



Family Violence Information Sharing Legislation Consultation questions

A Submission from the Community Housing Federation of Victoria

31 August 2016

The Community Housing Federation of Victoria (CHFV) welcomes this opportunity to make a submission in response to the *Family Violence Information Sharing: Consultation questions*.

CHFV is the peak body that represents the not-for-profit community housing sector in Victoria. CHFV's member community housing organisations (CHOs) are committed to providing secure, affordable and decent housing for people on low to middle incomes.

Members include the CHOs registered as housing associations or housing providers under the Victorian regulatory framework for non-profit housing providers plus other organisations and individuals interested in housing. These registered CHOs manage more than 19,000 units of rental property, over 9,000 of which are owned by CHOs themselves.

Executive Summary

CHOs, as "first to know" organisations, have an important role to play in a community-wide response to family violence. Part of this response involves the appropriate sharing of information to manage risks to individuals and families.

We believe therefore that the proposal arising out of the Royal Commission into Family Violence to permit information sharing between a "trusted circle" of prescribed organisations has merit. We would however argue that:

- It should be clear whether CHOs are included or not. Legislation and regulations made should not simply refer to "funded community service providers" or "organisations that provide a service to victims of family violence" as this does not provide sufficient clarity. Most CHOs do not receive ongoing operational funding from government and provide housing to victims of family violence as part of a broader housing remit.
- If CHOs are to be included as prescribed organisations, then government needs to invest in appropriate workforce and sector development. This is to ensure that CHOs and their staff have the necessary resources, skills and capacity to comply with their legal obligations under the information sharing regime.

Background

The role of community housing in responding to family violence

CHOs play an important role in a community wide-response to family violence. This is because:

- Many women and families use housing provided by CHOs – crisis, transitional and long-term housing – to be safely housed after a threat or occurrence of family violence.
- Family violence can occur in homes owned or managed by CHOs. In this case, CHOs play a role as a social landlord who:
 - is a “first to know” agency who can recognise signs and risks of family violence, make referrals to appropriate services and alert law enforcement when appropriate;
 - while not providing support themselves, are able to working in collaboration with with specialist family violence and other services to support tenants and households who are the victims of family violence; and
 - works closely with services and law enforcement to establish and maintain safe tenancies for women and families at risk.
- Perpetrators of family violence may be living in or seek to access housing owned or managed by CHOs after being excluded from other housing as a result of family violence intervention orders or other legal means.

Data collected by CHOs and privacy implications of this role

CHOs in their role as tenancy managers collect personal information of applicants for housing, tenants and household members of applicants and tenants. This includes:

- Identifying information such as names, addresses and ages of all household members;
- Contact details including phone numbers and email addresses of the tenant and (in some circumstances) household members;
- Documents used to verify the eligibility of applicants for community housing, including:
 - Identity documents which establish that the applicant is an Australian citizen or permanent resident; and
 - Information establishing the applicant’s income (Centrelink statements, copies of income tax assessments, payslips or letters from employers) and assets;
- Documents submitted by tenants as part of regular rental reviews evidencing household income;
- Tenancy file, including property condition report, letters and notices sent to the tenant, file notes of conversations between CHO staff and the tenant; records of regular property inspections, photos taken as evidence of the condition of the property.

This information can be kept either in a hard copy file or on a tenancy management database or database recording details of applicants for housing.

For many CHO tenancies where a tenant is supported by other people to maintain their tenancy (such as support workers, family members or other natural supports), CHOs may also have consent to communicate with those people providing support to the tenant. This is what is known as a “supported tenancy”. It is model of partnership between services and CHOs that has a strong track record of sustaining tenancies for people with support needs.

CHOs and supports must have the written consent of the mutual tenant/client to share information. CHOs and funded support providers usually have written protocols for successful communication and information sharing to manage risks and ensure timely sharing of information (where permitted). Of course, tenants with support needs may choose not to provide consent or later withdraw their consent.

In these supported tenancies, CHOs may also maintain personal information or health records in the nature of:

- contact details of those supports;
- information of a general nature of the tenant’s disability, mental health condition or other support need, such as risk factors and communication needs so that CHO staff can most effectively manage the tenancy and notify supports of any issues that arise with the tenancy; and
- records of conversations or communication with supporters about resolution of issues where a tenancy is at risk owing to the actions of the tenant (such as rental arrears, failure to care for the property or nuisance behavior).

