

libertyvictoria.org.au

5 March 2018

Children Legislation Amendment (Information Sharing) Bill 2017

1. The Children Legislation Amendment (Information Sharing) Bill 2017 ('the Bill') aims to establish a regime to allow professionals in a range of organisations (including child protection workers, teachers and health professionals) to share information about children to promote their safety.
2. In principle we support the Bill. However, Liberty Victoria's view is that the proposed regime goes too far and needs to be amended to ensure that the range of information that can be stored is clearly defined, that children have the opportunity to give consent wherever possible, and that there are clear rules about the types of people that are able to access the information. As it stands, the Bill has the capacity to erode the rights of already vulnerable children and possibly be used for improper purposes.

Definition of Purpose

3. The purpose for which information can be stored is currently very broad, which creates a risk that unnecessary or prejudicial information will be stored and accessed by other services. While we support a system of more effective communication

between professionals to achieve better and more consistent outcomes for children at risk, disclosing and requesting confidential information should be for a purpose that is objectively definable. 'Promoting wellbeing' is a dangerously nebulous expression and professional minds can differ over its meaning. This makes it essentially useless as a threshold requirement. This is particularly the case when we consider the broad allowability of good faith as a defence to many charges proposed in the Bill. The danger we perceive is an erosion of good practice based on children's right to safety, and a climate of distrust where children and families do not know who is talking to whom behind their backs.

4. We agree with the analysis of Victoria Legal Aid ('VLA') et al in their submission to the consultation paper, that the purpose should relate to a risk-based and rights-based framework, such as 'assessing and managing risks to the safety of a child or group of children'. Accordingly, the legislative purpose and the three-part tests in the proposed sections 41V and 41W should contain this formulation in place of 'promoting the wellbeing or safety'. This would go a long way to ensuring that a pretext cannot be found for the unauthorised disclosure of confidential information, while preserving sharing entities to exchange vital information at need. It also would make the good faith defences more plausible, if it is already established that the defendant was engaged in questions of risks to child safety.

Consent

5. Our second concern is the question of consent, and the displacement of Information Privacy Principle 10.1. There will always be the need to access confidential information without consent, as acknowledged in the *Children, Youth and Families Act 2005*, and in IPP 10.1 itself. Many children have the developmental attainments and the capacity to give informed consent. However, under the current proposals they will not be asked to give consent. This arguably marginalises them in the very process put in place to benefit them. This conflicts with at least five of the stated legislative principles in the Bill, which include involving children and families, respecting their culture, capacity and cohesion, and maintaining positive relationships between children/families and sharing entities. Few things could harm these objects more than failure to seek

consent where practicable and safe, and when a person has the maturity and capacity to give it.

6. To not require consent has the effect of further disempowering vulnerable Victorians with already high levels of intervention in their affairs, including disabled children and other disabled family members. In many situations, supported decision making and empowerment are far more profitable outcomes that may obviate the need for more overbearing crisis-driven measures down the track.
7. Accordingly, we again support the VLA submission that a fourth part to the three-part test should be introduced which requires the consent of the child or other family member except where demonstrably impracticable or unsafe, or where the person in question is for developmental reasons unable to consent.

Child Link

8. We support the implementation of a database that can provide an accurate chronological overview of a child's interactions with government-supported services. However, we are concerned that the number of Child Link end-users appears to be large, with many entities have the power to further delegate their functions. This leaves the system vulnerable to being improperly accessed.
9. One compromise would be for school principals and council CEOs not to be able to further delegate their Child Link access. Rather, staff should make a request for Child Link data through the CEO or school principal. Another option would be to permit only one authorisation at a time per institution, not including the CEO/principal. This would make the numbers of people with access to Child Link more manageable. Access needs in excess of this could also be authorised by the Secretary on application.

Contact

10. Any questions with regard to this comment can be directed to Liberty Victoria President Jessie Taylor, Policy Committee Member Gemma Cafarella, or the Liberty Victoria office on 9670 6422 or info@libertyvictoria.org.au.