senior Sergeant Howard**

3. I am a Senior Sergeant of Victoria Police. I have held this position since 14 June 2015.
4. I have been a member of Victoria Police since 1994. My current role is Senior Supervisor, Security Incident Register.
5. Prior to taking up my current role, I have performed general duties at a number of metropolitan police stations, as well as a specialist role as a member of a Sexual Offence and Child Abuse Unit (1999-2003). I have responded to hundreds of family

violence incidents, and on many occasions have acted as the informant in criminal matters arising from family violence incidents and as the applicant in family violence intervention order applications. I have given sworn evidence in relation to these matters in the Magistrates and County Courts. As a patrol supervisor, I supervised and guided the police response to family violence incidents by other members.

6. I have been a law instructor in various roles at the Victoria Police Academy, with roles in training and assessment to police and Protective Security Officer (PSO) recruits, police probationary constables and police re-appointees (2007-2011). In this role I provided subject matter expertise in relation to the development of the *Family Violence Protection Act 2008* training package.
7. Since 2011, I have been a Police Aboriginal Liaison Officer and a Gay and Lesbian Liaison Officer. In those roles I have been a point of contact in relation to family violence incidents specifically involving members of those communities.
8. Most recently, between February 2012 and June 2015, I worked at Dandenong Police station as a general duties member. During that time I performed a number of roles with a dedicated family violence focus, namely Family Violence Liaison Officer, Family Violence Court Liaison Officer and Acting Officer in Charge of the Greater Dandenong Family Violence Unit.
9. I hold an Associate Diploma of Arts (Police Studies), a Certificate IV Training and Assessment, and a Master of Education (Organisational Policy & Leadership).

#### **SCOPE OF THIS STATEMENT**

10. We make this statement in response to a notice from the Royal Commission pursuant to section 17(1)(d) of the *Inquiries Act 2014* requesting us to attend to give evidence and to provide a written statement regarding matters the subject of Module 20: Information Sharing. We understand that the Royal Commission is interested in the sharing of information about persons at risk of being affected by or committing family violence and in particular:
  - 10.1 the type of information that needs to be shared;
  - 10.2 whether there is presently anything preventing such information from being shared or shared effectively, such as privacy laws, lack of resources (technological or other) or a lack of a structure to facilitate information sharing; and
  - 10.3 suggested options for improved information sharing.

11. We also understand this hearing day is intended to be an introduction to the topic of Information Sharing and that the topic may be revisited at a further public hearing of the Royal Commission at a later date.

## **SUMMARY**

12. The effective assessment and management of risk in the family violence context depends upon service providers, including Victoria Police and others involved in Victoria's Integrated Family Violence System, and frontline personnel in particular, having ready access to all relevant information about victims and perpetrators of family violence.
13. Victoria Police acknowledges that, at least in cases where there is a serious and imminent risk to an individual's life, safety or welfare, the statutory framework applicable to the privacy, confidentiality and security of different types of personal information and health information either permits or provides mechanisms for enabling most of the information sharing practices that Victoria Police considers are necessary in the family violence context.
14. However, Victoria Police members receive many and varied requests for information sharing in this area and the statutory framework does present a real barrier to information sharing in many cases. This is particularly so where a serious and imminent risk to an individual's life, safety or welfare is not present, such as in relation to early intervention and prevention strategies involving coordinated case management that might be implemented following an initial police intervention.
15. The statutory framework is complex. It consists of the numerous pieces of legislation and standards set out below, which apply differently to different information. Currently, many requests for information received by Victoria Police do not fit neatly into the principles permitting disclosure and require the member receiving the request to unpack the issues raised by the request and to navigate their way through a complex set of statutory provisions, standards and guidelines. Although members of Victoria Police receive training relevant to information sharing, to require this level of expertise and interpretive skill of operational members who have multiple competing priorities and often little time in which to make these sorts of decisions is unnecessarily onerous and not conducive to effective and timely information sharing. In addition, Victoria Police members are aware that they may potentially face disciplinary proceedings and civil and criminal liability for unauthorised use and disclosure of police information.

16. Members should disclose information where they consider that there exists a serious and imminent risk to an individual's life, safety or welfare. However, in other cases where the information they have does not satisfy them of a serious and imminent risk and where the legality of the disclosure of information is unclear to them or their supervisor, members are likely to treat non-disclosure of the information as a safer option. Training and cultural change will go some way toward achieving increased information sharing by Victoria Police members. However, Victoria Police considers that overarching, comprehensive legislative enabling provisions are necessary to facilitate the effective and timely sharing of all relevant information in all family violence matters. A system that makes information sharing the starting point in relation to family violence is preferable to the current system, within which information sharing only occurs where the primary position of non-disclosure has been dislodged by satisfaction of a series of complicated tests.

## **INFORMATION SHARING FRAMEWORK**

### **Relevant legislation**

17. Victoria Police's information sharing activities and arrangements are governed by a complex system of legislation and policy.
18. At State level there are a number of statutes governing the way Victoria Police engages in information sharing. These include, but are not limited to:
- 18.1 the *Privacy and Data Protection Act 2014 (PDP Act)*, which incorporates the Information Privacy Principles (**IPPs**);
  - 18.2 the *Health Records Act 2001*, which incorporates the Health Privacy Principles (**HPPs**);
  - 18.3 the *Victoria Police Act 2013*;
  - 18.4 the *Freedom of Information Act 1982 (FOI Act)*;
  - 18.5 the *Public Administration Act 2004*;
  - 18.6 the *Charter of Human Rights and Responsibilities Act 2006*; and
  - 18.7 the *Children, Youth and Families Act 2005 (CYF Act)*.
19. There are numerous additional statutes that govern the use of identified categories of information, such as the secrecy provisions in the *Sex Offenders Registration Act 2004*.

### **Victoria Police Act**

20. The *Victoria Police Act* contains strict confidentiality provisions, breach of which carries very serious consequences. Breach of the *Victoria Police Act* confidentiality provisions may result in criminal prosecution and/or disciplinary proceedings.
- 20.1 Section 227 of the *Victoria Police Act* makes it a summary offence to, without reasonable excuse, access, use or disclose “police information” if it is the member’s duty not to access, use or disclose that information. “Police information” is broadly defined in section 225 to mean any information that has come to the knowledge or into the possession of the member in the performance of functions or duties or the exercise of powers as a member of Victoria Police personnel or otherwise as a result of being a member of Victoria Police personnel. The maximum penalty for the commission of the offence in section 227 is imprisonment for two years.
- 20.2 Section 228 of the *Victoria Police Act* makes it an indictable offence to access, use or disclose police information if it is the member’s duty not to do so, and the member knows or is reckless as to whether the information may be used to endanger the life or safety of another person, to commit or assist in the commission of an indictable offence, or impede or interfere with the administration of justice. The maximum penalty for this offence is imprisonment for five years.
- 20.3 Section 125(1) of the *Victoria Police Act* provides that a contravention of a provision of that Act (including sections 227 and 228), or a failure to comply with the Chief Commissioner’s Instructions made pursuant to section 60 of that Act (which include the Victoria Police Manual), is a breach of discipline.
- 20.4 Section 125(2) of the *Victoria Police Act* provides that a member of Victoria Police who aids, abets, counsels or procures, or who, by any act or omission, is directly or indirectly knowingly concerned in or a party to the commission of a breach of discipline, also commits a breach of discipline.
- 20.5 Section 132 of the *Victoria Police Act* provides that a person found to have engaged in a breach of discipline may face a range of sanctions, ranging from a reprimand to dismissal.
21. These provisions impose an obligation on Victoria Police members and employees to ensure that they do not access, use or disclose any police information unless they have a legitimate law enforcement, community policing or legislative need to do so.

