

Independent review of privacy incidents in child protection

Departmental response

September 2016

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1. Background

On 12 July 2016, the Minister for Children and Families, the Honourable Jenny Mikakos, sought an independent review of privacy incidents in the child protection program managed by the Department of Health and Human Services, following concerns raised in relation to the disclosure of a carer's withheld address to the parent of a child.

The purpose of the review was to examine the causes of incidents of this nature to identify any systemic issues that could be addressed.

Mr John Leatherland, an experienced Human Services consultant, conducted the review over a six week period and provided a report to the Minister on 26 August 2016.

The reviewer was asked to:

- inquire into the circumstances of a sample of child protection privacy incidents over the past 5 years. The sample focused on incidents where information became available to third parties that could have been expected to place children and or their caregivers at direct risk of harm;
- determine the extent to which policy and practice advice, or, compliance with policy and practice advice, contributed to the reported incidents;
- examine the adequacy of the department's response method(s) to reported incidents; and
- provide advice on improvements to policy, practice or systems including client information systems, to improve controls and reduce the recurrence of future incidents.

2. Summary of key findings

Following a search for all incident reports categorised as privacy breaches over the last five years, the department provided the reviewer with 64 reports where a privacy breach had occurred and a risk of harm to a carer or child was possible.

The reviewer determined that 61 of these reports were in scope and examined the circumstances of each breach. 58 of the reports were substantiated. The reviewer subsequently undertook an in-depth analysis of 18 of the reports that were found to be similar to the incident that led to the commissioning of the review.

Of the cases reviewed, six involved some disruption or detriment to carers or children.

The review found:

- while immediate actions taken in response to privacy incidents are usually appropriate and effective, follow up actions could be better monitored to ensure completion;
- the majority of privacy incidents are caused by human error, which could be reduced through enhanced practice guidance and tailored training;
- monitoring and oversight of privacy incidents could be strengthened and the roles and responsibilities of the department's central privacy unit and operational arms could be better defined; and
- the department has implemented or was already planning to implement a range of actions to improve compliance across the department with privacy obligations. This includes

enhancements to the client management information system to improve the protection of carer information.

Overall, the review found that although there were several deficiencies in the way the department managed child protection personal information, it also found that improvements could be made without the need to undertake major reforms.

The review has recommended actions to reduce the possibility of breaches in the future.

These include:

- providing more training around privacy to our child protection workforce, including an e-learning module that is specifically about the privacy issues they will encounter;
- being clearer about when the department or foster care agency can and cannot share information about a child's location and their responsibilities to both parents and carers;
- continuing to work with community service organisations to ensure they meet their privacy obligations;
- changing the department's client information system so that phone numbers and addresses do not automatically appear in court documents and considerations of privacy issues are more prominent in child protection forms and assessment procedures;
- developing a new privacy framework including an IT tool to record, monitor and report on privacy incidents;
- exploring options to improve the child protection interfaces with the Children's Court; and
- ensuring matters of confidentiality and privacy are paramount considerations when developing or reviewing policies, programs and practice guidance.

3. Department's response

The protection of vulnerable children is a fundamental responsibility of the department.

Child protection workers are compassionate and skilled professionals. However, their work is inherently complex and fluid.

The findings of the review reinforce the need for the department to have in place appropriate systems and information controls that are effective in a very demanding environment. These must be supported by guidance, training and increased oversight.

The department agrees to implement all of the recommendations of the review. Our actions in response to the recommendations are outlined in the following sections.

Regular updates on the implementation of the recommendations will be published on the department's website: www.dhhs.vic.gov.au

Addressing the development and support needs of child protection practitioners and senior child protection staff

Recommendation 1	Response
<p>Additional learning and development tools are developed and implemented which are specific to the Child Protection program. These are to include:</p> <ul style="list-style-type: none"> • an eLearning module for child protection practitioners, students and administrative staff within the Child Protection program. This module should be no more than 30 minutes. The focus of this module should be on the basic do's and don'ts of privacy/information sharing, with most content being program specific. • this module should be included as mandatory training with associated monitoring of completion. It should also be followed by discussions with a supervisor to maximise the opportunity for learning to be embedded in practice. • an eLearning module for leadership staff, especially senior practitioners and team managers within the Child Protection program. The focus of this module the additional privacy and information sharing responsibilities associated with their roles and the broader policy context of information sharing. 	<p>The department is developing a privacy training strategy to deliver:</p> <ul style="list-style-type: none"> • a refreshed eLearning module that provides general training for all staff on their privacy and confidentiality obligations - currently being finalised ahead of the roll out in September 2016; • new specific training modules for a range of workers over 2016-17, starting with modules for child protection staff and leaders, to be released by December 2016. <p>The modules will refer to the planned enhancements to information systems (see response to Recommendation 4).</p>

