

Child Information Sharing

Consultation paper



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Introduction

Keeping children safe from harm and promoting their wellbeing is a top priority for the Victorian Government.

Victoria's current legal framework limits the effective sharing of information between organisations that provide services to children and families. Information can be shared relatively easily with Child Protection when there is already a significant concern for a child's wellbeing, or where there is a significant risk of harm and a child is in need of protection. Information may also be shared without consent if there is already a serious threat to an individual's life, health, safety or welfare and a reasonable belief that disclosing information is necessary to lessen or prevent that threat.

However, existing legislation does not appear to effectively enable organisations to share information with other organisations who work with children and young people, to facilitate prevention of harm or early intervention. The current legal framework has contributed to an overly risk-averse culture around information sharing in Victoria's service system, which has had negative consequences for children and families.

Why is reform needed?

Over the last decade, many inquiries and reviews have recommended reform to Victoria's information sharing laws to support improved child safety and wellbeing outcomes. These include reviews undertaken by the Victorian Auditor-General, the Coroners Court of Victoria, the Commission for Children and Young People, the Protecting Victoria's Vulnerable Children Inquiry, and the Royal Commission into Family Violence.

These reviews show that tragic outcomes can result when services do not have access to all the information they need. It is difficult for services to establish a full picture of risk for a child, and as a result they cannot take appropriate action to protect or support the child and family. For example, the [Commission for Children and Young People's 2014–15 annual report](https://ccyp.vic.gov.au/about-the-commission/annual-reports) < <https://ccyp.vic.gov.au/about-the-commission/annual-reports>> found that of the 27 child death inquiry reports reviewed, 16 reports highlighted issues relating to service coordination, collaboration, communication, information sharing and lack of case conferences between relevant services.

In response, the Victorian Government is developing information sharing legislative reforms to improve the way information is shared between agencies and organisations, to:

- promote the safety and wellbeing of all Victorian children and young people (up to the age of 18),
- enable better risk identification, early intervention and prevention, and reduce the likelihood of harm
- promote family support and connection to universal services
- promote shared responsibility and enable better collaboration across professions and organisations
- reduce reliance on tertiary services, including child protection.

The Victorian Government is seeking stakeholder views to inform the development of the proposed Child Wellbeing and Safety information sharing legislation, and assist with implementation planning.

How could better information sharing assist to keep children safe?

Several cases have highlighted barriers across the service system in Victoria that hinder services from identifying and protecting isolated children. In these cases, children are 'kept off the radar' by their families, with sometimes tragic consequences. If services could share information more systematically, the risks faced by these children – including lack of participation in Maternal and Child Health, kindergarten and school – could be identified. This would assist services to put together the 'pieces of the puzzle' about a child's life and make a better, earlier assessment of risk. In some cases, this may prompt earlier intervention to support families and children, potentially preventing harm from occurring.

How to have your say

Preliminary consultations on the Child Wellbeing and Safety information sharing reforms were undertaken in late 2016 and early 2017. This included face-to-face consultation sessions with key stakeholders in a number of sectors, including early childhood education and care services, schools, child and family services, family violence services and health services, courts and the legal profession. A consultation paper was also widely circulated offering the opportunity to provide written submissions.

A second targeted consultation round is now being undertaken to further refine the proposed legislative model, and ensure there is an opportunity for stakeholders who may be affected by the reforms to have their say.

Stakeholder views are sought on particular aspects of the proposed Child Wellbeing and Safety information sharing regime, as follows:

- exclusions (i.e. circumstances when organisations are lawfully permitted to refuse a request to share information or must not share information voluntarily)
- overarching legislative principles to guide services when sharing information; and
- organisations that should be prescribed through regulation as part of the ‘trusted circle’ authorised to request, receive and/or share information under the proposed scheme.

Throughout the paper, and in the [‘Issues and risks to be addressed through implementation and guidelines’](#) section, stakeholder feedback is sought on any practice issues or risks associated with the scheme and how they might be addressed through implementation and guidelines.

Stakeholders are invited to provide written responses to questions in this paper using the [‘Responses template’](#) provided, [by email to the Department of Health and Human Services](mailto:ChildInfoSharing@dhhs.vic.gov.au) <ChildInfoSharing@dhhs.vic.gov.au>. It is important that you provide a clear rationale to support your responses to the questions.

Submissions must be received by **Monday 25 September 2017**.

Key stakeholders will also be invited to a series of face-to-face workshops and information sessions in coming weeks.

If you have any questions about this paper or the consultation process please [contact the Department of Health and Human Services](#) at <ChildInfoSharing@dhhs.vic.gov.au>.

Summary of proposed legislative model

The proposed legislative model for the Child Wellbeing and Safety information sharing regime is broadly based on ‘Chapter 16A’ of the *Children and Young Persons (Care and Protection) Act* (1998) in New South Wales, with appropriate modifications for the Victorian context. Chapter 16A has been operating successfully in New South Wales since 2009, and has also been referred to by the Royal Commission into Institutional Responses to Child Sexual Abuse as an example of good practice.

The New South Wales model

A 2015 review by the University of New South Wales, '[Opportunities for Information Sharing](https://www.sprc.unsw.edu.au/research/projects/information-sharing-between-government-agencies/)' <<https://www.sprc.unsw.edu.au/research/projects/information-sharing-between-government-agencies/>> found that Chapter 16A has facilitated considerable changes to information sharing practices across agencies and sectors in New South Wales. It has also been helpful in the ongoing development of a culture of appropriate information sharing.

