



Submission: Information sharing legislative reforms

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Contents

Introduction	1
About safe steps Family Violence Response Centre.....	2
Summary of Recommendations	2
1. Purpose of sharing information	3
Risk assessment and safety management	3
Welfare-related information sharing	6
2. Included organisations	8
Included agencies.....	9
‘Intake’ organisations.....	9
3. Exempt information.....	11
Secure accommodation addresses.....	11
Sensitive information	11
Law enforcement information.....	11
4. Third party information.....	13
Aboriginal and Torres Strait Islander communities	14
5. Consent	15
Consent of children	15
People with cognitive impairment	15
Perpetrator consent.....	16
6. Interaction with other laws and legal frameworks.....	17
7. Design elements	18
Security and access to shared information.....	18
Safeguards for victims/survivors	19
8. Implications of sharing information	20
Impediments to information sharing	20
Undesirable consequences of information sharing.....	20
9. Extending the regime beyond family violence.....	21

Introduction

safe steps welcomes this opportunity to provide feedback on the development of the information sharing regime recommended by the Royal Commission into Family Violence. This regime will be vitally important to support enhanced responsiveness to women and children experiencing family violence, potentially reducing the harm in our community from family violence.

A specific information sharing regime for family violence is required because of the need for:

- The importance of disclosing information relevant to risk to the victim/survivor who is subject to the risk
- Relevant information pertaining to the risks to victims and survivors of family violence to be disclosed to the agencies with capacity to act to ensure the safety of victims/survivors
- Immediate intervention, in some cases, where the risk level is high
- Agencies with expertise

Present privacy provisions do not always provide for these purposes to be fulfilled. They do not provide an authorising environment for responses to family violence to be enacted in a timely and effective manner that works for the benefit of women and children experiencing family violence. Often, they serve to protect the perpetrator, or even enable his use of violence.

A strong information management regime will provide relevant information in a timely manner to the agencies that require it to keep women and children safe. **safe steps** proposes the following principles for information management in the context of family violence:

- Safety of victims/survivors of family violence is central and paramount
- Recognition that family violence has lasting negative effects on children and it is important to respond to their needs as individuals
- Specialist family violence services have the best and most relevant expertise to determine the relevance of risk information, to analyse risk, and to intervene appropriately to ensure the safety of women and children experiencing family violence
- Only information relevant to risk assessment and safety management should be shared
- Only relevant individuals in relevant agencies should have access to the information
- Perpetrators should only be enabled to have access to information about their victim/survivor when it is safe for the victim/survivor
- Shared understanding of risk assessment and safety management functions in relation to family violence, with specialist family violence services leading other agencies in providing these functions
- Ensuring that collection, use and disclosure of information is safe
- Ensuring that sensitive information is protected

safe steps makes the comments and recommendations below to support the development of an effective system of information management that will achieve these goals.

About safe steps Family Violence Response Centre

safe steps Family Violence Response Centre is Victoria's 24 hour, 7 day per week service providing immediate responses to women and children experiencing family violence. **safe steps** is the gateway for family violence responses in Victoria, providing support, accommodation, advocacy and referral throughout Victoria and nationally. **safe steps** ensures that women and children experiencing family violence, including those at the highest risk of harm, receive an immediate response to keep them safe.

The Royal Commission into Family Violence named **safe steps** as a key agency in its recommended information sharing regime, in recognition of the significant role we play in responding to family violence in Victoria.

Summary of Recommendations

1. That the terms risk assessment and safety management are defined in the *Family Violence Protection Act 2008* and associated legislation related to privacy and information sharing.
2. That the Victorian Government divides prescribed organisations between:
 - 1) Agencies authorised to collect information from other agencies, and to disclose that information as needed for risk assessment and safety management purposes.
 - 2) Agencies authorised to disclose information to agencies in category 1, and to use that information for safety management purposes agreed with these agencies.
3. That the list of prescribed information sharing agencies does not include Safety and Support Hubs.
4. That the information sharing regime is reviewed after 2 years to assess its effectiveness and determine whether other agencies should be included.
5. That the Victorian Government reviews the Standards for Law Enforcement Data Security in order to ensure their alignment with the information sharing regime.
6. That organisations seeking information about a female perpetrator without demonstrating that they have obtained consent must also provide evidence of having undertaken a comprehensive assessment that the woman is the primary aggressor.