CHOs take their privacy obligations seriously. The Privacy and Data Protection Act 2014 (PDP Act) applies to most CHOs as contracted service providers under the PDP Act.

The Health Records Act 2001 (HR Act) may apply to some records described above to the extent that it is personal information and information or an opinion about:

- the physical, mental or psychological health (at any time) of an individual; or
- a disability (at any time) of an individual.

In addition, registered CHOs are required under the Performance Standards made under the Housing Act 1983 (Vic) (Housing Act) to establish a privacy policy.¹

Tenants and applicants for housing who believe that their legal right to privacy has not been complied with by a registered CHO may, in addition to rights under the privacy legislation, make a

¹ See *Performance Standards for Registered Agencies*, Performance Standard 6 which states that: “The registered agency has privacy policies that comply with the Information Privacy Principles contained in the *Information Privacy Act 2000* and has strategies to ensure that tenants privacy is maintained with respect to disclosure within the registered agency and to third parties.”

complaint under the CHO's internal complaints process that a registered CHO is required to establish under the Housing Act. A tenant or applicant for housing who is not satisfied with the outcome may appeal the matter to the Housing Registrar for investigation and determination.²

How CHOs are funded and regulated by government

Most CHOs receive government financial support from the Director of Housing (DoH), the state body established to own and manage public housing in Victoria and part of the Department of Health and Human Services (DHHS). Financial support is provided under a range of programs, which adapt and evolve along with government's priorities in social and affordable housing. It can be either operational (recurrent) funding, head leases of DoH-owned housing stock or one-off capital grant funding. Attachment 1 to this submission contains an overview of the key funding arrangements.

Most registered CHOs have received funding from a mixture of sources. The terms of these programs evolve and adapt with changes to government housing policy. For example:

- Since 2006 it has been the policy of successive governments to require CHOs to make their own contribution (or leverage) to new capital programs through debt or other contributions, usually 25% of project cost.
- Since 2013, DHHS has changed its leasing model for DoH-owned properties to move CHOs on to forms of lease which require the CHO to assume more responsibility (and risk) for long-term asset management.

Regulation under the Housing Act is intended to complement the funding model by giving government assurances that the CHOs registered under the scheme (known as registered agencies) are well-governed, financially viable, manage risk appropriately and provide quality outcomes for tenants.

Response to consultation questions

1. What should the purpose of an information sharing regime be?

In principle, the twin purposes of risk assessment and service referrals and managing risks to safety appear to be adequate for the purposes of the information-sharing regime. Broader purposes of public welfare are best left to exceptions in the default privacy legislation in the HR Act and PDP Act.

2. Which organisations should be included in the information sharing regime?

We think prescribing organisations by regulation is a sensible approach. It would give flexibility for the future as this area evolves.

We believe it is vitally important however that relevant organisations be specifically identified by type and not using broad terminology. It would be easy to define whether CHOs are included – or

² See the Housing Registrar publication, *The Housing Registrar's role with complaints by tenants or prospective tenants*

excluded – from the regime by making specific reference to *a registered housing agency within the meaning of the Housing Act 1983*.

This is apparent by ambiguity in both the Consultation Paper and the Commission’s report as to whether CHOs should be included in the information sharing regime.

- Appendix 1 to the Consultation Paper refers to “community services that are stated funded” which includes “homelessness services”.
- The Royal Commission’s report included “housing and homelessness services” in its description of information different organisations might collect and use in the context of family violence.³ However, in the report’s discussion on which prescribed organisations should be included, it referred to “..registered ‘community services’ such as homelessness, health care, aged care, disability, drug and alcohol and mental health services”. The Commission’s report then went on to state that:

Broadly, community service organisations (including specialist family violence services, sexual assault services and other providers who come into contact with people experiencing family violence and who will need to assess family violence risks) should be prescribed organisations [sic]⁴

These types of broad definitions leave CHOs in real doubt about whether they are included or not. Because of the nature of housing and also the various funding arrangements (capital grants and leases) it is not always clear whether housing provided by a CHO is considered a “service” or one that is “state funded”. CHOs come into contact with people experiencing family violence but it is not their sole focus.

