

Child Information Sharing Scheme Ministerial Guidelines

Submission to the Department of Health and Human Services and
Department of Education and Training

June 2018



Aboriginal Community Controlled
Culturally Safe
Prevention of Family Violence
Legal Services and Holistic Support
Cultural and Wellbeing Workshops
Policy and Advocacy

women's legal
service victoria



DOMESTIC VIOLENCE VICTORIA

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About the contributing organisations

Victoria Legal Aid

Victoria Legal Aid (VLA) is the largest provider of free legal assistance in Victoria, providing legal information, education and advice for all Victorians. We fund legal representation for people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances. VLA's Family, Youth and Children's Law program aims to help people resolve family disputes and achieve safe, workable and enduring care arrangements for children. Our most vulnerable clients have problems that cross over the family law, child protection and family violence jurisdictions.

Domestic Violence Victoria

As the peak body for specialist family violence services in Victoria, Domestic Violence Victoria (DV Vic) has broad membership of more than 80 state-wide and regional family violence organisations across Victoria that provide a variety of responses to women and children who have experienced family violence. Our members include every specialist family violence service, community health and women's health agencies, local governments and other community service agencies.

No to Violence

No to Violence (NTV) is the largest peak body in Australia representing organisations and individuals working with men to end family violence. We have an active role in: supporting and advocating on behalf of our organisational members that deliver specialist men's family violence interventions; the provision of telephone counselling, information and referrals for men in Victoria, New South Wales and Tasmania; and delivering professional development in male family violence.

Djirra

Established over 15 years ago, Djirra is an Aboriginal Community Controlled Organisation which provides culturally safe and holistic assistance to Aboriginal victims/survivors of family violence and sexual assault. Djirra provides legal assistance and early intervention/prevention, including through providing community legal education to the Aboriginal community, the legal, Aboriginal and domestic violence sectors. Djirra also undertakes policy and law reform work to identify systemic issues in need of reform and advocate for strengthened law and justice outcomes for Aboriginal victims/survivors of family violence and sexual assault.

Women's Legal Service Victoria

Women's Legal Service Victoria (WLSV), established in 1981, is a state-wide not for profit organisation providing free and confidential legal information, advice, referral and representation to women across Victoria. Our principal areas of work are family law, child protection, family violence intervention orders and victims of crime compensation. In addition to providing legal services to women, WLSV also ensures that clients' experiences inform the development of policy and legislation. Our client group consists of women from a range of different cultural, ethnic and religious backgrounds, many of whom are family violence victim survivors.

Federation of Community Legal Centres

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities. As an influential advocate, our voice is distinct and courageous: we are not afraid to challenge government, big business, or other powerful actors to ensure equality and fairness for all. Together with our members and communities, we work to dismantle unjust systems that perpetuate racism, sexism, homophobia, ableism, economic injustice and other inequalities. Our priority is to be fully accountable to the communities we represent.

Introduction

The contributing organisations welcome the opportunity to provide a submission to the Department of Education and Training (DET) and Department of Health and Human Services (DHHS) on the Child Information Sharing Scheme Ministerial Guidelines (the Guidelines).

The Guidelines will play an important role in supporting the application and implementation of the Child Information Sharing Scheme (CIS Scheme). Our submission sets out what our experience indicates will be important in an information sharing regime in order to encourage help-seeking behaviour and individual and community empowerment to make decisions that keep children safe.

The Guidelines are also necessary to enable cultural and behavioural change; our practice experience shows that practitioners are more likely to share information appropriately when they understand their professional responsibilities and are informed of the risks of sharing information.

The comments in our submission reflect on this principle and suggest ways of providing greater instruction to Information Sharing Entities (ISEs) and practitioners, taking into account the possible risks associated with sharing information and the need for appropriate safeguards. In our view, these changes will support ISEs to apply the CIS Scheme effectively.

Key recommendations:

- Use flowcharts, case studies and decision-making checklists to provide clear guidance to practitioners and encourage confident practices
- Provide clearer articulation of key terms and the linkages between the CIS Scheme and the FVIS Scheme, relevant intersecting legislation, Child Safe Standards and Reportable Conduct Scheme
- Deliver training and capacity building initiatives to support consistent, safe and appropriate practices of information sharing across the prescribed organisations, including the best interests of the child and child development frameworks, as well as content regarding cultural awareness
- Include more detailed guidance about maintaining engagement with and seeking the views of the child or family to assist practitioners to share information respectfully and appropriately, including further requirements for record keeping
- Applying key learnings from the implementation of the FVIS Scheme to the CIS Scheme rollout.

Response to questions about the Ministerial Guidelines

Chapter 1 – Sharing information under the scheme

1. Do you think this chapter is clear about how information can be shared under the Scheme? Do you have any general suggestions for improvement?

Using practical tools

Chapter 1 explains how information can be shared under the CIS Scheme. In our view, there are opportunities to strengthen the clarity of information in this chapter. We suggest that clearer guidance be provided to practitioners by using flowcharts, case studies and decision-making checklists.

