



22 August 2022

Ms Jan Shuard PSM
Family Violence Reform Implementation Monitor
Office of the Family Violence Reform Implementation Monitor
GPO Box 4912
Melbourne Vic 3001

Dear Ms Shuard,

Review of family violence information sharing and risk management

The Victorian Office of the Public Advocate (OPA) is pleased to be able to provide a submission to the review of family violence information sharing and risk management.

This submission addresses questions 3 and 13 from the consultation questions in relation to gaps, and comments and suggestions for improvement. It draws directly on OPA's recent August 2022 report *Line of sight: Refocussing Victoria's adult safeguarding laws and practices*. The *Line of sight* report, among other things, identifies gaps in Victoria's family violence information sharing and risk assessment frameworks and makes recommendations relevant to this consultation.

About the Office of the Public Advocate

OPA is a Victorian statutory office, independent of government and government services, that works to safeguard the rights and interests of people with disability. The Public Advocate is appointed by the Governor in Council and is answerable to the Victorian State Parliament.

The Public Advocate has functions under the *Guardianship and Administration Act 2019* (Vic), all of which relate to promoting the independence and human rights of people with disability and protecting them from abuse, neglect, and exploitation. To this end, OPA provides a range of critical services for people with cognitive impairment or mental illness, including guardianship, advocacy, and investigation services.

OPA is supported by more than 600 volunteers across three volunteer programs: the Community Visitors Program, the Independent Third Person (ITP) Program and the

Corrections Independent Support Officer (CISO) Program. The ITP Program is an on-call, statewide service operating in all police stations in Victoria. ITPs assist persons with cognitive impairment when making formal statements to Victoria Police. CISOs are experienced ITPs who support prisoners with an intellectual disability at Governor's disciplinary hearings at Victorian prisons and/or remand centres.

Community Visitors are independent volunteers empowered by law to visit Victorian accommodation facilities for people with disability or mental illness. They monitor and report on the adequacy of services provided in the interests of residents and patients. They ensure that the human rights of residents or patients are being upheld and that they are not subject to abuse, neglect, or exploitation. In their annual report, Community Visitors relate their observations on the quality and safety of the services they visit and make recommendations to the Victorian Government. More than 400 Community Visitors visit across three streams: disability services, supported residential services and mental health services.

About the *Line of sight* report

The *Line of Sight* report highlights the urgent need to address a critical gap in the protection of at-risk adults in the community who, because of their care and support needs, may be unable to protect themselves from abuse or neglect. In the *Line of sight* report, 'at-risk' adults are people aged 18 years and over who:

- have care and support needs
- are being abused or neglected, or are at risk of abuse or neglect
- are unable to protect themselves from abuse or neglect because of their care and support needs.¹

OPA has long held concerns about the endemic levels of violence and abuse experienced by at-risk adults living in our community. In the report OPA urges the Victorian Government to ensure that laws and systems are in place to prevent, identify and respond to the abuse of the most vulnerable members of our community and not lose sight of any adult in our community who may be at risk of experiencing violence, abuse or neglect.

The following recommendations and observations are from the report.

¹ This definition is recommended in the Australian Law Reform Commission, *Elder Abuse – A National Legal Response* (Report No 131, May 2017), 387 [rec 14-3].

Gaps in Victoria's family violence information sharing and risk assessment frameworks

While Victoria's family violence legislation and reform initiatives are transformative, there are gaps in the reform framework in terms of preventing and responding to family violence against at-risk adults.

The *Family Violence Protection Act 2008* does not provide sufficient scope for the disclosure of all information needed to effectively manage risks of family violence. Significant service providers and bodies that work with at-risk adults are not part of Victoria's family violence information sharing and risk assessment frameworks. These include financial institutions, and aged and disability services funded by the Australian Government.

Phase two of the Family Violence Information Sharing Scheme (FVISS) and MARAM Framework, which took place in 2021, prescribed state-funded aged care and disability services, among others.² However, given that the funding and regulation of disability and aged care services has largely shifted to the Australian Government, it is concerning that no Australian Government agencies or funded services have yet been prescribed as information-sharing entities in respect of the MARAM Framework. Ultimately, prescribing them in respect of the FVISS and MARAM Frameworks is important to ensure early and accurate risk assessment and responses when concerns are raised about at-risk adults. It would be necessary to negotiate with the Australian Government to reach agreement on this approach.