1. Purpose of sharing information

Consultation paper question:

- a. In addition to risk assessment and safety management, should the regime provide for information sharing for a broader purpose that includes welfare? Why or why not? Please provide relevant examples.

Risk assessment and safety management

Risk assessment and safety management in the context of family violence is a complex matter. The source of the threat in family violence is another person who has a significant amount of access to the victim/survivor, including the areas that most would think of as safe, and, often, the victim/survivor cares about and has multiple links with the perpetrator. Disclosure of family violence can itself increase the risk faced by the victim, as can many interventions. Furthermore, dominant gender expectations and relationship norms serve to conceal the extent of family violence.

Ensuring women and children are safe in these circumstances requires specialised skills and specific responses to elicit appropriate information, analyse the information, and initiate a safe and effective intervention. Specialist family violence services have developed a range of safety-focused responses that address the gendered nature of family violence, establish and which can intervene. Unlike other services, specialist family violence services are equipped to analyse and respond to the complex nature of family violence.

The regime should therefore not provide for broader purposes that include welfare.

The proposed information sharing regime should be fit for purpose and should share only the information that is necessary for the purpose of the regime, with only the people who need to know the information.

This does not preclude a mechanism for a 'first to know' agency, such as a community health service or a child care service, to identify family violence, report that it is occurring, obtain a secondary consultation, or even be part of a safety plan and safety management strategy. But involvement in responding to family violence at this level does not require these broad community agencies to have the authorisation to collect personal information without consent.

The purposes of risk assessment and safety management must be defined clearly, as these activities have specific features in the context of family violence, and are distinct from other types of risk assessment and safety management, as well as other types of specialised support.

Privacy and information security are equally important to risk assessment and safety management as sharing information. These measures should all be seen as part of a suite of options that form part of safety protocols in relation to information about family violence. Core principles of information management in the context of family violence should inform the development of the information sharing regime.

Consequences of both withholding and disclosing information inappropriately are borne disproportionately by survivors of family violence. These can include further violence as well as discrimination and diminished trust in supportive community services.

Risk assessment

The term 'risk assessment' has differing definitions and applications in different settings by different professional groups. Criminal justice, health, and child protection risk assessments assess different risks, and measure different factors. Family violence risk assessment is not widely understood by all of the sectors which are proposed to participate in the information sharing regime. It is therefore necessary to define the risk assessment being performed as an assessment of the risk of lethality or severe harm due to family violence, performed by an experienced family violence practitioner.

At present there is not a consistent shared understanding of the information relevant to establishing family violence risk among the health, human services and justice agencies that make up the proposed list of prescribed organisations. This is a barrier to effective information sharing for risk assessment and safety management

Many agencies do not have the capacity or skill to analyse relevant risk factors and determine the level of risk from family violence. This is clearly demonstrated at present where agencies do not assess family violence risk consistently or accurately. For instance, a number of children who have been placed in safe accommodation by **safe steps** due to the risk they face from the perpetrator have had multiple assessments within their school and by other agencies where it was not identified that they were experiencing family violence, let alone experiencing a number of adverse effects as a consequence of the violence.

Although the Royal Commission has recommended a broad program to increase the skill and capacity of health, human services, and justice agencies to identify and respond to family violence, the baseline level of understanding is low. It is therefore unlikely that all the agencies and service providers listed in Appendix 1 to the Consultation Paper will be equipped to utilise the information they would be authorised to share under the proposed regime.

Most other health, human services and justice systems are not designed to provide opportunities for safe disclosure of family violence or to provide interventions that are specifically focused on the safety of the client. Under these circumstances, information sharing can increase risk to clients, with little benefit.

