



## Information sharing to prevent domestic violence – draft Protocol - 8 July 2014

*Comments and questions raised by Women's Legal Services NSW, August 2014*

### Background

1. As part of reforms to the system's response to domestic and family violence in NSW the government released its broad policy direction document "*It Stops Here*" in 2014. A key part of the new policy and practice proposed, were changes to enhance a more coordinated approach to service delivery. As part of this, the law around information sharing was changed to enable information to be shared about victims and perpetrators of violence between government and non-government agencies, in some circumstances without consent.
2. It is disappointing that government has provided very limited opportunities for the community sector to contribute over the past 12 – 18 months.
3. The *Crimes (Domestic and Personal Violence) Act 2007 NSW* was amended twice during 2013 and 2014 to enable the information sharing and to provide for a formal Protocol to accompany the legal framework.
4. As part of the reform package, a Domestic Violence Safety Assessment Tool (DVSAT) for use by NSW Police; and a Safety Action Meeting Manual were also developed to guide practice.
5. The NSW Department of Justice released the draft Protocol very late in its development stage on 10 July 2014, with comments due by cob 31 July 2014.
6. The Protocol document was distributed for comment in isolation from other key documents that relate to it such as the DVSAT and Safety Action Meeting manual which are not yet publically available. The comments below have been made without the opportunity to consider the draft Protocol in the light of the other related documents.
7. We do not suggest that these comments are comprehensive, given the limited time we had available.

### Status and language of the Protocol

8. The *Crimes (Domestic and Personal Violence Amendment (Information Sharing))*



*Act 2014* requires compliance with Protocols made by the Minister under section 98O. We are unsure of the intended status of the Protocol in its final form. We understand that it may have the status of a regulation, however its form and content does not suggest that this is the case.

9. The draft Protocol seems to conflate a set of mandatory standards, with a recommended practice manual. We suggest it would be clearer if the mandatory standards that must be complied with by force of section 98O *Crimes (Domestic and Personal Violence Amendment (Information Sharing) Act 2014*, be separately identified from what otherwise is a practice manual.

### Unclear language

10. Some of the language leaves the reader unclear as to the intended force of the Protocol. For example: The Protocol is a **resource** (Executive summary and at 2.1.3) and the words **should** and **may** and **will** are used often throughout the document leaving the reader uncertain as to whether its use is clearly intended. For example, at para 3.2.5 the word **will** is used: the Local Coordination Point **will** conduct a comprehensive assessment” when perhaps **must** is intended? The word ‘**generally**’ is used (such as at page 9; at 3.1.1; at 3.5; at 6.1.4; at 6.1.7) to unclear effect.
11. At para 3.3.6 service providers should still make a referral to the Central Referral Point. What is intended here? How will the service provider do this? Will there be a described pathway for access to the Central Referral Point for service providers?
12. At para 3.3.9 there is reference to: “To ensure victim’s safety, when making a telephone call the receiving service provider **should** also: .....” . We suggest this be **must**.
13. At 2.35 the word **must** is used in reference to a Local Coordination Point – it **must** make a report to the child protection hotline. If the draft Protocol is intended to be a Regulation, will this have the effect of making the agency (not an individual as is the case in the *Children and Young Person (Care and Protection) Act* a mandatory reporter? If the Local Coordination Point is a service within a Community Legal Centre how will this fit with the exclusion of legal practitioners as mandatory notifiers and with the provisions of the Legal Profession Act and the Australian Solicitor Conduct Rules?
14. In the Example at p48 “the doctor believes that sharing information about Karen and Jim... **may** prevent or lessen the serious threat” we suggest should be “**necessary to** prevent or lessen the serious threat”.
15. We suggest that paras 5.1.6 and 5.1.7 be moved to Part 4.

