

Submission to: The Social Policy Scrutiny Committee
Submission regarding: The Domestic and Family Violence Amendment (Information Sharing) Bill 2017

The Domestic and Family Violence Network (DFVN) welcomes the opportunity to comment on the Domestic and Family Violence Amendment (Information Sharing) Bill 2017 ('the Bill').

About the DFVN

The DFVN was established in 1996 to link the various government and non-government organisations working in the area of Domestic and Family Violence (DFV) in the Greater Darwin area. The Network keeps the focus of its work on subjects directly related to DFV. The Network is committed to the prevention of DFV in the Darwin community and has zero tolerance towards Domestic and Family Violence. The key objectives of the DFVN are Information sharing, encouraging a more effective service system and strategic advocacy.

Our recommendations are:

1. The Assembly should not pass this Bill in the March sittings.
2. The Assembly should defer the passage of the Bill to allow a proper consultation process which is accessible to services who assist the people who would be impacted by this Bill.
3. The Network commends the NTG on its aim to promote a more permissive culture in relation to information sharing, but only where this is underpinned by client consent to the information sharing. As such, the Bill should codify how, outside of the mandatory reporting framework, information sharing should take place with an adult client's consent.
4. If the Bill is to be passed it must be with amendments to protect safety and privacy.

Key points for the consideration

1. Proper Consultation needed

- 1.1. A more extensive consultation process should be undertaken in relation to this Bill, including a discussion paper and face to face consultation with key services whose clients will be impacted on by this.
- 1.2. Services that work with victims and perpetrators want to see a discussion paper that shows the evidence base for these changes and demonstrates how similar changes work elsewhere in Australia and internationally.
- 1.3. The timeframe provided to comment on this Bill was insufficient, particularly as many services operate on skeleton staff as people take leave over December and January.
- 1.4. Services that work with victims that will be directly impacted by the Bill have not had the opportunity to provide considered feedback.

2. Creating a consent-based information sharing culture is helpful for victims of DFV

- 2.1. Sharing information with other services also seeking to support victims is helpful. There is a strong belief that except in instances where life is at risk, this sharing must be done with client consent.
- 2.2. It would benefit victims to codify a framework for information sharing, with client consent, particularly between non-government legal and support services and police, health and Territory Families. This would facilitate better support of victims.
- 2.3. THE DFVN notes that there is a current practice within government agencies, particularly Police, Health and Territory Families of freely sharing information amongst themselves with little regard for clients' rights to privacy and confidentiality. There is a culture of free sharing of information within these agencies, particularly where victims are Aboriginal. This is often done with an attitude that it is in the best interests of the victims, but contributes to a culture where victims don't trust these government agencies and where client confidentiality and rights to privacy are routinely breached. It would greatly benefit victims to codify, and train NTG employees in a framework for information sharing, with client consent that respects all Territorians fundamental Human Rights.
- 2.4. There is a concern that the mandated sharing of information between 'information sharing entities' will not serve the stated aim of creating a permissive information sharing culture. Organisations that support victims have already stated that they will not comply with laws that place their clients' confidentiality and safety at risk.

Resources could be better directed to build this culture through development of policies, procedures and training which builds the trust and connections between the various agencies that work in the field of DFV.

3. Bill may create culture which discourages ‘help seeking’

- 3.1. Victims may feel reluctant to access help and disclose to service providers if they fear their information will be shared. Safeguards should be in place to limit the circumstances of information sharing to those where there is a serious or imminent threat to a person’s life, health, safety or welfare as opposed to a person fearing or experiencing domestic violence. There should be a requirement for the victim to consent unless the disclosure is necessary to lessen or prevent a serious threat to an individual’s life, health, safety or welfare.
- 3.2. Additional privacy concerns are raised by the nature of the NT’s small centres where many victims have family and friends, or family and friends of the perpetrator working in the same services they are accessing. Again, the low threshold for those sharing and receiving information, may create a perception, and a reality, that people’s business will not be kept private by the organisations and individuals that should be supporting them.
- 3.3. The chronic shortage of skilled trained staff in the NT will contribute to a system where sensitive privacy and safety information may become widely accessible. What safeguards are in place to ensure that if ‘information sharing entity’ A was mandated to share information with ‘information sharing entity’ B, that that information would not then be passed to other ‘information sharing entities’ and even find its way to a perpetrator of domestic violence to the detriment of the victim?

4. Bill erodes privacy and confidentiality

- 4.1. The proposed Bill erodes the rights of victims to privacy and confidentiality. It does not require much analysis to determine whether information will be shared.
- 4.2. The DFVN endorses the submission of the NT Legal Aid Commission with regard to the Bills incompatibility with the International Covenant on Civil and Political Rights (‘ICCPR’) provides that ‘no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence...’. Without sufficient protections and analysis to determine whether information may be shared, this Bill enables circumstances in which there is an ‘arbitrary interference with privacy’ which is inconsistent with the ICCPR.

4.3. The Bill does not have a high enough threshold to be applied by the persons and entities which are able to share and receive information. The Bill erodes fundamental human rights, rights which many Aboriginal Territorians, already feel are eroded with regard to their privacy.

5. Safety concerns for victims

5.1. The DFVN has serious concerns for the safety implications for victims of proposed changes. Protecting the location, and other key information, is critical in FDV situations. A system in which poorly skilled and trained staff may feel mandated to comply with any request for information may result in serious safety implications for victims. There is a particular concern of this in cases where the perpetrator may be a member of the Police.

5.2. If the Bill is to be passed, the information sharing principles in 124C must require a consideration of adverse consequences to the safety of the victim in disclosing information.

6. Implications for perpetrator treatment

6.1. Perpetrator behaviour change programs rely on perpetrators becoming honest about their abusive behaviours. They may not properly participate in therapeutic sessions if they fear they could be incriminating themselves.

7. Resource implications for community organisations

7.1. The Government funds, and relies on many community organisations to provide services to victims of Domestic and Family Violence. The proposed changes represent a radical change to the current way of working for these organisations. The changes would need to be reflected in new policies and procedures and in extensive staff training. This will all impose a significant cost burden on an underfunded sector.

8. Mandating Information Sharing should be strictly limited

- 8.1. While the DFVN appreciates that the intention of this mandate is to improve information sharing cultures that will improve the safety of victims and children, we support the NTLAC submission that this is a matter that can be dealt with through internal procedures and training and does not warrant mandatory information sharing provisions.
- 8.2. In contrast to the Child Protection Information Sharing Provisions which do not compel information sharing, only permit it, 124H compels it in very broad circumstances. Mandating information sharing should only occur in very limited circumstances. We share the view of the NTLAC, the current mandatory reporting provisions are sufficient.
- 8.3. Like the NTLAC, the DFVN objects to services being compelled to share any information that comes into their possession without the consent of their client beyond what is already provided for under mandatory reporting.

To Contact the DFVN

Thank you for your consideration of the above. If you wish to discuss this submission further, or have any questions for the network, please contact the facilitator of the DFVN- Alex Richmond, Community Educator at Dawn House Women's Shelter via community.educator@dawnhouse.org or (08) 8945 1388.