Some diagrams have already been included and are a useful way of presenting information. However, some are confusing and could be used more effectively. For example, it is unclear what Figure 5 (p15) is attempting to convey to practitioners. The ‘examples’ provided appear to be a re-statement of the processes identified in the circle. Figure 4 (p13) seems similarly unnecessary.

We suggest that a flowchart be used for Figure 5, rather than a circular diagram, to demonstrate the decision-making process required of practitioners, with inclusion of practical examples of how these decisions might be made using case studies. Greater clarity for practitioners enables them to be confident and comfortable in their actions. Improving diagrams, definitions and explanation of processes in the Guidelines will, therefore, support and enable the application and implementation of the CIS Scheme.

Definitions of wellbeing and safety

Chapter 1 and the Glossary could also provide clear definitions of ‘wellbeing’ and ‘safety’. These concepts are fundamental to the implementation of the CIS Scheme, and it is unclear whether the terms are interchangeable, whether different weight should be given to each term or they hold different threshold considerations, or whether it is a single test.

The risks of leaving these terms undefined is a point many of the signatories to this submission have expressed significant concern about throughout the preceding consultation phase. It is of particular importance for diverse children and families (including Aboriginal and Torres Strait Islander children, children from culturally and linguistically diverse backgrounds and children with disabilities), who may otherwise face implicit or explicit discrimination resulting in different risk thresholds or stereotypes being (consciously or unconsciously) applied by professionals utilising the scheme.

We suggest further clarification of the key terms and references to the relevant legislation so that practitioners better understand these terms to assist with consistency of practice. This would also take into account the broad range of ISEs authorised to share information under this Scheme, and the different understandings of the terms throughout the sector. We refer to the definition of ‘family violence’ set out in the *Family Violence Protection Act 2008* as a good example of how a specific definition can provide clear guidance to ensure consistent application across a sector.

We also propose that the Glossary of terms found at the end of the Guidelines be relocated to the beginning of the document, as is done in the FVIS Guidelines. This will alert practitioners to the existence of these definitions at an earlier stage and inform their understanding.

In the section **Applying professional judgement to promote wellbeing and safety**, the Guidelines state that *ISEs should be guided by relevant professional practice and frameworks around children’s wellbeing and safety, when assessing whether information sharing meets the threshold for promoting the wellbeing or safety of a child*. There will be a number of prescribed ISEs in the CIS Scheme whose practitioners are not trained in practice frameworks relating to children’s wellbeing and safety; for example, mental health services, housing services or specialist family violence services may not have specific training in child development and wellbeing frameworks. Training on the Scheme should take this into consideration.

We recommend training for all practitioners in the Scheme to include the best interests of the child and child development frameworks, as well as content regarding cultural awareness, so that practitioners are informed and educated when using their professional judgement to make decisions about sharing information. This will help to mitigate against inappropriate or unnecessary information being shared. The Guidelines should also include links and references to relevant frameworks where appropriate, as the Family Violence Information Sharing Ministerial Guidelines (FVIS Guidelines) do (see p72).

Sharing information with a child or family member to manage a risk to a child’s safety

The Guidelines (p10) state that information shared with a child or relevant family member *cannot be further used or disclosed by that person unless it is for the purpose of managing a risk to the child’s safety or as permitted by any other law*. This is the only reference to the prohibition on a child or relevant family member further sharing information under the Scheme. It is unclear how this will be monitored, or what course of action will be taken in the event that a child or family member does re-share information inappropriately.

VLA especially holds concerns that where information is obtained about a child and shared for the purpose of managing wellbeing or safety of another child, that secondary child may not understand the implications or consequences of re-sharing that confidential information. The Guidelines need to clearly articulate the consequences of children and families re-sharing information they have obtained through the Scheme, and how those consequences (as set out under Chapter 7: Safeguards) should be communicated to children and family members.

Directing ISEs to Chapter 4 and the FVIS guidelines

We recommend that reference to the FVIS Guidelines and Scheme is included upfront in the **Key points** on page 10. We suggest moving the key point bullet point in Chapter 2 (p22), *ISEs should be aware of possible family violence risk when sharing information and should take all reasonable steps to plan for the safety of family members believed to be at risk of family violence* (see Chapter 4), up to the key points under Chapter 1. It would be useful for practitioners if the first chapter directly referred ISEs to the FVIS Guidelines, as well as Chapter 4, for more information about sharing information when family violence is present and the importance of applying a family violence lens to child wellbeing and safety.

Threshold for sharing

The Guidelines state that *An ISE [information sharing entity] must consider whether the threshold for sharing has been met before requesting or disclosing confidential information, and be satisfied that it has*. Practitioners within ISEs must be afforded the time and space to be able to critically assess requests for information sharing according to the threshold test. The Scheme has the potential to create high demand for information sharing on already busy practitioners. It is critical, therefore, that

the Guidelines and associated training explain and reinforce the threshold requirements to practitioners to reduce the risk of inappropriate information sharing. We recommend the following options to strengthen explanation of the threshold requirements.

