

Early Childhood Management Services (ECMS)

Submission to the Victorian Government's "Family Violence Information Sharing Legislation Consultation"

Summary of Recommendations

Issue 1 - Purpose

- a) ECMS strongly endorses the creation of a new family violence information sharing regime and broadly supports recommendations in line with the Royal Commission's proposal.
- b) ECMS recommends that the lawful purposes of family violence information sharing be extended beyond the Royal Commission's proposed model of (i) risk assessment and service referral and (ii) managing risks to safety. We would fully endorse information sharing to also include (iii) welfare, particularly the welfare of children exposed to or at risk of being exposed to family violence.
- c) ECMS recommends that, for the purposes of safety management and child welfare, there should be a mechanism by which ECEC services can receive the information needed to support their work with young children exposed to or at risk of being exposed to family violence (e.g., information supporting Special Childcare Benefit applications, information relevant to protecting the safety and enhancing the wellbeing of children).
- d) ECMS does not support the creation of a separate and higher risk threshold for welfare directed family violence information sharing.

Issue 2 - Prescribed Organisations

- e) ECMS recommends that the new family violence information sharing regime include ECEC services as a prescribed organisation. As outlined in (c), while prescribing ECEC services should allow them to *provide* information to 'intake' organisation for the purposes of (i) risk assessment and service referral, (ii) managing risks to safety and (iii) welfare, it should also allow them to *receive* information for the purposes of both (ii) and (iii).

Issue 4 - Third Parties

- f) ECMS endorses the proposal that the new information sharing regime include information sharing about third parties. However, we emphasise that third party consent cannot be the final arbiter of information sharing where the safety, health or welfare of children might be at risk. Under such conditions the child's rights to safety overrides any third parties rights to privacy, at least to the extent necessary to protect the child's safety and welfare.

Summary of Recommendations (Continued)

Issue 5 - Consent

- g) While ECMS is reassured that the current information sharing arrangements laid out in the *Children, Youth and Families Act 2005* (Vic) will remain unchanged, we urge careful consideration in the balance between the privacy rights of adult victims and children's rights to safety and healthy development. Therefore, we suggest that the victim's consent cannot be the final arbiter of whether to share family violence information relevant to the safety or welfare of a child. If a prescribed agency has a reasonable belief that a victim's withholding consent is not in the best interests of a child's safety or welfare, then that prescribed organisation should be authorised to share the relevant family violence information.

Issue 7 - Other Model Elements

- h) ECMS fully supports the Royal Commission's model in that it provides for:
- i) Victim's access to any information shared about them, as well as the capacity for victims to correct any such information;
 - ii) Protections for organisations and individuals who share information in accordance with the new regime;
 - iii) Penalties for inappropriate information sharing; &
 - iv) The creation of information sharing complaints process.

Issue 9 - Information Sharing Beyond Family Violence

- i) ECMS strongly supports the suggestion that the Victorian Government undertake complementary legislative reform in the area of information sharing about child safety and welfare.

Please note: For the purposes of this report we will be referring to all forms of childcare, kindergarten, playgroups etc., as Early Childhood Education and Care (ECEC)

Introducing ECMS

ECMS welcomes the opportunity to participate in the Victorian Government's consultation on *Family Violence Information Sharing Legislation* (Consultation Paper) and contributing to creating a safer Victoria for all children and their families.¹

ECMS has been providing early childhood education and care to children, parents, families and communities across Melbourne for over 20 years. As a not-for-profit community enterprise, our education programs touch the lives of close to 7,000 children and families, including managing and supporting kindergartens and early learning and care centres and other innovative, inclusive early learning services such as playgroups and outreach family support programs

Our vision

A community where every child has the opportunity to be their best and where every parent, family and community is enriched by the experience of their child's learning.

Our Mission

To create opportunities for children, parents and communities to discover and realise their potential

Introducing this Submission

ECMS strongly endorses the *Royal Commission into Family Violence's* (Royal Commission) recommendation that a new family violence information sharing regime be created in order to strengthen the capacity of prescribed agencies to accurately assess the risk of family violence and manage the safety of victims, while also holding perpetrators to account for their behaviour. However, in keeping with ECMS's mission, the particular focus of our submission will be on those needs of young children (0-5 year olds) exposed to family violence. Therefore, we shall adopt a children's rights perspective throughout the course of this submission.