22. Victoria Police members and employees are provided with training regarding the confidentiality of police information and are very aware of their obligation not to access or disclose information unless there is a clear policing need or legislative requirement to do so.
23. Every time a member or authorised Victorian Public Service employee accesses LEAP, which is the Victoria Police primary law enforcement database, they are reminded of their obligations of confidentiality. LEAP audits are conducted regularly and persons who have accessed LEAP are queried as to why a particular LEAP record was accessed on a particular day.

#### **The PDP Act and the IPPs**

24. Victoria Police must comply with the PDP Act in relation to all sharing of personal information.
25. Subject to section 15 of the PDP Act, which we refer to below, Victoria Police is obliged to comply with the IPPs set out in Schedule 1 of the Act. In respect of information sharing, pursuant to IPP 2.1, Victoria Police may use or disclose personal information where the use or disclosure:
  - 25.1 is the primary purpose for which it was collected;
  - 25.2 is related to the primary purpose and the person from whom it was collected would reasonably expect the use or disclosure;
  - 25.3 is, in the case of sensitive personal information, directly related to the primary purpose and the person from whom it was collected would reasonably expect the use or disclosure;
  - 25.4 has been consented to by the person to whom the information relates;
  - 25.5 is required or authorised by or under law; or
  - 25.6 is reasonably believed to be necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare.
26. The scope of the serious and imminent threat clause in IPP 2.1(d)(i) is potentially very broad in so far as it permits disclosure necessary to lessen or prevent a serious and imminent threat to an individual's *welfare*. However, in practice, Victoria Police members interpret and apply the reference to an individual's "welfare" as being confined by the references to an individual's life, health and safety which precede it.

The Guidelines to the IPPs published in November 2011 by the former Victorian Privacy Commissioner (**Attachment WS AH-1**), tend to reinforce this view. The Guidelines state (at page 64):

“‘Imminent’ in IPP 2.1(d)(i) is directed at emergency situations, where a threat to life or health could include a threat to safety (eg, bushfires). Disclosures for non-imminent threats are better dealt with by way of consent. A threat can remain ‘imminent’ over a period of time, for example, in the case of domestic violence where there is ongoing concern about harm to the victim, and disclosure is necessary to provide continued protection.”

27. The Guidelines do not provide any specific guidance on the scope of the word “welfare” in this context.
28. In addition, where the personal information is also “sensitive information” (which is defined to include information about an individual’s criminal record), there are further restrictions on the collection of such information under IPP 10. The nature of Victoria Police’s role and obligations do not prohibit it from collecting such information. However, other organisations may be limited in their ability to lawfully collect this information from Victoria Police.
29. Section 15 of the PDP Act provides Victoria Police with a specific exemption from compliance with IPP 1.3 to 1.5, 2.1, 6.1 to 6.8, 7.1 to 7.4, 9.1 or 10.1 if it believes on reasonable grounds that the noncompliance is necessary:
  - 29.1 for the purposes of one or more of its, or any other law enforcement agency’s, law enforcement functions or activities; or
  - 29.2 for the enforcement of laws relating to the confiscation of the proceeds of crime; or
  - 29.3 in connection with the conduct of proceedings commenced, or about to be commenced, in any court or tribunal; or
  - 29.4 in the case of the police force of Victoria, for the purposes of its community policing functions.
30. “Law enforcement function” and “community policing functions” are not defined in the PDP Act. However, “law enforcement function” is defined in the *Health Records Act* to include:
  - 30.1 the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction;

- 30.2 the prevention, detection or investigation of conduct that could found an application for a family violence intervention order under the *Family Violence Protection Act 2008*;
  - 30.3 the prevention, detection or investigation of conduct that could found an application for a personal safety intervention order under the *Personal Safety Intervention Orders Act 2010*; and
  - 30.4 the preparation for, or conduct of, proceedings before any court or tribunal, or execution, enforcement or implementation of the orders or decisions made by a court or tribunal.
31. The scope of the exemption for disclosure necessary for the purposes of Victoria Police's "community policing functions" in section 15 of the PDP Act is also potentially very broad. Victoria Police considers that "community policing functions" means activities that Victoria Police undertake which do not fit into a narrow definition of law enforcement purposes. The VMPG Information Privacy (in section 4.1) (see Attachment 6 below) provides the following examples:
- 31.1 licensing investigations;
  - 31.2 location of missing persons; or
  - 31.3 providing necessary responses in public emergency and disaster situations; and
  - 31.4 locating next of kin if required.
32. These examples are consistent with those referred to in the Explanatory Memorandum to the PDP Bill (**Attachment WS AH-2**).
33. However, in practice, the scope of the exemption remains unclear and, for the reasons we have discussed above, this is likely to result in members deciding not to share information in some cases where, strictly legally speaking, it could have been disclosed.
34. The PDP Act now also contains two new mechanisms designed to permit departure from the IPP:
- 34.1 public interest determinations (or temporary public interest determinations) – these can be made by the Commissioner for Privacy and Data Protection on the request of a party where an act or a practice of an organisation



contravenes or may contravene a specified IPP but the public interest in the organisation doing the relevant act or engaging in the relevant practice substantially outweighs the public interest in complying with that IPP; and

34.2 information usage arrangements – these enable the parties to the arrangement to handle personal information in a way which modifies or does not comply with a specified IPP or which permits handling personal information for the purposes of an information handling provision where the Commissioner certifies that the public interest in handling personal information in that way substantially outweighs the public interest in not doing so.

35. As far as Victoria Police is aware, the Commissioner has not yet made any public interest determination or approved any information usage arrangement.

#### **The *Health Records Act* and the HPPs**

36. The definition of “personal information” in section 3 of the PDP Act excludes information of a kind to which the *Health Records Act* applies. That Act requires public sector organisations, including Victoria Police, to comply with the HPPs, which contain similar provisions to the IPPs in relation to “health information”. “Health information” is defined in section 3 to mean, in summary, information about an individual’s physical, mental or psychological health and other personal information collected to provide, or in providing, a health service to an individual.

37. The *Health Records Act* does not contain mechanisms to permit departure from the HPPs such as those we have referred to in paragraphs 35 to 36 above.