Threshold Part 1

The absence of clear definitions of wellbeing and safety within the legislation, regulations and Guidelines creates a potential risk of inappropriate and inconsistent information sharing practices. Page 16 of the Guidelines outlines the factors that make up the wellbeing and safety of a child and we recommend these be strengthened by articulating what risks to wellbeing and safety look like in practice. Given the broadness of 'wellbeing', practitioners not usually familiar with child development frameworks could benefit from explicit examples of risks to wellbeing.

In our view, it is critical that a shared framework for assessing and promoting children's wellbeing is established and embedded across the proposed prescribed ISEs. This includes providing training on the best interests of the child and child development frameworks for those workforces and individuals for whom this practice is not within their professional expertise, in order to strengthen a shared understanding about child wellbeing and safety as well as workforce capacity to exercise professional judgement in information sharing. As noted above, given the particular risks for diverse children and families (including Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds) cultural awareness training should be a core element, as well as other forms of training to address potential issues of unconscious bias in practitioners' use of the scheme.

Threshold Part 2

Under the heading **Threshold Part 2: Disclosing information to assist another ISE to undertake their activities** (p17), the Guidelines highlight the legislative principle to work *collaboratively in a manner that respects the functions and expertise of each ISE*. We suggest that this section illustrate what this principle means in practice and how ISEs might support its implementation.

To avoid confusion among practitioners about who they can and cannot share information with, we recommend creating and distributing a list of prescribed ISEs to ensure the sharing of information with the right people in the right agencies. This could perhaps be a database with a search function to find agencies by area, type and name.

Threshold Part 3

The Guidelines (p18) state that excluded information includes *any information that, if shared, could be reasonably expected to... Endanger a person's life or result in physical injury. It is unclear how practitioners should respond if this conflicts with risk to a child*. For example, ISEs might not share 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, but this may then result in children remaining in at-risk living arrangements. We recommend that the Guidelines provide greater guidance on how practitioners address conflicts when they arise. Information about referral pathways to appropriately specialised services should be an important component of this.

The need to manage conflicts has been envisaged in the drafting of the Guidelines, and one scenario is considered in the section under the subheading entitled **Understanding Wellbeing and Safety**. The section includes a reference to an example where a practitioner might need to assess the wellbeing and safety of a group of children, however there is no further discussion on the

approach that should be taken when there are competing interests within that group of children, except to say that the risks and needs of each child should be considered. A practitioner may be presented with a situation where they may be required to share information about one child's wellbeing to the significant detriment of another child in a group, and the Guidelines could illustrate how practitioners should approach a scenario such as this. Providing a practice example to highlight this issue would be useful.

Information Sharing Activities

The Guidelines (p19) use language of compliance within the section 'Responding to requests for information', which does not align well with the previous practice statement, *an ISE must consider whether the appropriate threshold has been met as outlined above, and be satisfied that it does, before requesting or disclosing information*. The phrase 'comply with requests' suggests a compliance approach to information sharing and has the potential to be read as negating the practice idea of supporting professional judgement and assessing information requests prior to sharing. We therefore recommend that this language is reframed to align with the threshold for sharing information that allows the ISE to form a reasonable belief that information sharing requests are warranted for the purpose of promoting child wellbeing and safety.

It will be useful for the Guidelines to articulate in more detail what information can be shared and **how** it can be shared. For example, *verbal and informal information sharing* needs to be spelled out for ISEs and practitioners so they are explicitly aware that it is a valid means of sharing information under the Scheme.

Misidentification of perpetrators

We recommend the Guidelines provide additional guidance to practitioners in relation to what action should be taken when information is incorrectly shared in situations where there is a misidentified victim survivor of family violence and potentially other forms of abuse. This is relevant not only for adult victim survivors (who in family violence matters are frequently misidentified as perpetrators when the actual perpetrator misrepresents themselves as a victim and/or when authorities fail to recognise historic patterns of abuse), but also for young people who are identified as adolescents using violence, who may in fact also be victim survivors in their own right subjected to violence from a perpetrator in the home or another environment (e.g. school, church, care home).

Situations may also arise where information sharing may alert a practitioner to new information that an individual has been previously misidentified as a perpetrator of family violence. This is addressed in Chapter 3 of the FVIS Guidelines but may not come to a practitioner's attention if they do not specifically refer to those Guidelines or they are not familiar with the Family Violence Information Sharing Scheme (FVIS Scheme). Clear guidance should be provided to practitioners about what to do if they suspect that a person has been incorrectly identified as a perpetrator, especially in relation to correcting a record and their own record keeping obligations. In the event a perpetrator is misidentified, guidance will also be important regarding the review and revision of safety plans.

2. What additional key principles and/or existing frameworks, if any, should be referenced in the Guidelines in relation to promoting children’s wellbeing and safety?

