

Child Wellbeing and Safety (Information Sharing) Regulations 2018

Statement of Reasons

August 2018

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Introduction

The *Children Legislation Amendment (Information Sharing) Act 2018* (the Act) received Royal Assent on 10 April 2018. The Act inserts a new Part 6A into the *Child Wellbeing and Safety Act 2005* to enable authorised professionals and service providers to share information to promote the wellbeing and safety of children, otherwise known as the Child Information Sharing (CIS) scheme.

The Child Wellbeing and Safety (Information Sharing) Regulations 2018 (Regulations) support the Act by prescribing certain matters needed to effectively implement the CIS scheme, including:

- the date of commencement for information sharing entities (ISEs) under the scheme;
- the ISEs that are authorised to collect, use or disclose information;
- record keeping requirements for ISEs when sharing information; and
- the secrecy or confidentiality provisions in other legislation that will not prevent the sharing of information.

The Victorian Government released the Regulations and Regulatory Impact Statement (RIS) for public comment from 16 May 2018 to 15 June 2018. Public consultation co-occurred on the CIS Ministerial Guidelines, which were released from 25 May 2018 to 29 June 2018. These are collectively referred to as the CIS reforms.

The purpose of this document is to provide a statement of reasons responding to the key themes emerging from public consultation on the CIS Regulations and RIS, and to summarise and address the amendments made to the finalised Regulations following public consultation.

Consultation process

Stakeholder consultation had previously been undertaken on the CIS reforms in November to December 2016 and in September to October 2017. These consultations supported the development of the Act, which was introduced into Parliament on 12 December 2017 and received Royal Assent on 10 April 2018.

In early 2018, targeted consultation was undertaken with a sample of stakeholders in preparation of the RIS, in order to provide an indicative assessment of the estimated impact of the Regulations on a variety of organisations likely to be included in the scheme.

As requested by stakeholders, the public consultation on the CIS reforms formed part of a joint approach alongside public consultation on the Family Violence Information Sharing (FVIS) scheme and the Family Violence Risk Assessment and Risk Management Framework (the MARAM Framework). A series of joint public forums were undertaken in metropolitan and regional locations across Victoria in June 2018 and were attended by over 250 attendees representing over 150 organisations. A summary of the services that attended the forums is provided at Appendix 1.

Stakeholders were notified in writing of the opportunity to participate in public forums or submit a written response. A Notice of Preparation of a RIS and proposed Regulations was published in the Government Gazette and The Age newspaper on 18 May 2018.

Twenty-nine stakeholder groups, representing 32 stakeholders, submitted written responses to the CIS reforms in June 2018¹. Fourteen written submissions were received in the public consultation window for the Regulations and RIS and 16 submissions were received in the public consultation window for the Ministerial Guidelines². A full list is provided at **Appendix 1**.

Submissions were received from the following sectors:

- Community and Social Service organisations – 5 submissions
- Education organisations – 3 submissions
- Family Violence organisations – 2 submissions
- Legal organisations – 4 submissions³
- Health organisations – 6 submissions
- Local Government organisations – 1 submission
- Government and statutory agencies – 3 submissions
- Privacy and/or Information Technology organisations – 3 submissions
- Member of the Public/Anonymous – 2 submissions.

This document takes into consideration all feedback received on the Regulations and RIS through the joint public forums and written submissions on the CIS reforms.

The Victorian Government would like to thank all organisations and individuals who contributed to public consultation on the CIS reforms.

Key themes raised in submissions

Stakeholders were generally supportive of the proposed approach to implementation of the CIS reforms as presented through the Regulations and RIS. Many of the written submissions also provided suggestions on how the requirements of the Regulations could be implemented to support organisations to meet the objectives of the scheme.

Commencement date

A small number of stakeholders recommended reconsideration of the commencement date for the Regulations for Phase 1 of the CIS scheme and FVIS scheme to allow sufficient lead time between the release of the MARAM Framework practice guidance and tools, the delivery of integrated training on the three reforms and the commencement of information sharing schemes. Some stakeholders also suggested that the date should be revised to enable additional organisations to be prescribed in the Regulations and trained for Phase 1 of the CIS and FVIS schemes.

