

Sharing information safely

Summary of Feedback: Guidance on sharing personal information under the Family Violence Act 2018

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[New Zealand Government](#)

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Introduction

The Family Violence Act 2018 (previously the Family and Whānau Violence Legislation Bill) was passed by Parliament in November 2018 and will come into force on 1 July 2019. One of the significant changes the Act makes is to create new rules for family violence agencies¹ and social services practitioners² around sharing personal information. This change recognises that sharing the right information with the right people at the right time can ultimately save lives.

Under the Act, family violence agencies and social services practitioners (the sector) will be enabled to share information when it is safe and appropriate to do so. The Act provides clear authorisation for the sector to collect, use, request and share personal information for permitted purposes. It also clarifies that the sector has a duty to consider sharing if it may help protect a victim, or if it receives a request for information for a permitted purpose.

*“Information sharing has to be done in a way that helps empower the victim.
To help her rebuild her life and to help agencies see the whole picture.”*

Draft guidance on sharing personal information

To assist the sector in implementing the new provisions, the Ministry of Justice developed three draft documents: an Information Sharing Guidance document, an A3 poster and a one-page overview (the draft Guidance, collectively).

These resources aim to provide detail and certainty on when, how and why information relating to family violence can be shared. The draft Guidance captures the relevant legislative provisions that need to be considered when sharing information, so that the sector will not always need to refer to other legislative requirements. It also sets out clear rules and safeguards around how personal information is to be treated during its lifecycle – from collection, to storage, to sharing and final disposal.

¹ As defined by the new section 19, which includes government agencies (such as Police and Oranga Tamariki – Ministry for Children), publicly-funded non-governmental organisations and school boards.

² As defined by the new section 19, which includes, for example, teachers, health practitioners and social workers.



The draft Guidance was released for public feedback in August 2018. Feedback was sought in three ways: an online survey seeking feedback from the sector; facilitated workshops with government officials, social services practitioners and family violence agencies; and conversations with victims. Overall, feedback on information sharing was positive, with the sector recognising the importance of agencies having a more complete picture to better understand and address family violence.

This report summarises the feedback received across the three methods, and highlights the key themes in each.

Consultation process

The draft Guidance was publicly released for online feedback from 1 August to 21 September 2018. Submitters had the option of filling out an online questionnaire with a mixture of quantitative and qualitative questions, or submitting via email (or both). We received 58 online submissions.

We held seven facilitated community workshop sessions between 13 and 29 August, with attendees participating in small and large group discussions. Sessions were hosted in Kaitia, Whangarei, Auckland, Manukau, Wellington, Christchurch and Gore. Attendees included community leaders, service providers, victim support, court and justice services staff, individuals from interested government departments (such as Ministry of Health, Oranga Tamariki – Ministry for Children, Ministry of Education and Police), and iwi representatives.

We also held conversations with 13 victims of family and sexual violence. These sessions were supported by the Backbone Collective, SHINE and Waitomo Papakainga, and were conducted face-to-face, by Skype or by telephone. Conversations were victim-centred, and participants came from a wide variety of socio-economic backgrounds, professions, ages and ethnicities. Each victim was given a koha to acknowledge their contribution.

Next steps

We received many insightful and helpful comments and suggestions across all feedback methods, which we will draw on to update and finalise the Guidance. The updated Guidance will focus on enabling safe, appropriate, and consistent practice that builds in consent as a first step and meets the needs of victims, families and whānau.

The feedback received affirms the importance of current work underway to implement the Family Violence Act 2018, policy work on sexual violence, operational improvements in justice, and the work of the Joint Venture focused on the wider system, including investment in workforce capability.

Summary of key themes

Three key themes emerged across all feedback methods: information sharing generally, consent, and workforce capability. The key themes are summarised below.

Information sharing generally

The sector expressed views on information sharing generally and on the scheme introduced by the Family Violence Act across all feedback methods. It was agreed that information sharing is critical to develop integrated responses to clients, and is great if used correctly and in a safe way. Submitters noted that communication and system barriers can prevent sharing from happening, but recognised that information sharing can promote collaborative responses to help people affected by family violence.