This has arisen in previous legislative contexts where it appears that whether CHOs are intended to be included (or not) has been overlooked or dealt with inadequately by the legislation. For example:

- Recent amendments to the Child Wellbeing and Safety Act 2005 (Vic) applied new Child Safety Standards to an entity that “... receives funding under a State contract to provide housing services or other assistance to homeless persons” but exempted any organisation that “if the entity does not ... provide any services specifically for children.”⁵ It is unclear from this definition if a CHO who receives one-off capital grants “receives funding under a State contract” and if housing intended for families (but when parents and not children are named on the tenancy agreement) is a “service specifically for children”.
- The Charter of Human Rights and Responsibilities Act 2006 (Vic) can apply to decision made by “...an entity whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority (whether under

³ Report of the Royal Commission into Family Violence, page 157 (Table 7.1)

⁴ Report of the Royal Commission into Family Violence, page 187

⁵ See Child Safety and Wellbeing Act 2005 (Vic), sections 3 (definition of “category 1 entity”), 19 and 22.

contract or otherwise)...⁶ It has only been through recent tribunal decisions has the application of the Charter to CHOs has been clarified somewhat.⁷

In the context of information sharing, the purpose of prescribing organisations is to provide legal protection to an organisation where it might otherwise be in breach of default privacy legislation. Therefore it is particularly important to get this right.

As to whether registered housing agencies should be included or excluded, this is a complex question and difficult to resolve given the short time available to consult with CHFV members, and a lack of clarity on how the information-sharing regime will work. However, we would make the following observations:

- As stated in the Background section, CHOs are “first to know” agencies, therefore there is merit in including CHOs in the tent to permit information sharing with confidence and clarity.
- There may be a particular logic of including CHOs who work specifically with women and families who are the victims of family violence, or who have received funding for particular housing initiatives in this area such as the *Safer Housing Package*.
- Existing exceptions in the default privacy legislation for requests by law enforcement officials⁸ and threats to the safety of individuals⁹ also appear to be largely adequate for the purposes of disclosure by CHOs. These would be further enhanced by reforming the “serious and imminent” exception as proposed (see section 9).
- CHOs need to keep their own tenancy management records in a specific format due to the requirements of residential tenancies (rent ledgers, condition reports etc). If this regime becomes linked in the future to joint record-keeping for case management of individuals, then there is a risk that this will involve significant duplication of efforts by CHOs.
- Obligations to share information may be significant and will require significant workforce development and training. Frontline CHO staff are first and foremost tenancy and property managers and do not necessarily have a background in human services or welfare.

3. What types of information should be exempt from being shared?

The exceptions listed in the Discussion Paper appear reasonable.

4 Whose information should be shared?

From the perspective of CHOs seeking legal protection from actions to protect community safety, we are broadly supportive of allowing information-sharing about third parties, subject to the safeguards

⁶ Charter of Human Rights and Responsibilities Act 2006 (Vic), section 4(1)(c)

⁷ See for example *Louise Goode v Common Equity Housing Limited*, Victorian Civil and Administrative Tribunal (21 January 2016)

⁸ Health Privacy Principle 2.2(j) and Information Privacy Principle 2.2(g)

⁹ Health Privacy Principle 2.2(h) and Information Privacy Principle 2.2(d)

mentioned. We are not in a position to comment on the implications for the privacy rights of individuals however.

5. How should consent work?

We prefer Model 2 for obtaining consent as it would be easier to apply by CHOs and their staff.

We expect that a key type of information that might be requested from a CHO by another organisation is personal information about a perpetrator.

If CHOs are prescribed organisations, we understand that under the proposed arrangements, CHOs would be obliged to share personal information about perpetrators without the consent of the perpetrator if this information is requested by another prescribed organisation.

If this request is made for the purposes of risk assessment, the CHO would not need to be convinced a risk exists to share information with the other organisation.

