

## Feedback on the Child Information Sharing reforms

The Centre for Excellence in Family Welfare (the Centre) welcomes an opportunity to provide feedback on the Child Information Sharing reforms. The Centre is the peak body for child and family services in Victoria. For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 150 community service organisations, students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care. Many of our member organisations work with Aboriginal children and families and Aboriginal Community Controlled Organisations (ACCOs). Our members have an excellent understanding of the need for improved information sharing between and among relevant parties to keep children safe and support their wellbeing.

The Centre welcomes the proposed child information sharing legislative reforms. Information sharing about children and young people is critical to their safety and wellbeing as shown in the various investigations and reviews referred to in the Child Information Sharing discussion paper. We strongly support information sharing for the purposes of prevention and early intervention.

## Responses to consultation questions

### Purposes for sharing information

What issues should the guidance materials cover to support prescribed organisations to share information for the purposes of promoting children's wellbeing and safety?

The proposed legislative reform signals a cultural shift in the way organisations have previously managed information about children and young people. Guidance materials will need to make very clear the rationale for the legislation and why the safety and wellbeing of children takes precedence over their right to privacy or the rights of any other party to privacy. The guidance materials need to make clear that the information to be shared is not only about children or young people but also covers people close to the child, such as a carer or parent and why this is important. The Best Interests Framework for vulnerable children and youth provides a useful tool to support the development of a shared understanding of why information sharing is so critical for children.

To support informed and timely decision making, prescribed organisations would benefit from a range of scenarios and case studies that reflect the types of situations they are likely to face in their work with children, young people and families, particularly in relation to wellbeing. The information should also assist organisations to understand what information should be shared, under what circumstances, with whom, and how to anticipate and pre-empt any unintended adverse consequences.

The guidance materials should reinforce information sharing in relation to children as fundamental to good practice rather than as simply a new legislative requirement. The proposed legislative changes offer an opportunity for information sharing to be promoted as a core characteristic of good practice more generally beyond legislative reform.

It is not clear who is accountable if a person from a prescribed organisation withholds information and a child is placed at serious risk or is harmed. Will there be penalties for prescribed organisations not sharing information? Given the good faith defence, what would happen if a prescribed organisation refuses to provide the information requested on the grounds that they reasonably believe the information will not be used for wellbeing or safety purposes? The guidelines need to provide these

kinds of scenarios to inform decision making and practice.

Another issue raised in our consultation with members was the issue of embedding culture and cultural safety into the legislation and implementation of the law. How can this be done in ways that support and align with the intention of the legislative reforms?

#### Excluded information

What additions or changes should be made to the list of ['Excluded information'](#), if any? Please provide a clear rationale.

The Centre supports the concept of prescribed organisations needing to meet a three-part test before information can be shared. However, please note the following points:

- The first statement in the three-part test asks organisations to *consider that the information promotes the safety and wellbeing of a child or group of children*. However, the first dot point excludes information sharing that is likely to *endanger a person's life or result in physical injury*. Given the imperative to share information relating to a child's safety and wellbeing, this exclusion is problematic. There is a risk that organisations might not share legitimate information about a child who is exposed to family violence in the belief that sharing this information could place that child or other adults at risk of harm. The Centre believes this exclusion provides an easy 'opt out' for organisations and could result in children remaining in at-risk living arrangements. There is a risk, too, that organisations might choose not to share information with statutory bodies, such as child protection or police.
- The exclusion that refers to information sharing which is *contrary to the public interest* is open to interpretation and, like the first exclusion above, has the potential to be used as a rationale for not sharing legitimate information. The Centre believes there is a significant risk associated with prescribed organisations determining whether to share or withhold information that has been requested because the judgement about the three-part test and exclusion criteria relies on the individual views of practitioners in the prescribed organisations. These matters will need to be clarified and addressed in the guidance materials, including what each of the exclusions looks like in practice and how individuals can be supported in their decision making.