Risk-related information

The information sharing regime will need to define risk-related information closely in order to ensure it is fit for purpose and that information is not share inappropriately. Yet there is currently no common, agreed definition of relevant information for risk assessment and risk management purposes.

Specialist family violence services are best placed to assess the relevance of risk-related information. This is done through evidence-based practice, applied through close engagement with women and

children that enables practitioners to establish rapport that supports women to disclose family violence safely. Skilled family violence practice requires this ongoing engagement – it cannot be taught in a one-off session, or learned through research. The skill to assess risk requires professional, experienced practitioners.

safe steps therefore recommends that specialist family violence expertise is always engaged in information sharing for risk assessment and safety management purposes, through limiting the agencies involved in collecting and analysing this information. This is discussed below in section 2.

Safety management

Like risk assessment, safety management in relation to family violence is also not understood consistently or strongly among the broader health, human services and justice sectors.

Unlike other services, family violence safety management:

- Involves a range of safety protocols to avoid information being accessed by the perpetrator
- Has a geographic response to risk, i.e. safe and unsafe areas are distinguished based on an analysis of the perpetrator's movements and activities
- Involves a number of response mechanisms and approaches that are unavailable to other systems, such as secure accommodation, Safe At Home responses, crisis responses, and safety planning

There will need to be a clear indication about how information shared as part of the family violence information sharing regime will be used for safety management purposes. Specialist family violence services should therefore be the lead agencies in safety management strategies for women and children experiencing family violence.

Recommendation 1.

That the terms 'risk assessment' and 'safety management' are defined in the *Family Violence Protection Act 2008* and associated legislation related to privacy and information sharing.

Ensuring information is being used for safety management purposes

Safeguards would need to be in place to ensure that information shared for risk management purposes is actually being used for that purpose, in the form of thresholds to demonstrate that:

- The agency has the capacity, knowledge and skill to undertake a family violence risk assessment using the information
- The information sought is relevant and necessary to analysing the risk faced by the victim or posed by the perpetrator, or would be needed in order to perform agreed safety management actions
- The agency has procedures and mechanisms in place to ensure the security of the information

The recommendations in section 2 below will provide these safeguards to ensure the regime is fit for purpose.

Welfare-related information sharing

It would not be viable to extend an information sharing regime designed to respond to safety threats to broader welfare purposes. The term welfare is not well defined and interpretations of welfare differ significantly between agencies and across legal and policy frameworks.

This regime would not be fit for purpose if extended to broader welfare-related information sharing, and is likely to counteract the purpose of ensuring the welfare of the community by:

- Increasing opportunity for information to be used for inappropriate purposes
- Increasing opportunities for perpetrators to access information about victims/survivors
- Reducing community confidence in human services, and reluctance by the most vulnerable community members to engage for fear of adverse consequences
- Exposing victims/survivors of family violence to potential discrimination

The Royal Commission recommended a family violence information sharing regime to address the specific needs of people experiencing family violence and the agencies supporting them. The Commission did not propose that this regime to be extended to other purposes, and specifically stated that “the new regime should displace existing privacy protections only to the extent necessary and should also preserve victims’ control over sharing their information”*. The Consultation Paper does not outline a sufficient rationale for the proposal to extend the information sharing regime beyond family violence that would override these parameters set out by the Commission.

In many cases, safety management purposes would be sufficient to provide access to the welfare information relevant to meeting women’s and children’s needs. Safety management necessarily involves ensuring that clients’ support needs are met, and are met safely. For example, if a woman has particular mental health conditions or is experiencing suicidal thoughts, **safe steps** will make safety management decisions to ensure her safety by providing additional support to ensure she does not experience adverse consequences as a result of the service intervention provided.

Safety management also involves the broad safety of clients within the service. This includes their mental health, and issues which may result in safety risks for other clients in the service such as substance use.

