



6 June 2014

The Hon Brad Hazzard
Attorney General
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
By email: office@hazzard.minister.nsw.gov.au

Dear Attorney

**Crimes (Domestic and Personal Violence) Amendment (Information Sharing)
Bill 2014**

1. We refer to our letter to then Attorney General, Mr Smith, dated 2 May 2013 about the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2013 which was assented to on 27 May 2013 ('Information Sharing Act 2013'). The concerns we raised in that letter remain and we raise additional concerns with respect to the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2014 ('Information Sharing Bill 2014'), introduced into Parliament on 27 May 2014.
2. Women's Legal Services NSW is a state-wide service for women which provides specialist legal services including relating to domestic and family violence and sexual assault. We have been actively involved in consultations regarding the NSW Domestic and Family Violence Reforms ('NSW DFV Reforms'). Information sharing without informed consent is an issue of particular concern.
3. As we said in our letter dated 2 May 2013, while we support efforts made to improve the system's responsiveness to disclosures, we believe information sharing is a very complex issue and requires careful consideration, particularly regarding the many serious implications of such information sharing.
4. We also refer to research which recognises the vital need to adequately resource a state system of domestic, family and sexual violence services as 'an essential first step before safety-focused information exchange between agencies could be of value'. This is particularly the case in NSW, 'where service provision for victims of violence is ad hoc, and varies enormously across localities'.¹ While the NSW

¹ Karen Wilcox, *Issues in Good Practice: Privacy, information sharing and coordinated practice – dilemmas for practice*, Australian Domestic and Family Violence Clearinghouse, 2010. While noting this paper was published in 2010, this issue of lack of a state-wide system of services and adequate funding

Government has developed a Domestic and Family Violence Framework and there are some good elements to this Framework, 'It Stops Here' is only the first stage. Moreover, the reforms must be adequately funded.

5. In our view, the policy framework around information sharing has overly relied on research, which sought the views of victims who were already engaged with the criminal justice response to their experience of domestic violence. Our work provides us with the opportunity to hear from women who are not receiving an adequate response from the system; who are fearful of engagement with the system, including because of extreme fear of breaches of privacy, which may endanger them.
6. We remain extremely concerned that this Bill represents an even further broadening of the circumstances in which consent can be dispensed with in order to share information.

Information Sharing Protocols

7. We are concerned that despite limited opportunities to provide input into the development of the Information Sharing Protocols and an assurance we will be able to provide comment on draft Information Sharing Protocols, these have not yet been released for public comment.
8. While we understand this takes time and it is important to take the time to get it right, we fear that the introduction of this second information sharing bill, which largely replaces the earlier bill, before the release of draft information sharing protocols, suggests the government is not genuine in its commitment to consider community feedback.
9. We therefore request that the government release the draft information sharing protocols for public comment before it considers passing the Information Sharing Bill 2014.

Concerns with the current bill

Expanded definitions

10. We note with concern the very broad definitions of 'central referral point', 'local co-ordination point' and 'support agency'.

Removal of threshold for dealing with personal and health information

11. Under s98C of the *Information Sharing Act 2013*, personal and health information could be shared in the following circumstances:
 - An interim apprehended violence order has been made
 - An apprehended domestic violence order has been sought (by the making of an application) or made, or
 - A person has been charged (within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002) with a domestic violence offence.

12. This was in addition to s98D which provided for sharing of information without consent where there was serious threat to life, health or safety.
13. The Information Sharing Bill 2014 proposes to repeal s98C. In its place, NSW Police can provide personal and health information to the central referral point without the client's consent where it is lawful to do so for contact purposes.