Consent

Over 25 percent of online submitters mentioned consent, and it was raised at every facilitated community workshop and victim conversation. The overwhelming consensus by all consulted was that victim safety should trump privacy. Submitters acknowledged that there may be situations where information needs to be shared without consent to protect victim safety.

Despite this, the vast majority of submitters considered that the importance of seeking consent should be a strong and consistent message throughout the Guidance. Victims and their advocates told us that seeking victims' views on how their personal information is shared is one way to restore power to victims.

Workforce capability

Submitters highlighted the need for the family violence and sexual violence workforce to have appropriate training. Adequate training would enable the workforce to effectively recognise, respond to and understand the needs of victims and their families and whānau. The majority of submitters felt that the current level of knowledge amongst the workforce meant responses to victims were inconsistent and unsafe. Submitters emphasised the need to improve workforce responses to family violence, including ensuring safe and appropriate information sharing.

In general, submitters felt that the Guidance will provide an opportunity to give detailed and practical support to the sector. Many submitters made specific suggestions to improve the usefulness of the draft Guidance for the sector.

Online feedback

General feedback

Most submitters felt that the range of information provided in the draft Guidance was comprehensive, and acknowledged the complexities of the content. They noted that the target audience were mostly time-poor, and that the sector would benefit from more concise guidance. Submitters emphasised that the Guidance should be user-friendly, clear, logically ordered and succinct.

Several submitters suggested reducing the draft Guidance to a very high-level document with references to specific, detailed guidance where necessary. There were suggestions to provide the Guidance in an electronic format to enable easier navigation, or to create different guidance for different areas of the sector.

While some submitters felt that the tone was at the right level, others felt that there was a variation in formality throughout the draft Guidance, or that there was too much 'assumed knowledge'. Several submitters felt that, as the introduction of information sharing will be a significant culture shift for the sector, the Guidance should provide greater emphasis on the principles behind the legislation.

We received positive feedback on the 'Summary of guidance on sharing information' (p. 13) and the 'Sharing information' flowchart (p. 14). These pages were helpful as they were short and clearly presented the key messages. Submitters suggested extracting these as stand-alone resources or otherwise increasing their prominence within the Guidance.

Submitters also wanted more clarity on who exactly is covered by the Family Violence Act, and therefore the Guidance. Many submitters suggested clarifying the generic terms used to describe who was captured by the Guidance to ensure that some practitioners are not inadvertently excluded.

“Overall, we agree with the content. We appreciate the opportunity to review and submit on the content, which comes across as a well thought out and well-presented, the diagrams are an excellent resource.”

Consent

The importance of obtaining consent before information is shared was a strong theme among submitters. Around 25 percent of submitters addressed issues of consent.

While most submitters acknowledged that a serious or immediate safety concern would override the need for consent, there was strong support for professionals making every effort necessary to attempt to gain consent. Many considered that obtaining consent could be given more emphasis or prominence in the Guidance to ensure that it happened. Some submitters felt that information should never be shared without explicit consent.

Several submitters also raised questions about how a professional should proceed when the victim explicitly withholds consent and suggested that the Guidance could address this. Concerns were raised that the views of victims about their information being shared would be ignored if consent is not prominent throughout.

Submitters noted that victims of family violence are often already mistrusting of agencies, and that a relaxed attitude to consent may increase this mistrust, leading to a decrease in victims' willingness to engage with services. Several submitters were worried that the knowledge that their information may be shared could prevent some victims from coming forward or accepting help from an agency.

Concerns were also raised about ensuring that a child or young person who is a victim (or a perpetrator) could provide consent to their information being shared.

“While we support the principle of safety over confidentiality, it is important to recognise that family violence clients can be distrusting of support agencies, and particularly of government organisations. Victims must be able to interact with agencies with a reasonable expectation that their information is held in confidence, unless their permission is provided to share it or their safety would be seriously compromised.”

“Consent is a key part of the process within the voluntary sector. It is important to consider informed consent at a time of trauma, the consent to refer to an agency and the secondary consent to then engage with whānau. It is also important to be clear on the right to consent for children and young people.”

Workforce capability

Online feedback emphasised how important it is to ensure that the sector can understand the complexities and nuances of family violence situations to practice good information sharing.