Prescribing additional agencies – such as financial services and Australian Government entities responsible for disability and aged care services – as information sharing entities and in respect of the MARAM Framework would also result in more comprehensive data and information about family violence. As described above, this would require collaboration between the Victorian and Australian Governments.

OPA recommends that the Victorian Government collaborate with the Australian Government in relation to the prescription of Australian Government entities as Information Sharing Entities and for the Multi Agency Risk Assessment and Management (MARAM) Framework. Relevant Australian Government entities include the National Disability Insurance Agency, the NDIS Commission, and the Aged Care Quality and Safety Commission.

People experiencing financial abuse

The FVISS and MARAM Framework have transformed information-sharing between relevant agencies and risk assessment in the context of family violence.³

² 'About the Information Sharing and MARAM Reforms', *Victorian Government* <<https://www.vic.gov.au/about-information-sharing-schemes-and-risk-management-framework>>.

³ Family Violence Information Sharing Scheme', *Victorian Government*, (Web Page) <<https://www.vic.gov.au/family-violence-information-sharing-scheme>>.

Victoria Police reports that the FVISS, together with relationships built with agencies through involvement in an Elder Abuse Prevention Network, has improved their ability to investigate cases of abuse, violence, or neglect of at-risk adults.⁴

However, Victoria Police's ability to investigate cases of financial elder abuse is hampered by the fact that banks and other financial service providers are not prescribed under the Victorian FVISS.⁵ Police noted that this was a key inhibitor to banks approaching police with concerns over suspect transactions.⁶

Financial abuse is also often difficult to detect, and in the absence of evidence of clear criminality, there is no agency authorised to respond to concerns.

Privacy obligations are not well understood by agencies

Despite the FVISS having improved confidence about information sharing in the context of family violence, privacy obligations are poorly understood and agencies are generally risk averse in terms of potentially breaching privacy obligations by sharing information about abuse, neglect and exploitation.

Information may be shared without consent under the scheme where the information sharing entity reasonably believes that the collection, use or disclosure of the confidential information is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare.⁷ Provisions that mirror this exemption are also contained in the Privacy and Data Protection Act⁸ and Health Records Act.⁹

There is a definition of 'serious threat' in the Family Violence Risk Assessment and Risk Management Framework – a legislative instrument under Part 11 of the Family Violence Protection Act – and the supporting MARAM Framework. Serious risk is defined in the framework as 'risk factors associated with the increased likelihood of the victim survivor being killed or nearly killed'.¹⁰

There is practice guidance available to agencies as to whether a threat can be considered 'serious.' The guidance suggests that in making an assessment as to whether a threat is 'serious' under the relevant legislation, organisations should consider the severity of the

⁴ Meeting with Victoria Police (OPA, 8 October 2020) and telephone interview with Victoria Police (OPA, 23 March 2022).

⁵ Interview with Victoria Police (OPA, 8 October 2020).

⁶ Interview with Victoria Police (OPA, 8 October 2020).

⁷ *Family Violence Protection Act 2008* (Vic) s 144NA.

⁸ *Privacy and Data Protection Act 2014* (Vic) s 2(d)(i).

⁹ *Health Records Act 2001* (Vic) s 2(h)(i).

¹⁰ Victorian Government, *Family Violence Multi-Agency Risk Assessment and Management Framework, A shared responsibility for assessing and managing family violence risk* (Framework, June 2018) 57 <<https://content.vic.gov.au/sites/default/files/2021-02/Family%20violence%20multi-agency%20risk%20assessment%20and%20management%20framework%20%2811%29.pdf>>.

consequences of the threat, and the relative likelihood of harm occurring. Secondary factors may also be considered, including the timing of the threat, nature of the harm, and vulnerability of the affected person to the threat. The guidance materials note that ‘seriousness should be determined on a case-by-case basis, as the circumstances surrounding a threat will differ’.¹¹ Two out of the three examples provided in the guidance materials concerned threats to the life of a former partner or suicide, and the remaining example concerned a serious risk to staff.¹²

There is no definition of ‘serious threat’ in the Privacy and Data Protection Act and Health Records Act, but the documents referred to above provide practice linkages between the definitions in the three Acts.

While the flexibility of the current approach permits a case-by-case consideration, the lack of legislative definition concerning an exemption to an obligation that generates significant and arguably disproportionate apprehension, may have the unintended consequence of inhibiting information-sharing. OPA recommends that this issue is given further consideration as part of this review.¹³

Definitions of ‘family member’ and ‘family violence’ are limited

While Victoria’s Family Violence Protection Act uses a definition of family violence that is broader than other jurisdictions,¹⁴ in that it includes any person the relevant person regards as being like a family member,¹⁵ it does not expressly include people living in group homes.