Best interests of the child and child development

Not all practitioners involved in the scheme will be familiar with the ‘best interests of the child’ practice model. We are concerned that the concept of ‘best interests’ may be interpreted inconsistently, subjectively and without structure if there is not greater guidance as to how practitioners should make decisions about whether sharing information is in a ‘child’s best interests’. This may also cause confusion as to how ‘best interests’ align with definitions of wellbeing and safety. The fundamental terms and frameworks in the Scheme must be clearly described. For example, some practitioners may be more familiar with the best interests definition in the *Family Law Act 1975* than the state-based legislation. We recommend that the Guidelines adopt and include the definition of ‘best interests’ as outlined in the *Children, Youth and Families Act 2005, Part 1.2 Principles – 10. Best interests principles*. Including this definition within the body of the guidelines will also avoid requiring practitioners to continually refer to other resources whilst navigating the guidelines.

Chapter 2 – Sharing information about particular communities

3. What additional key principles or information should the Guidelines include, if any, in relation to sharing information about particular communities and other vulnerable children and young people?

We welcome the inclusion of specific information to guide information sharing in relation to particular groups and communities. Based on our combined experience, we have identified opportunities to strengthen the following sections.

Sharing information about Aboriginal and Torres Strait Islander peoples

Under the heading **Sharing information about Aboriginal and Torres Strait Islander people**, we propose that more detail be included to guide practitioners when sharing information about Aboriginal and Torres Strait Islander clients. In our view, it is important that the Guidelines acknowledge and recognise the colonisation and historical government policies of dispossession, dislocation, systemic racism/discrimination, and child removal experienced by Aboriginal and Torres Strait Islander peoples and their ongoing impact on Aboriginal and Torres Strait Islander clients. Aboriginal and Torres Strait Islander children are overrepresented in the child protection system and the fear of child removal is one of the most significant deterrents for Aboriginal victims/survivors of family violence to report violence and seek assistance from services.

Cultural awareness and reflective practice on the impacts of colonisation within organisations is therefore critical to maintain client engagement in services and so that practitioners understand the lived experiences of Aboriginal people and do not hold conscious or unconscious bias towards clients. This is particularly important given the reliance on practitioners’ professional judgment within the implementation of the scheme. The Guidelines should provide greater emphasis on the responsibility of ISEs to ensure that their services are culturally safe, and that Aboriginal and Torres Strait Islander people’s views are always obtained and considered, where it is safe to do so, to avoid creating an environment of mistrust with the service provider. The ‘best-practice principles’, as

outlined in the FVIS Guidelines, provide useful considerations that could be utilised in the CIS Scheme Guidelines.

We acknowledge and welcome the emphasis on cultural identity for Aboriginal and Torres Strait Islander children within the Guidelines, and recommend this be strengthened by adopting language from Section 60B(3) of the *Family Law Act 1975*:

An Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

- a. *to maintain a connection with that culture, and*
- b. *to have the support, opportunity and encouragement necessary,*
 - i. *to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and*
 - ii. *to develop a positive appreciation of that culture.*

Sharing information about people from culturally and linguistically diverse communities

This section provides a useful overview of the broad factors to consider when sharing information about people from culturally and linguistically diverse communities. In our view, the section should also give consideration to the migration experience and visa status of children and their parents. Children and parents on temporary visas are particularly vulnerable and have limited access to Commonwealth and state funded resources (such as housing, education, medical care and Centrelink). There may also be circumstances where the child's visa status or citizenship is more stable than their parents (or vice versa) and this could create vulnerabilities around information sharing should this potentially result in family separation. Perpetrators of abuse may exploit this vulnerability to threaten and isolate children, young people and adult protective parents and family members.

Regarding the use of interpreters for clients from culturally or linguistically diverse backgrounds, we recommend consistency with the FVIS Guidelines (see p90-91) which state that *When sharing information ... ISEs should ensure that necessary supports are in place to enable the client to understand the information being provided (this could include an interpreter or translator, presence of an advocate etc).*

Sharing information about people with a disability

It would be useful to include recognition of the role of the National Disability Insurance Scheme (NDIS) in this section as an essential service pertaining to a child's safety and wellbeing. The section discusses the importance of disability-relevant communication and support plans; however, these resources may largely fall under the remit of the NDIS, which may cause barriers to sharing given that NDIS administering agencies are not prescribed ISEs.

The second paragraph on page 25 acknowledges the importance of children with disabilities being able to share their views and take part in decision-making about information sharing. To emphasise the importance of this, it should also be acknowledged that children with disabilities have a right to an independent third party (rather than just a 'support person') to assist them to equitably participate in the process, should this be required. This is critical for ensuring that children with a disability are

able to freely express their views without interference from parents or carers, and to ease possible concerns that such information would be used to control and undermine them.

Guidance regarding vulnerable children and young people

We welcome the inclusion in the Guidelines of specific considerations when sharing information about vulnerable children and young people, under the heading **Wellbeing and safety considerations for vulnerable children and young people**. However, it is unclear why the focus narrows to children and young people who use violence or display sexually abusive behaviours, or who are (or have been) involved with the youth justice system. Although these are particularly vulnerable groups, in our experience there are similar and additional considerations that would apply to young people in the child protection system or out-of-home care, or who have experienced other types of trauma such as family violence, which may be useful knowledge for practitioners to consider. Based on our practice experience, we suggest the inclusion of a broader range of factors contributing to vulnerability or increased risk and the role of trauma in the lives of children and young people.