Consultation with **safe steps** staff indicates that it is not necessary to override current privacy restrictions to obtain welfare-related information. In many cases, there are cultural barriers to sharing relevant information. For instance, information about a woman’s support needs in relation to her mental health. Although a client may consent to **safe steps** accessing the information in order to provide support with safety management, health services and hospitals have differing approaches to providing this information.

Information sharing without the consent of the victim, for welfare related purposes, is not likely to be necessary. Information relevant to safety management is sufficient to ensure the safety and

* Royal Commission into Family Violence (2016) *Final Report*, Vol. I, Ch. 7, p. 187.

wellbeing of women and children affected by family violence. A robust definition of safety management for the purpose of the proposed regime would enable relevant welfare information to be shared for safety management purposes.

In another legal jurisdiction relating to protection from abuse, guardianship legislation is being re-formulated away from seeking to ensure the “best interests” of the person, towards enacting the stated will and preference of the person. This proactive approach to engaging, informing and supporting people affected by family violence to prepare for crisis should be enabled by the information sharing regime. A broad-based welfare-related information sharing regime would in many ways jeopardise this goal.

Safety planning and safety management activities should include disclosure to the person of any mandatory reporting requirements, and organisational safety management practices that may involve disclosure of the person’s information to other agencies. For example, **safe steps** informs clients that we may need to disclose their information to police if needed to ensure their safety. At the same time, **safe steps** provides support to clients with safety planning so that they can maintain control over their information in these crisis circumstances.

The regime parameters proposed by the Royal Commission would be sufficient to share information relating to welfare, as this information can currently be shared with the consent of the person. Without a safety threat, it is unlikely that information about the perpetrator would need to be shared for the purpose of ensuring victim/survivor welfare.

Real time information sharing arrangements without consent should only be utilised for safety

Furthermore, many welfare-related services are voluntary. Sharing information involuntarily, in these circumstances, would actually make it more difficult for community services to engage and establish trust as people

Restrictions on welfare-related information sharing

Consultation paper question:

b. If a broader purpose is adopted, should information sharing be restricted in any way?

If the legislative reforms broaden the purpose of information sharing beyond risk assessment and safety management, safeguards would be needed to prevent information being shared for inappropriate purposes.

Many of the principles outlined above, particularly that only necessary information is shared, and only with individuals and agencies for whom it is necessary to use that information for agreed purposes.

2. Included organisations

Consultation paper question:

- c. Is prescribing organisations by regulation a sensible approach? If so, are there organisations that should be added or removed from the proposed list in Appendix 1? If not, why and what alternative approach do you suggest?

The Royal Commission has recommended that risk assessment and safety management are shared responsibilities. **safe steps** supports this aim in principle, but would add that not all agencies have equal capacity to undertake risk assessment or safety management functions within a comprehensive response to family violence.

In designing the information sharing regime it is important to distinguish between the differing roles and capacity of specialist family violence services and associated statutory services (such as Victoria Police and the Child Protection Service), and other health, justice and human service systems. Access to personal information about people experiencing, and using, family violence should be limited according to the roles and responsibilities of the various agencies within the regime.

Relevant information in relation to the risks faced by a family may be decontextualised from the circumstances and interpreted very differently to the original context. Furthermore, sharing information beyond the original agency which collected the information increases the risk of misinterpretation. The proposed regime should therefore contain information to a smaller number of agencies in order to maintain the integrity of the regime.

As such the approach of a single pool of prescribed organisations with equal authority to access and use information about people experiencing and using family violence is too broad to ensure the security of information shared under the proposed regime.

safe steps proposes an alternative regime which separates the functions of collection, disclosure and use of information are separated based on the risk involved under each of these functions:

1. A smaller group of prescribed agencies is authorised to collect information from other agencies, to disclose and to use information as needed for the purposes of risk assessment and safety management. This group should include **safe steps**, the Men's Referral Service, Victoria Police, the Child Protection Service, and Risk Assessment and Management Panels. This would align with the proposed functioning of the Central Information Point.
2. A large pool of prescribed agencies is authorised to disclose information to agencies in category 1, and to use information for agreed safety management purposes.