All children, including young children, are recognised as having inherent dignity. They are holders of universal and child-specific human rights, including rights to safety, education and maximum opportunities to develop. As such, states are obliged to support healthy child development and to take necessary measures for the protection of children from all forms of violence (physical and psychological) and maltreatment. This

¹ Department of Premier and Cabinet, *Family Violence Information Sharing Legislation: Consultation Questions*, (Department of Premier and Cabinet, 2016). Hereinafter referred to as the 'Consultation Paper'.

includes creating effective systems for reporting, investigating and responding to potential and actual child abuse and neglect.²

Exposure to family violence is an unacceptable affront to the dignity of any child; it is a serious breach of children's rights and it may cause severe and lasting damage to children's development and wellbeing.³ It is therefore an obligation of the Victorian Government to maintain an effective system for reporting, assessing and responding to the exposure of children to family violence.

In keeping with the Royal Commission's findings, information sharing is essential to the success of any such system. ECMS broadly endorses the Royal Commission's recommendations on information sharing, as well as the extension of these recommendations as envisaged in the Consultation Paper. ECMS is also convinced that, given our extensive and intimate role in the lives of the children with whom we work, Early Childhood Education and Care (ECEC) services have an important place in the proposed information sharing regime.

Issue 1: What should the purpose of a family violence information sharing regime be?

ECMS strongly endorses the proposed 'broader purpose' for the new family violence information and agrees that it should include:

- (a) risk assessment and service referral;
- (b) managing risks to safety; &
- (c) support the welfare of victims, including children exposed to family violence.

The suggested adaption of section 245C of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) seems well suited to the extension of the Royal Commission's reform aims.

One reason for making 'welfare' a lawful purpose is that it supports the work of recovery. The categories of (a) risk assessment and service referral and (b) managing risks to safety tend to focus on immediate risk and the cause of risk, rather than on longer term therapeutic responses to the harm actually caused by family violence. For children, exposure to family

² *Convention on the Rights of a Child*, November 1987, 1577 UNTS 3. Committee on the Rights of the Child, *General Comment No.7: Implementing Child Rights in Early Childhood*, 40th sess, (20 September 2006), 3, 6, 28, 37; *Charter of Human Rights and Responsibilities Act 2006* (Vic), s.17.

³ Monica Campo, [*Children's exposure to domestic and family violence: Key issues and responses*](#) (CFCA Paper No. 36), (Melbourne: Child Family Community Australia information exchange, Australian Institute of Family Studies, 2015), 5-13.

violence can cause severe and long lasting developmental harm (e.g., impaired cognitive development; learning difficulties; internalising and externalising behaviours; depression and anxiety; trauma; negative long-term physical health outcomes, poor life-course outcomes; etc.).⁴ Preventing and ameliorating such harm is a fundamental obligation of the state and its agencies. If family violence information sharing for the purposes of protecting a child's welfare can support the work of harm prevention and amelioration, then it should be supported.

For the purpose of welfare directed information sharing, ECEC services should be considered as both a provider and a recipient of information. ECEC services provide an important means of protecting young children from the harm of family violence, as well as fostering resilience for those children already exposed.

One means through which ECEC services support children exposed to family violence is through provision of Special Childcare Benefit (SCCB). SCCB pays the gap fee for children attending services, if these children are deemed to be at risk of serious abuse or neglect.

In order to receive SCCB, ECEC services must apply to the Special Childcare Assessment Team at Department of Human Services and this application must contain supporting documentation from a case manager (child protection/family support), a doctor or other professional deemed to be able to confirm risk status. However, accessing of such confirmation is often difficult, long winded and unsustainable. It should be made part of the welfare directed family violence information sharing.

Consequently, there must be a mechanism by which ECEC services can receive pertinent family violence information, including (but not limited to):

- The name of the child exposed to family violence;
- The name of the child's caregivers;
- The name of the perpetrator;
- Any relevant family violence order conditions;
- Any known impacts exposure has had on the health and wellbeing of the child; &
- The name of any other prescribed agencies working with the family.