Submitters discussed a lack of consistency in training, especially in areas of the sector that have not traditionally been thought of as family violence service providers (e.g. schools). Concerns were expressed that individuals working in these areas may not have an adequate understanding of family violence dynamics, and risked causing more harm than good. Submitters also expressed concern that merely sharing the information would not lead to action.

Submitters wanted surety in knowing how to identify who in any given agency was the right person to share with. The sector would like clarity on how to be sure they were sharing information with the correct person, and on who they may share or receive information to or from. Some submitters signalled that family violence practitioners are currently overworked, and were worried that adding information sharing to their workload could increase the risk of a negative outcome.

Several submitters mentioned the potential risks created by secondary sharing. They were concerned that the risk of a 'leak' would be increased the more information is shared. Submitters wanted to understand who would have oversight of information, and who would be responsible in the event of a negative outcome. Several submitters mentioned that agencies have their own policies and procedures for sharing information, and that the Guidance will need to be able to work alongside these.

One submitter noted that some practitioners will be known to perpetrators and may therefore be identifiable as being responsible for sharing information. The submitter expressed concerns that the safety of practitioners, especially those who provide services that require going to victims' homes, be made a priority as well.

"We must equip professionals with the confidence that information sharing is a culture- from the very beginning. When we engage with a client, professionals must be clear- "this is how we do things, we do share information... because we know that is the best thing to do." We are not tentatively asking if we can- we are being clear that we will, with professional integrity."

Training, tools and further information

Nearly 75 percent of submitters suggested training or tools they would like to see to complement the Guidance, or requested that further information be provided.

Suggestions included:

- a Frequently Asked Questions section,
- flow diagrams for decision making,
- sample/model conversations,
- posters and pamphlets,
- a 'quick reference guide' or 'cheat sheet',
- checklists, and
- template forms (for example, consent forms and emails for requesting information).

A number of submitters also suggested that the flow chart (p. 14) be adapted into a one-page document or poster for easy reference. Several submitters thought that e-learning would provide flexible and accessible training on information sharing for practitioners.

Submitters would like information about how the Guidance interacts with other instruments, employment law, child protection legislation and privacy law. In particular, several submitters noted that the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 also contains information sharing provisions. Submitters suggested that it would be useful for the sector to have one set of information sharing guidance to cover both sets of provisions.

“It would be worth having different ‘cheat sheets’ or documents/examples for people who will be using this guidance that are not FV experts (i.e. teachers etc). Flow diagrams for decision making, including what to do if the information can’t be shared but someone still believes it is important.”

Document clarity

Nearly 75 percent of quantitative survey respondents reported that the draft Guidance was clear and easy to read and navigate. Many submitters offered specific suggestions for changes that could be made, from single word exchanges, to areas for emphasis or whole section consolidations and adjustments. In particular, submitters considered that the Guidance should define family violence so that the sector can use it consistently.

Some submitters thought that parts of the draft Guidance could be clarified or made more specific. However, they acknowledged that the Guidance will apply across a wide range of users and that it needs to provide a baseline for all.

Several submitters felt that different cultural needs could be made more explicit. In particular, some thought that the Guidance could use more te reo Māori and incorporate more Māori perspectives throughout. Submitters felt that whānau were absent from the draft Guidance and should be better represented throughout. Practitioners offered to review the next version of the Guidance to ensure that a Māori perspective is better incorporated.

Submitters also wanted recognition of those who provide services to people who have English as a second language and non-English speakers.

“There is no definition of family violence and what it includes. Not everyone understands what the term means and think it is just IPV etc. they don't realise it also includes child abuse and neglect.”

“The overarching goal should emphasize safety of victims, risk mitigation and timely and effective responses. Information sharing is the means to an end not the end.” “I would like to see more cultural communication, more use of reo, whakatauki. Thoughts about if you have to use an interpreter for ESOL families.”

Facilitated community workshops

General feedback

Each community workshop began with a facilitated discussion on the merits and risks of information sharing generally. Attendees agreed that victim safety should always be the paramount consideration in sharing information, and that safe and appropriate information sharing can lead to positive outcomes. However, concerns were raised that there are communication and system barriers both within agencies and across the wider sector that may prevent this from happening.