Recommendation 2.

That the Victorian Government divides prescribed organisations between:

- 1) Agencies authorised to collect information from other agencies, and to disclose that information as needed for risk assessment and safety management purposes.

2) Agencies authorised to disclose information to agencies in category 1, and to use that information for safety management purposes agreed with these agencies.

As discussed above in section 1, risk assessment and safety management in a family violence context are not well understood or practised across the various agencies listed in the proposed prescribed organisation list. The recommendation above would therefore provide robust safeguards while ensuring that relevant and necessary information is shared with agencies and individuals who require it in order to undertake safety management actions.

Included agencies

The following agencies should be specifically named within the list of prescribed organisations, within category 2) as recommended above.

- Office of the Public Advocate
- Corrections Victoria and Justice Health

Safety and Support Hubs

Safety and Support Hubs should not be included in the list of prescribed organisations at this stage. Hubs are, as yet, not developed. There are differing recommendations and expectations of the design of Hubs. It is therefore inappropriate at this stage to include agencies which do not yet exist in the list of prescribed organisations. The legislation should be reviewed after 2 years to assess the appropriateness of including Safety and Support Hubs, as well as any other agencies which may enhance the regime.

Recommendation 3.

That the list of prescribed information sharing agencies does not include Safety and Support Hubs.

Recommendation 4.

That the information sharing regime is reviewed after 2 years to assess its effectiveness and determine whether other agencies should be included.

'Intake' organisations

Consultation paper question:

- d. Is prescribing 'intake' organisations by regulation a sensible approach? If so, are there 'intake' organisations that should be added or removed from the proposed list in Appendix 1? If not, why and what alternative approaches do you suggest?

The reasoning for the Royal Commission's recommendation is sound in that a defined number of organisations should have the power to investigate potential risk before the existence of the risk is established clearly. Narrowing the group of agencies with this authorisation provides security, while involving community agencies such as **safe steps** ensures that broader support needs of people experiencing family violence can be met.

However, the term “intake organisation” is misleading, as this function is not an “intake” function. An alternative term such as ‘information collection’ or ‘risk assessment and analysis’ would provide more clarity about this function.

As recommended above, a smaller number of agencies should be authorised to collect information from other agencies in order to perform a risk assessment, and undertake safety management with people experiencing family violence. Other agencies should be required to disclose information to the authorised agencies, and would be authorised to use information disclosed to them if they were participating in agreed safety management strategies.

For example, a school would be authorised to disclose information about the children to authorised information collection agencies for the purpose of risk assessment and analysis. They would be authorised to receive relevant information about the perpetrator in order to ensure the safety of children. They would not be authorised to collect information from other agencies, however. An agency within category 1) could disclose relevant information to the school if deemed necessary.

3. Exempt information

Consultation paper question:

- e. Are there any exceptions to information sharing outlined in section 3 that should be added or removed? If so, please outline.

Secure accommodation addresses

Addresses of refuges and other secure safe accommodation facilities should not be shared under the regime. Most Victorian women's refuges are high security refuges. In Victoria this means that their addresses are kept confidential. Although some refuge locations are known in their local area, address information is not shared widely for most refuges.

This is a safety measure used to ensure that refuges can continue to provide safety to women and children who require high security accommodation.

Although in many cases this information would already be restricted on the grounds of danger to life or physical safety, and be contrary to public interest, the reasons for this are not widely understood. The addresses of refuges have previously been disclosed to Child Protection or Victoria Police, who have then included the address in documents accessible to the perpetrator. This not only endangers the woman and her children, but also workers at refuges. It also compromises all safety management mechanisms that have been put in place and requires the woman to relocate once again after a number of safety and support mechanisms have been put in place.

Sensitive information

In many cases victims/survivors of family violence may not want certain information shared. For example, information about past trauma or adverse experiences to which others may respond with unconscious bias or discrimination. Disclosure of this information would jeopardise supportive relationships between practitioners and their vulnerable clients.