A 2016 study by the Royal Commission into Institutional Responses to Child Sexual Abuse, '[Strengthening Information Sharing Arrangements](http://childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/legislative-and-related-frameworks-for-information)' <<http://childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/legislative-and-related-frameworks-for-information>>, also highlights that Chapter 16A:

- enables information from a variety of sources to be easily gathered and proactively shared to better inform assessments of and responses to children at risk.
- overcomes the issues associated with relying on the child protection agency as a central repository of information.

Under this model, organisations that are 'prescribed' under regulations will be able to request information that promotes the wellbeing or safety of a child or group of children from other prescribed organisations for specific purposes. Only professionals and organisations who already hold information that would assist to promote children's wellbeing and safety will be prescribed to share information with each other.

Requests for information must be responded to if they meet the requirements of the legislation, unless an exclusion applies. Prescribed organisations will also be able to share information proactively (even if a request has not been made) where they reasonably believe the information promotes child wellbeing or safety and may assist the recipient to carry out certain activities relating to a child or group of children's wellbeing or safety. Please note, in this paper, 'child' refers to any child or young person under the age of 18. The phrase 'group of children' refers to more than one individual child (for example, a school class).

In Victoria, the proposed legislation would also authorise the creation of 'Child Link', an information technology platform that enables the systematic sharing of information about children's participation in the key services that support their wellbeing and safety. A subset of organisations and workforces would be authorised to access the Child Link system. Child Link would help them to form an aggregate picture of risk in relation to a child and their family, and to work together to provide effective and early support for that family.

It is important to note that existing legislative reporting requirements relating to children – for example mandatory reporting requirements under the *Children Youth and Families Act 2005* – would not be affected by the proposed Child Wellbeing and Safety information sharing reforms. Nothing in the proposed regime would prevent or restrict prescribed organisations from collecting, using or disclosing information where it is already allowed under another Act, for example under the *Privacy and Data Protection Act 2014* or the *Health Records Act 2001*.

The Child Wellbeing and Safety information sharing reforms would complement the *Family Violence Protection Amendment (Information Sharing) Act 2017*. The new *Family Violence Protection Amendment (Information Sharing) Act 2017* provides a clear legislative basis for information to be shared by prescribed entities to assess family violence risks and manage safety. One of the key objectives of this new scheme is to ensure that the current barriers to sharing information about perpetrators of family violence are removed, so that risks to the safety of victims can be managed.

Both schemes reflect the principle that the wellbeing and safety of children, including the right of children to be safe from family violence, is paramount. Both schemes will also operate with the underpinning

principle that the agency of children is very important and should be promoted wherever appropriate. Children, non-violent parents and families should be properly informed of how and when their information will be shared, and their views and wishes should be taken into account when making decisions if it is appropriate, reasonable and safe to do so.

The proposed Child Wellbeing and Safety information sharing scheme will enable prescribed organisations to share information more freely to promote children's wellbeing and safety in circumstances beyond a family violence context. This will enable early identification and management of risks to children's wellbeing and safety whether family violence is involved or not.

The ['Intersection with Family Violence information sharing reforms'](#) section discusses the possible intersection between these two reforms.

Purposes for sharing information

It is intended that the proposed scheme will permit information to be shared, either voluntarily or on request, to promote children's wellbeing and safety. This would allow for a positive, proactive approach to information exchange and service collaboration, and enable early risk assessment and intervention to support children and their families before harm occurs.

Under the proposed regime, prescribed organisations need to meet a three-part test before information can be shared. Before sharing information, either proactively (without a request) or in response to a request, a prescribed organisation must:

- (a) consider that the information promotes the safety and wellbeing of a child or group of children;
- and
- (b) reasonably believe the information may assist the recipient (also a prescribed entity) to perform at least one of a specified range of activities relating to that child's or group of children's safety and wellbeing, specifically:
 - (i) making a decision, assessment or plan relating to the wellbeing or safety of the child or group of children
 - (ii) initiating or conducting any investigation relating to the wellbeing or safety of the child or group of children
 - (iii) providing any service relating to the wellbeing or safety of the child or group of children
 - (iv) managing any risk to the child or group of children.
- and
- (c) reasonably believe the information is not excluded information (refer to ['Excluded information'](#) section).

This three-part test makes it clear that information should be shared under the scheme for the promotion of the overall wellbeing or safety of a child or children (for example, where the information would assist the recipient to make a better or more informed decision relating to the wellbeing or safety of the child).

If sharing information is likely to result in overall physical, emotional or psychological harm to a child, or would put them at risk of harm, then the information would not meet the first part of the test to 'promote the safety and wellbeing of a child' and could not be lawfully shared under the regime.

The terms 'wellbeing' and 'safety' would not be explicitly defined in the legislation, as these terms have commonly understood meanings and including a legal definition may limit rather than encourage a

culture of sharing information. Guidance materials will be developed to assist practitioners and organisations to consider the various factors that may be relevant to determining whether information promotes a child’s wellbeing or safety.

This may include, for example, considering any risk of stigmatisation or discrimination that may result from sharing information, and considering the different experiences of children and young people depending on their age, gender identity, cultural background, sexuality, disability and other factors relevant to their wellbeing and safety.