Addressing the needs of carers

Recommendation 2	Response
<p>Changes are made to both the Child Protection and Out-of-Home Care Manuals to document procedures and appropriate advice regarding:</p> <ul style="list-style-type: none"> • the need to have discussions with carers immediately prior to or at the commencement of a placement about the legislative requirement of DHHS to provide information to the parents about the child, including the provision of personal information; and that this requirement is subject to several qualifications including consideration that it is not in the child's best interests to provide the information. These discussions need to be held in the context of the assessment processes that precede a placement; • the decision making and endorsement processes for withholding information from parents; • the communication and recording of such a decision; • consideration being given to reviewing a decision to withhold information. 	<p>The department will immediately review and revise relevant practice advice in both the Child Protection manual and Out-of-Home Care policies and guidelines. This will ensure assessments regarding the need to withhold placement details are timely and appropriate and where necessary the process to withhold such information accords with legislation and delegated decision making.</p> <p>New practice guidance will be available by the end of October 2016</p>

Recommendation 3	Response
<p>Correspondence is sent to all chief executive officers of organisations providing out-of-home care requesting that they take necessary steps to ensure that their staff and carers have appropriate training in relation to privacy and information sharing. In particular it will be important to ensure that they are aware of the legislative and policy requirements relating to the provision of information to parents regarding a child, and the circumstances in which a person with delegated authority within Child Protection can determine that information is to be withheld.</p>	<p>The department will send a letter to chief executive officers of out-of-home care providers as a matter of urgency.</p> <p>The correspondence will advise providers of the department's response to the Review and outline the privacy and confidentiality requirements that apply to them.</p> <p>This letter will be sent in the first week of September 2016.</p>

Court related documents

Recommendation 4	Response
<p>That the following changes are made to court related documents:</p> <ul style="list-style-type: none"> • by means of a CRIS enhancement, no address or other contact details of any professionals are included in the Professional's table in reports to the Children's Court; • it is noted that a number of enhancements are scheduled for release in November 2016 that will require a yes/no answer to whether an address is to be withheld prior to allowing the user to progress through the screens. This should substantially reduce the risk of human error; • a Summary Information Form which is completed for all Emergency Care Applications be amended to contain a specific reference as to whether or not an undisclosed placement is sought by the department. 	<p>The address and contact details of carers and professionals will be removed from court reports. This will require a systems change that will be developed, tested and rolled out by early 2017.</p> <p>The department confirms that the changes scheduled for November 2016 are on track.</p> <p>The department commits to amending Summary Information Forms by the end of September 2016.</p>

Strengthening the privacy framework as it relates to child protection

Recommendation 5	Response
<p>Measures are implemented that clarify the role relationship between the central Complaints and Privacy Unit and the privacy function delivered through the operational division. These are to include:</p> <ul style="list-style-type: none"> • The planned development of a new information technology tool to include supporting the management of privacy incidents to provide end to end recording, investigation and resolution of all such incidents. Such a tool needs to enhance the monitoring and oversight of performance and facilitate the identification of systemic issues that arise. • The Complaints and Privacy unit in conjunction with operational divisions defining the capabilities and core components of the privacy function within operations divisions to achieve greater consistency of approach. • Pending the implementation of the new information technology tool, the Breach of Privacy checklist be extended to include a sign off when medium terms steps have been taken to prevent privacy breaches that were identified following a specific incident. 	<p>The department will, by December 2016, review and adjust the operating model for the management and oversight of privacy policy, advice and breach management including:</p> <ul style="list-style-type: none"> • clarifying the role and purpose of the Complaints and Privacy Unit and its relationship to privacy officers in the operational divisions of the department • how and where to achieve greater consistency in practice. <p>The department will also, by November 2016, enhance the Breach of Privacy checklist to include authorisation of follow up actions.</p> <p>A new privacy management information system has been funded and is currently being developed to support the management, monitoring and reporting of privacy incidents and complaints / compliments. The system will be fully operational by July 2017.</p>

Addressing specific pressure points of the interface of child practitioners with the Children’s Court

Recommendation 6	Response
<p>A working group is established to consider strategies in the short and longer term to address the pressure points faced by child protection practitioners in their interface with the Children’s Court and to develop an action plan.</p>	<p>The department will establish a working group comprised of senior representatives from within the department and relevant external parties.</p> <p>This group will explore options to improve the child protection interfaces with the Children’s Court.</p> <p>An action plan will be developed by November 2016.</p>

Ensuring that the privacy issues are appropriately reflected in program documentation

Recommendation 7	Response
<p>The Child Protection and Out-of-Home Care manuals are reviewed to determine whether any changes are needed arising from the content of this review.</p> <p>When reviewing manuals and policies or developing new ones relating to child protection and out-of-home care, adequate attention needs to be given to the privacy issues that have been the subject of this review.</p> <p>Appropriate steps are taken to ensure that manuals and training materials for carers address the relevant privacy issues in practical terms that relate specifically to their role.</p>	<p>The Child Protection manual and various out-of-home care policies and guidelines will be reviewed to ensure all policies and procedures reflect the findings of this review.</p> <p>This will be undertaken by December 2016.</p> <p>Child protection will continue to work with the department’s Complaints and Privacy Unit on all new advice concerning privacy matters.</p>

4. Next Steps

The department will implement the recommendations as swiftly as possible. This work will be overseen by the department's Executive Board and updates regularly provided to the Commissioner for Privacy and Data Protection, who is conducting his own review of the Department's privacy provisions and information security.