The proposed regime will need to ensure that this type of information is protected.

The modified regime recommended above will afford additional protection to sensitive information by limiting requests on information to agencies which have the capacity to distinguish between relevant and irrelevant information for the purpose of assessing risk and managing safety.

Law enforcement information

Consultation paper question:

- f. Should law enforcement data be shared for the purposes of risk assessment and safety management? If so, how should the proposed legislative regime interact with the Standards for Law Enforcement Data Security?

Law enforcement data should be shared for the purposes of risk assessment and safety management. This information will be vital for most safety management and risk assessment purposes. At present the restrictions on sharing law enforcement information limit risk assessment and safety management practice in ways that put women and children at risk.

For example, at times **safe steps** supports clients where the perpetrator has been incarcerated for a criminal charge and is due for release. However, the release information is unavailable to us, and therefore supporting the client to remain safe is much more difficult.

In other cases, where the woman discloses that the perpetrator has had prior police contact, **safe steps** cannot obtain relevant information about the prior charges or convictions that would enable an accurate and comprehensive risk assessment. Some police will indicate that such information is available and relevant, while others are more circumspect with regard to disclosure.

The Standards for Law Enforcement Data Security should therefore be reviewed in order to align with the proposed information sharing regime.

Recommendation 5.

That the Victorian Government reviews the Standards for Law Enforcement Data Security in order to ensure their alignment with the information sharing regime.

4. Third party information

Consultation paper question:

g. Should the information sharing model cover information about third parties? Why or why not?

The information sharing model should include information about third parties. As with information about victims/survivors, children and perpetrators, the model should prioritise the safety of victims/survivors, and support victims/survivors to proactively plan for crises where information may need to be shared rapidly without prior consent.

In **safe steps'** experience, the information required about third parties would be relevant in cases where:

- The third party was colluding with the perpetrator, or was an associate of the primary perpetrator where seeking consent to share their information would endanger the women and/or her children
- The third party was potentially facing risk from the perpetrator, such as potential retaliation for assisting the victim to separate from the perpetrator, and may require support in their own right to ensure their safety.

Under these circumstances the person may also be considered a potential victim or a potential perpetrator in their own right, and therefore not entirely a 'third party'.

However, where the threat to the victim or another person was a potential threat (e.g. where an associate had not directly used violence), and seeking consent from them may endanger the victim, there would need to be a threshold in place to ensure that third party information could be shared without consent if necessary to protect the safety of the victim.

For example, **safe steps** recently worked with two women from the same family where the perpetrators were related. However, **safe steps** could not disclose this to both the women, even though it contributed to both of their levels of risk, due to privacy constraints. Under a regime where third party consent was required to disclose their information, it would not be possible to seek consent safely and it would increase risk to both women to seek consent from the two perpetrators to disclose that they were using violence.

Consultation paper question:

h. Are there any protections that should be incorporated into the new legislative regime to protect privacy or safety rights of third parties?

Similar to information about the primary parties involved in family violence, personal information about third parties should only be shared to the extent that is necessary, only with relevant individuals and agencies, and only necessary information should be shared. In these cases, the

content of the information shared should be minimal, and not sufficient for use for any purpose other than risk assessment and safety management.

Aboriginal and Torres Strait Islander communities

Many Aboriginal and Torres Strait Islander women would be less likely to seek assistance from health and human services if they became aware that information about not only them, but also their family and community, could be used for broader purposes. This is already a barrier for engagement between many human services and Aboriginal and Torres Strait Islander communities. Removing privacy constraints would be likely to increase the risk to Aboriginal and Torres Strait Islander women and children, including the risk of discrimination and unconscious bias.

5. Consent

Consultation paper question:

- i. What is the most appropriate consent model under the new legislative regime for victims, children, third parties and perpetrators?

As discussed above, proactive engagement, education and advocacy is required alongside consent to provide women and children experiencing family violence with control over their information and confidence that it will be shared for appropriate purposes.