Specific suggestions were made on how the draft Guidance could be improved to better serve the sector. These included:

- better inclusion and recognition of Māori,
- suggestions on how to further improve the flow chart (p. 14),
- more detail on how the Guidance interacts with other legislation and court information,
- creating further guidance and tools for the various parts of the sector,
- reducing the size of the Guidance so that it is easier to use,
- increasing the use of case examples – sourced from the sector,
- designing templates for information requests and for sending information, and
- ensuring the Guidance is available electronically.

Several workshop sessions discussed the need for the Guidance, and the broader system, to better include and recognise the Māori perspective. In particular, there were suggestions to make the case examples throughout the Guidance more multi-cultural, and for the Guidance to better acknowledge kaupapa Māori.

Attendees discussed the interrelation of the Guidance with other information sharing and privacy guidance and tools. There was support for ensuring the Guidance covers off any Privacy Act 1993 issues and that it is aligned with other information sharing guidance released by other government agencies. The potential for a portal or online hub for practitioners was repeated in a number of conversations with providers.

Consent

Obtaining the consent of victims and other people whose information may be shared was raised at all facilitated community workshops. Attendees were concerned that the draft Guidance did not adequately highlight the need to obtain the consent of victims before their information is shared. Many considered that consent should be a priority, and not merely a consideration in whether to share information.

There was consensus that the Guidance should clarify that, where consent cannot be obtained before information is shared, the person should be informed as soon as possible afterwards. Some attendees also suggested that the Guidance could provide direction on when to share information where a victim is opposed to the sharing. Attendees recognised that there may be situations where, to protect a victim's safety, information will need to be shared where a victim does not wish for it to be shared. They requested further information be included in the Guidance on what to do in those situations.

Workforce capability

Attendees emphasised the need for training across the sector, particularly to ensure that people have consistent understandings of family violence. There were concerns around the different ways the sector identifies what is and is not family violence, and what constitutes 'safety'. People also raised concerns about information being interpreted differently by the sector for the purposes of risk and needs assessments. Variable practice across the sector was acknowledged.

Some suggested that the Guidance should provide more examples to help agencies and practitioners who do not usually deal with family violence in their day-to-day work. Many also suggested that there should be more guidance on deciding what information is relevant to make sure people did not overshare.

Workshops discussed the differences in information sharing and management across the sector. Attendees noted that verifying the accuracy of the information that agencies hold can be difficult and this may create problems when information is being shared. Training and further guidance on how to record, collect, store, and pass on information was suggested to ensure consistent practice. Some also suggested a draft policy on information sharing could be included in the Guidance as a starting point for organisations that do not have existing policies around information sharing and management.

Some attendees raised concerns about the risk of subsequent sharing of information that was provided by another agency or practitioner. It was noted that the information could lose accuracy as it moves further away from the source, or could be wrongly interpreted. Some guidance around subsequent sharing of information was suggested.

What to do with information once you have it

Many of the workshop sessions discussed what should be done with information once an agency or practitioner holds it. This was linked to the discussions on workforce capability and the need for consistent understandings of family violence dynamics.

Some considered the Guidance should be more specific about how to deal with information once it is received, as practitioners will have different standards for dealing with information. Many noted there must be action following information sharing for the sharing to have any value, and suggested the Guidance should highlight this.

Attendees thought that the Guidance should discuss sharing information with practitioners or agencies who are not named in the legislation. Some felt that the draft Guidance currently implies that you cannot share if you land on a 'no' on the flowchart (p. 14). They noted that there are other pieces of legislation that may allow sharing with others outside of the family violence regime, such as the Privacy Act 1993, and that these should be captured.

Attendees noted that providing feedback to the agency or person who has shared the information would be helpful. Closing the loop would show that some action has come from the sharing and that the sharing has made a difference. Victims should also be informed that their information has been shared, whether or not they had consented to the sharing, so that they are informed on what is happening. Ongoing communication with a victim was described as essential to maintaining a trusting relationship between the victim and agency.