#### **Data security obligations**

38. In addition to the privacy and confidentiality obligations imposed by the legislation referred to above, the Standards for Law Enforcement Data Security (**SLEDS**), made by the Commissioner for Privacy and Data Protection under section 92 of the PDP Act, impose strict data security obligations on Victoria Police in relation to “law enforcement data”. “Law enforcement data” is defined in section 3 of the PDP Act to mean any information obtained, received or held by Victoria Police:

38.1 for the purpose of one or more of its, or any other law enforcement agency’s law enforcement functions or activities; or

38.2 for the enforcement of laws relating to the confiscation of the proceeds of crime; or

- 38.3 in connection with the conduct of proceedings commenced, or about to be commenced, in any court or tribunal; or
- 38.4 for the purposes of its community policing functions.
39. The SLEDS require that all law enforcement data is stored, shared, retained and destroyed in a secure manner. Whilst the SLEDS impose overarching obligations that affect all information usage, the following standards directly affect information sharing by Victoria Police:
- 39.1 Standard 3 – Victoria Police must ensure that agreements with approved third parties include the requirement to define and document in an information security policy, the roles and responsibilities in relation to the secure management of law enforcement data;
- 39.2 Standard 5 – Victoria Police must ensure that agreements with approved third parties include the requirement that users sign an agreement on their law enforcement data security roles and responsibilities, including a confidentiality agreement;
- 39.3 Standard 8 – Victoria Police employees, contractors, consultants and approved third parties must be deemed suitable prior to being granted access to law enforcement data;
- 39.4 Standard 11 – Release of law enforcement data must only occur if that disclosure is authorised;
- 39.5 Standard 12 – Law enforcement data passed to members of the public and other third parties via electronic messaging (including email) must be appropriately protected;
- 39.6 Standard 14 – Victoria Police must ensure that all facilities that access, store or handle law enforcement data are physically protected against unauthorised access and that agreements with approved third parties include the requirement to ensure all facilities that access, store and handle law enforcement data are physically protected against authorised access;
- 39.7 Standard 23 – Victoria Police must implement cryptographic controls in accordance with Australian Government protective security standards; cryptography must be implemented to protect law enforcement data that has been afforded protective markings while in transit (For example 'Unclassified

Information' does not require encryption whereas 'Protected – Sensitive' material does);

39.8 Standard 37 – Agreements must be established prior to the exchange of law enforcement data between Victoria Police and approved third parties.

40. As a part of the data security framework, members are trained and reminded that information should be shared, even internally, on a need to know basis.

### **Victoria Police policies**

41. Undemeath this legislative framework, Victoria Police has a number of internal documents to support and inform information sharing. The key internal Victoria Police documents governing or informing information sharing include:

41.1 relevant parts of the *Victoria Police Manual (VPM)*, including:

- (a) VPM Policy Rules (VPMP) - Appropriate Use of Information (**Attachment WS AH-3**);
- (b) VPMP - Information Sharing (**Attachment WS AH-4**);
- (c) VPMP - Information Access (**Attachment WS AH-5**);
- (d) VPM Guidelines (VPMG) - Information Privacy (**Attachment WS AH-6**);
- (e) VPMG - External Information Disclosure (**Attachment WS AH-7**);
- (f) VPMG - Obtaining Information from External Organisations (**Attachment WS AH-8**);
- (g) VPMP - Formal Arrangements with External Organisations (**Attachment WS AH-9**);
- (h) VPMG - Formal Arrangements with External Organisations (**Attachment WS AH-10**);
- (i) VPMG - Notification (**Attachment WS AH-11**);

41.2 Chief Commissioner's Instructions – PDP Act (**Attachment WS AH-12**)

41.3 Victoria Police Code of Conduct (**Attachment WS AH-13**)

#### 41.4 Enterprise Information Security Policy (**Attachment WS AH-14**).

42. When Victoria Police is requested to or intends to enter into an arrangement with a third party that includes the disclosure or sharing of law enforcement data, Victoria Police must ensure that the third party is aware of their duty to comply with the SLEDS and Victoria Police must have the power to ensure compliance. The VPMP - Formal Arrangements with External Agencies requires that all such arrangements are referred to the principal legal advisor for assessment of whether an agreement is required. Given the strict controls imposed in relation to law enforcement data, and Victoria Police's ongoing obligation to ensure the security of the data, formal agreements are generally required where information sharing is proposed.
43. Accordingly, Victoria Police enters into Memoranda of Understanding (**MOUs**), Letters of Understanding (**LOUs**) and agreements to enable information sharing with external agencies and to document each party's obligations in respect of data security. These documents are recorded on the MOU register managed by the Victoria Police Information Management Standards and Security Division (**IMSSD**). A table setting out the MOUs, LOUs and agreements relevant to information sharing in the family violence context is attached at **Attachment WS AH-15**.

#### **Victoria Police training relevant to information sharing**

44. Training in relation to Information Management and Information Security (**IM&IS**) is provided at various career points and via the Victoria Police on-line learning module.
45. Police and PSO recruit training has substantial content focusing on IM&IS. Significant reference is made to current policy regarding appropriate access, use and dissemination of police information through "threaded content" across all IM&IS sessions. Police and PSO recruits receive a single dedicated session on IM&IS at week 12 of their training cycle.
46. There is limited inclusion of IM&IS and privacy content delivered through the promotions program. Training at each promotional point is as follows:
- 46.1 Superintendent Qualifying Program – a single session on IM&IS is delivered by IMSSD subject matter experts;
  - 46.2 Inspector Qualifying Program – a single session on IM&IS is delivered by IMSSD subject matter experts;
  - 46.3 Senior Sergeant Qualifying Program – there is no specific training on information management, security or privacy; and

- 46.4 Sergeant Qualifying Program – there is limited training on information management/security/privacy within the Complaint Management and Professional Policing session; in the program handbook, there is one page on Information Management.
47. IM&IS training, through the Centre for Investigator Training & Centre for Intelligence Practitioners is as follows:
- 47.1 Centre for Investigator Training – privacy and IM&IS training is provided through non discrete content threaded through sessions within the program;
- 47.2 SOCIT Course – training covers the Information Sharing Principles as laid out in the "Protecting Children" protocols between Child Protection & Police as well as the CYF Act, with no specific training that directly addresses the PDP Act;
- 47.3 Centre for Intelligence Practitioners – the training program developed and delivered by the Centre for Intelligence Practice is the Intelligence Training Program which incorporates three separate modules, namely:
- (a) Applied Analytics Module (AAM) - 5 week course;
  - (b) Regional Intelligence Operations (RIO) - 2 week course; and
  - (c) Tactical Analytical Support to Investigations (TASI) - 2 week course.
48. These classes provide comprehensive and specific content on privacy, ethical decision making and IM&IS.
49. Additional (organisational) training through the Information Security online learning module provides comprehensive instruction on IM&IS. When the training was first rolled out it was compulsory for all members of Victoria Police. The Information Systems and Security Command is in the process refreshing this training to reflect the provisions of the PDPD Act and it will be compulsory for all users with access to the Victoria Police IT network and systems.
50. The Family Violence package currently delivered by the regional training officers network has no IM&IS or privacy elements.