However, when disclosing personal information for the purposes of safety management, the CHO would need to “reasonably believe that sharing information is necessary to manage the risk of safety to the victim”. This means each CHO would need to have the right assessment and verification systems for information sharing to ensure that:

- personal information is only disclosed information to the right organisations;
- CHO staff have the capacity to assess whether a safety risk exists; and
- policies and procedures are implemented to ensure compliance.

In addition, current and prospective tenants of each CHO will need to be informed of these changes to the CHO’s privacy policy.

6. How should the family violence information sharing regime interact with other laws?

7. Other elements of the Royal Commission’s proposed information sharing regime

We have no specific feedback on these questions.

8. Implication of the proposed information sharing regime

We think it is important that the resource implications to CHOs be understood in this context.

The community housing business model is one where CHOs rely largely on rent paid by tenants to sustain business operations include maintenance, rates, insurance, staff costs and overhead. This business model is under increasing pressure as government seeks that access to subsidized housing be targeted at those perceived as most in need.

Government initiatives to create a more integrated, effective service system are welcome, but in most cases we see little additional financial support for CHOs when these initiatives are rolled out. This would form part of an ever-increasing set of compliance expectations for CHOs. CHOs might have to respond by reducing resources available to maintenance or other important parts of their

services. This can be avoided by attaching specific funding to support CHOs to comply with their obligations and ensure safety for tenants and other people coming into contact with the CHO.

9. An information sharing regime beyond family violence

See separate CHFV submission on this point.

Attachment 1: Key funding arrangements for CHOs.

Program	Funding arrangement	Risk allocation
<p>Transitional housing</p> <p>Short- to medium-term supported housing for people who are homeless or at risk of homelessness. This is a pathway to long-term public, community or private market housing.</p>	<p>Funding agreement between CHO and DoH. CHO enters into tenancy agreement as agent of DoH. CHOs are delegated powers by the DoH under the terms of Section 35 of the <i>Housing Act 1983</i> to manage, control and undertake related activities to administer a transitional housing portfolio. CHO remits all rent paid by tenants to DoH. Staff and operating costs are funded by DoH.</p>	<p>DoH bears risks associated with asset management, non-performance of tenancy obligations (rent arrears, damage) and vacancies.</p>
<p>Long-term leased</p> <p>DoH-owned properties. Long-term housing for clients who meet eligibility for public housing.</p>	<p>DoH leases properties to CHO for term of up to 5 years, typically for small head lease rental. Tenants have tenancy agreement with CHO and pay rent to CHO. CHOs retain all rent paid by tenants.</p> <p>No operational funding is provided by DoH.</p>	<p>CHO bears risks associated with non-performance of tenancy obligations (rent, damage, vacancies).</p> <p>CHO assumes most asset management responsibilities. The DoH retains a residual liability for insurable risks.</p>
<p>CHO owned (capital grant funding)</p> <p>Properties owned by the CHO which are used as long-term community housing for people who meet community housing eligibility criteria. These are acquired with financial assistance from government or transferred to the CHO from government.</p>	<p>Capital grant agreement under which DoH provides a one-off capital grant or title to existing assets. Grants are repayable if the property is sold or ceases to be used as community housing. Since 2008 the policy of the DoH has been to provide 75% project of total up-front capital cost, with the CHO providing 25%.</p> <p>DoH does not provide any ongoing capital or operational funding.</p> <p>Tenants have tenancy agreement with CHO and pay rent to CHO, used to meet ongoing costs of ownership.</p>	<p>CHO bears all risks associated with property, including long-term maintenance liabilities and non-performance of tenancy obligations.</p> <p>DoH has no ongoing responsibilities with respect to the property except to exercise control where the CHO wishes to sell a funded asset.</p>

Program	Funding arrangement	Risk allocation
<p>Independently CHO owned</p> <p>Properties owned by the CHO which are used as community housing and have not had any government contribution to purchase or construction or compulsory conditions regarding eligibility criteria.</p>	<p>No government funding or compulsory conditions regarding eligibility criteria.</p>	<p>CHO bears all risks associated with property, including long-term maintenance liabilities and non-performance of tenancy obligations.</p> <p>DoH has no ongoing responsibilities with respect to the property, nor control over the asset.</p>