There was brief discussion on the legislative duty on the sector to consider sharing information, and how best an agency or practitioner could document that they had considered sharing. Some suggested that the Guidance should outline some examples of how this could be done.

Victim conversations

Consent

Every victim spoken to shared the view that information sharing should be promoted in the sector, but only in partnership with the victim. All said that people working with victims, and wanting to improve their safety, should seek their consent before sharing their information.

Victims felt that having their consent at the forefront of the Guidance would help to create an information sharing system where the sector was upholding their mana, dignity, autonomy and personal power. They felt that trust would be built by communicating openly with them about the information sharing process – and their rights around the use of their information.

However, victims were aware that there may be situations where information should be shared and the victim informed afterwards. They felt that the Guidance should clarify that victims are to be informed as soon as possible that their information had been shared, including to whom and for what purpose.

Victims thought that robust consent provisions would help them feel that professionals were aware of the risks they face, their need to trust the people working with them, and their desire to recover a sense of independence and control over their own lives. This would improve the trust victims felt when approaching and engaging with support services.

“I like to be kept informed of changes and what the social workers are doing, and want control over how my information is used. I find agencies/social workers informing me throughout the process really helpful and the relationship and trust I have with them is vital to me opening up and sharing my story.”

“Information could be shared without consent if there was extreme and immediate risk – but the woman should be told that the sharing is happening so that she can get to safety first.”

Workforce capability

The majority of victims expressed that, without understanding the risks that victims face, information sharing might increase their vulnerability.

Victims specifically mentioned the need for whole-of-whānau support, and emphasised that a well-trained, responsive workforce empowered to proactively help victims and their families would be a powerful step in preventing poor justice system outcomes.

Victims consistently recommended continued investment in workforce capability and in building public awareness about the dynamics, danger signs and risks associated with family violence and sexual violence. Those we spoke to also recalled experiences of people in different professions having different perceptions of risk, treating the same information differently, or using different language to describe the same things.

Victims felt that the Guidance and associated tools offered a mechanism to provide the workforce with information about the dynamics of family violence and sexual violence. They expressed a consistent view that investment is needed in the workforce, and that the Guidance could support improved practice.

Victims highlighted the value of early intervention, linking services up so they are integrated and responsive, and reducing the trauma by ensuring victims are believed and supported to access the help they need.

“There should be networks of agencies working together, integrated and responsive.”

“My midwife had concerns about my safety during pregnancy. She knew things were happening because I was so unwell, but she didn’t report anything. I wish the midwife had shared her concerns with authorities. It would have been good if the midwife had shared the information with Police and Refuge at the same time to get a combined move – to ensure I was safe and the offender was apprehended.”

Information management

Some victims discussed the need for the Guidance to provide adequate information to ensure that information recording is timely and accurate. There was agreement that practitioners should share information where there is a clear purpose for doing so, but that care is needed to avoid recording information that is not factual.

Some victims raised concerns about the same information being interpreted differently depending on the experience and profession of the person receiving it. This was consistent with victims' emphasis on building a common language in the workforce and avoiding value-laden judgements in recorded information.

Most victims agreed there is value in closing the loop so that people who have shared information get a report back on what actions have been taken. This will help them determine what else may be required in the best interest of families and whānau affected by violence.

“It would be good to be told about information being shared prior to it happening – this would help maintain trust. It would be good for professionals to inform the client what may happen with their information, who they may share with, and for what purpose.”

Information sharing and the court

In an area of discussion not raised by other submitters, victims informed us of the difficulties in having relevant information acknowledged by courts, and shared with – or by – courts. While victims understood the legal constraints on some court information, they wanted an information sharing regime that enables and encourages court staff to share information where possible. They stated that clarifying expectations for information sharing by court staff would represent a key system improvement.

Victims reported that it was very difficult getting information to the Family Court to ensure judges had all the relevant information, and at times the victims had not been supported to provide evidence about the abuse they had endured. Again, this reinforced their concern that the workforce be adequately informed on the dynamics of family violence in order to best support and empower victims and their families.

“There sometimes needs to be more information sharing. The Courts didn’t seek information from Police – then questioned why I needed a Protection Order and parenting order. If they don’t ask they won’t have information for context.”

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