Following public consultation, the commencement date for the Regulations has been amended to 27 September 2018, in alignment with the revised commencement dates for the MARAM Framework and the next phase of the FVIS scheme. This commencement date will assist to support sector readiness for prescribed workforces by enabling key professionals to be trained in the reforms prior to operating under the scheme.

¹Stakeholder groups consist of individual organisations that have submitted a response, as well as joint submissions received on behalf of multiple organisations. Two joint submissions were received, representing a total of five stakeholders.

²A number of stakeholder groups submitted separate submissions on the Ministerial Guidelines from the Regulations and RIS, which have been counted separately.

³ Includes a joint submission on behalf of both family violence and legal service stakeholders.

Prescribed information sharing entities

Stakeholders were generally supportive of the scope of services recommended for Phase 1 of the CIS scheme (Option 1 in the RIS). Some stakeholders supported the prescription of a broader range of ISEs into a Phase 1, including a roll out of universal services, arguing that it would more effectively meet the objectives of the CIS scheme (Option 2 in the RIS).

Universal services

Stakeholders recommended a hybrid approach to implementation, where a select range of additional services would be included in Phase 1. Some specialist health organisations were particularly supportive of the inclusion of general practitioners, nurses and other health practitioners in Phase 1 through the prescription of hospitals and private and public health centres. Other stakeholders recommended that select leadership positions in schools and early childhood services should also be included in Phase 1 as part of the phased approach to introducing the education sector into the scheme.

These stakeholders pointed to the critical role of universal services in providing early intervention and prevention programs and as key referral points for secondary and tertiary services, due to their more extensive contact with children and families. They also noted that earlier introduction of universal services could support the cultural shift towards better information sharing between universal services and secondary and tertiary services and therefore more effectively meet the objectives of the scheme.

The phased approach to implementation, recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (McClellan Royal Commission), was designed to support sector and system readiness for information sharing across diverse workforce types. Universal services have a significant role in promoting the wellbeing and safety of children under the scheme and will require a greater lead-time into commencement to ensure sufficient workforce support has been implemented for information sharing to occur safely and appropriately. The phased approach also enables the aligned roll out of the CIS scheme, FVIS scheme and MARAM Framework together, which will minimise workforce confusion and reduce reform fatigue for sectors. On this basis, the Regulations have been finalised in accordance with the range of prescribed ISEs referred to in Option 1.

Family Violence services

Stakeholders requested clarity on the inclusion of family violence services in the CIS scheme. Consistent with the FVIS scheme, the Regulations prescribe a broad range of specialist family violence services, including those providing specialist women's services, men's behaviour change services and therapeutic counselling services. The finalised Regulations provide additional clarity by explicitly prescribing perpetrator intervention services, programs and trials. The prescription of these services ensures most family violence services and programs are included in the CIS scheme, in alignment with the FVIS scheme. A key exception to this is court-ordered family violence services, which are prescribed under the FVIS only.

It was also recommended that Corrections-funded family violence engagement programs be included in the CIS scheme to support consistent practice with the FVIS scheme. Corrections Victoria and Corrections-funded services are not prescribed for Phase 1 of the CIS scheme given their indirect role in promoting child wellbeing and safety and their existing powers under Victorian law to currently share relevant information.

Additional information required

Stakeholders requested additional information explaining the descriptions of ISEs in the Regulations, including which services, functions and roles within organisations are authorised to share information under the scheme, including what is meant by a 'person' or 'body'. It was also suggested that the

phasing schedule could be reconsidered for large organisations where some of its functions are prescribed for Phase 1 and other functions will be considered for Phase 2.

The Regulations have been drafted to primarily prescribe organisations (which may be defined as legal 'persons' or 'bodies') in order to enhance alignment with existing privacy law, such as the *Privacy and Data Protection Act 2014* (Vic) (PDP Act), *Health Records Act 2001* (Vic) (HR Act) or *Privacy Act 1988* (Cth) (Privacy Act). There are small number of exceptions where individual roles have been prescribed instead of organisations, such as the Disability Services Commissioner.