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

Excluded information

A prescribed organisation must comply with a request for information from another prescribed organisation, if the three-part test outlined above is met. This means the provider of information must reasonably believe the information is not excluded information. Exclusions are proposed to be the same as those included in the *Family Violence Protection Amendment (Information Sharing) Act 2017*, to ensure consistency between the two laws.

Information proposed to be excluded will include where the collection, use or disclosure of that information could be reasonably expected to:

- endanger a person’s life or result in physical injury
- prejudice the investigation of a breach or possible breach of a law or prejudice the enforcement or proper administration of the law in a particular instance
- prejudice a coronial inquest or inquiry
- disclose the contents of a document, or a communication, that is of such a nature that the contents of the document, or the communication, would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege
- disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of a law
- prejudice the fair trial of a person or the impartial adjudication of a particular case
- contravene a court order or a provision made by or under any Act that:
 - prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication or other disclosure of information for or in connection with any proceeding
 - requires or authorises a court or tribunal to close any proceeding to the public
- be contrary to the public interest.

What additions or changes should be made to this list of exclusions, if any? Please provide a clear rationale.

Organisations to be prescribed to share information

The Victorian Government is seeking feedback on which organisations and workforces should be prescribed to share information under the proposed Child Wellbeing and Safety scheme. These organisations will be prescribed under regulation, which means organisations can be added and removed as needed. However, it is important to ensure the initial list of prescribed organisations includes all the services and professionals who hold vital information that would assist in promoting children's wellbeing and safety.

This may include government departments, health and social service providers, education providers and oversight and regulatory bodies with responsibility for ensuring service quality and safety, and the individuals employed or engaged by these organisations.

Prescribed organisations will also be authorised to share information with a child, a person with parental responsibility for the child, and/or a person with whom the child is living where it is necessary to manage a risk to a child's safety.

The proposed list of prescribed organisations below has been drawn from earlier consultations on the proposed Child Wellbeing and Safety scheme, consultations on the *Family Violence Protection Amendment (Information Sharing) Act 2017*, and broadly based on the list prescribed under the New South Wales Chapter 16A scheme:

- public sector bodies (as defined by section 4(1) of the *Public Administration Act 2004*)
- health service providers (as defined by section 3(1) of the *Health Records Act 2001*) including hospitals (public and private) and registered health professionals
- the Commission for Children and Young People as established by the *Commission for Children and Young People Act 2012*
- the Office of the Disability Services Commissioner established by the *Disability Act 2006*;
- childcare and early childhood learning service providers
- registered schools within the meaning of the *Education and Training Reform Act 2006*
- TAFE institutes created under section 3.1.11 of the *Education and Training Reform Act 2006* and any other entity that provides educational services to children including Vocational Education and Training providers
- courts including, but not limited to, the Magistrates Court of Victoria established under the *Magistrates' Court Act 1989* and the Children's Court of Victoria which operates under the *Children, Youth and Families Act 2005* [noting that Courts wouldn't be prescribed in relation to their judicial or quasi-judicial functions, or in any way that would interfere with judicial independence]
- tribunals and other administrative bodies including, but not limited to, VCAT and the Victims of Crime Assistance Tribunal [noting that tribunals and administrative bodies wouldn't be prescribed in relation to their judicial or quasi-judicial functions, or in any way that would interfere with judicial independence]
- community service organisations that are funded by the State government
- child protection practitioners, that is, delegates of the DHHS Secretary under the *Children Youth and Families Act 2005* performing functions relating to child protection

- nurses and midwives, that is, persons registered in Division 1 or 2 of the Register of Nurses kept by the Nursing and Midwifery Board of Australia under the Health Practitioner Regulation National Law, other than as a student
- medical practitioners, that is, persons registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student
- psychologists, that is, persons registered under the Health Practitioner Regulation National Law to practise in the psychology profession, other than as a student
- police officers within the meaning of the *Victoria Police Act 2013*
- registered teachers within the meaning of the *Education and Training Reform Act 2006*
- disability service providers, including but not limited to disability service providers within the meaning of the *Disability Act 2006*.

Would you add or remove any organisations and workforces from the proposed list of prescribed entities? Why?

Where organisations may have a number of functions, please specify the particular roles or functions that should, or should not, be prescribed under the proposed regime within that organisation.

Legislative principles

Legislative principles will provide an important overarching context for the proposed reforms and guide how information is to be shared responsibly and appropriately under the scheme.

The list of legislative principles should not create confusion, or put in place additional barriers or requirements that need to be fulfilled before information can be shared. They are not intended to determine whether or not a prescribed organisation is permitted to share information, as this threshold will be clearly set out in the body of the legislation.

The principles should be a succinct expression of the key issues for organisations to bear in mind when sharing information under the legislation.

Detailed information about best practice, and sector-specific examples will be included in the Ministerial Guidelines.