### **Victoria Police Information Sharing Guide**

51. Victoria Police also has a Privacy Unit which is part of Information Systems and Security Command. The main functions of the Privacy Unit include:

- 51.1 Managing and coordinating privacy related complaints, including defence of actions at the Victorian Civil and Administrative Tribunal;
  - 51.2 Developing and conducting privacy training and educational awareness presentations;
  - 51.3 Providing privacy advice to staff members (email/phone/in person);
  - 51.4 Conducting policy research projects.
52. In order to assist members to respond to requests for information or to obtain information from other agencies, the Privacy Unit has created an Information Sharing Guide. This is an online document designed to allow members to click through to identify if they can comply with a request for information.
53. The Information Sharing Guide is available to all Victoria Police personnel as a guide for sharing personal and health information with 'third party agencies'. The guide identifies four primary matters that govern Victoria Police's information sharing activities:
- 53.1 'compellable legislation', where there is a statutory demand requiring the provision of information;
  - 53.2 memoranda of understanding, formalised agreements between Victoria Police and third parties;
  - 53.3 privacy principles, as set out in the PDP Act and the *Health Records Act*; and
  - 53.4 requests for access to information under the FOI Act.
54. The guide provides a step-by-step process for making decisions about Victoria Police disclosure of information to a range of federal and state public sector agencies, including other law enforcement agencies, and for relevant private organisations. A decision-making matrix is provided about each agency, with information on applicable legislation, memoranda of understanding, privacy principles and applicable Victoria Police policy rules, procedures and guidelines. A print out of the guide is **Attachment WS AH-16**.

## **INFORMATION SHARING IN THE FAMILY VIOLENCE CONTEXT**

55. Victoria Police is a key partner in Victoria's Integrated Family Violence System. This means that, while Victoria Police is often the first point of contact for victims, our overall response to family violence is a collaborative one. We work closely with the

Department of Health and Human Services (DHHS), the Department of Justice and other agencies such as Corrections Victoria, the Department of Immigration, Councils, health/mental health, disability services, Centrelink, schools, and multicultural support agencies.

56. Sometimes Victoria Police becomes aware of family violence incidents through informal third party reporting of such incidents to Victoria Police. This may occur when an Affected Family Member (AFM) initially does not want to engage with police without that third party support. Victoria Police's collaboration with other agencies is particularly beneficial where members have an established rapport with service providers and AFMs can be encouraged to contact them specifically to seek assistance.
57. The key Victoria Police policies relating to family violence are:
- 57.1 VPMP - Family Violence;
  - 57.2 VPMG - Family Violence;
  - 57.3 VPMG - Family Violence Holding Powers;
  - 57.4 VPMG - Family Violence Safety Notices; and
  - 57.5 the *Code of Practice for the Investigation of Family Violence*.
58. These documents have been attached to other statements of members of Victoria Police that have been provided to the Royal Commission, including the statement of Assistant Commissioner Steendam dated 9 July 2015 and the statement of Assistant Commissioner Dean McWhirter dated 27 July 2015. The key parts of these policies that address information sharing within the family violence context are as follows:
- 58.1 VPMP and VPMG - Family Violence contain guidance regarding information sharing relating to referral of victims (section 3.10);
  - 58.2 VPMG - Family Violence Safety Notices details the information that must be provided to the Magistrates' Court and the power to obtain information from public sector organisations regarding the respondent's address for service (sections 5 and 13);
  - 58.3 VPMG - Family Violence Holding Powers refers to the information that must be provided to an AFM on cessation of a family violence holding direction (section 8);

- 58.4 the *Code of Practice for the Investigation of Family Violence* includes the following information sharing provisions:
- (a) the informant's obligation to keep the AFM and any witnesses informed regarding the investigation of criminal offences (section 4.7);
  - (b) obtaining information from public sector organisations regarding a respondent's address for service of a family violence safety notice or intervention order (section 5.4.4);
  - (c) notification of service of an intervention order (section 5.7.1); and
  - (d) referral to appropriate family violence services (Part 6) - section 6.5 specifically deals with information sharing in the context of referral, multi-agency case conferencing and recidivism.
59. The key documents governing the working relationship between Victoria Police and other government agencies in relation to family violence are:
- 59.1 Family Violence Referral Protocol between DHHS and Victoria Police 2015 (**Family Violence Referral Protocol**) (**Attachment WS AH-17**), which outlines the referral pathways between Victoria Police and family violence services funded by DHHS and the approaches for formal and informal referrals by police for victims and perpetrators of family violence; and
  - 59.2 'Protecting Children - Protocol between DHHS Child Protection and Victoria Police' (**Protecting Children Protocol**) (**Attachment WS AH-18**), which articulates the statutory and non-statutory responsibilities of DHHS Child Protection and Victoria Police, and how the two agencies will interact with each other in responding to child abuse and neglect.
60. Victoria Police is also guided by a fact sheet titled "Information Sharing in the Context of Family Violence", published by the Victorian Government in 2009 (**Attachment WS AH-19**). This fact sheet was developed by the Family Violence Reform Coordination Unit, Office of Women's Policy, Department of Planning and Community Development. Victoria Police was not the lead agency in developing this fact sheet but had input regarding its content.



61. Relevantly, this fact sheet states that:
- 61.1 victims should be given an opportunity to make an informed decision about whether to consent to the disclosure of their personal information, meaning that they should be told the reasons for collecting and disclosing the information, how the information will be shared or used and possible consequence for the victim; and
  - 61.2 because information may be disclosed for the primary purpose for which it was collected, regardless of whether the person consents, Victoria Police does 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.
62. Whilst each instance of information sharing is assessed in light of its own facts and circumstances, generally, in the context of information sharing for the purposes of family violence policing, the use and disclosure of personal information will be:
- 62.1 the primary purpose for which it was collected;
  - 62.2 authorised by or under law;
  - 62.3 necessary to lessen or prevent a serious and imminent threat to the victim's life, health, safety or welfare; or
  - 62.4 engaged in pursuant to the consent of the victim.
63. Seeking consent, wherever possible, is Victoria Police's preferred approach, as it upholds a rights based approach.
64. Victoria Police is aware that it is not appropriate for every piece of information that comes into the possession of members of Victoria Police or every form of conduct engaged in by persons suspected of or charged with crimes to be communicated to all persons associated with the perpetrator. The PDP Act and *Health Records Act* will on occasion prevent that information being disclosed to us or can prevent us from disclosing that information. Information sharing is always limited to the information that other agencies need in order to carry out their duties to protect and support victims of family violence. Members are trained to exercise professional judgment in these matters.

65. Members must also exercise professional judgment in relation to disclosing information where a current investigation is ongoing. In circumstances where members consider that it would be prejudicial to the investigation of criminal offending to disclose certain information, that information will not be released in order to protect any future prosecution.
66. For these reasons, Victoria Police does not generally share access to the LEAP database and does not disclose full criminal histories.

#### **Information sharing in practice**

67. Victoria Police collects the following types of information in relation to family violence:
- 67.1 personal identifying information of victims, perpetrators and witnesses including children;
  - 67.2 health information such as information about a person's mental health or use of drugs and alcohol;
  - 67.3 criminal record information, including existing commitments such as bail conditions or intervention order conditions;
  - 67.4 other information about perpetrators, including their propensity for violence, apparent drug or alcohol misuse or access to weapons, which may impact upon the level of risk posed by them; and
  - 67.5 information relating to court orders.
68. In the following section, we explain how information collected by Victoria Police is currently shared pursuant to MOUs and agreements between Victoria Police and other agencies. We also explain how ad hoc requests for information from a large number of different types of organisations are responded to.