Organisations are prescribed to share information to the extent that they provide that service or program, including those organisations with multiple prescribed services or programs. Additionally, existing privacy law allows information that is collected by an ISE to be used for the primary or secondary purpose for which that information was collected. Organisations can also continue to share as authorised by any other law.

More information on Phase 1 ISEs will be provided in the Ministerial Guidelines following the finalisation of the Regulations.

Record keeping obligations

Stakeholders generally supported recording case-level information only (Option 1 in the RIS), over recording and reporting on aggregate-level data (Option 2 in the RIS). It was acknowledged, however, that there would be some benefits to collecting aggregate-level data to support the review of the scheme.

There was no opposition from stakeholders on the proposed list of record keeping obligations, however some stakeholders recommended a range of additional record keeping obligations for inclusion in the Regulations or to be mandated through Ministerial Guidelines.

Additional record keeping obligations

Stakeholders suggested an additional requirement to record how the threshold test for sharing was met and to provide contextual information on how the threshold test was considered when deciding to share information. Some stakeholders also recommended that the CIS scheme require ISEs to record the view of the child or relevant family member and provide contextual information on how those views were taken into account when sharing information.

The record keeping obligations in the finalised Regulations were developed for consistency with the FVIS Regulations to ensure alignment in the delivery of both schemes, minimise administrative burden for ISEs, and create a culture of safe and appropriate information sharing. These obligations are consistent with those referenced in the McClellan Royal Commission in regard to its recommended national exchange scheme and are intended to build on existing practice that may be required under existing law, state contracts and professional practice standards.

It is anticipated, however, that many ISEs in Phase 1 of the scheme will record additional information through case notes in accordance with existing professional standards. ISEs are not discouraged from recording additional information where this is reasonable and achievable by the ISE.

Complaints and disputes

There was general support for the requirement to record information in relation to complaints received from individuals, including children and families, and from other ISEs in relation to the performance of the ISE's performance under the CIS scheme. It was highlighted that records of complaints will be an essential input into the evaluation of the CIS scheme in assessing whether the objectives of the scheme are being met and whether ISEs are holding themselves to account and taking steps to address the concern where a complaint is received in an effective and responsive manner.

Stakeholders raised that the record keeping obligations for complaints may need to be complemented by a dispute resolution process to assist where there are disagreements about whether the threshold for sharing has been met.

The Ministerial Guidelines include information on how complaints are to be handled and addressed by ISEs, in accordance with existing processes for managing privacy complaints from individuals, as overseen by the Office of the Victorian Information Commissioner. Where there are disagreements between ISEs regarding a refusal to share information, the Ministerial Guidelines recommend that ISEs work together to come to an agreement through a continued dialogue, and where necessary, utilise existing dispute resolution mechanisms that organisations may have in place.

Correcting information

Stakeholders noted that quality record keeping by ISEs would be essential to enable the timely and effective correction of information where necessary, especially in circumstances where inaccurate or out-of-date information had been shared. The correction of information was identified as a critical area for guidance, especially in situations where a person has been incorrectly identified as a perpetrator of family violence or other offences. It was also noted that the Regulations and RIS do not address whether prescribed entities are required to inform other prescribed entities whenever information has been on-shared and then corrected.

Under the scheme, ISEs are required to comply with their existing obligations for record keeping and information management, in accordance with existing laws, standards and professional practice that might apply to the service. The Act strengthens these existing requirements by explicitly extending the application of the PDP Act to all ISEs not already covered by the PDP Act, HR Act or Privacy Act.

The Information Privacy Principles under the PDP Act provide that an organisation must take reasonable steps to ensure that personal information which is collected, used or disclosed is accurate, complete and up to date, as well as take reasonable steps to correct personal information if an individual is able to establish that the information is inaccurate.