The proposed list of principles below is adapted from those in the *Family Violence Protection Amendment (Information Sharing) Act 2017*, and in the New South Wales Chapter 16A legislation:

- when sharing information to promote the wellbeing or safety of a child or children, information should be shared in a way that is in the best interests of the child or children
- promoting the wellbeing or safety of children is paramount and takes precedence over the protection of confidentiality or individual privacy
- a person's right to privacy and confidentiality should be overridden only to the extent necessary to promote the wellbeing or safety of a child or group of children
- when sharing information, entities should promote the agency of the child, including by recognising the wishes of the child and their family wherever appropriate, taking into account relevant factors such as:
 - the desirability of preserving and promoting positive relationships between the child and their parent, other family members and persons significant to the child

- the child’s social, individual and cultural identity and religious faith
- the child’s age, maturity, sexual and gender identity
- 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, that is culturally sensitive and that considers the child or children’s familial and community connections
- when sharing information in the context of family violence, entities should take all reasonable steps to ensure the information is shared in a way that plans for the safety of those family members at risk of being subjected to family violence
- entities should work collaboratively and respect each other’s functions and expertise
- wherever possible, shared information should be properly contextualised so as to minimise the risk that children, their family members and other individuals will be unfairly subjected to stigma because of the information shared.

Are there any legislative principles you would amend, or add to the proposed list? If so, why?

Safeguards to ensure appropriate information sharing

As this paper has outlined, the regime will generally allow information to be shared when:

- Both the provider and the recipient of the information are lawfully prescribed entities (as noted in the [‘Organisations to be prescribed to share information’](#) section), a prescribed organisation may also share information with a child, a person with parental responsibility for a child, or a person with whom the child is living, if the prescribed organisation reasonably believes that the provision of the information to that child or person is necessary to manage a risk to the child’s safety)
- The following three-part test is met:
 - the information promotes the safety or wellbeing of a child or group of children
 - there is a reasonable belief that the information may assist another prescribed entity to undertake specified activities relating to that wellbeing or safety
 - there is a reasonable belief that the information is not excluded information.

Further, the information should be shared in a manner compatible with the overarching legislative principles and the Ministerial Guidelines issued under the proposed scheme, which will include requirements for prescribed entities to share information responsibly and appropriately. Prescribed entities will be prohibited from using or disclosing the information obtained under the scheme for any purpose that does not relate to the wellbeing or safety of a child or children, unless otherwise required or permitted by law.

Consistent with the approach adopted under the *Family Violence Protection Amendment (Information Sharing) Act 2017*, there will be offences for the following:

- unauthorised use or disclosure of information
- intentional or reckless unauthorised use or disclosure of personal or health information
- impersonating a prescribed entity or employee of a prescribed entity.

However, a good faith defence will apply in relation to these offences. In other words, if a prescribed entity has otherwise acted in good faith and with reasonable care it will be immune from any professional or disciplinary proceedings or penalties, any civil liability or any findings that professional codes of

conduct or ethical standards have been breached. Further, the offences would not apply to a use or disclosure made:

- with consent of the person to whom the information relates
- to a court or tribunal in the course of legal proceedings
- pursuant to an order of a court or tribunal
- to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth
- to an Australian legal practitioner for the purposes of obtaining legal advice or representation
- as required or authorised under any law.

The regime will also be subject to an independent review after 2 and 5 years, and complaints will be able to be made to the Health Complaints Commissioner and the Commissioner for Privacy and Data Protection regarding alleged interferences with privacy under the proposed scheme.

None of these safeguards are intended to discourage or unduly inhibit information sharing to promote children's safety and wellbeing, consistent with the [purposes of the scheme](#).

What operational questions might services have about these safeguards, and how could these issues be dealt with through implementation support and in guidelines?

Record-keeping and reporting requirements

To ensure information is shared and kept in a safe and secure manner, organisations will need to appropriately and responsibly share, store and manage confidential information under the legislative scheme, and keep some records about the information they share and with whom.

It is important to note that these obligations will not displace existing requirements for information storage. The proposed information storage, management and record-keeping obligations are intended to set a minimum standard for this proposed regime, recognising that many workforces and organisations are already (and will continue to be) required to meet information storage, management and record-keeping obligations under existing policies and laws.

Any obligations associated with the proposed scheme, which may be included under regulations and in Ministerial Guidelines, are not intended to overburden workforces and services, but ensure that the legislative scheme works as intended and to enable an effective review of the information sharing scheme.

For example, it is possible prescribed organisations may be required to record:

- what information was shared, and who it was shared with (this could be a copy of an email or letter sent, or a written record of a conversation, if the information is shared verbally);
- if an information request has been declined under the [exclusions](#), a written record of the request, and the reason(s) why it was declined;
- any risk assessment or safety plan that is undertaken in relation to the information sharing;
- details of any complaint(s) made by clients in relation to the sharing of information.

Many of these obligations are already part of the policies and processes in organisations that are likely to be prescribed.

Further, to assist in evaluating and reviewing the scheme, prescribed organisations may be required to report to government in relation to:

- the number of requests for information made and received by them under the information sharing scheme
- the number of responses to requests provided by them
- the number of refusals to disclose information by them in response to requests
- the average number of days taken to respond to requests
- the number of times they did not respond to a request legitimately made under the proposed regime.

These requirements will be subject to further consultation next year, but government welcomes early stakeholder feedback, as per the questions below.

Are there any additional record keeping obligations that should be included?

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

Intersection with Family Violence information sharing reforms

The model for the proposed Child Wellbeing and Safety information sharing regime is designed to be compatible with the *Family Violence Protection Amendment (Information Sharing) Act 2017*. Extensive stakeholder consultation was undertaken on the model for the *Family Violence Protection Amendment (Information Sharing) Act 2017*, and the draft Ministerial Guidelines will be open for public consultation in coming weeks.

The two regimes will share the same [safeguards](#), and it is also likely that a number of organisations and workforces will be prescribed under both information sharing schemes.