Private ADVO applications

14. We understand that under the *Information Sharing Act 2013*, there was no provision for the sharing of information without informed consent where a victim of violence applied for a private apprehended domestic violence order (ADVO).
15. WLS NSW supported this approach.
16. In contrast, clause 98E of the Information Sharing Bill 2014 provides that when an application is made to the Local Court for an ADVO the Local Court may disclose personal or health information of the victim of violence (primary person) and associated respondent without informed consent 'unless the primary person expressly objects to the disclosure'.
17. We are concerned that victims of violence will not know they can expressly object unless they are informed of this right. We do not understand why consent cannot be sought in such circumstances, particularly given one of the guiding principles of the NSW DFV Reforms includes 'information sharing is consent-based wherever possible'.²
18. Furthermore, many women may be reluctant to report domestic and family violence to police as a result of information sharing without informed consent. We are particularly concerned this will be the case with Aboriginal and Torres Strait Islander women who fear investigation by Family and Community Services in circumstances that are not warranted, particularly given the history of the stolen generations and the continued removal of Aboriginal and Torres Strait Islander children in large numbers in NSW.
19. Women need to be supported to take protective action and the option of making a private ADVO application where information is not shared without consent is one important way of doing this.
20. To remove an alternative avenue for seeking an ADVO which avoids information sharing without consent will deny some people the opportunity to take early intervention measures with potential consequences including the escalation of violence.
21. We are not suggesting that victims of violence should not be informed about support services and warm referrals to services take place. We are simply advocating that this happen with the informed consent of the victim.
22. Victims of violence applying for a private ADVO should therefore be expressly asked

² NSW Government, *It Stops Here: Standing together to end domestic and family violence in NSW The NSW Government's Domestic and Family Violence Framework for Reform*, 2014 at 6.

if they wish to be referred to the Central Referral Point with a brief description of the role of the Central Referral Point.

Women defendants to AVOs

23. In our letter dated 2 May 2013, we asked for an explanation of how the *Information Sharing Act 2013* addresses safety and privacy concerns and the treatment of 'associated respondents' when they are in need of protection and not the primary aggressor.
24. This issue has still not been addressed.
25. We continue to be concerned about how incorrect information can be corrected, particularly by the associated respondent where they have incorrectly been identified as the primary aggressor when they will likely be aware that information has been shared in the first place.
26. We refer to '*Women defendants to AVOs*', an exploratory study of our 2010 experience of representing women who were defendants to Apprehended Domestic Violence Order ('AVO') proceedings.
27. We found that over two-thirds of our women clients defending AVOs reported that they were the victim of violence in their relationships. Less than 40% of these clients had a final AVO made against them when the matter came before the court.
28. Some women reported that they believed the other party had deliberately initiated AVO proceedings as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future
29. Although further research is needed to determine the frequency with which inappropriate AVOs are pursued against women who are primarily victims, it is clear from the study that in a number of cases, the applications initiated against women defendants appeared unnecessary for the protection of the other party.
30. While we understand the NSW Police continue to strengthen their policies and procedures around identification of the 'primary victim' and 'primary aggressor' in domestic violence incidents, we believe this is an ongoing issue which has implications in the information sharing context.

Regulations

31. We are concerned that the Information Sharing Bill 2014 provides that additional circumstances for the sharing of information without consent can be prescribed by regulation. Furthermore, the 'safeguard' of the Minister consulting with the Privacy Commissioner before recommending the making of a regulation as outlined in CI 98L is of little practical benefit as 'failure to comply ... does not invalidate the regulation'.

Dealings if serious domestic violence threat

32. We note that the powers of sharing information without informed consent where there is a serious domestic violence threat, have been significantly expanded to include 'where the person has refused to give consent'.

33. We are deeply concerned about this development. Women's sense of their own safety is a crucial part of risk assessment. For assistance to be imposed in such a way may further jeopardise the safety of the woman and where there are children, the children as well.

Positive development

Two-year review

34. We believe it is essential that any information sharing legislation is regularly reviewed, particularly for unintended consequences. We therefore support a two-year review of any information sharing legislation. However, reviewing this legislation should not be limited to the first two years. There should be an on-going review mechanism included in the event the legislation continues beyond two years.

35. In conclusion, we call again for public consultations on the Information Sharing Protocols before the Information Sharing Bill 2014 is further considered in Parliament. The safety of victims of violence is too important not to provide the community with the opportunity to provide input from clients' lived experiences and have this input considered.