The Ministerial Guidelines also state that ISEs should inform other ISEs where inaccurate information has been shared and to do so in a timely manner that is proportional to the potential risks of that inaccurate information. For example, if a perpetrator has been misidentified, this information should be corrected as quickly as possible. Further, the Ministerial Guidelines refer to Chapter 3 of the Family Violence Information Sharing Guidelines and the MARAM Framework with regard to how to respond when a perpetrator or victim survivor of family violence has been misidentified.

Excluded information

The Act includes a regulation making power to prescribe additional categories of excluded information under the scheme. It was recommended that the categories of excluded information should be broadened to account for emotional and mental harm.

Under the Act, ISEs are authorised to share information provided the threshold test for sharing has been met, including that the purpose of requesting or disclosing information is for the purpose of promoting the wellbeing or safety of a child or group of children. In circumstances where an ISE assesses that there may be a risk of emotional or mental harm, information sharing entities should carefully consider what information should be shared and when, prioritising the wellbeing and safety of any children involved.

In addition, the categories of excluded information defined in the Act include information that could be reasonably expected to endanger a life or result in physical injury of any person. Information that may result in mental or emotional harm would be included in this category of excluded information to the extent that it could be reasonably expected to result in the endangerment of life or physical injury, such as information that if shared may increase the risk of self-harming or violence towards others.

Regulatory Impact Statement

Underestimating costs to non-government organisations and the community

There was general support for the preferred options in the RIS. However, it was raised that the economic analysis in the RIS underestimated the cost impact of the CIS Scheme, arguing that there will be greater upfront and ongoing costs related to services including training, systems and policy updates and information sharing activities, and that there will be additional costs that the RIS did not account for, including costs related to governance, monitoring, evaluation and improvement activities.

The RIS aimed to capture and quantify the most significant costs that would apply to all organisations prescribed under the scheme as an effect of regulatory change, including costs related to training, updating policies, protocols and systems, time spent record keeping and sharing of information. The economic modelling was not designed to capture discretionary costs that might apply to organisations, such as costs related to internal monitoring of information sharing or evaluation of the scheme, or costs that are less readily quantifiable to the community, such as the cost of improved or reduced outcomes for children. The validity of the economic modelling was reviewed by the Office of the Commissioner for Better Regulation before being released for public comment.

Intersection with the family violence information sharing scheme

Submissions also requested further information on whether the cost estimations in the RIS account for ISEs prescribed under the initial tranche of the FVIS scheme that will be required to re-update their policies, procedures and systems and re-train staff for the CIS scheme.

For ISEs that have already been prescribed under the FVIS Scheme, the full upfront cost of updating policies, protocols and systems is counted towards implementation of the CIS Scheme. This is calculated for all organisations, irrespective of their current status under the FVIS Scheme.

Other issues raised

A number of other issues were raised in the public forums and the submissions which relate to the implementation and operationalisation of the Regulations and the Act.

In relation to implementation, stakeholders made recommendations to:

- develop standardised templates for information sharing and record keeping across services;
- align or integrate standardised templates with those developed the FVIS scheme to create efficiencies where information is shared using both scheme;
- train ISEs to develop strong internal policies and good record keeping practices;
- implement a training program that encourages the participation of staff from different services, in order to support the scheme's objective of promoting service collaboration;
- align or integrate the independent reviews for the CIS scheme and FVIS scheme to facilitate a greater understanding of the impact of both schemes.

The Victorian Budget 2018-19 provided funding of \$42.9 million over four years and \$5.2 million ongoing to support implementation of the CIS Scheme. Feedback received through public consultation will be taken into consideration in the development and delivery of implementation activities during this period.

Amendments to the Regulations

A number of amendments were made to the finalised Regulations following public consultation in response to stakeholder and government agency feedback.

Commencement date

Amended regulation	Rationale
Amended regulation 3 – Regulations commence on 27 September	The commencement date for the Regulations has been amended from the proposed date of 3 September 2017 to 27 September 2018. This date will support sector readiness for prescribed workforces by enabling key professionals to be trained in the reforms prior to their commencement under the CIS scheme.