#### **Referral to external support agencies**

69. The *Code of Practice for the Investigation of Family Violence*, first released in 2004, was considered the first step in the development of multi-agency integrated response to family violence. It was the first time that there was a clear requirement that all family violence incidents attended by Victoria Police members be referred to family violence services.

70. As a result of the requirement to refer family violence incidents, the Family Violence Referral Protocol (Attachment 16, above) was developed. It sets out the process for referring victims of family violence to a support organisation.
71. Victoria Police does not provide women's referral services with the perpetrator's information, nor does it provide perpetrator referral services with the victim's information.
72. We are aware that victims' referral agencies are concerned that they do not receive the parts of the L17 regarding the perpetrator, which they regard as relevant for risk assessment purposes. In Victoria Police's view, this information, especially that relating to prior criminal convictions or investigations, is sensitive personal information. The disclosure of this information to referral agencies not capable of complying with the SLEDS would be a breach of the SLEDS.
73. Police members are adept at assessing risk arising out of criminal histories and will provide general information regarding a perpetrator's criminal history to victims' referral agencies; for example, that the perpetrator has a history of using violence. In Victoria Police's view, referral agencies can rely on Victoria Police's assessment, so far as it relates to history of violence or other relevant issues, and do not need to know the details of a perpetrator's prior criminal offending in order to conduct an effective risk assessment. The disclosure of detailed criminal histories, beyond this generalised type of information, may also be a breach of the PDP Act.
74. L17 reports are faxed to the referral organisations. The L17 report is a digital form. Victoria Police's IT systems allow email transmission of the L17 report. However, the SLEDS require that email transmission of law enforcement data, which the L17 reports contain, is subject to suitable levels of encryption. Referral agencies on the Victoria Government Global Address List, such as the Victims Support Agency, have the capacity to receive encrypted emails. However, other referral agencies, funded by but not a part of government do not. In these circumstances Victoria Police must, in order to remain SLEDS compliant, revert to an alternative immediate transmissions system – digital facsimile.

### ***Child protection reports***

75. In addition to referring victims and perpetrators of family violence to service providers, Victoria Police members are required by the CYF Act to make a mandatory report to Child Protection if they believe on reasonable grounds that a child is in need of protection because they have suffered or are likely to suffer significant harm as a

result of physical injury or sexual abuse. Additionally, Victoria Police members may report concerns regarding a child's wellbeing if they believe on reasonable grounds that the child is at risk and in need of protection.

76. Reports are made by way of providing the relevant sections of the L17 report.
77. The information sharing provisions in the CYF Act include:
- 77.1 sections 28, 29, 31 and 32, which relate to the reporting of significant concerns for the well being of a child or unborn child;
  - 77.2 section 183, which deals with reporting a belief, on reasonable grounds, that a child is in need of protection;
  - 77.3 section 184, which requires a police officer to report a belief on reasonable grounds that a child is in need of protection due to a risk of physical injury or sexual abuse; and
  - 77.4 section 192, which provides that if the Secretary of DHHS 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 may do so.
78. The Protecting Children Protocol (Attachment 18, above) sets out the framework for protection of children at risk. Chapter 20 deals with information exchange between Victoria Police and Child Protection regarding children at risk of harm.

***Multi agency coordinated case management and co-location of services***

79. Victoria Police has instituted or piloted a number of programs based on multi-agency coordinated case management and co-location of services including:
- 79.1 the Strengthening Risk Management (**SRM**) and Risk Assessment and Management Panels (**RAMPs**) for the highest risk family violence matters;
  - 79.2 multidisciplinary centres (**MDCs**) for sexual assault and child abuse matters;
  - 79.3 Victims Assistance & Counselling Program workers at nominated police stations;

- 79.4 a pilot program involving the placement of a full-time senior clinical and forensic psychologist at the Footscray Police Station to assist members with risk assessment and management of family violence cases;
- 79.5 Taskforce Alexis; and
- 79.6 Police and Clinical Emergency Response (**PACER**) teams.
80. The benefits of these types of multi-agency or co-located services have been explained in statements of other Victoria Police members given to this Royal Commission, including Assistant Commissioner Dean McWhirter, Superintendent Stuart Bateson, Superintendent Paul Naylor, Senior Sergeant Fiona Alexander, Senior Sergeant Bryce Pettett and Sergeant Mark Spriggs. In relation to information sharing specifically, these types of services facilitate a coordinated and fully informed service response by all parties involved and reduce the need for victims to repeat personal and sensitive information relating to the often traumatic events they have suffered. Information sharing is critical to their effective operation and we understand that the persons operating in these environments are making information sharing work in these situations.
81. By way of example a number of programs are discussed in brief below. However, because of the nature of policing, and the need to be responsive to the particular needs identified in a particular region, there is great diversity in the type of multi-agency or co-located services involving Victoria Police.

*Strengthening Risk Management and Risk Assessment and Management Panels*

82. The SRM and RAMPs program is designed to enable a rapid, co-ordinated, multi-agency approach to protecting women and children at serious and imminent risk from family violence. It involves co-ordinated meetings of representatives from a number of key agencies and organisations in the local area. Police, specialist women's family violence service providers, DHHS Child Protection, DHHS Office of Housing, clinical mental health services, alcohol and drugs services, Corrections Victoria and Child FIRST are intended to be in attendance at each meeting.
83. In the course of RAMPs meetings information is shared between attendees in order to address the serious and imminent risk to the subject women and children. The consent of the victim to the disclosure of their personal information is always sought in the first instance. However, because the information is shared for this purpose pursuant to IPP 2.1(d)(i), the consent of the persons whom the information concerns,

in particular the perpetrator, is not required. The type of information verbally shared at a RAMP meeting by Victoria Police may include:

- 83.1 current status and conditions associated with family violence intervention orders;
  - 83.2 family violence incident history (including with previous partners);
  - 83.3 general details regarding previous family violence related charges or convictions;
  - 83.4 referrals made for the parties;
  - 83.5 Child Protection reports and/or Child First referrals relating to family violence incidents; and
  - 83.6 general context of perpetrators past behaviour.
84. Due to Victoria Police's understanding of the PDP Act, police will not share:
- 84.1 specific details of prior criminal behaviour that is not related to family violence; or
  - 84.2 details of ongoing criminal investigations, where there is a need to protect current investigations and to ensure any future prosecution is not prejudiced.
85. Guidelines for the Statewide implementation of the SRM/RAMPs program are being developed by DHHS in consultation with Victoria Police and other stakeholders. The draft Guidelines currently provide that information can be shared with the consent of the victims of family violence and that, where consent is not obtained, information can only be shared in circumstances where high risk is established. Information that is not relevant to risk assessment and planning or, where the case does not meet the threshold level of risk, must not be shared. However, we are aware that DHHS has commenced the process of obtaining an Information Usage Arrangement under the PDP Act relating to the SRM/RAMPs program and Victoria Police will work with DHHS in this process.