Women and children should be provided with prior information about how their information may be used, in the context of safety planning with the woman and her children. This places greater control over information sharing with the woman, as information sharing will occur within a safety management strategy that prioritises the intentions and decisions of the woman and her children. This is because women are often the best judges of what is safe and unsafe in the context of family violence.

Consent of children

The Royal Commission has provided clear, principled direction that children should be treated as individuals in their own right. This necessarily involves fulfilling their right to be informed about decisions that affect them, and to have their views taken into account in these decisions.[†]

Although the Royal Commission recommended that consent to share information about children should be obtained from the adult victim/survivor, this should be accompanied by a requirement to engage with the child. Where it is safe and age-appropriate to do so, consent from the child should also be sought to share their information. In other cases, engagement with a child may involve informing the child about who their information is shared with, seeking their views on and informing them about the potential outcome.

Where it is safe to do so, it is greatly beneficial to children's wellbeing to inform them about how the family violence is being addressed; conversely, it is detrimental to children when they are kept ignorant about interventions that affect them, e.g. if they are not informed about the nature and purpose of a refuge. In other cases, such as where the perpetrator is influencing the child, has ongoing access, and is pressuring the child to report on the other parent, it would be unsafe to disclose safety management strategies to the child.

People with cognitive impairment

Many people with cognitive impairment would have capacity to provide informed consent to their information being shared for safety and risk management purposes. Legal capacity is specific to the particular activity for which informed consent is required. Furthermore, even where the person had

[†] Article 12, UN Convention on the Rights of the Child.

an appointed guardian, the person may still have capacity to give informed consent, as a person under guardianship would still need to have the opportunity to give their stated will and preference for information sharing purposes.

Where the perpetrator is the guardian and/or has power of attorney for the person, the perpetrator should not be approached to provide consent on behalf of the victim/survivor.

Perpetrator consent

Many women who are actually victims/survivors are mis-identified as the perpetrator in family violence incidents due to their use of force to defend themselves, and/or the perpetrator re-characterising their actions as aggression towards him. Under these circumstances, a significant amount of victim information may be shared without their consent before the primary aggressor is identified. Assessment of the primary aggressor should therefore be undertaken before sharing a perpetrator's information without consent.

Recommendation 6.

That organisations seeking information about a female perpetrator without demonstrating that they have obtained consent must also provide evidence of having undertaken a comprehensive assessment that the woman is the primary aggressor.

6. Interaction with other laws and legal frameworks

Consultation paper question:

- j. Are there any secrecy and confidentiality provisions in other laws that need to be explicitly overridden by the new family violence legislation? Why?
- k. Are there any secrecy and confidentiality provisions in other laws that need to be explicitly preserved by the new family violence legislation? Why?

Family violence information sharing arrangements are needed to address the specific risks relating to family violence. Although these risks overlap with risks addressed by other systems, such as criminal justice and Child Protection, the response mechanisms are specific to family violence. Other statutory systems do not necessarily have access to the safety management options available to the family violence specialist service system, the capacity to consistently analyse and respond to family violence risk, or the capacity to act immediately in a crisis.

The information sharing regime therefore requires the capacity to share information from other systems, and should not be seen as mutually exclusive with the *Children, Youth and Families Act*, criminal justice system, or other information sharing regimes.

7. Design elements

Consultation paper question:

- I. Do you have any comments on the other design elements of the information sharing regime proposed by the Royal Commission?
 - access to shared information
 - protection for people sharing information
 - penalties for inappropriate information sharing
 - complaints about information sharing
 - data quality and data security

Security and access to shared information

It is critical that information collected under the information sharing regime is stored securely and that access is limited to individuals who require the information for risk assessment and safety management purposes. The more broadly that information is shared, the more opportunities that perpetrators will be able to use the system to access information about victims.

This has occurred under the current privacy regime through perpetrators employed in community services, or with connections to Child Protection or police, accessing information about their victim, including when the woman had been settled in a safe area unknown to the perpetrator for 12 months. This caused major disruption to the woman and children's lives.