Prescribed information sharing entities

Amended regulation	Rationale
Former regulation 5(n) – removal of the Magistrates' Court	The inclusion of the Magistrates' Court was provisionally included in the proposed Regulations, subject to further consultation with the Magistrates' Court. The Magistrates' Court has been removed from the finalised Regulations and will be considered for inclusion in future Regulations for the CIS scheme.
Former regulation 5(o) – removal of the Children's Court	The inclusion of the Children's Court was provisionally included in the proposed Regulations, subject to further consultation with the Children's Court. The Children's Court has been removed from the finalised Regulations and will be considered for inclusion in future Regulations for the CIS scheme.
New regulation 5(x) – Inclusion of Authorised Hub Entities	This regulation was introduced to clarify the status of services operating at The Orange Door (formerly known as Support and Safety Hubs). While it is anticipated that most services operating at The Orange Door would be prescribed for the service they provide, the inclusion of Authorised Hub Entities future proofs against potential changes to this model.
New regulation 5(y) – Inclusion of Family Violence Perpetrator Intervention programs, services and trials	This regulation was introduced for the avoidance of doubt regarding whether Family Violence Perpetrator Intervention programs, services and trials are captured under regulation 5(m) for specialist family violence services.

Record keeping obligations

Amended regulation	Rationale
Former regulation 6(1) – Record keeping obligations do not apply to the Courts	This regulation clarified that the Courts would not be required to comply with the record keeping obligations. The regulation has been removed following the removal of the Courts from the finalised Regulations.
Amended regulation 7(h) – Whether the views of the parent were sought and obtained in relation to the parent's information	A minor change was made to the drafting of this record keeping obligation to clarify that the ISE must record whether the views of the child and/or child's parent were sought and obtained in relation to the sharing of information, including information about the parent, and if not, the reason why.
Amended regulation 7(g) – Copies of relevant family violence documents	A minor change was made to the drafting of this record keeping obligation to clarify that the ISE is expected to attach a copy of a family violence risk assessment or a family violence safety plan where it is relevant to the disclosure under the CIS scheme.

Appendix 1: Consultation on the Child Information Sharing reforms

The following organisations participated in public consultation on the CIS reforms either through attendance at a forum or through providing a written response.

All feedback relating to the Regulations and RIS has been taken into consideration, including feedback received through public comment on the Ministerial Guidelines.

Written submissions received on the Regulations, RIS or Ministerial Guidelines

Organisations that provided written submissions		
Stakeholder Group	Regulations or RIS	Ministerial Guidelines
1. Ambulance Victoria	Y	
2. Australian Nursing and Midwifery Federation	Y	Y
3. Australian Privacy Foundation	Y	
4. Centre for Excellence in Child and Family Welfare	Y	Y
5. Centre for Organisational and Social Informatics, Monash University	Y	Y
6. Colac Area Health		Y
7. Commission for Children and Young People		Y
8. Djirra, Domestic Violence Victoria, No to Violence, Women's Legal Service Victoria, the Federation of Community Legal Centres and Victoria Legal Aid		Y
9. Domestic Violence Victoria and No to Violence	Y	Y (per no.8)
10. Early Childhood Management Systems	Y	
11. Early Learning Association Australia	Y	
12. FACTIL		Y
13. Family Life	Y	
14. Good Shepherd Australia New Zealand		Y
15. Judicial Advisory Group on Family Violence		Y
16. Law Institute of Victoria		Y
17. Mercy Health		Y
18. Municipal Association of Victoria	Y	
19. Office of Professional Practice, Department of Health and Human Services		Y
20. Office of the Victorian Information Commissioner	Y	Y
21. Victorian Aboriginal Child Care Agency		Y
22. Victorian Alcohol and Drug Association		Y
23. Victorian Association of Maternal and Child Health Nurses	Y	

24. Victorian Council of Social Service		Y
25. Victoria Legal Aid	Y	Y (per no.8)
26. Victorian Principals Association		Y
27. Youth Law	Y	
28. Anonymous		Y
29. Anonymous		Y

