



Secretary

Department of Health & Human Services

50 Lonsdale Street
Melbourne Victoria 3000
Telephone: 1300 650 172
GPO Box 4057
Melbourne Victoria 3001
www.dhhs.vic.gov.au
DX 210081



Court ref: e4043429
COR 2010 002023

Kate Doherty
Coroners Registrar
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

Dear Ms Doherty

Thank you for your letter received 26 November 2015, regarding the findings of the State Coroner Judge Ian Gray, into the death of Ms Sherry Ann Robinson.

The Coroner raises a number of issues in his investigation about police responses to family violence, their recording of information, and information sharing between Victoria Police and mental health services and emergency departments.

As a result of his investigation into her tragic death, Coroner Gray has made the following recommendation in relation to the Department of Health and Human Services.

"I recommend that the Department of Health and Human Services and the Chief Commissioner of Police address in their shared protocol for mental health the circumstances in which Victoria Police should be notified of the discharge of a person initially apprehended by Victorian Police under the Mental Health Act 2014.

Consideration should be given to making such notification mandatory, rather than contingent on an assessment of future or current risk".

Response

The department is working closely with Victoria Police on the updating and revising of the existing draft protocol. The draft protocol has already been informed by the circumstances surrounding the tragic death of Ms Robinson. The protocol will address the following issues:

- a) the circumstances in which police can exercise the power under section 351 of the *Mental Health Act 2014* (Mental Health Act) to bring a person to an emergency department or to a mental health service, and the information police can provide to the health service about the person, including risks of harm to self and others and if there is a known history of violence based on police records; and
- b) the circumstances in which the emergency department or mental health services may notify police of the discharge of the person from the emergency department or mental health service.

The department regards any risk of family violence as very serious and the draft protocol will consider the circumstances when information can be shared where family violence history is apparent.

.../2

However, mandatory notification by a mental health service or emergency department to police would require legislative change as presently, only certain notifications would be lawful.

The information that a particular patient is being discharged from an emergency department or a mental health service is 'health information' within the meaning of that term in the Mental Health Act and the *Health Records Act 2001* and as such, the use and disclosure of that health information is governed by section 346 of the Mental Health Act, the Health Records Act and the Health Privacy Principles made under the Health Records Act.

Section 346 of the Mental Health Act prohibits the disclosure of health information by a mental health service except in the circumstances set out in section 346(2). None of those circumstances would apply, except for those in section 346(2)(e): where the disclosure is permitted by Health Privacy Principles 2.1, 2.2(a), (f), (g), (h), or (k), or 2.5.

Of the Health Privacy Principles stipulated in section 345(2)(e), only Health Privacy Principle 2.2(h) is of potential relevance; however that Health Privacy Principle will only authorise disclosure by a mental health service to police when the disclosure is necessary to lessen or prevent:

- a) a serious and imminent threat to an individual's life, health, safety or welfare; or
- b) a serious threat to public health, public safety or public welfare.

Given the legislative requirements of the Mental Health Act and Health Records Act, disclosures must be based on an assessment of risk to the person and others.

The department is aware that the Royal Commission into Family Violence has heard evidence about sharing and storage of risk assessment information. The Commission is due to release the report findings and recommendations on 29 March 2016. The department will then further consider appropriate responses to the Royal Commission's recommendations.

The protocol between the department and Victoria Police has not been finalised, however the Coroner's recommendation has informed its contents. As the provision of health information must be based on the assessment of risk, the protocol will include a reference to recognising likely risk factors. For example where there is a history of threats, violence and/or intervention orders regarding the person being discharged, then the existence of Family Court proceedings is a relevant consideration when assessing risk and these risk factors will be included in the draft Department of Health and Human Services and Victoria Police protocol. This will provide a further lens for clinicians when assessing the individual's risk during planning for leave and discharge from the mental health service. The decision to disclose to either the family member or the police should then be based on the Health Privacy Principles.

If you require further information about this work please contact Kristen Densley, Senior Policy Advisor, on 9096 6931.

Yours sincerely



Kym Peake
Secretary

22/3/2016