Memorandum of Understanding

Information sharing between agencies with responsibilities for preventing and responding to family and domestic violence in Western Australia.
PART 1: Introduction

A key strategy of the Western Australian Family and Domestic Violence State Strategic Plan 2009–2013 is that agencies have a responsibility for preventing family and domestic violence, for responding when it occurs, and for working to provide integrated responses that keep adult and child victims safe from harm, and make perpetrators accountable. An integrated response requires agencies to work together at:

- the local level, via Regional Coordination Responses to Family and Domestic Violence ("RCRs") to manage, coordinate and monitor responses to those experiencing family and domestic violence who are assessed to be at high risk of harm from family and domestic violence; and
- a central policy level, via a Senior Officers’ Group (“the SOG”) that meets in Perth.

A range of strategies and tools will support the work of the RCRs at all levels, in providing an integrated response, but fundamental to its success is a capacity for agencies to share information regarding those individuals (adults and children) who have been assessed to be at high risk of harm from family and domestic violence.

This Memorandum of Understanding supports Western Australia’s Family and Domestic State Strategic Plan 2009–2013, through formalising uniform arrangements for the exchange of information between signatory agencies. It establishes the protocols that will govern the exchange of information between the agencies on matters of mutual interest and responsibility, in order to address family and domestic violence in the community, reduce risks and enhance the future safety of victims.

PART 2: DEFINITIONS

Family and domestic violence is behaviour which results in physical, sexual and/or psychological damage, forced social isolation, economic deprivation, or behaviour which causes the victim to live in fear.¹

A key characteristic of family and domestic violence is the use of violence or other forms of abuse to control someone with whom the perpetrator has an intimate or family relationship. The term domestic violence usually refers to abuse against an intimate partner while family violence is a broader expression encompassing domestic violence and the abuse of children, the elderly and other family members.

Aboriginal people generally prefer the term ‘family violence’. This concept describes a matrix of harmful, violent and aggressive behaviours and is considered to be more reflective of an Aboriginal world view of community and family healing. However, the use of this term should not obscure the fact that Aboriginal women and children bear the brunt of family violence.

PART 3: Objective and outcome

¹ Western Australian Family and Domestic Violence State Strategic Plan 2004-2008
The Parties agree that the following objective and outcome relate to this MOU:

- The **Objective** of this MOU is to achieve standard arrangements across the State for the sharing of information between the signatory agencies (including RCR Coordinators) and improvements in the level and quality of information shared.
- The **Outcome** of the implementation of this MOU will be more informed and integrated responses that lead to a reduction in incidents that harm adult and child victims, and to an increase in the accountability of perpetrators.

**PART 4: Principles**

The actions of signatory agencies in relation to this MOU are underpinned by the eight principles of the Western Australian Strategic Plan for Family and Domestic Violence 2009–2013. The MOU intends to support the signatory agencies to work according to the principles through promoting cooperation, respect and good will between them, and to promote and enhance their individual and collective capacity to keep victims of domestic violence who are assessed to be at high risk, free from harm.

**Part 5: Scope**

In the context of the multilateral rcr risk assessment and case management arrangements to achieve effective integrated responses to family and domestic violence (as described in part 1), this mou covers arrangements for the sharing of information between the signatory agencies in relation to incidents of family and domestic violence, where an assessment indicates a high level of risk to harm for adults including any children in their care.

**Part 6: Commitment**

By signing this MOU, each signatory agency is committed to:

- working cooperatively with other signatory agencies to enhance the safety of adult and child victims of family and domestic violence who are assessed to be at high risk of harm and to increasing perpetrator accountability;
- contributing to local level problem solving, should any local issues arise in the application of this MOU; and
- contributing to the review and ongoing refinement of the MOU over time.

**PART 7: PARTIES TO THE AGREEMENT**

The agencies that are party to this MOU are:

**State Government**
Department of the Attorney General
Department for Child Protection
Department of Corrective Services
PART 8: CONDITIONS APPLYING TO THE PROVISION OR EXCHANGE OF INFORMATION

The MOU is a statement of the intentions of the signatory agencies. It does not create a contractual relationship and is not binding on the parties in law.

It is anticipated that in most cases, consent will have been obtained and that there will be no barriers to the exchange of information in the circumstances outlined in this MOU. In these cases, the following conditions (except 8.3) apply. Where consent is not obtained, then all of the following conditions will apply when information needs to be shared in the context of incidents of family and domestic violence where an assessment indicates a high level of risk of harm.

8.1 Subject Laws Apply
The provisions of the MOU are subject to any relevant legislation enacted by the Commonwealth or the State of Western Australia.

8.2 Confidentiality
Some information that may, from time to time, be provided or exchanged will already be on the public record and, therefore, not be subject to confidentially requirements, or to the provisions of this MOU.

The signatory agencies to this MOU are bound by agency level policies, codes of practice and legal obligations regarding confidentiality of personal information. They will provide and exchange information on the understanding that (1) the other agency/agencies will maintain the integrity of the information and treat it as confidential, unless otherwise required or allowed by law and that (2) any breach might subject the individual to penalties as set out in the Criminal Code.

8.3 Disclosure without Consent
Good practice requires that the limitations to a commitment to confidentiality are explained to both victims and perpetrators when they first have contact with a government or non-government provider of any family and domestic violence related service. This should include an explanation of the
circumstances in which disclosure of personal information could occur, and preferably the signing of a release of information consent form.