OPA recommends the Victorian Government amend the Family Violence Protection Act to explicitly state that co-residents in supported disability accommodation are in ‘family-like relationships’ for the purposes of the legislation. This would entirely address the gap identified, ensuring that residents are able to access the protections offered by the family violence framework.

Further, while the reference to ‘in any other way control or dominates the family member’ potentially covers some of the behaviors commonly exhibited by the perpetrators of abuse against at-risk adults, there is no explicit reference to those behaviours in the legislation. These behaviours include making the at-risk person dependent on or subordinate to the abusive person or limiting the at-risk adult’s access to services. These behaviours are expressly included in the definition of abusive conduct in the ACT’s *Crimes Act 1900* (ACT).

¹¹ Office of the Victorian Information Commissioner, *Removal of ‘Imminent’ from the IPPs and HPPs (Factsheet, undated)* 4.

¹² Ibid.

¹³ *Family Violence Protection Act 2008* (Vic) s 144SA.

¹⁴ For example, comparable Tasmanian legislation is limited to intimate partners, *Family Violence Act 2004* (Tas) s 7.

¹⁵ *Family Violence Protection Act 2008* (Vic) s 8.

OPA recommends the inclusion of an express reference to these behaviours in the Victorian legislation.

Another potential gap identified during the consultations for the Adult Safeguarding Project concerns intentional or unintentional neglect. Family members may not fully appreciate the care needs of an at-risk adult.

The definition of family violence in Victoria's legislation describes behavior that is physically, sexually, emotionally, psychologically or economically abusive, is threatening or coercive, or in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another family member.¹⁶ A failure to provide appropriate support and care where there is a responsibility to do so and where this results in harm may constitute a family violence behaviour under the current law. However, while there is reference to neglect as an outcome of isolation in the Victim Survivor Practice Guide in respect of Responsibility 7,¹⁷ there is no explicit reference to 'failure to act' behaviours causing harm in the definition of family violence.¹⁸ The express reference to neglect in the definition could provide clarity and have the effect of setting standards of appropriate behaviour.

However, careful consideration should be given to expanding the definition in this way given the potential for criminalising neglect if an order is breached. In OPA's analysis of its clients on guardianship orders who have experienced elder abuse, in many cases the perpetrator did not appear malevolent. Rather, they were more likely unable to cope or seemed unable to accept the declining health and cognition of the person under guardianship. For example, a family member persisted in undertaking health care steps against medical advice, such as feeding a person who could no longer chew safely.¹⁹ It may be that a supportive intervention to better address the support needs of the at-risk adult and the carer is a more appropriate response in these cases.

As a result of the above, OPA recommends the Victorian Government amend the Family Violence Protection Act to provide effective protection for at-risk adults. The legislation should:

- specify that residents cohabitating in Supported Disability Accommodation are in 'family-like relationships' for the purposes of the Act

¹⁶ *Family Violence Protection Act 2008* (Vic) s 6(1).

¹⁷ Victoria State Government, *Practice Guides: Responsibility 7: Comprehensive Risk Assessment* (Guide, Undated) 331 <<https://www.vic.gov.au/maram-practice-guides-and-resources/responsibility-7>>.

¹⁸ *Family Violence Protection Act 2008* (Vic) s 5.

¹⁹ L Bedson, L, J Chesterman and M Woods, 'The prevalence of elder abuse among adult guardianship clients' (2018) 18 *Macquarie Law Journal*, 15-33 <<http://classic.austlii.edu.au/au/journals/MqLawJl/2018/3.html>>.

- explicitly include behaviors common in cases of violence against at-risk adults, such as making the person dependent on the abuser, isolating the at-risk person from friends and family, and limiting the at-risk adult's access to services, as forms of family violence and provide examples in the legislation.

Where to find the *Line of sight* report

The full *Line of sight* report, which contains the above-listed recommendations and further information, is available on the OPA website at:

<https://www.publicadvocate.vic.gov.au/the-public-advocate/in-the-news/our-news/504-public-advocate-calls-on-victorian-government-to-fix-gaps-in-protection-of-at-risk-adults>

Thank you once again for the opportunity to contribute to this consultation. My office would be pleased to expand on any aspect of this submission. If you have any queries, please contact [REDACTED] (Coordinator Systemic Advocacy) from my office at [REDACTED]

Yours sincerely,

[REDACTED]

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Public Advocate