⁴ Campo, [Children's exposure to domestic and family violence: Key issues and responses](#), 5-13.

Issue 2: Which organisations should be included in the information sharing regime?

ECMS supports both (a) the prescribing of organisations and (b) the prescribing of ‘intake’ organisations for the purposes of family violence information sharing. In particular, we endorse the inclusion of ECEC services in the class of prescribed organisations. The rationale for including ECEC services amongst the class of prescribed organisations lies, not in their funding arrangements,⁵ but in the decisive role they can play in family violence assessment, management and response.

ECEC educators can care for individual children for up to 50 hours per week, and in that process develop a collaborative relationship with that child’s caregivers. As such, ECEC educators become intimately acquainted with a child’s family circumstances. Educators are also attuned to changes in a child’s behaviour, health and development. As such, they are often in possession of information that can corroborate risk, enhance safety planning or strengthen therapeutic response strategies. Moreover, children often confide in educators, including reporting traumatic experiences like exposure to family violence. All of this argues for the inclusion of ECEC services in the class of prescribed organisations.

Finally, the vital role ECEC services play should not be overlooked in responding to family violence. For children exposed to family violence, ECEC can be a safe haven. It is a place in which they can form secure attachments and develop their capabilities free from the anxieties of a volatile family household. Also, when ECEC services are properly informed about a child’s exposure to family violence, they are able to appropriately tailor the child’s education and care, while also remaining vigilant with respect to any signs of further family violence. As such, there is a case to be made that ECEC services should not simply be providers of family violence information, but also recipients of it. Early intervention is the best way to foster resilience and minimise the developmental harm of family violence. In this respect, ECEC services are an important early intervention partner; a role that may be fortified through the sharing of relevant family violence information.

⁵ The consultation paper (see *Appendix 1*) lists childcare services amongst “community services that are state funded”. However, while regulated by the state government, childcare services, like ECMS, do not receive direct state government funding, except to provide approved kindergarten programs.

Issue 4: *What information should be shared?*

If those organisations tasked with responding to family violence are unable to garner the information necessary for arriving at an accurate risk assessments and effective safety management strategies, then the outcome for victims can be catastrophic.⁶ As such, ECMS is convinced that a robust family violence information sharing regime must be as comprehensive as is reasonably possible. This includes having some capacity for information sharing about third parties.

Third parties (e.g., grandparents, other extended family members, family friends, etc.) can play a significant role in the care of children and they are often important repositories of information about a child's family circumstances, as well as the child's health and safety. ECEC services frequently forge strong relationships with these third parties, as it is not uncommon for third parties to have responsibility for the collection of children from ECEC. Such third parties frequently provide information to educators and, conversely, are often authorised to request information from ECEC services. As such, ECEC services may hold important information about third parties connected to children at risk of exposure to family violence.

ECMS believes that under such circumstances it is in the best interest of children that third party information is shared with prescribed 'intake' organisations. The best interests of children should override the privacy rights of third parties to the extent necessary to protect children's safety and ensure their welfare. As such, ECMS does not believe that the consent of third parties should be the final arbiter of whether third party information is shared. Rather, the test should be calibrated to the best interests of the child.

Issue 5: *How should consent work?*

ECMS suggests that just as the new family violence information sharing regime must "re-calibrate the balance of a victim's right to safety and a perpetrator's right to privacy in favour of the victim",⁷ so too must the new regime find a proper balance between the privacy rights of adult victims and the rights children have to safety and the protection of their welfare. ECMS is, of course, mindful of the fact that family violence is often deliberately directed toward undermining the mother-child relationship and

⁶ State of Victoria, *Royal Commission into Family Violence: Report and Recommendations*, Vol. I, Parl Paper No 132 (2014-16), 155.