It is encouraging to see the inclusion in the Guidelines of the stigma surrounding involvement with the youth justice system, and the need for sensitivity when sharing information to maintain inclusion, engagement and therapeutic relationships that support the young person. We continue to hold concerns about how information about a young person's youth justice involvement may be used to exclude children with records of criminal offending, behavioural difficulties, or disability from services, including education. We recommend that any unintended consequences of sharing information about a young person's youth justice involvement are explicitly considered in the two and five-year reviews of the Scheme.

It could also be useful for the Guidelines to acknowledge the underreporting of young people using violence in the home, which often occurs due to parental concerns about potential consequences and impacts of criminal justice system responses to their children's behaviour. We recommend discussion about this issue, either in the Guidelines or in the practice guidance, to inform practitioners' judgments when determining what to share and with whom. This is important given information sharing's potential effect on future disclosures and continued engagement with services.

Chapter 3 – Maintaining engagement with children and families when sharing information

4. Do you think this chapter is clear about the key considerations for maintaining client engagement? Do you have any general suggestions for improvement?

Improving clarity and consistency

The Guidelines could provide greater clarity on how this chapter should be practically applied to prioritise client engagement with services operating under this new information sharing regime. Practitioners may be concerned that the lack of a consent model and broad information sharing purpose may contribute to disengagement very early in the individual's help-seeking process. Conversations about confidentiality and information sharing are critical to the start of a service relationship, particularly when responding to serious and sensitive issues of abuse and violence. We recommend the following amendments to the section on **Informing the child and family about information sharing**:

- Move the section to the front of the chapter, as it is the first element of applying the scheme with the child or family.
- Include a clear step by step about how and when to inform the child and the family about information sharing, which could include specific forms for ISEs to use in place of consent forms (which are usual practice) that explain individuals' rights and responsibilities. These will assist practitioners to consistently and effectively apply the guidelines. The process should also emphasise the importance of offering additional support for clients to understand the scheme and feel safe to continue accessing support (in some circumstances this might necessitate referring a person to another service such as a culturally-specific or specialist service or referring a person for legal advice).
- Highlight the criticality of seeking the views of the child or family before sharing. We suggest the inclusion of a new beginning sentence in the third paragraph that explains the need to seek the views of the child or parent before sharing information: *Before an ISE shares information about a child or family, they should seek the views of the child or relevant family members, inform them of the purpose and benefits of sharing the information and keep them updated as to when information is shared or requested.*
- Follow this section with the section **Seeking the views about a child or family member about information sharing** for greater guidance on how to sensitively and respectfully seek the views of the child or family members.

The Guidelines (p28) state that *It is important that ISEs seek the views of the child or relevant family members in each instance of information sharing, as well as at the start of service engagement (where appropriate, safe and reasonable).* As currently drafted, it is unclear about who (the requesting agency, the responding agency or both) holds the obligation to seek the views of children and parents. It appears that the requesting ISE should seek a child or parent's views prior to requesting information, but also appears that the responding ISE should seek their views to determine whether there is merit in providing the information, or the requesting ISE may record the views of the child and parent and provide that to the responding ISE along with the information being sought. We recommend that this be explicitly clarified so practitioners have clear guidance about how this works in practice.

In the paragraph (at the bottom of page 28) which discusses cases where it may be unreasonable to seek the views of the child or family, the example provided is the parent being uncontactable. In such a situation we would expect that all reasonable and appropriate efforts are made to contact the child or parents. Furthermore, practitioners should record what efforts were made to seek the child or parent's views, if their views were not sought, the reasons why, and if their views were obtained, what those views were. These reporting obligations will help to:

- emphasise the importance of seeking the child and family member's views
- posit the seeking of a child and family member's views as the default starting point
- ensure that practitioners comply with the Guidelines
- provide clarification for parties if there are complaints about information sharing.

In the section about **Seeking the views of a child's relevant family members**, the Guidelines highlight examples of cases where it may not be appropriate, safe or reasonable to seek the views of a child or family member and the factors practitioners need to consider when assessing a situation. It is critical that practitioners approach any information sharing from the default of seeking

the child's views. We recommend also adding an acknowledgement, and providing practice guidance and training, on why it is important to seek a child's and family member's views and some best practice examples of how best to do so. This could be supported by developing and distributing examples of how to have conversations about the Scheme with clients, including key dot points about what should be covered. Versions of conversations with adults as well as children would be beneficial for practitioners.

In the same section, the Guidelines state that *If a family member is a perpetrator or alleged perpetrator of family violence (or other type of abuse), then it would not be appropriate, safe and reasonable to seek their views.* We broadly agree that it may not be appropriate, safe and reasonable to seek the views of a family member who is a perpetrator or alleged perpetrator of family violence. We suggest the inclusion here of the need for practitioners to refer to the FVIS Guidelines for more detailed advice about sharing information when family violence is present.