As noted in the introduction to this paper, existing legislative reporting requirements – for example mandatory reporting requirements under the *Children Youth and Families Act 2005* – would not be affected by the proposed Child Wellbeing and Safety information sharing reforms. Nothing in the proposed regime would prevent or restrict prescribed organisations from collecting, using or disclosing information where it is already allowed under another Act, for example under the *Privacy and Data Protection Act 2014* or the *Health Records Act 2001*.

Consent and children’s agency

The *Family Violence Protection Amendment (Information Sharing) Act 2017* does not require prescribed organisations to seek consent prior to sharing information for the purpose of assessing or managing family violence risk to child victims, provided the requirements for sharing information are otherwise met under that scheme.

The proposed Child Wellbeing and Safety information sharing regime will take a similar approach to consent. Prescribed organisations won’t be required to seek consent prior to sharing information for the purpose of promoting child wellbeing or safety, provided the requirements for sharing information are otherwise met under the proposed scheme. This approach will allow the two regimes to be interoperable for organisations that are prescribed under both regimes. It also reflects the principle that the wellbeing and safety of children, including the right of children to be safe from family violence, is paramount.

However, privacy of children and their families remains an important right and, in accordance with the proposed legislative principles, should only be overridden to the extent necessary to promote the safety or wellbeing of a child or group of children.

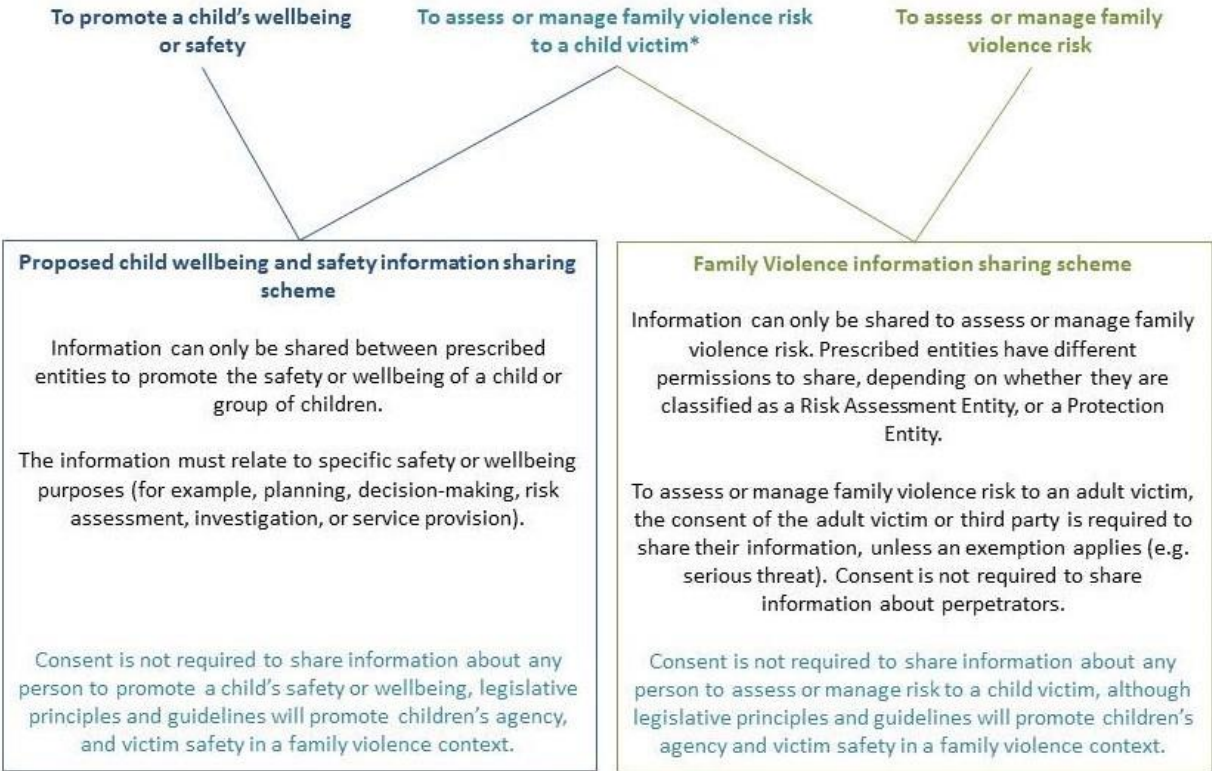
Stakeholders have previously expressed the view that because consent for children is complex and must be approached on a case-by-case basis using professional judgment, this issue is more appropriately dealt with in guidelines rather than through the imposition of blanket requirements in legislation. Some stakeholders also advised that asking a child to give permission for the sharing of their information places a significant burden of responsibility on a child for their own safety and wellbeing. This would be inconsistent with the ‘best interests of the child’ and human rights frameworks, which require practitioners to exercise their professional judgment to balance children’s agency with the need to act in their best interests.

The majority of stakeholders expressed the view that within the context of the ‘best interests’ and human rights frameworks, and in accordance with best practice, the agency of children is very important and should be promoted wherever appropriate. Children and families should be properly informed, and their views and wishes should be taken into account when making decisions. In cases involving family violence, it is important that the safety of children is prioritised (which may also include ensuring the safety of their protective non-violent parent), in line with the purpose of the legislation to promote children’s safety and wellbeing. Therefore, legislative principles promoting client agency and safety will preface the legislation, and are open for stakeholder feedback in the ‘[Legislative principles](#)’ section of this consultation paper. Guidelines to accompany the legislation will also promote children’s agency.