In other cases, information about the victim was shared with other agencies who included it in court reports, medical charts, and other documents which the perpetrator accessed, enabling him to perpetrate further violence.

There would need to be a safeguard to ensure that information shared in the context of family violence risk assessment and safety management is only used for these purposes. This should include:

- The information is not included in documents accessible to the perpetrator
- The information is stored securely
- Only specified individuals have access to the information once it is shared
- For agencies not part of the Central Information Point, that they destroy the information after a specified period
- The capacity to track who has accessed the information

This can be implemented through the information and case management system recommended by the Royal Commission by including capabilities to secure files and track all access to files. Alongside the recommended regime where the number of agencies authorised to access this information is limited, these safeguards will be practicable and feasible to implement.

Agencies participating in the information sharing regime must also have safety protocols in place to prevent unsafe or inappropriate disclosure of personal information. For instance, where the agency

has sought information about a person, another worker should be assigned to work with the victim/survivor and/or her children in order to avoid unconscious bias or discrimination.

Safeguards for victims/survivors

The proposed complaint mechanism is not sufficient or practicable for the level of risk posed to women and children by the potential for inappropriate information sharing. The complaint mechanism proposed is not accessible or timely. Significant and ongoing adverse consequences may be experienced by the survivor/victim by the time these proposed complaint processes conclude, including threats to their safety and ongoing and escalating abuse.

The onus should be on the system to:

- inform victims/survivors about how their information will be collected, stored, and used
- provide appropriate education about the person's rights in relation to their information
- ensure victims/survivors have appropriate support to engage with complaint processes
- ensure that victims/survivors do not bear the cost of any adverse consequences by providing support for relocating, legal costs, counselling, and other support.

As discussed above, proactive, supportive engagement to establish safety plans and risk management strategies should include clear explanations for victims/survivors about how their information will be shared, accessed and used.

8. Implications of sharing information

Consultation paper question

- m. Are there any other issues you wish to raise about the design elements of the legislative model proposed by the Royal Commission or potential enhancements that might:
- act as practical impediments to information sharing?
 - give rise to undesirable consequences?

Impediments to information sharing

Many current impediments to information sharing relate to practice and organisational cultures that are risk averse. As discussed above, current privacy restrictions offer enough exemptions for many of the purposes that **safe steps** seeks information. However, practice within various agencies limits the actual information available.

Undesirable consequences of information sharing

Potential undesirable consequences are broad, and include:

- Access to personal information of the victim/survivor or children by the perpetrator
- Inappropriate sharing of personal information
- Reduced community confidence in human services, and reluctance by the most vulnerable community members to engage for fear of adverse consequences
- Exposure of victims/survivors of family violence to potential discrimination
- Exposure of victims/survivors of family violence to retaliation or pressure from extended family or community networks

In particular, disclosure of information that results in unwanted Child Protection or criminal justice system contact may actually increase risk to the adult and child victims/survivors. This is not necessarily beneficial or likely to ensure the safety of the person. For example, Ms. Dhu, an Aboriginal woman from Western Australia who sought assistance from police in relation to family violence, but was jailed for unpaid fines. She subsequently died in police custody from her injuries sustained at the hands of her abusive partner.

It is therefore necessary to ensure the system limits disclosure of information to necessary agencies, and individuals within those agencies, only. The central involvement of **safe steps** as the statewide specialist family violence service, is necessary to ensure the safety of women and children coming into contact with this information sharing regime.

9. Extending the regime beyond family violence

Consultation paper question:

- n. Are you broadly supportive of legislative reform to support information sharing in contexts beyond family violence? Why or why not?

safe steps does not support information sharing for purposes other than family violence risk assessment and safety management. The risks outlined in section 8 above would be amplified where information was shared involuntarily for broader purposes than family violence. A broad information sharing regime would undermine rapport and engagement between support agencies and the most vulnerable and disadvantaged people in the community.