Attendance at targeted consultation or public forums on the CIS reforms

Organisations that attended a consultation forum		
Anglicare Victoria	FACTIL	Njernda Aboriginal Corporation
Annie North Inc	Family Care	No To Violence
Australian Health Practitioner Regulation Agency	Family Life	North Western Mental Health
Australian Nursing and Midwifery Federation	Federation of Community Legal Centres	Odyssey House Victoria
Australian Privacy Foundation	Financial and Consumer Rights Council	Office of Professional Practice (DHHS)
Banyule City Council	Fitzroy Legal Service	Office of the Victorian Information Commissioner
Barwon Health	Gateway Health	Only about Children
Bayside City Council	GEO Group	Peninsula Health
Benalla Rural City Family Services	Gippsland CASA	Peter Mac
Bendigo & District Aboriginal Co-Operative	Gippsland Lakes Community Health	Primary Care Connect
Bendigo Community Health	Glen Eira Kindergarten Association	Prison Fellowship
Bendigo Health	Golden Plains Shire Council	Quantum
Berry Street	Good Samaritan Industries	Royal Children's Hospital
Bethany	Good Shepherd Australia New Zealand	Royal Women's Hospital
Breakthru	Goulburn and Ovens Murray Integrated Family Violence Committee	Safe Steps
Campaspe Shire Council	Goulburn Valley CASA	SalvoConnect
CASA Forum	Gunnawarra Shire Council	Sexual Assault Crisis Line
Castlemaine District Community Health	Haven Home Safe	South West Health
Catholic Education Melbourne	Independent Schools Victoria	Statewide Children's Resource Co
CatholicCare	Jesuit Social Services	Sunraysia Community Health Services
Centacare Ballarat	Judicial Advisory Group on Family Violence	Surf Coast Shire

Organisations that attended a consultation forum		
Centre for Excellence in Child and Family Welfare	Kingston City Council	Swan Hill Rural City Council
Centre for Non-Violence	Knox City Council	Swinburne University
Centre for Organisational and Social Informatics Monash University	Latrobe City Council	TaskForce
Children's Protection Society	Latrobe Community Health Service	The Bridge Youth Service
City of Greater Bendigo	Latrobe Regional Hospital	Tweddle
City of Melbourne	Law Institute of Victoria	Uniting Care
City of Port Phillip	Les Twentyman Foundation	Upper Murray Family Care
City of Whittlesea	Loddon Shire Council	VICSEG
Co Health	Macedon Ranges Shire Council	Victims Support Agency
Cobaw Community Health Service	Mackillop Family Services	Victoria Legal Aid
Colac Area Health	Magistrates' Court	Victoria Police
Commission for Children and Young People	Mallee District Aboriginal Services	Victorian Aboriginal Child Care Agency
Coroners Court of Victoria	Mallee Family Care	Victorian Alcohol and Drug Association
Court Network	Mallee Sexual Assault and Domestic Violence Service	Victorian Association of Maternal and Childhood Nurses
Court Services Victoria	Melton City Council	Victorian Council of Social Services
Department of Education and Training	Member of the public	Victorian Principal's Association
Department of Health and Human Services	Mental Health Complaints Commissioner	Vincent Care
Department of Justice and Regulation	Mercy Health	West CASA
Department of Premier and Cabinet	Merri Health	West Gippsland Healthcare Group
Disability Services Commissioner	Mildura Base Hospital	Western Health
Djirra	Mildura Rural City Council	Western Region Alcohol and Drug Centre
Domestic Violence Resource Centre Victoria	ML Consulting	Westernport Accommodation & Youth Support Services
Domestic Violence Victoria	Monash City Council	Windana Drug and Alcohol Recovery Inc
Drummond Street Services	Monash Health	Women's Health West
EACH	Monash University	Women's Legal Service Victoria
Early Childhood Management Services	Moonee Valley Council	WRISC
Early Learning Association Australia	Moreland City Council	Wyndham City Council
Eastern Health (CASA)	Mount Alexander Shire	Youth Law
Eastern Domestic Violence Service	Municipal Association of Victoria	Youth Support and Advocacy Service (YSAS)