⁷ *Consultation Paper*, 6.

that child protection systems have all too often naively compounded this dynamic.⁸ Nevertheless, we are equally convinced that children are independent rights-holders and that in the event that their safety and welfare rights conflict with the privacy rights of any adult caregiver or third party, the rights of the latter must give way to the rights of the former, at least to an extent necessary to secure the safety and welfare of the child. We in no way deny the fact that the interests of young children and their victimised caregiver (usually the mother) are generally aligned. We also recognise a child's best interests are usually best served by supporting and (if necessary) rebuilding the relationship between child and their victimised caregiver. Nonetheless, the interests of children and their victimised caregivers can come into conflict and such conflict might lead a victimised caregiver to withhold consent for information sharing. Under such circumstances, the victim's consent should not be the final arbiter of whether or not information can be shared between prescribed organisations.

ECMS is reassured that the current information sharing arrangements laid out in the *Children, Youth and Families Act 2005* (Vic) will remain unchanged. Nonetheless, as already stated, when designing a new family violence information sharing regime, ECMS urges careful consideration of the proper balance between the privacy rights of adult victims and the rights children have to safety and the protection of their welfare. As such, if the model defaults to obtaining children's consent from the victim (as it does in both *Model 1* and *Model 2*), then this default can only be justified on the supposition that the victim will generally act in the best interests of the child. However, should a prescribed agency have a reasonable belief that a victim's withholding consent is not in the best interests of the child, then that prescribed organisation should be authorised to share the relevant family violence information.

Issue 7: Other elements of the Royal Commission's proposed information sharing regime

ECMS fully supports the Royal Commission's model that provides for:

- a) Victim's access to any information shared about them, as well as the capacity for victims to correct any such information;
- b) Protections for organisations and individuals who share information in accordance with the new regime;

⁸ Cathy Humphreys, 'Relevant Evidence for Practice' in Cathy Humphreys and Nicky Stanley (eds), *Domestic Violence and Child Protection: Directions for Good Practice*, (JKP, 2006), 29-30.

- c) Penalties for inappropriate information sharing; &
- d) The creation of information sharing complaints process.

With respect to (b), ECMS is convinced that in order to create a culture of responsible family violence information sharing it is imperative that prescribed organisations and their employees are clear about when it is legal to share information and when it is not. If prescribed organisations and their employees are unsure about whether sharing some piece of information will expose them to criminal or civil penalty or to professional sanction, then they are likely to be reluctant to share information. Such an outcome obviously works against effective information sharing and the best interests of children. Consequently, ECMS supports the proposed protections for organisations and individuals sharing information in good faith. We also recommend that the launch of any new information sharing regime be accompanied by an effective education campaign.

Issue 9: An information sharing regime beyond family violence

ECMS strongly supports the suggestion that the Victorian Government undertake complementary legislative reform in the area of information sharing about child safety and welfare. We look forward to the government issuing their consultation paper on this issue and indicate our strong desire to be involved in developing such a reform.

From the perspective of the child, intimate partner abuse is unfortunately only one form of familial violence; other forms of maltreatment, often correlated with intimate partner abuse, can also seriously threaten children's safety and healthy development (e.g., sexual abuse, physical abuse, psychological abuse, neglect, etc.). As already indicated above, it is our belief that a child's rights to safety and access to maximum developmental opportunities override not only the privacy rights of perpetrators, but also those of other caregivers and relevant third parties. For too long the public/private divide has hidden away the experience of victims and protected perpetrators of intimate partner abuse and child maltreatment. Less able to advocate for themselves, young children are especially vulnerable to having their experience rendered invisible by such a divide. Information sharing is one of the most effective antidotes to such an imperilling invisibility. The law must reach out to protect the dignity of children wherever they may be, whether in the family home or in out-of-home care or in ECEC services, etc. In order to achieve this those in a position to be a voice for the child, like ECEC services, must be enabled to do so.

Conclusion

Universal ECEC services have much to contribute to prevention and protection strategies in promoting the safety and wellbeing of young children

EMS has strong focus on this progressive universalism and welcomes future opportunities to contribute to future consultations.

ECMS wishes to thank the Department of Premier and Cabinet for the opportunity to contribute to debate about a new family violence information sharing regime. The Royal Commission has powerfully exposed the prevalence and destructive effects of family violence on individuals, families and the wider community.

We are greatly encouraged by the Victorian Government's commitment to realising the Royal Commission recommendations and better protecting the rights of victims, especially the rights of young children exposed to or at risk of exposure to family violence.