#### *Multidisciplinary Centres*

86. MDCs for sexual assault and child abuse matters have been established in Dandenong, Geelong, Mildura and Seaford. Two more will be established in Bendigo and Morwell in late 2015. MDCs co-locate Victoria Police specialist Sexual Assault and Child Abuse Investigation Team (**SOCIT**) members, Child Protection practitioners

and victims counselling services (from the Centre Against Sexual Assault or equivalent regional services).

87. Dandenong MDC includes South East CASA, DHHS, Victorian Institute of Forensic Medicine and Victoria Police. Shortly, a full time Southern Health nurse will join the Dandenong MDC. The key partner agencies in the Dandenong MDC also include Corrections Victoria, who hold monthly case conferencing meetings regarding active caseload management.
88. Pursuant to the MOUs and LOUs in place, the parties share information pertaining to cases for the purpose of service provision to victims/survivors. Case information is otherwise treated as strictly confidential within the relevant party's domain. **Attachment WS AH-20** is an example of a LOU for the Mildura MDC.
89. We understand that due to the relationships of trust and confidence built in the centres between the agencies involved in the MDCs, information sharing in relation to risk assessment and management is practical and effective.

*Victims Assistance & Counselling Program workers at nominated police stations*

90. VACP workers are currently collocated at a number of police stations. The purpose of this co-location is to provide victims of violent crime with easy and timely access to support and to improve police understanding of the services available for victims in the community.
91. The relationships developed between police and support services in these areas improves communication and collaboration.

*Taskforce Alexis*

92. The Taskforce Alexis pilot program tackles family violence, youth crime and mental health through an integrated team of police and specialist clinicians based at Moorabbin. We understand that Senior Sergeant Fiona Alexander has provided a statement to the Royal Commission in relation to Taskforce Alexis. In summary, Taskforce Alexis is a multi-agency first response and ongoing management team for recidivist and other high risk cases. Strong partnerships with external agencies ensure active guidance is provided from the time of first response.
93. During Taskforce Coordination Team meetings, information relating to the victims and perpetrators of family violence is discussed. Victims and perpetrators are aware of this information sharing and where possible it is conducted with consent. Where no consent is given, IPP 2.1(d)(i) allows disclosure in cases of serious and imminent risk.

*PACER units*

94. The PACER service model was designed in 2007 to address the needs of people with mental health issues coming into contact with police. PACER units involve one police officer and one mental health clinician working as a second response to police call outs.
95. The formal arrangements for the PACER units vary based on the health service with whom Victoria Police has joined with in providing the service for the particular region.

***Ad hoc requests for information sharing***

96. Despite the work being done to enable information sharing in structured programs, Victoria Police is aware that on occasion information sharing between agencies that would be beneficial may not be taking place. This occurs when:
- 96.1 Victoria Police holds information which would assist another person or organisation to perform their functions; and
- 96.2 another organisation or person holds information which would assist Victoria Police perform its functions.

*Victoria Police information*

97. Victoria Police is aware that some organisations have indicated a need for increased information sharing by Victoria Police.
98. Unless the person requesting information has not previously had contact with a specialist family violence practitioner or member and been provided with a direct email and telephone number, ad hoc requests will come through to the general watchhouse telephone or email account.
99. Where ad hoc requests are received by general duties members, and are not referred on, in our experience there is a real risk that a conservative default position will be taken. This is because the primary position is not to share information unless the person seeking the information can show a legitimate authority to obtain it. This is a high bar for the person making the request to meet, especially where the requestor may be unaware of this position.
100. It is worth noting also that general duties members are required to know a diverse array of legal and policy requirements. They are required to constantly reassess the current work requirements to determine which request or incident requires the most



urgent attention. As such, it is reasonable to assume their understanding of the PDP Act, beyond the fact that it protects a person's right to privacy, and their ability to apply it in a time pressured environment, is limited.

101. Currently, due to the overarching framework discussed above, a member who receives an ad hoc request for information must consider the information sharing framework, whether the IPPs authorise disclosure and whether the law enforcement exemption applies. They must also consider the relevance of the information sought to family violence; the effect disclosure may have on any ongoing investigation of any offences and any future prosecutions; the effect disclosure will have on police methods and procedures for investigation; the effect disclosure may have on the victim of family violence; and the rights of the perpetrator. It creates a complicated balancing of the public interest in the detection and prosecution of offending and the interest in ensuring victims of family violence are safe from harm. In our experience, when such difficult requests arise, in circumstances where no clear guidance is available, members will either:

- 101.1 make a professional judgment in good faith that the law enforcement exemption in section 15 of the PDP Act permits disclosure; or
- 101.2 determine that the law enforcement exemption does not apply and take a conservative non-disclosure position.

102. We set out below some examples of ad hoc requests for information from Victoria Police.

- 102.1 On occasion a women's shelter may seek information regarding a perpetrator's prior criminal convictions and prior family violence incidents to assess the risk posed by the perpetrator to a victim. We are aware of an instance in which such a request was made by an interstate women's shelter, with whom Victoria Police had not established any ongoing relationship of trust and confidence. The shelter was attempting to repatriate a Victorian woman who had left the State when escaping her violent partner. The shelter requested information regarding the perpetrator's criminal and family violence background, whether he had been released from custody and background checks to be conducted on the persons with whom the woman was to reside on her return to Victoria in order to avoid re-victimisation. In this case, upon verification of the service's identity, in order to protect the victim the information was provided. This was due to the specific circumstances of the victim including her social isolation, the fact that she

was a member of a community with a specific dialect, her relationship to most members of that community and the significant risk posed by the perpetrator. The information release was based on the serious and imminent risk to the victim.

- 102.2 Corrections Victoria has requested information relating to an incarcerated family violence perpetrator who was being assessed for a prison-based education program. The perpetrator had provided a version of events in relation to the incident for which he was incarcerated. Corrections Victoria wanted additional information, beyond that included in the court record, in order to assess how the violence manifested, what his triggers for violence were and what external or additional factors may have been present. This is not a common request, but is likely to have been raised in a number of police service areas. In this situation it would be reasonable to request that Corrections Victoria obtain the prisoner's consent prior to release and to provide a redacted version of the relevant documents to protect the personal information of the victim and any witnesses.
- 102.3 Members of Victoria Police are sometimes asked for information regarding a family violence history to support applications in the Family Court. Obviously where a subpoena has been issued by the Court, Victoria Police complies with the subpoena. However, where an individual seeks the information by way of background it is more complicated. By way of example, Child A had been removed from the care of her mother (Z) and her father (Y) due to risk of harm issues. Child A had been placed in the care of Y's ex-de facto partner, X. X had access applications against Y in the Family Court in relation to their biological child, B. X sought significant amounts of information regarding Child A to support an application to have Y's access revoked in relation to B. During the period where Child A lived with X but was not officially in the custody of X, X had no right to obtain the information as it did not reveal a current serious risk to B. However, once X had official custody of A she could obtain information relating to A as her legal guardian.
- 102.4 Another difficult scenario arises where a family violence service or victim requests information about charges that have been laid against a perpetrator other than for offences related to family violence, or in relation to victims of prior family violence offending. Information regarding unrelated charges would not generally be provided to a family violence service or victim of family violence. This is because the offending is alleged, not proven, is

unrelated to the family violence and disclosure may prejudice any ongoing investigation. However, if there were children involved and the alleged offending indicated a risk of harm to the children the police would provide that information to Child Protection. Child Protection may then use that information to implement actions to ensure any risk is minimised.