Further, our practice experience highlights that this broad guidance might not be appropriate in situations where the perpetrator of family violence has been misidentified. Practitioners should therefore assess whether it is appropriate, safe and reasonable to seek the views of a child's parent who has been identified as a perpetrator on a case-by-case basis. For example, in a situation where a mother's ex-partner has made an allegation of FV against her (e.g. in the form of a family violence intervention order cross-application), our practice experience indicates that the practitioner should be able to determine whether the mother should be included in the conversation. A mother may have valuable insights into the risks present in the situation that may be overlooked in risk assessment and management if practitioners follow the guidance without consideration of the specifics of individual cases. We recommend that such unintended consequences be considered in the two and five-year reviews of the scheme.

Finally, disengagement is not the only concern arising from this new information sharing legislation. Deterrence is another consideration. ISEs should be cognisant of any impacts of the CIS Scheme in relation to communities possibly no longer accessing services because they are concerned about low thresholds for sharing information and a lack of consent-based model. This may be indicated in service data where an ISE sees a drop in help-seeking generally, or from specific populations (such as Aboriginal people, persons with disabilities or those from CALD, migrant and refugee backgrounds), or direct feedback from previous clients or leaders representing concerned communities. We recommend that deterrence is addressed in the guidelines, particularly in regard to record-keeping and information management as well data collection under the two and five-year reviews.

5. What additional key principles, if any, should be included in the Guidelines for seeking and taking into account the views of the child and relevant family members in relation to information sharing?

The legislation contains important requirements to ensure information sharing is done safely and appropriately, taking into account the views of children and family members. In our view, there are opportunities to strengthen the Guidelines to maximise the ability of agencies to maintain client engagement.

We suggest that the Guidelines make clear that obtaining the views of a child and/or family member should be the default approach when working with families, and that not obtaining their views should only be done in exceptional circumstances. There should also be an explicit requirement for practitioners to record their reasons for making the decision not to obtain the views of the child

and/or family member. The provision of an example of circumstances where a practitioner might conclude that it is not appropriate to obtain the views of a child and/or family member would be of assistance.

We suggest that an additional principle of cultural safety be included in the section **Seeking the views of a child or family member about information sharing** that specifically recognises the need to engage with Aboriginal community-controlled organisations, or Aboriginal liaison officers within 'mainstream' organisations (including the Support and Safety Hubs), to work with the child and family, and that their expertise should be sought by non-Aboriginal providers. Where family violence is present or suspected, we strongly recommend referral to and engagement with family violence specialist Aboriginal community-controlled organisations. Although this is mentioned in the Guidelines in the section relating to **sharing information about Aboriginal and Torres Strait Islander children and families**, there would be benefit in expressing this throughout the document where appropriate to reinforce its critical importance.

This is particularly important to maintain engagement in services of Aboriginal and Torres Strait Islander peoples who, due to colonisation and historical government policies of dispossession, dislocation, and child removal may hold greater levels of mistrust toward government and welfare agencies, and therefore may be less likely to engage with community services if they know their information is likely to be shared without their consent.

Chapter 4 – Sharing information if family violence is believed to present

6. What additional information or clarification, if any, could be included in the Guidelines about how the two Schemes operate together?

All Victorian information sharing regimes should be aligned in both principle and content and we welcome the efforts to align the CIS Scheme with the FVIS Scheme. Consistency between information sharing regimes will be critical to manage family violence safety risk and ensure that victim survivors of family violence are not deterred from seeking assistance. We also believe that cohesion between the schemes will support practitioners operating under both regimes.

In our view, there are further opportunities to strengthen congruence in key areas through minor amendments to the Guidelines. For example, under the heading **Who can share information and who they can share it with**, the Guidelines could include the requirement that, where an organisation seeks to share information with another organisation, they should confirm in writing that both organisations are on the prescribed list. The FVIS Guidelines makes this point on page 17.

As mentioned earlier, aligning the content under the heading **Sharing information about Aboriginal and Torres Strait Islander people** with similar content under the same heading in the FVIS Guidelines will be important. The inclusion of cultural awareness content within, or in addition to, any mandatory training on the use of the scheme would also be beneficial.

Finally, the Guidelines articulate when practitioners should use the FVIS Scheme (to assess and manage family violence risk for children and adults) but indicates that the CIS Scheme should also be used in the same situation (to promote the wellbeing and safety of children). We are concerned that the use of two schemes for the same child/ren and family will be confusing for practitioners and could lead to practitioners incorrectly applying the schemes and inflating the risks associated with sharing information. We suggest the inclusion of case examples and decision flowcharts in the guidelines which may assist practitioners to formulate their approach when required to apply both schemes simultaneously.