- Make the wording in parts a, b and c more consistent: instead of using 'consider' in part a and 'reasonably believe' in parts b and c, use the same word(s) in each section.
- Using the word 'promote' in the three-part test is problematic. Information in and of itself can't promote anything. Consider using 'relevant' or 'relates to' rather than 'promote'.

### Organisations to be prescribed to share information

Would you add or remove any organisations and workforces from the proposed list of ['Organisations to be prescribed to share information'](#)? Why?

Where organisations may provide a range of services, some of which may not be relevant to children's safety and wellbeing, please specify the particular roles or functions that should (or should not) be prescribed under the proposed regime within that organisation.

The Centre recognises that the organisations to be prescribed are mostly defined in terms of their legislative definition and are broadly consistent with the NSW 16A scheme. However, there is still need for further clarification. For example, where do Aboriginal Community Controlled Organisations (ACCOs) and Aboriginal Community Controlled Health Organisations (ACCHOs) belong in this list? Are they in the category of 'community service organisations that are funded by state government' or in a separate category of their own? The Centre believes they need to be treated as entities in their own right and explicitly named as prescribed organisations.

The category of 'community service organisations' is very broad and encompasses a variety of services. We suggest that these types of services need to be specified, such as Child FIRST, Early Parenting Centres, CASA, drug and alcohol services, mental health services and so on. We assume Maternal and Child Health nurses will be picked up in the category 'nurses and midwives' but they could also be specifically mentioned given their critical importance in prevention and early intervention.

### Legislative principles

Are there any ['Legislative principles'](#) you would amend, or add to the proposed list? If so, why?

The Centre supports the proposed principles outlined in the consultation paper.

However, the first legislative principle refers to information being *shared in a way that is in the best interests of the child or children* but is it only *the way* in which information is shared or is it also the content of the information being shared that must be in the best interests of children? That is, should the wording of (a) in the three-part test (*the information promotes the safety and wellbeing of a child or group of children*) also be included in the first principle to reinforce the message of best interests in all aspects of information sharing? Given the cultural shift that will need to take place, particularly in the family violence sector, the best interests principles in relation to children are cannot be stressed too often.

Successful implementation of the principles will require provision of a range of relevant case studies and scenarios. For example, the principle that states *when sharing information in relation to children from an Aboriginal background, prescribed organisations should do so in a manner that promotes the right to self-determination* raises the question of what does this look like in practice. What situations could potentially arise where information sharing is at odds with self-determination and how can these be resolved?

## Safeguards to ensure appropriate information sharing

What operational concerns might services have about the '[Safeguards to ensure appropriate information sharing](#)', and how could these concerns be dealt with through implementation support and in guidelines?

To address any concerns about privacy and confidentiality, which is integral to the work that many prescribed organisations undertake routinely with clients, the Centre suggests the guideline materials should strongly promote the principle of transparency as outlined in the draft ministerial guidelines for the Family Violence information sharing amendment. That is, organisations need to make clear upfront to clients how their information will be used – where it is appropriate, safe and reasonable to do so – and the importance of protecting children.

One suggestion from member organisations is to establish a central hotline to support immediate queries in relation to information sharing, including what's appropriate to share, and where there might be concerns that information has not been shared appropriately.

## Record-keeping and reporting requirements

Are there any additional [‘Record keeping and reporting requirements’](#) that should be included in the proposed list?

The Centre believes the proposed record keeping and reporting requirements, including the proposed new reporting for evaluation purposes, are likely to be onerous given the amount of compliance activities and paperwork organisations are already required to complete. The case for additional data collection is not made strongly enough in the consultation paper; it is not clear how the increased workload will be managed; and the data collection needs to be linked more clearly to outcomes for children and families, rather than being a bureaucratic exercise for the purposes of state-wide evaluation.