103. We are aware that even members with 20 years' experience have difficulty making the decisions required by requests such as these and may need to spend time researching their ability to share the information sought. Given more junior members are the bulk of the frontline contact, and have had it consistently reinforced that information sharing can only occur on a need to know basis, it is not surprising that they may be more likely to decide not to disclose the information sought.

*External agency information*

104. Victoria Police is aware that some organisations hold information that would be of assistance to it in addressing family violence risk. Police generally have difficulties in obtaining information from health practitioners who rely on section 141 of the *Health Services Act 1998* and/or the *Health Records Act* to deny police access to medical information.
105. A need for such information may arise when police take a person into custody under section 351 of the *Mental Health Act* in circumstances where threats or a risk to family members are present. The referral form for the health service, the L42, does not include information regarding criminal history or intervention orders in place. When the person is released back into the community, police are not notified. This creates a risk assessment and risk management issue.
106. In addition, hospitals and especially Emergency Room nurses are unclear about what they should do if they suspect family violence where mandatory reporting provisions do not apply.
107. Some organisations are unclear about their ability to disclose information in relation to child welfare matters. For example, schools can be unclear about their obligations regarding a student who is being subjected to family violence. In one particular case, a child was expected to participate in an arranged marriage and had been subjected to controlling behaviours and physical violence. The relevant school was concerned regarding the definition of family violence and whether a child protection report was necessary or a report to police. In that case the appropriate reports were made and the child was taken into the custody of the Secretary to DHHS.

108. No suitable feedback loop exists regarding the outcome of family violence referrals made by Victoria Police. Currently, we do not receive information regarding what services are being offered to victims of family violence following referral, whether those services have been accepted, or how effective those services have proved in addressing risk of harm.

#### **BARRIERS TO EFFECTIVE INFORMATION SHARING**

109. As we noted at the beginning of this statement, the current legislative regime enables most of the necessary information sharing between Victoria Police and external stakeholders in high risk family violence cases, but significant practical and cultural barriers nonetheless exist both in that specific context and throughout the whole of the Integrated Family Violence System.
110. The complex system of regulation relating to information sharing, and the different application of the PDP Act to Victoria Police and other organisations involved in family violence response work, leads to a fragmented and difficult framework to apply. Each new multi-agency or co-location project requires significant amounts of time to be spent by the relevant agencies navigating the information sharing area. This creates duplication and time wastage which is ultimately detrimental to these projects and can delay their implementation if not sought before the project has been implemented.
111. As noted above, we understand that DHHS has commenced the process of obtaining an Information Usage Arrangement under the PDP Act relating to the SRM/RAMPs program.
112. Outside of high risk cases, such as those managed through the RAMPs process or Taskforce Alexis, a grey area arises regarding risk assessment and management. The initial assessment of risk may require information sharing before a serious or imminent threat can be established; effective risk management may require information sharing in cases where the risk to a person does not constitute a serious or imminent threat on the basis of the available information; and the degree and imminence of a person's risk of family violence is also dynamic. The very purpose of coordinated case management programs such as RAMPs and Taskforce Alexis is to reduce individuals' level of risk over time. The IPPs do not clearly permit information sharing in these circumstances, however, an IUA may allow such sharing
113. Whilst the consent of the affected family member or the perpetrator would allow the sharing of information, it may not always be forthcoming. Mental health issues, drug

and alcohol abuse and long term trauma may all lead a person to refuse consent in circumstances where information sharing would be to their benefit.

114. As such, where a member does not feel they can be satisfied that risk is 'imminent' and they do not have consent, they are more likely to revert to a position of non-disclosure.
115. Further, law enforcement data can only be used and shared in compliance with SLEDS. This provides a necessary level of protection for law enforcement data, but in practice, it also means that information sharing with agencies or organisations who cannot comply with the SLEDS may not be possible or may be procedurally inefficient.
116. Information sharing also depends upon an individual police member's knowledge of the relevant legislation. As discussed above, provisions of the *Victoria Police Act* prohibit police members from the unauthorised use or disclosure of police information. Breach of these provisions can lead to criminal and disciplinary proceedings against a member. Coupled with the extremely complex system of governance in relation to information sharing, this may lead to an overly cautious approach being taken to information sharing by police members.
117. Technological constraints can also inhibit information sharing. For example, we have referred above to the difficulties associated with sharing relevant parts of L17 reports with agencies who do not have the technological capacity to receive encrypted email communications.
118. Information sharing by Victoria Police is also constrained by the availability of resources, which can affect members' ability to respond to requests for information promptly. Depending on what is happening at the time of the request, some requests may be deferred while responding to situations where an immediate risk is more apparent.

#### **OPTIONS FOR IMPROVED INFORMATION SHARING**

119. Victoria Police is of the view that there are options that would address barriers to information sharing and improve information sharing in the context of family violence.

#### **Overarching legislative facilitation of information sharing in the family violence context**

120. The Victoria Police submission to the Royal Commission (at page 24) calls for legislative reform to provide clear and simple legislative support for routine disclosure, storage, use and destruction of relevant information by family violence response

services. The submission notes that models in other jurisdictions adopt a presumption of information sharing unless exceptional circumstances apply. For example, section 37 of the *Family Violence Act 2004* (Tas) provides that a police member or other custodian of personal information “acting in good faith, does not commit a breach of [the Tasmanian equivalent of the PDP Act] by reason only of collecting, using, disclosing or otherwise dealing with personal information for the purpose of furthering the objects of” the *Family Violence Act*.

121. An overarching legislative solution of this nature, although not necessarily in these terms, would enshrine information sharing ideals in law and provide a simple provision for practitioners to interpret and apply, in contrast to the current complex legislative framework in Victoria.
122. It would create an environment where information relevant to assessing and managing individuals’ risk of family violence, across the whole spectrum of risk, can be shared with all relevant recipients quickly, efficiently and confidently. And it would alleviate the duplication and delay that would be involved in developing specific Information Usage Arrangements or other information sharing protocols for each new multidisciplinary initiative.
123. As long as it was clear that good faith reliance on this provision is a defence to a charge under the *Victoria Police Act*, it would also have very significant cultural benefits for Victoria Police members. It would ensure that members need not be lawyers in order to determine how information sharing in this context should be conducted. It would remove the complexity and uncertainty associated with individual information sharing decisions and give members the confidence to share information in every case where they consider it necessary to do so, subject always to the need to retain the discretion not to share information the disclosure of which may be prejudicial to ongoing criminal investigations or which may disclose police methodology or sources.