The limits to confidentiality are expressed differently in relation to different agencies. They include, but are not necessarily limited to the following:

8.3.1 S23 of the Children and Community Services Act 2004 (CCSA 2004) enables staff of the Department for Child Protection to disclose and request relevant information involving a public authority, a corresponding authority, a service provider or an interested person. Relevant information means information that, in the Department for Child Protection’s opinion, is or is likely to be relevant to the wellbeing of a child or children or to perform a function under the CCSA 2004. It also enables other public authorities, service providers or interested persons to share information about concerns about the wellbeing of a child where requested by the Department for Child Protection.

8.3.2 The Restraining Orders Act - Section 70A enables the Western Australian Police to exchange of information in certain circumstances in relation to those protected by a Violence Restraining Order.

8.3.3 The Public Sector Commissioner’s Circular 2009-29 The Policy Framework and Standards for Information Sharing Between Government Agencies which has been developed to facilitate the sharing of information on a structured basis, particularly confidential client information.

8.3.4 Obligations under the Freedom of Information Act 2000.

8.3.5 Disclosure in the public interest, such as situations in which there is a serious threat to life.

It is recognised that some signatory agencies operate under legislation that does not include explicit authority to share information in certain circumstances. Further direction is required and will need to be sought by those signatory agencies, in relation to the application of the public interest test which allows for the release of information in certain circumstances, including where there is a threat to life.

Until such direction is obtained, in situations where authority to share personal information with other agencies has either (1) not been obtained or (2) has been refused, and the agency has information from or about an individual that indicates a threat to life or serious harm, or in the case of children and their wellbeing, the following arrangements will apply under this MOU.

As set out in 8.3.1 and 8.3.2 officers of both the WA Police and the Department for Child Protection operate under legislation that enables them to share information with others in certain circumstances. When other agencies that are signatories to this MOU have information related to a family and domestic violence matter that gives rise to a
cause for concern about a threat to life or serious harm to others and
they do not have express consent to share that information with other
signatory agencies to this MOU, they will act as follows:
- If the matter involves a threat to the life or serious harm of an
  individual without children, immediate referral will be made to the
  WA Police; or
- If the matter involves a threat to the wellbeing of a child or class or
group of children, immediate referral will be made to the
Department for Child Protection or the WA Police.

The Department for Child Protection employee or the WA Police officer
who receives the information will refer the case to the Regional
Coordination Response case management group.

When an agency or case management group receives information from
or in relation to a victim that indicates that risk of harm is high, it may
on occasions be necessary for that agency or the case management
group to request information from another agency that provides
services to the alleged perpetrator of concern, in order to develop a
case management safety plan in relation to the victim.

If the agency providing services to the alleged perpetrator of concern
does not have legislative authority or client consent to release the
requested information, the first agency or case management group
should refer their concerns to the Department for Child Protection if a
child or children are involved, and/or to the WA Police where an adult
victim is involved. Each of these agencies will use their legislative
authority to undertake an investigation in relation to the perpetrator and
the risk they pose, and provide whatever information is necessary to
the first agency or the case management group so that a case
management safety plan can be developed to keep the victim safe.

8.4 Third Parties
The Parties to the MOU shall not permit access to, or release information to, a
Third Party unless lawfully require to by a Court or lawfully required or
enabled to do so by statute.

8.5 Information Provided/Exchanged in Good Faith
The signatories to this MOU will provide and exchange information within the
scope of this MOU in good faith, but cannot guarantee the accuracy of the
information.

8.6 Security of Information
The signatories to this MOU undertake that staff of their agencies will ensure
the adequate and secure storage of information in any form, received from
another signatory agency under the auspice of this MOU.

8.7 Disposal of Information
When the information is no longer required, the signatories to this MOU
undertake to destroy or dispose of the information in compliance with the
requirements of the Information Commissioner and with their agency’s
records management, retention and disposal policy and procedures.
8.8 Costs
The signatories to this MOU will provide and exchange information within the scope of this MOU to other signatory agencies at no cost.

8.9 Improper Requests
It is the duty of all signatories to this MOU to report to their agency's representative on the Senior Officers' Group any request or demand for information from another signatory agency that does not comply with the spirit of this MOU. The reporting of any such requests will contain all of the information available on the matter.

Part 9: Information that can be provided or exchanged

9.1 Information exchange
Subject to the conditions outlined in Part 8 of this MOU and for the purposes as set out in Part 5, information provided and/or exchanged under the auspice of this MOU must:
- relate to the identification of high risk of harm to an adult and/or to the wellbeing of child victims of family and domestic violence; and/or
- be used to enhance capacity to support and monitor and, therefore, reduce the risk of harm; and/or
- where relevant, increase perpetrator accountability.

On a case by case basis, information that can be provided or exchanged will include, but not necessarily be limited to, the following:
- basic demographic information (e.g. names, ages and address of the victims and perpetrator);
- known details of family circumstances including, but not limited to, any criminal and civil history of violence;
- qualitative information provided by the victim or another party who is concerned about the victim;
- any special issues that might be contributing to the risk of harm (e.g. cultural factors, mental health, substance misuse or other medical issues);
- criminal histories that (1) have been taken into account in determining that a high level of risk exists for the adult and/or child victims, and/or (2) indicate a potential risk of harm to a worker who will become involved as a result of the information provision or exchange;
- the information and circumstances that have led the referring agency to assess the individual/s to be at high risk of harm;
- details of violence or any other restraining orders that are in place; and
- any other information that might contribute to reducing the risk of harm to victims.

9.2 Forms in which information may be exchanged
Information may be exchanged at the request of any RCR member agency/agencies to one or more other member agencies, or by joint initiative, as part of a strategy to keep victims safe and perpetrators accountable. The information may be exchanged verbally, in writing or electronically. Where