Furthermore, to better align the schemes we recommend that the FVIS and CIS Schemes are aligned in governance arrangements, evaluation reviews and in regard to both schemes' interdependency with the re-developed Family Violence Risk Assessment and Risk Management Framework. Please refer to the joint submission from DVVic and NTV on the CIS Regulations and Regulatory Impact Statement provided to Government.

Chapter 5 – Relationship of the Scheme with other laws

7. What additional information or clarification, if any, could be included in the Guidelines about the relationship of the Scheme with other laws?

In our view, the Guidelines provide an opportunity to clarify how the scheme interacts with other laws. Page 35 of the Guidelines lists 13 laws listed and provides content related to the PDP Act, the Health Records Act, and Freedom of Information Sharing laws. We recommend that this is expanded through a diagram that describes how the scheme displaces or overrides these other acts and where specifically it does not displace them and requires compliance with secrecy and confidentiality provisions in other laws.

Additionally, these guidelines should address the relationship between the CIS Scheme, the Child Safe Standards and Reportable Conduct Scheme. Again, a diagram would be useful to draw the links between CIS Scheme, FVIS Scheme, other Acts, Child Safe Standards and the Reportable Conduct Scheme.

Chapter 6 – Record keeping and information management

8. Do you think this Chapter is clear about record keeping and information management requirements? Do you have any suggestions for improvement?

The legislation contains important requirements to ensure information sharing is done safely, appropriately and taking into account the views of children and family members. VLA provided a submission to the Government that recommended that the Regulations be strengthened to incorporate record-keeping requirements that would support these legislative obligations in practice. We consider that similar record-keeping obligations be included in the Guidelines to improve guidance about how the views of children and families can meaningfully be considered in practice.

In particular, we recommend the following additions to the **Record keeping and information management** section of the Guidelines. These changes will improve alignment with the *Children Legislation Amendment (Information Sharing) Act 2018*:

- Section 41U(2)(b) of the legislation requires: *Information sharing entities and restricted information sharing entities should...only share confidential information to the extent necessary to promote the wellbeing or safety of a child or group of children, consistent with the best interests of that child or those children.*

The Guidelines should therefore require entities to **record why it was considered necessary to share the confidential information to promote the wellbeing or safety of a child.**

- Section 41U(2)(h) of the legislation requires: *Information sharing entities and restricted information sharing entities should...promote the cultural safety and recognise the cultural rights and familial and community connections of children who are Aboriginal, Torres Strait Islander, or both.*

The Guidelines should therefore require entities to **record how this requirement informed the decision to share information or how it was considered before sharing the information.**

- *Section 41U(2)(d) of the legislation requires: Information sharing entities and restricted information sharing entities should...seek and take into account the views of a child and the child's relevant family members, if it is appropriate, safe and reasonable to do so.*

The Guidelines should therefore require entities to **record the view of the child or relevant family member if their view was sought, or the reasons why a decision was made not to obtain their view.**

The joint submission on the Regulations from DVVic and NTV also addressed record keeping requirements and made similar recommendations. In particular, it recommended that Government provide an integrated record keeping template that accounts for the requirements of both the FVIS and the CIS schemes. This may involve replacing current templates that were already developed for the initial tranche of the FVIS Scheme. This should be addressed in the guidelines with a new template provided to all FVIS and CIS Scheme prescribed ISEs.

Finally, it is important that the Guidelines describe information management processes that the government will introduce, such as Child Link, to prepare practitioners for the likelihood that the Guidelines may need to be adapted after these processes come into operation. While Child Link is embedded in the legislation, it is noticeably absent from these Guidelines.

Chapter 7 – Safeguards

9. Do you think this Chapter is clear about the safeguards for this scheme? Do you have any suggestions for improvement?

The legislation and Guidelines include clear safeguards and penalties for when information is incorrectly shared. In our view, these could be strengthened through the inclusion of specific safeguards which make sure that ISEs are only sharing information to the extent necessary to promote wellbeing and safety of a child or group of children. This is critical to maintain service engagement and trust, including particularly for Aboriginal and Torres Strait Islander families who may hold greater levels of mistrust due to past government policies and current high rates of child removal.

We encourage the imposition of clearer safeguards for the inappropriate use of the information sharing scheme, as well as clear procedures for instances where a complaint is made. Similar to the FVIS Guidelines, we would welcome the inclusion of a case study to demonstrate what might constitute a practitioner demonstrating good faith and reasonable care, under the subheading 'Protection for individual workers'.

We would also recommend stronger language be used in relation to imposing duties on an ISE to have internal complaint procedures in place within their organisation, as well as clarifying what the external procedure may be for removal of an entity from the prescribed list (i.e. in the event that an entity shares information in an irresponsible or inappropriate manner).