### Definitions

16. We found the range of definitions to delineate services affected by the Protocol to be confusing and were regularly returning to the definitions section to understand

what was intended. These are: **agency; organisation; domestic violence support service; support agency; non-government support service; service provider; support agency.**

17. The meaning of **legal assistance services** (part of the definition of domestic violence support services) is not clear. In the Australian legal aid context the expression legal assistance services refers to Legal Aid Commissions, ATSILS, Family Violence Prevention Legal Services and Community Legal Centres. What is its intended meaning in the draft Protocol?

### **Risk assessment**

18. What is the rationale for changing the language of **risk** assessment to **threat** assessment? Given other domestic and family violence risk assessment tools do not use the language of **threat indicators**, will this add a level of complexity and confusion to the task? Is it intended that there is a qualitative difference in assessing risk and threat?

### **Safety**

19. **At para 3.3.9** "To ensure victim's safety, when making a telephone call the receiving service provider **should** also:....". We suggest this be **must**.
20. **At para 3.3.9:** Where there are no telephone contact details or attempts to contact by telephone have failed, we suggest that the Local Coordination Point **must not** attempt contact by post, unless the referral expressly indicates it is safe to do so. In our experience many victims of domestic violence choose contact by email, and we suggest also asking if contact by email is safe.
21. **At para 4.2.3** further consultation and re-drafting is required to take account of the real potential for putting the victim at risk because they do not know what is happening. This is one of the core concerns that we have had in relation to information sharing without consent.
22. **At Part 5** at p50 we suggest that reference be made in the opening paragraph that as well as information saving lives, information sharing can also endanger lives.

### **Perpetrator information**

23. We do not fully understand the rationale for not allowing perpetrators to correct information about them. We suggest that the efficacy of information sharing relies on the accuracy of information. We raise the issue in relation to women defendants to AVOs who are primary victims of domestic violence, but also consider the question of relevance to all perpetrators.

### **Conflict of interest**

24. The possible status of the Protocol as a regulation is problematic at section 3.5 on

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25. The social science literature acknowledges that information sharing is complex. It raises dilemmas and contradictory sets of rules for different practitioners that need to be resolved.<sup>1</sup> The failure to consult at an early stage on these dilemmas fails to acknowledge that there are different perspectives to take into account, and complicates rather than solves potential ethical dilemmas for some practitioners.
26. We are concerned that the questions outlined in para 3.5.1 will be considered sufficient for all organisations to determine whether a conflict of interest exists. There may be an inference drawn by readers that the draft Protocol has status to determine that these questions are adequate.
27. This is particularly the case with the use of a community legal centre in the example at para 3.5.1. The example is not informed by the application of legal professional ethics nor the national accreditation standards for Community Legal Centres. What work is the Protocol doing in providing an answer to a conflict of interest question here?
28. Further, it is difficult to assess fully the impact of this issue without reference to the Safety Action Meeting manual. We have been informed that information discussed at Safety Action Meetings is strictly confidential. If this is the case, then we suggest that this be part of the Protocol, so that it has the force of compliance under section 98O *Crimes (Domestic and Personal Violence Amendment (Information Sharing) Act 2014*.
29. We suggest deleting the case example using a Community Legal Centre.

### **Privileges and subpoenas**

30. At 6.3.4 we suggest mentioning that the sexual assault communications privilege applies in AVO proceedings.
31. The case examples suggest that the counselling needs to be about sexual assault, whereas this is not the case.

### **Other comments and questions**

32. **At para 2.3.5:** How will the Local Coordination Point know if the NSW Police Force or a NSW Local Court has not made a notification? Mandatory notification already causes considerable strain on the child protection system and duplicate reports, or time wasted doing the assessment guide, should be avoided.
33. **At para 3.3.6:** How will service providers make a referral to the Central Referral Point, which we understand is done electronically?
34. We suggest that the draft Protocol be simplified.

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<sup>1</sup> For example Wilcox, K *Privacy, information sharing and coordinated practice – dilemmas for practice in DFV Clearinghouse Newsletter 42* at page 8.