This approach balances children’s rights to safety, privacy and agency, with the overall aim of achieving their best interests.

Figure 1 below summarises how the two schemes would work in tandem for organisations and workforces prescribed under both schemes, with particular reference to the issue of consent.

Figure 1: What is the purpose for which the prescribed entity is sharing information?



** In circumstances where information to promote a child's safety or wellbeing also relates to family violence risk assessment or management, prescribed entities could share information under either scheme without requiring consent.*

Please note, Figure 1 is indicative only, noting that several aspects of the reforms are still open to consultation, and that both regimes have additional requirements (as included in legislation, regulations and guidelines) that must be met before sharing can occur.

It is anticipated that an integrated set of guidance materials will be developed to explain to practitioners and organisations how the two schemes will permit information sharing in relation to children, including in situations involving family violence. In addition, as with the draft Ministerial Guidelines to be issued under the *Family Violence Protection Amendment (Information Sharing) Act 2017*, it is intended that these integrated guidance materials will include best practice guidance around promoting children's agency and taking into account their views and wishes wherever appropriate, considering their maturity and capacity.

While it is anticipated a separate consultation will be undertaken on any future guidelines about information sharing for children, the government is interested in early stakeholder views on the intersection of the family violence and child wellbeing and safety information sharing reforms, and any issues that should be addressed in future guidelines in relation to the promotion of children's agency.

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

Are there any particular concerns or questions your sector has in relation to the intersection of the two reforms?

Child Link

The proposed Child Wellbeing and Safety information sharing reforms will also authorise the creation of an information technology (IT) platform for systematic sharing of specified categories of information about children's participation in services, to be known as Child Link.

Child Link responds to several inquiries recommending that the Victorian Government needs to take a more proactive and systematic data management approach to information sharing. Child Link will be an IT enabler to support the operation of the broader Child Wellbeing and Safety information sharing legislation.

Child Link will assist practitioners who are lawfully authorised to access the Child Link Register to identify risk or vulnerability before harm has occurred, but is not intended to replace appropriate communications between children's service providers. Rather, Child Link will facilitate collaboration between service providers to promote appropriate early service intervention and enable early identification and mitigation of risks of harm to wellbeing or safety of a child.

For example, a practitioner who is authorised to access the Child Link Register will be able to identify if a child and family for whom they have service responsibility is not participating in universal services and/or may have key vulnerabilities (such as current or previous child protection orders). They will then be able to make an informed decision on how best to engage with the child or family, or contact any other prescribed services with which the child is engaged to request further information that would promote their wellbeing or safety and assist the practitioner to make a plan to support the child and family.

Child Link will assist authorised children's service professionals to form a better picture of the circumstances of children in their care by showing each child's:

- basic details, including name, birth date, sibling names, and carer information
- enrolment and participation in key universal childhood services and programs (including maternal and child health services, supported playgroups, kindergarten programs, and schools), and certain other services (including whether they reside in out of home care, or if there are current orders from the family division of the Children's Court relating to the child or a sibling).

No case notes or opinions will be included on Child Link. Child Link will include contact details for other specified services with which a child has been or is engaged. This will facilitate better (i.e. more accurate and up to date) information sharing, early risk identification, service collaboration and early intervention.

Professionals authorised to access Child Link

A limited subset of the professionals [proposed to be prescribed](#) under the broader Child Wellbeing and Safety information sharing regime will also be authorised to access Child Link. This list is more limited as it is intended that only professionals providing services for, or directly related to, children will be able to access the system in relation to children who are enrolled in their service.

Authorised persons and bodies are proposed to include (among others):

- the secretaries to the Department of Education and Training and the Department of Health and Human Services
- employees of councils who have responsibility for implementing policies relating to childhood services (for example, maternal and child health and kindergarten programs)
- registered nurses delivering maternal and child health and school nursing programs
- approved providers of education and care services and certain persons employed or engaged by those services

- certain authorised persons employed or otherwise engaged by family violence services and community-based services
- child protection area directors/case managers
- school principals
- the Disability Services Commissioner
- the Commissioner for Children and Young People.

It is likely that access will be limited to particular employees within a service at a management or senior level.

The secretaries to the Department of Education and Training and the Department of Health and Human Services would also have the power to authorise certain employees to have access to Child Link Identifiers and related information on the Register for the purposes of creating de-identified data for use in the design, planning and review of services.

Consistent with the proposed broader Child Wellbeing and Safety information sharing scheme, access to, and use of, information stored on the Child Link Register by authorised persons and bodies will not require the consent of the child, parent or carer. However, on enrolment in relevant services or programs delivered by specified providers, children and (where appropriate) their parents or guardians will be notified about the purposes for which their information is collected and how their information may be used and disclosed, as currently required under privacy laws, and in accordance with best practice.

Once an authorised person or body has accessed the Register for a permitted purpose, they will be prohibited from any unauthorised disclosure of the information, subject to limited exceptions, including where the person to whom the information relates has consented to the disclosure, or the disclosure is required or authorised under the proposed new Child Wellbeing and Safety information sharing laws or any other Act.

How would Child Link help practitioners?