Chapter 8 – Resources and further support

10. What materials, tools or resources in addition to the Ministerial Guidelines would assist practitioners to share appropriately under the scheme

As mentioned in our response to Question 1, the Guidelines would benefit from the inclusion of more case studies, practice examples, checklists and tools to support practitioners to share (or not share) information under the CIS Scheme. Information sharing also needs to be supported by policies and procedures for daily work once workers are trained, including responsible oversight and management, as well as communication procedures. Communication procedures assist individual practitioners to understand who in their organisation is able to share information and how they are allowed to do so. For example, the FVIS Guidelines support the creation of an organisational line management channel – identifying the line manager as the sharer of information, rather than everybody in the organisation. We suggest the government support agencies to develop policies and procedures, including quality control measures, that support the CIS Scheme's implementation and ensure consistent practices across all ISE's.

We understand that there will be joint training delivered on the CIS Scheme, FVIS Scheme and Family Violence Risk Assessment and Risk Management Framework for prescribed ISEs before the CIS Scheme comes into operation in September. This commitment to training is welcomed. We are concerned, though, about the breadth of content to be covered in the training, considering the broad range of ISE's involved in the schemes, the scope of information to be included, the need for inclusion of cultural awareness training and the different learning needs of the organisations.

The effective operation of the CIS Scheme and FVIS Scheme will require prescribed entities to have knowledge of child development and wellbeing, cumulative harm, cultural safety, and relevant frameworks that support decision-making in the child's best interests, such as the best interests case practice model used by child protection, as well as the nature and dynamics of family violence. In the event that an agency does not have this expertise prior to their involvement in the CIS Scheme, we suggest the Guidelines include more case studies, link to relevant frameworks, and decision-making flowcharts to assist practitioners to easily apply the scheme within their realm of professional expertise. It would also be useful for agencies to have access to ongoing practice support, training, and information to assist them to apply the CIS Scheme and continually improve their knowledge and practice.

Further, practice guidance and training on perpetrator behaviours, tactics of abuse, control and collusion are essential to assessing and managing co-occurring child wellbeing and family violence risks and addressing issues related to the misidentification of perpetrators. This can have significant consequences for children's wellbeing and safety and that of the non-offending parent if information is shared without due confidence and capacity to address part three of the CIS Scheme threshold (i.e. identify that the information being disclosed is not excluded, including where the sharing of information could reasonably endanger a person's life or result in physical injury).

Finally, our practice experience suggests that brochures and documents outlining the scheme and clients' rights and responsibilities would be useful for ISEs to provide to clients. We recommend the Government develop these so there is consistent messaging across the state. They should be available in multiple languages, online, and in accessible formats (i.e. pictographs).

General questions about the Ministerial Guidelines

11. Do you have any general suggestions about the content or structure of the Guidelines to improve readability or clarity?

To assist practitioners to find relevant topics, we propose that the Contents page include more detail as to what can be found within the guidelines. For example, Chapter 2 contains information on young people who use violence or who display sexually harmful behaviours, yet these are not included as subheadings in the Contents page. Practitioners seeking information on these important issues may infer that the Guidelines do not include the relevant information.

For consistency across documents currently available for public consultation, we recommend referring to the Family Violence Risk Assessment and Risk Management Framework in the first instance and subsequently as 'the Framework' rather than the 'Family Violence Framework'. In addition to being inconsistent, using the term 'Family Violence Framework' does not clearly communicate the focus on family violence **risk**.

12. Do you have any general suggestions to improve the Guidelines to guide and encourage safe, appropriate sharing to promote children's wellbeing or safety?

Measures to support implementation of the guidelines

Member organisations of DVVic and NTV have identified some learnings from the implementation of the FVIS Scheme that can be applied to and support the implementation of the CIS Scheme. In particular, it is important that the Government consider and help agencies to develop clear, secure processes and systems for sharing information. Agencies in the FVIS Scheme have been sharing information via email, which is concerning if the security cannot be guaranteed. Other lessons include the need to:

- Create systems for the secure handling and transferral of information across ISEs.
- Develop consistent protocols for communication, including the circumstances for verbal and written information sharing.
- Provide accessible information to search for which agencies are and are not ISEs.
- Provide training that clearly articulates how to translate the policy into practice.
- Provide training and ongoing professional support to ISEs to enhance their confidence to practice from a child-focussed perspective.
- Require ISEs to have clear lines of accountability that support their internal processes and procedures in relation to decision making.

Summary

Djirra, DVVic, NTV, Women's Legal Service Victoria, the Federation of Community Legal Centres and VLA thank you again for the opportunity to provide this submission. We welcome further opportunities for discussion and consultation involving our agencies and member organisations.

This submission is endorsed by:

Nicole Rich, Executive Director Family Youth and Children's Law, Victoria Legal Aid

Antoinette Braybrook, Chief Executive Officer, Djirra

Fiona McCormack, Chief Executive Officer, Domestic Violence Victoria

Jacqui Watt, Chief Executive Officer, No to Violence

Joanna Fletcher, Chief Executive Officer, Women's Legal Service Victoria

Belinda Lo, Acting Chief Executive Officer, Federation of Community Legal Centres.

If you require further information regarding the above comments, please contact Alice Wilson O'Neill, Senior Policy and Projects Officer, VLA at alice.wilsononeill@vla.vic.gov.au. She will facilitate contact with the endorsing organisations.