We note the statement in the consultation paper that ‘many of these obligations are already part of the policies and processes in organisations that are likely to be prescribed’ but question how, and the extent to which, information is currently being collected, used or recorded, and whether recording and reporting practice is consistent within organisations. Given the wide range of prescribed organisation categories, and within each broad category, the wide range of organisations working with children and young people experiencing vulnerability, the Centre questions how much is currently known about information storage, management and record keeping in practice. It is not clear to us that prescribed organisations are already routinely collecting the information in the listed dot points on page 12 of the paper and to a high quality, particularly as this relates to children and young people.

We support the notion of a mapping exercise to determine how information is currently being captured, used, stored and reported to identify gaps, risks, areas of commonality across the prescribed organisations. Only then will it be known how much change needs to occur within and across organisations to have consistent approaches towards high quality information capture, use and storage.

The additional reporting requirements will add an extra layer of data collation within organisations to be able to meaningfully report at a sufficiently high-level to contribute to a state level evaluation. The additional data to be collected is also quantitative in nature and we question the value of this data without any context. For example, asking organisations to report *the number of refusals to disclose information by them in response to requests* would appear to be meaningless without knowing why these decisions were made. How will the information at an organisational level relating to information refusal or non-response to a legitimate request be aggregated?

We also question whether, given the range of services involved, organisations will be able to collate and record the required information without being resourced to do so.

Feedback from the sector suggests that the voice of children in what information is shared should include not only the child’s words but also observations of them, data about them and their expression through physical or social engagement with others, especially in the case of pre-verbal infants. We recognise this adds to the burden of reporting but it would give more context to decision making in the interests of the child.

Despite our concerns about the amount of documentation required under the new information-sharing regime, the Centre also supports an additional requirement for organisations to record whether they have discussed the information sharing provisions and/or consent with the parents and young person, and if relevant, to record why this was not done. While consent of the child is not required before information is shared, being required to record the nature of the discussion would support organisations in being accountable for their actions. This could also help address any potential tension

between the first part of the three-part test – requiring information to be shared in the best interests of the child – and the first exclusion – which provides a potential way out for organisations.

The Centre suggests this is an area of the new model that will need close monitoring to make sure information is being collected and stored appropriately, that safeguards are in place to avoid inadvertent sharing with non-prescribed organisations or individuals, and that there is sufficient consistency in reporting for data analysis at a state-wide level to be meaningful.

What support and information in the guidelines about these proposed requirements might be needed for your sector to implement these proposed requirements?

Given the additional burden of reporting required, the guidelines should make very clear the rationale for these reporting requirements and how organisations and clients will benefit ultimately from the evaluation and review of the scheme. The guidelines will need to clarify how the additional data will be collected and used.

To increase the level of consistency within and across prescribed organisations the guidelines should include templates for record keeping.

The guidelines should also outline how organisations will be held accountable and how greater consistency will be gained and maintained.

### Intersection with Family Violence Information Sharing reforms

What aspects of best practice in promoting [children's agency](#) should be covered in guidelines to support service providers?

The proposed legislative change provides an opportunity to promote good information-sharing protocols and practice in relation to all clients, not only children, including guidance around parental and perpetrator consent in situations of family violence.

As mentioned above in relation to the principle of transparency, a key element of good practice in promoting children's agency – any client's agency – is to be clear from the outset about how any information about them will be used, where it is appropriate, safe and reasonable to do so, and the paramountcy of children's safety and wellbeing.

The consultations have raised the challenge of maintaining agency while being able to share information without consent. However, agency can still occur if children are appropriately informed about the purpose of gathering information and how it will be used to protect and support them. This kind of transparency – taking into account the age, maturity and cognition of the child – promotes awareness of the importance of their role in maintaining safety and wellbeing. It is important that children's agency does not become a barrier to the sharing of information but, through clear guidelines and protocols from the outset of any communication with the child, can be embedded through children understanding that they are agents in their own protection.