A family disengages from a Maternal and Child Health (MCH) service after attending a few appointments. Their MCH nurse checks Child Link to see whether the child and family are attending a service in a different local government area and sees that they are not. Further, Child Link shows that an older sibling was the subject of a child protection order. Under the broader information sharing regime, the nurse could contact relevant prescribed agencies (using the contact details in Child Link), which is likely to include Child Protection and other services the child is engaged with, to request information under the broader Child Wellbeing and Safety information sharing scheme. Based on any information received, the nurse may redouble efforts to engage the family through extra home visits and offer them additional targeted services to alleviate the stresses of parenting.

Safeguards

Offences for the unauthorised access to, or use or disclosure of information on Child Link and the complaints mechanism will be consistent with the wider child information sharing regime. For Child Link, the legislative reforms will also include the following safeguards:

- an individual will retain the right to access information in Child Link under *the Privacy and Data Protection Act 2014*, *Health Records Act 2001* and *Freedom of Information Act 1982*, with limited modifications;
- The Secretary to the Department of Education and Training will have the power to block access to certain entries on Child Link if the Secretary is satisfied that there is a risk to the life or safety of any person if the entry remains on Child Link (for example, if a family violence perpetrator has possible access).

Because of the logistics of developing a significant IT system, it is anticipated that the development and piloting of Child Link would follow about a year after the roll out of the wider child information sharing reforms.

At this early stage, stakeholder feedback is sought in relation to the proposed scope of Child Link, and any risks associated with this systematic approach.

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?

Issues and risks to be addressed through implementation and guidelines

Government is seeking initial views about sector-specific gaps and risks associated with the scheme, and ideas about how these might be mitigated through implementation measures, including Ministerial Guidelines. Possible risks raised by stakeholders to date include:

- insufficient guidance, training, cultural change programs and technological systems, to enable and encourage better information sharing in practice
- privacy breaches as a result of human error, or inappropriate use or disclosure of information
- discouragement of children, parents or carers from seeking assistance or from disclosing all relevant personal or health information needed for the provision of appropriate services because of concerns about how their information will be handled.

Although further consultation will be undertaken on the approach to implementation, are there any additional likely risks or issues for your sector, in relation to the proposed information sharing regime and/or Child Link?

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

Responses template

Please type your responses in the spaces provided, and email the completed document to [the Department of Health and Human Services](mailto:ChildInfoSharing@dhhs.vic.gov.au) <ChildInfoSharing@dhhs.vic.gov.au>.

Responses must be received by Monday 25 September 2017.

Although there is no word limit, as a guide responses should not exceed 250 words per question (1–2 short paragraphs). If you do not wish to provide a response to particular questions, please insert the text 'N/A'.

How submissions will be handled

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our [privacy policy](https://dhhs.vic.gov.au/department-health-and-human-services-privacy-policy) <https://dhhs.vic.gov.au/department-health-and-human-services-privacy-policy> for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by DHHS.

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 VHA supports reform that allows agencies to share information to promote the wellbeing of children and prevent harm. This includes situations where harm is very likely to occur or where a clinician or worker believes there is potential risk to a child.

Currently, there is a range of legislative acts covering the sharing of information including the *Children, Youth and Families Act 2005*, the *Information Privacy Act 2000*, the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*.¹² This complex legislative framework has created barriers to information sharing and, in some cases, perceptions that information cannot be shared even when there are no legal barriers.³ The threshold for sharing of information is often quite high. For example, information about a child for whom a child protection report has been made can only be shared if the child needs protection.⁴

A review of the "Chapter 16A" of the *Children and Young Persons (Care and Protection) Act 1998* in New South Wales, upon which the proposed Victorian legislation is based, found that while information is

¹ State Government of Victoria. Department of Human Services (2007). Providing support to vulnerable children and families. An information sharing guide for registered community services (family services and out of home care services) in Victoria. http://www.dhs.vic.gov.au/_data/assets/pdf_file/0009/590517/information-sharing-guidelines-community-services.pdf

Accessed 15/9/17

² Nous group. (2016) Consultation Paper. Proposed legislative model for Child Safety and Wellbeing Information Sharing. 30 November 2016. <http://chp.org.au/wp-content/uploads/2017/01/Child-Safety-and-Wellbeing-Info-Sharing-Consultation-Paper.pdf> Accessed 14/9/17

³ Ibid

⁴ Ibid

rarely shared inappropriately, there is a tendency for organisations to be risk averse and under share information.⁵

Medical and health services generally take a cautious approach to information sharing to protect client confidentiality; clinicians may not feel confident to apply the principles of this reform. Guidance materials should involve a combination of online and telephone supports and will need to clearly articulate the role and responsibilities of various organisations in sharing information about children.

Guidance materials should also have decision tools and specific case examples that assist workers to decide when information should and shouldn't be shared. Clearly, there are significant 'grey areas' when disclosing information about children and these situations must also be covered. Support materials will need to articulate how this reform intersects with existing legislation and when the requirements of one item of legislation may supersede another.

Excluded information

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

The VHA generally supports the list of exclusions in the consultation paper and believe that there should be as few practical barriers as possible to sharing of information that promotes the wellbeing of children.

The VHA believes the guideline referring to legal privilege needs to be better defined and simplified. It is also important to consider the development of guidelines for situations where sharing of information may be detrimental to, or jeopardise the safety of the worker making the disclosure.

