Commissioner for Public Interest Disclosures

Information Commissioner NORTHERN TERRITORY

24 January 2018

Ms Julia Knight
Secretary to the Social Policy Scrutiny Committee
GPO Box 3721
DARWIN NT 0801

Via email: SPSC@nt.gov.au.

RE: Domestic and Family Violence (Information Sharing) Bill

Thankyou for the opportunity to comment on this Bill which will provide for a new domestic and family violence information-sharing regime, by creating a new Chapter 5A in the *Domestic and Family Violence Act* to deal with information sharing. The Explanatory Statement describes the Bill as 'creating a permissive regime in a domestic and family violence context and protecting persons acting in good faith from liability'. It overrides the Information Privacy Principles (IPPs) in the *Information Act* which currently guide public officers and public bodies in deciding what personal and sensitive information they can share, when they can share it and with whom.

In preparing my submission I have spoken to various senior public officers who work in supporting victims and families affected by domestic violence. There were concerns expressed to me about current problems with the sharing of information between government agencies themselves and between those agencies and various external domestic violence related services.

More than one person mentioned that Information Privacy Principle IPP 2.1(d)(i) in the *Information Act* is often considered a stumbling block to the sensible sharing of information about domestic violence. IPP 2.1(d)(i) allows a public sector organisation to use or disclose information where the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent 'a serious and imminent threat to the individual's or another individual's life, health or safety.'

For many years, this Office has held the view that this test in the IPPs should be amended so that the threat to an individual should not need to be both 'serious and imminent' but either 'serious or imminent'. The new test should apply not just in domestic violence cases but on all occasions where there is a relevant threat to a person. Such an amendment would be more in line with the Commonwealth legislation[1].

It is submitted that this amendment to the *Information Act* should ideally be made as part of the current domestic violence reforms. There is precedent for such an amendment. In 2012 when the *Care and Protection of Children Act* was amended by the addition of Part 5.1A to facilitate

[1]Section 16A of the *Privacy Act 1988* (Cth) allows the collection, use or disclosure by an APP entity of personal information about an individual, or of a government related identifier of an individual, if: (b) the entity reasonably believes that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

information-sharing for the safety and wellbeing of children, an amendment was made to IPP 2.1(d)(ii) in the *Information Act* to provide that the test for children be amended to include 'a serious or imminent threat of harm to, or exploitation of, a child.' Noting that the proposed domestic violence reforms are modelled on the 2012 reforms to protect children, it makes sense to amend IPP2.1(d)(i) of the *Information Act* so that the relevant 'threat' tests remain consistent and are easily accessible within the one Act.

I note that there may well be a strong wish by government to rebrand and repackage the current domestic and family violence law to assist in driving cultural change. It must be said however, that a simple amendment to IPP2.1(d)(i) of the *Information Act* to change 'serious and imminent threat' to 'serious or imminent threat' together with some effective guidelines, training and staff support may in fact be just as effective as these reforms in improving information-sharing between the relevant bodies.

The current IPPs allow reasonable information-sharing in many other circumstances in addition to IPP2.1, including the following:

- Where the individual consents to their information being shared;
- Where there is reason to suspect that unlawful activity has been, is being or may be engaged in and the organisation uses or discloses the information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities;
- Where the use or disclosure is required or authorised by law; and
- For preventing, detecting, investigating, prosecuting or punishing an offence or a breach of a prescribed law.

If IPP2.1(d)(i) was amended as suggested, then the existing IPPs would not prevent the types of information-sharing that would and should be occurring between 'information sharing entities' so long as good guidelines and resources are supplemented by continuous, quality staff training and support. Further, section 151 of the *Information Act* already provides that a person is not civilly or criminally liable for information-sharing in good faith in accordance with the Act (including the IPPs).

It is acknowledged however that making specific rules for information-sharing regarding domestic violence in the *Domestic Violence Act* may be the preferred option. The proposed model, which requires information-sharing between domestic violence entities, is based on the 2012 amendments to the *Care and Protection of Children Act* where a similar scheme was enacted. I note that those involved in caring for children at risk have put significant effort and resources into improving outcomes. However, I am aware that those agencies still report significant problems with information-sharing between government agencies and between government and non-government agencies despite good guidelines and resources.

The proposed model requires the sharing of information between the relevant agencies and external bodies involved in domestic violence work. This requirement is perhaps a result of the fact that there is often a lack of trust between various government and non-government agencies working in domestic violence. The risk is that requiring external bodies to share personal client information without addressing their trust concerns may actually make them more concerned that the information about their vulnerable patients/clients may be more widely and inappropriately shared by others.

Many health professionals rely on practices involving promises of not only privacy protection but also confidentiality. These are important ingredients in ensuring people access health and support services, share full and accurate information with persons who can assist them and retain control of their dignity and reputation. Placing a legal requirement on health professionals to share their client's confidential information may not in fact create the desired practical change unless those professionals are satisfied that the new scheme is appropriately respectful of an individual's right to privacy.

Further, the sharing of a person's status as a domestic violence victim may have unintended consequences for them personally. In fact, the NT Anti-Discrimination Commission is considering a proposal for domestic violence to be considered an attribute under the *Anti Discrimination Act* because of the discrimination that victims can face in areas such as employment and housing once their personal circumstances are known.

If the proposed reforms are enacted, then they must be accompanied by sound guidelines and ongoing education and training of domestic violence practitioners that tries to ensure that an individual's consent is obtained to sharing of their personal information wherever reasonable, taking into account the reality that their safety and the safety of others is always paramount.

It is not enough to simply create guidelines and educational tools and expect that public officers and others involved in this work will know of their existence, use them, and change their past practices. The reality is that some of these organisations face a high staff turnover requiring easily accessible induction and refresher training on information sharing to be compulsory for all staff working in the area, both internal and external to government.

Further, not all information sharing can be cured through education and guidelines. The agencies involved must take collaborative and proactive steps to identify all information-sharing blockages and address them in practical ways. Some problems may involve technological solutions and others may require organisational change or the creation of new functions for some senior staff to provide advice to others on any difficult information-sharing issues.

It will be vital to ensure that external bodies have the capacity and systems to securely store any personal information they receive and dispose of it appropriately. Where the NT Government is the funding body of external organisations, the contractual arrangements between them should require the external organisations to comply with the record-keeping and other provisions of the *Information Act*. While keeping victims and their families safe is the prime objective, people dealing with and sharing their personal information must be well trained and equipped so that unintended consequences are minimised.

I have spoken to Jeanette Kerr, Acting CEO of Territory Families, the lead agency responsible for the implementation of this legislation and advised her of my concerns. Ms Kerr has been provided with a copy of this submission.

Brenda Monaghan

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