### **New South Wales models**

#### *Part 13A of the Crimes (Domestic and Personal Violence) Act 2007 (NSW)*

124. Section 98M of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) provides that an agency may, despite the NSW privacy legislation, deal with information (defined to mean collection, use or disclosure) about a person without the consent of the person if the agency believes on reasonable grounds that the particular dealing is necessary to prevent or lessen a domestic violence threat to the

person or any other person, the threat is a serious threat and the person has refused to give consent or it is unreasonable or impractical to obtain the person's consent.

125. This model does not require that the threat be "imminent", as is required by IPP 2.1(d)(i) under the PDP Act, but adds an additional requirement that the person whom the information concerns has refused to give consent or it is unreasonable or impractical to obtain the person's consent. This would still require assessment of what is a "serious" threat in any case and may not address the concerns we have raised above about information sharing across the whole of the risk spectrum, not just in cases where there is a high risk of family violence.

#### *NSW CARAM-DFV Framework*

126. The NSW CARAM-DFV Framework is another example of an over-arching solution of this nature. It is a Direction made by the Privacy Commissioner under section 41 of the *Privacy and Personal Information Protection Act 1998* (NSW) which provides that participating agencies (a number of public sector agencies, including the NSW Police Force) are not required to comply with the obligations concerning the disclosure of personal information in section 18 of that Act for the purposes of, relevantly:
- 126.1 undertaking initial risk assessment, referring a victim for specialist risk assessment or undertaking specialist risk assessment;
  - 126.2 providing assistance and support services to the victim;
  - 126.3 reporting any incident of domestic violence that involves a serious threat of harm or physical injury which is likely to cause a reasonable victim to fear for her or his safety to the NSW Police Force; or
  - 126.4 any other purpose directly or indirectly related to the CARAM-DFV Framework.
127. A copy of the CARAM-DFV Framework is attached as **Attachment WS AH-21**.
128. A related direction has also been made under section 62 of the *Health Records and Information Privacy Act 2002* (NSW) in relation to health information.
129. This model requires a slightly greater level of engagement with the exceptions than the more general exception under the Tasmanian model. However, it is simpler and broader than the current arrangements in Victoria. Focussed training for supervising family violence practitioners within Victoria Police would be required to ensure that this model of exception would be uniformly applied in practice.

130. If this model were adopted in Victoria, it would be important to ensure that both the PDP Act and the *Health Records Act* empowered the relevant Commissioners to allow non-compliance with those Acts and non-compliance with other information handling provisions relevant to their field, such as section 141 of the *Health Services Act* for the Health Commissioner.
131. It is noted that this model may not operate to override the *Privacy Act 1988* (Cth) and the Australian Privacy Principles (**APPs**). The APPs are similar to but not the same as the IPPs. APP 6.2(b) allows secondary disclosure in circumstances where the disclosure is authorised or required under an “Australian law” or order of a court. “Australian Law” is defined to include a State enactment or “instrument” made under such an enactment. Commonwealth agencies and some private organisations relevant to the family violence framework are subject to the APPs. As such, careful consideration would need to be given to ensuring that any arrangement made under the PDP Act and *Health Records Act* had the character of an “instrument” made under a State enactment for the purposes of the *Privacy Act*.

### **Risk register**

132. Victoria Police’s submission to the Royal Commission also refers to the possibility that a risk register could be established in Victoria. Such a register would be based on the UK’s *Domestic Violence Disclosure Scheme (DVDS)*. It would allow individuals to apply to obtain information about their partner’s history of family violence.
133. In 2012/13, a 14 month pilot to test a national DVDS took place across four police force areas in the UK. The scheme was later rolled out across the UK. The scheme, which entails a ‘right to ask’ and a ‘right to know’ component, allows police to, in circumstances where there was a pressing need to disclose, inform a person that they are at risk of harm from their partner. If police, or a partner agency, determined a person was at risk of harm from their partner, the person would be informed of this by police accompanied by a family violence worker who could assist in planning and decision making relating to mitigating risk. A disclosure could be triggered by an application (right to ask) or by police or other agencies identifying that a person had a right to know.
134. The three-part test for appropriate and lawful disclosure pursuant to the DVDS is:
- 134.1 that the disclosure is necessary to protect a person from being the victim of a crime related to domestic violence;



- 134.2 that there is a pressing need for such disclosure; and
- 134.3 that the disclosure is proportionate in aiming to prevent crime.
135. The DVDS was established administratively, as disclosure of such information is allowed under the legislative and common law framework in place in the UK.
136. In 2013, the Home Office conducted a DVDS Pilot Assessment (**Attachment WS AH-22**). The assessment aimed to assist in understanding how the scheme was working in practice and identifying lessons learnt to inform any decisions about roll-out of the scheme. The assessment was not designed to consider any impact the scheme may have had on domestic violence victims.
137. Over the course of the pilot, police monitoring data recorded a total of 111 disclosures given by the police about a partner's previous abusive behaviour, out of a total of 386 applications. The pilot assessment found that, overall, participants were satisfied with the scheme and, those who received a disclosure felt empowered to make decisions about their own safety. In addition, the practice of having face to face disclosures supported by family violence workers assisted in developing safety management plans and valuable support networks. Some respondents to the assessment indicated that the scheme encouraged individuals who had concerns about their partner's behaviour to approach police, often for the first time.
138. However, issues were identified in relation to knowledge of the scheme, the bureaucracy of the process of the scheme, overlap with other disclosure schemes and understanding of the term 'pressing need to disclose'.
139. The scheme, and the evaluation of the scheme, has been the subject of some criticism. **Attachment WS AH-23** is an example of such a criticism. The main criticisms can be summarised as follows
140. First, critics queried the scheme's efficacy in increasing victims safety. The assessment did not address whether the disclosures that had occurred had resulted in a benefit to individuals at risk of harm. Indeed, only four respondents to the assessment reported that they were likely to seek support from support services following the disclosure of information they had received as 'intelligence' about their partner.
141. Second, the legal basis for the scheme (common law powers) and the complexity of the three-part test were both criticised. Application of the 'proportionality' part of the test was considered to involve a particularly complex process.


142. Third, the scheme was criticised in light of human rights considerations relating to the perpetrators of family violence. Critics suggested that human rights considerations warranted greater emphasis on offender/perpetrator consultation, as well as notification and engagement generally, under the scheme.

143. Whilst Victoria Police acknowledges the criticism of the scheme, a similar scheme, (based in legislation), with a well-defined test, could go a long way to empowering individuals to identify the risks they face and, with adequate supports, put safety management plans in place. Appropriate follow up and ongoing involvement of multi-agency support networks for individuals at risk of being a victim of or perpetrator of family violence would still be necessary.

Signed by )  
WENDY MAREE STEENDAM )  
at Melbourne )  
this 3rd day of August 2015 )

  
WENDY STEENDAM  
ASSISTANT COMMISSIONER

Signed by )  
AILSA CAROLINE HOWARD )  
at Melbourne )  
this 3rd day of August 2015 )

  
AILSA CAROLINE HOWARD  
Senior Sergeant 30469.

Before me   




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