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 list of prescribed organisations is extensive but both registered community health services (CHS) and integrated family services (IFS) have important roles in the support of vulnerable children and need to be included as prescribed organisations.⁶

There are 31 registered community health services in Victoria that provide a holistic range of health and human services, including children's therapy programs, counselling and family services.

In addition, many CHS provide family violence services and some are specialist providers. A 2016 VHA survey found that 25 of 31 registered community health services provide family violence services including services for children, family violence specific counselling, women's support groups, perpetrator support groups, case management, housing support and health promotion.

IFS provide a range of services to support vulnerable children including counselling and casework and also play an integral role linking children to a range of other service providers.⁷

⁵ University of New South Wales (2015). Opportunities for Information Sharing: Case Studies. Report prepared for NSW Department of Premier and Cabinet, April 2015. <https://www.sprc.unsw.edu.au/research/projects/information-sharing-between-government-agencies/> accessed 14/9/17

⁶ Victorian State Government and Department of Health and Human Services (2016). Procedural guidelines for referral and consultation. Child Protection and Child First/Integrated Family Services. <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/procedural-guidelines-for-referral-and-consultation-child-protect>. Accessed 15/9/17

⁷ Ibid

Legislative principles

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

N/A

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?

The three-part test contains considerable flexibility that will allow organisations to make judgements about information sharing. The VHA supports the lowering of the threshold for sharing information and believes that the definition of ‘wellbeing’ needs to be more concisely set out to best guide providers.

Furthermore, support needs to be provided for organisations to have a shared understanding of each other’s functions for the purpose of information sharing. For example, a health provider may have very different needs to a school or a community service organisation and each may benefit from having a better appreciation of the role and type of information related services are likely to collect or request when sharing information.

The VHA is supportive of the good faith defence outlined in the consultation paper that protects prescribed entities whose actions are well intentioned but are found to have breached ethical standards or acted contrary to the guidelines when disclosing information about a child.

Record-keeping and reporting requirements

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

N/A

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

Health services are subject to a range of administrative, accreditation and reporting responsibilities and the VHA is concerned that the reporting requirements in this reform could significantly increase this burden. Services in New South Wales working under the 16A legislation found reporting to be bureaucratically intense and expressed a need for better support systems.⁸

In the past, services have employed staff to perform manual, labour intensive mechanisms such as maintaining spreadsheets for similar administrative tasks such as incident reporting. Health services will require IT, technical and governance support to ensure that they can meet their reporting requirements under this reform. The VHA recommends that DHHS consider developing software to augment reporting, similar in principle to what is seen with the Victorian Health Incident Management System. Smaller organisations that often have more limited capacity will require higher levels of support.

Furthermore, reporting requirements as stipulated by government departments are often amended creating more burden for health services. To avoid this, at the time of reform implementation, DHHS should clearly define exactly what type of information needs to be reported and how often this will need to occur. It is important that training of staff, acquisition of software and staff time to maintain databases and reports are fully funded by DHHS and a phased roll out is applied to embed new processes into regular business practices.

⁸⁸⁸ University of New South Wales (2015) op cit.

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?

Children should be provided with an opportunity to express their feelings and concern and consideration of both the maturity of the child and the particular circumstances in which the child is placed will determine whether seeking their consent is appropriate.⁹ The safety and well-being of the child in question is paramount at all times.

While in many circumstances, consent of a child or their guardian will be obtained before sharing information to another organisation, situations do arise where it is not always in a child's best interest to seek their consent.¹⁰ A particular child may be able to give consent in some circumstances but not others. Where it is not appropriate for a child to give consent, it should be sought from a parent or responsible adult, where possible.¹¹

Reflected in the guidelines are other situations in which consent of a child may not be achievable such as if a responsible adult is not contactable or a practitioner has concerns for a child's safety or wellbeing. There is considerable grey area in making these decisions and prioritising the autonomy of the child is an essential consideration in each circumstance.¹²

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 VHA believes that the family violence information sharing scheme and proposed child and wellbeing safety information sharing schemes are likely to intersect appropriately and improve information sharing. The implementation of the family violence scheme is in its infancy and appropriate time to assess the success or otherwise of this scheme is required.

⁹ Nous Group (2016). op cit.

¹⁰ State Government of Victoria. Department of Human Services (2007). op cit.

¹¹ Ibid.

¹² Ibid

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'](#))?

While the VHA believes it is appropriate to initially limit Child Link to a smaller number of service users and broaden it over time, it may be useful for health providers that provide substantial children's health or family violence support services such as registered community health services, public hospitals, general practitioners and multi-purposes services to have access to Child Link to enable monitoring of risk and referral to other providers such as universal services and child protection, as appropriate.

Understanding of the purpose of Child Link should be built with parents and guardians so that they are not discouraged from accessing childhood services and programs through fear of detrimental consequences.

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?

A major risk is the possibility that increased information sharing about children between agencies (in some cases without the need to gain prior consent) may lead to disengagement from services by some families.

There are a number of vulnerable groups for whom this is a particular concern including women with children who are exposed to family violence and parents of children with Aboriginal and Torres Strait Islander background. These families may require additional support, as mitigation and to ensure they continue to access important services for children.

Significant upskilling of clinicians and other employees may be required in some organisations to ensure they understand their obligations with regards to sharing of information about children. This will be particularly pertinent where provision of children's services is not the core role of the organisation and employees do not regularly engage in this type of information sharing. Implementation of an appropriate training regimen is recommended.

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

N/A