If you would like to discuss any aspect of this letter, please contact me on 02 8745 6900.

Yours faithfully,
Women's Legal Services NSW

Janet Loughman
Women's Legal Services NSW

Encl: Letter to Attorney General the Hon Greg Smith, 2 May 2013

CC: The Hon. Mike Baird, Premier
The Hon. Pru Goward, Minister for Women
The Hon Gabrielle Upton, Minister for Family and Community Services
The Hon. Paul Lynch, Shadow Attorney-General
The Hon Sophie Cotsis, Shadow Minister for Status of Women
The Hon Helen Westwood, MLC
Reverend the Hon. Fred Nile, MLC
The Hon Paul Green, MLC
Mr David Shoebridge, MLC
Dr Mehreen Faruqi MLC
The Hon Robert Borsak, MLC
The Hon Robert Brown, MLC



2 May 2013

The Hon. Greg Smith, MP
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
By email: office@smith.minister.nsw.gov.au

CC: The Hon Pru Goward, MP

Dear Attorney General,

Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2013

We are writing to you about the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2013 currently before parliament. We understand this Bill will enable information sharing as proposed in the NSW Domestic Violence Justice Strategy. While we support efforts made to improve the system's responsiveness to disclosures of family violence, we believe information sharing is a very complex issue and requires careful consideration, particularly regarding the many and potentially serious implications of such information sharing.

The Department of Attorney General and Justice sought feedback about information sharing through the Apprehended Violence Legal Issues Co-ordinating Committee (AVLICC) in April 2012. We expressed concerns at that time as outlined in the attached letter. We also raised concerns about information sharing through the Domestic and Family Violence Framework consultations. We are not convinced that the Bill is providing a solution that meets a distinct and articulated problem or that the benefits of information sharing without consent outweigh the risks. The policy objective is described as 'to facilitate access by alleged victims of domestic violence to support services appropriate to their needs'. Our experience tells us that it is unlikely to achieve its intended benefits for many victims of domestic violence and it has inherent safety and breach of privacy risks which are not adequately addressed when consent is dispensed with. Further, many women may be reluctant to report domestic violence to police as a result.

Our Domestic Violence Legal Service has been advising and representing women in applications for ADVOs for over 25 years. Over those years, we have seen a significant improvement in police responsiveness to domestic violence – with now almost all applications for ADVOs being taken out by police, rather than privately. However, in the past 5 years our practice has changed significantly to one where the majority of our clients are women who are initially defendants to police ADVOs, but on further enquiry into their circumstances are victims of domestic violence – the primary aggressor being her partner and the person the police initially assessed as being the 'person in need of protection'. These circumstances are so common in our experience, that we have serious concerns about the impact of the 'information sharing' provisions as they relate to defendants to ADVOs where the primary aggressor has not been correctly assessed. On the face of this Bill, such women would not be informed about the sharing of their information without consent nor given an opportunity to amend incorrect information.

Another problem is that, especially in small communities, victims of violence may not wish to engage with a service to whom the NSW Police provides their personal and health information because a relative of the perpetrator works at that organisation.

We also note the NSW Legislation Review Committee's response to the Bill is to refer to Parliament 'whether the amendments proposed by the Bill unduly trespass on an individual's right to privacy'.

We believe consideration should be given to a single central agency to which victims are referred under these provisions, such as the NSW Domestic Violence line administered by Family and Community Services. We believe this may go some way to ameliorating some of the concerns.

Can you please explain how the proposed legislation addresses safety and privacy concerns and the treatment of 'associated respondents' when they are in need of protection and not the primary aggressor and how we can be involved in the development of the protocols that are proposed.

We look forward to your response to these important matters.

Yours faithfully,

Janet Loughman
Principal Solicitor
Women's Legal Services NSW

Encl: WLS NSW response to Draft issues Paper (Privacy, information sharing and providing an integrated response to domestic and family violence) dated 20 April 2012