The Centre believes children's wishes and involvement in the decision to share information needs to be communicated to practitioners through education about how to engage and communicate effectively with clients. This is one way in which children's agency and the matter of consent can be managed. To avoid situations where clients choose not to disclose or seek assistance because of

apprehension or uncertainty about the new child information sharing requirements, education could also be targeted at community and clients to increase awareness about the rationale for this approach and their key role in supporting children's safety and wellbeing. There will need to be a clear and consistent communications strategy to clients to mitigate the risk of families refusing to access services.

The Centre supports reference to children's agency in a set of legislative principles (see CYFA 2005, Division 1 for example: *the child's views and wishes, if they can be reasonably ascertained, and they should be given such weight as is appropriate in the circumstances*) rather than being incorporated in the substantive provisions of the legislation or left to the legislative guidelines.

Are there any particular concerns or questions your sector has in relation to the [intersection of the family violence and child information sharing reforms](#)?

The joint consultations between DHHS and FSV appear to have been effective in making the intersections clear, both the commonalities and distinctions. It will be important that each set of guidelines is consistent in approach and refers to the other reforms as relevant to reduce any potential confusion.

## Child Link

Do you consider there to be particular opportunities or risks for your sector in implementing a systematic approach to sharing linked information about a child (see description of '[Child Link](#)')?

There is a risk, if not appropriately managed, that information about children will be accessed by unauthorised others, including perpetrators. What safeguards will be put in place to ensure this does not happen? Designating such information use an offence will not be sufficient to deter as the risk is that information might be shared inadvertently by practitioners or professionals without realising the implications for a child or family. Conversely, what right will children, young people or their parents have to make sure information about the child is accurate and being used appropriately?

There is a risk that families will not provide information about their children if they do not have assurance about how this information will be used, by whom and for what purposes, particularly in the case of hard-to-engage families where there might already be a distrust of government.

Some sector members have queried the connection between Child Link and Patchwork, an issue also raised in the Child Link consultations. The Centre seeks clarity about this in the guidelines. We also seek clarity about how the quality of the data captured in Child Link will be assessed and maintained.

## Issues and risks to be addressed through implementation and guidelines

Are there any additional likely risks or issues for your sector, in relation to the proposed information sharing regime and/or Child Link?

The Centre strongly endorses the child information sharing reforms. We have been advocating for better information sharing about and for children over many years. However, it is our view that without adequate resourcing and training it will be difficult to implement these reforms. Prescribed organisations need staff with the necessary skills and resources to be able to manage the information sharing requests in a timely manner, assess the appropriateness and extent of information to be shared, document all decisions and actions, and promote agency among clients. Our members are already burdened with multiple reporting requirements and need to be sufficiently resourced to prioritise service delivery with vulnerable clients while managing requests for information from other prescribed organisations others and maintaining the necessary documentation.

The Centre supports increased education about cultural safety. There should be mandatory minimum standards and training to ensure all prescribed organisations are able to provide children and their families with the same level of culturally safe services in culturally safe environments

Training needs to take into account and make clear the links to related laws and policies, such as the reportable conduct scheme, child safety standards, mental health and family violence information sharing Acts.

How could risks be managed or mitigated through implementation (i.e. how could practitioners and organisations be supported to manage and address risks)?



The guidelines will need to use and promote a common language given the diversity of histories, methodologies, theoretical underpinnings, and practices across the breadth of organisations to be prescribed.

We support having a mechanism – whether in the form of an independent regulatory council, ombudsman or after-hours centralised service – to respond to information sharing questions from prescribed organisations seeking assistance in appropriate decision making.

We would welcome demonstrations and training sessions on how child information sharing practice, including the use of Child Link, might work in practice to improve prescribed organisations' capacity to respond promptly.

## Other comments

N/A

Please do not hesitate to contact me should you wish to discuss any aspect of our submission on (03) 9614 1577.

Yours sincerely

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